***Drafting Notes***

**Public Service Employment in the State of Victoria**

**Standard Executive Employment Contract: *Public Administration Act 2004* (Vic) (PA Act), Part 3, Division 5**

* This Standard Executive Employment Contract is for use by Victorian Public Service (VPS) employers[[1]](#footnote-2) when employing Executives[[2]](#footnote-3).
* The contract should be used as drafted, and Employers should apply its terms which reflect existing Victorian Government policy.
* The contract should be read in conjunction with the:
* *Public Administration Act 2004* (Vic)
* *Superannuation (Public Sector) Act 1992* (Vic); and
* the Victorian Public Service Executive Employment Handbook
* The contract contains alternative superannuation clauses depending on whether the Executive is a member of a statutory superannuation scheme or not.
* If the contract is executed on behalf of the Employer (the public service body head) this must be done in accordance with the instrument of delegation.
* For further information or assistance, please contact the Victorian Public Sector Commission (03 9651 2020 or info@vpsc.vic.gov.au).

**Public Service Employment in the State of Victoria**

**Standard Executive Employment Contract: *Public Administration Act 2004* (Vic), Part 3, Division 5**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |  |
| --- | --- |
| **Parties:** | **[Employer – insert name of public service body head], in their capacity as public service body Head of Department/Agency of [insert name of Department/Agency], State of Victoria (the Employer)**  **and**  **[Name] (You, or the Executive)** |
| **Date:** | **[Date contract given to Executive]** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Terms and conditions of employment**

## Commencement and term

### The period of this contract is the period commencing on the [ ] day of [ ], 20[ ] and ending on the [ ] day of [ ] 20[ ] unless terminated earlier in accordance with the terms of the contract.

## Position and duties

### You will initially be employed in the position and band set out at Schedule A in [*insert name of Department/Agency*] (Department/Agency).

### You are required to perform the duties and responsibilities consistent with your position, including any detailed in Schedule A, and such other duties and responsibilities as may be notified or assigned to you from time to time.

### The parties will review the duties and responsibilities detailed in Schedule A annually (which may be at the time of the performance review in accordance with clause 6), or as otherwise determined by the Employer. The Employer may, at its discretion, amend the duties and responsibilities following such review or at any other time.

### You acknowledge and understand that you may be transferred to other duties in the Department/Agency, and to duties in another public service body or a public entity, pursuant to Part 3, Division 6 of the PA Act.

## Standards of conduct, conflicts of interest and general responsibilities

You must:

#### at all times conduct yourself in accordance with ethical standards commensurate with your role as an Executive in the Victorian Public Service;

#### act in the best interests of the State of Victoria and the Victorian Public Service and use your best endeavours to promote those interests;

#### not intentionally do anything which is or may be harmful to the State of Victoria, including the Employer or the Department/Agency;

#### comply with all legal requirements, statutory or otherwise, pertaining to your responsibilities as an Executive, including applicable standards, codes of conduct (including the Code of Conduct for Victorian Public Sector Employees), the Victorian Public Service Executive Employment Handbook and policies, as may be in place and apply from time to time. These documents are not incorporated into, and are not otherwise included in, this contract but are nevertheless binding on you;

#### avoid actual, potential or perceived conflicts of interest and if a conflict appears possible or arises, notify the Employer at the earliest opportunity and make all reasonable attempts to manage or resolve it, including complying with any directions issued by the Employer;

#### not, without the express permission of the Employer, be engaged in any other paid employment or carry on any business profession or trade, either directly or indirectly in any capacity. For the avoidance of doubt this does not prevent you from engaging in voluntary activities for a charitable organisation or project;

#### promptly report to the Employer any matters which, on a reasonable view, are material to your employment, including reporting any information and explanations which may affect or impact your ability to properly discharge your duties and responsibilities under this contract;

#### maintain a current security clearance as directed by your Employer, and when occupying a position listed under section 8 of the *Emergency Management Act 2013,* including submitting the necessary application forms within 60 days of being requested by your Employer to do so and promptly notifying your Employer if you are unable to obtain or maintain the requested security clearance for any reason; and

#### maintain the qualifications which are required to perform the duties and responsibilities consistent with your position, including any detailed in Schedule A or added to Schedule A pursuant to clauses 2.2 or 2.3, and provide evidence to the Employer on request.

## Executive warranties

### In signing this contract you warrant that:

#### you have disclosed any actual, potential or perceived conflicts of interest including any conflict between your duties as an Executive and your personal interests, and any other matters which, on a reasonable view, are material to your employment;

#### you are not and will not be in breach of any legal obligation, including any obligation to a third party (such as a previous employer), by entering into this contract or by performing your duties under it; and

#### all information provided by you as to your qualifications, skills, experience, and employment history are true and correct.

## Location and hours

### You will initially be based in the location set out in Schedule A but may be required to work at other locations from time to time.

### You are required to work the hours necessary for you to perform your duties in a satisfactory manner, including reasonable additional hours which may include, without limitation, working on weekends and public holidays. Your remuneration includes compensation for all hours you may work, including reasonable additional hours.

## Performance plan and review

### Performance of Executives employed in the Victorian Public Service is assessed under the Performance Management Framework (or, if not applicable, under such other framework as the Employer may determine from time to time) and includes outcomes and expectations aligned with Government priorities, public sector values and leadership capabilities.

### An annual performance plan will be determined by the Employer in consultation with you at or within three months following commencement of your employment.

### Your performance will be reviewed on an annual basis, and at such other times as may be determined by the Department/Agency, including against your duties and responsibilities under this contract and as set out in Schedule A (as amended from time to time).

### Following such a review, the Employer will determine, in consultation with you, any changes to the performance plan for the subsequent review period. The Department/Agency may implement at its discretion any changes to the duties and responsibilities detailed in Schedule A following such review or at any other time.

## Remuneration

### *Salary and employment benefits*

#### You are entitled to the remuneration set out in Schedule B, which is made up of:

(A) base salary;

(B) superannuation contributions;

(C) employment benefits (i.e. non-salary) specified in Schedule B; and

(D) the annual cost to the Employer of providing the non-monetary benefits, including any fringe benefits tax payable.

#### Your remuneration will be reviewed on an annual basis. The Employer may also agree to undertake a remuneration review at any time requested in writing by you. A review does not guarantee an increase to any element of your remuneration.

#### Any increases or other change to your base salary or employment benefits (including as a result of a change in the annual cost to the Employer of providing the non-monetary benefits) shall be notified to you in writing.

#### You may request in writing at any time to re-structure your base salary and any employment benefits for consideration by the Employer. Should the Employer agree to this request, such a re-structure shall only apply prospectively, and must include a superannuation component at least equivalent to the minimum superannuation contribution required by the Employer to avoid a charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth).

### *Superannuation*

#### If you are not a member of a statutory superannuation scheme:

1. the Employer will make the minimum superannuation contributions required to avoid a charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth);
2. if there is any change in the minimum superannuation contributions required to avoid a charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth), the superannuation contribution will be varied accordingly, and there will be no impact on your base salary; and
3. the Employer’s default complying superannuation fund is set out in Schedule C, and contributions shall be made to that fund unless you advise the Employer in writing of an alternative choice of complying superannuation fund.

#### Subject to sub-clause 7.2(c), if you are a member of a statutory superannuation scheme:

1. you must elect to either continue or cease to be a member of that scheme by specifying the election in Schedule C;
2. where you elect to cease to be a member of a statutory superannuation scheme, the Employer will make superannuation contributions to a complying superannuation fund in accordance with clause 7.2(a);

(C) where you elect to continue to be a member of a statutory superannuation scheme then, for the purposes of calculating contributions and benefits under the scheme, your salary is taken to be the amount specified for that purpose in Schedule C (which must not be more than 70% of the sum of items (A), (C) and (D) in Schedule B). If your salary for the purposes of the scheme immediately before entering this contract ('previous superannuation salary') was more than the amount equivalent to 70% of the sum of items (A), (C) and (D) specified in Schedule B('proposed new superannuation salary'), then you must elect in writing which of those amounts (previous superannuation salary or proposed new superannuation salary) is to be your salary for the purpose of that scheme by specifying the election in Schedule C; and

1. an amount set out in item (B) in Schedule B as the cost of the contribution by the Employer to a statutory superannuation scheme is (and may continue to be even after any alteration is made to your remuneration under clause 7.1) a notional and fixed amount based on actuarial assessment and may not represent the precise amount required to be contributed by the Employer.

#### Where a member of the Emergency Services Superannuation Scheme becomes eligible for membership of a non-statutory superannuation scheme by operation of applicable legislation, that member will not be required to terminate membership of the statutory superannuation scheme. The requirement to maintain membership of both schemes is set out in Schedule C.

## Expenses

You will be reimbursed for any necessary and reasonable expenses incurred in the performance of your duties subject to appropriate prior authority, provision of documentary evidence and any applicable policies in place.

## Executive health

### The Employer can require you, at any time, to undergo and satisfactorily pass a medical examination by a qualified medical practitioner (selected by the Employer at the Employer's expense).

### Subject to clause 9.3, each year you will be entitled to receive a non-cumulative reimbursement of up to $1,000 (inclusive of fringe benefits tax) for an annual medical check to review your overall health and fitness for work, subject to provision of satisfactory documentary evidence.

### On request, the Employer may permit accumulation of the reimbursement amount of $1,000 provided for in clause 9.2.

## Leave

### Your leave entitlements are set out in clause 10 with further specific entitlements relating to family violence leave set out in clause 11.

### *Annual leave*

#### 20 days paid annual leave for each year of employment – accruing on a daily pro rata basis. Annual leave entitlements must be taken by the end of the calendar year following the calendar year in which they are accrued. By agreement between the Employer and you, annual leave may be deferred beyond that date.

#### Where your accrued annual leave entitlement has not been taken by the end of the calendar year following the calendar year in which it accrued, you and the Employer must genuinely try to agree upon steps that will be taken to reduce or eliminate that leave accrual. This agreement must be attempted before the Employer can direct that leave be taken under clause 10.1(c).

#### Where you have an excessive annual leave accrual (and agreement has not been reached under 10.1(b)), the Employer may give a written direction to you to take a period or periods of paid annual leave. You will have excessive annual leave if you have accrued more than eight weeks’ paid annual leave.

### *Personal leave*

#### 15 days paid personal leave for each year of employment – accruing on a daily pro rata basis – with the entitlement to personal leave accumulating from year to year. No payment for accrued but untaken personal leave will be made on termination of employment.

#### Subject to clause 10.2(c), when taking personal leave, you must provide the Employer with a medical certificate from a Registered Practitioner. Registered Practitioner means one of the following: Aboriginal and Torres Strait Islander health practitioner, Chinese medicine practitioner, Chiropractor, Dental care practitioner, Medical practitioner, Nurse practitioner, Midwife, Optometrist, Osteopath, Pharmacist, Physiotherapist, Podiatrist or Psychologist.

#### Subject to clauses 10.2(d) and 10.2(f), you may take up to an aggregate of 5 days or equivalent pro‑rata amount accrued personal leave in each year of employment without having to provide the Employer with the documentary evidence required by clause 10.2(b).

#### If the period of absence referred to in clause 10.2(c) is for a continuous period exceeding 3 days, the Executive must provide appropriate documentary evidence to the Employer as set out in clause 10.2(b).

#### If you cannot reasonably provide documentary evidence from a Registered Practitioner, you may provide a statutory declaration. The statutory declaration must include information as to why you were unable to attend a Registered Practitioner and the reason why you were unable to attend work. A statutory declaration can only be used for single day absences and on no more than three occasions in each year of employment.

#### Despite clause 10.2(c), you may be required to provide appropriate documentary evidence as required by the Employer in accordance with clause 10.2(b).

#### Where you have been on personal leave for at least six weeks the Employer may request that you obtain other documentary evidence from your treating Registered Practitioner for the purposes of determining when you can return to work and any reasonable adjustments that may be necessary in the workplace.

#### Where you have been on personal leave for at least six weeks and have a medical certificate indicating on‑going need for personal leave, the Employer may require you to provide, at its cost, a medical report from an independent Registered Practitioner from a relevant specialisation. You will select a Registered Practitioner from a list of at least three appropriately specialised Registered Practitioners nominated by the Employer. The nominated Registered Practitioners will not include a Registered Practitioner employed by the Employer in the VPS. If it is not possible for the Employer to nominate three appropriately specialised Registered Practitioners, the Employer may provide fewer than three Registered Practitioners for you to select from.

### *Carer's Leave*

#### Use of accrued paid personal leave in clause 10.2 above as paid carer’s leave to provide care and support to an Immediate Family or household member.

#### If you have exhausted your personal leave accruals in any 12 month period of employment, you may be granted further carer’s leave with or without pay at the Employer's discretion.

#### The Employer may require you to provide a medical certificate or statutory declaration stating the condition of the person concerned and that this person requires your care and support.

### *Compassionate Leave*

#### Up to three days of paid compassionate leave on each occasion when a member of the Executive's Immediate Family or household dies or sustains a personal illness or injury that poses a serious threat to that person's life.

#### You are not required to take compassionate leave in respect of a permissible occasion consecutively.

#### Compassionate leave will not accrue from year to year and will not be paid out on termination of your employment.

#### The Employer may, at its discretion, grant you compassionate leave with or without pay when a person with a significant family or personal connection to you, but who is not a member of your Immediate Family or household, dies or sustains a personal illness or injury that poses a serious threat to that person’s life.

#### The Employer may require you to provide satisfactory evidence to support the taking of compassionate leave, which may include a medical certificate from a Registered Practitioner, a statutory declaration or other relevant documentary evidence to the reasonable satisfaction of the Employer.

### *Parental Leave*

#### You are entitled to parental leave in accordance with the provisions set out below, as applicable, if:

#### the leave is associated with:

1. the birth of your Child or your Spouse's child; or
2. the birth of a Child of your legal surrogate; or
3. the placement of a Child with you for adoption; and

#### you have or will have responsibility for the care of the Child either as the Primary or Secondary Caregiver.

### *Definitions*

#### **Child** means:

#### in relation to birth-related leave, your child (or children from a multiple birth) or your Spouse's child;

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

1. who is, or will be, under 16 as at the day of placement, or the expected day of placement;
2. has not, or will not have, lived continuously with you for a period of 6 months or more as at the day of placement, or the expected day of placement; and
3. is not (otherwise than because of the adoption) your child or your Spouse's child.

#### **Primary Caregiver** means the person who is the primary carer of a newborn or newly adopted Child. The primary carer is the person who meets the Child's physical needs more than anyone else. Only one person can be a Child's primary carer on a particular day. In most cases the Primary Caregiver will be the birth mother of a newborn or the initial primary carer of a newly adopted child.

#### **Secondary Caregiver** means a person who has parental responsibility for the Child but is not the Primary Caregiver.

#### **Spouse** includes a de facto spouse, former spouse or former de facto spouse. De facto spouse means a person who lives with you as husband, wife or same sex partner on a bona fide domestic basis, whether or not legally married to you.

### *Primary Caregiver parental leave*

#### If you will be the Primary Caregiver at the time of the birth or adoption of your Child and you have completed at least three months paid continuous service, you will be entitled to up to 52 weeks parental leave, comprising:

1. 16 weeks paid parental leave; and
2. up to 36 weeks unpaid parental leave,

commencing on the day of birth or placement of the Child save that an Executive who is pregnant may commence Primary Caregiver parental leave at any time within 16 weeks prior to the expected date of birth of the Child.

#### If you will be the Primary Caregiver and have not completed at least three months continuous service at the time of the birth or adoption of the Child, you will be entitled to up to 52 weeks unpaid parental leave.

#### You will be entitled to have superannuation contributions made in respect of the period of your Primary Caregiver parental leave.

###### The Employer will pay the superannuation contribution as a lump sum to your fund as provided for in Schedule C.

###### The lump sum payment will be made on or before the first superannuation guarantee quarterly payment due date following the your return to work at the conclusion of your Primary Caregiver parental leave.

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

* 1. the number of weeks of Primary Caregiver parental leave taken by you, capped at 52 weeks; and
  2. your ordinary time earnings, as defined in the *Superannuation Guarantee (Administration) Act 1992* (Cth), during your Primary Caregiver parental leave; and
  3. the applicable contribution rate under the *Superannuation Administration Act 1992* (Cth) at the time the payment is made.

#### Only one parent can receive Primary Caregiver parental leave entitlements in respect to the birth or adoption of their Child. You cannot receive Primary Caregiver parental leave entitlements:

1. if your Spouse is, or will be, the Primary Caregiver at the time of the birth or adoption of your Child;
2. if your Spouse has received, or will receive, paid maternity leave, primary caregiver entitlements, or a similar entitlement, from their employer; or
3. if you have received, or will receive, Secondary Caregiver parental leave entitlements in relation to your Child.

### *Secondary Caregiver parental leave*

#### If you will be the Secondary Caregiver at the time of the birth or adoption of your Child and you have completed at least three months paid continuous service, you will be entitled to up to 52 weeks parental leave, comprising:

1. 4 weeks paid parental leave; and
2. 12 weeks additional paid Secondary Caregiver parental leave, subject to the conditions in clause 10.9; and
3. unpaid parental leave to bring the total available paid and unpaid leave to 52 weeks,

which may commence on the day of birth or placement of the Child.

#### If you will be the Secondary Caregiver and have not completed at least three months paid continuous service at the time of birth or adoption of the Child, you will be entitled to up to 52 weeks unpaid parental leave.

#### Only one parent can receive Secondary Caregiver parental leave entitlements in respect to the birth or adoption of their Child.

#### You cannot receive Secondary Caregiver parental leave entitlements where you have received Primary Caregiver parental leave entitlements in relation to your Child.

### *Additional paid leave for Secondary Caregiver*

#### If you are the Secondary Caregiver, you are entitled to an additional 12 weeks’ paid leave within the first 78 weeks of the date of birth or adoption of the Child provided that:

1. you assume primary responsibility for the care of a Child, by meeting the Child’s physical needs more than anyone else; and
2. your spouse is not concurrently taking primary responsibility for the care of the Child or receiving paid parental leave, primary caregiver entitlements or a similar entitlement from their employer.

#### To access additional paid leave, you must have been eligible for paid Secondary Caregiver leave at the time of birth or adoption of the Child, irrespective of when you elect to take paid leave under this clause.

### *Rules for taking parental leave entitlements*

#### Parental leave is to be available to only one parent at a time except in the case of concurrent leave.

#### An employee couple (i.e. where both parents are Executives or one parent is an Executive and the other is an employee who is covered by the *Victorian Public Service Agreement 2020*) may take up to 8 weeks concurrent leave in connection with the birth or adoption of their Child, which may commence one week prior to the expected date of birth of the Child or the time of placement in the case of adoption.

#### Concurrent leave periods form part of your total entitlement to parental leave (i.e. it is not additional to the parental leave in clause 10.7 and 10.8).

#### While an Executive’s eligibility for parental leave is determined at the time of birth or adoption of the Child, the Executive and Employer may agree to permit the Executive to use the paid leave entitlements outlined in this clause at any time within the first 52 weeks of parental leave, or where an extension is granted under clause 10.12(b), within the first 78 weeks where clause 10.9 is invoked or otherwise the first 104 weeks.

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

### *Special maternity leave*

#### Where the pregnancy of an Executive not then on parental leave terminates other than by the birth of a living child, the Executive may take leave for such periods as a registered medical practitioner certifies as necessary (**Certified Period/s**) as follows:

#### Where the pregnancy terminates during the first 20 weeks, during the Certified Period/s the Executive may take:

1. any accrued but untaken paid personal leave in accordance with clause 10.2; and/or
2. unpaid personal leave at the Employer's discretion;

#### Where the pregnancy terminates after the completion of 20 weeks, during the Certified Period/s the Executive is entitled to paid special maternity leave not exceeding 16 weeks and thereafter, to unpaid special maternity leave.

### *Extending parental leave*

#### **Extending the period of parental leave where the initial period of parental leave is less than 52 weeks**

1. Where you are on an initial period of parental leave of less than 52 weeks under clause 10.7or 10.8, you may extend the period of your parental leave on one occasion up to the full 52 week entitlement.

#### **Right to request an extension to parental leave beyond the initial 52-week period to a maximum of 104 weeks**

1. If you are on parental leave under clause 10.7 or 10.8, you may request an extension of unpaid parental leave for a further period of up to 12 months immediately following the end of the current parental leave period.
2. In the case of an Executive who is a member of a couple, the period of the extension cannot exceed 12 months, less any period of parental leave that the other member of the couple will have taken in relation to the Child.
3. The Employer shall consider the request having regard to your circumstances and, provided the request is based on your parental responsibilities, may only refuse the request on reasonable business grounds.
4. The Employer must not refuse the request unless the Employer has given the Executive a reasonable opportunity to discuss the request.
5. The Employer must give a written response to the request as soon as practicable, and no later than 21 days after the request is made. The request must include the details of the reasons for any refusal.

### *Pre-natal leave*

#### You will have access to paid leave totalling up to 38 hours per pregnancy to enable you to attend routine medical appointments associated with the pregnancy.

#### If you have a Spouse who is pregnant, you will have access to paid leave totalling up to 7.6 hours per pregnancy to enable you to attend routine medical appointments associated with the pregnancy.

#### You are required to provide a medical certificate from a registered medical practitioner confirming that you or your spouse is pregnant. Each absence on pre-natal leave must also be covered by a medical certificate.

### *Pre-adoption leave*

#### If you are seeking to adopt a Child, you may take two days paid leave for the purpose of attending any compulsory interviews or examinations as necessary as part of the adoption procedure.

#### You may also access further unpaid leave. You and the Employer should agree on the length of any unpaid leave. Where agreement cannot be reached, you are entitled to take up to two days unpaid leave.

#### Where accrued paid leave is available to you, the Employer may require you to take such leave instead of taking unpaid leave.

#### The Employer may require that you provide satisfactory evidence supporting the leave.

### *Permanent care leave*

#### You will be entitled to access parental leave in accordance with this clause at a time agreed with the Employer if you:

1. are granted a permanent care order in relation to the custody or guardianship of a Child pursuant to the Children, Youth and Families Act 2005 (Vic) (or any successor to the legislation) or a permanent parenting order by the Family Court of Australia; and
2. will be the Primary or Secondary Caregiver for that Child.

### *Lactation breaks*

#### An Executive who wishes to continue breastfeeding or chestfeeding or expressing milk after returning to work from a period of parental leave may take reasonable time during working hours without loss of pay to do so.

### *Grandparent leave*

#### If you are or will be the Primary Caregiver of a grandchild, you are entitled to a period of up to 52 weeks’ continuous unpaid grandparent leave in respect of the birth or adoption of your grandchild.

### *Surrogacy leave*

#### An Executive who has completed at least three months paid continuous service, who enters into a formal surrogacy arrangement on or after 1 July 2020, which complies with Part 4 of the Assisted Reproductive Treatment Act 2008 (Vic), as the surrogate, is entitled to access the following leave entitlements:

1. pre-natal leave in accordance with clause 10.13 in this contract; and
2. six weeks paid leave.

### *Special surrogacy leave*

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

1. where the pregnancy terminates during the first 20 weeks, during the certified period/s the Executive is entitled to access any paid and/or unpaid personal/carer’s leave entitlements in accordance with clauses 10.2 and 10.3.
2. where the pregnancy terminates after the completion of 20 weeks, during the certified period/s the Executive is entitled to paid special surrogacy leave not exceeding the amount of paid surrogacy leave available under clause10.18.

### *Foster and kinship leave*

#### If you provide short-term foster or kinship care as the Primary Caregiver to a Child who cannot live with their parents as a result of an eligible child protection intervention, you are entitled to up to two days paid leave on up to five occasions per calendar year to be taken at the time the placement of the Child with you commences.

#### For the purposes of this clause, foster and kinship care includes:

1. foster caring, which is the temporary care of a Child of up to 18 years of age on a short-term basis by an Executive who is an accredited foster carer.
2. kinship care, which is temporary care provided by an Executive who is a relative or a member of the Child’s social network when the Child cannot live with their parents.
3. Aboriginal kinship care, which is temporary care provided by an Executive who is a relative or friend of an Aboriginal Child who cannot live with their parents, where Aboriginal family and community and Aboriginal culture are valued as central to the child’s safety, stability and development.

#### Eligible child protection interventions include emergency respite and short-term or long-term placements on a non-permanent basis, as issued by the Victorian Department of Health and Human Services, the Children’s Court or other similar federal, state or judicial authority.

#### Subject to approval of the Employer, the paid leave provided in this clause may be used in conjunction with any other paid or unpaid leave entitlements you may be eligible for under this contract.

#### In the case of foster carers, one occasion totalling up to two days duration may be used for accreditation purposes, including attending compulsory interviews or training.

### *Gender transition leave*

#### If you commence living as a member of another gender, you are entitled to gender transition leave for the purpose of supporting your transition. Gender transition leave comprises:

1. up to 4 weeks paid leave for essential and necessary gender affirmation procedures; and
2. up to 48 weeks unpaid leave.

#### The gender transition leave entitlements are available to be taken within the first 52 weeks after you commence living as a member of another gender.

#### Gender transition leave will not accrued from year to year and cannot be cashed out on termination of employment.

### *Leave to attend rehabilitation program*

#### You may be granted leave with or without pay to undertake an approved rehabilitation program where the Employer is satisfied that:

1. your work performance is adversely affected by the misuse of drugs or alcohol or problem gambling;
2. you are prepared to undertake a course of treatment designed for rehabilitation of persons with alcohol, drug or gambling related problems; and
3. in the case of an alcohol or drug addiction, a Registered Practitioner has certified that in their opinion you are in need of assistance because of your misuse of alcohol or drugs and that you are suitable for an approved rehabilitation program; or
4. in the case of problem gambling, you satisfy the eligibility criteria for entry into an approved problem gambling rehabilitation program.

#### On production of proof of attendance at an approved rehabilitation program in accordance with this clause, you may be granted leave as follows:

1. An employee who has completed two years’ continuous or aggregate service and who has exhausted all other accrued leave entitlements may be granted leave with pay up to the maximum number of days specified below:

|  |  |  |
| --- | --- | --- |
| **Years of Service** | **First Year of Program** | **Subsequent Years of Program** |
| 2 years | 20 days | 15 days |
| 3 years | 27 days | 20 days |
| 4 years | 33 days | 25 days |
| 5 or more years | 40 days | 30 days |

1. An employee who has completed less than two years continuous or aggregate service may be granted leave without pay for the purposes of attending an approved rehabilitation program.

### *Cultural and ceremonial leave*

#### **NAIDOC week leave**

1. If you are of Aboriginal or Torres Strait Islander descent, you are entitled to one day of paid leave per calendar year to participate in National Aborigines and Islanders Day Observance Committee (NAIDOC) week activities and events.
2. NAIDOC week leave will not accrue from year to year and will not be paid out on termination of your employment.

#### **Leave to attend Aboriginal community meetings**

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

#### **Leave to attend Annual General Meetings of Aboriginal community organisations**

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

#### **Ceremonial leave**

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

connected with the death of a member of the Immediate Family or extended family (provided that no Executive shall have an existing entitlement reduced as a result of this clause); or

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

1. Where ceremonial leave is taken for the purposes outlined in this clause, up to three days in each year of employment will be with pay. Paid ceremonial leave will not accrue from year to year and will not be paid out on termination of the employment of the Executive.
2. Ceremonial leave granted under this clause is in addition to carer’s leave under clause 10.3.

### *Leave to participate in the First Peoples’ Assembly of Victoria*

#### If you are a member of the First Peoples’ Assembly of Victoria, you are entitled to up to 10 days paid leave per calendar year to fulfil your official functions during your term of office.

#### Leave will be available to attend sessions of the First Peoples’ Assembly of Victoria, participate in constituent consultation relevant to your role or for any other ancillary purpose as agreed with the Employer.

#### Where in any calendar year you exhaust your entitlement under this clause the Employer may grant further paid or unpaid leave under clause 10.33 (other leave), to support your representative functions.

#### You may also utilise flexible working arrangements, in addition to leave provided in this clause, to help support your representative functions, with the agreement of the Employer.

#### Leave under this clause will not accrue from year to year and cannot be cashed out on termination of employment.

### *Defence reserve leave*

#### If you are required to complete Defence Reserve service, you may be granted leave up to a maximum period of 78 weeks’ continuous service.

#### You will consult with the Employer regarding the proposed timing of the service. Applications for leave under this clause must be made with as much notice as is possible and be accompanied by evidence supporting the call to duty or reason for the service.

#### Where the base salary excluding allowances received by you from the Australian Defence Force or Defence Reserve service during your ordinary hours of work is below your VPS salary, the Employer will, unless exceptional circumstances arise, pay you make-up pay for the period of your Defence Reserve service.

#### For Executives in employment prior to 9 May 2002, any more favourable provision relating to their previous entitlement to Defence Force leave is maintained.

### *Military service sick leave*

#### Where the Employer is satisfied that an illness of an Executive with at least six months paid continuous service is directly attributable to, or is aggravated by, service recognised under the Veteran’s Entitlements Act 1986 (Cth), including operational service, peacekeeping service or hazardous service, the Executive will be credited with 114 hours special leave with pay for each year of service with the VPS from the conclusion of the Executive’s operational, peacekeeping or hazardous service.

#### Leave under this clause will be cumulative to a maximum of 760 hours.

#### This leave is in addition to personal leave under clause 10.2.

#### The Employer may require you to provide evidence of the existence of the illness and its relationship to service from a Registered Practitioner as specified in clause 10.2.

#### For each period of special leave taken, the Executive must comply with the notice and evidence requirements outlined in clause 10.2.

### *Jury service*

#### If you are required to attend for jury service under the Juries Act 2000 (Vic), you are entitled to leave with pay for the period during which your attendance is required. You must provide a certificate of attendance issued by the Juries Commissioner as evidence of attendance.

#### Any payment made to you in accordance with the Juries Act 2000 (Vic) for serving as a juror during your ordinary hours of work must be repaid to the Employer, less an amount for reasonable expenses actually incurred.

### *Leave for blood donations*

Leave may be granted to you without loss of pay to visit the Red Cross Blood Bank as a donor once every twelve weeks.

### *Leave to engage in voluntary emergency management activities*

#### If you engage in a voluntary emergency management activity with a recognised emergency management body that requires attendance at a time when you would otherwise be required to be at work, you are entitled to leave with pay for:

1. time when you engage in the activity; and
2. reasonable travelling time associated with the activity; and
3. reasonable rest time immediately following the activity.

#### You must advise the Employer as soon as reasonably practicable if you are required to attend a voluntary emergency management activity and must advise the Employer of the expected or likely duration of the attendance. You must provide a certificate of attendance or other evidence of attendance as reasonably requested by the Employer.

#### Recognised emergency management bodies include but are not limited to, the Country Fire Authority, Red Cross, State Emergency Service and St John Ambulance.

#### An Executive who is required to attain qualifications or to requalify to perform activities in an emergency management body must be granted leave with pay for the period of time required to fulfil the requirements of the training course pertaining to those qualifications, provided that such training can be undertaken without unduly affecting the operations of the Employer.

### *Voluntary community activities leave*

#### You are entitled to leave with pay of up to 10 days, per calendar year, to fulfil official functions during your term of office as an elected member of:

1. A Local Government Council; or
2. a committee of management of a not-for-profit community organisation which operates under a formal legal structure subject to applicable State or Federal legislation.

#### Leave will be subject to the Employer’s operational needs.

#### Leave will be available for any of the following purposes:

1. to enable you to attend any training program required to meet grant, funding or governance obligations;
2. participate in a community event as part of your role with the organisation;
3. participate in consultation relevant to your role in the organisation; or
4. any other purpose agreed with the Employer.

#### Leave will not accrue from year to year and cannot be cashed out on termination of employment.

### *Participation in sporting events*

#### Leave with pay up to a maximum of two weeks in any two calendar year period may be granted to you by the Employer, at its discretion, to participate either as a competitor or an official in any non-professional state, national or international sporting event.

#### The length of absence from work and travel arrangements for participation in sporting events must be agreed with the Employer in advance before leave may be granted.

### *Study leave*

#### The Employer may, at its discretion, grant you paid leave to undertake an accredited course of study provided by an educational institution or registered training organisation.

#### The Employer may, at its discretion, grant you time off without loss of pay under this clause for professional development including Continuing Professional Development (CPD), short courses, micro-credentialing or other training.

#### In determining whether to grant study leave, the Employer will consider matters such as the relevance of the proposed study to your employment, the development of your capability and skills, alignment to organisational goals and the reasonable operational requirements of the Employer.

#### The Employer may grant you the following leave entitlements:

1. paid leave to enable travel to and attendance of up to seven hours of classroom activity or related project work per week; and
2. up to five days paid leave per annum to:

prepare for and attend examinations associated with the course of study; or

finish major project work required to complete an accredited course of study, professional development, short course, micro-credentialing or other training.

#### The Employer may, at its discretion, grant additional leave with or without pay as considered necessary.

#### Part-time Executives may be granted study leave on a pro-rata basis calculated on the number of ordinary hours worked, at the Employer's discretion.

#### In determining the amount of any leave to be granted under clause 10.32(b), the Employer will have regard to the course requirements, the Employer’s operational requirements and your development.

#### Where an Executive undertakes an accredited course of study professional development, short course, micro-credentialing or other training, the Executive may be expected to complete some of the course requirements in their own time.

#### The paid leave provided for in clause (A) may be used weekly or, with the approval of the Employer, banked to support attendance at intensive courses. Study leave will not accrue from year to year and will not be paid out on termination.

### *Other leave*

#### You may be granted leave with or without pay by the Employer, at its discretion, for any purpose.

#### Leave under this clause may be granted for purposes including:

1. cultural and religious purposes; or
2. activities inherently associated with an Executive’s disability not already provided for by specific leave entitlements under this contract or otherwise agreed with the Employer.

#### Unless otherwise provided for in this contract, leave without pay shall not break the Executive’s continuity of employment but leave without pay will not count as service for leave accrual or other purposes.

### *Notice and evidence requirements*

Notice and evidence requirements for parental leave and special maternity leave, surrogacy leave and special surrogacy leave, gender transition leave, foster and kinship care leave and military service sick leave (as applicable) are as stated in the  *Victorian Public Service Enterprise Agreement 2020*.

### *Commonwealth Paid Parental Leave*

Paid leave entitlements outlined in this contract are in addition to any payments which may be available under the Commonwealth Paid Parental Leave Scheme.

### *Leave of Absence*

A leave of absence that the Employer may grant to you:

#### to pursue a course of studies or training or undertake research or engage in employment which, in the opinion of the Department/Agency Head would improve your capacity to service the State in the public sector;

#### to engage in employment in another public sector jurisdiction; or

#### for any other reason,

#### may be granted on any terms and conditions determined by the Employer, however, any leave granted under this clause will be without pay unless the Employer is satisfied that the activities in which you propose to engage during the leave are of significance to the Department/Agency or the State.

### *Long Service Leave*

#### You are entitled to long service leave of three months with pay after each 10 years of continuous Service, to be taken at a time or times agreed with the Employer. Part time Executives are entitled to long service leave on a pro rata basis of time worked.

#### You are entitled to access your entitlement to long service leave after seven years of continuous Service, calculated on the basis of one-fortieth of the period of your Service.

#### Long service leave continues to accrue for absences from work after the birth or adoption of a child on unpaid parental leave which, in combination with any period of paid parental leave, totals 52 weeks or less.

#### You may take any or all of your long service leave at half pay over double the period to which you would be entitled to take the leave, subject to the Employer's agreement.

#### If, after seven years of continuous Service, you resign from your employment with the Employer or your employment is terminated by the Employer, you will be entitled to be paid an amount equal to your accrued but untaken long service leave entitlement. This entitlement will be calculated on the basis of one-fortieth of the period of your Service.

#### If you have more than four years but less than seven years of continuous Service, you will be entitled or, in the case of death, deemed to have been entitled, to a pro rata amount of long service leave with pay, if:

1. on account of age or ill health:

you retire or you are retired; or

your employment is terminated by the Employer;

1. your employment is terminated for any other reason (including automatic termination of your employment on the contract’s end date stated at clause 1.1), except for serious misconduct or resignation; or
2. you die.

#### The pay to which you will be entitled for the period during which long service leave is granted will be calculated as follows:

1. if the leave is granted with full pay, the payment will be computed in the same manner as if you had remained on duty during that period; or
2. if the leave is granted at half-pay, the payment will be computed at half of the total amount of the total remuneration package to which you would have been entitled to had you remained on duty during that period.

#### If, before commencing leave, you performed a role on temporary assignment for 12 months or more and that temporary assignment attracted a higher salary than your substantive role, you will be entitled to be paid at the temporary assignment rate for the period of long service leave taken.

#### If a public holiday occurs during a period of long service leave granted to you, the public holiday is not to be regarded as part of the long service leave, and the Employer must grant you a day off in lieu.

#### The provisions of the *Long Service Leave Act 2018* (Vic) will apply to long service leave under this contract save where this contract provides for a more generous entitlement in which event the more generous entitlement under this this contract will apply*.*

### *Accident Compensation Leave (WorkCover)*

#### In the case of a WorkCover claim, the Employer will pay the difference between compensation benefits under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (and/or its predecessor or replacement legislation as applicable) and your remuneration package for a period of up to 52 weeks. You may utilise accrued leave credits for absences beyond the period for which compensation is made. Leave without pay may be granted where entitlements to paid leave have ceased.

#### Payments made under clause 10.38(a) will cease:

1. on the date on which you are fit to resume duty;
2. on the date the you receive a disability benefit from a superannuation scheme; or
3. on the date on which a lump sum redemption is received,

whichever comes first.

#### You are required to refund the make-up pay received under clause 10.38(a) if a settlement is received in a civil claim which specifically compensates you for make-up payments.

### *Infectious Diseases Leave*

#### Upon report by a registered medical practitioner that by reason of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by law in respect of such disease, an Executive is unable to attend work, the Employer may grant the Executive special leave of absence with pay. The period of leave must not be for any period beyond the earliest date at which it would be practicable for the Executive to return to work having regard to the restrictions imposed by law.

## Family Violence Leave

### *General Principle*

#### The Employer recognises that Executives sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, the Employer is committed to providing support to staff that experience family violence.

#### Leave for family violence purposes is available to Executives who are experiencing family violence to allow them to be absent from the workplace to attend counselling appointments, legal proceedings and other activities related to, and as a consequence of, family violence.

### *Definition of Family Violence*

## Family violence includes physical, sexual, financial, verbal or emotional abuse by a family member as defined by the *Family Violence Protection Act 2008* (Vic).

### *Eligibility*

## You are entitled to leave for family violence purposes in accordance with this clause 11.

## 11.4 *General Measures*

#### Evidence of family violence may be required and can be in the form of an agreed document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, a district nurse, a maternal and health care nurse or a Lawyer. A signed statutory declaration can also be offered as evidence.

#### All personal information concerning family violence will be kept confidential in line with the Employer’s policies and relevant legislation. No information will be kept on an Executive’s personnel file without their express written permission.

#### No adverse action will be taken against an Executive if their attendance or performance at work suffers as a result of experiencing family violence.

#### The Employer will identify contact/s within the workplace who will be trained in family violence and associated privacy issues. The Employer will advertise the name of any Family Violence contacts within the workplace.

#### An Executive experiencing family violence may raise the issue with their immediate supervisor, Family Violence contacts, union delegate or nominated Human Resources contact. The immediate supervisor may seek advice from Human Resources if the Executive chooses not to see the Human Resources or Family Violence contact.

#### Where requested by an Executive, the Human Resources contact will liaise with the Executive’s manager on the Executive’s behalf, and will make a recommendation on the most appropriate form of support to provide in accordance with clause 11.5 and clause 11.6.

#### The Employer will develop guidelines to supplement this clause 11 and which details the appropriate action to be taken in the event that an Executive reports family violence.

### *Leave*

#### An Executive experiencing family violence will have access to 20 days per calendar year of paid special leave for medical appointments, legal proceedings and other activities related to family violence (this leave is not cumulative but if the leave is exhausted consideration will be given to providing additional leave). This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval.

#### An Executive who supports a person experiencing family violence may utilise their personal/carer’s leave entitlement to accompany them to court, to hospital, or to care for children. The Employer may require evidence consistent with clause 10.3(b) from an Executive seeking to utilise their personal/carer’s leave entitlement.

### *Individual Support*

#### In order to provide support to an Executive experiencing family violence and to provide a safe work environment to all Executives, the Employer will approve any reasonable request from an Executive experiencing family violence for:

###### temporary or ongoing changes to their span of hours or pattern or hours and/or shift patterns;

###### temporary or ongoing job redesign or changes to duties;

###### temporary or ongoing relocation to suitable employment;

###### a change to their telephone number or email address to avoid harassing contact; or

###### any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.

#### Any changes to an Executive’s role should be reviewed at agreed periods. When an Executive is no longer experiencing family violence, the terms and conditions of employment may revert back to the terms and conditions applicable to the Executive’s substantive position.

#### An Executive experiencing family violence will be offered access to the Employee Assistance Program (**EAP**) and/or other available local Executive support resources. The EAP shall include professionals trained specifically in family violence.

#### An Executive that discloses that they are experiencing family violence will be given information regarding current support services.

## Intellectual Property and Moral Rights

### You acknowledge and agree that Intellectual Property developed, created or conceived by you during your employment is and will be the sole and exclusive property of the State of Victoria. You further acknowledge and agree that:

#### full right, title and interest in and to copyright works created by you will vest in the State of Victoria immediately on creation;

#### full right, title and interest in all other Intellectual Property is assigned to the State of Victoria by you;

#### you will promptly execute all documents and do all things necessary to vest or assign full right, title and interest in the Intellectual Property in and to the State of Victoria; and

#### you irrevocably grant the State of Victoria (and its licensees, successors in title and authorised agents) consent to do or omit to do any act which would otherwise infringe your moral rights under the *Copyright Act 1968* (Cth) in relation to all copyright works you make in the course of your employment, whether such act or omission occurs before or after the date of this contract.

## Confidential Information

### *Confidentiality*

Without limiting obligations you owe under common law or any other law, you must not, either during or after your employment, use or disclose to any person any Confidential Information except:

#### in the proper performance of your responsibilities and duties;

#### if you are compelled by law and have used every lawful means available to you to prevent disclosure;

#### if you have been authorised in writing by the Employer to do so; or

#### in respect of the terms and conditions of your employment, in confidence to your legal or financial advisers.

### *Maintain secure custody*

You must maintain proper and secure custody of all Confidential Information and use your best endeavours to prevent the unauthorised use or disclosure of any Confidential Information by third parties.

### *Uncertainty*

If there is any uncertainty as to whether any information is Confidential Information, that information will be taken to be Confidential Information unless you are advised by the Employer in writing to the contrary.

### *Return of Confidential Information and other property*

On termination of your employment, or otherwise at the request of the Employer, you must immediately return to the Department/Agency:

#### all documents or other items in your possession, custody or control on which any Confidential Information is stored or recorded, whether in writing or in electronic or other form; and

#### any other property of the Department/Agency in your possession or control including but not limited to credit cards, keys, computer software, mobile telephone and laptop computers or tablets.

## Termination of employment

### *Termination on notice by the Employer*

Except in circumstances where clause 14.2 or clause 14.3 applies, the Employer may at any time before the contract's end date stated at clause 1.1, terminate this contract by giving you four months’ written notice. In such circumstances, the Employer shall make available to the Executive up to four months of reasonable outplacement support and counselling during the notice period.

#### The Employer may elect to provide payment in lieu of all or part of this notice period.

### *Termination on notice by the Employer due to failure to fulfill duties*

The Employer may terminate your employment by giving you four weeks’ written notice (or five weeks' written notice where you are over 45 years old and have completed more than five years continuous service when you receive that notice) where the reason for termination is based on a serious failure by you in fulfilling your duties and responsibilities under this contract, including:

#### duties and responsibilities as detailed in Schedule A; and/or

#### standards of conduct, conflicts of interest and general responsibilities set out in clause 3.

#### The Employer may elect to provide payment in lieu of all or part of this notice period.

### Summary termination by the Employer

The Employer may at any time terminate your employment with immediate effect without giving you notice if you commit any act of serious misconduct (which shall include without limitation any breach of the warranties set out in clause 4).

### Termination by you (resignation)

You may resign from your employment at any time by giving the Employer four weeks’ written notice. The Employer may provide payment in lieu of all or part of this notice period. The Employer may agree, in writing, to waive all or part of this notice period.

### Payments upon termination

On termination of your employment, you will not be entitled to any compensation or payments other than:

#### the remuneration payable to you under clause 7 up to and including the date of termination;

#### payment in respect of any accrued but untaken annual leave under clause 10.1 and any accrued but untaken long service leave payable on termination under clauses 10.37(d) or 10.37(e); and

#### payment in lieu of notice, if applicable under this clause 14.

## Re-Employment

### Subject to clause 15.2:

#### at least six months prior to the expiration of the period of employment, the parties may confer with the view to reaching agreement as to whether you shall be re-employed for a further period and, if so, on what terms; and

#### each party may advise the other no later than four months (or such other period as they may agree in writing) prior to the expiration of the period of employment of their decision regarding the matters referred to in clause 15.1(a).

### Where the period of employment is one year or less, the period of months referred to in clause 15.1(a) shall be three and the period of months referred to in clause 15.1(b) shall be two.

### Regardless of whether the parties have conferred, advised and/or reached agreement in accordance with clause 15.1 or clause 15.2, as applicable, unless the Employer has offered, in writing, and you have accepted, in writing, a further period of employment, your employment will automatically terminate on the contract’s end date stated at clause 1.1. Upon termination of your employment on the end date, you will be entitled to receive payment in accordance with clause 14.5, noting that no written notice or payment in lieu will apply.

## Grievance and Dispute Resolution Procedure

### If a dispute or grievance (Dispute) arises out of this contract it will be dealt with by the matter first being discussed between you and your immediate supervisor. The parties will endeavour to resolve the Dispute to the mutual satisfaction of both parties.

### If the Dispute is not resolved, you may seek to resolve it through discussion with the next level above the immediate supervisor (where such level exists).

### If the Dispute is still not resolved you may formally bring it to the attention of the Employer who will within 14 days nominate one or more persons for the purpose of conducting further investigation and discussion and making a recommendation to the Employer. Persons nominated for this purpose will have had no prior involvement in the Dispute.

### Having regard to the recommendation made in accordance with clause 16.3, the Employer will make a final decision regarding the Dispute which shall be binding on all parties.

### During this procedure, work will continue and no party shall be prejudiced as to the final resolution of the Dispute by the continuance of work in accordance with this clause 16.5. The parties will co-operate to ensure that the steps required to reach a resolution are carried out as expeditiously as possible for the benefit of all concerned.

## Suspension

### At any time during employment, including without limitation, during part, or all, of any period of notice of termination, and including during any period in which the Employer is investigating any potential disciplinary issue involving you, the Employer may:

#### require you to perform only specified duties, or no duties at all;

#### require you not to have any contact with any employees, stakeholders, customers or associates of the Employer, or any other person or entity, other than normal social contact; and/or

#### exclude you from all or any part of the Employer’s premises,

#### (each a **Suspension**).

### Suspension is with pay (i.e. your remuneration will not be affected).

## Miscellaneous

### Governing legislation

This contract constitutes a contract of employment for the purposes of section 25 of the PA Act, and shall be governed by the law of the State of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Victoria.

### No waiver

A failure to exercise or any delay in exercising any right, power or remedy under this contract will not operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

### Severance

Any provision of this contract which is or becomes illegal, void or unenforceable is severable and will not invalidate the remaining provisions of this contract.

### Variation

#### This contract may at any time be varied by agreement in writing signed by you and an authorised representative of the Employer.

#### This contract will continue to govern your employment with the Employer despite any changes from time to time to your position, remuneration, duties and responsibilities or employment location, unless otherwise agreed in writing.

#### A reference in the contract to a Schedule refers to the Schedule then in force whether or not the Schedule has been physically attached to the contract.

### Entire agreement

This contract constitutes the entire agreement between the parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding, or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

### Personal information

You agree that the Employer and the Department/Agency will collect information, including personal information, regarding you and your employment and may disclose that information to other Victorian public sector entities for reasons relating to your employment, to third parties in the delivery of employment services to you and/or where the disclosure of that information is otherwise permitted (including where authorised or required by law).

## Glossary of terms

In this contract, these terms have the following meanings:

|  |  |
| --- | --- |
| 1. **Confidential Information** | 1. Any information, however communicated or recorded, relating to the State of Victoria's functions to which you gain access, whether before, during or after your employment, and includes but is not limited to:    1. any trade secret or other commercially sensitive or confidential information of or possessed by the Department/Agency, the Employer or the State of Victoria;    2. any techniques, methods, computer software, materials, documents or manuals of the Department/Agency, the Employer or the State of Victoria used in carrying out their functions;    3. technical information or research concerning products developed or used by the Department/Agency, the Employer or the State of Victoria, their customers, stakeholders and suppliers;    4. inventions, improvements or products discovered or developed by any employee, officer or consultant of the Department/Agency, the Employer or the State of Victoria;    5. any information relating to the business affairs, accounts, market research, marketing plans, sales plans, customer lists, prospects, management or finances of the Department/Agency, the Employer or the State of Victoria; and    6. the identity of the Department/Agency, the Employer or the State of Victoria customers, suppliers, consultants, distributors, agents, contractors, executives and employees and the arrangements between the Department/Agency, the Employer or the State of Victoria and their customers, stakeholders, suppliers, consultants, distributors, agents, contractors, executives and employees. |
| 1. **Immediate Family** | 1. means:    1. a Spouse, De Facto Partner, Child, parent, grandparent, grandchild or sibling of the Executive; or    2. a Child, parent, grandparent, grandchild or sibling of a Spouse or De Facto Partner of the Executive.   Where:  (a) Child unless otherwise defined means:   1. someone who is child of the Executive within the meaning of the *Family Law Act 1975* (Cth), and 2. an adopted child or step-child of the person.   It doesn’t matter whether the child is an adult.  (b) De Facto Partner means:   1. a person who, although not legally married to the Executive, lives with the Executive in a relationship as a couple on a genuine domestic basis (whether the Executive and the person are of the same sex or different sexes); and 2. includes a former De Facto Partner of the Executive. 3. (c) Spouse includes a De Facto Partner, former spouse or former De Facto Partner. |
| 1. **Intellectual Property** | 1. Includes, but is not limited to, ideas, designs, concepts, patents, slogans, trademarks, copyright and designs whether registered or unregistered, software developments, computer programs, security codes, eligible layout rights, know-how, data or formula inventions and improvements in procedures made or discoveries conceived. |
| 1. **PA Act** | 1. *Public Administration Act 2004* (Vic)*,* as amended from time to time. |
| 1. **Service** | 1. For the purposes of clause 10.13, 'Service' is the aggregate of service: 2. (a) in the Victorian public service; and 3. (b) with any public or private employer approved by the Employer within six months of the Executive starting employment. |
| 1. **Statutory Superannuation Scheme** | 1. Has the same meaning as that expression has in the *Superannuation (Public Sector) Act 1992* (Vic). |
|  |  |

**Execution**

**Signed by or on behalf of the Employer Public Service Body Head** (in accordance with an instrument of delegation as applicable)**:**

Name and role: *………………………..................................................................................*

Signature: *………………………...........................................................................................*

Date: *………………………..................................................................................................*

**Signed by the Executive:**

Name: ………………………................................................................................................

Signature: ………………………...........................................................................................

Date: ………………………................................................................................................

###### **Schedule A**

## Position, Duties and Location

* 1. Position: X at Classification X
  2. Duties and responsibilities:

*[Insert a clear and detailed description of the duties and responsibilities the Employee will be required to perform during their employment. Also include any relevant or required qualifications (including registration/s, supervised practice) the Employee must attain, provide the Employer with evidence and maintain as part of the role.]*

* + 1. X
    2. X
  1. Location of work: X

###### **Schedule B**

## Remuneration Package

## The Remuneration is $X per annum, comprising of:

(A) base salary - $X per annum;

(B) superannuation contributions (for employees in accumulation schemes specify $X per annum as at the contract commencement date, which amount may subsequently vary in accordance with clause 7.2(a)(B) / for employees in statutory superannuation schemes state “superannuation contributions as required under the relevant statutory superannuation scheme”);

(C) employment benefits (i.e. non-salary):

* X
* X
* X
* X

(D) the annual cost to the Employer of providing the non-monetary benefits, including any fringe benefits tax payable:

* X
* X
* X
* X

###### **Schedule C**

**Superannuation**

**[Option 1 – Where the Executive is not a member of a statutory superannuation scheme]**

The Employer’s **default complying superannuation fund** for the purpose of clause 7.2(a)(C) is: [VicSuper]

**[Option 2 – Where the Executive is a member of a statutory superannuation scheme]**

Pursuant toclause 7.2(b)(A), **the Executive hereby elects to** continue/cease\* to be a member of the following statutory superannuation scheme:………………………………………………………………………………

**Salary for the purposes of clause (C)**

* 1. Subject to sub-clause (b)below, the Executive’s salary for the purposes of calculating contributions and benefits under the relevant statutory superannuation scheme is: [$ Employer to insert].
  2. The Executive confirms that his/her salary for the purposes of a statutory superannuation scheme immediately before entering this contract, was more than the amount specified in sub-clause(a)above, and hereby elects that the salary for the purposes of calculating contributions and benefits under the relevant statutory superannuation scheme is\*:

$……………………… ***/*** the amount specified in sub-clause (a) above.

\*Executive to delete as appropriate

**[Option 3 – Where the Executive is a member of the Emergency Services Superannuation Scheme – the Executive retains membership of the statutory superannuation scheme and becomes eligible for membership of a non-statutory superannuation scheme]**

Pursuant to clause 7.2(c), when the Executive has attained the maximum benefitunder the Emergency Services Superannuation Scheme, the Executive will be eligible for membership of a non-statutory superannuation scheme administered by the Emergency Services Superannuation Scheme. The Executive is not required to elect to cease membership of the statutory superannuation scheme.

\*the corresponding increase to the Executive’s remuneration package should be reflected in Schedule B.

1. As defined under Part 3, Division 5, section 24 of the PA Act [↑](#footnote-ref-2)
2. As defined under Part 3, Division 5, section 23 of the PA Act [↑](#footnote-ref-3)