



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

Office of Parliamentary Counsel

(AG2011/10564)

OFFICE OF PARLIAMENTARY COUNSEL SES ENTERPRISE AGREEMENT 2011-2014

Commonwealth employment

COMMISSIONER DEEGAN

CANBERRA, 8 JULY 2011

Application for approval of the Office of Parliamentary Counsel SES Enterprise Agreement 2011 - 2014.

[1] An application has been made for approval of an enterprise agreement known as the Office of Parliamentary Counsel SES Enterprise Agreement 2011 - 2014 (Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (Act). The Agreement is a single-enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[3] 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 the Agreement to cover it. In accordance with s.201(2) of the Act, I note that the Agreement covers the organisation.

[4] A number of conditional terminations of individual agreement-based transitional instruments (individual agreements) were lodged with the application for approval of the Agreement. In accordance with Schedule 3, clause 18 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* those individual agreements will terminate upon commencement of the Agreement.

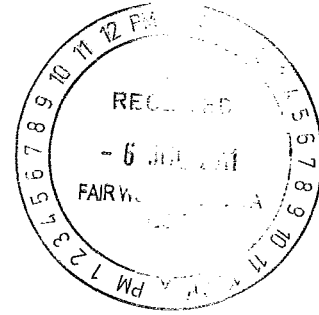
[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 15 July 2011. The nominal expiry date of the Agreement is 30 June 2014.



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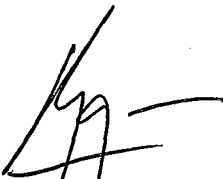


Office of Parliamentary Counsel
SES Enterprise Agreement 2011-2014

1 **Office of Parliamentary Counsel SES Enterprise Agreement**
2 **2011-2014**
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6 **Acceptance of Agreement**

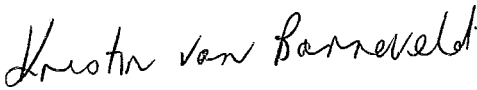
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8 This Agreement is made under section 172 of the *Fair Work Act 2009*. By signing below, the
9 parties to this Agreement signify their agreement to its terms.
10
11

12
13 
14
15
16 _____
17 Peter Quiggin PSM
18 First Parliamentary Counsel
19 Level 2, 39 Brisbane Avenue
20 Barton ACT 2600

21
22 Employer

23
24
25 _____
26 Date

27
28
29
29/6/11

30
31 
32
33 _____
34 For and on behalf of the
35 Community and Public Sector Union
36 1st Floor, 40 Brisbane Avenue
37 Barton ACT 2600

38 Bargaining Representative Signature

39
40 _____
41 Date

6/7/11

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Part 1—Objective

1 Objective

OPC drafts Bills for consideration by the Parliament of Australia. As such, OPC plays a key role in supporting Australian democracy.

The purpose of this Agreement is to ensure that OPC continues to play this key role in supporting Australian democracy. This will be achieved by maintaining and improving OPC's high standards of service delivery.

Part 2—Preliminary matters

1A Title

This Agreement is the Office of Parliamentary Counsel SES Enterprise Agreement 2011-2014.

2 Parties to the Agreement

- (1) This Agreement covers all Senior Executive Service employees employed by the Office of Parliamentary Counsel under the provisions of the *Public Service Act 1999*, but it does not cover any employee who is party to an Australian Workplace Agreement with the Office of Parliamentary Counsel.
- (2) This Agreement is made under section 172 of the *Fair Work Act 2009* and covers:
 - (a) First Parliamentary Counsel;
 - (b) all Senior Executive Service employees; and
 - (c) the Community and Public Sector Union (if Fair Work Australia has noted in its decision to approve the Agreement that the Community and Public Sector Union is covered).

3 Period of operation

This Agreement will commence operation seven days after it is approved by Fair Work Australia. The nominal expiry date is 30 June 2014.

4 Variation of the Agreement

This Agreement may only be varied in accordance with the *Fair Work Act 2009*.

5 Comprehensive agreement

- (1) This Agreement is a comprehensive agreement.
- (2) It is acknowledged that employment by OPC is subject to the provisions of any applicable Commonwealth law.

5A Closed agreement

This Agreement constitutes a closed agreement in settlement of all matters for its duration. The parties agree that for the life of the Agreement, there will be no further claims, except where consistent with the terms of this Agreement.

1 **5B Implementation payment**

2 Upon commencement of this Agreement, employees who were entitled to vote on this
3 Agreement will be entitled to a payment of \$1,900. An employee who was on leave when the
4 Agreement commences is not entitled to the payment unless and until he or she resumes duty
5 in OPC.

6 **6 Other policies and procedures**

7 This Agreement is supported by OPC policies and procedures to provide more detailed
8 guidance to managers and employees. Most of this material is set out in Office Procedural
9 Circulars and is identified in the relevant clause. Any Office Procedural Circular referred to
10 in this Agreement may be reviewed or amended from time to time by FPC after consultation
11 with the Workplace Consultative Committee. Office Procedural Circulars are not
12 incorporated into, and do not form part of, this Agreement. Where any provisions of this
13 Agreement are inconsistent with OPC policies and procedures, as varied from time to time,
14 then the terms of this Agreement will prevail.

15 **7 Termination of employment**

- 16 (1) The sole and exhaustive rights and remedies of an employee in relation to termination of
17 employment are those that the employee has:
- 18 (a) under Division 11 of Part 2-2 of Chapter 2 of the *Fair Work Act 2009*; and
 - 19 (b) under Part 3-2 of Chapter 3 of the *Fair Work Act 2009*; and
 - 20 (c) under Division 2 of Part 3-6 of Chapter 3 of the *Fair Work Act 2009*; and
 - 21 (d) under other Commonwealth laws (including the Constitution); and
 - 22 (e) at common law.
- 23 (2) Termination of employment, or a decision to terminate employment, cannot be reviewed
24 under the procedures set out in clauses 12 to 14 of this Agreement.
- 25 (3) Nothing in this Agreement prevents FPC from terminating the employment of an employee
26 for serious misconduct, without further notice or payment in lieu, in accordance with
27 section 123 of the *Fair Work Act 2009*. However, FPC must comply with the procedures
28 established by FPC under section 15 of the *Public Service Act 1999* for determining whether
29 an employee has breached the Code of Conduct.

30 **8 Delegations**

31 FPC may, in writing, delegate any of his or her powers under this Agreement to another
32 person, or authorise another person to exercise any of those powers. However, FPC may not
33 delegate, or authorise the exercise of, the power under this clause.

34 **Part 3—Working together**

35 **Division 1—Structures and processes**

36 **9 Workplace Consultative Committee**

37 The WCC will continue in operation with the existing membership and processes. More
38 information about the WCC is contained in an Office Procedural Circular.

9A Principles for workplace delegates

- (1) The role of union workplace delegates and other elected union representatives is to be respected and facilitated.
- (2) OPC and union workplace delegates will deal with each other in good faith.
- (3) In discharging their representative roles at the workplace level, the rights of union workplace delegates and recognised representatives include but are not limited to:
 - (a) the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment;
 - (b) recognition by OPC that workplace delegates speak on behalf of their members in the workplace;
 - (c) the right to participate in collective bargaining on behalf of those who they represent, as per the *Fair Work Act 2009*;
 - (d) the right to reasonable paid time to provide information to and seek feedback from employees in the workplace on workplace relations matters at OPC during normal working hours;
 - (e) the right to email employees in their workplace to provide information and seek feedback, subject to individual employees exercising a right to 'opt out';
 - (f) reasonable access to OPC's facilities for the purpose of carrying out work as a delegate and consulting with members and other interested employees and the union, subject to OPC's policies and protocols;
 - (g) the right to address new employees about union membership at the time they enter employment;
 - (h) the right to consultation, and access to relevant information about the workplace and OPC; and
 - (i) the right to reasonable paid time to represent the interests of members to the employer and industrial tribunals.
- (4) In discharging any roles that may involve undertaking union business, the rights of union workplace delegates include but are not limited to:
 - (a) reasonable paid time during normal working hours to consult with other delegates and union officials in the workplace, and receive advice and assistance from union staff and officials in the workplace;
 - (b) reasonable access to appropriate training in workplace relations matters including training provided by a union; and
 - (c) reasonable paid time off to represent union members in OPC at relevant union forums.
- (5) OPC will seek to facilitate official union communication with employees by means that may include:
 - (a) the use of email as a means of communicating with employees and other means of information sharing, including written materials, notice boards and access to websites; and
 - (b) group or individual meetings between employees and their representatives.
- (6) In exercising their rights, workplace delegates and unions will consider operational issues, OPC's policies and guidelines and the likely effect on the efficient operation of, or service provision by, OPC.

10 General Consultation

- (1) In making decisions which affect employees, whether in relation to matters covered by this Agreement or in relation to broader matters, OPC is committed to consultation with affected employees.
-

- 1 (2) An Office Procedural Circular sets out the consultation and participative work practices in
2 OPC. The WCC will monitor consultation and participative work practices in OPC and make
3 recommendations to FPC on the need for any changes.
- 4 (3) In this Agreement, *consultation* means:
5 (a) providing, wherever possible, relevant information to employees and their
6 representatives about proposed changes or decisions or other issues that will impact on
7 them so that they are able to participate meaningfully in debate; and
8 (b) in making decisions—taking account of the views expressed by employees and their
9 representatives; and
10 (c) explaining decisions that have been made, including how the views expressed by
11 employees and their representatives were taken into account.

12 10A Consultation on Major Change

- 13 (1) This clause applies if:
14 (a) OPC has made a definite decision to introduce a major change to its program,
15 organisation, structure or technology; and
16 (b) the change is likely to have a significant effect on employees of OPC.
- 17 (2) FPC must notify the relevant employees of the decision to introduce the major change.
- 18 (3) The relevant employees may appoint a representative for the purposes of the procedures in
19 this clause.
- 20 (4) As soon as practicable after the decision is made, FPC must:
21 (a) discuss with the relevant employees and their representatives:
22 (i) the introduction of the change; and
23 (ii) the effect the change is likely to have on the employees; and
24 (iii) measures OPC is taking to avert or mitigate the adverse effect of the change on
25 the employees; and
26 (b) for the purposes of the discussion—provide, in writing, to the relevant employees and
27 their representatives:
28 (i) all relevant information about the change including the nature of the change
29 proposed; and
30 (ii) information about the expected effects of the change on the employees; and
31 (iii) any other matters likely to affect the employees.
- 32 (5) However, FPC is not required to disclose confidential or commercially sensitive information
33 to the relevant employees or their representatives.
- 34 (6) FPC must give prompt and genuine consideration to matters raised about the major change
35 by the relevant employees and their representatives.
- 36 (7) Where provision is already made elsewhere in this Agreement for a major change to
37 program, organisation, structure or technology of OPC, the requirements set out in
38 subclauses (2), (3) and (4) are taken not to apply.
- 39 (8) In this clause, a major change is *likely to have a significant effect on employees* if it results
40 in:
41 (a) the termination of the employment of employees; or
42 (b) major change to the composition, operation or size of OPC's workforce or to the skills
43 required by employees; or
44 (c) the elimination or diminution of job opportunities (including opportunities for
45 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 major restructuring of jobs.

(9) In this clause, *relevant employees* means the employees who may be affected by the major change.

11 Grievance officer

Employees are to annually elect an employee to be grievance officer for OPC. The functions of the grievance officer are to receive individual grievances from staff members and to take the grievances up with the appropriate body or person with a view to settling them.

11A Resolution of Agreement disputes

Clauses 12 to 14 set out procedures to settle disputes that relate to a matter arising under:

- (a) this Agreement; or
- (b) the National Employment Standards.

12 Prevention and settlement of disputes—mutual responsibilities

- (1) All members of OPC recognise that they have a mutual responsibility to work co-operatively to resolve disputes.
- (2) If a dispute arises, the parties to the dispute will ensure that work will continue in accordance with established custom and practice while the dispute resolution procedures are applied. If the dispute involves a genuine occupational health and safety issue, employees will not be expected to work in an unsafe environment, but will undertake suitable alternative work until the occupational health and safety issue is resolved.
- (3) All members of OPC agree to take genuine and reasonable internal steps to prevent or settle disputes. The steps taken must be timely and appropriate to the settlement of the matters in dispute.

13 Internal dispute resolution procedures

- (1) There are various different internal procedures available for resolving disputes, depending on the nature of the dispute and the people involved in it. These include the following:
 - (a) discussion of the dispute between the employees affected and their immediate supervisor (if the dispute relates to the behaviour or actions of the immediate supervisor, the employees may discuss the matter with FPC or with either of the 2PCs);
 - (b) the dispute being raised with, and taken up by, the grievance officer;
 - (c) counselling or mediation provided through the employee assistance program referred to in clause 21.
- (2) If the matter is not resolved through the procedures mentioned in subclause (1), a party to the dispute may arrange for it to be discussed with FPC. FPC may suggest any procedure or assistance to resolve the matter, including recommending the appointment of an independent mediator.
- (3) For any discussions under this clause, employees may choose to be accompanied by a person of their choice (who need not be an employee of OPC), who may participate in the discussions.

14 Resolution of disputes—referral to Fair Work Australia

- (1) If a dispute is unable to be resolved at the workplace, and all agreed steps at clauses 12 and 13 have been taken, a party to the dispute may refer the matter to Fair Work Australia.
- (2) Fair Work Australia may deal with the dispute in 2 stages:
- (a) Fair Work Australia 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 Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.
- Note: If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the *Fair Work Act 2009*. A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5-1 of the *Fair Work Act 2009*. Therefore, an appeal may be made against the decision.
- (3) The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this clause.

Division 2—Roles and responsibilities

15 Leadership, management and teamworking

The parties to this Agreement recognise that, in general, OPC's work is best performed by people who are able to see themselves as members of a team with a common aim. An Office Procedural Circular sets out details of this, including the roles and responsibilities of management and employees in relation to this.

16 Corporate Service Charter

The Corporate Service Charter outlines:

- (a) the service commitments of the Corporate Services work group to the management and staff of OPC; and
- (b) staff responsibilities to the Corporate Services work group to enable the service commitments to be met.

Division 3—Other matters

17 Managing unsatisfactory performance

- (1) If FPC considers that an employee's work performance is unsatisfactory, the employee's supervisor will, as soon as practicable:
- (a) advise the employee in writing that the employee's work performance is considered to be unsatisfactory; and
 - (b) provide the employee with details of the required standards for the duties the employee has been assigned and how the employee has failed to meet those standards.
- The employee will have 7 days to comment.
- (2) If, having regard to the comments (if any) provided by the employee, the employee's supervisor considers it necessary, remedial action will be instituted. Details of such action and the processes are set out in an Office Procedural Circular.

1 (3) There will be an initial period of assessment, usually of 3 months, that will be undertaken by
2 the employee's supervisor. Where performance issues have not been satisfactorily resolved a
3 further period of assessment, usually of 3 months, will take place. This further assessment
4 will be undertaken by a person who is not the employee's supervisor.

5 (4) For SES employees, the initial period of assessment may be undertaken by a 2PC.

6 **18 Fitness for continued duty**

7 If an employee's fitness for continued duty is affected by physical or mental incapacity, the
8 matter will be handled under an Office Procedural Circular.

9 **19 Probation**

10 Arrangements for probation for employees joining OPC from outside the APS are set out in
11 an Office Procedural Circular. The Office Procedural Circular must cover the following
12 topics:

- 13 (a) who is engaged on probation;
- 14 (b) the length of probation;
- 15 (c) the basis of assessment during probation;
- 16 (d) the appraisal system;
- 17 (e) special provisions for employees on leave or attending Legal Workshop etc.;
- 18 (f) what is to be done if employees are rated as "unsatisfactory";
- 19 (g) special provisions for graduated return to work or exceptional circumstances.

20 **20 Protection for whistleblowers**

21 (1) An employee of OPC should report to FPC or to a 2PC any breach or alleged breach of the
22 APS Code of Conduct, which the employee believes should appropriately be dealt with
23 under OPC's whistleblowing arrangements. Details of OPC's whistleblowing arrangements
24 are set out in an Office Procedural Circular.

25 (2) FPC and the 2PCs are committed to ensuring that protection is provided against victimisation
26 or discrimination for any employee of OPC reporting a breach or alleged breach of the APS
27 Code of Conduct.

28 **21 Employee assistance program**

29 OPC will provide access to counselling and related services on the basis set out in an Office
30 Procedural Circular.

31 **Part 4—Terms and conditions**

32 **Division 1—Task broadening**

33 **22 Task broadening**

34 FPC may direct an employee to perform any duties that are within the limits of the
35 employee's skill, competence and training and could be performed by that employee
36 consistently with the classification and local designation structure, with the work level
37 standards determined by FPC and with FPC's responsibility to protect the health and safety
38 at work of employees in OPC.

Division 2—Working hours

23 Hours of work

- (1) The standard hours of work are 8.30 am until 12.30 pm and 1.30 pm until 5.00 pm Monday to Friday. This is 7 hours and 30 minutes per day or 37 hours and 30 minutes per week.
- (2) For the purposes of section 62 of the *Fair Work Act 2009* (maximum weekly hours), the parties to this Agreement agree that standard hours will be averaged over successive 6 month periods beginning on 1 January and 1 July. A supervisor may request or require an employee to work reasonable additional hours (within the meaning of section 62 of the *Fair Work Act 2009*).
- (3) The span of hours during which employees may work normal hours (normal bandwidth) is 7.00 am to 7.00 pm Monday to Friday.
- (4) Employees must take a meal break of at least 30 minutes after working continuously for a 5 hour period.

24 Flexible working hours

- (1) [not required]
- (2) SES employees (including part-time employees) may work flexible hours.
- (3) Supervisors may, if they think it appropriate, approve absences (including whole days) in recognition of substantial additional time worked by employees who are working flexible working hours. Such approved absences need not be covered by any formal grant of leave.
- (4) [not required]
- (5) Office Procedural Circulars provide details on the flexible working hours arrangements. The Office Procedural Circular also provides details on corporate hours for SES drafters, which are 9.30 am to 4.00 pm, Mondays to Thursdays.

24A Requests for flexible working arrangements

- (1) An employee who is a parent, or has responsibility for the care, of a child under school age or a child under 18 who has a disability, may request flexible working arrangements, including part-time hours, to assist the employee to care for the child. The employee is not eligible to make this request unless they have completed at least 12 months of continuous service with OPC.
- (2) A request made in accordance with subclause (1) must be in writing and set out details of the change sought and the reasons for the change.
- (3) FPC will respond in writing to the request within 21 days and will only refuse on reasonable business grounds. Where the request is refused, the response will include reasons for the refusal.

Division 3—Other entitlements

25 Allowances

Employees are entitled to the allowances as set out in the following table in the circumstances set out in an Office Procedural Circular. The table sets out basic entitlement conditions and minimum amounts for some of those allowances.

1

Item	Allowance	Basic entitlement conditions	Minimum amount	Notes
1	Temporary performance allowance			see clause 92
2	First aid certificate allowance	(a) possession of current first aid certificate recognised under an OPC; and (b) appointment by FPC as a First Aid Officer	\$15 per week	
3	Community language allowance			entitlement and rate fixed by an OPC
4	Allowance for office disabilities			entitlement and rate fixed by an OPC
5	Motor vehicle allowance	(a) authorisation by FPC to use a private motor vehicle for official purposes; and (b) FPC is satisfied that such use will result in greater efficiency or less expense to OPC	Rates published by the ATO	
6	[not required]			
7	Loss or damage to clothing or personal effects allowance	loss occurs in the course of employment		reimbursement basis
8	Prescription eyewear allowance	(a) prescription of eyewear by an optometrist or ophthalmologist; and (b) need to wear prescribed eyewear in performance of any work	\$500 every two years	
9	Dependant care cost allowance	(a) requirement to work outside ACT, or outside normal patterns of work; and (b) additional family care arrangements necessary as a result; and (c) costs minimised by employee; and (d) FPC given reasonable advance notice	reimbursement of reasonable expenses as determined by FPC	
10	[not required]			

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26 Travel

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The entitlements of employees travelling on official business are set out in an Office Procedural Circular. FPC is to determine appropriate allowances having regard to the amount or rate of the allowance, or an equivalent allowance, that is payable to employees within the Attorney-General's Department or comparable agencies.

1 **27 Accommodation**

2 All SES drafters are entitled to individual offices.

3 **28 Relocation**

4 Employees who relocate permanently on engagement, movement or promotion to OPC will
5 receive assistance agreed with FPC.

6 **Division 4—Part-time work**

7 **29 Overview**

8 Part-time work can provide advantages for OPC and for employees.

- 9 • For OPC, part-time work may provide an opportunity to employ people with special
10 skills for whom OPC could not provide a full-time workload, or to retain trained
11 employees.
- 12 • For employees, part-time work may provide an opportunity to strike a balance between
13 work and their other commitments or interests.

14 There will be no arbitrary restrictions on the number of employees who may be granted
15 permission to work part-time hours.

16 **30 Part-time hours**

- 17 (1) An employee is working part-time if their average weekly normal hours are less than 37.5
18 hours. These hours are to be worked during the normal bandwidth.

19 Example: A part-time employee may work a 9 day fortnight.

- 20 (2) The number of hours worked and the work patterns of an employee granted permission to
21 work part-time hours are to be as agreed between the employee and FPC from time to time.

22 **31 Salary and other benefits**

23 Salary and other benefits (except reimbursement benefits) for part-time employees will be
24 calculated on a pro-rata basis. Reimbursement benefits will be paid on the same basis as for
25 full-time employees.

26 **32 Permission to work part-time hours**

- 27 (1) FPC may grant an employee permission to work part-time hours either indefinitely or for a
28 specified period.
- 29 (2) FPC must grant this permission to an employee returning to duty after maternity, parental,
30 adoption or foster carer's leave who requests permission from FPC to work part-time hours
31 for up to 12 months after returning to duty. Subject to operational requirements, FPC will not
32 unreasonably refuse permission to other employees to work part-time hours.

33 **33 Resumption of full-time work**

- 34 (1) An employee who is granted permission to work part-time hours indefinitely cannot be
35 required to, and is not entitled to, resume, or commence, working full-time hours except by
36 agreement between the employee and FPC.

- 1 (2) An employee who is granted permission to work part-time hours for a specified period
2 cannot be required to, and is not entitled to, resume working full-time hours before the end
3 of the period except by agreement between the employee and FPC. At the end of the period,
4 the employee is entitled to resume working full-time hours or to request permission to
5 continue to work part-time hours.

6 **34 Application of part-time work provisions to existing part-time employees**

7 Part-time arrangements that are in place at the commencement of this Agreement continue.
8 The number of hours worked, and the work patterns, may be subsequently varied under
9 subclause 30(2).

10 **35 Part-time work arrangements don't prevent abolition of positions**

11 Nothing in this Division affects FPC's powers to declare an employee excess in accordance
12 with Part 8 or limits any other dealing with a position in accordance with any applicable
13 legislation.

14 **Division 5—Other matters**

15 **36 Staff development**

16 Development opportunities, including the payment of financial assistance to approved
17 students where appropriate, will be made available to employees. Details of OPC's Staff
18 Development Program are set out in an Office Procedural Circular.

19 **37 Unauthorised absences**

- 20 (1) If an employee is absent from duty without approval, all pay and other benefits provided
21 under this Agreement may, at FPC's discretion, cease to be available until the employee
22 resumes duty or is granted leave. Until then, standard hours of work as defined in clause 23
23 will apply in the case of a full-time employee and the part-time hours of work agreed with
24 FPC will apply in the case of a part-time employee.
- 25 (2) Unauthorised absences may constitute non-performance of duties and result in termination of
26 employment. The procedures for dealing with non-performance of duties are set out in an
27 Office Procedural Circular.

28 **Part 5—Classifications/local designations and remuneration**

29 **Division 1—Salaries: general**

30 **38 Salary increases**

31 In recognition of the productivity improvements and savings in OPC, the following increases
32 are payable under this Agreement:

- 33 (a) 4.4% increase in salary, payable from the commencement of this Agreement;
34 (b) 3% increase in salary, payable from 1 July 2012; and
35 (c) 2% increase in salary, payable from 1 July 2013.

36 Each increase is to be calculated based on the salary immediately before the increase.

1 **39 Salary levels**

2 (1) The tables in Attachment A set out the salaries that are payable to employees under this
3 Agreement.

4 (2) The salary and pay point for the employee at the commencement of this Agreement is the
5 same as the salary for the employee immediately before the commencement of this
6 Agreement.

7 **40 Individual Flexibility Arrangements**

8 (1) FPC and an employee may agree to make an individual flexibility arrangement to vary the
9 effect of terms of this Agreement if:

10 (a) the arrangement deals with one or more of the following matters:

11 (i) arrangements about when work is performed;

12 (ii) overtime rates;

13 (iii) penalty rates;

14 (iv) allowances;

15 (v) remuneration;

16 (vi) leave;

17 (vii) retention payments; and

18 (b) the arrangement meets the genuine needs of OPC and the employee in relation to one
19 or more of the matters mentioned in paragraph (a); and

20 (c) the arrangement is genuinely agreed to by FPC and the employee.

21 (2) FPC must ensure that the terms of the individual flexibility arrangement:

22 (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and

23 (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and

24 (c) result in the employee being better off overall than the employee would be if no
25 arrangement was made.

26 (3) FPC must ensure that the individual flexibility arrangement:

27 (a) is in writing; and

28 (b) includes the name of the employer and employee; and

29 (c) is signed by FPC and the employee and, if the employee is under 18 years of age,
30 signed by a parent or guardian of the employee; and

31 (d) includes details of:

32 (i) the terms of the Agreement that will be varied by the arrangement; and

33 (ii) how the arrangement will vary the effect of the terms; and

34 (iii) how the employee will be better off overall in relation to the terms and conditions
35 of his or her employment as a result of the arrangement; and

36 (e) states the day on which the arrangement commences and, where applicable, when the
37 arrangement ceases.

38 (4) FPC must give the employee a copy of the individual flexibility arrangement within 14 days
39 after it is agreed to.

40 (5) FPC or the employee may terminate the individual flexibility arrangement:

41 (a) by giving no more than 28 days written notice to the other party to the arrangement; or

42 (b) if FPC and the employee agree in writing—at any time.

41 SES experience loading

(1) An employee who is an SES employee is entitled to an experience loading calculated under this clause. The experience loading is part of salary.

(2) The annual amount of the experience loading for a Band 1 SES employee is calculated using the formula:

$$\text{Band 1 amount} \times \text{Years at level} \times \text{Performance factor}$$

(3) The annual amount of the experience loading for a Band 2 SES employee is calculated using the formula:

$$\text{Band 2 amount} \times \text{Years at level} \times \text{Performance factor}$$

(4) In this clause:

Band 1 amount means:

- (a) before 1 July 2012—\$2,610;
- (b) from 1 July 2012 to 30 June 2013—\$2,688;
- (c) from 1 July 2013—\$2,742.

Band 2 amount means:

- (a) before 1 July 2012—\$3,132;
- (b) from 1 July 2012 to 30 June 2013—\$3,226;
- (c) from 1 July 2013—\$3,291.

performance factor means:

- (a) 1 if the performance rating for the last appraisal for the employee was “fully effective”;
or
- (b) 0.5 if the performance rating for the last appraisal for the employee was “adequate”; or
- (c) 0 if the performance rating for the last appraisal for the employee was “unsatisfactory”.

years at level means the number of years (including part of a year) since the employee was promoted to the relevant SES level to a maximum of 10 years for a Band 1 employee and 15 years for a Band 2 employee.

42 EVS vehicles

Each SES employee is entitled to a vehicle (or, alternatively, to a cash benefit in lieu of a vehicle). Details are set out in an Office Procedural Circular.

43 Salary for superannuation etc.

An SES employee’s salary for superannuation, redundancy and termination purposes includes:

- (a) experience loading payable under clause 41; and
- (b) the cash benefit in lieu of a vehicle under clause 42, whether the employee chooses to be provided with an EVS vehicle or to receive a cash benefit in lieu of a vehicle.

1 **44 [not required]**

2 **Division 2—[not required]**

3 **45 [not required]**

4 **Division 3—Initial salaries and salary advancement**

5 **46 Initial salary—staff other than APC 1s**

6 (1) An employee (other than an employee who is already an APS employee) is, on engagement,
7 to be paid at the salary point for the classification determined by FPC.

8 (2) An employee who is already an APS employee is, on movement to OPC, to be paid at the
9 first salary point for the classification that is higher than the employee's salary immediately
10 before joining OPC or at such higher salary point for the classification as is determined by
11 FPC.

12 (3) If an employee moves to a position in OPC from another APS agency and the employee's
13 salary in the previous APS agency (*current salary*) exceeds the current maximum of the
14 relevant classification under this Agreement then, at FPC's discretion, the employee may be
15 maintained on the current salary until the salary that would otherwise be payable to the
16 employee equals or exceeds the current salary.

17 **47 [not required]**

18 **48 [not required]**

19 **49 [not required]**

20 **50 Salary on promotion within OPC**

21 An employee who is promoted within OPC is to be paid at the first salary point for the
22 classification that is higher than the employee's salary immediately before being promoted
23 or at such higher salary point for the classification as is determined by FPC.

24 **Division 4—Other matters**

25 **51 Temporary performance at a lower level**

26 If an employee requests or agrees, in writing, to temporarily perform work at a lower
27 classification or local designation level, FPC may determine in writing that the employee
28 will be paid a rate of salary applicable to the lower level for the period specified in the
29 request or agreement.

30 **52 Salary packaging**

31 Salary packaging (that is, allowing employees to receive part of their remuneration in the
32 form of non-cash benefits) is available to all employees. Detailed arrangements for salary
33 packaging are set out in an Office Procedural Circular.

53 Superannuation

- (1) OPC will make compulsory employer contributions as required by the applicable legislation and fund requirements.
- (2) Where an employee has chosen an accumulation superannuation fund (including the Public Sector Superannuation Accumulation Plan (PSSap)), the employer contribution will be at the rate of 15.4% of superannuation salary. This will not be reduced by any other contributions made through salary sacrifice arrangements.
- (3) A choice made in accordance with this subclause is subject to the chosen fund being an approved fund which can accept employer contributions by electronic funds transfer and for which there are no fees and costs to be borne by OPC.
- (4) Employer superannuation contributions will not be paid on behalf of employees during periods of unpaid leave that does not count as service, unless otherwise required under Commonwealth legislation.

54 Notice of resignation or retirement from the APS

An employee who intends to resign or retire from the APS must give at least 2 weeks' notice unless the employee and FPC agree on an alternative period of notice.

55 Payment on death

If an employee dies, or FPC directs that an employee is presumed to have died on a particular date, payment may be made, to the dependants or the legal personal representative of the former employee, of an amount that would have been paid to the employee under this Agreement if the employee had otherwise ceased employment by resignation or retirement. Any money owing to the Commonwealth as a result of advanced annual leave credits will be waived.

Part 6—Leave

Division 1—Annual leave and purchased leave

56 Overview of annual leave and purchased leave arrangements

Employees have access to 2 options in relation to annual leave. The first is that employees will be able to take the leave at either full pay or half pay. The second is a purchased leave option under which additional leave may be purchased by the employees.

57 Accrual of annual leave credit

- (1) An employee is entitled to 20 days annual leave with pay for each full year of service. Annual leave entitlements accrue continuously, will be credited fortnightly and are cumulative.
- (2) A part-time employee accrues a pro-rata annual leave credit based on the hours worked.
- (3) An employee who receives compensation under the *Safety, Rehabilitation and Compensation Act 1988* accrues annual leave credit in accordance with the preceding provisions of this clause for the first 45 weeks during which he or she receives compensation and after the end of the 45 weeks, accrues annual leave credit on a pro-rata basis based on the hours worked while he or she continues to receive compensation.

- 1 (4) Leave does not accrue during absences on leave without pay not to count as service.
2 However, an employee who takes 30 calendar days or less of such leave during a calendar
3 year will be credited with leave on 31 December for the leave that would have accrued
4 during that leave if it had counted as service.

5 **58 Taking annual leave**

- 6 (1) The granting of annual leave is subject to operational requirements, but FPC will not
7 unreasonably:
8 (a) refuse to authorise an employee to take an amount of annual leave that is credited to
9 the employee; or
10 (b) revoke an authorisation enabling an employee to take annual leave during a particular
11 period.
- 12 (2) FPC may grant annual leave to be taken before the necessary annual leave credits accrue.
- 13 (3) Annual leave counts as service for all purposes.
- 14 (4) If a public holiday to be observed by employees falls within a period of annual leave granted
15 to an employee, there will be no deduction from annual leave credit in respect of the
16 employee's absence from duty on that public holiday.

17 **59 Annual leave credits—portability of leave**

- 18 (1) An employee in the Service who becomes an employee in OPC will, on movement or
19 promotion to OPC, be credited with annual leave equal to the employee's annual leave credit
20 immediately before movement or promotion, provided there is no break in continuity of
21 service.
- 22 (2) An employee in the Parliamentary Service or the ACT Government Service who is engaged
23 as an employee of OPC, will be credited with annual leave equal to the employee's annual
24 leave credit immediately before engagement.
- 25 (3) Any annual leave credits are to be expressed in days (rather than hours) before being
26 credited.

27 **60 Employee directed to take annual leave**

- 28 (1) FPC may direct an employee to take annual leave if, at the time the direction is given, the
29 employee has annual leave credits of more than 10 weeks.
- 30 (2) The maximum amount of annual leave FPC may direct an employee to take under this clause
31 is 1/4 of the amount of credited annual leave of the employee at the time that the direction is
32 given.

33 **61 Annual leave to be paid out when employment ceases**

34 When employment ceases, the employee is entitled to payment in lieu of annual leave in
35 respect of any outstanding annual leave credits. This payment will be made at the
36 employee's final rate of salary, including any allowances that would have been paid during
37 annual leave.

38 **62 Employees may take annual leave at half pay**

39 An employee may nominate in writing that a period of annual leave is to be taken at half pay.
40 Where annual leave is taken at half pay at the request of the employee, the employee's
41 annual leave credit will be debited with half the number of days taken on half pay.

63 Restrictions on taking annual leave at half pay

- (1) An employee may only take whole days of annual leave at half pay.
- (2) An employee may not take any annual leave at half pay in a year in which the employee purchases additional leave.
- (3) An employee may not take annual leave at half pay if, at the end of the period of annual leave, the employee's annual leave credits and purchased leave credits would total more than the amount that would be the annual leave credits representing 2 years service.

63A Cashing out annual leave

- (1) An employee may, with the approval of FPC, cash out a portion of the employee's annual leave credit.
- (2) A request to cash out annual leave will not be approved if the cashing out would result in the employee's remaining annual leave credits being less than 4 weeks.
- (3) Each cashing out of a particular amount of annual leave credit must be by a separate agreement in writing between FPC and the employee.
- (4) If an employee cashes out annual leave, the employee will be paid the full amount that would have been paid to the employee had the employee taken the leave at the time the payment is made.

64 Employees may purchase leave

- (1) Employees may purchase additional leave.
- (2) Details of the purchased leave arrangements are set out in an Office Procedural Circular.

Division 2—Personal/carer's leave

Subdivision A—Overview

65 What this Division is about

This Division provides for personal/carer's leave to be granted to an employee for absences:

- (a) related to the employee's own illness; or
- (b) occurring because the employee is required to provide care or support for a family member in connection with illness; or
- (c) occurring because of unplanned special circumstances.

Note: The circumstances and purposes for which personal/carer's leave may be granted are set out in clause 69.

Subdivision B—Personal/carer's leave credits

66 Accrual of personal/carer's leave credit

- (1) An employee accrues the following personal/carer's leave credit:
 - (a) on the date of engagement—18 days with full pay;
 - (b) on the next 1 January—a pro-rata credit for the period of service since the date of engagement;

(c) on each subsequent 1 January—18 days with full pay, or a pro-rata credit for an employee with less than 12 months service since the previous 1 January.

Personal/carer's leave is cumulative.

(2) A part-time employee accrues personal/carer's leave credit in accordance with this clause on a pro-rata basis based on the employee's hours of duty.

(3) An employee who receives compensation under the *Safety, Rehabilitation and Compensation Act 1988* accrues personal/carer's leave credit for the first 45 weeks during which he or she receives compensation and after the end of the 45 weeks, accrues personal/carer's leave credit on a pro-rata basis based on the hours worked while he or she continues to receive compensation.

(4) Leave does not accrue during absences on leave without pay not to count as service. However, an employee who takes 30 calendar days or less of such leave during a calendar year will accrue personal/carers leave as if they did not take any leave without pay not to count as service during the year.

67 Personal/carer's leave credits—portability of leave

(1) An employee in the Service who becomes an employee in OPC will, on movement or promotion to OPC, be credited with personal/carer's leave equal to the employee's personal/carer's leave (however described) credit immediately before movement or promotion, provided there is no break in continuity of service.

(2) An employee in the Parliamentary Service or the ACT Government Service who is engaged as an employee of OPC, will be credited with personal/carer's leave equal to the employee's personal/carer's leave (however described) credit immediately before engagement.

(3) Any personal/carer's leave credits expressed in half-pay days will be credited at the rate of one day of personal/carer's leave for each 2 days of half-pay leave.

68 Previous employment may be allowed to count as service

FPC may, on or after the commencement of the employee's employment in the Service, decide that the whole or a part of a previous period of employment of the employee is to count as service for the purpose of accrual of personal/carer's leave credit.

Subdivision C—Use of personal/carer's leave

69 Personal/carer's leave with pay

(1) FPC may grant personal/carer's leave with pay to an employee in accordance with personal/carer's leave credit available to the employee in the following circumstances or for the following purposes:

(a) where the employee is unfit for duty because of illness;

(b) where the employee attends a medical appointment;

(c) for care or support for a family member, or a member of the employee's household, who requires care or support because of a personal illness of the member or an unexpected emergency affecting the member;

(d) for attending to essential requirements associated with birth, adoption or fostering of children;

(e) to attend a ceremony of religious or cultural significance which involves a family member;

(f) for the provision of emergency interpreting for a family member;

-
- 1 (g) to attend the employee's graduation ceremony;
- 2 (h) to accompany a family member to court where the family member is a party or a
- 3 witness to proceedings;
- 4 (i) to enable the employee to participate as an accredited official or competitor in an
- 5 international sporting event that FPC considers is of major international significance.

6 (2) Personal/carer's leave with pay under paragraphs (1)(d) to (h) is only to be granted for

7 occasional, non-enduring situations while longer term arrangements are made (if necessary).

8 (3) Personal/carer's leave with pay cannot be used as a substitute for formal child care

9 arrangements (for example, during school holidays). In addition, personal/carer's leave with

10 pay cannot be granted in the following circumstances:

11 (a) attendance at a family member's school or educational facility (whether or not required

12 or encouraged by the school or facility);

13 (b) to care for a family member on a student-free school day.

14 (4) Personal/carer's leave of more than 5 consecutive days may not be granted with pay without

15 production of a medical certificate or, if it is not reasonably practicable for the employee to

16 give the employer a medical certificate, a statutory declaration made by the employee.

17 (5) An application for personal/carer's leave with pay must specify the paragraph in subclause

18 (1) under which it is made and be supported by reasons for the application.

19 (6) Where the employee attends a counselling appointment through the employee assistance

20 program, the appointment can be treated as a medical appointment under paragraph (1)(b).

21 **70 Personal/carer's leave on half pay**

22 Any part of an employee's personal/carer's leave credit may be taken on half pay at the

23 request of the employee, and the employee's personal/carer's leave credit will be debited

24 with half the number of days taken on half pay.

25 **71 Anticipation of personal/carer's leave credit**

26 If the employee's personal/carer's leave credit is exhausted, FPC may allow the employee to

27 use up to 15 days personal/carer's leave credit in advance of the credit accruing.

28 **72 Personal/carer's leave without pay**

29 (1) FPC may grant personal/carer's leave without pay:

30 (a) to an employee who has no personal/carer's leave credit available; or

31 (b) in exceptional circumstances and at the request of the employee, to an employee who

32 has personal/carer's leave credit available.

33 (2) If a medical certificate or other evidence is required under clause 69 and it is not provided,

34 the personal/carer's leave granted to an employee must be without pay.

35 **73 When does personal/carer's leave count as service?**

36 (1) A period of personal/carer's leave counts as service for all purposes except in circumstances

37 covered by any of subclauses (2) to (4).

38 (2) Personal/carer's leave granted without pay because of subclause 72(2) does not count as

39 service for any purpose.

1 (3) If an employee has been granted personal/carer's leave for a continuous period of more than
2 78 weeks (including at least 52 weeks leave with pay), any of the personal/carer's leave that
3 is without pay after the end of the first 78 weeks does not count as service for any purpose.

4 (4) If an employee has been granted personal/carer's leave without pay for a continuous period
5 of more than 26 weeks, any of the personal/carer's leave that is without pay after the end of
6 the first 26 weeks does not count as service for any purpose.

7 **Subdivision D—Provisions applicable only to illness of employee**

8 **74 FPC may direct leave of absence**

9 If a medical report obtained for the purpose of determining an employee's fitness for duty
10 states that the employee is unfit for duty, FPC may grant the employee personal/carer's leave
11 in accordance with the report and direct the employee to absent himself or herself from duty
12 during the period of leave.

13 **75 Personal/carers leave not available while on maternity leave**

14 An employee is not entitled to personal/carer's leave with pay for any period when the
15 employee is entitled to leave with pay under the *Maternity Leave (Commonwealth*
16 *Employees) Act 1973* or under subclauses 81(1) or 81A(1) of this Agreement.

17 **76 Employee sick on public holiday**

18 If an employee is unfit for duty because of illness on a public holiday, the employee's
19 personal/carer's leave credit is not reduced for that day.

20 **77 Invalidity**

21 (1) The retirement of an employee on invalidity grounds must not, without the employee's
22 consent, take effect earlier than the day when the employee's credit for personal/carer's
23 leave is exhausted unless the continuous period for which the employee is granted
24 personal/carer's leave with pay (whether full pay or half pay or a combination) immediately
25 before retirement exceeds 52 weeks.

26 (2) If a person, after retirement on invalidity grounds, is re-engaged because of action taken
27 under section 75 of the *Superannuation Act 1976*, the person must be credited on
28 re-engagement with the personal/carer's leave at his or her credit immediately before
29 retirement.

30 **78 [not required]**

31 **Subdivision E—Unpaid carer's leave**

32 **79 Unpaid carer's leave to care for family member etc.**

33 FPC may grant personal/carer's leave without pay for a period of up to 2 days leave for each
34 occasion when a family member of the employee requires care or support during such a
35 period because of a personal illness of the member or an unexpected emergency affecting the
36 member. This leave does not count as service for any purpose.

Division 3—Leave for particular purposes

80 Parental leave

- (1) An employee is entitled to leave of absence without pay, during the period commencing on the day of the birth of a child of the employee, or, in the case of an adopted child, on the day on which the employee assumes responsibility for the child, and ending 104 weeks later, for the purpose of enabling the employee to care for the child. This leave does not count as service for any purpose.
- (2) The maximum period of leave of absence which may be granted by virtue of subclause (1) is 52 weeks. However, if an employee has been granted maternity leave without pay under the *Maternity Leave (Commonwealth Employees) Act 1973*, the maximum period of leave which may be granted is such that the aggregate period of leave granted under the maternity leave provision of the *Maternity Leave (Commonwealth Employees) Act 1973* (not including the period of required absence under that Act) and the period of leave granted under subclause (1) does not exceed 36 weeks.
- (3) An employee who is the parent of a new-born child, or is the partner of a parent of a new-born child and has caring responsibilities for the child, but who is not entitled to maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* is entitled to up to 4 weeks of paid parental leave. This leave counts as service for all purposes.
- (4) Employees are entitled to unpaid parental leave in accordance with the National Employment Standards provided for under Division 5 of Part 2-2 of Chapter 2 of the *Fair Work Act 2009*.
- (5) On ending parental or maternity leave, an employee is entitled to return to:
 - (a) the employee's pre-parental or pre-maternity leave duties; or
 - (b) if those duties no longer exist—an available position for which the employee is qualified and suited, at the same classification and pay as applied pre-parental or pre-maternity leave. Where this is not practical, other duties will be sought.

81 Adoption leave

- (1) An ongoing APS employee with at least 12 months continuous service in OPC or another APS agency who has adopted a child and who will be the primary caregiver for the child is entitled to up to 16 weeks paid leave for the purposes of caring for the child. This leave counts as service for all purposes.
- (2) An ongoing APS employee who has adopted a child, or is the partner of a parent who has adopted a child and has caring responsibilities for the child, but who is not entitled to leave under subclause (1) is entitled to up to 4 weeks paid leave for the purposes of caring for the child. This leave counts as service for all purposes.
- (3) Documentary evidence of approval for adoption must be submitted when applying for adoption leave and immediately before the adoption, the adoptive child must not be a child or step-child of the employee or the employee's partner.

81A Foster carer's leave

- (1) An ongoing APS employee with at least 12 months continuous service in OPC or another APS agency who has fostered a child and who will be the primary caregiver for the child is entitled to up to 16 weeks paid leave for the purposes of caring for the child. This leave counts as service for all purposes.

1 (2) An ongoing APS employee who has fostered a child, or is the partner of a parent who has
2 fostered a child and has caring responsibilities for the child, but who is not entitled to leave
3 under subclause (1) is entitled to up to 4 weeks paid leave for the purposes of caring for the
4 child. This leave counts as service for all purposes.

5 (3) Documentary evidence of enduring parental responsibilities under formal fostering
6 arrangements must be submitted when applying for foster carer's leave.

7 **82 Long service leave**

8 The entitlement to long service leave is provided for under the *Long Service Leave*
9 *(Commonwealth Employees) Act 1976*. Leave will only be granted for a minimum period of
10 7 consecutive calendar days.

11 **83 Maternity leave**

12 The entitlement to maternity leave is provided for under the *Maternity Leave*
13 *(Commonwealth Employees) Act 1973*. An employee who is entitled to paid maternity leave
14 under the *Maternity Leave (Commonwealth Employees) Act 1973* is entitled to up to 4 weeks
15 additional paid maternity leave. However, the total paid maternity leave must not exceed 16
16 weeks.

17 **84 Other leave for particular purposes**

18 An Office Procedural Circular sets out the circumstances in which the following forms of
19 leave can be taken:

- 20 (a) War service sick leave;
- 21 (b) Ceremonial, cultural and NAIDOC leave.

22 **84A Defence Reserve leave**

23 (1) In accordance with the *Defence Reserve Service (Protection) Act 2001*, OPC supports the
24 release of Defence Reservists for peacetime training and deployment.

25 (2) An employee who is a member of a Defence Reserve is entitled to 20 days leave on full pay
26 each year for the purposes of undertaking Defence Reserve service or training. Any leave not
27 taken during a year may be taken during the following year (but not during any year after
28 that following year).

29 (3) In the year in which an employee joins a Defence Reserve, the employee is entitled to an
30 additional 10 days leave on full pay for the purposes of undertaking initial Defence Reserve
31 training.

32 (4) For the purposes of determining leave entitlements under subclauses (2) and (3), a year
33 begins on the day on which the employee becomes a member of a Defence Reserve and on
34 each anniversary of that day, and leave may be taken at any time during the year.

35 (5) FPC may grant further leave for the purposes of Defence Reserve service or training. Such
36 further leave may be granted on full or part pay or without pay.

37 (6) Subject to subclause (7), leave under this clause is to count as service for all purposes.

38 (7) Periods of leave without pay under this clause that exceed 6 months in any 12 month period
39 do not count as service for the purposes of accruing annual leave.

84B Community service leave

- (1) An employee who engages in an eligible community service activity (including a voluntary emergency management activity and jury service) is entitled to a period of leave in accordance with Division 8 of Part 2-2 of Chapter 2 of the *Fair Work Act 2009*.
- (2) The entitlement to leave with pay for a voluntary emergency management activity and jury service is provided for in clause 85 of this Agreement.
- (3) Periods of leave granted, with or without pay, for voluntary emergency management activities include leave for emergency service responses, regular training, reasonable recovery time and ceremonial duties.

Division 4—Other leave

85 Leave with pay

- (1) Leave with pay (to count as service for all purposes) will be granted to an employee in the following circumstances:
 - (a) if a family member, or a member of the household, of the employee dies—maximum of 3 days for each bereavement;
 - (b) if a family member, or a member of the household, of the employee:
 - (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - (ii) sustains a personal injury that poses a serious threat to his or her life; maximum of 3 days for each occasion;
 - (c) if the employee's home or contents have been destroyed or significantly damaged by an event that FPC considers a disaster—maximum of 3 days;
 - (d) to enable the employee to attend an emergency (e.g. bushfire, flood) as a member of a recognised emergency management body—maximum of 4 days;
 - (e) if the employee is required to serve on a jury or to give evidence at legal or industrial proceedings;
 - (f) to enable an employee who is a returned soldier to receive medical attention or undergo a pension review—maximum of 10 days;
 - (g) to attend the funeral of a close friend—a maximum of 4 hours if the funeral is in the Canberra region or a maximum of 1 day if the funeral is elsewhere;
 - (h) to attend to responsibilities such as funeral arrangements, executor duties, administrative estate duties or duties to assist police or legal authorities with enquiries where a family member of an employee has died—maximum of 5 days for each bereavement;
 - (i) to move house—maximum of one day in any period of 12 months;
 - (j) in any other circumstances at FPC's discretion.
- (2) If a maximum period for the leave is specified in subclause (1), the period may be extended at FPC's discretion.

86 Leave without pay

- (1) Leave without pay (not to count as service for any purpose) will be granted to an employee to enable the employee to accompany a partner on a posting away from the ACT.
- (2) Leave without pay (to count as service for all purposes except the accrual of annual leave credits) will be granted to an employee to engage in employment outside the Service, if FPC is satisfied that the proposed employment would be in the interests of the Service.

1 (3) Leave without pay (to count as service for all purposes) will be granted to an employee to
2 take up employment in accordance with clause 2.1 of the Prime Minister's Public Service
3 Directions 1999.

4 (4) Leave without pay will be granted to an employee to engage in employment outside the
5 Service for purposes associated with compensation leave. This leave will count as service for
6 all purposes, except that, in determining the accrual of annual and personal/carer's leave
7 credits (see clause 57 and clause 66), it will be treated as a period during which the employee
8 is receiving compensation.

9 (5) Leave without pay (not to count as service for any purpose) may be granted, at FPC's
10 discretion, for any purpose for which leave could not otherwise be granted. However, this
11 leave will only be granted in exceptional circumstances.

12 **87 Leave under this Division**

13 (1) Leave under this Division may be granted subject to conditions.

14 (2) Leave without pay under this Division does not count as service for any purpose if the
15 employee does not resume duty in the Service at the end of the period of leave.

16 **Division 5—Miscellaneous**

17 **88 Expenses—cancellation of leave or recall to duty**

18 (1) This provision applies if an employee's leave is cancelled without reasonable notice or an
19 employee is recalled to work from leave.

20 (2) On request from the employee, he or she will be reimbursed such travel costs and incidental
21 expenses as FPC thinks reasonable, being costs and expenses incurred in respect of the
22 employee or any family member travelling with or intended to travel with the employee and
23 that are not otherwise recoverable under any insurance or from any other source.

24 **89 Public holidays**

25 (1) Employees will be entitled to the following public holidays:

26 (a) New Year's Day (1 January);

27 (b) Australia Day (26 January);

28 (c) Good Friday;

29 (d) Easter Monday;

30 (e) Anzac Day (25 April);

31 (f) the Queen's birthday holiday (on the day on which it is celebrated in a State or
32 Territory or a region of a State or Territory);

33 (g) Christmas Day (25 December);

34 (h) Boxing Day (26 December);

35 (i) any other day, or part-day, declared or prescribed by or under a law of a State or
36 Territory to be observed generally within the State or Territory, or a region of the State
37 or Territory, as a public holiday, other than a day or part-day, or a kind of day or
38 part-day, that is excluded by the *Fair Work Regulations 2009* from counting as a public
39 holiday.

40 (2) If under a State or Territory law, a day or part-day is substituted for one of the public
41 holidays listed above, then the substituted day or part-day is the public holiday.

- 1 (3) FPC and an employee may agree on the substitution of a day or part-day that would
2 otherwise be a public holiday, having regard to operational requirements.
- 3 (4) An employee, who is absent on a day or part-day that is a public holiday in the place where
4 the employee is based for work purposes, is entitled to be paid for the part or full day
5 absence as if that day or part-day was not a public holiday, except where that person would
6 not normally have worked on that day.
- 7 (5) Where a public holiday falls during a period when an employee is absent on leave (other
8 than annual or paid personal/carer's leave) there is no entitlement to receive payment as a
9 public holiday. Payment for that day would be in accordance with the entitlement for that
10 form of leave (e.g. if on long service leave on half pay, payment is on half pay).

11 **90 Christmas shutdown**

- 12 (1) OPC will close its normal operations from close of business on the last working day before
13 Christmas, with business resuming on the first working day after New Year's Day.
- 14 (2) Employees will be provided with time off for the working days between Christmas and New
15 Year's Day and will be paid in accordance with their ordinary hours of work. Where an
16 employee is absent on leave, payment for the Christmas shutdown will be in accordance with
17 the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is on
18 half pay).
- 19 (3) There will be no deduction from annual or personal/carer's leave credits for the shutdown
20 days.

21 **Part 7—Operations**

22 **91 Performance management**

- 23 (1) OPC's Performance Management Programs provide the framework for managing and
24 improving the performance of employees and identifying present and future development
25 opportunities for employees. Details of OPC's Performance Management Programs are set
26 out in Office Procedural Circulars.
- 27 (2) Training in performance management will be offered from time to time to all staff involved
28 in a program.

29 **92 Temporary performance allowance**

- 30 (1) An employee temporarily assigned to perform all or part of the duties of a higher
31 classification or local designation for a period of at least 1 week will be paid an allowance
32 (*temporary performance allowance* or *TPA*) equal to the difference between the employee's
33 own salary and the salary the employee would receive if promoted to the higher
34 classification or local designation or, in the case of partial performance of duties, an
35 alternative amount determined by FPC.
- 36 (2) An Office Procedural Circular sets out guidelines for decisions about directing employees to
37 perform duties at a higher level, and for matters relating to the performance of duties in those
38 circumstances.
- 39 (3) Where an employee is temporarily directed to perform duties at a level in the SES, the
40 employee's rate of payment, and entitlement to a motor vehicle or an allowance in respect of
41 a motor vehicle, is to be determined by FPC.

Part 8—Redeployment, retirement and termination

93 Application

This Part applies only to ongoing employees.

94 Identifying excess employees

- (1) FPC may identify an employee as excess in various circumstances, which may include any of the following:
 - (a) OPC undergoes a restructure;
 - (b) OPC reduces its overall SES staffing levels;
 - (c) the employee is no longer able to provide the skills mix required due to the changing environment in which OPC operates.
- (2) If an employee is so identified, FPC will advise the employee of options for redeployment, both at level or at a lower classification.

95 Redeployment

- (1) If FPC identifies an employee as being excess, FPC may redeploy the employee to other duties in OPC, including to duties at a lower classification.
- (2) FPC may redeploy the employee with, or without, the employee's agreement.
- (3) Any decision by FPC to redeploy the employee will be in accordance with the minimum requirements prescribed by the *Public Service Act 1999* and the Commissioner's Directions.

96 Retirement with an incentive

- (1) If FPC identifies an employee as being excess, but suitable duties for redeployment are not available, FPC may discuss with the employee the possibility of the employee retiring from the Australian Public Service on a specified date, with a specified amount as an incentive to do so pursuant to section 37 of the *Public Service Act 1999* and associated requirements of the Commissioner's Directions (a **section 37 arrangement**). The incentive amount is subject to the agreement of the Public Service Commissioner.
- (2) The decision on whether or not to accept a section 37 arrangement rests with the employee.
- (3) As required by the Commissioner's Directions, reasonable costs of outplacement and financial counselling services will be paid for by OPC if a section 37 arrangement is offered.
- (4) If the employee accepts the offer of a section 37 arrangement, and if the Public Service Commissioner agrees, the employee will be issued with a written notice to that effect under section 37 of the *Public Service Act 1999*.
- (5) If the employee does not accept the offer of a section 37 arrangement, the employee's employment may be terminated in accordance with sections 29 and 38 of the *Public Service Act 1999*, or the employee may be reassigned to other duties, including at a lower classification.

97 Termination

- (1) In accordance with sections 29 and 38 of the *Public Service Act 1999*, FPC may at any time, by notice in writing, terminate the employee's employment. Section 38 requires that the

1 employment cannot be terminated unless the Public Service Commissioner has issued a
2 certificate stating that:

- 3 (a) all relevant requirements of the Commissioner's Directions under section 36 of the
4 *Public Service Act 1999* have been satisfied in respect of the proposed termination; and
5 (b) the Commissioner is of the opinion that the termination is in the public interest.

6 (2) The notice of termination must specify the ground or grounds that are relied on for the
7 termination as set out in subsection 29(3) of the *Public Service Act 1999*.

8 Note: See clause 7 for the sole and exhaustive rights and remedies of an employee in relation to termination
9 of employment.

10 **98 [not required]**

11 **99 [not required]**

12 **100 [not required]**

13 **101 [not required]**

14 **102 [not required]**

15 **103 [not required]**

16 **104 [not required]**

17 **105 [not required]**
18

1 **Part 9—Transitional arrangements**

2 **106 Preservation of annual leave credits**

3 At the commencement of this Agreement, each employee is credited with accrued annual
4 leave credit equal to the employee’s accrued annual leave credit immediately before that
5 commencement.

6 **107 Preservation of personal/carer’s leave credits**

7 At the commencement of this Agreement, each employee is credited with accrued
8 personal/carer’s leave credit equal to the employee’s accrued personal/carer’s leave credit
9 immediately before that commencement.

10

Part 10—Definitions

108 Definitions

(1) In this Agreement, unless the contrary intention appears:

2PC means a Second Parliamentary Counsel.

APC 1 means Assistant Parliamentary Counsel Grade 1.

APC 2 means Assistant Parliamentary Counsel Grade 2.

APC 3 means Assistant Parliamentary Counsel Grade 3.

APS agency means an agency staffed under the *Public Service Act 1999*.

child includes an adopted child.

Commissioner's Directions means the *Public Service Commissioner's Directions 1999*.

Defence Reserve means the Naval Reserve, the Army Reserve or the Air Force Reserve.

Note: For Naval Reserve, Army Reserve and Air Force Reserve, see the *Naval Defence Act 1910*, the *Defence Act 1903* and the *Air Force Act 1923*.

dependant in relation to an employee means:

- (a) the partner of the employee; or
- (b) a child or parent of the employee, or of the partner of the employee, being a child or parent who ordinarily resides with the employee and who is wholly or substantially dependent upon the employee.

dependent child means a child who is a dependant of the employee and is less than 21 years of age.

family member, for an employee, means a person who:

- (a) is related to the employee by blood, marriage, affinity or adoption; or
- (b) stands in a bona fide domestic or household relationship with the employee, without discrimination as to sexual preference; or
- (c) is a child, foster child or ward of the employee or of a person who stands in a bona fide domestic or household relationship with the employee.

FPC means First Parliamentary Counsel.

full-time employee means an employee other than a part-time employee.

illness includes an injury or medical condition.

medical certificate means a certificate of a registered health practitioner, or other evidence of illness approved by FPC.

member of OPC means:

- (a) a non-SES employee in OPC; or
- (b) an SES employee working in OPC; or
- (c) a 2PC; or
- (d) FPC.

normal bandwidth means the span of hours specified in subclause 23(3) (7.00 am to 7.00 pm, Monday to Friday).

- 1 **ongoing APS employee** has the same meaning as in the *Public Service Act 1999*.
- 2 **OPC** means the Office of Parliamentary Counsel.
- 3 **partner** means, in relation to a person who is a member of a couple, the other member of the
- 4 couple.
- 5 **part-time employee** means an employee who is working part-time hours.
- 6 **personal/carer's leave credit** means personal/carer's leave credit accrued under Subdivision
- 7 B of Division 2 of Part 7.
- 8 **registered health practitioner** means:
- 9 (a) a person who is registered or licensed as a health practitioner (or a health practitioner
- 10 of a particular type) under a law of a State or Territory; or
- 11 (b) a Medical Officer in Health Services Australia.
- 12 **Service** means the Australian Public Service.
- 13 **SES** means Senior Executive Service.
- 14 **SES drafter** means a person who occupies a position of:
- 15 (a) Senior Assistant Parliamentary Counsel (SES Band 1 (Specialist)); or
- 16 (b) First Assistant Parliamentary Counsel (SES Band 2 (Specialist)).
- 17 **superannuation salary** means the annual rate of superannuation salary within the meaning
- 18 of the *Superannuation Act 1990* worked out on the assumption that the employee was a
- 19 regular employee within the meaning of that Act.
- 20 **term of this Agreement** is the period starting when the Agreement comes into operation and
- 21 ending on the nominal expiry date of the Agreement.
- 22 **TPA** means temporary performance allowance.
- 23 **WCC** means the Workplace Consultative Committee continued in operation under clause 9.
- 24 **work group** is defined in subclause (3).
- 25 (2) [not required]
- 26 (3) The **work groups** in OPC are as follows:
- 27 (a) SES drafters;
- 28 (b) Assistant Drafters;
- 29 (c) Corporate Services.
- 30

Attachment A—Salaries

1 Salaries

[Table A is not required]

[Table B is not required]

1. Classification or local designation	2. Pay points	3. Salary from commencement of agreement	4. Salary from 1 July 2012	5. Salary from 1 July 2013
Senior Assistant Parliamentary Counsel (SES 1)	Lower Upper	140142 151461	144347 156005	147234 159125
First Assistant Parliamentary Counsel (SES 2)		184612	190150	193953

2 [not required]

3 Workers eligible for a supported wage

An Office Procedural Circular sets out the conditions that will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the Office Procedural Circular.