



FAIR WORK  
AUSTRALIA

## DECISION

*Fair Work Act 2009*

s.185—Approval of enterprise agreement

### Department of Finance and Deregulation

(AG2010/8132)

### COMMONWEALTH MEMBERS OF PARLIAMENTS STAFF ENTERPRISE AGREEMENT 2010-2012

Commonwealth employment

COMMISSIONER ROE

MELBOURNE, 22 APRIL 2010

*Application for approval of the Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012.*

[1] An application has been made for approval of an enterprise agreement known as *The Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by the Department of Finance and Deregulation. The agreement is a single-enterprise agreement.

[2] I examined the proposed Agreement as to whether it met the Better Off Overall Test. In this I was assisted by charts comparing the Awards and the Agreement provided as part of the employer's declaration in support of the application for approval of the agreement. The relevant Awards for comparison purposes were identified as the *Electorate Officers- Members of Australian Parliament (Salaries and Conditions of Employment) Award 2001* and the *Journalists' (Australian Government Instrumentalities) Award 1999*. No Award for comparison purposes was identified by the employer or the bargaining representatives for the Ministerial and Senior Opposition Staff advisers who are covered by the Agreement. There are a number of conditions in the Agreement which are less beneficial than those under the Award and a number which are more beneficial. However, I was able to satisfy myself that the more beneficial conditions and rates of pay when combined with the allowances for overtime work were sufficient to ensure that employees were better off overall. For the purpose of the exercise I assessed the position of the Ministerial and Senior Opposition Staff advisers by comparing them to the *Miscellaneous Award 2010* [MA000104] and I also had some regard to the situation which applies to APS employees at a similar level.

[3] I was however concerned about one matter which was the exclusion or partial exclusion of certain categories of employees under the Agreement from the benefit of redundancy or severance payments. I was concerned that there might be employees in these categories who were not better off overall when compared to the relevant Award and so I wrote to the employer and the bargaining representatives on 14 April 2010 concerning this

matter and received a detailed response from the employer on 21 April 2010. I was also mindful of the need for the National Employment Standards to be observed in respect to all employees pursuant to Section 55 (1). There is no “industry specific redundancy scheme” consistent with the definition in Clause 12 of the Act in that there is no modern award covering these employees which contains a scheme described in these terms. Therefore, the NES redundancy provisions apply to employees covered by this Agreement except for those employees exempted by Sections 121, 122 and 123 of the Act (e.g. casuals, those with less than 12 months service, or those terminated for serious misconduct).

[4] The situations which were of concern are dealt with below.

[5] Clause 70.1(d) of the Agreement excludes employees who have been approved for invalidity retirement benefit under the relevant Commonwealth Superannuation Scheme (CSS and PSS) from severance benefits. I am satisfied that invalidity retirement benefits are not paid by the superannuation schemes in cases of redundancy and so there is no issue of inconsistency with the NES. I am satisfied that the invalidity benefits in the CSS and PSS defined benefit superannuation schemes are directly linked to the level of retirement salary (or in some cases the average salary in the final years of employment) and that the overaward payments as a result of the Agreement will therefore ensure that workers in this category will still be better off overall.

[6] Clause 70.1(e) of the Agreement excludes employees terminated during probation from severance payments but they are entitled to one week’s notice payment. Under the Agreement a person cannot be on probation for more than a maximum of 5 months. There is therefore no breach of the NES. However, under the Award, except in cases of serious misconduct, they would be entitled to two weeks pay whilst under the Agreement they are entitled to one week’s paid notice only. However, in many cases the termination of employees during probation occurs when a Member of Parliament loses office and in those cases under the Members Of Parliament Staff Act 1984 the employees are given at least an extra two weeks notice. In other cases I am still satisfied that because of the level of over-award payments an employee would have to work for less than one month to overcome this disadvantage and be better off under the Agreement than the Award. I am therefore satisfied that probationary employees are better off overall despite this provision.

[7] Clause 70.1(f) of the Agreement excludes from severance payments employees who have been absent without approved leave for a continuous period of 10 business days and have failed to notify reasonable cause for their absence. I am satisfied that in these circumstances an employer does have the power to dismiss such an employee for serious misconduct and if the employer did take that option the employee would not be entitled to severance pay either under the Award or under the NES. The employee is advantaged by the employer not taking that course of action. I am therefore satisfied that the employees in this category are better off overall despite this provision.

[8] Clause 70.3 of the Agreement reduces severance payment for an employee who is re-employed under the Agreement and the MOPS Act during the period covered by the severance payment. However, the Agreement specifies that the employee cannot receive less than the NES. The difference between the Award entitlement and the NES is never more than 3 weeks pay in total and at some years of service it is less than this amount. Any employee with more than three month’s service at the time of receiving the initial severance payment

would have been employed for sufficient time to overcome any disadvantage due to the level of overaward payments. I am therefore satisfied that the employees in this category are better off overall despite this provision.

[9] I am therefore satisfied that the Agreement meets the Better Off Overall Test.

[10] 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.

[11] The Community and Public Sector Union, the Media, Entertainment and Arts Alliance and the Australian Municipal, Administrative, Clerical and Services Union have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) of the Act I note that the Agreement covers the three organisations.

[12] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 29 April 2010. The nominal expiry date of the Agreement is 29 April 2012.



COMMISSIONER

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**COMMONWEALTH  
MEMBERS OF PARLIAMENT STAFF  
ENTERPRISE AGREEMENT  
2010-2012**

## Formal Acceptance of Enterprise Agreement

The *Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012* has been made under Part 2-4 of the *Fair Work Act 2009*.

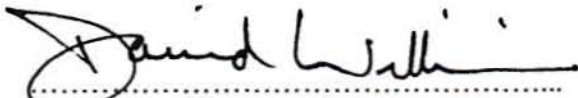
For, and on behalf of, the Commonwealth



Senator the Hon Joe Ludwig  
Special Minister of State  
Parliament House, Canberra, ACT, 2600

Dated: 12th April 2010

On behalf of the Staff Representative Group



Name: Mr David Williams

Address: M140 PARLIAMENT HOUSE  
CANBERRA ACT

Dated: 12 APRIL 2010.

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## **A INTRODUCTION**

Staff employed under the *Members of Parliament (Staff) Act 1984* (the MOP(S) Act) and covered by this Agreement work on behalf of Senators, Members of the House of Representatives and Office Holders, including former Prime Ministers. Throughout this Agreement, MOP(S) Act staff are referred to as employees while Senators, Members and Office Holders are referred to as Members, unless indicated otherwise.

Employees are employed by Members on behalf of the Commonwealth and are responsible to their employing Member. However, significant management responsibilities are exercised on behalf of the Commonwealth by the Special Minister of State (the Minister), under authorisation of the Prime Minister, and by the Department of Finance and Deregulation (the Department) under the Minister's direction.

The Minister may make a determination or determinations under the MOP(S) Act, where required, in order to ensure that this Agreement takes effect in accordance with its terms.

## **B TECHNICAL MATTERS**

### **1 Title**

1.1 This Agreement will be known as the *Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012*.

### **2 Coverage**

2.1 This Agreement is made as an Enterprise Agreement under Part 2-4 of the Fair Work Act and covers:

- (a) the Special Minister of State (the Minister) on behalf of the Commonwealth of Australia;
- (b) persons employed under Part III and Part IV of the MOP(S) Act, at the classifications listed in Attachments A, B and C (employees);
- (c) the Community and Public Sector Union
- (d) the Media, Entertainment and Arts Alliance; and
- (e) the Australian Services Union.

### **3 Operation of Agreement**

3.1 This Agreement will come into operation seven days after this Agreement is approved by Fair Work Australia (FWA). The nominal expiry date of this Agreement will be two years after it commences operation.

### **4 Closed Agreement**

4.1 During the period starting on the date this Agreement starts operating and ending on the nominal expiry date, no further claims may be pursued in respect of terms and conditions of employment by a person or organisation covered by this Agreement, except where such claims are consistent with the terms of this Agreement.

### **5 Transitional Arrangements**

5.1 The transitional arrangements that apply to eligible employees who commenced their employment prior to the date that this Agreement commences operation are set out in Attachment E to this Agreement.

### **6 Guidelines**

6.1 The operation of this Agreement is supported by policies, procedures, and guidelines. They are not incorporated into, and do not form part of, this Agreement. If there is any inconsistency between the policies, procedures and guidelines and the terms of this Agreement, the express terms of this Agreement will prevail.

- 6.2 Policies, procedures and guidelines which support the operation of this Agreement may be made or varied from time to time following consultation with the Employee Consultative Group and will apply in the form they are in as at the time of any relevant action or decision.
- 6.3 Disputes over the content, application or interpretation of any policies, procedures or guidelines which support the operation of this Agreement will be subject to the dispute resolution procedures of this Agreement.

## **7 Consultation Framework**

- 7.1 In addition to the consultation obligations in relation to major workplace changes set out at clause 9, the following consultation framework is established because the persons and organisations covered by this Agreement value communication, consultation, co-operation and input from employees and their unions on matters that affect their workplace. The Minister will consult with employees and unions on workplace matters when required by this framework.
- 7.2 Circumstances may arise where the consultation referred to at clause 7.1 is not possible or practicable. It is recognised that the Prime Minister, the Minister and employing Members have the authority to make decisions, including under the MOP(S) Act, with regard to employees, and that the Department has a role of administering employment under the MOP(S) Act. This consultation framework does not remove the authority for such decisions and actions to be made or taken, as required, without regard to this consultation framework.
- 7.3 The Department will generally act on behalf of the Minister for the purpose of consultation.
- 7.4 Under this framework, consultation involves:
  - (a) providing relevant information;
  - (b) giving reason for proposed decisions;
  - (c) giving employees and their representatives, including unions, the opportunity to put their views to the appropriate decision-maker;
  - (d) providing feedback to employees and their representatives, including unions, on those views;
  - (e) considering the views of employees and their representatives, including unions, before the decision is made.
- 7.5 A consultative body involving management representatives, union representatives and employees will be maintained and established as set out in clause 8.

- 7.6 To facilitate such consultation under this framework, unions representing employees covered by this Agreement will be entitled to hold meetings with employees to discuss and get feedback on those workplace issues that warrant such feedback prior to meetings of the Employee Consultative Group (ECG). Employees may be provided with reasonable paid time during normal working hours to attend such meetings.
- 7.7 In exercising their rights under this consultation framework, representatives, including unions, will consider operational issues, relevant policies and guidelines and the likely effect on the efficient operation of employing Members' offices and the Department.
- 7.8 Nothing in this clause provides employee representatives, including unions, with a right to enter premises:
- (a) for a purpose referred to in section 481 of the Fair Work Act (which deals with investigations of suspected contraventions);
  - (b) to hold discussions of a kind referred to in section 484 of the Fair Work Act; or
  - (c) in the exercise of a State or Territory OHS right.

## **8 Employee Consultative Group**

- 8.1 An ECG will be established comprising management representatives, employees and representatives of unions covered by this agreement.
- 8.2 The ECG will comprise:
- (a) Employee representation from all political parties on a proportional basis to Party staff numbers, to be elected by Employees covered by this Agreement (initially, within three months of the commencement of the Agreement).
  - (b) Management representatives, including a nominee of the Minister and/or representatives from the Department.
  - (c) Union representatives nominated by each relevant union.

A formal meeting of the ECG will only be constituted when there is attendance from each of the above three groups.

- 8.3 The ECG will be consulted on workplace issues pertaining to employees generally (as opposed to issues relating to individual employees or individual offices), including but not limited to:
- (a) proposed changes to, or establishment of, guidelines or policies in relation to the Enterprise Agreement, where the proposed change affects Employees;
  - (b) the operation and application of the Enterprise Agreement;

- (c) harassment and discrimination policies;
  - (d) any other relevant workplace matters.
- 8.4 Consultation must be in accordance with the consultation framework at clause 7 and includes but is not limited to the provision of appropriate and timely responses to matters raised by ECG members.
- 8.5 The ECG is to meet no less than four (4) times in each complete calendar year over the life of the Agreement.

## **9 Consultation on Major Changes**

- 9.1 This clause applies if:
- (a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
  - (b) the change is likely to have a significant effect on employees of the enterprise.
- 9.2 The employer must notify the relevant employees of the decision to introduce the major change.
- 9.3 The relevant employees may appoint a representative for the purposes of the procedures in this clause.
- 9.4 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purpose of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- 9.5 As soon as practicable after making the decision, the employer must:
- (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion – provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and

- (ii) information about the expected effects of the change on the employees; and
  - (iii) any other matters likely to affect the employees.
- 9.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 9.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 9.8 If a term in the Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in clauses 9.2, 9.3 and 9.5 are taken not to apply.
- 9.9 In this clause, a major change is **likely to have a significant effect on employees** if it results in:
  - (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.
- 9.10 In this clause, **relevant employees** means the employees who may be affected by the major change.

## **10 Evaluation of Electorate Officer working hours and Electorate Staff Allowance**

- 10.1 The persons and organisations covered by this Agreement, as provided for in clause 2, commit to an evaluation of the working hours of Electorate Officers and the adequacy and framework of the Electorate Staff Allowance to be completed during the life of this Agreement.
- 10.2 The ECG will be provided with regular reports on the progress of the evaluation.

## 11 Employee Representation

- 11.1 Employees are entitled to be represented by, and communicate with, an employee organisation or employee representative of their choosing in relation to their employment.
- 11.2 Employees undertaking representational duties will be provided with appropriate support, having regard to the operational and resource requirements of the employing Member. Such support will include:
- (a) reasonable time during work hours for employee representatives to conduct their representational activities without deduction of salary;
  - (b) reasonable access to office equipment and communications systems; and
  - (c) allowing participation in collective bargaining on behalf of employees who have appointed the organisation or representative as their bargaining representative in accordance with the Fair Work Act.
- 11.3 Employee organisations and employee representatives may engage in official communication with employees, including members of those organisations, including via:
- (a) emails;
  - (b) access to employee organisations' or representatives' websites; and
  - (c) group or individual meetings between employees and their representatives.

## **C EMPLOYMENT OPTIONS**

### **12 Type of engagement**

- 12.1 Employees covered by this Agreement may be employed on an ongoing, non-ongoing or casual basis.
- 12.2 An agreement to employ a person on any of these bases must be in writing between the Member and the employee and in accordance with sections 13 or 20 of the MOP(S) Act.
- 12.3 An employee employed by one Member is considered to have a single employment for all purposes under this Agreement. For example, if an employee is engaged on an ongoing basis as a part-time employee, and the employee is subsequently engaged by the same Member to temporarily work additional hours, those additional hours will form part of the original ongoing employment (albeit temporarily), rather than a separate non-ongoing or casual employment.
- 12.4 Notwithstanding clause 12.3 above, if an employee is employed by more than one Member, the employee is considered to have a separate employment with each of those Members.
- 12.5 Further information can be found in the relevant Guideline 'Ongoing, Non-ongoing and Casual Employment'.

### **13 Probation**

- 13.1 New ongoing employees are appointed on a period of probation of up to three months.
- 13.2 An employing Member may waive the probationary period in writing, and must notify the employee of the waiver.
- 13.3 An employing Member may extend the probationary period by up to two months, and must notify the employee in writing of any extension prior to completion of the initial probationary period.
- 13.4 Non-ongoing employees may be engaged with a maximum probation period of three months at the discretion of the employing Member.
- 13.5 This clause is not intended to affect any 'minimum employment period' within the meaning of that phrase set out in section 383 of the Fair Work Act.
- 13.6 Further information can be found in the relevant Guideline 'Ongoing, Non-ongoing and Casual Employment'.

### **14 Ongoing**

- 14.1 An ongoing employee receives payment of salary, access to leave and other benefits in accordance with this Agreement.

- 14.2 An ongoing employee may be employed on a full-time or part-time basis in accordance with clause 36.
- 14.3 An ongoing employee must be employed wholly or partly against an established position.
- 14.4 An ongoing employee who is on temporary transfer from the office of one Member to a position in the office of another Member continues to be considered as an ongoing employee for the purposes of employment conditions under this Agreement.
- 14.5 The hours of employment of an ongoing part-time employee by a Member may be increased by employment at the same classification and salary against another position or the Relief Staff Budget in conjunction with the employee's primary ongoing employment to the limit of the full-time hours specified in clause 36. The employee will continue to be considered as an ongoing employee for the purposes of employment conditions under this Agreement.
- 14.6 Further information can be found in the relevant Guideline 'Ongoing, Non-ongoing and Casual Employment'.

## **15 Non-ongoing**

- 15.1 A non-ongoing employee receives payment of salary, access to leave and other benefits in accordance with this Agreement.
- 15.2 A non-ongoing employee may be engaged on either a full-time or part-time basis in accordance with clause 36.
- 15.3 A non-ongoing employee may be engaged against an established position and/or the Relief Staff Budget. Each period of engagement is separate and may not be for a period of more than 12 months.
- 15.4 The engagement of non-ongoing employees against the Relief Staff Budget is limited by an individual Member's Relief Staff Budget as determined by the Minister.
- 15.5 Further information can be found in the relevant Guideline 'Ongoing, Non-ongoing and Casual Employment'.

## **16 Casual**

- 16.1 A casual employee may be engaged against an established position and/or the Relief Staff Budget, to work such hours as are required from time to time by the employing Member, on an occasional, non-systematic or irregular basis.
- 16.2 Casual employment will be worked in accordance with an employment agreement between the employee and the employing Member, which specifies that the basis of employment of the employee during the period of the employment agreement will be as a casual employee.

- 16.3 The maximum period for an employment agreement referred to in clause 16.2 will be four weeks (28 days). However, each day (or part-day) worked by a casual employee will constitute a separate engagement.
- 16.4 A casual employee is paid for every hour worked at an hourly rate. The hourly rate is based on a salary point in accordance with clause 23, plus the additional 20 per cent of salary described at clause 16.5.
- 16.5 A casual employee receives an additional 20 per cent of his or her salary in lieu of access to the entitlements referred to in clause 16.6 below.
- 16.6 A casual employee is not entitled to:
- (a) annual leave;
  - (b) paid personal leave;
  - (c) paid compassionate leave;
  - (d) paid miscellaneous leave;
  - (e) paid maternity leave;
  - (f) paid supporting partner leave;
  - (g) payment for public holidays on which he or she does not work;
  - (h) paid workplace relations training leave;
  - (i) the signing bonus;
  - (j) salary increments;
  - (k) payment of overtime loadings;
  - (l) Electorate Staff Allowance;
  - (m) Personal Staff Allowance;
  - (n) Corporate Responsibility Allowance;
  - (o) time off in lieu of overtime; and
  - (p) notice of termination of employment.
- 16.7 The engagement of casual employees against the Relief Staff Budget is limited by an individual Member's Relief Staff Budget as determined by the Minister.
- 16.8 Further information can be found in the relevant Guideline 'Ongoing, Non-ongoing and Casual Employment'.

## **17 Working From Home**

- 17.1 Arrangements for working from home may be approved by the Minister. Further information can be found in the relevant Guideline 'Working From Home'.

## **18 Individual Flexibility**

- 18.1 The Minister, on behalf of the Commonwealth, and an individual employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
- (a) the Agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the Minister, on behalf of the Commonwealth, and employee in relation to 1 or more of the matters mentioned in clause 18.1(a); and
  - (c) the arrangement is genuinely agreed to by the Minister, on behalf of the Commonwealth, and employee.
- 18.2 The Minister, on behalf of the Commonwealth, must ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the Fair Work Act; and
  - (b) are not unlawful terms under section 194 of the Fair Work Act; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 18.3 The Minister, on behalf of the Commonwealth, must ensure that the individual flexibility arrangement:
- (a) is in writing; and
  - (b) includes the name of the Minister and employee; and
  - (c) is signed by the Minister, on behalf of the Commonwealth, and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

- (d) includes details of;
  - (i) the terms of the Agreement that will be varied by the arrangement; and
  - (ii) how the arrangement will vary the effect of the terms; and
  - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

18.4 The Minister, on behalf of the Commonwealth, must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

18.5 The Minister, on behalf of the Commonwealth, or employee may terminate the individual flexibility arrangement:

- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
- (b) if the Minister, on behalf of the Commonwealth, and employee agree in writing – at any time.

## **D REMUNERATION**

### **19 Signing Bonus**

19.1 Electorate employees and employees of former Prime Ministers no longer in Parliament, other than non-ongoing employees with an employment agreement with a term of less than three months and casual employees, will be paid a one-off signing bonus of 2.4 per cent of the employee's salary as at the commencement of this Agreement.

### **20 Payment of Salary**

20.1 Employees will be paid fortnightly in arrears, by electronic funds transfer (EFT) into an Australian financial institution account of the employee's choice.

20.2 Annual salary and allowances are converted to fortnightly amounts by the following formula:

$$\text{Fortnightly amount} = \text{annual amount} \times 12 \div 313$$

### **21 Salary Increases**

21.1 Employees will receive two salary increases over the life of this Agreement as shown at Attachments A, B and C of this Agreement:

- (a) an increase in salary of 3 per cent on and from the commencement of this Agreement;
- (b) an increase in salary of 3 per cent on and from one year following the commencement of this Agreement.

### **22 Classification Structures**

22.1 The classification structure and salary ranges for:

- (a) senior staff are as shown at Attachment A;
- (b) Personal Employees, other than senior staff, are as shown at Attachment B; and
- (c) Electorate Employees are as shown at Attachment C.

22.2 An employee may only be employed by a Member at a single classification and a single salary regardless of whether that employment is against a position or positions and/or the Relief Staff Budget.

### **23 Salary Setting and Progression**

23.1 The employing Member may appoint Electorate Employees, or engage new Electorate Employees, at the Electorate Officer A classification at

any of the seven lowest salary points of that classification based on the demonstrated and relevant skills and experience of the employee.

- 23.2 The employing Member may appoint Electorate Employees, or engage new Electorate Employees, at the Electorate Officer C and Electorate Officer B classifications at any of the three lowest salary points of the respective classifications based on the demonstrated and relevant skills and experience of the employee.
- 23.3 Clauses 23.1 and 23.2 do not apply to Electorate Employees of Ministers, Parliamentary Secretaries, the Leader and Deputy Leader of the Opposition in the House of Representatives and the Senate and the Leader and Deputy Leader of a minority party. The electorate employees of these Office Holders may be appointed/engaged at any salary point within the classification to which the appointment/engagement is made.
- 23.4 An ongoing Electorate Employee who reaches the top of the salary range for an Electorate Officer classification may:
- (a) after 12 months at that salary point; and
  - (b) subject to competency assessment undertaken by the employing Member,
- be moved to the next Electorate Officer classification. However, at any time, only one employee of an employing Member can be at the next Electorate Officer classification as a result of the process undertaken under this clause 23.4.
- 23.5 The employing Member may appoint Personal Employees, or engage new Personal Employees, other than senior staff, at any salary point within the classification to which the appointment/engagement is made based on the demonstrated and relevant skills and experience of the employee.
- 23.6 A new Electorate or Personal Employee, in relation to engagement, is an employee who was not employed at that classification on the business day immediately preceding the commencement date of the engagement.
- 23.7 The salary of an employee, other than a senior staff employee, who is promoted may be set by the employing Member to a salary point of the respective classification as if the employee was being appointed to that classification.
- 23.8 Unless otherwise agreed by the Prime Minister, the commencing salary at a classification for a senior staff employee, within the relevant salary band in the tables at Attachment A, will be:
- (a) for a Government senior staff employee: as approved by the Prime Minister; or

- (b) for a non-Government senior staff employee: as set by the employing Office Holder.

23.9 After 12 months of service at a particular salary point, an ongoing or non-ongoing employee who is not at the maximum salary point within the relevant salary band will advance to the next point in the relevant salary band provided that the employee's performance has not been reported as being unsatisfactory by the employing Member.

23.10 Further information can be found in the relevant Guideline 'Salary Progression'.

## **24 Salary Advancement for Employees of Certain Office Holders**

24.1 In addition to the salary increment provided for in clause 23.9:

- (a) Ministers, Parliamentary Secretaries, the Leader and Deputy Leader of the Opposition in the House of Representatives and the Senate, and the Leader and Deputy Leader of a Minority Party, may advance the salary of one or more of their employees to a higher salary within the employee's classification at any time, subject to any arrangements that the Prime Minister may have put in place from time to time in relation to such salary advancements.
- (b) The Prime Minister may advance the salary of an employee of a Minister or a Parliamentary Secretary to a higher salary within the employee's classification at any time.

## **25 Temporary Performance Progression (Higher Duties Allowance)**

25.1 An employing Member may temporarily progress an ongoing employee to a vacant position at a higher classification under this Agreement within the agreed structure of the office for a defined period.

25.2 For the purposes of clause 25.1, a position is vacant if:

- (a) there is no employee who usually fills the position; or
- (b) the employee who usually fills the position is on leave or is temporarily filling another position.

25.3 Temporary performance progression of an employee may only occur for a minimum period of four weeks.

25.4 The Higher Duties Allowance paid for temporary performance progression to a classification under this Agreement is the salary that would apply if the employee was promoted to the higher classification, less the employee's existing salary.

25.5 Employees who are temporarily progressed to the classifications of Principal Adviser, Chief of Staff and Senior Adviser will be paid an allowance in lieu of a private-plated vehicle as set out at clause 28.

25.6 Further information can be found in the relevant Guideline 'Salary Progression'.

## **26 Salary Packaging**

26.1 Under this Agreement, salary packaging is available to all ongoing employees and non-ongoing employees with an employment agreement for a minimum period of three months, upon receipt from the employee of a written election, which is separate to the employment agreement. Salary packaging allows an employee to elect to receive benefits in lieu of salary. It is offered to employees on the basis that it incurs no additional cost to the employing Member or the Department.

26.2 Ongoing employees may include in a salary package items that attract either no Fringe Benefits Tax (FBT) or a concessional rate of FBT. Non-ongoing employees may only include superannuation contributions in a salary package.

Note: Salary packaging these items may provide a benefit to the employee as a result of the difference between the rate of personal income tax and the (nil or concessional) rate of FBT.

26.3 Further information can be found in the relevant Guideline 'Salary Packaging'.

## **27 Superannuation**

27.1 Employees are entitled to superannuation in accordance with the relevant Commonwealth legislation.

27.2 Contributions to the Public Sector Superannuation Accumulation Plan (PSSAP) will be calculated in accordance with the ordinary time earnings method for the purpose of Rule 2.2.3 of the Rules for the PSSAP, as amended or replaced from time to time.

27.3 For an employee who exercises superannuation choice in accordance with Part 3A of the *Superannuation Guarantee (Administration) Act 1992*, the Commonwealth will maintain the maximum basic contribution for designated employers as specified in Part 2, Division 2 of the Deed to establish the PSSAP (currently 15.4 per cent), calculated on the employee's ordinary time earnings.

27.4 The choice of superannuation funds is limited to those funds that allow employee and employer contributions to be paid fortnightly through electronic funds transfer.

## **28 Private-plated Vehicle or Allowance**

- 28.1 From the commencement of this Agreement, senior staff with the classifications of Principal Adviser, Chief of Staff and Senior Adviser are entitled to be provided with a private-plated vehicle for private and business use or may elect to receive a Private-Plated Vehicle Allowance (PPVA) of \$21,000 per annum in lieu of the entitlement to a private-plated vehicle from the commencement of this Agreement.
- 28.2 PPVA will increase from one year after the commencement of this Agreement to an amount of \$21,630 per annum.
- 28.3 PPVA does not count as salary for the purposes of salary packaging, superannuation, payment in lieu of accrued annual leave, cash out of annual leave, or severance benefits.
- 28.4 Further information can be found in the relevant Guideline 'Private-Plated Vehicles'.

## **29 Corporate Responsibility Allowance**

- 29.1 An employee, other than a casual employee, will be entitled to receive an allowance (Corporate Responsibility Allowance) of \$20 per fortnight if the employee fills one or more of the following roles in relation to their employment:
- Occupational Health and Safety Site Officer (including first aid officer)
- Occupational Health and Safety Committee member.
- 29.2 An employee who fulfils more than one of the above roles is only entitled to receive a total Corporate Responsibility Allowance of \$20 per fortnight.
- 29.3 Corporate Responsibility Allowance is not to be included in calculating severance payments or other payments made in lieu of leave on cessation of employment.

## **30 Relocation Expenses**

- 30.1 The reasonable costs of removal and temporary accommodation expenses may be met where an ongoing employee is required to relocate including on appointment, promotion or transfer. Further information on the costs of removal and temporary accommodation expenses that may be met by the Department can be found in the relevant Guideline 'Relocation Expenses'.

## **31 Reimbursement for Loss or Damage to Clothing or Personal Effects**

- 31.1 Employees may be entitled to be reimbursed for loss or damage to clothing or personal effects arising out of or in the course of their employment. Further information can be found in the relevant Guideline 'Loss or Damage to Clothing or Personal Effects'.

## **32 Discretionary Payments**

- 32.1 In certain circumstances, the Minister has the discretion to allow additional payments, as necessary, in any case where an employee would be otherwise financially disadvantaged in the performance of his or her work.

## **33 Supported Wage System**

- 33.1 This clause provides for the employment of people with a disability under the Supported Wage System. Further information on the employment arrangements that would apply can be found in the relevant Guideline 'Supported Wage System'.

## **34 Recovery of Debts**

- 34.1 A debt owed by an employee to the Commonwealth in relation to the employee's employment, including because the employee has received an overpayment of salary, allowances or other remuneration (including a severance benefit), or incurred an expense outside of entitlement, may be recovered, by way of set-off from:

- (a) the employee's pay or salary at a rate of 20 per cent of the gross amount of pay or salary per fortnight, unless a different arrangement is agreed between the Department and the employee, while the employee continues in employment under the MOP(S) Act;
- (b) future payments of Travelling Allowance in relation to debts incurred in the course of travel; or
- (c) the employee's pay or salary, leave entitlements or other monies (except superannuation funds) payable upon termination of the employee's employment under the MOP(S) Act,

and the Department is authorised to implement any such set-off if it considers appropriate.

- 34.2 The Department will attempt to contact the employee prior to commencing recovery and will consider any claims of hardship raised by the employee in any decision on the rate of recovery.

## **35 Payment on Death**

- 35.1 Where an employee dies, or the Minister has determined that an employee is presumed to have died on a particular date, payment will be made of the amount to which the former employee would have been entitled had he or she ceased employment through resignation otherwise than by death. Payment should be made to the former employee's executor or legal personal representative. If the former employee does not have an executor or legal personal representative or one cannot be found, payment should be made in accordance with

paragraph 30 of the *Financial Management and Accountability Regulations 1997*.

## **E WORKING HOURS AND ALLOWANCES**

### **36 Ordinary Hours of Duty**

- 36.1 The ordinary hours of duty for a full-time employee are 37 hours and 30 minutes per week (7 hours and 30 minutes per day). These hours will generally be worked between the hours of 8.00 am and 6.00 pm, Monday to Friday.
- 36.2 A part-time employee regularly works a specified number of hours per week, less than full-time hours, as agreed in writing with the employing Member at the commencement of employment, or as varied from time to time by agreement in writing with the employing Member.
- 36.3 A part-time employee receives payment for salary, allowances in the nature of salary if payable, severance benefits and leave on a pro rata basis, based on the proportion of the number of hours worked per week (as agreed in accordance with clause 36.2) when compared to full-time hours.
- 36.4 An employee may agree with his or her employing Member that some part of the ordinary hours of duty (as specified in clause 36.1 or 36.2) may be worked on a regular or occasional basis outside the span of 8.00 am to 6.00 pm, Monday to Friday.
- 36.5 An employee's ordinary times of commencement and cessation of duty within the span of his or her ordinary hours will be determined by the employing Member in consultation with the employee. There will be sufficient and reasonable meal and/or rest breaks within and between periods of duty, to be agreed in advance between the employing Member and the employee.
- 36.6 Further information can be found in the relevant Guideline 'Part-time Work'.

### **37 Additional Hours**

- 37.1 The level of remuneration provided to Electorate Employees and Personal Employees, including salary, allowances and other benefits, reflects an expectation that these employees will be required to work reasonable additional hours over and above the ordinary hours of duty as specified in clause 36 on a regular basis. Additional hours of work, over and above the ordinary hours of duty as specified in clause 36, are recognised and compensated through:
- (a) Parliamentary Staff Allowance, in accordance with clause 38;
  - (b) Electorate Staff Allowance, in accordance with clause 39; or
  - (c) Time off in lieu, in accordance with clause 40.
- 37.2 There is no entitlement to the payment of overtime loadings for employees under this Agreement.

- 37.3 For the purpose of assessing whether additional hours are reasonable, hours worked by an employee will be averaged over a 12 month averaging period.

### **38 Parliamentary Staff Allowance – Personal Employees**

- 38.1 A four-tiered Parliamentary Staff Allowance (PSA) is payable to Personal Employees in recognition of, and as compensation for, reasonable additional hours of work.
- 38.2 PSA will increase in line with the salary increases specified in clause 21 and will be paid at the rates shown in Attachment D.
- 38.3 Employees in receipt of PSA will work such reasonable additional hours as are agreed with the employing Office Holder including on public holidays in accordance with clause 56. The agreed additional hours will be designed to best suit the operating requirements of the workplace, taking into account the personal needs of the employee. There will be sufficient and reasonable meal and/or rest breaks within and between periods of duty.
- 38.4 A Personal Employee may choose not to receive PSA where the employee is unable or does not expect to work significant additional hours. This option may be taken up, for example, by those employees who for personal or family reasons do not frequently work additional hours.
- 38.5 PSA is calculated on a pro rata basis for part-time employees, in accordance with clause 36.3.
- 38.6 PSA is paid fortnightly in arrears including during periods when the employee is on paid leave.
- 38.7 Where an employee is a member of the CSS or PSS, the employee may elect not to include PSA as salary for superannuation purposes, subject to the rules and regulations of the employee's superannuation scheme.
- 38.8 PSA is included in the definition of pay for the purposes of calculating severance payments and other payments made in lieu of leave on cessation of employment.
- 38.9 PSA is not payable to employees of former Prime Ministers no longer in Parliament or casual employees.
- 38.10 Further information can be found in the relevant Guideline 'Parliamentary Staff Allowance'.

### **39 Electorate Staff Allowance – Electorate Employees**

- 39.1 An Electorate Staff Allowance (ESA) is payable to Electorate Employees in recognition of, and as compensation for, reasonable additional hours of work.

- 39.2 ESA is paid at one of seven rates, ESA1 to ESA7 as shown in Attachment D, for each Electorate Officer position allocated to the employing Member, subject to the cap specified at clause 39.3 and subject to clauses 39.10 and 39.11.
- 39.3 The allocation of ESA to the Electorate Officer positions of a Member may not exceed the following caps:

	<b>Member with an additional position allocated for a second official electorate office</b>	<b>Other Member</b>
From commencement	\$47,242	\$40,493
From one year after commencement	\$48,660	\$41,708

Note: The above caps mean that the ESA levels allocated in a four position office may not total more than 12 (or more than 14 for a Member with an additional position allocated for a second official electorate office). The Guidelines provide examples of the possible maximum combinations of ESA rates that may be allocated by a Member.

- 39.4 The employing Member may choose to allocate a lower ESA rate to a position or positions where a higher ESA rate is available.
- 39.5 ESA will increase in line with the salary increases specified in clause 21 as shown in Attachment D.
- 39.6 The employing Member may allocate the level of ESA for each position:
- (a) at the commencement of each financial year;
  - (b) in the event of an office restructure involving a change in the classification of electorate officer positions;
  - (c) where an employee commences or ceases a period of approved leave of three months or longer;
  - (d) where the employing Member commences as a Senator or Member;
  - (e) where the employing Member is appointed as, or ceases to be, a Minister or Parliamentary Secretary; or
  - (f) in special circumstances with the agreement of the Minister;

having regard to the expected additional hours and official travel outside of business hours to be undertaken.

- 39.7 The employing Member may increase or decrease the allocated level of ESA to a position that is vacant, as the employee or employees that filled the vacant position have:
- (a) ceased employment with the Member; or
  - (b) moved permanently to a position with a different classification within the employing Member's office.
- 39.8 The employing Member may allocate any unallocated ESA to a position or positions within the office at any time during the financial year, e.g. to increase the level of ESA allocated to a position.
- 39.9 Employees in receipt of ESA will work such additional hours as are agreed with the employing Member, including on public holidays as required in accordance with clause 56. The agreed additional hours will be designed to best suit the operating requirements of the workplace, taking into account the personal needs of the employee. There will be sufficient and reasonable meal and/or rest breaks within and between periods of duty.
- 39.10 The employing Member may choose not to allocate an ESA rate to a position or positions where there is no expectation that the employee or employees will work significant additional hours.
- 39.11 An Electorate Employee may choose not to receive ESA where the employee is unable or does not expect to work significant additional hours. This option may be taken up, for example, by those employees who do not frequently work additional hours for personal/family reasons.
- 39.12 Electorate Employees who are not in receipt of ESA may access time off in lieu in accordance with clause 40.
- 39.13 ESA is calculated on a pro rata basis for part-time employees, in accordance with clause 36.3.
- 39.14 ESA is only paid in respect of hours of employment against a position. ESA is not paid in respect of employment against the Relief Staff Budget.
- 39.15 ESA is not payable to casual employees.
- 39.16 ESA is paid fortnightly in arrears including during periods when the employee is on paid leave.
- 39.17 Where an employee is a member of the CSS or PSS, the employee may elect not to include ESA as salary for superannuation purposes, subject to the rules and regulations of the employee's superannuation scheme.
- 39.18 ESA is included in the definition of pay for the purposes of calculating severance payments and other payments made in lieu of leave on cessation of employment.

39.19 Further information can be found in the relevant Guideline 'Electorate Staff Allowance'.

#### **40 Time Off in Lieu**

40.1 Time off in lieu (TOIL) in recognition of additional hours worked above the ordinary hours of duty as specified in clause 36 may be available to:

- (a) employees, other than casual employees and those in receipt of PSA or ESA, and
- (b) the employees of former Prime Ministers no longer in Parliament, other than drivers and casual employees.

40.2 TOIL may accrue if agreed to by the employing Member and should take into account the nature of the occasion and level of inconvenience to the employee when the additional hours were worked.

40.3 Accrued TOIL may be taken at a time agreed to by the employing Member and the employee.

#### **41 Allowance for Drivers Employed by Former Prime Ministers**

41.1 Drivers employed by former Prime Ministers no longer in Parliament will receive an allowance for additional hours of work, over and above the ordinary hours of duty as specified in clause 36.

41.2 The allowance set out in clause 41.1 will increase in line with salary increases specified in clause 21 and will be paid at the rates shown in Attachment D.

41.3 Where an employee is a member of the CSS or PSS, the employee may elect not to include the allowance set out in clause 41.1 as salary for superannuation purposes, subject to the rules and regulations of the employee's superannuation scheme.

## **F LEAVE**

### **42 Leave Applications**

- 42.1 An employee must submit a leave application to his or her employing Member for any absence on leave, other than time off in lieu in accordance with clause 40.

### **43 Annual Leave**

- 43.1 Full-time employees are entitled to four weeks' annual leave at full pay (150 hours) per year for recreational purposes.
- 43.2 Part-time employees are entitled to pro rata annual leave in accordance with clause 36.3.
- 43.3 Annual leave accrues daily, with accrued entitlements able to be taken at any time, with the approval of the employing Member.
- 43.4 As an administrative arrangement, an employee may use annual leave at half pay on the basis that one day of annual leave at full pay is equivalent to two days of annual leave at half pay.
- 43.5 An employee may elect in writing to take payment in lieu of up to two weeks for a full-time employee or the pro rata equivalent for a part-time employee of annual leave per year:
- (a) such an election may be made only once per calendar year;
  - (b) only if the employee has taken at least two weeks of annual leave in the 12 months preceding the election; and
  - (c) only if, after the election, the employee's remaining accrued entitlement to paid annual leave will be four weeks or greater.
- 43.6 Where an employee's annual leave credits total 80 days or more as at 31 January or 31 July of any year, the employing Member may direct the employee to take a period of annual leave of up to one quarter of the amount of annual leave credited to the employee provided:
- (a) the employee is given at least one month's notice of the requirement to commence annual leave; and
  - (b) the period of annual leave is not required to commence within one week of a date on which the employee has previously requested to be absent from work on annual leave where that request was denied by the employing Member.
- 43.7 Subject to clause 43.8, all unused annual leave will be paid out when an employee's employment under the MOP(S) Act ends. An employee's employment does not end where there is no break in MOP(S) Act employment.

- 43.8 An ongoing Commonwealth employee who is on leave, including an ongoing APS employee who has been granted leave without pay under paragraph 2.1 of the *Prime Minister's Public Service Directions 1999* (as varied or replaced from time to time), to undertake employment under the MOP(S) Act, will not be entitled to receive a payment for unused annual leave when his or her employment under the MOP(S) Act ends, if the relevant Department/Agency recognises that unused annual leave.
- 43.9 If an ongoing or non-ongoing employee becomes ill during a period of annual leave, the employee may apply for personal leave and re-crediting of annual leave.
- 43.10 Annual leave is not accrued by casual employees.
- 43.11 Further information can be found in the relevant Guideline 'Types of Leave'.

#### **44 Personal Leave**

- 44.1 Full-time employees are entitled to three weeks' leave at full pay (112 hours and 30 minutes) per year to be used for personal illness or injury of the employee, or carer's leave (in accordance with clause 44.3).
- 44.2 Part-time employees are entitled to a pro rata accrual of personal leave in accordance with clause 36.3.
- 44.3 The taking of personal leave as carer's leave may only be authorised to provide care or support to a member of the employee's immediate family or household, who requires care or support during a period because of:
- (a) a personal illness, or injury, of the family/household member;  
or
  - (b) an unexpected emergency affecting the family/household member.
- 44.4 Personal leave will be cumulative and available from the date of commencement and will accrue on each subsequent anniversary.
- 44.5 All applications for personal leave are required to include the reason for taking leave. Any requirements for the provision of medical certificates or other documentary evidence will be determined by the employing Member, in accordance with the Fair Work Act.
- 44.6 As an administrative arrangement, an employee may use personal leave at half pay on the basis that one day of personal leave at full pay is equivalent to two days of personal leave at half pay.
- 44.7 If an employee who has exhausted his or her personal leave entitlements requires leave because of a personal illness or injury of

the employee, unpaid personal leave may be available. Unpaid carer's leave may only be taken in accordance with clause 45.

- 44.8 Unused personal leave will not be paid out on termination of employment.
- 44.9 Personal leave is not accrued by casual employees.
- 44.10 Further information can be found in the relevant Guideline 'Types of Leave'.

## **45 Unpaid Carer's Leave**

- 45.1 Employees, including casual employees, are entitled to a period of up to two days' unpaid carer's leave for each occasion when a member of the employee's immediate family or household, requires care or support during such a period because of:
  - (a) a personal illness, or injury, of the family/household member; or
  - (b) an unexpected emergency affecting the family/household member.
- 45.2 The entitlement in clause 45.1 is to two days' leave for full-time, part-time and casual employees, and is not subject to a pro rata in accordance with clause 36.3.
- 45.3 Employees are entitled to unpaid carer's leave for a particular period only if the employee cannot take an amount of personal leave under clause 44 during the period.
- 45.4 A period of unpaid carer's leave will not count as service for any purpose. However, it will not break an employee's continuity of service.
- 45.5 Further information can be found in the relevant Guideline 'Types of Leave'.

## **46 Compassionate Leave**

- 46.1 Employees, other than casual employees, are entitled to a period of two days of paid compassionate leave for each occasion a member of the employee's immediate family or household:
  - (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
  - (b) sustains a personal injury that poses a serious threat to his or her life.
- 46.2 Employees, other than casual employees, are entitled to a period of three days of paid compassionate leave for each occasion a member

of the employee's immediate family, member of the employee's household or friend dies.

- 46.3 Casual employees are entitled to unpaid compassionate leave in accordance with the provisions of the Fair Work Act.
- 46.4 The entitlements in clauses 46.1 and 46.2 apply to full-time and part-time employees, and are not subject to a pro rata in accordance with clause 36.3.
- 46.5 Further information can be found in the relevant Guideline 'Types of Leave'.

## **47 Community Service Leave**

- 47.1 Employees are entitled to leave with full pay for a period during which the employee is undertaking eligible community service activities within the meaning given in Division 8 of Part 2-2 of the Fair Work Act. Eligible community service activities include undertaking emergency services duties (including regular training, emergency services responses, reasonable recovery time and ceremonial duties) and jury service.
- 47.2 Further information can be found in the relevant Guideline 'Types of Leave'.

## **48 Miscellaneous Leave**

- 48.1 Full pay non-accruing miscellaneous leave may be granted to employees, other than casual employees, subject to approval by the employing Member, for absences associated with:
  - (a) Defence Force service;
  - (b) participation in major international multi-disciplinary sporting events;
  - (c) courses of study approved under clause 65;
  - (d) war service sick leave;
  - (e) political exchange leave; and
  - (f) other special purposes leave approved by the Department.
- 48.2 Further information can be found in the relevant Guideline 'Types of Leave'.

## **49 Leave for workplace relations training**

- 49.1 Subject to operational requirements, an employee other than a casual employee, who is a delegate of an employee organisation, is entitled to a period of up to five days paid leave per year to attend workplace relations training courses or seminars.

- 49.2 Leave granted under clause 49.1 counts as service for all purposes.
- 49.3 Leave under clause 49.1 does not accrue.
- 49.4 Further information can be found in the relevant Guideline 'Types of Leave'.

## **50 Long Service Leave**

- 50.1 Employees are entitled to long service leave in accordance with the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act).
- 50.2 Each period of absence on long service leave must be a minimum of 15 consecutive calendar days.
- 50.3 For the purposes of the LSL Act, an employee who has attained the age of 55 years may retire at any time on or after having attained that age.
- 50.4 Further information can be found in the relevant Guideline 'Types of Leave'.

## **51 Maternity Leave**

- 51.1 Employees are entitled to maternity leave in accordance with the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973* (ML Act).
- 51.2 Employees entitled to paid maternity leave under the ML Act, will also receive an additional two weeks paid leave to be taken immediately following the period of paid maternity leave provided under the ML Act. The additional leave will count as service for all purposes.
- 51.3 An employee may elect to spread the payment for the period of paid maternity leave (if eligible) and additional leave over a period of up to 28 weeks at a rate of half normal salary. As this is an administrative arrangement, the additional leave beyond the 14 weeks will not count as service for any purpose, but does not break the continuity of service.
- 51.4 Any unpaid absence beyond 14 weeks will not count as service for any purpose, except as otherwise provided by section 7B of the ML Act.
- 51.5 If an employee's employment is terminated:
  - (a) in accordance with section 16(1), 16(2) or 23(1) of the MOP(S) Act; and
  - (b) during a period while the employee is absent from duty and is receiving pay in accordance with clauses 51.1 or 51.2,

the employee is entitled to receive a payment equal to:

- (c) the pay the employee would have been entitled to in accordance with clauses 51.1 and 51.2 had the employee's employment not been terminated during the period while the employee is absent from duty in accordance with the provisions of the ML Act; less
- (d) any payment the employee has already received in accordance with clauses 51.1 and 51.2 for that period of absence from duty.

51.6 If an employee:

- (a) receives a payment in accordance with clause 51.5; and
- (b) after the employee's employment is terminated, receives paid leave in accordance with the ML Act or additional paid maternity leave from another employer,

then:

- (c) the employee is required to pay the Commonwealth within 60 days an amount equal to the lesser of:
  - (i) the weekly amount the employee would have received in accordance with clauses 51.1 and 51.2 multiplied by the number of weeks that the employee receives paid maternity leave from the new employer during which the employee would have received paid maternity leave under clauses 51.1 and 51.2 had the employee's original MOPS Act employment continued; and
  - (ii) the weekly amount received from the new employer while the employee is on paid maternity leave multiplied by the number of weeks that the employee receives paid maternity leave from the new employer during which the employee would have received paid maternity leave under clauses 51.1 and 51.2 had the employee's original MOPS Act employment continued, and
- (d) the Commonwealth will be entitled to recover from the employee an amount equal to the relevant amount described under clause A51.6(c) from any payment the Commonwealth is required to make to the employee or as a debt to the Commonwealth.

51.7 Further information can be found in the relevant Guideline 'Types of Leave'.

## **52 Adoption leave**

52.1 An employee who adopts a child and is the primary carer of the child is entitled to 14 weeks of paid leave. Guidelines on eligibility for adoption leave will be developed by the Department in consultation with the ECG.

52.2 The entitlement established at clause 52.1 will be applied in accordance with the Guidelines. Where relevant circumstances arise prior to the finalisation of Guidelines, the Minister will determine access to the entitlement on a case by case basis after considering all relevant information.

52.3 Further information can be found in the relevant Guideline 'Types of Leave'.

### **53 Supporting partner leave**

53.1 An employee who is not the primary care giver to a dependent child is entitled to two weeks of paid supporting partner leave within the 52 weeks following the birth or adoption of the dependent child.

53.2 Further information can be found in the relevant Guideline 'Types of Leave'.

### **54 Unpaid parental leave**

54.1 Employees are entitled to unpaid parental leave in accordance with the terms of the Fair Work Act.

54.2 Further information can be found in the relevant Guideline 'Types of Leave'.

### **55 Leave Without Pay**

55.1 Leave without pay, including ceremonial leave, may be granted to employees subject to approval by the employing Member.

55.2 Leave without pay will not count as service for any purpose, except as otherwise provided in this Agreement.

55.3 Further information can be found in the relevant Guideline 'Types of Leave'.

### **56 Public Holidays**

56.1 Subject to clause 56.2, employees, other than casual employees, are entitled to absent themselves from work on a public holiday, and will be paid for standard hours that would otherwise be worked on that day. For the purposes of this clause 56, a public holiday means:

- (a) New Year's Day or if that day falls on a Saturday or Sunday, the following Monday;
- (b) Australia Day or if that day falls on a Saturday or Sunday, the following Monday;
- (c) Good Friday, Easter Saturday and Easter Monday;
- (d) Anzac Day, or where another day is substituted by the relevant State or Territory Government, that day;

- (e) Christmas Day, or if that day falls on a Saturday or Sunday, 27 December;
- (f) Boxing Day, or if that day falls on a Saturday or Sunday, 28 December;
- (g) an additional day within the Christmas/New Year period as follows:
  - (i) Wednesday, 28 December – when Christmas Day falls on a Sunday;
  - (ii) Wednesday, 27 December – when Christmas Day falls on a Monday;
  - (iii) Monday, 31 December – when Christmas Day falls on a Tuesday;
  - (iv) Friday, 27 December – when Christmas Day falls on a Wednesday;
  - (v) Monday, 29 December – when Christmas Day falls on a Thursday;
  - (vi) Tuesday, 29 December – when Christmas Day falls on a Friday;
  - (vii) Wednesday, 29 December – when Christmas Day falls on a Saturday;
- (h) Queen's Birthday, as gazetted by the relevant State or Territory Government;
- (i) Labour Day, as gazetted by the relevant State or Territory Government; and
- (j) any other days gazetted as public holidays by the State or Territory Government in the State or Territory in which the employee would otherwise be working on that day.

56.2 Employees may be requested to work on particular public holidays, and must work on the public holiday unless the request to work is unreasonable or any refusal by the employee to the request is reasonable. Employees acknowledge that the nature of the job requires certain employees to work on particular public holidays (including Australia Day, ANZAC Day, the Queen's birthday and local picnic and Cup days) from time to time.

56.3 Further information can be found in the relevant Guideline 'Types of Leave'.

## 57 Prior Service

### 57.1 An employee who:

- (a) ceases to be employed under the MOP(S) Act under subsection 16(1), 16(2), 16(3), 23(1), 23(1A) or 23(2);
- (b) is subsequently appointed or engaged under the MOP(S) Act within six months of that cessation; and
- (c) pays to the Department within 60 calendar days of the new appointment or engagement an amount equal to the amount paid to the employee upon termination of his or her employment in lieu of accumulated leave (if any) and severance benefits, including additional severance benefits (if any),

will have his or her immediately preceding period of employment under Part III or Part IV of the MOP(S) Act (and any previous periods in relation to which continuity of employment provisions have applied) recognised as service for all purposes in relation to his or her current period of employment. The break in service will not count as service for any purpose, but is not considered to break continuity of service.

### 57.2 An employee who:

- (a) resigns to contest a Federal, State or Territory election;
- (b) is unsuccessful and subsequently appointed or engaged within six months of resignation; and
- (c) pays to the Department within 60 calendar days of the new appointment or engagement an amount equal to the amount paid to the employee upon termination of his or her employment in lieu of accumulated leave (if any);

will have his or her immediately preceding period of employment under Part III or Part IV of the MOP(S) Act (and any previous periods in relation to which continuity of employment provisions have applied) recognised as service for all purposes in relation to his or her current period of employment. The break in service will not count as service for any purpose, but is not considered to break continuity of service. There is no automatic right of reinstatement when a former employee is unsuccessful in gaining a seat at an election.

### 57.3 Employees who have previously been employed by Commonwealth, State, Territory or local Government organisations may have that employment recognised for personal leave purposes, and long service leave purposes in accordance with the LSL Act.

## **58 Portability of Leave**

- 58.1 Employees, other than casual employees, who are:
- (a) employed by an agency as defined in section 5 of the *Financial Management and Accountability Act 1997*; and
  - (b) who are granted leave without pay from that employer (the former employer) to undertake MOP(S) Act employment,
- will have all their accrued leave credits recognised.
- 58.2 An employee's entitlement to the accrued leave credits specified in clause 58.1 and to any future leave entitlements will be in accordance with this Agreement.
- 58.3 On an employee's return to the former employer at the cessation of MOP(S) Act employment, the employee's accrued leave entitlements will be transferred to the former employer and will not be paid in lieu.
- 58.4 Further information can be found in the relevant Guideline 'Recognition of Prior Service'.

## **59 Unauthorised Absence**

- 59.1 Where an employee is absent from duty without approval, all pay and other benefits provided under this Agreement, in relation to the period of absence, will cease to be available until the employee resumes duty or is granted leave.

## **G TRAVEL**

### **60 Travel**

- 60.1 Employees may be directed by the employing Member to travel on official business either domestically or overseas. Further information on the travel entitlement, conditions and associated costs that will be met by the Commonwealth can be found in the relevant Guidelines 'Domestic Travel', 'Overseas Travel', 'Travelling Allowance' and 'Motor Vehicle Allowance'.
- 60.2 Excess (Canberra) Travel Leave is to compensate employees, whose work base is located in a remote and/or rural location as approved by the Minister or listed in clause 60.3, and who are required to travel from the employee's work base to Canberra on a Sunday or a day which is a public holiday in their work base, for a Parliamentary sitting on the following day. In this circumstance, employees may claim and receive one additional day of annual leave for each two Sundays and/or public holidays spent travelling up to a limit of eight additional days of annual leave per calendar year.
- 60.3 Excess (Canberra) Travel Leave under clause 60.2 will be available to employees whose work base is in Western Australia, the Northern Territory and the present Federal electorates of Capricornia, Dawson, Kennedy, Herbert or Leichhardt (or such other Federal electorates as determined by the Minister from time to time).
- 60.4 Employees may be entitled to travel for approved learning and professional development activities, within budgetary and policy constraints.

### **61 Travelling Allowance**

- 61.1 A single flat rate of Travelling Allowance (TA) incorporating accommodation, meals and incidental expenses will be paid to an employee directed to travel on official business by his or her employing Member, where the travel requires an overnight stay away from the employee's work base.
- 61.2 TA is only payable for travel that involves an overnight stay. TA is not payable for travel where there is no overnight stay involved.
- 61.3 A single flat rate of TA is payable for each overnight stay up to a maximum continuous period of 35 nights in one location.
- 61.4 Subject to clause 61.5, the rates of TA will be set by the Minister in accordance with rates determined from time to time by an independent organisation, as determined by the Minister, based on current market data.

- 61.5 For overnight stays in Canberra:
- (a) the rate for senior staff will be the Canberra rate of TA for Members, as determined from time to time by the Remuneration Tribunal;
  - (b) the rate for employees who are not senior staff will be \$10 less than the Canberra rate of TA for Members, as determined from time to time by the Remuneration Tribunal; and
- 61.6 For overnight stays outside of Canberra, the single flat rate of TA will be based on the type of accommodation used:
- (a) *commercial accommodation*: the full (commercial) rate of TA will be paid where a receipt for the commercial accommodation is produced, or where a certification is made that a receipt for the commercial accommodation can be produced. Where neither a receipt is produced, nor a certification made; or where a certification is made but a receipt is not produced upon request by the Department, a rate of one third of the commercial rate is payable, rounded upwards to the nearest dollar; or
  - (b) *private non-commercial accommodation*: where an employee is accommodated in private, non-commercial accommodation, a rate of one third of the commercial rate is payable, rounded upwards to the nearest dollar.
- 61.7 If an employee resides in one location away from their work base for a continuous period of longer than 35 nights, a review rate of TA based on actual expenses, up to a maximum of the TA rate for the location, will be paid for subsequent nights.
- 61.8 The payment of TA is limited to a maximum of 120 overnight stays in Canberra per financial year for:
- (a) Personal Employees; and
  - (b) any Electorate Employee not subject to the Electorate Staff Travel Budget,

whose work base is not Canberra. TA for overnight stays for these employees in locations other than Canberra is not otherwise limited except to the extent provided for in clauses 61.1 to 61.4.

- 61.9 If:
- (a) an employee's work base is neither Canberra nor an office of the employing Member provided at Commonwealth expense; and
  - (b) the employee has already received TA during the same financial year for overnights stays in Canberra or the location of an office of the employing Member provided at

Commonwealth expense that, when aggregated, total 120 overnight stays,

the employee will not be entitled to receive TA for any additional overnight stays in these locations for the rest of the financial year. TA for overnight stays for these employees in locations other than Canberra or the location of an office of the employing Member provided at Commonwealth expense is not otherwise limited except to the extent provided for in clauses 61.1 to 61.4.

61.10 Further information is contained in the Guideline 'Travelling Allowance'.

## **62 Airline Loyalty Points**

62.1 Airline Loyalty points accrued by employees during work related travel may only be used by the employee for further work related travel as follows:

- (a) to pay for additional work related flights;
- (b) to pay for airline lounge membership or renewal; or
- (c) to upgrade tickets to business class for work related travel for flights with an expected flight time of more than three hours duration.

## **63 Motor Vehicle Allowance**

63.1 An employee may be authorised (in advance) to use his or her privately owned vehicle or a self-drive hire vehicle, at his or her own expense, for the purpose of official business where the employing Member considers that it will result in greater efficiency or involves less expense.

63.2 An employee authorised, under clause 63.1, to use his or her privately owned vehicle or self-drive hire vehicle will be entitled to be paid Motor Vehicle Allowance (MVA) in accordance with the Guidelines.

63.3 Further information can be found in the relevant Guideline 'Motor Vehicle Allowance'.

## **H LEARNING AND PROFESSIONAL DEVELOPMENT**

### **64 Learning and Professional Development**

- 64.1 This Agreement continues the commitment to investing in learning and development strategies to offer professional development and career opportunities to employees. The Agreement:
- (a) recognises the importance of employees continually developing relevant skills and knowledge in achieving the objectives of their employing Member;
  - (b) supports an approach that balances the work commitments of offices and meets the development needs of employees;
  - (c) gives a commitment to provide access to information on learning and development opportunities; and
  - (d) aims to increase awareness and encourage use of learning and development opportunities and the time and flexibility required for employees to participate in these opportunities.
- 64.2 Responsibility for identifying relevant learning and development activities rests with the employee who will require the approval of their employing Member. There will be no specified limit on the number of activities completed or the cost of these activities at an office level. However, overall funding for learning and development will be subject to a budget.

### **65 Learning and Development Options**

- 65.1 Computer systems training will be provided by the Department, in applications provided and supported by the Department.
- 65.2 Learning and development available to employees also include a Professional Development Program, arranged by the Department, which provides focussed and tailored training designed to enhance employees' skills and knowledge and contribute to the support role that employees provide to their employing Members. This program includes Know Your Entitlements Information Sessions to support new employees in their understanding of the terms and conditions of their employment, and Office Management Information Sessions to assist workplace managers to improve and maintain accountability and office management practices.
- 65.3 Studies assistance will be available for study at educational institutions in courses considered relevant to the employee's employment. An employee may be eligible for up to five hours paid study leave per week to attend accredited courses at universities, colleges of advanced education or technical and further education institutions. Employees may also be eligible to apply for whole or partial reimbursement, up to a maximum of \$8,000 per financial year,

of any compulsory tuition or examination fees, HELP, TAFE and course fees but not administration charges or student union fees.

- 65.4 An employee wishing to apply for studies assistance pursuant to clause 65.3 will require the written approval of his or her employing Member and the Department prior to the commencement of the relevant semester of the relevant course.
- 65.5 Ad hoc learning and development opportunities for Government Personal Employees and Personal Employees of Presiding Officers will be provided by their home departments.
- 65.6 Ad hoc learning and development opportunities for Electorate Employees, and Personal Employees other than those referred to in clause 65.5, will be available subject to the support of the employing Member and the prior approval of the Department. This may include attendance at events within Australia such as courses, seminars, workshops and conferences. These events must be related to the employee's duties, tasks and responsibilities, and may include (but are not limited to) the following types of topics: management, professional writing, public speaking, and communication skills. The Department may withhold approval to attend an event that duplicates a learning and development opportunity provided by the Department.
- 65.7 Further information can be found in the relevant Guideline 'Learning and Professional Development'.

# **I OCCUPATIONAL HEALTH AND SAFETY**

## **66 Occupational Health and Safety**

- 66.1 Clauses 66.1, 66.2, 66.3 and 67.1 are intended to identify various obligations that apply in the workplace under occupational health and safety legislation and anti-discrimination legislation. Clauses 66.1, 66.2, 66.3 and 67.1 are not intended to create any additional obligations under this Agreement.
- 66.2 The *Occupational Health and Safety Act 1991* (OH&S Act) applies to all employees covered by this Agreement.
- 66.3 There is an obligation upon Members and employees to take all reasonably practicable steps to protect the health, safety and welfare of employees and others in the workplace such as colleagues, volunteers and constituents. This extends to include protecting psychological health and safety.
- 66.4 Upon request, the Department may arrange assessments of work practices and equipment in the workplace.
- 66.5 Annual flu vaccinations will be available to employees in accordance with arrangements made by the Department.

## **67 Discrimination and Harrassment**

- 67.1 Employees have an obligation to refrain from behaviour that could be perceived as discrimination or harassment in the workplace under Commonwealth anti-discrimination laws.
- 67.2 The Department will provide support and guidance to employees to promote a workplace free of discrimination and harassment by undertaking the following initiatives with the aid and cooperation of the ECG and all employees during the course of their employment:
- (a) development of a workplace harassment policy and associated information materials;
  - (b) inclusion of anti-discrimination and anti-harassment sessions in the MOP(S) training framework;
  - (c) continue to provide the Entitlements Managers and Employee Assistance Program as avenues for raising issues relating to harassment and discrimination; and
  - (d) ongoing consultation with the ECG regarding policies pertaining to discrimination and harassment.
- 67.3 Further information on the Commonwealth's and employees' responsibilities under the OH&S Act can be found in the relevant Guideline 'Occupational Health and Safety'.

## **68 Employee Assistance Program**

- 68.1 The Department will continue to provide employees covered by this Agreement with access to a confidential professional counselling service to assist with work or personal issues through the Employee Assistance Program (EAP).
- 68.2 Further information can be found in the relevant Guideline 'Employee Assistance Program'.

## J TERMINATION OF EMPLOYMENT

### 69 Notice of Termination

69.1 Subject to clause 69.5 below, where an employee's employment is terminated under subsection 16(3) or subsection 23(2) of the MOP(S) Act, the employee is entitled to a period of notice of termination or a payment in lieu of notice calculated as follows:

<b>Length of continuous service employed by the Commonwealth (including service under the MOP(S) Act with other Members)</b>	<b>Period of Notice</b>
--	-------------------------

Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

69.2 Where an employee is over 45 years of age and has completed two years' continuous service at the time of termination the employee will be entitled to one additional week's notice of termination or payment in lieu of notice.

69.3 Where an employee's employment is terminated within the employee's probationary period, the employee will be entitled to one week's notice of termination or payment in lieu of notice.

69.4 Where an employee is guilty of serious misconduct (within the meaning of paragraph 1.07 of the Fair Work Regulations), his or her employment may be terminated without notice.

69.5 Clauses 69.1 to 69.4 will not apply to the following groups of employees:

- (a) ongoing Commonwealth employees who are on leave, including ongoing APS employees who have been granted leave without pay under the *Prime Minister's Public Service Directions 1999* (as varied or replaced from time to time), to undertake employment under the MOP(S) Act; and
- (b) casual employees.

### 70 Severance Benefits

70.1 Severance benefits are payable in accordance with clause 70.2 to persons whose employment is terminated under Part III or Part IV of the MOP(S) Act other than through resignation and excluding:

- (a) employees of the APS, the Public Service of a State or Territory, or any other public sector employer from which they are on leave;

- (b) employees guilty of serious misconduct in the view of the Minister, that is misconduct of such a nature that it would be unreasonable to require the employing Member to continue the employment of the employee;

Note: Examples of serious misconduct in the course of the employee's employment include, but are not limited to: theft, fraud, assault, intoxication, and refusal to carry out a lawful and reasonable instruction.

- (c) non-ongoing or casual employees;
- (d) employees who have been approved for an invalidity retirement benefit from the CSS or the PSS;
- (e) employees terminated during probation;
- (f) employees who immediately prior to the cessation of their employment under the MOP(S) Act have been absent from duty without approved leave for a continuous period of 10 business days and who have failed to notify a reasonable cause for their absence to the employing Member (either prior to or, in special circumstances, subsequent to their absence); and
- (g) employees who are re-employed under the MOP(S) Act without a break in MOP(S) Act employment (whether that employment is with the employee's original employing Member or another Member).

70.2 The severance benefits payable to an employee will be the gross benefit provided by the following table.

<b><u>Length of Continuous Service</u></b>	<b><u>Gross Benefit</u></b>
Less than 1 year	2 weeks' pay
1 year or more but less than 2 years	6 weeks' pay
2 years or more but less than 3 years	8 weeks' pay
3 years or more but less than 4 years	10 weeks' pay
4 years or more but less than 5 years	11 weeks' pay
5 years or more but less than 7 years	12 weeks' pay
7 years or more	12 weeks' pay plus 2 weeks' pay for every completed year in excess of 6 years up to a maximum of 48 weeks' pay.

70.3 Where an employee is:

- (a) employed after a break in MOP(S) Act employment (whether that employment is with the employee's original employing Member or another Member); and
- (b) employment occurs within the Severance Pay Period,

the employee's severance benefit will be reduced by an amount calculated by multiplying the employee's pay by the period of employment within the Severance Pay Period unless that reduction results in the employee receiving an amount less than the employee is entitled to under the National Employment Standards in which case the severance benefit will be reduced by the maximum amount that still results in the employee receiving the amount the employee is entitled to under the National Employment Standards.

70.4 If in the circumstances set out in clause 70.3 a severance payment has already been paid to an employee (the amount paid) that exceeds the severance benefit payable to the employee under clause 70.2 (the entitlement), the difference between the amount paid and the entitlement will be an overpayment of remuneration to the employee. Such an overpayment will be a debt owed by the employee to the Commonwealth, and will be subject to clause 34.

Example: An employee receives a severance benefit of 10 weeks' pay on termination of employment. The person is re-employed under the MOP(S) Act after a period of six weeks. Therefore, four weeks of the severance benefit is required to be repaid.

70.5 For the purposes of clause 70.2, 'pay' includes salary and ESA, PSA or allowances for drivers of former Prime Ministers, if any is payable to the employee at the time of termination of the employment, but does not include:

- (a) Higher Duties Allowance, or other allowances paid in relation to temporary performance progression, unless the temporary performance progression has been for a continuous period of 12 months at the time of termination; or
- (b) Corporate Responsibility Allowance (referred to in clause 29 of this Agreement).

## **71 Additional Severance Benefits**

71.1 Severance benefits payable under clause 70 will be increased by 30 per cent if an employee's MOP(S) Act employment terminates as a result of the employing Member ceasing to hold Office (i.e. under subsections 16(1), 16(2) or 23(1) of the MOP(S) Act) and if the benefits are not treated as a genuine redundancy payment for the purpose of subdivision 83-C of the *Income Tax Assessment Act 1997*.

Note: The severance benefits payable to an employee under clause 70 where the employee's MOP(S) Act employment has

terminated as a result of the employing Member ceasing to hold Office (i.e. under subsections 16(1), 16(2) or 23(1) of the MOP(S) Act) are currently not treated as a genuine redundancy payment for the purpose of subdivision 83-C of the *Income Tax Assessment Act 1997*.

## **72 Career Transition Payment (CTP)**

- 72.1 In recognition of the nature of MOP(S) Act employment, a payment of up to \$500 (GST inclusive) is payable to an employee for career transition counselling, training or financial advice upon the occasion of a genuine redundancy in respect of which severance benefits are payable under clause 70.2 or of a termination of employment where additional severance benefits are payable under clause 71.1. Pro rata payments of CTP will be made to part-time employees based on their ordinary hours of duty at the date of termination of their employment.
- 72.2 To be eligible for the CTP, the counselling/training/financial advice must have prior approval by the Department and occur within six months of termination.
- 72.3 The costs of counselling, training or financial advice may be paid by the Department to the service provider or will be borne by the individual and be reimbursed by the Department upon the production of receipts.

## **73 Termination of Employment**

- 73.1 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee has under:
- (a) Division 3 of Part 3-2 of the Fair Work Act;
  - (b) other Commonwealth laws (including the Constitution); and
  - (c) at common law.
- 73.2 Termination of, or a decision to terminate employment, cannot be reviewed under the dispute prevention and resolution procedures addressed in clause 74 of this Agreement.
- 73.3 Nothing in this Agreement prevents the employing Member from terminating the employment of an employee for serious misconduct, without further notice or payment in lieu, in accordance with section 123 of the Fair Work Act.

## **K DISPUTE PREVENTION AND RESOLUTION**

### **74 Dispute Prevention and Resolution**

74.1 If a dispute relates to:

- (a) a matter arising under this Agreement; or
- (b) the National Employment Standards,

this clause 74 sets out procedures to settle the dispute.

74.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause 74.

74.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level.

74.4 The parties to a dispute must attempt to resolve the dispute at the workplace level by taking each of the following steps:

- (a) participating in a discussion between the employee(s) (and where they choose, their chosen representative) and the relevant supervisor(s) (e.g. the office manager or Chief of Staff);
- (b) participating in a discussion between the employee(s) (and where they choose, their chosen representative) and the employing Member; and
- (c) referring the matter to the Department.

74.5 If the matter cannot be resolved at the workplace level in accordance with the steps set out in clause 74.4, a party to the dispute may refer the matter to Fair Work Australia.

74.6 Where a matter has been referred to Fair Work Australia under clause 74.5, and where the referring party subsequently applies to have the dispute reviewed by a court or tribunal or under an alternative process, and the action may be reviewed by that court or tribunal or under that alternative process, then that referring party must discontinue the application to Fair Work Australia in accordance with section 588 of the Fair Work Act.

74.7 Fair Work Australia may deal with a dispute referred to it under clause 74.5 in two 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. A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Fair Work Act. Therefore, an appeal may be made against the decision.

74.8 While the parties to a dispute are trying to resolve the dispute using the procedures in this clause 74:

- (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
- (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
  - (i) the work is not safe;
  - (ii) applicable occupational health and safety legislation would not permit the work to be performed;
  - (iii) the work is not appropriate for the employee to perform; or
  - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

74.9 The parties to the dispute agree to be bound by any decision or direction made by Fair Work Australia (be it final or procedural) in accordance with this clause 74.

74.10 Each party to the dispute will bear its own costs, including but not limited to, the costs associated with being represented in proceedings before Fair Work Australia.

## L DEFINITIONS AND INTERPRETATION

### 75 Definitions

75.1 In this Agreement, the terms below have the following meanings:

**“appointment”** refers to the commencement of a period of employment of an ongoing employee provided that person was not an ongoing employee on the business day immediately preceding the commencement date.

**“APS”** means the Australian Public Service.

**“break in MOP(S) Act employment”** means where an employee ceases to be employed under the MOP(S) Act for a period of at least one full business day.

**“business day”** means any day other than a Saturday, Sunday or a public holiday.

**“casual employee”** means an employee engaged under the MOP(S) Act on an occasional, non-systematic or irregular basis, under an employment agreement (referred to in clauses 12.2 and 16.2 of this Agreement) that specifies the basis of the employment to be casual.

**“classification”** means the classifications referred to in Attachments A, B and C to this Agreement.

**“continuous service”** means, for the purposes of clause 70.2, either ongoing or non-ongoing (but not casual) employment under the MOP(S) Act without a break in MOP(S) Act employment.

Accordingly, if an employee:

- (a) ceases to be employed under the MOP(S) Act for one full business day or longer for any reason (including by way of resignation); or
  - (b) moves from either ongoing or non-ongoing to casual employment under the MOP(S) Act, even without a break in MOP(S) Act employment,
- any periods of MOP(S) Act employment preceding either of the events described in paragraph (a) or (b) above will not be counted for the purposes of calculating severance benefits.

**“CSS”** means the Commonwealth Superannuation Scheme.

**“Department”** is the Department of Finance and Deregulation, or any subsequent Department that has portfolio responsibility for administering the MOP(S) Act.

**“Electorate Employee”** means an employee under either Part III or Part IV of the MOP(S) Act in an electorate officer classification referred to in Attachment C.

**“Electorate Staff Allowance”** or **“ESA”** means the allowance payable to Electorate Employees under clause 39.

**“employing Member”** refers to the Member who employs a particular employee under subsections 13(1) or 20(1) of the MOP(S) Act.

**“engagement”** refers to the commencement of a period of employment of a non-ongoing or casual employee.

**“established position”** means a position allocated to a Member under arrangements approved by the Prime Minister or Minister under sub-sections 13(2) or 20(2) of the MOP(S) Act against which the Member may employ Electorate or Personal Employees up to the limit of the hours prescribed for the position.

**“Fair Work Act”** means the *Fair Work Act 2009* and, where the context requires, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the *Fair Work (State Referral & Consequential and other Amendments) Act 2009*.

**“Fair Work Regulations”** means the *Fair Work Regulations 2009*.

**“full-time hours”** means the ordinary hours of duty per week for a full-time employee as specified in clause 36.1.

**“Government Personal Employee”** means an employee, other than an Electorate Employee, of the Prime Minister, a Minister, a Parliamentary Secretary, a Government Whip, or another Senator or Member of the House of Representatives other than a Presiding Officer, who is a member of a Government party.

**“Guidelines”** refers to the *Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012 Guidelines* issued by the Department and amended from time to time.

**“immediate family”** means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee or a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

**“Leader or Deputy Leader of a Minority Party”** means a Leader or Deputy Leader of a recognised non-Government party with at least five members in the Parliament, but not including an Opposition Office Holder.

**“Member”** refers to a Senator, Member of the House of Representatives or an Office Holder as defined in section 3 of the MOP(S) Act.

**“Minister”** refers to the Special Minister of State, or any other Minister authorised by the Prime Minister as having responsibility for determining the conditions of employees employed under the MOP(S) Act and includes his or her delegate.

**“MOP(S) Act”** means the *Members of Parliament (Staff) Act 1984*.

**“National Employment Standards”** means the minimum standards set out in Part 2-2 of the Fair Work Act.

**“Non-Government Personal Employee”** means an employee, other than an Electorate Employee, of a Presiding Officer, of a former Prime Minister, or of a Senator or Member of the House of Representatives who is not a member of a Government party.

**“non-ongoing employee”** means an employee engaged under the MOP(S) Act who is not an ongoing or casual employee.

**“Office Holder”** means a person who holds a relevant office as defined in section 3 of the MOP(S) Act; a person, not being a Senator or Member of the House of Representatives, who held the office of Prime Minister; or a person in respect of whom a determination by the Prime Minister under section 12 of the MOP(s) Act is in force.

**“ongoing employee”** means an employee under the MOP(S) Act employed (wholly or partly) against an established position whose employment will continue until terminated by the employee, the employing Member or otherwise in accordance with sections 16 or 23 of the MOP(S) Act.

**“Parliamentary Staff Allowance”** or **“PSA”** means the allowance paid to Personal Employees under clause 38.

**“Personal Employee”** means an employee who is not an Electorate Employee, employed under Part III of the MOP(S) Act by an Office Holder, and includes senior staff.

**“promotion”** refers to the movement of an ongoing employee to a higher classification (higher maximum salary point), other than a temporary transfer or temporary progression, without a break in MOP(S) Act employment.

**“PSS”** means the Public Sector Superannuation Scheme.

**“Relief Staff Budget”** means the annual budget allocated to each Member for engaging relief staff in his/her electorate office which provides for employment of Electorate Employees over and above the staffing available against established positions. Employment of staff against the Relief Staff Budget is limited by the available balance of the Relief Staff Budget.

**“salary”** means an employee’s rate of pay and will be salary for all purposes.

**“salary increment”** means the progression from one salary point to the next highest salary point within a classification.

**“senior staff”** means a Personal Employee in a classification above the level of Adviser referred to in Attachment A.

**“Severance Pay Period”** means the period, commencing from the date of termination of the employee’s employment under the MOP(S) Act, which corresponds to the number of weeks’ pay of the relevant gross benefit in clause 70.2.

**“temporary transfer”** refers to the movement of an ongoing employee from the office of one Member to another on a temporary basis where it has been agreed between the relevant Members that the employee will return to the office of the first Member.

**“this Agreement”** means the *Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012*.

**“transfer”** refers to the movement of an ongoing employee to an equivalent classification (same classification or same maximum salary) or to a lower

classification (lower maximum salary) without a break in MOP(S) Act employment.

**“Travelling Allowance”** or **“TA”** means the allowance for accommodation, meals and incidental expenses paid to an employee who is directed to travel on official business by his or her employing Member, where the travel requires an overnight stay away from the employee’s work base.

**“work base”** refers to the place of work where the employee will spend most time on duty, as agreed by the employing Member.

## **76 Interpretation**

76.1 Unless otherwise specified, a reference to legislation is to that legislation as amended, re-enacted or replaced from time to time and includes subordinate legislation.

## M ATTACHMENTS

### Attachment A: Classification Structure: Senior Staff

Classification Structure: Ministerial Senior Staff						
Principal Adviser	Chief of Staff (Cabinet) / Senior Media Adviser (Deputy PM / Treasurer)	Senior Adviser 2 (PM / Deputy PM / Treasurer)	Senior Adviser 1 (Cabinet)	Chief of Staff / Senior Adviser 1 (non-Cabinet) / Senior Media Adviser	Salary effective from commencement	Salary effective 12 months after prior increase
					+ 3%	+ 3%
					225,746	232,518
					216,418	222,911
					207,090	213,303
					197,760	203,693
					188,432	194,085
					179,104	184,477
					169,776	174,869
					160,448	165,261
					151,120	155,654
					146,492	150,887
					142,939	147,227
					139,603	143,791
					135,405	139,467
					131,099	135,032
					125,287	129,046
				120,444	124,057	
				115,923	119,401	
				111,403	114,745	
Principal Advisers, Chiefs of Staff and Senior Advisers are entitled to a private-plated vehicle or allowance-in-lieu.						

Note: Refer to Attachment E for the translation of senior staff salaries onto this salary structure at the commencement of the Agreement.

<b>Classification Structure: Opposition Senior Staff</b>				
<b>Chief of Staff (Leader of the Opposition)</b>	<b>Senior Adviser/ Senior Media Adviser (Leader of the Opposition)</b>	<b>Senior Adviser / Senior Media Adviser</b>	<b>Salary effective from commence ment</b>	<b>Salary effective 12 months after prior increase</b>
			<b>+ 3%</b>	<b>+ 3%</b>
			160,448	165,261
			151,120	155,654
			146,492	150,887
			142,939	147,227
			139,603	143,791
			135,405	139,467
			131,099	135,032
			125,287	129,046
			120,444	124,057
			115,923	119,401
		111,403	114,745	

Chiefs of Staff and Senior Advisers are entitled to a private-plated vehicle or allowance-in-lieu.

<b>Classification Structure: Minority Party and Presiding Officers' Senior Staff</b>		
<b>Senior Adviser</b>	<b>Salary effective from commence ment</b>	<b>Salary effective 12 months after prior increase</b>
	<b>+ 3%</b>	<b>+ 3%</b>
	135,405	139,467
	131,099	135,032
	125,287	129,046
	120,444	124,057
	115,923	119,401
	111,403	114,745

Senior Advisers are entitled to a private-plated vehicle or allowance-in-lieu.

**Attachment B:  
Classification Structure: Personal Employees other than Senior Staff**

<b>Classification Structure: Government Personal Employees</b>						
	<b>Classification</b>		<b>Current Salary</b>	<b>Salary effective from commencement</b>	<b>Salary effective 12 months after prior increase</b>	
				<b>+ 3%</b>	<b>+ 3%</b>	
Exec2-6	<b>Adviser / Media Adviser</b>		114,916	118,363	121,914	
Exec2-5			109,780	113,073	116,465	
Exec2-4			104,728	107,870	111,106	
Exec2-3			101,175	104,210	107,336	
Exec2-2			93,799	96,613	99,511	
Exec2-1			88,650	91,310	94,049	
Exec1-2			84,350	86,881	89,487	
Exec1-1		<b>Assistant Adviser</b>		77,869	80,205	82,611
MOPS6-5			72,762	74,945	77,193	
MOPS6-4			70,051	72,153	74,318	
MOPS6-3	<b>Executive Assistant / Office Manager</b>		66,696	68,697	70,758	
MOPS6-2			64,920	66,868	68,874	
MOPS6-1			63,343	65,243	67,200	
MOPS5-3			62,189	64,055	65,977	
MOPS5-2			60,485	62,300	64,169	
MOPS5-1			58,647	60,406	62,218	
MOPS4-4			57,093	58,806	60,570	
MOPS4-3			55,665	57,335	59,055	
MOPS4-2		<b>Secretary / Administrative Assistant</b>		54,253	55,881	57,557
MOPS4-1				52,580	54,157	55,782
MOPS3-4			50,920	52,448	54,021	
MOPS3-3			49,633	51,122	52,656	
MOPS3-2			48,404	49,856	51,352	
MOPS3-1			47,178	48,593	50,051	
MOPS2-5			45,931	47,309	48,728	
MOPS2-4			44,813	46,157	47,542	
MOPS2-3			43,679	44,989	46,339	
MOPS2-2			42,561	43,838	45,153	
MOPS2-1		41,419	42,662	43,942		

<b>Classification Structure: Non-Government Personal Employees</b>					
	<b>Classification</b>		<b>Current Salary</b>	<b>Salary effective from commencement</b>	<b>Salary effective 12 months after prior increase</b>
				<b>+ 3%</b>	<b>+ 3%</b>
Exec2-5	Adviser / Media Adviser		109,780	113,073	116,465
Exec2-4			104,728	107,870	111,106
Exec2-3			101,175	104,210	107,336
Exec2-2			93,799	96,613	99,511
Exec2-1			88,650	91,310	94,049
Exec1-2			84,350	86,881	89,487
Exec1-1		Assistant Adviser	77,869	80,205	82,611
MOPS6-5			72,762	74,945	77,193
MOPS6-4			70,051	72,153	74,318
MOPS6-3			66,696	68,697	70,758
MOPS6-2			64,920	66,868	68,874
MOPS6-1			63,343	65,243	67,200
MOPS5-3		Executive Assistant	62,189	64,055	65,977
MOPS5-2			60,485	62,300	64,169
MOPS5-1			58,647	60,406	62,218
MOPS4-4			57,093	58,806	60,570
MOPS4-3			55,665	57,335	59,055
MOPS4-2			54,253	55,881	57,557
MOPS4-1			52,580	54,157	55,782
MOPS3-4			Secretary / Administrative Assistant	50,920	52,448
MOPS3-3		49,633		51,122	52,656
MOPS3-2		48,404		49,856	51,352
MOPS3-1		47,178		48,593	50,051
MOPS2-5		45,931		47,309	48,728
MOPS2-4		44,813		46,157	47,542
MOPS2-3		43,679		44,989	46,339
MOPS2-2		42,561		43,838	45,153
MOPS2-1		41,419		42,662	43,942

**Attachment C:  
Classification Structure: Electorate Employees**

	Classification		Current Salary	Salary effective from commencement	Salary effective 12 months after prior increase
				<i>+ 3%</i>	<i>+ 3%</i>
MOPS6-4	Electorate Officer C		70,051	72,153	74,318
MOPS6-3			66,696	68,697	70,758
MOPS6-2			64,920	66,868	68,874
MOPS6-1			63,343	65,243	67,200
MOPS5-3		Electorate Officer B	62,189	64,055	65,977
MOPS5-2			60,485	62,300	64,169
MOPS5-1			58,647	60,406	62,218
MOPS4-4			57,093	58,806	60,570
MOPS4-3			55,665	57,335	59,055
MOPS4-2			54,253	55,881	57,557
MOPS4-1			52,580	54,157	55,782
MOPS3-4		Electorate Officer A	50,920	52,448	54,021
MOPS3-3			49,633	51,122	52,656
MOPS3-2			48,404	49,856	51,352
MOPS3-1			47,178	48,593	50,051
MOPS2-5			45,931	47,309	48,728
MOPS2-4			44,813	46,157	47,542
MOPS2-3			43,679	44,989	46,339
MOPS2-2			42,561	43,838	45,153
MOPS2-1			41,419	42,662	43,942

## Attachment D: Allowances for Additional Hours of Work

### Rates of Electorate Staff Allowance

Level	ESA1	ESA2	ESA3	ESA4	ESA5	ESA6	ESA7
Current	\$3,276	\$6,552	\$9,828	\$13,104	\$16,380	\$19,656	\$22,933
From commencement	\$3,374	\$6,749	\$10,123	\$13,497	\$16,871	\$20,246	\$23,621
From one year after prior increase	\$3,475	\$6,951	\$10,427	\$13,902	\$17,377	\$20,853	\$24,330

### Rates of Parliamentary Staff Allowance

	Current	From commencement	From one year after prior increase
Senior staff	\$18,900	\$27,500	\$28,325
Adviser/Media Adviser	\$18,678	\$25,000	\$25,750
Assistant Adviser	\$17,294		
MOPS4-1 to MOPS6-2 (other than Assistant Adviser)	\$17,294	\$20,900	\$21,527
MOPS2-1 to MOPS3-4	\$10,810	\$16,400	\$16,892

### Allowance for Drivers Employed by Former Prime Ministers

Current	From commencement	From one year after prior increase
\$14,000	\$14,420	\$14,853

## Attachment E: Transitional Arrangements

### 1 Translation of Personal Employee Classifications

- 1.1 The classifications of non-Government Personal Employees, other than senior staff, will translate to the classifications shown at Attachment B in accordance with the table below from the commencement of the Agreement:

Non-Government Personal Employee Classifications - Transitional Arrangements			
Non-Government Personal Employees		New Classification Structure	
Media Adviser	Adviser Level 2		Adviser / Media Adviser
	Adviser Level 1		
Executive Assistant 3			Executive Assistant
Executive Assistant 2			
Executive Assistant 1			
Secretary - Administrative Assistant 2			Secretary / Administrative Assistant
Secretary - Administrative Assistant 1			

- 1.2 The salaries of Personal Employees, other than senior staff, will translate at the same salary point, except where the employee was at the top salary point of their classification, or another higher salary point, for a continuous period of 12 months or longer prior to translation. In this case, the employee will translate to the next highest salary point in the new classification, if one exists. The

employee's next salary increment will be due 12 months after translation in accordance with clause 23.9.

- 1.3 Personal employees employed at the classification of Clerk to Whip immediately prior to the commencement of this Agreement will translate to the classification of Assistant Adviser, at their existing salary point, from the commencement of the Agreement.

## **2 Translation of Senior Staff Salaries**

- 1.4 The salaries of senior staff will translate to the salary tables shown at Attachment A, from the commencement of the Agreement, by increasing the employee's salary prior to the commencement of this Agreement by 3 per cent.
- 1.5 Where the salary resulting from the calculation is not a salary point, but is below the top of the salary band, the employee's salary will increase to the next highest salary point.
- 1.6 Continuous service at the same salary prior to the commencement of the Agreement, notwithstanding the salary increase on 25 March 2009, will count for salary increment purposes for senior staff. An employee may be eligible for incremental advancement on the commencement of this Agreement. Such advancement will be by a maximum of one salary point.

## **3 Translation of Senior Staff Basis of Employment**

- 1.7 Senior staff whose employment agreement **does not** specify a termination date will be classified as ongoing employees from the date of commencement of this Agreement.
- 1.8 Senior staff whose employment agreement **does** specify a termination date will be classified as non-ongoing employees from the date of commencement of this Agreement.