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Office of Parliamentary Counsel

SES Enterprise Agreement 2016-2019

Office of Parliamentary Counsel SES Enterprise Agreement 2016-2019

Acceptance of Agreement

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

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for and on behalf
of

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Employer

6 September 2016

Date

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Deputy
Secretary

Bargaining Representative Signature

12 September 2016

Date

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Part 1—Preliminary matters

1 Title

This Agreement is the Office of Parliamentary Counsel SES Enterprise Agreement 2016-2019.

2 Parties to the Agreement

- (1) This Agreement covers all Senior Executive Service employees employed by the Office of Parliamentary Counsel under the provisions of the *Public Service Act 1999*.
- (2) This Agreement is made under section 172 of the *Fair Work Act 2009* and covers:
 - (a) First Parliamentary Counsel;
 - (b) all Senior Executive Service employees; and
 - (c) the Community and Public Sector Union (if the Fair Work Commission has noted in its decision to approve the Agreement that the Community and Public Sector Union is covered).

3 Period of operation

- (1) This Agreement will commence operation seven days after it is approved by the Fair Work Commission.
- (2) The nominal expiry date of this Agreement is three years from the date of commencement.

4 Variation of the Agreement

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

5 Comprehensive agreement

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

6 Other policies and procedures

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

7 Termination of employment

- (1) The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those that the employee has:
 - (a) under Division 11 of Part 2-2 of Chapter 2 of the *Fair Work Act 2009*; and
 - (b) under Part 3-2 of Chapter 3 of the *Fair Work Act 2009*; and
 - (c) under Division 2 of Part 3-6 of Chapter 3 of the *Fair Work Act 2009*; and

- (d) under other Commonwealth laws (including the Constitution); and
- (e) at common law.

- (2) Termination of employment, or a decision to terminate employment, cannot be reviewed under the procedures set out in clause 12 of this Agreement.
- (3) Nothing in this Agreement prevents FPC 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 2009*. However, FPC must comply with the procedures established by FPC under section 15 of the *Public Service Act 1999* for determining whether an employee has breached the Code of Conduct.

8 Delegations

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

Part 2—Working together

Division 1—Structures and processes

9 General consultation

- (1) The WCC is the main forum in OPC for consultation with employees.
- (2) The WCC will continue in operation with the existing membership and processes. More information about the WCC is contained in an Office Procedural Circular.
- (3) Office Procedural Circulars set out other consultation and participative work practices in OPC.

10 Consultation on major change

- (1) This clause applies if OPC has made a definite decision to introduce a major change to its program, organisation, structure or technology that is likely to have a significant effect on employees of OPC.
- (2) For a major change referred to in subclause (1):
 - (a) FPC must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (10) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this clause.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise FPC of the identity of the representative;FPC must recognise the representative.
- (5) As soon as practicable after the decision is made, FPC must:
 - (a) discuss with the relevant employees and their representatives:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and

- (iii) measures OPC 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 and their representatives:
 - (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.
- (6) However, FPC is not required to disclose confidential or commercially sensitive information to the relevant employees or their representatives.
- (7) FPC must give prompt and genuine consideration to matters raised about the change by the relevant employees and their representatives.
- (8) Where provision is already made elsewhere in this Agreement for a major change to program, organisation, structure or technology of OPC, the requirements set out in paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (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 OPC's workforce or to the skills required by 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 major restructuring of jobs.
- (10) In this clause, *relevant employees* means the employees who may be affected by a change referred to in subclause (1).

10A Consultation on change of ordinary hours

- (1) This clause applies if OPC proposes to introduce a change to ordinary hours of work of employees.
- (2) For a change referred to in subclause (1):
 - (a) FPC must notify the relevant employees of the proposed change; and
 - (b) subclauses (3) to (8) apply.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this clause.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise FPC of the identity of the representative;
 FPC must recognise the representative.
- (5) As soon as practicable after proposing to introduce the change, FPC must:
 - (a) discuss with the relevant employees and their representatives the introduction of the change; and

(b) for the purposes of the discussion—provide, in writing, to the relevant employees and their representatives:

(i) all relevant information about the change including the nature of the change proposed; and

(ii) information about what FPC reasonably believes will be the effects of the change on the employees; and

(iii) any other matters likely to affect the employees; and

(c) invite the relevant employees and their representatives to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

(6) However, FPC is not required to disclose confidential or commercially sensitive information to the relevant employees or their representatives.

(7) FPC must give prompt and genuine consideration to matters raised about the change by the relevant employees and their representatives.

(8) In this clause, **relevant employees** means the employees who may be affected by a change referred to in subclause (1).

11 Grievance officer

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

12 Resolution of disputes

(1) This clause sets out procedures to settle a dispute that relates to:

(a) a matter arising under this Agreement; or

(b) the National Employment Standards.

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

(3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.

(4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to the Fair Work Commission.

(5) The Fair Work Commission may deal with the dispute in 2 stages:

(a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

(b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:

(i) arbitrate the dispute; and

(ii) make a determination that is binding on the parties.

Note: If the Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision that the Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5-1 of the Act. Therefore, an appeal may be made against the decision.

(6) While the parties are trying to resolve the dispute using the procedures in this clause:

- (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; or
 - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
 - (iii) the work is not appropriate for the employee to perform; or
 - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

(7) The parties to the dispute agree to be bound by a decision made by the Fair Work Commission in accordance with this clause.

(8) In this clause:

Act means the *Fair Work Act 2009*.

Division 2—Other matters

17 Managing unsatisfactory performance

- (1) If FPC considers that an employee's work performance is unsatisfactory, the employee's supervisor will, as soon as practicable:
 - (a) advise the employee in writing that the employee's work performance is considered to be unsatisfactory; and
 - (b) provide the employee with details of the required standards for the duties the employee has been assigned and how the employee has failed to meet those standards.
 The employee will have 7 days to comment.
- (2) If, having regard to the comments (if any) provided by the employee, the employee's supervisor considers it necessary, remedial action will be instituted. Details of such action and the processes are set out in an Office Procedural Circular.
- (3) There will be an initial period of assessment, usually of 3 months, that will be undertaken by the employee's supervisor. Where performance issues have not been satisfactorily resolved a further period of assessment, usually of 3 months, will take place. This further assessment will be undertaken by a person who is not the employee's supervisor.
- (4) For SES employees, the initial period of assessment may be undertaken by a 2PC.

19 Probation

Information about probation for employees joining OPC from outside the APS is contained in an Office Procedural Circular. The Office Procedural Circular includes the following topics:

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

21 Employee assistance program

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

Part 3—Terms and conditions

Division 1—Working hours

23 Hours of work

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

24 Flexible working hours

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

24A Requests for flexible working arrangements

- (1) An employee who is covered by subsection 65(1) of the *Fair Work Act 2009* may request flexible working arrangements, including part-time hours, to assist the employee. The employee is not eligible to make this request unless they have completed at least 12 months of continuous service with OPC.
- (2) A request made in accordance with subclause (1) must be in writing and set out details of the change sought and the reasons for the change.
- (3) FPC will respond in writing to the request within 21 days and will only refuse on reasonable business grounds. Where the request is refused, the response will include reasons for the refusal.

Division 2—Other entitlements

25 Allowances

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

Item	Allowance	Basic entitlement conditions	Minimum amount	Notes
1	Temporary performance allowance			see clause 92
2	First aid certificate allowance	(a) possession of current first aid certificate recognised under an OPC; and (b) appointment by FPC as a First Aid Officer	\$15.90 per week	
3	Community language allowance			entitlement and rate fixed by an OPC
4	Allowance for office disabilities			entitlement and rate fixed by an OPC
5	Motor vehicle allowance	(a) authorisation by FPC to use a private motor vehicle for official purposes; and (b) FPC is satisfied that such use will result in greater efficiency or less expense to OPC	Rates published by the ATO	
6	[not required]			
7	Loss or damage to clothing or personal effects allowance	loss occurs in the course of employment		reimbursement basis
8	Prescription eyewear allowance	(a) prescription of eyewear by an optometrist or ophthalmologist; and (b) need to wear prescribed eyewear in performance of any work	\$530 every two years	
9	Dependant care cost allowance	(a) requirement to work outside ACT, or outside normal patterns of work; and (b) additional family care arrangements necessary as a result; and (c) costs minimised by employee; and (d) FPC given reasonable advance notice	reimbursement of reasonable expenses as determined by FPC	
10	[not required]			

26 Travel

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

27 Accommodation

All SES employees are entitled to individual offices.

28 Relocation

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

Division 3—Part-time work

30 Part-time hours

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

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

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

31 Salary and other benefits

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

32 Permission to work part-time hours

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

33 Resumption of full-time work

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

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

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

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

Nothing in this Division affects FPC's powers to declare an employee excess in accordance with Part 7 or limits any other dealing with a position in accordance with any applicable legislation.

Division 4—Other matters**36 Staff development**

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

37 Unauthorised absences

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

Part 4—Classifications/local designations and remuneration**Division 1—Salaries: general****38 Salary increases**

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

- (a) 2.5% increase in salary, payable from the commencement of this Agreement;
- (b) 2% increase in salary, payable 12 months from the commencement of the Agreement;
- and
- (c) 1.5% increase in salary, payable 24 months from the commencement of the Agreement.

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

39 Salary levels

- (1) The tables in Attachment A set out the salaries that are payable to employees under this Agreement.
- (2) The salary and pay point for the employee at the commencement of this Agreement is the same as the salary for the employee immediately before the commencement of this Agreement.

40 Individual Flexibility Arrangements

- (1) FPC and an employee may agree to make an individual flexibility arrangement to vary the effect of terms of this Agreement if:
 - (a) the arrangement deals with one or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) remuneration;
 - (vi) leave;
 - (vii) retention payments; and
 - (b) the arrangement meets the genuine needs of OPC and the employee in relation to one or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by FPC and the employee.
- (2) FPC must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) FPC must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by FPC and the 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 and, where applicable, when the arrangement ceases.
- (4) FPC must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) FPC or the 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 FPC and the employee agree in writing—at any time.

41 SES experience loading

- (1) An employee who is an SES employee is entitled to an experience loading calculated under this clause. The experience loading is part of salary.
- (2) The annual amount of the experience loading for a Band 1 SES employee is calculated using the formula:

Band 1 amount × Years at level × Performance factor

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

Band 2 amount × Years at level × Performance factor

- (4) In this clause:

Band 1 amount means:

- (a) before the first anniversary of the commencement date—\$2,811;
- (b) from the first anniversary of the commencement date to the second anniversary of the commencement date—\$2,867;
- (c) from the second anniversary of the commencement date—\$2,910.

Band 2 amount means:

- (a) before the first anniversary of the commencement date—\$3,373;
- (b) from the first anniversary of the commencement date to the second anniversary of the commencement date—\$3,441;
- (c) from the second anniversary of the commencement date—\$3,492.

performance factor means:

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

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

42 EVS vehicles

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

43 Salary for superannuation etc.

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

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

44 [not required]

Division 2—[not required]

45 [not required]

Division 3—Initial salaries and salary advancement

46 Initial salary—staff other than APC 1s

- (1) An employee (other than an employee who is already an APS employee) is, on engagement, to be paid at the salary point for the classification determined by FPC.
- (2) An employee who is already an APS employee is, on movement to OPC, to be paid at the first salary point for the classification that is higher than the employee's salary immediately before joining OPC or at such higher salary point for the classification as is determined by FPC.
- (3) If an employee moves to a position in OPC from another APS agency and the employee's salary in the previous APS agency (*current salary*) exceeds the current maximum of the relevant classification under this Agreement then, at FPC's discretion, the employee may be maintained on the current salary until the salary that would otherwise be payable to the employee equals or exceeds the current salary.

47 [not required]

48 [not required]

49 [not required]

49A [not required]

50 Salary on promotion within OPC

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

50A Supported wage system

Information on supported wage rates and related arrangements is at Attachment B to this Agreement.

Division 4—Other matters

51 Temporary performance at a lower level

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

52 Salary packaging

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

53 Superannuation

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

54 Notice of resignation or retirement from the APS

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

55 Payment on death

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

Part 5—Leave

Division 1—Annual leave

56 Overview of annual leave arrangements

Employees will be able to take annual leave at either full pay or half pay.

57 Accrual of annual leave credit

- (1) An employee is entitled to 20 days annual leave with pay for each full year of service. Annual leave entitlements accrue continuously, will be credited fortnightly and are cumulative.
- (2) A part-time employee accrues a pro-rata annual leave credit based on the hours worked.
- (3) An employee who receives compensation under the *Safety, Rehabilitation and Compensation Act 1988* accrues annual leave credit in accordance with the preceding provisions of this clause for the first 45 weeks during which he or she receives compensation and after the end of the 45 weeks, accrues annual leave credit on a pro-rata basis based on the hours worked while he or she continues to receive compensation.
- (4) Leave does not accrue during absences on leave without pay not to count as service. However, an employee who takes 30 calendar days or less of such leave during a calendar

year will be credited with leave on 31 December for the leave that would have accrued during that leave if it had counted as service.

58 Taking annual leave

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

59 Annual leave credits—portability of leave

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

60 Employee directed to take annual leave

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

61 Annual leave to be paid out when employment ceases

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

62 Employees may take annual leave at half pay

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

63 Restrictions on taking annual leave at half pay

- (1) An employee may only take whole days of annual leave at half pay.
- (2) An employee may not take annual leave at half pay if, at the end of the period of annual leave, the employee's annual leave credits would total more than the amount that would be the annual leave credits representing 2 years service.

63A Cashing out annual leave

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

Division 2—Personal/carer's leave

Subdivision A—Personal/carer's leave credits

66 Accrual of personal/carer's leave credit

- (1) An employee accrues the following personal/carer's leave credit:
 - (a) on the date of engagement—18 days with full pay;
 - (b) on the next 1 January—a pro-rata credit for the period of service since the date of engagement;
 - (c) on each subsequent 1 January—18 days with full pay, or a pro-rata credit for an employee with less than 12 months service since the previous 1 January.
 Personal/carer's leave is cumulative.
- (2) A part-time employee accrues personal/carer's leave credit in accordance with this clause on a pro-rata basis based on the employee's hours of duty.
- (3) An employee who receives compensation under the *Safety, Rehabilitation and Compensation Act 1988* accrues personal/carer's leave credit for the first 45 weeks during which he or she receives compensation and after the end of the 45 weeks, accrues personal/carer's leave credit on a pro-rata basis based on the hours worked while he or she continues to receive compensation.
- (4) Leave does not accrue during absences on leave without pay not to count as service. However, an employee who takes 30 calendar days or less of such leave during a calendar year will accrue personal/carers leave as if they did not take any leave without pay not to count as service during the year.

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

- (1) An employee in the Service who becomes an employee in OPC will, on movement or promotion to OPC, be credited with personal/carer's leave equal to the employee's

personal/carer's leave (however described) credit immediately before movement or promotion, provided there is no break in continuity of service.

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

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

68 Previous employment may be allowed to count as service

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

Subdivision B—Use of personal/carer's leave

69 Personal/carer's leave with pay

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

- (a) where the employee is unfit for duty because of illness or injury;
- (b) where the employee attends a medical appointment;
- (c) for care or support for a family member, or a member of the employee's household, who requires care or support because of a personal illness of, or injury to, the member or an unexpected emergency affecting the member;
- (d) for attending to essential requirements associated with birth, adoption or fostering of children;
- (e) to attend a ceremony of religious or cultural significance which involves a family member;
- (f) for the provision of emergency interpreting for a family member;
- (g) to attend the employee's graduation ceremony;
- (h) to accompany a family member to court where the family member is a party or a witness to proceedings;
- (i) to enable the employee to participate as an accredited official or competitor in an international sporting event that FPC considers is of major international significance.

(2) Personal/carer's leave with pay under paragraphs (1)(d) to (h) is only to be granted for occasional, non-enduring situations while longer term arrangements are made (if necessary).

(2A) Personal/carer's leave with pay under paragraphs (1)(b) and (1)(d) to (i) must not be used, and will not be granted, if it would be detrimental to an employee in any respect, when compared to the National Employment Standards under the *Fair Work Act 2009*.

(3) Personal/carer's leave with pay cannot be used as a substitute for formal child care arrangements (for example, during school holidays). In addition, personal/carer's leave with pay cannot be granted in the following circumstances:

- (a) attendance at a family member's school or educational facility (whether or not required or encouraged by the school or facility);
- (b) to care for a family member on a student-free school day.

This subclause does not apply to unexpected situations arising at short notice.

- (4) Personal/carer's leave of more than 5 consecutive days may not be granted with pay without production of a medical certificate or, if it is not reasonably practicable for the employee to give the employer a medical certificate, a statutory declaration made by the employee.
- (5) An application for personal/carer's leave with pay must specify the paragraph in subclause (1) under which it is made and be supported by reasons for the application.
- (6) Where the employee attends a counselling appointment through the employee assistance program, the appointment can be treated as a medical appointment under paragraph (1)(b).

70 Personal/carer's leave on half pay

Any part of an employee's personal/carer's leave credit may be taken on half pay at the request of the employee, and the employee's personal/carer's leave credit will be debited with half the number of days taken on half pay.

71 Anticipation of personal/carer's leave credit

If the employee's personal/carer's leave credit is exhausted, FPC may allow the employee to use up to 15 days personal/carer's leave credit in advance of the credit accruing.

72 Personal/carer's leave without pay

- (1) FPC may grant personal/carer's leave without pay to an employee who has no personal/carer's leave credit available.
- (2) If a medical certificate or other evidence is required under clause 69 and it is not provided, the personal/carer's leave granted to an employee must be without pay.

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

- (1) A period of personal/carer's leave counts as service for all purposes except in circumstances covered by any of subclauses (2) to (4).
- (2) Personal/carer's leave granted without pay because of subclause 72(2) does not count as service for any purpose.
- (3) If an employee has been granted personal/carer's leave for a continuous period of more than 78 weeks (including at least 52 weeks leave with pay), any of the personal/carer's leave that is without pay after the end of the first 78 weeks does not count as service for any purpose (unless otherwise required by legislation).
- (4) If an employee has been granted personal/carer's leave without pay for a continuous period of more than 26 weeks, any of the personal/carer's leave that is without pay after the end of the first 26 weeks does not count as service for any purpose (unless otherwise required by legislation).

Subdivision C—Provisions applicable only to illness or injury of employee

74 FPC may direct leave of absence

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

75 Personal/carers leave not available while on maternity leave

An employee is not entitled to personal/carer's leave with pay for any period when the employee is entitled to leave with pay under the *Maternity Leave (Commonwealth Employees) Act 1973* or under subclause 80(3) of this Agreement.

76 Employee sick on public holiday

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

77 Invalidity

- (1) The retirement of an employee on invalidity grounds must not, without the employee's consent, take effect earlier than the day when the employee's credit for personal/carer's leave is exhausted unless the continuous period for which the employee is granted personal/carer's leave with pay (whether full pay or half pay or a combination) immediately before retirement exceeds 52 weeks unless provided by legislation.
- (2) If a person, after retirement on invalidity grounds, is re-engaged because of action taken under section 75 of the *Superannuation Act 1976*, the person must be credited on re-engagement with the personal/carer's leave at his or her credit immediately before retirement.

Subdivision D—Unpaid carer's leave

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

An employee is entitled to 2 days of unpaid carer's leave for each occasion when a family member of the employee requires care or support during such a period because of a personal illness or injury of the member or an unexpected emergency affecting the member. This leave does not count as service for any purpose.

Division 3—Leave for particular purposes

80 Maternity leave and parental leave

- (1) Employees who are pregnant, or who have given birth, are covered by the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973* (the **ML Act**).
- (2) Employees with an entitlement to paid leave under the ML Act are provided with an additional 4 weeks of paid leave, to be taken continuous with the period of paid maternity leave provided by the ML Act.
- (3) Employees who adopt or permanently foster a child, and who have care of, or responsibility for, that child, are entitled to up to 52 weeks of parental leave. If the employee:
 - (a) is an ongoing APS employee with at least 12 months continuous service in OPC or another APS agency; and
 - (b) is the primary caregiver for the child;the employee is entitled to take the first 16 weeks as paid leave. Leave for adoption or permanent foster care is available from one week prior to the date of placement. The paid leave counts as service for all purposes.
- (4) However, employees are entitled to parental leave for adoption or permanent foster care only if that child:

- (a) is under 16 years of age;
- (b) has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day (or expected day) of placement; and
- (c) is not (otherwise than because of the adoption) a child of the employee or the employee's partner.

- (5) Documentary evidence of approval for adopting or enduring parental responsibilities under formal fostering arrangements must be submitted when applying for parental leave for adoption or permanent foster carer purposes.
- (7) On ending the initial period of up to 52 weeks of maternity or parental leave, employees may request an extension of unpaid parental leave for a further period of up to 52 weeks. The second period of unpaid leave is to commence immediately following the initial leave period.
- (8) Unpaid maternity or parental leave will not count as service for any purpose except for any unpaid leave taken during the first 12 weeks.
- (9) This leave is inclusive of public holidays and will not be extended because a public holiday or the Christmas shutdown falls during a period of paid or unpaid maternity or parental leave. On ending maternity or parental leave, employees have the return to work guarantee and the right to request flexible working arrangements provided by (or the equivalent to those provided by) the *Fair Work Act 2009*.

81 Supporting partner/other primary caregiver leave

- (1) Employees who are not otherwise entitled to paid maternity under the ML Act or parental leave under this Agreement are entitled to 4 weeks of paid leave on the birth, adoption or permanent foster care placement of a child or their partner's child.
- (2) This leave is to commence within 2 weeks of the birth/placement of the child and is inclusive of public holidays, i.e. the leave will not be extended because a public holiday or the Christmas shutdown falls during a period of leave provided by this clause.
- (3) Documentary evidence as outlined in clause 80, or a birth certificate following the birth of a child, must be submitted when applying for supporting partner/other primary caregiver leave.
- (4) This paid leave will count as service for all purposes.

82 Long service leave

The entitlement to long service leave is provided for under the *Long Service Leave (Commonwealth Employees) Act 1976*. Leave will only be granted for a minimum period of 7 consecutive calendar days at full pay or 14 calendar days at half pay. Long service leave cannot be broken with other periods of leave, except as otherwise provided by legislation.

83 War service sick leave

- (1) Employees who are war veterans and who suffer from a war-caused or defence-caused medical condition may be entitled to war service sick leave.
- (2) An eligible employee who provides a statement from the Department of Veterans' Affairs stating what condition has been determined as being war-caused or defence-caused under relevant legislation will accrue two separate credits of paid war service sick leave:
 - (a) a special credit of 9 weeks war service sick leave that is credited on first commencement with the Service following eligible war service; and

- (b) an annual credit of 3 weeks war service sick leave that is credited annually on commencement and following each 12 months of service.
- Unused annual credits accumulate, subject to a maximum credit balance of 9 weeks. The annual credit cannot be accessed until the special credit has been used up.
- (3) FPC may only grant war service sick leave when an employee is unfit for duty due to the accepted war-caused or defence-caused medical condition.
- (4) In applying for war service sick leave the employee must present a medical certificate stating the nature of the medical condition, or stating it was a war-caused condition.
- (5) If an employee's war service sick leave credits have been used up, the employee may apply for personal/carer's leave.
- (6) Employees who rejoin the Service and who have been credited with war service sick leave in respect of an earlier period of employment in the Service will be credited with:
- (a) any special credit that remained unused as at the final day of the prior employment in the Service; and
- (b) any annual credit held on the final day of the prior employment in the Service.
- The next annual credit will accrue when the employee's period of service since recommencement and the employee's period of service between the 1 November before cessation and the date of cessation from the Service equals 12 months. After that, further annual credits will accrue after each 12 months of service.
- (7) A period of paid war service personal leave counts as service for all purposes.

84 Defence Reserve leave

- (1) In accordance with the *Defence Reserve Service (Protection) Act 2001*, OPC supports the release of Defence Reservists for peacetime training and deployment.
- (2) An employee who is a member of a Defence Reserve is entitled to 20 days leave on full pay each year for the purposes of undertaking Defence Reserve service or training. Any leave not taken during a year may be taken during the following year (but not during any year after that following year).
- (3) In the year in which an employee joins a Defence Reserve, the employee is entitled to an additional 10 days leave on full pay for the purposes of undertaking initial Defence Reserve training.
- (4) For the purposes of determining leave entitlements under subclauses (2) and (3), a year begins on the day on which the employee becomes a member of a Defence Reserve and on each anniversary of that day, and leave may be taken at any time during the year.
- (5) FPC may grant further leave for the purposes of Defence Reserve service or training. Such further leave may be granted on full or part pay or without pay.
- (6) Subject to subclause (7), leave under this clause is to count as service for all purposes.
- (7) Periods of leave without pay under this clause that exceed 6 months in any 12 month period do not count as service for the purposes of accruing annual leave.

84A Community service leave

- (1) An employee who engages in an eligible community service activity (including a voluntary emergency management activity and jury service) is entitled to a period of leave in accordance with Division 8 of Part 2-2 of Chapter 2 of the *Fair Work Act 2009*.

- (2) The entitlement to leave with pay for a voluntary emergency management activity and jury service is provided for in clause 85 of this Agreement.
- (3) Periods of leave granted, with or without pay, for voluntary emergency management activities include leave for emergency service responses, regular training, reasonable recovery time and ceremonial duties.

84B Ceremonial, cultural and NAIDOC leave

- (1) FPC may grant up to 10 days of unpaid leave (not to count as service for any purpose) over any two year period to Aboriginal and Torres Strait Islander employees:
 - (a) for ceremonial purposes arising from the death of an immediate or extended family member; or
 - (b) for other ceremonial and cultural obligations under Aboriginal or Torres Strait Islander law.
- (2) Leave under subclause (1) in respect of the death of a person may be granted in addition to leave under subclause 85(2) in respect of that death.
- (3) FPC may grant up to 2 days of paid leave (to count as service for all purposes) to allow an employee to participate in NAIDOC Week activities.

Division 4—Other leave

85 Leave with pay

- (1) Leave with pay (to count as service for all purposes) will be granted to an employee in the circumstances set out in this clause.

Bereavement leave

- (2) An employee is entitled to 3 days paid leave for each bereavement if a family member, or a member of the household, of the employee dies.
- (3) A maximum of 5 days for each bereavement will be granted to attend to responsibilities such as funeral arrangements, executor duties, administrative estate duties or duties to assist police or legal authorities with enquiries where a family member of an employee has died.
- (4) A maximum of 4 hours will be granted to attend a funeral in the Canberra region of a close friend. A maximum of 1 day will be granted if the funeral is elsewhere.

Serious illness or injury

- (5) A maximum of 3 days for each occasion will be granted if a family member, or a member of the household, of the employee:
 - (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.

Disasters

- (6) A maximum of 3 days will be granted for each occasion if the employee's home or contents have been destroyed or significantly damaged by an event that FPC considers a disaster.

Members of emergency management bodies

- (7) A maximum of 4 days for each occasion will be granted to enable the employee to attend an emergency (e.g. bushfire, flood) as a member of a recognised emergency management body.

Court proceedings

- (8) Leave will be granted if the employee is required to serve on a jury or to give evidence at legal or industrial proceedings.

Returned soldiers pension review

- (9) A maximum of 10 days will be granted to enable an employee who is a returned soldier to receive medical attention or undergo a pension review.

Moving leave

- (10) A maximum of one day will be granted in any period of 12 months to move house.

FPC may increase the maximum period

- (11) If a maximum period for the leave is specified in this clause, the period may be extended at FPC's discretion.

86 Leave without pay

- (1) Leave without pay (not to count as service for any purpose) will be granted to an employee to enable the employee to accompany a partner on a posting away from the ACT.
- (2) Leave without pay (to count as service for all purposes except the accrual of annual leave credits) will be granted to an employee to engage in employment outside the Service, if FPC is satisfied that the proposed employment would be in the interests of the Service.
- (3) Leave without pay (to count as service for all purposes) will be granted to an employee to take up employment in accordance with clause 7.4 of the Australian Public Service Commissioner's Directions 2013.
- (4) Leave without pay will be granted to an employee to engage in employment outside the Service for purposes associated with compensation leave. This leave will count as service for all purposes, except that, in determining the accrual of annual and personal/carer's leave credits (see clause 57 and clause 66), it will be treated as a period during which the employee is receiving compensation.

86A FPC discretion to grant leave

- (1) Leave with pay (to count as service for all purposes) may be granted, at FPC's discretion, for any purpose for which leave with pay could not otherwise be granted.
- (2) Leave without pay (not to count as service for any purpose unless otherwise required by legislation) may be granted, at FPC's discretion, for any purpose for which leave could not otherwise be granted.

87 Leave under this Division

- (1) Leave under this Division may be granted subject to conditions.
- (2) Leave without pay under this Division does not count as service for any purpose (unless otherwise required by legislation) if the employee does not resume duty in the Service at the end of the period of leave.

Division 5—Miscellaneous

88 Expenses—cancellation of leave or recall to duty

- (1) This provision applies if an employee's leave is cancelled without reasonable notice or an employee is recalled to work from leave.
- (2) On request from the employee, he or she will be reimbursed such travel costs and incidental expenses as FPC thinks reasonable, being costs and expenses incurred in respect of the employee or any family member travelling with or intended to travel with the employee and that are not otherwise recoverable under any insurance or from any other source.

89 Public holidays

- (1) Employees will be entitled to the following public holidays:
 - (a) New Year's Day (1 January);
 - (b) Australia Day (26 January);
 - (c) Good Friday;
 - (d) Easter Monday;
 - (e) Anzac Day (25 April);
 - (f) the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - (g) Christmas Day (25 December);
 - (h) Boxing Day (26 December);
 - (i) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the *Fair Work Regulations 2009* from counting as a public holiday.
- (2) If under a State or Territory law, a day or part-day is substituted for one of the public holidays listed above, then the substituted day or part-day is the public holiday.
- (3) FPC and an employee may agree on the substitution of a day or part-day that would otherwise be a public holiday, having regard to operational requirements.
- (4) An employee, who is absent on a day or part-day that is a public holiday in the place where the employee is based for work purposes, is entitled to be paid for the part or full day absence as if that day or part-day was not a public holiday, except where that person would not normally have worked on that day.
- (5) Where a public holiday falls during a period when an employee is absent on leave (other than annual or paid personal/carer's leave) there is no entitlement to receive payment as a public holiday. Payment for that day would be in accordance with the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is on half pay).

90 Christmas shutdown

- (1) OPC will close its normal operations from close of business on the last working day before Christmas, with business resuming on the first working day after New Year's Day.
- (2) Employees will be provided with time off for the working days between Christmas and New Year's Day and will be paid in accordance with their ordinary hours of work. Where an employee is absent on leave, payment for the Christmas shutdown will be in accordance with

the entitlement for that form of leave (e.g. if on long service leave on half pay, payment is on half pay).

- (3) There will be no deduction from annual or personal/carer's leave credits for the shutdown days.

Part 6—Operations

91 Performance management

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

92 Temporary performance allowance

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

Part 7—Redeployment, retirement and termination

93 Application

This Part applies only to ongoing employees.

94 Identifying excess employees

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

95 Redeployment

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

96 Retirement with an incentive

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

97 Termination

- (1) In accordance with sections 29 and 38 of the *Public Service Act 1999*, FPC may at any time, by notice in writing, terminate the employee's employment.
- (2) The notice of termination must specify the ground or grounds that are relied on for the termination as set out in subsection 29(3) of the *Public Service Act 1999*.

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

1 **98 [not required]**

2 **99 [not required]**

3 **100 [not required]**

4 **101 [not required]**

5 **102 [not required]**

6 **103 [not required]**

7 **104 [not required]**

8 **105 [not required]**

9
10
11
12 **Part 8—Transitional arrangements**

13 **106 Preservation of annual leave credits**

14 At the commencement of this Agreement, each employee has an accrued annual leave credit
15 equal to the employee's accrued annual leave credit immediately before that commencement.

16 **107 Preservation of personal/carer's leave credits**

17 At the commencement of this Agreement, each employee has an accrued personal/carer's
18 leave credit equal to the employee's accrued personal/carer's leave credit immediately before
19 that commencement.

Part 9—Definitions

108 Definitions

In this Agreement, unless the contrary intention appears:

2PC means a Second Parliamentary Counsel.

APC 1 means Assistant Parliamentary Counsel Grade 1.

APC 2 means Assistant Parliamentary Counsel Grade 2.

APC 3 means Assistant Parliamentary Counsel Grade 3.

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

child includes an adopted child.

Commissioner's Directions means the *Australian Public Service Commissioner's Directions 2013*.

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

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

dependant in relation to an employee means:

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

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

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

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

FPC means First Parliamentary Counsel.

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

illness includes a medical condition.

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

member of OPC means:

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

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

1 **ongoing APS employee** has the same meaning as in the *Public Service Act 1999*.

2 **OPC** means the Office of Parliamentary Counsel.

3 **partner** means, in relation to a person who is a member of a couple, the other member of the
4 couple.

5 **part-time employee** means an employee who is working part-time hours.

6 **personal/carer's leave credit** means personal/carer's leave credit accrued under Subdivision
7 A of Division 2 of Part 5.

8 **registered health practitioner** means a person who is registered or licensed as a health
9 practitioner (or a health practitioner of a particular type) under a law of a State or Territory.

10 **Service** means the Australian Public Service.

11 **SES** means Senior Executive Service.

12 **superannuation salary** means the annual rate of superannuation salary within the meaning
13 of the *Superannuation Act 1990* worked out on the assumption that the employee was a
14 regular employee within the meaning of that Act.

15 **TPA** means temporary performance allowance.

16 **WCC** means the Workplace Consultative Committee continued in operation under clause 9.
17

Attachment A—Salaries

1 Salaries

[Table A is not required]

[Table B is not required]

Table C—Salaries payable under this Agreement—SES				
1. Classification or local designation	2. Pay points	3. Salary from commencement of agreement	4. Salary 12 months from commencement of agreement	5. Salary 24 months from commencement of agreement
Senior Assistant Parliamentary Counsel (SES 1)	Lower	150,915	153,933	156,242
	Upper	163,103	166,365	168,861
First Assistant Parliamentary Counsel (SES 2)		198,802	202,778	205,820

2 [not required]

Attachment B—Supported Wage System (SWS)

1 Overview

This attachment defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Agreement.

2 Definitions

In this attachment:

Approved assessor means a person accredited by the management unit established by the Commonwealth under the SWS to perform assessments of an individual's productive capacity within the SWS.

Assessment instrument means the tool provided for under the SWS that records the assessment of the productive capacity of the person to be employed under the SWS.

Disability Support Pension means the Commonwealth Government pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

Relevant minimum wage means the minimum wage prescribed in this Agreement for the class of work for which an employee is engaged.

Supported Wage System (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full wages because of a disability, as documented in the SWS Handbook. The Handbook is available from the JobAccess website (www.jobaccess.gov.au).

SWS wage assessment agreement means the document in the form required by the Department of Employment that records the employee's productive capacity and agreed wage rate.

3 Eligibility criteria

- (1) Employees covered by this attachment will be those who are unable to perform the range of duties to the competence level required within the class for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
- (2) The attachment does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

4 Supported wage rates

- (1) Employees to whom this clause applies shall be paid the applicable percentage of the relevant minimum wage according to the following table, provided that the minimum amount payable is not less than the minimum prescribed rate set by the relevant Government body:

Assessed capacity	% of prescribed rate
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10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

- (2) Where an employee's assessed capacity is 10 per cent; they must receive a high degree of assistance and support.

5 Assessment of capacity

- (1) For the purposes of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and the employee, and if the employee so desires, a union which the employee is eligible to join.
- (2) Assessment made under this attachment must be documented in a SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

6 Lodgement of SWS wage assessment agreement

- (1) All SWS wage assessment agreements under the conditions of this attachment, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.
- (2) All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union, which has an interest in the agreement, is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

7 Review of assessment

The assessment of the applicable percentage should be subject to annual review or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the support wage system.

8 Other terms and conditions of employment

- (1) Where an assessment has been made, the applicable percentage will apply to the relevant wage rate only.

- (2) Employees covered by the provisions of the attachment will be entitled to the same terms and conditions of employment as all other workers covered by this Agreement paid on a pro-rata basis.

9 Workplace adjustment

An employer wishing to employ a person under the provisions of this attachment must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other workers in the area.

10 Trial Period

- (1) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this attachment for a Trial Period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (2) During that Trial Period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- (3) The minimum amount payable to the employee during the Trial Period must be no less than \$81 per week, increased in line with decisions by the relevant Government body.
- (4) Work trials should include induction or training as appropriate to the job being trialled.
- (5) Where the employer and employee wish to establish a continuing employment relationship following the completion of the Trial Period, a further contract of employment will be entered into based on the outcome of assessment under clause 5 of this attachment.

