

SECTION 2 TECHNICAL AND GENERAL MATTERS

3. Coverage

3.1 This Agreement is made as an Enterprise Agreement under Part 2-4 of the *Fair Work Act 2009* and covers:

- (a) the Clerk of the Senate on behalf of the Commonwealth of Australia;
- (b) employees of the department other than:
 - (i) Senior Executive Service employees; and
 - (ii) employees whose salary is paid by another department or agency.

4. Interpretations/definitions

Agreement means the *Department of the Senate Enterprise Agreement 2010 – 2012*.

department means the Department of the Senate.

employee means a person who is employed under the *Parliamentary Service Act 1999* by the department, whether full-time, part-time, ongoing or non-ongoing.

employer means the Clerk of the Senate (the Clerk) on behalf of the Commonwealth.

FWA means Fair Work Australia.

HRM Human Resource Management section.

immediate family means:

- (a) a spouse, partner, child, parent, grandparent, grandchild, or sibling of the employee
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or partner of the employee
- (c) a person with whom the employee has a strong affinity

a child includes an adopted child, a stepchild, an exnuptial child, an adult child or a child in the care and custody of the employee

a spouse includes a former spouse, a de facto spouse and a former de facto spouse

a de facto spouse, of an employee, means a person who lives with the employee on a genuine domestic basis (whether married to the employee or not)

a partner includes a former partner.

manager	means an employee who has responsibility for overseeing, monitoring, managing, directing or supervising a discrete work group.
NES	means the National Employment Standards as set out in the <i>Fair Work Act 2009</i> .
other documentary evidence	means a statutory declaration, where provision of a medical certificate would otherwise be required.
Parliamentary Service	means the Australian Parliamentary Service established by the <i>Parliamentary Service Act 1999</i> .
program manager	means a Senior Executive Service employee.
Program Manager Group	means the Senior Executive Service employees collectively.
section head	means an employee at the Parliamentary Executive Level 1 or 2 with management responsibilities for a discrete work unit.
sessional employee	means an employee who is primarily employed to undertake duties involved with the sittings of the Senate.
supervisor	means an employee who has responsibility for overseeing, monitoring, managing, directing or supervising another employee.

5. Duration and variation

- 5.1 This Agreement shall commence operation on the date seven days after the date on which it is approved by FWA. The nominal expiry date of the Agreement is 30 June 2012.
- 5.2 During the period starting on the date this Agreement commences operation 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.

6. Employment subject to other laws

6.1 It is acknowledged that employment is subject to the provisions of the following Acts (and regulations or instruments made under the Acts), as varied from time to time or replacement legislation, including, but not limited to:

- (a) *Fair Work Act 2009*;
- (b) *Long Service Leave (Commonwealth Employees) Act 1976*;
- (c) *Maternity Leave (Commonwealth Employees) Act 1973*;
- (d) *Superannuation Act 1976*;
- (e) *Superannuation Act 1990*;
- (f) *Superannuation Act 2005*;
- (g) *Superannuation (Productivity Benefit) Act 1988*;
- (h) *Superannuation Guarantee (Administration) Act 1992*;
- (i) *Safety, Rehabilitation and Compensation Act 1988*;
- (j) *Occupational Health and Safety Act 1991*;
- (k) *Veterans' Entitlement Act 1986*;
- (l) *Age Discrimination Act 2004*;
- (m) *Defence Reserve Service (Protection) Act 2001*;
- (n) *Australian Human Rights Commission Act 1986*; and
- (o) *Parliamentary Service Act 1999*.

7. Further agreements

7.1 The Clerk and an 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 arrangement meets the genuine needs of the employer and employee in relation to one 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 is genuinely agreed to by the Clerk and employee.

7.2 The Clerk 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.

7.3 The Clerk must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of the Clerk and employee; and
- (c) is signed by the Clerk 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 enterprise 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
 - (iv) states the day on which the arrangement commences.
- 7.4 The Clerk must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 7.5 The Clerk or employee may terminate the individual flexibility arrangement at any time:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the Clerk and employee agree in writing.

8. Appeals against termination of employment

- 8.1 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those under:
 - (a) Part 3-1 and 3-2 of the *Fair Work Act 2009*;
 - (b) other Commonwealth laws (including the Constitution); and
 - (c) common law.
- 8.2 Termination of, or a decision to terminate, employment cannot be reviewed under the procedures contained in this Agreement for preventing and settling disputes arising from this Agreement.
- 8.3 Nothing in this Agreement prevents the Clerk from terminating the employment of an employee for a breach of the Code of Conduct, without further notice or payment in lieu, in accordance with the *Fair Work Act 2009*, subject to compliance with the procedures established by the Clerk for determining whether an employee has breached the Code of Conduct under section 13 of the *Parliamentary Service Act 1999*.

9. Procedures for preventing and settling disputes arising from this Agreement

- 9.1 If a dispute relates to:
 - (a) a matter arising under the Agreement; or
 - (b) the NES;
 this clause sets out procedures to settle the dispute.
- 9.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause.
- 9.3 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.

- 9.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to FWA.
- 9.5 FWA may deal with the dispute in two stages:
- (a) FWA 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 FWA is unable to resolve the dispute at the first stage, FWA may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.
- Note: If FWA arbitrates the dispute, it may also use the powers that are available to it under the Fair Work Act 2009. A decision that FWA makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the Fair Work Act 2009. Therefore, an appeal may be made against the decision.*
- 9.6 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 Clerk 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.
- 9.7 The parties to the dispute agree to be bound by a decision made by FWA in accordance with this clause.
- 10. Delegation**
- 10.1 The Clerk may, in writing, delegate to, or authorise a person to exercise, any of the Clerk's powers or functions under this Agreement. A power which is exercised by a program manager, manager, section head or supervisor under the Agreement may be exercised and delegated by the Clerk.
- 10.2 A program manager may, in writing, authorise a person to exercise any of the program manager's powers or functions under this Agreement.

11. Formal acceptance of the Agreement

11.1 This Agreement is made under section 172 of the *Fair Work Act 2009*. Accordingly, it is an agreement between the employer and the employees who are covered by this Agreement.

Employer

Signed:
Name: Dr Rosemary Laing Date
Clerk of the Senate

Bargaining representatives

Signed for and on behalf of employees covered by this Agreement by their bargaining representatives:

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