

SECTION 2: TECHNICAL AND GENERAL MATTERS

3. Coverage

- 3.1 This is an Agreement made under section 172 of the *Fair Work Act 2009* between the Clerk of the Senate and the employees of the Department of the Senate (the department).
- 3.2 This Agreement covers the terms and conditions of employment of employees in the department, but does not apply to:
- (a) Senior Executive Service employees; and
 - (b) a person whose salary is paid by another department or agency.

4. Definitions

Agreement	means the <i>Department of the Senate Enterprise Agreement 2012 – 2015</i> .
department	means the Department of the Senate.
departmental guidelines	means relevant policies, guidelines and advices.
employee	means a person who is engaged by the department under the <i>Parliamentary Service Act 1999</i> .
employer	means the Clerk of the Senate (the Clerk) on behalf of the Commonwealth.
FWA	means Fair Work Australia.
HRM	means the Human Resource Management section.
immediate family	means: <ul style="list-style-type: none">(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

for the purposes of which:

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); and

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> .
part-time employee	means an employee whose agreed hours are less than 37 hours and 30 minutes per week.
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 employed primarily 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 commences operation on the day seven days after the date on which it is approved by FWA. The nominal expiry date of the Agreement is 30 June 2015.
- 5.2 From the commencement of this Agreement, a person or organisation covered by the Agreement will not pursue further claims in relation to terms and conditions of employment that would have effect during the period of operation of this Agreement, except where they are consistent with the Agreement.

6. Delegation

- 6.1 The Clerk may, in writing, delegate to or authorise a person to exercise any of the Clerk's powers or functions under this Agreement.

7. Employment subject to other laws

- 7.1 It is acknowledged that employment is subject to the provisions of the following Acts 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) *Parliamentary Service Act 1999*;
- (e) *Superannuation Act 1976*;
- (f) *Superannuation Act 1990*;
- (g) *Superannuation Act 2005*;
- (h) *Superannuation (Productivity Benefit) Act 1988*;
- (i) *Superannuation Guarantee (Administration) Act 1992*;
- (j) *Superannuation Benefits (Supervisory Mechanisms) Act 1990*;
- (k) *Safety, Rehabilitation and Compensation Act 1988*;
- (l) *Work Health and Safety Act 2011*; and
- (m) *Veterans' Entitlement Act 1986*.

8. Departmental guidelines

- 8.1 The operation of this Agreement is supported by departmental guidelines. These guidelines do not form part of the Agreement.

9. Further agreements

- 9.1 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 the 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; and
- (b) the arrangement is genuinely agreed to by the Clerk and the employee.

- 9.2 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.

- 9.3 The Clerk must ensure that the individual flexibility arrangement:
- (a) is in writing; and
 - (b) includes the names of the Clerk and the employee; and
 - (c) is signed by the Clerk and the employee and if the employee is under 18 years of age, is 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
 - (iv) the day on which the arrangement commences.
- 9.4 The Clerk must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 9.5 The Clerk or the 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 the employee agree in writing.

10. Appeals against termination of employment

- 10.1 The sole and exhaustive rights and remedies of an employee in relation to termination of employment are those under:
- (a) Parts 3-1 and 3-2 of the *Fair Work Act 2009*;
 - (b) other Commonwealth laws; and
 - (c) common law.
- 10.2 Termination of, or a decision to terminate, employment cannot be reviewed under the procedures in this Agreement for preventing and settling disputes arising under this Agreement.
- 10.3 Nothing in this Agreement prevents the Clerk from terminating the employment of an employee for a breach of the Parliamentary Service Code of Conduct, without notice (or payment in lieu of notice) 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 Parliamentary Service Code of Conduct.

11. Procedures for preventing and settling disputes arising under this Agreement

- 11.1 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.
- 11.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this clause.

- 11.3 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 supervisor/s and/or manager/s.
- 11.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to FWA.
- 11.5 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.

- 11.6 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 work 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.
- 11.7 The parties to the dispute agree to be bound by a decision (including any determination) made by FWA in accordance with this clause.

