

Document 1

From: s22
To: [Booth, Damien](#); [Rebecca Fawcett](#)
Subject: [APS BARGAINING] Salary increase clause drafting [SEC=OFFICIAL]
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)

Hi Rebecca

I'd like to offer a meeting to talk through the clause drafting for the salary increase clause We'll be circulating an explanatory note to all bargaining parties tomorrow morning

Please let me know if this time does not suit

Regards

s22

s22 MAHRI

Director, APS Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

s22

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APS Bargaining

Commonwealth pay outcome & concluding APS bargaining

Good afternoon

I'm writing to advise you that following detailed consideration of the responses received on 28 September 2023 to the Commonwealth's revised offer of 4 per cent from 14 March 2024, 3.8 per cent from 13 March 2025 and 3.4 per cent from 12 March 2026, the Commonwealth is prepared to make an adjustment to the timing of the first year increase. This is the Commonwealth's final position to resolve the service-wide bargaining component of our negotiations.

Adjustment to the Commonwealth pay offer

For APS employees that reach in-principle agreement on their agency's proposed enterprise agreement on or before 14 March 2024, the Commonwealth will bring forward the Year 1 pay increase of 4 per cent by **3 months**.

This means APS employees could get a **4 per cent pay increase 3 months earlier than previously proposed**, and, if necessary, a **payment reimbursed to 21 December 2023** to recognise the new effective date.

When employees could get this payment

APS employees get this payment if they **reach in-principle agreement**. This means:

- their agency enters the '[access period](#)' or similar on or before 14 March 2024 (this is the period where employees can access and consider their agency's proposed agreement); and
- then over 50 per cent of employees who vote on their agency's proposed agreement vote yes.

After a successful yes vote on an agency's enterprise agreement APS employees will get:

- a 4 per cent pay increase; and
- a payment to cover any gap between 21 December 2023 and the date the 4 per cent increase is processed.

Each agency will give administrative effect to the outcome by way of a Determination to ensure employees receive the increase at the earliest opportunity while approval processes under the Fair Work Act are completed.

APS employees who leave their agency before the commencement of the Determination or enterprise agreement will not be eligible for any payment to cover the period from 21 December 2023.

Where an agency doesn't enter the '[access period](#)' or similar before 14 March 2024 or they don't get a yes vote to their proposed enterprise agreement, the Year 1 increase will not be payable until the first pay period starting on or after the date an agreement commences following approval by the Fair Work Commission.

In recognition of the revised pay proposal, the APSC requests that the CPSU and individual employee bargaining representatives pause protected industrial action while employees they represent consider the proposal. This is noting that unions, individual employee bargaining representatives and agencies continue to work through agency-level matters separately.

I request that you advise me of your response by 12pm Thursday 30 November 2023. The Commonwealth will then give all APS employees the opportunity to vote directly on the current APS bargaining package of pay and conditions and agency-level conditions in their agency's proposed enterprise agreement.

Yours sincerely

Peter Riordan PSM CF

Deputy Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

s47F

: www.apsc.gov.au



CONFIDENTIAL



s22

From: Booth, Damien s47F
Sent: Tuesday, 17 October 2023 4:32 PM
To: Rebecca Fawcett
Cc: Riordan, Peter; s22 Aru Tandel
Subject: RE: Statement of Common Conditions - Dispute resolution [SEC=OFFICIAL]

OFFICIAL

Thanks Rebecca, we will fix that.

Damien

From: Rebecca Fawcett <s47F>
Sent: Tuesday, 17 October 2023 3:27 PM
To: Booth, Damien s47F
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22 22 Aru Tandel
s47F
Subject: FW: Statement of Common Conditions - Dispute resolution

Hi Damien,

The dispute resolution procedure in version 3 of the draft Statement of Common Conditions contains an error in clause 7.2, where the numbering has dropped off the first subclause "the work is not safe...". The draft template EA does not contain this error.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

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From: Rebecca Fawcett
Sent: Monday, September 11, 2023 3:09 PM
To: Booth, Damien s47F
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22 s22 Aru Tandel
s47F
mon Conditions - Dispute resolution

Hi Damien,

Dispute resolution

Existing conditions

- The phrasing at clause 2 didn't come to the table. I'm not sure we'd see additional steps in the DSP as "more beneficial." The second part of the sentence should be deleted to give better effect to what was negotiated. It would read "Agencies may retain more beneficial entitlements related to dispute resolution."

Clause

- Note, just after clause 6. The second sentence would benefit from the addition of "the", so it would read: "A decision that **the** Fair Work Commission..."
- At clause 7.2, the reference to 7(a) needs to be replaced with 7.1 to reflect the renumbering.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU
s47F

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From: Booth, Damien <Damien.Booth@apsc.gov.au>
Sent: Monday, 16 October 2023 3:41 PM
To: Rebecca Fawcett
Cc: s22 s22 Aru Tandel
Subject: RE: Statement of common conditions - Employment types, job security, casual employment, non-ongoing employment [SEC=OFFICIAL]

OFFICIAL

Thanks Rebecca

We will take a look at this in the Statement.

Damien

From: Rebecca Fawcett s47F
Sent: Monday, 16 October 2023 3:31 PM
To: Booth, Damien s47F
Cc: s22 s22 Aru Tandel
s47F
Subject: RE: Statement of common conditions - Employment types, job security, casual employment, non-ongoing employment [SEC=OFFICIAL]

Hi Damien,

In version 3 of the draft Statement of Common Conditions, the “and” in the definition of IIE (casual) employee should be reinstated, because an IIE will have both of the listed characteristics. The draft template EA does not contain this error, so that clause doesn’t need correcting.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

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From: Booth, Damien s47F
Sent: Tuesday, September 12, 2023 5:25 PM
To: Rebecca Fawcett s47F
Cc: Prideaux, Jillian s22
Subject: RE: Statement of common conditions - Employment types, job security, casual employment, non-ongoing employment [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

I'm happy with both – we just missed the casuals one below. I've highlighted this and the new wording at the end of Employment Types in green for clarity. We will now work all of the below into the next iteration of the statement (in tracks).

Damien

From: Rebecca Fawcett <s47F [REDACTED]>
Sent: Tuesday, 12 September 2023 2:31 PM
To: Booth, Damien <s47F [REDACTED]>
Cc: s [REDACTED]
Subject: RE: Statement of common conditions - Employment types, job security, casual employment, non-ongoing employment [SEC=OFFICIAL]

Hi Damien,

Thanks for the prompt response on this. For ease of reference I've responded below in blue.

I think you may have left out a response on casual employment. I've suggested a slight tweak to your proposed wording on Employment Types so that agencies work with the APSC on any consistency issues.

Can you please let me know where you land on both?

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F [REDACTED]

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From: Booth, Damien <s47F [REDACTED]>
Sent: Tuesday, September 12, 2023 10:05 AM
To: Rebecca Fawcett <s47F [REDACTED]>
Cc: s22 [REDACTED]
Subject: FW: Statement of common conditions - Employment types, job security, casual employment, non-ongoing employment [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

I've added in purple below a response to your points on the below matters. Thanks for picking up the various typos...I think everything is probably all ok.....it might just be my misunderstanding on the Employment Types section – please see below...I think this is all just drafting/teething issues as we go through the process of converting slides and positions etc into the Statement format - so I would be holding off on your ballot for these - providing you agree of course. ☺

We can chat on these at the end of the parental leave discussion if that is easier.

Damien

From: Rebecca Fawcett [s47F](#)
Sent: Monday, 11 September 2023 1:48 PM
To: Booth, Damien [s47F](#)
Cc: Riordan, Peter Peter.Riordan@apsc.gov.au; [s22](#); Aru Tandel [s47F](#) >
Subject: Statement of common conditions - Employment types, job security, casual employment, non-ongoing employment

Hi Damien,

When the "Job Security" clauses were tabled in bargaining they were bundled as one clause covering employment types, job security, casual employment, and non-ongoing employment. That clause contained a drafting note which read: "Agencies with more generous conditions, including casual loading and reporting requirements, will retain these provisions." That drafting note was intended to cover all clauses.

As such, the text under the "Existing conditions" for each of the "Job Security" clauses needs to be removed, because it is inconsistent with negotiated outcomes.

1. Employment types

Statement

- The "text in green" (assuming the text in parentheses in the text box) isn't yet highlighted green.
We will fix that.

Common clause

- there is an extra "a" in the definition of "Full-time employee".
We will fix that.

Existing conditions

- Clause 3 is inconsistent with the negotiated provisions, which included "Agencies with more generous conditions, including casual loading and reporting requirements, will retain these provisions." Clause 3 should be removed so that the Statement of Common Conditions reflect negotiated outcomes.
I've reviewed the position slide on Employment Types and the most recent job security clause we tabled. I might be splitting hairs, but the above statement in yellow does apply to job security, causals and non-ongoing elements, but I'm not sure it was intended to specifically extend to Employment Types per se' which were on a separate slide which contained draft pure definitions only.

Given the proposed Employment Types clause contains definitions only, do you contemplate there being more generous definitions out there other than those agreed, which are basically legislative definitions? Are you perhaps concerned there might be more generous formulations of the definition of FT or PT definitions for example, that you might want to retain? From a commonality perspective, I think it is preferable for the definitions to be adopted universally ie universal adoption of the definition of casual would (hopefully) mean there is no ambiguity about who is a casual. Thoughts?

Let's discuss this, but if there remains a concern, perhaps we could change clause 3 in the Employment Types term to read something like "Agencies with more generous Employment Type definitions may maintain these"...thoughts?

It's definitely not our intention to move away from bargained outcomes but in drafting the statement we are balancing the introduction of policy directive language, with intent to ensure everyone is clear about what the bargained outcome was and therefore what the requirement/obligation is in each term.

I understand the value in a common definitions term, but also want to balance that against agencies with more detailed provisions that we won't have time to obtain visibility of. Can I suggest a variation to your suggestion to strike this balance:

"Agencies with more generous Employment Type definitions may maintain these, and should consult with the APSC to ensure consistency with the common term."

2. Job security

Statement

- The "text in green" (assuming the text in parentheses in the text box) isn't yet highlighted green.
We will fix that.

Existing conditions

- Clause 3 is inconsistent with the negotiated provisions, which included "Agencies with more generous conditions, including casual loading and reporting requirements, will retain these provisions." Clause 3 should be removed so that the Statement of Common Conditions reflect negotiated outcomes.
How about we change this to read in this section "Agencies with more generous job security provisions may maintain these" so it is consistent with the bargained outcome.

Agree with this approach.

3. Casual employment

Existing conditions

- We suggest rephrasing clause 2 to read: "Agencies can retain more detailed or facilitative clauses" to avoid confusion, and also, so the Statement of Common Conditions is consistent with negotiated outcomes.

Is this agreed?

Yes Agreed, we will fix that as suggested

4. Non-ongoing employment

Existing conditions

- We suggest rephrasing clause 2 to read: "Agencies can retain more detailed or facilitative clauses" to avoid confusion, and also, so the Statement of Common Conditions is consistent with negotiated outcomes.
Agreed, we will fix that as suggested

Thank you

Clause

- 2(b) should refer to clause 3, not clause 10;
- Clause 4 should refer to clause 3, not clause 10.
We will fix that.

Given the significance of job security for CPSU members, I would be grateful for the resolution of this issue by COB Tuesday, to ensure the CPSU member poll can proceed.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

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From: Rebecca Fawcett <s47F>
Sent: Monday, 16 October 2023 3:01 PM
To: Booth, Damien
Cc: Riordan, Peter; s22; Aru Tandel
Subject: RE: Statement of Common Conditions - Flexible working arrangements (including work from home)

Hi Damien,

By way of follow up, and a review of the draft Statement of Common Conditions – v3:

- Clause 8 – the track changes appear to be an error, the reference to clause 9 should be retained or the phrasing doesn't make sense. I note that the clause in the template EA is correct and doesn't need amending.
- 8.3 – there should be a colon after "matters", so the phrase reads: "state that the agency head refuses the request and include the following matters:". Clause 94.3 of the draft template EA also needs amending.

Thank you for picking up the remaining issues identified below. I note though that the changes weren't track-changed, which means we've had to check the entire clause.

Warm regards,
 Rebecca



Rebecca Fawcett | Legal Director | CPSU

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From: Rebecca Fawcett
Sent: Tuesday, September 12, 2023 9:34 AM
To: Booth, Damien; s47F
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22
Subject: Statement of Common Conditions - Flexible working arrangements (including work from home)

Hi Damien,

Flexible working arrangements (including work from home)

Agency-level bargaining

- Clause 5 and clause 6 appear to be inconsistent. Noting that agencies may bargain facilitative clauses, to avoid confusion, clause 6 should be removed.

Clause

- Clause 6. “Be” should be removed so the clause reads: “The request must:”
- 8.3. There should be colon after “matters”, not a semicolon.
- 8.3.1 should read: “details of the reasons **for the** refusal;”
- 9.1. “any” is missing from the beginning of the sentence, which should read: “**any** security and work health and safety requirements;”
- 11.6 and 22 require formatting.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

S47F

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From: Booth, Damien s47F
Sent: Wednesday, 18 October 2023 5:53 PM
To: Rebecca Fawcett
Cc: Riordan, Peter; Aru Tandel
Subject: RE: Statement of Common Conditions - Overpayments [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Yes, I've confirmed via my notes that we did indeed agree to remove the word 'financial' in the overpayments clause. We will make that correction.

Also, we can agree to the following words being added as you have suggested: "The arrangement will be documented in writing".

Damien

From: Rebecca Fawcett <s47F>
Sent: Wednesday, 18 October 2023 5:18 PM
To: Booth, Damien s47F
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; Aru Tandel s47F
Subject: Statement of Common Conditions - Overpayments

Hi Damien,

STATEMENT OF COMMON CONDITIONS – OVERPAYMENTS

Clause

1. In negotiations on 27 July, the APSC agreed to remove "financial" from clause 5, as this had been a particularly vexed issue in wide-scale overpayments issues in the Department of Home Affairs. The clause needs to be amended to reflect this negotiated outcome.
2. The ATO agreement requires recovery arrangements to be documented in writing. The CPSU proposes an amendment to reflect this requirement.

With amendments, the clause would read as follows:

The <Agency Head> and the employee will discuss a suitable recovery arrangement. A recovery arrangement will take into account the nature and amount of the debt, the employee's ~~financial~~ circumstances and any potential hardship to the employee. The arrangement will be documented in writing.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

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From: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Sent: Wednesday, 18 October 2023 3:58 PM
To: Rebecca Fawcett
Cc: Booth, Damien; Aru Tandel s22; s22
Subject: RE: Statement of Common Conditions - Remote Localities [SEC=OFFICIAL]

OFFICIAL

Good afternoon Rebecca,

Thank you for your feedback on the remote localities provision.

The intent was never to establish DAFF as a standard provision for the service. The DAFF position was only intended as an interim measure at the request of agencies that have workforces co-located with DAFF workforces that have different provisions.

Trying to establish a common remote localities provision for the service is a huge undertaking given the diverse range of existing entitlements and operational requirements. It was not possible to achieve in this round of bargaining. To address this, I have undertaken to review remote localities provisions during the life of the agreement in preparation for the next round of bargaining.

However, I also acknowledged in bargaining that it was important to allow agencies some room to bargain remote localities provisions. While the remote locality provisions in DAFF are not perfect, the position arrived at in bargaining is that these would be the parameters within which agencies may bargain. I note that the approach does allow for things outside the DAFF standard on a case by case basis- this could for example pick up where adopting the DAFF standard would create difficulties in relativities between locations currently in EAs. I am prepared to remove the reference to clause 41-43 in the Policy (exemption) as a concession to give slightly more flexibility here, and amend to note the Commission will continue to consider this 'on a case by case basis' without reference to need for exemption.

I am not in a position to allow agencies to introduce a raft of new provisions into agreements with a review on the horizon. Enshrining additional locations and entitlements in agreements will only complicate the review process and create further disparity.

The position you have suggested below extends beyond what I am prepared to agree to.

Regards

Peter

From: Rebecca Fawcett <s47F>
Sent: Saturday, 14 October 2023 12:46 PM
To: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Cc: Booth, Damien <s47F>; Aru Tandel s47F
Subject: Statement of Common Conditions - Remote Localities

Hi Peter,

As discussed, the CPSU considers that the Remote Localities section of the Statement of Common Conditions should be amended. There are a number of difficulties in establishing the arrangements in DAFF as a "standard", because there are errors in the arrangements and they aren't underpinned by any clear methodology.

The better position would be to include an amended version of the last Commonwealth position on Remote Localities, tabled prior to the negotiation on 15 August.

Commonwealth position – 15 August (with CPSU amendments)

1. The Commonwealth has considered claims relating to Remote Localities.
2. Agency arrangements are diverse having evolved to meet their needs.
3. Remote localities can be raised at Agency level bargaining in consultation with the APSC.
4. In consultation with the APSC, agencies can consider including existing conditions (currently located in IFAs, s 24(1) determinations, and policy) in the enterprise agreement, in a common format which details the relevant methodology, locations, gradings, and rates payable.
5. ~~Agencies may bargain to incorporate provisions in line with those provided by DAFF (refer to previous support documents provided).~~
6. ~~The APSC will consider changes not encompassed by Point 4, on a case by case basis.~~
7. Remote localities will be reviewed in preparation for the next round of bargaining.

Drafting Note

~~i. Regarding Point 5, refer to clauses 41-43 of the Public Sector Workplace Relations Policy 2023.~~

This would translate into the Statement of Common Conditions as follows:

Statement (no change)

1. Remote localities is referred to agency-level bargaining within parameters.
2. Remote localities will be reviewed in preparation for the next round of bargaining, with oversight of the APS-wide consultative committee.

Existing conditions (no change)

3. Agencies may retain existing conditions on remote localities.

Agency-level bargaining (remove 5 and 6, add new 5)

4. Agencies may bargain remote localities in consultation with the Commission
5. In consultation with the APSC, agencies can consider including existing conditions (currently located in IFAs, s 24(1) determinations, and policy) in the enterprise agreement, in a common format which details the relevant methodology, locations, gradings, and rates payable.

Can you please let me know your views on this.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

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From: Booth, Damien <s47F >
Sent: Tuesday, 17 October 2023 4:48 PM
To: Rebecca Fawcett
Cc: Riordan, Peter; s22 Aru Tandel
Subject: RE: Statement of Common Conditions – Classifications and Work Level Standards [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Agreed, we will replace existing Item 3 with:

“Agencies may maintain more codified or beneficial conditions related to WLS.

Thanks
Damien

From: Rebecca Fawcett <s47F >
Sent: Tuesday, 17 October 2023 4:30 PM
To: Booth, Damien s47F
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22 Aru Tandel
s47F >
Subject: Statement of Common Conditions – Classifications and Work Level Standards

Hi Damien,

STATEMENT OF COMMON CONDITIONS – CLASSIFICATIONS AND WORK LEVEL STANDARDS

Existing conditions

- Item 3 does not reflect negotiated outcomes, or the approach taken to service-wide bargaining. It should be replaced with the following:
“Agencies may retain more detailed or codified clauses on work level standards.”

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

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s22

From: Rebecca Fawcett <s47F>
Sent: Tuesday, 17 October 2023 5:46 PM
To: Booth, Damien
Cc: Riordan, Peter; s22; Aru Tandel
Subject: RE: Statement of Common Conditions – Classifications and Work Level Standards [SEC=OFFICIAL]

Thanks Damien.



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

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From: Booth, Damien <s47F>
Sent: Tuesday, October 17, 2023 4:48 PM
To: Rebecca Fawcett <s47F>
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22; Aru Tandel
<s47F>
Subject: RE: Statement of Common Conditions – Classifications and Work Level Standards [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Agreed, we will replace existing Item 3 with:

“Agencies may maintain more codified or beneficial conditions related to WLS.

Thanks
Damien

From: Rebecca Fawcett <s47F>
Sent: Tuesday, 17 October 2023 4:30 PM
To: Booth, Damien <s47F>
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22; Aru Tandel
<s47F>
Subject: Statement of Common Conditions – Classifications and Work Level Standards

Hi Damien,

STATEMENT OF COMMON CONDITIONS – CLASSIFICATIONS AND WORK LEVEL STANDARDS

Existing conditions

- Item 3 does not reflect negotiated outcomes, or the approach taken to service-wide bargaining. It should be replaced with the following:
“Agencies may retain more detailed or codified clauses on work level standards.”

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

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s22

From: Booth, Damien s47F
Sent: Tuesday, 14 November 2023 8:45 AM
To: Rebecca Fawcett
Cc: Riordan, Peter; s47F; s22
Subject: RE: Statement of Common Conditions - Closed comprehensive agreement [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

The Commonwealth does not agree to your suggestion to remove the sentence you have struck out below. We don't agree to facilitating circumstances in potential future disputes where it would be up to debate or otherwise create ambiguity around whether or not a particular policy or guideline might be incorporated as a term of the agreement. The inclusion of the words below at 3 put the issue beyond doubt that policies and guidelines do not form part of the agreement.

Kind regards
Damien

Damien Booth

Assistant Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

s47F w: www.apsc.gov.au



CONFIDENTIAL



From: Rebecca Fawcett s47F
Sent: Monday, 13 November 2023 2:36 PM
To: Booth, Damien s47F >
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s47F
Subject: Statement of Common Conditions - Closed comprehensive agreement

Hi Damien,

CLOSED COMPREHENSIVE AGREEMENT

Clause

In bargaining on 24 August the AMWU and CPSU expressed concern about the drafting of clause 3, particularly in the context of previous bargaining rounds in which employees' rights and conditions were removed from enterprise agreements and placed into policy. As a result, the APSC committed to re-examining the drafting of the clause.

Version 4 of the Statement of Common Conditions does not reflect this commitment.

The CPSU suggests the following:

Closed comprehensive agreement

1. This agreement states the terms and conditions of employment of employees covered by this agreement, other than terms and conditions applying under relevant Commonwealth laws.
2. This agreement will be supported by policies and guidelines, as implemented and varied from time to time.
3. ~~Policies and guidelines are not incorporated into and do not form part of this agreement.~~ To the extent that there is any inconsistency between policies and guidelines and the terms of this agreement, the terms of this agreement will prevail.

I would be grateful if you could advise the CPSU and the AMWU of your response.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

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s22

From: Booth, Damien s47F
Sent: Monday, 16 October 2023 4:00 PM
To: Rebecca Fawcett
Cc: Riordan, Peter; s22 Aru Tandel; s47F
Subject: RE: Statement of Common conditions - consultation and consultative committees [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca, ok thanks we will look at the reference in clause 14.

From: Rebecca Fawcett s47F
Sent: Monday, 16 October 2023 3:57 PM
To: Booth, Damien s47F
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; Prideaux, Jillian s22 Aru Tandel s47F
Subject: RE: Statement of Common conditions - consultation and consultative committees

Correction – clauses 2 and 3 appear to be fine in the template EA.



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

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From: Rebecca Fawcett s47F
Sent: Monday, October 16, 2023 3:53 PM
To: Booth, Damien s47F
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22 s22; Aru Tandel s47F
Subject: RE: Statement of Common conditions - consultation and consultative committees

Hi Damien,

Thanks for picking up this feedback from the CPSU in v3 of the draft Statement of Common Conditions. A couple of additional issues in v3:

- Clause 2 – the semi-colons at 2.1 and 2.2 are missing. This also needs to be corrected in the draft template EA;
- Clause 3 – the semi-colons at 3.1 and 3.2 are missing. This also needs to be corrected in the draft template EA; and
- Clause 14. The clause reference to 4.3 is incorrect. It should be clause 5. This also needs to be corrected in the draft template EA.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

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From: Rebecca Fawcett

Sent: Monday, September 11, 2023 10:55 AM

To: Booth, Damien <s47F>

Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22 <s22>

Subject: Statement of Common conditions - consultation and consultative committees

Good morning Damien,

Thank you for providing the draft Statement of Common conditions. Our team will work its way through the document and alert you to any issues as we come across them.

Consultation and consultative committees

We have picked up the following:

Statement

- Clause 2 should read "The Australian Public Service Commission will bargain an agreement..."
- The formatting in clause 4 needs correcting (jumps from 4.1, 4.2 to a, b, c etc)

Consultation clause

- Clause 10 should refer to clause 4.3, not clause 4(c)
- Clause 14.1.1.2 should read "for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives" (remove "their union")
- Clause 18 should refer to clause 4.5, not clause 4(e)
- Clause 20 looks like it needs reformatting.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

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s22

From: Rebecca Fawcett <s47F>
Sent: Monday, 16 October 2023 3:53 PM
To: Booth, Damien
Cc: Riordan, Peter; s22; Aru Tandel
Subject: RE: Statement of Common conditions - consultation and consultative committees

Hi Damien,

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- Clause 2 – the semi-colons at 2.1 and 2.2 are missing. This also needs to be corrected in the draft template EA;
- Clause 3 – the semi-colons at 3.1 and 3.2 are missing. This also needs to be corrected in the draft template EA; and
- Clause 14. The clause reference to 4.3 is incorrect. It should be clause 5. This also needs to be corrected in the draft template EA.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

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From: Rebecca Fawcett
Sent: Monday, September 11, 2023 10:55 AM
To: Booth, Damien <s47F>
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22; s22
Subject: Statement of Common conditions - consultation and consultative committees

Good morning Damien,

Thank you for providing the draft Statement of Common conditions. Our team will work its way through the document and alert you to any issues as we come across them.

Consultation and consultative committees

We have picked up the following:

Statement

- Clause 2 should read "The Australian Public Service Commission will bargain an agreement..."

- The formatting in clause 4 needs correcting (jumps from 4.1, 4.2 to a, b, c etc)

Consultation clause

- Clause 10 should refer to clause 4.3, not clause 4(c)
- Clause 14.1.1.2 should read “for the purposes of the discussion – provide, in writing, to employees and the relevant union(s) and/or other recognised representatives” (remove “their union”)
- Clause 18 should refer to clause 4.5, not clause 4(e)
- Clause 20 looks like it needs reformatting.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

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s22

From: Booth, Damien s47F
Sent: Tuesday, 17 October 2023 4:34 PM
To: Rebecca Fawcett
Cc: Riordan, Peter; Prideaux, Jillian; Aru Tandel
Subject: RE: Statement of Common Conditions - delegates' rights [SEC=OFFICIAL]

OFFICIAL

Thanks, we will take a look. I appreciate your eyes on these! 😊

Damien

From: Rebecca Fawcett <s47F>
Sent: Tuesday, 17 October 2023 4:04 PM
To: Booth, Damien s47F >
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22; Aru Tandel s47F
Subject: Statement of Common Conditions - delegates' rights

Hi Damien,

We haven't picked up any substantive issues in the delegates' rights clause, but there are some issues with semicolons and formatting in clause 4 and 7.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU
s47F

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s22

From: Rebecca Fawcett s47F >
Sent: Tuesday, 28 November 2023 5:56 PM
To: Riordan, Peter
Cc: Booth, Damien; s22 Aru Tandel
Subject: Statement of Common Conditions - delegations

Hi Peter,

Apologies for not picking this one up earlier. To be consistent with legislation, the Delegations clause should read:

1. **Subject to the PS Act**, the <Agency Head> may delegate to or authorise any person to perform any or all of the <Agency Head's> powers or functions under this agreement, including the power of delegation, and may do so subject to conditions.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU
s47F

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s22

From: Booth, Damien <s47F>
Sent: Wednesday, 29 November 2023 3:28 PM
To: s47F
Cc: Riordan, Peter; s47F; WRreform
Subject: FW: Statement of Common Conditions - Incremental advancement [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Apologies for missing this.

I have consulted with Peter and we agree to the first edit and will note the discretion available under the salary setting clause.

We cannot agree to providing salary progression to casuals, as that was not agreed during service-wide bargaining.

Regards
Damien

Damien Booth

Assistant Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

s47F w: www.apsc.gov.au



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Begin forwarded message:

From: Rebecca Fawcett <s47F>
Date: 28 November 2023 at 6:37:50 pm AEDT
To: "Riordan, Peter" <Peter.Riordan@apsc.gov.au>
Cc: "Booth, Damien" <s47F> s22
s22 >, Aru Tandel s47F
Subject: FW: Statement of Common Conditions - Incremental advancement

Hi Peter,

I may have missed it, but I haven't seen a response from the APSC on these issues raised with the clause Incremental advancement – fixed percentage and date of advancement, raised by the CPSU on 25 September.

I would be grateful for follow up.

Warm regards,

Rebecca Fawcett

Legal Director | LIU

s47F

From: Rebecca Fawcett
Sent: Monday, September 25, 2023 4:04 PM
To: Booth, Damien <s47F>
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22 <s22>;
Aru Tandel <s47F>
Subject: Statement of Common Conditions - Incremental advancement

Hi Damien,

INCREMENTAL ADVANCEMENT – FIXED PERCENTAGE AND DATE OF ADVANCEMENT

Existing conditions

1. There is an interaction between incremental progression and salary setting clauses. The CPSU suggests that clause 2 is amended to read: "Agencies are to retain existing fixed percentages and dates of incremental advancement, subject to the discretion available to the agency head under the salary setting clause."

INCREMENTAL ADVANCEMENT – ALL ASPECTS OTHER THAN FIXED PERCENTAGE AND DATE OF ADVANCEMENT

Statement

2. To reflect the outcome of negotiations, and for clarity, an additional sentence should be added at clause 1, to the effect of "Where an existing clause is inconsistent with the principles and detrimental to employees, agencies are to negotiate clauses which are consistent with the below principles."

Existing conditions

3. Clause 2 should be amended for clarity, to read: "Agencies may retain more beneficial entitlements related to all aspects of incremental advancement", noting that Incremental advancement – fixed percentage and date of advancement – Existing conditions – clause 2, mandates that agencies retain existing fixed percentages and date of advancement.

Clause

4. Clause 1 – Typo, replace "roles" with "rules".
5. In negotiations on 15 August 2023, the APSC agreed that clause 3(b) of the slides would be amended so that casual employees have access to incremental progression. Clauses 4 and 6 are inconsistent with this negotiated outcome. Clause 4.2 should be amended to read "Service while employed on a non-ongoing or casual basis." Clause 6 should be removed.

Warm regards,



Rebecca Fawcett | Legal Director | CPSU

s47F

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Do you accept the APS-wide pay & conditions package on offer?



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s22

From: Rebecca Fawcett s47F
Sent: Tuesday, 28 November 2023 6:37 PM
To: Riordan, Peter
Cc: Booth, Damien s22; Aru Tandel
Subject: FW: Statement of Common Conditions - Incremental advancement

Hi Peter,

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I would be grateful for follow up.

Warm regards,

Rebecca Fawcett
Legal Director | LIU

s47F

From: Rebecca Fawcett
Sent: Monday, September 25, 2023 4:04 PM
To: Booth, Damien s47F
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s22 s22; Aru Tandel
<s47F>
Subject: Statement of Common Conditions - Incremental advancement

Hi Damien,

INCREMENTAL ADVANCEMENT – FIXED PERCENTAGE AND DATE OF ADVANCEMENT

Existing conditions

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INCREMENTAL ADVANCEMENT – ALL ASPECTS OTHER THAN FIXED PERCENTAGE AND DATE OF ADVANCEMENT

Statement

- To reflect the outcome of negotiations, and for clarity, an additional sentence should be added at clause 1, to the effect of "Where an existing clause is inconsistent with the principles and detrimental to employees, agencies are to negotiate clauses which are consistent with the below principles."

Existing conditions

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Clause

- Clause 1 – Typo, replace "roles" with "rules".

- In negotiations on 15 August 2023, the APSC agreed that clause 3(b) of the slides would be amended so that casual employees have access to incremental progression. Clauses 4 and 6 are inconsistent with this negotiated outcome. Clause 4.2 should be amended to read "Service while employed on a non-ongoing or casual basis." Clause 6 should be removed.

Warm regards,

Rebecca



Rebecca Fawcett | Legal Director | CPSU
 s47F [Redacted]

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CPSU MEMBERS: IT'S TIME TO DECIDE.

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s22

From: Rebecca Fawcett <s47F>
Sent: Friday, 24 November 2023 12:19 PM
To: Booth, Damien; Aru Tandel
Subject: Re: Draft Statement of Common Conditions and draft Template EA - Feedback [SEC=OFFICIAL]

Great, thanks for the heads up Damien



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

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From: Booth, Damien <s47F>
Sent: Friday, November 24, 2023 12:18:11 PM
To: Aru Tandel <s47F>
Cc: Rebecca Fawcett <s47F>
Subject: RE: Draft Statement of Common Conditions and draft Template EA - Feedback [SEC=OFFICIAL]

OFFICIAL

Hi Aru...and Rebecca

Thanks, yes we are doing well...it has been a crazy week for us all. I hope you are both holding in there too! 😊

Thanks for the below comments. We will take a look through these now and come back if we have questions.

Also, I wanted to give you a heads up that we will shortly (today) be sending out Version 5 of the Statement to all bargaining parties. We will be communicating that the Statement is largely settled/close to final, but we will be clear in identifying where V5 has changed from V4.

We will be calling for comments on the amended sections in V5 by Noon next Wednesday (29/11). Please look out for that email.

Regards
Damien

Damien Booth

Assistant Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

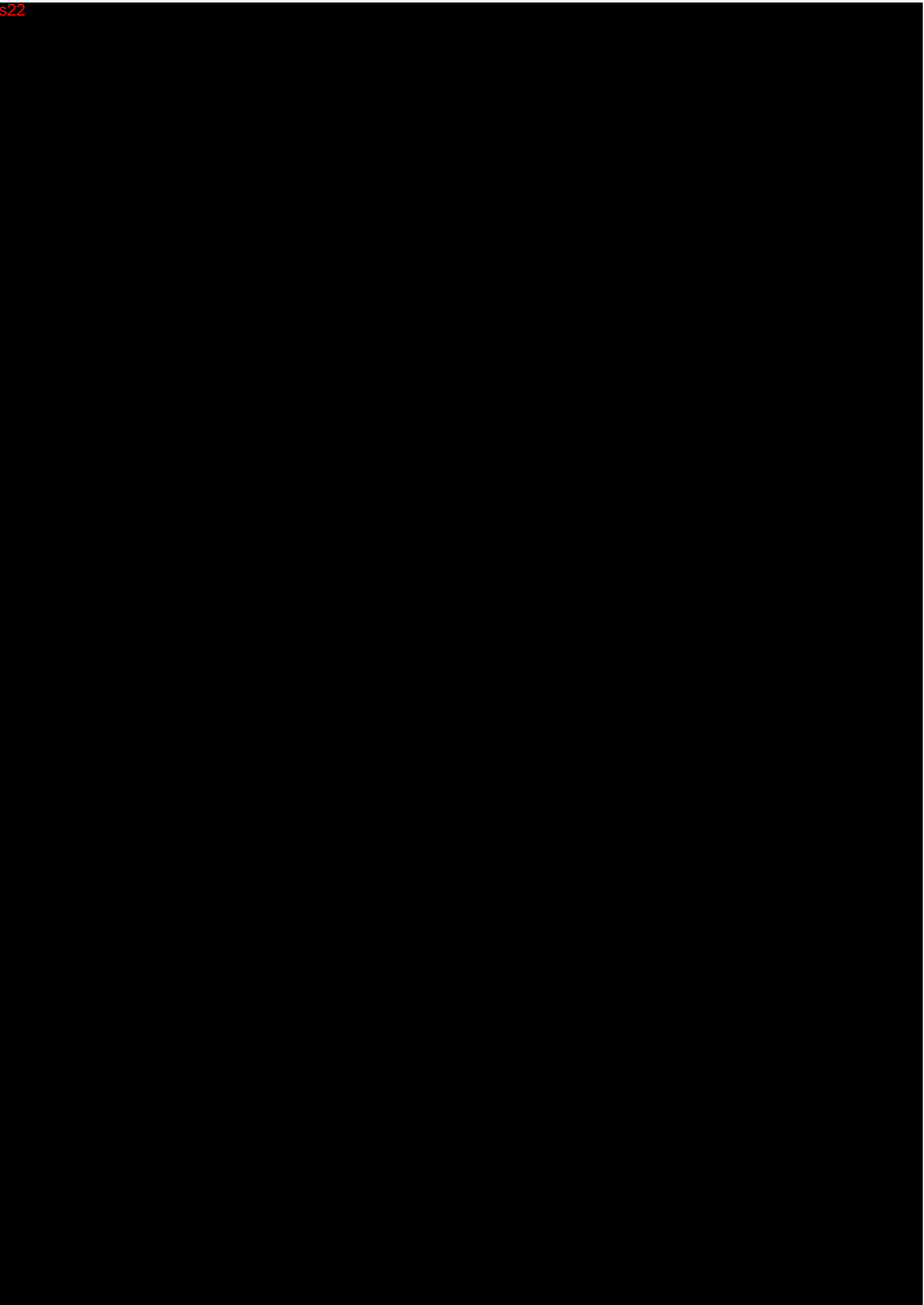
t: s47F w: www.apsc.gov.au



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s22



s22

From: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Sent: Thursday, 5 October 2023 8:56 AM
To: Rebecca Fawcett
Subject: RE: Matter B2023/1031 - Proposed correspondence to the FWC [SEC=OFFICIAL]

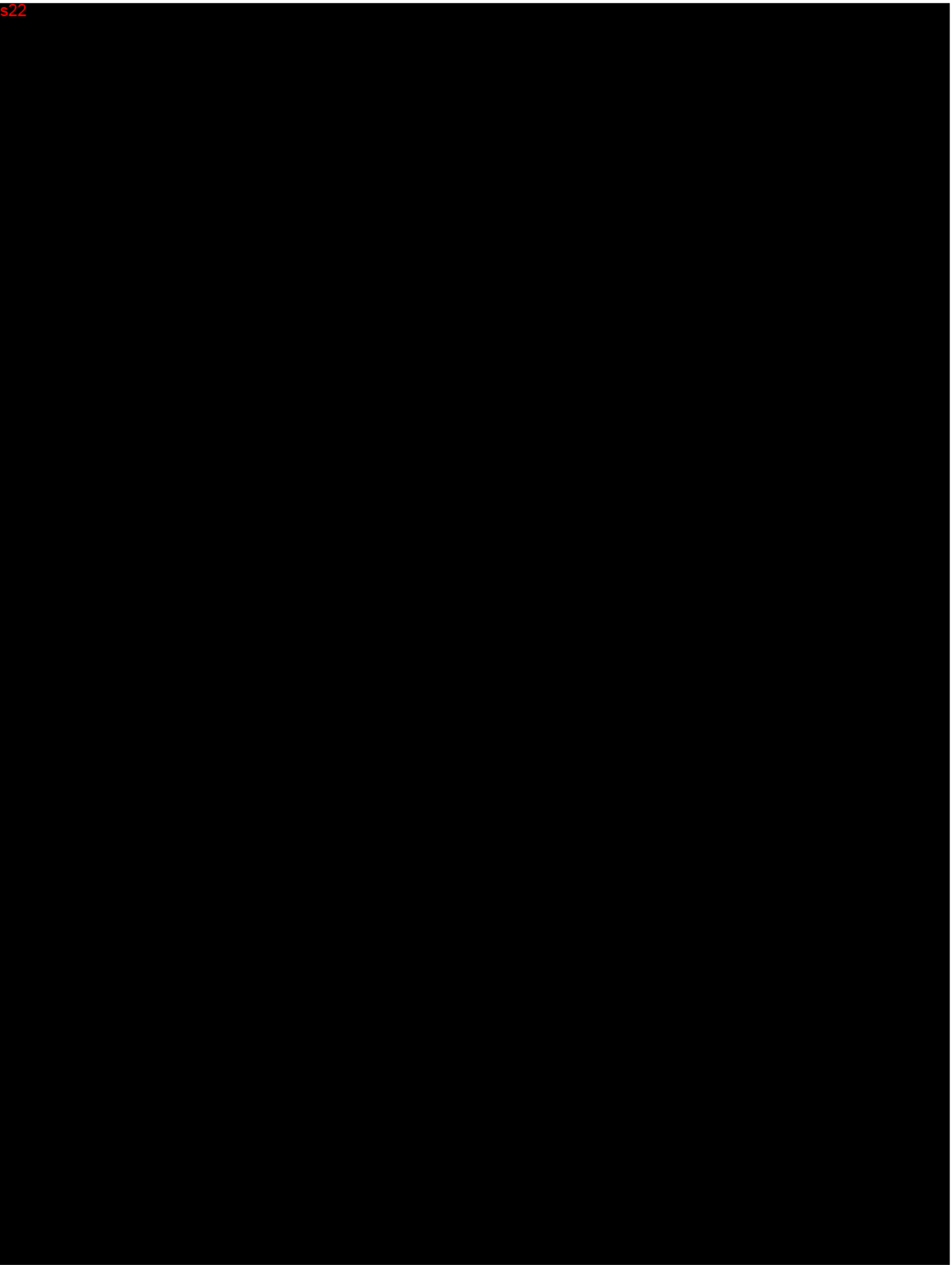
OFFICIAL

Thanks Rebecca, I support your proposed approach.

Regards

Peter

s22



s22

From: Booth, Damien s47F
Sent: Wednesday, 29 November 2023 3:08 PM
To: Rebecca Fawcett; Riordan, Peter
Cc: Aru Tandel; s22
Subject: RE: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

OFFICIAL

Hi all...clarifying we had no concerns with the below in green. I think Jill said she was ok? s22

Damien

From: Rebecca Fawcett <s47F>
Sent: Wednesday, 29 November 2023 11:06 AM
To: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Cc: Booth, Damien s47F; Aru Tandel s47F; s22
Subject: FW: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

Good morning Peter,

Please see the exchange below. On 20 October, the APSC agreed to incorporate the following into the drafting note:

Agencies are not to retain existing clauses on superannuation, with the exception of those clauses relating to payment of superannuation contributions on periods of unpaid parental leave or more beneficial entitlements.

Unfortunately this is not reflected in version 5, with the highlighted section omitted.

Can you please address this in the final version of the Statement of Common Conditions. To retain the specific example now included at clause 4, the clause might be worded as follows:

Agencies are not to retain existing clauses on superannuation, with the exception of those clauses relating to payment of superannuation contributions on periods of unpaid parental leave or more beneficial entitlements, which includes existing clauses providing for superannuation to be calculated on a higher salary rate.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

Member Service Centre: 1300 137 636 | cpsu.org.au

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From: Riordan, Peter <Peter.Riordan@apsc.gov.au>

Sent: Friday, October 20, 2023 12:42 PM

To: Rebecca Fawcett <s47F>

Cc: Booth, Damien <s47F>; Aru Tandel <s47F>; <s22>

Subject: RE: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Thank you for these three comments on superannuation which we've addressed below.

Issue 1 – payment on periods of unpaid parental leave

We are unable to accept this suggestion.

Where an agency currently uses the OTE methodology and pays employer superannuation contributions during periods of unpaid leave it is necessary to stipulate the basis for the payment. This is because the employee's Ordinary Time Earnings are technically zero. For this reason, it is the Commonwealth's position that the clause should stipulate the payment will be calculated on the 'employee's nominal base salary' since this figure is known and stable.

We note your preference for the terminology 'as if they had been at work', but we are unable to agree to this wording where an agency does not already have it. This alternate wording is less clear and requires the agency to determine what an employee's earnings would have been, had they been at work, and then to make superannuation payments on that basis. The nature of shift penalties, field allowances, and other temporary allowances is that they regularly vary – unlike 'base salary' which is clear and stable. It would therefore be difficult for agencies to calculate with accuracy the earnings an employee 'would have received' and this ambiguity risks underpayments. For this reason, any agency with the 'as if they had been at work' wording will be able to retain it, but for the purpose of our common clause we prefer to maintain the clearer 'base salary' drafting.

Issue 2 – Drafting note in the Statement of Common Conditions

We will amend the drafting note as below:

Agencies are not to retain existing clauses on superannuation, with the exception of those clauses relating to payment of superannuation contributions on periods of unpaid parental leave or more beneficial entitlements.

Issue 3 – minor drafting matters

We will accept both of these minor drafting suggestions.

Regards

Peter

From: Rebecca Fawcett <s47F>
Sent: Wednesday, 18 October 2023 10:44 AM
To: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Cc: Booth, Damien <s47F>; Aru Tandel <s47F>
Subject: RE: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

Hi Peter,

Issue 1 – payment on periods of unpaid parental leave

The CPSU seeks an amendment to the superannuation clause, so that it does not represent a reduction for employees currently receiving superannuation contributions on period of unpaid parental leave, where the method of calculation is OTE.

Option B: For agencies using OTE - and already contributing during unpaid parental leave

Clause 5 currently reads:

Employer contributions will be paid on periods of unpaid parental leave at the employee's nominal base salary for periods of leave up to a maximum of 52 weeks.

It should be replaced with:

Employer contributions will be paid on periods of unpaid parental leave, as if they had been at work, for periods of leave up to a maximum of 52 weeks.

This amended wording is based on clause 21.3 *ATO Agreement 2017*, and is necessary to ensure that women who are shift workers who already tend to be lower paid don't suffer further disadvantage in their earnings.

Issue 2 – Drafting note in the Statement of Common Conditions

Existing conditions

This phrasing should be amended to reduce the inadvertent loss of conditions.

Amended wording:

Agencies are not to retain existing clauses on superannuation, with the exception of those clauses relating to payment of superannuation contributions on periods of unpaid parental-leave, or existing clauses providing for superannuation to be calculated on a higher salary rate. Agencies with more beneficial or codified superannuation provisions may retain them, subject to consultation with the APSC and the relevant union(s).

Issue 3 – minor drafting matters

- Option C – For agencies using both FCS and OTE, clause 2: the meaning of the clause would be clearer with a comma after “(PSSap)”.
- Clause 6 currently sits under “Payment during unpaid parental leave” but is unrelated. It would benefit from its own heading, e.g. “Eligible funds”.

I would be grateful if you or your team could come back to the CPSU on these issues.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

Member Service Centre: 1300 137 636 | cpsu.org.au

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From: Riordan, Peter <Peter.Riordan@apsc.gov.au>

Sent: Friday, October 6, 2023 2:43 PM

To: Rebecca Fawcett s47F; Aru Tandel <s47F>; Booth, Damien s47F

Subject: FW: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Thank you for these comments on the superannuation clause.

Agreed.

We have adopted comments two and three via tracked changes in the attached revision. These comments concerned the expression of clause 3 and being silent on superannuation payments during periods of unpaid parental leave.

Not agreed.

We cannot agree to the proposal of requiring the standard choice form to be provided and completed within 14 days. We have considered this matter closely and consulted with the Departments of Treasury and Finance. The process for providing standard choice forms and considering stapled or default funds is provided for by legislation including a 28 day time frame. Shortening this timeframe to 14 days would impose a potential additional administrative burden.

Regards

Peter

From: Rebecca Fawcett s47F >

Sent: Thursday, 5 October 2023 2:39 PM

To: Booth, Damien <s47F>

Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>; s47F

Subject: RE: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

Hi Damien,

Thank you for sending this through. There are a small number of issues to work through.

1. In our discussion on 21 September, the APSC undertook to draft a simplified version of the CPSU's clause dealing with stapled funds, which would require the employer to provide employees with the choice form on engagement (rather than within 28 days), with the employer paying the stapled fund/PSSap as the default fund if the employee doesn't return the form within 14 days. We are keen to resolve this aspect of our claim.
 2. Clause 3 deals with two distinct issues, and should be broken into separate clauses to avoid ambiguity, as follows:
 3. *Employer contributions will be made for all employees covered by this agreement.*
 4. *Employer contributions will not be reduced by any other contributions made through salary sacrifice arrangements.*
3. We would like "Option C" to be removed. Where option C is the status quo, the enterprise agreement tends to be silent rather than explicitly prohibiting the payment of superannuation on unpaid parental leave. Given this is an area that may be subject to change and further negotiation in the coming years, the CPSU considers that it would be unhelpful to lock this position into enterprise agreements.

Warm regards,
Rebecca

Rebecca Fawcett | Legal Director | CPSU

s47F

Member Service Centre: 1300 137 636 | cpsu.org.au

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From: Booth, Damien <s47F>
Sent: Wednesday, October 4, 2023 4:31 PM
To: Rebecca Fawcett <s47F>
Cc: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Subject: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Please see the attached revised superannuation clause for comment following our recent discussion. Please let us know if you have concerns with the revised drafting. Subject to that, we intend to move this into the Statement shortly.

Damien

Damien Booth
A/g Assistant Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

s47F

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s22

From: Booth, Damien s47F
Sent: Wednesday, 29 November 2023 3:37 PM
To: Rebecca Fawcett; Riordan, Peter
Cc: Aru Tandel; s22
Subject: RE: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Confirming that we are happy with the revised sentence below that I have highlighted in green. This will go into the Statement before finalisation.

Damien

From: Rebecca Fawcett <s47F>
Sent: Wednesday, 29 November 2023 11:06 AM
To: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Cc: Booth, Damien s47F; Aru Tandel <s47F> s22
Subject: FW: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

Good morning Peter,

Please see the exchange below. On 20 October, the APSC agreed to incorporate the following into the drafting note:

Agencies are not to retain existing clauses on superannuation, with the exception of those clauses relating to payment of superannuation contributions on periods of unpaid parental leave or more beneficial entitlements.

Unfortunately this is not reflected in version 5, with the highlighted section omitted.

Can you please address this in the final version of the Statement of Common Conditions. To retain the specific example now included at clause 4, the clause might be worded as follows:

Agencies are not to retain existing clauses on superannuation, with the exception of those clauses relating to payment of superannuation contributions on periods of unpaid parental leave or more beneficial entitlements, which includes existing clauses providing for superannuation to be calculated on a higher salary rate.

Warm regards,
 Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

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From: Riordan, Peter <Peter.Riordan@apsc.gov.au>

Sent: Friday, October 20, 2023 12:42 PM

To: Rebecca Fawcett <s47F>

Cc: Booth, Damien <s47F>; Aru Tandel <s47F>; s22

Subject: RE: [FOR REVIEW] Superannuation clause [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Thank you for these three comments on superannuation which we've addressed below.

Issue 1 – payment on periods of unpaid parental leave

We are unable to accept this suggestion.

Where an agency currently uses the OTE methodology and pays employer superannuation contributions during periods of unpaid leave it is necessary to stipulate the basis for the payment. This is because the employee's Ordinary Time Earnings are technically zero. For this reason, it is the Commonwealth's position that the clause should stipulate the payment will be calculated on the 'employee's nominal base salary' since this figure is known and stable.

We note your preference for the terminology 'as if they had been at work', but we are unable to agree to this wording where an agency does not already have it. This alternate wording is less clear and requires the agency to determine what an employee's earnings would have been, had they been at work, and then to make superannuation payments on that basis. The nature of shift penalties, field allowances, and other temporary allowances is that they regularly vary – unlike 'base salary' which is clear and stable. It would therefore be difficult for agencies to calculate with accuracy the earnings an employee 'would have received' and this ambiguity risks underpayments. For this reason, any agency with the 'as if they had been at work' wording will be able to retain it, but for the purpose of our common clause we prefer to maintain the clearer 'base salary' drafting.

Issue 2 – Drafting note in the Statement of Common Conditions

We will amend the drafting note as below:

Agencies are not to retain existing clauses on superannuation, with the exception of those clauses relating to payment of superannuation contributions on periods of unpaid parental leave or more beneficial entitlements.

Issue 3 – minor drafting matters

We will accept both of these minor drafting suggestions.

Regards

Peter

s22

From: s22
Sent: Wednesday, 29 November 2023 11:23 AM
To: Rebecca Fawcett
Subject: RE: [IN CONFIDENCE] Email to bargaining parties | Commencement provisions and one-off payment [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Thanks. Here is the final drafting.

Drafting explanation

4. The common salary increase clause provides that the applicable rates are those set out in Attachment the agreement. An employee's entitlement to a particular rate of pay is therefore the value in the appl column of Attachment A.
5. The pay increase percentages in point 2 of the common clause are **descriptive** rather than directly con the entitlement.
6. The default effect of this drafting is that **Column 3** of Attachment A lists the current salary rates as at 3 August 2023 and **Column 4** provides the rates inclusive of the Year 1 pay increase of 4 per cent, and an applicable pay fragmentation uplift.
7. The higher rate in **Column 4** will apply from commencement of the agreement, or from 14 March 2024 the agreement commences prior to that date. All enterprise agreement will reflect this drafting.
8. Where agencies have commenced an access period leading to a successful ballot by 14 March 2024, th make a supplementary determination to provide an additional one-off payment and give effect to the 14 March 2024 date prior to the commencement of the agreement.

s22

s22

MAHRI

Director, APS Workplace Relations Bargaining Taskforce

Australian Public Service Commission

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 GPO Box 3176 CANBERRA ACT 2601

s47F

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From: Rebecca Fawcett s47F
Sent: Wednesday, 29 November 2023 10:51 AM
To: s22
Subject: RE: [IN CONFIDENCE] Email to bargaining parties | Commencement provisions and one-off payment [SEC=OFFICIAL]

Hi s22

Thanks for sending this through, much appreciated.

I wonder if the wording at 8 might be brought into line with the phrasing at 2, for consistency and clarity? Also "some agencies" suggests exception rather than the most likely scenario, so a suggested change of phrasing there also.

Suggest the following:

All enterprise agreements will adopt this drafting to provide the Year 1 pay increase from 14 March 2024, or from commencement of the agreement where agencies have not commenced an access period leading to a successful ballot by that date. Where applicable, agencies will make a supplementary determination to provide an additional one-off payment and lock-in the 14 March 2024 date.

Warm regards,

Rebecca Fawcett

Legal Director | LIU

s47F

From: s22
Sent: Wednesday, November 29, 2023 10:34 AM
To: Rebecca Fawcett s47F
Subject: RE: [IN CONFIDENCE] Email to bargaining parties | Commencement provisions and one-off payment [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

We have made the proposed tracked changes to paragraph 8 of the **attached** explanation of the salary increase clause.

We intend to send this to all bargaining parties at noon today. I'll send you a revised copy of the Statement soon.

s22

s22 MAHRI

Director, APS Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
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s22

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From: s22
Sent: Tuesday, 28 November 2023 8:36 PM
To: Rebecca Fawcett <s47F>
Subject: [IN CONFIDENCE] Email to bargaining parties | Commencement provisions and one-off payment [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

I'm writing to provide some draft advice in-confidence and without prejudice.

The below email and attached documents are intended to be sent to bargaining parties tomorrow, Wednesday 29 November 2023.

Regards

s22

MAHRI

Director, APS Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

s22

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APS Bargaining

Commencement provisions and one-off payment

Good morning

I am writing to provide further information about the proposed enterprise agreement **commencement provisions** and some extra detail about the proposed **administration of the one-off payment**.

Agreement commencement provision

1. On **Friday 24 November 2023** we provided a fifth draft version of the Statement of Common Conditions, including details of the Commonwealth's final pay offer.
2. This draft also proposed that enterprise agreements would commence from the **later of** 7 days after approval by the Fair Work Commission or **14 March 2024**.
3. In response to feedback received from bargaining parties, the Commonwealth has agreed to **amend** this proposal to allow enterprise agreements to **commence prior to 14 March 2024**, where approved by the Fair Work Commission.
4. Increases to base salaries will still not become effective prior to 14 March 2024, and agencies may still specify a later date for operational reasons, but this change means **conditions may commence sooner**.

Details about the proposed administration of the one-off payment

5. On **Thursday 23 November 2023** the Commonwealth announced its final pay offer, including of a **one-off payment** with certain eligibility criteria.
6. The **attached** explanatory material describes how the one-off payment will operate, and reflects that agreements may commence **before or after 14 March 2024**.
7. Also **attached** are answers which were provided in response to questions from the Australian Services Union, Tax Officers Branch, at the ATO.

Kind Regards

Damien

Damien Booth
Assistant Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

e: WRreform@apsc.gov.au w: www.apsc.gov.au



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s22

From: Rebecca Fawcett <s47F>
Sent: Wednesday, 29 November 2023 2:34 PM
To: s22
Subject: RE: [IN CONFIDENCE] Email to bargaining parties | Commencement provisions and one-off payment [SEC=OFFICIAL]

Hi s22

Thanks for sending this through.

One suggested change. In my view clause 6 needs amendment so that it is consistent with 8.2.

6. The year 1 pay increase, and any applicable pay fragmentation uplifts, will apply from the later of commencement of the agreement or 14 March 2024. All enterprise agreements are required to reflect this drafting.

Warm regards,

Rebecca

Rebecca Fawcett
Legal Director | LIU
s47F

From: s22 >
Sent: Wednesday, November 29, 2023 2:06 PM
To: Rebecca Fawcett s47F
Subject: RE: [IN CONFIDENCE] Email to bargaining parties | Commencement provisions and one-off payment [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Here is an updated excerpt of the *Statement* clauses relating to salary increases.

With apologies, I need to request any feedback by 3pm today.

Regards
s22

s22 MAHRI
Director, APS Workplace Relations Bargaining Taskforce

Australian Public Service Commission
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From: Rebecca Fawcett <s47F>
Sent: Wednesday, 29 November 2023 11:27 AM
To: s22
Subject: RE: [IN CONFIDENCE] Email to bargaining parties | Commencement provisions and one-off payment [SEC=OFFICIAL]

Nice, thanks s22

Rebecca Fawcett
Legal Director | LIU

s47F

From: s22
Sent: Wednesday, November 29, 2023 11:23 AM
To: Rebecca Fawcett <s47F>
Subject: RE: [IN CONFIDENCE] Email to bargaining parties | Commencement provisions and one-off payment [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

Thanks. Here is the final drafting.

Drafting explanation

4. The common salary increase clause provides that the applicable rates are those set out in Attachment the agreement. An employee's entitlement to a particular rate of pay is therefore the value in the appl column of Attachment A.
5. The pay increase percentages in point 2 of the common clause are **descriptive** rather than directly con the entitlement.
6. The default effect of this drafting is that **Column 3** of Attachment A lists the current salary rates as at 3 August 2023 and **Column 4** provides the rates inclusive of the Year 1 pay increase of 4 per cent, and an applicable pay fragmentation uplift.
7. The higher rate in **Column 4** will apply from commencement of the agreement, or from 14 March 2024 the agreement commences prior to that date. All enterprise agreement will reflect this drafting.
8. Where agencies have commenced an access period leading to a successful ballot by 14 March 2024, th make a supplementary determination to provide an additional one-off payment and give effect to the 14 March 2024 date prior to the commencement of the agreement.

s22

s22

MAHRI

Director, APS Workplace Relations Bargaining Taskforce

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s22

s22

From: Rebecca Fawcett <s47F>
Sent: Thursday, 14 December 2023 11:56 AM
To: Riordan, Peter
Subject: RE: One-off payment examples [SEC=OFFICIAL]

Thanks for sharing this, Peter. The examples look very helpful.

Rebecca Fawcett
 Legal Director | LIU

s47F

From: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Sent: Thursday, December 14, 2023 11:51 AM
To: Rebecca Fawcett <s47F>
Subject: One-off payment examples [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca, I would be interested in your thoughts on the text below. We would send out to clarify the use of agency discretion.

Regards

Peter

The intent of the one-off payment is to provide effect to the headline pay increase to base salaries for the period 21st December 2023 to 14th March 2024. A reference date is chosen to provide an indication of an employee's base salary. The Agency Head has discretion to change the payment amount if the reference date does not reflect the employee's usual salary over this period. The following examples show circumstances where an agency head may choose to exercise discretion to adjust the payment an employee would receive.

Example 1

Dhruv is acting for his supervisor who is on parental leave for 12 months. His acting finishes at the beginning of March, the day before the reference period for his agency. The Agency Head recognises that he was acting for most of the period covered by the one off payment, and if his acting had continued for an extra day his payment would have reflected the increased salary. The Agency may exercise their discretion to provide Dhruv with a higher one off payment reflecting the duties he was performing and salary he was receiving for the majority of the period.

Example 2

Due to a personal illness Nhi is on personal leave without pay on the reference date. The Agency Head might use discretion to provide Nhi with the one-off payment equal to 0.92% of her usual salary.

Example 3

Kevin chooses to adopt part-time work over the school holidays to spend more time with his family, so is counted as a part-time employee on the reference date. The Agency Head might use discretion to account for the fact that Kevin works full-time for most of the period, and adjust his one off payment to reflect this.

Example 4

Jacqui is caring for a relative with an illness and agrees with her manager to perform duties at a lower classification for a few weeks covering the reference date for her agency. The Agency Head may consider that her classification

and salary on this date is not reflective of her normal duties and salary over the period and exercise discretion to provide her a one off payment matching 0.92% of her usual salary.

Example 5

Alex is on leave at half pay for two weeks covering the reference period for their agency. The Agency Head may exercise their discretion to provide the one off payment to Alex as 0.92% of their salary as if they were on full pay instead of half pay, as this better reflects the salary Alex would be earning over the period.

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s22

From: WRreform <WRreform@apsc.gov.au>
Sent: Thursday, 30 November 2023 2:53 PM
To: s47F
Cc: Riordan, Peter
Subject: RE: Revised position on pay [SEC=OFFICIAL]

OFFICIAL

Dear Rebecca

Thank you for your email indicating your support for the revised Commonwealth pay offer.

I sincerely appreciate you taking the time to share your views with the Taskforce and myself.

I am pleased to advise following careful consideration of all responses received, I confirm that the pay offer is now final. I have decided to release the Statement of Common Conditions and have sought approval from the APS Commissioner to do so. The release will conclude APS-wide bargaining.

Once again, thank you for your engagement and please get in touch with the Taskforce if you have any questions or concerns.

Kind regards,
Peter

Peter Riordan PSM CF

Deputy Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

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CONFIDENTIAL



From: Rebecca Fawcett <s47F>
Sent: Thursday, 30 November 2023 1:55 PM
To: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Cc: Booth, Damien s47E>; Aru Tandel s47F
Subject: Revised position on pay

Dear Peter,

The CPSU conducted a poll of its membership on the revised pay proposal put to bargaining representatives on 23 November 2023. More than 16,000 CPSU members participated, with 67.5% voting in support.

On that basis, the CPSU accepts the Part A proposal. I note that that there are various Part B matters yet to be resolved, which we are working through at an agency-level.

Regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

Member Service Centre: 1300 137 636 | cpsu.org.au

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s22

From: Booth, Damien <s47F>
Sent: Monday, 9 October 2023 2:37 PM
To: Rebecca Fawcett; Riordan, Peter
Cc: Aru Tandel
Subject: RE: TOIL Guidance Material [SEC=OFFICIAL]

OFFICIAL

Hi Rebecca

We have considered your request below and I'm advising that we will not be issuing any revised guidance to agencies.

With respect, your below suggested edits are a misrepresentation of the bargained outcome on this matter. As you know, the bargained outcome was deliberate in leaving the amount of TOIL available as a matter for individual employees and supervisors to agree on. The clause then stipulates that any TOIL accrued under any arrangement agreed between employee/supervisor will be granted. The bargained outcome does not include an automatic right to 1:1 TOIL, nor was there any discussion in bargaining about supervisors being required to exercise caution in granting TOIL in the manner you have suggested in your edits below.

Kind regards
Damien

Damien Booth

A/g Assistant Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

s47F w: www.apsc.gov.au



CONFIDENTIAL



From: Rebecca Fawcett <s47F>
Sent: Saturday, 7 October 2023 11:44 AM
To: Booth, Damien <s47F>; Riordan, Peter <Peter.Riordan@apsc.gov.au>
Cc: Aru Tandel <s47F>
Subject: RE: TOIL Guidance Material [SEC=OFFICIAL]

Hi Damien,

Thanks for sending this through.

The CPSU considers the advice provided by the APSC to ALN is inconsistent with the negotiated clause, which provides no basis for a supervisor to discount the TOIL provided for additional hours worked. This advice is concerning, because the EL TOIL clause reflects compromise on both sides, and has been carefully explained to CPSU members in detailed briefings on the conditions package.

The CPSU requests that the APSC provide ALN with a clarification to accurately reflect the negotiated outcome. Please see amendments to the APSC's advice below.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

Member Service Centre: 1300 137 636 | cpsu.org.au

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s22

From: Rebecca Fawcett s47F
Sent: Thursday, 30 November 2023 3:15 PM
To: Riordan, Peter
Cc: Booth, Damien; s22 Aru Tandel; s47F
Subject: Responses on cultural competency and delegations
Attachments: Statement of Common Conditions - delegations (94.6 KB); Statement of Common Conditions - v 5 (Operation of the agreement, Common... (93.9 KB)

Dear Peter,

There seem to be two items the CPSU raised with the APSC in relation to version 5 of the draft Statement of Common Conditions have been overlooked. Please see the attached correspondence for reference. They include:

1. Delegations
2. Cultural competency training

I would be grateful if your team could review this correspondence and respond to the CPSU.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

Member Service Centre: 1300 137 636 | cpsu.org.au

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s22

From: Rebecca Fawcett <s47F>
Sent: Wednesday, 11 October 2023 4:27 PM
To: Riordan, Peter
Cc: Booth, Damien; Aru Tandel
Subject: Review of the draft Statement of Common Conditions

Dear Peter,

The CPSU has been making progress providing feedback on the draft Statement of Common Conditions, to ensure that the drafting reflects negotiated outcomes. We're working through the lists below, including provisions yet to be reviewed, and new clauses recently tabled. We will also need an opportunity to review amendments to the Statement of Common Conditions, and any revised drafts with clauses that are not yet included.

We are working as quickly as we can on this significant body of work. We intend to review all clauses, and I trust you understand our interest in making sure this document reflects the best outcomes possible.

1. Provisions reviewed by the CPSU

The CPSU has so far reviewed the following drafting. Where feedback has been provided on the substance of the clause, generally this includes wording that did not reflect negotiated outcomes. Errors refer to typographical, numbering, and phrasing errors.

- a. Parties – feedback on substance of clause provided.
- b. Delegations - feedback on substance of the clause provided; errors found.
- c. NES precedence - errors found.
- d. IFAs - errors found.
- e. Salary setting - feedback on substance of the clause provided.
- f. Incremental progression - feedback on substance of the clause provided; errors found.
- g. Supported Wage System - feedback on substance of the clause provided.
- h. Higher duties - feedback on substance of the clause provided.
- i. Workplace Responsibility Allowances - feedback on substance of the clause provided.
- j. Employment types - feedback provided to the APSC.
- k. Job security - errors found.
- l. Casual employment - errors found.
- m. Non ongoing employment - errors found.
- n. EL TOIL – no issues identified.
- o. Flexible work and WFH – errors found.

- p. Part time work - feedback on substance of the clause provided; errors found.
- q. Annual leave - no issues identified.
- r. PCL - no issues identified.
- s. Respect at Work - feedback on substance of the clause provided.
- t. Family and domestic violence support - errors found.
- u. Integrity and transparency - errors found.
- v. Workloads - errors found.
- w. Relocation assistance - no issues identified.
- x. Consultation - errors found.
- y. Dispute resolution - feedback on substance of the clause provided; errors found.
- z. Public holidays - feedback on substance of the clause provided.
- aa. Bereavement and compassionate leave – no issues identified.
- bb. Lactation and breastfeeding support - feedback on substance of the clause provided.

The CPSU has not yet had an opportunity to examine whether all errors have been corrected by the APSC. The CPSU will need to undertake this work.

2. Provisions not yet reviewed by the CPSU

The CPSU is still reviewing the following provisions, which we endeavour to respond to the APSC on as soon as possible.

- a. Operation of the agreement
- b. Closed comprehensive agreement
- c. Superannuation
- d. Overpayments
- e. Classifications and WLS
- f. Working hours - span of hours
- g. Annual leave - excess leave
- h. Portability of leave
- i. Emergency response leave
- j. Jury duty
- k. Defence reservist leave
- l. Defence service sick leave
- m. Witness leave
- n. Blood donation
- o. Vaccinations
- p. EAP
- q. First Nations employment
- r. Disaster support
- s. Delegates' rights
- t. Resignation

3. Not yet in the Statement of Common Conditions (22 September)

- a. Definitions
- b. Commonwealth pay increase
- c. Pay fragmentation mechanism
- d. Superannuation
- e. Community Language Allowance
- f. Working Hours – Standard Span of Hours
- g. Public Holidays
- h. Annual Leave – Excess Leave
- i. Parental leave

4. New clauses tabled by the APSC

The APSC has tabled a number of new clauses that the CPSU bargaining team needs to consider and respond to.

- a. Definitions
- b. Operation of the agreement
- c. Pay fragmentation mechanism
- d. Payment of salary
- e. Remote localities

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

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s22

From: Rebecca Fawcett s47F
Sent: Thursday, 30 November 2023 1:55 PM
To: Riordan, Peter
Cc: Booth, Damien; Aru Tandel
Subject: Revised position on pay

Dear Peter,

The CPSU conducted a poll of its membership on the revised pay proposal put to bargaining representatives on 23 November 2023. More than 16,000 CPSU members participated, with 67.5% voting in support.

On that basis, the CPSU accepts the Part A proposal. I note that there are various Part B matters yet to be resolved, which we are working through at an agency-level.

Regards,
 Rebecca



Rebecca Fawcett | Legal Director | CPSU

s47F

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From: Rebecca Fawcett <s47F>
Sent: Wednesday, 29 November 2023 11:22 AM
To: Booth, Damien
Cc: s22
Subject: Draft Statement of Common Conditions - v5 - employment types

Hi Damien,

I wanted to check in on changes to the definition of full time and part time employee, before the final version of the document is settled, and the thinking about including "an average over a period defined by the agency" in both definitions, as highlighted below:

Full-time employee is an employee whose ordinary hours <agency's standard working hours: 37 hours 30 minutes per week or the agency's retained agency entitlement standard full-time hours, which may include an average over a period defined by the agency> in accordance with this agreement.

Part-time employee means is an employee whose ordinary hours are less than <agency's standard working hours: 37 hours 30 minutes per week or the agency's retained agency entitlement standard full-time hours, which may include an average over a period defined by the agency> in accordance with this agreement.

Warm regards,



Rebecca Fawcett | Legal Director | LIU | CPSU

s47F

Member Service Centre: 1300 137 636 | cpsu.org.au

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From: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Sent: Friday, 1 December 2023 12:09 PM
To: Rebecca Fawcett
Subject: Draft correspondence to the FWC President [SEC=OFFICIAL]
Attachments: 20231201 - Draft letter to FWC - Statement of Common Conditions [Clean].docx

OFFICIAL

Hi Rebecca, updated letter for your consideration.

Regards

Peter

s22

From: Riordan, Peter <Peter.Riordan@apsc.gov.au>
Sent: Monday, 13 November 2023 2:14 PM
To: Rebecca Fawcett
Subject: Increments - pay fragmentation model (Without Prejudice) [SEC=OFFICIAL]
Attachments: Guidance - Incremental Advancement.pdf

OFFICIAL

Hi Rebecca,

Please find attached advice to agencies to assist them to bargain revised salary increments where these are impacted by adjustments needed to give effect to the pay fragmentation model. This was issued late on Friday afternoon.

Regards

Peter

Peter Riordan PSM CF

Deputy Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

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APS Bargaining

Incremental Advancement

Guidance for Agency Lead Negotiators

Introduction

1. This document outlines the parameters within which changes to incremental advancement may be bargained during agency-level bargaining.
2. The pay fragmentation mechanism will require many agencies to lift certain salary values or introduce new top salary values, in a move toward greater commonality across the APS. In many instances, these changes will require amendments to the existing increments within a classification's salary range.
3. Agencies that currently have a fixed per cent progression through salary ranges must retain the same rate of progression.
4. These parameters provide guidance for Agencies with fixed increments.

Parameters for varying salary increments due to pay fragmentation

5. Agencies may bargain to adjust their current increment-based structure and redistribute increments within the revised salary range to achieve a workable pay scale, where that pay scale is impacted by pay fragmentation.
6. When choosing to redistribute increments within the current increment-based structure, the **following parameters must be observed**:
 - a. increments may only be varied in classifications impacted by the pay fragmentation mechanism,
 - b. when combining pay increments, the combined increment progression must not exceed **3%**,
 - c. the total number of increments in the pay scale in Year 3 must be equal to or greater than the current number of increments,
 - d. the salary range (minimum and maximum) must not be varied beyond what is required by the pay fragmentation mechanism.
7. Complexities caused by the interaction of fixed increments and the pay fragmentation mechanism include:
 - a different number of increments each year as current increments are subsumed or new ones created,
 - employees may receive pay increases but notionally move *backwards* within an agency's pay scale,
 - a degree of manual intervention will be required to ensure parameters are observed.
8. The benefits of adjusting the increment-based structure will need to be balanced against these complexities which may be difficult to explain to employees and other bargaining parties.



Parameters for aligning multiple pay scales

9. Agencies may have multiple pay scales due to historical bargaining or Machinery of Government changes.
10. Agencies may make reasonable adjustments to provide greater commonality where:
 - a. it affects a minority of employees at that classification within the Agency,
 - b. it is not adjusted to be more advantageous than the pay scale for most employees in the Agency,
 - c. all changes must be discussed with WRreform@apsc.gov.au.

Parameters for increment dates

11. It is common APS practice to conduct performance management on a regular cycle, with a common date for increment advancement linked to this process.
12. Agencies that do not currently have a common date for increment advancement may bargain to introduce one.

Considerations

13. A majority of APS agencies currently use an increment-based structure with discrete dollar value increments. However the size of the jump between increments varies considerably both within and between agencies and see employees receiving varied rates of salary progression year-to-year.
14. There is currently no identified standard rate of progression, or number of increments.
15. Changes to pay increment structures will require careful consideration to ensure any proposed change is consistent with these guidelines, viable from a payroll perspective, and able to be communicated to employees. Agencies should undertake modelling to understand the value of their increments both in their current state and in each year of the agreement with the pay fragmentation impacts.
16. Agency Lead Negotiators should contact WRreform@apsc.gov.au to discuss any proposed variations to their pay scales consistent with this guidance before any proposals are tabled in bargaining.

s22

From: Booth, Damien s47F
Sent: Wednesday, 4 October 2023 12:32 PM
To: s47F
Cc: Riordan, Peter; WRreform
Subject: TOIL Guidance Material [SEC=OFFICIAL]
Attachments: Extract - EL TOIL - Statement of Common Conditions DRAFT v2 22 Sep 2023.pdf

OFFICIAL

Hi Rebecca

As requested by text yesterday afternoon, please find below and extract of a broader communication we recently sent to Agency Lead Negotiators. The below extract represents the advice we provided to agencies on the correct application of the draft common term on EL TOIL (copy of current draft attached).

The below guidance was provided to agencies given we have been receiving queries from agencies in relation to reports of CPSU delegates suggesting at Part B bargaining tables, that the new EL TOIL common term means there is now an absolute right to 1:1 TOIL for EL employees - which I'm sure you appreciate is not representative of the bargained outcome on this matter.

Damien

 Good afternoon Agency Lead Negotiators (ALNs)

I am writing to provide you with various resources that will be of assistance in your role as ALN, and the APS bargaining process including in your agency-level negotiations.

Advice on the operation of the EL TOIL common term

As discussed in the ALNs meeting this morning, the Workplace Relations Bargaining Taskforce has received a number of emails from agencies asking us to confirm the intended operation of the EL TOIL outcome reached in APS-wide bargaining, and to clarify how the outcome interacts with agency-level bargaining on EL TOIL.

Below are clarifications to common issues brought to our attention by Agencies:

Intention of EL TOIL Common Clause

CPSU delegates in some agencies have been claiming that the intention of the EL TOIL clause negotiated in APS-wide bargaining is to provide for TOIL on an absolute 1:1 basis. This interpretation is incorrect. While the CPSU claimed 1:1 TOIL in the bargaining room, this was rejected and we agreed to the attached clause as drafted.

The intention of the EL TOIL clause is to ensure that an employee and their supervisor can agree through discussion to working arrangements which:

- include consideration of the work requirements to reasonably complete their job; and
- reasonably allow an employee to balance their work and personal life.

As per the proposed clause, requests from EL employees to access flexible time off which are consistent with their agreed working arrangements are to be granted, having regard to operational requirements.

In some cases, TOIL arrangements, subject to discussion between supervisor and employee may result in EL TOIL being granted on an hour for hour basis, however in other cases this will not be the case. The amount of TOIL granted will be dependent on employee and agency circumstances and their working arrangements agreement.

Bargaining Additional Clauses on EL TOIL into Agreements

Agencies on formal release of the Statement of Common condition, will as a matter of Government policy be required to include in their agreement the common clause on EL TOIL. This is unless they currently have more codified or beneficial entitlements in their EA. In these circumstances, agencies are to incorporate as much of the clause as possible in their EA while maintaining their additional entitlements. Aside from this, agencies are not to bargain any further clauses on EL TOIL into their agreements, this includes procedural clauses on the administration of the common clause. This is to ensure the Commonwealth remains best placed to bargain for additional commonality in future APS-wise bargaining rounds.

As per the drafting note of the clause in the Statement of Common Conditions, Agencies may develop **policy parameters** to assist managers and employees to provide TOIL consistent with the enterprise agreement and Agency operational requirements.

Bargaining Enhancements to Existing EL TOIL Arrangements

Agencies will not be permitted to bargain further improvements to EL TOIL provisions in their enterprise agreements beyond the common clause on EL TOIL (and any additional codified or beneficial provisions on EL TOIL where they already exist in their enterprise agreement).

Bargaining Policy on EL TOIL into Enterprise Agreements

Previous substantive entitlements which currently exist in policy and were previously stripped out of the agency's enterprise agreement as a result of Government policy at the time may be bargained back into the agreement, so long as they are consistent with or more beneficial than the common clause (please refer to APSC guidance on bargaining policy into agreements for further detail).

A copy of the common clause on EL TOIL has been attached to this email for reference.

Kind regards

Damien Booth
A/g Assistant Commissioner
Workplace Relations Bargaining Taskforce

Australian Public Service Commission

Level 5, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

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s22

From: Rebecca Fawcett <s47F >
Sent: Tuesday, 28 November 2023 6:40 PM
To: Miller, Harrison
Subject: Accepted: [APS BARGAINING] Salary increase clause drafting [SEC=OFFICIAL]

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s22

From: Rebecca Fawcett <s47F>
Sent: Thursday, 9 November 2023 5:10 PM
To: Riordan, Peter
Subject: CPSU draft clauses - Services Australia Part B bargaining
Attachments: Draft clauses_final.docx; Delegates rights_draft clause.docx; Services Australia Additional Flex Clause_Tracked Changes20231101.docx

Hi Peter,

Please find attached the draft clauses on priority issues the union put to Services Australia. We intend to put revised positions forward on Monday.

Warm regards,

Rebecca Fawcett
Legal Director | LIU

s47F

s22

Delegates' rights

The draft Statement of Common Conditions provides that:

- Agencies are to incorporate in their agreement the common clause on delegates' rights.
- Agencies may also retain more beneficial entitlements related to delegates rights' and more detailed arrangements, such as in a Protocol or Terms of Reference document.

The agency's existing Protocol and Terms of Reference documents each contain a number of provisions that are more beneficial and also more detailed than the provisions of the common clause. The CPSU provides the below draft clause on without prejudice basis, incorporating relevant provisions from the existing Protocol and Terms of Reference documents.

Delegates' rights

1. Union delegates play an important and legitimate role in the workplace. This includes representing their members and supporting employee access to union officials, and providing employee views to the agency.
2. The role of union delegates is to be respected and supported.
3. The agency and union delegates will work together respectfully and collaboratively.

Supporting the role of union delegates

4. The agency respects the role of union delegates to:
 - 4.1 Provide information, consult with and seek feedback from employees in the workplace on workplace matters;
 - 4.2 Consult with other delegates and union officials, and get advice and assistance from union officials;
 - 4.3 Represent the interests of members to the employer and industrial tribunals; and
 - 4.4 Represent members at relevant union forums, consultative committees or bargaining.
5. The agency and union delegates recognise that undertaking the role of a union delegate is not the primary purpose of an employee's engagement, and must work with and not unreasonably impact their regular duties. Honorary officials may request additional time and facilities from time to time.
6. Union delegates will be provided with reasonable paid time during their normal working hours to perform their union delegate role. The paid time provided should not result in disruption to critical services or operational requirements.
7. To support the role of union delegates, the agency will, subject to legislative and operational requirements, including privacy and security requirements:

- 7.1 Provide union delegates with reasonable access to agency facilities and resources, including for paid and unpaid meetings between employees and their unions and to communicate with union officials;
 - 7.2 Advise union delegates and other union officials of the agency facilities and resources available for their use, which may include telephone, photocopying, internet and email;
 - 7.3 Allow reasonable official union communication appropriate to the agency from union delegates with employees, including through email, intranet pages and notice boards. This may include providing a link to a union website for employees to access union information. Any assistance in facilitating email communications does not include the agency vetoing reasonable communications;
 - 7.4 Provide access to new employees as part of induction; and
 - 7.5 Provide reasonable access to union delegates to attend appropriate paid time training in workplace relations matters, during normal working hours. Delegates elected to governing bodies will require access to additional training leave.
8. Where APS employees are elected as officials of a trade union or professional association, they are not required to seek permission from the workplace or agency before speaking publicly in that capacity, subject to the APS Code of Conduct and legislative requirements.

Paid time and other support for union delegates

9. Consistent with clause 6, in supporting and facilitating the role of union delegates, agency support includes but is not limited to:
 - a) The ability to provide information to, and seek feedback from, employees in the workplace on workplace matters during normal working hours;
 - b) Reasonable paid time during normal working hours to consult with other delegates and union officials in the workplace, and receive advice and assistance from union staff and officials in the workplace;
 - c) Reasonable paid time to represent union members in the agency at relevant union forums. This includes paid time to attend Governing Council meetings for CPSU Governing Councillors;
 - d) Paid time of 1 hour per month for CPSU Section Councillors to participate in Section Council teleconferences
 - e) Paid time of 1 hour per month for CPSU Workplace Delegates to participate in Workplace Delegate teleconferences
10. Approval for paid time activities will not be unreasonably refused. Where a team leader/ manager has refused to approve a request the matter may be escalated to the appropriate agency manager and/or CPSU official.

9.11. For the avoidance of doubt, elected union representatives include APS employees elected to represent union members in representative forums, including for example CPSU Section Secretaries, Governing Councillors and Section Councillors

Facilitating union communication with employees

12. The agency recognises that union visibility in the workplace is important, and delegates and members will not be prevented from wearing lanyards or lapel pins, or displaying or wearing other union material. In face-to-face or customer contact areas, the wearing of a discreet union lapel pin by workplace delegates and members in customer contact areas is acceptable.

10.13. Where requested, the agency will not unreasonably refuse requests for union meetings to be conducted on paid time. The agency will facilitate and encourage attendance at such meetings.

11.14. These delegates rights are not an exhaustive list of rights and facilities. Additional arrangements may be negotiated at the workplace level.



CPSU DRAFT CLAUSES

LEAVE CEILINGS

1. The Agency will engage with employees and their union, in a co-operative and consultative approach to review existing leave ceilings. The purpose of the consultation is to improve employee access to both leave planned in advance and leave on short notice.
2. Consultation shall be consistent with the consultation provisions of this Agreement and will include:
 - a. Provision of all relevant operational information relating to the existing leave ceiling framework including how it was developed;
 - b. Feedback from employees as to what is and is not working in relation to the current leave ceiling.
3. Where the agency is proposing to introduce or change existing leave ceilings, the agency will consult with affected employees and their union consistent with the consultation provisions of this Agreement. Provision of information for the purposes of this consultation will include relevant operational information which has/or will inform the development of or change to leave ceilings.
4. Once the agency has determined a leave ceiling for a team, workplace, business area or division, the agency will publish and communicate that information to all affected employees in the interest of transparency.

REDUCED ACTIVITY PERIOD (RAP)



For the purpose of cl. XX, 'essential operational requirements' for the Reduced Activity Period (RAP) means those services deemed critical to support vulnerable customers.

2. As a minimum, 50% of employees at the team level will be granted leave for the entirety of the RAP. To enable this, the agency will, to the greatest extent possible, reduce servicing and availability over this period of time.
3. Where the agency needs to decrease the minimum percentage of employees able to access leave in the RAP period as provided at sub-clause 2 in response to an unplanned, unforeseen and unavoidable circumstance, the agency will consult affected employees and the union on how the agency will achieve the proposed staffing level for the period consistent with the consultation provisions of this Agreement.

KEY PERFORMANCE INDICATORS (KPIs)

For inclusion with the consultation provision of the agreement

Consultation on Customer Service Indicators (CSIs) and Key Performance Indicators (KPIs)

1. The Agency will engage employees and their union in a co-operative and consultative approach to review and redefine Customer Service Indicators (CSI) and relevant Key Performance Indicators (KPIs) in Individual Performance Agreements, in the first part of each year, which will inform the relevant performance cycle commencing from 1 July of that year. The purpose of consultation will include ensuring KPIs are consistent with the performance principles in this Agreement.
2. Where the agency seeks to make changes to KPIs or to introduce KPIs, the agency will consult with employees and their union, before the changes are made.



Since the agency has determined KPIs/CSI/target for a team, workplace, business area or division, the agency will publish and communicate that information to all affected employees in the interest of transparency.

For inclusion with the performance clauses

1. Where an employee is subject to Key Performance Indicators (KPIs), proposed KPIs will be discussed with the employee before they are included in the Individual Performance Agreement to ensure consistency with the principles set out in Performance Principles in clause xx.

HOT-DESKING ARRANGEMENTS and ACCOMMODATION

Principles for hot-desking

1. Employees working in a flexible work environment with no assigned desk (agile work environment) will be provided with suitable and adequate paid time and appropriate resources to set up, clean and sanitise their workspace at the start and finish of their workday.
2. Employees may request reasonable workplace adjustments including in relation to agile work environments. Requests and relevant access for reasonable workplace adjustments will be facilitated by the agency.
3. For employees required to participate in agile working, the agency will provide lockers or a similar facility to secure agency and/or personal belongings as far as reasonably practicable.
4. For employees with an agreement to work in the office a majority of the time, the agency will provide an on-going assigned individual seat, as far as reasonably practicable.

APS Bargaining

One-off Payment Calculator

Benefit of bringing forward the first pay increase

Purpose

1. This calculator helps employees to calculate their benefit from the 4% pay increase 12 we
2. The one-off payment is calculated on 0.92% of your base salary, pro-rated for part-time ar
3. You could get a one-off payment if:
 - your agency's enterprise agreement is finalised and given to you for consideration by 14
 - a majority of colleagues who vote in your agency ballot support that enterprise agreeme

Salary

Enter your base salary here

\$85,000



eks early in the form of a one-off payment.
nd casual employees.

March 2024
nt.

One-off Payment Value

Your potential one-off payment is

\$782

From: [Rebecca Fawcett](#)
To: [Riordan, Peter](#)
Cc: [Booth, Damien](#); [Aru, Tandel](#)
Subject: Statement of Common Conditions - v 5 (Operation of the agreement, Commonwealth pay increase, Cultural competency training)
Date: Monday, 27 November 2023 7:50:31 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Hi Peter,

Thank you for providing version 5 of the draft Statement of Common Conditions.

1. Operation of the agreement

The union considers that it is appropriate for enterprise agreements to commence operating seven days after approval of the enterprise agreement by the Fair Work Commission, in line with the Fair Work Act. The clause should be amended to reflect this, with the removal of 1.2.

Additionally, it would not be appropriate for an APS agency to specify a later commencement date. Clause 3 of the drafting note should therefore be deleted.

2. Commonwealth pay increase

The CPSU seeks a discussion in relation to the drafting of the Commonwealth pay increase clause to ensure that the drafting reflects the revised offer put to bargaining representatives on 23 November.

3. First Nations employment (cultural competency training)

The CPSU has had feedback that there are agencies that currently provide cultural competency training to cohorts beyond EL2. It is appropriate that these practices are reflected in enterprise agreements.

Agency-level bargaining

This instruction to agencies should be amended to read: "Any further bargaining must be undertaken in consultation with the APSC, unless it is a permitted policy matter described on page 18."

I anticipate that the CPSU will provide further feedback on the draft over the next few days.

Warm regards,
Rebecca



Rebecca Fawcett | Legal Director | LIU | CPSU

S47F

Member Service Centre: 1300 137 636 | cpsu.org.au

*** Please note, we are moving to mobile only communication. Please update your records to reflect this as landlines will be decommissioned on 31 January 2024.*

The Community and Public Sector Union (CPSU) acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the elders past and present.



If you have not received your ballot, please call the AEC (03) 9285 7111 or email iebevents@aec.gov.au to request a replacement.