

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

**JAMES HUNTER ASHBY**

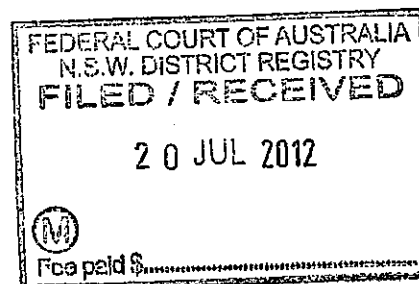
Applicant

**THE COMMONWEALTH OF AUSTRALIA**

First Respondent

**PETER SLIPPER**

Second Respondent



**BOOK OF RESPONDENTS' EVIDENCE FOR HEARING 23 JULY 2012**

This book has been prepared by the respondents at the request of Justice Rares.

VOLUME 1		
DOCUMENT	DATE	PAGE NUMBER
List of Evidence of the First Respondent	10 July 2012	1
Affidavit of Catherine Mann	13 June 2012	3
Affidavit of Catherine Mann	4 July 2012	177
Document consisting of extracts from an affidavit of James Ashby affirmed on 13 April 2012, filed by the First Respondent	filed 4 July 2012	387

Filed on behalf of the First Respondent, The Commonwealth of Australia

File ref: 12026851

Prepared by: Catherine Mann

Australian Government Solicitor.

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## LIST OF EVIDENCE OF FIRST RESPONDENT

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

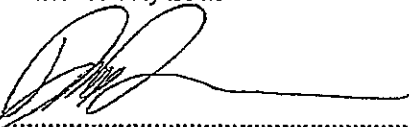
NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

1. The evidence on which the First Respondent proposes to rely at the hearing on 23 July 2012 is:
  - 1.1. Affidavit of Catherine Mann affirmed on 13 June 2012.
  - 1.2. Affidavit of Catherine Mann affirmed on 4 July 2012.
  - 1.3. Document consisting of extracts from an affidavit of James Ashby affirmed on 13 April 2012, filed by the First Respondent on 4 July 2012.
2. The First Respondent may also rely on:
  - 2.1. Supplementary evidence filed and served to cure any objections pursuant to order 6 made by Rares J on 6 July 2012.
  - 2.2. Solicitor's affidavits annexing any relevant material produced under subpoenas issued by the Second Respondent that have not yet been returned.

Date: 10 July 2012



.....  
Damien O'Donovan  
A lawyer employed by  
Australian Government Solicitor  
Lawyer for the First Respondent

---

Filed on behalf of the First Respondent, the Commonwealth of  
Australia

File ref: 12026851

Prepared by: Sarah Wright

Australian Government Solicitor.

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50 Blackall Street, Barton, ACT 2600  
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**Schedule**

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

**Respondents**

Second Respondent

Peter Slipper

Date: 10 July 2012

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)  
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
FAIR WORK DIVISION**

**No: NSD580/2012**

**NOTICE OF FILING**

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 13/06/2012.

**DETAILS OF FILING**

**Document Lodged:** Affidavit - Form 59 - Rule 29.02(1)  
**File Number:** NSD580/2012  
**File Title:** James Hunter Ashby v Commonwealth of Australia & Anor  
**District Registry:** NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



★ **Date:** 14/06/2012

Registrar

**Note**

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



Form 59  
Rule 29.02(1)

**AFFIDAVIT**

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK**

**NO NSD 580 OF 2012**

**JAMES HUNTER ASHBY**  
Applicant

**THE COMMONWEALTH OF AUSTRALIA**  
and another named in the Schedule  
Respondents

Affidavit of: Catherine Heather Mann  
Address: 50 Blackall St, Barton, Australian Capital Territory 2600  
Occupation: Lawyer  
Date sworn or affirmed: 13 June 2012

*Catherine Mann* *MJM*  
Filed on behalf of the First Respondent, The Commonwealth  
of Australia

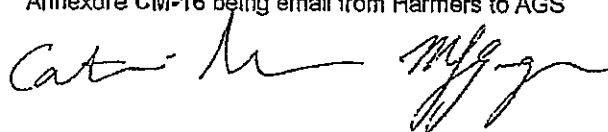
File ref: 12026851

Prepared by: Catherine Mann  
Australian Government Solicitor.  
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Facsimile: 02 6253 7381  
DX5678 Canberra


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3.	Annexure CM-2 being <i>Bullying, Harassment and Workplace Violence Policy and Procedure for MOP(S) Act Employees</i> .	15	23
4.	Annexure CM-3 being <i>Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012</i> .	16	30
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11.	Annexure CM-10 being copy of the front page and pages 2, 3 and 36 of the Daily Telegraph newspaper on 21 April 2012.	26	121
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15.	Annexure CM-14 being picture of calendar for 20 to 26 July 2009.	51	135
16.	Annexure CM-15 being email from AGS to Harmers dated 23 May 2012 and attached letter.	54	137
17.	Annexure CM-16 being email from Harmers to AGS	55	143



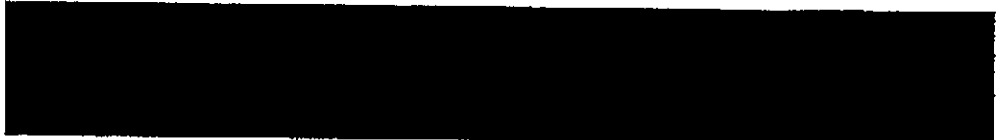


Document Number	Details	Paragraph(s) of affidavit referring to annexure(s)	Page
	dated 28 May 2012 and attached letters.		
18.	Annexure CM-17 being email from AGS to Harmers dated 4 June 2012 and attached letter.	56	150
19.	Annexure CM-18 being email from Harmers to AGS dated 5 June 2012 and attached letter.	57	154
20.	Annexure CM-19 being email from Harmers to AGS dated 6 June 2012 and attached letter.	58	157
21.	Annexure CM-20 being email from AGS to Harmers dated 26 April 2012 and attached letter.	61	166
22.	Annexure CM-21 being medical certificate dated 5 May 2012.	62	171

I, Catherine Heather Mann of 50 Blackall St, Barton in the Australian Capital Territory, lawyer, affirm:

1. I am a solicitor employed by the Australian Government Solicitor (AGS). I have carriage of this matter on behalf of the First Respondent.
2. 
3. This affidavit is made on the basis of my own knowledge, documents held on the AGS file and information provided by certain people who are identified in the body of the affidavit. Where it is based on information provided by others, I believe the information to be true.

#### GROUND S FOR APPLICATION

4. 
5. 
6. 



7.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

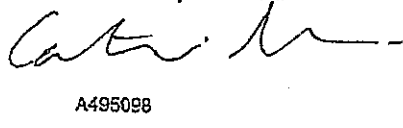

*Carte* *Meyer*

8. [REDACTED]
9. The applicant remains employed by the Commonwealth and has been on paid leave since 23 April 2012. [REDACTED]

#### COMMENCEMENT OF PROCEEDINGS

10. Richard Harding is an employee of AGS based in the Sydney office. I am informed by him that on 20 April 2012 the Sydney office of AGS was served with an unsealed copy of the originating application filed by the Applicant in the Federal Court.
11. The Applicant was at that time, and remains, an employee of the Commonwealth employed under Part III of the *Member of Parliament (Staff) Act 1984* (MOPS Act). Annexed to this affidavit and marked CM-1 is the letter employing the Applicant in the office of the Second Respondent.
12. Pursuant to the Administrative Arrangement Order, the Department of Finance and Deregulation (Department) administers the MOPS Act. Within the Department, the Branch responsible for providing advice on entitlements issues to Members of Parliament, and their staff employed under the MOPS Act is the Entitlements Management Branch.
13. Greg Miles is the Assistant Secretary of the Entitlements Management Branch. I am informed by him that the Entitlements Management Branch is the Branch with responsibility for providing staff help-desk services for the staff of Members of Parliament.
14. I am informed by Mr Miles that he has undertaken inquiries in relation to the matter. He has informed me that the Applicant has not brought to the attention of the Department any of the matters alleged in the originating application (except by serving the application). I am informed by Mr Miles that he has made inquiries of:
- a) relevant staff in the Department who were responsible for assisting Mr Slipper's staff with any inquiries they had arising out of their employment under the MOPS Act, and
  - b) staff of Konekt Response, which is the Department's workplace safety manager.

and no complaints concerning the Second Respondent were made, nor was the potential for litigation ever raised by the Applicant with any employee of the Department.

 - 

15. Mr Miles also informed me:

- 15.1. that the Department publishes for the benefit of persons employed under the MOPS Act a policy known as *Bullying, Harassment and Workplace Violence Policy and Procedure for MOP(S) Act Employees*. The policy is accessible by MOPS employees on the Parliament House computer system;
- 15.2. that the policy provides processes for dealing with bullying and harassment issues. A copy of the policy is annexed to this affidavit and marked CM-2;
- 15.3. that before filing the originating application the Applicant did not follow the *Bullying, Harassment and Workplace Violence Policy and Procedure for MOP(S) Act Employees* and report the incidents of harassment to Konekt Response within 24 hours of them occurring.

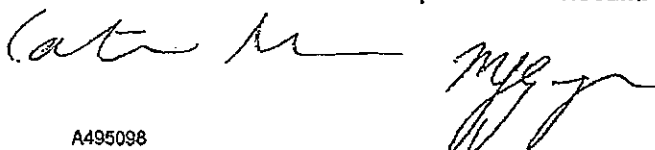
16. Mr Miles has also informed me that, so far as he has been able to ascertain, before filing the originating application:

- 16.1. the Applicant did not make a complaint to the Ministerial and Parliamentary Services Division of the Department;
- 16.2. the Applicant did not refer the matter to the Department under clause 74.4(c) of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012*;
- 16.3. the Applicant did not initiate the issue resolution procedure under the *Work Health and Safety Act 2011*;
- 16.4. the Applicant did not make a complaint about the conduct to the Australian Human Rights Commission on the basis that it constituted an allegation of sexual harassment;
- 16.5. the Applicant did not make an application to Fair Work Australia under section 372 of the *Fair Work Act 2009*.

17. Annexed to this affidavit and marked CM-3 is a copy of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012* which, Mr Miles has informed me, applies to the employment of the Applicant.

#### MEDIA PUBLICITY ACCOMPANYING PROCEEDINGS

- 18. On or about 15 May 2012 I caused an internet search to be performed for media articles published about the Applicant's claims on 21 April 2012, that is to say, the day after the unsealed application was served on the First Respondent.
- 19. Annexed to this affidavit and marked CM-4 is a print-out of an article titled 'Court documents allege Peter Slipper made advances towards James Ashby at the Speaker's Sunshine Coast home' by Janet Fife-Yeomans published on the website of the Courier-Mail on 21 April 2012 at 1.00am.



20. Annexed to this affidavit and marked CM-5 is a print-out of an article titled 'This is an extract of allegations against Peter Slipper in the application in federal court' by the Daily Telegraph and published on the website of the Courier-Mail on 21 April 2012 at 1.00am.
21. Annexed to this affidavit and marked CM-6 is a print-out of an article titled 'OPINION: Peter Slipper scandal a threat to fragile government' by Steve Lewis and published on the website of the Courier-Mail on 21 April 2012 at 1.00am.
22. Annexed to this affidavit and marked CM-7 is a print-out of an article titled 'Speaker in sex harass claim' by Steve Lewis and published on the website of the Courier-Mail on 21 April 2012 at 1.01am.
23. Annexed to this affidavit and marked CM-8 is a print-out of an article titled 'Speaker Peter Slipper denies staffer's allegation of sexual harassment' by Steve Lewis and published on the website of the Courier-Mail on 21 April 2012 at 1.17am.
24. On 15 May 2012 I asked staff of the AGS library to obtain copies of the Courier-Mail and the Daily Telegraph newspapers in hard copy published on 21 April 2012.
25. Annexed to this affidavit and marked CM-9 is a copy of the front page and pages 4 and 5 of the Courier-Mail newspaper on 21-22 April 2012, containing articles about the proceedings commenced by the Applicant.
26. Annexed to this affidavit and marked CM-10 is a copy of the front page and pages 2, 3 and 36 of the Daily Telegraph newspaper on 21 April 2012, containing articles about the proceedings commenced by the Applicant.

#### AFFIDAVIT OF RODNEY MCKEMMISH

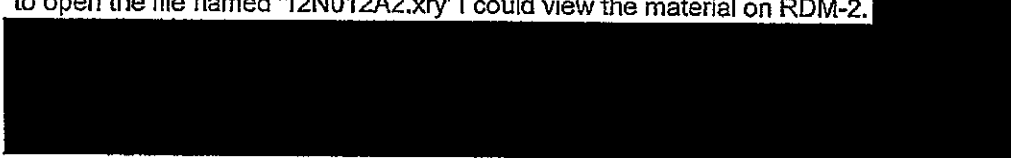
27. On page 14 of the originating application the following words appear:  

The allegations contained in the Application are supported by sworn/affirmed evidence and, in the case of text messages, by independent forensic Information Technology assessment and report.
28. On 18 May 2012 the Court made the following order:  


4. The Applicant serve any further particulars of the Statement of Claim on or before 28 May 2012, together with the documents referred to on page 14 of the Originating Application filed on 20 April 2012 save for documents subject to a claim for privilege, which claim is to be supported by an affidavit served at the same time.
29. After close of business on 28 May 2012 the Applicant's solicitors, Harmers Workplace Lawyers (Harmers) emailed to AGS a letter dated 28 May 2012 which attached, relevantly, an affidavit of Rodney McKemmish sworn on 24 April 2012. Mr McKemmish deposed that:  

29.1. He is a Partner of PPB Advisory (PPB) and the national head of the firm's IT Forensics practice.

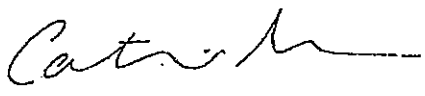

*Catrina M. - [Signature]*

- 29.2. On or about 12 April 2012, PPB was instructed by Hamers Workplace Lawyers to undertake a forensic examination of an iPhone said to belong to the Applicant.
- 29.3. The forensic examination produced a forensic image of all readable data contained in the iPhone as at about 12.30pm on 13 April 2012, which was contained in a CDROM exhibited to the affidavit of Mr McKemmish and marked 'Exhibit RDM-2'.
- 29.4. The forensic examination also produced a forensic extract of all of the SMS, MMS, Chat and Status Updates data contained in the iPhone as at about 12.30pm on 13 April 2012, which was contained in a CDROM which was exhibited to the affidavit of Mr McKemmish and marked 'Exhibit RDM-3'.
30. Beginning on 5 June 2012, I reviewed the contents of Exhibit RDM-3. Exhibit RDM-3 is a CDROM which contains an Excel spreadsheet named 'James Ashby iPhone.xlsx'. Based on the description in the affidavit of Mr McKemmish, I believe that the spreadsheet displays the contents of text and other messages sent and received by the Applicant. The spreadsheet includes, in addition to the content of the messages, the numbers of the phone to or from which the messages were sent. The spreadsheet does not identify the persons to whom the phone numbers belonged.
31. Beginning on 7 June 2012, I reviewed the contents of Exhibit RDM-2. It contained two files named '12N012A1.xry' and '12N012A2.xry'. Using a program called XRY Reader to open the file named '12N012A2.xry' I could view the material on RDM-2. 
32. While viewing the file named '12N012A2.xry' in XRY Reader I was able to search (using the command Ctrl-F) for a person's name. This produced an extract of data showing calls, SMSs, MMSs and Chats between that person and the Applicant, the content of the message and the time and the date the message was sent or received.
33. Set out below is information I obtained by reviewing the files named '12N012A2.xry' and 'James Ashby iPhone.xlsx'. Messages which are marked 'sent' in column 3 were stored in the 'sentbox' folder and I believe they were written and sent by the Applicant. Messages which are marked 'read' in column 3 were stored in the 'Inbox' folder and marked as read.

Mark McArdle

34. The data includes text messages between the Applicant and the phone number . On 10 June 2012 I performed a Google search for this number and obtained results which displayed this as the phone number for Mark McArdle. I also performed a Google search for the name 'Mark McArdle' and the top results were for the Hon. Mark McArdle, Liberal National Party Member for Caloundra in the Queensland Parliament.

Mark  
McArdle

35. When I viewed '12N012A2.xry' with XRY Reader, I saw that this number was listed in the Contacts (address book) as the iPhone number for 'Mark Macardle'. The Contacts section included a separate entry for 'Mark McArdle'. That entry contained no phone number but included Mark McArdle's email address as Caloundra@parliament.qld.gov.au.

36. I have extracted from the exhibits the following text messages between the Applicant and the number [REDACTED] on 2 February 2012 and the week following.

mark  
m cArdle

This is 100% confidential!	2/02/2012 1:01:58 AM UTC (Device)	Sent
Agreed. Mark	2/02/2012 1:03:04 AM UTC (Network)	Read
See u in 15	2/02/2012 1:23:18 AM UTC (Device)	Sent
Any thoughts overnight?	2/02/2012 10:41:46 PM UTC (Device)	Sent
Still want to talk today?	6/02/2012 6:14:09 AM UTC (Device)	Sent
No worries mate	6/02/2012 8:32:45 AM UTC (Device)	Sent
G'day Mark. If you'd prefer we don't discuss this any further just say the word. I certainly don't want to put u in an awkward position.	7/02/2012 8:29:20 AM UTC (Device)	Sent
U got 5 to chat?	8/03/2012 2:44:07 AM UTC (Device)	Sent

Tania

37. The data includes text messages between the Applicant and the phone number [REDACTED]

Tania

Hey there dearest. Tania here. I sat up over night about our chat, again this morning. PLEASE DO NOT TEXT ME BACK. This is just from me to you for further thought. Because I care I am going to ask....Are you decision making from ego? Are you feeling a rush from the power of this moment - are you clear this is not the case? I could not tell completely last night. Am concerned that you will not be protected. I understand you trust Mark - is his and your intention clear - measure up all the costs and consequences - remember this is not a heart decision - this requires logic, reason, analysis. No	4/02/2012 3:40:00 AM AM UTC (Device)	Read
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------	------

*Carla* *McG*

meetings for you with any other Min was what we discussed last night - pass the text forward in hard copy only to Mark - let him move it forward. Backup phone, delete messages, put in safe and let it be. A smoking gun usually means someone has already been shot! Don't let it be you - please. Tell me to sod off - I can handle the truth - won't text you again with this without your express wish for further discussion. Take great care. Tania

Your message contradicts itself lol. u wrote don't text u back, yet at the end won't text u agin without your wish &#xD83D; &#xDE09; I really enjoyed our chat last night and I must admit there is an understanding of what power can do to people, but this doesn't empower me once the information is passed on. I don't want to use it for my personal power. It will empower someone else definitely. Will I be rewarded or condemned? Who knows. You are right though. The smoking gun is after the shot has been fired. We haven't yet seen the gun go off. I need protection, you're right. I always welcome your wisdom, so please feel free to text me anytime with thoughts. I will talk to mark again tomorrow and See what his ideas are.

4/02/2012 3:40:00 AM UTC (Device) Sent

38. I performed a Google search on 12 June 2012 which informed me that Mark McArdle was the Shadow Minister for Health in the Queensland Parliament from 6 April 2009 to 19 February 2012.

Steve Lewis

39. When I viewed the file named '12N012A2.xry' with XRY Reader, I saw that the number [REDACTED] was listed as belonging to Steve Lewis. Based on a Google search, the newspaper articles referred to in paragraphs 21 to 26 of this affidavit and the text messages below, I believe Steve Lewis to be a journalist employed by the News Limited media group.

40. I have extracted from the exhibits the following text messages between the Applicant and the phone number [REDACTED].

Let's meet at a little cafe at 5 grand parade, parrearra. It's also called kawana island. It's a set of shops but we'll meet in te cafe which is on the water. See u at 12 noon

3/04/2012 10:30:38 AM UTC (Device) Sent

I will be there

3/04/2012 10:33:46 AM UTC (Network) Read

Dan Adams parents own Greenery Designs on wises rd Maroochydore. 5443 5388. It's my understanding Dan is back in Japan.

4/04/2012 5:42:55 AM UTC (Device) Sent

Spoke to Richard about car. Richard said he has travelled

4/04/2012 6:07:43 AM Sent

*Cate* - *me*

in the car but was instructed to book the car on two occasions when the pope was in australia. The car was apparently used twice for different pope ceremonies. Good luck :)

UTC (Device)

That should have been hasn't travelled in the car.

4/04/2012 6:08:10 AM Sent  
UTC (Device)

Ta  
Abt to hop on plane

4/04/2012 6:17:50 AM Read  
UTC (Network)

Will call later

We will get him!!

Great!

4/04/2012 6:18:11 AM Sent  
UTC (Device)

Thanks for coming up

4/04/2012 6:18:16 AM Sent  
UTC (Device)

I am here to help!!!

4/04/2012 6:19:02 AM Read  
UTC (Network)

Hello??

5/04/2012 1:40:41 AM Read  
UTC (Network)

Sorry mate. Just in a meeting. Can I give u a yell in 30?

5/04/2012 1:41:38 AM Sent  
UTC (Device)

Yep

5/04/2012 1:41:58 AM Read  
UTC (Network)

Whats your email steve?

6/04/2012 6:20:35 AM Sent  
UTC (Device)

Lewiss@newsfild.com.au

6/04/2012 6:24:20 AM Read  
UTC (Network)

Just sending u personal email address. Have daily print out of diary now as well.

6/04/2012 6:26:52 AM Sent  
UTC (Device)

Can u chat?

9/04/2012 1:02:06 AM Read  
UTC (Network)

In 10 mate b

9/04/2012 1:02:22 AM Sent  
UTC (Device)

Be in touch soon

9/04/2012 1:02:29 AM Sent  
UTC (Device)

Ok

9/04/2012 1:04:09 AM Read  
UTC (Network)

Mate

9/04/2012 1:32:05 AM Read  
UTC (Network)

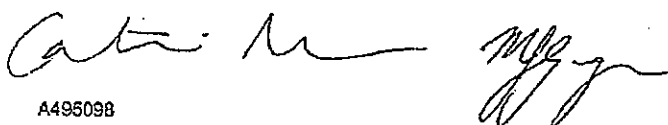
The dates I need for Diary (daily extracts) are:

Dec 31 2009 - Jan 9 2010  
Nov 10,11 2010

Ta  
Steve

Hi James when I hadn't heard from you I contacted office and hear you sick. You ok? Can you include me in any

10/04/2012 2:32:27 AM Sent  
UTC (Device)



A495098



message when sick as I like to know who in/not in. Thanks

I'll send you on a group message from Karen re more illness. This is becoming quite a challenge. Gather she has been away for most of the time I have and she hasn't been in office long. I've never had anyone take so much sick time off. Any theories?

10/04/2012 2:32:45 AM Sent  
UTC (Device)

From Peter,

10/04/2012 2:33:06 AM Sent  
UTC (Device)

We need to act fast mate.

10/04/2012 2:33:21 AM Sent  
UTC (Device)

News Ltd  
2 Holt St  
Surrey Hills

10/04/2012 8:34:04 AM Read  
UTC (Network)

(Abt 15 mins from airport)

See u shortly

10/04/2012 8:43:51 AM Sent  
UTC (Device)

Just landed in downtown Sydney. Should be over your way soon.

10/04/2012 10:27:17 Sent  
AM UTC (Device)

Righto....

10/04/2012 10:33:24 Read  
AM UTC (Network)

Sebel  
28 Albion Street  
Surrey Hills

10/04/2012 10:46:16 Read  
AM UTC (Network)

On my way mate.

10/04/2012 10:57:12 Sent  
AM UTC (Device)

Hi Steve. Do u want me to check out before I leave for the lawyers or am staying another night in the same place?

10/04/2012 8:28:16 PM Sent  
UTC (Device)

Hi mate  
No stay another night OK?

10/04/2012 8:30:57 PM Read  
UTC (Network)

I will sort out paymeent etc

Just tell hotel to book u in again and News will sort

Ok cheers for that &#xD83D;&#xDE09;

10/04/2012 8:31:30 PM Sent  
UTC (Device)

Hello?

11/04/2012 12:58:52 Read  
AM UTC (Network)

Call when u can

12/04/2012 1:41:37 AM Read  
UTC (Network)

Steve

Hi

12/04/2012 4:42:19 AM Read  
UTC (Network)

Pls call

Can u call pls ??

12/04/2012 8:08:12 AM Read  
UTC (Network)

I need to give an update...

Ta

*Cate M*

*myg*

Hello? Where r u???	12/04/2012 9:01:34 AM	Read
Call pls	UTC (Network)	
Hey Steve. Just confirming our previous conversation, can u speak to Anthony regarding me. Thanks for your understanding &#xD83D;&#xDE09; cheers James.	12/04/2012 9:20:29 AM	Sent
	UTC (Device)	
Can u call??	12/04/2012 9:21:12 AM	Read
	UTC (Network)	
Sorry	12/04/2012 9:21:48 AM	Sent
	UTC (Device)	
Where r u? With anthony?	12/04/2012 9:22:21 AM	Read
	UTC (Network)	
Need to chat or txt mate	12/04/2012 9:56:19 AM	Read
	UTC (Network)	
I am being hassled abt costs etc		
We need to speak...		
Mate	12/04/2012 10:27:15	Read
	AM UTC (Network)	
Pls let me know wot is going on		
A txt will do		
Mate??	12/04/2012 11:45:53	Read
	AM UTC (Network)	
Not sure wot is going on		
U need to communicate with me		
I need to know u r all right		
Pls call	12/04/2012 9:12:56 PM	Read
	UTC (Network)	

41. Viewed with XRY Reader, the file also recorded 48 calls being dialled, received, or missed between the number [REDACTED] and the Applicant between 9 and 12 April 2012.

#### Karen Doane

42. When I viewed the file named '12N012A2.xry' with XRY Reader, I saw that the number [REDACTED] was listed as belonging to Karen Doane. I have been informed by Mr Miles that Ms Doane is a staff member employed by the Second Respondent on behalf of the First Respondent.
43. I have extracted from the exhibits the following text messages between the Applicant and the phone number [REDACTED] which I have formed the view are relevant to the First Respondent's application.

What month in 2009 forward?

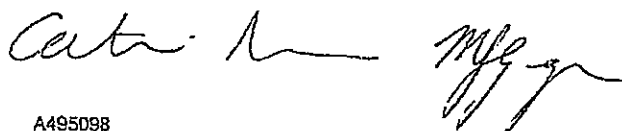
28/03/2012 3:39:38 AM Read  
UTC (Network)

*Cate M. Myer*

*Karen  
Doane*

January forward	28/03/2012 3:39:53 AM	Sent
	UTC (Device)	
Doing it now	28/03/2012 3:43:38 AM	Read
	UTC (Network)	
Legend	28/03/2012 4:10:17 AM	Sent
	UTC (Device)	
Palpitating this afternoon as I've had two missed blocked calls-- stupid to have to be afraid of my own phone &#xD83D;&#xDE21; hope your arvo was good. Weird message from Peter to all-- clearly Michelle.	30/03/2012 7:30:24 AM	Read
	UTC (Network)	
Super happy w the chat w Jackie today!! Can't wait for Easter break, too!	30/03/2012 7:41:27 AM	Read
	UTC (Network)	
I left at 4. Feel super drained. Over at families tonight to bring them up to speed with everything that's about to happen. Sorry about Michelle calling u today. I'd finished using Peters computer to do my travel forms and she said I should be using your computer. I tired using it earlier but it was password activated in a dos style format. I tired my password but it didnt work. Just used peters and got what I needed done. Make sure u have a good weekend and if u wanna catch up, just let me know &#xD83D;&#xDE0A;	30/03/2012 7:44:40 AM	Sent
	UTC (Device)	
Enjoy the love of your family and no worries about my computer, easy as!! Just think, we only have a short week and we are done!!! BTW- you have 3 weeks personal leave waiting for you too. Smile and feel loved, you are very courageous my friend. Proud of what u r doing &#xD83D;&#xDC4D;&#xD83D;&#xDE09;	30/03/2012 7:48:55 AM	Read
	UTC (Network)	
Thanks Karen. Not even music is making me feel too good right now. The sooner this is over the better.	30/03/2012 8:26:09 AM	Sent
	UTC (Device)	
I hear ya.... I encourage you to contact Murray ( Marie&#xD83D;&#xDE09;. You need to keep everyone onside and have options. Not sure if State will be your future, or that you'll want it to be, so the more options the better. I really want the Sports portfolios that is my passion and I know it on many levels so I would be perfect ( even if I do say so myself) when you get to it, please send thru Jackie's email info. I'll cc you into anything. Chat soon &#xD83D;&#xDE0F;	30/03/2012 9:51:20 AM	Read
	UTC (Network)	
Howdy, you awake? Just got a text that state staffing isn't the decision of the minister... Do you think Jackie has influence? I would think yes?!?&#xD83D;&#xDE01;	30/03/2012 11:14:33 AM	Read
	UTC (Network)	
Hmmm interesting. I had no idea of that rule... I bet the likes of Jacki and Bruce McIver have some influence. Jacki is definitely a key player in the party these days. To arrange a lawyer for \$1 of that caliber is a big thing in my mind.	30/03/2012 11:17:07 AM	Sent
	UTC (Device)	
Agreed. It is also due to the barrister's ties to the LNP and the way this will tip the govt to Mal's and the LNP's advantage. Definitely a good move for us to meet with him so he gets to know us other than w the black mark from being w Peter!!	30/03/2012 11:20:31 AM	Read
	UTC (Network)	

Hope I've said thank you enough???!! I am really appreciative James	30/03/2012 11:21:18 AM UTC (Network)	Read
Yeah I totally agree. We are fixing the black mark &#xD83D;&#xDE09; you don't have to thank me Karen. I think we're equally supportive for one another. We compliment one another nicely. I'm very pleased u have been on board even though we've both been thru so much shit.	30/03/2012 11:23:37 AM UTC (Device)	Sent
Yeah I totally agree. We are fixing the black mark &#xD83D;&#xDE09; you don't have to thankY	30/03/2012 11:23:37 AM UTC (Device)	Deleted
I'm counting down the days; it makes it easier &#xD83D;&#xDE0C;. BTW- please shot me his email so I can send thru an updated CV this weekend. &#xD83D;&#xDE4F;&#xD83D;&#xDE4F; for a great position w decent \$\$	30/03/2012 11:28:28 AM UTC (Network)	Read
Mal.brough1@bigpond.com	30/03/2012 11:29:20 AM UTC (Device)	Sent
Coolio. I have to send one to Andrew as well. Are you/have you already given him yours? I know you've said you don't do resumes &#xD83D;&#xDE1C;	30/03/2012 11:31:01 AM UTC (Network)	Read
Lol I will have to put something together over the weekend. I haven't written a resume, so I better get learning @	30/03/2012 11:31:54 AM UTC (Device)	Sent
Happy to help if u like?! Google CV/resume templates as that will help, it did for me. Off to sleep, chat on the weekend &#xD83D;&#xDCA4;	30/03/2012 12:00:54 PM UTC (Network)	Read
Sounds great. Night.	30/03/2012 12:01:18 PM UTC (Device)	Sent
Howdy! Could you please send thru Mal's mobile again? I want to text after I send thru my CV. Hope you had a good weekend @	1/04/2012 10:28:09 AM UTC (Network)	Read
Muchos gracias mi amigo &#xD83D;&#xDC68;	1/04/2012 12:27:38 PM UTC (Network)	Read
The email for Mal doesn't seem to work. I have: Mal.brough1@bigpond.com . Do you have something different?	1/04/2012 1:11:16 PM UTC (Network)	Read
Whoops it's Mal.brough2@bigpond.com sorry bout that. My fault.	1/04/2012 1:12:33 PM UTC (Device)	Sent
Morning all! I'll be picking up the newspapers on my way in this morning ;- ) see you then!	1/04/2012 8:58:54 PM UTC (Network)	Read
Neither emails work	1/04/2012 9:56:18 PM UTC (Network)	Read
??? Are u at work already?	1/04/2012 9:56:55 PM UTC (Device)	Sent
I'll double check my laptop and catch u when I get in	1/04/2012 9:57:23 PM UTC (Device)	Sent



Just had the most lengthy convo with Steve Lewis. He's flying up Wednesday. Wanna come to coffee with him?  
2/04/2012 11:07:10 AM Sent  
UTC (Device)

Okay... I'm calling you now!!  
2/04/2012 11:11:06 AM Read  
UTC (Network)

I want to balance your harassment charge with one of my own. He is demeaning, aggressive and w his bcc's unprofessional at the very least. However I don't want to diminish your claim in any way. As you said last night, both claims may strengthen the case. I might look for a lawyer myself if we don't have contact soon.  
2/04/2012 8:52:58 PM Read  
UTC (Network)

Yeah I will contact Mal again today. Failing that I will make contact with someone myself as well.  
2/04/2012 8:54:07 PM Sent  
UTC (Device)

Mal did email me confirming he forwarded my CV and received confirmation that I should receive a call in the next day or two. He also said if I wasn't successful to contact him again. Great result  
2/04/2012 8:56:29 PM Read  
UTC (Network)

Excellent. I'm pleased u have put that resume out so soon.  
2/04/2012 8:57:26 PM Sent  
UTC (Device)

Let me know if you want so help putting yours together. I had my amazing friend help me as I was like you !  
2/04/2012 9:00:04 PM Read  
UTC (Network)

Morning! Can u please send me Steve Lewis' number? The one I have won't go thru  
6/04/2012 10:35:18 PM Read  
UTC (Network)

Thx ;-) just going to double check I have everything he needs before turning in media phone. Gorgeous day, hope you have a wonderful time w your family  
6/04/2012 10:44:04 PM Read  
UTC (Network)

Great idea. Driving out now. You too  
6/04/2012 10:47:41 PM Sent  
UTC (Device)

Hey Karen. Would u be able to photograph with your iPhone and message the following dates to me? I'll then email to Steve if u like otherwise if u wouldn't mind sending them directly to him that would be great  
9/04/2012 7:21:04 AM Sent  
UTC (Device)

The dates he need from the Diary (daily extracts) are:  
Dec 31 2009 - Jan 9 2010  
Nov 10,11-2010

Thanks James

Howdy!! Just finished having BBQ at friends and now picked up Kalena from Mooloolaba. I'll head to yours now  
9/04/2012 9:34:36 AM Read  
UTC (Network)

Ok sounds good &#xD83D; &#xDE09;	9/04/2012 9:37:01 AM UTC (Device)	Sent
Your baby home safe and sound, parked and key returned. All the best in Sydney!	10/04/2012 9:18:14 AM UTC (Network)	Read
Thanks for driving that back. Fingers crossed everything goes smoothly. I've just landed and will go have a meeting with steve now before going to bed. I think tomorrow is going to be a big day.	10/04/2012 10:26:36 AM UTC (Device)	Sent
Take care of yourself my friend and remember an extra 24 hours of waiting to go to press is in everyone's best interest :-)	10/04/2012 10:37:32 AM UTC (Network)	Read
PS I sent you an email &#xD83D; &#xDC4D;		
Excellent thanks for that	10/04/2012 10:39:50 AM UTC (Device)	Sent
I'm on the train to Brisbane for my appt there. Please call me when you are finished w your deposition. Thx!!	11/04/2012 12:25:32 AM UTC (Network)	Read
Also, please forward those text messages from Peter from yesterday as well as prev derogatory ones you've shown me.	11/04/2012 12:26:28 AM UTC (Network)	Read
Just sitting they this long interview process. It's very tedious. I'll give u a yell as soon as I'm done.	11/04/2012 12:31:23 AM UTC (Device)	Sent
Fark-- totally not looking forward to mine	11/04/2012 12:32:04 AM UTC (Network)	Read
Hey Karen. I'm being advise to make sure all contact with Steve and any other journalist goes thru Anthony McClellan. Can u not tell Steve anything more and dont tell Steve about this text lill we've spoken. [REDACTED] is Anthony's number. Can he call u tomoorow? Text him your number and hell call u tomorrow. &#xD83D; &#xDE09;	12/04/2012 8:20:33 AM UTC (Device)	Sent
Cool. Mal Brough just called as well. Please give me a call when you and Anthony are finished as I've heard nothing from about 1pm and curious. Thx &#xD83D; &#xDE0A;	12/04/2012 9:02:31 AM UTC (Network)	Read
I'm fairly certain Steve asked Mal to call me. Mal also said Clive was overseas so nothing can be put forward - hmmm	12/04/2012 9:03:38 AM UTC (Network)	Read
Call u soon.	12/04/2012 9:20:42 AM UTC (Device)	Sent

44. When I viewed the file named '12N012A2.xry' with XRY Reader, I also saw that MMSs were recorded as having been sent to the number [REDACTED] (Karen Doane's mobile number).

45. One MMS was displayed as sent on 1 April 2012 at 12.26.01pm UTC with the file name 'MB.vcf'. When I opened the file named 'MB.vcf', it appeared as an entry in a Contacts list or address book, showing the name 'MB' and the phone number [REDACTED].

mal BROUGH



46. Another MMS was displayed as sent on 6 April 2012 at 10.39.17pm UTC with the file name 'Steve Lewis.vcf'. When I opened the file named 'Steve Lewis.vcf', it appeared as an entry in a Contacts list or address book, showing the name 'Steve Lewis' and the phone number [REDACTED]

Steve Lewis

MB

47. When I viewed the file named '12N012A2.xry' with XRY Reader, I saw that the number [REDACTED] was listed as belonging to 'MB'. On 12 June 2012 I performed a Google search for this number and obtained results which displayed this as the phone number for Mal Brough. Based on that search, the text messages below and the text messages and MMS between the Applicant and Ms Doane on 1 April 2012 (extracted above), I believe that this number belongs to Mal Brough, who I am aware is a former Liberal Member of the Australian Parliament. Annexed to this affidavit and marked CM-11 is a print-out of an article published in The Australian newspaper on 5 May 2012 titled 'I urged Slipper staffer James Ashby to get a lawyer, says Mal Brough'.

Mal Brough

48. I have extracted from the exhibits the following text messages between the Applicant and the phone number [REDACTED] which I have formed the view are relevant to the First Respondent's application.

Can that be emailed James it is hard to read Mal.brough2@bigpond.com	29/03/2012 11:31:19 AM	Read
	UTC (Network)	
Done. Coming thru in minutes	29/03/2012 11:31:53 AM	Sent
	UTC (Device)	
Thanks	29/03/2012 11:32:11 AM	Read
	UTC (Network)	
James can you give me a call please. Mal	12/04/2012 10:09:04 AM	Read
	UTC (Network)	

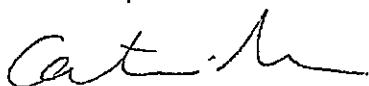
49. By viewing '12N012A2.xry' with XRY Reader, I also viewed three MMSs which were displayed as having been sent to the number [REDACTED]. The first was displayed as sent on 29 March 2012 at 11.28.10am UTC. When I clicked on the icon to open the file, it was a picture of an unnamed person's calendar for 21 September to 27 September 2009. Annexed to this affidavit and marked CM-12 is a copy of the picture. The following are examples of some of the entries in the calendar:

21 September 8am-9.30am: Peter going to sydney monday night

23 September 9am-10.30am: Peter returning to Brisbane wednesday morning

24 September to 6 October: Peter away

50. The second was displayed as sent on 29 March 2012 at 11.29.57am UTC. When I clicked on the icon to open the file, it was a picture of an unnamed person's calendar for 27 July to 2 August 2009. Annexed to this affidavit and marked CM-13 is copy of the picture.




51. The third was displayed as sent on 29 March 2012 at 11.30.08am UTC. When I clicked on the icon to open the file, it was a picture of an unnamed person's calendar for 20 to 26 July 2009. Annexed to this affidavit and marked CM-14 is copy of the picture.
52. Viewed with XRY Reader, the file also recorded 5 calls being dialled, received, or missed between this number and the Applicant on 9 and 10 April 2012.

#### REQUEST FOR PARTICULARS

53. On 18 May 2012 the Court made the following orders:
  1. The Respondents serve any request for particulars of the Statement of Claim on or before 23 May 2012.
  2. The Applicant serve any further particulars of the Statement of Claim on or before 28 May 2012, together with the documents referred to on page 14 of the Originating Application filed on 20 April 2012 save for documents subject to a claim for privilege, which claim is to be supported by an affidavit served at the same time.
54. On 23 May 2012 I emailed Harmers a letter dated 23 May 2012 requesting particulars of the Statement of Claim. Annexed to this affidavit and marked CM-15 is a copy of the email and attached letter.
55. On 28 May 2012 at 5.43pm Harmers emailed AGS a letter dated 28 May 2012 providing only some of the particulars requested. Annexed to this affidavit and marked CM-16 is a copy of the email and attached letters.
56. On 4 June 2012 Sarah Wright, a solicitor employed by AGS, emailed Harmers a letter dated 4 June 2012 pressing the request for particulars of the loss and damage suffered by the Applicant. Annexed to this affidavit and marked CM-17 is a copy of the email and attached letter.
57. On 5 June 2012 Harmers emailed AGS a letter dated 5 June 2012 providing an interim response. Annexed to this affidavit and marked CM-18 is a copy of the email and attached letter.
58. On 6 June 2012 Harmers emailed AGS a letter dated 6 June 2012. [REDACTED] Annexed to this affidavit and marked CM-19 is a copy of the email and attached letter.

#### STATUS OF APPLICANT'S EMPLOYMENT

59. I am informed by Greg Miles that the Applicant remains employed by the Commonwealth and that he is not attending work but remains off work on full pay. I am informed by Mr Miles that the Department's records show that, since the commencement of the Applicant's employment, the only leave taken by the Applicant is from 23 April 2012 to present.
60. In the originating application the Applicant alleged that as a result of the conduct of the respondents he suffered "considerable stress, humiliation and illness" and that he was currently seeking medical assistance.



61. On 26 April 2012 the First Respondent, through AGS, sought details of the Applicant's illness. A copy of the letter seeking information about the Applicant's medical condition is annexed to this affidavit and marked CM-20.
62. On 10 May 2012 the Applicant submitted a [REDACTED] medical certificate to support a leave application. The medical certificate was dated 5 May 2012 and stated that the Applicant "has a significant medical condition and will be unfit for work for the period 24/4/2012 to 12/6/2012". A copy of the certificate is annexed and marked CM-21.

Affirmed by the deponent

at Melbourne

Catrina

on 13 June 2012

Before me:

Signature of witness:

MJG

Name of witness:

Melissa Jane Gengemi

Qualification of witness:

Lawyer

## Schedule

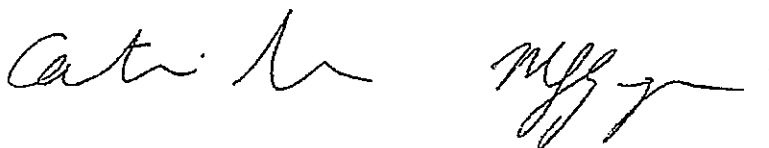
FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

## Respondents

Second Respondent      Peter Slipper

Date: 13 June 2012



## ANNEXURE CM-1

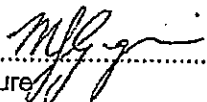
FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

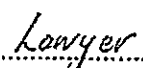
NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 1 pages is the annexure marked CM-1 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

  
Signature

  
Qualification



Parliament of Australia

SPEAKER OF THE HOUSE OF REPRESENTATIVES

FEDERAL MEMBER FOR FISHER

THE HON PETER SLIPPER MP

5 December 2011

Mr James Ashby  
Kawana Island

Dear James

I am writing to confirm my offer of employment on my personal staff at the level of Adviser as an ongoing employee commencing as soon as possible.

You will be employed as a Personal Employee under Part 111 of the *Members of Parliament (Staff) Act 1984*. The salary will be \$116,465 plus Parliamentary Staff Allowance (PSA) of \$25,750 in lieu of overtime.

The position will be based at Buddina and you will travel to Canberra during parliamentary sitting periods or at other times as directed. Overnight travelling allowance of \$230 per night (60 to 80 days on average per year) will also be payable.

Yours sincerely

PETER SLIPPER

5/12/11

Electorate Office, PO Box 1224 Buddina QLD 4575, Australia

Telephone (07) 5444 4888 Facsimile (07) 5452 6655

Speaker's Office, Suite RG44, Parliament House, PO Box 6022 Canberra ACT 2600, Australia

Telephone (02) 6277 4000 Facsimile (02) 6277 2050 Email: [peter.slipper.mp@aph.gov.au](mailto:peter.slipper.mp@aph.gov.au)

## ANNEXURE CM-2

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 6 pages is the annexure marked CM-2 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

.....  
Signature

.....  
Qualification



## Bullying, Harassment and Workplace Violence Policy and Procedure for MOP(S) Act Employees

### Introduction and Aim

To comply with Commonwealth legislation, Senators and Members must provide a safe and healthy work environment, free from bullying, harassment and workplace violence, for *Members of Parliament (Staff) Act 1984* (MOP(S) Act) employees. This policy should be read in conjunction with the draft Code of Practice *Preventing And Responding to Workplace Bullying* published by Safe Work Australia (the Code of Practice).

Bullying, harassment and workplace violence is unacceptable and can have significant consequences for individuals. It is expected that all employees, contractors, volunteers and other persons in a Senator or Member's office will behave in a professional manner, and treat each other with dignity and respect.

Employees have a role to play in eliminating bullying, harassment, and workplace violence by refusing to participate in this behaviour, reporting any experiences of the behaviour, and supporting colleagues in saying no to these behaviours. Senators and Members are responsible for ensuring, as far as practicable, that no employees are exposed to bullying, harassment or violence when on duty.

All reports of bullying, harassment or workplace violence that Ministerial and Parliamentary Services (M&PS) becomes aware of will be treated seriously, promptly and impartially. Employees who report bullying, harassment or workplace violence must not be victimised.

### Definitions

Bullying means repeated, unreasonable behaviour, directed towards a person or group of persons at a workplace, which creates a risk to health and safety. Repeated, unreasonable behaviour may be obvious or hidden and can escalate over time. Bullying is behaviour that a reasonable person would find offensive, humiliating, intimidating, degrading or threatening.

Bullying can be direct and obvious or indirect. Examples of direct bullying include:

- abusive, insulting or offensive language;
- spreading misinformation or malicious rumours;
- behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling or screaming;
- displaying offensive material;
- inappropriate comments about a person's appearance, lifestyle, or their family;
- teasing or regularly making someone the brunt of pranks or practical jokes;

- interfering with a person's personal property or work equipment; or
- harmful or offensive initiation practices.

Examples of indirect bullying include:

- unreasonably overloading a person with work or not providing enough work;
- deliberately setting timelines that are difficult to achieve or constantly changing deadlines;
- deliberately setting tasks that are unreasonably below or beyond a person's skill level;
- deliberately excluding, isolating or marginalising a person from normal work activities;
- withholding information that is vital for effective work performance;
- deliberately denying access to information, consultation or resources;
- deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular worker or workers; or
- a pattern of unfair treatment in relation to accessing workplace entitlements such as leave or training.

The following behaviours would not normally be considered bullying:

- A single incident of unreasonable or inappropriate behaviour. However this should be considered as an incident that may escalate into bullying if not addressed.
- Occasional differences of opinion, conflicts or problems in work relationships; this can be a common part of working life. However, workplace relationships should be managed in a professional way, and if the behaviour is unreasonable, degrading, threatening or offensive then it should be addressed.
- Respectful management of performance such as suggesting ways to improve poor work practices or implementation of disciplinary proceedings.

Harassment is verbal or physical conduct which, because of its severity and/or persistence, is likely to create a hostile or intimidating environment which in turn may detrimentally affect an individual's employment.

Sexual harassment is unwelcome advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment, unreasonably interferes with a person's work, or creates an intimidating, hostile or offensive working environment.

Workplace violence is any physical assault, threatening behaviour or verbal abuse occurring in the workplace that offends, degrades or humiliates a person, and has the potential to create a risk to health, safety and wellbeing.

## Risk Management

An ongoing risk management approach should be used to identify and address risks that may contribute to the occurrence of bullying, harassment and violence in the workplace.

### Hazard Identification

This involves identifying factors that may contribute to employees being exposed to workplace violence, harassment or bullying behaviour. These factors may include:

- Direct information - specific complaints and feedback, workers' compensation claims;
- Indirect information - absence patterns, withdrawn employees, an ongoing tense working environment, resignations;
- Organisational issues - nature of work, restructuring, staff shortages, job uncertainty;
- Operational issues - regular patterns of working alone or out of hours; and
- Environmental factors - physical layout of office area, location of office.

### Risk Assessment

Once any of the above factors are identified, the risk of potential harm needs to be assessed in terms of its likelihood and impact on employees and the office environment. There are potentially significant consequences of bullying, harassment and workplace violence in terms of individual psychological health, employment costs, legal action and reputational damage.

### Mitigating the Risk

#### Training and Awareness

A key preventative measure to combat workplace bullying, harassment and violence is to promote awareness of these behaviours. Finance will provide:

- online training for MOP(S) Act employees;
- support for a 'no tolerance' approach to bullying, harassment and violence; and
- information for Senators and Members and MOP(S) Act employees about how bullying, harassment and violence should be managed within the office.

#### Early intervention and response

In accordance with principles of early intervention, incidents or injuries related to bullying, harassment or workplace violence should be reported to Konekt Response within 24 hours.

Where required, rehabilitation services will be provided by the Commonwealth as promptly as practicable, with the aim of reducing the human and financial costs associated with the incident.



Senators and Members are responsible for managing employment arrangements within their office to reduce the risk of further incidents. This may include issuing cautions or taking other disciplinary action; or changing working arrangements, such as the location or usual hours of work, to reduce the risk of conflict between employees.

#### Employee Assistance Program (EAP)

The EAP can be utilised by MOP(S) Act employees affected by personal or job related problems. These may be work-related, health, family, financial or emotional concerns. All calls made to the EAP provider, Davidson Trahaire Corpsych (DTC), are confidential. DTC is available 24 hours per day, seven days per week.

#### Complaint Resolution Procedure

There are three ways in which to resolve a complaint of bullying, harassment or workplace violence. These are:

- self-management through informal methods;
- informal measures involving a third party; and
- making a formal complaint.

#### Self-Management through Informal Methods

A self-management approach can be effective in dealing with some types of inappropriate behaviour in the workplace, for example, when the behaviour is not caused by deliberate nastiness but rather by insensitivity or ignorance.

The following techniques may be helpful when approaching a person exhibiting inappropriate behaviour:

- remain calm and well-mannered;
- describe the inappropriate behaviour rather than the person exhibiting it;
- describe the detrimental effect of the behaviour;
- request that the behaviour not occur again; and
- request an agreement that the behaviour will not happen again; or
- request an acknowledgement of the request for the behaviour to stop.

Self-management may not be appropriate if it puts the MOP(S) Act employee making a complaint at risk, or if the problem is with a group of employees, rather than one individual.

#### Informal Measures Involving a Third Party

This approach focuses on resolving the issue in conjunction with an appropriate third party and aims to put in place strategies to ensure that the behaviour is acknowledged and not repeated. An appropriate third party may be a manager within the office or someone else with appropriate skills and authority. DTC are available to assist with information about informal solutions. M&PS Entitlements Managers can arrange for professional mediation services where appropriate.

Informal measures may include the following:

- The third party guides a mediated discussion between the parties involved. The outcome should be determined and agreed by the two people involved; however the third party mediates the process as required.
- The third party conducts individual negotiations between the parties to reach an acceptable agreement.
- The MOP(S) Act employee with the complaint raises their concerns with an appropriate third party who can then deal with the issues in an indirect way, such as arranging staff training regarding bullying and harassment.
- The MOP(S) Act employee with the complaint raises their concerns with their manager or an appropriate third party who can put themselves in a position in which to observe the inappropriate behaviour. This will then allow them to intervene directly to address the issue.

Any agreement reached as a result of the informal measures above should be put in writing and signed by the involved parties. Only the involved parties will have a copy of the agreement. This can then be used as evidence of an attempt to resolve the matter, should there be a breach of the agreement.

### Formal Complaints

Where there is no satisfactory outcome after a self-management approach and/or informal resolution involving a third party, a MOP(S) Act employee may wish to lodge a formal complaint. A formal complaint can also be lodged as the first step in the complaint management resolution process should the other approaches not be appropriate in the circumstances.

A formal complaint is also initiated when M&PS becomes aware of an incident of bullying or harassment, either through a direct complaint to M&PS or through a report made to Konekt or Comcare. In this circumstance, M&PS will communicate with relevant parties to the complaint, confirming the circumstances of the incident and where appropriate setting out each party's responsibilities and providing information on managing bullying and harassment within the office.

### Resolution of Formal Complaints

The following outlines the three stages in the formal complaint resolution procedure:

#### Written Statement

Where the complaint concerns other MOP(S) Act employees, the complainant should set out their grievance in writing to their employing Senator or Member, outlining the reasons for the grievance and the person/s involved.

Where the complaint concerns the employing Senator or Member, the complainant should set out their grievance in writing to their M&PS Entitlements Manager, outlining the reasons for the grievance.

#### Meeting

A meeting is arranged, where possible, with relevant parties to the complaint present, in order to establish the facts and attempt to resolve the issue. Complaints

must be fully described by the person with the complaint and the other person(s) should be given the full details of the complaint(s) against them. In addition the person(s) who the complaint has been made against should have the opportunity to prepare and present their side of the story before resolution is attempted. The aim of this meeting is to discuss and agree to options for resolution. The meeting must be documented and a record of the discussion and agreed outcomes provided to each party.

If the MOP(S) Act employee reporting the complaint feels uncomfortable with the other party or parties being present then, as soon as practicable, separate meetings will be held between each party and either a representative of the Senator or Member or a mediator, as appropriate to the circumstances, to explain the formal process and each party's rights and responsibilities. Subject to the consent of each party to the complaint, information provided by one party may be shared with the other parties, and follow-up separate meetings held, in an attempt to discuss and agree to options for resolution. All meetings will be documented and a record of the discussion and agreed outcomes provided to each party to the complaint.

#### Investigation

Should the MOP(S) Act employee making the complaint not be satisfied with the outcomes of the meeting, an investigation as set out in the Code of Practice may be undertaken. The investigator will provide a draft written report on the outcomes of the investigation to all parties. If either party is not satisfied with the outcomes set out in the draft report, they can provide a dissenting statement that must be incorporated into the final report of the investigation and provided to all parties.

Where a formal investigation has taken place, the parties will be contacted within six-weeks after the finalisation of the investigation, to establish the wellbeing of the parties involved and whether any actions taken to stop the bullying or harassment have been effective.

## ANNEXURE CM-3

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 63 pages is the annexure marked CM-3 referred to in the affidavit of Catherine Heather Mann made 13 June 2012 before me:

Signature

Lawyer  
Qualification

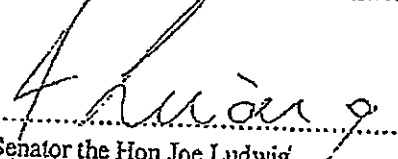
**COMMONWEALTH  
MEMBERS OF PARLIAMENT STAFF  
ENTERPRISE AGREEMENT  
2010-2012**

Effective from 29 April 2010

### Formal Acceptance of Enterprise Agreement

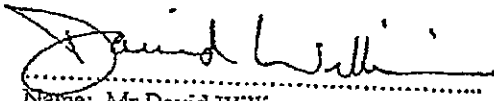
The *Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012* has been made under Part 2-4 of the *Fair Work Act 2009*.

For, and on behalf of, the Commonwealth

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

Dated: 12th April 2010

On behalf of the Staff Representative Group

  
.....  
Name: Mr David Williams

Address: M140 PARLIAMENT HOUSE  
CANBERRA ACT

Dated: 12 APRIL 2010.

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## A INTRODUCTION

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

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

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

## **B TECHNICAL MATTERS**

### **1 Title**

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

### **2 Coverage**

- 2.1 This Agreement is made as an Enterprise Agreement under Part 2-4 of the Fair Work Act and covers:
- (a) the Special Minister of State (the Minister) on behalf of the Commonwealth of Australia;
  - (b) persons employed under Part III and Part IV of the MOP(S) Act, at the classifications listed in Attachments A, B and C (employees);
  - (c) the Community and Public Sector Union
  - (d) the Media, Entertainment and Arts Alliance; and
  - (e) the Australian Services Union.

### **3 Operation of Agreement**

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

### **4 Closed Agreement**

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

### **5 Transitional Arrangements**

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

### **6 Guidelines**

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

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

## 7 Consultation Framework

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

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

## 8 Employee Consultative Group

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

A formal meeting of the ECG will only be constituted when there is attendance from each of the above three groups.
- 8.3 The ECG will be consulted on workplace issues pertaining to employees generally (as opposed to issues relating to individual employees or individual offices), including but not limited to:
  - (a) proposed changes to, or establishment of, guidelines or policies in relation to the Enterprise Agreement, where the proposed change affects Employees;
  - (b) the operation and application of the Enterprise Agreement;

(c) harassment and discrimination policies;

(d) any other relevant workplace matters.

8.4 Consultation must be in accordance with the consultation framework at clause 7 and includes but is not limited to the provision of appropriate and timely responses to matters raised by ECG members.

8.5 The ECG is to meet no less than four (4) times in each complete calendar year over the life of the Agreement.

## **9 Consultation on Major Changes**

9.1 This clause applies if:

- (a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
- (b) the change is likely to have a significant effect on employees of the enterprise.

9.2 The employer must notify the relevant employees of the decision to introduce the major change.

9.3 The relevant employees may appoint a representative for the purposes of the procedures in this clause.

9.4 If:

- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purpose of consultation; and
- (b) the employee or employees advise the employer of the identity of the representative;

the employer must recognise the representative.

9.5 As soon as practicable after making the decision, the employer must:

- (a) discuss with the relevant employees:
  - (i) the introduction of the change; and
  - (ii) the effect the change is likely to have on the employees; and
  - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- (b) for the purposes of the discussion – provide, in writing, to the relevant employees:
  - (i) all relevant information about the change including the nature of the change proposed; and

(ii) information about the expected effects of the change on the employees; and

(iii) any other matters likely to affect the employees.

9.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

9.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

9.8 If a term in the Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in clauses 9.2, 9.3 and 9.5 are taken not to apply.

9.9 In this clause, a major change is **likely to have a significant effect on employees** if it results in:

- (a) the termination of the employment of employees; or
- (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

9.10 In this clause, **relevant employees** means the employees who may be affected by the major change.

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

10.1 The persons and organisations covered by this Agreement, as provided for in clause 2, commit to an evaluation of the working hours of Electorate Officers and the adequacy and framework of the Electorate Staff Allowance to be completed during the life of this Agreement.

10.2 The ECG will be provided with regular reports on the progress of the evaluation.

## 11 Employee Representation

11.1 Employees are entitled to be represented by, and communicate with, an employee organisation or employee representative of their choosing in relation to their employment.

11.2 Employees undertaking representational duties will be provided with appropriate support, having regard to the operational and resource requirements of the employing Member. Such support will include:

- (a) reasonable time during work hours for employee representatives to conduct their representational activities without deduction of salary;
- (b) reasonable access to office equipment and communications systems; and
- (c) allowing participation in collective bargaining on behalf of employees who have appointed the organisation or representative as their bargaining representative in accordance with the Fair Work Act.

11.3 Employee organisations and employee representatives may engage in official communication with employees, including members of those organisations, including via:

- (a) emails;
- (b) access to employee organisations' or representatives' websites; and
- (c) group or individual meetings between employees and their representatives.

## **C EMPLOYMENT OPTIONS**

### **12 Type of engagement**

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

### **13 Probation**

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

### **14 Ongoing**

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



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

## **15 Non-ongoing**

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

## **16 Casual**

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

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

## **17 Working From Home**

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

## **18 Individual Flexibility**

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

- (d) includes details of;
    - (i) the terms of the Agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (e) states the day on which the arrangement commences.
- 18.4 The Minister, on behalf of the Commonwealth, must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 18.5 The Minister, on behalf of the Commonwealth, or employee may terminate the individual flexibility arrangement:
- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the Minister, on behalf of the Commonwealth, and employee agree in writing – at any time.

## **D REMUNERATION**

### **19 Signing Bonus**

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

### **20 Payment of Salary**

- 20.1 Employees will be paid fortnightly in arrears, by electronic funds transfer (EFT) into an Australian financial institution account of the employee's choice.
- 20.2 Annual salary and allowances are converted to fortnightly amounts by the following formula:

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

### **21 Salary Increases**

- 21.1 Employees will receive two salary increases over the life of this Agreement as shown at Attachments A, B and C of this Agreement:
- (a) an increase in salary of 3 per cent on and from the commencement of this Agreement;
  - (b) an increase in salary of 3 per cent on and from one year following the commencement of this Agreement.

### **22 Classification Structures**

- 22.1 The classification structure and salary ranges for:
- (a) senior staff are as shown at Attachment A;
  - (b) Personal Employees, other than senior staff, are as shown at Attachment B; and
  - (c) Electorate Employees are as shown at Attachment C.
- 22.2 An employee may only be employed by a Member at a single classification and a single salary regardless of whether that employment is against a position or positions and/or the Relief Staff Budget.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 25.5 Employees who are temporarily progressed to the classifications of Principal Adviser, Chief of Staff and Senior Adviser will be paid an allowance in lieu of a private-plated vehicle as set out at clause 28.
- 25.6 Further information can be found in the relevant Guideline 'Salary Progression'.

## 26 Salary Packaging

- 26.1 Under this Agreement, salary packaging is available to all ongoing employees and non-ongoing employees with an employment agreement for a minimum period of three months, upon receipt from the employee of a written election, which is separate to the employment agreement. Salary packaging allows an employee to elect to receive benefits in lieu of salary. It is offered to employees on the basis that it incurs no additional cost to the employing Member or the Department.
- 26.2 Ongoing employees may include in a salary package items that attract either no Fringe Benefits Tax (FBT) or a concessional rate of FBT. Non-ongoing employees may only include superannuation contributions in a salary package.

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

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

## 27 Superannuation

- 27.1 Employees are entitled to superannuation in accordance with the relevant Commonwealth legislation.
- 27.2 Contributions to the Public Sector Superannuation Accumulation Plan (PSSAP) will be calculated in accordance with the ordinary time earnings method for the purpose of Rule 2.2.3 of the Rules for the PSSAP, as amended or replaced from time to time.
- 27.3 For an employee who exercises superannuation choice in accordance with Part 3A of the *Superannuation Guarantee (Administration) Act 1992*, the Commonwealth will maintain the maximum basic contribution for designated employers as specified in Part 2, Division 2 of the Deed to establish the PSSAP (currently 15.4 per cent), calculated on the employee's ordinary time earnings.
- 27.4 The choice of superannuation funds is limited to those funds that allow employee and employer contributions to be paid fortnightly through electronic funds transfer.



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

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

## **29 Corporate Responsibility Allowance**

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

## **30 Relocation Expenses**

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

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

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

### **32 Discretionary Payments**

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

### **33 Supported Wage System**

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

### **34 Recovery of Debts**

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

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

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

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

### **35 Payment on Death**

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

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

## **E WORKING HOURS AND ALLOWANCES**

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

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

### **37 Additional Hours**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 40.1 Time off in lieu (TOIL) in recognition of additional hours worked above the ordinary hours of duty as specified in clause 36 may be available to:
- (a) employees, other than casual employees and those in receipt of PSA or ESA, and
  - (b) the employees of former Prime Ministers no longer in Parliament, other than drivers and casual employees.
- 40.2 TOIL may accrue if agreed to by the employing Member and should take into account the nature of the occasion and level of inconvenience to the employee when the additional hours were worked.
- 40.3 Accrued TOIL may be taken at a time agreed to by the employing Member and the employee.

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

- 41.1 Drivers employed by former Prime Ministers no longer in Parliament will receive an allowance for additional hours of work, over and above the ordinary hours of duty as specified in clause 36.
- 41.2 The allowance set out in clause 41.1 will increase in line with salary increases specified in clause 21 and will be paid at the rates shown in Attachment D.
- 41.3 Where an employee is a member of the CSS or PSS, the employee may elect not to include the allowance set out in clause 41.1 as salary for superannuation purposes, subject to the rules and regulations of the employee's superannuation scheme.



## **F LEAVE**

### **42 Leave Applications**

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

### **43 Annual Leave**

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

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

#### 44 Personal Leave

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

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

44.8 Unused personal leave will not be paid out on termination of employment.

44.9 Personal leave is not accrued by casual employees.

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

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

45.1 Employees, including casual employees, are entitled to a period of up to two days' unpaid carer's leave for each occasion when a member of the employee's immediate family or household, requires care or support during such a period because of:

- (a) a personal illness, or injury, of the family/household member; or
- (b) an unexpected emergency affecting the family/household member.

45.2 The entitlement in clause 45.1 is to two days' leave for full-time, part-time and casual employees, and is not subject to a pro rata in accordance with clause 36.3.

45.3 Employees are entitled to unpaid carer's leave for a particular period only if the employee cannot take an amount of personal leave under clause 44 during the period.

45.4 A period of unpaid carer's leave will not count as service for any purpose. However, it will not break an employee's continuity of service.

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

#### **46 Compassionate Leave**

46.1 Employees, other than casual employees, are entitled to a period of two days of paid compassionate leave for each occasion a member of the employee's immediate family or household:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (b) sustains a personal injury that poses a serious threat to his or her life.

46.2 Employees, other than casual employees, are entitled to a period of three days of paid compassionate leave for each occasion a member

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

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

#### **47 Community Service Leave**

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

#### **48 Miscellaneous Leave**

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

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

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

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

## **50 Long Service Leave**

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

## **51 Maternity Leave**

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

the employee is entitled to receive a payment equal to:

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

**51.6 If an employee:**

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

then:

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

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

**52 Adoption leave**

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

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

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

### **53 Supporting partner leave**

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

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

### **54 Unpaid parental leave**

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

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

### **55 Leave Without Pay**

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

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

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

### **56 Public Holidays**

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

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

- (e) Christmas Day, or if that day falls on a Saturday or Sunday, 27 December;
  - (f) Boxing Day, or if that day falls on a Saturday or Sunday, 28 December;
  - (g) an additional day within the Christmas/New Year period as follows:
    - (i) Wednesday, 28 December – when Christmas Day falls on a Sunday;
    - (ii) Wednesday, 27 December – when Christmas Day falls on a Monday;
    - (iii) Monday, 31 December – when Christmas Day falls on a Tuesday;
    - (iv) Friday, 27 December – when Christmas Day falls on a Wednesday;
    - (v) Monday, 29 December – when Christmas Day falls on a Thursday;
    - (vi) Tuesday, 29 December – when Christmas Day falls on a Friday;
    - (vii) Wednesday, 29 December – when Christmas Day falls on a Saturday;
  - (h) Queen's Birthday, as gazetted by the relevant State or Territory Government;
  - (i) Labour Day, as gazetted by the relevant State or Territory Government; and
  - (j) any other days gazetted as public holidays by the State or Territory Government in the State or Territory in which the employee would otherwise be working on that day.
- 56.2 Employees may be requested to work on particular public holidays, and must work on the public holiday unless the request to work is unreasonable or any refusal by the employee to the request is reasonable. Employees acknowledge that the nature of the job requires certain employees to work on particular public holidays (including Australia Day, ANZAC Day, the Queen's birthday and local picnic and Cup days) from time to time.
- 56.3 Further information can be found in the relevant Guideline 'Types of Leave'.



## 57 Prior Service

### 57.1 An employee who:

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

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

### 57.2 An employee who:

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

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

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

## 58 Portability of Leave

58.1 Employees, other than casual employees, who are:

- (a) employed by an agency as defined in section 5 of the *Financial Management and Accountability Act 1997*, and
- (b) who are granted leave without pay from that employer (the former employer) to undertake MOP(S) Act employment,

will have all their accrued leave credits recognised.

58.2 An employee's entitlement to the accrued leave credits specified in clause 58.1 and to any future leave entitlements will be in accordance with this Agreement.

58.3 On an employee's return to the former employer at the cessation of MOP(S) Act employment, the employee's accrued leave entitlements will be transferred to the former employer and will not be paid in lieu.

58.4 Further information can be found in the relevant Guideline 'Recognition of Prior Service'.

## 59 Unauthorised Absence

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

## **G TRAVEL**

### **60 Travel**

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

### **61 Travelling Allowance**

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

61.5 For overnight stays in Canberra:

- (a) the rate for senior staff will be the Canberra rate of TA for Members, as determined from time to time by the Remuneration Tribunal;
- (b) the rate for employees who are not senior staff will be \$10 less than the Canberra rate of TA for Members, as determined from time to time by the Remuneration Tribunal; and

61.6 For overnight stays outside of Canberra, the single flat rate of TA will be based on the type of accommodation used:

- (a) *commercial accommodation*: the full (commercial) rate of TA will be paid where a receipt for the commercial accommodation is produced, or where a certification is made that a receipt for the commercial accommodation can be produced. Where neither a receipt is produced, nor a certification made; or where a certification is made but a receipt is not produced upon request by the Department, a rate of one third of the commercial rate is payable, rounded upwards to the nearest dollar; or
- (b) *private non-commercial accommodation*: where an employee is accommodated in private, non-commercial accommodation, a rate of one third of the commercial rate is payable, rounded upwards to the nearest dollar.

61.7 If an employee resides in one location away from their work base for a continuous period of longer than 35 nights, a review rate of TA based on actual expenses, up to a maximum of the TA rate for the location, will be paid for subsequent nights.

61.8 The payment of TA is limited to a maximum of 120 overnight stays in Canberra per financial year for:

- (a) Personal Employees; and
- (b) any Electorate Employee not subject to the Electorate Staff Travel Budget,

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

61.9 If:

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

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

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

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

## **62 Airline Loyalty Points**

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

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

## **63 Motor Vehicle Allowance**

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

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

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

## **H LEARNING AND PROFESSIONAL DEVELOPMENT**

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

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

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

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

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

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

## **I OCCUPATIONAL HEALTH AND SAFETY**

### **66 Occupational Health and Safety**

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

### **67 Discrimination and Harrassment**

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



## 68 Employee Assistance Program

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

## J TERMINATION OF EMPLOYMENT

### 69 Notice of Termination

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

Length of continuous service employed by the Commonwealth (including service under the MOP(S) Act with other Members)	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- 69.2 Where an employee is over 45 years of age and has completed two years' continuous service at the time of termination the employee will be entitled to one additional week's notice of termination or payment in lieu of notice.
- 69.3 Where an employee's employment is terminated within the employee's probationary period, the employee will be entitled to one week's notice of termination or payment in lieu of notice.
- 69.4 Where an employee is guilty of serious misconduct (within the meaning of paragraph 1.07 of the Fair Work Regulations), his or her employment may be terminated without notice.
- 69.5 Clauses 69.1 to 69.4 will not apply to the following groups of employees:
- (a) ongoing Commonwealth employees who are on leave, including ongoing APS employees who have been granted leave without pay under the *Prime Minister's Public Service Directions 1999* (as varied or replaced from time to time), to undertake employment under the MOP(S) Act; and
  - (b) casual employees.

### 70 Severance Benefits

- 70.1 Severance benefits are payable in accordance with clause 70.2 to persons whose employment is terminated under Part III or Part IV of the MOP(S) Act other than through resignation and excluding:
- (a) employees of the APS, the Public Service of a State or Territory, or any other public sector employer from which they are on leave;

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

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

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

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

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

70.3 Where an employee is:

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

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

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

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

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

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

## 71 Additional Severance Benefits

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

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

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

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

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

## **73 Termination of Employment**

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

## **K DISPUTE PREVENTION AND RESOLUTION**

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

74.1 If a dispute relates to:

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

this clause 74 sets out procedures to settle the dispute.

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

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

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

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

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

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

74.7 Fair Work Australia may deal with a dispute referred to it under clause 74.5 in two stages:

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

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

- (i) arbitrate the dispute; and
- (ii) make a determination that is binding on the parties.

**Note:** If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Fair Work Act. A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Fair Work Act. Therefore, an appeal may be made against the decision.

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

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

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

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

## **L DEFINITIONS AND INTERPRETATION**

### **75 Definitions**

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

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

**"APS"** means the Australian Public Service.

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

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

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

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

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

Accordingly, if an employee:

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

**"CSS"** means the Commonwealth Superannuation Scheme.

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

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

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

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



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

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

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

**"Fair Work Regulations"** means the *Fair Work Regulations 2009*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"PSS"** means the Public Sector Superannuation Scheme.

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

**"salary"** means an employee's rate of pay and will be salary for all purposes.

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

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

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

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

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

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

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

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

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

## **76 Interpretation**

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

## M ATTACHMENTS

### Attachment A: Classification Structure: Senior Staff

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

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

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

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

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

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

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

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

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

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

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

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



## Attachment D: Allowances for Additional Hours of Work

### Rates of Electorate Staff Allowance

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

### Rates of Parliamentary Staff Allowance

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

### Allowance for Drivers Employed by Former Prime Ministers

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

## Attachment E: Transitional Arrangements

### 1 Translation of Personal Employee Classifications

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

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

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

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

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

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

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

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

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

## ANNEXURE CM-4

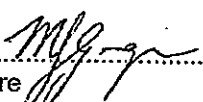
FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

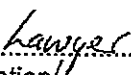
NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 3 pages is the annexure marked CM-4 referred to in the affidavit of Catherine Heather Mann made 13 June 2012 before me:

Signature 

Qualification 

# The Courier-Mail

## News

### Court documents allege Peter Slipper made advances towards James Ashby at the Speaker's Sunshine Coast home

- by: Janet Fife-Yeomans
- From: The Daily Telegraph
- April 21, 2012 1:00AM



Source: The Daily Telegraph

IT started at Peter Slipper's comfortable Sunshine Coast home, court documents allege.

James Ashby, 33, had been invited to the MP for Fisher's house at Gleneagle Rd, Buderim, by a mutual acquaintance, a man who was launching a bid for a seat on the local council.

It didn't take long before the conversation turned to sex, it is claimed.

Mr Ashby, best known until now as the adviser who grabbed a journalist's mobile phone and threw it away during one of Mr Slipper's press conferences last month, has documented in his application to the Federal Court an alleged litany of sexual innuendos, flirting via text, harassment and outright invitations to have sex.

At that first visit back in June or August last year, Mr Ashby claims Mr Slipper asked him if he knew whether their mutual acquaintance was gay or heterosexual.

Mr Ashby said he told Mr Slipper that he had no idea about the person's sexual orientation but that he had been quite open about his own sexuality: he told Mr Slipper that he was gay.

About two months later, in October, Mr Slipper's job offers began. He twice offered Mr Ashby the job as his media adviser. Twice Mr Ashby, who had been working in public relations and marketing, turned him down.

But Mr Slipper was persistent, Mr Ashby claims, and in December made him an offer in writing as an adviser.

By this time, Mr Slipper had been installed as the new Speaker of the House of Representatives and Mr Ashby resigned as a member of the Liberal National Party and accepted the job as an adviser to Mr Slipper on December 22 last year.

It was a job, Mr Ashby claims, that led to him suffering "considerable stress, humiliation, and illness".

Just over a week into it, Mr Ashby moved from Queensland to Canberra where, he claims, Mr Slipper insisted he was to stay with him at his flat in Hughes. Mr Slipper allegedly said his long-term adviser Tim Knapp and other staff usually stayed there with him.

During the following few days, Mr Ashby alleges Mr Slipper said to him: "Tim says you're my f ... buddy."

Another day, he allegedly asked Mr Ashby to massage his neck.

"(Mr Slipper) then lay on his bed. He did not have a shirt on and was clothed only in shorts," Mr Ashby claims in the documents filed in the Federal Court.

"(Mr Ashby) stood beside the bed and began to massage (Mr Slipper)'s neck. After about a minute (Mr Slipper) began to moan in a manner that to (Mr Ashby) indicated intense sexual pleasure. Mr Ashby was shocked, felt very uncomfortable at what was happening, and stopped immediately, saying 'You're done', and proceeded to leave the room. (Mr Slipper) said 'Oh that felt so good'."

The next morning, Thursday January 5, and still just two weeks into his new job, Mr Ashby claims his new boss told him: "You're a strange one. You're weird because you shower with the door shut."

Mr Slipper called him a prude and went on to say: "You even go to the toilet with the door shut."

Mr Ashby claims he told Mr Slipper that it wasn't weird but perfectly normal to wash and go to the toilet with the door shut.

When he woke up the next morning, it was to the sound of the shower and the sight of the bathroom door open.

He claims Mr Slipper continued to shower with the door open for the rest of that week on Canberra.

On the way back to Queensland that weekend, Mr Ashby claims Mr Slipper "spitefully" taunted him about looking fat in a new purple shirt he had bought in Canberra.

A week later, on the morning of January 14 this year, Mr Ashby claims he picked father-of-three Mr Slipper up from the home where he lives with his wife to drive him to meet with some of his constituents.

They pulled up for a takeaway coffee at a cafe a couple of kilometres away and as they sat in the car with their drinks, Mr Slipper allegedly asked Mr Ashby: "Have you ever c ... in a guy's a ... before?"

"(Mr Ashby) was shocked to hear this question from his employer and replied 'That's not the kind of question you ask people, Peter'," the court documents claim.

Mr Ashby claims that some weeks later he was again driving his boss around when Mr Slipper allegedly asked him: "Twinks or bears - what are you into?"

"(Mr Ashby) recognised the question as relating to types of gay sexual partners and was uncomfortable, replying: 'They are not questions you ask'," the court documents claim.

Then the text messages started, first ending in one "x" and then "Xxx". They continued late into the evening.

"While (Mr Ashby) could assume that one "x" was a mistake, he became concerned at three and viewed the message as bizarre," according to the court documents. Mr Ashby claims that after "declining the sexual invitations" of Mr Slipper, the MP's attitude changed.

Mr Slipper told him to communicate with him only through Mr Knapp and withdrew his invitation to join a cruise on Sydney Harbour with a delegation from Samoa including the Deputy Prime Minister of Samoa.

But he alleges that Mr Slipper did not stop trying.

On March 1, as he prepared a YouTube video of Mr Slipper explaining the significance of the mace in parliament, Mr Ashby claims Mr Slipper stroked his arm, saying: "You do such a beautiful job with these videos."

On March 20, he claims Mr Slipper walked into his office and said; "Can I kiss you both?" There was no one else present.

"By this time (Mr Ashby) had formed the view that (Mr Slipper) had recruited him to his personal staff for the purpose of pursuing a sexual relationship," the court documents allege.

"(Mr Ashby) was further informed by (Mr Slipper) that (Mr Slipper) had in November 2011 interviewed another gay man for the purpose of recruiting that man to the office."

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## ANNEXURE CM-5

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 5 pages is the annexure marked CM-5 referred to in the affidavit of Catherine Heather Mann made 13 June 2012 before me:

Signature

Qualification



# The Courier-Mail

News

## This is an extract of allegations against Peter Slipper in the application in federal court

- by: The Daily Telegraph
- From: The Daily Telegraph
- April 21, 2012 1:00AM



Source: The Courier-Mail

A FORMER aide to Speaker Peter Slipper has made allegations of unwanted sexual advances. Here is an extract of the allegations lodged against Mr Slipper in the federal court.

Wednesday January 4 2012: James Ashby and Peter Slipper were in Slipper's flat after work. Slipper asks applicant: "Can you massage my neck". Ashby says words to the effect of "yeah righto" as "he did not know what other response to give as he was brand new to him job and he was being asked by his employer".

Thursday, January 5: Ashby was getting ready for work, when Slipper says: "You're a strange one". The following conversation then took place in words to the effect of: Slipper: "You're a weird because you shower with the door shut".

Ashby: "What's weird about that?"

Slipper: "You're a prude".

Ashby: "You can call me what you like, I'm happy to war the tag of prude. I don't know what you private schoolboys got up to in your day, but I've never found it normal to shower with the door open. My dad's never done it, I've never done it, my mates don't do it, that's not weird".

Slipper: "But you even go to the toilet with the door shut".

Ashby: "It's not weird and it's normal".

Slipper: "You should try showering with the door open"

Ashby: "It's never gonna happen"

Slipper: "What have you got to hide? What are you doing in there?"

Ashby: "I'm not doing anything in there, it's just not normal to shower with the door open".

-----//-----

January 14: Applicant drove to Slipper's home to take him to meet some of his constituents. They stop at a local coffee shop.

Slipper: "Have you ever c\*\*\* in a guy's a\*\*\* before".

Ashby: "That's not the kind of question you ask people, Peter".

Some weeks later ---

Slipper: Twinks or Bears - what are you into?

"The applicant recognised the question as relating to the types of gay sexual partners and was uncomfortable, replying to the questions 'They are not questions you ask'."

-----//-----

Text messages on February 1 and 2: *The Sunshine Coast Daily* was wanting to interview Slipper on his use of social media.

Ashby texts Slipper at 5.44pm: "DO NOT DO THE SOCIAL MEDIA INTERVIEW WITH CATHY. They are digging for a new angle. It will not be good!!!! The questions are laced with double meaning. It's like answering the 'do i look fat' question. There's not (sic) right answer. The daily do not like u! U do not like them! I do not like them! Do not help them sell papers!".

After finding out Slipper had done the interview he text him at 6.10pm: "You're not funny! I cannot believe you called her! We'll have to clean this mess up now !! f\*\*k f\*\*k f\*\*k".

7.06pm - Slipper texts Ashby: "Relax my friend! x".

Ashby replies at 7.07pm: "It's so very hard to when u care about the bloke they keep f\*\*king over. I hope like hell they don't f\*\*k u over with this report".

7.19pm - Slipper texts Ashby: "Xxx".

9.38pm - Slipper texts Ashby: "Would be good if you here but perhaps we are not close enough?".

10pm - Slipper again texts: "Would be good if you here but perhaps we are not close enough?".

A text exchange then took place --

Ashby: "Haha where's Tim tonight?"

Slipper: "Missing".

Ashby: "Gone to pick up lol".

Slipper: "Do you think Timbo is closer to me than you?"

Ashby: "Yeah but that's to be expected. He's known u longer. That sort of stuff doesn't worry me".

Slipper: "Gone to prick (sic) up to whom? And closer to you than pete?"

Ashby: "No he's closer to you. I hardly know him".

Ashby: "A random root lol!"

Ashby: "I've gotta stop being rude to my friends. Text u when I leave".

Slipper: "U getting roks off. Pity".

Slipper: "If you interested we could be closer?"

Slipper: "?"

Ashby: "I think we're good already. I'm happy seeing Tim being closest. I hate stepping on toes".

Slipper: ":"

Slipper: "Your call if u want to keep degrees of seperation. No toes".

Slipper: "I told him position (sic) open".

Slipper: "But you're call and no hard feelings in that you only want businesslike contact. In that event of the difficulty in our persona".

Ashby: "I don't know what type of contact you expect Peter. Perhaps u should define that u would like and I can then be clearer on my position".

Slipper: "U want something more? U brillianmt (sic) at massages".

Ashby: "No I'm happy the way things are. I care for u Pete but the massage is at far as it goes. Life's a lot more simpler when it's business and a few drinks after work".

Slipper: "Oh".

Slipper: "No problems and thanks for (unclear)".

Ashby: "All good".

Slipper: "Sorry things not working out but appreciate your frankness. In future in circumstances please arrange all communcoations (sic)".

Slipper: "Thu tim as cannot guarantee avaiiability. Soo u missing syd harbour creises (sic: cruises)".

Ashby: "Am I missing it now?"

Slipper: "Suspect if you miss"

Slipper: "If you miss ok. Tim has girlfrien abd".

Slipper: "And pete needs to sort ou".

Slipper: "ok your call. Sorry? You still happy to ? come to can ? if not can cover".

-----//-----

February 2:

Slipper: "And suspect I'm pretty stressed about next week".

Ashby: "Yeah I get that. Just be mindful we all carry the same level of commitment and stress for various reasons".

Slipper: "Ok :)".

Slipper: "How daily? Media?"

-----//-----

February 26 text exchange:

5.37pm - Slipper texts Ashby: "with the number of 'followers' on twitter".

7.18pm - Slipper: "Lucky canberra. Tim (third person) thought you were a nice twink!".

7.32pm: Text sent again

7.35pm - Ashby: "Why would he have seen a pic of me? That's a little weird that comment from him. Weird he was having that convo with u".

7.56pm - Slipper: "Met u in person".

8pm - Ashby: "Oh Tim. What was the discussion about".

8.01pm - Slipper: "U"

8.02pm - Ashby: "In a good way I hope"

8.03pm - Slipper: "Bout whether your loyalty was to thugs in LNP or to me! I told him I was hopeful your loyalty was to me".

Slipper: ";;) ok I do like you but must understand I get upset when you play with my enemies and keep me in the dark. It is not what I expect of someone I considered I am close to. If you find this intolerable please discuss".

-----//-----

March 1: Both Slipper and Ashby are in Slipper's parliamentary office. Slipper "put his hand on the arm of the applicant and stroked the applicant's arm stating in low tones: 'You do such a beautiful job with these videos'. Ashby dropped his arm to stop the touching".

-----//-----

March 20: Ashby was in his office and Slipper "walked into the office and said 'Can I kiss you both'. There was no other person present in the office. Ashby said 'no' very loudly".

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## ANNEXURE CM-6

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 2 pages is the annexure marked CM-6 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

Signature

Qualification

# The Courier-Mail

CM iPad section Front Page

## OPINION: Peter Slipper scandal a threat to fragile government

- by: Steve Lewis COMMENT
- From: The Courier-Mail
- April 21, 2012 1:00AM



Source: The Courier-Mail

JULIA Gillard is facing a grave crisis that threatens to derail her Government's already tenuous grip on national power.

In the history of Australian political scandals, the allegations against Peter Slipper are among the most serious ever raised - and they rank as potentially deadly. The man backed by Labor into the high office of parliamentary speaker stands accused of two serious crimes - sexual harassment and alleged fraud against the Commonwealth.

And while the Liberal turncoat has a history of fending off allegations of rorting the public purse, the claims outlined in the 15-page Federal Court filing are substantial and backed by credible evidence from one of his own senior advisers.

James Ashby, who turned his back on the Liberal National Party to join Mr Slipper's staff, is taking a huge risk in filing his statement of claim.

The man who has brought the pomp back into the Parliament was always a risky option for Labor. Ms Gillard, who has been battling allegations against one of her own Labor team Craig Thomson, sealed the deal with Mr Slipper in late November because it gave her Government an extra number.

This was all about brutal pragmatism, a judgement that Mr Slipper, with his questionable past, would give the Government breathing to survive until 2013.

But he may end up choking this Government instead. The PM now faces the toughest of choices. She either has to back Mr Slipper (as she has Mr Thomson) through what will be an explosive court drama.

Or she will decide to cut him loose, and risk the life of her Government and the ongoing confidence of the Parliament.

Remember that Tony Windsor and Rob Oakeshott - ~~the two cross-bench Independents who~~  
~~continues to breathe life into this Government~~ - have publicly stated that they could be tempted to vote it down if any corruption surfaced.

Mr Slipper will fly back into Australia within a few days into a political storm - one that threatens to end his career and bring even further instability to the already delicate political landscape.

---

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## ANNEXURE CM-7

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

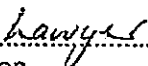
THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 4 pages is the annexure marked CM-7 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

Signature



Qualification



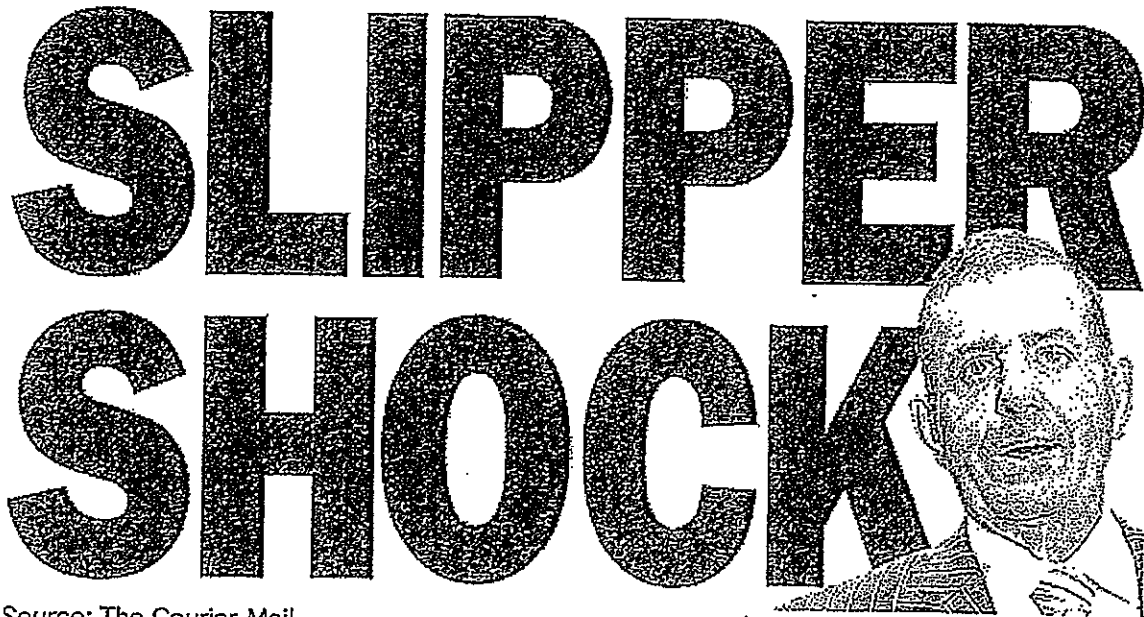
# The Courier-Mail

CM iPad section Front Page

## Speaker in sex harass claim

- by: Steve Lewis EXCLUSIVE
- From: The Courier-Mail
- April 21, 2012 1:01AM

PM update



Source: The Courier-Mail

**UPDATED:** Speaker Peter Slipper is facing explosive allegations he sexually harassed a young male adviser and misused taxpayer-funded Cabcharge dockets in a major new crisis for the Gillard Government.

*The Courier-Mail* can reveal the man who holds the highest parliamentary office in Australia is accused by a key adviser, James Ashby, of making "unwelcome sexual advances" and "unwelcome sexual comments".

Mr Ashby, in court documents, alleges Mr Slipper only recruited him "for the purpose of pursuing a sexual relationship". The Australian Federal Police will also be asked to investigate conduct by Mr Slipper in relation to the use of public funds.

These include claims he signed Cabcharge vouchers which were later filled out by a Sydney-based limousine driver.

Last night Mr Slipper said: "The allegations are denied."

Today, he took to Twitter to again deny the claims. ~~He has been in the United States on a parliamentary delegation.~~

"The allegations in News Ltd papers are denied!" he tweeted, later adding they were "a surprise to me".

Mr Slipper was also questioned over the allegations at Los Angeles International Airport. A tired-looking Mr Slipper declined to comment, but the claims against him have prompted calls from the Opposition for him to stand aside, and former Queensland Premier Peter Beattie says he has lost credibility. (See separate story.)

Prime Minister Julia Gillard now faces the prospect that her minority government's legitimacy rests on two people under serious legal clouds - Mr Slipper and backbencher Craig Thomson, who is accused of using union credit cards to pay for prostitutes.

Mr Ashby is being represented by Harmers Workplace Lawyers, the firm Kristy Anne Fraser-Kirk used in her successful suit against David Jones CEO Mark McInnes.

Mr Slipper, who was last night flying back from overseas, is accused of making "unwelcome suggestions of a sexual nature" through mobile phone text messages and in private conversations.

The court documents also revealed Mr Slipper would regularly send "bizarre" kisses to him by ending text messages with an "X". One text message from Mr Slipper to Mr Ashby merely read "xxx".

According to an application filed in the Federal Court yesterday, Mr Slipper asked Mr Ashby to shower with the bathroom door open at his Canberra home.

And after complaining of having a sore neck, Mr Slipper arranged for a massage, during which he made moaning noises indicating "intense sexual pleasure".

It is alleged Mr Slipper asked several weeks later whether he preferred "twinks or bears" - terms which are homosexual slang.

In a series of text messages Mr Slipper sent Mr Ashby in February he told the staffer, "if you are interested we could be closer". But his attempt to forge a closer relationship was rejected by the adviser, who had joined the Speaker's office in December.

He also asked Mr Ashby: "You getting rocks off. Pity," during an exchange of text messages sent on February 1 this year.

A few minutes later Mr Slipper wrote via email: "U want something more? U brillianmt (sic) at massages."

However when Mr Ashby - who told Mr Slipper he was homosexual before commencing employment - said he only wanted a professional relationship, the Speaker's tone changed.

He told Mr Ashby he should "in future" arrange all communications through another staffer, Tim Knapp, as Mr Slipper said he "cannot guarantee availability".

He also threatened to stop Mr Ashby accompanying him to Sydney for two harbour cruises with delegations from Samoa and Cyprus.

According to the court documents, the Howard government was aware of Mr Slipper's sexual relationship with another young male adviser - and other allegations of sexual harassment - as early as 2003.

Megan Hobson, a former adviser to Mr Slipper, approached John Howard's then senior adviser Tony Nutt after she - and two other women - had viewed a video featuring the Speaker and the young male adviser.

According to the court documents, the video included footage of Mr Slipper lying on a bed with the male adviser and hugging him in "an intimate fashion".

After hearing her concerns about the video, Mr Nutt allegedly told Ms Hobson to "forget all about it".

Mr Ashby's legal team claim the adviser had suffered "considerable stress, humiliation and illness and was seeking medical assistance".

Anthony McClellan, a spokesman for Mr Ashby, said: "Mr Ashby has nothing further to add at this time."

The allegations against Mr Slipper come at a bad time for Prime Minister Julia Gillard, who is battling record low polls and a collapse in her approval rating. Mr Slipper's defection from the Liberal Party in late November after Labor wooed him with the role of Speaker delivered vital breathing space to the ~~minority government~~.

The Liberal turncoat, who has been heading a parliamentary delegation to Africa and Europe over the last month, was flying last night.

He will return home to a political storm after being accused of being "vindictive and spiteful" towards Mr Ashby.

The Courier-Mail has learned the Cabcharge transactions allegedly took place in January and February while the Speaker was in Sydney.

Mr Slipper has been a controversial political figure for many years despite his long tenure as a Federal MP. He was first elected in 1984 as a National Party MP and was defeated in 1987. He was re-elected in 1993 for the Liberals.

He was rumoured to be fighting to gain preselection for his seat at the 2010 Federal poll. But the merger of the Liberal and National parties brought with it a grandfathering clause which guaranteed the preselection all sitting MPs.

The LNP was then set to dump Mr Slipper at the next poll but he left the party late last year and stunned the political community by becoming an Independent MP.

The LNP remains confident of regaining his seat at the next election after its dominant Sunshine Coast performance at the state election.

Below is a series of alleged conversations as detailed in court documents:

Wednesday January 4 2012: Ashby and Slipper were in Slipper's flat after work. Slipper asks applicant: "Can you massage my neck". Ashby says words to the effect of "yeah right" as "he did not know what other response to give as he was brand new to him job and he was being asked by his employer".

Thursday January 5: Ashby was getting ready for work, when Slipper says: "You're a strange one". The following conversation then took place in words to the effect of: Slipper: "You're a weird because you shower with the door shut".

Ashby: "What's weird about that?"

Slipper: "You're a prude".

Ashby: "You can call me what you like, I'm happy to war the tag of prude. I don't know what you private schoolboys got up to in your day, but I've never found it normal to shower with the door open. My dad's never done it, I've never done it, my mates don't do it, that's not weird".

Slipper: "But you even go to the toilet with the door shut".

Ashby: "It's not weird and it's normal".

Slipper: "You should try showering with the door open"

Ashby: "It's never gonna happen"

Slipper: "What have you got to hide? What are you doing in there?"

Ashby: "I'm not doing anything in there, it's just not normal to shower with the door open".

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## ANNEXURE CM-8

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

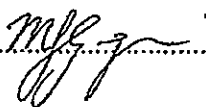
JAMES HUNTER ASHBY

Applicant

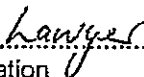
THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 4 pages is the annexure marked CM-8 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

Signature



Qualification



# The Courier-Mail

Queensland

## Speaker Peter Slipper denies staffer's allegation of sexual harassment

- by: Steve Lewis
- From: The Courier-Mail
- April 21, 2012 1:17AM



Source: The Courier-Mail

**SPEAKER Peter Slipper is facing explosive allegations he sexually harassed a young male adviser and misused taxpayer-funded Cabcharge docket in a major new crisis for the Gillard Government.**

*The Courier-Mail* can reveal the man who holds the highest parliamentary office in Australia is accused by a key adviser, James Ashby, of making "unwelcome sexual advances" and "unwelcome sexual comments".

**Aide says harassment began in Slipper's home**

(<http://www.couriermail.com.au/news/aide-says-it-began-at-home/story-e6freon6-1226334933887>)

Mr Ashby, in court documents (see below), alleges Mr Slipper only recruited him "for the purpose of pursuing a sexual relationship". The Australian Federal Police will also be asked to investigate conduct by Mr Slipper in relation to the use of public funds.

These include claims he signed Cabcharge vouchers which were later filled out by a Sydney-based limousine driver.

Last night Mr Slipper said: "The allegations are denied."

Prime Minister Julia Gillard now faces the prospect that her ~~minority government's~~ legitimacy rests on two people under serious legal clouds - Mr Slipper and backbencher Craig Thomson, who is accused of using union credit cards to pay for prostitutes.

Mr Ashby is being represented by Harners Workplace Lawyers, the firm Kristy Anne Fraser-Kirk used in her successful suit against David Jones CEO Mark McInnes.

Read the text exchanges between Slipper and his aide  
(<http://www.couriermail.com.au/news/this-is-an-extract-of-allegations-against-peter-slipper-in-the-application-in-federal-court/story-e6freon6-1226334972822>)

Mr Slipper, who was last night flying back from overseas, is accused of making "unwelcome suggestions of a sexual nature" through mobile phone text messages and in private conversations.

The court documents also revealed Mr Slipper would regularly send "bizarre" kisses to him by ending text messages with an "X". One text message from Mr Slipper to Mr Ashby merely read "xxx".

According to an application filed in the Federal Court yesterday, Mr Slipper asked Mr Ashby to shower with the bathroom door open at his Canberra home.

And after complaining of having a sore neck, Mr Slipper arranged for a massage, during which he made moaning noises indicating "intense sexual pleasure".

It is alleged Mr Slipper asked several weeks later whether he preferred "twinks or bears" - terms which are homosexual slang.

In a series of text messages Mr Slipper sent Mr Ashby in February he told the staffer, "if you are interested we could be closer". But his attempt to forge a closer relationship was rejected by the adviser, who had joined the Speaker's office in December.

He also asked Mr Ashby: "You getting rocks off. Pity," during an exchange of text messages sent on February 1 this year.

A few minutes later Mr Slipper wrote via email: "U want something more? U brillianmt (sic) at massages."

However when Mr Ashby - who told Mr Slipper he was homosexual before commencing employment - said he only wanted a professional relationship, the Speaker's tone changed.

He told Mr Ashby he should "in future" arrange all communications through another staffer, Tim Knapp, as Mr Slipper said he "cannot guarantee availability".

He also threatened to stop Mr Ashby accompanying him to Sydney for two harbour cruises with delegations from Samoa and Cyprus.

According to the court documents, the Howard government was aware of Mr Slipper's sexual relationship with another young male adviser - and other allegations of sexual harassment - as early as 2003.

Megan Hobson, a former adviser to Mr Slipper, approached John Howard's then senior adviser Tony Nutt after she - and two other women - had viewed a video featuring the Speaker and the young male adviser.

According to the court documents, the video included footage of Mr Slipper lying on a bed with the male adviser and hugging him in "an intimate fashion".



After hearing her concerns about the video, Mr Nutt allegedly told Ms Hobson to "forget all about it".

Mr Ashby's legal team claim the adviser had suffered "considerable stress, humiliation and illness and was seeking medical assistance".

Anthony McClellan, a spokesman for Mr Ashby, said: "Mr Ashby has nothing further to add at this time."

The allegations against Mr Slipper come at a bad time for Prime Minister Julia Gillard, who is battling record low polls and a collapse in her approval rating. Mr Slipper's defection from the Liberal Party in late November after Labor wooed him with the role of Speaker ~~delivered vital breathing space to the minority government.~~

The Liberal turncoat, who has been heading a parliamentary delegation to Africa and Europe over the last month, was flying last night.

He will return home to a political storm after being accused of being "vindictive and spiteful" towards Mr Ashby.

The Courier-Mail has learned the Cabcharge transactions allegedly took place in January and February while the Speaker was in Sydney.

Mr Slipper has been a controversial political figure for many years despite his long tenure as a Federal MP. He was first elected in 1984 as a National Party MP and was defeated in 1987. He was re-elected in 1993 for the Liberals.

He was rumoured to be fighting to gain preselection for his seat at the 2010 Federal poll. But the merger of the Liberal and National parties brought with it a grandfathering clause which guaranteed the preselection all sitting MPs.

The LNP was then set to dump Mr Slipper at the next poll but he left the party late last year and stunned the political community by becoming an Independent MP.

The LNP remains confident of regaining his seat at the next election after its dominant Sunshine Coast performance at the state election.

Below is a series of alleged conversations as detailed in court documents:

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Ashby: "What's weird about that?"

Slipper: "You're a prude".

Ashby: "You can call me what you like, I'm happy to war the tag of prude. I don't know what you private schoolboys got up to in your day, but I've never found it normal to shower with the door open. My dad's never done it, I've never done it, my mates don't do it, that's not weird".

Slipper: "But you even go to the toilet with the door shut".

Ashby: "It's not weird and it's normal".

Slipper: "You should try showering with the door open"

Ashby: "It's never gonna happen"

Slipper: "What have you got to hide? What are you doing in there?"

Ashby: "I'm not doing anything in there, it's just not normal to shower with the door open".

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## ANNEXURE CM-9

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

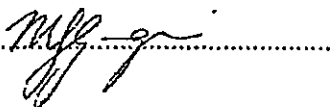
NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

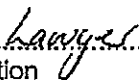
THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 3 pages is the annexure marked CM-9 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

Signature



Qualification



# LEST WE FORGET

Honouring Queensland's forgotten

Rats of Tobruk

Newspaper R/R

WEEKEND MAGAZINE

## THE SATURDAY Courier Mail

FIRE UP: Young Bear  
fans (from left) Kate  
Schultz, Sofia Moore,  
Breanna Maxwell, and  
Hollie Connolly, all 12,  
can't wait for tomorrow's  
A-League decider.  
Picture: Derek Moore



Exclusive: Speaker hit with sexual harassment claim

# SLIPPER SHOCK

STEVE LEWIS

**SPEAKER** Peter Slipper is facing explosive allegations he sexually harassed a young male adviser and misused taxpayer-funded Cobcharge dollars in a major new crisis for the Gillard Government.

The man who holds the highest parliamentary office in Australia is accused by a key adviser, James Ashby, of making "unwelcome sexual advances" and "unwelcome sexual comments".

Mr Ashby, in court documents, alleges Mr Slipper only recruited him "for the purpose of pursuing a sexual relationship". The Australian Federal Police will also be asked to investigate

conduct by Mr Slipper in relation to the use of public funds.

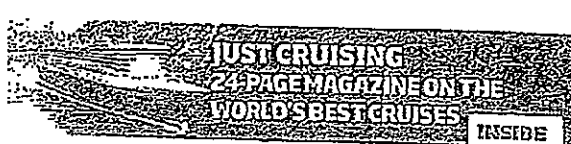
These include claims he signed multiple Cobcharge vouchers which were later filled out by a Sydney-based limousine driver.

Last night Mr Slipper said: "The allegations are denied."

Prime Minister Julia Gillard now faces the prospect that her cabinet's government's legal limo seats on two people under serious legal clouds - Mr Slipper and backbencher Craig Thomson, who is accused of using union credit cards to pay for prostitutes.

Mr Ashby is being represented by Horners Workplace Lawyers, the firm Kristy Anne Fraser-Kirk used in her successful suit against David Jones CEO Mark McLennan.

Continued P4-5



4 NEWS

# Slipper accused of



UNWELCOME ADVANCES: James Ashby has alleged Peter Slipper sexually harassed him on a number of occasions, via mobile phone text messages and in private conversations.

From 1.

Mr Slipper, who was last night flying back from overseas, is accused of making "unwelcome suggestions of a sexual nature" through mobile phone text messages and in private conversations.

The court documents also revealed Mr Slipper would regularly send "bizarre" kisses to him by ending text messages with an "X". One text message from Mr Slipper to Mr Ashby merely read "xxx".

According to an application filed in the Federal Court yesterday, Mr Slipper asked Mr Ashby to shower with the bathroom door open at his Canberra home.

And after complaining of having a sore neck, Mr Slipper arranged for a massage, during which he made moaning noises indicating "intense sexual pleasure".

It is alleged Mr Slipper asked several weeks later whether he preferred "drinks or beers" - terms which are homosexual slang.

In a series of text messages Mr Slipper sent Mr Ashby in February he told the staffer, "If you are interested we could be closer". But his attempt to forge a closer relationship was rejected by the staffer, who had joined the Speaker's office in December.

He also asked Mr Ashby: "You getting rocks off, Pity", during an exchange of text messages sent on February 1 this year.

A few minutes later Mr Slipper wrote via email "I want something more! I brilliant (sic) at massages".

However when Mr Ashby - who told Mr Slipper he was homosexual before commencing employment - said he only wanted a professional relationship, the Speaker's tone changed.

He told Mr Ashby he should "in future" arrange all communications through another staffer, Tim Knapp, as Mr Slipper said he "cannot guarantee availability".



He also threatened to stop Mr Ashby accompanying him to Sydney for two harbour cruises with delegations from Samoa and Cyprus.

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According to the court documents, the video included footage of Mr Slipper lying on

a bed with the male adviser and hugging him in "an intimate fashion".

After hearing her concerns about the video, Mr Nutt allegedly told Mr Hobson to "forget all about it".

Mr Ashby's legal team claim the adviser had suffered "considerable stress, humiliation and illness and was seeking medical assistance".

Anthony McClellan, a spokesman for Mr Ashby, said: "Mr Ashby has nothing further to add at this time."

The allegations against Mr Slipper came at a bad time for Prime Minister Julia Gillard, who is battling record low polls and a collapse in her approval rating. Mr Slipper's defection from the Liberal Party in late

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# harassment

WEDNESDAY, JANUARY 4:

Ashby and Slipper in Slipper's flat after work

Slipper asks applicant: "Can you massage my neck?"

Ashby says words to the effect of "yeah right" as "he did not know what other response to give as he was brand new to him job and he was being asked by his employer"

THURSDAY, JANUARY 5:

Ashby was getting ready for work

Slipper says: "You're a strange one"

The following conversation then took place in words to the effect of:

Slipper: "You're a weird because you shower with the door shut"

Ashby: "What's weird about that?"

Slipper: "You're a prude"

Ashby: "You can call me what you like, I'm happy to wear the tag of prude. I don't know what you private school boys got up to in your day, but I've never found it normal to shower with the door open. My dad's never done it, I've never done it, my mates don't do it, that's not weird"

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Ashby: "It's never gonna happen"

Slipper: "What have you got to hide? What are you doing in there?"

Ashby: "I'm not doing anything in there, it's just not normal to shower with the door open"

November after Labor would him with the role of Speaker delivered a letter outlining a plan to the minority government.

The Liberal turncoat, who has been heading a parliamentary delegation to Africa and Europe over the last month, could not be reached for comment last night.

He will return home to a political storm after being accused of being "vindictive and spiteful" towards Mr Ashby.

The Clubcharge transactions allegedly took place in January and February while the Speaker was in Sydney.

Mr Slipper has been a controversial political figure for many years despite his long tenure as a Federal MP. He was first elected in 1984 as a



If you are interested we could be closer

Alleged text message sent by Speaker Peter Slipper to key adviser James Ashby

National Party MP and was defeated in 1997. He was re-elected in 1993 for the Liberals.

He was renowned to be fighting to gain preselection for his seat at the 2010 Federal poll. But the merger of the Liberal and National parties brought with it a grandfathering clause which guaranteed the preselection all sitting MPs.

The LNP was then set to dump Mr Slipper at the next poll but he left the party late last year and stunned the political community by becoming an independent MP.

The LNP remains confident of regaining his seat at the next election after its dominant Sunshine Coast performance at the state election.

## Speaker scandal a threat to fragile government

JULIA Gillard is facing a grave crisis that threatens to derail her Government's already tenuous grip on power. In the history of Australian political scandals, the allegations against Peter Slipper are among the most serious ever raised - and they rank as potentially deadly. The man backed by Labor into the high office of parliamentary speaker stands accused of two serious crimes - sexual harassment and alleged fraud against the Commonwealth. And while the Liberal turncoat has a history of fending off allegations of rorting the public purse, the claims outlined in the 15-page Federal Court filing are substantial and backed by credible evidence from one of his own senior advisers James Ashby, who turned his back on the Liberal National

Steve Lewis

COMMENT

Party to join Mr Slipper's staff, is taking a huge risk in filing his statement of claim.

The man who has brought the pomp back into the Parliament was always a risky option for Labor. Mr Gillard, who has been battling allegations against one of his own Labor team Craig Thomson, sealed the deal with Mr Slipper in late November because it got worse.

Government and Labor members. This was all about brutal pragmatism, a judgement that Mr Slipper, with his questionable past, would give the Government a much-needed boost.

But he may end up choking this Government instead. The PM now faces the toughest of choices. She either has to back Mr Slipper (as she has for Thomson) through what will be an explosive court drama. Or she will decide to cut him loose, and risk the life of her Government and the ongoing confidence of the Parliament. Remember that Tony Windsor and Rob Oakeshott - who were once independent MPs - were thrown out of the Labor Government - have publicly stated that they could be tempted to vote if downed any corruption surfaced. Mr Slipper will fly back into Australia within a few days into a political storm - one that threatens to end his career and bring even further instability to the already delicate political landscape.



### Electrical Safety Recall

**PRODUCER** Electric Blasket

**BRAND NAMES** LINDA **SOLIS** Home Series 2003-2009, Eg W 2007-2009, Format 2004-2005

**ITEM/EMAKER** LIVING ESSENTIALS **Item** 2004-2005, Eg W 2004-2005

**PRODUCT INFORMATION** An inspection of CSN's internal records is confirming a recall for the above named Electric Blasket fitted with detachable Mechanical or Digital wall clocks, as follows: Solis, Big W & Kmart stores between March 2004 and February 2009

**HAZARD:** Risk of Fire / Electric Shock

**DESCRIPTION OF DEFECT:** In instances where there is a severe bend to electrical supply line of the detachable controller at the connection to the blasket the potential risk exists for an electrical short to occur.

**DETACHABLE CONTROLLER MODEL NO'S:**  
 ( If Not Position Electrical Switch, As Shown below )  
 ELEC220 & ELEC221 ( Digital display )  
 ELEC240 & ELEC241 ( Digital display )

**BATCH NOS. 20**

**CONSUMER ACTION:** We recommend that consumers recall use of the electric blasket immediately and disconnected from power supply.  
 To ensure the ongoing safe operation, CSN (internationally) will arrange for Replacement controller (s) or replacement Electric blasket to be sent to you. Simply phone 1300 372 163 between 9.00 am - 6.00 pm (Mon-Fri AEST).  
 To assist in the recall process, please supply your blasket to ensure that detachable controller (s) attached is one of the above Model numbers shown are and return to the recall.

See [www.recall.gov.au](http://www.recall.gov.au) for Australian Product Recall Information

Issue 21-23, 2012 The Council-USA 5

## ANNEXURE CM-10

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

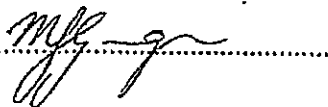
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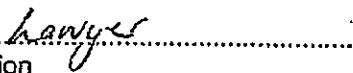
THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following X pages is the annexure marked CM-10 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me;

Signature



Qualification



\$1.00 / SATURDAY, APRIL 21, 2012

THE TELEGRAPH.COM.AU



# FRONTLINE FEMALES

Women soldiers' combat fears

pages 4-5

## SYDNEY LIVE

### LIFTOUT

Your guide to the hottest shows  
[Inside Best Weekend] APR 21

# The Daily Telegraph

SATURDAY'S BIGGEST SELLING NEWSPAPER

EXCLUSIVE

# SPEAKER ROCKED BY SEX SCANDAL

Staffer's lawsuit over Slipper's  
alleged 'unwelcome advances'

STEVE LEWIS

FEDERAL Speaker Peter Slipper was last night embroiled in a fresh controversy involving allegations made in court documents that he made 'unwelcome sexual advances to

a young woman, Mr Slipper also faces claims he misused taxpayer-funded cash. The claims create a major crisis for the ruling government. Lawyers for the speaker, adviser James Ashby, alleged Mr Slipper only employed him to

assist him. The claim involves transcripts of text messages allegedly sent by Mr Slipper to the woman. Mr Slipper's



## KIWIS CRUSHED BY FLYING KANGAROOS

SPORT



## SLIPPER SCANDAL

## SLIPPERY SLIDE

1984 Elected as the Member for Fisher on Queensland's Sunshine Coast for the Nationals.  
 1987 Defeated at election.  
 1993 Re-elected to the same seat for the Liberal Party.  
 October 1998 Becomes Parliamentary Secretary to Finance Minister.  
 March 2002 Becomes Acting Parliamentary Secretary to Prime Minister John Howard until October 2003.  
 October 2004 Dropped from parliamentary secretary roles by Howard, and Slipper begins agitating for Peter Costello to take leadership.  
 August 2010 Revealed Slipper spent \$36,000 on travel for his 16-months as part of a newspaper deal for the six months to the end of 2009 of \$5640,562.  
 September 2010 Slipper engineers deal with Prime Minister Julia Gillard to become deputy speaker of the house.  
 October 2010 Revealed Slipper was forced to pay back more than \$14,000 in taxpayer funds of entitlements and hole rules allowing his son to drive his car.  
 November 2010 Liberal National Party begins agitating against Slipper as local party members move against him.  
 February 2011 The Daily Telegraph reveals Slipper was part of "tonnage" - a \$300,000 springs on office supplies by Liberal MPs before the last election.  
 September 2011 LNP plot for former minister to be brought to take Slipper's seat.



November 24, 2011 Controversial Slipper from the Liberal National Party to become an independent speaker of the house.  
 November 26, 2011 Slipper denies alleged video recorded at the home of an ex-wife and was part of a "disgraceful smear campaign" by the Coalition.  
 March 9, 2012 Steller James Ashby allegedly shows a journalist's phone away during a press conference when they tried to ask about his expenses.



April 16, 2012 The Daily Telegraph reveals Mr Slipper has spent \$15,000 on taxis, hire cars and limousines in 18 months.

April 20, 2012 Mr Ashby alleges in Federal Court, in suit that Slipper made "unwelcome sexual advances" and committed fraud.



# Speaker to defend claims of sexual advances

STEVE LEWIS  
NATIONAL POLITICAL  
CORRESPONDENT



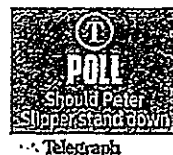
**SPEAKER** Peter Slipper is facing explosive allegations he sexually harassed a young male adviser and misused taxpayer-funded Cobcharge dockets in a major new crisis for the Gillard government.

The man who holds the highest parliamentary office in Australia is accused by a key adviser, James Ashby, 33, of making "unwelcome sexual advances" and "unwelcome sexual comments".

Mr Ashby, in court documents obtained by The Daily Telegraph, alleges Mr Slipper, 62, only recruited him "for the purpose of pursuing a sexual relationship".

The Australian Federal Police will also be asked to investigate conduct by Mr Slipper in relation to the use of public funds.

These include claims he signed multiple Cobcharge vouchers which were later



filled out by a Sydney-based limousine driver. Mr Ashby is being represented by Horneys Workplace Lawyers, the same firm which represented Krity Anna Fraser-Kirk in her successful suit against David Jones chief executive Mark McLennan—who resigned over the case.

Mr Slipper, who was last night flying back from overseas, is accused of making "unwelcome suggestions of a sexual nature" through mobile phone text messages and in private conversations.

The court documents also revealed Mr Slipper would regularly send "bizarre" kis-

ses to him by ending text messages with an "X". One text from Mr Slipper to Mr Ashby merely read "sex".

According to an application filed in the Federal Court yesterday, Mr Slipper asked Mr Ashby to shower with the bathroom door open at his Cheltenham home.

And after complaining of having a sore neck, Mr Slipper arranged for a massage, during which he made moaning noises indicating "intense sexual pleasure".

Just a month after starting work with the Speaker, Mr Ashby also claimed he was asked: "Have you ever been a guy's... before?"

It is alleged that the question was repeated several weeks later, with Mr Slipper also asking whether the adviser preferred "twinks or bears" — terms which are homosexual slang.

In a series of text messages Mr Slipper sent Mr Ashby in February he told the staffer, "if you are interested we could be closer". But his

**BEST Aweekend**

**LIFTOUT**  
Art and about  
Don't miss the new  
16-page  
Sydney Live  
glo guide  
**BEST WEEKEND**

**FUNNY BUSINESS**

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**SPORT**  
Six Harbin has been told to clean up the 1000's of swimming spots in p128

**Cars Guide**

**LIFTOUT P88**  
Safe driving  
Mercedes-Benz  
Driving Academy  
program  
**PRESTIGE CARS**

FOR A FREE TRIAL TELEGRAPH...  
 IF YOU SEARCH FOR...  
 HAVE THE LATEST NEWS DELIVERED TO YOUR MOBILE...  
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 IF YOU SEARCH FOR...  
 HAVE THE LATEST NEWS DELIVERED TO YOUR MOBILE...



Political adviser James Ashby has accused Speaker Peter Slipper, (below in the Hungarian parliament in recent days) of sexual harassment.

attempt to forge a closer relationship was rejected by the adviser, who joined the Speaker's office in December.

He also asked Mr Ashby: "You getting rocks off, Pity?" during an exchange of text messages sent on February 1 this year. A few minutes later Mr Slipper wrote via email: "U want something more? U brilliant (sic) at massage?"

However when Mr Ashby — who told Mr Slipper he was homosexual before commencing employment — said he only wanted a professional relationship, the Speaker's tone changed.

He told Mr Ashby he should "in future" arrange all communications through another staffer, Tim Knapp, as Mr Slipper said he "cannot guarantee availability".

He also threatened to stop Mr Ashby accompanying him to Sydney for two harbour

crises with delegations from Samoa and Cyprus.

According to the court documents, the Howard government was aware of Mr Slipper's sexual relationship with another young male adviser — and other allegations of sexual harassment — as early as 2003.

Megan Hobson, a former adviser to Mr Slipper, approached John Howard's then



senior adviser Tony Nutt after she — and two other women — had viewed a video featuring the Speaker and the young male adviser.

According to the court documents, the video included footage of Mr Slipper lying on a bed with the male adviser and hugging him in "an intimate fashion".

After hearing her concerns about the video Mr Nutt

allegedly told Mr Hobson to "forget all about it".

Mr Ashby's legal team claim the adviser had suffered "considerable stress, humiliation and illness and was seeking medical assistance".

Anthony McClellan, a spokesman for Mr Ashby, said: "Mr Ashby has nothing further to add at this time."

The allegations against Mr Slipper — which are yet to be

tested in court — come at a bad time for Prime Minister Julia Gillard, who is battling record low polls and a collapse in her approval rating. Mr Slipper's defection from the Liberal Party in late November after Labor wooed him with the role of Speaker dealt a blow to the government.

The Liberal government has been heading a parliamentary delegation to Africa and Europe since the last month. He will return home to a political storm after being accused of being "vindictive and spiteful" towards Mr Ashby.

The Daily Telegraph has learned the Cabcharge transactions allegedly took place in January and February while the Speaker was in Sydney.

Mr Slipper last night denied the claims.

✉ EDITORIAL PAGE 36

## Court case could be the end for Gillard

STEVE LEWIS  
NATIONAL POLITICAL  
CORRESPONDENT

JULIA Gillard is facing a grave crisis that threatens to derail her government's already slender parliamentary majority.

In the history of Australian political crises, the allegations filed in court against Peter Slipper are among the most serious ever raised — and they rank as potentially deadly.

The man backed by Labor into the high office of parliamentary speaker stands accused of sexual harassment and will have his use of travel vouchers referred to the Federal Police.

And while the Liberal turncoat has a history of fending off allegations of parliamentary expense, the claims outlined in the 15-page Federal Court filing are from one of his own advisers, James Ashby, a young man who turned his back on the Liberal National Party to join Mr Slipper's staff, is taking a huge risk in filing his statement of claim.

The man who has brought the bomb back into the parliament was always a risky option for Labor, Mr Gillard, who has been battling allegations against one of her own Labor team, Craig Thomson, sealed the deal with Mr Slipper in late November to secure a government majority.

This was all about brutal pragmatism. In a judgment that Mr Slipper would give the government sufficient breathing space for it to survive until 2013, but he may end up choking it instead.

The PM now faces the toughest of choices — she either has to back Mr Slipper (as she has Mr Thomson) through what will be an explosive court drama or she will cut him loose, and risk the life of her government and the confidence of the parliament.

Remember Tony Windsor and Rob Chisholm — the two independent MPs who have publicly stated they could be tempted to vote it down in the event of any proven impropriety. Mr Slipper will fly back within a few days into a political storm.

## CARBON CONCERN

WOOLWORTHS boss Grant O'Brien has warned that uncertainty about the carbon tax and interest rates has led to Aussies feeling "confused and lacking confidence".

Despite the supermarket bucking the light market to post a 3.8 per cent boost in sales yesterday, Mr O'Brien (pictured) said those factors were a big part in household budgets.

"It's clear there are a number of items in the household budget that are a lightning rod to people's emotions, such as utilities and electricity," he said. "What's been evident over the last year is the volatility of those prices."

Woolworths boosted sales in supermarkets, bottle shops, petrol, Big W, hardware and hotels. Total sales were \$14.4 billion, up from \$13.56 billion last year.

✉ BUSINESS PAGE 10



## NEW POWERS ON BIKIES

POLICE will get unprecedented powers to fight back against bike gangs and regain control of Sydney's streets.

After one of the city's worst weeks of gun crime in a decade, Premier Barry O'Farrell yesterday announced a crackdown on bikies owning or preparing tattoo parlours, which are often fronts for outlaw motorcycle gangs.

Police will also be able to randomly raid the tattoo shops without a warrant and use dogs to search for drugs, firearms and explosives.

Bikies will also be banned

from wearing their "colours" or anything that identifies them as a gang member in SS Kings Cross nightspot, branding the Cross into line with 65 other venues across western Sydney and the Blue Mountains. Mr O'Farrell said the community had "had a gutful" of gangs thinking they were untouchable.

Police Commissioner Andrew Scipione said: "Police are sick and tired of bike gangs in colours entering premises and intimidating staff and patrons."

✉ FULL REPORT PAGES 18-17

## NO HAM FOUL PLAY

POLICE have ruled out foul play in the death of Men At Work musician Greg Ham.

Horror detectives were brought in to investigate Ham's death after friends found him in his Melbourne home but police said his death was not suspicious.

Friends and music industry peers rallied yesterday to remember a respected musician (pictured), who was a popular member of his Carlton community and a school teacher.

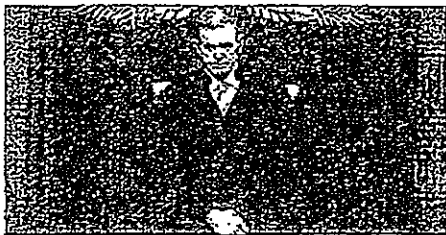
Ham battled drug addiction for years and was distressed by a court ruling that his signature flute riffs in the hit *Down Under* infringed the copyright of the folk song *Koolhaara Sits In The Old Gum Tree*.

✉ TRIBUTE TO A LEGEND PAGE 24



## OUR SAY The Daily Telegraph

### A scandal that is no small matter



Speaker of the house of representatives Peter Slipper.

Every government has its scandals. Some, in retrospect, seem extremely trivial — even quaint. For example, in 1984 Labor minister Mick Young was actually forced to resign over a Paddington Bear toy, which Young's wife had imported into Australia without making the relevant declaration.

It took a judicial inquiry before Mr Young was cleared.

In 1970, Liberal minister Andrew Peacock offered to quit cabinet because — check — his wife had appeared in television commercials for Sheridan sheets.

And in 1982, the Fraser government's Michael MacKellar lost his job over a scandal that modern generations would barely be able to comprehend. He'd imported a colour television but told customs that the device was black and white.

The various scandals that have to this point beset the

government of Prime Minister Julia Gillard tend to be far more serious.

Policy failures in everything from border security to household insulation have cost millions in public funds and at the very least have exposed lives to risk. These are no Paddington Bear disputes.

The government has also brought into question its own legitimacy by frequent leadership infighting and also by pledging not to introduce a carbon tax. Again, these are no small matters. A colour TV inquiry would at this point be absolutely welcomed.

And now the government faces yet another potential scandal, this time one that it imported from the opposition benches. House Speaker Peter Slipper is accused by a young male adviser of sexual harassment. The alleged details are extremely unpleasant.

For both Mr Slipper and the government, so are the possible implications.

### Labor finds answers

Australia has an ever-increasing number of elderly citizens, a situation that requires enormous concern and delicacy from both families and government.

For families, care is an individual or case-by-case matter. For governments, which must design broad policies, care of the elderly is one of the largest and most complex of all political circumstances.

Care must be balanced against general public expense and also against future costs of any elderly

care programs. As the vast population swell of baby boomers reaches towards old-timer status, too-lavish programs would become budget liabilities.

Negotiating this policy maze is a real test of government. Labor's \$3.7 billion aged care package, announced yesterday, seems to do an excellent job of providing improvements to the most crucial areas of aged care while remaining fiscally responsible.

The reality of this package must match the promise. Our elderly deserve nothing less.



Former US president Ronald Reagan used humour to deflect criticism of his economic policies. Picture: AP

### Gillard sends Labor shock troops to war

very time Julia Gillard's degenerate government looks a little policy or event as a potential circuit breaker, things seem to get worse rather than better.

But hope springs eternal. Gillard and her inner circle now believe they can use return to surplus as a platform for a political recovery.

This was the basis of a revving-up lecture that the prime minister delivered to a special meeting of federal Cabinet on Tuesday night.

"The PM put Cabinet on a war footing," a senior government source said later.

The theme of the pep talk was that ministers must be in constant campaign mode for the next 18 months, until the election. If ministers follow Gillard's instructions, there will be a marked change in the tone and tempo of the government's approach to politics.

She wants more rapid and effective rebuttals of opposition attacks, and harder-hitting responses whenever Coalition mistakes provide the opportunity. She wants ministers doing more to speak Labor's achievements and argue its political case.

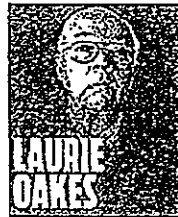
She wants them to use major speeches and newspaper articles to provide a philosophical underpinning for policies and actions — as Swan tried to do in his recent essay in *The Monthly* magazine.

It's all basic stuff. Politics 101. But Gillard's spiel in the Cabinet room was not simply a reminder. It was, effectively, an admission that ministers have fallen down on the job.

The core of the PM's exhortation was that getting out the key message of next month's budget, and making sure that it cuts through, is the responsibility of the entire Cabinet — not just her and Treasurer Wayne Swan.

And she carefully took ministers through that message — particularly the line that achieving a surplus is not an end in itself, but a means of giving the Reserve Bank room for further interest rate cuts.

Labor survived the 2010 election by the skin of its teeth because, in the wake of the GFC, voters rated it the best party to run the economy.



Opinion polls show that advantage was lost — along with the government's credibility overall — when Gillard broke her "no carbon tax" promise, but she and Swan are now making a determined bid to regain the lead on economic competence.

They want voters to see a return to surplus — at a time when no other advanced country is within coo-coe of it — as emblematic of sound economic management.

When he was US president, Ronald Reagan dismissed critics of his economic policies by joking at a press dinner: "I'm not worried about the deficit. It's big enough to look after itself."

Gillard is getting plenty of advice — from a string of economists and leading business figures as well as new Greens leader Christine Milne — that she shouldn't worry about the deficit either.

The argument against ripping 2.6 per cent of growth out of the economy to achieve a massive \$40 billion budget turnaround in a year has increasing economic respectability as well as political appeal in the eyes of many in the ALP. But those advising Gillard are convinced that getting the budget back into the black, despite the pain, will yield the best political results — and not only because to do otherwise would be portrayed as another broken promise.

Presumably relying on focus group findings, they say that voters regard a country in surplus as doing well and one in deficit as doing badly.

Therefore, more back to budget surplus should be an electoral positive.

In this crucial political battle, Labor benefited from what

some Liberal colleagues refer to as Joe Hockey's "blatant snip" — the shadow treasurer's speech and interview in London attacking the entitlement mentality in Western societies.

Hockey said a Coalition government would review welfare measures on a case-by-case basis, and added: "We need to compare ourselves with our Asian neighbours where the entitlement programs of the state are far less than they are in Australia."

He even admitted the Howard government had been guilty of encouraging the entitlement system for short-term political gain.

That provided the first test for Gillard's new "rapid response" doctrine. Ministers — and the PM herself — were quickly in the media with dire predictions about the impact of the Hockey approach on families, pensioners and others depending on government benefits.

More unfortunately, perhaps, Hockey's comments will make it harder for Tony Abbott to play his usual populist politics with the budget by opposing spending cutsbacks and means-testing. However, even with Coalition mistakes and a budget in surplus, Gillard's task still looks hopeless.

But she isn't fighter, and expects ministers to fight harder alongside her. She concluded her Cabinet room lecture with a stern warning that was only partly tongue-in-cheek.

If Ministers went off-message, she said, the next thing they'd hear would be an angry Scottish voice.

"That means it's time for John McTernan to unlock his inner Malcolm Tucker," explains Labor strategist.

In the satirical BBC TV program *The Thick of It*, Tucker is an aggressive, foul-mouthed Scottish director of communications who bullies and threatens ministers in a British government very similar to Tony Blair's.

McTernan, a Scot, is former Blair government spin doctor who is now Gillard's director of communications.

Jack Gold is political editor for the *Tele*. He can be contacted at [jack@telegraph.com.au](mailto:jack@telegraph.com.au).

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## ANNEXURE CM-11

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY

Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following *4* pages is the annexure marked CM-11 referred to in the affidavit of  
Catherine Heather Mann made *13* June 2012 before me:

Signature

Qualification

# The Australian

## I urged Slipper staffer James Ashby to get a lawyer, says Mal Brough

- by: MICHAEL McKENNA, QUEENSLAND POLITICAL EDITOR
- From: The Australian
- May 05, 2012 12:00AM



Former Howard minister Mal Brough with his wife Sue at their home in the Glass House Mountains north of Brisbane. Picture: Lyndon Mechielsen

Source: The Australian

**FORMER** Liberal cabinet minister Mal Brough has admitted telling James Ashby to go to the police and get legal advice over allegations of sexual harassment and misuse of taxi vouchers by Peter Slipper after a series of secret meetings with the political staffer earlier this year.

After a Gillard government campaign to link federal opposition MPs to the court action that led Mr Slipper to step down as Speaker, Mr Brough yesterday revealed he was briefly a confidant to Mr Ashby, even organising him legal advice, in the weeks before the adviser launched his explosive law suit against his then boss.

Mr Brough, who is standing for pre-selection in Mr Slipper's Queensland seat of Fisher at the next federal election, rejected speculation the Liberal National Party turncoat had been snared in a "honey trap" set by Mr Ashby with the backing of senior Coalition figures.

The one-time indigenous affairs minister in the Howard government, who lost his seat in the 2007 election landslide, revealed his role in Mr Ashby's court action as Labor stepped up its bid to tie Tony Abbott and Liberal frontbencher Christopher Pyne into setting up the Speaker.

In an exclusive interview, Mr Brough outlined the chain of events that led Mr Ashby to file his legal claim in relation to the sexual harassment he alleges to have suffered at Mr Slipper's hands, as well as the veteran MP's alleged misuse of taxi dockets, now the subject of an Australian Federal Police investigation.

Mr Slipper has denied all the allegations.

Mr Brough said Mr Ashby had sought him out for help on the advice of local party official Valerie Bradford. Ms Bradford, a grandmother and 38-year member of the Nationals and now the LNP, had recruited Mr Ashby to join the party early last year after meeting him when he was working at a local strawberry farm as a marketing manager.

Despite initially being "suspicious", Mr Brough met the parliamentary adviser on three occasions in March and April - each time advising him he "needed to sit down with a lawyer".

"I said to him that my strong view was that you need to make sure you are on extremely strong ground because the media, the government and Mr Slipper will tear you apart," Mr Brough said he told Mr Ashby during the second meeting in late March.

"I said that you had better know that what you are saying is true and beyond any doubt.

"And, if it is, my strong advice to you is to go to the AFP with your claims of criminality and you had better get yourself legal advice regarding the civil matter."

In between the meetings, Mr Brough said he consulted only a few trusted people about the allegations - without using any names - but that he brought a person "with a legal background" to the last meeting to advise Mr Ashby, who, he says, then informed them he had already engaged his own lawyers.

Mr Brough denies ever speaking to any opposition MPs, their staffers or the LNP about Mr Ashby and his allegations.

"I did not speak to Pyne, or Pyne's office, or to Abbott or anybody like that," he said.

Mr Brough, who waged a two-year campaign in the LNP branch to oust Mr Slipper as candidate at the next election, said he had had little interaction with Mr Ashby before the "distressed" parliamentary adviser approached him.

A local LNP branch chairwoman, Mrs Bradford said she had tried to convince Mr Ashby to reject Mr Slipper's job offers, made before and after he was elected Speaker last November, and then progressively heard his allegations of harassment over the months he worked for the party turncoat, including being urged to shower with the door open.

Mrs Bradford said she eventually had told Mr Ashby to contact Mr Brough over the allegations after seeing some mobile text messages allegedly exchanged between the adviser and his boss.

"I had been speaking to James for weeks about what was happening and he was becoming really distressed," Mrs Bradford said. "I told him to see a doctor, which he did, and talk to a solicitor, but he didn't have one.

"He had been staying with Mr Slipper and at the time he told me about the shower door incident, and the text messages and him even asking if he could kiss James.

"In early March, James came back to town and he wanted to talk to someone who knew about the parliamentary processes and what could be done. He didn't want to talk to an MP, and we talked, and I could only think of Mal Brough."

On the eve of Queensland's March 24 election, Mr Brough said he had received a telephone call from Mr Ashby, asking to meet him. Mr Brough said he was suspicious of Mr Ashby, because he was a staffer of his political rival and a party member who had unsuccessfully run for election as an LNP official last year against Mr Brough's own team, which eventually took over the branch.

The former MP, who lost the neighbouring seat of Longman in the 2007 federal election, said he had relented and agreed to meet Mr Ashby on March 23.

The meeting with Mr Brough and his wife, Sue, acting as a "witness", went for several hours and initially focused on whether Mr Ashby was behind a social media campaign that had been attacking Mr Brough over his planned pre-selection bid, scheduled for later this year. "We went over that (the attacks) and around that for a very long time and the whole time there is this background, 'There are things in Slipper's office that aren't right'," Mr Brough alleged.

"And I was going, 'Yeah, well, surprise, surprise'.

"It wasn't until very late in the piece that he started to put a bit of meat on the bone, so to speak, and say that he felt he had been harassed, and talked about the Cabcharge stuff."

Ms Brough supports her husband's recollection that Mr Ashby offered few details of the allegations at the first meeting and that he had said he wanted the former MP's advice on what to do.

The first meeting ended with Mr Brough warning him the allegations were "extremely serious", he should go to the AFP over his concerns about Mr Slipper's use of taxi dockets and that he would seek some advice on Mr Ashby's behalf.

The following week, Mr Brough said he had had another meeting with Mr Ashby in which he advised him to seek his own legal counsel and outlined the advice he had received, concerning the alleged sexual harassment.

"I had taken some soundings as to all this - I spoke to someone in the legal fraternity - and I had learnt his (sexual) allegations were ... a civil action if he chose to take it and the other matter was a criminal matter, if he chose to take it," he said.

Mr Brough said Mr Ashby then showed him a text message that went into more detail about his allegations against Mr Slipper.

He said a lawyer friend was at the next meeting with Mr Ashby early last month and began to go through the material with the adviser, who then revealed he had engaged his own lawyers in Brisbane and was meeting them on April 10.

"He rang me from Brisbane where he had some long conversations with lawyers, that was on the Tuesday after Easter (April 10), and that he was going to Sydney to have further discussions with lawyers," Mr Brough said.

He said he had "no regrets" about his involvement with Mr Ashby and dismissed the conspiracy theories that the adviser was placed in Mr Slipper's office to entrap him and bring down the government, which had installed Mr Slipper to gain an extra vote on the floor of parliament.

"All these people are crawling over it and I won't lie," Mr Brough said. "I just feel there is this storm of innuendo, that the LNP was behind it, that he (Mr Ashby) was a 'honey-pot' and it is all drivel."

Mr Brough said he believed he had a "moral obligation" to listen to Mr Ashby and would offer the same advice to anybody making similar claims.

Mr Brough said he believed Mr Ashby had "clearly spoken to other people" when he was considering taking action.

Mr Brough's revelations came as Wayne Swan yesterday called on Mr Abbott and Mr Pyne to face questions about their dealings with Mr Ashby before he filed his Federal Court action last month.

Mr Abbott yesterday admitted that Mr Pyne, manager of opposition business, had sent an email to Mr Ashby after the pair had drinks in the Speaker's office on March 19. But Mr Abbott said Mr Pyne had not made further contact with Mr Ashby.

*Additional reporting: Lauren Wilson*





## ANNEXURE CM-12

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 1 pages is the annexure marked CM-12 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

Signature

Qualification

21 September 2009 -  
27 September 2009

September 2009							October 2009						
M	T	W	T	F	S	S	M	T	W	T	F	S	S
1	2	3	4	5	6								
7	8	9	10	11	12	13	1	2	3	4	5	6	7
14	15	16	17	18	19	20	8	9	10	11	12	13	14
21	22	23	24	25	26	27	15	16	17	18	19	20	21
28	29	30					22	23	24	25	26	27	28

21	22	23	24	25	26	27
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## ANNEXURE CM-13

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 1 pages is the annexure marked CM-13 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

Signature

Qualification

134

## ANNEXURE CM-14

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

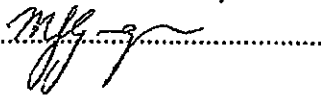
NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

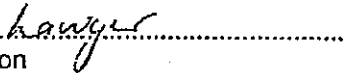
THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 1 pages is the annexure marked CM-14 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

Signature



Qualification



20 July 2009 -  
26 July 2009

July 2009							August 2009						
M	T	W	T	F	S	S	M	T	W	T	F	S	S
1	2	3	4	5	6	7	1	2	3	4	5	6	7
8	9	10	11	12	13	14	8	9	10	11	12	13	14
15	16	17	18	19	20	21	15	16	17	18	19	20	21
22	23	24	25	26	27	28	22	23	24	25	26	27	28
29	30	31					29	30	31				

	NSW School Holidays						
	20	21	22	23	24	25	26
	Albury		Murrumbidgee Murrumbidgee	Kirby Len	Glenhouse Tim Away		
7:00		Rocky Club			Alexandra Headland		
8:00		Sally's delivers PMS to			Headland Golf C		
9:00	5:10 am Mudgee High School Flag Presentation take a couple minutes					Maroochydore	
10:00			10am - Volunteer Probus Club mee		Janine Hill - SCT		Canberra office
11:00					Meeting with M		
12:00					Meeting with M		
1:00			12noon - Volunteer Bankfoot House	Council of Mayors Luncheon Balmoral Room Brisbane City Hall		Work in Canber	
2:00	Meeting with Je						
3:00							
4:00	Meeting with M					Meeting Canber	
5:00		5:30pm - 7pm Commissioner Meeting with Rigel Warren					
6:00							
			Dinner with Ma	Calounia Vasil			
	7:30pm - 9:30pm	7:00pm - 9:00pm					
		7:00pm - 9:00pm					

28/03/201

136

## ANNEXURE CM-15

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 5 pages is the annexure marked CM-15 referred to in the affidavit of Catherine Heather Mann made 13 June 2012 before me:

Signature

Qualification

Mann, Catherine

---

From: Mann, Catherine  
Sent: Wednesday, 23 May 2012 2:36 PM  
To: Michael Harmer  
Cc: 'Kit Yap'; Wright, Sarah  
Subject: Ashby v Commonwealth & Anor - request for particulars [SEC=IN-CONFIDENCE:LEGAL]  
Attachments: LitigationScansBW\_20120523140909.PDF

EmailPrinted: -1

Objective: -1

Security Classification: LEGAL-IN-CONFIDENCE

Dear Mr Harmer

Please find attached, by way of service, request for particulars.

Regards

---

Catherine Mann

Senior Lawyer

Australian Government Solicitor

T 02 6253 7402 F 02 6253 7381

[catherine.mann@ags.gov.au](mailto:catherine.mann@ags.gov.au)

Find out more about AGS at <http://www.ags.gov.au>

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Your ref. MDH:GKR:BDB:20031553  
Our ref. 12026851

*Australian Government Solicitor*  
50 Blackall Street Barton ACT 2600  
Locked Bag 7246 Canberra Mail Centre ACT 2610  
T 02 6253 7000 DX 5678 Canberra  
www.ags.gov.au

23 May 2012

Mr Michael Harmer  
Harmers Workplace Lawyers  
Level 28, St Martins Tower  
31 Market St  
SYDNEY NSW 2000

Canberra  
Sydney  
Melbourne  
Brisbane  
Perth  
Adelaide  
Hobart  
Darwin

Dear Mr Harmer

James Ashby v Commonwealth & Anor (NSD 580/2012)

We refer to the amended originating application dated 18 May 2012 (filed on 21 May 2012) and the statement of claim dated 15 May 2012 and filed on the same date. In accordance with orders made by Rares J on 18 May 2012, the first respondent requests the following particulars of the statement of claim. Please provide a response on or before 28 May 2012 in accordance with those orders.

Unless otherwise stated, references to paragraph numbers below are references to paragraphs in the statement of claim dated 15 May 2012.

Paragraph 3

1. Please provide a copy of the letter referred to in paragraph 3.

Paragraph 4(a)

2. To the extent that the employment contract is in writing specify which documents constitute the Employment Contract (and provide copies).

Paragraph 5(a)

3. In relation to the express terms identified in paragraph 5(a), to the extent that the terms are recorded in a document please specify which documents expressly state those terms (and provide copies). To the extent that the express terms were agreed orally, please specify the facts, matters and circumstances on which the applicant will rely to establish that the terms pleaded formed part of an oral contract between the applicant and the Commonwealth.

## Paragraph 5(b)

4. Specify the precise term which it is alleged is to be implied in the Employment Contract and the facts, matters and circumstances by reason of which it is alleged that the term is to be implied.

## Paragraph 5(c)

5. Specify the precise term which it is alleged is to be implied in the Employment Contract and the facts, matters and circumstances by reason of which it is alleged that the term is to be implied.

## Paragraph 6(a)

6. State the facts matters and circumstances by reason of which it is alleged that any directions given by the second respondent were given "on behalf of the Commonwealth".
7. State whether it is alleged that any and which directions given by the second respondent were not lawful directions.

## Paragraphs 12 and 13

8. Where and in what circumstances did the pleaded conversation take place?

## Paragraph 15

9. Where and in what circumstances did the pleaded conversation take place?

## Paragraph 16

10. Where and in what circumstances did the pleaded conversation take place?

## Paragraph 17(c)

11. Give particulars of the way in which the applicant rejected the approaches as alleged. Was the alleged rejection oral or in writing? What words did the applicant use? Where was the applicant at the time of the alleged rejection? Where was the second respondent at the time of the alleged rejection?

## Paragraph 17(d)

12. For what period were each of the directions specified in sub paragraphs (i) and (ii) in force.
13. Give particulars of the invitation referred to in paragraph 17(d)(ii) and give particulars of the withdrawal of that invitation.

## Paragraph 21(a)

14. State the facts, matters and circumstances which are relied on to support the allegation that each of the component parts of the conduct pleaded in paragraphs 9, 11, 12, 14, 15, 16(a), 17, 18(b), 19 and 20 were done by the Speaker acting on behalf of the Commonwealth.

## Paragraph 21(c)

15. State the facts, matters and circumstances relied on to support the allegation that each of the component parts of the conduct pleaded in paragraphs 9, 11, 12, 14, 15, 16(a), 17, 18(b), 19 and 20 had a sufficiently close connexion to the employment of the applicant to make the Commonwealth responsible for the acts of the Speaker.

## Paragraph 22

16. In respect of the distress, anxiety and stress (including physical symptoms) alleged to have been suffered by the applicant, please identify and describe:
- a) each symptom which the applicant is alleged to have suffered;
  - b) when and in what circumstances the applicant first suffered each symptom;
  - c) whether the symptoms suffered constituted a medical illness or injury and if so what illness or injury has been diagnosed;
  - d) when the diagnosis referred to in (c) was first made;
  - e) on what dates treatment was sought.
17. State the facts, matters and circumstances which constituted the sexually hostile working environment as alleged.
18. State:
- a) which elements of the Relevant Conduct caused the applicant to feel offended and humiliated and caused him distress and anxiety;
  - b) when the applicant first formed the view that the working environment was sexually hostile; and
  - c) what if any steps the applicant took to bring to the attention of either and which respondent the fact that the applicant considered that the working environment was sexually hostile.

## Paragraph 24

19. State the facts, matters and circumstances which are relied on to support the allegation that the adverse action alleged was taken against the applicant because of:
- a) his being male;

- b) his being homosexual.

Paragraph 28

20. State the facts, matters and circumstances which are relied on to support the allegation that the matters pleaded in paragraph 17(d) constituted an alteration of the applicant's position.

Paragraph 33

21. Identify the contractual objects referred to in sub-paragraph (i).

Paragraph 35

22. Please provide particulars (including the amount) of the applicant's loss or damage to date including:
- a) particulars of economic loss by reason of loss of income;
  - b) particulars of economic loss by reason of the incurring of medical expenses (including the identity of the treating doctor / medical service provider and the amounts charged to date and the dates on which treatment was sought);
  - c) particulars of any other loss which is alleged.
23. If any of the loss identified is referable to some, but not all of the causes of action pleaded, please identify what loss and damage is alleged to flow from:
- a) the alleged contravention of s 351 of the *Fair Work Act 2009* (the FW Act);
  - b) the alleged contravention of s 340 of the FW Act;
  - c) the alleged breach of contract.

Yours sincerely



per Sarah Wright  
Senior Executive Lawyer  
T 02 6253 7630 F 02 6253 7381  
sarah.wright@ags.gov.au

## ANNEXURE CM-16

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 6 pages is the annexure marked CM-16 referred to in the affidavit of Catherine Heather Mann made 13 June 2012 before me:

Signature

Qualification

Mann, Catherine

From: Kit Yap <kit.yap@harmers.com.au>  
 Sent: Monday, 28 May 2012 3:39 PM  
 To: Wright, Sarah; Mann, Catherine  
 Cc: Michael Harmer; Greg Robertson; Brad Buffoni  
 Subject: Ashby v Commonwealth of Australia & Anor (NSD580/2012)  
 Attachments: Letter to First Respondent re FBP sent 28 May 2012.PDF; Letter of Offer dated 5 December 2011.PDF

EmailPrinted: -1  
 Objective: -1

Dear Colleagues,

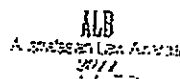
Please see attached correspondence.

Kind regards,

Kit

Kit Yap  
 Solicitor

D +61 2 9993 8551 | T +61 2 9267 4322 | F +61 2 9264 4295  
 E kit.yap@harmers.com.au | W www.harmers.com.au  
 A Level 28, St Martins Tower, 31 Market Street, Sydney NSW 2000



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 ALB Australasian Law Awards Winner 2006, 2007, 2008, 2009, 2010 & 2011

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# HARMERS

Workplace Lawyers

- Change Management
- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Legal Risk Management

Our ref: MDH:GKR:20121209

28 May 2012

Australian Government Solicitor  
50 Blackall St  
BARTON ACT 2600

Attention: Sarah Wright /  
Catherine Mann

By email: sarah.wright@ags.gov.au /  
catherine.mann@ags.gov.au

Dear Colleagues,

**JAMES ASHBY v COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)**

We refer to your request for particulars of our client's Statement of Claim dated 23 May 2012.

## INTRODUCTION

Prior to detailing our specific responses to your requests it is useful that we make reference to six general principles that have informed the response to your requests:

- (a) Rule 16.42(1) of the *Federal Court Rules 2011* (FCR) obliges a party to give "the necessary" particulars of any claim pleaded by it. The criterion of necessity gives flexibility as what particulars are required in an individual case. Importantly, however, our client's requirement is to furnish particulars that are reasonably required, and the best particulars that it is able to give with its current state of knowledge: *Rosenstraus v Muscat* [1965] NSW 302; *Doherty v Nationwide News Pty Ltd* (1967) 86 WN (Part 1) NSW 181.
- (b) Under FCR 16.45, no order requiring particulars should be made unless the order for further and better particulars is "necessary or desirable" to enable the respondents to plead, or for some other special reason.
- (c) The basal function of particulars is identified in FCR 16.41; it is to reduce costs by alerting the opponent to the scope of the real case being made so the opponent is not caught by surprise, nor does the opponent waste time and money in preparing to meet issues that the other party does not intend to raise: see eg *Sims v Wran* [1984] 1

MELBOURNE  
Level 2  
417 Collins Street  
Melbourne VIC 3000  
PO Box 632 Collins St West  
Melbourne VIC 8007  
Telephone: (03) 9612 2300  
Facsimile: (03) 9612 2301  
Email: melbourne@harmers.com.au

SYDNEY  
Level 28, St Martins Tower  
31 Market Street  
Sydney NSW 2000  
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Sydney NSW 1230  
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BRISBANE  
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Brisbane QLD 4000  
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Brisbane QLD 4001  
Telephone: (07) 3016 8000  
Facsimile: (07) 3016 8001  
Email: brisbane@harmers.com.au

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NSWLR 317, 321 and *Banque Commerciale SA (In Liquidation) v Akhil Holdings Limited* (1990) 169 CLR 279 at 286.

- (d) Particulars are supplied of the material facts pleaded, as P.E. Joske J said in *Trade Practices Commission v Total Australia* (1975) 24 FLR 413, 417:

*While the defendant is entitled to know the case it is called upon to meet, it is not entitled to be told the evidence that will be called to prove the case. A defendant is entitled to ask for the material facts upon which the plaintiff will rely and he may make his request for the facts and matters relied on, which is taken to mean the same thing. When he asks for the facts and circumstances relied on he is going beyond the scope of particulars, and is probing for evidence.*

- (e) Importantly, in the circumstances of this case, when a party requesting particulars has the means of knowing the real facts, ordinarily the other party will not be ordered to supply particulars until after discovery: *Millar v Harper* (1888) 38 Ch D 110; *TPC v CC (NSW) Pty Limited* (1995) 131 ALR 581, 593.

#### SPECIFIC RESPONSES

Using the paragraph numbering of your request and to the extent your requests are proper requests for particulars, we respond as follows:

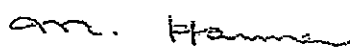
- 1 A copy of the offer of employment from the Speaker is attached (Employment Letter).
- 2 The Employment Letter (see paragraph 1 above).
- 3 The express terms are included in the Employment Letter; your client is in a position to plead to the allegation.
- 4 The term is implied not from some presumed or imputed intention of the particular parties, rather, the term is a legal incident of a particular class of contract. As noted in *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at 453 per McHugh and Gummow JJ, the implication occurs "*lest the contract be deprived of its substance, seriously undermined or drastically devalued in an important respect*". Implication of the term is necessary to the maintenance of the integrity of contracts of the class to which the Employment Contract belongs. For the avoidance of any doubt, the pleaded good faith term contended for by the applicant includes but extends beyond the implied term of trust and confidence discussed by the Court of Appeal of New South Wales in *Shaw v State of New South Wales* [2012] NSWCA 102 at [35] to [44]. It is a duty of good faith of the type described by Allsop P in his Honour's summary of the relevant authorities in *United Group Rail Services Limited v Rail Corporation New South Wales* (2009) 74 NSWLR 618 at [58] to [61].
- 5 The precise term is pleaded; the applicant will contend there is implied by law a term in employment contracts that the employer will provide a safe system of work and take reasonable steps to protect the safety of the applicant: see eg *Wright v TNT Management Pty Ltd* (1989) 15 NSWLR 679 at 684B per Mahoney JA; 687F – 688D per McHugh JA; at 698B per Clarke JA; *Macken's Law of Employment*, Sappideen, O'Grady, Riley & Warburton, 7<sup>th</sup> Edition, Lawbook Co, 2011 at [4.510]. This




- applies to the Employment Contract pleaded and the Commonwealth is in a position to either agree or disagree with such a contention.
- 6 This is not a proper request for particulars but, in any event, as the pleading makes plain, the applicant relies on the matters pleaded in paragraph 4 of the Statement of Claim.
- 7 This is not a proper request for particulars; the conduct giving rise to the causes of action pleaded are specified.
- 8 The Speaker's flat in Canberra in the morning. The relevant allegation is pleaded, any other details are (subject to relevance) matters for evidence.
- 9 The conversation occurred in the applicant's car on the Sunshine Coast in Queensland. The relevant allegation is pleaded, any other details are (subject to relevance) matters for evidence.
- 10 The conversation occurred in the applicant's car on the Sunshine Coast in Queensland. The relevant allegation is pleaded, any other details are (subject to relevance) matters for evidence.
- 11 The applicant was on the Sunshine Coast and the conduct occurred after 10pm. The applicant believes the Speaker was in Canberra. The applicant sent an SMS message saying "*No I'm happy the way things are. I care for u Pete but the massage is as far as it goes. Life's a lot more simple when it's business and a few drinks after work*". The rejection was by that SMS and by conduct in not further responding to the Speaker's messages pleaded in paragraph 17(a).
- 12 The directions were in force for approximately 8 hours but the implied threat and fear of similar and escalating reprisals should the applicant be non-compliant with the Speaker's wishes in the future remained.
- 13 In or about early January 2012 the applicant was invited by the Speaker orally and in person to a cruise with the Speaker and a delegation from Samoa which included the Deputy Prime Minister of Samoa and others. The invitation was withdrawn by an SMS message sent by the Speaker late on the evening of 1 February 2012 which included the following, "*Sorry u missing syd [sic] harbour creises [sic]*."
- 14 This is not a proper request for particulars and we draw your attention to paragraphs 4(d) and 21(b) of the Statement of Claim.
- 15 The applicant relies on the matters pleaded in paragraph 1 to 6 and the fact that the Relevant Conduct occurred during the course of the employment of the applicant.
- 16 This is not a proper request for particulars. Insofar as the request relates to further particulars of injury, the Statement of Claim also makes plain that we will provide further particulars at the time that we serve opinion evidence. This is sufficient to provide procedural fairness at this stage of the case.
- 17 This not a proper request for particulars. The Statement of Claim makes clear that the Relevant Conduct is relied upon.

- 18 18(a) The whole or combined effect of the individual components of the Relevant Conduct. 18(b) This request does not make sense: the applicant does not allege he formed a view in those terms. Rather, what is pleaded is a legal characterisation of the effect of the Relevant Conduct. 18(c) This is not a proper request for particulars of the applicant's claim.
- 19 The Relevant Conduct, the fact that the applicant was known by the Speaker to be homosexual, the fact the Speaker was a man and was a person who had demonstrated a sexual interest in the applicant.
- 20 The applicant had previously been able as part of his employment to contact the Speaker directly and to attend any political functions.
- 21 The employment of the applicant in the office of the Speaker to assist the Speaker to fulfil his functions and duties to the best of the applicant's abilities.
- 22 This is not a proper request for particulars having regard to what is pleaded and, in any event, it is clear from the Statement of Claim that we will provide further particulars of loss and damage at the time we serve opinion evidence.
- 23 Not applicable.

Yours faithfully  
HARMERS WORKPLACE LAWYERS

  
Michael Harmer

  
Kit Yap



Parliament of Australia

SPEAKER OF THE HOUSE OF REPRESENTATIVES

FEDERAL MEMBER FOR FISHER

THE HON PETER SLIPPER MP

5 December 2011

Mr James Ashby  
Kawana Island

Dear James

I am writing to confirm my offer of employment on my personal staff at the level of Adviser as an ongoing employee commencing as soon as possible.

You will be employed as a Personal Employee under Part 111 of the *Members of Parliament (Staff) Act 1984*. The salary will be \$116,465 plus Parliamentary Staff Allowance (PSA) of \$25,750 in lieu of overtime.

The position will be based at Buddina and you will travel to Canberra during parliamentary sitting periods or at other times as directed. Overnight travelling allowance of \$230 per night (60 to 80 days on average per year) will also be payable.

Yours sincerely

PETER SLIPPER

5/12/11

Electorate Office, PO Box 1224 Buddina QLD 4575, Australia

Telephone (07) 5444 4888 Facsimile (07) 5452 6655

Speaker's Office, Suite R644, Parliament House, PO Box 6022 Canberra ACT 2600, Australia

Telephone (02) 6277 4000 Facsimile (02) 6277 2050 Email: peter.slipper.mp@aph.gov.au

## ANNEXURE CM-17

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

NO NSD 580 OF 2012

JAMES HUNTER ASHBY

Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 5 pages is the annexure marked CM-17 referred to in the affidavit of  
Catherine Heather Mann made 13 June 2012 before me:

Signature

lawyer  
Qualification

Mann, Catherine

---

From: Wright, Sarah  
Sent: Monday, 4 June 2012 1:15 PM  
To: Michael Harmer  
Cc: Kit Yap; Mann, Catherine  
Subject: Ashby v Cth [SEC=UNCLASSIFIED]  
Attachments: Ltr to Mr Harmer 04 Jun 12.PDF

Importance: High

Security Classification: UNCLASSIFIED

Dear Mr Harmer

Please see attached letter.

Regards

---

Sarah Wright  
Senior Executive Lawyer  
Australian Government Solicitor  
T 02 6253 7630 F 02 6253 7381 M 0478 322 029  
[sarah.wright@ags.gov.au](mailto:sarah.wright@ags.gov.au)  
Find out more about AGS at <http://www.ags.gov.au>

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*the leading lawyers to government*



Your ref. MDH:GKR:BDB:20031553  
Our ref. 12026851

4 June 2012

Mr Michael Harmer  
Harmers Workplace Lawyers

By email

Dear Mr Harmer

*Australian Government Solicitor*  
50 Blackall Street Barton ACT 2600  
Locked Bag 7246 Canberra Mail Centre ACT 2610  
T 02 6253 7000 DX 5678 Canberra  
www.ags.gov.au

*Canberra  
Sydney  
Melbourne  
Brisbane  
Perth  
Adelaide  
Hobart  
Darwin*

James Ashby v Commonwealth & Anor (NSD 580/2012)

1. We refer to our request for particulars dated 23 May 2012 and to your response dated 28 May 2012.
2. We note that you have declined to provide answers to a number of particulars requested.
3. We do not accept that there was any proper basis for refusing to provide the particulars in question and we do not accept that this is a case where the first respondent is in a position to know the real facts.
4. Despite this view, to avoid further dispute and delay we will not press the majority of the requests.
5. However there are some requests which we do press because your failure to answer them impedes our client's ability to plead to those matters and more importantly impedes our client's ability to make any assessment of whether an agreed resolution to this matter should be sought and if so on what basis.
6. On what is presently known, your client is not suffering any economic loss, no particular psychiatric injury is pleaded, nor any need for medical treatment identified. Accordingly, the largest component of your client's claim appears to be an amount for general damages for the matters identified in paragraph 35 of the statement of claim. Without a clear understanding of the nature of the loss and damage suffered by your client, quantification of his claim is impossible.
7. Given your obligation under the *Federal Court Act* to conduct litigation in a manner consistent with the overarching purpose, and in particular the objective of resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute, your client should answer the request for particulars sought in respect of paragraphs 22 and 35 of the statement of claim. Presumably your client commenced these proceedings cognisant of some loss which he sought to have remedied by them. Early and proper particularisation of that loss is therefore appropriate.
8. As you would appreciate, the intense public scrutiny resulting from the manner in which these proceedings were commenced and pleaded is causing our client to incur significant costs. It appears likely on what is known that the costs incurred by both parties already far

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Australian Government Solicitor

exceed any amount that could plausibly be in dispute between the parties even assuming everything in the pleading is made good. Accordingly, early particularisation of your client's loss is essential to the just resolution of this dispute.

9. Continued refusal by your client to particularise the loss and damage he claims in this proceeding will be viewed by our client as unreasonable conduct for the purposes of s 570(2)(b) of the *Fair Work Act*. It may also be relied upon by our client as evidence that your client has brought these proceedings for some purpose other than obtaining a legal remedy.
10. The court timetable requires the Commonwealth to file and serve any application to strike out the Statement of Claim, in whole or in part, or to stay or dismiss the proceeding, on or before 8 June 2012, with any application to be heard on 15 June 2012. It is necessary for the Commonwealth's compliance with this order for particulars of loss and damage to be provided early this week.
11. Please provide the particulars sought in paragraphs 16, 22 and 23 of our letter of 23 May 2012 before 5pm on Tuesday 5 June 2012.

Yours sincerely

  
Sarah Wright  
Senior Executive Lawyer  
T 02 6253 7630 F 02 6253 7381  
sarah.wright@ags.gov.au

## ANNEXURE CM-18

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

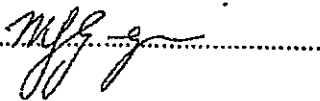
NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

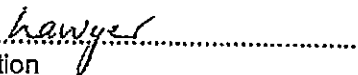
THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 2 pages is the annexure marked CM-18 referred to in the affidavit of Catherine Heather Mann made 13 June 2012 before me:

Signature



Qualification





**Mann, Catherine**

---

From: Kit Yap <kit.yap@harmers.com.au>  
 Sent: Tuesday, 5 June 2012 11:24 AM  
 To: Wright, Sarah; Mann, Catherine  
 Cc: Michael Harmer; Karen Jones  
 Subject: Ashby v Commonwealth of Australia (NSD580/2012) [HWL-HARMERS.FID775611]  
 Attachments: Letter to First Respondent sent 5 June 2012.PDF

Dear Colleagues,

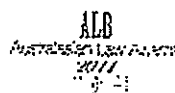
Please see attached correspondence.

Kind regards,

Kit

Kit Yap  
 Solicitor

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 E kit.yap@harmers.com.au | W www.harmers.com.au  
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Harmers Workplace Lawyers – "Employment Specialist Law Firm of the Year"  
 ALB Australasian Law Awards Winner 2006, 2007, 2008, 2009, 2010 & 2011

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Workplace Lawyers

- Change Management
- Industrial Relations
- Employment
- Occupational Health & Safety
- Human Rights & Equal Opportunity
- Legal Risk Management

Our ref: MDH:GKR:20121209

5 June 2012

Australian Government Solicitor  
50 Blackall St  
BARTON ACT 2600

Attention: Sarah Wright /  
Catherine Mann

By email:  
sarah.wright@ags.gov.au /  
catherine.mann@ags.gov.au

Dear Colleagues,

**JAMES ASHBY v COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)**

We refer to your letter received yesterday afternoon to which you have required a response by 5pm today.

Counsel is not in a position to settle a response today but we expect to provide you with a substantive response tomorrow. If the letter had been sent promptly after our letter of 23 May 2012, we could have provided a response at an earlier time.

In the interim, we note you have not provided us with any response to our letter of 21 May 2012. If there is to be response, please let us have it without further delay.

Yours faithfully  
HARMERS WORKPLACE LAWYERS  
PP:



Michael Harmer / Kit Yap

## MELBOURNE

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## BRISBANE

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Brisbane QLD 4001  
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Facsimile: (07) 3016 8001  
Email: brisbane@harmers.com.au

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## ANNEXURE CM-19

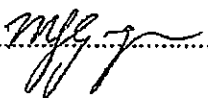
FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

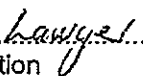
NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following 3 pages is the annexure marked CM-19 referred to in the affidavit of Catherine Heather Mann made 13 June 2012 before me:

Signature 

Qualification 

Mann, Catherine

---

From: Kit Yap <kit.yap@harmers.com.au>  
 Sent: Wednesday, 6 June 2012 3:08 PM  
 To: Wright, Sarah; Mann, Catherine  
 Cc: Michael Harmer; Karen Jones  
 Subject: Ashby v Commonwealth of Australia & Anor (NSD580/2012) [HWL-HARMERS.FID775611]  
 Attachments: Letter to First Respondent re FBP sent 6 June 2012.PDF

Dear Colleagues,

Please see attached correspondence.

Kind regards,

Kit

Kit Yap  
 Solicitor

D +61 2 9993 8551 | T +61 2 9267 4322 | F +61 2 9264 4295  
 E kit.yap@harmers.com.au | W www.harmers.com.au  
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 ALB Australasian Law Awards Winner 2006, 2007, 2008, 2009, 2010 & 2011

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- ▣ Change Management
- ▣ Industrial Relations
- ▣ Employment
- ▣ Occupational Health & Safety
- ▣ Human Rights & Equal Opportunity
- ▣ Legal Risk Management

Our ref: MDH:KJ:20121209

6 June 2012

Australian Government Solicitor  
50 Blackall St  
BARTON ACT 2600

Attention: Sarah Wright /  
Catherine Mann

By email:  
sarah.wright@ags.gov.au /  
catherine.mann@ags.gov.au

Dear Colleagues,

## JAMES ASHBY v COMMONWEALTH OF AUSTRALIA & ANOR (NSD580/2012)

We refer to your letter dated 4 June 2012 and our interim response sent yesterday. We note that you press the request for what are described as "*particulars*" of certain paragraphs of the Statement of Claim. In doing so, five contentions have been made which can be summarised as follows:

- (a) early and proper particularisation of the loss is appropriate given our client's obligations under the Overarching Purpose (Contention A);
- (b) that without a clear understanding of the nature of the loss and damage suffered by our client, quantification of the claim is impossible (Contention B);
- (c) "*intense public scrutiny...is causing our client to incur significant costs*" and that the costs incurred by the parties is likely to exceed any amount that is in dispute (Contention C);
- (d) that our client's refusal to particularise loss and damage will be viewed as "*unreasonable conduct*" for the purposes of section 570(2)(b) of the *Fair Work Act 2009* (Cth) (FWA) (Contention D);

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Brisbane QLD 4001  
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Facsimile: (07) 3016 8001  
Email: brisbane@harmers.com.au

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- (e) that it is necessary that the Commonwealth have particulars of loss and damage in order to be able to comply with the Court timetable requiring the Commonwealth to file and serve an application to strike out the Statement of Claim (Contention E).

We will respond to each of these contentions individually below, but before doing so we think it important to refute the further suggestion in your letter that a failure to supply the requested information (which, for reasons we have explained, go beyond particulars) will be relied upon by the Commonwealth as "*evidence that [our] client has brought these proceedings for some purpose other than obtaining a legal remedy*". This is a serious allegation for which there is not a reasonable basis. Further, we note as follows:

- 1 This proceeding was not commenced solely to obtain monetary compensation; although Mr Ashby suffered compensable loss, the primary motivating factor in bringing this action was that our client felt strongly that he has been wronged by reason of the actions of the Speaker and he wished to prevent further wrongful conduct. He has, as you know, sought relief, which extends beyond monetary compensation.
- 2 Mr Ashby suffered at the hands of a person who occupied one of the two highest offices in the legislative branch of the government; he resorted to the protection of the judicial branch by commencing this proceeding because he believed that if he raised his difficulties with the executive branch, he would not be protected. His judgment in this regard was vindicated, when upon making public complaint, he suffered a direct attack by a very senior Minister of the Commonwealth government accusing him of fabrication and became the subject of more general political attack. Vicious and untrue matters have been published about him including matters related to his motivation in pursuing his complaints and slurs have been made concerning his personal life. Submissions made on behalf of the Speaker upon the first return of the application accused him of character assassination and it was suggested that his actions could have amounted to an abuse of process. You have, on behalf of the Commonwealth, made a similar suggestion in your letter.
- 3 The continuation of this proceeding through to judgment is not only about obtaining an amount to compensate our client, but also is about other relief and, importantly, Mr Ashby being vindicated and for him to obtain a public and binding recognition of the fact that the Speaker engaged in the conduct alleged and that the Commonwealth was responsible for the Speaker's actions as a matter of law.
- 4 Aside from proving the contravening conduct and obtaining the specific relief in the amended application, Mr Ashby has a pervasive interest in preventing and redressing attacks upon his credit and reputation. He can realistically address the wrongs suffered by him and the public consequences that have followed his raising of a complaint, by the public vindication of a judgment.
- 5 You have made reference to the Overarching Purpose; we have been acutely conscious of our obligations under section 37N(2) of the *Federal Court Australia Act 1976* (Cth) to assist Mr Ashby conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the controversy being resolved according to law; and as quickly, inexpensively and efficiently as possible. In fulfilment of this objective, prior to the first directions hearing, we proposed an order for the mediation of the dispute. Regrettably, both

respondents rebuffed this suggestion. We had hoped an early mediation might have stood some chance of preventing the unnecessary and disproportionate expenditure of legal costs and demands upon the resources of the Court. Mr Ashby was criticised in a Genuine Steps Statement for not seeking the assistance of executive government functionaries to resolve his dispute without recourse to legal proceedings, but once proceedings are commenced, the Commonwealth indicated inconsistently an unwillingness to engage in any process of alternative dispute resolution. We intend to write further about the possible resolution of this matter, but will do so in "without prejudice" correspondence.

- 6 The obligations of all parties and their legal representatives under the Overarching Purpose are unaffected by the fact that costs in this proceeding are governed by Part 4-2, Division 4 of the FWA. Indeed, we consider the Overarching Purpose obligations are reinforced by the provisions of subsection 570(2)(b) which, as you know, relevantly provides that costs may be awarded against a party in the event the Court is satisfied that the party's unreasonable act or omission caused another party to incur the costs. For our part, we consider that the refusal of the Commonwealth and the Speaker to engage in the mediation of this dispute is, in the context of the Overarching Purpose, an unreasonable act.

- 7 We now turn to the five contentions identified above.

#### Contention A

- 8 As we have made plain, there is no dispute between us that your client is entitled to procedural fairness by the provision of adequate particulars. Our position as to the purpose of particulars has been set out comprehensively in our letter of 28 May 2012. As we understand it, the present dispute relates to paragraphs 16, 22 and 23 of your letter dated 23 May 2012 and our response. For ease of reference those requests for particulars and our response are reproduced below.

#### Paragraph 16

*"In respect of the distress, anxiety and stress (including physical symptoms) alleged to have been suffered by the applicant, please identify and describe:*

- (a) each symptom which the applicant is alleged to have suffered;*
- (b) when and in what circumstances the applicant first suffered each symptom;*
- (c) whether the symptoms suffered constituted a medical illness or injury and if so what*
- (d) illness or injury has been diagnosed;*
- (e) when the diagnosis referred to in (c) was first made;*
- (f) on what dates treatment was sought."*

Our response:

*"This is not a proper request for particulars. Insofar as the request relates to further particulars of injury, the Statement of Claim also makes plain that we will provide further particulars at the time that we serve opinion evidence. This is sufficient to provide procedural fairness at this stage of the case."*

Paragraph 22

*"Please provide particulars (including the amount) of the applicant's loss or damage to date including:*

- (a) particulars of economic loss by reason of loss of income;*
- (b) particulars of economic loss by reason of the incurring of medical expenses (including the identity of the treating doctor / medical service provider and the amounts charged to date and the dates on which treatment was sought);*
- (c) particulars of any other loss which is alleged."*

Our response:

*"This is not a proper request for particulars having regard to what is pleaded and, in any event, it is clear from the Statement of Claim that we will provide further particulars of loss and damage at the time we serve opinion evidence."*

Paragraph 23

*"If any of the loss identified is referable to some, but not all of the causes of action pleaded, please identify what loss and damage is alleged to flow from:*

- (a) the alleged contravention of s 351 of the Fair Work Act 2009 (the FW Act);*
- (b) the alleged contravention of s 340 of the FW Act;*
- (c) the alleged breach of contract."*

Our response:

*"Not applicable."*

- 9 As we noted in our letter of 28 May 2012, rule 16.42(1) obliges the party to give the "necessary" particulars of any claim and under rule 16.45 no order requiring particulars should be made unless the order of further and better particulars is



"*necessary or desirable*" to enable the respondents to plead, or for some other special reason. In relation to paragraph 16, the allegation made by our client is clear. We presume the relevant allegation will be denied or not admitted. The request that you have made is not for particulars, but is for evidence; at best the request amounts to an attempt to obtain an admixture of pleading elaboration (when the material fact is already pleaded) and identification of the evidence called to support the allegation in the pleading. It is consistent with the Overarching Purpose for this information to be provided when such further material can be provided with precision and following receipt of material from medical professionals from whom reports are to be obtained. We are not going to descend to the detail of providing the evidentiary material that you seek until that material has been prepared. Steps have been taken for this material to be provided to us as soon as it is convenient and we anticipate it will be provided to us at the end of this month or early next month. If there was a way of expediting this process we would do so - but there is not. When the material has been completed we will provide you with a response to your request; it goes without saying that as a consequence, it will be provided to you well in advance of any hearing.

- 10 In relation to paragraph 22, we repeat the response above and note we will provide additional material at the time our client serves opinion evidence. You are aware that on the last occasion we pressed for a prompt timetable including a timetable, which provided for the service of outlines of evidence and expert material with promptitude. It is curious that on the one hand the Commonwealth engages in criticism of Mr Ashby in not providing what amounts to evidentiary material promptly, and yet on the other hand resisted a prompt timetable being put in place by the Court.
- 11 In relation to paragraph 23, notwithstanding that we indicated that our response was "*not applicable*", we agree to provide the information that you have sought but again, we will provide that material at the time of service of opinion evidence which we presently anticipate will be in late June or early July.

#### Contention B

- 12 In a case such as the type pleaded, the precise quantification of the claim for loss and damage at this time presents difficulty. We will provide the material sought and will provide an outline of evidence that will be led by Mr Ashby in his case in chief. As Senior Counsel for the applicant noted at the directions hearing, if mediation had been ordered (over objection of the respondents) we would have provided a position paper, which would have included, in non-admissible form, further material which might be relevant to quantification. If, however, what is requested is a precise quantification of the claim, it is cost effective for this to be done at the time of service of evidence.

#### Contention C

- 13 We do not understand the causal relationship between "*intense public scrutiny*" and the Commonwealth incurring significant costs. We agree it is likely that if the proceeding is only resolved following a contested hearing, the costs incurred by the parties will exceed the amount that is in dispute; regrettably this proceeding is not unique in this regard. But this dispute is not just about money. As noted above,

statutory compensation or damages is not the only relief sought by our client. Moreover, requiring our client to undertake work that is unnecessary at this stage of the proceeding (when your client will obtain all of the relevant material shortly), is a course of conduct that will serve only to increase costs.

#### Contention D

- 14 It is simply wrong to characterise our client's conduct as a "*refusal to particularise loss and damage*". Our client has pleaded his claim with precision and provided the necessary particulars. We have indicated that we will provide further information at an appropriate time. Not only is such conduct not an unreasonable act or omission, it is an approach entirely consistent with Mr Ashby's duties under the Overarching Purpose.

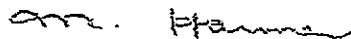
#### Contention E

- 15 We do not accept it is necessary for your client to have the information sought in order to comply with the Court timetable requiring the Commonwealth to file and serve its application to strike out the Statement of Claim. As you are aware, authority requires that the allegations in the Statement of Claim will be taken at their highest on any strike out application. If you wish to move to strike out the Statement of Claim, such an application should be brought in accordance with the Court timetable. We note that we went to some detail to write to you as long ago as 21 May 2012 to point out that the applicant has a right under rule 16.51(1) to amend the Statement of Claim without leave of the Court at any time prior to the close of pleadings. We asked that you indicate that if the Commonwealth proposed to bring a strike out application you identify:
- (a) the paragraph/s of the statement of claim that you are instructed to make application to have struck out; and
  - (b) a brief outline of the basis upon which it will be argued that any particular paragraph/s should be struck out.
- 16 We further noted that the timely provision of this information would have enabled our client to consider whether it was appropriate to exercise his rights under the rules, to narrow issues in dispute and try to ensure the most cost effective and efficient use of Court resources. Notwithstanding this, we note we have received no response to our letter. We wish to make it plain that if a strike out application is brought without prior detailed notification we may contend to the Court (depending upon the nature of the application) that the application was unnecessary because remedial steps could have been taken by Mr Ashby without leave to resolve any interlocutory dispute.

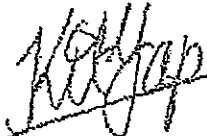
We again invite you to provide the material we asked for in our letter of 21 May 2012 and again on 5 June 2012 before an application (if any) is made to strike out the pleading.

Alternatively, we look forward to receipt of the Commonwealth's Defence in accordance with the timetable.

Yours faithfully  
HARMERS WORKPLACE LAWYERS



Michael Harmer



Kit Yap

## ANNEXURE CM-20

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: FAIR WORK

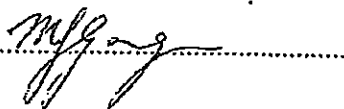
NO NSD 580 OF 2012

JAMES HUNTER ASHBY  
Applicant

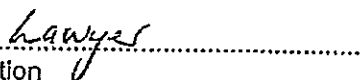
THE COMMONWEALTH OF AUSTRALIA  
and another named in the Schedule  
Respondents

The following *4* pages is the annexure marked CM-20 referred to in the affidavit of  
Catherine Heather Mann made *13* June 2012 before me:

Signature



Qualification



**Mann, Catherine**

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**From:** Harding, Richard  
**Sent:** Thursday, 26 April 2012 9:06 AM  
**To:** sydney@harmers.com.au  
**Cc:** Mann, Catherine; O'Donovan, Damien  
**Subject:** FW: Ashby and Doane request [SEC=IN-CONFIDENCE:LEGAL]  
**Attachments:** img-426085854.pdf

**Importance:** High

**EmailPrinted:** -1

**Objective:** -1

**Security Classification:** LEGAL-IN-CONFIDENCE

Dear Mr Harmer

Please find attached a scan of a letter and attachment in relation your clients' requests for leave. We will also send you a hard copy of this material.

Yours sincerely

Richard Harding

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Your ref. GKR:BDB:np:20121209  
Our ref: 12026851

26 April 2012

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Darwin

Dear Mr Harmer

Ashby and Doane and the Speaker of the House of Representatives

1. We act for the Commonwealth in relation to the Federal Court proceedings commenced by Mr Ashby and the matters raised in your letter of 20 April 2012 to the Minister for Finance and Deregulation and to the Department concerning Mr Ashby and Ms Doane.
2. We note that that the Speaker has authorised the Department to consider the issue of whether your clients should be granted miscellaneous leave with pay.
3. We understand from your letter of 20 April 2012 that both Mr Ashby and Ms Doane have been absent from work on sick leave because their health has been affected by conduct associated with their employment.
4. In circumstances where a medical condition is preventing a person's attendance at work, the usual course is for the person to apply for personal leave as provided for in the *Commonwealth Members of Parliament Staff Enterprise Agreement 2010-2012*. The Commonwealth wishes to ensure that your clients are not treated any differently from any other employee with a medical condition. Accordingly, please forward any application for personal leave and supporting medical evidence to this office to be processed in the usual way. We have attached a copy of the appropriate leave application form.
5. While neither you nor your clients have provided the Commonwealth with any detailed information concerning their health issues, it would appear from the material set out in the Federal Court application and your letter that your clients' medical conditions may have arisen in compensable circumstances. Accordingly, your clients should give consideration to submitting a claim for compensation to Comcare. In the event that your clients make compensation claims and they are accepted, any personal leave taken as a result of a work related injury or disease