



## Additional hours, related allowances and TOIL

### Additional hours

1. Provisions relating to ordinary and additional hours of work are outlined at clauses 30 to 35 of the Enterprise Agreement, and in accordance with section 62 of the *Fair Work Act 2009* (FW Act). Additional hours arrangements as per clause 31.1 in the Enterprise Agreement include personal staff allowance (PSA), electorate staff allowance (ESA), time off in lieu (TOIL) and the allowance for drivers of former Prime Ministers (driver's allowance).
2. Employees and employing Members share responsibility for monitoring hours of work and making suitable adjustments. Employees are encouraged to record their hours and employing Members should regularly review records. The recording of hours can support conversations regarding reasonable additional hours between employees and employing Members.
3. Given the nature of MOP(S) Act employment (including work requirements for parliamentary sittings and committees, constituent and stakeholder engagement, media and official travel outside of business hours), employing Members and employees have flexibility available as to how hours of work are performed within the additional hours arrangements in the Enterprise Agreement. Members and employees should work together to establish arrangements that are mutually suitable. Subject to an employee's particular additional hours arrangement, nothing prevents employing Members and employees from agreeing to an arrangement on a pattern of hours where additional hours are worked on some days and fewer hours on other days that takes account of varying workload requirements.

For example, an employee works longer hours on a Thursday to assist their employing Member with committee work. Noting the employee's agreed hours of work (and their particular additional hours arrangement), the employing Member and employee could agree that the employee leave early on Friday.

## Reasonable additional hours

4. Employing Members and employees should agree on the expectations and requirements when discussing or entering into any arrangement regarding additional hours of work and receipt of an allowance or accrual of TOIL in recognition of additional hours of work. An employing Member and employee should review additional hours of work regularly.
5. Employees are not to work unreasonable additional hours even where they receive an allowance or accrue TOIL in recognition of reasonable additional hours. In accordance with their duties to ensure, so far as is reasonably practicable, the health and safety of their employees, employing Members must be aware of and actively manage the additional hours of their employees, including managing additional hours during periods of higher and lower workloads, providing reasonable breaks between periods of work and being aware of signs of fatigue.
6. When assessing whether additional hours worked are reasonable, additional hours worked are averaged over a period of 12 months, taking into account periods of higher workloads, such as parliamentary sittings. Employees are encouraged to keep accurate timesheets to provide to their employing Members recording additional hours that they have worked. One office or role may not be comparable to another office or role, and judgement is required as to reasonable additional hours.
7. The FW Act empowers an employee to refuse to work additional hours (i.e. hours beyond 38 hours per week) if those hours are unreasonable. In determining whether additional hours are unreasonable a range of factors, including the following, are taken into account:
  - a. any risks to employee health and safety
  - b. the employee's circumstances, including family responsibilities
  - c. the operational requirements of the workplace
  - d. compensation the employee receives that reflects an expectation of additional hours
  - e. the notice provided by the employing Member requesting the employee to work additional hours
  - f. the necessity for the additional hours
  - g. the nature of the employee's role and the employee's level of responsibility
  - h. previous additional hours already worked
  - i. future additional hours expected to be required
8. Where an employee considers that they are working unreasonable additional hours given their particular additional hours arrangement, the Department can assist the employee, including supporting the employee to discuss their concerns with their employing Member and assisting the Member to modify their work place arrangements.
9. Where discussions between the employing Member and employee do not resolve the situation, the employee is entitled to use the formal dispute prevention and resolution mechanism in clause 66 of the Enterprise Agreement, including seeking the assistance of the Fair Work Commission.

## Electorate Staff Allowance

### General arrangements

10. ESA is paid in accordance with clause 33 of the Enterprise Agreement.
11. ESA is allocated to an ongoing or non-ongoing employee. The ESA allocated to an employee moves with the employee if the employee moves to another position. A new employee will only be paid ESA if they are allocated ESA.
12. The levels of ESA are not derived from any particular salary point and are not classification dependent. However, it is generally expected that an employee in receipt of a higher level of ESA would work more additional hours, and/or undertake more official travel outside of business hours, than an employee in receipt of a lower level of ESA.
13. The allocation of ESA does not mean that an employee is available for unlimited hours of work. The additional hours of work expected of an employee should generally be in proportion to the level of ESA paid to that employee.
14. ESA can be paid to ongoing and non-ongoing employees employed against a position, the Electorate Support Budget (ESB), or partly against a position and the ESB.
15. The payment of ESA to a part-time employee is not pro rata. A part-time employee will receive the full value of the ESA that they are allocated and ESA does not vary as an employee's part-time hours vary. A part-time employee should not be expected to work full-time hours as a result of receiving ESA.
16. It is expected that any reduction in the ESA paid to an employee will be accompanied by a reduction in the additional hours of work or official travel outside of business hours to be undertaken by that employee.
17. Where an employee is in a deferral period following an automatic termination of employment, their allocation cannot be changed. If the employee is rehired, their ESA may only be changed if there is a reallocation event under clause 33.7, if there is unallocated ESA (to increase the amount allocated to the employee) or if the employing Member and employee agree to a reduction or cessation of ESA.

### Considering appropriate amounts of additional hours for electorate employees

18. The table below provides a general guide to assist in considering a suitable level of ESA for an employing Member to allocate to an employee for reasonable additional hours of work per week depending on their role, responsibilities and any official travel outside of business hours, noting each employing Member will have their own office structure, staffing resources (including relief staff) and workload requirements.

For example, employing Members should take particular care in allocating an appropriate level of ESA where one employee is expected to undertake a significant majority of travel, including during sitting weeks.

*	ESA-2	ESA-4	ESA-6	ESA-8	ESA-10	ESA-12	ESA-14	ESA-16
<b>EOA</b>	2-3	4-6	6-8	8-11	11-14	13-16	15-19	18-22
<b>EOB</b>	1-2	3-5	5-7	7-9	9-11	11-14	13-16	15-19
<b>EOC</b>	1-2	3-4	5-6	7-8	8-10	10-12	12-14	13-17

\*Hours per week, averaged over a 12 month period

For example, Ashley has commenced as an EOB in a Member's office. Ashley will be expected to work approximately 4 additional hours per week only during sitting weeks. Ashley and their employing Member agree that a level of ESA-5 is acceptable to compensate for the additional hours they will be required to work during sitting weeks spread out across the year.

Approximately 70 days requiring additional hours x 4 hours = 280 additional work hours over a 12 month period.

280 hours over 12 months = 6 hours per week on average (accounting for public holidays and expected leave).

It may be that ESA-4, ESA-5 or ESA-6 is appropriate depending on how the office operates, including how much ESA other employees are receiving or the number of relief staff that might be available.

## Consultation on the allocation or re-allocation of ESA

19. In order to ensure that the expectations of employing Members are clear to their employees, and employees' ability to work additional hours and undertake travel outside of business hours is known to the Member, Members should consult with employees on the allocation, and any re-allocation, of ESA.
20. Consultation should occur at any time when there is a change in the expectations of the employing Member about additional hours of work or travel outside of business hours, or the allocation of ESA changes, to ensure that these expectations remain transparent.
21. If an employing Member does not consult with the relevant employees prior to the allocation or re-allocation of ESA, the Member should indicate why this has not occurred when completing the ESA allocation form.

## Allocation of ESA

22. Employing Members have the flexibility to allocate one of 16 levels of ESA to each employee in their office, subject to a cap set out at clause 33.3 of the Enterprise Agreement. The levels of ESA are detailed in Attachment D to the Enterprise Agreement.
23. An employing Member with four Electorate Officer positions can allocate up to a total of 34 levels of ESA across the office. An employing Member with five positions can allocate up to 38 levels and an employing Member with six positions can allocate up to 42

levels. Where an employing Member is eligible for reimbursement of a privately-leased office (known as a satellite office), they can allocate two further levels of ESA.

24. An employing Member may choose not to allocate ESA to an employee if the employee is not required to work significant additional hours. A Member may also choose to allocate a lower ESA level where a higher ESA level is available, e.g. 4 x ESA4. There is no requirement to allocate all of the available ESA.
25. An employee may elect not to receive ESA by indicating this on the ESA allocation form to be signed by both the employee and the employing Member. Where an employee elects not to receive ESA, they are entitled to TOIL under clause 34 of the Enterprise Agreement.
26. An employing Member and an employee may agree at any time to reduce the amount of ESA an employee receives or that the employee no longer receive ESA. The reduction or cessation will be effective from the date that this advice is received by the Department.
27. Where an electorate employee moves from one Member's office to another Member's office they will receive the level of ESA allocated by the second employing Member (if any).
28. All ESA allocations and re-allocations must be advised to the Department on an [Electorate Staff Allowance Allocation](#) form.
29. An employee must sign the ESA allocation form, acknowledging that they have been advised of their ESA allocation.
30. The ESA allocated to each employee in an office is listed in Monthly Management Reports. The level of ESA an employee receives is stated on their pay slip.

#### Allocation of ESA by a newly elected Member

31. A newly elected or appointed Member will have six weeks from the commencement of their term to notify the Department in writing of an ESA allocation. If the six-week timeframe is met, the payment of ESA will commence from the date that an employee commences. That is, the ESA allocation will be paid with retrospective effect.
32. If a new Member does not meet the above timeframe, the payment of ESA will commence from up to six weeks prior to the Department receiving the allocation in writing, depending on the date that the employee commenced.
33. These provisions apply only to the first allocation of ESA to employees. Any change in the level of ESA allocated to an employee will be subject to the re-allocation provisions.

#### ESA allocation may be increased or mutually decreased at any time

34. An employing Member may allocate any unallocated ESA to an employee at any time in accordance with clause 33.10 of the Enterprise Agreement. Changes to ESA will be effective from the date the Department receives the ESA allocation advice.

For example, an employing Member's electorate office has the following ESA allocations in place:

	EOA - Sue	EOA - Emily	EOB - James	EOC - Jennifer
ESA Level	4	8	6	10

As the Member has not allocated all of the ESA levels (allocated ESA = 28 of 34 for a four position office), the Member may increase the level of ESA allocated by a maximum of six levels. Following discussions with Sue, the Member chooses to increase Sue's ESA by two levels and keep four levels of ESA in reserve.

	EOA - Sue	EOA - Emily	EOB - James	EOC - Jennifer
ESA Level	6	8	6	10

35. An employee and employing Member may agree to decrease the ESA allocated to an employee at any time under clause 33.11. Changes to ESA will be effective from the date the Department receives the ESA allocation advice. The employee must sign the allocation form as evidence they agree to the reduction.

36. An increase in ESA may be used in conjunction with clause 33.11, e.g. decreasing the ESA allocated to one employee and increasing the ESA allocated to other employees.

#### Allocation during a temporary transfer – internal to a personal employee position

37. Where an electorate employee undertakes a temporary transfer - internal to a personal employee position (i.e. receives Higher Duties Allowance), they cease to receive any ESA during the transfer period and receive Personal Staff Allowance instead.

38. During this period, the employing Member may temporarily allocate the employee's ESA to other electorate employees within the office for the period of the temporary transfer. Where the Department is notified more than two weeks after the temporary transfer commences, the temporary allocation of ESA will not be made. Upon the cessation of the temporary transfer, the ESA allocations will revert to the allocations prior to the temporary transfer.

39. Where a re-allocation event under clause 33.7 occurs during the period of the temporary transfer, the employing Member can re-allocate ESA as if the temporary transfer is not in effect and can then temporarily re-allocate the ESA of the employee on temporary transfer as per paragraph 38.

## Re-allocation of ESA – commencement of the financial year

40. The re-allocation of ESA under clause 33.7(a) – commencement of the financial year – must be notified to the Department in writing prior to 1 July. Changes to ESA will be effective from 1 July. Where the Department is not notified prior to 1 July the re-allocation of ESA will not be made.

## Re-allocation of ESA – office restructure, or a period of leave or temporary transfer of three months or longer

41. The re-allocation of ESA as a result of an event described at clause 33.7(c) – office restructure – or 33.7(d) – commencing or ceasing a temporary transfer or leave of three months or longer – must be notified to the Department in writing no later than two weeks after the trigger event occurs. Changes to ESA will be effective from the date of the trigger event. Where the Department is notified more than two weeks after the trigger event the re-allocation of ESA will not be made.
42. Where an employing Member re-allocates duties without changing the classification of Electorate Officer positions in the office, ESA cannot be re-allocated.
43. Employing Members should not restructure their office for the sole purpose of reallocating ESA.
44. Where an employee is on approved leave for three months or longer, the level of ESA the employee was receiving immediately before the leave commenced will be maintained for the period of leave (subject to leave at reduced pay). While on leave, the levels of ESA the employee is receiving do not count towards the office cap. ESA may be re-allocated within the office on the employee's commencement of leave and on their return to work.

For example, where an employee commences a period of 12 months maternity leave, and is eligible for paid maternity leave, the 16 weeks of paid leave will include the level of ESA that the employee was receiving immediately prior to commencing leave. The employing Member may re-allocate the levels of ESA in the office within two weeks of the employee commencing maternity leave and again within two weeks of the employee returning to work.

45. Where an employee returns from leave of three months or longer and the employing Member does not reallocate ESA in the office under clause 33.7(d), the employee will have their ESA reduced if necessary to bring the total allocated ESA in the office to within the office cap.
46. Where an employee is temporarily transferred to another Member's office for three months or longer, ESA may be re-allocated within the first employing Member's office on the employee's commencement of the temporary transfer and on their return. The first employing Member may re-allocate the levels of ESA in the office within two weeks of the employee commencing their temporary transfer and again within two weeks of the employee returning to the office.

47. Where a temporary transfer or a period of approved leave is extended so that the total period of the transfer or leave becomes more than three months, the employing Member may re-allocate the levels of ESA in the office. The re-allocation must be notified to the Department in writing no later than two weeks after the commencement of that extension of the temporary transfer or period of leave. Changes to ESA will be effective from the date of the commencement of the extension of the temporary transfer or period of leave. ESA may not be re-allocated as a result of any subsequent extension of temporary transfer or leave.
48. Where an employee is on leave for less than three months, the level of ESA that they receive will be subject to change in accordance with clause 33 of the Enterprise Agreement.

### Re-allocation of ESA by Ministers and Parliamentary Secretaries

49. An employing Member, who is appointed as, or ceases to be, a Minister or Parliamentary Secretary, will have six weeks from their appointment, or cessation, to notify the Department in writing of an ESA re-allocation. If the six-week timeframe is met, the re-allocation will be effective from the date that the Department receives the notification. That is, the level of ESA will be paid with prospective effect.
50. If an employing Member who is appointed as, or ceases to be, a Minister or Parliamentary Secretary does not meet the above timeframe, the re-allocation of ESA will not be made.
51. Being appointed as, or ceasing to be, a Minister or Parliamentary Secretary does not include a change in portfolio, a Parliamentary Secretary being appointed as a Minister or vice versa.

### Personal Staff Allowance and allowance for drivers of former Prime Ministers

52. Ongoing and non-ongoing personal employees and drivers of former Prime Ministers are paid Personal Staff Allowance (PSA) and an allowance (driver's allowance) in recognition of, and as compensation for, reasonable additional hours of work respectively. Both allowances are pro-rata for part-time employees.
53. PSA is classification dependent. It is not commensurate with the number of additional hours an employee is expected to work. Driver's allowance is paid specifically to drivers at the Executive Assistant classification. A driver is not eligible for PSA.

### Time off in lieu

54. Employees not in receipt of ESA or PSA because they are not expected to work significant additional hours are entitled to time off in lieu (TOIL) in recognition of additional hours of work under clause 34 of the Enterprise Agreement. Drivers of former Prime Ministers are not entitled to TOIL.



55. TOIL is a method to recognise the additional hours worked by employees in performing their duties. It enables employees and employing Members to vary working hours, patterns and arrangements to provide maximum flexibility with benefit to the employee and their employing Member.
56. TOIL may accrue if agreed by the employing Member and accrued TOIL may be taken at a time agreed between the Member and employee. In determining the amount of TOIL accruing to an employee an employing Member must take into account when the employee is working. An employee accrues more hours of TOIL working on weekends or public holidays than if those same hours were worked on a weekday. Time spent travelling on official business as directed beyond ordinary hours of work counts as additional hours and can be accrued as TOIL.
57. Where an employing Member requires an employee to work outside of ordinary hours of work, they should consider if it is appropriate to ask an employee in receipt of an allowance for additional hours to work (subject to the request not being unreasonable), before requesting an employee not in receipt of an allowance who is accruing TOIL.
58. Employing Members and employees should actively manage TOIL balances and identify periods where TOIL can be used.
59. Prior to an employee ceasing employment, employing Members should take particular care to ensure opportunities are available to use accrued TOIL during a period of notice or a deferral period. Accrued TOIL is not paid out on cessation and does not carry over to employment with a different Member.