Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

From: "Prowse, Fay" <Fay.Prowse@act.gov.au>
Sent: 18/10/2024 9:50 AM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Cc: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: RE: Update on LAMS Update - in table format
Attachments: LAMS Liaison Project - October 2024 - 17 October 2024 Update.docx

OFFICIAL: Sensitive

Hi Lisa

Sanaz requested below update be placed into a table format for ease of reference, documents which were attached to this email have been embedded in the table.

From: Mirzabegian, Sanaz
Sent: Friday, 18 October 2024 8:21 AM
To: Carmody, Lisa
Cc: Matthews, EmmaC ; Wright, Steven ; Szandurski, Kim ; Bolton, Martin ; Prowse, Fay
Subject: Update on LAMS Update

OFFICIAL: Sensitive

Now with a minor adjustment to reflect Emma's engagement with LAMS.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

Duplicate

Duplicate

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Duplicate

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 18/10/2024 10:51 AM
To: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>
Cc: "Kalleske, Sarah" <Sarah.Kalleske@act.gov.au>; "Power, Leanne" <Leanne.Power@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>
Subject: Update re LAMS matter
Attachments: LAMS Liaison Project - October 2024 - 17 October 2024 Update.docx

OFFICIAL: Sensitive

Kathy

Please find attached for visibility a document providing an update on actions taken in relation to the matter involving estimates for staff of members of the Legislative Assembly who are employed under the *Legislative Assembly (Members Staff) Act 1989* (LAMS Act).

I note that of the 63 estimates required, 15 were completed by end of day yesterday and are undergoing QA today. We have staff working overtime and over the weekend and expect estimates to be completed by Tuesday evening to meet the commitment to provide revised estimates on Wednesday next week.

I am holding twice daily check-ins with the team which is comprised of EGM, PSE and 3 x PSE B1s (each with specific responsibilities in relation to this matter – union engagement, staff concerns and triage/support, payroll) as well as the EGM Corporate.

I will continue to update you as we progress.

Kind regards,
Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: Sch 2 s 2.2(a)(ii) |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 18/10/2024 1:01 PM
To: "Arthur, Sarah" <Sarah.Arthur@act.gov.au>
Cc: "Manzoney, Lisa" <Lisa.Manzoney@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>
Subject: Urgent advice sought: LAMS ETP

OFFICIAL: Sensitive - Personal Privacy

Hello Sarah

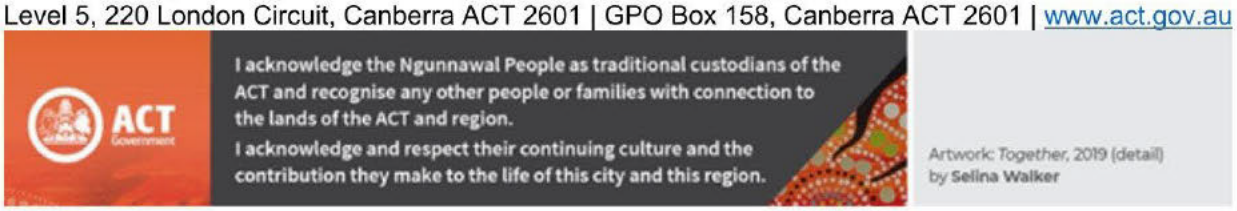
We have received an enquiry from a Sch 2 s 2.2(a)(ii) .

Could you please provide us with advice that we can pass on to employees such as this with an outline of their status at law with respect of the termination of their employment when compared with their counterparts who are employed on a full-time basis?

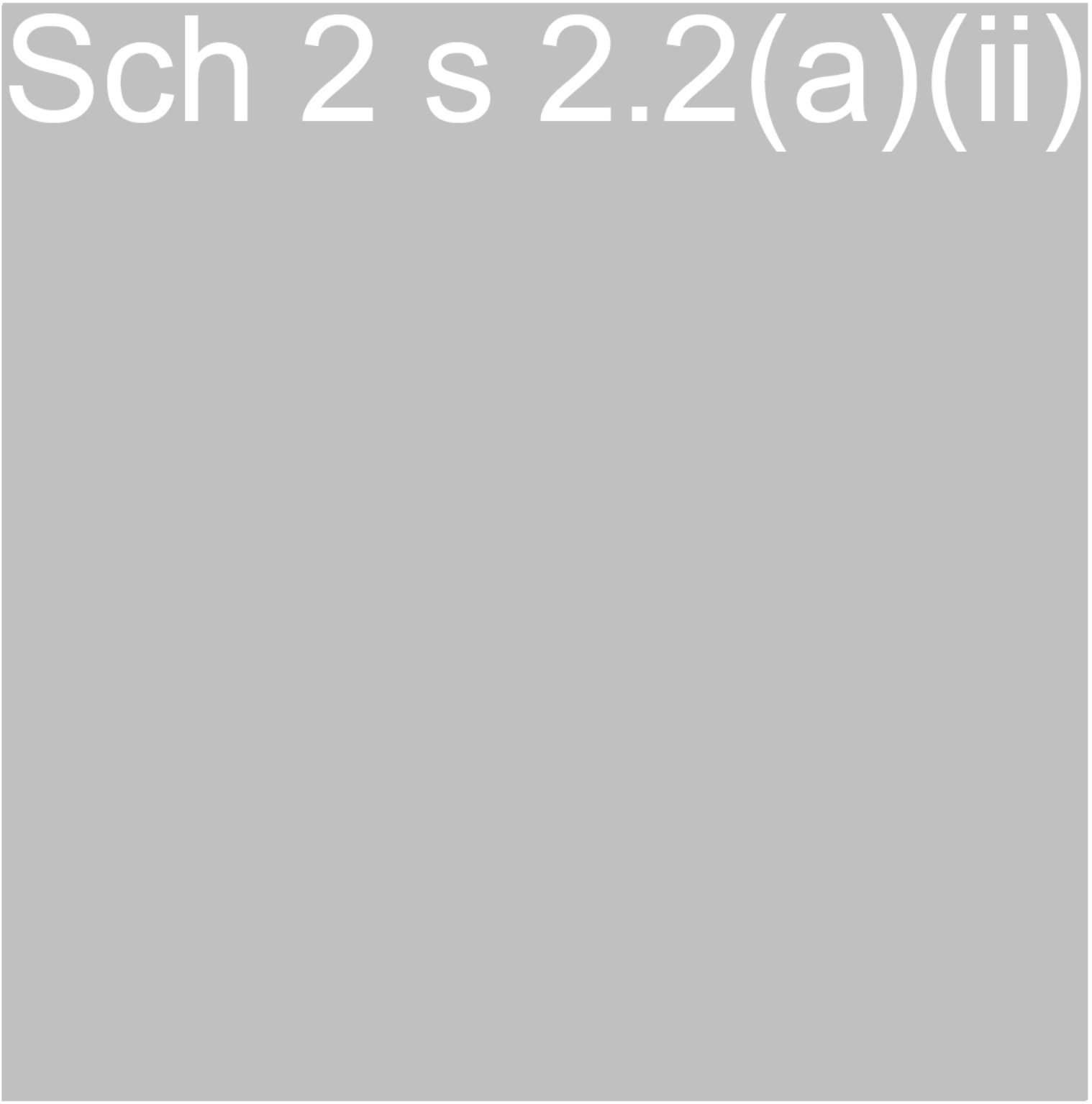
Your urgent assistance will be greatly appreciated.

Emma

Emma Matthews | Executive Branch Manager, Workforce Governance and Recruitment *(she/her)*
Phone: Sch 2 s 2.2(a)(ii) | Email: EmmaC.Matthews@act.gov.au
Chat with me on Microsoft Teams
Whole-of-Government Public Sector Employment | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au> on behalf of "CMTEDD, LAMS Liaison" <LAMSLiaison@act.gov.au>
Sent: 18/10/2024 1:24 PM
To: "Undisclosed recipients:"
Subject: Email inbox live: Important update on pay estimates for final entitlements

OFFICIAL: Sensitive

Good afternoon

As outlined below, this email is being sent to you from the dedicated mailbox to which you may direct your enquiries. The mailbox is now live. Please remember that if you prefer you can telephone me on Sch 2 s 2.2(a)(ii)

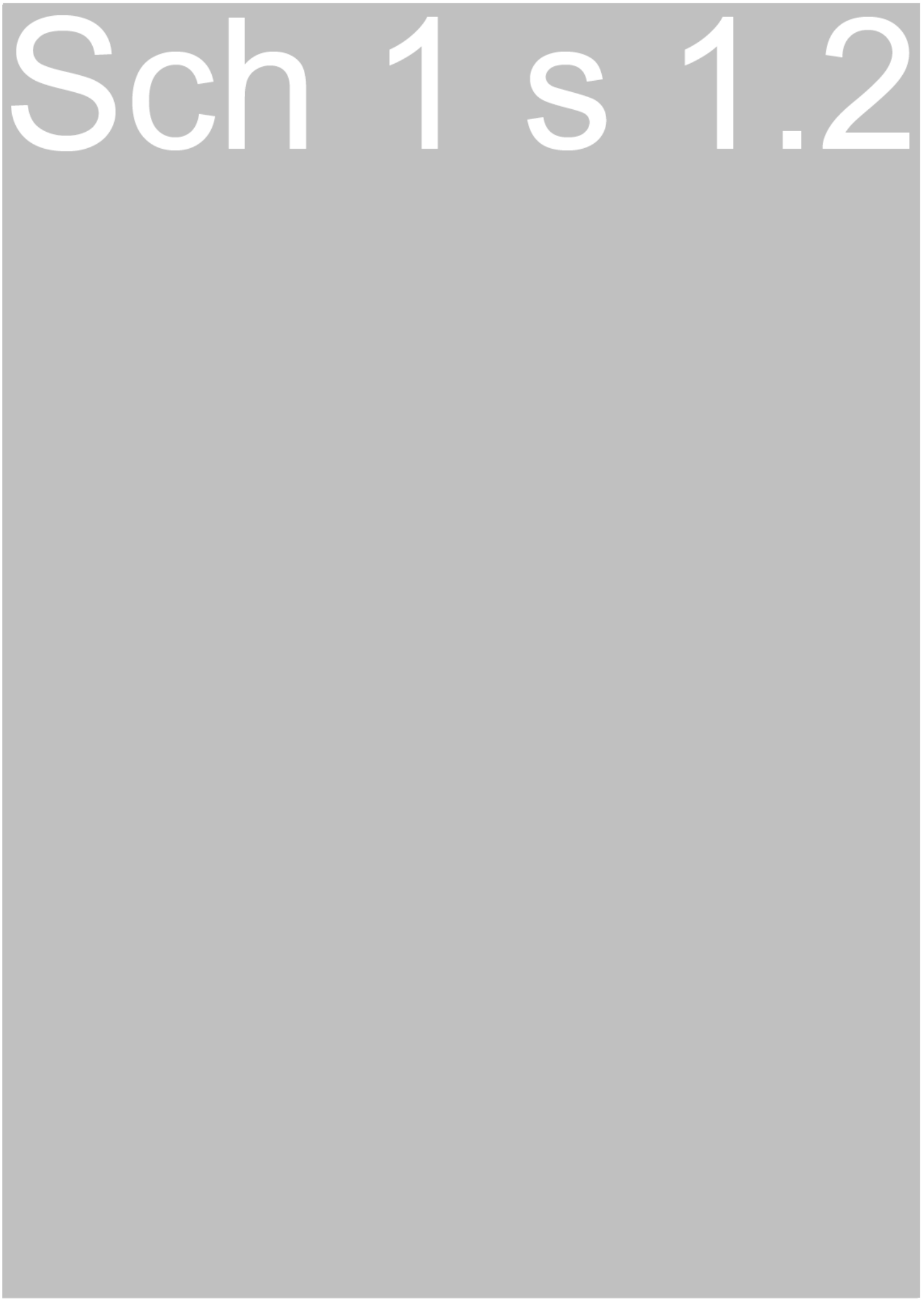
Kind regards

Emma

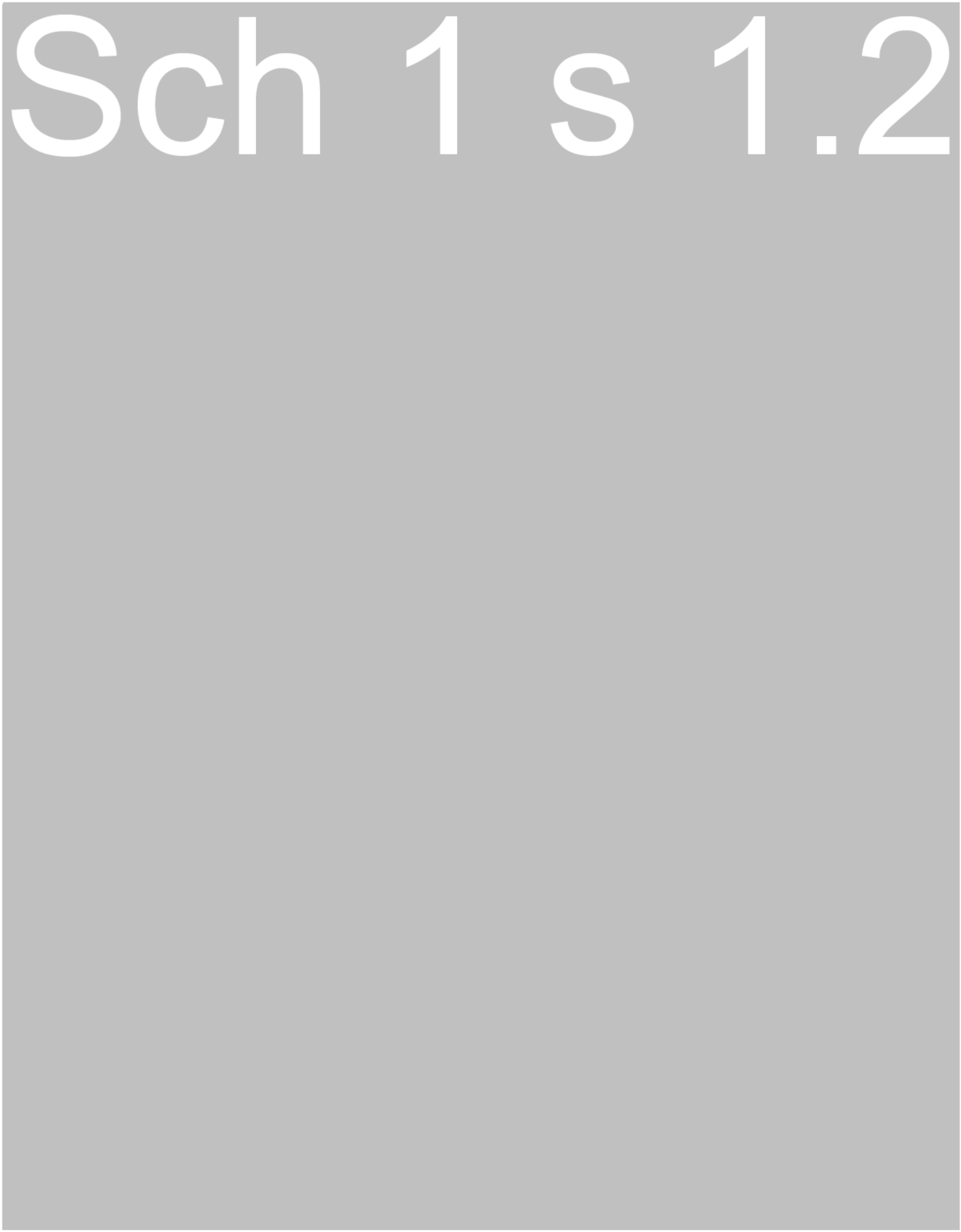
Emma Matthews on behalf of

The Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate I ACT Government
E: LAMSInquiries@act.gov.au
M: 0411 772 362

Duplicate


Sch 1 s 1.2

Sch 1 s 1.2


Sch 1 s 1.2

Sch 1 s 1.2

Duplicate

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 18/10/2024 4:48 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: Fw: LAMS termination matter - options

OFFICIAL

In case you haven't seen this yet
Get Outlook for iOS
From: Maddy Northam
Sent: Friday, October 18, 2024 3:19 PM
To: Carmody, Lisa ; Sch 2.2(a)(ii)
Cc: Sch 2.2(a)(ii) (CPSU ACT) ; Matthews, Emma ; Szandurski, Kim ; Taylor, Nina ; Sch 2.2(a)(ii)
Subject: LAMS termination matter - options

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon Lisa,

Sch 2.2(a)(ii) and OIRWS team,

CPSU is concerned by the approach being taken by OIRWS in relation to the LAMS termination matter and suggests that there are further options that may be available. As always, we seek to work collaboratively with you to find a solution that works for everyone.

CPSU proposes two options for your consideration.

1. CPSU and Government jointly approach the Fair Work Commission seeking an urgent hearing on the basis of ambiguity around the termination payment. Unions and Government agree on a set of words to put forward to the Commission.

2. Consider re-balloting the Enterprise Agreement, including a clause very similar to the MOPS Enterprise Agreement (see below). In recognition this process would take us beyond 5 November, make this retrospective to ensure impacted staff are covered.

63 64 Additional severance benefits 63.1 Severance benefits payable under clause 62 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 62 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.

CPSU looks forward to working constructively with OIRWS and Government to resolve this serious matter in a timely way.

Regards
Maddy Northam

Maddy Northam **(She/Her)**| Regional Secretary | National Secretariat | CPSU
m: Sch 2.2(a)(ii)

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

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

This e-mail message and any accompanying attachment is intended for the use of the recipient only and may contain confidential, commercially valuable or legally privileged information. If you are not the intended recipient, or an agent responsible for delivering it to the intended recipient, you are notified that any

use, review, copying or dissemination of this communication is strictly prohibited. If you have received this message in error, please notify the sender immediately and delete this message. Before opening any attachments, please check them for viruses and defects.

From: "Bolton, Martin" <Martin.Bolton@act.gov.au>
Sent: 18/10/2024 4:49 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: LamS calculations

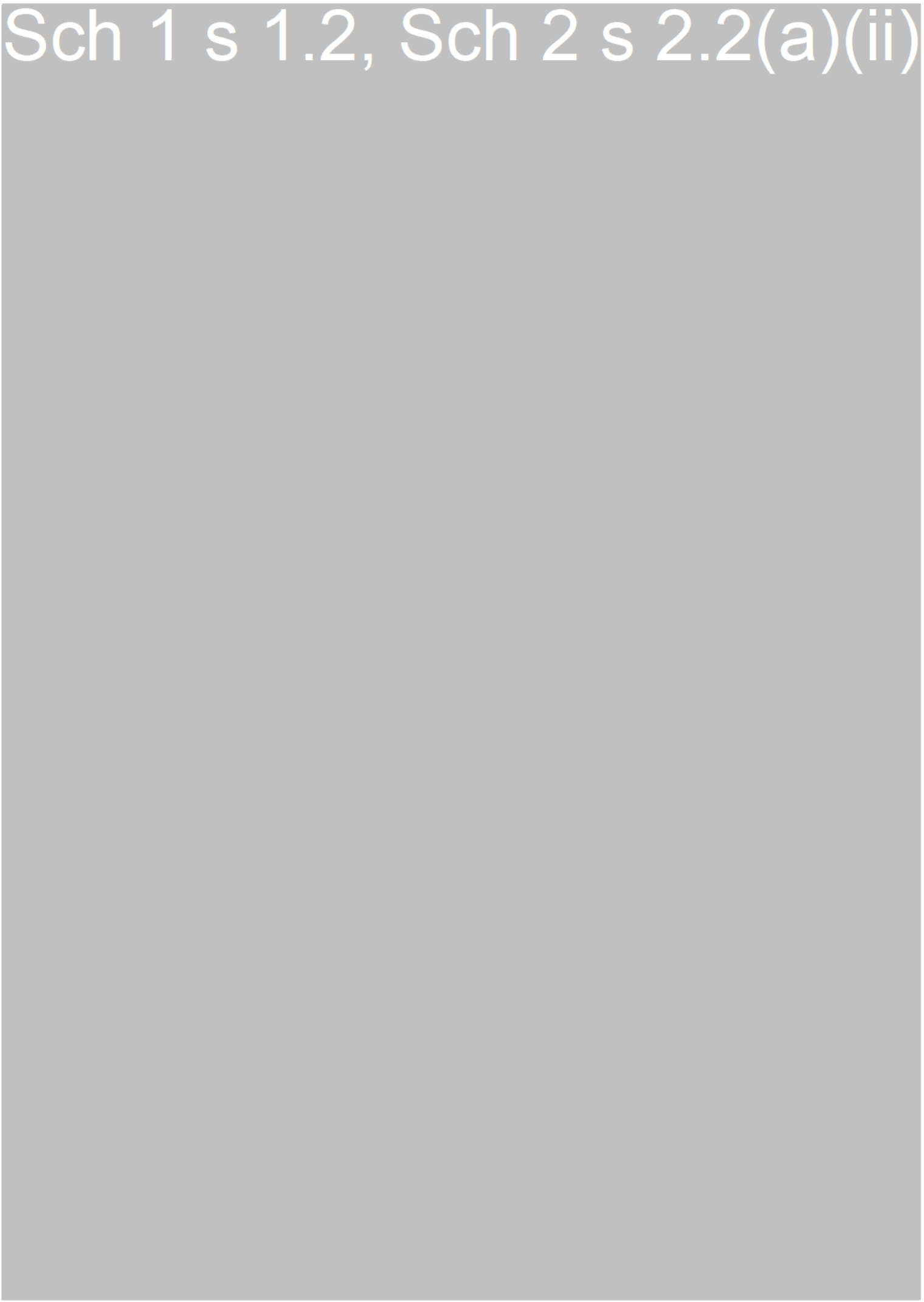
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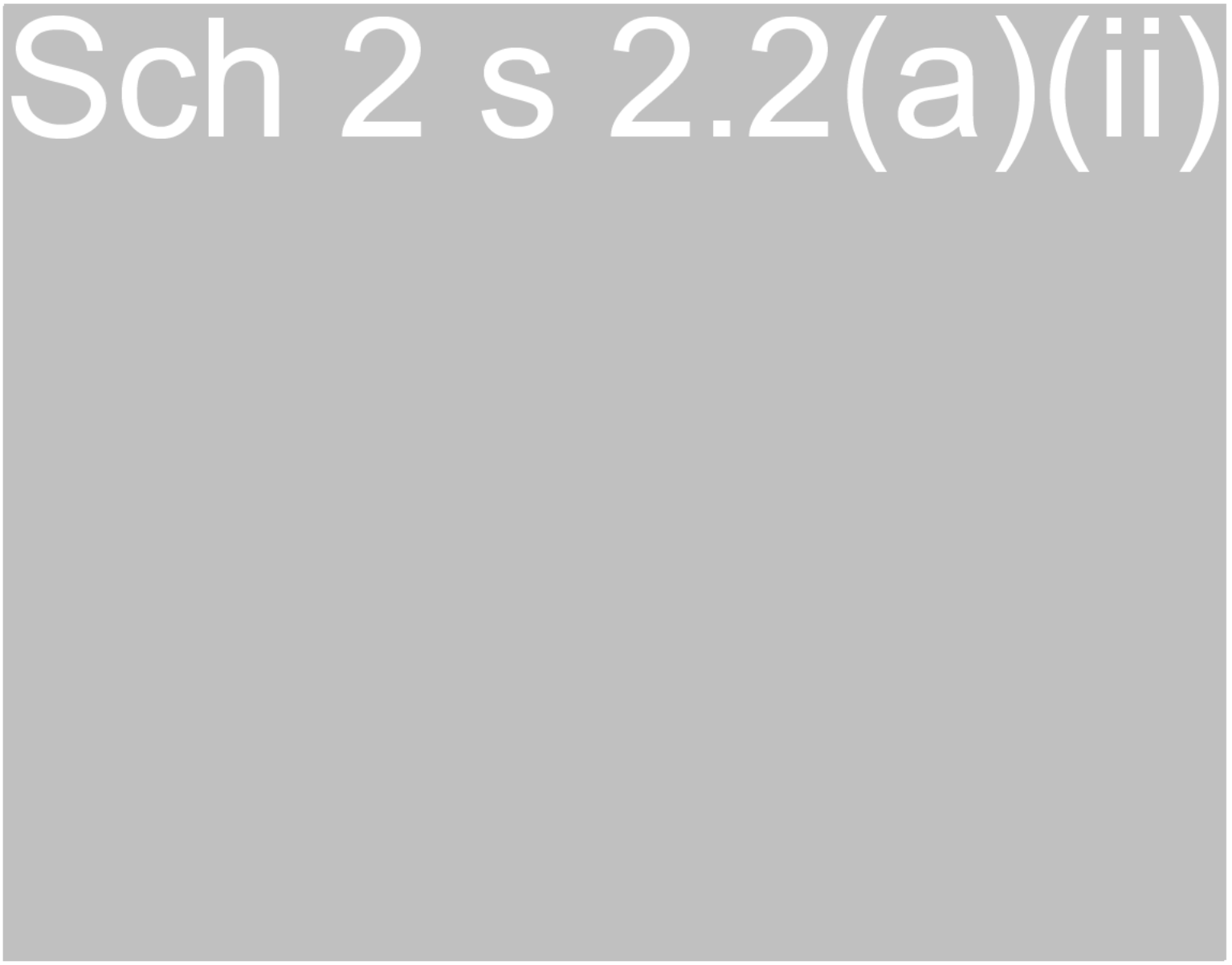
At 4pm

53 Calculated
25 checked

Range is between 17% and 27% reduction in total net calculation

Martin Bolton | Executive Branch Manager Payroll and HR Systems, Shared Services
Phone: 02 620 **58700 | Mobile:** Sch 2 s 2.2(a)(ii) Email: martin.bolton@act.gov.au
Shared Services and Property | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au


Sch 1 s 1.2, Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)

Sch 1 1.2

Sch 1 1.2


Sch 1 1.2

Employment of staff of Executive and non-Executive Member of the Legislative Assembly

Staff of Members and office-holders (Executive Members) of the Legislative Assembly are employed under the *Legislative Assembly (Members' Staff) Act 1989* (**LAMS Act**) and are covered by the *ACT Legislative Assembly Members Staff Enterprise Agreement 2023-2026* (**LAMS EA**).

The powers of Assembly office-holders and Members to employ staff under sections 5 and 10 of the LAMS Act respectively are exercisable only in accordance with arrangements approved by the Chief Minister, and subject to the conditions determined by the Chief Minister (see sections 5((3) and 10(3) of the LAMS Act respectively).

The Chief Minister has approved arrangements and conditions as set out the *Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2021 (No 1)*(**Members' Hiring Approval**); and the *Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2021 (No 1)* (**Office-holders' Hiring Approval**) (together **Hiring Approvals**).

A Member or office-holder may only relevantly employ an employee under an agreement in the forms set out in schedule 1 to each Hiring Approval.

Staff are typically engaged for the anticipated duration of the term of the current Assembly with their employment terminating as determined under the LAMS Act (see ss 8 and 13 of the LAMS Act). Staff may also be engaged on a short-term temporary contract for a fixed term, in which case those employment arrangements are governed by the recent amendments to the *Fair Work Act 2009 (Cth)* (**FW Act**) regarding temporary employment arrangements.

The LAMS EA covers people employed under the LAMS Act, however the power to employ staff comes from the LAMS Act. Section 40(1) of the FW Act makes clear that the LAMS Act (as a 'public sector employment law') prevails over the LAMS EA (being a 'fair work instrument') to the extent of any inconsistency.

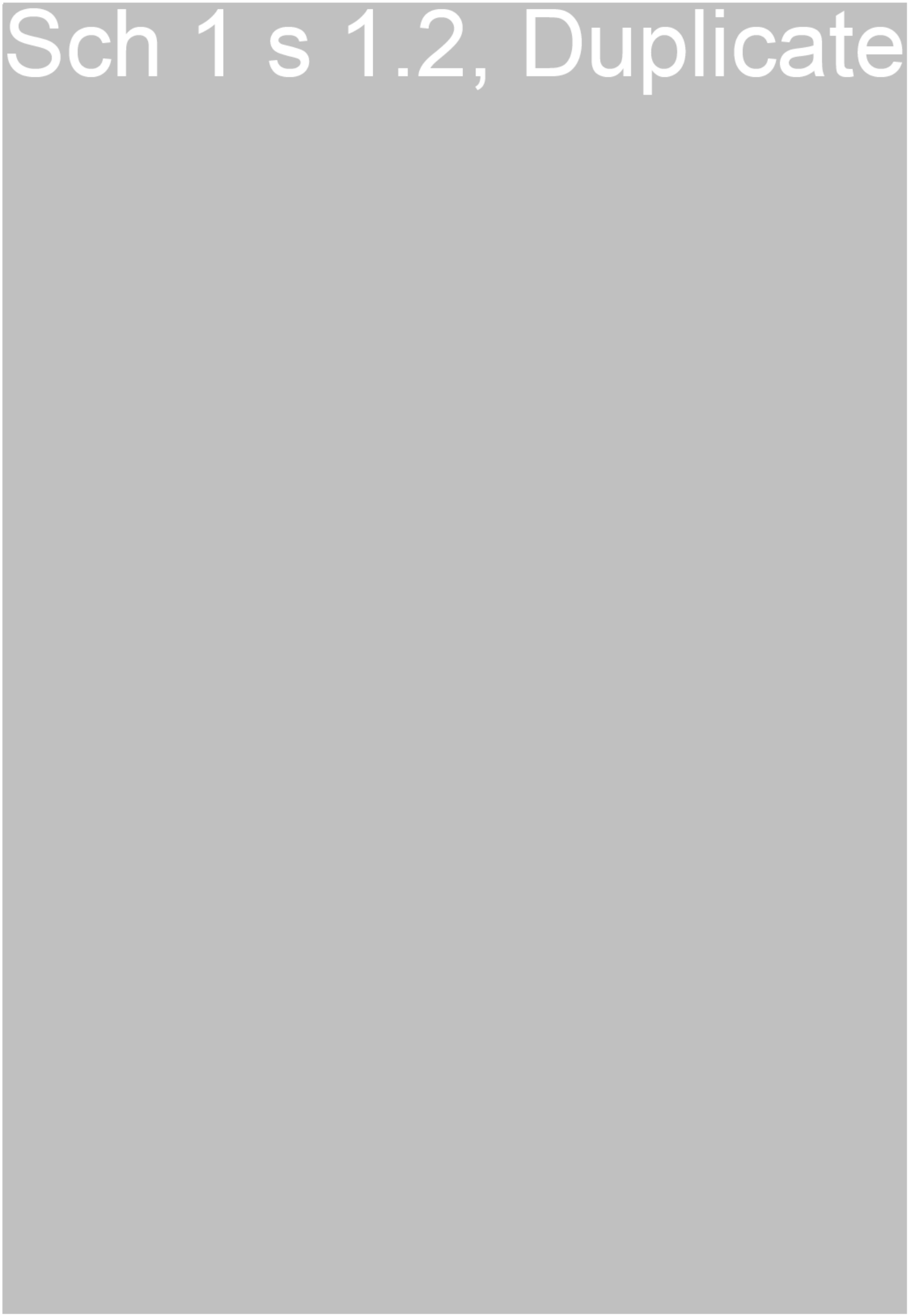
Section 26(1) of the FW Act expresses an intention by the Commonwealth for the FW Act to apply to the exclusion of all 'State or Territory industrial laws'. However, the LAMS Act is not a 'State or Territory industrial law' within the meaning of s 26 as it does not 'apply to employment generally' in the Territory within the meaning of s 26(4).[1]

This means that the FW Act does not expressly operate to 'cover the field' to the exclusion of the LAMS Act.

---

[1] See FW Act ss 26(4)(a)-(b), the LAMS Act does not apply to all employers and employees in the ACT. See also FW Act s 28, the LAMS Act is not prescribed by the *Fair Work Regulations 2009* (Cth) for the purposes of that section.

Sch 1 s 1.2


Sch 1 s 1.2, Duplicate


Sch 1 s 1.2, Duplicate

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 21/10/2024 12:12 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>; "Lawless, Brian" <Brian.Lawless@act.gov.au>
Subject: Advice for review: LAMS termination matter - options
Importance: High

OFFICIAL: Sensitive - Personal Privacy

Hi Sanaz

Maddy Northam wrote to various people at OIRWS on Friday (and to the wrong Emma Matthews) seeking two possible approaches to the LAMS termination matter.

The team has proposed the following in relation to the requests from the CPSU.

We have our 1:1 scheduled today which might be a good time to discuss?

Emma

From: Lawless, Brian **On Behalf Of** CMTEDD, LAMS Liaison
Sent: Monday, 21 October 2024 11:21 AM
To: Matthews, EmmaC ; CMTEDD, LAMS Liaison
Cc: Taylor, Nina ; Szanto, Juliet
Subject: RE: LAMS termination matter - options
Importance: High

OFFICIAL: Sensitive - Personal Privacy

Hi Emma

I met with Nina and Juliet this morning to discuss the options suggested by Ms Northam and the CPSU. A brief summary of the issues associated with each option is presented below but, in short, **Option One** would be the recommended approach given the potential for a quick turnaround.

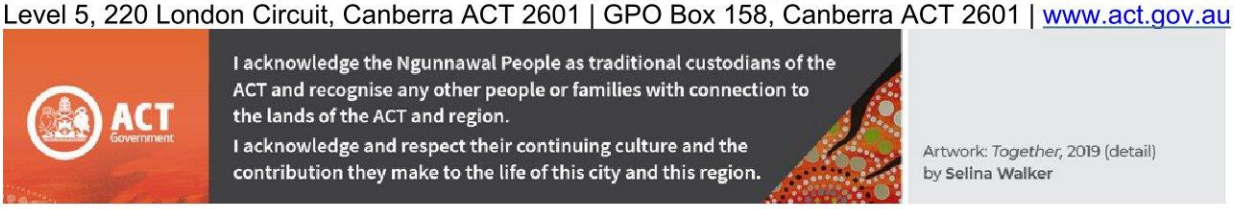
Nina and Juliet – please advise if I've missed anything.

	Option One	Option Two
Suggested approach	CPSU and Government jointly approach the Fair Work Commission seeking an urgent hearing on the basis of ambiguity around the termination payment. Unions and Government agree on a set of words to put forward to the Commission.	Re-balloting the Enterprise Agreement to include a clause very similar to the MOPS Enterprise Agreement. In recognition this process would take us beyond 5 November, make this retrospective to ensure impacted staff are covered.
Process	OIRWS would be required to: • define the ambiguity and the associated issues in the Legislative Assembly Members' Staff Enterprise Agreement 2023 – 2026 (the LAMS EA) the Fair Work Commission (the FWC) would be asked to consider; • develop replacement language to be included in the LAMS EA;	OIRWS would be required to: • develop new contract clauses to establish the new allowance; • prepare for balloting (e.g., collect staff data, etc.); • undertake an access period; and • undertake a ballot period.

	• consult with all relevant unions on both the construction of the ambiguity and the proposed replacement language prior to making a submission to the FWC; and • complete a form F1 Application to the FWC. The FWC would then consider the matter (+/- a hearing).	
Time required	The OIRWS could potentially submit the F1 Application to the FWC as early as **Friday, 25 October 2024**. However, it is unclear how long it would take for the FWC to consider the matter and arrive at a decision.	This option would take approximately three months.
Risks	1. The replacement language could interact/have unintentional consequences on other provisions within the LAMS EA. In order to conduct a comprehensive analysis of the replacement language to identify/address any unintended interactions, another 1 – 2 weeks would be required prior to submitting the F1 application. 2. Despite the quick process undertaken by the OIRWS, the FWC may not consider the matter and/or make a decision prior to the termination of the employees in question.	1. This change would not be finalised prior to the termination of the employees in question. 2. Despite the CPSU's statement that the change can be made retrospective to cover impacted staff, it is unclear whether this would be feasible given they would no longer be covered by the LAMS EA at the time of the change.

Kind regards,
Brian.

Brian Lawless | Director *(he/him)*
Secure Employment | Workforce Governance and Recruitment
Phone: 6207 2903 | Chat with me on Microsoft Teams | Email: brian.lawless@act.gov.au
Whole-of-Government Public Sector Employment | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Monday, 21 October 2024 9:13 AM
To: CMTEDD, LAMS Liaison <LAMSLiaison@act.gov.au>
Subject: FW: LAMS termination matter - options
Importance: High

OFFICIAL: Sensitive - Personal Privacy

From: Matthews, Emma <Emma.Matthews@act.gov.au>
Sent: Monday, 21 October 2024 8:40 AM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>

Subject: FW: LAMS termination matter - options
Importance: High

OFFICIAL: Sensitive - Personal Privacy

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From: "Bolton, Martin" <Martin.Bolton@act.gov.au>
Sent: 21/10/2024 4:37 PM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>
Subject: LAMS estimates
Attachments: Copy of 001. Master list_ RECALULATIONS of LAMS Estimates.xlsx

UNOFFICIAL

See attached list with percentages.

Martin Bolton | Executive Branch Manager Payroll and HR Systems, Shared Services
Phone: 02 620 **58700 | Mobile:** 0468 510 954| Email: martin.bolton@act.gov.au
S**hared Services and Property | Chief Minister, Treasury and Economic Development Directorate | ACT Government**
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

				ELIGIBLE FOR TERM PAYMENT
				Yes
				Yes
				Yes
				Yes
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				Yes
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Original Gross	Original Net	Updated gross	Updated Net as at 22/10/24	$ nett DIFFERENCE
$ 135,964.34	$ 106,486.34	$ 190,497.94	$ 100,940.94	-$ 5,545.40
$ 384,277.59	$ 283,356.59	$ 386,091.23	$ 204,628.23	-$ 78,728.36
$ 123,123.80	$ 149,355.17	$ 213,123.80	$ 112,930.80	-$ 36,424.37
$ 100,097.37	$ 80,647.37	$ 102,774.75	$ 63,933.75	-$ 16,713.62
$ 179,625.81	$ 134,171.81	$ 184,542.77	$ 97,824.77	-$ 36,347.04
$ 44,406.33	$ 36,367.33	$ 41,927.73	$ 28,541.73	-$ 7,825.60
$ 48,376.75	$ 39,981.75	$ 49,037.57	$ 33,367.57	-$ 6,614.18
$ 120,275.24	$ 91,808.24	$ 122,635.44	$ 70,814.44	-$ 20,993.80
$ 38,065.36	$ 32,559.36	$ 38,497.32	$ 26,120.32	-$ 6,439.04
$ 139,073.74	$ 108,600.74	$ 139,073.74	$ 76,797.74	-$ 31,803.00
$ 41,178.78	$ 36,018.78	$ 41,892.55	$ 27,327.55	-$ 8,691.23
$ 23,230.16	$ 21,252.16	$ 19,820.07	$ 13,480.07	-$ 7,772.09
$ 55,334.27	$ 46,356.27	$ 56,471.55	$ 36,927.55	-$ 9,428.72
$ 46,820.81	$ 37,850.81	$ 46,820.81	$ 30,062.81	-$ 7,788.00
$ 50,863.08	$ 44,607.08	$ 50,863.08	$ 33,308.08	-$ 11,299.00
$ 99,700.33	$ 82,896.33	$ 97,463.52	$ 63,435.52	-$ 19,460.81
$ 110,076.49	$ 88,882.49	$ 110,076.49	$ 65,185.49	-$ 23,697.00
$ 44,817.56	$ 40,168.56	$ 48,231.23	$ 32,454.23	-$ 7,714.33
$ 72,925.05	$ 59,610.05	$ 72,925.05	$ 46,055.05	-$ 13,555.00
$ 15,936.19	$ 14,117.19	$ 15,936.19	$ 10,783.19	-$ 3,334.00
–	–	–	–	NA
$ 48,230.28	$ 41,154.28	$ 54,356.47	$ 35,885.47	-$ 5,268.81
$ 31,249.79	$ 25,361.79	$ 31,249.79	$ 21,210.79	-$ 4,151.00
$ 37,038.46	$ 29,194.46	$ 36,463.12	$ 23,340.12	-$ 5,854.34
$ 264,385.71	$ 197,821.71	$ 264,385.71	$ 140,097.71	-$ 57,724.00
–	–	–	–	NA
$ 29,846.05	$ 29,483.05	$ 27,371.03	$ 18,612.03	-$ 10,871.02
$ 39,721.44	$ 33,023.44	$ 39,721.44	$ 25,449.44	-$ 7,574.00
$ 25,556.52	$ 21,386.52	$ 24,995.85	$ 16,382.85	-$ 5,003.67
$ 6,334.41	$ 5,782.41	$ 6,334.41	$ 4,339.41	-$ 1,443.00
$ 15,345.86	$ 13,946.86	$ 14,891.71	$ 10,131.71	-$ 3,815.15
$ 79,046.56	$ 68,004.56	$ 80,141.84	$ 52,069.84	-$ 15,934.72
$ 38,308.69	$ 36,163.69	$ 47,380.37	$ 32,232.37	-$ 3,931.32
$ 70,105.20	$ 57,692.20	$ 70,105.20	$ 43,866.20	-$ 13,826.00
$ 26,638.40	$ 21,226.40	$ 25,609.96	$ 17,413.96	-$ 3,812.44
$ 72,074.33	$ 56,336.33	$ 72,074.33	$ 45,144.33	-$ 11,192.00
$ 16,692.80	$ 14,968.80	$ 17,092.50	$ 11,630.50	-$ 3,338.30
$ 175,312.98	$ 153,287.98	$ 175,312.98	$ 101,234.98	-$ 52,053.00
$ 29,529.89	$ 28,633.89	$ 29,529.89	$ 20,091.89	-$ 8,542.00
$ 16,023.74	$ 13,000.74	$ 16,248.55	$ 11,827.55	-$ 1,173.19
$ 21,421.01	$ 18,233.01	$ 21,421.01	$ 14,582.01	-$ 3,651.00
$ 8,692.78	$ 7,763.78	$ 8,692.78	$ 5,903.78	-$ 1,860.00
$ 27,760.69	$ 24,479.69	$ 27,760.69	$ 18,882.69	-$ 5,597.00
$ 52,111.93	$ 41,589.93	$ 52,111.93	$ 34,257.93	-$ 7,332.00
–	–	–	–	NA
–	–	–	–	NA
–	–	–	–	NA
$ 70,943.52	$ 58,262.52	$ 70,943.52	$ 43,781.52	-$ 14,481.00
$ 14,590.44	$ 12,770.44	$ 15,012.46	$ 10,239.46	-$ 2,530.98
$ 31,246.93	$ 25,493.93	$ 31,246.93	$ 20,005.93	-$ 5,488.00

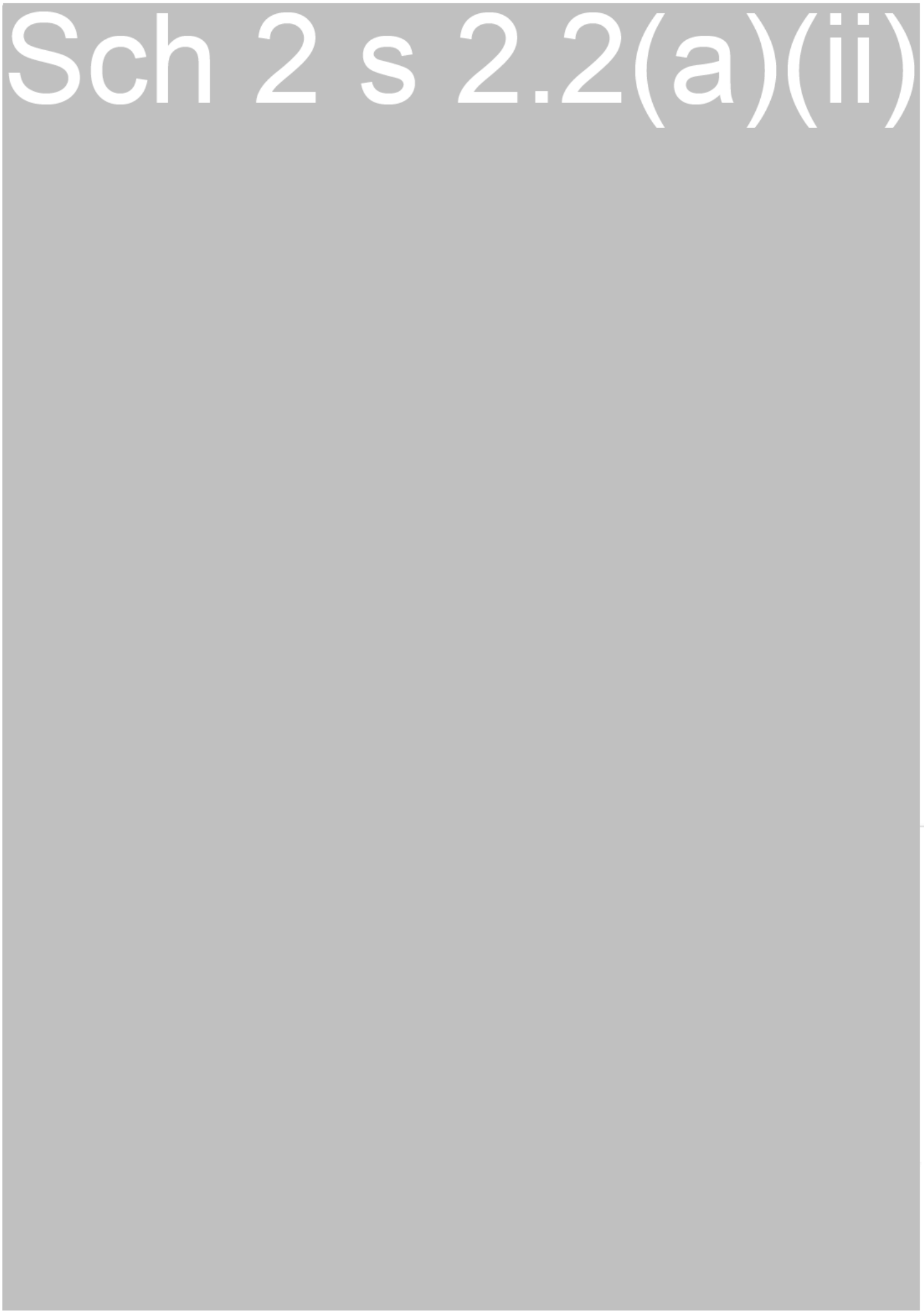
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$ 20,745.65	$ 18,072.65	$ 20,477.98	$ 13,945.98	-$ 4,126.67
$ 14,156.17	$ 13,017.17	$ 14,160.85	$ 9,623.85	-$ 3,393.32
$ 41,297.49	$ 34,265.49	$ 43,946.94	$ 29,843.94	-$ 4,421.55
$ 22,954.04	$ 20,334.04	$ 25,157.56	$ 17,126.56	-$ 3,207.48
$ 40,741.84	$ 35,215.84	$ 42,031.35	$ 27,399.35	-$ 7,816.49
$ 11,419.54	$ 10,369.54	$ 9,231.77	$ 6,263.77	-$ 4,105.77
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$ 143,942.47	$ 117,924.47	$ 143,942.47	$ 83,995.47	-$ 33,929.00
$ 101,586.01	$ 82,629.01	$ 101,586.01	$ 63,231.01	-$ 19,398.00
$ 79,904.80	$ 68,365.80	$ 79,904.80	$ 51,455.80	-$ 16,910.00
$ 67,322.02	$ 55,345.02	$ 70,340.34	$ 45,664.34	-$ 9,680.68
$ 45,062.00	$ 38,991.00	$ 45,062.00	$ 29,537.00	-$ 9,454.00
$ 40,564.15	$ 32,797.15	$ 43,897.61	$ 29,824.61	-$ 2,972.54
$ 25,041.49	$ 21,679.49	$ 31,029.34	$ 21,133.34	-$ 546.15
$ 22,771.79	$ 20,433.79	$ 22,771.79	$ 15,482.79	-$ 4,951.00
$ 29,608.19	$ 25,175.19	$ 29,608.19	$ 19,627.19	-$ 5,548.00

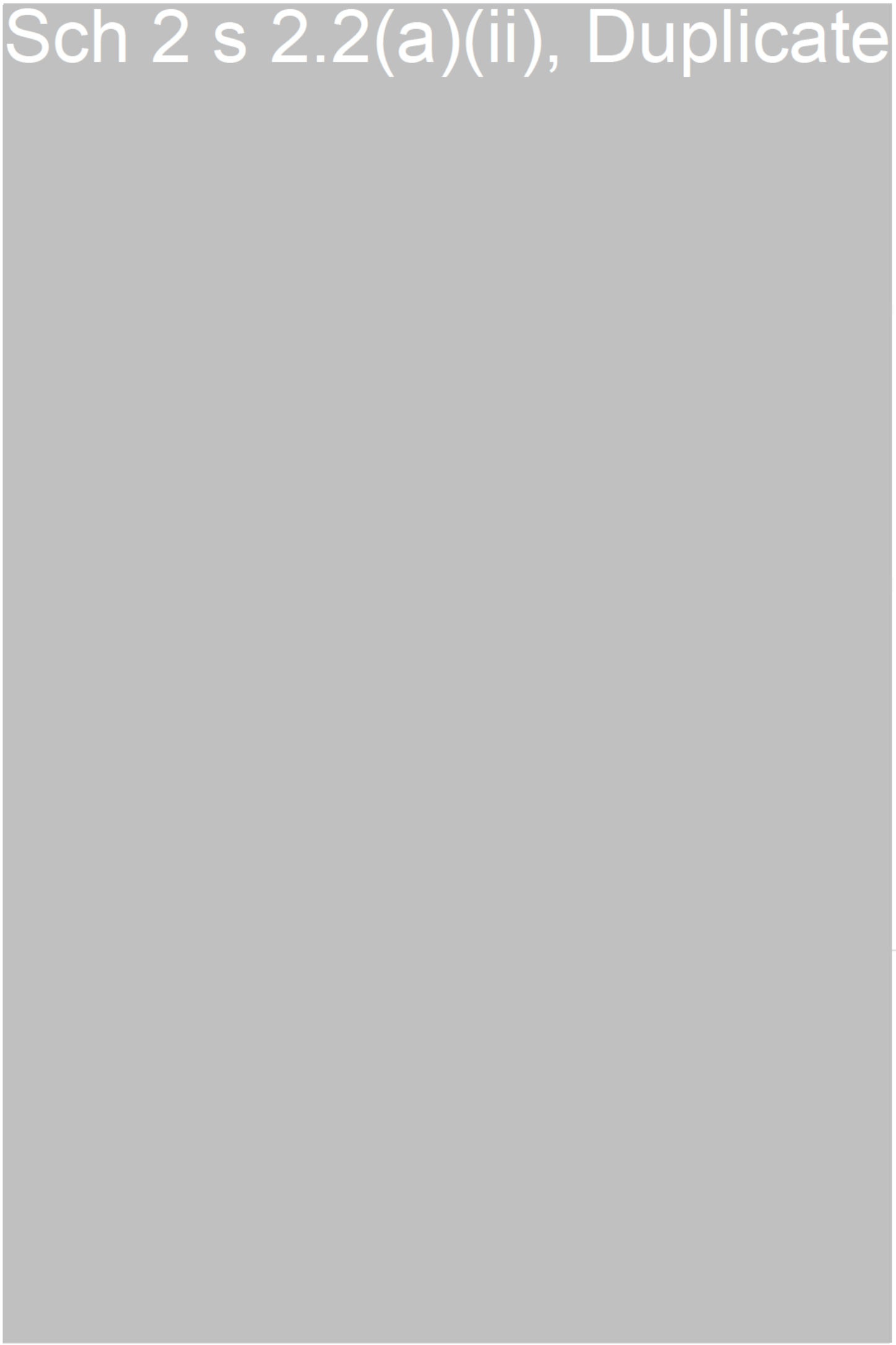
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-28%	Louise	Dee	Srujana	
-24%	Louise	Richard	Dee	
-21%	Louise	Richard	Dee	
-27%	Louise	Richard	Dee	
-22%	Louise	Richard	Dee	
-17%	Louise	Richard	Dee	
-23%	Louise	Richard	Dee	
-20%	Louise	Dee	Richard	
-29%	Louise	Dee	Richard	
-24%	Louise	Dee	Richard	
-37%	Louise	Dee	Richard	
-20%	Louise	Srujana	Richard	
-21%	Louise	Dee	Richard	
-25%	Louise	Srujana	Richard	
-23%	Dee	Richard	Srujana	
-27%	Dee	Richard	Srujana	
-19%	Dee	Richard	Srujana	
-23%	Dee	Richard	Srujana	
-24%	Dee	Richard	Srujana	
NA	-	-	-	-
-13%	Louise	Dee	Srujana	
-16%	Louise	Dee	Srujana	
-20%	Louise	Dee	Srujana	
-29%	Louise	Dee	Srujana	-
NA	-	-	-	-
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-23%	Louise	Srujana	Dee	
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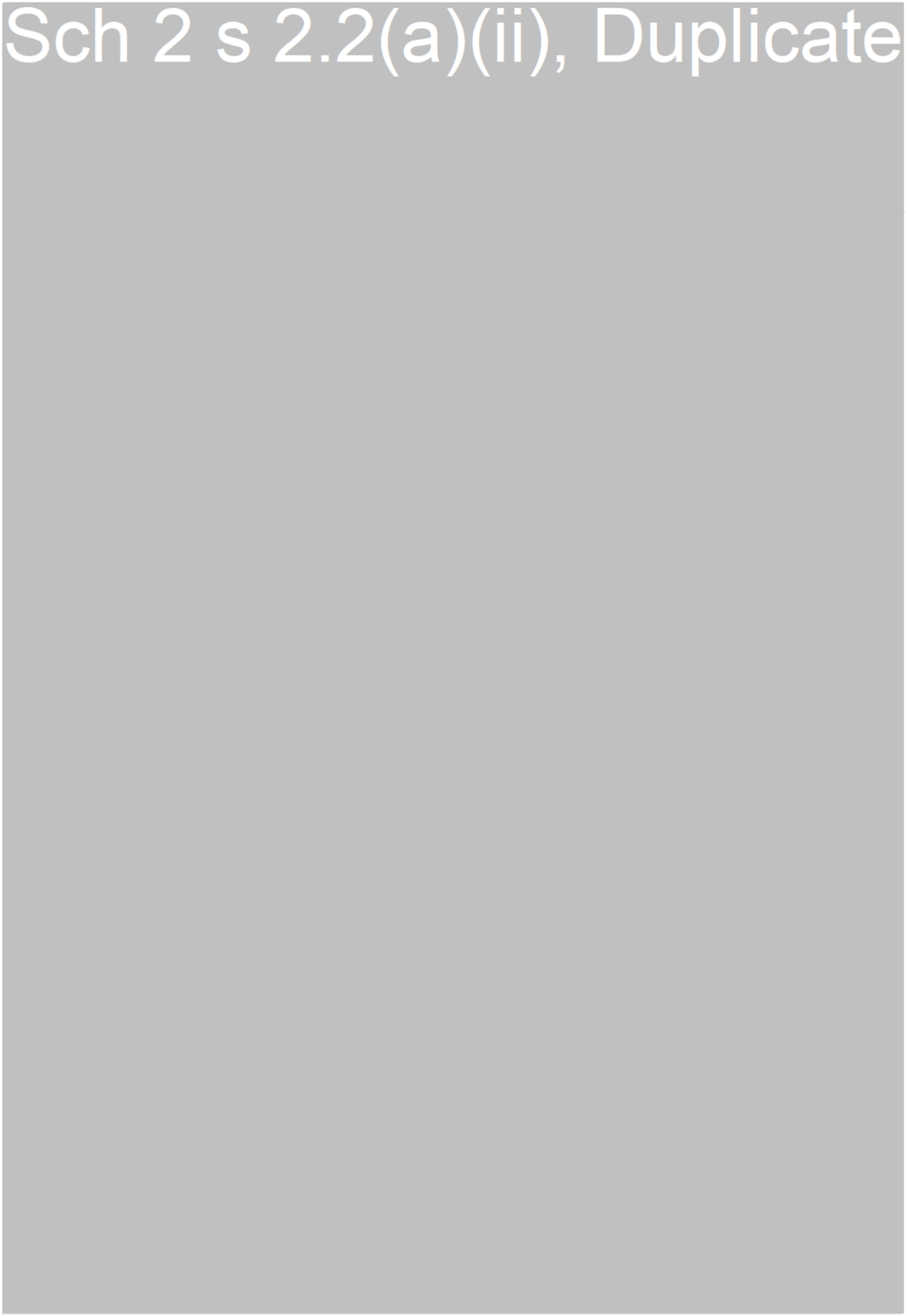
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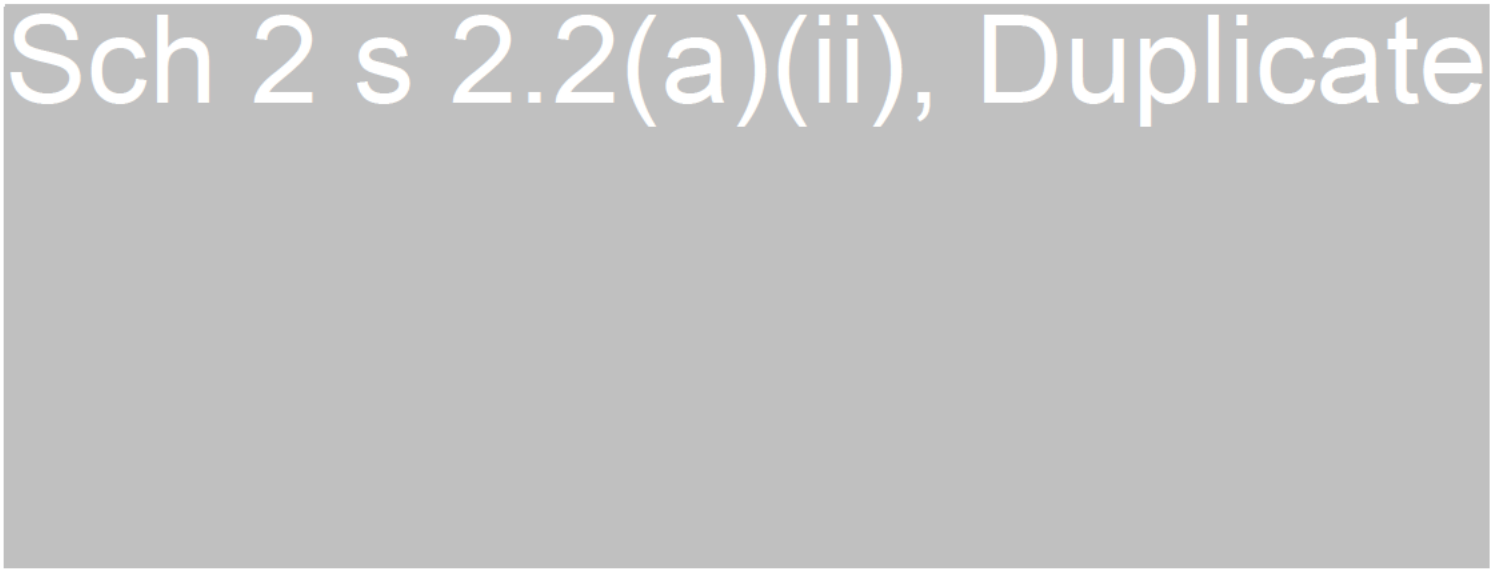
Queries		

NOT ELIGIBLE BUT REQUESTED VIA TRACEY	–	
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Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii), Duplicate


Sch 2 s 2.2(a)(ii), Duplicate


Sch 2 s 2.2(a)(ii), Duplicate

From: "Bolton, Martin" <Martin.Bolton@act.gov.au>
Sent: 22/10/2024 9:16 AM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>
Cc: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Subject: FW: 30 Percent loading projections -LAMS estimates.xlsx
Attachments: 30 Percent figure projections -LAMS estimates.xlsx

OFFICIAL

Happy to talk through the contents but have pasted below.

In short on the sample below we have applied a 30% loading on both the severance and the 4 weeks in lieu of notice. The net effect after estimating tax at either 47% for larger ones or 32% is in the final column. The individual in the first row had their net estimate reduced in the second calculation (new ETP version vs the VR original) by around $78k. The estimated net increase after the 30% loading reduces the $78 down by $17.5k.

ANNUAL SAL + ALW	Severance weeks	Severance amount	30% loading on severance	4 wks-Notice in Lieu	30% loading on 4wks-Notice in lieu	TOTAL OF D-F	ESTIMATED TAX ON 30%	ESTIMATED NET INCREASE
$ 327,821.00	15.5weeks @ 33 hpw	$ 87,650.00	$ 26,295.00	$ 22,619.00	$ 6,785.70	$ 33,080.70	$ 15,547.93	$ 17,532.77
$ 291,063.00	15.5 weeks @ 36.75 hpw	$ 87,412.00	$ 26,223.60	$ 22,318.00	$ 6,695.40	$ 32,919.00	$ 15,471.93	$ 17,447.07
$ 142,842.00	7.6 weeks @ 36.75 hpw	$ 20,992.00	$ 6,297.60	$ 10,952.00	$ 3,285.60	$ 9,583.20	$ 3,066.62	$ 6,516.58
$ 101,133.00	3.5 weeks @ 22.5hpw	$ 4,154.00	$ 1,246.20	$ 4,747.00	$ 1,424.10	$ 2,670.30	$ 854.50	$ 1,815.80
$ 96,580.00	6.5 weeks @ 36.75 hpw	$ 12,033.00	$ 3,609.90	$ 7,405.00	$ 2,221.50	$ 5,831.40	$ 1,866.05	$ 3,965.35
$ 126,436.00	2.5 weeks @ 36.75phw	$ 6,059.00	$ 1,817.70	$ 9,694.00	$ 2,908.20	$ 4,725.90	$ 1,512.29	$ 3,213.61

Martin Bolton | Executive Branch Manager | Payroll and HR Systems
Phone: 620 58700 | Email: Martin.Bolton @act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

From: Khem, Deepika
Sent: Tuesday, 22 October 2024 9:06 AM
To: Bolton, Martin
Subject: 30 Percent figure projections -LAMS estimates.xlsx

OFFICIAL

ANNUAL SAL + ALW	Severance weeks	Severance amount	30% loading on severanc
$ 327,821.00	15.5weeks @ 33 hpw	$ 87,650.00	$ 26,295.00
$ 291,063.00	15.5 weeks @ 36.75 hpv	$ 87,412.00	$ 26,223.60
$ 142,842.00	7.6 weeks $ 36.75 hpw	$ 20,992.00	$ 6,297.60
$ 101,133.00	3.5 weeks @ 22.5hpw	$ 4,154.00	$ 1,246.20
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4 wks- Notice in Lieu	30% loading on 4wks- Notice in lieu	TOTAL OF D-F
$ 22,619.00	$ 6,785.70	$ 33,080.70
$ 22,318.00	$ 6,695.40	$ 32,919.00
$ 10,952.00	$ 3,285.60	$ 9,583.20
$ 4,747.00	$ 1,424.10	$ 2,670.30
$ 7,405.00	$ 2,221.50	$ 5,831.40
$ 9,694.00	$ 2,908.20	$ 4,725.90

ESTIMATED TAX ON 30%	ESTIMATED NET INCREASE
$ 15,547.93	$ 17,532.77
$ 15,471.93	$ 17,447.07
$ 3,066.62	$ 6,516.58
$ 854.50	$ 1,815.80
$ 1,866.05	$ 3,965.35
$ 1,512.29	$ 3,213.61

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 22/10/2024 6:49 PM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: For consideration: Draft LAMS Termination Payments advice
Attachments: LAMS Termination Payments advice.docx

OFFICIAL

Hi both
The attached paper outlines six options (or 'risk mitigation strategies') for addressing the legal risk to the territory that has arisen with respect to the end of employment payment estimates that have been provided to the staff of office-holders.
Attachment 2 is the helpful summary table.
Best.
Emma
Emma Matthews
Executive Branch Manager, Workforce Governance & Recruitment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate
Telephone: 0411 772 362
Email: EmmaC.Matthews@act.gov.au
From: Lawless, Brian
Sent: Tuesday, October 22, 2024 5:08 pm
To: Matthews, EmmaC ; Szandurski, Kim
Cc: Norton, Sheri ; Taylor, Nina ; Mimilidis, Jacob ; Bird, Lucas ; Perkovic, Sophia ; Taylor, Nina
Subject: Draft LAMS Termination Payments advice

OFFICIAL

Hi Emma and Kim
In a Herculean team effort, we have pulled together the requested advice. Coming in at a healthy 18 pages, we believe we have covered the issues and options with a concise summary on the options provided at Attachment B. Please let us know if you'd like any changes ☺
Cheers,
Brian.

ACT Government
Chief Minister, Treasury and Economic Development

Options paper

Legislative Assembly Members' Staff Termination Payments

Purpose

This paper explores:

- the issues that have resulted in divergent practices between payroll teams across the ACT Government in the management of termination payments for staff of Legislative Assembly Members (LAMS staff);
- practices in other jurisdictions in relation to the termination payments provided to staff of members of Parliament; and
- options for the ACT Public Service (ACTPS) to remedy current LAMS staff impacted by the discrepancies arising in payroll practices.

Problem statement

Termination payments (outlined under clause B7 of the Legislative Assembly Members' Enterprise Agreement 2023-2026 (LAMS EA)) have been calculated and paid differently for executive and non-executive LAMS staff.

In light of this discovery, the Community and Public Sector Union (CPSU) and ACT Government have sought to establish options to resolve this problem centred around the following methodology:

- a termination payment is calculated as at the employee's part-time or full-time status at the termination date; and
- tax on a termination payment is calculated as if it was a redundancy payment.

Termination payments for staff of members of the Legislative Assembly

Sch 1 1.2

- LAMS termination payments under clause B7 of the LAMS EA are employment termination payments (ETP payments) and should be taxed as such; and
- there is no prescribed method of applying a proportionate basis where the employee has worked part-time hours during the period of service;
- therefore, the calculation is made as at the employee's part-time or full-time status at the termination date.

DRAFT

As a result, the first part of the solution sought by the CPSU and Government can be met; however, the second part cannot. The advice is clear that a termination payment is not a redundancy payment and therefore ETP tax rules per the *Income Tax Assessment Act 1997* apply.

Past ACTPS practice

Staff employed under the LAMS EA have their entitlements and pay administered by two HR areas/payroll teams:

- the Office of the Legislative Assembly (OLA) Payroll team is responsible for the payment of non-executive members of staff; and
- the Office of Industrial Relations and Workforce Strategy (OIRWS) Shared Services Payroll teams which is responsible for the payment of executive staff.

When Shared Services and OLA implement new entitlements, corresponding payroll rules and procedures are created and applied by both payroll teams' staff. However, in this instance, separate payroll teams applied different administrative practice with reference to payment types similar to the termination payment, resulting in diverging payment processing. Specifically:

- Shared Services Payroll applied processes already set up to handle broader ACTPS payee redundancy payments
- OLA Payroll set processes for the payment treating it as a termination payment and sought further legal advice in 2012 where there was uncertainty.

Unfortunately, as there have been no significant changes to the LAMS EA termination payment clauses since 2007, there has been no cause to review existing pay processing practices which has resulted in the inconsistencies in payroll practices remaining unrecognised until they were raised by the CPSU.

A subsequent investigation has revealed that the following divergent methods were applied by the payroll teams in the application of termination payments:

Shared Services Payroll

- A termination payment is calculated on a proportionate basis where the employee has worked part-time hours during the period of service.
- Tax on the termination payment is calculated as if it was a redundancy payment, as per section B7 of the LAMS EA and section 119 of the *Fair Work Act 2009* (FWA).
- This method is heavily based on the redundancy/severance payment method which applies for rest of the ACTPS.

OLA Payroll

- A termination payment is calculated as at the employee's part-time or full-time status at the termination date.
- OLA monitors any changes of status towards the end of employment to mitigate potential changes for financial benefit

- Tax on termination payment is calculated as an ETP payment.
- This method is consistent with the *Members of Parliament (Staff) Act 1984* (Cth) (MOPS Act) and is the method the ACTPS LAMS employment framework was derived from.

Cross-jurisdictional practice

OIRWS Public Sector Employment has undertaken a review of the practices from other jurisdictions related to the termination of parliamentary and electorate staff and a summary is as follows:

- Commonwealth – under the Members of Parliament Staff Enterprise Agreement 2020-2023 (MOPS EA), termination payments are treated as an ETP. They also provide employees with a 30% allowance at termination.
- NSW – Staff of Parliamentarians are treated similar to staff under the MOPS EA, where termination payments are treated as an ETP and may provide an additional allowance. However, some staff of office holders receive a severance payment which is treated as a redundancy type payment.
- Queensland - Queensland Parliamentary Service electorate staff (excluding those employed under the Parliamentary Service Act 1988) receive a severance entitlement treated as an ETP.
- Victoria – the termination payment is a redundancy type payment and no allowance is provided to individuals. It is possible that the tax treatment in this case is in accordance with a Voluntary Redundancy payment, however it is unclear how the tax component is treated as it is not stated in the relevant enterprise agreement.

A table summarising the findings is provided at Attachment A.

This analysis reveals that there is no one agreed treatment method for such termination payments.

Solutions

There are several options available to address the question posed by the CPSU and Government. Each of the options is explored in detail below and a table summarising the options is presented at Attachment B

Option 1: a hearing with the Fair Work Commission

Approach

Under this option, ACT Government and the CPSU could jointly apply for a LAMS EA variation via an F1 Fair Work Commission (FWC) form application in accordance with s217/s218 of the FWA. This approach would seek an urgent hearing on the basis of the ambiguity around the termination payment after agreeing on a set of words to put forward to the Commission to vary the LAMS EA.

Process

This would require the following:

- changes to the enterprise agreement at clause B7 for the ability for the termination payment to be treated as a redundancy payment for tax purposes;
- the varied agreement and the F1 application form to be consulted with the unions and submitted to the FWC for approval; and
- a letter to sit alongside the application seeking a joint request for urgent review.

It is estimated this process may take approximately 3-4 weeks to receive an outcome as follows:

- Paperwork and preparation – 1-2 weeks
- Awaiting FWC approval – unknown. Standard timeframes are 3-4 weeks however this may vary.

Risks and consequences

Risks associated with this option include:

- Approval by the FWC may not be granted on the basis that the termination payment as stated in clause B7 of the LAMS EA and how it should be treated is not ambiguous and therefore may be deemed inconsistent with s217/s218 of the FWA in order for the application to be approved.
- OIRWS and OLA have received advice that LAMS termination payments should be treated as an ETP payment for tax purposes and relevant tax law applies. The LAMS EA cannot determine and vary how tax can be applied to employees.
- Changing the termination payment to be treated as a redundancy payment could create new issues in how the employees are treated as an ongoing employee vs a fixed term contract employee. Both a redundancy payment and/or a termination payment may need to be applied in some circumstances where clause B7.3 of the LAMS EA is applicable. Additionally, employees cease for various reasons and redundancies only apply in certain circumstances, however termination payments may apply in different circumstances which are not considered a redundancy.
- This method steers away from the Commonwealth method which is what the original ACTPS LAMS employment framework is based upon.

Stakeholder questions or issues

- Consultation with staff would cause confusion as non-Executive staff have received correct estimates based on current legal advice.
- This option appears the least time and resource intensive; however, it could pose further issues in the future. It may also confuse the part-time and full-time proportionate advice received – i.e., if it is changed to be treated as a redundancy payment then the service payment should be proportionate as per the calculations for redundancy in other ACTPS agreements.

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Option 2: Re-balloting the Legislative Assembly Members' Staff Enterprise Agreement 2023–2026

Approach

Under this option, the LAMS EA would be re-balloted to include a clause similar to the one contained in the Commonwealth Members of Parliament Staff Enterprise Agreement the 2020–2023 (the MOPS EA) which states:

Clause	Terms
63.1	Severance benefits payable under clause 62 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 62 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.*

If this option were chosen, the process would extend beyond 5 November 2024 and amendments to the LAMS EA would seek to be made retrospective to ensure impacted staff are covered.

Process

This would require the following:

- undertaking an agreement variation process in accordance with s207 of the FWA, where all staff are consulted and offered to be part of the variation discussions;
- drafting of new words for the enterprise agreement would be consulted with unions and relevant bargaining parties and access and ballot processes would be provided to allow employees to vote on the proposed variation; and
- following these stages, an application for approval of agreement would be submitted to the FWC for consideration.

It is estimated that this process may take approximately 3-4 months to receive an outcome from the FWC as follows:

- Paperwork, preparation, consultation, approvals – 4 weeks
- Access and ballot processes – 4 weeks
- FWC approval – standard timeframes are 3-4 weeks, but this can vary.

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Risks and consequences

The risks associated with this option include the following:

- Current staff eligible for termination payments may ordinarily opt to be paid these in the next 3-4 weeks. The changes proposed to the LAMS EA are unlikely to occur in time for when the termination payments are due to be paid to staff.
- Calculation of termination payments are required to be paid in accordance with current legal advice received until such time the LAMS EA is varied. The payment cannot be paid retrospectively, and it is not recommended that a clause be inserted to provide retrospectivity as an agreement cannot apply to ceased employees. Additionally, if applied, this will cause over/underpayments where payroll will need to recalculate termination payments.
- The inclusion of the allowance requires a thorough review of the LAMS EA, *Legislative Assembly Members' Staff Act 1989* (LAMS Act) and LAMS instruments which would take approximately 6 months and is not possible within the timeframe noted above.
- If these changes are inserted hastily without appropriate consideration as per the above timeline, there are potential consequences that could see further issues in regard to how the new allowance payment is calculated and treated.

Stakeholder questions or issues

- Varying the current LAMS EA will require engagement of staff through consultation on proposed variations prior to formal approval of any such variation. While difficult to anticipate the nature of specific payee questions that may present, it is possible staff may be confused by the more technical nature of this issue for which a variation is sought (again, also acknowledging non-Executive staff have received correct estimates based on current legal advice).

Option 3: a disallowable instrument for an allowance payment

Approach

A new disallowable instrument would be prepared to provide for an allowance payment, similar to the Commonwealth and NSW jurisdictions.

Process

A disallowable instrument together with a brief would be prepared for the Chief Minister's consideration and approval. The instrument would provide an allowance for employees who cease in certain circumstances accordance with the LAMS Act. This would be in alignment with the MOPS EA.

It is estimated this process may take approximately 3-4 weeks to be finalised as follows:

- Paperwork, preparation, consultation – 1-2 weeks.
- Approvals and application – 1-2 weeks.

DRAFT

Risks and consequences

The risks associated with this option include the following:

- No retrospectivity is possible; however, employees could email payroll seeking their termination payments not to be paid until the disallowable instrument is in place as long as they continue to be employed. Where they cease to be employed at the time the instrument comes into effect, they would not be entitled to the allowance payment.
- On rare occasions the legislation register team provide the ability to provide retrospectivity and there may be an exemption that could be sought.

Benefits:

- This approach would be treated separate to the EA termination payment and be revoked when the LAMS EA is updated in future. This means it would have the least amount of impact to any proposed LAMS EA/LAMS Act reviews.
- This method aligns with Commonwealth and NSW methods

Option 4: amendment to the *Legislative Assembly Members' Staff Act 1989*

Approach

The LAMS ACT would be amended to include an allowance as noted in options 2 and 3 and in alignment with the Commonwealth and NSW jurisdictions

Process

This would require an amendment of the LAMS Act and would take approximately 12 months to complete.

Risks and consequences

The LAMS Act does not contain entitlements and conditions and therefore an allowance is not appropriate for inclusion and would set unnecessary precedence. This option also takes a considerable amount of time to complete and therefore is not the preferred option when there a time limits associated with termination payments being made in the next 2-3 weeks.

Option 5: Act of Grace payment

Approach

The Treasurer would authorise an act of grace payment to affected staff pursuant to section 130 of the *Financial Management Act 1996*.

Process

This would require a brief and approval by the Chief Minister for all affected staff by the person seeking the request.

DRAFT

- The ACT Government's published guidelines based on section 130 provides that the decision-maker may consider whether any of the following give rise to special circumstances:
    - the direct role of the ACT Government in causing an unintended and inequitable result to a person such that it considers it has a moral responsibility to address the circumstances of the individual;
    - ACT legislation or policy though properly applied has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the individual's or organisation's circumstances; and
    - the impact on the individual's or organisation's circumstances is:
        - i. specific to the individual or organisation;
        - ii. outside the parameters of events for which the individual or organisation was responsible or had the capacity to adequately control; but
        - iii. not merely the intended effect of the legislation; and
    - the matter is not covered by legislation or specific policy, but the ACT intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy to the individual or organisation prior to the legislation or policy's commencement.
- An act of grace payment is generally an avenue of last resort and is not used where there are other options available to provide redress. If other avenues exist for a person to receive financial assistance from the ACT Government or elsewhere (such as existing legislation or schemes), it is recommended that those avenues be investigated before a request is made for an act of grace payment.

The time to review and action this request would vary however could occur quickly where this method was supported by Government

Risks and consequences

The risks associated with this option include the following:

- It may set precedence for future issues that arise with unions.
- The scope of payment could extend beyond the person intended.
- The cost incurred by the Territory could significantly increase dependant on the request, if there is no cap or calculation method or rules carefully determined as associated with the payment.

Option 6: Damages/settlement deed

Approach

Each LAMS employee who elects to take a termination payment could receive a damages/settlement payment to compensate for incorrect estimates issued by Shared Services Payroll and receive payment of an allowance in line with the MOPS EA.

Process

ACT GSO would create a settlement or damages deed for each employee that elects to take the termination payment. ACT GSO would assess a claim for damages based on the reasonableness test and are bound to comply with the rules as set out in the Legal Services Direction.

This process would occur on a case-by-case basis and be paid by Shared Services Payroll as specified in the deed. Tax is not usually applied on damages/settlement deeds.

Risks and consequences

This option may only be justified for Executive LAMS staff who received incorrect estimates and may not be suitable for non-Executive LAMS employees who received correct estimates.

Stakeholder questions or issues

Effective communications would be critical under this option, as staff will likely have queries regarding eligibility, the process for lodging a claim and transparency with respect to how their claim might be assessed and progressed.

Conclusion

Noting issues explored in this paper, all options come with risk – particularly acknowledging that the ACT Government has no scope to vary established taxation law with respect to ETPs and redundancy payment types.

Option 6 may present the least risk and future impact of all options explored followed, by Option 3. Both of these options would apply current legal and tax advice received while offering payments of compensation. It is preferable and advisable to apply and remain consistent with current legal advice OIRWS and OLA has received and undertake a thorough and considered review of the LAMS EA/LAMS Act and instruments to make relevant changes in future.

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Attachment A – Cross-jurisdictional practices

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
Members of Parliament (Staff) Act 1984 MOPS Enterprise Agreement 2022-23 - Aug 2023.pdf (finance.gov.au)	**Part III—Employment arrangements** **14 Automatic termination of employment** (1) A person's employment under this Act terminates if an event specified in the table occurs and the person is the kind of employee specified for the event. **Events that terminate employment** **Item** / **Event** / **Kind of employees whose employment terminates** 1 — The employing individual dies — Electorate employees and personal employees 2 — The employing individual ceases to be a parliamentarian — Electorate employees and personal employees 3 — The employing individual ceases to hold a relevant office and on the same day: (a) starts to hold another relevant office; or (b) starts to be covered by a determination made under section 4 — Personal employees 4 — The employing individual ceases to hold a relevant office and does not do one of the following on the same day: (a) start to hold another relevant office; (b) start to be covered by a determination made under section 4 — Electorate employees and personal employees 5 — The employing individual ceases to be covered by a determination made under section 4 (whether or not the employing individual starts to be covered on the same day by another such determination) — Personal employees Note 1: The employing individual is the parliamentarian or office-holder who employed the person on behalf of the Commonwealth (see the definition of *employing individual* in section 3).	**Commonwealth methods:** - Staff of parliamentarians and office holders receive a separation benefit and an 30% allowance where the ATO deems the payment is not a redundancy. **62 Severance benefits** 62.1 Severance benefits are payable in accordance with clause 62.2 to ongoing employees whose employment is terminated under Part III or Part IV of the MOP(S) Act other than: 62.2 The severance benefits payable to an employee will be the gross benefit provided by the following table. **Length of continuous service** / **Gross benefit** Less than 1 year — 4 weeks' pay 1 year or more but less than 2 years — 8 weeks' pay 2 years or more but less than 3 years — 10 weeks' pay 3 years or more but less than 4 years — 12 weeks' pay 4 years or more but less than 5 years — 13 weeks' pay 5 years or more but less than 7 years — 14 weeks' pay 7 years or more — 2 weeks' pay, plus 2 weeks' pay for every completed year, up to a maximum of 48 weeks' pay. To note: **63 Additional severance benefits** 63.1 Severance benefits payable under clause 62 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 62 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*.
Parliamentary Administration Act 2005 (VIC) Electorate Officers (Victoria) Single Enterprise Agreement 2021. | Fair Work Commission (fwc.gov.au)	**Part 4 – Employment of electorate officers**	**Victorian method:** - Staff of members of parliament receive a termination payment that is a redundancy payment.

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
	31 Termination of employment (1) The employment of a person under this Part— (a) terminates if the member of Parliament whom the person was appointed to assist dies or ceases to be a member; (b) may be terminated in accordance with the agreement under which the person is employed in accordance with this Part. (2) The employment of a person as an electorate officer is deemed not to have terminated on the death or cessation of membership of a member of Parliament if— (a) the term of the employment is extended by the presiding officers, acting jointly, from the date of death or cessation for a specified period; or Authorised by the Chief Parliamentary Counsel 26 Parliamentary Administration Act 2005 No. 20 of 2005 Part 4—Employment of electorate officers (b) within 4 weeks, or any longer period that the presiding officers acting jointly determine, after the date of death or cessation the person is employed under this Part as an electorate officer to assist another member of Parliament. S. 31(2)(b) amended by No. 37/2013 s. 14(b).	**27.5 Compulsory termination** **(a)** Unless section 31(2) of the *Parliamentary Administration Act 2005* (Vic) applies to the Employee, if a Member dies, is defeated in an election, retires or is not pre-selected, or resigns prior to their term expiring or the seat in which the Member holds office is abolished, the employment of any full time and part time Employee attached to that Member shall terminate either: **(i)** four weeks after the date of the death, or resignation of the Member; or **(ii)** four weeks after the date the election poll results are confirmed by the Victorian Electoral Commission. **(b)** In the event of an Employee's services being compulsorily terminated under the circumstances prescribed in **clause 27.5(a)**, a redundancy payment as prescribed in **clause 27.5(f)** shall apply to the Employee. **(f)** The termination payment shall be as follows: **Length of Continuous Service** / **Termination Pay** Less than one year — Four weeks One year or more but less than two years — Six weeks Two years or more but less than three years — Eight weeks Three years or more but less than four years — Ten weeks Four years or more but less than five years — Eleven weeks ate Officers (Victoria) Single Enterprise Agreement 2021 Page 25 of 76 Five years or more but less than six years — Twelve weeks Six years or more by less than seven years — Thirteen weeks Seven years or more — Fourteen weeks plus an additional two weeks for every completed year of service in excess of seven years, up to a maximum of forty-eight weeks. NOTE: In this scenario the termination payment is called a redundancy payment. However, there are no instruction on how this payment is processed.
Queensland Parliamentary Service employees (excluding those employed under the *Parliamentary Service Act 1988* under section 28, i.e., on contract): • *Queensland Parliamentary Service Award – State 2015* (Award).		**Queensland Method** - Award at clause 9.7 also provides for a severance entitlement for (electorate office staff only) where their service is terminated in certain circumstances, including on the Member's death, resignation, retirement or defeat. It does not specify the taxation treatment. - Contact with Queensland confirmed that they treat termination payments provided to electorate office staff as an ETP (not a genuine redundancy) based on their own ATO advice.

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
		9.6 Electorate office staff (a) The employment of an employee may be terminated: (i) by way of resignation with the giving of 2 weeks' notice; or (ii) subject to justification to the Clerk, on behalf of the Legislative Assembly, by the Member giving the appropriate notice as set out in the Act, provided that no less than 2 weeks' notice is given; or Page 11 of 72 Queensland Parliamentary Service Award – State 2015 (iii) on the Member's death, resignation, retirement or defeat, upon the return of the Writ for the Election or By-Election of a new Member for the relevant electoral district by giving the appropriate notice as set out in the QES, provided that no less than 2 weeks' notice shall be given. (b) Termination of employment by way of clauses 9.6(a)(ii) or (iii) allows for the application of the provisions of clause 9.7.

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<table>
<tr><th>Instruments:</th><th>Termination Clauses under legislation</th><th>Termination under applicable Enterprise Agreements/Determinations</th></tr>
<tr><td></td><td></td><td>
9.7 Electorate office staff - severance entitlement

(a) An employee whose employment is terminated pursuant to clauses 9.6(a)(ii) or (iii), will be entitled to the following severance payments dependant on the length of service at the date of termination:

<table>
<tr><th>Length of Service</th><th>Severance entitlement</th></tr>
<tr><td>Where the employee has less than one year of service at the date of termination</td><td>4 weeks' salary</td></tr>
<tr><td>Where the employee has one year or more but less than 2 years of service at the date of termination</td><td>6 weeks' salary</td></tr>
<tr><td>Where the employee has 2 years or more but less than 3 years of service at the date of termination</td><td>8 weeks' salary</td></tr>
<tr><td>Where the employee has 3 years or more but less than 4 years of service at the date of termination</td><td>10 weeks' salary</td></tr>
<tr><td>Where the employee has 4 years or more but less than 5 years of service at the date of termination</td><td>11 weeks' salary</td></tr>
<tr><td>Where the employee has 5 years or more but less than 7 years of service at the date of termination</td><td>12 weeks' salary</td></tr>
<tr><td>Where the employee has 7 years or more of service at the date of termination</td><td>12 weeks' salary plus an additional 2 weeks' salary for every completed year of service in excess of 6 years, up to a maximum of 52 weeks' salary.</td></tr>
</table>

(b) An employee engaged upon a temporary basis, as a result of a secondment of an electorate office staff member which is of an indeterminate period of time, shall also be entitled to severance payments if their employment is terminated as a result of the termination of the secondment.

(c) Where the employee has at least one year of continuous service, the employee shall be entitled to the payment of accrued long service leave, on the basis of 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service.
</td></tr>
<tr><td>Members of Parliament Staff Act 2013 No 41

Members Staff Conditions of Employment Determination of the POs July 2019.pdf - Google Drive - applicable to the staff of parliamentarians (Part 3 employees under their Act)

- Note: this document was pulled from the Public Service Association archive</td><td>Part 3 Staff of members of Parliament</td><td>NSW Methods
- Staff of parliamentarians receive a separation payment and an 30% allowance where the ATO deems the payment is not a genuine redundancy.
- Staff of office holders receive a severance payment. There is no direction on whether this is treated as genuine redundancy.

Contact with NSW verbally confirmed that they treat some terminations (termination of some office holder staff) as genuine redundancies.
Part 3 employees:</td></tr>
</table>

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
as it does not appear publicly available. Microsoft Word - A5837381 - Attachment A - Conditions of Employment for Political Office Holders' Staff - 20230823 and Ministers-Office-Handbook.pdf applicable to the staff of office holders .	**20 Termination of employment** (1) The employment of a person under this Part by a member of Parliament terminates— (a) in the case of a person employed by a member of Parliament under section 14—if the member ceases to be a member of Parliament (b) in the case of a person employed by a member of the Legislative Council under section 14—if the member becomes a political offic (c) in the case of a person employed by a member of Parliament in his or her capacity as a special office holder under section 15—if th office holder or a member of Parliament, or (d) on the day appointed for the taking of the poll for the next general election, or (e) if the person resigns by letter addressed to the member of Parliament, or (f) if the person's services are dispensed with by the member of Parliament. (1A) The employment of a person under this Part by a member of Parliament may also be terminated by the relevant Presiding Officer unde (2) The relevant Presiding Officer may direct in a particular case that the employment of a person that would otherwise terminate because o terminate. In that case, the person's employment continues for such period as the relevant Presiding Officer directs and the person is tak Officer during that period. (3) A member of Parliament may at any time dispense with the services of a person employed by the member of Parliament under this Part. (4) This section has effect despite anything in the written agreement of employment of the person concerned. **Part 2 Staff of office holders** **8 Termination of employment** (1) The employment of a person under this Part by a political office holder terminates— (a) if the political office holder ceases to hold that office for any reason (even if, after ceasing to hold that office, he or she immediate (b) on the day appointed for the taking of the poll for the next general election, or (c) if the person resigns by letter addressed to the political office holder, or (d) if the services of the person are dispensed with by the political office holder. (2) The Premier may direct in a particular case that the employment of a person that would otherwise terminate because of the operation o case, the person's employment continues for such period as the Premier directs and the person is taken to be employed by the Premier (3) A political office holder may at any time dispense with the services of a person employed by the office holder under this Part. (4) This section has effect despite anything in the written agreement of employment of the person concerned.	**Separation Payments** Staff who begin employment after the commencement of this Determination, are not excluded from separation payments, and whose employment is terminated other than for an excluded reason will be entitled to the following termination payments: • Notice period of 4 weeks (5 weeks for staff over 45 years of age and more than 5 years' service); plus • Severance benefit of 3 weeks per year of service to a maximum of 39 weeks; plus • An additional payment based on length of service equal to: more than 1 but less than 2 years – 4 weeks D21/51203 24 more than 2 but less than 3 years – 6 weeks More than 3 years – 8 weeks For the purposes of this provision, service will include any service recognised by applying the provisions applying to the recognition of prior service for extended leave purposes where there has been no break between the prior and Parliamentary service. **Additional Payments – Member ceasing to hold office** Where a Member ceases to hold office by way of resignation, retirement, illness, death, not recontesting, or not successfully retaining their seat following an election, or for any other reason pursuant to Clause 20 (1) (a)-(d) of the *Members of Parliament Staff Act 2013* the following additional payments may be made to staff who leave their employment as a result (note, exclusions from separation from service payments continue to apply to this provision): • Where the Australian Taxation Office does not consider the separation to be a bona fide redundancy an allowance of up to 30% will be applied to the severance, notice and pro-rata leave loading benefits • Assistance for specific retraining costs can also be provided in line with the guidelines for providing job assistance in place at the time of the cessation. **Part 2 employees:**

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
		11.5 Attachment F - Severance Policy *This policy applies to political office holders' staff only and not to NSW Government sector employees seconded to political offices.* Employees are entitled to severance payments on a full-time equivalent basis when their employment in a political office is terminated for any reason (other than for reasons of misconduct and/or poor performance or at the employee's own request or through the employee's resignation). All periods of continuous service with NSW Government sector services are included when calculating severance pay which is based on the length of continuous service, provided no previous severance or redundancy payment has been made for any of this service. Continuous service is defined as being employed without a break of a working day (e.g. resigning from a NSW Government sector service and commencing in the Ministers' Office the next working day). The components of severance payments are: • Notice or payment in lieu in accordance with the following table. Continuous service | Period of notice or payment in lieu | Period of notice or payment in lieu for employees aged 45 years and over with 5 or more years of completed service Any period of service for an indefinite period | 4 weeks (full-time equivalent basis) | 5 weeks (full-time equivalent basis) • Any benefit allowable as a contributor to a retirement fund. • Pro rata annual leave loading in respect of leave accrue full-time equivalent basis) at the date of termination. • Severance payment (full-time equivalent basis) at the rate of 3 weeks per year of continuous service with a maximum of 39 weeks, with pro-rata payments for incomplete years of service to be on a quarterly basis. Following a State election or a political office holder ceasing to hold office, staff employment may be continued for a temporary period of up to three months to assist with the establishment of new Ministers' offices. At the conclusion of such temporary employment, where staff are not further employed in a Ministers' office, severance provisions will apply as if the staff member's employment had been terminated. Transitional arrangements are subject to the approval of the Premier's Chief of Staff. Employees who receive a severance payment will be required to refund any portion of the payment applying to the period of re-employment should they be re-employed in any capacity in a NSW Government sector service within the period covered by the severance payment, e.g. an employee who received 20 weeks' severance pay and then secured employment with a NSW Government sector agency after 10 weeks, would be required to re-pay 10 weeks of the severance pay. Severance payments are conditional on signature of the below undertaking.
Legislative Assembly (Members' Staff) Act 1989 (ACT) ACT-Legislative-Assembly-Members-Staff-Enterprise-Agreement-2023-2026.pdf	**Part 2 Staff of office-holders**	**ACT method:** - Staff of office holders and members receive a termination payment. The LAMS enterprise agreement directs to the Fair Work Act as the source of redundancy entitlements. Current GSO advises this payment is a ETP (not a genuine redundancy).

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations

8 Termination of employment

(1) The employment of a person under this part terminates if the office-holder by whom the person was employed dies.

(2) The employment of a person under this part terminates if—

(a) in the case of a person employed by an office-holder—the office-holder ceases to hold office; or

(b) in the case of a person employed by a member of the Assembly in respect of whom a determination by the Chief Minister under section 4 is in force—the member ceases to be a member of the Assembly or the determination is revoked.

(3) For subsection (2) (b), a member of the Assembly shall be deemed not to have ceased to be such a member while he or she continues to be entitled to an allowance that was payable to him or her as such a member.

(4) An office-holder may at any time, by notice in writing given to a person employed by the office-holder under this part, terminate the person's employment.

(5) A person employed by an office-holder under this part may at any time, by notice in writing given to the office-holder, terminate the person's employment.

(6) Where the employment of a person under this part is terminated by subsection (1) or (2), the Chief Minister may direct that the employment of the person shall be deemed—

(a) not to have been so terminated; and

(b) to have continued, or to continue, until a specified date;

and, where the Chief Minister so directs, the employment of the person under this part shall for all purposes be deemed to have continued, or to continue, until that date.

(7) A direction under subsection (6) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note - Part 3 'staff of members (under section 13)' have a similar termination clause.

B7 Termination Payment

B7.1 Subject to this clause and subclause B7.2, an employee whose employment is terminated by the operation of sections 8(1), 8(2), 8(4), 13(1) and 13(3) of the LAMS Act is entitled to be paid all of the following:

B7.1.1 A sum equal to 4 weeks salary irrespective of length of service.

B7.1.2 A sum equal to 2 weeks salary for each completed year of continuous service.

B7.1.3 A pro-rata payment for additional completed months of service, up to a maximum of 48 weeks' salary.

To note:

B7.3 Where an employee is entitled to be paid redundancy pay under section 119 of the Fair Work Act, any termination payment made under subclause B7.1 will be reduced by an amount equal to that redundancy payment.

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Attachment B - Summary of options

	Option One	Option Two	Option Three	Option Four	Option Five	Option Six
Approach	S217/s218A FWA variation and a hearing with the Fair Work Commission	Re-balloting the LAMS EA to include an allowance similar to the MOPS EA	A disallowable instrument providing for an allowance payment	An amendment to the *Legislative and Assembly Members' Staff Act 1989*	An Act of Grace payment would be made to affected employees under section 130 of the *Financial Management Act 1996*	LAMS employees who take a termination payment receive a damages / settlement payment to compensate for the incorrect estimates they were provided
Process	This would require: • defining the ambiguity and the associated issues in the LAMS EA the FWC would be asked to consider; • developing replacement language to be included in the LAMS EA; • consulting with all relevant unions on both the construction of the ambiguity and the proposed replacement language prior to making a submission to the FWC; • completing a form F1 Application to the FWC; and • drafting a letter alongside the F1 Application with a joint ACTPS / ACT Unions request for an urgent review by the FWC.	This would require: • following the processes set out by section 207 of the FWA and providing an opportunity for staff to be involved in the variation discussions; • drafting of new language for the LAMS EA and consultation with unions and bargaining parties • providing access and ballot processes to allow employees to vote on the proposed variation; and • approval by the FWC.	This would require: • drafting a disallowable instrument; and • a brief to the Chief Minister. The payment would be treated separately to the LAMS EA termination payment and would be revoked when the LAMS EA is updated in the future. This process would have the least amount of impact to any proposed LAMS EA/LAMS Act reviews. Further, this method is consistent with Commonwealth and NSW methods.	The LAMS Act would be amended to include an allowance for payment at termination similar to that proposed for option 2 and option 3	This would require: • a brief to the Chief Minister for all affected staff; • the Chief Minister to authorise a payment to each affected member of staff; and • Shared Services Payroll to process the payments.	This would require: • GSO to create a settlement or damages deed for each employee that elects to take the termination payment; • GSO to assess each claim for damages based on the reasonableness test and in line with the Legal Services Directions; and • Shared Services Payroll to make payment to each employee as specified in the deed. No tax is usually applied on damages / settlement deeds.
Time required	This option would take approximately **five weeks** as follows: • preparation of the replacement language and necessary forms and letters: 1-2 **weeks**; and • FWC approval: standard timeframes are **3 – 4 weeks**, but this can vary.	This option would take approximately **three months** as follows: • paperwork, preparation, consultation and approvals: **4 weeks**; • access and ballot processes: **4 weeks**; and • FWC approval: standard timeframes are **3 – 4 weeks**, but this can vary.	This option would take approximately **four weeks** as follows: • paperwork, preparation and consultation: **1-2 weeks**; and • approvals and application: **1-2 weeks**.	This option would take approximately **12 months**, allowing for the usual drafting, consultation, scrutiny and notification processes.	This option would take approximately **four weeks** as follows: • paperwork, preparation and consultation: **1-2 weeks**; and • approvals and application: **1-2 weeks**.	Each deed would be settled on a case-by-case basis. The time required would be dependent on the number of LAMS staff who take a termination payment and complexity of the damages assessment.
Risks	1. The FWC may not agree that the current clause is ambiguous and may not approve the application to amend the LAMS EA. 2. The LAMS EA cannot determine how tax law (i.e., treating a termination payment as an ETP payment) can be applied to employees. 3. Changing the termination payment to be treated as a redundancy payment could create unintended interactions/consequences with other clauses in the LAMS EA. 4. This method is inconsistent with the Commonwealth method on which	1. This change would not be finalised prior to the termination of the employees in question. 2. Until the LAMS EA is varied, termination payments are required to be made based on the current legal advice that has been received. 3. While introducing a retrospectivity clause is possible, it has the potential to cause over/underpayments where payroll will need to recalculate the payments in the future. 4. Without a thorough review of the effect of the changes to the LAMS EA, LAMS Act and LAMS instruments,	1. No retrospectivity is possible; however, employees could email payroll seeking their termination payments not to be paid until the disallowable instrument is in place as long as they continue to be employed. 2. Where they cease to be employed at a time before the instrument comes into effect, they would not be entitled to the allowance payment. 3. On rare occasions the legislation register team provide the ability to provide retrospectivity and there	1. This option would not be finalised prior to the termination of the employees in question. 2. The LAMS Act does not contain entitlements and conditions of employment. Inclusion of an allowance in the LAMS Act would set an unnecessary precedence.	1. An act of grace payment is generally an avenue of last resort and not used where there are other options available to provide redress. 2. An act of grace payment would set a precedent for future issues that arise with unions. 3. The scope of payment could extend beyond the person intended. 4. The cost incurred by the Territory could significantly increase if there is no cap or calculation method or rules.	1. This option may only be justified for executive LAMS staff who received incorrect estimates. 2. This option may not be suitable for non-executive LAMS employees who received correct estimates.

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	Option One	Option Two	Option Three	Option Four	Option Five	Option Six
	the original ACTPS LAMS employment framework was based.	other unintended issues could arise in how the new allowance payment is calculated and treated. This review would require a further **6 months**.	may be an exemption that could be sought. 4. Advice would need to be sought from Assembly Coordination as to the feasibly of retroactively applying this instrument.			

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Sch 2 s 2.2(a)(ii)

Sch 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

From: "Bolton, Martin" <Martin.Bolton@act.gov.au>
Sent: 23/10/2024 8:55 AM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>
Cc: "Taylor, Nina" <Nina.Taylor@act.gov.au>; "Prowse, Fay" <Fay.Prowse@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

I haven't spoken to Lisa but the practice is that we don't include prior service elsewhere (ACT Gove etc) for severance. Service that falls under the LAMS Act is included for Severance purposes.

Martin Bolton | Executive Branch Manager | Payroll and HR Systems
Phone: 620 58700 | Email: Martin.Bolton @act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

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From: Mirzabegian, Sanaz
Sent: Wednesday, 23 October 2024 8:02 AM
To: Matthews, EmmaC ; Szandurski, Kim
Cc: Taylor, Nina ; Bolton, Martin ; Prowse, Fay
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Emma, I think Martin asked this question again from Lisa Manzoney directly and it was settled, so please double check with him. In case, you haven't got the rest of the advices, here they are. We should keep a register of all of these advices. If Kim's team haven't had the chance to collate, could @Szandurski, Kim work with Fay today to do that in an electronic folder with one doc showing the list of them, when they were obtained and the summary or key points.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Tuesday, 22 October 2024 9:18 PM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Cc: Szandurski, Kim <Kim.Szandurski@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Sanaz

Sch 2.2(a)(ii)

Sch 1 1.2

Sch 1 s 1.2

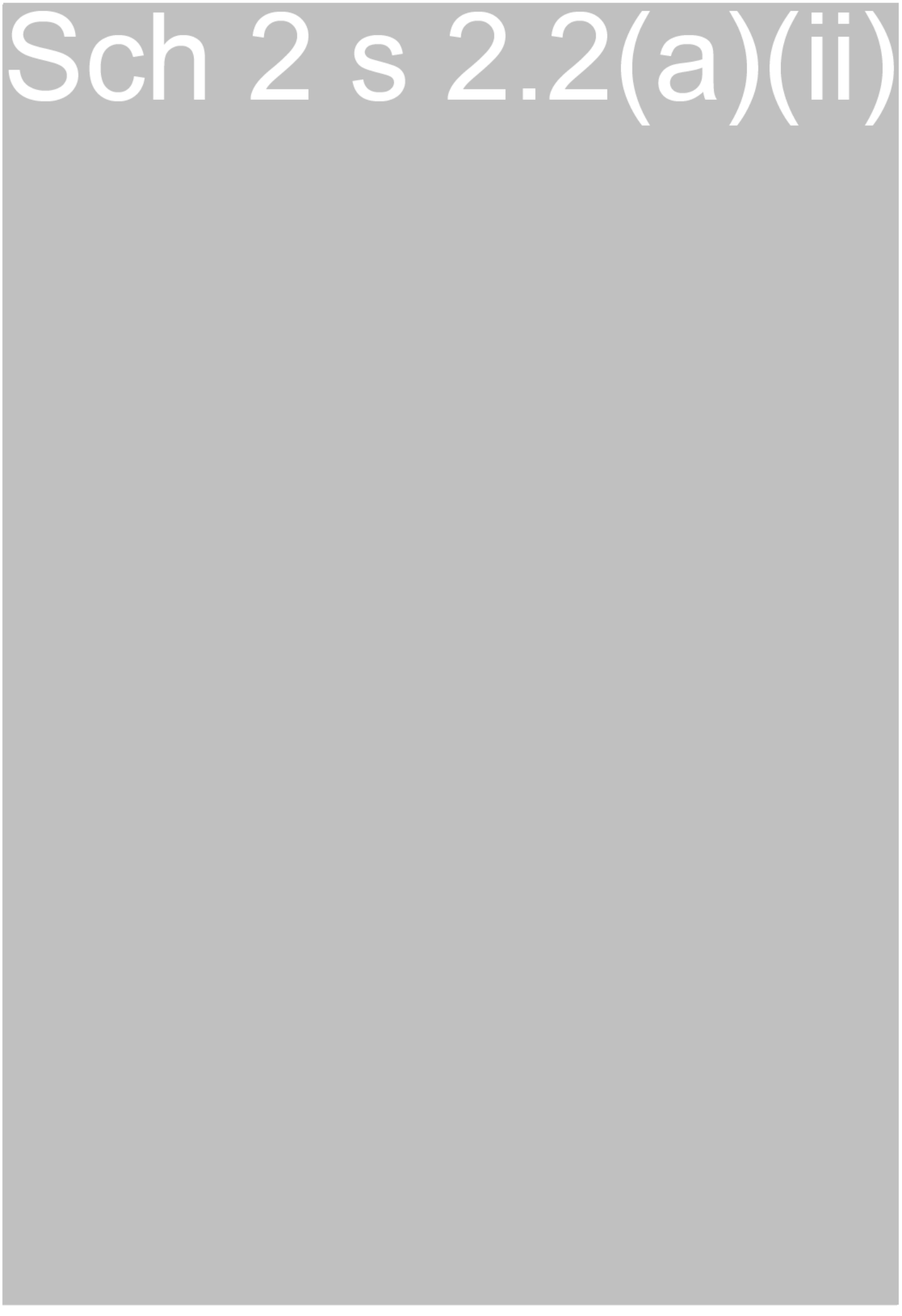
Sch 1 s 1.2

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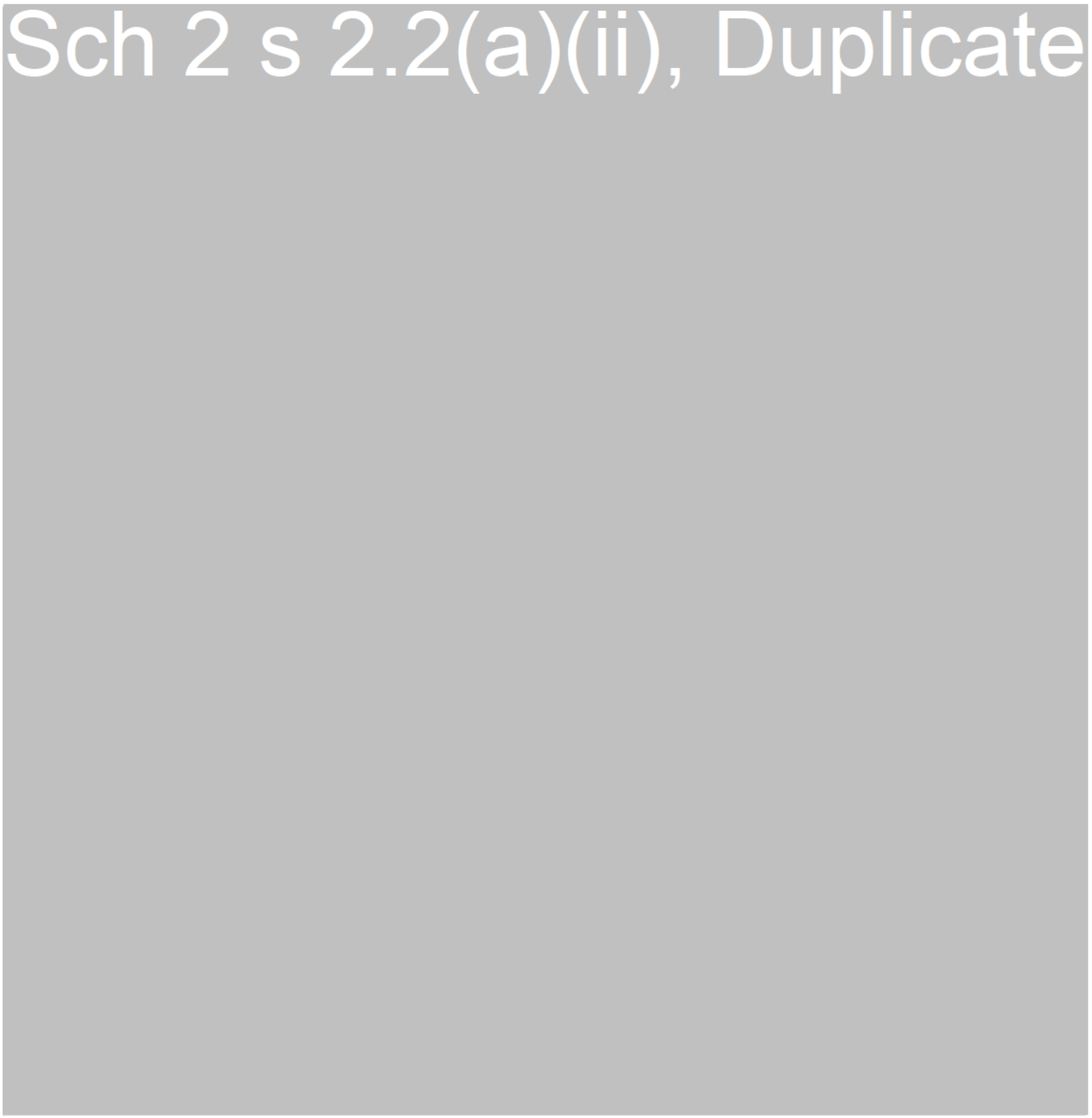
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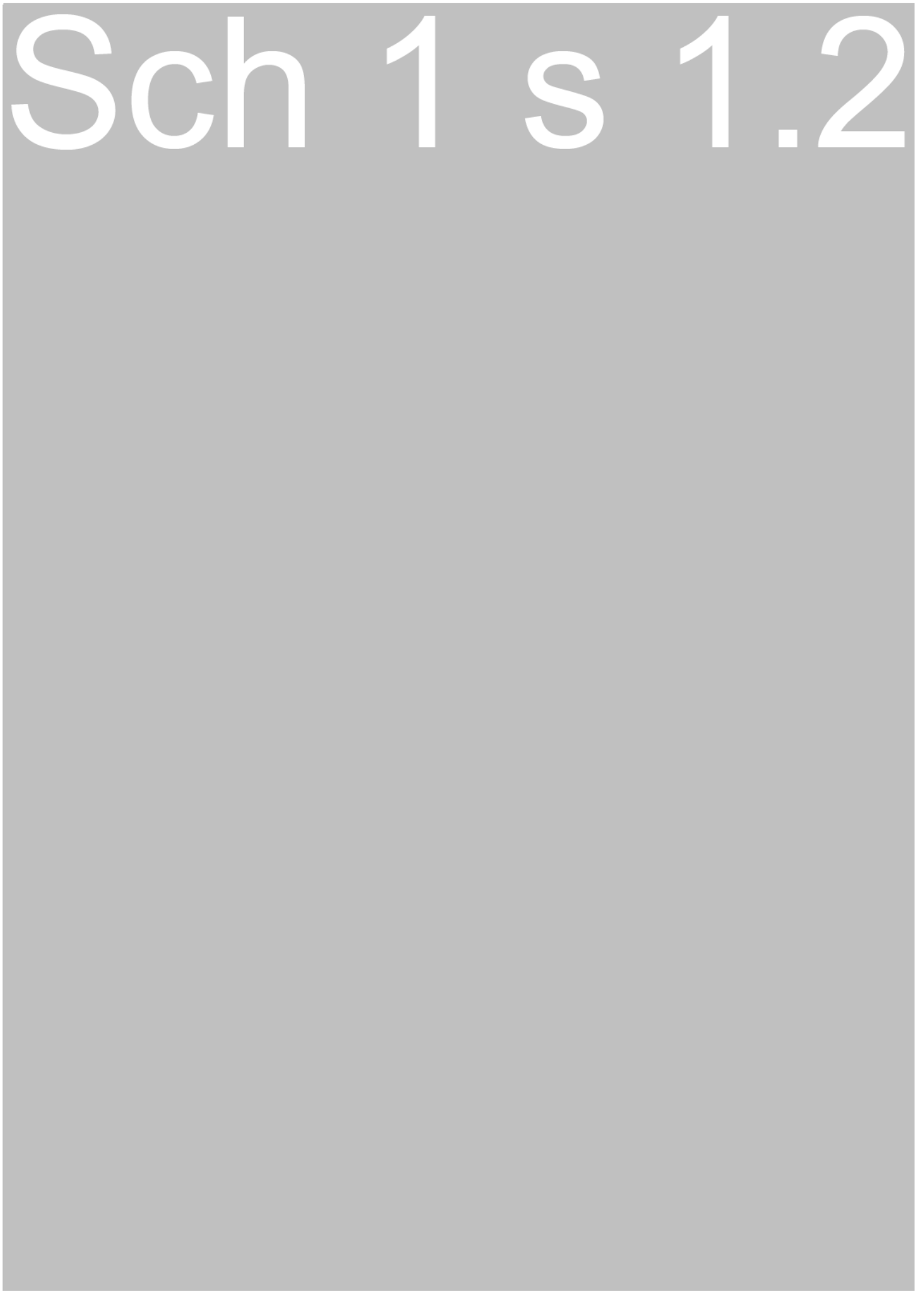
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Sch 2 s 2.2(a)(ii)

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Sch 2 s 2.2(a)(ii), Duplicate


Sch 1 s 1.2

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Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au> on behalf of "CMTEDD, LAMS Liaison" <LAMSLiaison@act.gov.au>
Sent: 23/10/2024 11:55 AM
To: Sch 2.2(a)(ii) @act.gov.au>; "CMTEDD, LAMS Liaison" <LAMSLiaison@act.gov.au>
Cc: "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: RE: Timing for final entitlements

OFFICIAL: Sensitive - Personal Privacy

Hello Sch 2 s 2.2(a)(ii)

Thank you for your email. The estimates reflecting the new advice about the approach to taxation are due to be released today. I have spoken with payroll and they have confirmed the following approach to payments for those staff whose employment terminates on the first sitting day:

- Usual pay on payday 7 November (pay up until termination day, first sitting day – 6 November);
- Usual pay on payday 21 November (pay for two weeks after termination day – the deeming period provided by Legislative Assembly (Members' Staff) Deemed Date Of Termination Of Employment Of Office-holders' Staff Direction 2015); and
- Final monies on 5 December (it will be important that all cessation paperwork is received by payroll with sufficient time to process final monies).

Happy to discuss.

Emma

Emma Matthews on behalf of

The Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate I ACT Government
E: LAMSLiaison@act.gov.au
M: Sch 2.2(a)(ii)

From: Sch 2 s 2.2(a)(ii)
Sent: Wednesday, 23 October 2024 8:34 AM
To: CMTEDD, LAMS Liaison
Subject: Timing for final entitlements

Hi team

Thanks for the information about the changes to the termination payments. Do you know yet when these payments will be finalised and paid to staff members?

Kind regards,

Sch 2 s 2.2(a)(ii)

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 23/10/2024 4:06 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: FW: Draft LAMS Termination Payments advice

OFFICIAL

Hi Sanaz

An important overview of the general principles from Nina in the email below to guide broader approaches to redundancy in various scenarios.

Emma

From: Taylor, Nina
Sent: Wednesday, 23 October 2024 3:14 PM
To: Lawless, Brian ; Matthews, EmmaC ; Szandurski, Kim
Cc: Norton, Sheri ; Mimilidis, Jacob ; Bird, Lucas ; Perkovic, Sophia ; Szanto, Juliet ; Angus, Sarah
Subject: RE: Draft LAMS Termination Payments advice

OFFICIAL

Hi team,

Following further information received last night and this morning in regards to how tax is treated by other jurisdictions, it is clear that the termination payment is not able to have a blanket rule about what tax applies as the circumstances which the termination occurs can vary and therefore the applicable tax will vary accordingly. I don't believe we can determine which tax is applicable until the situation occurs – for example, if a Member decides to retire on a particular date, then the Member's staff would loose their roles and a VR tax may be appropriate, however if the Member does not get re-elected and the Member's staff end their employment as expected at the end of the fixed date or assembly term, then ETP tax would apply.

I will work with the team to review and reflect the additional information we have gathered from other jurisdictions into the paper prepared yesterday and to help explain this aspect further.

This will also feed into our table which showcases the different LAMS employment termination scenarios and various tax implications that would come from them. This will take us a few more days to finalise if that's okay, but we are hoping this will be useful for both OLA an SS moving forward about how to be consistent, while not being able to apply a blanket tax rule.

Happy to discuss. Thanks, Nina

From: Lawless, Brian <Brian.Lawless@act.gov.au>
Sent: Tuesday, October 22, 2024 5:08 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>; Szandurski, Kim <Kim.Szandurski@act.gov.au>
Cc: Norton, Sheri <Sheri.Norton@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>; Mimilidis, Jacob <Jacob.Mimilidis@act.gov.au>; Bird, Lucas <Lucas.Bird@act.gov.au>; Perkovic, Sophia <Sophia.Perkovic@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: Draft LAMS Termination Payments advice
Importance: High

OFFICIAL

Hi Emma and Kim

In a Herculean team effort, we have pulled together the requested advice. Coming in at a healthy 18 pages, we believe we have covered the issues and options with a concise summary on the options provided at Attachment B. Please let us know if you'd like any changes ☺

Cheers,
Brian.

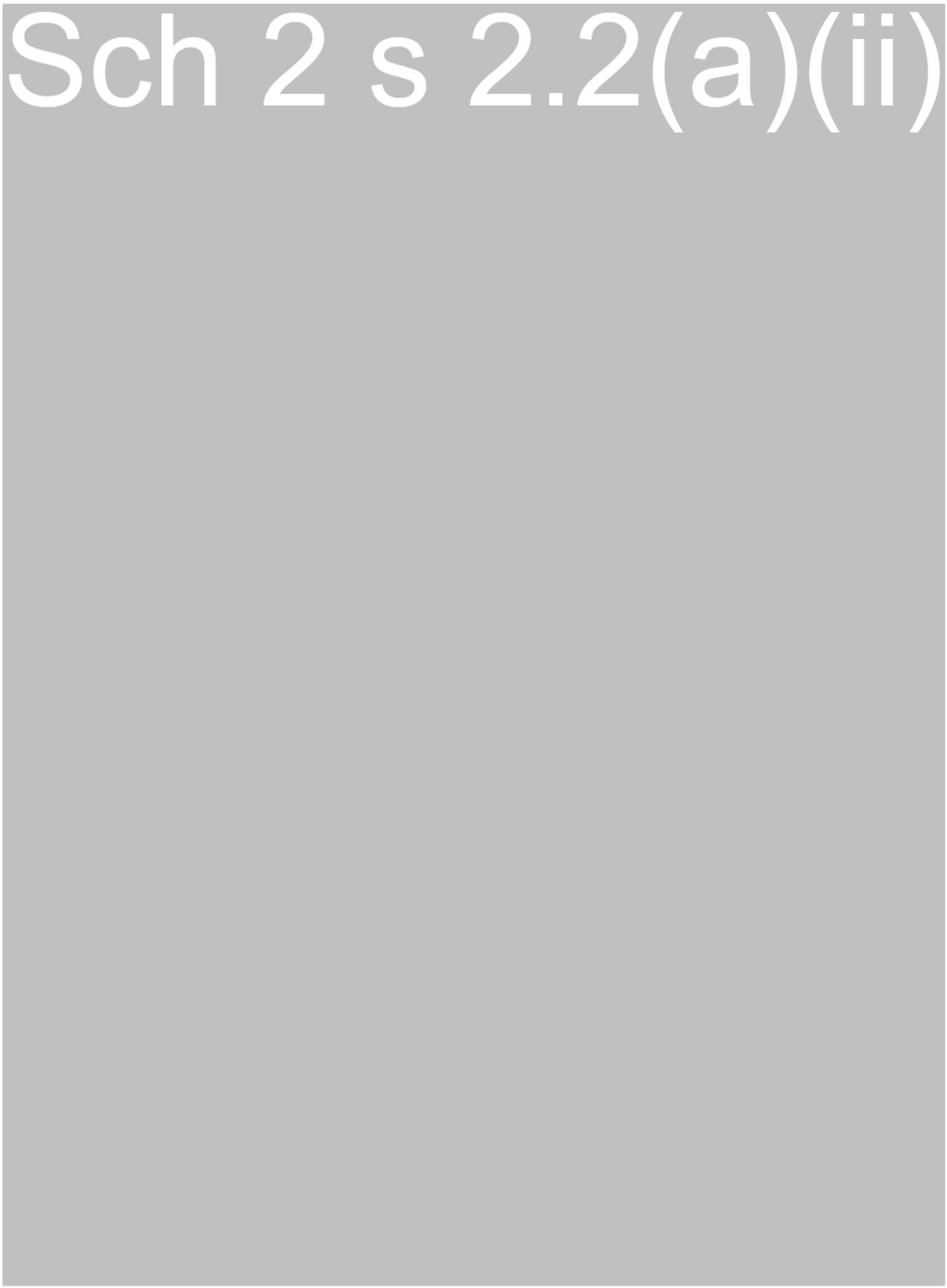
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Sch 2 s 2.2(a)(ii)

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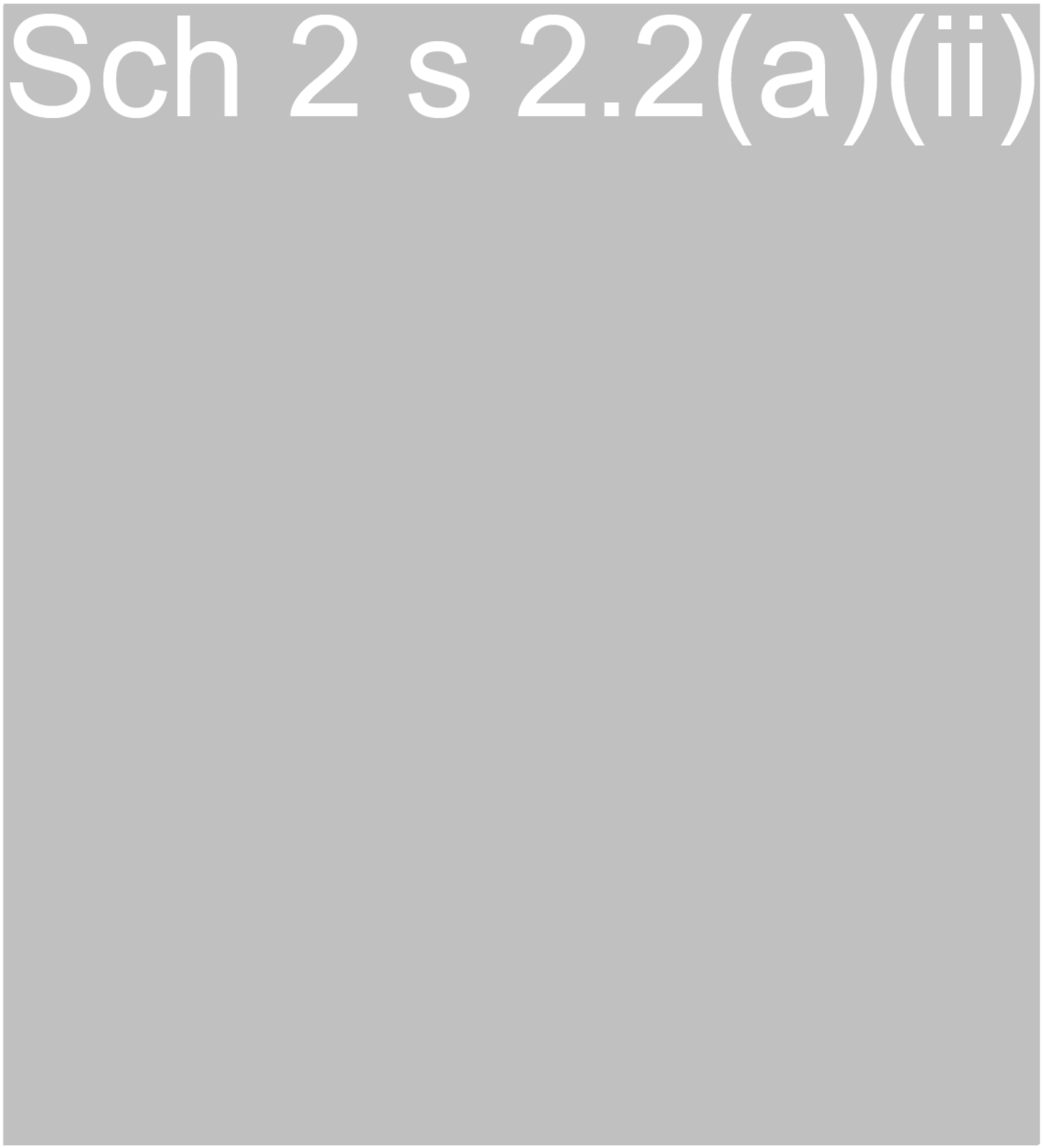
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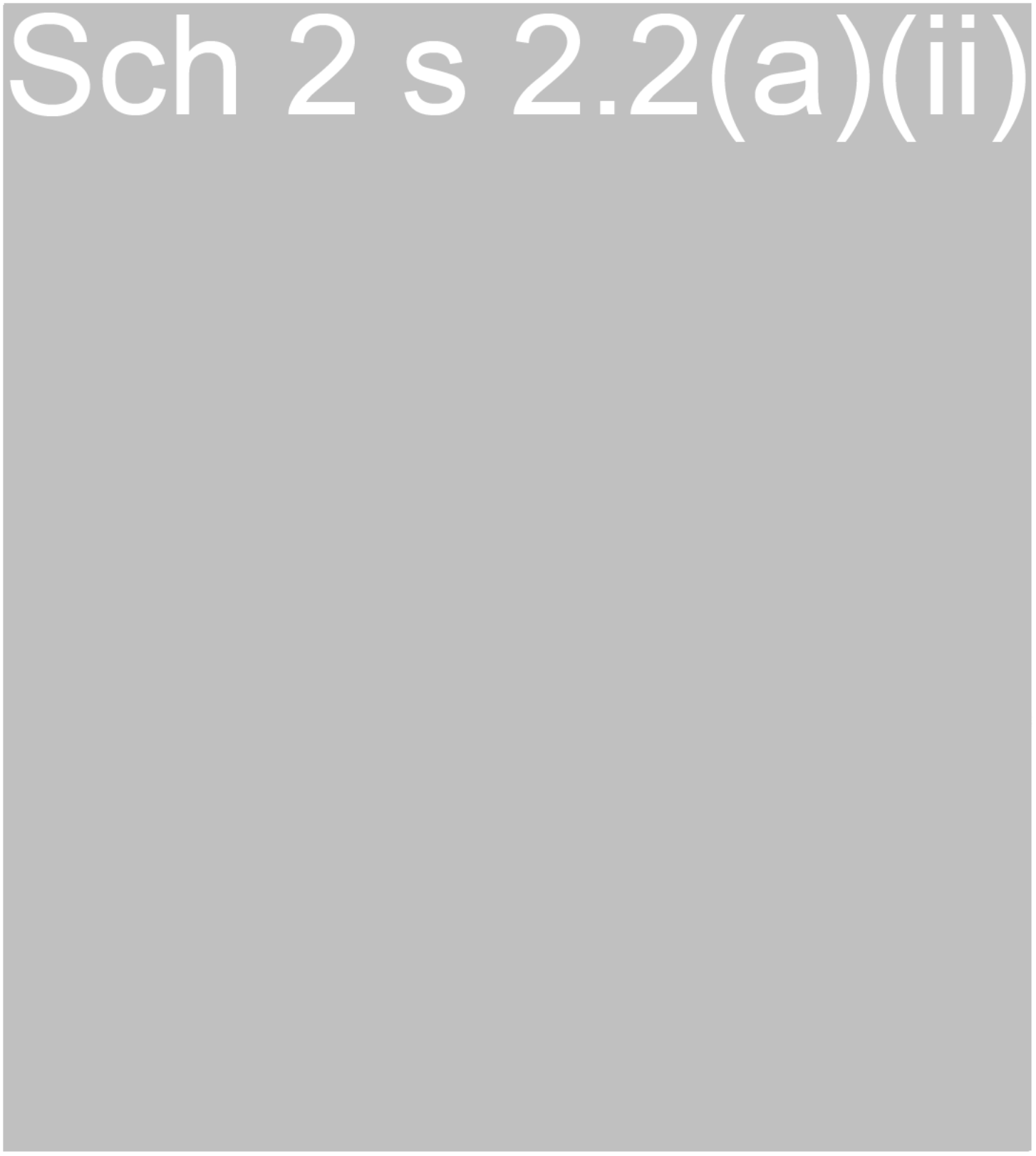
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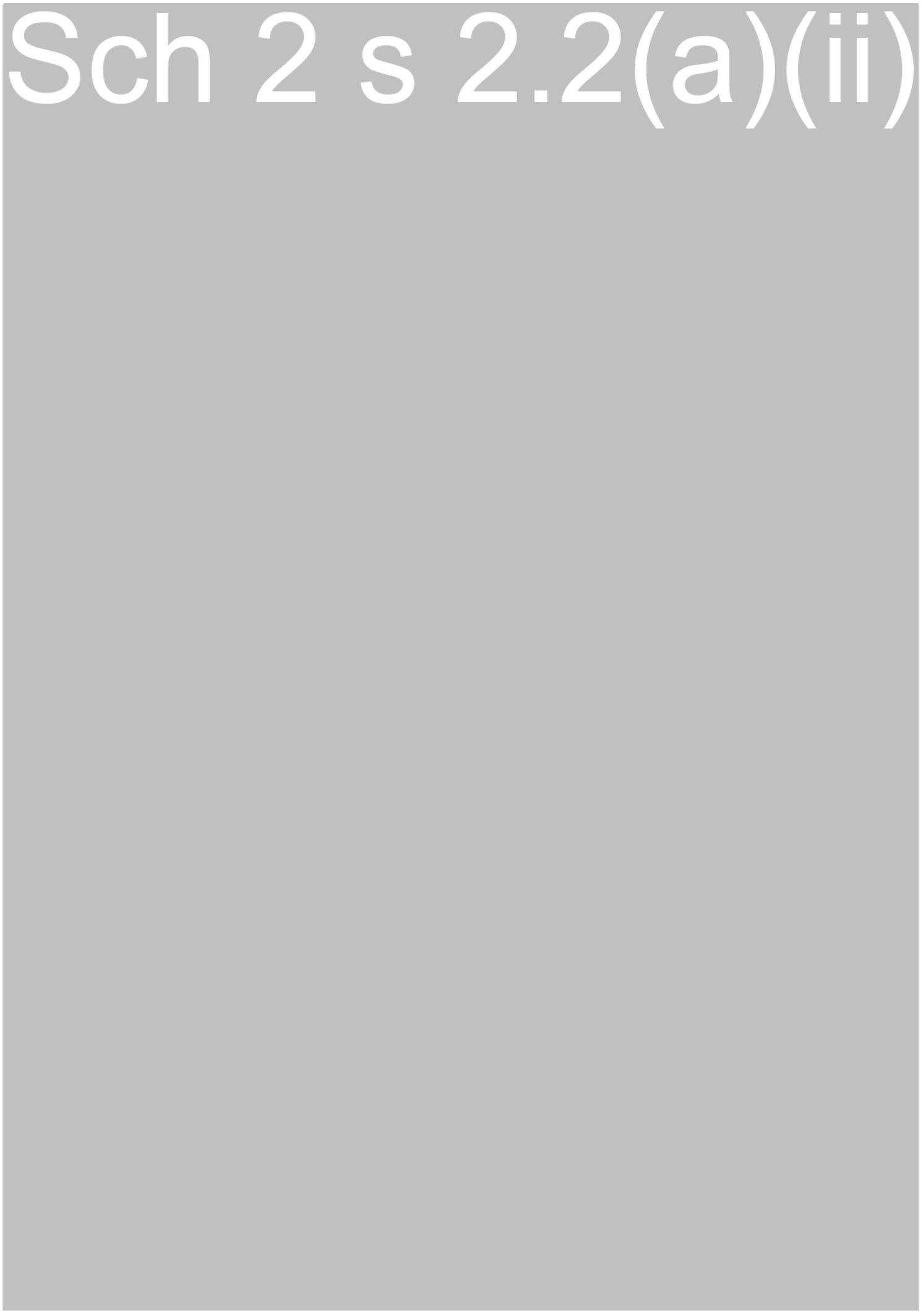
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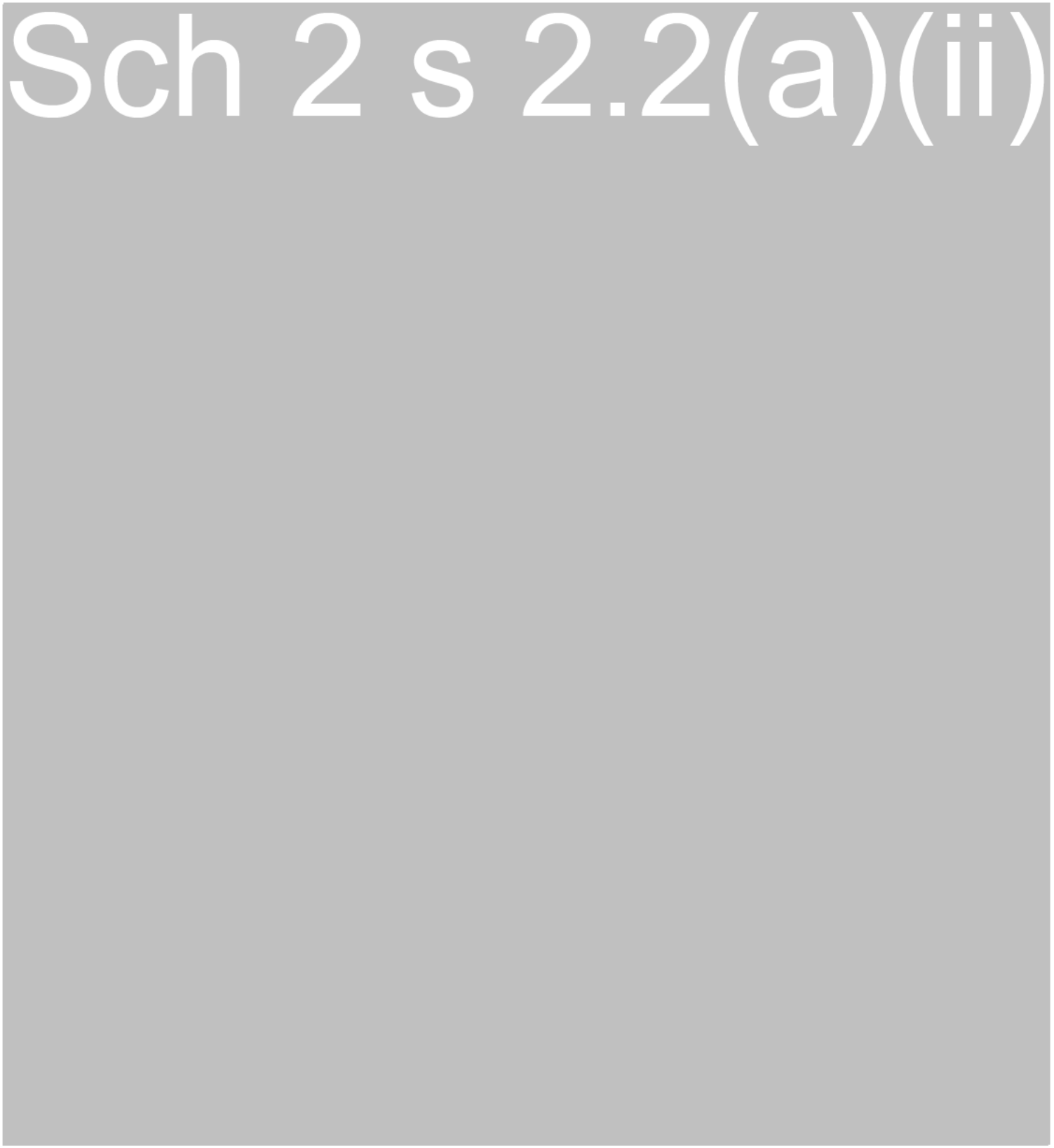
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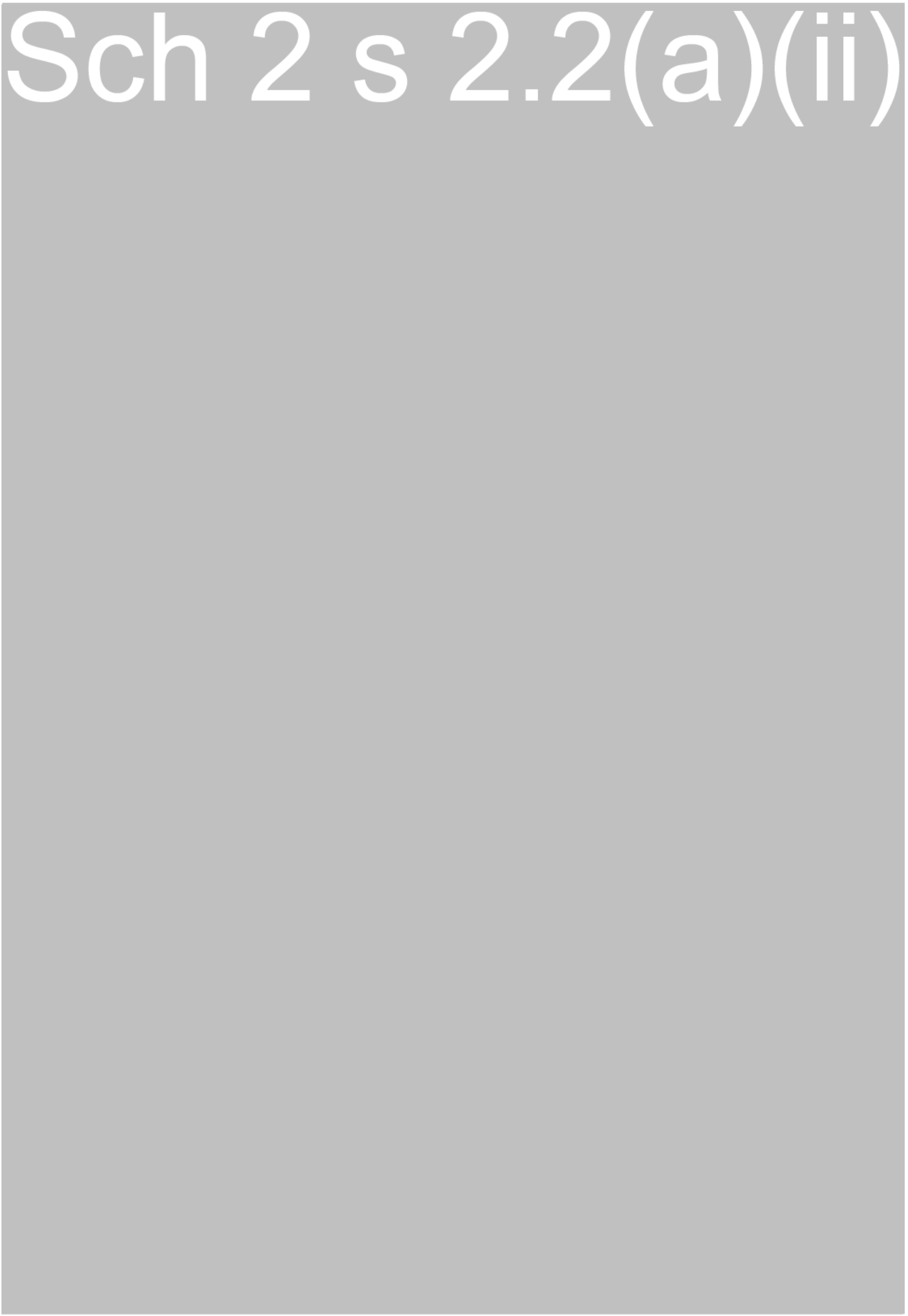

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Sch 2 s 2.2(a)(ii)

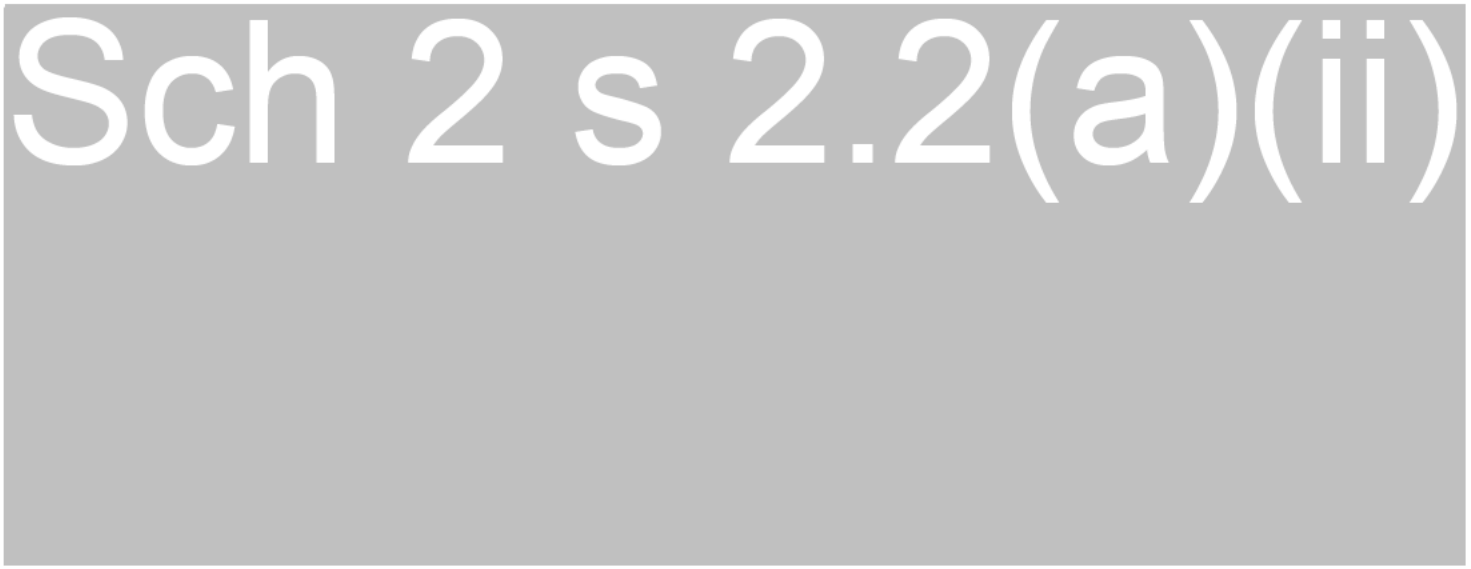

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Sch 2 s 2.2(a)(ii)

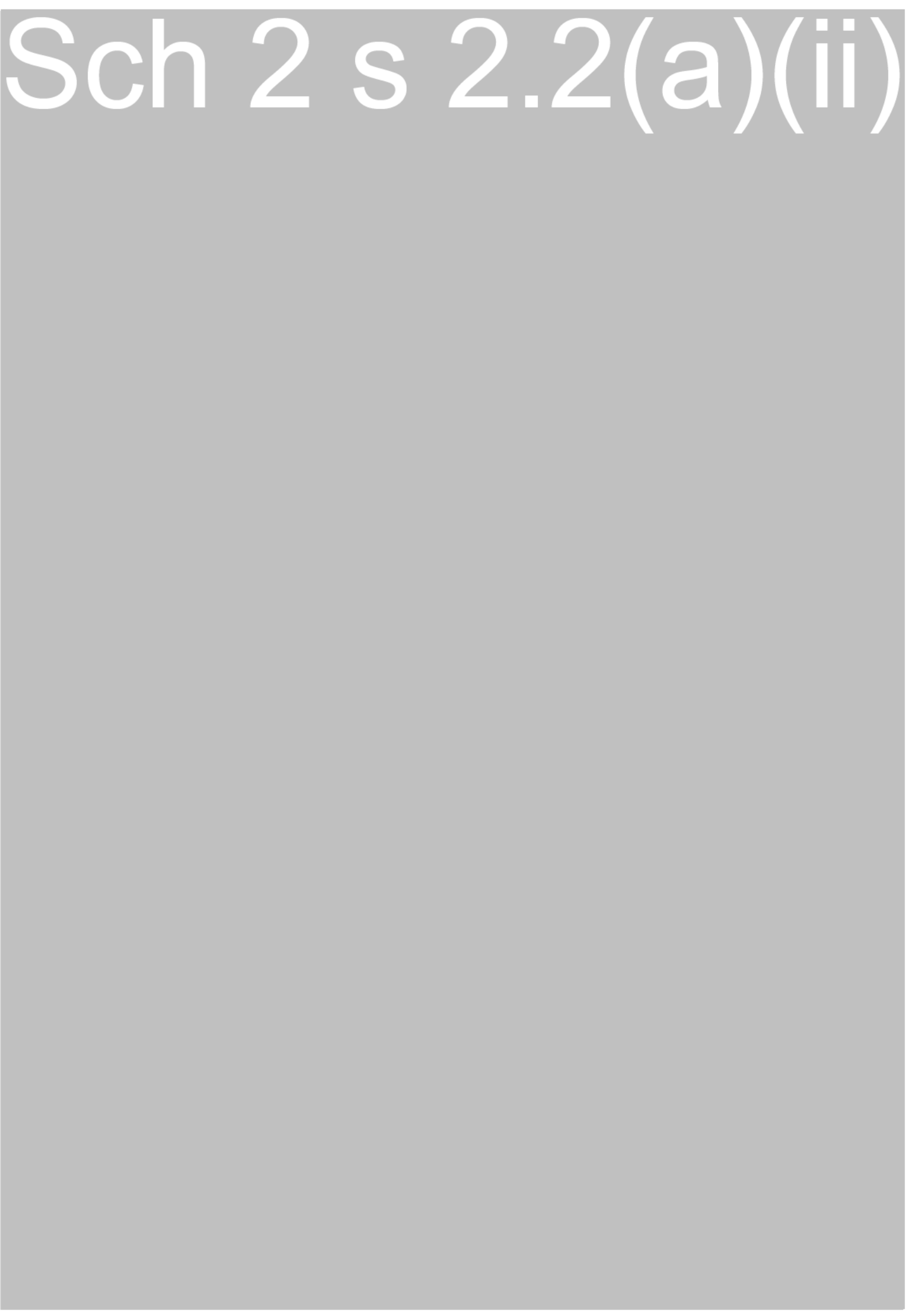

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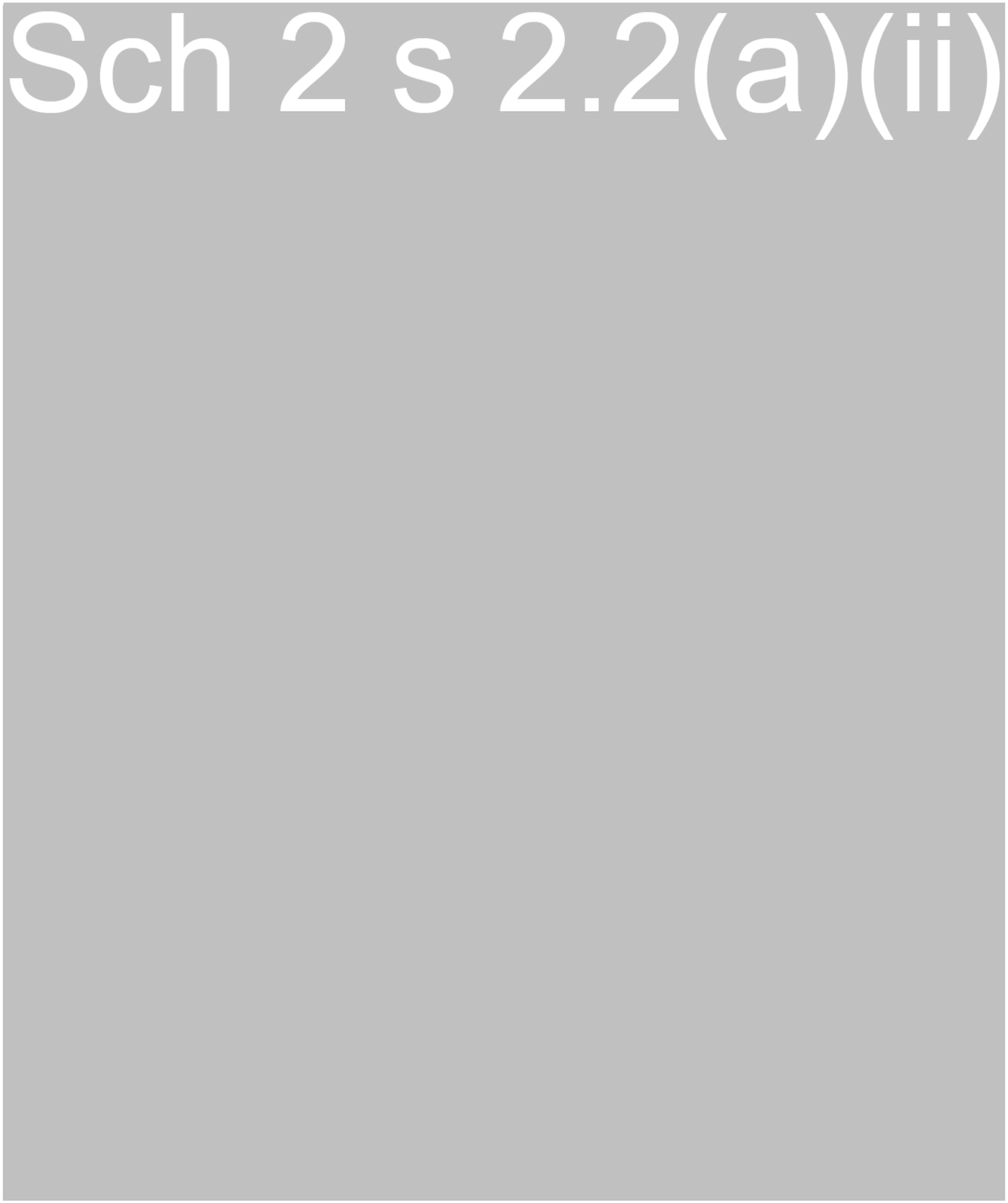

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Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 24/10/2024 12:48 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>
Cc: "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>
Subject: Fw: CM Comments to the LAMS
Attachments: CM Comment - Changes to the LAMS Termination Payment.pdf

OFFICIAL

For advice re process and to include in options brief to cm pls
Get Outlook for iOS
From: Kalleske, Sarah
Sent: Thursday, October 24, 2024 12:45:51 PM
To: Carmody, Lisa
Cc: CMTEDD, DDGOIRWS
Subject: CM Comments to the LAMS

OFFICIAL

Hi Lisa
Kathy hasn't seen the comment from the Chief Minister but I expect she will ask you to investigate please.
Kind regards
Sarah
Sarah Kalleske | Executive Assistant to Kathy Leigh, Head of Service and Director-General
Phone: 02 6205 0241 | Email: sarah.kalleske@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 24/10/2024 1:28 PM
To: "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>
Subject: Re: CM Comments to the LAMS

OFFICIAL

It does. Thank you.
Emma Matthews
Executive Branch Manager, Workforce Governance & Recruitment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate
Telephone: Sch 2 s 2.2(a)(ii)
Email: EmmaC.Matthews@act.gov.au
From: Bolton, Martin
Sent: Thursday, October 24, 2024 1:24:27 PM
To: Matthews, EmmaC ; Carmody, Lisa ; Mirzabegian, Sanaz
Cc: CMTEDD, DDGOIRWS
Subject: RE: CM Comments to the LAMS

OFFICIAL

Ok I have reached out to Calvin and am going to chat at 4 does that suit you
Martin Bolton | Executive Branch Manager | Payroll and HR Systems
Phone: 620 58700 | Email: Martin.Bolton @act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

From: Matthews, EmmaC
Sent: Thursday, 24 October 2024 1:23 PM
To: Bolton, Martin ; Carmody, Lisa ; Mirzabegian, Sanaz
Cc: CMTEDD, DDGOIRWS
Subject: Re: CM Comments to the LAMS

OFFICIAL

Hi Martin
We would seek to provide advice to the CM in the first instance on whether we recommend seeking the ATO Ruling.
Let's work out who we should pull together to chat about that - me, you and Calvin?
Emma
Emma Matthews
Executive Branch Manager, Workforce Governance & Recruitment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate
Telephone: Sch 2 s 2.2(a)(ii)
Email: EmmaC.Matthews@act.gov.au

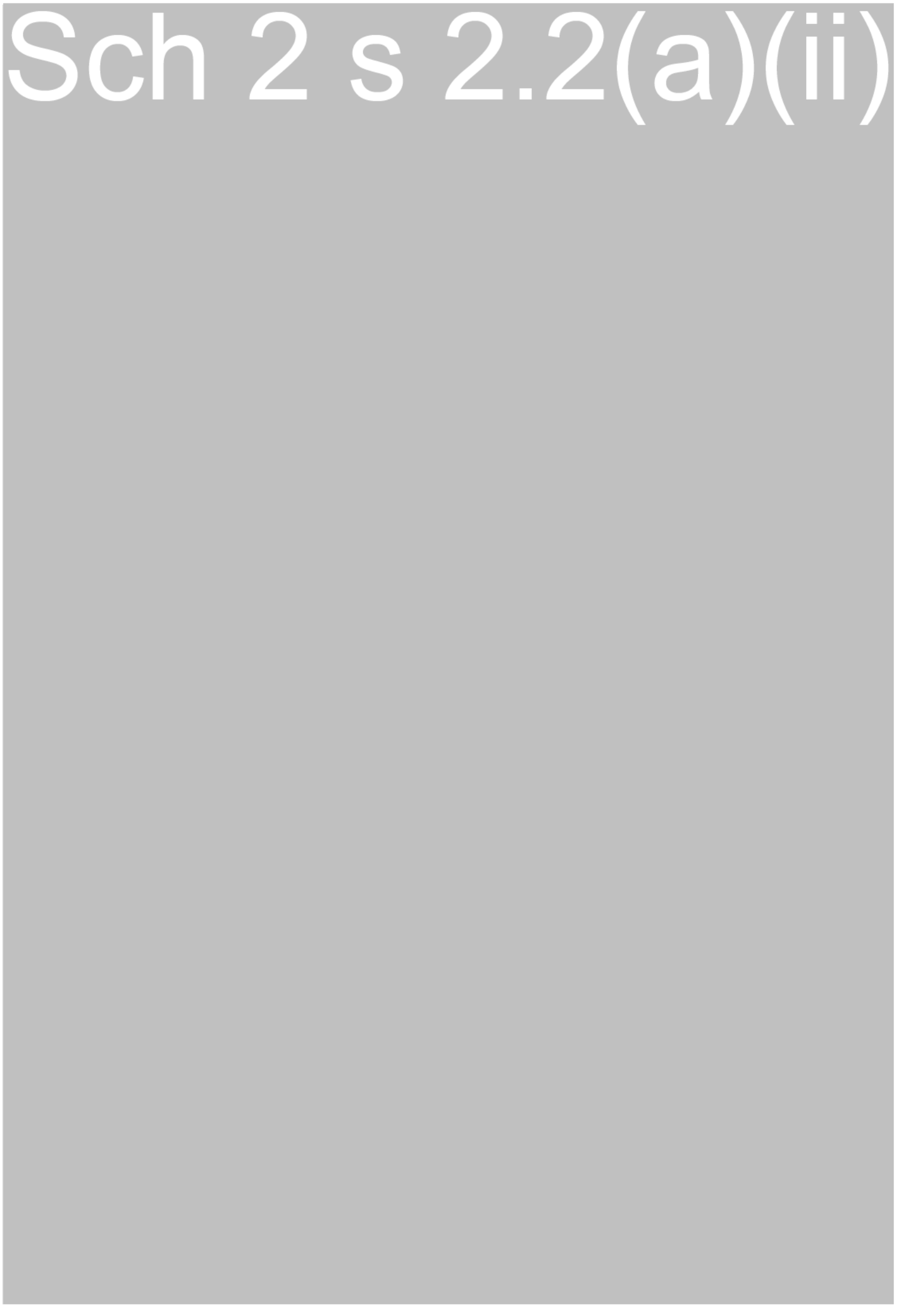
From: Bolton, Martin <Martin.Bolton@act.gov.au>
Sent: Thursday, October 24, 2024 1:16:36 PM
To: Carmody, Lisa <Lisa.Carmody@act.gov.au>; Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>; Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>
Subject: RE: CM Comments to the LAMS

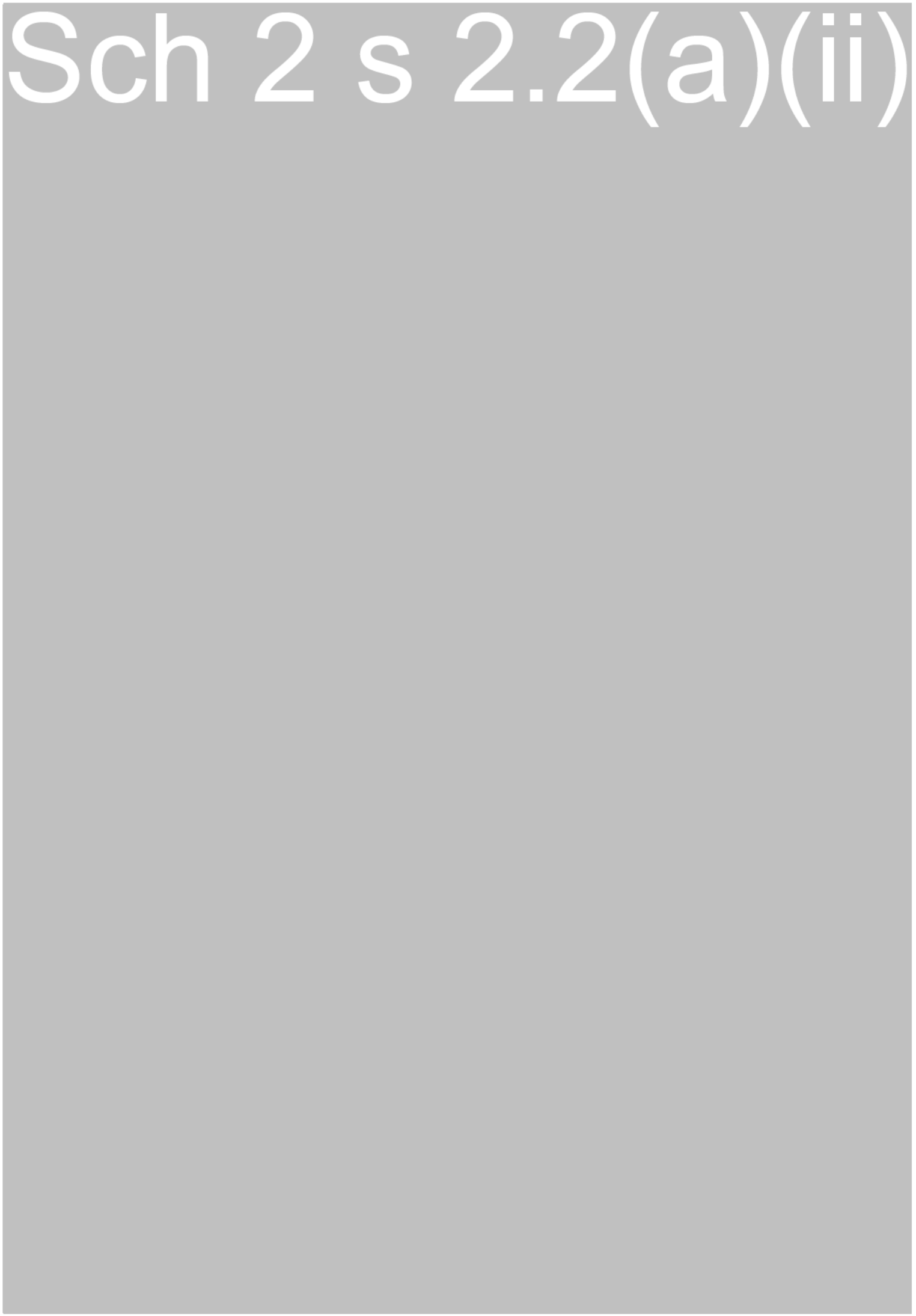
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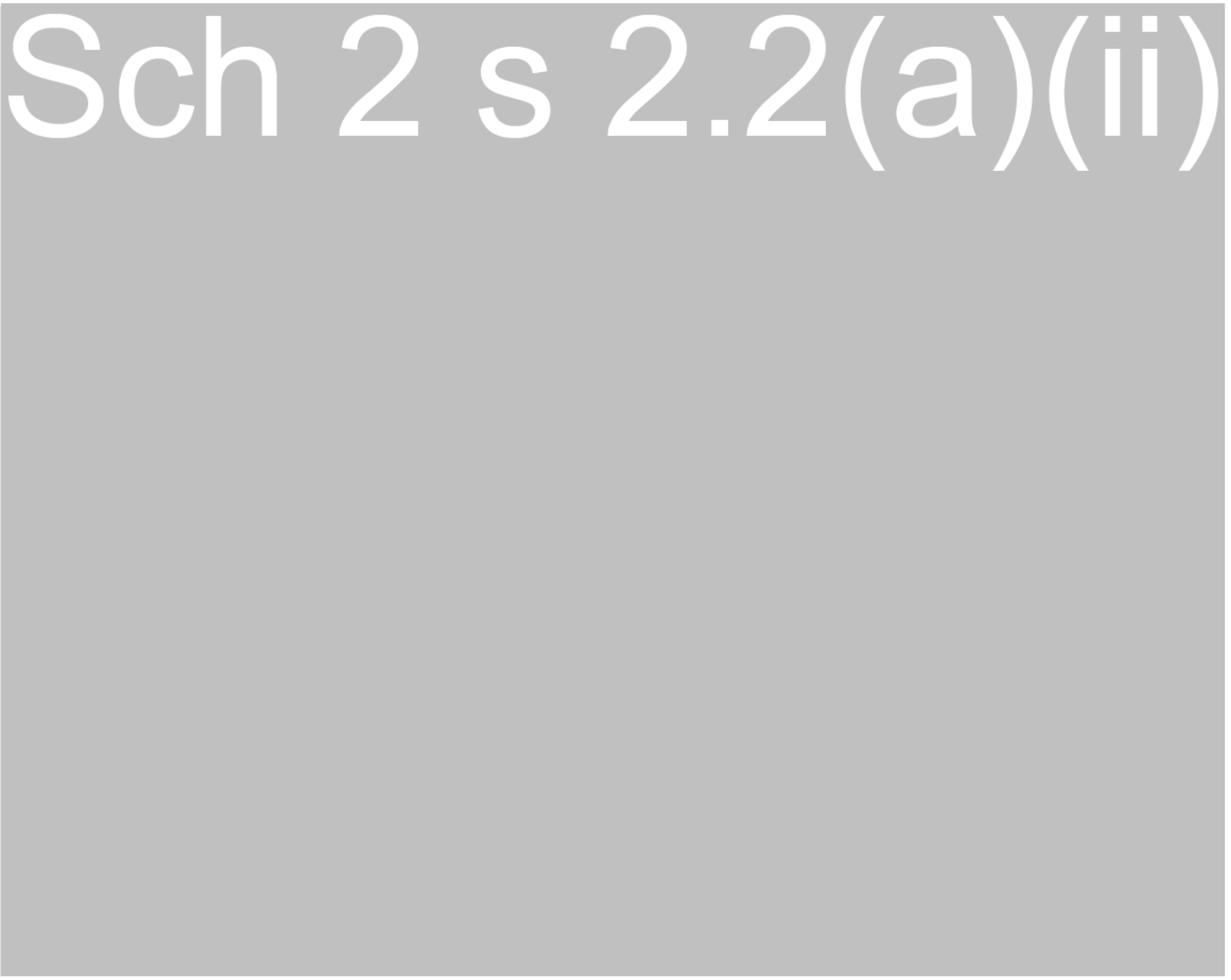
Can do, we normally do this through the tax team in the old shared services finance, I will ask some questions. That said do we want someone different than KPMG to liaise with ATO or do we get GSO?

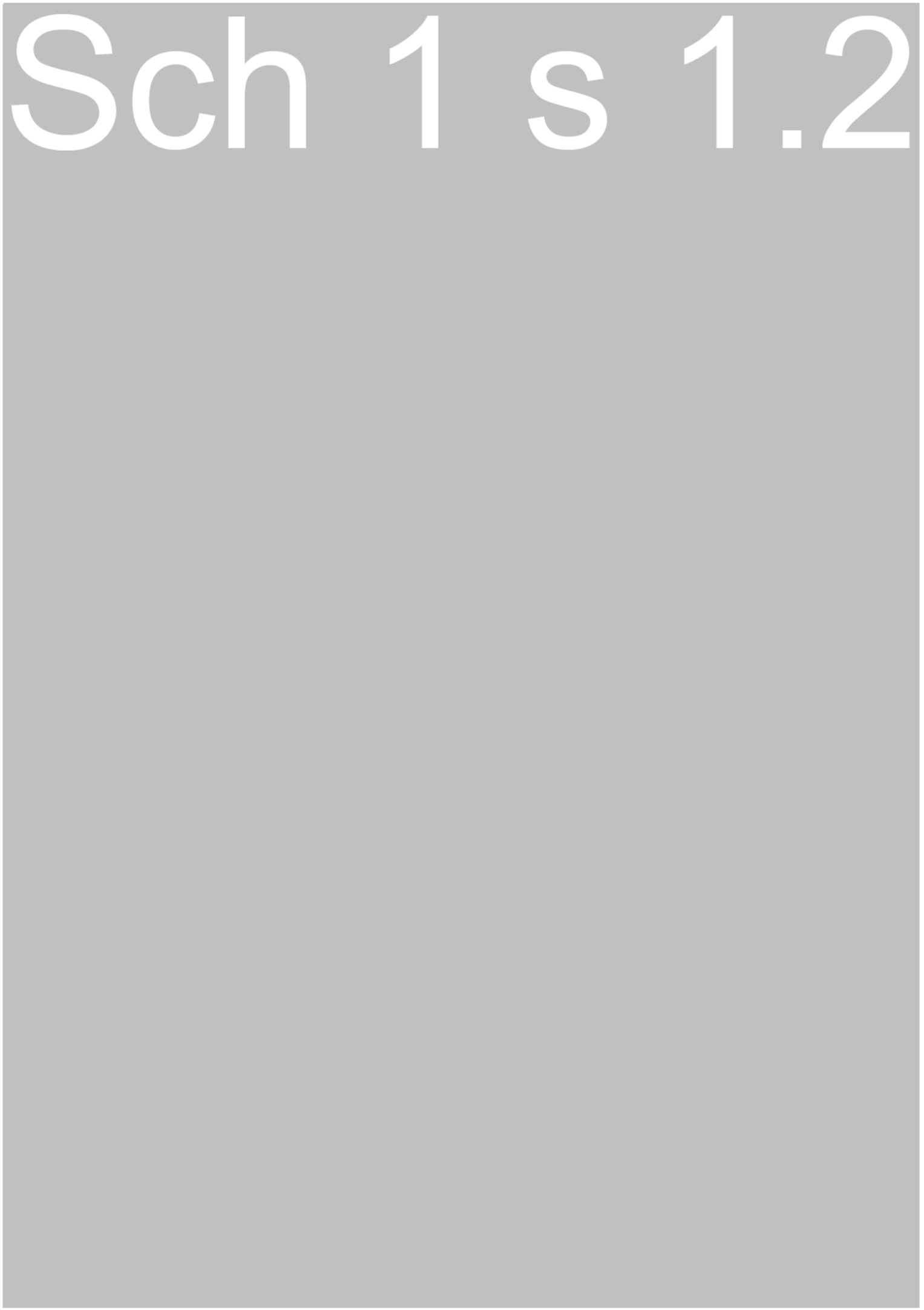
Martin Bolton | Executive Branch Manager | Payroll and HR Systems
Phone: 620 58700 | Email: Martin.Bolton @act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

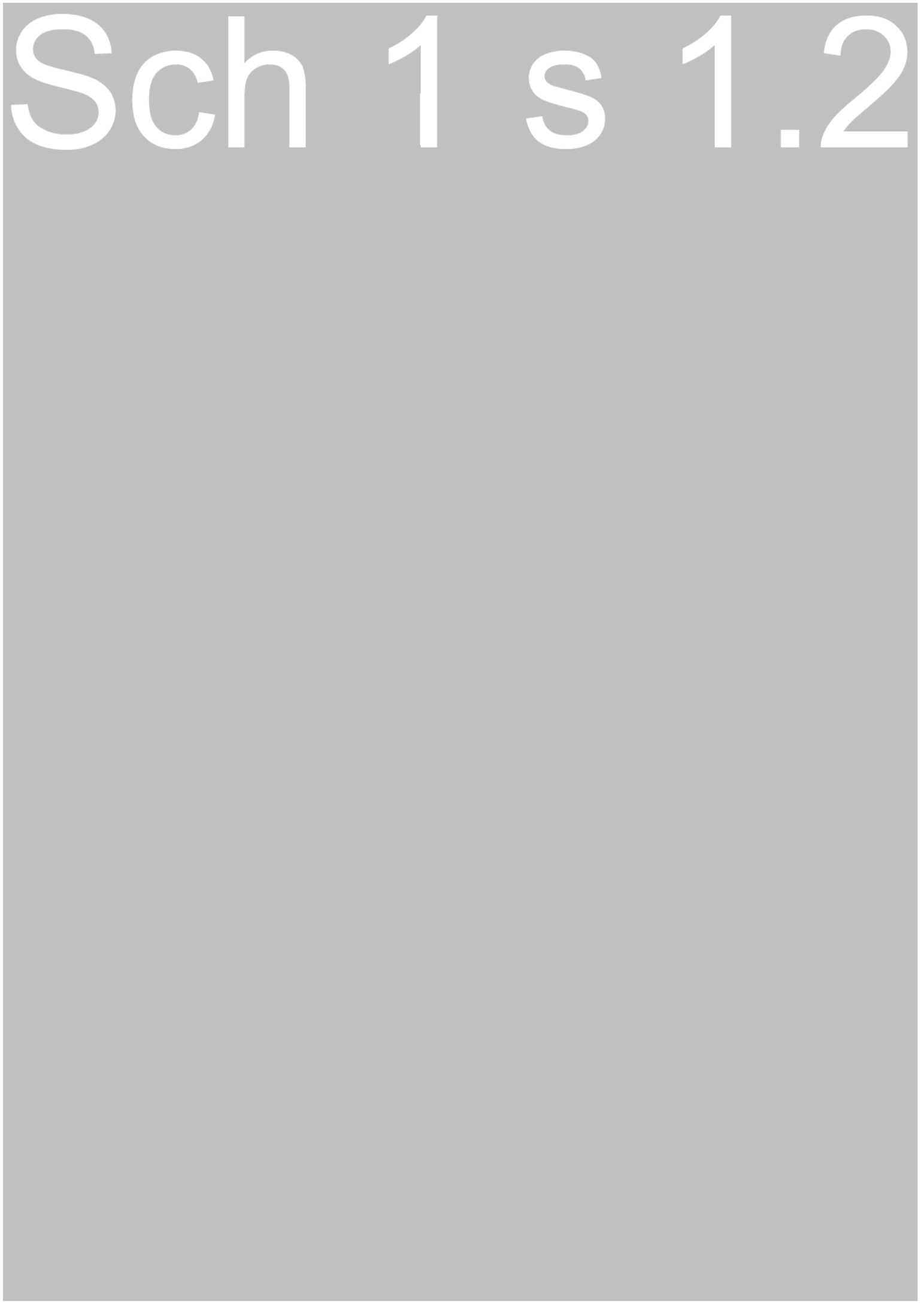
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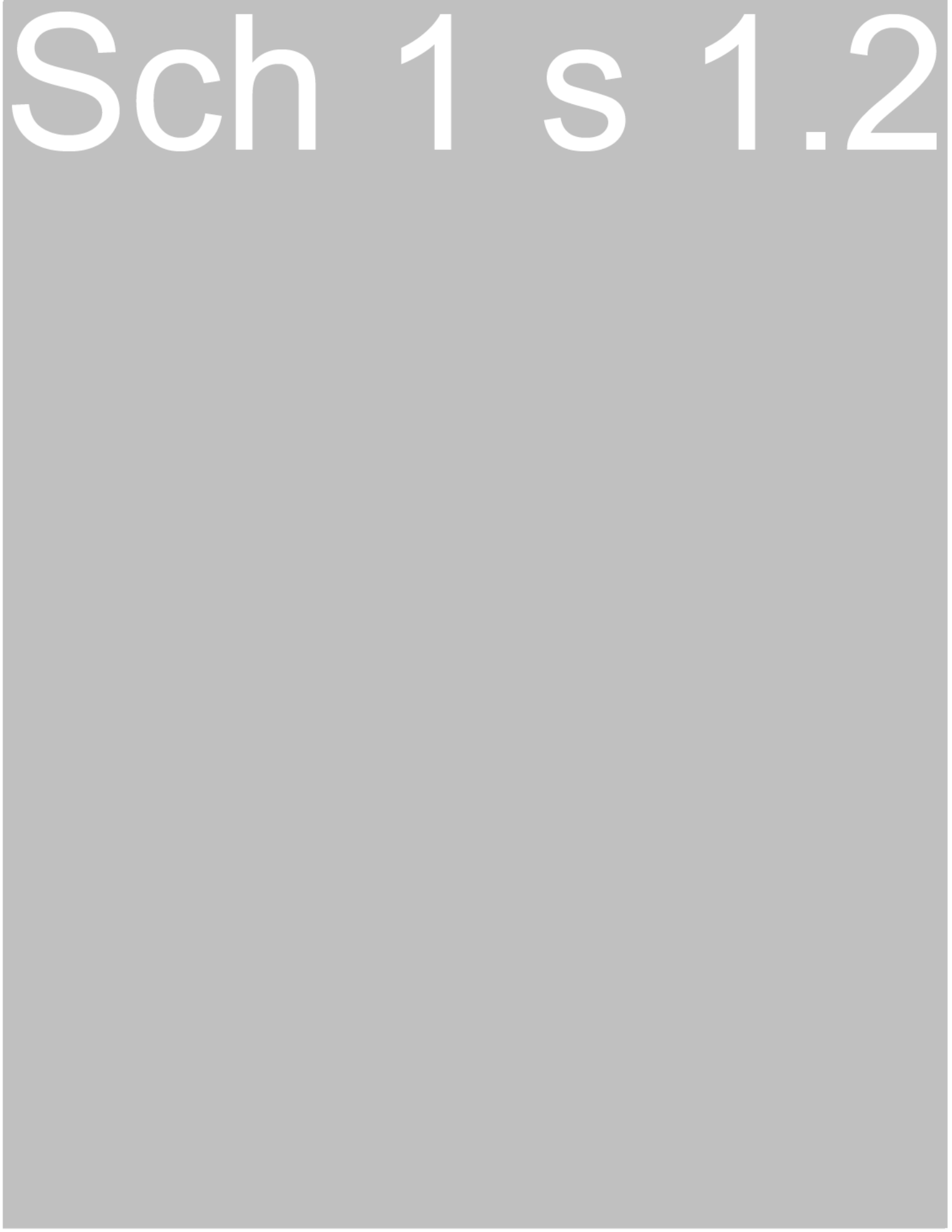

Sch 2 s 2.2(a)(ii)


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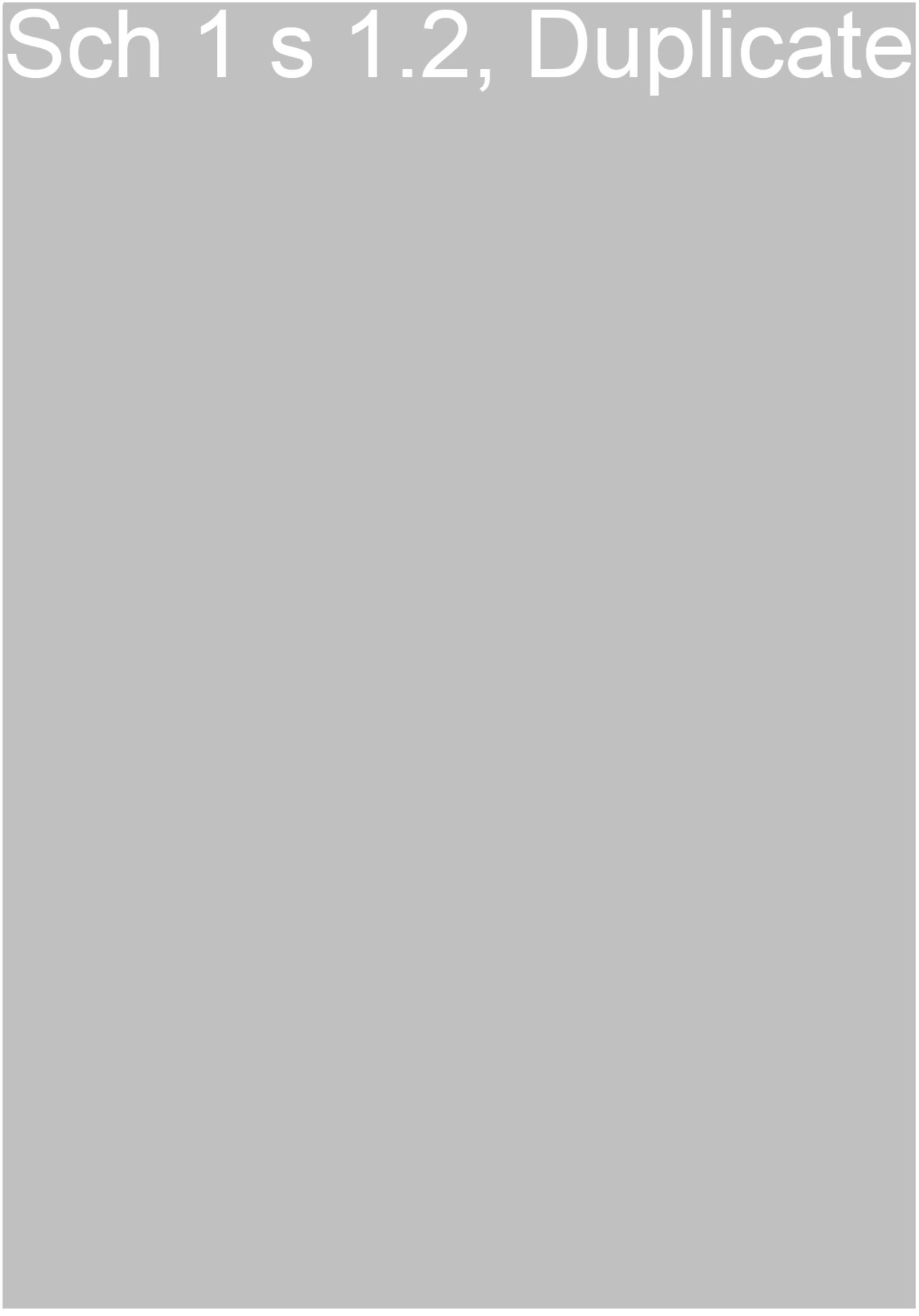

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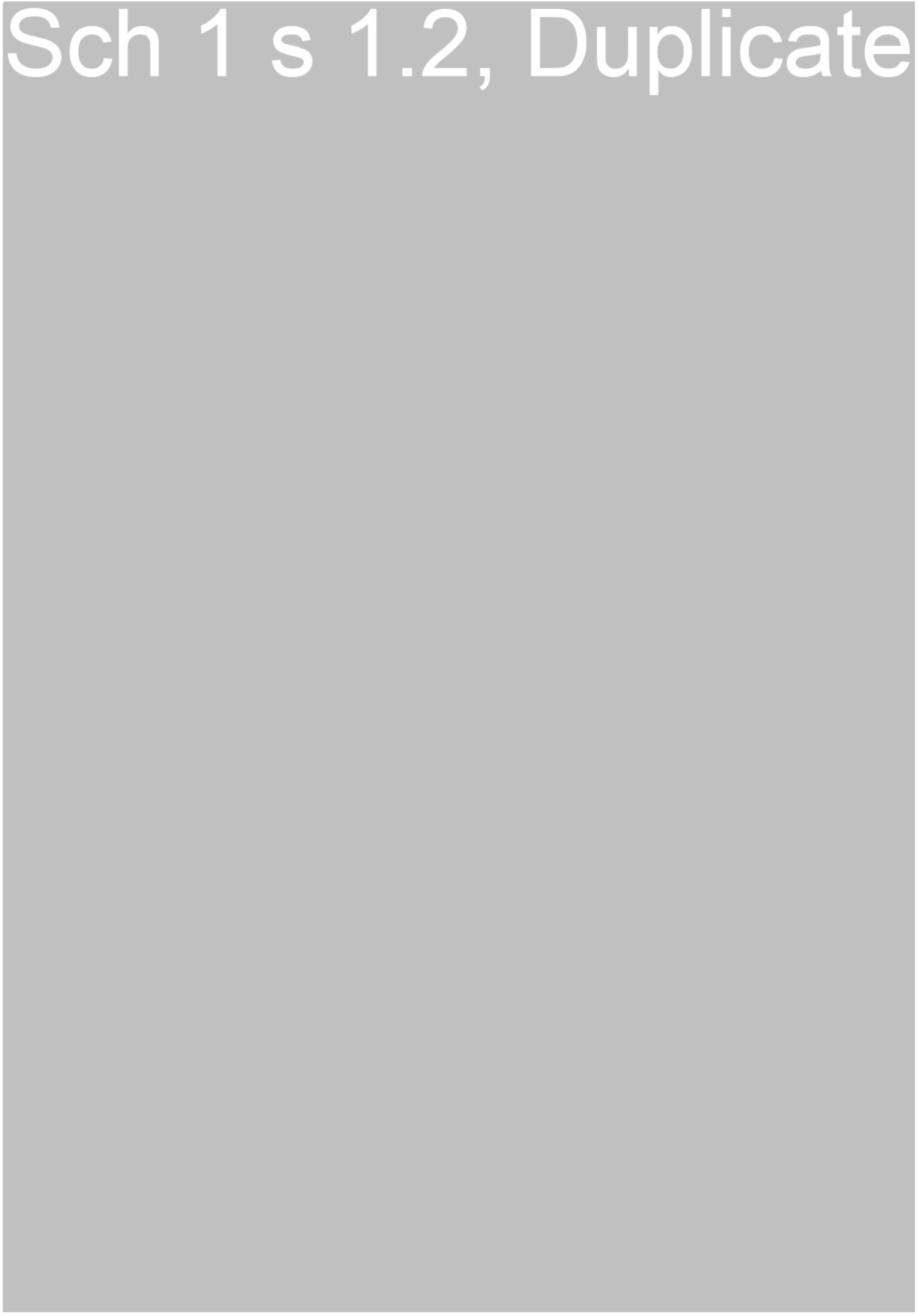

Sch 1 s 1.2


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Sch 1 s 1.2

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Sch 1 s 1.2, Duplicate

Sch 1 s 1.2, Duplicate

From: "Taylor, Nina" <Nina.Taylor@act.gov.au>
Sent: 28/10/2024 9:40 AM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Subject: RE: Draft LAMS Termination Payments advice

OFFICIAL

Hi Sanaz,

That sounds great, thank you.

Kind regards, Nina

From: Mirzabegian, Sanaz
Sent: Monday, October 28, 2024 9:38 AM
To: Taylor, Nina
Cc: Matthews, EmmaC
Subject: RE: Draft LAMS Termination Payments advice

OFFICIAL

Good Morning Nina, Hope you and team are well. Thank you, for the email. I will set up a time for us to discuss. Lisa is hoping we can have the package over to the CM earlyish this week.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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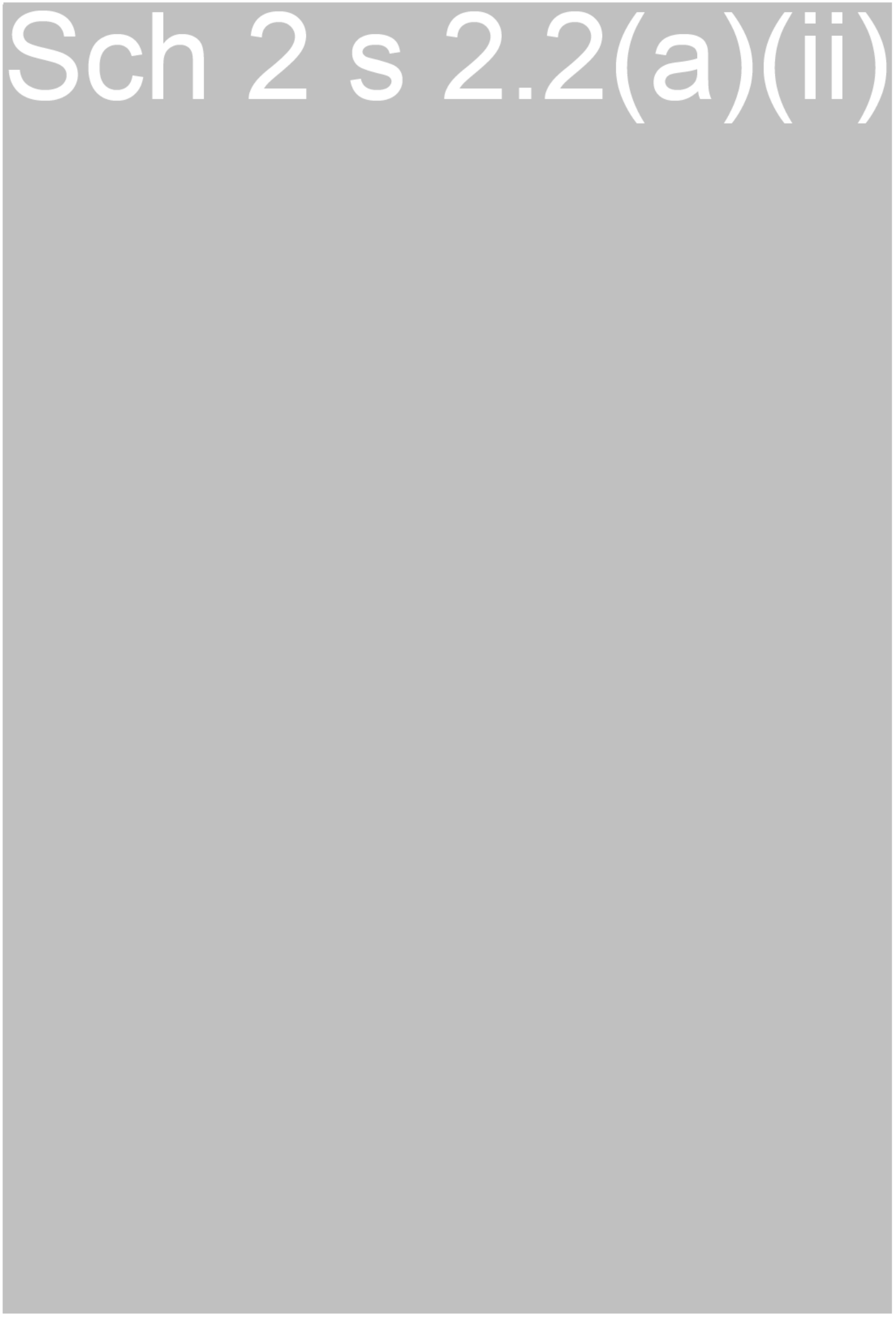
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Sch 2 s 2.2(a)(ii), Duplicate

Sch 2 s 2.2(a)(ii), Duplicate


Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 28/10/2024 12:28 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Cc: "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>
Subject: FW: CM Comments to the LAMS
Attachments: CM Comment - Changes to the LAMS Termination Payment.pdf

OFFICIAL

Noting CM annotated brief with this question a few points on the process would be helpful for HoS.

We are liaising with Calvin from [insert details] because [insert details].
Typically, the process is done via [insert details] and takes approximately [insert details].
It would be [?] open to the Territory to seek such a determination ...

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: 0408 645 386 |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

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From: "Taylor, Nina" <Nina.Taylor@act.gov.au>
Sent: 28/10/2024 12:58 PM
To: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: LAMS options paper and Employment Arrangements HR/Payroll guidelines
Attachments: LAMS Employment Arrangements (Termination,_notice_redundancy payroll guide).docx, LAMS Employment Arrangements (on-going _fixed-term HR guide).docx, LAMS Termination Payments advice NT update.docx, Draft LAMS Termination Payments advice

OFFICIAL

Hi Emma and Sanaz,

Please see attached the latest versions of the LAMS documents as follows:

- LAMS options paper – LAMS payment advice paper as provided by Brian is attached, however as discussed our team is working on further updating this document today and the latest version is attached noting this is not yet complete

- LAMS Employment Arrangements (on-going _fixed-term HR guide):
    - This document still needs to be QA'd and I would like to run it past Emma R and Tracey before finalizing. This assessment was needed for us to really understand the different options for resolution

- LAMS Employment Arrangements (Termination_notice_redundancy payroll guide)
    - This document is still in progress. We are planning to consult and reformat it, however this was needed for us to really understand the different options for resolution

As discussed, we hope to have the LAMS options paper in better shape later this afternoon, noting that this is based on the understanding in the LAMS employment arrangements documents.

Thanks, Nina

These tables provide a set of scenarios that may occur to where a LAMS Employment Agreement terminates under the LAMS Act.

- A LAMS Termination Payment may be applied when a termination occurs under the LAMS Act.
- A termination reason should be provided to payroll when a termination occurs under the LAMS Act. The termination reason will impact the employee's final entitlement to a redundancy payment under the FW Act and how the payment is taxed (for example, whether there is a non-genuine redundancy or genuine redundancy). Payroll may also need to check the LAMS Termination Payment against FW Act entitlements to ensure it remains more advantageous.
- A LAMS Termination Payment may be applied when a termination occurs under the LAMS Act, depending on the reason for termination it may also be taxed together as part of an employee's final genuine redundancy package.

~~B6.3 T~~Termination at initiative of Member or Office Holder (covering termination under LAMS Act s8(4) & s13(3) and notice entitlements under B6.3).

NOTE this section does NOT apply to any termination resulting from the death or cessation of the relevant Member or Office Holder (LAMS Act s8(1), s8(2), s13(1) and s13(2))

Employment type	Termination Type (for payroll use - suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
Ongoing Employee – employees continuing, OR continuing, contingent to their employer being a	Termination prior to expected end date (end of the Assembly term)	~~B7.1~~ Discretionary (e.g. underperformance or similar processes outlined under the LAMS EA)	Yes. (note: if an exception under B7.2 applies, please refer to the relevant table entry)	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination	LAMS Termination payment (covers 4 wks in lieu of notice + severance)	Notice period applies	Please periodically check entitlement remains above the FWA – NES entitlement. ~~above NES entitlement in all~~

Member of the Assembly. ~~continuing, OR continuing, contingent to member term~~. i.e. Employment arrangement notes expected end date of employment.				reasons' is more appropriate. e.g. Misconduct/serious misconduct/job role not required/ Public Sector Secondment/			~~circumstances~~ (e.g check the severance still covers entitlement to additional wk for over 45 yrs)
	dismissal	~~B7.2.1~~ Misconduct	No.	B7.2.1 dismissal for misconduct applies. ~~Serious misconduct/ Public Sector Secondment~~	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act 117 is not provided)	Notice period applies	Please check: Rate of pay calculation to apply per the FWA s117
	Summary dismissal	~~B7.2.1~~ Serious misconduct	Nil	Nil	Nil	Nil	N/A
	Genuine Redundancy	~~B7.1~~ **Job role** no longer required (e.g. due to current member undertaking a restructure during their relevant Assembly ~~term~~)	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable.	Portion of LAMS Termination Payment above tax free limit (if applicable)	Notice period applies If over 12 months continuous service worked	Check FWA to confirm which entitlement is higher (e.g redundancy+ notice must be higher that LAMS

				Please confirm no other 'termination reasons' is more appropriate. e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/ ~~Voluntary redundancy (VR)/ Declined offer of other employment of a similar nature/ Public Sector Secondment~~	(4 wks notice + genuine redundancy) NOTE – Portion of LAMS termination payment below the tax free limit is payable as a NON-ETP lump sum.	- Rredundancy applies	termination payment)
	Non-Genuine Redundancy (Age)	~~B7.1~~ **Job role** no longer required (e.g. due to current member undertaking a restructure during their relevant term) – employee is over retirement or age pension age	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies, then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate.	LAMS termination payment (4 wks notice + severance)	Notice period applies per FWA If over 12 months continuous service worked - ~~redundancy applie~~ sRedundancy	Check FWA to confirm which entitlement is higher (applies to both Notice and Redundancy)

				e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/ ~~Voluntary Separation/ Declined offer of other employment of a similar nature / Public Sector Secondment~~		pay applies per FWA	
	Non-Genuine Redundancy (Voluntary)	~~B7.1~~ Volunteer to become redundant (e.g. reduction in number of similar roles during Member's relevant term) – employee self-selects to have their role made redundant	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies, then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate. e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public	LAMS termination payment (4 wks notice + severance)	Notice period applies per FWA If over 12 months continuous service worked - Redundancy applies per FWA ~~redundancy applies~~	Check FWA to confirm which entitlement is higher

				Sector Secondment/ ~~Public Sector Secondment~~			
	Voluntary Separation	~~B7.1~~ Volunteer to become redundant AND over retirement/age pension age (non-genuine redundancy scenarios in this table apply)	Yes.	~~Public Sector Secondment~~ Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies, then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate. e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/	LAMS termination payment (4 wks notice + severance)	Notice period applies per FWA	above NES entitlement in all circumstances (severance covers entitlement to additional wk for over 45 yrs)
	Early Termination of Secondment Arrangement	Secondment or similar agreement is terminated early ~~B7.2.2 Any~~	No.	B7.2.2 An employee who has a right of return to	N/A	Nil	N/A

Commented [JS1]: Above comment. I'm not sure if this is an option for LAMS employees.

		~~termination reason under LAMS act, where employee has the right to return to Public Sector Employment~~		secure employment in the public sector Subject to terms of PSMA / or other relevant public sector legislation			
	~~B7.2.5~~ Termination during probationary period	~~B7.1~~ Discretionary	No.	B7.2.5 A probationary employee~~Nil~~	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act 117 is not provided)	Notice applies	Rate of pay calculation to apply per the FWA s117
~~B7.2.2 and B7.2.3 -~~ Fixed term (backfill or specific project – as prescribed under the FW Act) NOTE – Fixed term contracts which are in breach of the	Early Termination of Contract	~~B7.1~~ Discretionary	No.	B7.2.3 - Fixed term (backfill or specific project – as prescribed under the FW Act) ~~Serious misconduct/ Public Sector Secondment~~	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act 117 is not provided)	Notice applies	Rate of pay calculation to apply per the FWA s117
	Summary dismissal	~~B7.2.1~~ Serious misconduct	Nil	Nil	Nil	Nil	N/A

FW Act are to operate as per arrangements for continuing, contingent to member term employees (as above)	Early Termination of Secondment Arrangement	~~B7.2.2~~ Any termination reason under LAMS act, where employee has the right to return to Public Sector Employment	No.	B7.2.2 An employee who has a right of return to secure employment in the public sector Subject to terms of PSMA	Nil	Nil	N/A
~~B7.2.6 –~~ Casual Employee	End casual employment	Nil	No.	B7.2.6 –Casual Employee ~~Nil~~	Nil	Nil	Nil

~~B7.1~~ LAMS termination payment for termination resulting from the death or cessation of the relevant Member or Office Holder (LAMS Act s8(1), s8(2), and s13(1) ~~and s13(2)~~)

Employment type	Termination Type (for pay-roll use – suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
Ongoing Employee – employees continuing, OR continuing, contingent to their employer being a Member of the Assembly. ~~continuing, OR continuing, contingent to member term.~~ i.e. Employment arrangement notes expected end date of employment.	Termination at expected end date	~~B7.1~~ Cessation of appointment for relevant office holder/member/ End of assembly term.	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate. e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/ ~~Declined offer of additional employment~~	LAMS Termination payment (4 wks in lieu of notice + severance)	Nil	N/A

				~~(B7.2.7)/ Public Sector Secondment~~			
	Redundancy	~~B7.1~~ **Job role** no longer required (e.g. due to current member death or early cessation of appointment)	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reason' is more appropriate. e.g. Cessation of appointment/ Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/ ~~Declined offer of other employment of a similar nature (B7.2.7)/ Public Sector Secondment~~	Portion of LAMS Termination Payment above tax free limit (if applicable) (4 wks notice + genuine redundancy) NOTE – Portion of LAMS termination payment below the tax free limit is payable as a NON-ETP lump sum.	Notice applies If over 12 months continuous service worked - redundancy applies	Check FWA to confirm which entitlement is higher

	Non-Genuine Redundancy (Age)	B7.1 **Job role** no longer required (e.g. due to current member death or early cessation of appointment) – over retirement or age pension age	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reason' is more appropriate. e.g. Cessation of appointment/ Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/ ~~Declined offer of other employment of a similar nature (B7.2.7) / Public Sector Secondment~~	LAMS termination payment (4 wks notice + severance)	Notice applies If over 12 months continuous service worked - redundancy applies	Check FWA to confirm which entitlement is higher
	Non-Genuine Redundancy (Voluntary)	B7.1 Volunteer to become redundant (e.g. reduction in	Yes,	Nil. Please confirm that no exceptions under B7.2 apply. If	LAMS termination payment (4	Notice applies If over 12 months continuous	Check FWA to confirm which entitlement is higher

		number of similar roles due to current member death or early cessation of appointment) – employee self-selects to have their role made redundant		an exception applies then this entry is not applicable. Please confirm no other 'termination reason' is more appropriate. e.g. Cessation of appointment/ Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/ ~~Public Sector Secondment~~	wks notice + severance)	service worked - redundancy applies	
	Voluntary Separation	~~B7.1~~ Volunteer to become redundant AND over retirement/age pension age (non-genuine redundancy scenarios in this table apply)	Yes	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination	LAMS termination payment (4 wks notice + severance)	Notice period applies	above NES entitlement in all circumstances (severance covers entitlement to additional wk for over 45 yrs)

				reason' is more appropriate. e.g. Cessation of appointment/ Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/ ~~Public Sector Secondment~~			
	Termination of Secondment Arrangement	~~B7.2.2~~ End date of secondment arrangement, where employee has a right to return to secure employment in the public sector.	No.	B7.2.2 End date of secondment arrangement, where employee has a right to return to secure employment in the public sector.~~Subject to terms of PSMA~~	N/A	Nil	N/A
	Termination during probationary period	~~B7.2.5~~ termination due to current member death or early cessation of	No.	B7.2.5 probationary period ~~Nil~~	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act	Notice applies	Rate of pay calculation to apply per the FWA s117

		appointment for office holder.			117 is not provided)		
~~B7.2.2 and B7.2.3~~ - Fixed term (backfill or specific project – as prescribed under the FW Act) NOTE – Fixed term contracts which are in breach of the FW Act are to operate as per arrangements for continuing, contingent to member term employees (as above)	Early Termination of Contract	~~B7.1~~ Current member death or early cessation of appointment for office holder.	No.	~~Declined offer of other employment of a similar nature (B7.2.7)/ Public Sector Secondment~~ B7.2.3 An employee who is engaged for a fixed period, to fill a vacancy caused by a staff member being absent on leave. B7.2.4 An employee who is engaged to undertake a specified project, where the project has been completed.	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act 117 is not provided)	Notice applies	Rate of pay calculation to apply per the FWA s117
	Termination at contract end date~~e~~	Termination at contract end date ~~B7.1 Cessation of appointment for relevant office~~		Nil	Nil	Nil	N/A

Commented [JS2]: TBC.

		~~holder/End of term.~~					
	Termination of Secondment Arrangement	~~B7.2.2~~ End date of secondment arrangement, where employee has a right to return to secure employment in the public sector.	No.	B7.2.2 Where employee has a right to return to secure employment in the public sector. Subject to terms of PSMA	Nil	Nil	N/A
~~B7.2.6 –~~ Casual Employee	End casual employment	Nil	No.	B7.2.6 – Casual Employee~~Nil~~	Nil	Nil	Nil

I was hoping to check with you on the termination types I have highlighted in green to see if these are actually relevant in this scenario, and if I have applied these correctly. I also need to check the FW redundancy entitlement to make sure the LAMS entitlement would be the higher

payment in all scenarios – but I can do that at a later stage, or payroll can confirm ☺. I also think it may be worth providing the notice and redundancy entitlements from the FWA in a table for payroll, so they can build these checks into their estimate calculators for future reference. Happy to talk it through this morning at the meeting.

Employment Arrangements for LAMS Staff.

Abbreviations/definitions:

- FW Act (Fair Work Act 2009)
- LAMS Act (Legislative Assembly (Members' Staff) Act 1989)
- LAMS EA (ACT Legislative Assembly Members Staff Enterprise Agreement 2023-2026)
- NES (FW Act - National Employment standards)
- Employment Agreement (Schedule 1 - Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 202) and (Schedule 1 - Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2021 (No 1))
- Members – (members and/or office holders under the LAMS Act)
- Severance – compensation that an employee receives when their job contracts end early.
- Genuine redundancy – compensation for early termination where the person's job doesn't need to be done by anyone.
- ATO – Australian Taxation Office

Table 1: Arrangements for on-going employees

On-going employees	
What is an on-going employee?	An on-going employee is an employee who does not have a contract end date. An on-going employee instead have termination conditions that are triggered under the LAMS Act and agreed to in their Employment Agreement. For example, staff employed to advise a member or office-holder in a continuous manner while their employer holds their position in the ACT Legislative Assembly (i.e. employees employed for the assembly term).
How to complete an on-going employment arrangement under the 'Employment Agreement'	Item 3 'Type of Employment' should be completed with either 'full-time' or 'part-time' or 'casual' Item 4 'Period of Agreement' should be completed with '[Commencement Date] until this Agreement is determined under the Act'. *Note: If an end date is required for administrative purposes (including payroll), a date [the end date of the next Assembly] can be provided separately.* ○ Where it is anticipated that inclusion of end dates in HR/Payroll systems will cause confusion it may be necessary for payroll/HR to brief either employee's or Members on the function of these end dates (i.e. end dates which appear in HR/Payroll systems prevent overpayments/reduce liability).
Is the employee entitled to probation?	Yes. Item 5 'Probation' must specify the probationary period.

Commented [JS1]: TBC.

	Note: The probationary period would normally be 6 months or less.
Is a FWC fixed term contract information statement required?	No.
Ending employment	**On-going employment ceases through operation of the LAMS Act unless there has been serious misconduct, or the employee resigns.** - A LAMS Termination Payment may be appropriate when a termination occurs under the LAMS Act. - A termination reason should be provided to payroll when a termination occurs under the LAMS Act. The termination reason will impact the employee's final entitlement to a redundancy payment under the FW Act and how the payment is taxed (for example, tax will change where there is a non-genuine redundancy vs. genuine redundancy). Payroll may also need to check the LAMS Termination Payment against FW Act entitlements to ensure it remains more advantageous. *Termination due to employee's resignation* An employee may terminate their Employment Agreement through resignation at any time. - **Is there a notice period requirement/ agreement:** A minimum of 2 weeks written notice should be given to the employing Member unless a shorter notice period is agreed in writing between parties per clause B6 of the LAMS EA. - **Is the employee entitled to a LAMS Termination Payment:** No - **Is this a redundancy under the FW Act:** No *Termination due to the employee's serious misconduct (summary dismissal)* Employment may be terminated if an employee is found guilty of serious misconduct. - **Is there a notice period requirement/ agreement:** No. Where the employee is found guilty of serious misconduct they may be dismissed without notice or pay in lieu. - **Is the employee entitled to a LAMS Termination Payment:** No - **Is this a redundancy under the FW Act:** No *Termination due to the employee receiving notice from their Member that employment is terminated.* Employment may be terminated by written notice under the LAMS Act section 8 (4) and 13(3). Termination by written notice means the Member writes to the employee with the intention of ending the employee's Employment Agreement prior to the arrangement's anticipated or agreed to end date.

	- **Is there a notice period requirement/ agreement:** Yes. Where termination occurs at the initiative of the Member the employee is entitled to notice, or pay in lieu of notice.
	  ○ **Does B7.1 of the LAMS EA apply:** The termination payment under clause B7 will constitute payment or part payment of compensation in lieu of notice for the purposes of section 117 of the Fair Work Act.
	  ▪ IMPORTANT! If the payment to which the employee is entitled to under clause B7 is less than that to which the employee would be entitled to under section 117 of the Fair Work Act, the employee will be entitled to be paid compensation in lieu of notice equal to the difference between the termination payment in subclause B7.1 and the employee's entitlement under section 117 of the Fair Work Act. This would be an additional payment if this were to occur.
	  ○ **Does B7.2 of the LAMS EA apply:** Where an employee is not entitled to a termination payment under subclause B7.1, the employee may be entitled to notice, or pay in lieu of notice, in accordance with section 117 of the Fair Work Act.
	- **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply.
	- **Is this a redundancy under the FW Act:**
	
	  ○ **No.** If the termination is at the Member's initiative and the employee receives notice and/or payment or pay in lieu of notice as agreed to in their Employment Agreement and outlined under the LAMS EA per clauses B6 and B7, this termination is not a redundancy.
	  Examples-
	  ▪ An employee terminated before the end of the Assembly term (i.e. before the anticipated end of their employment arrangement) for reasons that do not include the employee's job roll no longer being required.
	  ▪ An employee terminated because the Member intends to retire or resign (and there was further employment available).
	  ▪ An employee terminated during probation.
	  ▪ An employee terminated due to misconduct (which is not serious misconduct).
	  ▪ An employee terminated due to underperformance.
	
	  ○ **Possibly.** If the termination is at the Member's initiative and the employee receives notice and/or payment or pay in lieu of notice as agreed to in their Employment Agreement and the reason for termination is the employee's job role is no longer required. If there was no alternative position available or where there would be a substantial change to the position description in their

Employment Agreement making the work substantially different then this may meet redundancy requirements.

Examples-

- An employee terminated due to a Member undertaking a restructure during their relevant term.
- An employee terminated due to changes in the Member's staffing needs (i.e. where a Member changes their position in the Assembly and the individual's Job Roll is no longer required as a result).
- An employee terminated because the Member intends to retire or resign (and they were unable to be offered an alternative employment arrangement).

Automatic termination due to the employee's Member dying.

Employment may be immediately terminated where certain events occur through operation of the LAMS Act. Where the Member under whom the employee is dies, the employee's Employment Agreement will immediately terminate per sections 8(1), or 13(1) of the LAMS Act

- **Is there a notice period requirement/agreement:** Where the event is unexpected or unanticipated, the Member may not be able to reasonably provide notice to the employee prior to employment automatically terminating under the LAMS Act.
  - IMPORTANT! If the payment to which the employee is entitled to under clause B7 is less than that to which the employee would be entitled to under section 117 of the Fair Work Act, the employee will be entitled to be paid compensation in lieu of notice equal to the difference between the termination payment in subclause B7.1 and the employee's entitlement under section 117 of the Fair Work Act. This would be an additional payment if this were to occur.
- **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply.
- **Is this a redundancy under the FW Act:** No. TBC.
  - In the present circumstances, by virtue of the operation of the statutory provisions the termination of the employment does not occur "at the employer's initiative"; rather, the employment terminates by operation of law.
  - **However,** this advice was provided where termination was occurring during an election it is unclear whether this would also apply to a scenario where the Member dies.

Sch 1 1.2

Commented [JS3]: TBC.

	Automatic termination due to the employee's Member ceasing because of a general election. Employment may be immediately terminated where certain events occur through operation of the LAMS Act. Where the Member under whom the employee is employed ceases to be a Member or Office Holder during an election they have ceased to hold office/be a member and the employee's Employment Agreement will immediately terminate per sections 8(1), 8(2), or 13(1) of the LAMS Act. - **Is there a notice period requirement/agreement:** Yes. On-going employment arrangements are anticipated to continue for the length of an Assembly term. As noted in the Employment Agreement it is expected that employment may cease during a general election. The employee is made aware of election dates in advance. - **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply. - **Is this a redundancy under the FW Act:** No. o In circumstances of a change in Ministerial portfolios following the re-election of a Member, and consequent change in staffing requirements for the relevant Member, the ending of a staff member for that reason is not a genuine redundancy. o In the present circumstances, by virtue of the operation of the statutory provisions the termination of the employment does not occur "at the employer's initiative"; rather, the employment terminates by operation of law.
Is the employee entitled to a LAMS Termination payment?	**Yes. An ongoing employee is entitled to a termination payment unless they fall into the employment categories listed in B7.2.** o Sections 8 and 13 of the LAMS Act state that employment terminates automatically where the employing member or office holder ceases to hold office or be a Member. o Clause B7 of the LAMS EA provides a termination payment to employees terminated under the sections 8 and 13 of the LAMS Act. o Clause B7.2 The LAMS termination payment is not payable where the employee: o Is on probation. o Has resigned. o Is immediately re-employed under the LAMS Act. o Is returning to secure work with the public sector

Sch 1 1.2

	○ Is engaged for a fixed period to fill a vacancy caused by a staff member being absent on leave or to undertake a specific project. The LAMS Termination Payment on its own is currently considered a severance payment for tax purposes unless it is paid as part of a redundancy package.
Is the employee entitled to a redundancy payment?	**Yes. A redundancy payment may be provided as per the NES.** - The LAMS EA does not contain any term which supplements the NES entitlement; thus, the entitlement to redundancy pay arising under the NES is the sole source of redundancy entitlement for staff undergoing a redundancy. Section 119 of the Fair Work Act establishes an employee's entitlement to redundancy pay as follows: - Section 119 (1) An employee is entitled to be paid redundancy pay by the employer if the employee's employment is terminated: ○ (a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour ○ (b) because of the insolvency or bankruptcy of the employer. Redundancy pay is the amount prescribed under the NES.
What happens when both FW Act redundancy and LAMS Act termination conditions are met?	**In this scenario the employee is entitled to two payments:** - A termination payment under the LAMS EA. - A redundancy payment under the FW Act. For example, where an on-going employee is terminated, and the termination conditions/reason satisfy section 119 of the FW Act, If an employee is entitled to redundancy pay under s 119 of the FW Act **AND** has been terminated through operation of the LAMS Act, any termination payment made to them under clause B7 of the LAMS EA would be reduced by an amount equal to the redundancy payment made under the FW Act in accordance with clause B7.3. *Note: If this is a redundancy scenario then both payments may be taxed together as part of an employee's final redundancy package.*

	The tax amount will depend on the reason for termination and whether the circumstances surrounding the termination were a genuine or non-genuine redundancy as determined by the ATO.

Table 2: Arrangements for fixed-term employees

LAMS fixed-term employees	
What is a fixed-term employee?	A fixed term employee is an employee who has a contract that terminates at the end of a set period. A fixed-term employee has an Employment Agreement with an agreed to end date. For example, - Staff employed for a project with a set start and end date. - Staff employed to replace an employee on leave.
How to complete the 'Employment Agreement' if an employee is fixed-term?	Item 3 'Type of Employment' should be completed with either 'full-time' or 'part-time' or 'casual' Item 4 'Period of Agreement' should be completed with '[Commencement Date] until [End Date]. *Note: The employer **MUST** follow Fair Work fixed-term time limitations unless an exception applies.*
Is the employee entitled to probation?	No. Item 5 'Probation' must specify that '[a probationary period does not apply].'
Is a FWC fixed term contract information statement required?	Yes. Employers must give every employee engaged on a new fixed term contract a copy of the Fixed Term Contract Information Statement (fairwork.gov.au) when they enter into the contract.
What are fixed-term contract limitations?	Section 333E of the FW Act provides limitations of fixed-term contracts.

Commented [JS5]: TBC. Wording to be confirmed.

	The limitations
	• **Time limitations:** A fixed term contract can't be for longer than 2 years. This includes any extensions or renewals.
	• **Renewal limitations:** A fixed term contract can't have an option to:
	  ○ extend or renew the contract so the period of employment lasts for longer than 2 years, or
	  ○ extend or renew the contract more than once.
	Consecutive contract limitations: An employee cannot be employed on a new fixed term contract if:
	  ○ the contract is for mainly the same work as a previous fixed term contract,
	  ○ there isn't a substantial break in the employment relationship between the previous and new contracts, and
	  ○ any of the following apply:
	  ○ the total period of employment for the previous contract and the new fixed term contract is more than 2 years, or
	  ○ the new fixed term contract can be renewed or extended, or
	  ○ the previous fixed term contract was extended, or
	  ○ there was an initial fixed term contract in place (before the previous contract) that:
	  ○ was for mainly the same work, and
	  ○ there was continuity of the employment relationship from the period of time (if any) between the initial contract and the previous contract.

Can an exception be applied?	Section 333F of the FW Act provides exceptions to the limitations on fixed-term contracts that apply under section 333E. Please review Fixed-Term-Contracts-Fair-Work-Exceptions-and-Examples.pdf if you believe an exception applies. *Relevant exceptions that may be relevant (non-exhaustive list):* 1. **Specialised skills for a specific task:** Work only on a specific task that requires the employee's specialised skills. 2. **Training arrangements:** Engaging an employee under a formal training arrangement made under State or Territory law. 3. **High Income employees:** If the employee's guaranteed salary is more than the high income threshold in the year the contract is entered into.

	4. **Temporary circumstances:** Working to replace someone who is temporarily away (i.e. employee's on leave)
Ending employment	A fixed-term employee's employment ends as per their contract end date.
Ending employment before the contract end date.	If a contract is ended prior to the contract end date the employee may be entitled to a Termination Payment and/or Redundancy under the FW Act. - the Employment Agreement is terminated prior to the agreed end date by written notice at the initiative of the Member - *please see relevant section under ongoing employment as the same rules would apply.* - the Employment Agreement is terminated early due to automatic termination when employee's Member retires/resigns/dies - *please see relevant section under ongoing employment as the same rules would apply.*
Is the employee entitled to a LAMS Termination payment?	No, if a fixed-term employee's employment ends as per their contract end date. Maybe, where contract is terminated prior to the agreed end date or by written notice and/or Member retiring/resigning/dying and clause B7.2 of the LAMS EA does not apply – *please see relevant section under ongoing employment.*
Is the employee entitled to redundancy payment?	No, if a fixed-term employee's employment ends as per their contract end date. Maybe, where contract is terminated prior to the agreed end date by written notice and/or Member retiring/resigning/dying and redundancy conditions are met per the FW Act – *please see relevant section under ongoing employment.*
What happens when both redundancy and LAMS Act termination conditions are met?	**In this scenario the employee is entitled to two payments:** - A termination payment under the LAMS EA. - A redundancy payment under the FW Act. For example, where an on-going employee is terminated, and the termination conditions/reason satisfy section 119 of the FW Act,

	If an employee is entitled to redundancy pay under s 119 of the FW Act **AND** has been terminated through operation of the LAMS Act, any termination payment made to them under clause B7 of the LAMS EA would be reduced by an amount equal to the redundancy payment made under the FW Act in accordance with clause B7.3. *Note: If this is a redundancy scenario then both payments may be taxed together as part of an employee's final redundancy package.* *The tax amount will depend on the reason for termination and whether the circumstances surrounding the termination were a genuine or non-genuine redundancy as determined by the ATO.*
What happens when a contract is non-compliant with FW Act fixed-term contract limitations and there is no applicable exception?	If a fixed term employee's employment is in contravention of s 333E the employee will be considered an on-going employee: - OIRWS-IR's current advice when the ACTPS is found non-compliant with the FW Act fixed-term contract rules is that the employee becomes an 'ongoing' temporary employee and will need to be treated similarly to (but not as a) 'permanent' employee for the purposes of the FW Act until such time that they could be officially appointed to a permanent position. - Under the current LAMS Framework this would mean the employee is treated as an 'on-going' employee (see Table 1) without formally being an on-going employee (noting that they may not have employment contract in this scenario) until they can be offered an on-going employment contract with the Member under whom they were previously employed. - If there is no on-going employment available, they would be entitled to notice and redundancy payment under the FW Act. - As their on-going employment is under the FW Act and not the LAMS Act they would not be entitled to a Termination Payment.

Commented [JS6]: TBC. Confirm if they get the termination payment here? Or just a redundancy under the FW Act

Other LAMS Employment arrangements:

Example 1: Employees on leave from the ACTPS with a LAMS Employment contract.

An employee 'on transfer' from the ACTPS should be considered on-going employee unless stated otherwise in their employment contract. For example, if they were the employee is being engaged for a short fixed-period (i.e. for project work) or filling in for a LAMS employee on leave then a fixed-term contract should be issued.

An employee on leave from the ACTPS is not entitled to a termination payment per clause B7 of the LAMS EA. However, should redundancy conditions be met under the FW Act they may be entitled to a redundancy payment.

Commented [JS7]: TBC.

Example 2: Employees deferring their termination entitlement for 3 months after a general election (see Legislative Assembly (Members' Staff) Variable Terms of Employment of Office-holders' Staff 2005 | HTML view and Legislative Assembly (Members' Staff) Variable Terms of Employment of Members' Staff 2005 | HTML view)

Where offered by the Member, an employee has the option to continue employment for up to 3 months following a general election. There should be no break in employment, meaning the employee remains on-going.

Where the employee is 'on-going':

- The arrangement has the effect of deferring the employee's termination under the LAMS Act and preserves their entitlement to the Termination payment. This employment arrangement should remain on-going.
- In this scenario, there should be no update to Item 4 'Period of Agreement' as employment is still ending employment through operation of the LAMS Act. However, there may need to be an adjustment to end dates recorded in payroll and HR systems.

Example 3: Employees with employment 'deemed to continue' during a general election. (see Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment Of Office-holders' Staff Direction 2015 | HTML view and Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Members' Staff Direction 2020 (No 1) | HTML view)

In this scenario, there should be no update to Item 4 'Period of Agreement' as employment is still ending employment through operation of the LAMS Act. However, there may need to be an adjustment to end dates recorded in payroll and HR systems.

Example 4: Casual employees:

The limitations also don't apply to casual employees.

A person is a casual employee if, when they start employment:

- the employment relationship has no firm advance commitment to ongoing work, taking into account a number of factors, and
- they're entitled to a casual loading or specific casual pay rate under an award, registered agreement, or employment contract.

ACT Government
Chief Minister, Treasury and Economic Development

Options paper

Legislative Assembly Members' Staff Termination Payments

Purpose

This paper explores:

- the issues that have resulted in divergent practices between payroll teams across the ACT Government in the management of termination payments for staff of Legislative Assembly Members (LAMS staff);
- practices in other jurisdictions in relation to the termination payments provided to staff of members of Parliament; and
- options for the ACT Public Service (ACTPS) to remedy current LAMS staff impacted by the discrepancies arising in payroll practices.

Problem statement

Termination payments (outlined under clause B7 of the Legislative Assembly Members' Enterprise Agreement 2023-2026 (LAMS EA)) have been calculated and paid differently for executive and non-executive LAMS staff.

In light of this discovery, the Community and Public Sector Union (CPSU) and ACT Government have sought to establish options to resolve this problem centred around the following methodology:

- a termination payment is calculated as at the employee's part-time or full-time status at the termination date; and
- tax on a termination payment is calculated as if it was a redundancy payment.

Termination payments for staff of members of the Legislative Assembly

Based on recent ACT Government Solicitor Office (ACT GSO) legal advice received by OIRWS and separate taxation advice from KPMG received by the OLA, it was determined that the compliant method is in line with the practice undertaken by OLA. In summary:

- Employee's which cease by the operation of the LAMS Act, the LAMS termination payments under clause B7 of the LAMS EA are employment termination payments (ETP payments) and should be taxed as such, unless a redundancy event occurs; and
- there is no prescribed method of applying a proportionate basis where the employee has worked part-time hours during the period of service;

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- therefore, the calculation is made as at the employee's part-time or full-time status at the termination date.

As a result, the first part of the solution sought by the CPSU and Government can be met; however, the second part cannot. The advice received specifies that a termination payment is generally not a redundancy payment where the termination occurs in accordance with the LAM Act and therefore ETP tax rules per the *Income Tax Assessment Act 1997* apply, unless a redundancy event occurs.

Past ACTPS practice

Staff employed under the LAMS EA have their entitlements and pay administered by two HR areas/payroll teams:

- the Office of the Legislative Assembly (OLA) Payroll team is responsible for the payment of non-executive members of staff; and
- the Office of Industrial Relations and Workforce Strategy (OIRWS) Shared Services Payroll teams which is responsible for the payment of executive staff.

When Shared Services and OLA implement new entitlements, corresponding payroll rules and procedures are created and applied by both payroll teams' staff. However, in this instance, separate payroll teams applied different administrative practice with reference to payment types similar to the termination payment, resulting in diverging payment processing. Specifically:

- Shared Services Payroll applied processes already set up to handle broader ACTPS payee redundancy payments
- OLA Payroll set processes for the payment treating it as a termination payment and sought further legal advice in 2012 where there was uncertainty.

Unfortunately, as there have been no significant changes to the LAMS EA termination payment clauses since 2007, there has been no cause to review existing pay processing practices which has resulted in the inconsistencies in payroll practices remaining unrecognised until they were raised by the CPSU.

A subsequent investigation has revealed that the following divergent methods were applied by the payroll teams in the application of termination payments:

Shared Services Payroll

- A termination payment is calculated on a proportionate basis where the employee has worked part-time hours during the period of service.
- Tax on the termination payment is calculated as if it was a redundancy payment, as per section B7 of the LAMS EA and section 119 of the *Fair Work Act 2009* (FWA) and a blanket rule was applied regardless of the event for termination.
- This method is heavily based on the redundancy/severance payment method which applies for rest of the ACTPS.

OLA Payroll

- A termination payment is calculated as at the employee's part-time or full-time status at the termination date.
- OLA monitors any changes of status towards the end of employment to mitigate potential changes for financial benefit
- Tax on termination payment is calculated as an ETP payment and a blanket rule was applied regardless of the event for termination.
- This method is consistent with the *Members of Parliament (Staff) Act 1984* (Cth) (MOPS Act) and is the method the ACTPS LAMS employment framework was derived from.

Cross-jurisdictional practice

OIRWS Public Sector Employment has undertaken a review of the practices from other jurisdictions related to the termination of parliamentary and electorate staff and a summary is as follows:

- Commonwealth – under the Members of Parliament Staff Enterprise Agreement 2020-2023 (MOPS EA), termination payments are treated as an ETP. They also provide employees with a 30% allowance at termination.
- NSW – Staff of Parliamentarians are treated similar to staff under the MOPS EA, where termination payments are treated as an ETP in some circumstances. However, some staff of office holders receive a severance payment which is treated as a redundancy type payment.
- Queensland - Queensland Parliamentary Service electorate staff (excluding those employed under the Parliamentary Service Act 1988) receive a severance entitlement treated as an ETP.
- Victoria – the termination payment is a redundancy type payment and no allowance is provided to individuals. It is possible that the tax treatment in this case is in accordance with a redundancy payment, however it is unclear how the tax component is treated as it is not stated in the relevant enterprise agreement.

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A table summarising the findings is provided at Attachment A.

This analysis reveals that there is no one agreed treatment method for such termination payments It is also evident that employment arrangements of parliamentary staff across jurisdictions varied and usually included both "ongoing" or "fixed term" employment arrangement options. Within the ACTPS LAMS employment framework we only have the "fixed term" employment arrangement type available. The nature of the employment arrangement will impact the way termination payments are treated in various end of employment events which may arise during the course of employment.

Solutions

There are several options available to address the question posed by the CPSU and Government. Each of the options is explored in detail below and a table summarising the options is presented at Attachment B

Option 1: a hearing with the Fair Work Commission

Approach

Under this option, ACT Government and the CPSU may jointly apply for a LAMS EA variation via an F1 Fair Work Commission (FWC) form application in accordance with s217/s218A of the FWA to amend the agreement and enable the termination payment to be treated as a redundancy payment. This approach would seek an urgent hearing on the basis of the ambiguity around the termination payment after agreeing on a set of words to put forward to the Commission to vary the LAMS EA.

Note: This option has been proposed as a solution by the CPSU.

Process

This would require the following steps to be taken:

- Develop a set of proposed changes to the enterprise agreement at clause B7 for the ability for the termination payment to be treated as a redundancy payment where applicable;
- Consult the varied agreement and the F1 application with the unions and submit to the FWC for approval; and
- Prepare a letter to sit alongside the application seeking a joint request for urgent review.

It is estimated this process may take approximately 5 weeks to receive an outcome as follows:

- Paperwork and preparation – 1-2 weeks
- Awaiting FWC approval – unknown. Standard timeframes are 3-4 weeks however this may vary.

Risks and consequences

Risks associated with this option include:

- Where the FWC deems that the application does not meet the requirements of s217/s218A of the FWA, the application may not be approved.
- OIRWS and OLA have received advice that LAMS termination payments should be treated as an ETP payment for tax purposes when they end in accordance with the LAMS Act, unless in the event of a redundancy.. Enterprise Agreements are not able to specify how tax can be applied to employees.
- Changing the termination payment to be treated as a redundancy payment as a blanket rule is not recommended as the termination payment may be paid in both redundancy

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Binder 1 - Part 12, 32

and non redundancy situations and therefore the event circumstances must be considered when determining tax on a termination payment. could create new issues in how the employees are treated as an ongoing employee vs a fixed term contract employee. Both a redundancy payment and/or a termination payment may need to be applied in some circumstances where clause B7.3 of the LAMS EA is applicable. Additionally, employees cease for various reasons and redundancies only apply in certain circumstances, however termination payments may apply in different circumstances which are not considered a redundancy.

- This method steers away from the Commonwealth method which is what the original ACTPS LAMS employment framework is based upon.

Stakeholder questions or issues

- Consultation with staff would cause confusion as non-Executive staff have received correct estimates based on current legal advice.
- This option appears the least time and resource intensive; however, it could pose further issues in the future. It may also confuse the part-time and full-time proportionate advice received – i.e., if it is changed to be treated as a redundancy payment then the service payment should be proportionate as per the calculations for redundancy in other ACTPS agreements.

Option 2: Re-balloting the Legislative Assembly Members' Staff Enterprise Agreement 2023–2026

Approach

Under this option, the LAMS EA would be re-balloted to include a clause similar to the one contained in the Commonwealth Members of Parliament Staff Enterprise Agreement the 2020–2023 (the MOPS EA) which states:

Clause	Terms
63.1	Severance benefits payable under clause 62 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 62 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.*

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If this option were chosen, the process would extend beyond 5 November 2024 and amendments to the LAMS EA would seek to be made retrospective to ensure impacted staff are covered.

Process

This would require the following:

- undertaking an agreement variation process in accordance with s207 of the FWA, where all staff are consulted and offered to be part of the variation discussions;
- drafting of new words for the enterprise agreement would be consulted with unions and relevant bargaining parties and access and ballot processes would be provided to allow employees to vote on the proposed variation; and
- following these stages, an application for approval of agreement would be submitted to the FWC for consideration.

It is estimated that this process may take approximately 3-4 months to receive an outcome from the FWC as follows:

- Paperwork, preparation, consultation, approvals – 4 weeks
- Access and ballot processes – 4 weeks
- FWC approval – standard timeframes are 3-4 weeks, but this can vary.

Risks and consequences

The risks associated with this option include the following:

- Current staff eligible for termination payments may ordinarily opt to be paid these in the next 3-4 weeks. The changes proposed to the LAMS EA are unlikely to occur in time for when the termination payments are due to be paid to staff.
- Calculation of termination payments are required to be paid in accordance with current legal advice received until such time the LAMS EA is varied. The payment cannot be paid retrospectively, and it is not recommended that a clause be inserted to provide retrospectivity as an agreement cannot apply to ceased employees. Additionally, if applied, this will cause over/underpayments where payroll will need to recalculate termination payments.
- The inclusion of the allowance requires a thorough review of the LAMS EA, *Legislative Assembly Members' Staff Act 1989* (LAMS Act) and LAMS instruments which would take approximately 6 months and is not possible within the timeframe noted above.
- If these changes are inserted hastily without appropriate consideration as per the above timeline, there are potential consequences that could see further issues in regard to how the new allowance payment is calculated and treated.

Stakeholder questions or issues

- Varying the current LAMS EA will require engagement of staff through consultation on proposed variations prior to formal approval of any such variation. While difficult to anticipate the nature of specific payee questions that may present, it is possible staff may

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be confused by the more technical nature of this issue for which a variation is sought (again, also acknowledging non-Executive staff have received correct estimates based on current legal advice).

Option 3: a disallowable instrument for an allowance payment

Approach

A new disallowable instrument would be prepared to provide for an allowance payment, similar to the Commonwealth and NSW jurisdictions.

Process

A disallowable instrument together with a brief would be prepared for the Chief Minister's consideration and approval. The instrument would provide an allowance for employees who cease in certain circumstances accordance with the LAMS Act. This would be in alignment with the MOPS EA.

It is estimated this process may take approximately 3-4 weeks to be finalised as follows:

- Paperwork, preparation, consultation – 1-2 weeks.
- Approvals and application – 1-2 weeks.

Risks and consequences

The risks associated with this option include the following:

- No retrospectivity is possible; however, employees could email payroll seeking their termination payments not to be paid until the disallowable instrument is in place as long as they continue to be employed. Where they cease to be employed at the time the instrument comes into effect, they would not be entitled to the allowance payment.
- On rare occasions the legislation register team provide the ability to provide retrospectivity and there may be an exemption that could be sought.

Benefits:

- This approach would be treated separate to the EA termination payment and be revoked when the LAMS EA is updated in future. This means it would have the least amount of impact to any proposed LAMS EA/LAMS Act reviews.
- This method aligns with Commonwealth and NSW methods

Option 4: amendment to the *Legislative Assembly Members' Staff Act 1989*

Approach

The LAMS ACT would be amended to include an allowance as noted in options 2 and 3 and in alignment with the Commonwealth and NSW jurisdictions

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Process
This would require an amendment of the LAMS Act and would take approximately 12 months to complete.

Risks and consequences
The LAMS Act does not contain entitlements and conditions and therefore an allowance is not appropriate for inclusion and would set unnecessary precedence. This option also takes a considerable amount of time to complete and therefore is not the preferred option when there a time limits associated with termination payments being made in the next 2-3 weeks.

Option 5: Act of Grace payment

Approach
The Treasurer would authorise an act of grace payment to affected staff pursuant to section 130 of the *Financial Management Act 1996*.

Process
This would require a brief and approval by the Chief Minister for all affected staff by the person seeking the request.

- The ACT Government's published guidelines based on section 130 provides that the decision-maker may consider whether any of the following give rise to special circumstances:
    - the direct role of the ACT Government in causing an unintended and inequitable result to a person such that it considers it has a moral responsibility to address the circumstances of the individual;
    - ACT legislation or policy though properly applied has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the individual's or organisation's circumstances; and
    - the impact on the individual's or organisation's circumstances is:
        - i. specific to the individual or organisation;
        - ii. outside the parameters of events for which the individual or organisation was responsible or had the capacity to adequately control; but
        - iii. not merely the intended effect of the legislation; and
    - the matter is not covered by legislation or specific policy, but the ACT intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy to the individual or organisation prior to the legislation or policy's commencement.
- An act of grace payment is generally an avenue of last resort and is not used where there are other options available to provide redress. If other avenues exist for a person to receive financial assistance from the ACT Government or elsewhere (such as existing

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legislation or schemes), it is recommended that those avenues be investigated before a request is made for an act of grace payment.

The time to review and action this request would vary however could occur quickly where this method was supported by Government

Risks and consequences

The risks associated with this option include the following:

- It may set precedence for future issues that arise with unions.
- The scope of payment could extend beyond the person intended.
- The cost incurred by the Territory could significantly increase dependant on the request, if there is no cap or calculation method or rules carefully determined as associated with the payment.

Option 6: Damages/settlement deed

Approach

Each LAMS employee who elects to take a termination payment could receive a damages/settlement payment to compensate for incorrect estimates issued by Shared Services Payroll and receive payment of an allowance in line with the MOPS EA.

Process

ACT GSO would create a settlement or damages deed for each employee that elects to take the termination payment. ACT GSO would assess a claim for damages based on the reasonableness test and are bound to comply with the rules as set out in the Legal Services Direction.

This process would occur on a case-by-case basis and be paid by Shared Services Payroll as specified in the deed. Tax is not usually applied on damages/settlement deeds.

Risks and consequences

This option may only be justified for Executive LAMS staff who received incorrect estimates and may not be suitable for non-Executive LAMS employees who received correct estimates.

Stakeholder questions or issues

Effective communications would be critical under this option, as staff will likely have queries regarding eligibility, the process for lodging a claim and transparency with respect to how their claim might be assessed and progressed.

Conclusion

Noting issues explored in this paper, all options come with risk – particularly acknowledging that the ACT Government has no scope to vary established taxation law with respect to ETPs and redundancy payment types.

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Option 6 may present the least risk and future impact of all options explored followed, by Option 3. Both of these options would apply current legal and tax advice received while offering payments of compensation. It is preferable and advisable to apply and remain consistent with current legal advice OIRWS and OLA has received and undertake a thorough and considered review of the LAMS EA/LAMS Act and instruments to make relevant changes in future.

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Attachment A – Cross-jurisdictional practices

<table>
<tr><th>Instruments:</th><th>Termination Clauses under legislation</th><th>Termination under applicable Enterprise Agreements/Determinations</th></tr>
<tr>
<td>Members of Parliament (Staff) Act 1984

MOPS Enterprise Agreement 2022-23 - Aug 2023.pdf (finance.gov.au)</td>
<td>Part III—Employment arrangements

14 Automatic termination of employment
(1) A person's employment under this Act terminates if an event specified in the table occurs and the person is the kind of employee specified for the event.

Events that terminate employment
<table><tr><th>Item</th><th>Event</th><th>Kind of employees whose employment terminates</th></tr><tr><td>1</td><td>The employing individual dies</td><td>Electorate employees and personal employees</td></tr><tr><td>2</td><td>The employing individual ceases to be a parliamentarian</td><td>Electorate employees and personal employees</td></tr><tr><td>3</td><td>The employing individual ceases to hold a relevant office and on the same day:
(a) starts to hold another relevant office; or
(b) starts to be covered by a determination made under section 4</td><td>Personal employees</td></tr><tr><td>4</td><td>The employing individual ceases to hold a relevant office and does not do one of the following on the same day:
(a) start to hold another relevant office;
(b) start to be covered by a determination made under section 4</td><td>Electorate employees and personal employees</td></tr><tr><td>5</td><td>The employing individual ceases to be covered by a determination made under section 4 (whether or not the employing individual starts to be covered on the same day by another such determination)</td><td>Personal employees</td></tr></table>
Note 1: The employing individual is the parliamentarian or office-holder who employed the person on behalf of the Commonwealth (see the definition of employing individual in section 3).</td>
<td>Commonwealth methods:
- Staff of parliamentarians and office holders receive a separation benefit and an 30% allowance where the ATO deems the payment is not a redundancy.

62 Severance benefits
62.1 Severance benefits are payable in accordance with clause 62.2 to ongoing employees whose employment is terminated under Part III or Part IV of the MOP(S) Act other than:

62.2 The severance benefits payable to an employee will be the gross benefit provided by the following table.
<table><tr><th>Length of continuous service</th><th>Gross benefit</th></tr><tr><td>Less than 1 year</td><td>4 weeks' pay</td></tr><tr><td>1 year or more but less than 2 years</td><td>8 weeks' pay</td></tr><tr><td>2 years or more but less than 3 years</td><td>10 weeks' pay</td></tr><tr><td>3 years or more but less than 4 years</td><td>12 weeks' pay</td></tr><tr><td>4 years or more but less than 5 years</td><td>13 weeks' pay</td></tr><tr><td>5 years or more but less than 7 years</td><td>14 weeks' pay</td></tr><tr><td>7 years or more</td><td>2 weeks' pay, plus 2 weeks' pay for every completed year, up to a maximum of 48 weeks' pay.</td></tr></table>
To note:

63 Additional severance benefits
63.1 Severance benefits payable under clause 62 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 62 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.</td>
</tr>
<tr>
<td>Parliamentary Administration Act 2005 (VIC)

Electorate Officers (Victoria) Single Enterprise Agreement 2021. | Fair Work Commission (fwc.gov.au)</td>
<td>Part 4 – Employment of electorate officers</td>
<td>Victorian method:
- Staff of members of parliament receive a termination payment that is a redundancy payment.</td>
</tr>
</table>

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
	31 Termination of employment (1) The employment of a person under this Part— (a) terminates if the member of Parliament whom the person was appointed to assist dies or ceases to be a member; (b) may be terminated in accordance with the agreement under which the person is employed in accordance with this Part. (2) The employment of a person as an electorate officer is deemed not to have terminated on the death or cessation of membership of a member of Parliament if— (a) the term of the employment is extended by the presiding officers, acting jointly, from the date of death or cessation for a specified period; or Authorised by the Chief Parliamentary Counsel 26 Parliamentary Administration Act 2005 No. 20 of 2005 Part 4—Employment of electorate officers (b) within 4 weeks, or any longer period that the presiding officers acting jointly determine, after the date of death or cessation the person is employed under this Part as an electorate officer to assist another member of Parliament. S. 31(2)(b) amended by No. 37/2013 s. 14(b).	**27.5 Compulsory termination** **(a)** Unless section 31(2) of the *Parliamentary Administration Act 2005* (Vic) applies to the Employee, if a Member dies, is defeated in an election, retires or is not pre-selected, or resigns prior to their term expiring or the seat in which the Member holds office is abolished, the employment of any full time and part time Employee attached to that Member shall terminate either: **(i)** four weeks after the date of the death, or resignation of the Member; or **(ii)** four weeks after the date the election poll results are confirmed by the Victorian Electoral Commission. **(b)** In the event of an Employee's services being compulsorily terminated under the circumstances prescribed in **clause 27.5(a)**, a redundancy payment as prescribed in **clause 27.5(f)** shall apply to the Employee. **(f)** The termination payment shall be as follows: ate Officers (Victoria) Single Enterprise Agreement 2021 Page 25 of 76 NOTE: In this scenario the termination payment is called a redundancy payment. However, there are no instruction on how this payment is processed.
Queensland Parliamentary Service employees (excluding those employed under the *Parliamentary Service Act 1988* under section 28, i.e., on contract): • *Queensland Parliamentary Service Award – State 2015* (Award).		**Queensland Method** - Award at clause 9.7 also provides for a severance entitlement for (electorate office staff only) where their service is terminated in certain circumstances, including on the Member's death, resignation, retirement or defeat. It does not specify the taxation treatment. - Contact with Queensland confirmed that they treat termination payments provided to electorate office staff as an ETP (not a genuine redundancy) based on their own ATO advice.

Length of Continuous Service	Termination Pay
Less than one year	Four weeks
One year or more but less than two years	Six weeks
Two years or more but less than three years	Eight weeks
Three years or more but less than four years	Ten weeks
Four years or more but less than five years	Eleven weeks
Five years or more but less than six years	Twelve weeks
Six years or more by less than seven years	Thirteen weeks
Seven years or more	Fourteen weeks plus an additional two weeks for every completed year of service in excess of seven years, up to a maximum of forty-eight weeks.

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
		9.6 Electorate office staff (a) The employment of an employee may be terminated: (i) by way of resignation with the giving of 2 weeks' notice; or (ii) subject to justification to the Clerk, on behalf of the Legislative Assembly, by the Member giving the appropriate notice as set out in the Act, provided that no less than 2 weeks' notice is given; or Page 11 of 72 Queensland Parliamentary Service Award – State 2015 (iii) on the Member's death, resignation, retirement or defeat, upon the return of the Writ for the Election or By-Election of a new Member for the relevant electoral district by giving the appropriate notice as set out in the QES, provided that no less than 2 weeks' notice shall be given. (b) Termination of employment by way of clauses 9.6(a)(ii) or (iii) allows for the application of the provisions of clause 9.7.

<table>
<tr><th>Instruments:</th><th>Termination Clauses under legislation</th><th>Termination under applicable Enterprise Agreements/Determinations</th></tr>
<tr><td></td><td></td><td>
9.7 Electorate office staff - severance entitlement

(a) An employee whose employment is terminated pursuant to clauses 9.6(a)(ii) or (iii), will be entitled to the following severance payments dependant on the length of service at the date of termination:

<table>
<tr><th>Length of Service</th><th>Severance entitlement</th></tr>
<tr><td>Where the employee has less than one year of service at the date of termination</td><td>4 weeks' salary</td></tr>
<tr><td>Where the employee has one year or more but less than 2 years of service at the date of termination</td><td>6 weeks' salary</td></tr>
<tr><td>Where the employee has 2 years or more but less than 3 years of service at the date of termination</td><td>8 weeks' salary</td></tr>
<tr><td>Where the employee has 3 years or more but less than 4 years of service at the date of termination</td><td>10 weeks' salary</td></tr>
<tr><td>Where the employee has 4 years or more but less than 5 years of service at the date of termination</td><td>11 weeks' salary</td></tr>
<tr><td>Where the employee has 5 years or more but less than 7 years of service at the date of termination</td><td>12 weeks' salary</td></tr>
<tr><td>Where the employee has 7 years or more of service at the date of termination</td><td>12 weeks' salary plus an additional 2 weeks' salary for every completed year of service in excess of 6 years, up to a maximum of 52 weeks' salary.</td></tr>
</table>
(b) An employee engaged upon a temporary basis, as a result of a secondment of an electorate office staff member which is of an indeterminate period of time, shall also be entitled to severance payments if their employment is terminated as a result of the termination of the secondment.

(c) Where the employee has at least one year of continuous service, the employee shall be entitled to the payment of accrued long service leave, on the basis of 1.3 weeks for each year of continuous service and a proportionate amount for an incomplete year of service.
</td></tr>
<tr><td>Members of Parliament Staff Act 2013 No 41

Members Staff Conditions of Employment Determination of the POs July 2019.pdf - Google Drive - applicable to the staff of parliamentarians (Part 3 employees under their Act)

- Note: this document was pulled from the Public Service Association archive</td><td>Part 3 Staff of members of Parliament</td><td>NSW Methods
- Staff of parliamentarians receive a separation payment and an 30% allowance where the ATO deems the payment is not a genuine redundancy.
- Staff of office holders receive a severance payment. There is no direction on whether this is treated as genuine redundancy.

Contact with NSW verbally confirmed that they treat some terminations (termination of some office holder staff) as genuine redundancies.
Part 3 employees:</td></tr>
</table>

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
as it does not appear publicly available. Microsoft Word - A5837381 - Attachment A - Conditions of Employment for Political Office Holders' Staff - 20230823 and Ministers-Office-Handbook.pdf applicable to the staff of office holders .	**20 Termination of employment** (1) The employment of a person under this Part by a member of Parliament terminates— (a) in the case of a person employed by a member of Parliament under section 14—if the member ceases to be a member of Parliament, (b) in the case of a person employed by a member of the Legislative Council under section 14—if the member becomes a political offic (c) in the case of a person employed by a member of Parliament in his or her capacity as a special office holder under section 15—if th office holder or a member of Parliament, or (d) on the day appointed for the taking of the poll for the next general election, or (e) if the person resigns by letter addressed to the member of Parliament, or (f) if the person's services are dispensed with by the member of Parliament. (1A) The employment of a person under this Part by a member of Parliament may also be terminated by the relevant Presiding Officer under (2) The relevant Presiding Officer may direct in a particular case that the employment of a person that would otherwise terminate because of terminate. In that case, the person's employment continues for such period as the relevant Presiding Officer directs and the person is tak Officer during that period. (3) A member of Parliament may at any time dispense with the services of a person employed by the member of Parliament under this Part. (4) This section has effect despite anything in the written agreement of employment of the person concerned. **Part 2 Staff of office holders** **8 Termination of employment** (1) The employment of a person under this Part by a political office holder terminates— (a) if the political office holder ceases to hold that office for any reason (even if, after ceasing to hold that office, he or she immediatel (b) on the day appointed for the taking of the poll for the next general election, or (c) if the person resigns by letter addressed to the political office holder, or (d) if the services of the person are dispensed with by the political office holder. (2) The Premier may direct in a particular case that the employment of a person that would otherwise terminate because of the operation of case, the person's employment continues for such period as the Premier directs and the person is taken to be employed by the Premier (3) A political office holder may at any time dispense with the services of a person employed by the office holder under this Part. (4) This section has effect despite anything in the written agreement of employment of the person concerned.	**Separation Payments** Staff who begin employment after the commencement of this Determination, are not excluded from separation payments, and whose employment is terminated other than for an excluded reason will be entitled to the following termination payments: • Notice period of 4 weeks (5 weeks for staff over 45 years of age and more than 5 years' service); plus • Severance benefit of 3 weeks per year of service to a maximum of 39 weeks; plus • An additional payment based on length of service equal to: more than 1 but less than 2 years – 4 weeks D21/51203 24 [redacted] more than 2 but less than 3 years – 6 weeks More than 3 years – 8 weeks For the purposes of this provision, service will include any service recognised by applying the provisions applying to the recognition of prior service for extended leave purposes where there has been no break between the prior and Parliamentary service. **Additional Payments – Member ceasing to hold office** Where a Member ceases to hold office by way of resignation, retirement, illness, death, not recontesting, or not successfully retaining their seat following an election, or for any other reason pursuant to Clause 20 (1) (a)-(d) of the *Members of Parliament Staff Act 2013* the following additional payments may be made to staff who leave their employment as a result (note, exclusions from separation from service payments continue to apply to this provision): • Where the Australian Taxation Office does not consider the separation to be a bona fide redundancy an allowance of up to 30% will be applied to the severance, notice and pro-rata leave loading benefits • Assistance for specific retraining costs can also be provided in line with the guidelines for providing job assistance in place at the time of the cessation. **Part 2 employees:**

Instruments:	Termination Clauses under legislation	Termination under applicable Enterprise Agreements/Determinations
	8 Termination of employment (1) The employment of a person under this part terminates if the office-holder by whom the person was employed dies. (2) The employment of a person under this part terminates if— (a) in the case of a person employed by an office-holder—the office-holder ceases to hold office; or (b) in the case of a person employed by a member of the Assembly in respect of whom a determination by the Chief Minister under section 4 is in force—the member ceases to be a member of the Assembly or the determination is revoked. (3) For subsection (2) (b), a member of the Assembly shall be deemed not to have ceased to be such a member while he or she continues to be entitled to an allowance that was payable to him or her as such a member. (4) An office-holder may at any time, by notice in writing given to a person employed by the office-holder under this part, terminate the person's employment. (5) A person employed by an office-holder under this part may at any time, by notice in writing given to the office-holder, terminate the person's employment. (6) Where the employment of a person under this part is terminated by subsection (1) or (2), the Chief Minister may direct that the employment of the person shall be deemed— (a) not to have been so terminated; and (b) to have continued, or to continue, until a specified date; and, where the Chief Minister so directs, the employment of the person under this part shall for all purposes be deemed to have continued, or to continue, until that date. (7) A direction under subsection (6) is a disallowable instrument. *Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act. Note - Part 3 'staff of members (under section 13)' have a similar termination clause.	B7 Termination Payment **B7.1** Subject to this clause and subclause B7.2, an employee whose employment is terminated by the operation of sections 8(1), 8(2), 8(4), 13(1) and 13(3) of the LAMS Act is entitled to be paid all of the following: **B7.1.1** A sum equal to 4 weeks salary irrespective of length of service. **B7.1.2** A sum equal to 2 weeks salary for each completed year of continuous service. **B7.1.3** A pro-rata payment for additional completed months of service, up to a maximum of 48 weeks' salary. To note: **B7.3** Where an employee is entitled to be paid redundancy pay under section 119 of the Fair Work Act, any termination payment made under subclause B7.1 will be reduced by an amount equal to that redundancy payment.

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Attachment B - Summary of options

	Option One	Option Two	Option Three	Option Four	Option Five	Option Six
Approach	S217/s218A FWA variation and a hearing with the Fair Work Commission	Re-balloting the LAMS EA to include an allowance similar to the MOPS EA	A disallowable instrument providing for an allowance payment	An amendment to the *Legislative and Assembly Members' Staff Act 1989*	An Act of Grace payment would be made to affected employees under section 130 of the *Financial Management Act 1996*	LAMS employees who take a termination payment receive a damages / settlement payment to compensate for the incorrect estimates they were provided
Process	This would require: • defining the ambiguity and the associated issues in the LAMS EA the FWC would be asked to consider; • developing replacement language to be included in the LAMS EA; • consulting with all relevant unions on both the construction of the ambiguity and the proposed replacement language prior to making a submission to the FWC; • completing a form F1 Application to the FWC; and • drafting a letter alongside the F1 Application with a joint ACTPS / ACT Unions request for an urgent review by the FWC.	This would require: • following the processes set out by section 207 of the FWA and providing an opportunity for staff to be involved in the variation discussions; • drafting of new language for the LAMS EA and consultation with unions and bargaining parties • providing access and ballot processes to allow employees to vote on the proposed variation; and • approval by the FWC.	This would require: • drafting a disallowable instrument; and • a brief to the Chief Minister. The payment would be treated separately to the LAMS EA termination payment and would be revoked when the LAMS EA is updated in the future. This process would have the least amount of impact to any proposed LAMS EA/LAMS Act reviews. Further, this method is consistent with Commonwealth and NSW methods.	The LAMS Act would be amended to include an allowance for payment at termination similar to that proposed for option 2 and option 3	This would require: • a brief to the Chief Minister for all affected staff; • the Chief Minister to authorise a payment to each affected member of staff; and • Shared Services Payroll to process the payments.	This would require: • GSO to create a settlement or damages deed for each employee that elects to take the termination payment; • GSO to assess each claim for damages based on the reasonableness test and in line with the Legal Services Directions; and • Shared Services Payroll to make payment to each employee as specified in the deed. No tax is usually applied on damages / settlement deeds.
Time required	This option would take approximately **five weeks** as follows: • preparation of the replacement language and necessary forms and letters: 1-2 **weeks**; and • FWC approval: standard timeframes are **3 – 4 weeks**, but this can vary.	This option would take approximately **three months** as follows: • paperwork, preparation, consultation and approvals: **4 weeks**; • access and ballot processes: **4 weeks**; and • FWC approval: standard timeframes are **3 – 4 weeks**, but this can vary.	This option would take approximately **four weeks** as follows: • paperwork, preparation and consultation: **1-2 weeks**; and • approvals and application: **1-2 weeks**.	This option would take approximately **12 months**, allowing for the usual drafting, consultation, scrutiny and notification processes.	This option would take approximately **four weeks** as follows: • paperwork, preparation and consultation: **1-2 weeks**; and • approvals and application: **1-2 weeks**.	Each deed would be settled on a case-by-case basis. The time required would be dependent on the number of LAMS staff who take a termination payment and complexity of the damages assessment.
Risks	1. The FWC may not agree that the current clause is ambiguous and may not approve the application to amend the LAMS EA. 2. The LAMS EA cannot determine how tax law (i.e., treating a termination payment as an ETP payment) can be applied to employees. 3. Changing the termination payment to be treated as a redundancy payment could create unintended interactions/consequences with other clauses in the LAMS EA. 4. This method is inconsistent with the Commonwealth method on which	1. This change would not be finalised prior to the termination of the employees in question. 2. Until the LAMS EA is varied, termination payments are required to be made based on the current legal advice that has been received. 3. While introducing a retrospectivity clause is possible, it has the potential to cause over/underpayments where payroll will need to recalculate the payments in the future. 4. Without a thorough review of the effect of the changes to the LAMS EA, LAMS Act and LAMS instruments,	1. No retrospectivity is possible; however, employees could email payroll seeking their termination payments not to be paid until the disallowable instrument is in place as long as they continue to be employed. 2. Where they cease to be employed at a time before the instrument comes into effect, they would not be entitled to the allowance payment. 3. On rare occasions the legislation register team provide the ability to provide retrospectivity and there	1. This option would not be finalised prior to the termination of the employees in question. 2. The LAMS Act does not contain entitlements and conditions of employment. Inclusion of an allowance in the LAMS Act would set an unnecessary precedence.	1. An act of grace payment is generally an avenue of last resort and not used where there are other options available to provide redress. 2. An act of grace payment would set a precedent for future issues that arise with unions. 3. The scope of payment could extend beyond the person intended. 4. The cost incurred by the Territory could significantly increase if there is no cap or calculation method or rules.	1. This option may only be justified for executive LAMS staff who received incorrect estimates. 2. This option may not be suitable for non-executive LAMS employees who received correct estimates.

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	Option One	Option Two	Option Three	Option Four	Option Five	Option Six
	the original ACTPS LAMS employment framework was based.	other unintended issues could arise in how the new allowance payment is calculated and treated. This review would require a further **6 months**.	may be an exemption that could be sought. 4. Advice would need to be sought from Assembly Coordination as to the feasibly of retroactively applying this instrument.			

DRAFT

From: "Taylor, Nina" <Nina.Taylor@act.gov.au>
Sent: 28/10/2024 1:22 PM
To: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: RE: LAMS options paper and Employment Arrangements HR/Payroll guidelines

OFFICIAL

Hi Emma,

This option is available in the paper – it is option number 6 in Attachment B and is also further explained in the paper.

I'm still tidying up the language, however it is noted at present. Happy to discuss

Thanks, Nina

From: Matthews, EmmaC
Sent: Monday, October 28, 2024 1:18 PM
To: Taylor, Nina ; Mirzabegian, Sanaz
Subject: RE: LAMS options paper and Employment Arrangements HR/Payroll guidelines

OFFICIAL

Thanks Nina – I just had a look at the attachment b options table. Given the preferred option is the deed of settlement, it would be good to include that in the table.

From: Taylor, Nina <Nina.Taylor@act.gov.au>
Sent: Monday, 28 October 2024 12:58 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>; Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Subject: LAMS options paper and Employment Arrangements HR/Payroll guidelines

OFFICIAL

Hi Emma and Sanaz,

Please see attached the latest versions of the LAMS documents as follows:

- LAMS options paper – LAMS payment advice paper as provided by Brian is attached, however as discussed our team is working on further updating this document today and the latest version is attached noting this is not yet complete
- LAMS Employment Arrangements (on-going _fixed-term HR guide):
  - This document still needs to be QA'd and I would like to run it past Emma R and Tracey before finalizing. This assessment was needed for us to really understand the different options for resolution
- LAMS Employment Arrangements (Termination_notice_redundancy payroll guide)
  - This document is still in progress. We are planning to consult and reformat it, however this was needed for us to really understand the different options for resolution

As discussed, we hope to have the LAMS options paper in better shape later this afternoon, noting that this is based on the understanding in the LAMS employment arrangements documents.

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 28/10/2024 1:45 PM
To: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>
Subject: Re: CM Comments to the LAMS

OFFICIAL

Thank you that's helpful.

Get Outlook for iOS

From: Matthews, EmmaC
Sent: Monday, October 28, 2024 1:15:05 PM
To: Carmody, Lisa ; Mirzabegian, Sanaz
Cc: CMTEDD, DDGOIRWS
Subject: RE: CM Comments to the LAMS

OFFICIAL

We are liaising with Calvin Robinson, Executive Branch Manager, Finance Services because he is responsible for the provision of tax advice as it relates to employee payments.

Typically, the process is done via a request under a pre-existing arrangement between the Territory and KPMG and takes approximately 3-6 months to ensure the appropriate question is asked of the Australian Taxation Office and to allow time for the ATO to provide that advice.

Sch 1 s 1.2

From: Carmody, Lisa
Sent: Monday, 28 October 2024 12:57 PM
To: Matthews, EmmaC ; Mirzabegian, Sanaz
Cc: CMTEDD, DDGOIRWS
Subject: RE: CM Comments to the LAMS

OFFICIAL

Could we add to that that KPMG arranged this for OLA and the outcome may not be different (or words to that effect from a read of what KPMG have actually said in relation to the determination)? I think Martin had a discussion with KPMG too.

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: Sch 2.2(a)(ii) Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

Duplicate

Duplicate

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 28/10/2024 1:51 PM
To: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>
Cc: "Kalleske, Sarah" <Sarah.Kalleske@act.gov.au>; "Power, Leanne" <Leanne.Power@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "CMTEDD, DDGOIRWS" <DDGOIRWS@act.gov.au>
Subject: ATO determination

OFFICIAL

Hi Kathy in case this is helpful in your discussion at 2.30 some additional info in relation to the process a determination from the ATO is below.

Sanaz and Emma (copied) are in the office if you need a quick discussion on any of this. I am about to pop out for an hour to an appointment but happy to take a call of course.

Thanks,
Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: [redacted] | Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

Duplicate

From: "Taylor, Nina" <Nina.Taylor@act.gov.au>
Sent: 28/10/2024 3:36 PM
To: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: RE: LAMS options paper and Employment Arrangements HR/Payroll guidelines
Attachments: LAMS Termination Payments advice NT V2.docx

OFFICIAL

Hi Emma and Sanaz,

Please see attached with additional updates as discussed. I will set up a time for us to meet shortly.

Thanks, Nina

Duplicate

Solutions

There are several options available to address the question posed by the CPSU and Government. Each of the options is explored in detail below and a table summarising the options is presented at Attachment B

Option 1: a hearing with the Fair Work Commission

Approach

Under this option, ACT Government and the CPSU may jointly apply for a LAMS EA variation via an F1 Fair Work Commission (FWC) form application in accordance with s217/s218A of the FWA to amend the agreement. This approach would seek an urgent hearing on the basis of addressing an ambiguity of the agreement.

Note: This option has been proposed as a solution by the CPSU.

Process

This would require the following steps to be taken:

- Develop a set of proposed changes to the enterprise agreement at clause B7 for the ability for the termination payment to be treated as a redundancy payment where applicable;
- Consult the varied agreement and the F1 application with the unions and submit to the FWC for approval; and
- Prepare a letter to sit alongside the application seeking a joint request for urgent review.

Note: under this variation process, employees are not required to be consulted or vote on the variation if it is based on an ambiguity or error.

It is estimated this process may take approximately 5 weeks to receive an outcome as follows:

- Paperwork and preparation – 1-2 weeks
- Awaiting FWC approval – unknown. Standard timeframes are 3-4 weeks however this may vary.

Risks and consequences

Risks associated with this option include:

- Varying the LAMS EA at clause B7 in isolation is unlikely to alter the way a Termination payment is treated for taxation purposes. This is because the LAMS Act provides the circumstances for when the termination payment is due and tax rules are applied depending on the relevant circumstances.
- The legal advice does not indicate that there was any ambiguity in the circumstances which would warrant a Termination payment and how they should be treated for tax purposes.

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- Where the FWC deems that the application does not meet the requirements of s217/s218A of the FWA, the application may not be approved.
- OIRWS and OLA have received advice that LAMS termination payments should be treated as an ETP severance payment for tax purposes when they end in accordance with the LAMS Act, unless in the event of a redundancy.. Enterprise Agreements are not able to specify how tax can be applied to employees.
- The changes proposed to the LAMS EA are unlikely to occur in time for when the termination payments are due to be paid to staff (note end of employment will be 20 November 2024).
- . The original ACTPS LAMS employment framework is based upon the Commonwealth method. This method would steer away from the Commonwealth method and a review of the LAMS employment framework would be required to update all other relevant provisions.

Stakeholder questions or issues

- Consultation with staff would be required in order to vary the agreement. This may cause confusion as non-Executive staff have received correct estimates based on current legal advice.
- This option appears the least time and resource intensive; however, it could pose further issues in the future. It may also confuse the part-time and full-time proportionate advice received – i.e., if it is changed to be treated as a redundancy payment then the service payment should be proportionate as per the calculations for redundancy in other ACTPS agreements.

Option 2: Re-balloting the Legislative Assembly Members' Staff Enterprise Agreement 2023–2026

Approach

Under this option, the LAMS EA would be re-balloted to include a clause similar to the one contained in the Commonwealth Members of Parliament Staff Enterprise Agreement the 2020–2023 (the MOPS EA) which states:

Clause	Terms
63.1	Severance benefits payable under clause 62 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 62 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.*

Note: this option was proposed by the CPSU.

Process

This would require the following:

- A variation of the LAMS EA in accordance with s207 of the FWA, where all staff are consulted and offered to be part of the variation process;
- drafting of new words for the enterprise agreement would be consulted with unions and relevant bargaining parties and access and ballot processes would be provided to allow employees to vote on the proposed variation; and
- following these stages, an application for approval of the agreement would be submitted to the FWC for consideration.

It is estimated that this process may take approximately 3-4 months to receive an outcome from the FWC as follows:

- Paperwork, preparation, consultation, approvals – 4 weeks
- Access and ballot processes – 4 weeks
- FWC approval – standard timeframes are 3-4 weeks, but this can vary.

Risks and consequences

The risks associated with this option include the following:

- The changes proposed to the LAMS EA are unlikely to occur in time for when the termination payments are due to be paid to staff (note end of employment will be 20 November 2024)
- Calculation of termination payments are required to be paid in accordance with current legal advice received until such time the LAMS EA is varied. The payment cannot be paid retrospectively, and it is not recommended that a clause be inserted to provide retrospectivity as an agreement cannot apply to ceased employees. Additionally, if applied, this will cause over/underpayments where payroll will need to recalculate termination payments.
- The inclusion of the allowance requires a thorough review of the LAMS EA, *Legislative Assembly Members' Staff Act 1989* (LAMS Act) and LAMS instruments which would take approximately 6 – 12 months and is not possible within the timeframe noted above.
- If these changes are inserted hastily without appropriate consideration as per the above timeline, there are potential consequences that could see further issues in regard to how the new allowance payment is calculated and treated.

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Stakeholder questions or issues

- Varying the current LAMS EA will require engagement of staff through consultation on proposed variations prior to formal approval of any such variation. While difficult to anticipate the nature of specific payee questions that may present, it is possible staff may be confused by the more technical nature of this issue for which a variation is sought (again, also acknowledging non-Executive staff have received correct estimates based on current legal advice).

Option 3: a disallowable instrument for an allowance payment

Approach

A new disallowable instrument would be prepared to provide for an allowance payment, similar to the Commonwealth jurisdiction.

Process

A disallowable instrument together with a brief would be prepared for the Chief Minister's consideration and approval. The instrument would provide an allowance for employees who cease in certain circumstances accordance with the LAMS Act. This would be in alignment with the Commonwealth jurisdiction process.

It is estimated this process may take approximately 3-4 weeks to be finalised as follows:

- Paperwork, preparation, consultation – 1-2 weeks.
- Approvals and application – 1-2 weeks.

Risks and consequences

The risks associated with this option include the following:

- No retrospectivity is possible as instruments apply propectively; however, employees could email payroll seeking their termination payments not to be paid until the disallowable instrument is in place as long as they continue to be employed. There is an option where the deeming period could be extended for employees. Where employees cease to be employed before the instrument comes into effect, employees would not be entitled to the allowance payment.
- On rare occasions the legislation register team may provide the ability to provide retrospectivity for an instrument and there may be an exemption that could be sought.

Benefits:

- This approach would be treated separate to the EA termination payment and be revoked when the LAMS EA is updated in future. This means it would have the least amount of impact to any proposed LAMS EA/LAMS Act reviews.
- This method aligns with Commonwealth method

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Option 4: amendment to the *Legislative Assembly Members' Staff Act 1989*

Approach
The LAMS ACT would be amended to include an allowance as noted in options 2 and 3 and in alignment with the Commonwealth jurisdiction

Process
This would require an amendment of the LAMS Act and would take approximately 12 months to complete.

Risks and consequences
The LAMS Act does not contain entitlements and conditions and therefore an allowance is not appropriate for inclusion and would set unnecessary precedence. This option also takes a considerable amount of time to complete and therefore is not the preferred option when there a time limits associated with termination payments being made following the end of employment on 20 November 2024.

Option 5: Act of Grace payment

Approach
The Treasurer may authorise an act of grace payment to affected staff pursuant to section 130 of the *Financial Management Act 1996*.

Process
This would require a brief and approval by the Chief Minister for all affected staff by the person seeking the request.

- The ACT Government's published guidelines based on section 130 provides that the decision-maker may consider whether any of the following give rise to special circumstances:
    - the direct role of the ACT Government in causing an unintended and inequitable result to a person such that it considers it has a moral responsibility to address the circumstances of the individual;
    - ACT legislation or policy though properly applied has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the individual's or organisation's circumstances; and
    - the impact on the individual's or organisation's circumstances is:
        - i. specific to the individual or organisation;
        - ii. outside the parameters of events for which the individual or organisation was responsible or had the capacity to adequately control; but
        - iii. not merely the intended effect of the legislation; and
    - the matter is not covered by legislation or specific policy, but the ACT intends to introduce such legislation or policy, and it is considered desirable in a particular

case to apply the benefits of the relevant policy to the individual or organisation prior to the legislation or policy's commencement.

- An act of grace payment is generally an avenue of last resort and is not used where there are other options available to provide redress. If other avenues exist for a person to receive financial assistance from the ACT Government or elsewhere (such as existing legislation or schemes), it is recommended that those avenues be investigated before a request is made for an act of grace payment.

The time to review and action this request would vary however could occur quickly where this method was supported by Government

Risks and consequences

The risks associated with this option include the following:

- It may set precedence for future issues that arise with unions.
- The scope of payment could extend beyond the person intended as it is normally determined on a case by case basis
- The cost incurred by the Territory could significantly increase dependant on the request, if there is no cap or calculation method or rules carefully determined as associated with the payment.

Option 6: Damages/settlement deed

Approach

Each LAMS employee who elects to take a termination payment could receive a damages/settlement payment to compensate for incorrect estimates issued by Shared Services Payroll and receive compensation similar to that of payment of an allowance Under the Commonwealth jurisdiction, noting that the percentage rate would need to be determined if this arrangement is preferred.

Process

ACT GSO may create a settlement or damages deed for each employee that elects to take the termination payment. ACT GSO would assess a claim for damages based on the reasonableness test and are bound to comply with the rules as set out in the Legal Services Direction.

This process would occur on a case-by-case basis and be paid by Shared Services Payroll as specified in the deed. Tax is not usually applied on damages/settlement deeds.

Risks and consequences

This option may only be justified for Executive LAMS staff who received incorrect estimates and may not be suitable for non-Executive LAMS employees who received correct estimates.

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Stakeholder questions or issues

Effective communications would be critical under this option, as staff will likely have queries regarding eligibility, the process for lodging a claim and transparency with respect to how their claim might be assessed and progressed.

Conclusion

Noting issues explored in this paper, all options come with risk – particularly acknowledging that the ACT Government has no scope to vary established taxation law with respect to ETPs and redundancy payment types.

Option 6 may present the least risk and future impact of all options explored followed by Option 3. Both of these options would apply current legal and tax advice received while offering payments of compensation. It is preferable and advisable to apply and remain consistent with current legal advice OIRWS and OLA has received and undertake a thorough and considered review of the LAMS EA/LAMS Act and instruments to make relevant changes in future.

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Attachment B - Summary of options

	Option One	Option Two	Option Three	Option Four	Option Five	Option Six
Approach	S217/s218A FWA variation and a hearing with the Fair Work Commission	Re-balloting the LAMS EA to include an allowance similar to the MOPS EA	A disallowable instrument providing for an allowance payment	An amendment to the *Legislative and Assembly Members' Staff Act 1989*	An Act of Grace payment may be made to affected employees under section 130 of the *Financial Management Act 1996*	LAMS employees who take a termination payment receive a damages / settlement payment to compensate for the incorrect estimates they were provided
Process	This would require: • defining the ambiguity and the associated issues in the LAMS EA the FWC would be asked to consider; • developing replacement language to be included in the LAMS EA; • consulting with all relevant unions on both the construction of the ambiguity and the proposed replacement language prior to making a submission to the FWC; • completing a form F1 Application to the FWC; and • drafting a letter alongside the F1 Application with a joint ACTPS / ACT Unions request for an urgent review by the FWC.	This would require: • following the processes set out by section 207 of the FWA and providing an opportunity for staff to be involved in the variation discussions; • drafting of new language for the LAMS EA and consultation with unions and bargaining parties • providing access and ballot processes to allow employees to vote on the proposed variation; and • approval by the FWC.	This would require: • drafting a disallowable instrument; and • a brief to the Chief Minister. The payment would be treated separately to the LAMS EA termination payment and would be revoked when the LAMS EA is updated in the future. This process would have the least amount of impact to any proposed LAMS EA/LAMS Act reviews. Further, this method is consistent with the Commonwealth method	The LAMS Act may be amended to include an allowance for payment at termination similar to that proposed for option 2 and option 3	This would require: • a brief to the Chief Minister for all affected staff; • the Chief Minister to authorise a payment to each affected member of staff; and • Shared Services Payroll to process the payments.	This would require: • GSO to create a settlement or damages deed for each employee that elects to take the termination payment; • GSO to assess each claim for damages based on the reasonableness test and in line with the Legal Services Directions; and • Shared Services Payroll to make payment to each employee as specified in the deed. No tax is usually applied on damages / settlement deeds.
Time required	This option would take approximately **five weeks** as follows: • preparation of the replacement language and necessary forms and letters: 1-2 **weeks**; and • FWC approval: standard timeframes are **3 – 4 weeks**, but this can vary. • No consultation or ballot would be required with staff	This option would take approximately **three months** as follows: • paperwork, preparation, consultation and approvals: **4 weeks**; • access and ballot processes: **4 weeks**; and • FWC approval: standard timeframes are **3 – 4 weeks**, but this can vary.	This option would take approximately **four weeks** as follows: • paperwork, preparation and consultation: **1-2 weeks**; and • approvals and application: **1-2 weeks**.	This option would take approximately **12 months**, allowing for the usual drafting, consultation, scrutiny and notification processes.	This option would take approximately **four weeks** as follows: • paperwork, preparation and consultation: **1-2 weeks**; and • approvals and application: **1-2 weeks**.	Each deed would be settled on a case-by-case basis. The time required would be dependent on the number of LAMS staff who take a termination payment and complexity of the damages assessment.
Risks	1. The FWC may not agree that the current clause is ambiguous and may not approve the application to amend the LAMS EA. 2. The LAMS EA cannot determine how tax law (i.e., treating a termination payment as an ETP payment) can be applied to employees. 3. Changing the termination payment to be treated as a redundancy payment could create unintended interactions/consequences with other clauses in the LAMS EA. 4. This option may not be able to change the way the Termination	1. This change would not be finalised prior to the termination of the employees in question. 2. Until the LAMS EA is varied, termination payments are required to be made based on the current legal advice that has been received. 3. While introducing a retrospectivity clause is possible, it has the potential to cause over/underpayments where payroll will need to recalculate the payments in the future. 4. Without a thorough review of the effect of the changes to the LAMS EA, LAMS Act and LAMS instruments,	1. No retrospectivity is possible; however, employees could email payroll seeking their termination payments not to be paid until the disallowable instrument is in place as long as they continue to be employed. 2. Where they cease to be employed at a time before the instrument comes into effect, they would not be entitled to the allowance payment. 3. On rare occasions the legislation register team provide the ability to provide retrospectivity and there	1. This option would not be finalised prior to the termination of the employees in question. 2. The LAMS Act does not contain entitlements and conditions of employment. Inclusion of an allowance in the LAMS Act would set an unnecessary precedence.	1. An act of grace payment is generally an avenue of last resort and not used where there are other options available to provide redress. 2. An act of grace payment would set a precedent for future issues that arise with unions. 3. The scope of payment could extend beyond the person intended. 4. The cost incurred by the Territory could significantly increase if there is no cap or calculation method or rules.	1. This option may only be justified for executive LAMS staff who received incorrect estimates. 2. This option may not be suitable for non-executive LAMS employees who received correct estimates.

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	Option One	Option Two	Option Three	Option Four	Option Five	Option Six
	payment is treated as the circumstances in which the payment is treated for tax rules is derived from the LAMS Act. 5. This method is inconsistent with the Commonwealth method on which the original ACTPS LAMS employment framework was based.	other unintended issues could arise in how the new allowance payment is calculated and treated. This review would require a further **6 - 12 months**.	may be an exemption that could be sought. 4. Advice would need to be sought from Assembly Coordination as to the feasibly of retroactively applying this instrument.			

DRAFT

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 28/10/2024 5:10 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>
Subject: LAMS Termination Payments advice NT V2 (002)
Attachments: LAMS Termination Payments advice NT V2 (002).docx

OFFICIAL

Hi Sanaz

I have added some text in mark-up to reflect our discussion with Lisa C this morning.

When you are happy with this, it can go on to Lisa C. I am separately drafting the brief to the Chief Minister.

Emma

ACT Government
Chief Minister, Treasury and Economic Development

Options paper

Legislative Assembly Members' Staff Termination Payments

Purpose

This paper explores:

- the issues that have resulted in divergent practices between payroll teams across the ACT Government in the management of termination payments for staff of Legislative Assembly Members (LAMS staff);
- practices in other jurisdictions in relation to the termination payments provided to staff of members of Parliament; and
- options for the ACT Public Service (ACTPS) to remedy current LAMS staff impacted by the discrepancies arising in payroll practices.

Problem statement

Termination payments (outlined under clause B7 of the Legislative Assembly Members' Enterprise Agreement 2023-2026 (LAMS EA)) have been calculated and paid differently for executive and non-executive LAMS staff.

In light of this discovery, the Community and Public Sector Union (CPSU) and ACT Government have sought to establish options to address specifically these two issues: ~~resolve this problem centred around the following methodology:~~

- ~~that~~a termination payments are ~~is~~ calculated as at the employee's part-time or full-time status at the termination date; and
- that tax on a termination payment is not being calculated as if it was a redundancy payment.

Termination payments for staff of members of the Legislative Assembly

Based on recent ACT Government Solicitor Office (ACT GSO) legal advice received by OIRWS and separate taxation advice from KPMG received by the OLA, it was determined that the compliant method is in line with the practice undertaken by OLA. In summary:

- Employee's which cease by the operation of the LAMS Act, the LAMS termination payments under clause B7 of the LAMS EA are employment termination payments (ETP payments) and should be taxed as such, unless a redundancy event occurs; and
- there is no prescribed method of applying a proportionate basis where the employee has worked part-time hours during the period of service;

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OLA Payroll

- A termination payment is calculated as at the employee's part-time or full-time status at the termination date.
- OLA monitors any changes of status towards the end of employment to mitigate potential changes for financial benefit
- Tax on termination payment is calculated as an ETP payment and a blanket rule was applied regardless of the event for termination.
- This method is consistent with the *Members of Parliament (Staff) Act 1984* (Cth) (MOPS Act) and is the method the ACTPS LAMS employment framework was derived from.

Review of advice

The Chief Minister has asked whether the Territory should consider seeking a ruling from the Australian Taxation Office to put beyond doubt whether the circumstances that arise at the end of an Assembly term could give rise to a redundancy payment rather than a termination payment.

The Government Solicitor's Office has provided advice

Cross-jurisdictional practice

OIRWS Public Sector Employment has undertaken a review of the practices from other jurisdictions related to the termination of parliamentary and electorate staff and a summary is as follows:

- Commonwealth – under the Members of Parliament Staff Enterprise Agreement 2020-2023 (MOPS EA), termination payments are treated as an ETP. They also provide employees with a 30% allowance at termination.
- NSW – Staff of Parliamentarians are treated similar to staff under the MOPS EA, where termination payments are treated as an ETP in some circumstances. However, some staff of office holders receive a severance payment which is treated as a redundancy type payment.
- Queensland - Queensland Parliamentary Service electorate staff (excluding those employed under the Parliamentary Service Act 1988) receive a severance entitlement treated as an ETP.
- Victoria – the termination payment is a redundancy type payment and no allowance is provided to individuals. It is possible that the tax treatment in this case is in accordance with a redundancy payment, however it is unclear how the tax component is treated as it is not stated in the relevant enterprise agreement.

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A table summarising the findings is provided at Attachment A.

This analysis reveals that there is no one agreed treatment method for such termination payments. It is also evident that employment arrangements of parliamentary staff across jurisdictions varied and usually included both "ongoing" or "fixed term" employment arrangement options. Within the ACTPS LAMS employment framework we only have the "fixed

term" employment arrangement type available. The nature of the employment arrangement will impact the way termination payments are treated in various end of employment events which may arise during the course of employment.

It is important to note that this options paper has a focus on terminations at the end of an Assembly. There are other circumstances under which a termination would give rise to a redundancy payment, for example during the restructure of an office.

Solutions

There are several options available to address the question posed by the CPSU and Government. Each of the options is explored in detail below and a table summarising the options is presented at Attachment B

Option 1: a hearing with the Fair Work Commission

Approach

Under this option, ACT Government and the CPSU may jointly apply for a LAMS EA variation via an F1 Fair Work Commission (FWC) form application in accordance with s217/s218A of the FWA to amend the agreement. This approach would seek an urgent hearing on the basis of addressing an ambiguity of the agreement.

Note: This option has been proposed as a solution by the CPSU.

Process

This would require the following steps to be taken:

- Develop a set of proposed changes to the enterprise agreement at clause B7 for the ability for the termination payment to be treated as a redundancy payment where applicable;
- Consult the varied agreement and the F1 application with the unions and submit to the FWC for approval; and
- Prepare a letter to sit alongside the application seeking a joint request for urgent review.

Note: under this variation process, employees are not required to be consulted or vote on the variation if it is based on an ambiguity or error.

It is estimated this process may take approximately 5 weeks to receive an outcome as follows:

- Paperwork and preparation – 1-2 weeks
- Awaiting FWC approval – unknown. Standard timeframes are 3-4 weeks however this may vary.

Risks and consequences

Risks associated with this option include:

- Varying the LAMS EA at clause B7 in isolation is unlikely to alter the way a Termination payment is treated for taxation purposes. This is because the LAMS Act provides the circumstances for when the termination payment is due and tax rules are applied depending on the relevant circumstances.
- The legal advice does not indicate that there was any ambiguity in the circumstances which would warrant a Termination payment and how they should be treated for tax purposes.
- Where the FWC deems that the application does not meet the requirements of s217/s218A of the FWA, the application may not be approved.
- OIRWS and OLA have received advice that LAMS termination payments should be treated as an ETP severance payment for tax purposes when they end in accordance with the LAMS Act, unless in the event of a redundancy.. Enterprise Agreements are not able to specify how tax can be applied to employees.
- The changes proposed to the LAMS EA are unlikely to occur in time for when the termination payments are due to be paid to staff (note end of employment will be 20 November 2024).
- The original ACTPS LAMS employment framework is based upon the Commonwealth method. This method would steer away from the Commonwealth method and a review of the LAMS employment framework would be required to update all other relevant provisions.

Stakeholder questions or issues

- Consultation with staff would be required in order to vary the agreement. This may cause confusion as non-Executive staff have received correct estimates based on current legal advice.
- This option appears the least time and resource intensive; however, it could pose further issues in the future. It may also confuse the part-time and full-time proportionate advice received – i.e., if it is changed to be treated as a redundancy payment then the service payment should be proportionate as per the calculations for redundancy in other ACTPS agreements.

Option 2: Re-balloting the Legislative Assembly Members' Staff Enterprise Agreement 2023–2026

Approach

Under this option, the LAMS EA would be re-balloted to include a clause similar to the one contained in the Commonwealth Members of Parliament Staff Enterprise Agreement the 2020–2023 (the MOPS EA) which states:

Clause	Terms
63.1	Severance benefits payable under clause 62 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 62 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.*

Note: this option was proposed by the CPSU.

Process

This would require the following:

- A variation of the LAMS EA in accordance with s207 of the FWA, where all staff are consulted and offered to be part of the variation process;
- drafting of new words for the enterprise agreement would be consulted with unions and relevant bargaining parties and access and ballot processes would be provided to allow employees to vote on the proposed variation; and
- following these stages, an application for approval of the agreement would be submitted to the FWC for consideration.

It is estimated that this process may take approximately 3-4 months to receive an outcome from the FWC as follows:

- Paperwork, preparation, consultation, approvals – 4 weeks
- Access and ballot processes – 4 weeks
- FWC approval – standard timeframes are 3-4 weeks, but this can vary.

Risks and consequences

The risks associated with this option include the following:

- The changes proposed to the LAMS EA are unlikely to occur in time for when the termination payments are due to be paid to staff (note end of employment will be 20 November 2024)
- Calculation of termination payments are required to be paid in accordance with current legal advice received until such time the LAMS EA is varied. The payment cannot be paid retrospectively, and it is not recommended that a clause be inserted to provide retrospectivity as an agreement cannot apply to ceased employees. Additionally, if applied, this will cause over/underpayments where payroll will need to recalculate termination payments.

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- The inclusion of the allowance requires a thorough review of the LAMS EA, *Legislative Assembly Members' Staff Act 1989* (LAMS Act) and LAMS instruments which would take approximately 6 – 12 months and is not possible within the timeframe noted above.
- If these changes are inserted hastily without appropriate consideration as per the above timeline, there are potential consequences that could see further issues in regard to how the new allowance payment is calculated and treated.

Stakeholder questions or issues

- Varying the current LAMS EA will require engagement of staff through consultation on proposed variations prior to formal approval of any such variation. While difficult to anticipate the nature of specific payee questions that may present, it is possible staff may be confused by the more technical nature of this issue for which a variation is sought (again, also acknowledging non-Executive staff have received correct estimates based on current legal advice).

Modelling of this scenario

- We have modelled this alternative approach and compared it with how redundancy and termination payments are calculated.
- For those employees in the highest income bracket, a 30% loading as outlined above would increase their termination payments by 15%;
- For those employees in the next income bracket, a 30% loading as outlined above would increase their termination payment by 20%.
- These increases are significantly less than the monies that would be received if those monies were taxed as redundancies. Redundancy payments can be as much as 60% more favourable.

Option 3: a disallowable instrument for an allowance payment

Approach

A new disallowable instrument would be prepared to provide for an allowance payment, similar to the Commonwealth jurisdiction.

Process

A disallowable instrument together with a brief would be prepared for the Chief Minister's consideration and approval. The instrument would provide an allowance for employees who cease in certain circumstances accordance with the LAMS Act. This would be in alignment with the Commonwealth jurisdiction process.

It is estimated this process may take approximately 3-4 weeks to be finalised as follows:

- Paperwork, preparation, consultation – 1-2 weeks.
- Approvals and application – 1-2 weeks.

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Risks and consequences

The risks associated with this option include the following:

- No retrospectivity is possible as instruments apply propectively; however, employees could email payroll seeking their termination payments not to be paid until the disallowable instrument is in place as long as they continue to be employed. There is an option where the deeming period could be extended for employees. Where employees cease to be employed before the instrument comes into effect, employees would not be entitled to the allowance payment.
- On rare occasions the legislation register team may provide the ability to provide retrospectivity for an instrument and there may be an exemption that could be sought.

Benefits:

- This approach would be treated separate to the EA termination payment and be revoked when the LAMS EA is updated in future. This means it would have the least amount of impact to any proposed LAMS EA/LAMS Act reviews.
- This method aligns with Commonwealth method

Option 4: amendment to the *Legislative Assembly Members' Staff Act 1989*

Approach

The LAMS ACT would be amended to include an allowance as noted in options 2 and 3 and in alignment with the Commonwealth jurisdiction

Process

This would require an amendment of the LAMS Act and would take approximately 12 months to complete.

Risks and consequences

The LAMS Act does not contain entitlements and conditions and therefore an allowance is not appropriate for inclusion and would set unnecessary precedence. This option also takes a considerable amount of time to complete and therefore is not the preferred option when there a time limits associated with termination payments being made following the end of employment on 20 November 2024.

Option 5: Act of Grace payment

Approach

The Treasurer may authorise an act of grace payment to affected staff pursuant to section 130 of the *Financial Management Act 1996*.

Process

This would require a brief and approval by the Chief Minister for all affected staff by the person seeking the request.

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- The ACT Government's published guidelines based on section 130 provides that the decision-maker may consider whether any of the following give rise to special circumstances:
    - the direct role of the ACT Government in causing an unintended and inequitable result to a person such that it considers it has a moral responsibility to address the circumstances of the individual;
    - ACT legislation or policy though properly applied has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the individual's or organisation's circumstances; and
    - the impact on the individual's or organisation's circumstances is:
        - i. specific to the individual or organisation;
        - ii. outside the parameters of events for which the individual or organisation was responsible or had the capacity to adequately control; but
        - iii. not merely the intended effect of the legislation; and
    - the matter is not covered by legislation or specific policy, but the ACT intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy to the individual or organisation prior to the legislation or policy's commencement.
- An act of grace payment is generally an avenue of last resort and is not used where there are other options available to provide redress. If other avenues exist for a person to receive financial assistance from the ACT Government or elsewhere (such as existing legislation or schemes), it is recommended that those avenues be investigated before a request is made for an act of grace payment.

The time to review and action this request would vary however could occur quickly where this method was supported by Government

Risks and consequences

The risks associated with this option include the following:

- It may set precedence for future issues that arise with unions.
- The scope of payment could extend beyond the person intended as it is normally determined on a case by case basis
- The cost incurred by the Territory could significantly increase dependant on the request, if there is no cap or calculation method or rules carefully determined as associated with the payment.

Option 6: Damages/settlement deed

Approach

Each LAMS employee who elects to take a termination payment could receive a damages/settlement payment to compensate for incorrect estimates issued by Shared Services

Payroll and receive compensation similar to that of payment of an allowance Under the Commonwealth jurisdiction, noting that the percentage rate would need to be determined if this arrangement is preferred.

Process

ACT GSO may create a settlement or damages deed for each employee that elects to take the termination payment. ACT GSO would assess a claim for damages based on the reasonableness test and are bound to comply with the rules as set out in the Legal Services Direction.

This process would occur on a case-by-case basis and be paid by Shared Services Payroll as specified in the deed. Tax is not usually applied on damages/settlement deeds.

Risks and consequences

This option may only be justified for Executive LAMS staff who received incorrect estimates and may not be suitable for non-Executive LAMS employees who received correct estimates.

Stakeholder questions or issues

Effective communications would be critical under this option, as staff will likely have queries regarding eligibility, the process for lodging a claim and transparency with respect to how their claim might be assessed and progressed.

Conclusion

Noting issues explored in this paper, all options come with risk – particularly acknowledging that the ACT Government has no scope to vary established taxation law with respect to ETPs and redundancy payment types.

Option 6 may present the least risk and future impact of all options explored followed by Option 3. Both of these options would apply current legal and tax advice received while offering payments of compensation. It is preferable and advisable to apply and remain consistent with current legal advice OIRWS and OLA has received and undertake a thorough and considered review of the LAMS EA/LAMS Act and instruments to make relevant changes in future.

DRAFT

From: "Taylor, Nina" <Nina.Taylor@act.gov.au>
Sent: 28/10/2024 10:30 PM
To: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: Re: LAMS Termination Payments advice NT V2 (002)

OFFICIAL

Hi Emma and Sanaz,
I am writing to provide an update on the number of termination payments that OLA and CMTEDD Corporate were expecting to process at the end of assembly term:
OLA - approximately 20 give or take
CMTEDD Corporate - approximately 17 give or take, with 2 confirmed.
Please note these estimates are only based on assumptions from the relevant directorates and may change.
Hope this helps.
Kind regards, Nina

From: Matthews, EmmaC
Sent: Monday, October 28, 2024 5:10 pm
To: Mirzabegian, Sanaz
Cc: CMTEDD, Office of the EGM PSE ; Taylor, Nina
Subject: LAMS Termination Payments advice NT V2 (002)

OFFICIAL

Hi Sanaz
I have added some text in mark-up to reflect our discussion with Lisa C this morning.
When you are happy with this, it can go on to Lisa C. I am separately drafting the brief to the Chief Minister.
Emma

From: "Henry, Tracey" <Tracey.Henry@act.gov.au>
Sent: 30/10/2024 9:26 AM
To: "CMTEDD, LAMS Liaison" <LAMSLiaison@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>
Cc: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: RE: Update - Estimate of payment based on a termination event

OFFICIAL

Hi Emma,

A staff member cannot elect to extend work for the additional 3-month period unless they have been asked to stay on by an office holder/member i.e. there needs to be budget and a position available.

If they are asked to continue for the additional 3 months and they then take a termination payment there is an exclusion period before they can be re-employed by the ACT Executive. The exclusion period is equivalent to the termination payment received. For example, if a staff member receives a termination payment equal to six weeks' pay, the exclusion period for re-engagement is six weeks.

Please let me know if you require any further information.

Kind regards
Tracey

From: Matthews, EmmaC **On Behalf Of** CMTEDD, LAMS Liaison
Sent: Wednesday, 30 October 2024 8:54 AM
To: Taylor, Nina ; Henry, Tracey
Cc: Mirzabegian, Sanaz
Subject: FW: Update - Estimate of payment based on a termination event

OFFICIAL

Hi Nina and Tracey

Is there a standard answer to questions of this kind, both in relation to extending work prior to accessing final monies and whether the payment will give rise to an exclusion period?

Thank you

Emma

From: Dawes, Toni <Toni.Dawes@act.gov.au>
Sent: Monday, 28 October 2024 1:01 PM
To: CMTEDD, LAMS Liaison <LAMSLiaison@act.gov.au>
Subject: RE: Update - Estimate of payment based on a termination event

OFFICIAL

Hi, thanks for sending this through!

While we wait to find out if we have employment, could you please let me know what the option is for extending the period of work before accessing the redundancy/termination payment, and if I cease work after accepting a payment, how long is the period until re-employment is possible?

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 30/10/2024 1:24 PM
To: "Manzoney, Lisa" <Lisa.Manzoney@act.gov.au>
Cc: "Clarke, Elissa" <Elissa.Clarke@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: Example emails - LAMS staff
Attachments: LAMS ETP, LAMS ETP, RE: Important update on pay estimates for final entitlements, LAMS Termination Payments , RE: Email inbox live: Important update on pay estimates for final entitlements, LAMS Termination Payments , RE: Email inbox live: Important update on pay estimates for final entitlements, RE: Important update on pay estimates for final entitlements, RE: Email inbox live: Important update on pay estimates for final entitlements, RE: Important update on pay estimates for final entitlements, Issues with revised pay estimates ** Re: Important update on pay estimates for final entitlements

OFFICIAL: Sensitive - Legal Privilege

Hello Lisa

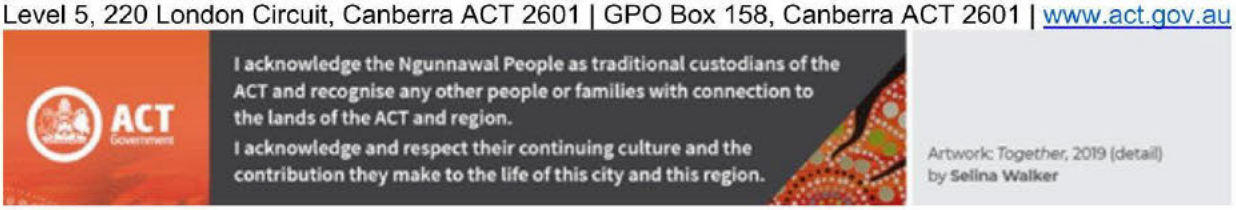
As you may be aware, the Office of Industrial Relations and Workforce Strategy (OIRWS) established a LAMS liaison inbox and invited LAMS staff of office-holders to email the inbox with questions. Some emails provided detail about individual circumstances, although we have not directly requested this.

I have attached some emails for your consideration when forming a view about prospects of success vis a vis deeds of settlement.

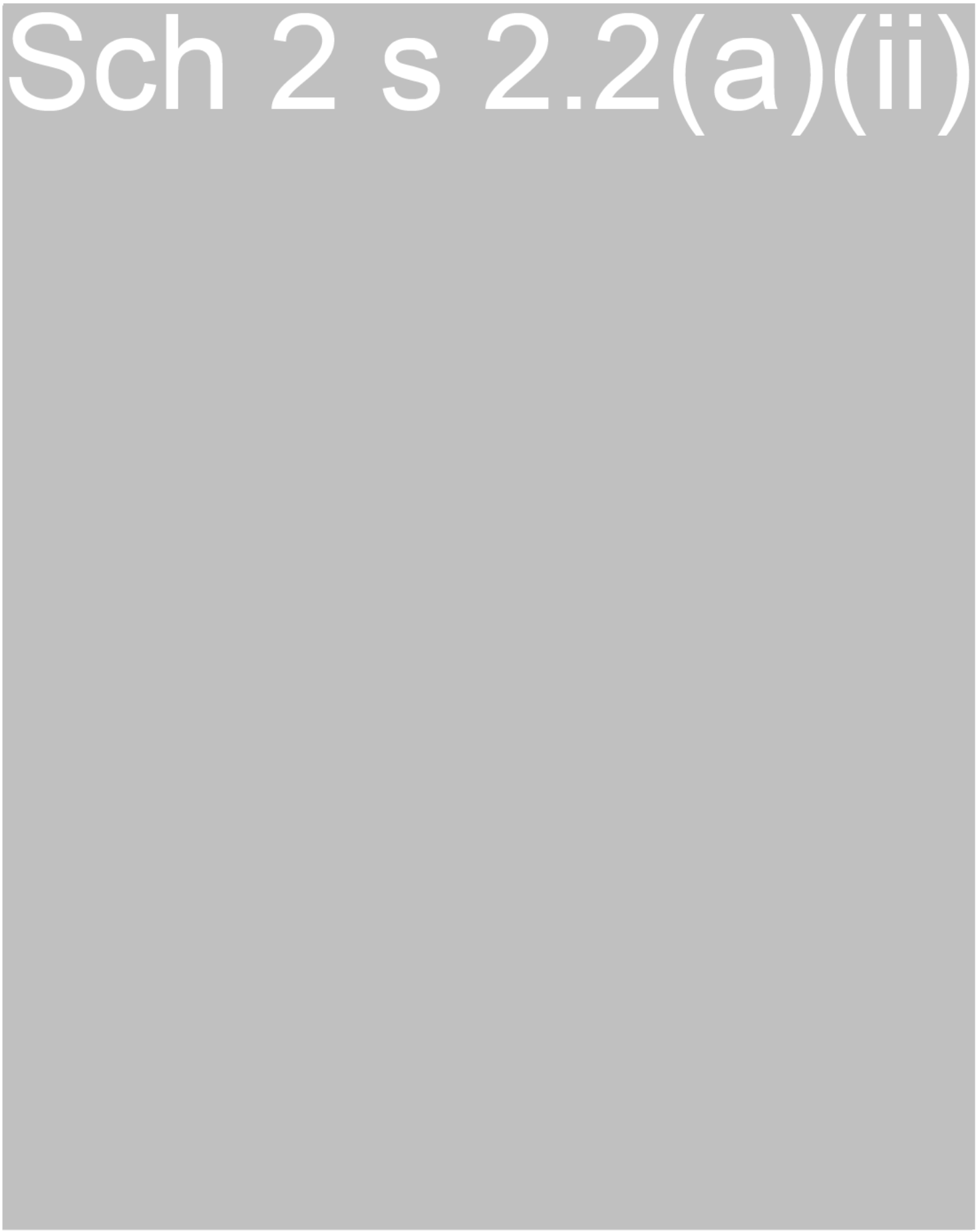
Kind regards

Emma

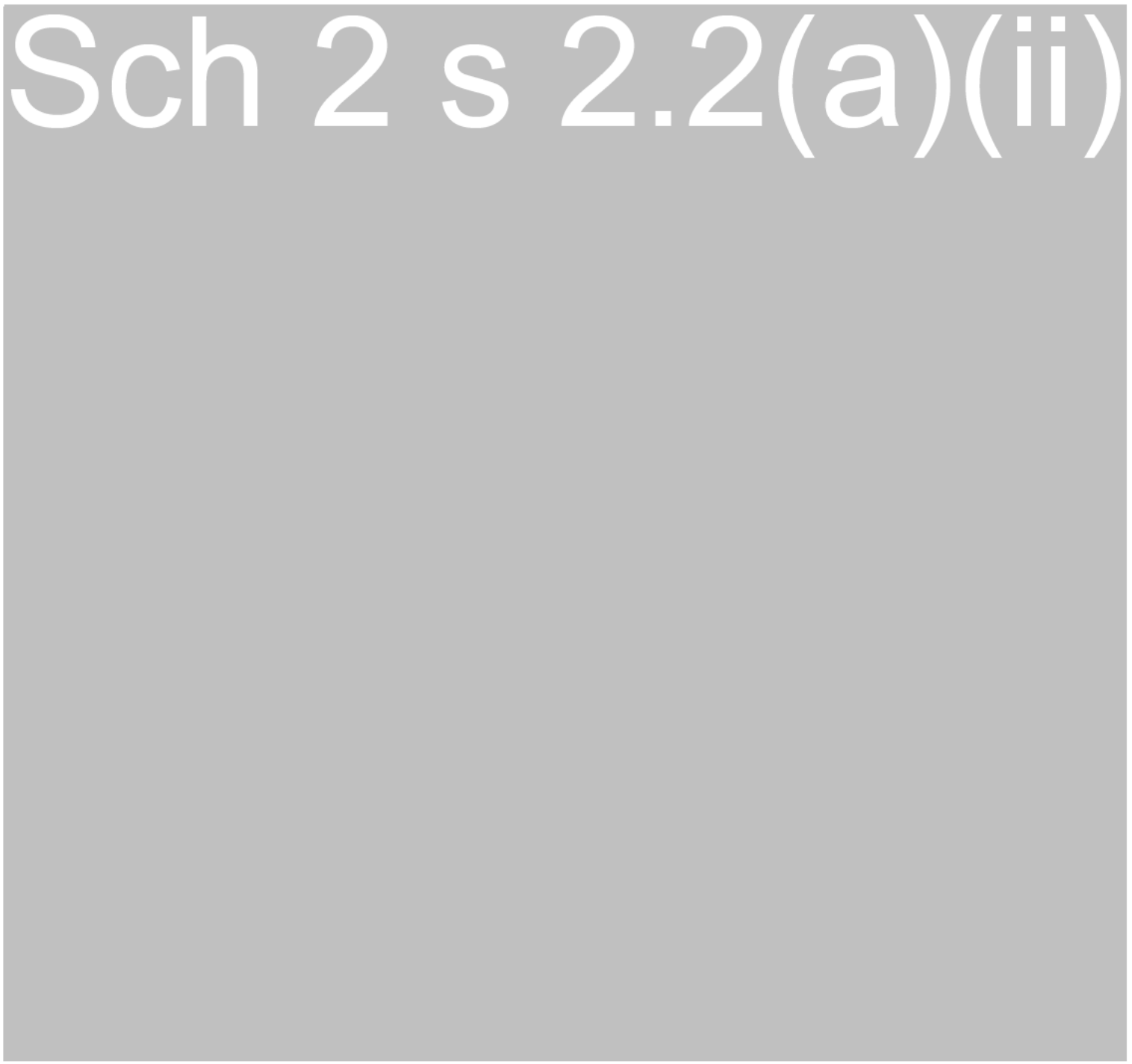
Emma Matthews | Executive Branch Manager, Workforce Governance and Recruitment *(she/her)*
Phone: Sch 2 s 2 1 (B) 2 | Email: EmmaC.Matthews@act.gov.au
Chat with me on Microsoft Teams
Whole-of-Government Public Sector Employment | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



Sch 2 s 2.2(a)(ii)

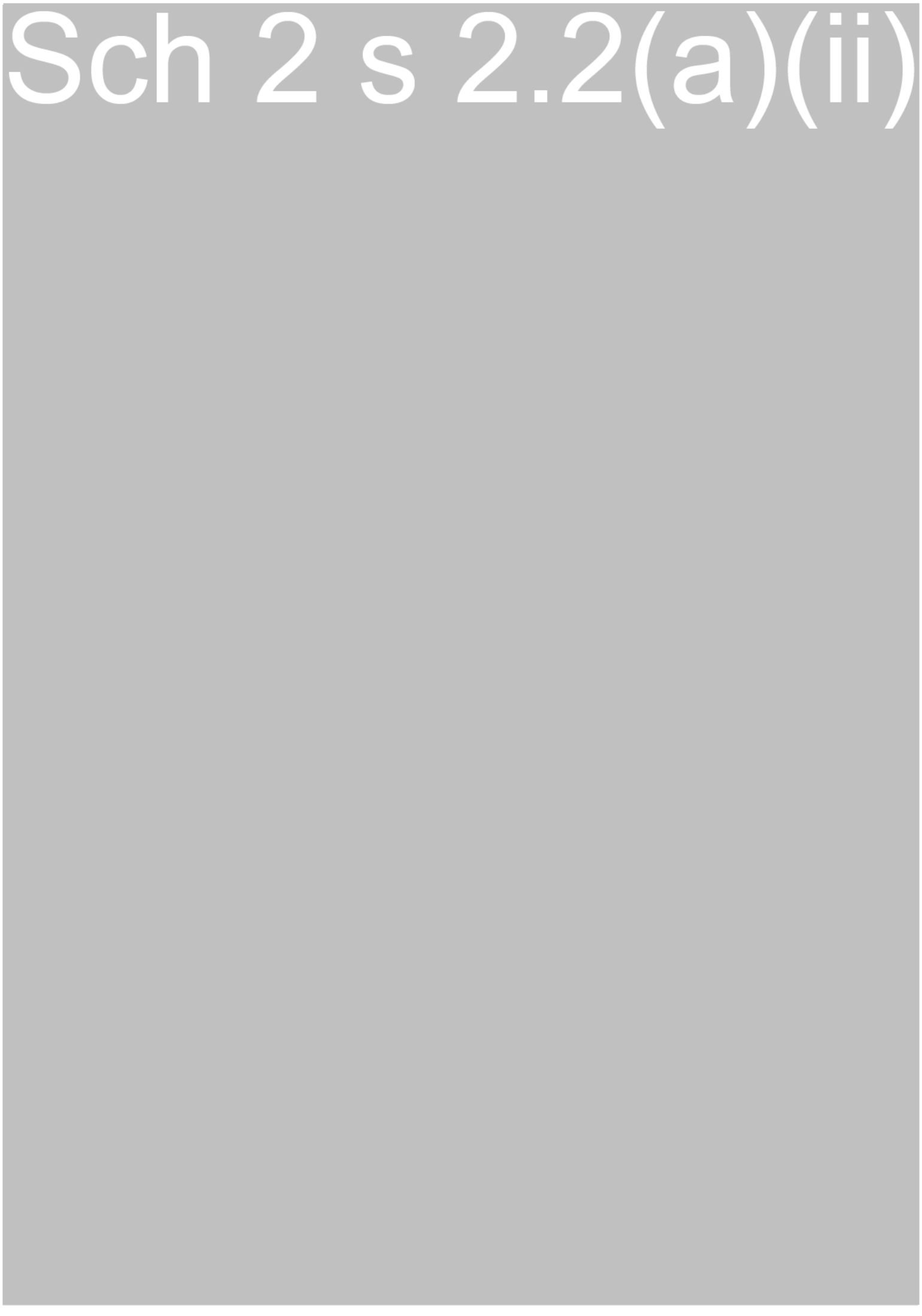

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)

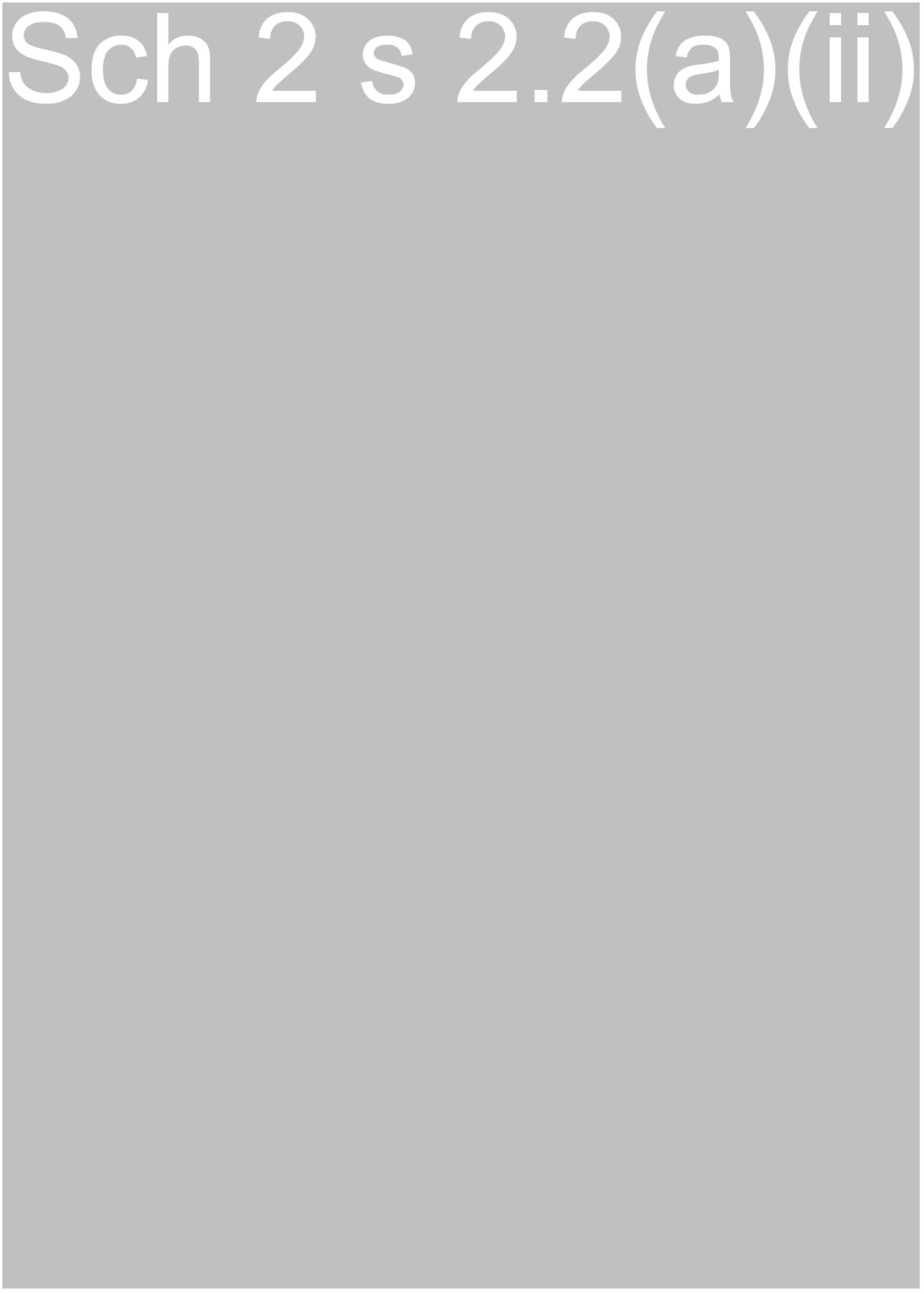
Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

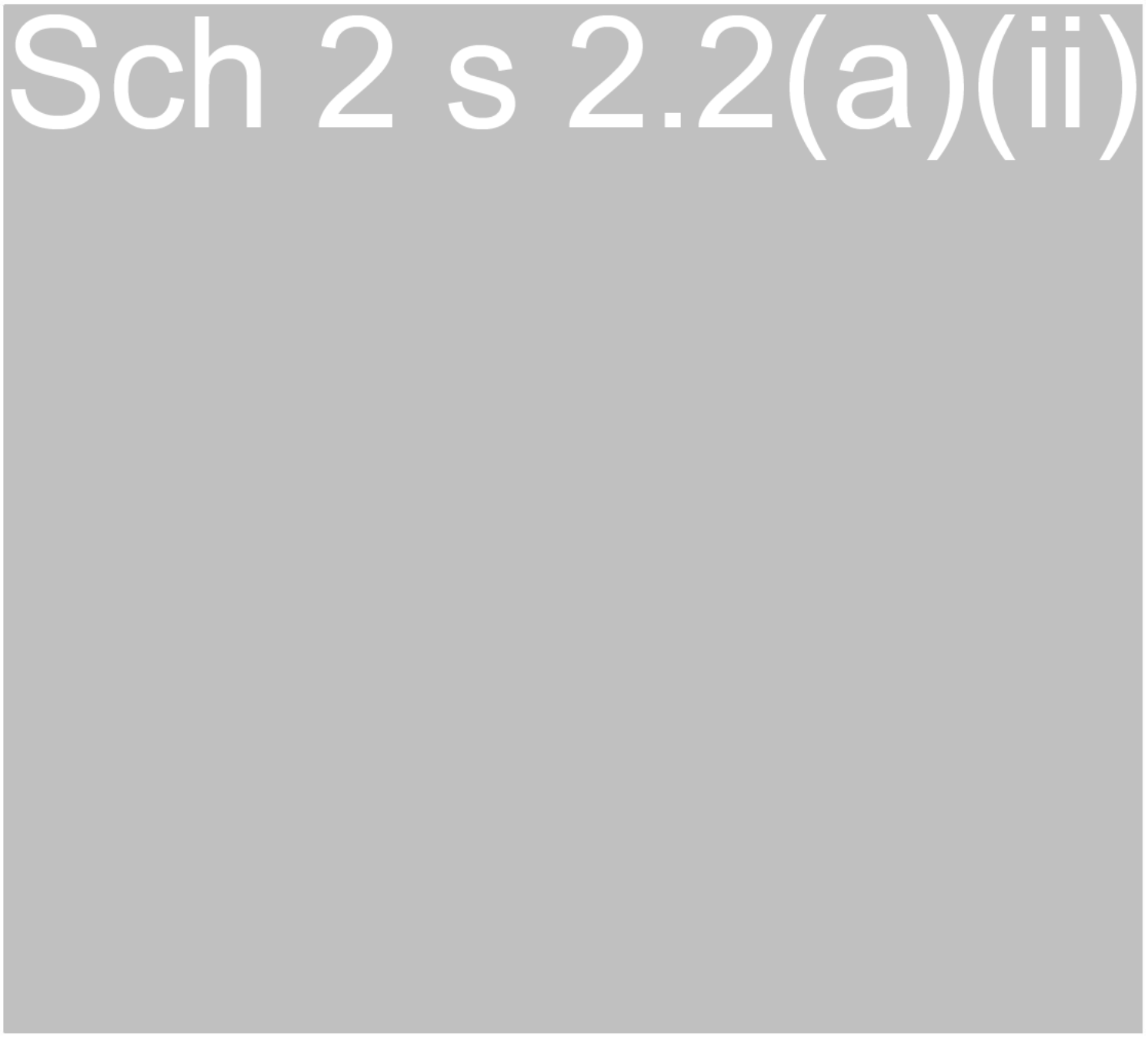

Sch 2 s 2.2(a)(ii)

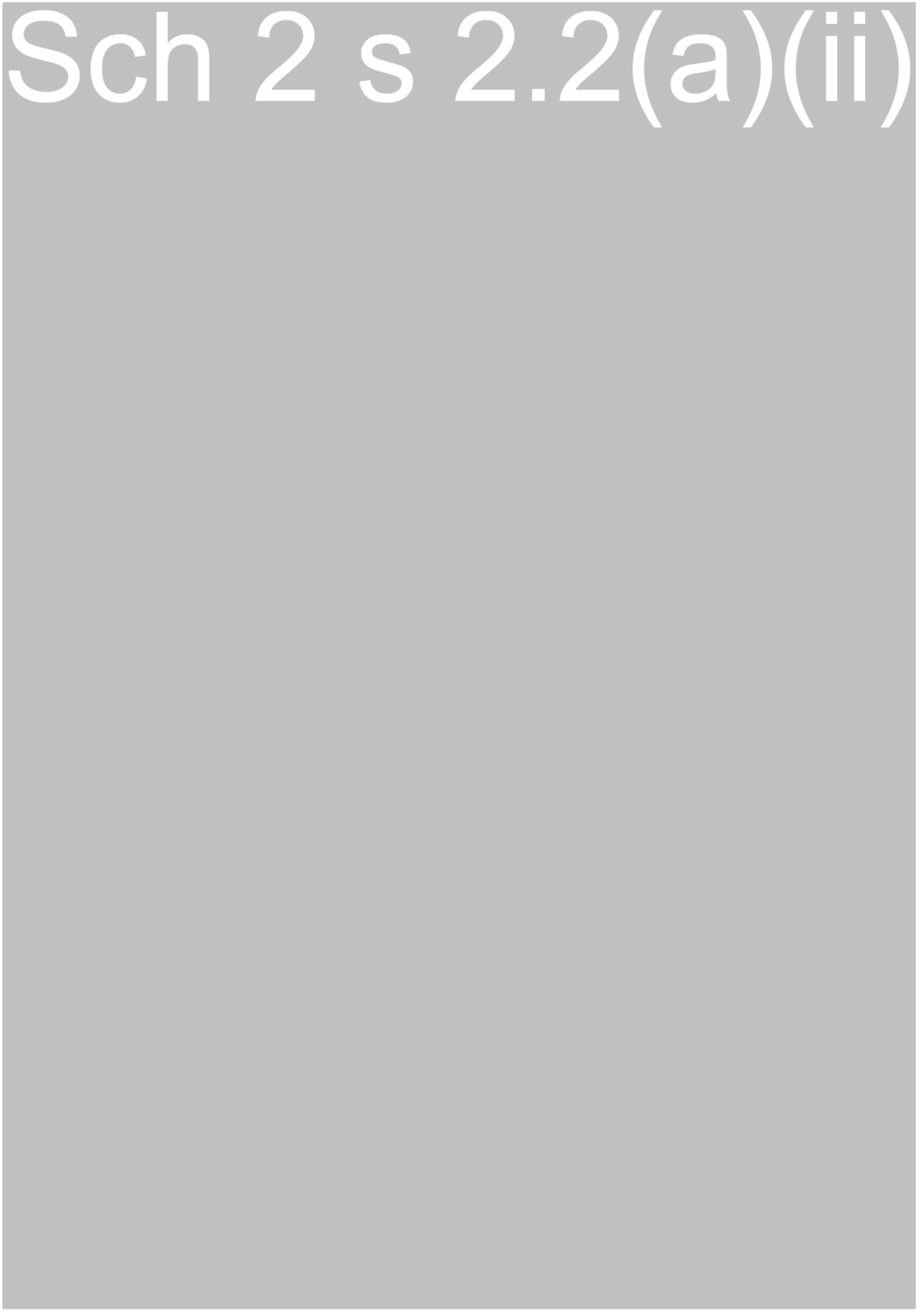
Sch 2 s 2.2(a)(ii)

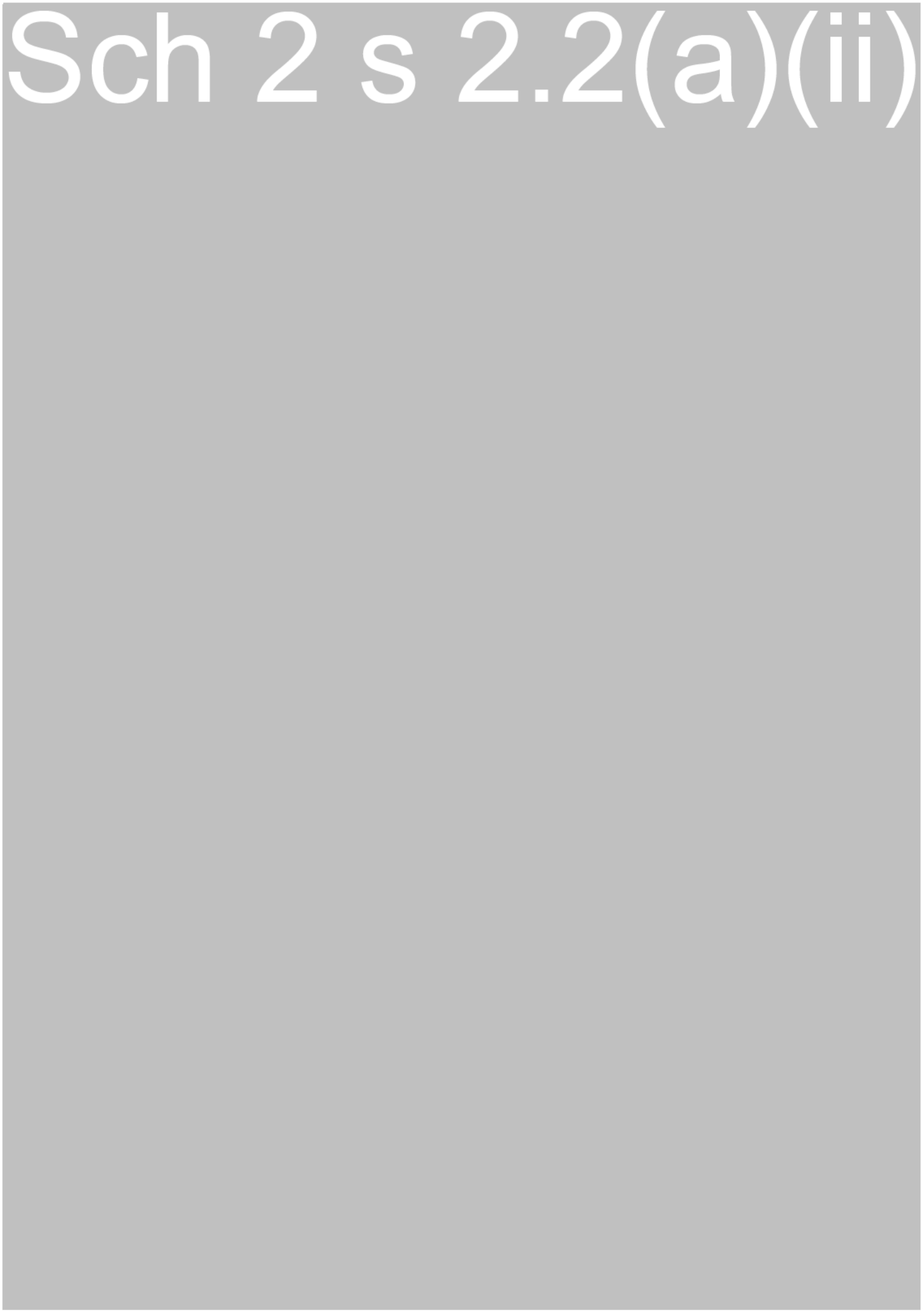
Sch 2 s 2.2(a)(ii)

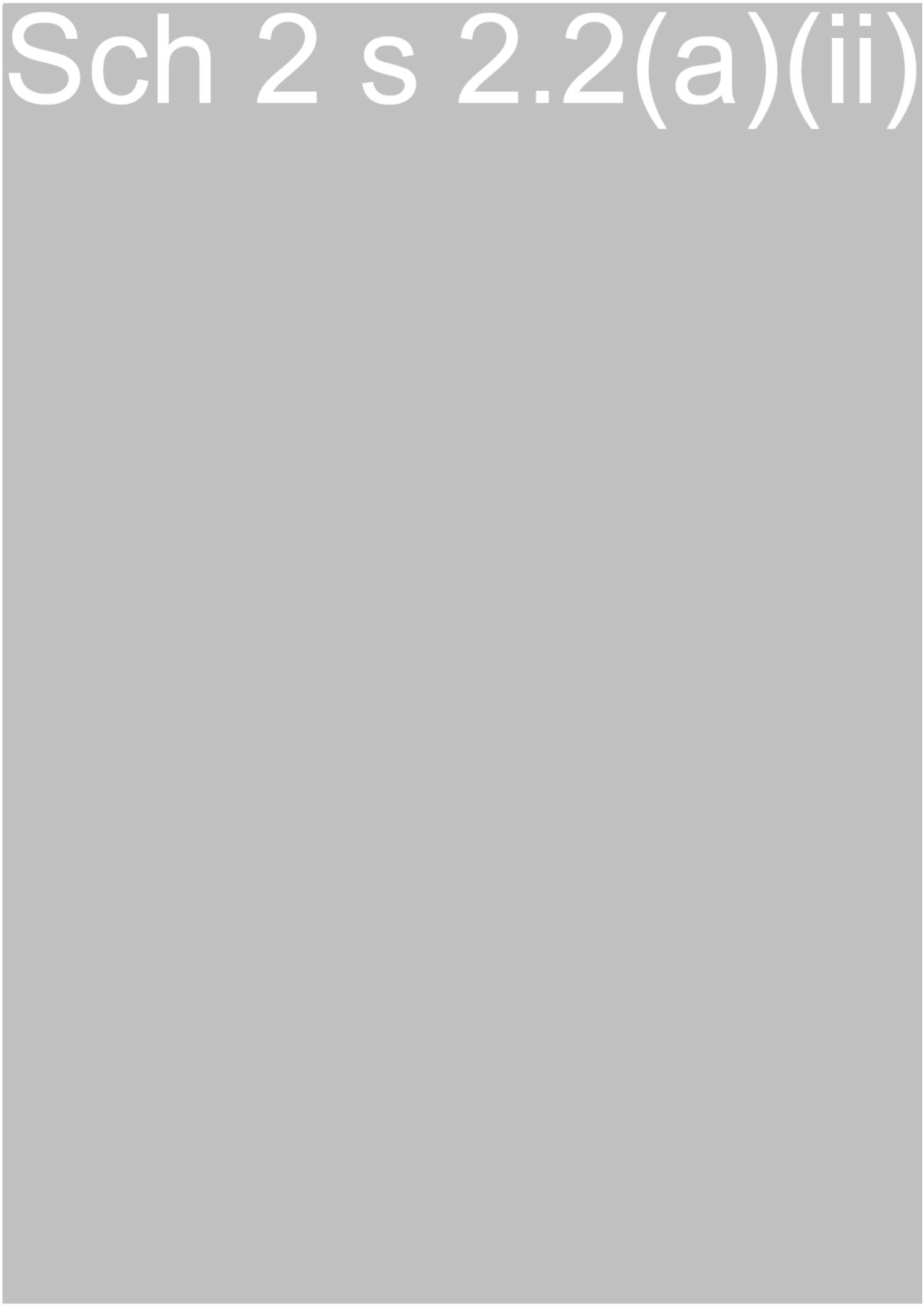

Sch 2 s 2.2(a)(ii)

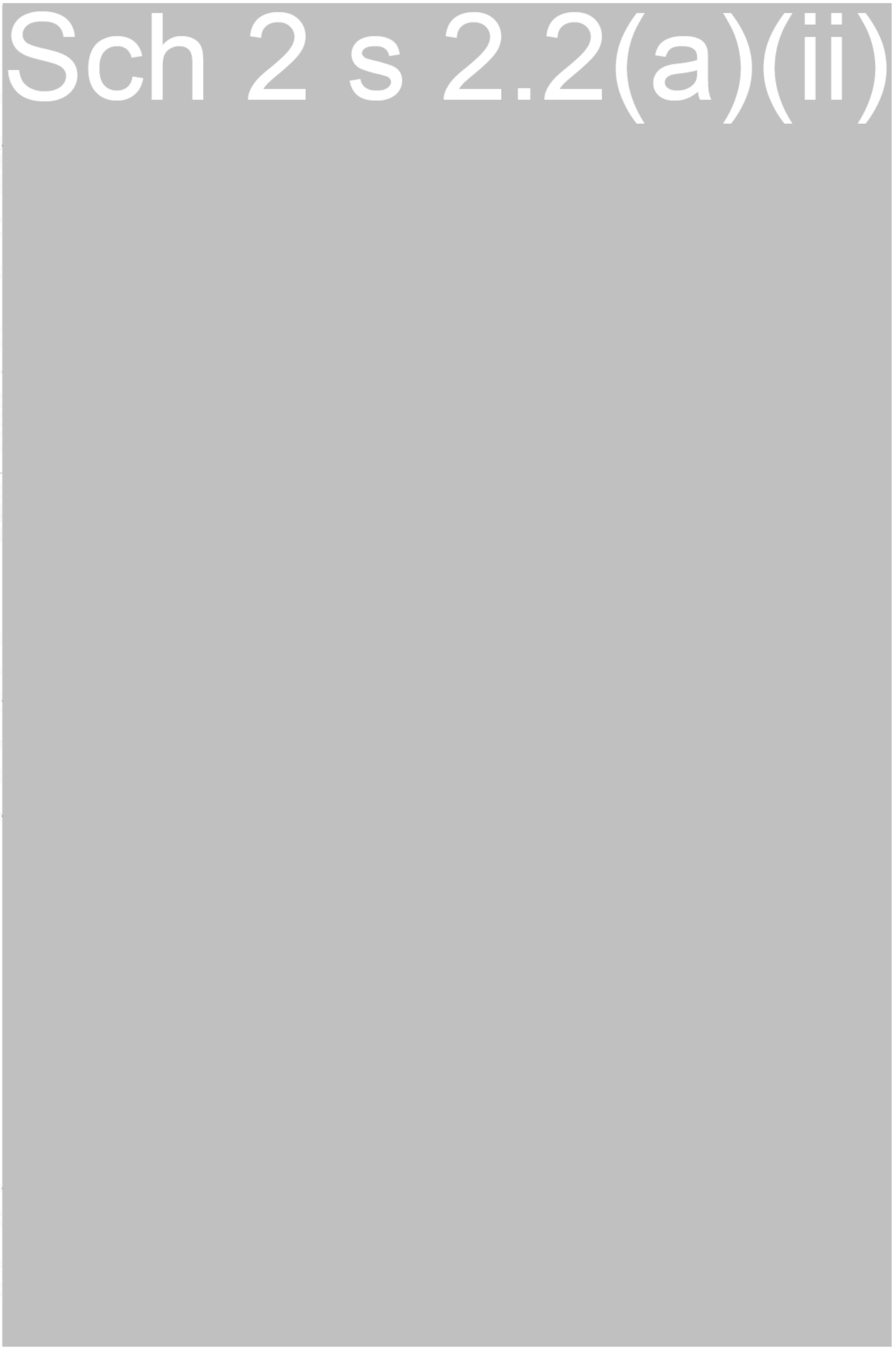
Sch 2 s 2.2(a)(ii)

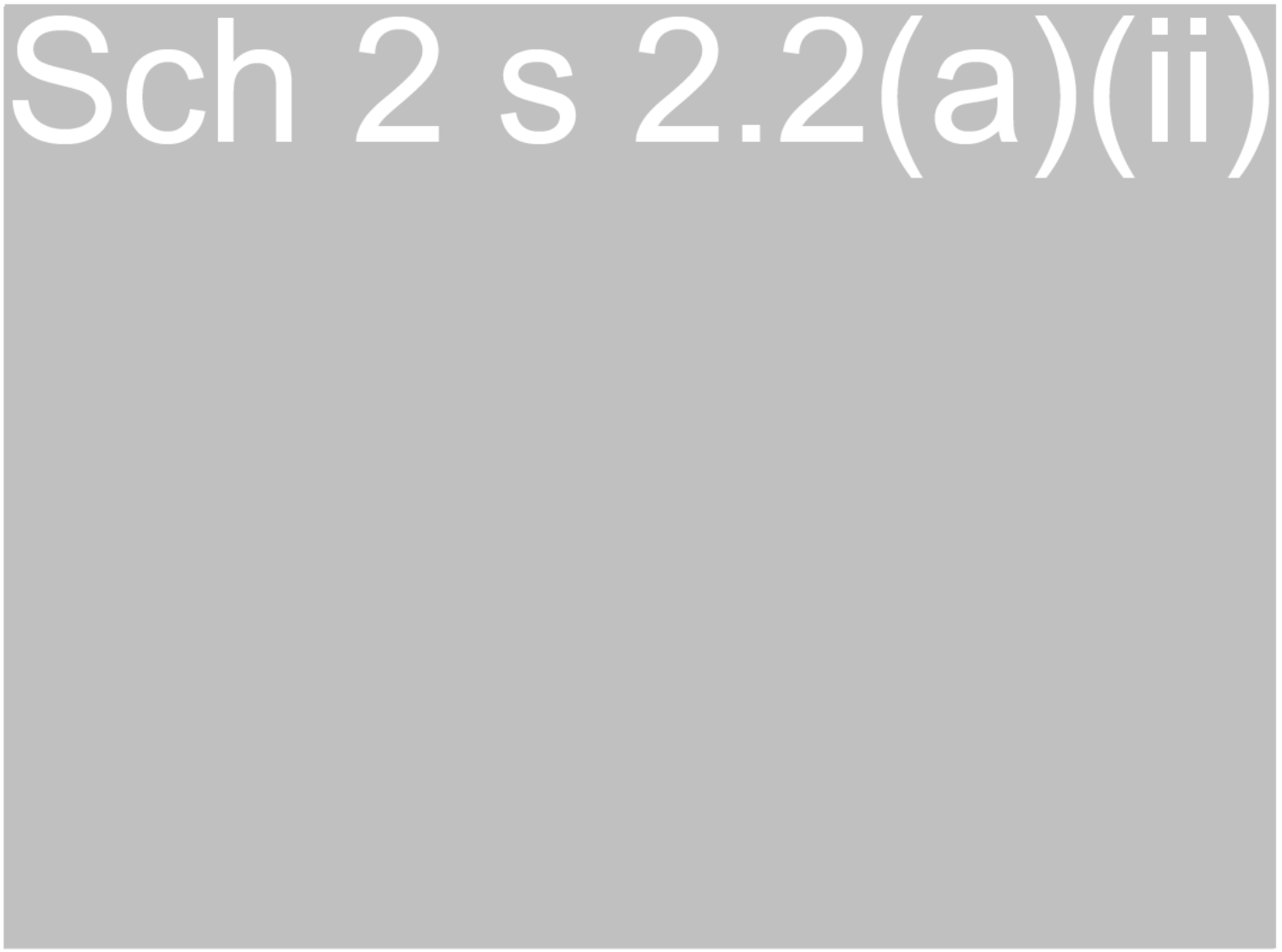

Sch 2 s 2.2(a)(ii)

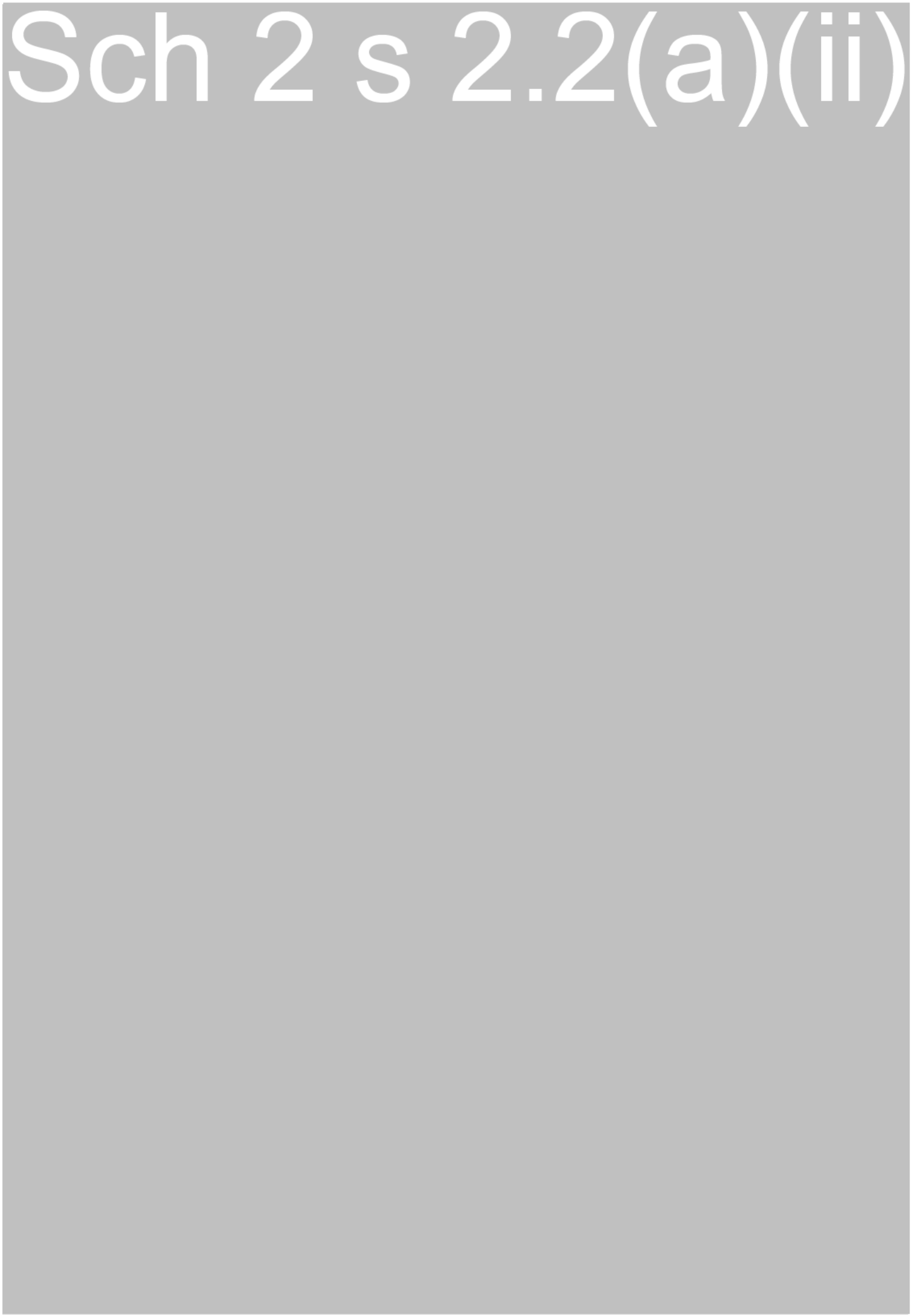

Sch 2 s 2.2(a)(ii)

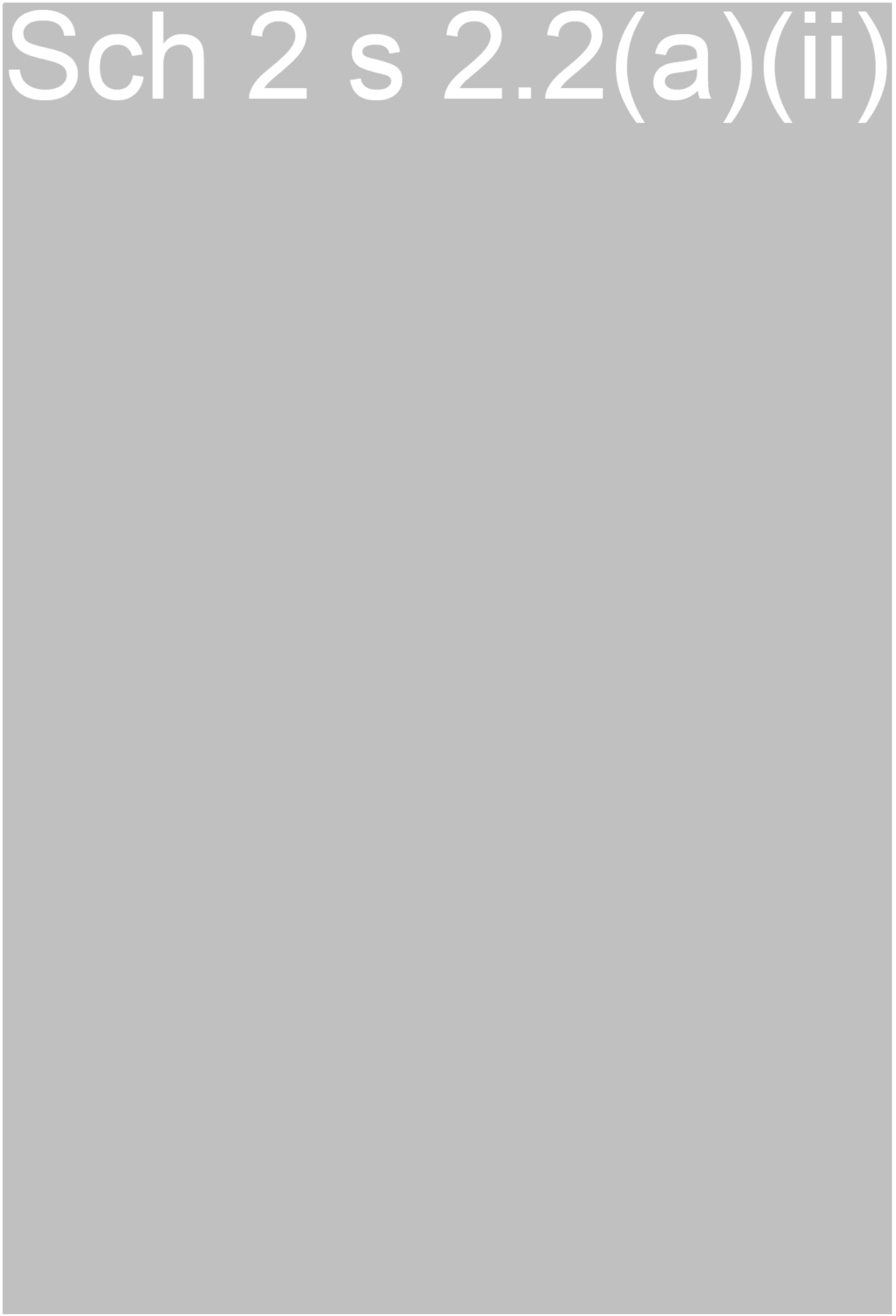

Sch 2 s 2.2(a)(ii)

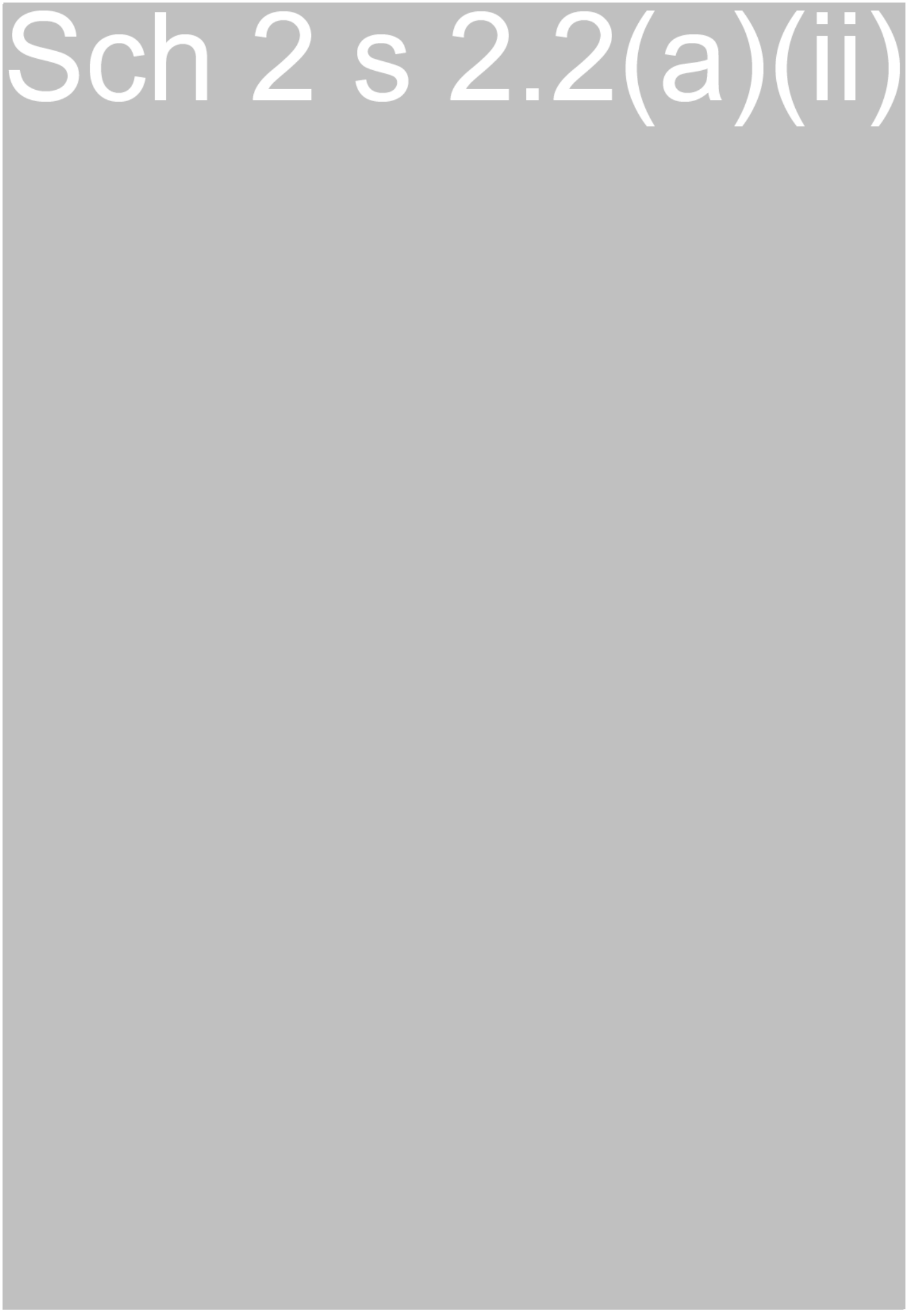

Sch 2 s 2.2(a)(ii)

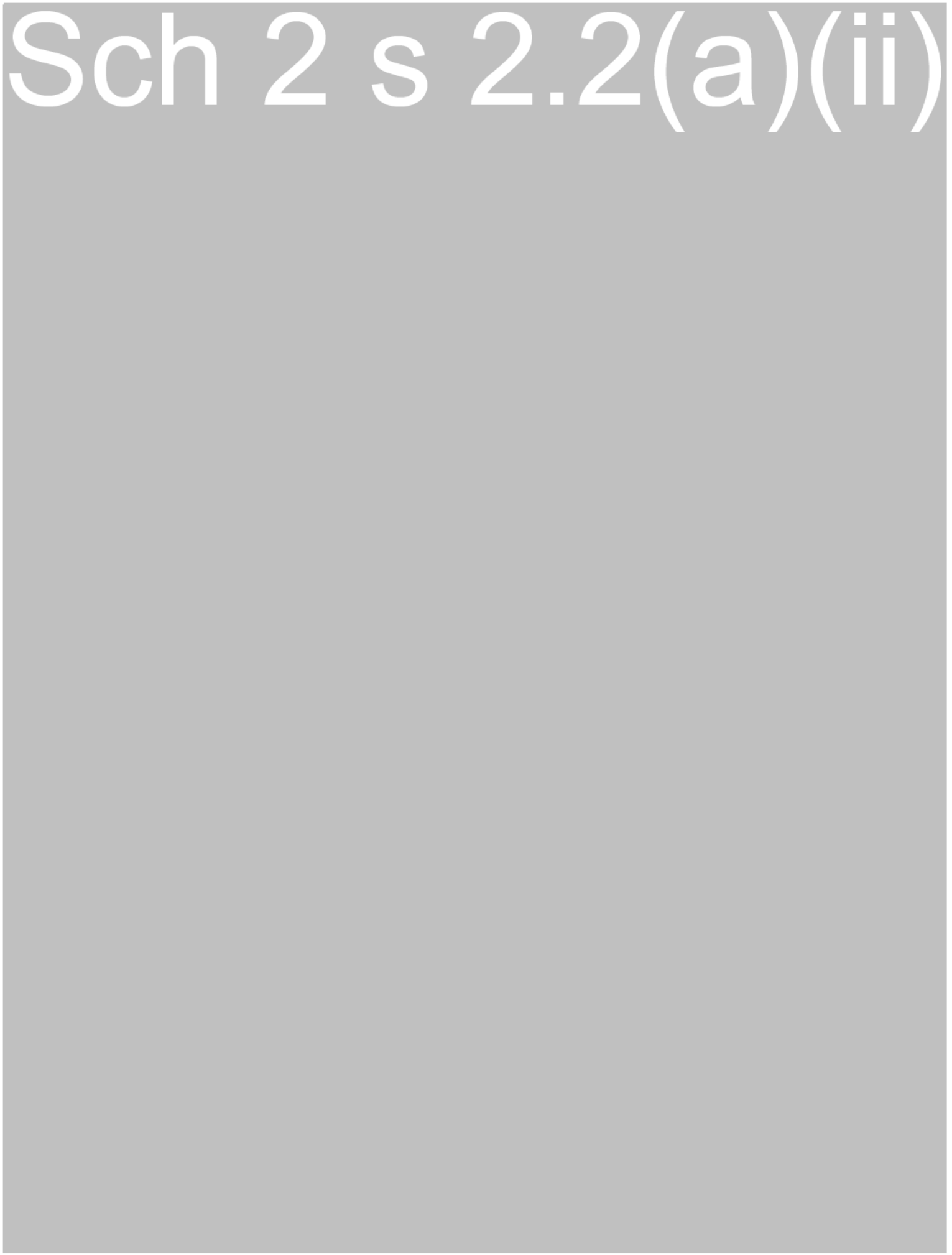

Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)


Sch 2 s 2.2(a)(ii)

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 31/10/2024 10:03 AM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "Taylor, Nina" <Nina.Taylor@act.gov.au>
Subject: FW: PRIVATE & CONFIDENTAIL - LAMS Executive Staff - Issue tracker

OFFICIAL: Sensitive - Personal Privacy

Sch 2 s 2.2(a)(ii)

Emma

From: Bird, Lucas
Sent: Thursday, 31 October 2024 9:48 AM
To: Matthews, EmmaC
Subject: RE: PRIVATE & CONFIDENTAIL - LAMS Executive Staff - Issue tracker

OFFICIAL: Sensitive - Personal Privacy

In case this assists – these are the staff not marked out by holding a nominal role with ACTPS.

OFFICE	Original Net	Updated Net as at 22/10/24	*$ nett DIFFERENCE*
Sch 2 s 2.2(a)(ii)	$ 29,483.05	$ 18,612.03	$ 10,871.02
	$ 33,023.44	$ 25,449.44	$ 7,574.00
	$ 21,386.52	$ 16,382.85	$ 5,003.67
	$ 5,782.41	$ 4,339.41	$ 1,443.00
	$ 13,946.86	$ 10,131.71	$ 3,815.15
	$ 28,633.89	$ 20,091.89	$ 8,542.00
	$ 13,000.74	$ 11,827.55	$ 1,173.19
	$ 18,233.01	$ 14,582.01	$ 3,651.00
	$ 7,763.78	$ 5,903.78	$ 1,860.00
	$ 24,479.69	$ 18,882.69	$ 5,597.00
	$ 58,262.52	$ 43,781.52	$ 14,481.00
	$ 12,770.44	$ 10,239.46	$ 2,530.98
	$ 25,493.93	$ 20,005.93	$ 5,488.00
	$ 16,150.23	$ 13,041.23	$ 3,109.00
	$ 17,737.38	$ 13,335.43	$ 4,401.95
	$ 18,072.65	$ 13,945.98	$ 4,126.67
	$ 13,017.17	$ 9,623.85	$ 3,393.32
	$ 34,265.49	$ 29,843.94	$ 4,421.55
	$ 20,334.04	$ 17,126.56	$ 3,207.48
	$ 35,215.84	$ 27,399.35	$ 7,816.49
	$ 10,369.54	$ 6,263.77	$ 4,105.77
TOTAL	$ 457,422.62	$ 350,810.38	$ 106,612.24

Lucas Bird | Assistant Director *(he/him)*
Secure Employment | Workforce Governance and Recruitment
Office of Industrial Relations and Workforce Strategy

From: Bird, Lucas
Sent: Wednesday, 30 October 2024 3:58 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Subject: PRIVATE & CONFIDENTAIL - LAMS Executive Staff - Issue tracker

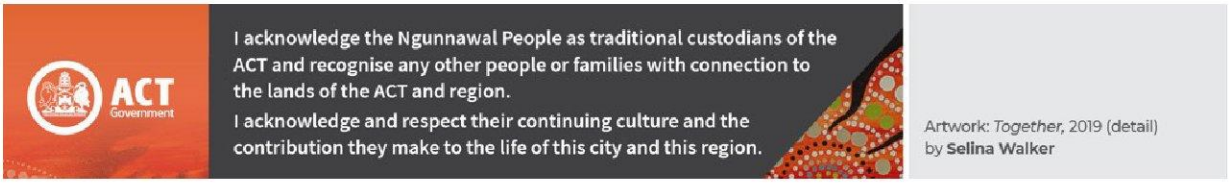
Good afternoon Emma,

As discussed please find attached an updated version of the document including a breakdown (in brief) of the issues and personal disadvantages claims made by affected staff.

Please let me know if you wish to discuss.

Warm regards

Lucas Bird | Assistant Director *(he/him)*
Secure Employment | Workforce Governance and Recruitment
Email: lucas.bird@act.gov.au
Whole-of-Government Public Sector Employment | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



From: "Buchanan, Bec" <Bec.Buchanan@act.gov.au>
Sent: 04/11/2024 9:39 AM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "Taylor, Nina" <Nina.Taylor@act.gov.au>
Subject: RE: Urgent: LAMS Fixed-term contracts

OFFICIAL: Sensitive

Hi Sanaz,

Thank you for sending through. I've had a read through the trail below. Was the draft response to Rachel sent?

Regards,

Bec Buchanan | A/g Executive Branch Manager
Whole of Government Industrial Relations & Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate I ACT Government
Level 5, 220 London Circuit I GPO Box 158 Canberra City ACT 2601
Mobile: Sch 2 s 2.2(a)(ii) Email: Bec.Buchanan@act.gov.au

From: Mirzabegian, Sanaz
Sent: Friday, 1 November 2024 5:21 PM
To: Buchanan, Bec
Cc: Taylor, Nina
Subject: FW: Urgent: LAMS Fixed-term contracts

OFFICIAL: Sensitive

For our discussions next week☺

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: "Taylor, Nina" <Nina.Taylor@act.gov.au>
Sent: 04/11/2024 10:04 AM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Buchanan, Bec" <Bec.Buchanan@act.gov.au>
Subject: RE: Urgent: LAMS Fixed-term contracts

OFFICIAL: Sensitive

Hi,

Please note for your background, Kim requested that Jake prepare a brief to Lisa C through Sanaz on the LAMS workload below and a proposal for a way forward for consideration. Given Jake has been away unexpectedly due to Sch 2.2(a)(ii) we will aim to finalise over the next week or two.

Also, as noted by Bec, it would be great to understand if the draft email below (or a version of it) was sent and if any further response was received.

Happy to discuss further of course, thanks, Nina

From: Mirzabegian, Sanaz
Sent: Friday, 1 November 2024 5:21 PM
To: Buchanan, Bec
Cc: Taylor, Nina
Subject: FW: Urgent: LAMS Fixed-term contracts

OFFICIAL: Sensitive

For our discussions next week☺

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 05/11/2024 4:43 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>; "CMTEDD, DDG Office OIRWS" <DDGOIRWS@act.gov.au>; "Buchanan, Bec" <Bec.Buchanan@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>
Subject: RE: DDG comments - Brief to CM - Legislative Assembly Members (LAMS) Termination Payment Options

OFFICIAL: Sensitive

Thanks all sorry I failed checking in (but I didn't have additional changes to attachments)

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: Sch 2 s 2.2(a)(ii) |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

---

From: Mirzabegian, Sanaz
Sent: Tuesday, 5 November 2024 4:20 PM
To: Carmody, Lisa
Cc: CMTEDD, Office of the EGM PSE ; CMTEDD, DDG Office OIRWS ; Buchanan, Bec ; Taylor, Nina
Subject: DDG comments - Brief to CM - Legislative Assembly Members (LAMS) Termination Payment Options

OFFICIAL: Sensitive

Hi Lisa,

I've updated in tracks or accepted otherwise – note both Attachments were checked out so couldn't see if they needed any changes. My thanks to Nina and Bec for their support in reviewing the document – certainly a team effort.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: Irvine, Lisa <Lisa.Irvine@act.gov.au>
Sent: Tuesday, 5 November 2024 2:30 PM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Cc: Carmody, Lisa <Lisa.Carmody@act.gov.au>
Subject: DDG comments - Brief to CM - Legislative Assembly Members (LAMS) Termination Payment Options

OFFICIAL: Sensitive

Hi Sanaz,

Lisa Carmody has made a few extra changes and comments for your consideration.

Let me know when you have actioned and I will get it over to HOS.

Lisa

Lisa Irvine
Executive Officer, Office of the Deputy Director-General
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra City 2601 | GPO Box 158 Canberra ACT 2601

From: "Prowse, Fay" <Fay.Prowse@act.gov.au>
Sent: 07/11/2024 12:41 PM
To: "Birkett, Joice" <Joice.Birkett@act.gov.au>
Cc: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: URGENT - I will phone - CMTEDD2024/4323 : Brief to CM - Legislative Assembly Members (LAMS) Termination Payment Options
Attachments: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Brief to ~ Legislative Assembly Members (LAMS) Termination Payment Options.tr5
Importance: High

OFFICIAL: Sensitive

Hi Joice

Sanaz is currently acting Russell Noud as EGM Public Sector Employment in OIRWS.

Sanaz needs 5 minutes urgently on the phone with Stuart to discuss an Act of Grace payments issue, in the context this brief.

This briefing package is very urgent and is currently with HoS for consideration/clearance. I have granted both yourself and Stuart access

I will give you a quick call once I send this email

Regards

Fay Prowse | Executive Officer to Sanaz Mirzabegian, Executive Group Manager Industrial Relations and Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Phone: 02 6205 0358 | Email: Fay.Prowse@act.gov.au;
Chief Minister, Treasury and Economic Development Directorate (CMTEDD) | ACT Government
Level 5, 220 London Circuit, Canberra City ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: "Connors, TeganM" <TeganM.Connors@act.gov.au>
Sent: 07/11/2024 2:26 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "Prowse, Fay" <Fay.Prowse@act.gov.au>
Subject: RE: URGENT - I will phone - CMTEDD2024/4323 : Brief to CM - Legislative Assembly Members (LAMS) Termination Payment Options

OFFICIAL: Sensitive

Hi Sanaz

Confirming I have sent this back to Lisa I in TRIM, also notified her via email and Teams.

Regards

Tegan Connors
Executive Assistant to Executive Group Manager | Convenor of Appeals
Public Sector Employment, Office of Industrial Relations and Workforce Strategy
Chief Minister and Treasury Directorate| ACT Government
220 London Circuit | GPO Box 158 Canberra City ACT 2601 | Web: www.act.gov.au
Phone: 02 6205 2108 | Email: teganm.connors@act.gov.au

From: Mirzabegian, Sanaz
Sent: Thursday, 7 November 2024 2:13 PM
To: Connors, TeganM
Cc: Prowse, Fay
Subject: FW: URGENT - I will phone - CMTEDD2024/4323 : Brief to CM - Legislative Assembly Members (LAMS) Termination Payment Options
Importance: High

OFFICIAL: Sensitive

Please reassign to Lisa I

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 07/11/2024 4:07 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Buchanan, Bec" <Bec.Buchanan@act.gov.au>
Subject: RE: Act of grace information

OFFICIAL

Noted. Thank you

From: Mirzabegian, Sanaz
Sent: Thursday, 7 November 2024 3:21 PM
To: Buchanan, Bec ; Matthews, EmmaC
Subject: FW: Act of grace information

OFFICIAL

Hi, leaving this with you as it might come in handy if we need to communicate re LAMS – please note it includes sensitive info so treat with appropriate discretion.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: Asmus, Conrad <Conrad.Asmus@act.gov.au>
Sent: Thursday, 7 November 2024 2:14 PM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Subject: Act of grace information

OFFICIAL

Hi Sanaz,

My team uses the text below when we have received a request from the Treasurer's Office to brief the Treasurer on an Act of Grace. This includes the three criteria we use in briefing the Treasurer. The words could be amended to provide initial advice on Act of Grace applications made to the Treasurer.

I've also attached an example of a brief on an Act of Grace request.

Kind regards
Conrad

Conrad Asmus | Senior Director | Revenue and Concessions Policy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Phone: +61 2 6207 0648| Email: conrad.asmus@act.gov.au
Level 1 220 London Circuit | GPO Box 158, Canberra ACT 2601 | act.gov.au

Your request for an Act of Grace payment has been received by the Treasurer's Office and ACT Treasury is preparing advice on the matter for the Treasurer's consideration.

Requests for Act of Grace payments can involve multiple areas across Government and often require consideration of complex matters. Ensuring Treasury's advice is rigorous may take a number of weeks. You can email this mailbox to request an update.

For your information, the advice we provide the Treasurer will be based on the following criteria:
a. the Territory's direct role, acts or omissions caused an unintended or inequitable result for the individual or entity concerned;
b. the application of Territory legislation has produced a result that is unintended, anomalous, inequitable or otherwise unacceptable; or
c. the matter is not covered by legislation or policy, but the Territory is intending to introduce such legislation or policy, and it is desirable to apply the provisions prospectively.
More information on Act of Grace payments is available at https://www.treasury.act.gov.au/__data/assets/pdf_file/0003/1391628/Act-of-Grace-Policy-and-Procedures-Guide.pdf.

As the power to provide an Act of Grace payment under the Financial Management Act 1996 is discretionary, the Treasurer may take other issues into consideration in making his decision.

The Act of Grace mechanism enables the authorisation of payments, but does not create an obligation to make these. There is no entitlement to an act of grace payment and the making of a request that sets out complete information does not guarantee a favourable outcome for the applicant.

If you would like to provide additional information please send it to this email address. Treasury may contact you to request specific information, if we consider it necessary for our advice to the Treasurer.

Kind regards

Revenue Policy Team
ACT Treasury
Chief Minister, Treasury and Economic Development Directorate.

From: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Sent: 18/11/2024 2:04 PM
To: "CMTEDD, DDG Office OIRWS" <DDGOIRWS@act.gov.au>
Cc: "Buchanan, Bec" <Bec.Buchanan@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Subject: LAMS update

OFFICIAL

Hello Lisa

A draft email to Sch 2.2(a)(ii) providing an update on the LAMS matter:

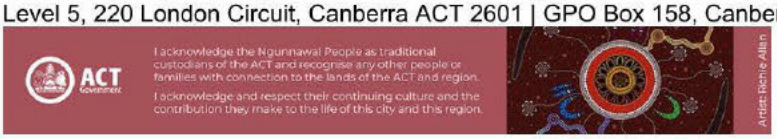
Good morning Sch 2.2(a)(ii)

Thank you for your time meeting to discuss the arrangements for ministerial advisors who have advised the Territory that they have suffered damages when they acted in reliance on the initial information provides to them as to the tax treatment that would be applied to their final monies following a termination event. You will recall we talked through options the Government might consider to address these damages. The purpose of this email is to provide you with an update on progress since our meeting:

- *OIRWS is meeting with Treasury to confirm the appropriateness of acts of grace payments in these circumstances;*
- *OIRWS confirming the taxation treatment of acts of grace payments – CONFIRMED: not taxed;*
- *OIRWS confirming next steps and timeframes for seeking a ruling from the tax office about the appropriate tax treatment for ministerial advisors in these circumstances;*
- *OIRWS seeking advice from the Government Solicitor as to the termination circumstances of ministerial advisors to Minister FItzharris, Chief Ministers Gallagher and Stanhope – did the resignation of any these give rise to redundancies.*

We will provide further advice upon receipt of information from the Government Solicitor and Treasury.

Emma Matthews | Executive Branch Manager, Workforce Governance and Recruitment *(she/her)*
Phone: Sch 2 s 2.2(a)(ii) 2 | Email: EmmaC.Matthews@act.gov.au
Chat with me on Microsoft Teams
Whole-of-Government Public Sector Employment | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



From: "Hodshon, Gerard" <Gerard.Hodshon@act.gov.au> on behalf of "CMCD DLO" <CMCDDLO@act.gov.au>
Sent: 25/11/2024 4:36 PM
To: "CMTEDD, DDG Office OIRWS" <DDGOIRWS@act.gov.au>
Cc: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>
Subject: Signed CM, agreed, nil comment
Attachments: 0. Brief - LAMS Termination Payment Options - Signed CM.PDF

OFFICIAL: Sensitive

Good Afternoon

This item has been signed by the Chief Minister: agreed, nil comment.

Saved off to TRIM 2024/4323.

Kind regards,
Gez

Gerard Hodshon (Gez)| CMTEDD Directorate Liaison Officer
Office of the Chief Minister | ACT Government
Sch 2 s 2.2(a)(ii) | CMCDDLO@act.gov.au | **MS Teams**
ACT Legislative Assembly | GPO Box 158 CANBERRA ACT 2601| www.act.gov.au

From: "Mimilidis, Jacob" <Jacob.Mimilidis@act.gov.au>
Sent: 29/11/2024 7:27 AM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Buchanan, Bec" <Bec.Buchanan@act.gov.au>
Cc: "Angus, Sarah" <Sarah.Angus@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: [FOR NOTING] CT Article on LAMS Salary Allocations
Importance: High

OFFICIAL

Hi Sanaz and Bec,
Worth noting there's an article in Canberra Times this morning re: Assembly staff salary allocations:
https://www.canberratimes.com.au/story/8833003/
While OIRWS prepare the Disallowable Instruments (referred to as 'determinations') that give effect to these salary allocations, I think it's important to note we have no role to play in determining salary levels, we simply provide the administrative function of preparing the instruments.
Happy to discuss further if need.
Jake

From: "Prowse, Fay" <Fay.Prowse@act.gov.au> on behalf of "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Sent: 31/10/2024 2:46 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "Buchanan, Bec" <Bec.Buchanan@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Angus, Sarah" <Sarah.Angus@act.gov.au>; "CMTEDD, Office of the EGM PSE" <CMTEDD.OfficeoftheEGMPSE@act.gov.au>; "Szanto, Juliet" <Juliet.Szanto@act.gov.au>
Subject: **URGENT for EGM Clearance** - CMTEDD2024/4323 : Brief to CM - Legislative Assembly Members (LAMS) Termination Payment Options
Attachments: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Brief to ~ Legislative Assembly Members (LAMS) Termination Payment Options.tr5
Importance: High

OFFICIAL

Hi Sanaz

CM LAMS options package for your urgent consideration/clearance.

Regards

Fay Prowse | Executive Officer to Sanaz Mirzabegian, Executive Group Manager Industrial Relations and Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Phone: 02 6205 0358 | Email: Fay.Prowse@act.gov.au;
Chief Minister, Treasury and Economic Development Directorate (CMTEDD) | ACT Government
Level 5, 220 London Circuit, Canberra City ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

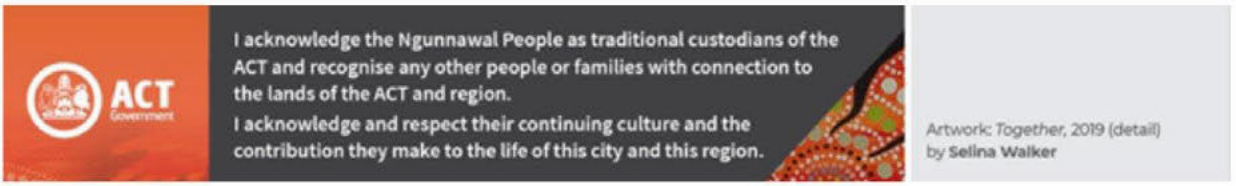
From: "Tyrie, Jacob" <Jacob.Tyrie@act.gov.au>
Sent: 16/09/2024 11:38 AM
To: "Wright, Robert" <Robert.Wright@act.gov.au>
Cc: "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: RE: LAMS: End of Assembly Termination Payments

OFFICIAL

Thank you Robert.

Regards,

Jacob Tyrie
A/g Assistant Director | Executive Support and Budget
Workforce and Information Services | CMTEDD Corporate
Phone: 02 6207 9691 | Email: Jacob.Tyrie@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | **ACT Government**
GPO Box 158 Canberra ACT 2601 | act.gov.au
Please consider the environment before printing this email. If printing is necessary, print double-sided and black and white



From: Wright, Robert
Sent: Monday, September 16, 2024 11:30 AM
To: Tyrie, Jacob
Cc: Henry, Tracey
Subject: RE: LAMS: End of Assembly Termination Payments

OFFICIAL

Thanks Jacob

I approve the seeking of [redacted] advice on this matter.

Kind regards

Robert Wright

Duplicate

Duplicate

Duplicate

From: "Henry, Tracey"
Sent: 07/07/2025 2:08 PM
To: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Cc: "Burton, Amelia" <Amelia.Burton@act.gov.au>
Subject: RE: questions from GSO
Attachments: Termination of Ministerial Staff at a General Election - Q&A, Guidelines and termination estimate

Hi Emma.

Answers to your questions are below.

Let me know if you require any further information.

Kind regards
Tracey

Tracey Henry |Senior Director | Ministerial and Executive Support
Workforce and Information Services| CMTEDD Corporate

Phone: 02 6207 0372 or via MS Teams | Email: Tracey.Henry@act.gov.au

Sch 1 s 1.2

Emma Matthews | Executive Branch Manager, Workforce Governance and Recruitment *(she/her)*
Phone: Sch 2 s 2.2(a)(ii) | Email: EmmaC.Matthews@act.gov.au

Chat with me on Microsoft Teams
ACTPS Employment and Industrial Relations Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



THE NEXT GENERATION: STRENGTH, VISION & LEGACY
6-13 JULY 2025

From: "Henry, Tracey"
Sent: 01/10/2024 11:58 AM
To: "Wright, Steven" <Steven.Wright@act.gov.au>
Subject: Termination of Ministerial Staff at a General Election - Q&A, Guidelines and termination estimate
Attachments: Payroll Guide- Termination payment LAMS Staff.pdf, Termination of Ministerial Staff after a general election 2024.pdf

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Good afternoon XXXX,

With the election coming up in October attached are guidelines that address some queries around the termination of ministerial staff at a general election.

I have also attached your termination estimate provided by payroll for your information, but please note:

- Your estimate is based on data that we currently hold in the system, and does not include any future pay rises.
- It is based on this current financial year tax rates, and does not include the potential change in rates, particularly for the tax free portion of the severance component.
- It is also based on the leave records that are currently in the system and are likely to change if there is any change to your leave record.

We know that the uncertainty of an election can be daunting and may cause concern or anxiety for some people, if you have further questions, please feel free to contact Matt Mison or utilise the available EAP services. Information on how to access the EAP can be found on the Executive Portal – under Popular resources.

If you have any questions that have not been addressed in the attached guidelines, please do not hesitate to contact me.

Kind regards

From: "Wright, Robert" <Robert.Wright@act.gov.au>
Sent: 17/09/2024 8:15 PM
To: "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Taylor, Nina" <Nina.Taylor@act.gov.au>
Cc: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Tyrie, Jacob" <Jacob.Tyrie@act.gov.au>; "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: RE: Request for Legal Advice - LAMS Termination Payments (Supplementary advice)

OFFICIAL

Thanks Martin

Nina any suggestions?

Cheers

Robert Wright

From: Bolton, Martin
Sent: Tuesday, September 17, 2024 8:14 PM
To: Wright, Robert ; Taylor, Nina
Cc: Mirzabegian, Sanaz ; Szandurski, Kim ; Tyrie, Jacob ; Henry, Tracey
Subject: Re: Request for Legal Advice - LAMS Termination Payments (Supplementary advice)

OFFICIAL

Hi Robert,

The questions look good but I would add to the first one 'or genuine redundancy'.

Thanks

Martin

Get Outlook for iOS

Duplicate

Duplicate

From: "Henry, Tracey"
Sent: 07/01/2025 3:23 PM
To: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>
Cc: "Wright, Robert" <Robert.Wright@act.gov.au>; "Allars, Alex" <Alex.Allars@act.gov.au>; "CMTEDD, Office of the EGM EIR" <CMTEDD.OfficeoftheEGMEIR@act.gov.au>
Subject: RE: RLA LAMS terminations - delegations and restructure Fund

Hi Emma,

Thank you for the opportunity to review the form. The form looks thorough and straightforward no further comments from me.

Kind regards
Tracey

Tracey Henry |Senior Director | Ministerial and Executive Support
Workforce and Information Services| CMTEDD Corporate

Phone: 02 6207 0372 or via MS Teams | Email: Tracey.Henry@act.gov.au

---

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Friday, 3 January 2025 4:51 PM
To: Henry, Tracey <Tracey.Henry@act.gov.au>
Cc: Wright, Robert <Robert.Wright@act.gov.au>; Allars, Alex <Alex.Allars@act.gov.au>; CMTEDD, Office of the EGM PSE <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: FW: RLA LAMS terminations - delegations and restructure Fund

OFFICIAL: Sensitive - Legal Privilege

Hello Tracey

Happy new year!

You will see from below that I am consulting on the attached form. I would be keen to hear your thoughts if you have an opportunity to review the form.

Sch 1 s 1.2

Best.

Emma

From: Matthews, EmmaC
Sent: Friday, 3 January 2025 4:49 PM
To: Austin, Scott <Scott.Austin@act.gov.au>
Cc: Allars, Alex <Alex.Allars@act.gov.au>; Wright, Robert <Robert.Wright@act.gov.au>; CMTEDD, Office of the EGM PSE <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: FW: RLA LAMS terminations - delegations and restructure Fund

Hello Scott

Happy new year. This email relates to the differing advice we provided to staff of Ministers as to the tax treatment that would be applied to their final monies on termination.

Sch 1 s 1.2

Best.

Emma

From: Matthews, EmmaC
Sent: Friday, 3 January 2025 4:47 PM
To: Manzoney, Lisa <Lisa.Manzoney@act.gov.au>
Cc: Clarke, Elissa <Elissa.Clarke@act.gov.au>; Allars, Alex <Alex.Allars@act.gov.au>; Wright, Robert <Robert.Wright@act.gov.au>; CMTEDD, Office of the EGM PSE <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: RE: RLA LAMS terminations - delegations and restructure Fund

Hello Lisa

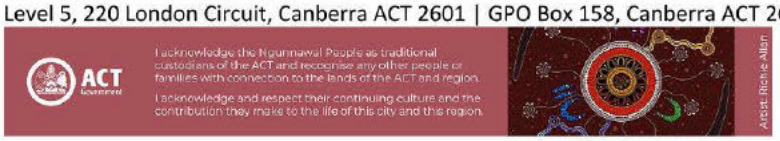
Many thanks to you and your team for the advice below.

We have prepared the attached document with a view to providing it to the affected staff of office-holders. Could you please let me know if you have any concerns, proposed amendments or other feedback?

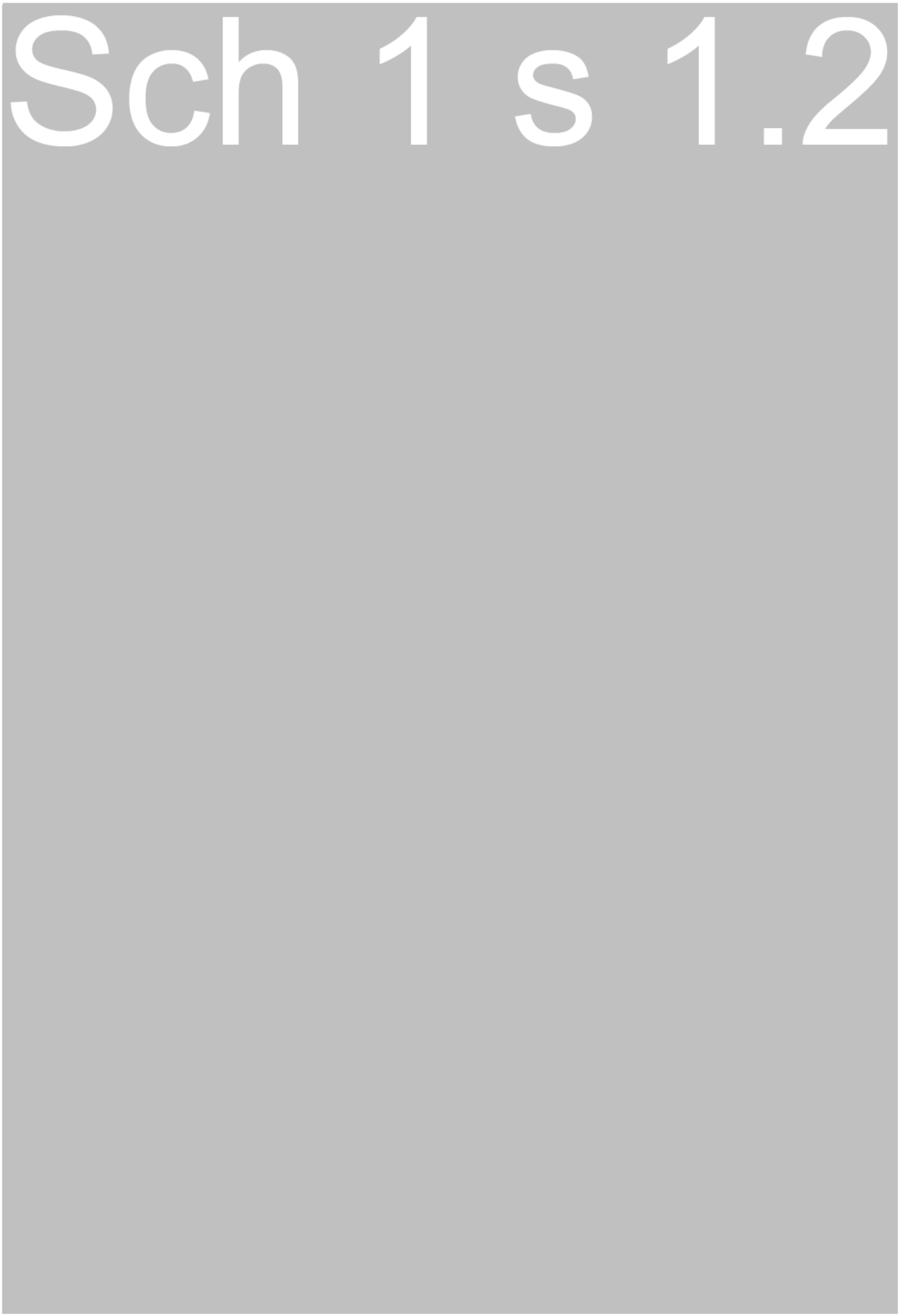
Best regards,

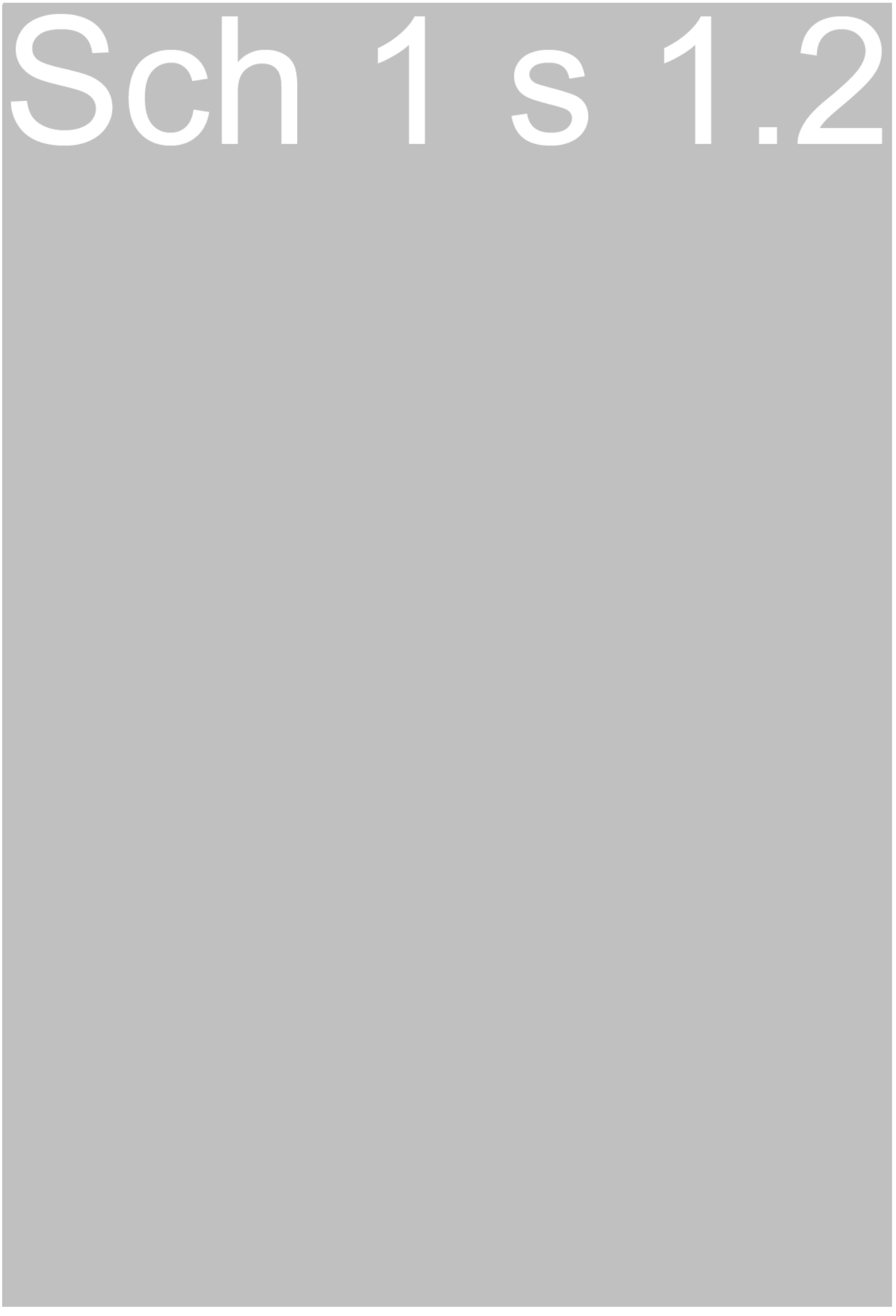
Emma

Emma Matthews | Executive Branch Manager, Workforce Governance and Recruitment *(she/her)*
Phone: Sch 2 s 2.2(a)(ii)2 | Email: EmmaC.Matthews@act.gov.au
Chat with me on Microsoft Teams
Whole-of-Government Public Sector Employment | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



Sch 1 s 1.2

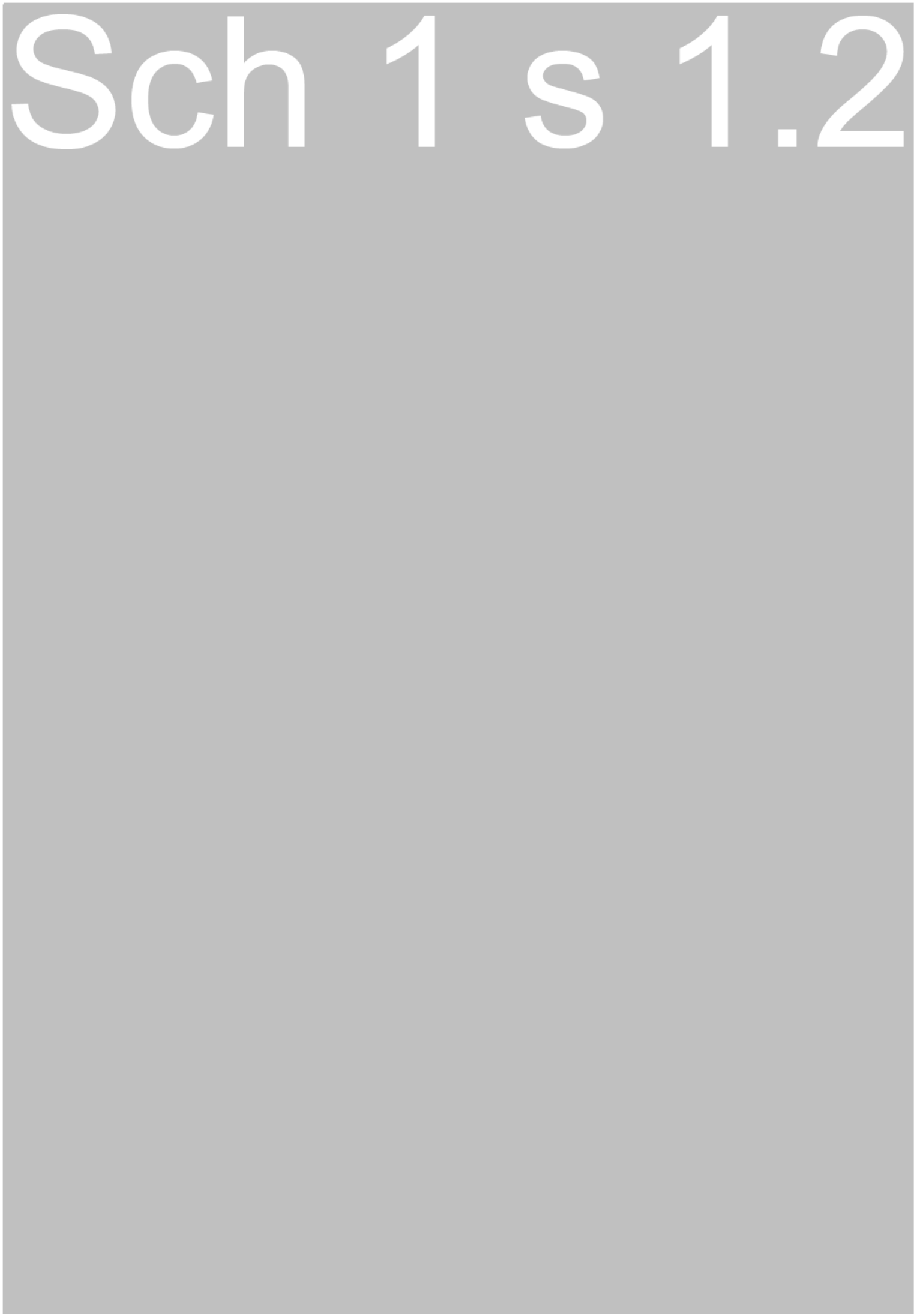

Sch 1 s 1.2


Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 23/10/2024 3:44 PM
To: "Wright, Robert" <Robert.Wright@act.gov.au>
Cc: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: FW: Draft of proposed email for comment: Update: Estimates of payment based n a termination event

OFFICIAL: Sensitive

FYI, for visibility.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: Mirzabegian, Sanaz
Sent: Wednesday, 23 October 2024 3:19 PM
To: Northam, Madeline (CPSU)
Cc: Matthews, EmmaC
Subject: Draft of proposed email for comment: Update: Estimates of payment based n a termination event

Dear Maddy,
Thank you for meeting with Emma Matthews and I earlier today. Below for your comments, proposed draft communication to affected staff. We are hoping to send it out today. Please let me know if it is easier to discuss on the phone or on Teams.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

Proposed Communications

Good Afternoon

I am writing to provide an update from our email of 17 October 2023. As outlined in that email, during August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff). These estimates were calculated based on a redundancy event.

Given that the email was based on recently received advice, we undertook to write to you again to provide estimates that would be calculated based on a **termination event**. This is now attached.

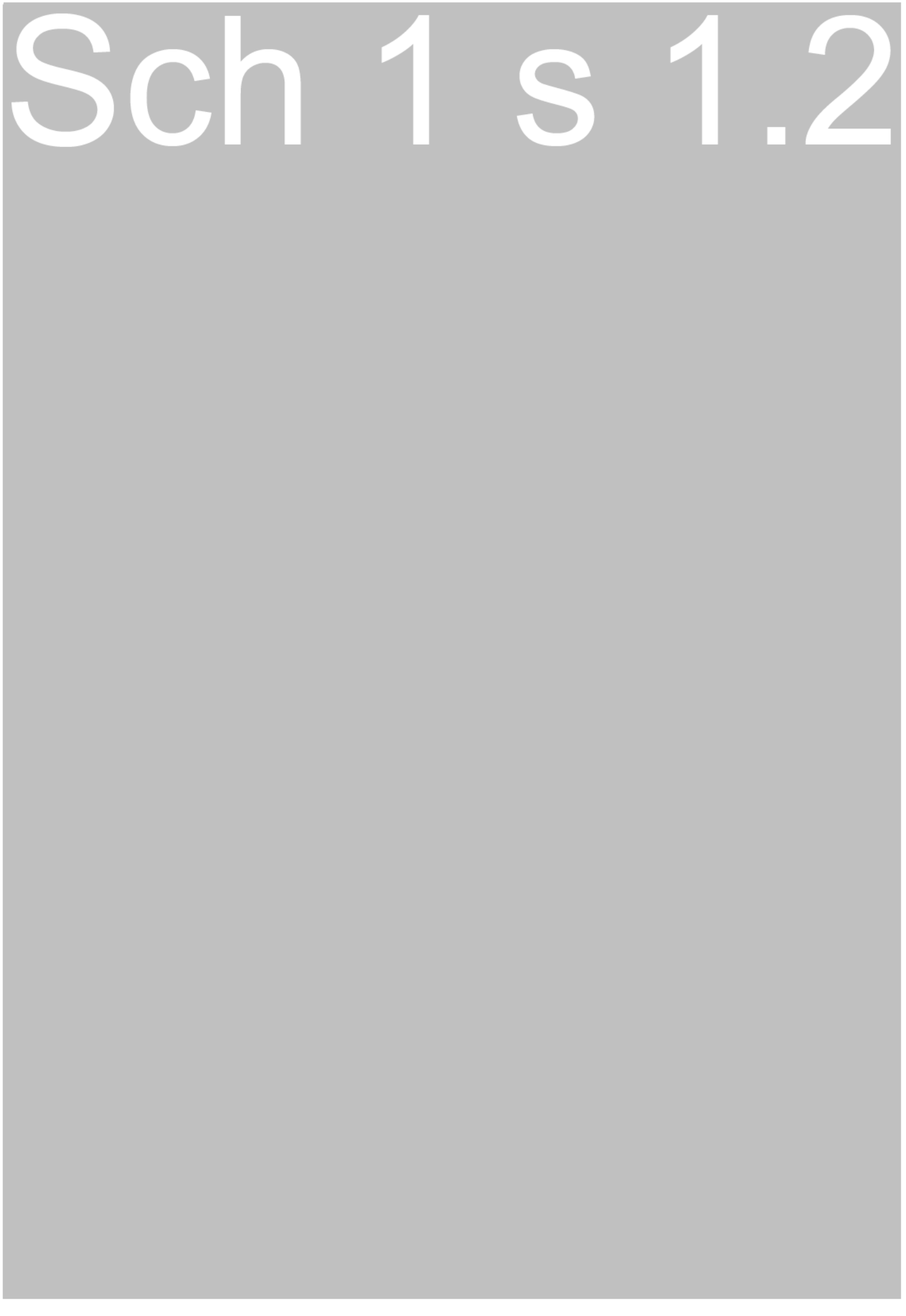
We continue to work with the CPSU and the USU in relation to this matter, and will provide you with updates over the coming days.

In the meantime, some of you have requested information about the timing of payment. Payroll has confirmed the following details on the current timing for payments:

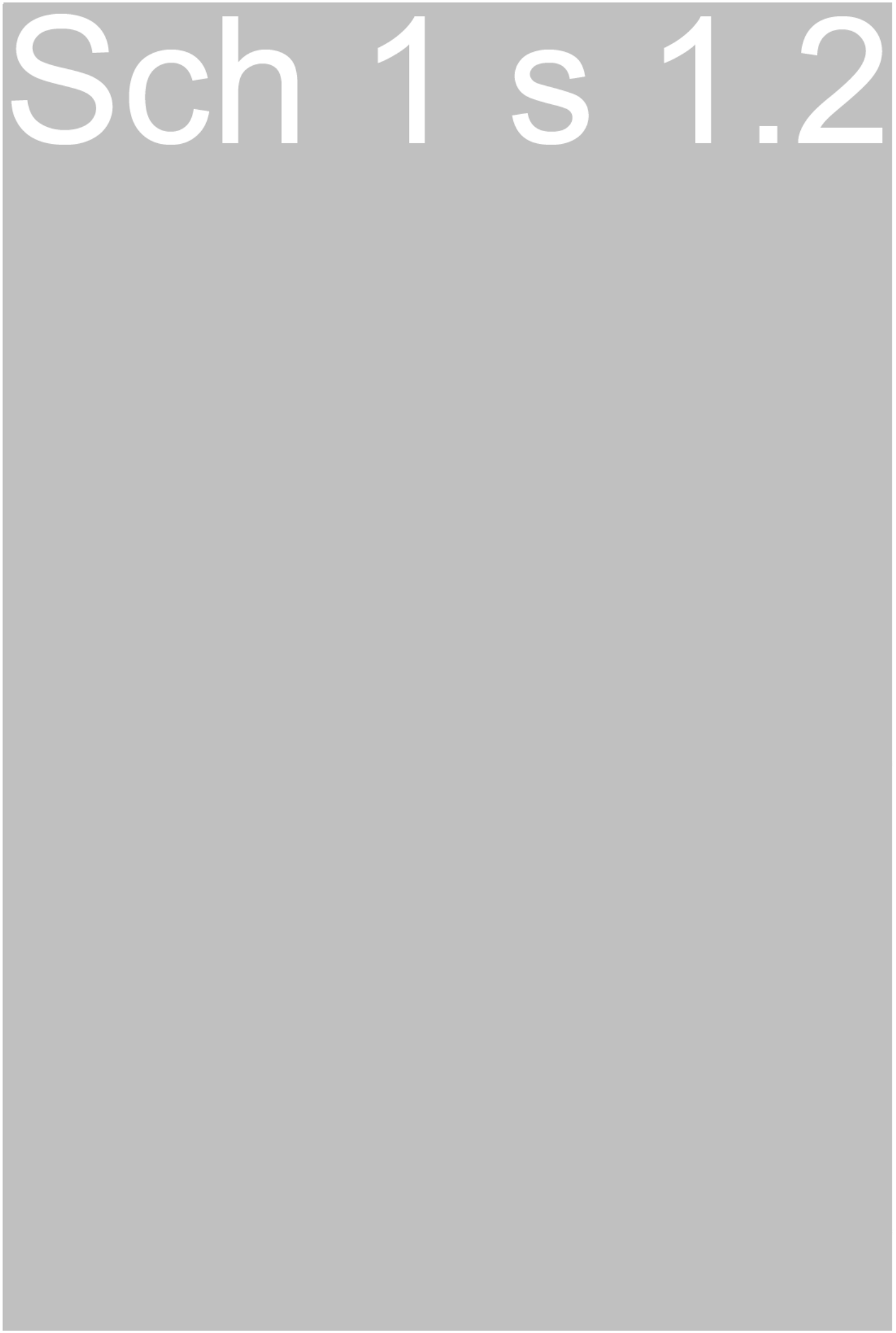
- Usual pay on payday: 7 November 2024 (pay up until termination day, first sitting day – 6 November);
- Usual pay on payday: 21 November 2024 (pay for two weeks after termination day – the deeming period provided by Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Office-holders' Staff Direction 2015)
- Balance of final payment on 5 December 2024 (it will be important that payroll receives all cessation paperwork with sufficient time to process to meet this date. In due course, CMTEDD Corporate will get in touch with staff who are not continuing employment under the *Legislative Assembly (Members' Staff) Act 1989* to discuss further details.

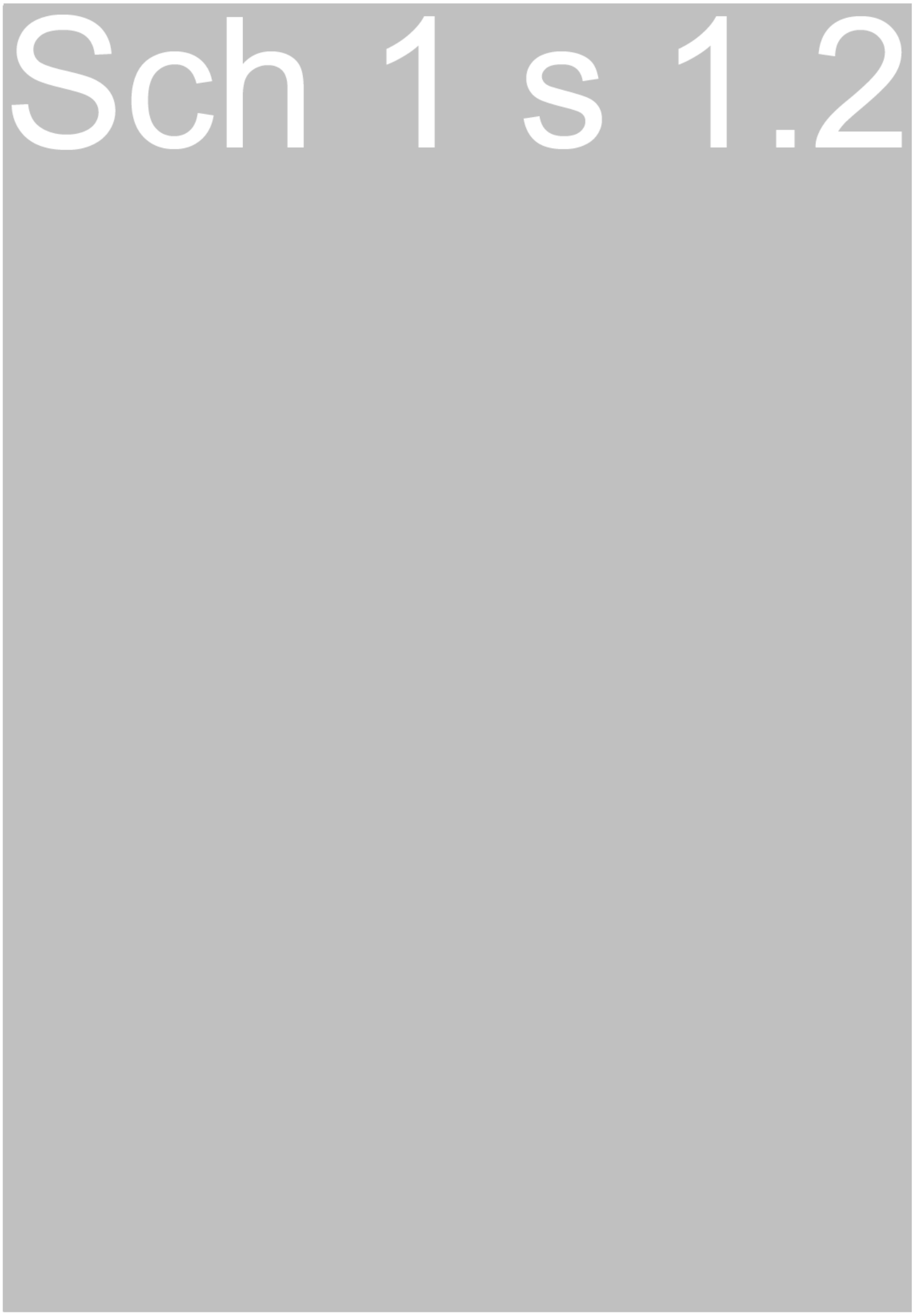
Once again, we appreciate that this may be a difficult time for you, and we thank you for your patience as we work through these important matters.

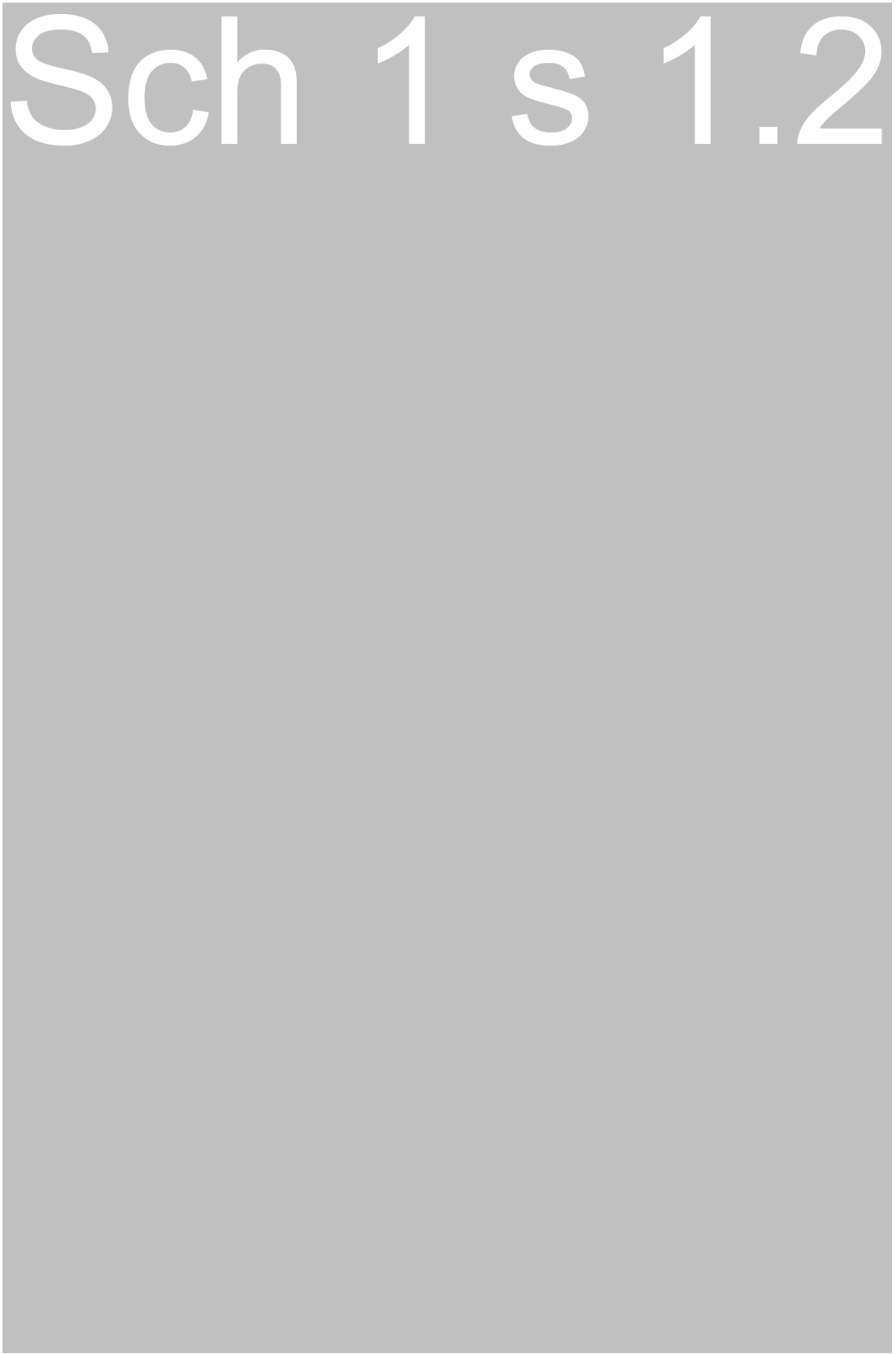
If you have any questions in relation to your specific circumstances, please send those directly to this mailbox.

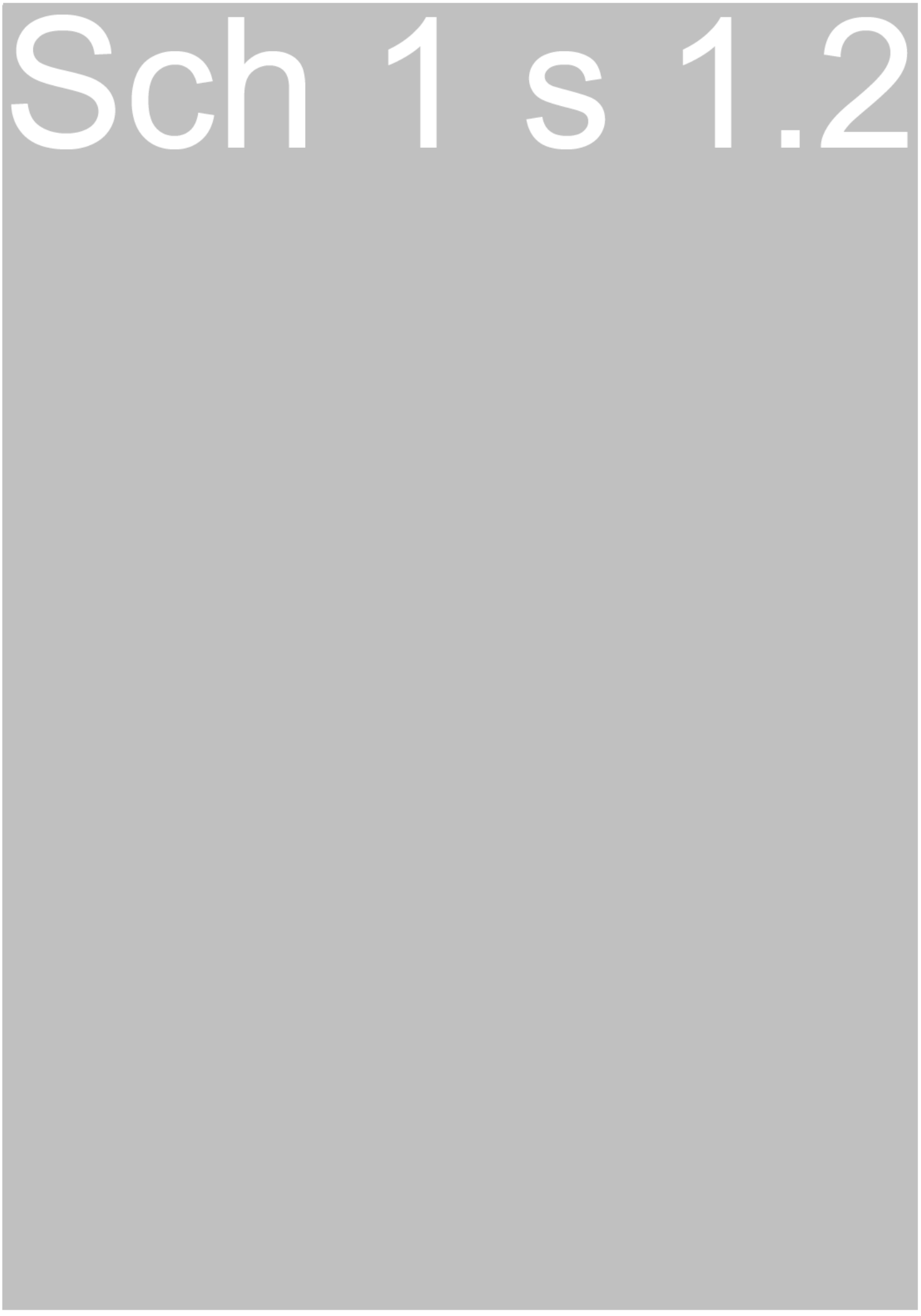

Sch 1 s 1.2

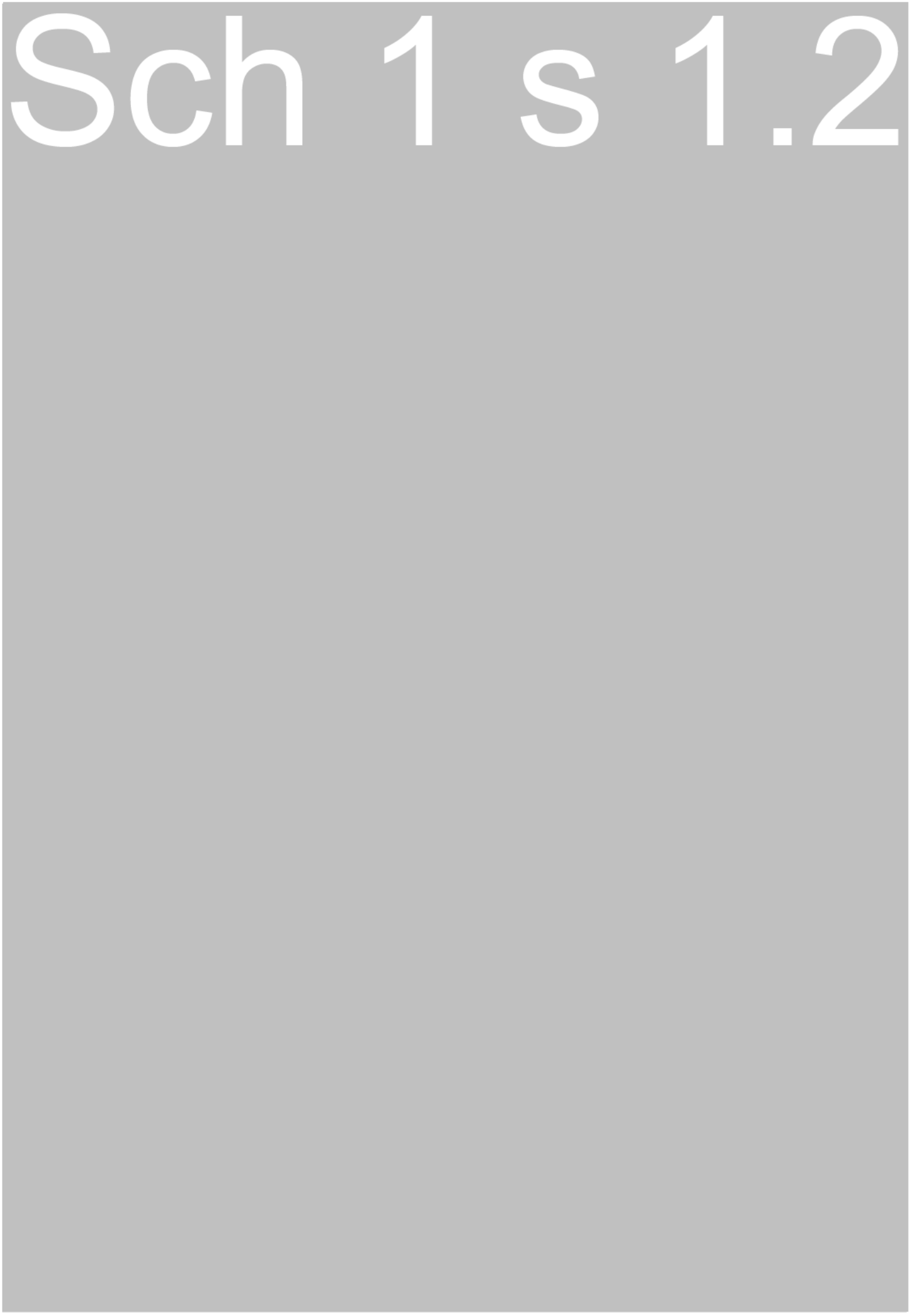
Sch 1 s 1.2

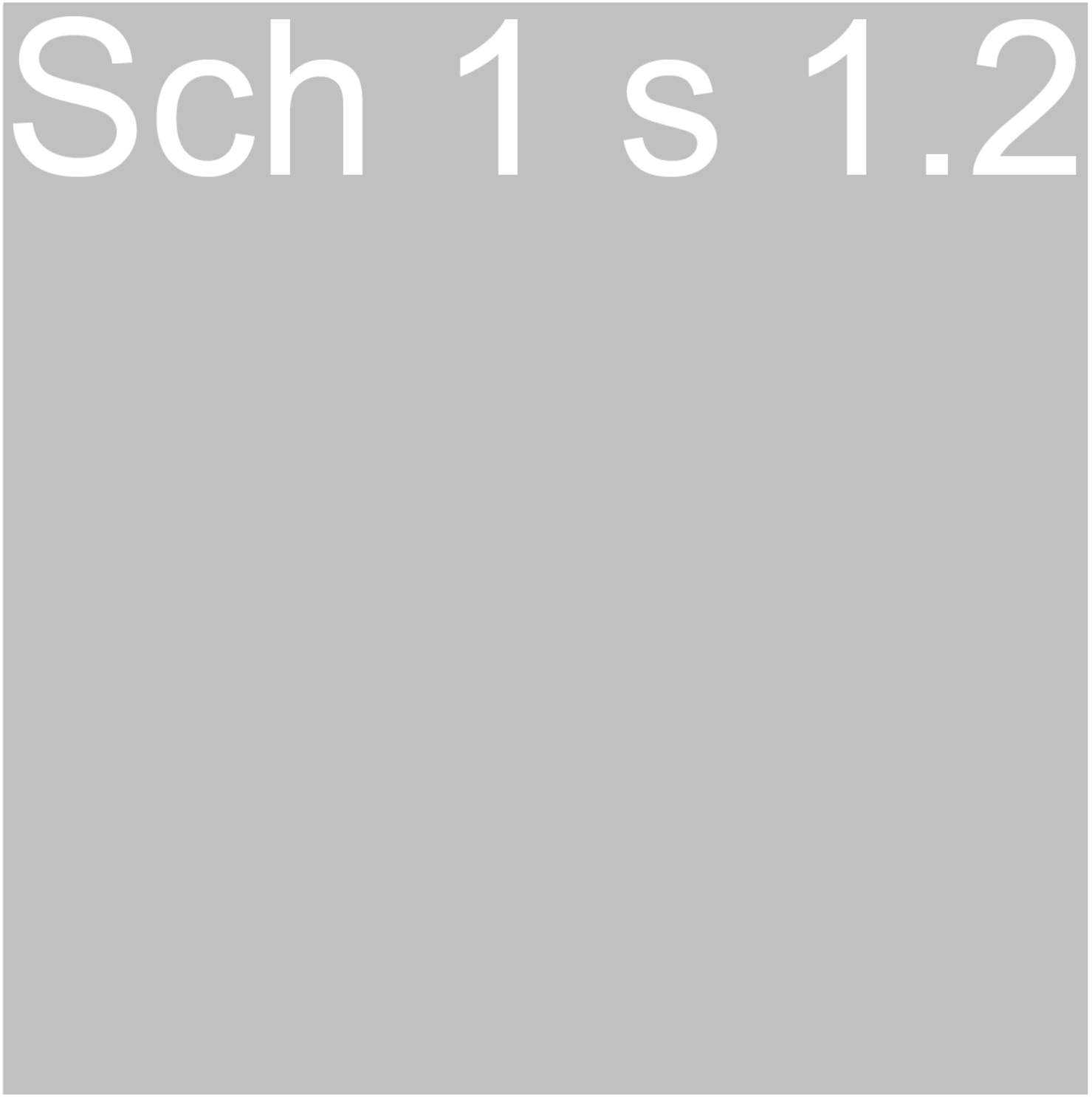

Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2

ACT Government
Chief Minister, Treasury and Economic Development

Request for consideration of individual circumstances: Staff of office-holders at the conclusion of the 10th Legislative Assembly

Without prejudice

Background

1. Toward the end of the 10th Legislative Assembly, estimate payments were provided to office-holder staff. These estimates represented the final monies that would be paid to office-holder staff who were not continuing to be employed in the 11th Legislative Assembly because their employment would be terminated in accordance with the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act). These estimates were calculated according to practice and convention and the calculations were consistent with advice provided at the end of the 9th Assembly and the 8th Assembly.

Commented [EM1]: Payroll is confirming the accuracy of this statement.

2. In August and September 2024, the Office of the Legislative Assembly (OLA) and CMTEDD separately prepared and sent estimates to Members' staff. The estimates prepared by OLA applied different, less favourable taxation assumptions.

3. Advice was sought and the advice confirmed that the OLA approach should be followed for staff of Members and staff of office-holders.

4. On 17 October 2024, office-holder staff were advised the previous information and estimates provided were not consistent with updated tax and legal advice. The Office of Industrial Relations and Workforce Strategy (OIRWS, CMTEDD) set up a dedicated mailbox and executive contact officer, to provide a centralised point of communication for office-holder staff.

5. Updated estimates were provided on 23 October 2024 to staff of office-holders reflecting estimated final monies treated as termination payments, rather than as redundancy payments.

6. Concerns were raised by office-holder staff and employee representatives about the discrepancies and changes to the estimates of final monies payable.
   (a) Primarily, the concerns are that the inconsistency in the advice provided has led to negative personal impacts for some individuals.
   (b) Senior officials of CMTEDD and representatives of the Community and Public Sector Union have corresponded regarding these matters.

7. Correspondence received by OIRWS, CMTEDD from affected staff of office-holders has outlined the following:

(a) that it was reasonable for staff of office-holders to rely on the advice provided to them by One Service Payroll as the payroll team are the Territory's relevant experts when it comes to payroll matters, including the taxation of final monies.
(b) that One Service Payroll had a duty to exercise reasonable care when providing the estimated final monies advice.

8. The OIRWS has provided advice on options to address affected office-holder staff concerns, and the Chief Minister has agreed to consider act of grace payments to those office-holder staff who have outlined that they relied on the Government's advice and have experienced a detriment. The purpose of this form is to enable an assessment of the possible avenues of legal recourse for affected individuals prior to the consideration of act of grace payments.

Consideration of individual circumstances

9. The form at Attachment A has been developed for use by staff of office-holders at the conclusion of the 10th Legislative Assembly to outline their individual circumstances arising from the receipt of advice as to final monies/tax treatment, advice which was subsequently withdrawn and replaced with new advice on final monies/tax treatment.

10. Staff are invited to complete this form to indicate:
(a) the quantum of the impact (potentially the difference between the original advice and the final advice);
(b) evidence of reasonable reliance on the original advice on final monies;
(c) evidence of loss experienced following that reliance on their original advice;
(d) additional information required to support a submission for an act of grace payment.

11. The form is designed to provide guidance on the relevant considerations with respect of compensable losses and act of grace payments. Submissions can be made by way of the form, or via any other format affected staff wish to present the information relating to their individual circumstances.

12. Upon receipt of this completed form, Chief Minister, Treasury and Economic Development Directorate (CMTEDD) will arrange for consideration of the impact on individual staff and any claim made by individual staff. Consideration will include:
(a) compensable loss following reliance on a representation, action taken to the detriment of staff of office-holders;
(b) the operation of the CMTEDD Restructure Fund, which funds legal liability that an agency has incurred in certain circumstances and can only be used for purposes approved by Cabinet, noting that this operation of this fund is not currently applicable to staff employed under the *Legislative Assembly (Members' Staff) Act 1989;* and
(c) act of grace payments in accordance with the Act of grace payments: policy and procedures guide.

13. Act of grace payments are only appropriate when other legal avenues have been exhausted. This form has been designed to enable affected staff to:

(a) pursue the question of legal liability in the first instance; and, in circumstances where a settlement of a claim against the Territory is not possible under clause 10 of the *Law Officers Legal Services Direction 2023,*

(b) pursue an act of grace payment.

14. Prior to the completion of this form, staff of office-holders may wish to review the attached Act of grace payments: policy and procedures guide and the *Law Officers Legal Services Direction 2023* – in particular clause 10. The completed form, or a claim in another format, or any enquiries about this process, should be addressed to LAMSLiaison@act.gov.au.

15. The form and the guidance material outlined above has been prepared on a without prejudice basis. It is important to note that the *Law Officers Legal Services Direction 2013* (in particular, clause 10) and the Act of grace payments: policy and procedures guide will guide the consideration of any claim made by a staff member of an office-holder.

Attachment A

NAME: Click or tap here to enter text.	DOB: Click or tap here to enter text.
PHONE: Click or tap here to enter text.	EMAIL: Click or tap here to enter text.
POSTAL ADDRESS: Click or tap here to enter text.	Preferred method of contact: *Phone / Email / Post* Click or tap here to enter text.

I acknowledge that I have read:

- the *Law Officers Legal Services Direction 2023* , and in particular clause 10
- the Act of Grace Payments – Policy and Procedures Guide.

The information that I provide in completing this form is true and correct. I acknowledge that I may be contacted to clarify the information I provide, or to provide additional information.

Click or tap here to enter text. Name

Click or tap to enter a date. Date

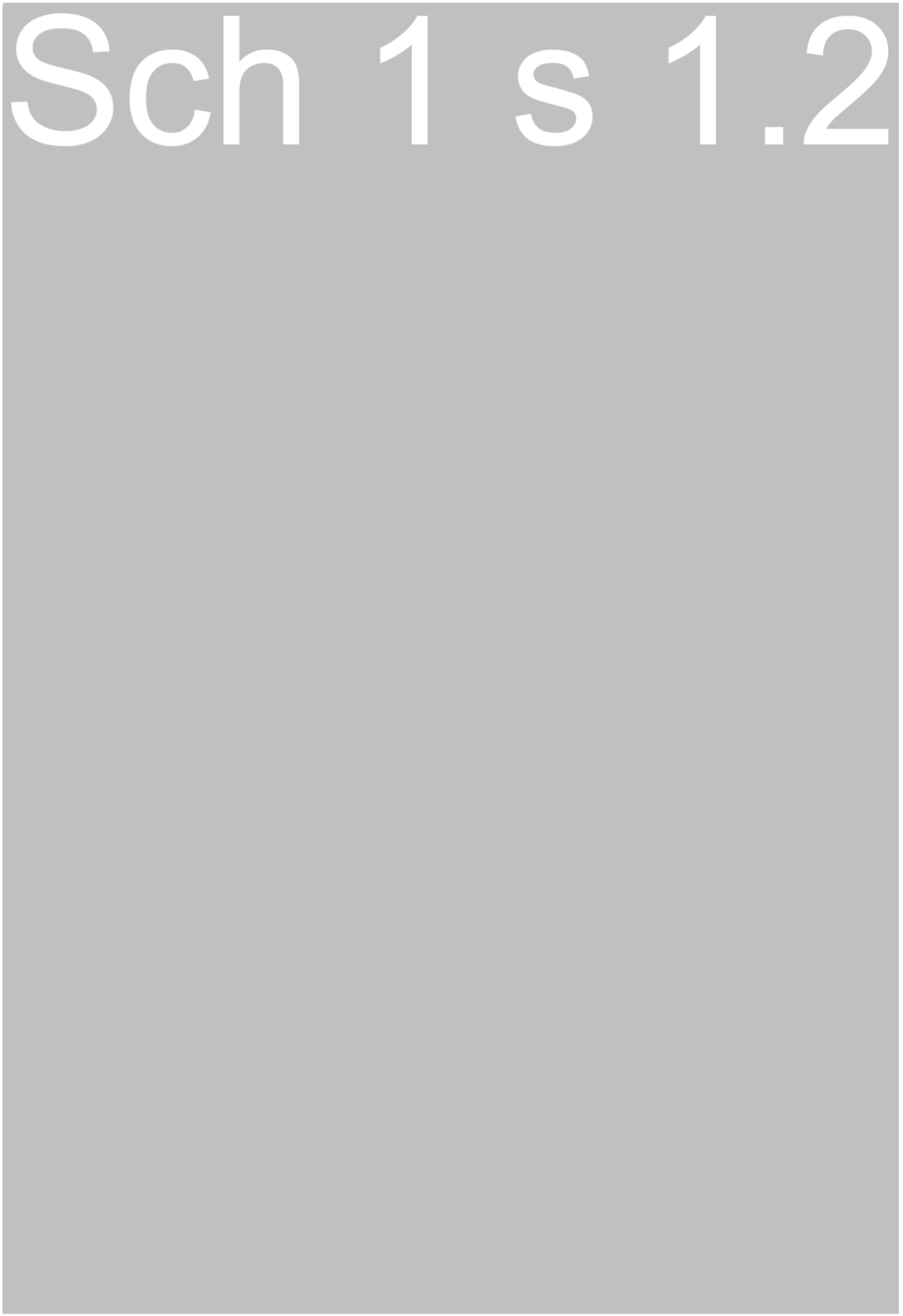
A clear explanation of the incident/situation and how it occurred.[1]	*Noting the background outlined at paragraphs 1-8 above, please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What actions on the Government's part contributed to the situation.[2]	*Noting the background outlined at paragraphs 1-8 above, please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What do you consider to be your loss and how have you calculated this?[3]	*Please detail how values have been determined.* Click or tap here to enter text.
In what ways did you rely on the original estimate and what evidence can you provide that relates to this reliance?[4]	*Please provide information relevant to your personal circumstances.* Click or tap here to enter text.
Do you have any comments on what made this reliance reasonable?[5]	*Please provide any additional information relevant to your personal circumstances and/or your views.* Click or tap here to enter text.
How many estimates for final monies have you received during your employment as staff of an office-holder?[6]	*Please outline how many estimates you have received and include a reference to your understanding of the tax treatment applied to those estimates. If you do not know, please enter N/A.* Click or tap here to enter text.

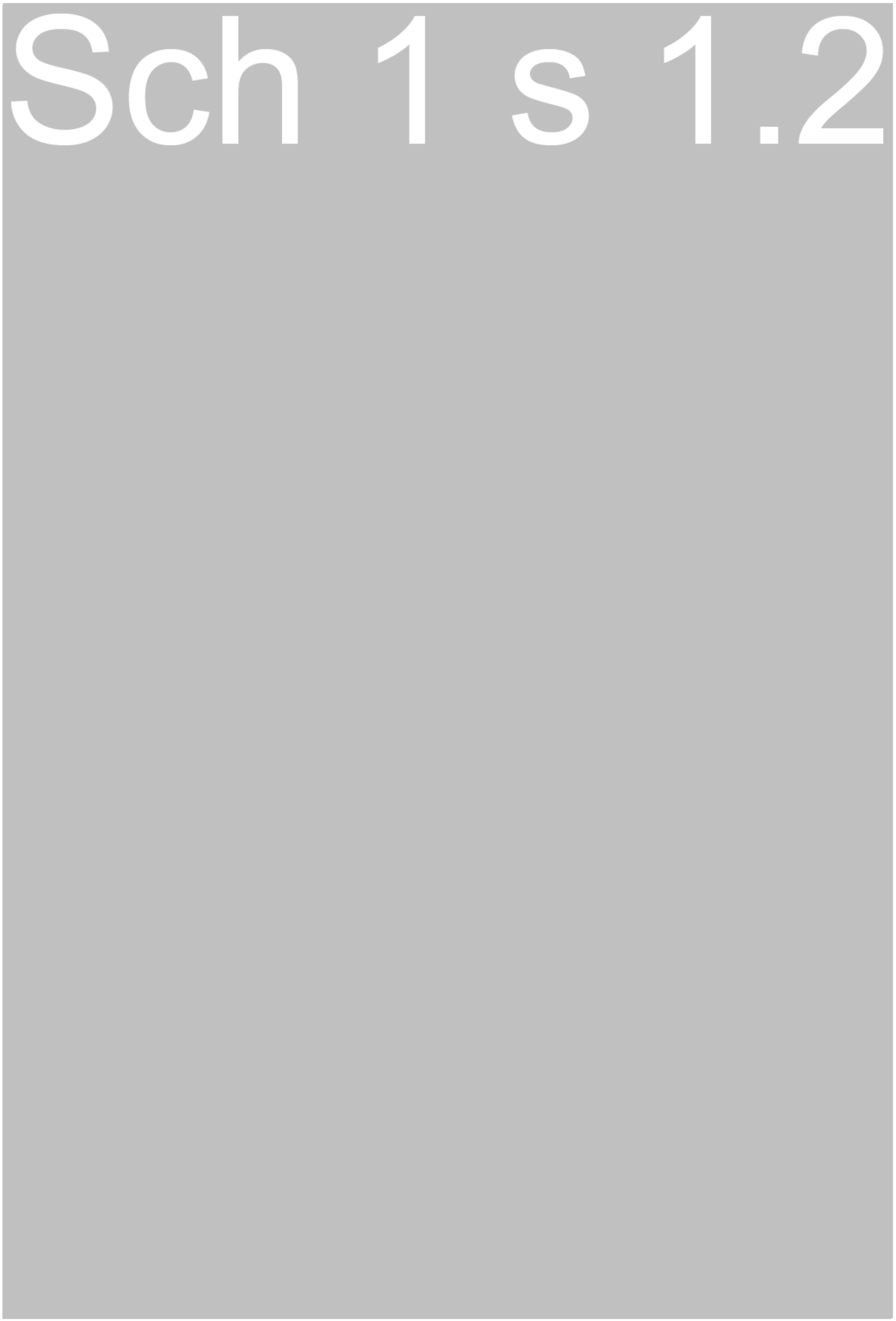
[1] 12(a) of the *Act of grace payments: Policy and procures guide*
[2] 12(b) of the *Act of grace payments: Policy and procures guide*
[3] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[4] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[5] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[6] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*

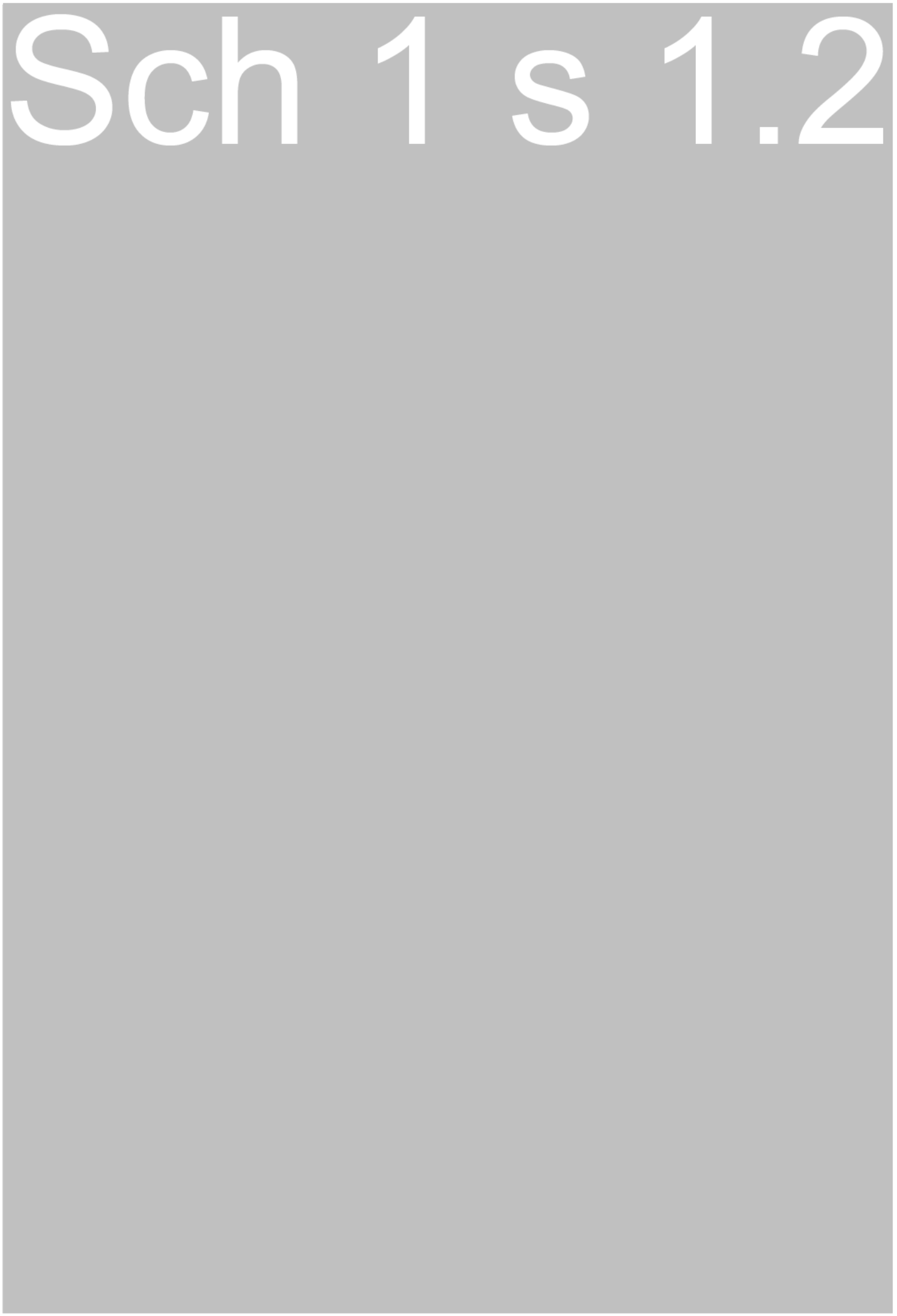
What actions or factors, relating to yourself or to other relevant individuals or organisations have contributed to the situation in either a positive or negative way.[7]	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
Why the situation warrants being considered a special circumstance.[8]	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What other avenues have been explored (including legal and financial), and with what outcomes.[9]	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
Why a payment would be appropriate, and the value of the payment being sought.[10]	*Please provide your views and the value of the payment being sought.* Click or tap here to enter text.
Supporting evidence should include[11]: • how the value of the payment being sought has been estimated; • documentary evidence of the circumstances, for example, correspondence, agreements and other documents establishing the circumstances and any loss (e.g. medical certificates and statements); • details of court or Tribunal findings; and • what reviews have been undertaken or may be underway.	*Please provide relevant information, and/or attach relevant documentation when submitting this form. If you do not intend to provide supporting evidence, please write 'Nil' in the textbox provided.* Click or tap here to enter text.
Previous correspondence with Government.[12]	*Noting paragraphs 1-8 above, please detail any other correspondence with government if relevant.* Click or tap here to enter text.
Other information that is likely to be relevant.[13]	**Optional - please provide any other information you believe to be relevant.* Click or tap here to enter text.
Any additional comments you would like to make.	**Optional - please provide any other comments you would like to make.* Click or tap here to enter text.

Attachment B – Act of grace payments: policy and procedure guide (2024)

[7] 12(c) of the *Act of grace payments: Policy and procures guide*
[8] 12(d) of the *Act of grace payments: Policy and procures guide*
[9] 12(e) of the *Act of grace payments: Policy and procures guide*
[10] 12(f) of the *Act of grace payments: Policy and procures guide*
[11] 12(g) of the *Act of grace payments: Policy and procures guide*
[12] 12(h) of the *Act of grace payments: Policy and procures guide*
[13] 12(j) of the *Act of grace payments: Policy and procures guide*


Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2

From: "Wright, Steven" <Steven.Wright@act.gov.au>
Sent: 16/10/2024 3:53 PM
To: "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: FW: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

Hi

For discussion (not circulation) please.

Steven

From: Mirzabegian, Sanaz
Sent: Wednesday, 16 October 2024 3:03 PM
To: Wright, Steven ; Carmody, Lisa
Cc: Bolton, Martin
Subject: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

Communication to staff to be sent on Friday morning:

Good Morning

We have an update on the information previously provided in relation to the estimates on termination of employment for Staff of Members of the Legislative Assembly.

We have been advised that an exit payment is appropriately characterised as an Eligible Termination Payment (ETP) rather than a redundancy. An ETP is taxed at a higher rate than a redundancy payment.

We have also been advised of the methodology for calculation of the severance component of the ETP, which depends on your circumstances as at the time of termination.

As the correct characterisation of the exit payment is an ETP, Payroll does not provide further estimates. Please note that ETP is not available if you are immediately re-employed under the LAMS Act.

If you have any questions in relation to your ETP, please email [Tracey]?

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 17/10/2024 1:48 PM
To: Sch 2.2(a)(ii) @act.gov.au>; Sch 2.2(a)(ii) @act.gov.au>
Cc: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>
Subject: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Sch 2.2(a)(ii)

Thank you for your further queries. Lisa has asked me to respond on her behalf. Some of the matters are highly technical, but I have tried to explain as best as I can.

Act of Grace payment
I confirm that an act of grace payment occurs as a matter of discretion where other avenues have been exhausted. The Guide provides further information in this regard.
Meaningful prospects of success apply mainly where other compensation is contemplated.

Taxation
The taxation treatment is complicated which is why the team needs a bit of time to work it all out for individual officers. Please note the below is not financial advice:

At a high level, For a redundancy, Leave (annual leave and long service leave) are taxed at a flat rate of 32%, whereas an Employee Termination Payment (ETP) payment is taxed marginally. In a redundancy, there is also a tax-free component of the income (first $12,524 base income and then $6,264 for each completed year of employment). This calculation is based on an annual ATO determination.
The ETP uses the Whole of Income Cap tax calculation. The Whole of Income cap for the current financial year is $180,000. Any earnings earned during the financial year, plus any leave and salary in the final pay reduces this "Whole of Income" cap, which is used to determine which portion of the ETP is to be calculated at the lower taxation rate (32% for staff under the preserved benefit age and 17% for those over the preservation age) and which portion is taxed at 47%. The ATO website provides general information: *Working out the whole-of-income cap amount | Australian Taxation Office (ato.gov.au)*

The tax on Leave is calculated based on Marginal tax rates and not included in the above. This is where we compare tax on normal fortnightly earnings to the employee's normal fortnightly earnings plus 1/26th of the leave to be paid out. The difference in tax will be the tax on leave to be paid out. Please note that the tax calculations will vary every fortnight, due to the variation in year to date earnings.

I hope this helps. We are finalising the staff communication and setting up a dedicated mailbox and Senior Executive contact to support staff who may have questions.

From: Carmody, Lisa
Sent: Thursday, 17 October 2024 9:28 AM
To: Sch 2.2(a)(ii)
Cc: Leigh, Kathy ; Mirzabegian, Sanaz ; Wright, Steven
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Thanks Sch 2.2(a)(ii) – we'll come back to you.

Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: Sch 2.2(a)(ii) |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: Sch 2.2(a)(ii)
Sent: Thursday, 17 October 2024 8:16 AM
To: Carmody, Lisa <Lisa.Carmody@act.gov.au>; Sch 2.2(a)(ii) @act.gov.au>
Cc: Leigh, Kathy <Kathy.Leigh@act.gov.au>; Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>
Subject: Re: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Lisa,

Thanks for providing this and ensuring this is communicated sensitively to effected staff given the significant stress people are under at this time.

I have a further question on the tax treatment if ETP -

Can you please confirm that the taxation treatment will still include concessional taxation (32%) up to the relevant ETP or whole or income cap as detailed in attached image. (Rather than the whole ETP and accrued leave being taxed at marginal rate)

(https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees/how-etp-components-are-taxed)

Kind regards,

Sch 2.2(a)(ii)

Get Outlook for iOS

From: Carmody, Lisa <Lisa.Carmody@act.gov.au>
Sent: Wednesday, October 16, 2024 6:49:44 PM
To: Sch 2.2(a)(ii) @act.gov.au>; Sch 2.2(a)(i) @act.gov.au>
Cc: Leigh, Kathy <Kathy.Leigh@act.gov.au>; Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>
Subject: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

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From: Sch 2.2(a)(ii) @act.gov.au>
Sent: 16/10/2024 7:26 PM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Cc: Sch 2.2(a)(ii) @act.gov.au>; "Leigh, Kathy" <Kathy.Leigh@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>
Subject: Re: Termination payments to staff of Members of the Legislative Assembly

Thanks Lisa.
We'll work through this advice and respond if any questions - but as an initial question, you note re ACT of Grace that:
Noting that as a general proposition, there must be a meaningful prospect that the Territory will be legally liable before payment can be made
I had understood that an Act of Grace assessment was based on an action or inaction of the Territory that caused detriment, where there was *no* legal liability avenue for the affected party to pursue?
Thanks and happy to discuss.
Sch 2.2(a)

Sent from my iPhone

> On 16 Oct 2024, at 6:49 PM, Carmody, Lisa wrote:
>
> Noting that as a general proposition, there must be a meaningful prospect that the Territory will be legally liable before payment can be made

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 23/10/2024 7:37 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Henry, Tracey" <Tracey.Henry@act.gov.au>; "Power, Leanne" <Leanne.Power@act.gov.au>
Cc: "Wright, Robert" <Robert.Wright@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>
Subject: Re: For Information: Emails of Estimates of payment based on a termination event now sent

OFFICIAL: Sensitive

Thanks Sanaz and Tracey (and of course to Martin and team for all the work revising these estimates so efficiently).
Lisa
Get Outlook for iOS
From: Mirzabegian, Sanaz
Sent: Wednesday, October 23, 2024 5:57 PM
To: Henry, Tracey ; Power, Leanne ; Carmody, Lisa
Cc: Wright, Robert ; Wright, Steven ; Matthews, EmmaC ; Szandurski, Kim ; Bolton, Martin
Subject: For Information: Emails of Estimates of payment based on a termination event now sent

OFFICIAL: Sensitive

Many thanks Tracey. As always, very much appreciate your responsive and diligent work. @Carmody, Lisa and @Power, Leanne for your visibility. I will send an email to the CPSU and USU to advise them of this.
Kind Regards
Sanaz (she/her)
Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: Henry, Tracey
Sent: Wednesday, 23 October 2024 5:55 PM
To: Mirzabegian, Sanaz
Cc: Wright, Robert ; Wright, Steven ; Matthews, EmmaC ; Szandurski, Kim ; Bolton, Martin
Subject: RE: Estimates of payment based on a termination event

OFFICIAL: Sensitive

Hi Sanaz,
Just confirming that all the recalculations have been emailed to the required staff members.
Kind regards
Tracey
Tracey Henry |Senior Director | Ministerial and Executive Support
Workforce and Information Services| CMTEDD Corporate
Phone: 02 6207 0372 or via MS Teams | Email: Tracey.Henry@act.gov.au

From: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Sent: Wednesday, 23 October 2024 4:51 PM
To: Henry, Tracey <Tracey.Henry@act.gov.au>
Cc: Wright, Robert <Robert.Wright@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>; Matthews, EmmaC <EmmaC.Matthews@act.gov.au>; Szandurski, Kim <Kim.Szandurski@act.gov.au>; Bolton, Martin <Martin.Bolton@act.gov.au>
Subject: Estimates of payment based on a termination event

OFFICIAL: Sensitive

Hi Tracey, Thank you for helping with sending out individual emails, attaching new estimates. Below is the covering email to staff. Appreciate it if you dropped us a line when all emails have been send.

Many thanks again
Kind Regards
Sanaz (she/her)
Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au
Covering email to affected staff:
Subject: Update - Estimate of payment based on a termination event
Good Afternoon
I am writing to provide an update from our email of 17 October 2023. As outlined in that email, during August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff). These estimates were calculated based on a redundancy event.
Given that the email of 17 October was based on recently received advice, we undertook to write to you again to provide estimates that would be calculated based on a **termination event**. This is now attached.
Please note that the calculation is still an estimate at this stage, and may not reflect the final payment.
We continue to work with the CPSU and the USU in relation to this matter, and will provide you with updates over the coming days.
In the meantime, some of you have requested information about the timing of payment. Payroll has confirmed the following details on the current timing for payments:

- Usual pay on payday: 7 November 2024 (pay up until termination day, first sitting day – 6 November)
- Usual pay on payday: 21 November 2024 (pay for two weeks after termination day – the deeming period provided by Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Office-holders' Staff Direction 2015)
- Balance of final payment on 5 December 2024 (it will be important that payroll receives all cessation paperwork with sufficient time to process to meet this date. In due course, CMTEDD Corporate will get in touch with staff who are not continuing employment under the *Legislative Assembly (Members' Staff) Act 1989* to discuss further details.

Once again, we appreciate that this may be a difficult time for you, and we thank you for your patience as we work through these important matters.
If you have any questions in relation to your specific circumstances, please send those directly to this mailbox.
We remind you that the Employment Assistance Program continues to be available to support you and family members. Information on how to access the EAP can be found on the Executive Portal – under Popular resources.

Duplicate

From: Wright, Steven
Sent: Thursday, 17 October 2024 11:23 AM
To: Carmody, Lisa ; Mirzabegian, Sanaz ; Bolton, Martin
Cc: CMTEDD, DDGOIRWS
Subject: FW: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Hi Lisa, Sanaz
I've updated the proposed comms (see page 1, attached) and run past Martin. Sch 2.2(a)(ii) has indicated mid-next week is ok for estimates, so have reflected this in the update.
For final review/clearance please and I will have the team issue it (we can also run past Sch 2.2(a)(ii)).
Steven

From: Carmody, Lisa <Lisa.Carmody@act.gov.au>
Sent: Thursday, 17 October 2024 10:13 AM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>; Bolton, Martin <Martin.Bolton@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>
Subject: RE: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Comments and suggestions marked up can I see an update please once reviewed?
Could I also have info on which staff OLA are responsible for and which we are? I have heard cab min staff, min staff etc I just want to be really clea.

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: Sch 2 s 2.2(a)(ii) |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

---

From: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Sent: Thursday, 17 October 2024 9:45 AM
To: Bolton, Martin <Martin.Bolton@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>; Carmody,

Lisa <Lisa.Carmody@act.gov.au>
Subject: Next Steps with LAMS - Comms to Affected Staff
Importance: High

OFFICIAL: Sensitive

Hi Lisa, While we prepare the list etc, here is the proposed staff comms, prepared in consultation with Steven and Martin:

Proposed Comms

Good Morning

We have an update on the information previously provided to the staff of the Executive Members of the Legislative Assembly (Executive Staff) in relation to the estimates on termination of employment.

We note that the exit payment estimates provided to the Executive Staff were based on a redundancy. We have been advised that an exit payment is appropriately characterised as an Eligible Termination Payment (ETP) rather than a redundancy and should be calculated as such. An ETP is based on salary as at termination and is taxed at a higher rate (X%) than a redundancy payment (X%). ETP is not available if a person is immediately re-employed under the LAMS Act.

The above position aligns the treatment of exit payments for Executive Staff with all other Members of the Legislative Assembly staff.

We appreciate that you may have questions in relation to this, and we are here to support you in this regard, including to provide new estimates, if required urgently.

If you have any questions, please email [CMTEED Corporate mail box] , and the team will coordinate a response based on your question.

Kind Regards

Sanaz (she/her)
Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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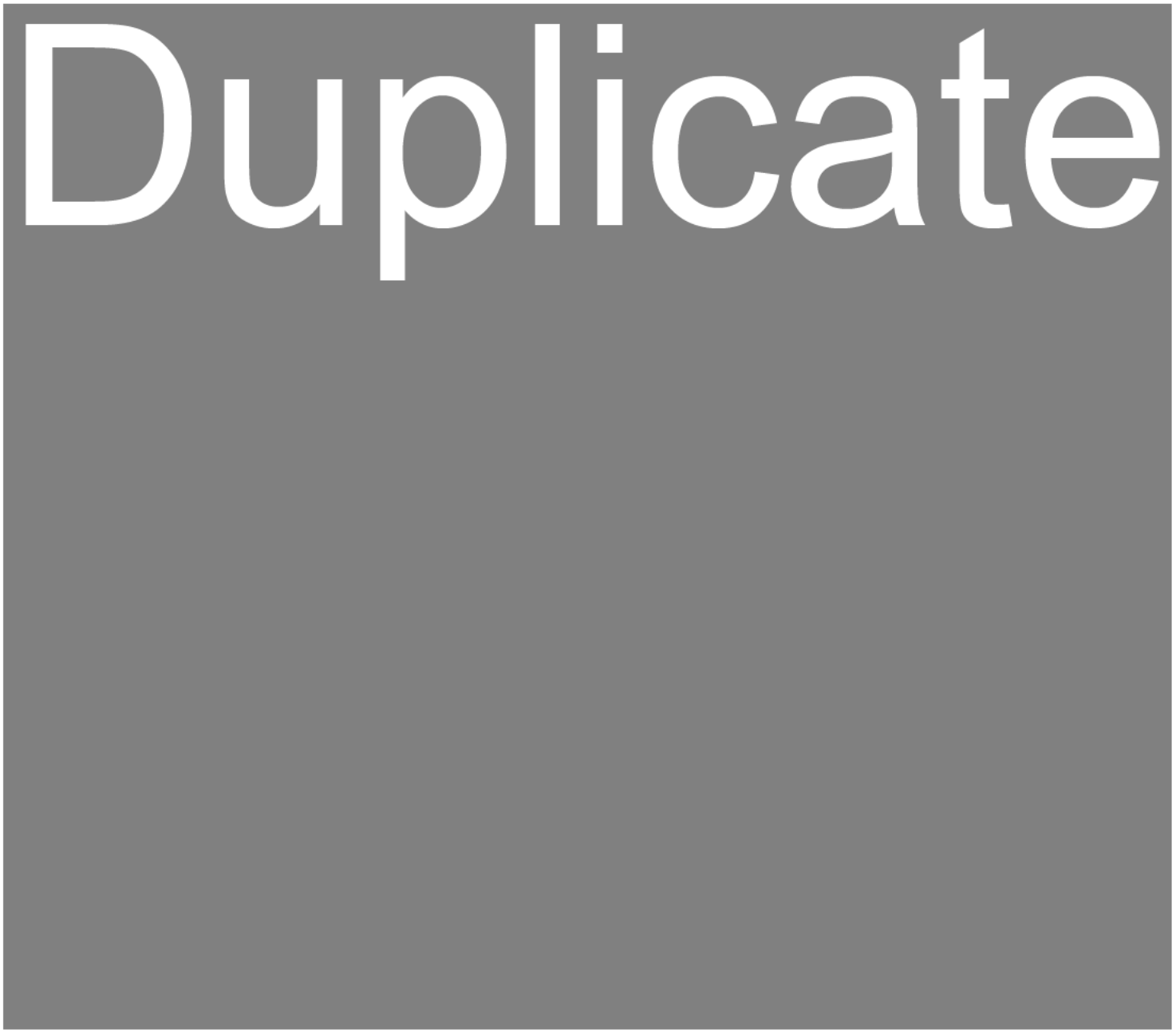
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From: "Wright, Steven"
Sent: 17/10/2024 11:22 AM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>
Cc: "CMTEDD, DDG Office OIRWS" <DDGOIRWS@act.gov.au>
Subject: FW: Next Steps with LAMS - Comms to Affected Staff
Attachments: Draft comms LAMS.docx

Hi Lisa, Sanaz

I've updated the proposed comms (see page 1, attached) and run past Martin. Matt Mison has indicated mid-next week is ok for estimates, so have reflected this in the update.

For final review/clearance please and I will have the team issue it (we can also run past Matt).

Steven

Duplicate

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From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 17/10/2024 10:26 AM
To: "Wright, Steven" <Steven.Wright@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>
Subject: FW: Next Steps with LAMS - Comms to Affected Staff
Attachments: Draft comms LAMS.docx

OFFICIAL: Sensitive

Hi most recent draft from Lisa

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 17/10/2024 10:14 AM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>
Cc: "CMTEDD, DDG Office OIRWS" <DDGOIRWS@act.gov.au>
Subject: RE: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Thanks working on it.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 17/10/2024 9:44 AM
To: "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Subject: Next Steps with LAMS - Comms to Affected Staff
Importance: High

OFFICIAL: Sensitive

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Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

---

From: Carmody, Lisa
Sent: Thursday, 17 October 2024 8:59 AM
To: Mirzabegian, Sanaz ; Bolton, Martin
Cc: CMTEDD, DDGOIRWS
Subject: Revised estimates
Importance: High

OFFICIAL: Sensitive

Morning both

From: "Wright, Steven"
Sent: 16/10/2024 8:37 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Cc: "Bolton, Martin" <Martin.Bolton@act.gov.au>
Subject: Re: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

Get Outlook for iOS
From: Mirzabegian, Sanaz
Sent: Wednesday, October 16, 2024 3:02 PM
To: Wright, Steven ; Carmody, Lisa
Cc: Bolton, Martin
Subject: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

Communication to staff to be sent on Friday morning:
Good Morning
We have an update on the information previously provided in relation to the estimates on termination of employment for Staff of Members of the Legislative Assembly.
We have been advised that an exit payment is appropriately characterised as an Eligible Termination Payment (ETP) rather than a redundancy. An ETP is taxed at a higher rate than a redundancy payment.
We have also been advised of the methodology for calculation of the severance component of the ETP, which depends on your circumstances as at the time of termination.
As the correct characterisation of the exit payment is an ETP, Payroll does not provide further estimates. Please note that ETP is not available if you are immediately re-employed under the LAMS Act.
If you have any questions in relation to your ETP, please email [Tracey]?
Kind Regards
Sanaz (she/her)
Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: "Wright, Steven"
Sent: 16/10/2024 3:53 PM
To: "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: FW: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

Hi

For discussion (not circulation) please.

Steven

From: Mirzabegian, Sanaz
Sent: Wednesday, 16 October 2024 3:03 PM
To: Wright, Steven ; Carmody, Lisa
Cc: Bolton, Martin
Subject: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

Communication to staff to be sent on Friday morning:

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Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 16/10/2024 3:02 PM
To: "Wright, Steven" <Steven.Wright@act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Cc: "Bolton, Martin" <Martin.Bolton@act.gov.au>
Subject: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

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If you have any questions in relation to your ETP, please email [Tracey]?

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 16/10/2024 1:58 PM
To: "Wright, Steven" <Steven.Wright@act.gov.au>
Subject: CM draft brief - LAMS Termination Payment
Attachments: LAMS Termination Payment Changes.docx, Attachment A - KPMG advice.pdf, Attachment B - ACTGS Advice - Members' staff termination payments.pdf, Attachment C - AoG Guidelines.docx

UNOFFICIAL

Hi Steven, for your reference, this is the initial brief prepared. I have not reviewed, but happy for you to use any part of it as you see fit.
I will next send the email to Michael and Matt and then the email comms.
Email 1 of 3.
Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: Matthews, EmmaC
Sent: Friday, 3 January 2025 4:47 PM
To: Manzoney, Lisa <Lisa.Manzoney@act.gov.au>
Cc: Clarke, Elissa <Elissa.Clarke@act.gov.au>; Allars, Alex <Alex.Allars@act.gov.au>; Wright, Robert <Robert.Wright@act.gov.au>; CMTEDD, Office of the EGM PSE <CMTEDD.OfficeoftheEGMPSE@act.gov.au>
Subject: RE: RLA LAMS terminations - delegations and restructure Fund

Hello Lisa

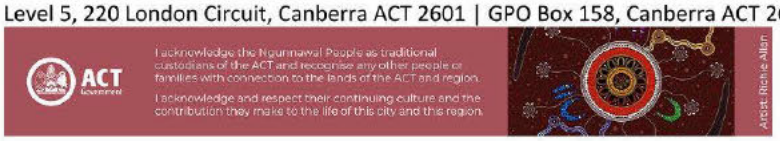
Many thanks to you and your team for the advice below.

We have prepared the attached document with a view to providing it to the affected staff of office-holders. Could you please let me know if you have any concerns, proposed amendments or other feedback?

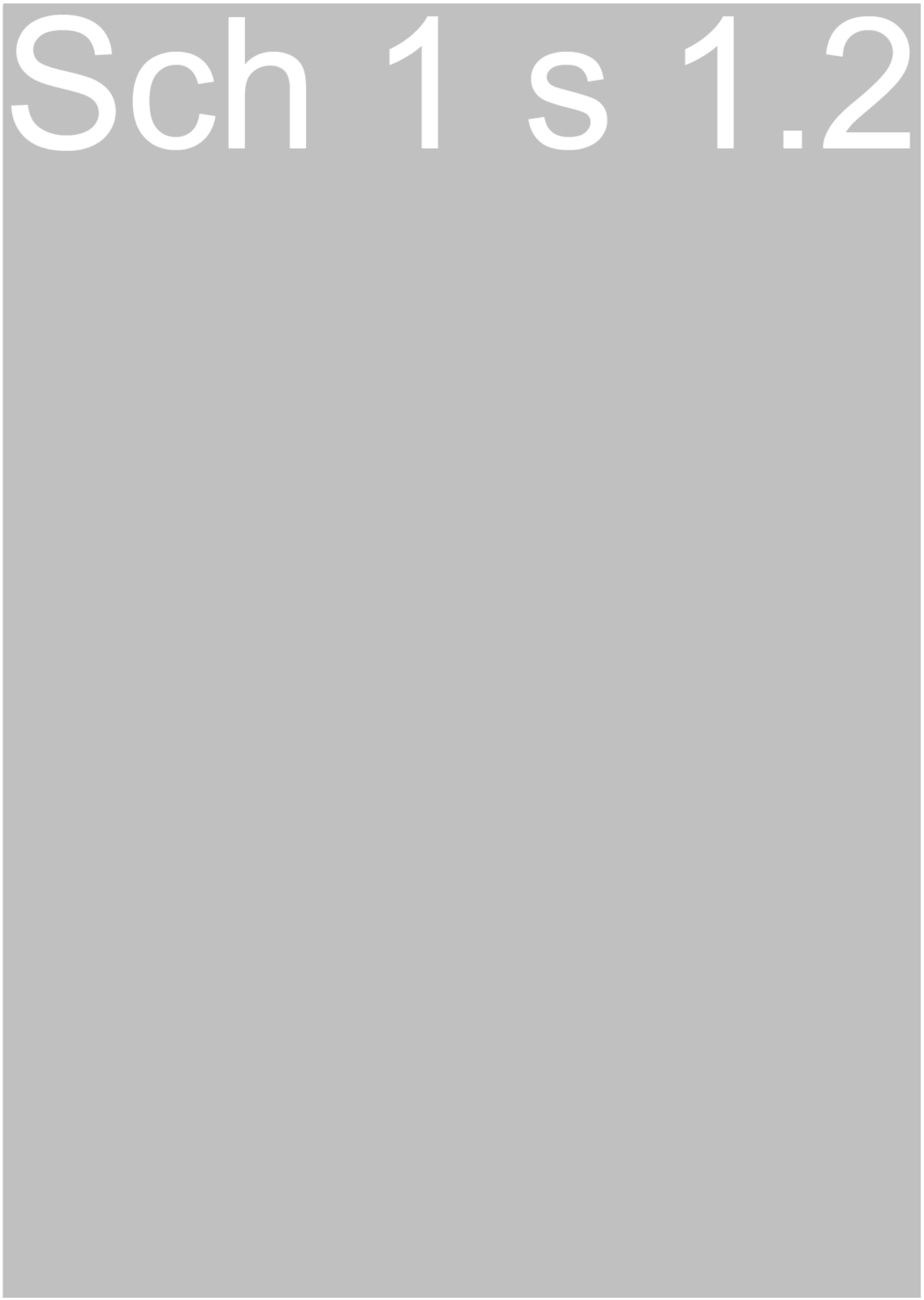
Best regards,

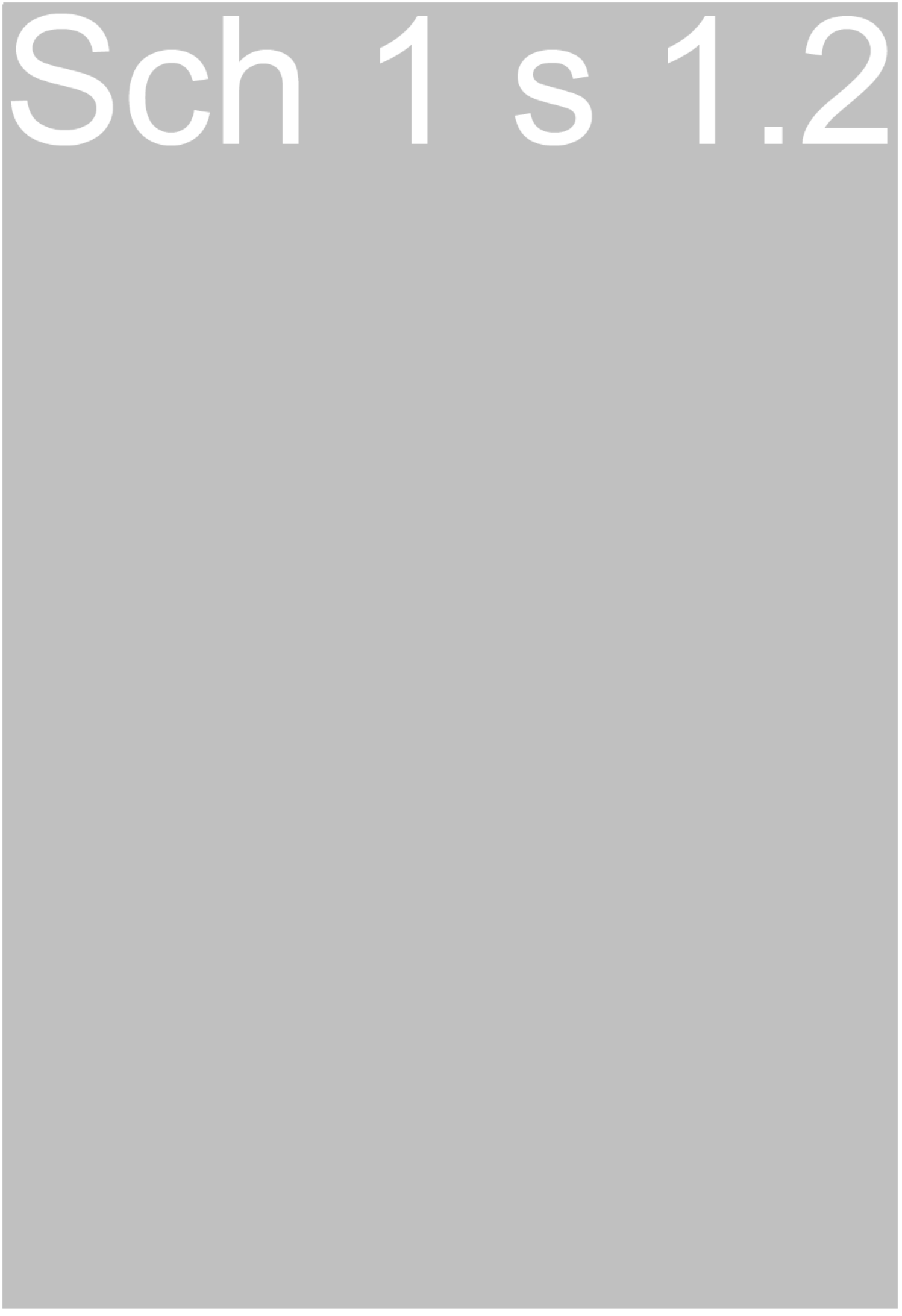
Emma

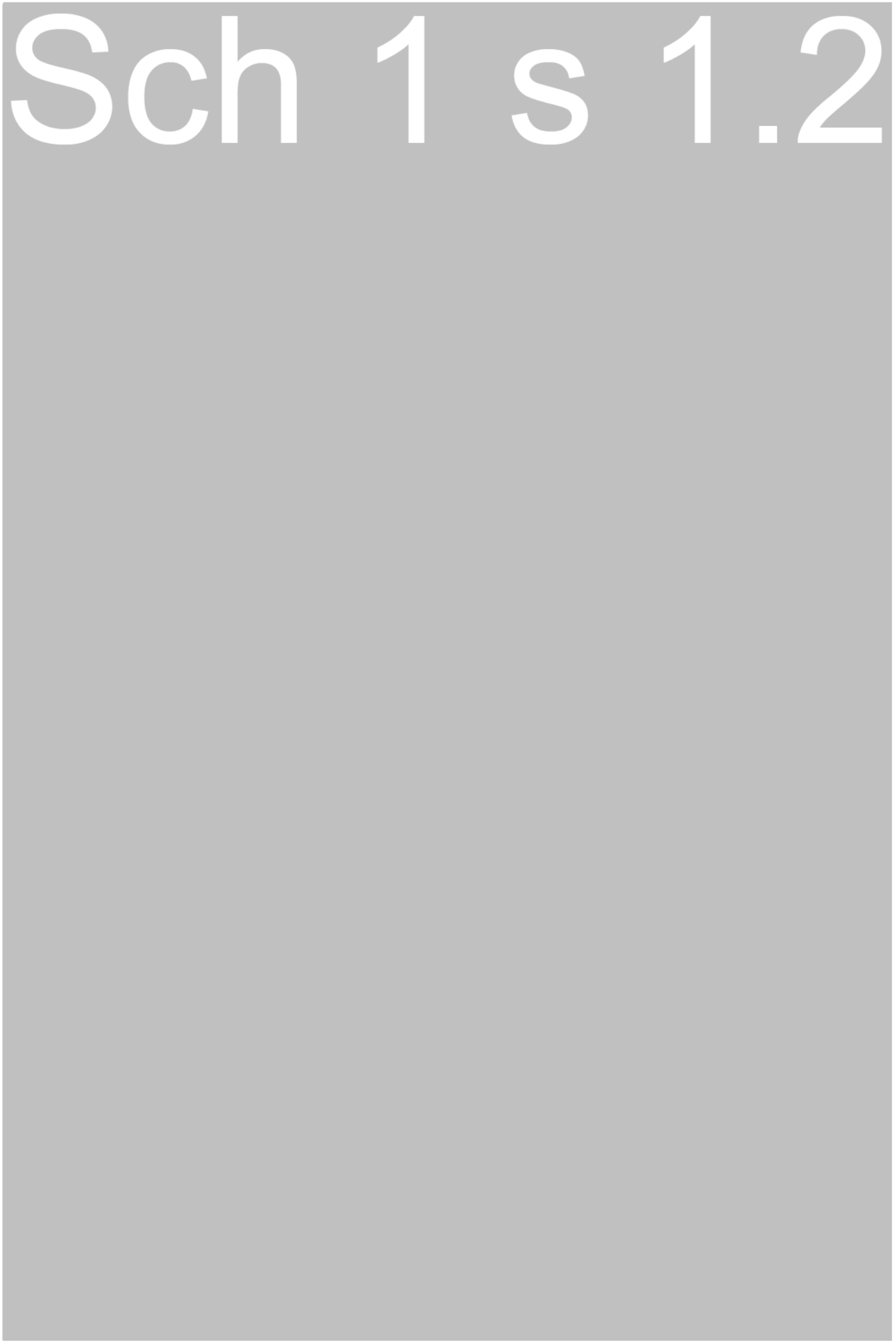
Emma Matthews | Executive Branch Manager, Workforce Governance and Recruitment *(she/her)*
Phone: Sch 2 s 2.2(a)(ii)2 | Email: EmmaC.Matthews@act.gov.au
Chat with me on Microsoft Teams
Whole-of-Government Public Sector Employment | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



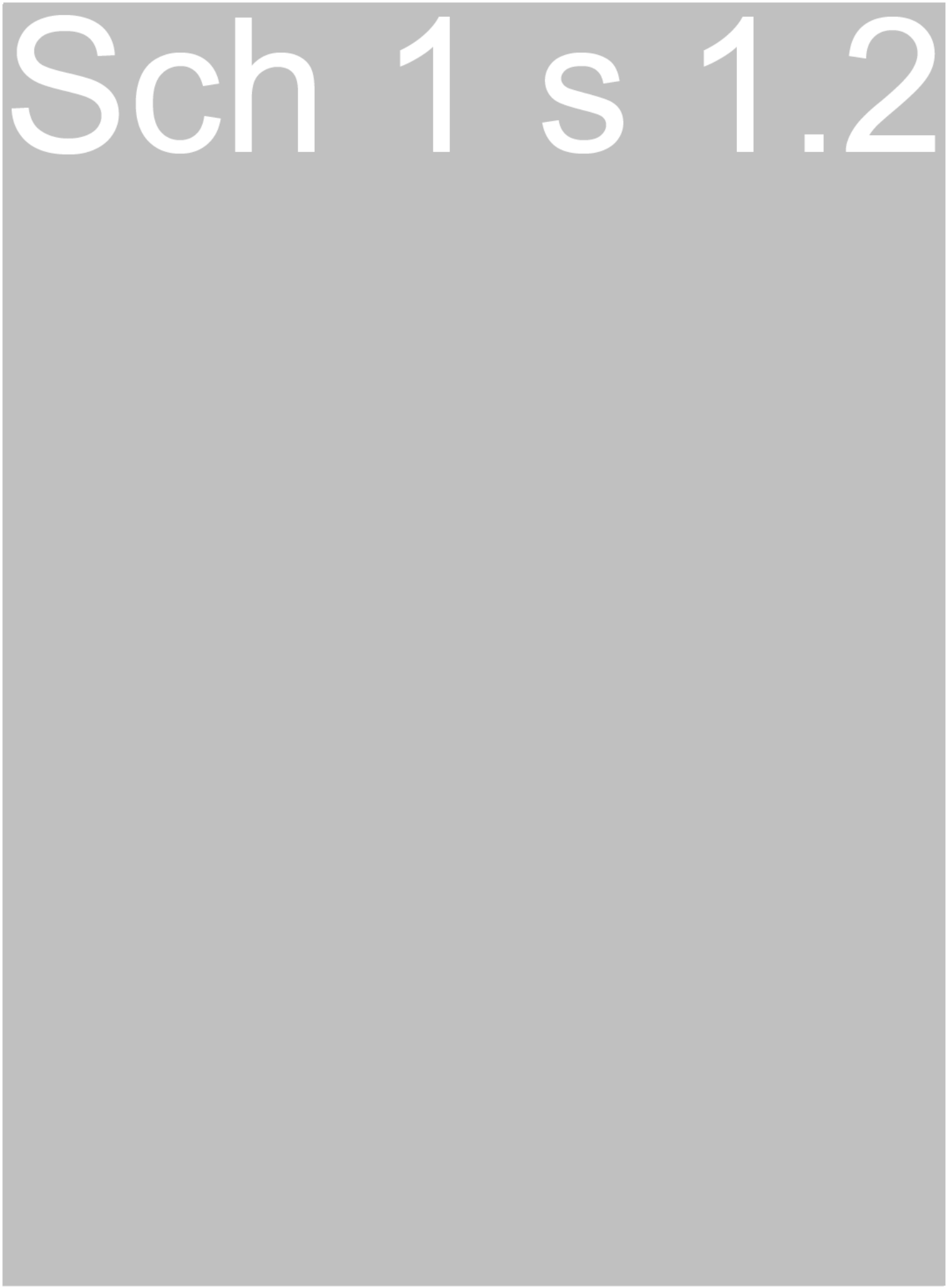
Sch 1 s 1.12

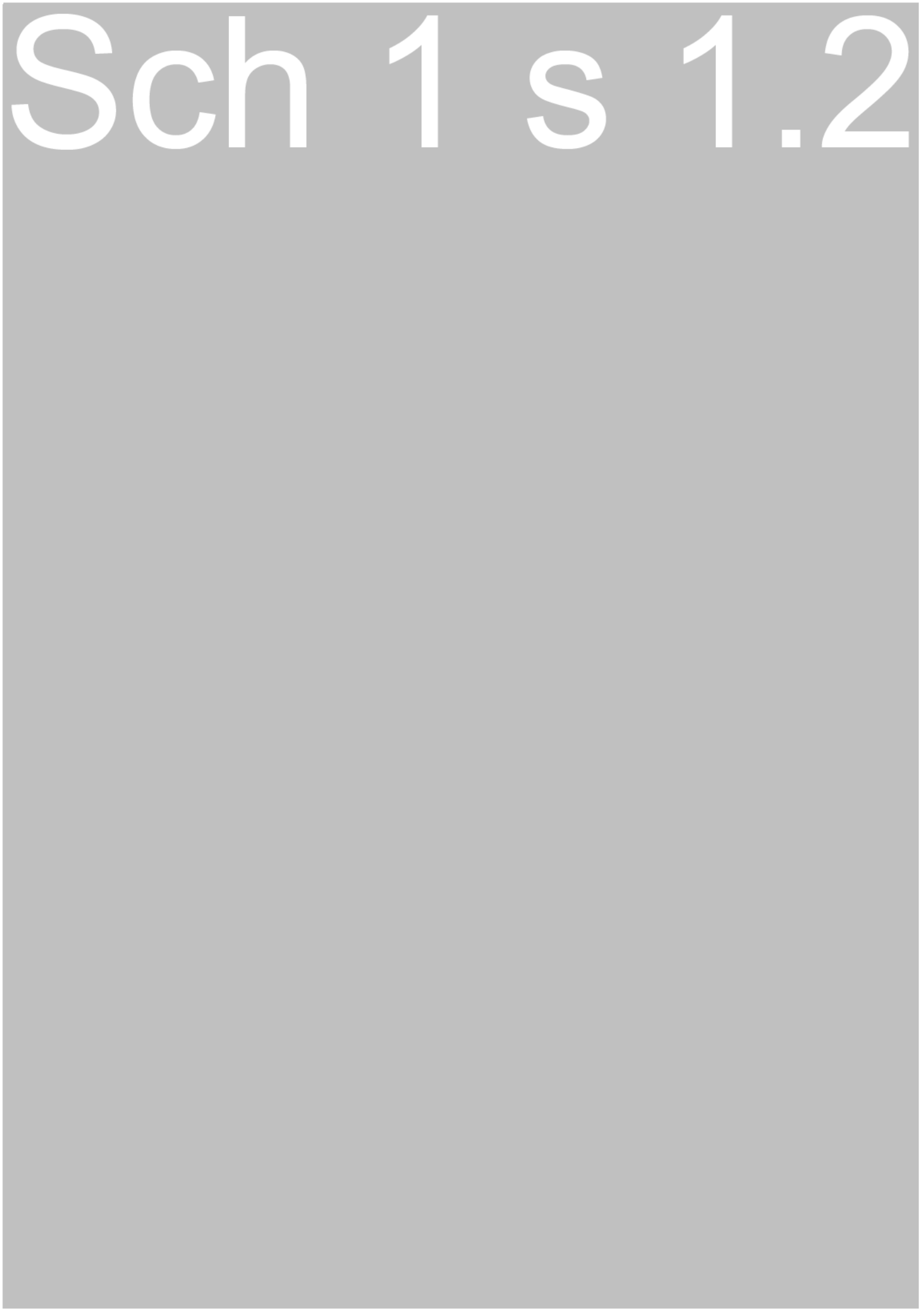

Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2

Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 23/10/2024 3:44 PM
To: "Wright, Robert" <Robert.Wright@act.gov.au>
Cc: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: FW: Draft of proposed email for comment: Update: Estimates of payment based n a termination event

OFFICIAL: Sensitive

FYI, for visibility.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

---

From: Mirzabegian, Sanaz
Sent: Wednesday, 23 October 2024 3:19 PM
To: Northam, Madeline (CPSU)
Cc: Matthews, EmmaC
Subject: Draft of proposed email for comment: Update: Estimates of payment based n a termination event

Dear Maddy,
Thank you for meeting with Emma Matthews and I earlier today. Below for your comments, proposed draft communication to affected staff. We are hoping to send it out today. Please let me know if it is easier to discuss on the phone or on Teams.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

Proposed Communications

Good Afternoon

I am writing to provide an update from our email of 17 October 2023. As outlined in that email, during August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff). These estimates were calculated based on a redundancy event.

Given that the email was based on recently received advice, we undertook to write to you again to provide estimates that would be calculated based on a **termination event**. This is now attached.

We continue to work with the CPSU and the USU in relation to this matter, and will provide you with updates over the coming days.

In the meantime, some of you have requested information about the timing of payment. Payroll has confirmed the following details on the current timing for payments:

- Usual pay on payday: 7 November 2024 (pay up until termination day, first sitting day – 6 November);
- Usual pay on payday: 21 November 2024 (pay for two weeks after termination day – the deeming period provided by Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Office-holders' Staff Direction 2015)
- Balance of final payment on 5 December 2024 (it will be important that payroll receives all cessation paperwork with sufficient time to process to meet this date. In due course, CMTEDD Corporate will get in touch with staff who are not continuing employment under the *Legislative Assembly (Members' Staff) Act 1989* to discuss further details.

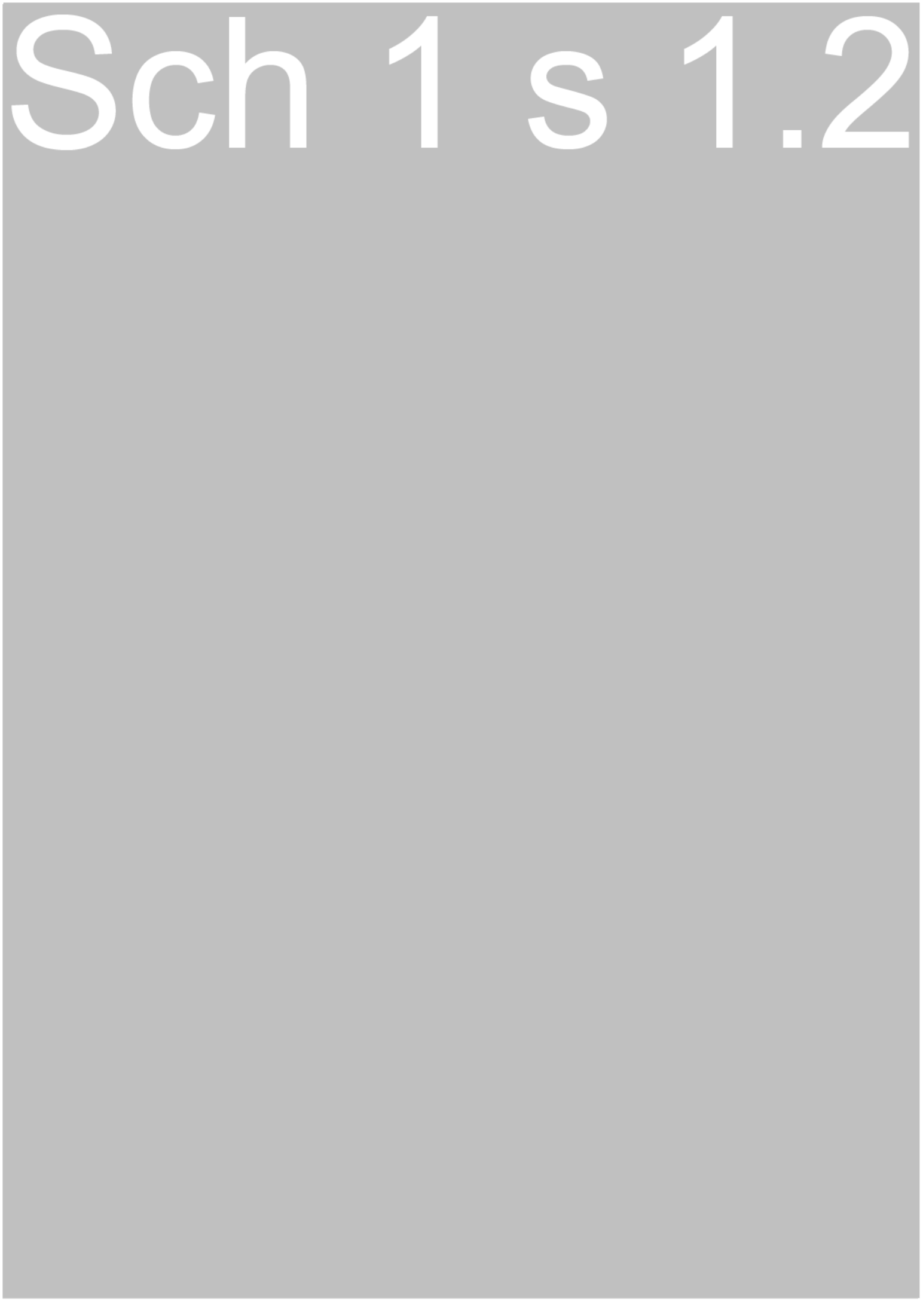
Once again, we appreciate that this may be a difficult time for you, and we thank you for your patience as we work through these important matters.

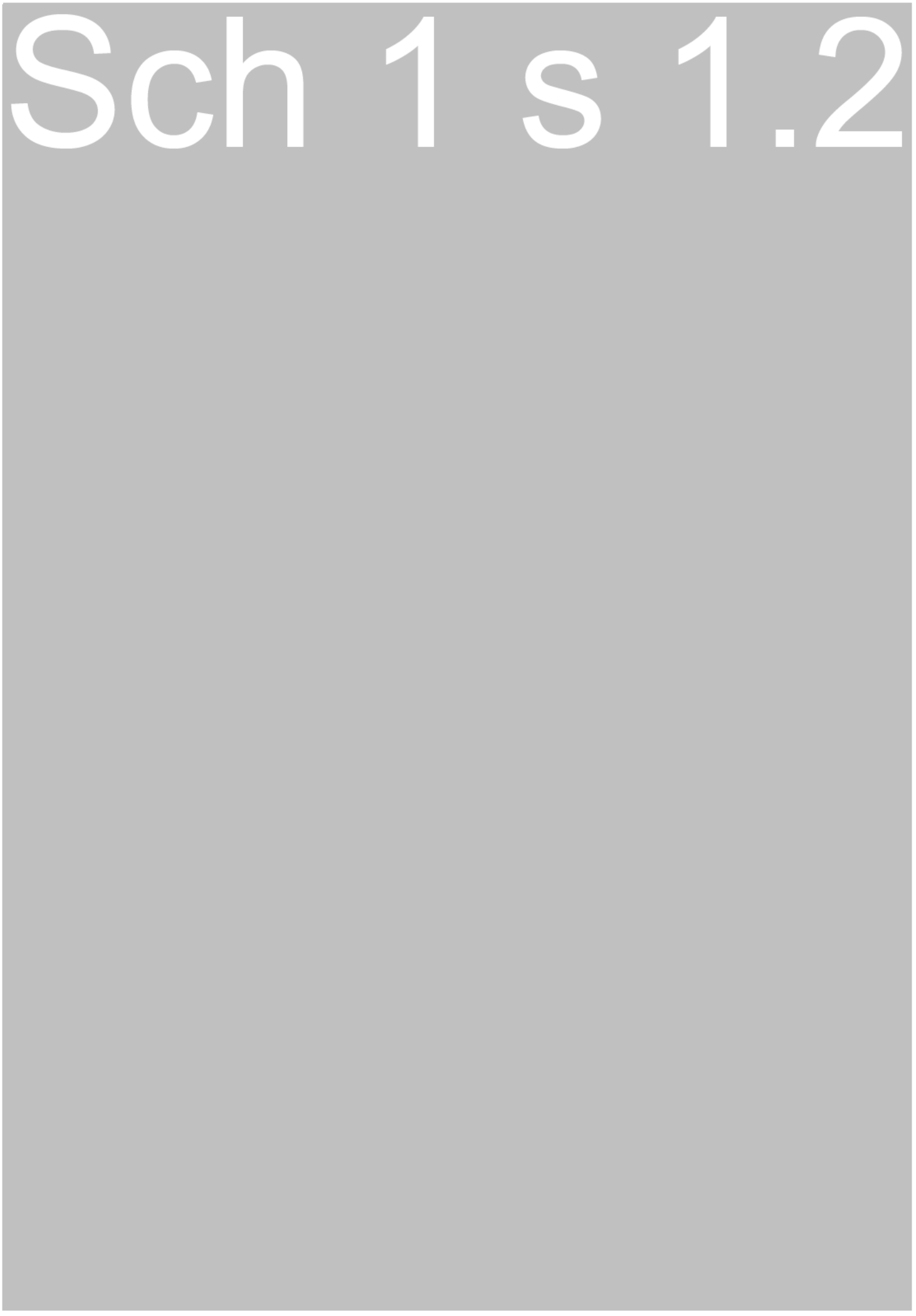
If you have any questions in relation to your specific circumstances, please send those directly to this mailbox.

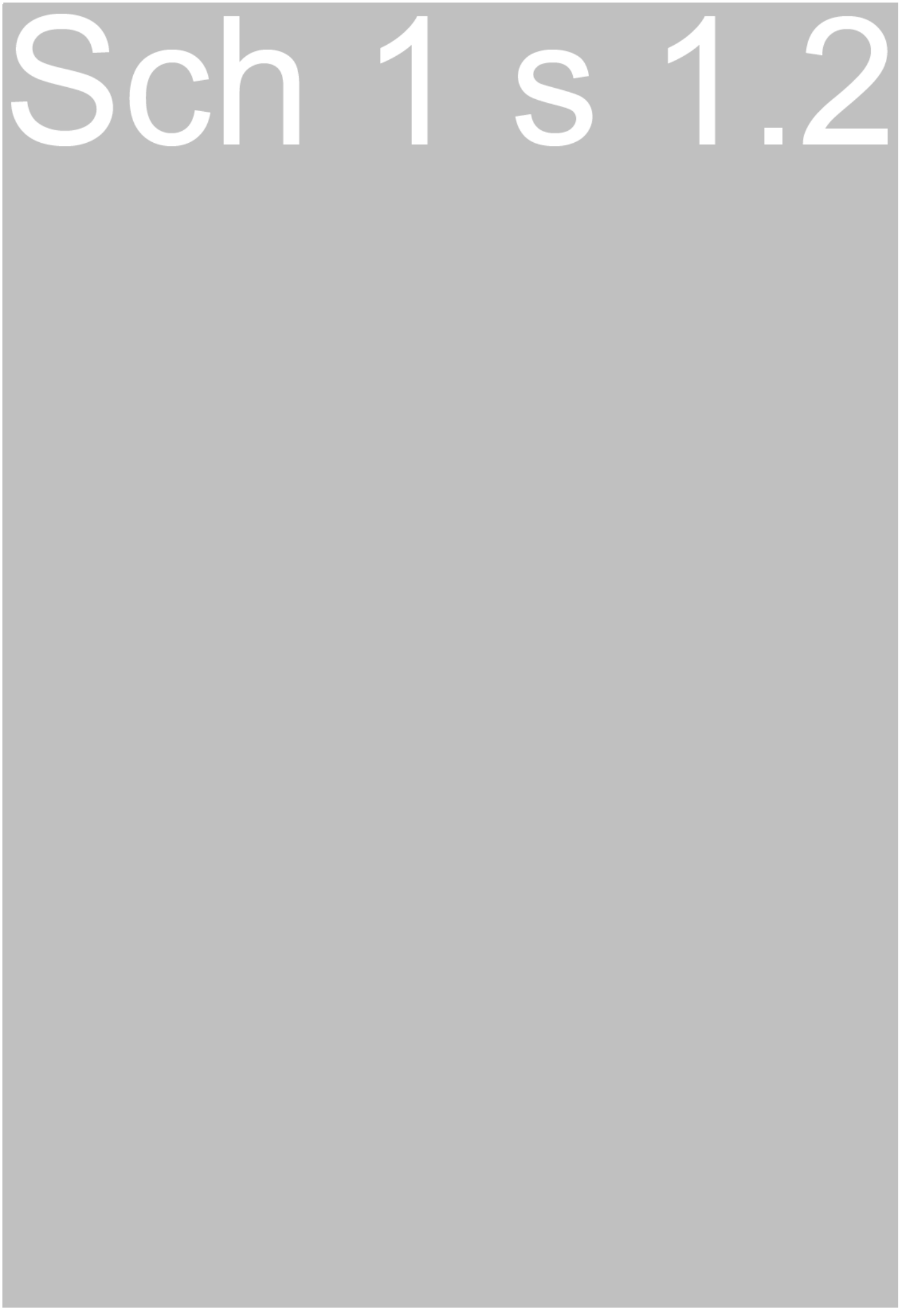
Duplicate

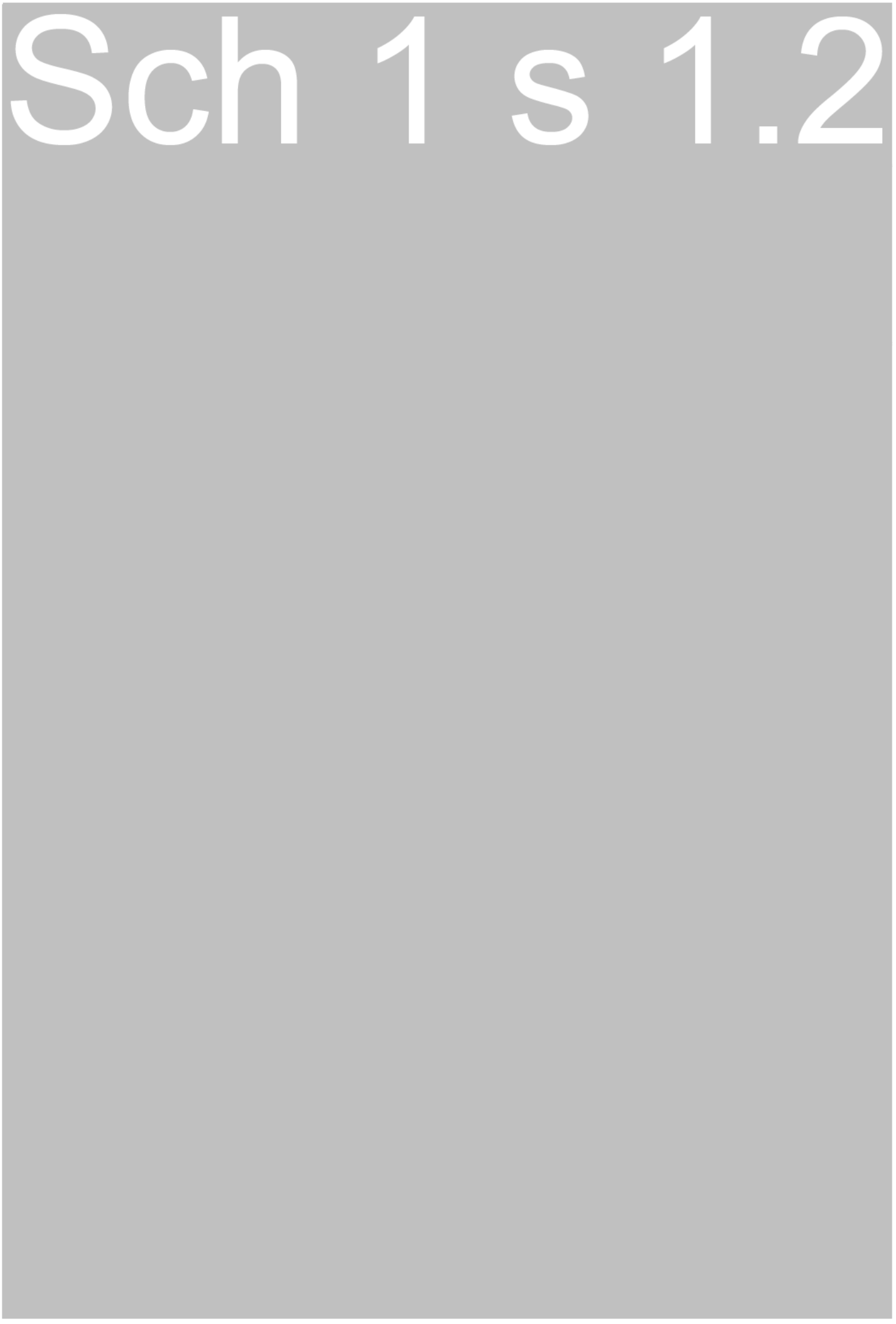
Duplicate

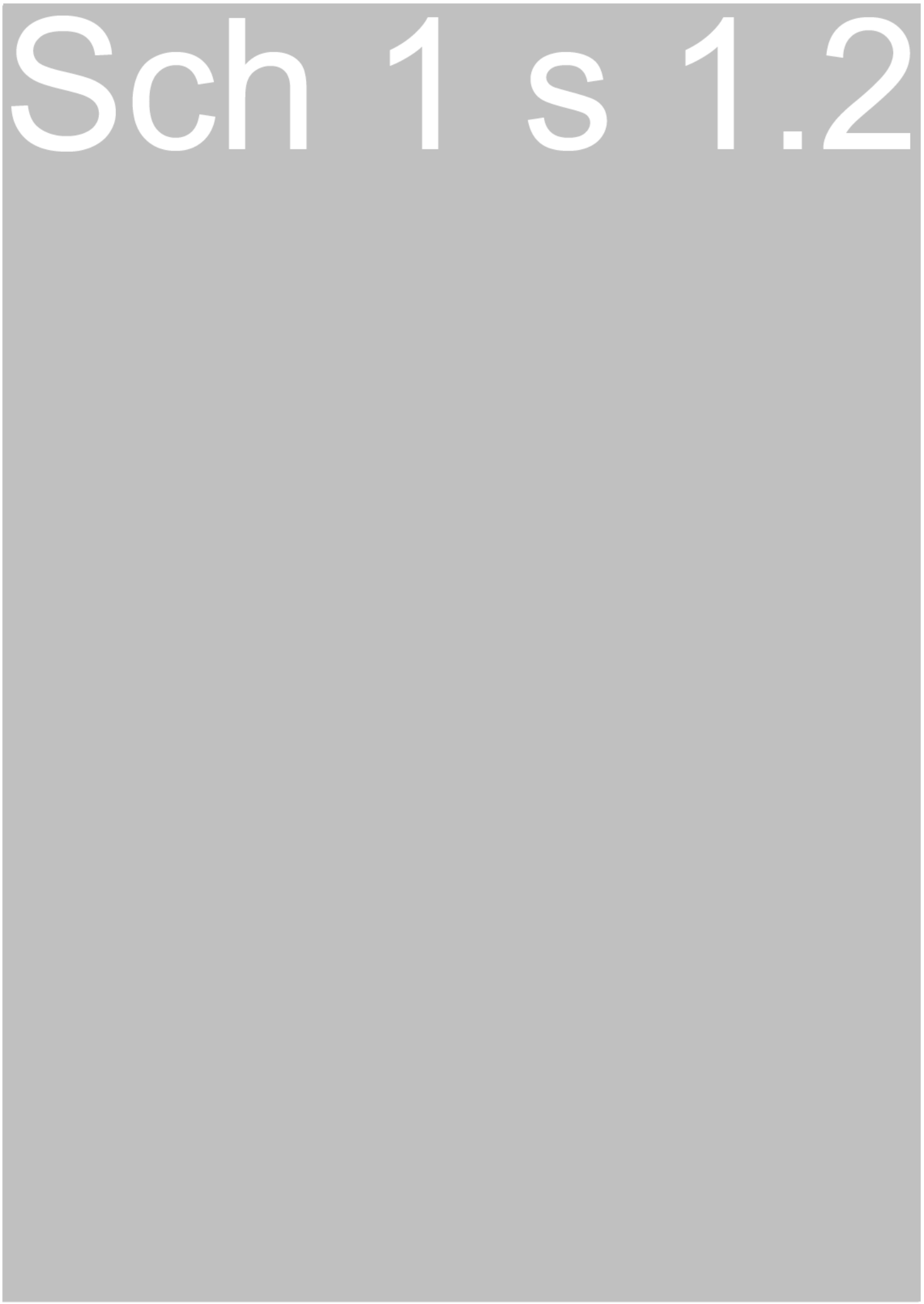
Sch 1 s 1.2

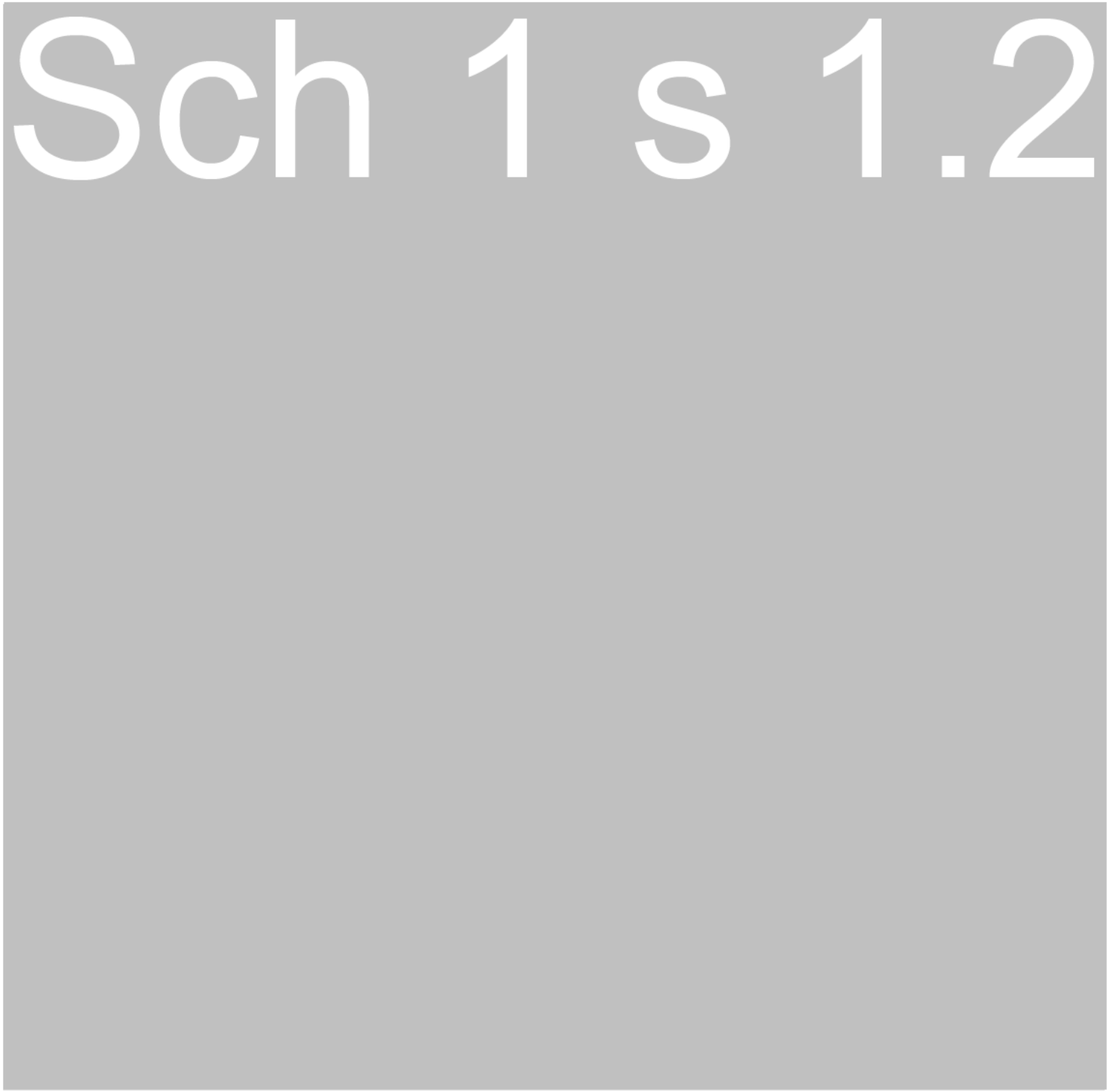

Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2


Sch 1 s 1.2

ACT Government
Chief Minister, Treasury and Economic Development

Request for consideration of individual circumstances: Staff of office-holders at the conclusion of the 10th Legislative Assembly

Without prejudice

Background

1. Toward the end of the 10th Legislative Assembly, estimate payments were provided to office-holder staff. These estimates represented the final monies that would be paid to office-holder staff who were not continuing to be employed in the 11th Legislative Assembly because their employment would be terminated in accordance with the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act). These estimates were calculated according to practice and convention and the calculations were consistent with advice provided at the end of the 9th Assembly and the 8th Assembly.

Commented [EM1]: Payroll is confirming the accuracy of this statement.

2. In August and September 2024, the Office of the Legislative Assembly (OLA) and CMTEDD separately prepared and sent estimates to Members' staff. The estimates prepared by OLA applied different, less favourable taxation assumptions.
3. Advice was sought and the advice confirmed that the OLA approach should be followed for staff of Members and staff of office-holders.
4. On 17 October 2024, office-holder staff were advised the previous information and estimates provided were not consistent with updated tax and legal advice. The Office of Industrial Relations and Workforce Strategy (OIRWS, CMTEDD) set up a dedicated mailbox and executive contact officer, to provide a centralised point of communication for office-holder staff.
5. Updated estimates were provided on 23 October 2024 to staff of office-holders reflecting estimated final monies treated as termination payments, rather than as redundancy payments.
6. Concerns were raised by office-holder staff and employee representatives about the discrepancies and changes to the estimates of final monies payable.
   (a) Primarily, the concerns are that the inconsistency in the advice provided has led to negative personal impacts for some individuals.
   (b) Senior officials of CMTEDD and representatives of the Community and Public Sector Union have corresponded regarding these matters.
7. Correspondence received by OIRWS, CMTEDD from affected staff of office-holders has outlined the following:

(a) that it was reasonable for staff of office-holders to rely on the advice provided to them by One Service Payroll as the payroll team are the Territory's relevant experts when it comes to payroll matters, including the taxation of final monies.
(b) that One Service Payroll had a duty to exercise reasonable care when providing the estimated final monies advice.

8. The OIRWS has provided advice on options to address affected office-holder staff concerns, and the Chief Minister has agreed to consider act of grace payments to those office-holder staff who have outlined that they relied on the Government's advice and have experienced a detriment. The purpose of this form is to enable an assessment of the possible avenues of legal recourse for affected individuals prior to the consideration of act of grace payments.

Consideration of individual circumstances

9. The form at Attachment A has been developed for use by staff of office-holders at the conclusion of the 10th Legislative Assembly to outline their individual circumstances arising from the receipt of advice as to final monies/tax treatment, advice which was subsequently withdrawn and replaced with new advice on final monies/tax treatment.

10. Staff are invited to complete this form to indicate:
    (a) the quantum of the impact (potentially the difference between the original advice and the final advice);
    (b) evidence of reasonable reliance on the original advice on final monies;
    (c) evidence of loss experienced following that reliance on their original advice;
    (d) additional information required to support a submission for an act of grace payment.

11. The form is designed to provide guidance on the relevant considerations with respect of compensable losses and act of grace payments. Submissions can be made by way of the form, or via any other format affected staff wish to present the information relating to their individual circumstances.

12. Upon receipt of this completed form, Chief Minister, Treasury and Economic Development Directorate (CMTEDD) will arrange for consideration of the impact on individual staff and any claim made by individual staff. Consideration will include:
    (a) compensable loss following reliance on a representation, action taken to the detriment of staff of office-holders;
    (b) the operation of the CMTEDD Restructure Fund, which funds legal liability that an agency has incurred in certain circumstances and can only be used for purposes approved by Cabinet, noting that this operation of this fund is not currently applicable to staff employed under the *Legislative Assembly (Members' Staff) Act 1989;* and
    (c) act of grace payments in accordance with the Act of grace payments: policy and procedures guide.

13. Act of grace payments are only appropriate when other legal avenues have been exhausted. This form has been designed to enable affected staff to:

(a) pursue the question of legal liability in the first instance; and, in circumstances where a settlement of a claim against the Territory is not possible under clause 10 of the *Law Officers Legal Services Direction 2023,*

(b) pursue an act of grace payment.

14. Prior to the completion of this form, staff of office-holders may wish to review the attached Act of grace payments: policy and procedures guide and the *Law Officers Legal Services Direction 2023* – in particular clause 10. The completed form, or a claim in another format, or any enquiries about this process, should be addressed to LAMSLiaison@act.gov.au.

15. The form and the guidance material outlined above has been prepared on a without prejudice basis. It is important to note that the *Law Officers Legal Services Direction 2013* (in particular, clause 10) and the Act of grace payments: policy and procedures guide will guide the consideration of any claim made by a staff member of an office-holder.

Attachment A

NAME: Click or tap here to enter text.	DOB: Click or tap here to enter text.
PHONE: Click or tap here to enter text.	EMAIL: Click or tap here to enter text.
POSTAL ADDRESS: Click or tap here to enter text.	Preferred method of contact: *Phone / Email / Post* Click or tap here to enter text.

I acknowledge that I have read:

- the *Law Officers Legal Services Direction 2023* , and in particular clause 10
- the Act of Grace Payments – Policy and Procedures Guide.

The information that I provide in completing this form is true and correct. I acknowledge that I may be contacted to clarify the information I provide, or to provide additional information.

Click or tap here to enter text. Name

Click or tap to enter a date. Date

A clear explanation of the incident/situation and how it occurred.[1]	*Noting the background outlined at paragraphs 1-8 above, please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What actions on the Government's part contributed to the situation.[2]	*Noting the background outlined at paragraphs 1-8 above, please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What do you consider to be your loss and how have you calculated this?[3]	*Please detail how values have been determined.* Click or tap here to enter text.
In what ways did you rely on the original estimate and what evidence can you provide that relates to this reliance?[4]	*Please provide information relevant to your personal circumstances.* Click or tap here to enter text.
Do you have any comments on what made this reliance reasonable?[5]	*Please provide any additional information relevant to your personal circumstances and/or your views.* Click or tap here to enter text.
How many estimates for final monies have you received during your employment as staff of an office-holder?[6]	*Please outline how many estimates you have received and include a reference to your understanding of the tax treatment applied to those estimates. If you do not know, please enter N/A.* Click or tap here to enter text.

[1] 12(a) of the *Act of grace payments: Policy and procures guide*
[2] 12(b) of the *Act of grace payments: Policy and procures guide*
[3] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[4] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[5] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[6] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*

What actions or factors, relating to yourself or to other relevant individuals or organisations have contributed to the situation in either a positive or negative way.[7]	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
Why the situation warrants being considered a special circumstance.[8]	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What other avenues have been explored (including legal and financial), and with what outcomes.[9]	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
Why a payment would be appropriate, and the value of the payment being sought.[10]	*Please provide your views and the value of the payment being sought.* Click or tap here to enter text.
Supporting evidence should include[11]: • how the value of the payment being sought has been estimated; • documentary evidence of the circumstances, for example, correspondence, agreements and other documents establishing the circumstances and any loss (e.g. medical certificates and statements); • details of court or Tribunal findings; and • what reviews have been undertaken or may be underway.	*Please provide relevant information, and/or attach relevant documentation when submitting this form. If you do not intend to provide supporting evidence, please write 'Nil' in the textbox provided.* Click or tap here to enter text.
Previous correspondence with Government.[12]	*Noting paragraphs 1-8 above, please detail any other correspondence with government if relevant.* Click or tap here to enter text.
Other information that is likely to be relevant.[13]	**Optional - please provide any other information you believe to be relevant.* Click or tap here to enter text.
Any additional comments you would like to make.	**Optional - please provide any other comments you would like to make.* Click or tap here to enter text.

Attachment B – Act of grace payments: policy and procedure guide (2024)

[7] 12(c) of the *Act of grace payments: Policy and procures guide*
[8] 12(d) of the *Act of grace payments: Policy and procures guide*
[9] 12(e) of the *Act of grace payments: Policy and procures guide*
[10] 12(f) of the *Act of grace payments: Policy and procures guide*
[11] 12(g) of the *Act of grace payments: Policy and procures guide*
[12] 12(h) of the *Act of grace payments: Policy and procures guide*
[13] 12(j) of the *Act of grace payments: Policy and procures guide*

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 17/10/2024 1:55 PM
To: Sch 2.2(a)(ii) @act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; Sch 2.2(a)(ii) @act.gov.au>
Cc: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Sch 2.2(a)(ii) Many thanks, I will double check this and get back to you.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: Sch 2.2(a)(ii)
Sent: Thursday, 17 October 2024 10:43 AM
To: Carmody, Lisa ; Sch 2.2(a)(ii)
Cc: Leigh, Kathy ; Mirzabegian, Sanaz ; Wright, Steven
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Apologies Lisa,

A further question on the advice summary – the last paragraph "However, it may be affected by the entitlement to recognition of prior employment under the *Public Sector Management Act 1994* and *Public Sector Management Standards 2016* pursuant to sections 6(2) and 11(2) of the LAMS Act depending on the circumstances."

Appears to indicate that staff who have had continuous employment carry over from the ACTPS (and have resigned form their positions) may have the recognition of prior service counted for termination – this is also new and significant information (and would assist in the scenario where people have resigned from the service). Is that the case?

Kind regards,

Matt

From: Carmody, Lisa <Lisa.Carmody@act.gov.au>
Sent: Thursday, 17 October 2024 9:28 AM
To: Sch 2.2(a)(ii) t.gov.au>; Sch 2.2(a)(ii) @act.gov.au>
Cc: Leigh, Kathy <Kathy.Leigh@act.gov.au>; Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Duplicate

Sch 1 s 1.2

Sch 1 s 1.2

From: "Wright, Steven" <Steven.Wright@act.gov.au>
Sent: 16/10/2024 3:53 PM
To: "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: FW: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

Hi

For discussion (not circulation) please.

Steven

Duplicate

Duplicate

Duplicate

Duplicate

Duplicate

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 17/10/2024 9:28 AM
To: [redacted]act.gov.au>; '[redacted]@act.gov.au>
Cc: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Thanks [redacted]– we'll come back to you.

Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: [redacted] |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

---

From: [redacted]
Sent: Thursday, 17 October 2024 8:16 AM
To: Carmody, Lisa ; [redacted]
Cc: Leigh, Kathy ; Mirzabegian, Sanaz ; Wright, Steven
Subject: Re: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Lisa,

Thanks for providing this and ensuring this is communicated sensitively to effected staff given the significant stress people are under at this time.

I have a further question on the tax treatment if ETP -

Can you please confirm that the taxation treatment will still include concessional taxation (32%) up to the relevant ETP or whole or income cap as detailed in attached image. (Rather than the whole ETP and accrued leave being taxed at marginal rate)

(https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees/how-etp-components-are-taxed)

Kind regards,

Sch 2.2(a)(ii)

Get Outlook for iOS

Duplicate

Duplicate

Sch 1 s 1.2

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 23/10/2024 7:37 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Henry, Tracey" <Tracey.Henry@act.gov.au>; "Power, Leanne" <Leanne.Power@act.gov.au>
Cc: "Wright, Robert" <Robert.Wright@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>; "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>
Subject: Re: For Information: Emails of Estimates of payment based on a termination event now sent

OFFICIAL: Sensitive

Thanks Sanaz and Tracey (and of course to Martin and team for all the work revising these estimates so efficiently).
Lisa
Get Outlook for iOS
From: Mirzabegian, Sanaz
Sent: Wednesday, October 23, 2024 5:57 PM
To: Henry, Tracey ; Power, Leanne ; Carmody, Lisa
Cc: Wright, Robert ; Wright, Steven ; Matthews, EmmaC ; Szandurski, Kim ; Bolton, Martin
Subject: For Information: Emails of Estimates of payment based on a termination event now sent

OFFICIAL: Sensitive

Many thanks Tracey. As always, very much appreciate your responsive and diligent work. @Carmody, Lisa and @Power, Leanne for your visibility. I will send an email to the CPSU and USU to advise them of this.
Kind Regards
Sanaz (she/her)
Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: Henry, Tracey
Sent: Wednesday, 23 October 2024 5:55 PM
To: Mirzabegian, Sanaz
Cc: Wright, Robert ; Wright, Steven ; Matthews, EmmaC ; Szandurski, Kim ; Bolton, Martin
Subject: RE: Estimates of payment based on a termination event

OFFICIAL: Sensitive

Hi Sanaz,
Just confirming that all the recalculations have been emailed to the required staff members.
Kind regards
Tracey
Tracey Henry |Senior Director | Ministerial and Executive Support
Workforce and Information Services| CMTEDD Corporate
Phone: 02 6207 0372 or via MS Teams | Email: Tracey.Henry@act.gov.au

From: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Sent: Wednesday, 23 October 2024 4:51 PM
To: Henry, Tracey <Tracey.Henry@act.gov.au>
Cc: Wright, Robert <Robert.Wright@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>; Matthews, EmmaC <EmmaC.Matthews@act.gov.au>; Szandurski, Kim <Kim.Szandurski@act.gov.au>; Bolton, Martin <Martin.Bolton@act.gov.au>
Subject: Estimates of payment based on a termination event

OFFICIAL: Sensitive

Hi Tracey, Thank you for helping with sending out individual emails, attaching new estimates. Below is the covering email to staff. Appreciate it if you dropped us a line when all emails have been send.

Many thanks again
Kind Regards
Sanaz (she/her)
Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au
Covering email to affected staff:
Subject: Update - Estimate of payment based on a termination event
Good Afternoon
I am writing to provide an update from our email of 17 October 2023. As outlined in that email, during August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff). These estimates were calculated based on a redundancy event.
Given that the email of 17 October was based on recently received advice, we undertook to write to you again to provide estimates that would be calculated based on a **termination event**. This is now attached.
Please note that the calculation is still an estimate at this stage, and may not reflect the final payment.
We continue to work with the CPSU and the USU in relation to this matter, and will provide you with updates over the coming days.
In the meantime, some of you have requested information about the timing of payment. Payroll has confirmed the following details on the current timing for payments:

- Usual pay on payday: 7 November 2024 (pay up until termination day, first sitting day – 6 November)
- Usual pay on payday: 21 November 2024 (pay for two weeks after termination day – the deeming period provided by Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Office-holders' Staff Direction 2015)
- Balance of final payment on 5 December 2024 (it will be important that payroll receives all cessation paperwork with sufficient time to process to meet this date. In due course, CMTEDD Corporate will get in touch with staff who are not continuing employment under the *Legislative Assembly (Members' Staff) Act 1989* to discuss further details.

Once again, we appreciate that this may be a difficult time for you, and we thank you for your patience as we work through these important matters.
If you have any questions in relation to your specific circumstances, please send those directly to this mailbox.
We remind you that the Employment Assistance Program continues to be available to support you and family members. Information on how to access the EAP can be found on the Executive Portal – under Popular resources.

From: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Sent: 17/10/2024 12:53 PM
To: "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>; "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Cc: "CMTEDD, DDG Office OIRWS" <DDGOIRWS@act.gov.au>
Subject: Re: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Thanks I would like to be able to update Kathy later today with an indication of how many in the team are working on this and how many of these are working overtime to accelerate revised calcs
Get Outlook for iOS
From: Bolton, Martin
Sent: Thursday, October 17, 2024 11:48:38 AM
To: Wright, Steven ; Carmody, Lisa ; Mirzabegian, Sanaz
Cc: CMTEDD, DDGOIRWS
Subject: RE: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

We should have all complete by mid next week. There are about 63 calculations to be recalculated, they take on average about hours. NCH have kindly lent us a former payroll operative to help and we will bring one of our salary packaging staff with experience in this space back after cut of at 10 am tomorrow. We will more than likely jave people working weekends and overtime.
Martin Bolton | Executive Branch Manager | Payroll and HR Systems
Phone: 620 58700 | Email: Martin.Bolton @act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

From: Wright, Steven
Sent: Thursday, 17 October 2024 11:23 AM
To: Carmody, Lisa ; Mirzabegian, Sanaz ; Bolton, Martin
Cc: CMTEDD, DDGOIRWS
Subject: FW: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Hi Lisa, Sanaz
I've updated the proposed comms (see page 1, attached) and run past Martin. Matt Mison has indicated mid-next week is ok for estimates, so have reflected this in the update.
For final review/clearance please and I will have the team issue it (we can also run past Matt).
Steven

From: Carmody, Lisa <Lisa.Carmody@act.gov.au>
Sent: Thursday, 17 October 2024 10:13 AM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>; Bolton, Martin <Martin.Bolton@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>
Subject: RE: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Comments and suggestions marked up can I see an update please once reviewed?
Could I also have info on which staff OLA are responsible for and which we are? I have heard cab min staff, min staff etc I just want to be really clea.
Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: 0408 645 386 |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Sent: Thursday, 17 October 2024 9:45 AM
To: Bolton, Martin <Martin.Bolton@act.gov.au>; Wright, Steven <Steven.Wright@act.gov.au>; Carmody,

Lisa <Lisa.Carmody@act.gov.au>
Subject: Next Steps with LAMS - Comms to Affected Staff
Importance: High

OFFICIAL: Sensitive

Hi Lisa, While we prepare the list etc, here is the proposed staff comms, prepared in consultation with Steven and Martin:

Proposed Comms

Good Morning

We have an update on the information previously provided to the staff of the Executive Members of the Legislative Assembly (Executive Staff) in relation to the estimates on termination of employment.

We note that the exit payment estimates provided to the Executive Staff were based on a redundancy. We have been advised that an exit payment is appropriately characterised as an Eligible Termination Payment (ETP) rather than a redundancy and should be calculated as such. An ETP is based on salary as at termination and is taxed at a higher rate (X%) than a redundancy payment (X%). ETP is not available if a person is immediately re-employed under the LAMS Act.

The above position aligns the treatment of exit payments for Executive Staff with all other Members of the Legislative Assembly staff.

We appreciate that you may have questions in relation to this, and we are here to support you in this regard, including to provide new estimates, if required urgently.

If you have any questions, please email [CMTEED Corporate mail box] , and the team will coordinate a response based on your question.

Kind Regards

Sanaz (she/her)
Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

---

From: Carmody, Lisa <Lisa.Carmody@act.gov.au>
Sent: Thursday, 17 October 2024 8:59 AM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>; Bolton, Martin <Martin.Bolton@act.gov.au>
Cc: CMTEDD, DDGOIRWS <DDGOIRWS@act.gov.au>
Subject: Revised estimates
Importance: High

OFFICIAL: Sensitive

Morning both

I am in the office but online with the Public Service Commissioners conference over the next two days. However I am very focused on how we are managing the next steps in relation to implementation of the consequences of the legal advice recently received.

We need comms to go out this morning – could I please see revised comms to review and note it should include a reference to revising estimate calculations and a contact person in Steven Wright's area (or Steven if appropriate) to assist people with concerns.

We need a plan for the revised estimate calculations – how ling will it take, how loong does it take for each roughly, how many do we have, how many adiditional people will we need to assist with it. How quickly can we have the revised estimates prepared? If we need to draw on people form across OIRWS or outside I am happy to help to facilitate this. Perhaps CFO could assist wit resources?

I would like to see and have complied a list of affected individuals and within that, we should include details like quantum of original estimate, tenure, anything else relevant so we have a sense of which individuals may be most impacted because they were expecting a significant payment which will now likely be reduced. Is that possible?

I will ask Lisa to book two check ins for us today using my breaks in conference but will step out if needed.

Thanks

Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: 0408 645 386 |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 18/10/2024 8:20 AM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Cc: "Matthews, EmmaC" <EmmaC.Matthews@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>; "Szandurski, Kim" <Kim.Szandurski@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Prowse, Fay" <Fay.Prowse@act.gov.au>
Subject: Update on LAMS Update
Attachments: LAMS Staff - entitlement to redundancy pay, Advice - Application of s 333E of the FW Act to engagement of staff under the LAMS Act, RE: Urgent request for legal advice--s 333E Fair Work Act, LAMS Act

OFFICIAL: Sensitive

Now with a minor adjustment to reflect Emma's engagement with LAMS.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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From: Mirzabegian, Sanaz
Sent: Friday, 18 October 2024 8:11 AM
To: Carmody, Lisa
Cc: Matthews, EmmaC ; Szandurski, Kim ; Prowse, Fay
Subject: LAMS Update

Good Evening Lisa,
Below for your first update to HoS. I have erred on the side of more at thispoint just for your visibility as it was a busy day today. We will provide a more structured email for tomorrow:

Update As at 17 October 2024

LAMS Liaison Team convened
A core team has been convened to work with relevant stakeholders to ensure the efficient and effective progression of a resolution to the current matter:

- DDG, OIRWS (Lead)
- EGM, Public Service Employment, OIRWS
- EBM, Workforce Governance and Recruitment, PSE, OIRWS
- EBM, Industrial Relations, PSE, OIRWS
- EGM, CMTEDD Corporate

Secretariat: Fay Prowse

Advice is sought as required from the ACTGS. Lisa Manzoney is the relevant contact in the first instance. Rachel Turner, Executive Manager, Business Support Branch, Office of the Legislative Assembly (OLA) will be consulted with and kept informed of progress, with any legal advice shared between OLA and OIRWS.

Payroll

- There are currently four dedicated staff working on the estimates and an additional four for quality assurance (checking) of the calculations
- The Team has commenced calculation and completed 15 assessments so far. Checking will commence after pay cut off for this fortnight at 10am on Friday.

- Some members of the team will work overtime, including over the weekend, with the expectation that all calculations will be complete by Tuesday night
- A spreadsheet has been prepared to track progress. This will be updated and available on a shared drive, for access by you, and limited other individuals.

Communications
key meetings

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Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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Binder 1 - Part 16_25

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From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 17/10/2024 10:14 AM
To: "Carmody, Lisa" <Lisa.Carmody@act.gov.au>; "Bolton, Martin" <Martin.Bolton@act.gov.au>; "Wright, Steven" <Steven.Wright@act.gov.au>
Cc: "CMTEDD, DDG Office OIRWS" <DDGOIRWS@act.gov.au>
Subject: RE: Next Steps with LAMS - Comms to Affected Staff

OFFICIAL: Sensitive

Thanks working on it.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

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Binder 1 - Part 16_28

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From: "Wright, Steven"
Sent: 16/10/2024 8:37 PM
To: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Cc: "Bolton, Martin" <Martin.Bolton@act.gov.au>
Subject: Re: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

Get Outlook for iOS
From: Mirzabegian, Sanaz
Sent: Wednesday, October 16, 2024 3:02 PM
To: Wright, Steven ; Carmody, Lisa
Cc: Bolton, Martin
Subject: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

Communication to staff to be sent on Friday morning:
Good Morning
We have an update on the information previously provided in relation to the estimates on termination of employment for Staff of Members of the Legislative Assembly.
We have been advised that an exit payment is appropriately characterised as an Eligible Termination Payment (ETP) rather than a redundancy. An ETP is taxed at a higher rate than a redundancy payment.
We have also been advised of the methodology for calculation of the severance component of the ETP, which depends on your circumstances as at the time of termination.
As the correct characterisation of the exit payment is an ETP, Payroll does not provide further estimates. Please note that ETP is not available if you are immediately re-employed under the LAMS Act.
If you have any questions in relation to your ETP, please email [Tracey]?
Kind Regards
Sanaz (she/her)
Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: "Wright, Steven"
Sent: 16/10/2024 3:53 PM
To: "Henry, Tracey" <Tracey.Henry@act.gov.au>
Subject: FW: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

Hi

For discussion (not circulation) please.

Steven

From: Mirzabegian, Sanaz
Sent: Wednesday, 16 October 2024 3:03 PM
To: Wright, Steven ; Carmody, Lisa
Cc: Bolton, Martin
Subject: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

Communication to staff to be sent on Friday morning:

Good Morning

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If you have any questions in relation to your ETP, please email [Tracey]?

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 16/10/2024 3:02 PM
To: "Wright, Steven" <Steven.Wright@act.gov.au>; "Carmody, Lisa" <Lisa.Carmody@act.gov.au>
Cc: "Bolton, Martin" <Martin.Bolton@act.gov.au>
Subject: Update on exit payments on termination of employment for staff of Members of the Legislative Assembly

UNOFFICIAL

Communication to staff to be sent on Friday morning:

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If you have any questions in relation to your ETP, please email [Tracey]?

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: "Mirzabegian, Sanaz" <Sanaz.Mirzabegian@act.gov.au>
Sent: 16/10/2024 1:58 PM
To: "Wright, Steven" <Steven.Wright@act.gov.au>
Subject: CM draft brief - LAMS Termination Payment
Attachments: LAMS Termination Payment Changes.docx, Attachment A - KPMG advice.pdf, Attachment B - ACTGS Advice - Members' staff termination payments.pdf, Attachment C - AoG Guidelines.docx

UNOFFICIAL

Hi Steven, for your reference, this is the initial brief prepared. I have not reviewed, but happy for you to use any part of it as you see fit.
I will next send the email to Michael and Matt and then the email comms.
Email 1 of 3.
Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals
Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and economic Development Directorate| ACT Government
220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

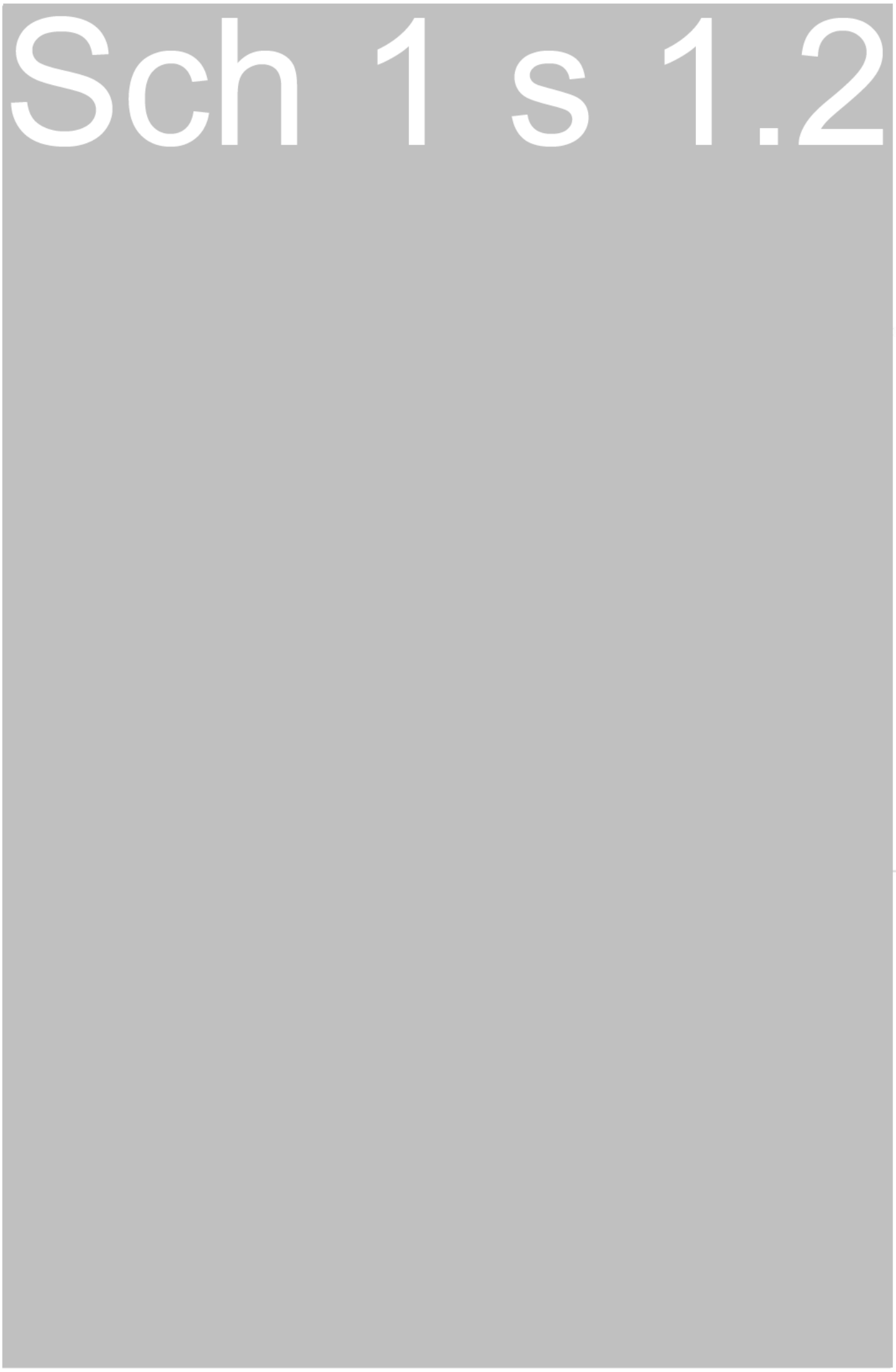
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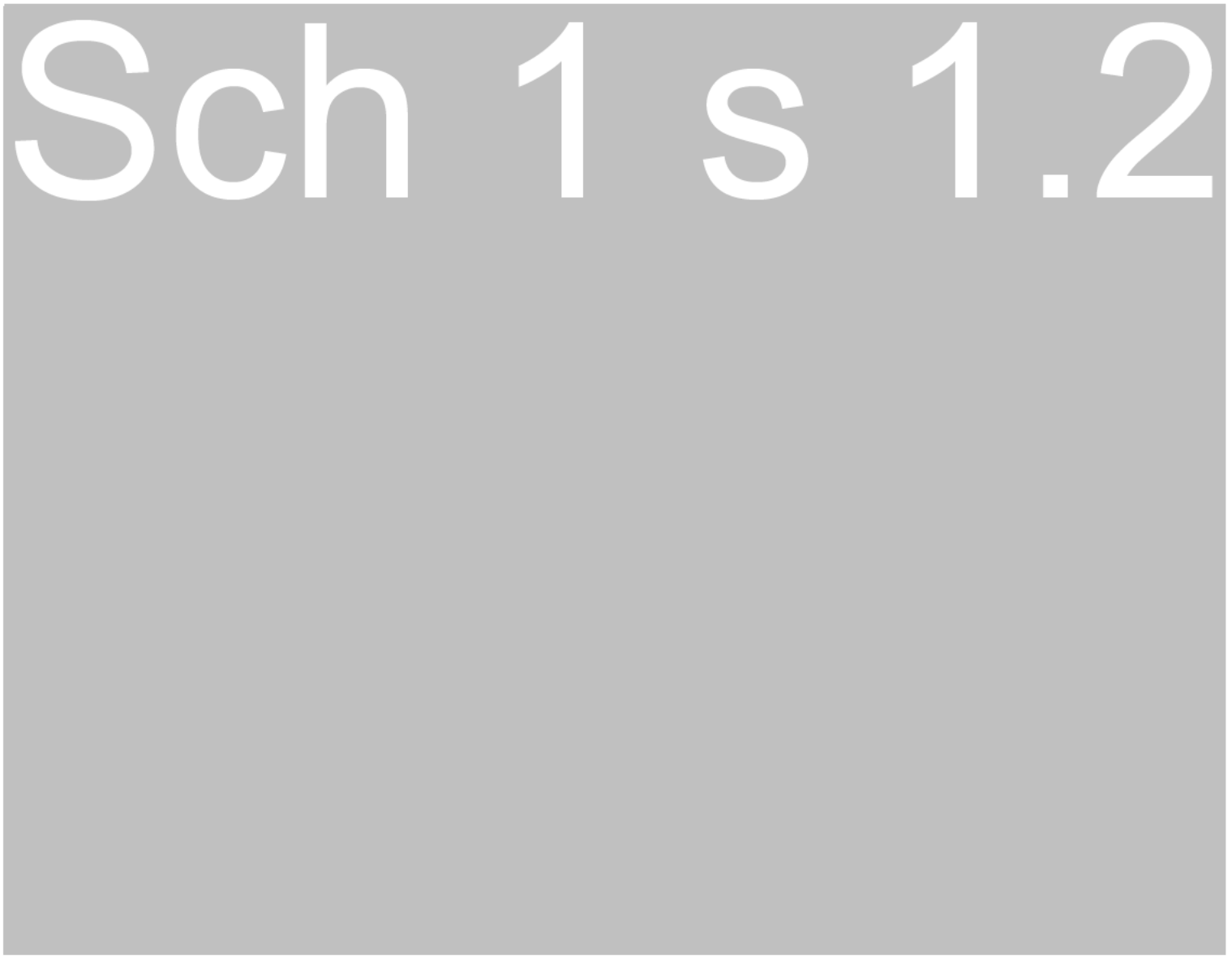
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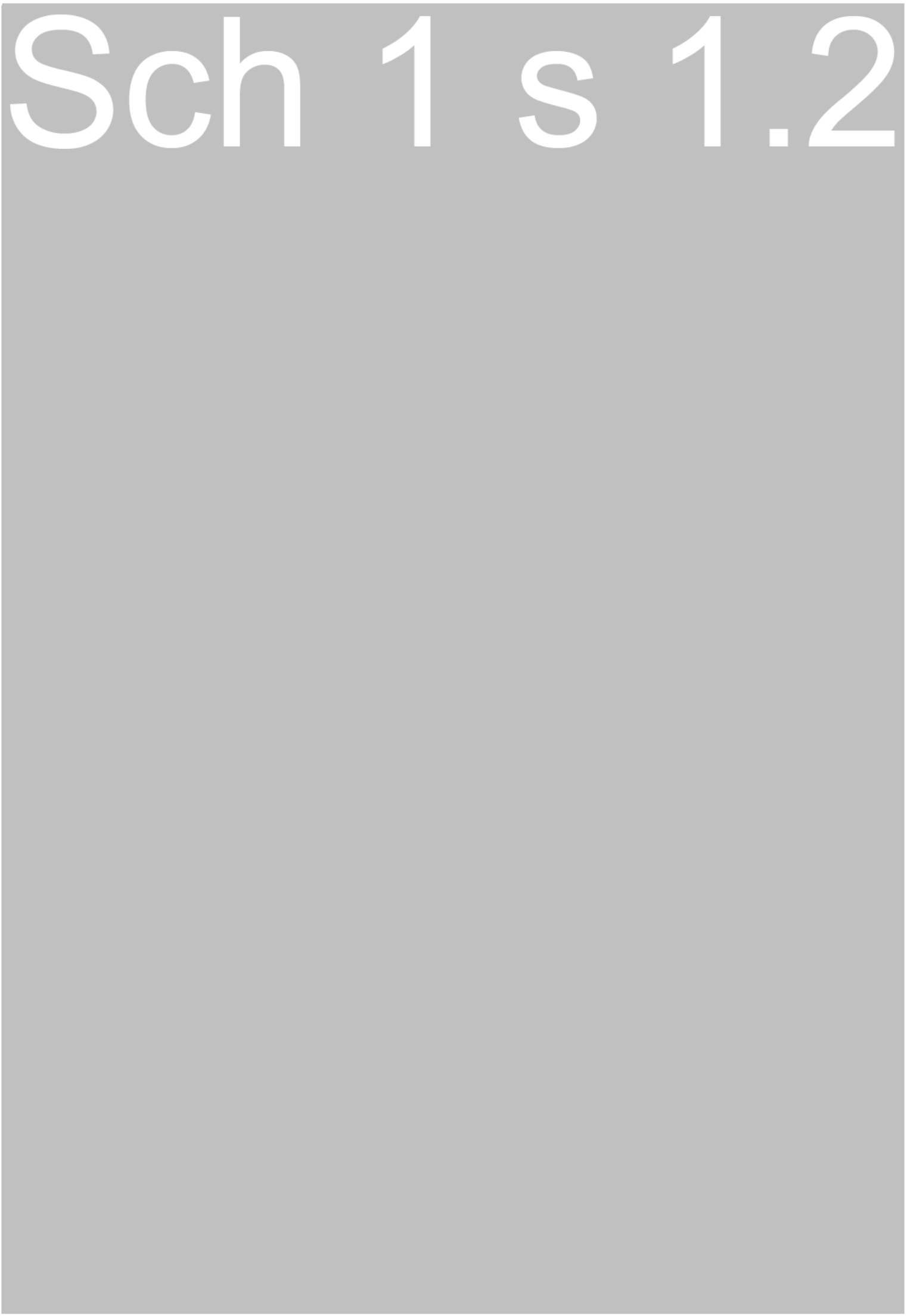
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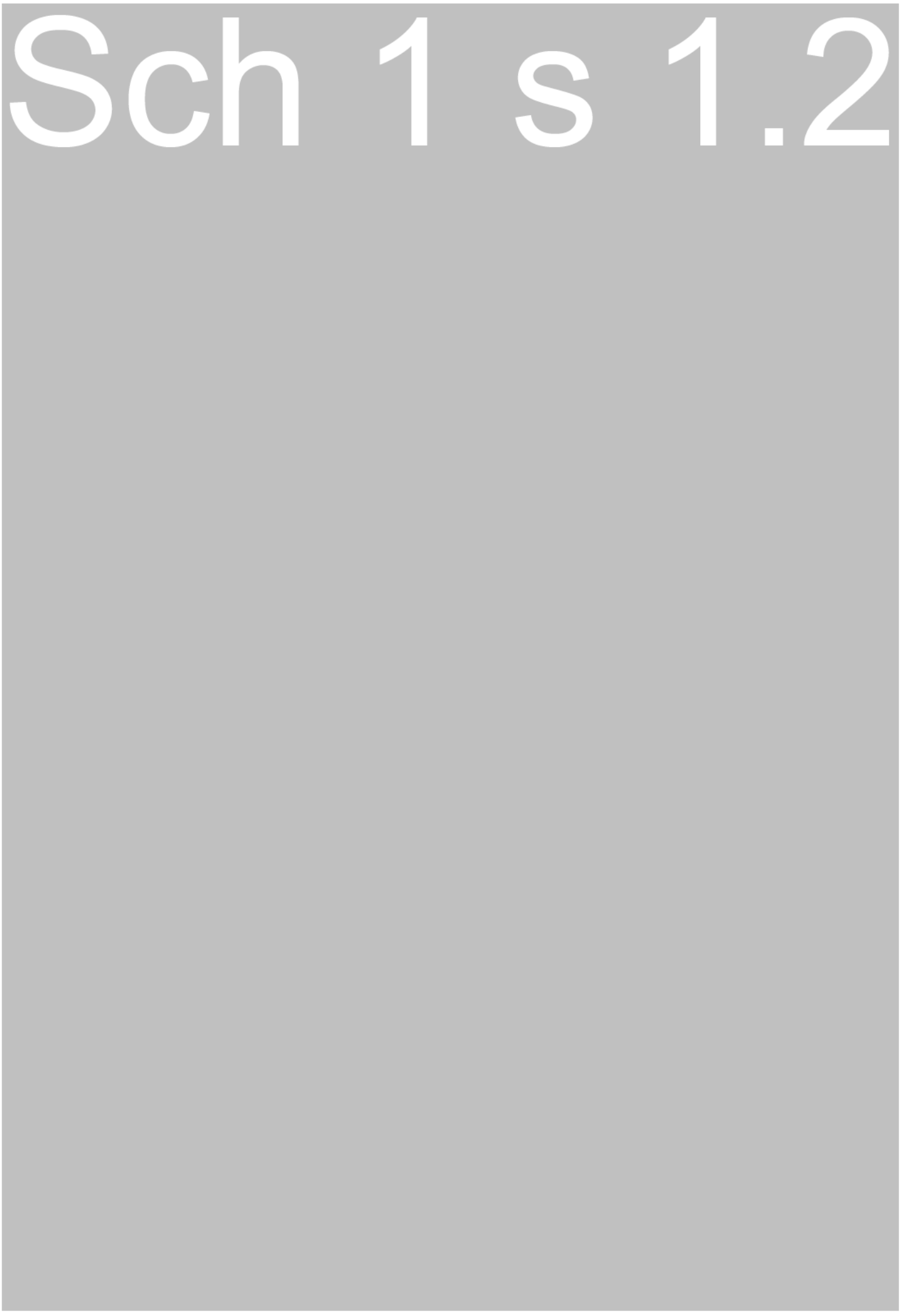

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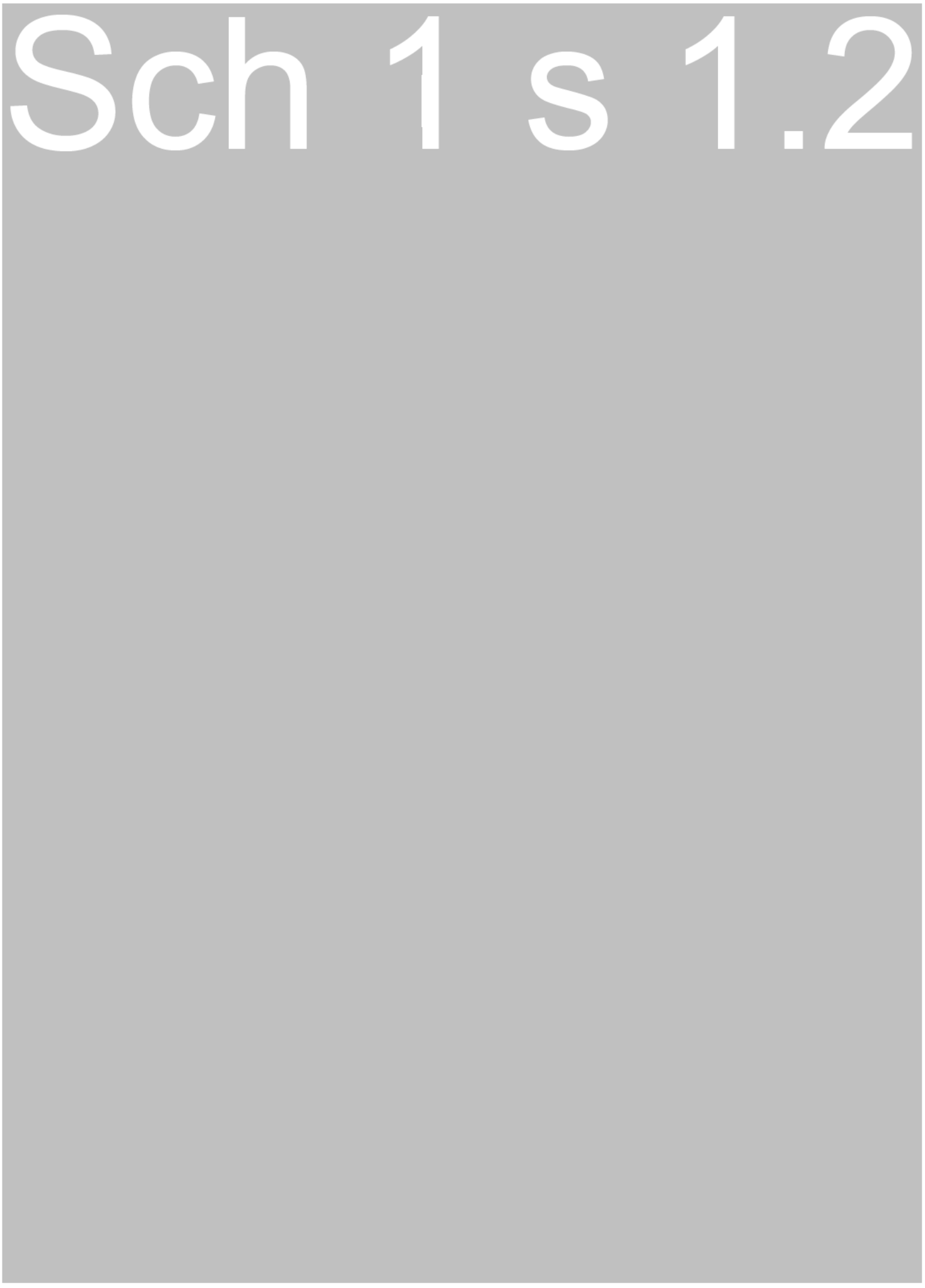
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Sch 1 s 1.2


Sch 1 s 1.2

From: "Wright, Robert" <Robert.Wright@act.gov.au>
Sent: 20/09/2024 3:42 PM
To: "Wright, Steven" <Steven.Wright@act.gov.au>
Subject: Fwd: taxation advice - end of Assembly term termination payments

OFFICIAL

FYI
Robert Wright
EGM Corporate CMTEDD
From: Wright, Robert
Sent: Friday, September 20, 2024 10:27:56 AM
To: Clarke, Elissa
Cc: Arthur, Sarah ; Mirzabegian, Sanaz ; Szandurski, Kim ; Bolton, Martin
Subject: FW: taxation advice - end of Assembly term termination payments
Hi Elissa

Sch 1 s 1.2

Kind regards
Robert Wright
EGM Corporate CMTEDD

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AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Treasurer's Advance

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
1	*Financial Management Act 1996*	To authorise expenditure in accordance with section 18 (Treasurer's Advance)	E900	Director-General Chief Minister, Treasury and Economic Development Directorate	$4,000,000 per authorisation	Limitations in section 18
2	*Financial Management Act 1996*	To authorise expenditure in accordance with section 18 (Treasurer's Advance)	E916	Under Treasurer Chief Minister, Treasury and Economic Development Directorate	$4,000,000 per authorisation	Limitations in section 18

I revoke all previous delegations of my powers under section 18 of the *Financial Management Act 1996*.

Andrew Barr MLA
Treasurer

Dated 11 / 2 / 2022

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Agreement for the Conduct of Banking for the Territory

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
1	*Financial Management Act 1996*	To enter into an agreement with an authorised deposit-taking institution relating to the conduct of banking for the Territory in accordance with section 32.	E900	Director-General Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
2	*Financial Management Act 1996*	To enter into an agreement with an authorised deposit-taking institution relating to the conduct of banking for the Territory in accordance with section 32.	E916	Under Treasurer Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil

I revoke all previous delegations of my powers under section 32 of the *Financial Management Act 1996*.

Andrew Barr MLA
Treasurer

Dated 11 / 2 / 2022

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Territory Banking Account

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
1	*Financial Management Act 1996*	To open and maintain a banking account for the purposes of the Territory in accordance with section 33	E900	Director-General Chief Minister, Treasury and Economic Development Directorate	Nil	Nil
2	*Financial Management Act 1996*	To open and maintain a banking account for the purposes of the Territory in accordance with section 33	E916	Under Treasurer Chief Minister, Treasury and Economic Development Directorate	Nil	Nil

I revoke all previous delegations of my powers under section 33 of the *Financial Management Act 1996*.

Andrew Barr MLA
Treasurer

Dated 11 / 2 / 2022

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Directorate Banking Account

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
1	*Financial Management Act 1996*	To approve the opening or maintaining of a directorate banking account, with an institution other than the banking institution with which the Territory banking account is maintained in accordance with subsection 34(3)	E900	Director-General Chief Minister, Treasury and Economic Development Directorate	Nil	Nil
2	*Financial Management Act 1996*	To approve the opening or maintaining of a directorate banking account, with an institution other than the banking institution with which the Territory banking account is maintained in accordance with subsection 34(3)	E916	Under Treasurer Chief Minister, Treasury and Economic Development Directorate	Nil	Nil

I revoke all previous delegations of my powers under subsection 34(3) of the *Financial Management Act 1996*.

Andrew Barr MLA
Treasurer

Dated 11 / 2 / 2022

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Investment of Certain Public Money

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
1	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	E900	Director-General Chief Minister, Treasury and Economic Development Directorate	Unlimited	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy
2	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	E916	Under Treasurer Chief Minister, Treasury and Economic Development Directorate	Unlimited	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy

Andrew Barr MLA (initial only)
Treasurer

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Investment of Certain Public Money

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
3	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	E01014	Deputy Under Treasurer - Economic, Revenue, Insurance, Property and Shared Services, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy
4	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	E01221	Deputy Under Treasurer - Budget, Procurement, Infrastructure and Finance Chief Minister, Treasury and Economic Development Directorate	Unlimited	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy

Andrew Barr MLA (initial only)
Treasurer

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Investment of Certain Public Money

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
5	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	E529	Executive Branch Manager, Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy

Andrew Barr MLA (initial only)
Treasurer

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Investment of Certain Public Money

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
6	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	1312 16191	Senior Officer Grade A, Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	$100,000,000 per investment	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy

Andrew Barr MLA (initial only)
Treasurer

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Investment of Certain Public Money

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
7	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	55405	Senior Officer Grade B, Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	$100,000,000 per investment	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy

Andrew Barr MLA (initial only)
Treasurer

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Investment of Certain Public Money

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
8	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	43378 3798	Senior Officer Grade C, Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	$30,000,000 per investment	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy

Andrew Barr MLA (initial only)
Treasurer

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Investment of Certain Public Money

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
9	*Financial Management Act 1996*	To invest any money held in the Territory banking account or directorate banking account in accordance with paragraphs 38(1)(a) to (e)	1413 372	Administrative Service Officer Class 6, Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	$10,000,000 per investment	Invest with a Territory appointed fund manager and/or in an approved investment fund or product consistent with the approved investment plan and strategy

I revoke all previous delegations of my powers under section 38(1)(a) to (e) of the *Financial Management Act 1996*.

Andrew Barr MLA
Treasurer
Dated 11 / 8 / 2022

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Payment of Interest

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
1	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	E900	Director-General Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
2	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	E916	Under Treasurer Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
3	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	E01014	Deputy Under Treasurer - Economic, Revenue, Insurance, Property and Shared Services, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
4	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	E01221	Deputy Under Treasurer - Budget, Procurement, Infrastructure and Finance Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil

Andrew Barr MLA
Treasurer

Dated 3 / 3 / 22

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Payment of Interest

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
5	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	E529	Executive Branch Manager, Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
6	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	1312 16191	Senior Officer Grade A, Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
7	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	55405	Senior Office Grade B, Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil

Andrew Barr MLA
Treasurer
Dated 3 / 3 / 22

AUSTRALIAN CAPITAL TERRITORY
LEGISLATION ACT 2001

Payment of Interest

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
8	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	43378 3798	Senior Officer Grade C Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
9	*Financial Management Act 1996*	To determine the amount of interest to be credited to directorate accounts in accordance with subsection 38(6)	1413 372	Administrative Service Officer Class 6 Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil

I revoke all previous delegations of my powers under section 38(6) of the *Financial Management Act 1996*.

Andrew Barr MLA
Treasurer
Dated 3 / 3 / 22

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
1	*Financial Management Act 1996*	To borrow money, give security for the repayment of an amount borrowed or the payment of interest on such an amount or enter into a finance lease in accordance with section 40	E900	Director-General Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
2	*Financial Management Act 1996*	To borrow money, give security for the repayment of an amount borrowed or the payment of interest on such an amount or enter into a finance lease in accordance with section 40	E916	Under Treasurer Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
3	*Financial Management Act 1996*	To borrow money, give security for the repayment of an amount borrowed or the payment of interest on such an amount in accordance with paragraphs 40(a) to 40(b)	E01014	Deputy Under Treasurer - Economic, Revenue, Insurance, Property and Shared Services, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil

Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
4	*Financial Management Act 1996*	To borrow money, give security for the repayment of an amount borrowed or the payment of interest on such an amount in accordance with paragraphs 40(a) to 40(b)	E01221	Deputy Under Treasurer - Budget, Procurement, Infrastructure and Finance Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil
5	*Financial Management Act 1996*	To borrow money, give security for the repayment of an amount borrowed or the payment of interest on such an amount in accordance with paragraphs 40(a) to 40(b)	E529	Executive Branch Manager Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	Unlimited	Nil



Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
6	*Financial Management Act 1996*	To borrow money, give security for the repayment of an amount borrowed or the payment of interest on such an amount in accordance with paragraphs 40(a) to 40(b)	1312 16191	Senior Officer Grade A Investments and Borrowings Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	$100,000,000 per transaction	Short-term notes only
7	*Financial Management Act 1996*	To borrow money, give security for the repayment of an amount borrowed or the payment of interest on such an amount in accordance with paragraphs 40(a) to 40(b)	55405	Senior Officer Grade B Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	$100,000,000 per transaction	Short-term notes only



Under section 254A of the *Legislation Act 2001*, with regard to each item in Column 1, I hereby delegate to the occupants, from time to time, of the positions specified in Column 4, my powers specified in Column 3 under the Act specified in Column 2, subject to the limitations specified in columns 6 and 7.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	**Act**	**Powers**	**Position No.**	**Classification / position title (for administrative purposes)**	**Monetary Limitation**	**Other Limitations**
8	*Financial Management Act 1996*	To borrow money, give security for the repayment of an amount borrowed or the payment of interest on such an amount in accordance with paragraphs 40(a) to 40(b)	43378 3798	Senior Officer Grade C Investments and Borrowings, Budget, Procurement and Infrastructure and Finance, Chief Minister, Treasury and Economic Development Directorate	$50,000,000 per transaction	Short-term notes only
9	*Financial Management Act 1996*	To enter into a finance lease in accordance with subsection 40(c)	E900	Director-General Chief Minister, Treasury and Economic Development Directorate	Unlimited	To enter into financing leases on behalf of the Territory in relation to vehicle leases and plant and equipment from an approved ACT Government Fleet provider only



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Sch 1 s 1.2

From: Matthews, EmmaC
Sent: Friday, 18 October 2024 2:06 PM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

Thank you!

From: Mirzabegian, Sanaz
Sent: Friday, 18 October 2024 1:56 PM
To: Matthews, EmmaC
Cc: Szandurski, Kim ; Taylor, Nina
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Here it is:)

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals

Public Sector Employment

Office of Industrial Relations and Workforce Strategy

Chief Minister, Treasury and economic Development Directorate| ACT Government

220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Friday, 18 October 2024 1:32 PM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Cc: Szandurski, Kim <Kim.Szandurski@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: FW: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Sanaz

I was in the process of preparing the more fulsome response, but I don't have the summary of the legal position which was attached to the original email.

Could you forward it to me?

Thank you.

Emma

From: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Sent: Thursday, 17 October 2024 6:28 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Cc: Szandurski, Kim <Kim.Szandurski@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

No, all good – happy to for you to prepare a more fulsome response (but not by reference to guidance – as we have not checked whether it is still authoritative). I'll then review, clear and we can send through you.

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals

Public Sector Employment

Office of Industrial Relations and Workforce Strategy

Chief Minister, Treasury and economic Development Directorate| ACT Government

220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Thursday, 17 October 2024 6:23 PM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Cc: Szandurski, Kim <Kim.Szandurski@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Sanaz

As Martin has outlined, the guidance states clearly that the prior service is not included.

Please let me know if you would like to discuss.

Emma

From: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Sent: Thursday, 17 October 2024 6:01 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Cc: Szandurski, Kim <Kim.Szandurski@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Thanks Emma. Is this up to date having regard to the very recent ACTGS advice we had?

Sch 1 1.2 Can you please check so we are 100% sure?

Kind Regards

Sanaz (she/her)

Sanaz Mirzabegian | Acting Executive Group Manager and Convenor of Appeals

Public Sector Employment

Office of Industrial Relations and Workforce Strategy

Chief Minister, Treasury and economic Development Directorate| ACT Government

220 London Cct | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Thursday, 17 October 2024 3:23 PM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Cc: Szandurski, Kim <Kim.Szandurski@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: FW: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Sanaz

Please see the attached payroll guide on termination payments for LAMS staff.

Emma

From: Bolton, Martin <Martin.Bolton@act.gov.au>
Sent: Thursday, 17 October 2024 3:10 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>; Szandurski, Kim <Kim.Szandurski@act.gov.au>
Subject: RE: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

see attached, if I read correctly we state very clearly that its not included.

Martin Bolton | Executive Branch Manager | Payroll and HR Systems

Phone: 620 58700 | Email: Martin.Bolton @act.gov.au

Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Thursday, 17 October 2024 3:06 PM
To: Taylor, Nina <Nina.Taylor@act.gov.au>; Szandurski, Kim <Kim.Szandurski@act.gov.au>
Cc: Bolton, Martin <Martin.Bolton@act.gov.au>
Subject: FW: Termination payments to staff of Members of the Legislative Assembly

OFFICIAL: Sensitive - Legal Privilege

Hi Nina and Kim

Are you aware of any advice we may have historically provided about prior service and how it relates to staff in LAMS arrangements?

Emma

From: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Sent: Thursday, 17 October 2024 2:46 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>; Bolton, Martin

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From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Thursday, 17 October 2024 6:30 PM
To: Mirzabegian, Sanaz <Sanaz.Mirzabegian@act.gov.au>
Cc: Szandurski, Kim <Kim.Szandurski@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: Re: Termination payments to staff of Members of the Legislative Assembly

Will do.

Emma Matthews

Executive Branch Manager, Workforce Governance & Recruitment

Office of Industrial Relations and Workforce Strategy

Chief Minister, Treasury and Economic Development Directorate

Telephone: Sch 2 s 2.2(a)(ii)

Email: EmmaC.Matthews@act.gov.au

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OFFICIAL SENSITIVE

ACT Government

MINISTERIAL BRIEF

Chief Minister, Treasury and Economic Development Directorate

To:	Chief Minister	**Tracking No.: HARD COPY**
Date:	16/10/2024	
CC:	A/g Executive Group Manager, CMTEDD Corporate	
From:	A/g Executive Group Manager, Public Service Employment, Office of Industrial Relations and Workforce Strategy	
Subject:	Changes to the LAMS Termination Payment	
Critical Date:	**17/10/2024**	
Critical Reason:	To provide you the ACT Government Solicitor's formal legal advice on changes to the taxation treatment of LAMS employees' termination payments, and associated matters prior to the Election on 19 October 2024.	

Recommendations

That you:

1. Note the information contained in this brief;

Noted / Please Discuss

2. Note that the legal advice attached to this brief (Attachment A) has been provided to you directly to preserve the Territory's legal privilege and for avoidance of any perceived or action conflict of interest that may arise for affected staff.

Noted / Please Discuss

Andrew Barr MLA 17/10/24

Minister's Office Feedback

Is it possible to seek a formal ATO ruling on the matter to conclusively resolve the tax treatment?

Background

1. In accordance with clause B7 of the Legislative Assembly Members' Staff Enterprise Agreement 2023-2026 (LAMS EA), an employee whose employment is terminated by the operation of sections 8(1), 8(2), 13(1) and 13(3) of the LAMS Act is entitled to a Termination Payment.

2. Historically, this has been treated as a genuine redundancy payment by the Territory, with tax withheld at the applicable (concessional) rate.

Sch 1 1.12

4. Sch 1 1.2 the termination payments are properly characterised as an Employment Termination Payment (ETP) rather than a redundancy, as had been the historical understanding and practice. Redundancy payments are taxed at a concessional rate compared to an ETP.

5. Between August 2024 and September 2024, estimates were provided to staff paid through the ACT Public Service payroll system. These estimates did not reflect the advice received by the OLA which was not known to the ACT Public Service pay team at the time. Subsequent discussions between the OLA and ACT Public Service pay teams identified a number of other technical issues for clarification.

6. Subsequent to identification of the different practices, and receipt of the Sch 1 1.2 ,

Issues

7. Your office is aware of these matters through informal briefings and provision of a written summary of the legal advice today. However, this minute has been provided to you directly to preserve the Territory's legal privilege and for avoidance of any perceived or action conflict of interest that may arise for affected staff.

Sch 1 1.2

9. The Regional Secretary, CPSU, Ms Maddie Northam wrote to Mr Sch 2.2(a)(ii) your Executive Chief of Staff, and Ms Lisa Carmody Deputy Director-General Office of Industrial Relations and Workforce Strategy in respect to these matters on 2 October 2024, delaying the provision of the legal advice. The CPSU represented that treatment of termination payments as redundancies is the correct characterisation and should

Sch 1 1.2

Sch 1 1.2

12. Between August 2024 and September 2024, 63 estimates were provided to staff paid through the ACT Public Service payroll system. These estimates were based on previous practices, which are now considered to be incorrect, in respect to the characterisation of termination payments as redundancies and treatment of part-time in the calculation of service.

Sch 1 1.2

14. Due to the complexity of the calculations, it is not possible to reissue accurate estimate for all staff prior to the election. As such, the staff who have received estimates will be advised by email on Friday morning of the updated interpretations addressed in this brief.

15. The Deputy Director-General, Office of Industrial Relations and Workforce Strategy will respond to the CPSU prior to the election, advising of the updated interpretation and application of tax and associated matters.

Financial Implications

16. The gross entitlement that the Territory will pay to employees will largely stay the same. Employees who have worked part-time during their employment will receive a higher gross entitlement.

17. Due to the changed tax treatment, the take-home-pay for individual staff is expected to be generally lower than provided in the estimates.

Consultation

Sch 1 1.2

Work Health and Safety

20. Affected staff will be reminded of their access to the Employee Assistance Program, and option to seek independent advice.

Benefits/Sensitivities

21. Termination Payments will be paid in accordance with the *Income Tax Assessment Act (ITAA) 1997.*

22. The OLA pay team and SSHR Payroll will be applying consistent methods in calculating and paying Termination Payments.

23. The advice will result in a change to existing practice for Termination Payments. LAMS Employees and relevant Unions would have been expecting the same methods to be applied for any Termination Payments processed in 2024. This is a sensitivity and risk as employees may be worse off due to this advice.

Communications, media and engagement implications

24. As detailed in this brief.

Signatory Name: Phone:

Action Officer: Phone:

Attachments

Sch 1 1.2

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

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Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

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Sch 2 s 2.2(a)(ii)

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Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

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Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

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Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

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From: Taylor, Nina
To: Matthews, EmmaC; Mirzabegian, Sanaz
Subject: RE: LAMS options paper and Employment Arrangements HR/Payroll guidelines
Date: Monday, 28 October 2024 3:36:10 PM
Attachments: LAMS Termination Payments advice NT V2.docx

OFFICIAL

Hi Emma and Sanaz,
Please see attached with additional updates as discussed. I will set up a time for us to meet shortly.
Thanks, Nina

From: Taylor, Nina
Sent: Monday, October 28, 2024 12:58 PM
To: Matthews, EmmaC ; Mirzabegian, Sanaz
Subject: LAMS options paper and Employment Arrangements HR/Payroll guidelines
Hi Emma and Sanaz,
Please see attached the latest versions of the LAMS documents as follows:

- LAMS options paper – LAMS payment advice paper as provided by Brian is attached, however as discussed our team is working on further updating this document today and the latest version is attached noting this is not yet complete
- LAMS Employment Arrangements (on-going _fixed-term HR guide):
    - This document still needs to be QA'd and I would like to run it past Emma R and Tracey before finalizing. This assessment was needed for us to really understand the different options for resolution
- LAMS Employment Arrangements (Termination_notice_redundancy payroll guide)
    - This document is still in progress. We are planning to consult and reformat it, however this was needed for us to really understand the different options for resolution

As discussed, we hope to have the LAMS options paper in better shape later this afternoon, noting that this is based on the understanding in the LAMS employment arrangements documents.
Thanks, Nina

From: Schwind, Simone on behalf of Shared Services, Exec Payroll
To: Matthews, EmmaC
Cc: CMTEDD, ExecutiveSupport; Mullavey, Malcolm; CMTEDD, LAMS Liaison; Allars, Alex; Palic, Richard
Subject: RE: Request for information: Update - LAMS -
Date: Friday, 24 January 2025 1:49:17 PM
Attachments: Affected staff email January 2025 (003).docx

OFFICIAL

Good afternoon Emma,

Thank you for your email.

I have reviewed our records for the employees on the list you have provided and added any personal email addresses that we had on record. Please find attached the updated copy with all additions highlighted in green.

In regards to the final date, Richard will be in contact with you to discuss this if he hasn't already.

Please let me know if there is anything further I can do to assist you.

Kind Regards,

Simone Schwind |Pay Team Member | Executive Pay Team| Payroll and HR Systems
Phone: (02) 6205 1579 | Email: ExecPayroll.SharedServices@act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

I acknowledge the traditional custodians of the ACT. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

PAY CUTOFF DATES
Pay Day 30 January 2025
Paperwork Cut–Off: 5:00pm Monday 20 January 2025
Salary Pay Advice (expected): Monday 27 January 2025

Please consider the environment before printing this email. If printing is necessary, print double-sided and black and white.

Do you have a payroll question? Search our Payroll Questions page on the website or use this link. Your question may already be answered.

This message, and any attachments to it, contains information that is confidential. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Friday, 24 January 2025 8:37 AM
To: Shared Services, Exec Payroll <ExecPayroll.SharedServices@act.gov.au>
Cc: CMTEDD, ExecutiveSupport <ExecutiveSupport@act.gov.au>; Mullavey, Malcolm <Malcolm.Mullavey@act.gov.au>; CMTEDD, LAMS Liaison <LAMSLiaison@act.gov.au>; Allars, Alex <Alex.Allars@act.gov.au>
Subject: Request for information: Update - LAMS -

OFFICIAL

Hello wonderful team supporting executive payroll

I am in the process of sending some advice to the affected staff of office-holders who held that position at the end of the 10th Assembly. I know you have been so helpful in providing estimate, and updated estimate, termination payment information to this cohort.

To support the sending of the correspondence, I am seeking confirmation of any personal email addresses we may have on file for the affected individuals. I have updated my list (attached) with personal email addresses, but I would be grateful if you could :

1. **review my list and update it with any personal email addresses you may have on file.**

Also, you will see from the email below that the email below that the Chief Minister's Office is keen to confirm what the actual date is for the three month period that individuals were permitted to work but still qualify for a termination payment. It appears to be 4 February or 5 February 2025. Could you please:

2. **confirm what is the final date that a staff member may be under contract and still qualify for the termination payment?**

If you are able to complete this today, that would be amazing. I am keen to provide the advice before the long weekend if possible.

Thank you so much.

Emma

From: Matthews, EmmaC **On Behalf Of** CMTEDD, LAMS Liaison
Sent: Thursday, 23 January 2025 5:34 PM
To: Mison, Matt <Matt.Mison@act.gov.au>
Cc: CMTEDD, ExecutiveSupport <ExecutiveSupport@act.gov.au>; Shared Services, Exec Payroll <ExecPayroll.SharedServices@act.gov.au>; Wright, Robert <Robert.Wright@act.gov.au>
Subject: Update - LAMS -

Hello Matt

We have previously advised staff of officeholders that they can still qualify for termination payments for contracts worked up to and including 5 February 2025, but I am confirming this advice with executive payroll. I will let you know when it is confirmed.

Emma

Emma Matthews on behalf of

The Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate I ACT Government
E: LAMSLiaison@act.gov.au
M: Sch 2 s 2.2(a)(ii)

From: Allars, Alex
To: Matthews, EmmaC; Khem, Deepika
Cc: Bolton, Martin; Mullavey, Malcolm; Palic, Richard
Subject: RE: LAMS -Payroll summary for pay day 21 Nov
Date: Wednesday, 11 June 2025 4:33:24 PM

OFFICIAL: Sensitive - Personal Privacy

Thanks Dee and Emma.

Always a superstar. Thanks Dee!

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Wednesday, 11 June 2025 4:31 PM
To: Khem, Deepika <Deepika.Khem@act.gov.au>
Cc: Bolton, Martin <Martin.Bolton@act.gov.au>; Mullavey, Malcolm <Malcolm.Mullavey@act.gov.au>; Palic, Richard <Richard.Palic@act.gov.au>; Allars, Alex <Alex.Allars@act.gov.au>
Subject: RE: LAMS -Payroll summary for pay day 21 Nov

OFFICIAL: Sensitive - Personal Privacy

What a superstar!

Thank you Dee!

From: Khem, Deepika <Deepika.Khem@act.gov.au>
Sent: Wednesday, 11 June 2025 4:27 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Cc: Bolton, Martin <Martin.Bolton@act.gov.au>; Mullavey, Malcolm <Malcolm.Mullavey@act.gov.au>; Palic, Richard <Richard.Palic@act.gov.au>
Subject: FW: LAMS -Payroll summary for pay day 21 Nov

OFFICIAL: Sensitive - Personal Privacy

Hi Emma,

Hope you've enjoyed the two lovely long weekends

I have collated the data as requested below.

In the attached ZIP folder, I have included:

- Original estimates provided to the employees listed below in Aug/Sept 2024
- Revised estimates provided to the employees based on a non-excluded ETP taxation method, provided in Oct 2024
- Actual final payment made to these individual employees – varying periods

There are individual folders for each employee containing the original and revised estimates, and a summary of the final payment. Noting that Matthew Georgeson did not have a final payment from us, as he transferred to OLA.

Also attached is the "payroll quick guide" that was provided to employees, cleared by Tracey Henry and the IR team at CMTEDD.

If you require anything further, please let me know.

Kind regards,

Dee

Deepika Khemchandani | A/g Senior Director | Payroll Services
ACTPS Employment and Industrial Relations Group
Chief Minister, Treasury and Economic Development Directorate | ACT Government
GPO Box 158 Canberra ACT 2601 | www.act.gov.au
Ph: (02) 6205 5294 | **Email:** deepika.khem@act.gov.au

End of Financial Year Service Information - OneGov Service Centre

I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

Please note: I work part-time Monday-Thursday

From: Bolton, Martin <Martin.Bolton@act.gov.au>
Sent: Friday, 6 June 2025 2:27 PM
To: Mullavey, Malcolm <Malcolm.Mullavey@act.gov.au>; Khem, Deepika <Deepika.Khem@act.gov.au>; Palic, Richard <Richard.Palic@act.gov.au>
Subject: FW: LAMS -Payroll summary for pay day 21 Nov

OFFICIAL: Sensitive - Personal Privacy

Martin Bolton | Executive Branch Manager | Payroll and HR Systems
Phone: 620 58700 | Email: Martin.Bolton @act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

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From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Friday, 6 June 2025 2:11 PM
To: Bolton, Martin <Martin.Bolton@act.gov.au>
Subject: RE: LAMS -Payroll summary for pay day 21 Nov

OFFICIAL: Sensitive - Personal Privacy

Some of the submission providers are in your list below, specifically:

Sch 2 s 2.2(a)(ii)

In addition, we received submissions from:

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

One more from Sch 2 s 2.2(a)(ii) – but I'll follow up with the OLA about that one.

Thank you!

Emma

From: Bolton, Martin <Martin.Bolton@act.gov.au>
Sent: Friday, 6 June 2025 1:42 PM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Subject: FW: LAMS -Payroll summary for pay day 21 Nov

OFFICIAL: Sensitive - Personal Privacy

Are these the people?

Martin Bolton | Executive Branch Manager | Payroll and HR Systems
Phone: 620 58700 | Email: Martin.Bolton @act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

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From: Khem, Deepika <Deepika.Khem@act.gov.au>
Sent: Wednesday, 13 November 2024 5:14 PM
To: Mullavey, Malcolm <Malcolm.Mullavey@act.gov.au>; Bolton, Martin <Martin.Bolton@act.gov.au>
Cc: Palic, Richard <Richard.Palic@act.gov.au>
Subject: FW: LAMS -Payroll summary for pay day 21 Nov

OFFICIAL: Sensitive - Personal Privacy

Hi Mal and Martin,

Just to keep you in the loop on what's going on in LAMS land

Thanks
Dee

From: Khem, Deepika
Sent: Wednesday, 13 November 2024 5:12 PM
To: Henry, Tracey <Tracey.Henry@act.gov.au>; CMTEDD, ExecutiveSupport <ExecutiveSupport@act.gov.au>
Cc: Seri, Srujana <Srujana.Seri@act.gov.au>; Palic, Richard <Richard.Palic@act.gov.au>
Subject: LAMS -Payroll summary for pay day 21 Nov

Hi Tracey,

As discussed, here is a status/ summary of where things are up to from our end as we have now finalised pay day 21 November 2024;

1. FINAL MONIES PAID OUT – for pay day 21 November

-

Surname	First Name	AGS	OFFICE	ACTION AFTER ELECTION

Sch 2 s 2.2(a)(ii)

**Letters to all Ministers have been sent, and final monies advice to these 5 staff will be sent to tomorrow.*

-

Pending final monies to be paid in the next pay on 5 December:

Sch 2 s 2.2(a)(ii)

2. TRANSFERS TO OLA:

Surname	First Name	AGS	OFFICE	PAY 506- ACTION TAKEN

Sch 2 s 2.2(a)(ii)

***MP has confirmed that the last 7 staff are to continue till 20/11/24 under the deeming period, until their new contracts are sorted out.*

3. NEW INCOMING STAFF

-

The staff and ministers listed below are yet to be assigned position numbers, we will process them next week and possibly make offline payments (depending on when we have the information available).

At this stage, there is no payment being made to this group.

NEW MINISTERS

Name
Marisa Paterson
Michael Petterson

Suzanne Orr

NEW STAFF

Name

Sch 2 s 2.2(a)(ii)

4. EXISTING/RE-ELECTED MINISTERS:

We have extended the re-elected Ministers until **8 Nov 2028**. Michelle P has advised that they do not require contracts, we can use the polling outcome as evidence for audit/file purposes.

All their salaries have been reverted to the original rates, and back payments have been processed.

Minister Barr
Minister Berry
Minister Stephen-Smith
Minister Steel
Minister Cheyne

Please let me know if I have missed anything that's critical to be processed for the upcoming pay.

Huge thank you to you and your team for helping us co-ordinate everything this pay

Kind regards,

Dee

Deepika Khemchandani | Director | Payroll Services
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
GPO Box 158 Canberra ACT 2601 | www.act.gov.au
Ph: (02) 6205 5294 | **Email:** deepika.khem@act.gov.au

I acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. I acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

Please note: I work part time Monday – Thursday.

From: Carmody, Lisa
To: Matthews, EmmaC
Cc: CMTEDD, DDG Office OIRWS
Subject: Re: AoG
Date: Friday, 22 November 2024 1:10:24 PM
Attachments: image001.png

OFFICIAL

Ok, thank you.

Get Outlook for iOS

From: Matthews, EmmaC
Sent: Friday, November 22, 2024 1:08:34 PM
To: Carmody, Lisa
Cc: CMTEDD, DDG Office OIRWS
Subject: RE: AoG

OFFICIAL

It would appear historically OLA *has* applied the redundancy taxation treatment – I am investigating.
Emma

From: Carmody, Lisa
Sent: Friday, 22 November 2024 1:08 PM
To: Matthews, EmmaC
Cc: CMTEDD, DDG Office OIRWS
Subject: Re: AoG

OFFICIAL

Ok thank you. Do you know why these staff are in this position? I had understood that OLA treated these payments as termination payments and their estimates had been provided as such.
Get Outlook for iOS

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Friday, November 22, 2024 12:18:41 PM
To: Carmody, Lisa <Lisa.Carmody@act.gov.au>
Cc: CMTEDD, DDG Office OIRWS <DDGOIRWS@act.gov.au>
Subject: FW: AoG

OFFICIAL

Hi Lisa
Sch 2 s 2.2(a)(ii) was in touch this morning to discuss two OLA staff Sch 2 s 2.2(a)(ii)) – one of whom appears to have been provided redundancy-style estimates in the past. Sch 2 s 2.2(a) was proposing, and I agree, that it would be useful for these two individuals to be considered as part of the act of grace process.
I will contact the two staff members as Sch 2 s 2.2(a) has outlined below. I consider Sch 2 s 2.2(a)(ii)

proposed response to the Treasurer to be appropriate.
Emma

From: Sch 2 s 2.2(a)(ii) act.gov.au>
Sent: Friday, 22 November 2024 9:59 AM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Subject: Fw: AoG

Hi Emma,

As discussed - I believe given the circumstances here it may be reasonable to consider this request as part of the process for the Executive.

If you could please speak to the staff effected that would be appreciated.

We will send a brief response from the Treasurer that this has been passed over for consideration.

Please let me know if we should do anything further.

Kind regards,

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

From: Matthews, EmmaC
To: Carmody, Lisa
Cc: CMTEDD, DDG Office OIRWS
Subject: RE: AoG
Date: Friday, 22 November 2024 1:08:00 PM
Attachments: image001.png

It would appear historically OLA *has* applied the redundancy taxation treatment – I am investigating.
Emma

From: Carmody, Lisa
Sent: Friday, 22 November 2024 1:08 PM
To: Matthews, EmmaC
Cc: CMTEDD, DDG Office OIRWS
Subject: Re: AoG

OFFICIAL

Ok thank you. Do you know why these staff are in this position? I had understood that OLA treated these payments as termination payments and their estimates had been provided as such.
Get Outlook for iOS

Duplicate

Duplicate

From: Matthews, EmmaC
Sent: Thursday, 5 December 2024 6:05 PM
To: Manzoney, Lisa <Lisa.Manzoney@act.gov.au>
Cc: Wright, Robert <Robert.Wright@act.gov.au>; Clarke, Elissa <Elissa.Clarke@act.gov.au>
Subject: RE: Advice - further clarification on termination payments to staff of MLAs

Sch 1 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

ACT Government
Chief Minister, Treasury and Economic Development

Minister Stephen-Smith: Briefing with the Office of Industrial Relations and Workforce Strategy

---

Date: 11 December 2024

Time: 12-1:00 PM

Venue: Webex

Apologies:

Minister for the Public Service – Digital, Data & Technology Solutions Group		
Item	**Requested by**	**Action Officer/s**
LAMS Tax Treatment	PSE	Robert Wright
Union Encouragement Policy	PSE	Robert Wright
Enterprise Bargaining Update	PSE	Robert Wright

Request for consideration of individual circumstances – Staff of office-holders at the conclusion of the 10th Legislative Assembly

This form has been developed for use by staff of office-holders at the conclusion of the 10th Legislative Assembly to outline their individual circumstances arising from the receipt of advice as to final monies/tax treatment, advice which was subsequently withdrawn and replaced with new advice on final monies/tax treatment.

Staff are invited to complete this form to indicate:

- the quantum of the impact (potentially the difference between the original advice and the final advice);
- evidence of reasonable reliance on the original advice on final monies;
- evidence of loss experienced following that reliance on their original advice;
- additional information required to support a submission for an act of grace payment.

Background information

This form is to be used by staff of office-holders of the 10th Legislative Assembly to outline their individual circumstances. The purpose of the form is to enable affected staff of office-holders to outline the reliance those officers had on the original termination payment and methodology that was used to calculate that termination payment.

Upon receipt of this completed form, Chief Minister, Treasury and Economic Development Directorate (CMTEDD) will arrange for consideration of the impact on individual staff and any claim made by individual staff. Consideration will include:

- compensable loss following reliance on a representation, action taken to the detriment of staff of office-holders;
- the operation of the CMTEDD Restructure Fund, which funds legal liability that an agency has incurred in certain circumstances and can only be used for purposes approved by Cabinet, noting that this operation of this fund is not currently applicable to staff employed under the *Legislative Assembly (Members' Staff) Act 1989;* and
- act of grace payments in accordance with the Act of grace payments: policy and procedures guide.

Act of grace payments are only appropriate when other legal avenues have been exhausted. This form has been designed to enable you to:

1. pursue the question of legal liability in the first instance; and, in circumstances where a settlement of a claim against the Territory is not possible under clause 10 of the *Law Officers Legal Services Direction 2023,*
2. pursue an act of grace payment.

Prior to the completion of this form, staff of office-holders may wish to review the attached Act of grace payments: policy and procedures guide and the *Law Officers Legal Services Direction 2023* – in particular clause 10. The completed form, or any enquiries about this process, should be addressed to LAMSLiaison@act.gov.au.

NAME: Click or tap here to enter text.	DOB: Click or tap here to enter text.
PHONE: Click or tap here to enter text.	EMAIL: Click or tap here to enter text.
POSTAL ADDRESS: Click or tap here to enter text.	Preferred method of contact: *Phone / Email / Post* Click or tap here to enter text.

I acknowledge that I have read:

- the *Law Officers Legal Services Direction 2023* , and in particular clause 10
- the Act of Grace Payments – Policy and Procedures Guide.

The information that I provide in completing this form is true and correct. I acknowledge that I may be contacted to clarify the information I provide, or to provide additional information.

Click or tap here to enter text. Name	Click or tap to enter a date. Date

A clear explanation of the incident/situation and how it occurred.[1]	Toward the end of the 10th Legislative Assembly, estimate payments were provided to office-holder staff. These estimates represented the final monies that would be paid to office-holder staff who were not continuing to be employed in the 11th Legislative Assembly because their employment would be terminated in accordance with the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act). These estimates were calculated according to practice and convention and the calculations were consistent with advice provided at the end of the 9th Assembly and the 8th Assembly. On or around August/September 2024, the Office of the Legislative Assembly (OLA) and CMTEDD separately prepared and sent estimates to Members' staff, which applied different, less favourable taxation calculations. Advice was sought and the advice confirmed that the OLA approach should be followed for staff of Members and staff of office-holders.

[1] 12(a) of the *Act of grace payments: Policy and procures guide*

	On 17 October 2024, the Office of Industrial Relations and Workforce Strategy (OIRWS) set up a dedicated mailbox and executive contact officer, to provide a centralised point of communication for office-holder staff. On 17 October 2024, office-holder staff were advised the previous information and estimates provided were not consistent with updated tax and legal advice. Updated estimates were provided on 23 October reflecting estimates treated as termination payments (not redundancy). On 22 November 2024, the Chief Minister agreed to consider act of grace payments to affected staff who received the original advice, have outlined their reliance on that advice, and the detriment they have subsequently experienced. **Optional – please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What actions on the Government's part contributed to the situation.[2]	Concerns have been raised by office-holder staff and employee representatives about the discrepancies and changes to the estimates of final monies payable. Primarily, the concerns are that the inconsistency in the advice provided has led to negative personal impacts for some individuals. Senior officials of CMTEDD and representatives of the Community and Public Sector Union have corresponded regarding these matters. **Optional - please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What do you consider to be your loss and how have you calculated this?[3]	*Please detail how values have been determined.* Click or tap here to enter text.

[2] 12(b) of the *Act of grace payments: Policy and procures guide*
[3] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*

In what ways did you rely on the original estimate and what evidence can you provide that relates to this reliance?[4]	*Please provide information relevant to your personal circumstances.* Click or tap here to enter text.
Do you have any comments on what made this reliance reasonable?[5]	Correspondence has been received that outlines that it was reasonable for staff of office-holders to rely on the advice provided to them by One Service Payroll as the payroll team are the Territory's relevant experts when it comes to payroll matters, including the taxation of final monies. Correspondence has indicated that staff of office-holders are of the view that One Service Payroll had a duty to exercise reasonable care when providing the estimated final monies advice. *Please provide any additional information relevant to your personal circumstances and/or your views.* Click or tap here to enter text.
How many estimates for final monies have you received during your employment as staff of an office-holder?[6]	*Please outline how many estimates you have received and include a reference to your understanding of the tax treatment applied to those estimates. If you do not know, please enter N/A.* Click or tap here to enter text.
What actions or factors, relating to yourself or to other relevant individuals or organisations have contributed to the situation in either a positive or negative way.[7]	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
Why the situation warrants being considered a special circumstance.[8]	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What other avenues have been explored (including legal and financial), and with what outcomes.[9]	The OIRWS has provided advice on options to address affected office-holder staff concerns, and the Chief Minister has agreed to consider act of grace payments to those office-holder staff who have outlined that they relied on the Government's advice and have experienced a detriment. The purpose of this form is to enable an assessment of the possible avenues of legal recourse for affected individuals prior to the consideration of act of grace payments. *Please provide any additional information relevant to your personal circumstances.*

[4] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[5] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[6] Ref: Clause 10 – Settlement of claims against the Territory *Law Legal Services Directions 2023*
[7] 12(c) of the *Act of grace payments: Policy and procures guide*
[8] 12(d) of the *Act of grace payments: Policy and procures guide*
[9] 12(e) of the *Act of grace payments: Policy and procures guide*

	Click or tap here to enter text.
Why a payment would be appropriate, and the value of the payment being sought.[10]	*Please provide your views and the value of the payment being sought.* Click or tap here to enter text.
Supporting evidence should include[11]: • how the value of the payment being sought has been estimated; • documentary evidence of the circumstances, for example, correspondence, agreements and other documents establishing the circumstances and any loss (e.g. medical certificates and statements); • details of court or Tribunal findings; and • what reviews have been undertaken or may be underway.	*Please provide relevant information, and/or attach relevant documentation when submitting this form. If you do not intend to provide supporting evidence, please write 'Nil' in the textbox provided.* Click or tap here to enter text.
Previous correspondence with Government.[12]	Correspondence with Government has been detailed above. **Optional – please detail any other correspondence with government if relevant.* Click or tap here to enter text.
Other information that is likely to be relevant.[13]	**Optional - please provide any other information you believe to be relevant.* Click or tap here to enter text.
Any additional comments you would like to make.	**Optional - please provide any other comments you would like to make.* Click or tap here to enter text.

Attachment – Act of grace payments: policy and procedure guide (2024)

[10] 12(f) of the *Act of grace payments: Policy and procures guide*
[11] 12(g) of the *Act of grace payments: Policy and procures guide*
[12] 12(h) of the *Act of grace payments: Policy and procures guide*
[13] 12(j) of the *Act of grace payments: Policy and procures guide*

Date:	12 February 2025	**TRIM No: CM2025/812**
To:	Deputy Director-General, Office of Industrial Relations and Workforce Strategy	
From	Executive Branch Manager, Workforce Governance and Recruitment team	
Subject:	Next steps: affected staff of office-holders of the Legislative Assembly	

Through / Approval

Approver	Date	Comments
EBM PSE	13/2/2024	AA

Recommendations

1. That you:
   - **note** the information outlined in this internal minute; and

NOTED

   - **agree** to the steps outlined in paragraph 12, noting that step 1 should commence as soon as this internal minute is agreed.

AGREED

Robert Wright **21 /02 /2025**

Background

2. At the end of the 10th Legislative Assembly estimate payments were provided to staff of Members and staff of office-holders. These estimates represented the final monies that would be paid to staff who were not continuing to be employed in the 11th Legislative Assembly.
   a. The Office of the Legislative Assembly (OLA) prepared and sent the estimates to staff of Members using calculations by the pay team at the OLA. These estimates were sent in or around August/September 2024.
   b. CMTEDD prepared and sent the estimate to staff of office-holders using calculations by the pay team at CMTEDD. These estimates were sent in or around August/September 2024.

3. At the beginning of October 2024, a discrepancy of approach between the OLA pay team and the CMTEDD pay team was identified. It was confirmed that:
    a. the OLA pay team had a practice of calculating the payments as terminations, which had a particular tax implication;
    b. the CMTEDD pay team had a practice of calculating the payments as redundancies, which had a particular tax implication.
4. Sch 1 s 1.2 .
5. Sch 1 s 1.2 .
6. On 17 October 2024, the staff of office-holders were advised that the previous information and estimates provided were not consistent with the updated tax and legal advice. Updated estimates were provided to all staff of office-holders of the 10th Assembly on 23 October 2024 based on the approach applied by the OLA pay team, being termination payments (not redundancy payments).
7. A number of affected staff of office-holders, as well as their unions, have been in contact with CMTEDD to raise their concerns about the proposed approach to taxing their final monies. The concerns include:
    a. Reliance on the original estimates, with decisions made including booked holidays, planned periods of leave, residential moves, partners resigning from work or reducing hours/pay arrangements, breast cancer treatment;
    b. That their relevant office-holder had lost the election, and therefore they were genuinely redundant; and
    c. That this represents a shift from custom and practice that ought to be relied upon.
8. Sch 1 s 1.2
9. Sch 1 s 1.2
10. On 28 January 2025, an email attaching a form was set to staff of office-holders who received termination advice at the end of the 10th Assembly. In addition to providing a form, the email outlined the following:

a. That the form had been prepared to seek information to enable CMTEDD to consider individual circumstance in determining the Territory's response;

b. A note on the Law Officers Legal Services Direction 2023 (particularly paragraph 10);

c. A note on the Territory's Act of grace payments: policy and procedures guide.

Issues

11. OIRWS is in receipt of responses to the email from OIRWS dated 28 January 2025 and further responses are expected.

12. OIRWS proposed the following approach to assessing the information outlined in the responses:

Sch 1 s 1.2

Consultation

13. Sch 1 s 1.2

Work Health and Safety

14. The timely consideration of the responses from affected staff members will assist to limit the psychosocial impact on those staff members and their family members. Specific advice is being sought from the Work Safety Group to assist in the mitigation of this risk.

Financial

15. The assessment of the responses from affected staff members will assist the Territory to better understand the possible financial impact arising from these responses.

Risks/ Sensitivities

16. The timely resolution of this matter has the benefit of managing the legal risk to the Territory of affected staff of office-holders seeking resolution of this matter under the tort of damages.
17. Sch 1 s 1.2 .

Media

18. These are private employment matters. There are no communications, media or engagement implications.

EmmaC Matthews, Executive Branch Manager, Workforce Governance and Recruitment

Action Officer: EmmaC Matthews, Executive Branch Manager, Workforce Governance and Recruitment
Phone: MS Teams

Chief Minister, Treasury and Economic Development Directorate

To:	Chief Minister	**Tracking No.: CMTEDD2025/2035**
Date:	19/05/2025	
CC:	Head of Service	
From:	Deputy Director-General, Office of Industrial Relations and Workforce Strategy	
Subject:	Treatment of termination payments for Legislative Assembly Members' staff (LAMS staff)	
Critical Date:	30/05/2025	
Critical Reason:	To enable progression of a long-term approach to manage termination payments for LAMS staff	

Recommendations

That you:

1. **note** the information contained in this brief; and

Noted / Please Discuss

2. **agree** to the long-term approach outlined in this brief to manage termination payments for LAMS staff.

Agreed / Not Agreed / Please Discuss

Andrew Barr MLA 28/5/25

Minister's Feedback

Background

1. On 31 October 2024, the Office of Industrial Relations and Workforce Strategy (OIRWS) briefed your office on issues arising in the final payment of monies to Legislative Assembly Members' staff (LAMS staff) at the end of the 10th Legislative Assembly (**CMTEDD2024/4323**). In short:

    a. due to Member and Office-holder staff having their pay and conditions managed by two separate pay teams, different methodologies had been historically applied in the calculation of termination payments for LAMS staff.

    b. Member staff have historically had their final payments treated as termination payments, whereas office-holder staff have historically had their final payments treated as redundancies – the former attracting a higher taxation component.

    c. the discrepancy was identified after LAMS staff were provided with estimates towards the end of the 10th Legislative Assembly of the final monies that would be paid if their employment was not continued.

    d. subsequent legal and taxation advice has confirmed that the appropriate approach is to calculate the final payment as a termination payment and not a redundancy payment.

    e. the termination payments made to member staff and office-holder staff at the 10th Assembly were taxed consistently as termination payments.

2. The October 2024 brief (**CMTEDD2024/4323**) presented both short and long-term options to address the issues, prioritising the former in the interest of progressing a timely solution for affected LAMS staff. Long-term options were to be explored in detail in a future brief.

Issues

Update on the implementation of the short-term approach

3. The matters subject to the short-term approach agreed in the October 2024 brief (**CMTEDD2024/4323**) have progressed to the ACT Government Solicitor's Office.

Long-term approach

4. In consultation with the Community and Public Sector Union (CPSU) and the United Services Union (USU), the OIRWS has considered longer-term options to address the issue that has been identified.

5. Specifically, LAMS staff bargained in good faith with respect of the Legislative Assembly Members' Staff Enterprise Agreement, with the expectation that the historical approach to taxing termination payments would continue. The change to the taxation treatment has impacted the quantum of monies that LAMS staff receive at the end of their engagements. The longer-term options seek to address that adverse impact.

6. The October 2024 brief (**CMTEDD2024/4323**) highlighted three possible longer-term options to address the adverse impacts on the affected staff. Those options were:

    a. Amending the Legislative Assembly Members' Staff Enterprise Agreement 2023-2026 by way of urgent hearing to address ambiguity or lack of clarity in the enterprise agreement as to whether the termination of the employment relationship through the operation of contract was a redundancy event;

    b. Amending the Legislative Assembly Members' Staff Enterprise Agreement 2023-2026 following a staff ballot process to include a termination allowance;

    c. Amending the *Legislative Assembly (Members' Staff) Act 1989* to include a termination allowance.

7. Following the receipt of advice, and noting the practice of other jurisdictions, the OIRWS proposes that the Government consider the second option, that the Legislative Assembly Members' Staff Enterprise Agreement 2023 – 2026 (LAMS EA) be re-balloted to provide a severance benefit in instances where LAMS staff cease to be employed as a result of the employing member or office-holder ceasing to hold office.

8. The OIRWS notes that the Australian Government's Members of Parliament Staff Enterprise Agreement 2020 – 2023 (MOPS EA) provides a similar entitlement at clause 63.1 which states:

    Severance benefits payable under clause 62 will be increased by 30 per cent if an employee's MOP(S) Act [Member of Parliament (Staff) Act 1984] employment terminates as a result of the employing Member ceasing to hold office … 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.

9. Section 207 of the *Fair Work Act 2009* provides a mechanism for the ACTPS to vary the terms of the existing LAMS EA to insert this entitlement. In order to undertake this process, the OIRWS would be required to:

    a. draft provisions for the LAMS EA;

    b. consult with unions and bargaining parties;

    c. provide access and ballot processes to allow employees to vote on the proposed variation; and

    d. lodge the variation with the Fair Work Commission (FWC) for approval if the vote is approved by a majority of staff.

10. It is anticipated that it will take approximately three months to implement this approach, allowing:

    a. four weeks to undertake drafting, consultation and internal approval processes;

    b. four weeks to complete access and ballot processes; and

    c. three to four weeks for FWC approval (noting these timeframes may vary).

11. Re-balloting of the LAMS EA will provide a relatively quick and cost-efficient solution to address this issue.

Financial Implications

12. Nil.

Consultation

Internal

13. Nil.

Cross Directorate

14. Nil.

External

15. Community and Public Sector Union and United Services Union.

Work Health and Safety

16. LAMS staff affected by the inconsistent advice leading into the 2024 election period have reported that the situation has caused significant distress. This approach will prevent similar issues from arising in future and reduce the psychosocial risk to employees.

Benefits/Sensitivities

17. The CPSU and USU have been consulted on this option and have endorsed this approach.

Communications, media and engagement implications

18. Nil.

Signatory Name:	Robert Wright	Phone:	6207 0569
Action Officer:	Brian Lawless	Phone:	Microsoft Teams

From: CMCD DLO
To: Lawless, Brian; Matthews, EmmaC; Allars, Alex; Wright, Robert; CMTEDD, DDG Office OIRWS; Power, Leanne
Cc: CMCD DLO
Subject: SIGNED – Chief Minister - Ministerial Brief - Employment arrangements
Date: Friday, 30 May 2025 10:41:56 AM
Attachments: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Ministerial Brief - Barr - Employment arrangements.tr5

OFFICIAL

Good morning team,

The Chief Minister has signed the above brief agreeing to the recommendations, with nil comments.
A copy is saved in container CMTEDD2025/2035 in TRIM.

– copy for the Head of Service at the top of the attached TRIM container.@Power, Leanne

Kind regards,

Isabelle Howse | Directorate Liaison Officer | Chief Minister
Phone: Teams | Email CMCDDLO@act.gov.au
Chief Minister Treasury and Economic Development Directorate |GPO Box 158, Canberra ACT 2601 | **ACT Government**
www.act.gov.au

Subject: RE: Taxation of LAMS termination payments
Location: Microsoft Teams Meeting

Start: Thu 03/07/2025 4:00 PM
End: Thu 03/07/2025 4:30 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Matthews, EmmaC
Required Attendees Perks, Danielle

Microsoft Teams Need help?

Join the meeting now

Meeting ID: 453 838 113 388 5

Passcode: ZR2Vo3iN

For organizers: Meeting options

ACT Government

Org help | Privacy and security

From: CMCD DLO
To: CMTEDD MLO
Cc: CMCD DLO; CMTEDD, DDG Office OIRWS; Wright, Robert; Marando, Liza
Subject: Ministerial Correspondence – Chief Minister – Sandie Morthen - LAMS termination Payments
Date: Thursday, 4 September 2025 2:47:52 PM
Attachments: email-footer2023_ec08fabf-86bb-4d7f-8eaa-e0680691bdb2.png
facebook_32x32_a5f96320-0d7e-47d5-b63a-85f4d628aaf7.png
linkedin_32x32_06d4b93a-27f8-4a45-bead-256925ebdcd6.png
instagram_32x32_d3b6dd92-7e27-4783-bcbd-2b519ccc6515.png
emailfooter20242smaller_eaa298f4-a4b9-41cd-97e4-435ae2647373.jpg
20250829-Legislative Assembly Members' Staff – termination payments for former staff.pdf
20250613-Legislative Assembly Members Staff-Termination Payments for Former Staff.pdf

---

Hi MLO team,

Please create a TRIM container for this ministerial correspondence and action as per the below advice:

Responding Minister: Chief Minister

Assign to: OIRWS, Liza Marando

Due back to MO: 19 September 2025

Additional notes:

Please see attached, letter also sent to HoS included.

*Where correspondence needs to be redirected or input is required from another directorate, please advise the PSIR DLO ASAP.

Input will be requested via DLO channels.

Kind regards,

Scarlett Harbin-Owens | Directorate Liaison Officer | CMTEDD
Phone: Teams | Email PSIRDLO@act.gov.au
Chief Minister Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra ACT 2601 | www.act.gov.au
Minister for Skills, Training and Industrial Relations
Minister for the Public Service
Manager of Government Business
Minister for the Night-Time Economy

From: ODonoghue, Yersheena
Sent: Thursday, 4 September 2025 1:45 PM
To: CMCD DLO
Subject: FW: 20250829-Legislative Assembly Members' Staff – termination payments for former staff

Can we please get a response drafted for the CM to sign.

Yersheena O'Donoghue | Deputy Chief of Staff
Office of the ACT Chief Minister
Mobile: Sch 2.2(a)(ii) **Email:** yersheena.odonoghue@act.gov.au

---

From: BARR <BARR@act.gov.au>
Sent: Friday, 29 August 2025 1:26 PM
To: ODonoghue, Yersheena <Yersheena.ODonoghue@act.gov.au>; Paviour, Mark <Mark.Paviour@act.gov.au>
Subject: FW: 20250829-Legislative Assembly Members' Staff – termination payments for former staff

Hi Yersheena and Mark

Please see the attached correspondence for your office's information.

Many thanks and happy to be of any further help.

Best

Brandon

From: United <united@usu.org.au>
Sent: Friday, 29 August 2025 12:36 PM

To: BARR <BARR@act.gov.au>
Cc: Sch 2 s 2.2(a)(ii) @usu.org.au>
Subject: 20250829-Legislative Assembly Members' Staff – termination payments for former staff

You don't often get email from united@usu.org.au. Learn why this is important

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Chiel Minister
Please see attached correspondence on behalf of organiser Sch 2.2(a)(ii)
Yours faithfully
United Services Unionb

email-footer 2023.png

Administration

1300 136 604

United Services Union
Level 7 / 321 Pitt Street, Sydney, NSW 2000

united@usu.org.au

www.usu.org.au

email footer 2024 2 smaller.jpg

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By your side | UNITED SERVICES UNION

13 June 2025

Kathy Leigh
Head of Service
Chief Minister, Treasury and Economic Development Directorate
Level 5, 220 London Circuit, Canberra ACT 2601
Via email: Kathy.leigh@act.gov.au

Dear Kathy

Legislative Assembly Members Staff – termination payments for former staff

The United Services Union would like to bring to your attention an ongoing issue concerning a group of our members who were previously employed as ministerial staff under the *Legislative Assembly (Members' Staff) Act 1989.*

Staff who have their employment terminated under the Act are provided with a termination payment under the LAMS Enterprise Agreement. In the lead up to a potential termination event, such as an election and the appointment of a new Territory Government, payment estimates are provided to staff for them to make informed decisions about their future employment arrangements. In the lead up to the last Territory election staff were provided with an initial payment estimate that was later revoked due to changing advice concerning how employee termination payments are treated for tax purposes. Staff were then provided with new payment estimates which were less than previously advised due to the payments now being treated as non-genuine redundancies.

To account for this lower estimate, the Office of Industrial Relations and Workforce Strategy commenced an application process where affected staff could provide information which would allow the Territory to consider its response. Staff subsequently completed those applications as advised by OIRWS. That process commenced in late January 2025. It is our understanding that the applications are being considered by the OIRWS and the Government Solicitor's Office.

The USU has previously expressed its concerns to OIWRS about the time it has taken for this issue to be resolved. We are now in the middle of June and have received no substantive updates on the processing timeframe or an indication of when the issue can be resolved despite being in regular contact with OIRWS. The processing time has caused significant distress for our members who are relying on any potential resolution to make significant life decisions or to ensure they can continue to meet their obligations after making decisions based on the initial incorrect estimates.

UNITED SERVICES UNION

NSW LOCAL GOVERNMENT, CLERICAL, ADMINISTRATIVE, ENERGY, AIRLINES AND UTILITIES UNION

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Satellite Offices
Bathurst, Canberra, Dubbo, Grafton, Hay, Port Macquarie, Tamworth, Wagga Wagga

We bring this issue to your attention in the hope that we can receive a more substantive update and find a prompt resolution.

If you require further information please contact organiser Joshua Polak via mobile 0448 636 066 or email jpolak@usu.org.au

We look forward to your response on behalf of our members.

Yours faithfully,

Sch 2 s 2.2(a)(ii)

Sandie Morthen
Manager Energy, Utilities, Private Sector, and Airlines
Per: Steven Donley, ACTING GENERAL SECRETRARY ,ACTING ASU BRANCH SECRETARY

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By your side | UNITED SERVICES UNION

29 August 2025

Andrew Barr MLA
Chief Minister for the Australian Capital Territory
ACT Legislative Assembly
196 London Cct, Canberra ACT 2601

Via email: barr@act.gov.au

Dear Chief Minister

RE: Legislative Assembly Members' Staff – termination payments for former staff

We are writing to you to formally raise our concerns regarding the delay in providing a remedy for former executive staff who were provided with incorrect termination payment estimates. These incorrect estimates were due to changing advice on the way such payments are subject to tax.

The Office of Industrial Relations and Workforce Strategy commenced a process in late 2024 after the last Territory Election to address the issue. Our members were required to provide personal and confidential information which OIWRS would use to assess any claims arising. We understand that the assessments are now being considered by the Government Solicitors Office.

Since the initial request to provide information, affected individuals have received scarce updates on the progress of their claims. In addition, any updates that have been provided are brief and lack substantive detail. For example, OIRWS committed to providing fortnightly updates but then failed to meet that commitment. Updates are provided intermittently with no substance.

The USU has also sought further information from OIWRS with insufficient additional information or indication of an indicative timeframe provided. We have also written to the ACT Head of Service and received no response other than that the correspondence would be dealt with by OIRWS.

We remain concerned that the way in which former staff have been treated is dismissive and unprofessional. Members faced with significant financial decisions have experienced unnecessary stress and anxiety. Given we are now at the end of August this process is now rapidly approaching the one-year mark. We consider the uncertainty and lack of communication a serious breach of trust. Staff were asked to undergo a process with the undertaking that OIWRS would do what it could to address an issue and provide a remedy that was prompt and adequate.

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Ms Sandie Morthen

United Services Union

Level 7, 321 Pitt Street

SYDNEY NSW 2000

Dear Ms Morthen.

Thank you for your letter about the process being followed by the Territory in relation to termination payments for former executive staff. You have referenced earlier correspondence with the Head of Service on 13 June 2025. I understand that the Deputy Director-General of the Office of Industrial Relations and Workforce Strategy responded to you on 17 June 2025 outlining that a more substantive response would be provided in due course.

As your letter to me outlines, the matter relates to termination payment estimates provided to then executive staff as the 10th ACT Legislative Assembly was due to conclude. The Office of Industrial Relations and Workforce Strategy (OIRWS) in the Chief Minister, Treasury and Economic Development Directorate has provided liaison assistance in this matter whilst the Territory seeks advice regarding the matters.

In the first instance, following the election and the termination by operation of law, of all employment under the *Legislative Assembly (Members' Staff) Act 1989*, I sought advice from OIRWS about industrial options for the affected staff. It became apparent that the question of liability with respect to the affected former executive staff needed to be established. This required submissions from the affected individuals to inform consideration of individual matters.

I am advised that OIRWS worked to ensure that the information sought from affected former executive staff would be of a kind that would assist in the consideration of the question of legal liability as well as consideration of any request for act of grace payments should the affected individuals wish to seek such payment. I am assured that the information provided by those individuals is being treated confidentially.

OIRWS has assured me that the affected individuals will receive a substantive update from OIRWS when they are in a position to do so. Until such time, OIRWS is unable to provide further information of substance.

In relation to your concerns about the delays in the finalisation of this matter, whilst I acknowledge the concerns and the ongoing impact this process is having on your members, the Territory is required to undertake the necessary steps to ascertain whether there is any basis at law to make any additional payments to affected individuals. These steps are taking longer than anticipated but given the number of former executive staff whose individual circumstances need to be considered and assessed, the timeframe experienced has reflected those necessary steps.

I am cognisant that the issue regarding the taxation treatment to be applied to termination payments has caused distress and upset to many of the affected individuals. I recognise the important contribution each of those individuals made to operation of the Territory. As soon as the Territory is in receipt of further advice in this matter, we will ensure all affected individuals are informed.

Yours sincerely

Andrew Barr MLA
Chief Minister

We request that you investigate with OIRWS and seek additional information that we can provide to members. A copy of the correspondence sent to the Head of Service is enclosed.

If you require further information please contact organiser Joshua Polak via mobile 0448 636 066 or email jpolak@usu.org.au

Yours faithfully,



Sandie Morthen
Manager Energy, Utilities, Private Sector, and Airlines
Per: Steven Donley, ACTING GENERAL SECRETRARY ,ACTING ASU BRANCH SECRETARY

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Andrew Barr MLA
Chief Minister
Minister for Economic Development
Minister for Tourism and Trade

Member for Kurrajong

Ms Sandie Morthen
United Services Union
Level 7, 321 Pitt Street
SYDNEY NSW 2000

Dear Ms ~~Morthen~~ Sandie

Thank you for your letter about the process being followed by the Territory in relation to termination payments for former executive staff.

Firstly, I would like to acknowledge the important individual contributions that these staff have made to the operation of the Territory, and the distress and upset that has been caused to many of the affected individuals as a result of the change in taxation treatment applied to termination payments. I also acknowledge that this has been a lengthy process as the Territory seeks advice regarding these matters.

You have referenced earlier correspondence with the Head of Service on 13 June 2025. I understand that the Deputy Director-General of the Office of Industrial Relations and Workforce Strategy responded to you on 17 June 2025 outlining that a more substantive response would be provided in due course.

As your letter to me outlines, the matter relates to termination payment estimates provided to then executive staff as the 10th ACT Legislative Assembly was due to conclude. The Office of Industrial Relations and Workforce Strategy (OIRWS) in the Chief Minister, Treasury and Economic Development Directorate has provided liaison assistance in this matter.

In the first instance, following the election and the termination by operation of law, of all employment under the Legislative Assembly (Members' Staff) Act 1989, I sought advice from OIRWS about industrial options for the affected staff. It became apparent that the question of liability with respect to the affected former executive staff needed to be established. This required submissions from the affected individuals to inform consideration of individual matters.

I am advised that OIRWS worked to ensure that the information sought from affected former executive staff would be of a kind that would assist in the consideration of the question of legal

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ABarrMLA
andrewbarrmla

liability as well as consideration of any request for act of grace payments should the affected individuals wish to seek such payment. I am assured that the information provided by those individuals is being treated confidentially.

In relation to your concerns about the delays in the finalisation of this matter, whilst I acknowledge the concerns and the ongoing impact this process is having on your members, the Territory is required to undertake the necessary steps to ascertain whether there is any basis at law to make any additional payments to affected individuals. These steps are taking longer than anticipated but given the number of former executive staff whose individual circumstances need to be considered and assessed on a case-by-case basis, the timeframe experienced has reflected those necessary steps.

While I cannot be directly involved in this matter due to the inherent conflict of interest resulting from having known the effected staff, I have again asked that this matter be prioritised by ACT Government Officials and resolved as quickly as possible. I have also asked that substantive updates are provided to staff as soon as practicable to ensure all affected individuals are informed.

Yours sincerely



Andrew Barr MLA
Chief Minister

25 September 2025

From: CMTEDD, DDG Office OIRWS
To: CMTEDD, Office of the EGM EIR
Cc: Matthews, EmmaC; Allars, Alex
Subject: RE: For DDG Re-Clearance - CMTEDD2025/3974 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment Matters
Date: Tuesday, 23 September 2025 4:13:22 PM
Attachments: image001.png

OFFICIAL

Thanks Fay – back with Robert now.

Thanks,
Liza

Liza Marando
(Pronounced "Leeza")
Senior Director, Office of the DDG OIRWS
Phone: Teams | Email DDGOIRWS@act.gov.au

From: Prowse, Fay <Fay.Prowse@act.gov.au> **On Behalf Of** CMTEDD, Office of the EGM EIR
Sent: Tuesday, 23 September 2025 2:47 PM
To: CMTEDD, DDG Office OIRWS <DDGOIRWS@act.gov.au>
Cc: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>; Allars, Alex <Alex.Allars@act.gov.au>; CMTEDD, Office of the EGM EIR <CMTEDD.OfficeoftheEGMEIR@act.gov.au>
Subject: For DDG Re-Clearance - CMTEDD2025/3974 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment Matters

OFFICIAL

Hi Liza, this is back with you for consideration and provision to DDG.

See tracked changes on brief in response to Robert's comment.

Regards

Fay Prowse
Executive Officer to Alex Allars, A/g EGM Employment and Industrial Relations Group
Office for Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate (CMTEDD) | ACT Government
Level 5, 220 London Circuit, Canberra City ACT 2601 | www.act.gov.au
E: fay.prowse@act.gov.au **P**: 02 6205 0358
Chief Minister Treasury and Economic Development Directorate | **ACT Government**
GPO Box 158, Canberra ACT 2601 | www.act.gov.au

A close-up of a logo AI-generated content may be incorrect.

From: Allars, Alex <Alex.Allars@act.gov.au>
Sent: Tuesday, 23 September 2025 2:32 PM
To: CMTEDD, Office of the EGM EIR <CMTEDD.OfficeoftheEGMEIR@act.gov.au>
Subject: RE: For EGM Re-Clearance - CMTEDD2025/3974 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment Matters

OFFICIAL

Thanks Fay, have reviewed the edits and agree with them. I also updated my approval date in the document. Good to go back to DDGO. Thank you!

From: Prowse, Fay <Fay.Prowse@act.gov.au> **On Behalf Of** CMTEDD, Office of the EGM EIR
Sent: Tuesday, 23 September 2025 8:31 AM
To: Allars, Alex <Alex.Allars@act.gov.au>
Cc: CMTEDD, Office of the EGM EIR <CMTEDD.OfficeoftheEGMEIR@act.gov.au>
Subject: For EGM Re-Clearance - CMTEDD2025/3974 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment Matters

OFFICIAL

Hi Alex, Robert had a query on this brief regarding the wording around Act of Grace.

Emma has made a small change to amend the wording and this is now ready for your consideration and re-clearance.

Regards

Fay Prowse
Executive Officer to Alex Allars, A/g EGM Employment and Industrial Relations Group
Office for Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate (CMTEDD) | ACT Government
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Chief Minister Treasury and Economic Development Directorate | **ACT Government**
GPO Box 158, Canberra ACT 2601 | www.act.gov.au

A close-up of a logo AI-generated content may be incorrect.

From: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Sent: Monday, 22 September 2025 10:43 PM
To: CMTEDD, Office of the EGM EIR <CMTEDD.OfficeoftheEGMEIR@act.gov.au>
Subject: CMTEDD2025/3974 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment Matters

OFFICIAL

Hi Fay

I have made the amendment requested by RW.

The brief is now ready for Alex's re-review.

Thank you.

Emma

From: CMTEDD, DDG Office OIRWS <DDGOIRWS@act.gov.au>
Sent: Monday, 22 September 2025 11:52 AM
To: CMTEDD, Office of the EGM EIR <CMTEDD.OfficeoftheEGMEIR@act.gov.au>
Cc: CMTEDD, DDG Office OIRWS <DDGOIRWS@act.gov.au>
Subject: Not cleared to progress by a/g DDG OIRWS - CMTEDD2025/3974 - Employment Matters

OFFICIAL

Hi Fay,

Robert has made comments on this one - for resubmit please:

''Friday, 19 September 2025 at 8:59:42 PM (GMT+10:00) Wright, Robert:''
Please see my comments in the brief. For your review and action.

Robert Wright
Acting DDG OIRWS

Thanks,
Liza

Liza Marando
(Pronounced "Leeza")
Senior Director, Office of the DDG OIRWS
Phone: Teams | Email DDGOIRWS@act.gov.au

						Initial Estimate				Revised Estimate				Final Payments and revised estimates		Difference (if final payment is unknown, difference is calculated on initial				ACTGS Comments		
Surname	First name	Position	Continuous Service	Salary at Exit	Date of Initial Estimate	Initial Estimate gross amount	Initial Tax Estimate	Initial Estimate nett amount	Date of Revised Estimate	Revised Estimate gross amount	Tax Estimate 2	Revised Estimate nett amount	Final gross amount	Final Tax	Final nett amount	Difference in gross payments (Init Est -	Difference in tax	Difference in nett payments (Init Est -	Amount claimed	Loss characterisation	Claimed Reliance (and loss)	Employer re-elected	Risk of liability based on information provided	Comments

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

From:	CMTEDD, Barr Ministerial Correspondence
To:	united@usu.org.au
Cc:	Joshua Polak
Subject:	Correspondence from the Chief Minister
Date:	Thursday, 25 September 2025 11:02:50 AM
Attachments:	Correspondence from the Chief Minister.pdf image001.png image002.jpg

Good morning,

Please find attached a letter from the ACT Chief Minister.

Please do not respond to this email as this mailbox is not monitored. If you wish to provide further correspondence, please use the following details:

- Via Contact My Minister
- Via email: BARR@act.gov.au
- Via mail: GPO Box 1020, Canberra ACT 2601

Kind regards,

Office of Andrew Barr MLA
Chief Minister
Minister for Economic Development
Minister for Tourism and Trade
Member for Kurrajong



-----Original Appointment-----
From: Wright, Robert <Robert.Wright@act.gov.au>
Sent: Tuesday, 16 September 2025 10:02 AM
To: Wright, Robert; Matthews, EmmaC; Manzoney, Lisa; Clarke, Elissa
Sch 1 s 1.2
Subject: Sch 1 s 1.2 ADVICE - Sch 1 s 1.2 LAMS staff termination payments - Sch 1 s 1.2 , Sydney.
Where: Microsoft Teams Meeting

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Meeting ID: 416 515 175 805 6

Passcode: 9aK9bq7i

For organizers: Meeting options



ACT Government

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Subject: Sch 1 s 1.2 ADVICE - 646196 LAMS staff termination payments Sch 1 s 1.2
Location: Microsoft Teams Meeting

Start: Thu 18/09/2025 3:30 PM
End: Thu 18/09/2025 4:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Wright, Robert
Required Attendees: Wright, Robert; Matthews, EmmaC; Manzoney, Lisa; Clarke, Elissa
Optional Attendees: Sch 1 s 1.2

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For organizers: Meeting options

FOR THE KING, THE LAW, AND THE PEOPLE

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Ministerial Brief

To:	Chief Minister	**Tracking No.: CMTEDD2025/3611**
Date:	12/09/2025	
CC:	Minister for the Public Service	
From:	A/g Deputy Director-General, Office of Industrial Relations and Workforce Strategy	
Subject:	Update on Legislative Assembly Members' (LAMS) Termination Payment and the LAMS Enterprise Agreement Bargaining Process	
Critical Date:	03/10/2025	
Critical Reason:	In the normal course of business	

- A/HoS 16/09/2025

Recommendations

That you:

1. **note** the information contained in this brief which provides an update on Legislative Assembly Members' (LAMS) termination payments and the LAMS Enterprise Agreement bargaining.

Noted / Please Discuss

Andrew Barr MLA 24/9/25

Minister's Feedback

Background

1. On 31 October 2024, the Office of Industrial Relations and Workforce Strategy (OIRWS) briefed your office on issues arising in the final payment of monies to Legislative Assembly Members' staff (LAMS staff) at the end of the 10th Legislative Assembly (**CMTEDD2024/4323**). In short:

a. due to Member and Office-holder staff having their pay and conditions managed by two separate pay teams, different methodologies had been historically applied in the calculation of termination payments for LAMS staff.

b. Member staff have historically had their final payments treated as termination payments, whereas office-holder staff have historically had their final payments treated as redundancies – the former attracting a higher taxation component.

c. the discrepancy was identified after LAMS staff were provided with estimates towards the end of the 10th Legislative Assembly of the final monies that would be paid if their employment was not continued.

d. subsequent legal and taxation advice has confirmed that the appropriate approach is to calculate the final payment as a termination payment and not a redundancy payment.

e. the termination payments made to Member staff and office-holder staff at the 10th Assembly were taxed consistently as termination payments.

2. The same brief presented both short and long-term options to address the issues, prioritising the former in the interest of progressing a timely solution for affected LAMS staff.

Sch 1 s 1.2

Sch 1 s 1.2

Issues

6. The agreed option to amend the LAMS EA following a staff ballot process to include a termination allowance was proposed noting that the Australian Government's Members of Parliament Staff Enterprise Agreement 2020 – 2023 (MOPS EA) provides a similar entitlement at clause 63.1 which states:

   Severance benefits payable under clause 62 will be increased by 30 per cent if an employee's MOP(S) Act [Member of Parliament (Staff) Act 1984] employment terminates as a result of the employing Member ceasing to hold office … 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.

7. Reflecting the approach taken in other jurisdictions, the ACT Government is committed to increasing severance benefits for LAMS staff by 30 per cent as part of the re-negotiated LAMS EA.

8. To support the proposed increase in severance benefits, OIRWS has drafted a clause to present for inclusion in the re-negotiated LAMS EA. This draft clause was provided to GSO for feedback.

9. With ACTPS-wide enterprise bargaining having commenced in July 2025, it was agreed that the LAMS EA would also be re-negotiated during this period. Rather than seeking to pursue a variation to the existing LAMS EA, OIRWS intends to address issues outlined above during the re-negotiation process. This approach ensures alignment with the broader bargaining process and avoids potential delays that could arise from a separate variation process, thereby enabling LAMS staff to receive any additional pay increases and improved conditions as part of the overall re-negotiation.

10. Notices of Employee Representational Rights (NERRs) were issued to LAMS staff on 24 and 25 July 2025, formally signalling the commencement of enterprise agreement bargaining.

11. OIRWS will lead the bargaining process for the LAMS EA and plans to commence formal bargaining meetings in the coming weeks.

Financial Implications

12. OIRWS acknowledges that the proposed 30 per cent increase in severance benefits will have financial implications for the LAMS staff budget, and this impact will need to be considered as part of the broader budget planning process.

Consultation

Internal

13. LAMS staff have been formally advised of the commencement of enterprise agreement bargaining through the issuing NERRs on 24 and 25 July 2025. This marks the beginning of the formal consultation and bargaining process, ensuring staff are informed and able to participate in accordance with legislative requirements.

14. As the bargaining process progresses, financial implications related to the proposed increase in severance benefits may require engagement with Treasury.

Cross Directorate

15. Nil.

External

16. OIRWS has engaged with relevant unions as part of the external consultation process for the LAMS EA. During these discussions, unions requested that the proposed increase in severance benefits be applied retrospectively.

17. OIRWS will consider if legal advice on the feasibility of retrospective application is an option, with initial research indicating it may not be legally possible. Unions have advised they are also seeking their own legal advice on this matter.

18. To date, unions have shown limited focus on the bargaining process of the LAMS EA, noting their attention is currently on negotiations for other ACTPS EAs.

Work Health and Safety

19. LAMS staff affected by the inconsistent advice leading into the 2024 election period have reported that the situation has caused significant distress. This approach will prevent similar issues from arising in future and reduce the likelihood of psychosocial risk to employees.

Benefits/Sensitivities

20. This approach will benefit LAMS staff by providing greater financial security in the event the employing Member ceases to hold office, through an increase in severance entitlements. It also ensures that the re-negotiation of the LAMS EA proceeds without delay, avoiding further postponement of potential pay increases and other improvements.

Communications, media and engagement implications

21. Nil.

Signatory Name:	Robert Wright	Phone:	MS Teams
Action Officer:	Alex Allars	Phone:	MS Teams

From:	CMCD DLO
To:	Allars, Alex; Burton, Amelia; Ruediger, Jessica; Matthews, EmmaC; CMTEDD, Public Service and Industrial Relations DLO
Cc:	CMCD DLO; CMTEDD, DDG Office OIRWS
Subject:	SIGNED nil comment - Brief - Chief Minister - Update on LAMS Termination Payment Process and EA Bargaining Process
Date:	Thursday, 25 September 2025 10:48:11 AM
Attachments:	GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Ministerial Brief - Barr - Update on LAMS Termination Payment Process and EA Bargaining Process.tr5 image001.png

Good morning team,

The Chief Minister has signed the above brief agreeing to the recommendations, with nil comments.
A copy is saved in container CMTEDD2025/3611 in TRIM.

– copy to the Minister for the Public Service please @CMTEDD, Public Service and Industrial Relations DLO

Kind regards,

Isabelle Howse | Directorate Liaison Officer – Chief Minister
Phone: MS Teams | Email: CMCDDLO@act.gov.au
Chief Minister Treasury and Economic Development Directorate |GPO Box 158, Canberra ACT 2601 **ACT Government**
| www.act.gov.au

Image

From: CMCD DLO
To: Matthews, EmmaC; Allars, Alex
Cc: CMCD DLO; CMTEDD, DDG Office OIRWS
Subject: SIGNED & SENT – Min Corro - Chief Minister – Sandie Morthen - LAMS termination Payments
Date: Thursday, 25 September 2025 11:08:10 AM
Attachments: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Ministerial Correspondence – Chief Minister – Sandie Morthen - LAMS termination Payments.tr5
image001.png

Good morning team,

The Chief Minister has signed the above correspondence.

A copy along with the sent email from the Barr inbox are saved in container CMTEDD2025/3829 in TRIM.

Kind regards,

Isabelle Howse | Directorate Liaison Officer – Chief Minister
Phone: MS Teams | Email: CMCDDLO@act.gov.au
Chief Minister Treasury and Economic Development Directorate |GPO Box 158, Canberra ACT 2601 **ACT Government**
| www.act.gov.au

Image

Ministerial Brief

To:	Chief Minister	**Tracking No.: CMTEDD2025/3974**
Date:	30/09/2025	
From:	A/Deputy Director-General Office of Industrial Relations and Workforce Strategy	
Subject:	Update on post-employment considerations for former staff of Assembly office-holders	
Critical date:	20/10/2025	
Critical reason:	In the normal course of business.	

- HoS 02/10/2025
- A/DDG OIRWS 23/09/2025
- A/EGM EIRG 23/09/2025

Recommendations

That you:

1. **Note** the information contained in this brief.

Noted / Please Discuss

Andrew Barr MLA 21/10/25

Minister's Feedback

Background

1. The Office of Industrial Relations and Workforce Strategy (OIRWS) previously briefed you on matters arising from advice sought by the Office of the Legislative Assembly on the appropriate taxation to apply to payments received by employees under the *Legislative Assembly Members Staff Act 1989* at the end of their employment **(CMTEDD2024/4323, CMTEDD2025/2035, CMTEDD2025/3611)**.

2. The purpose of this brief is to provide you with an update on this matter, following receipt of advice from the Government Solicitor. The Government Solicitor wrote to OIRWS on 11 September 2025 providing advice on the potential liability to the Territory arising from the circumstances where the termination payments of staff of Assembly officeholders were taxed differently from previous cohorts of staff of officeholders.

Sch 1 s 1.2

Issues

4. Sch 1 s 1.2

5. As OIRWS has previously advised you (**CMTEDD2024/4323**), for those former staff members who wish to pursue this matter, the next step in the consideration of the claims made by the former staff of officeholders is under section 130 of the *Financial Management Act 1996*, which relates to the Treasurer's powers to provide 'act of grace' payments. The Government Solicitor has referenced the Act of Grace Payments – Policy and Procedures Guide and in particular paragraphs 22 to 28. Of relevance to this matter is paragraph 28, which states:

   Act of grace requests are not likely to be approved in cases where a requestor's sole assertion is that it is unfair that the individual or organisation has been historically ineligible to receive a benefit for which a person or organisation in a similar contemporary situation would now be eligible. They are also not likely to be approved in cases where a person or organisation was historically eligible for a payment but is now ineligible due to a change in certain criteria.

6. Sch 1 s 1.2

Financial Implications

7. Sch 1 s 1.2

Consultation

Internal

8. Nil response.

Cross Directorate

9. Nil response.

External

10. OIRWS consulted with the Government Solicitor, and references advice received within this brief.

Work Health and Safety

11. Nil response.

Benefits/Sensitivities

12. Submissions from 16 former staff of officeholders were considered by the Government Solicitor. You have received correspondence from one of the relevant unions (**CMTEDD2025/3829**) noting both the impact of this matter on its members and the time it has taken to consider the matter. Sch 1 s 1.2

Communications, media and engagement implications

13. You may receive further correspondence on this matter. OIRWS will continue to provide advice on the status of this matter to support any response required of you as Chief Minister.

Signatory Name:	Robert Wright	Phone:	Sch 2 s 2.2(a)(ii)
Action Officer:	Emma Matthews	Phone:	Sch 2 s 2.2(a)(ii)

From: CMCD DLO
To: Wright, Robert; Allars, Alex; Matthews, EmmaC
Cc: CMCD DLO; CMTEDD, DDG Office OIRWS
Subject: SIGNED nil comment - Brief – Chief Minister - Employment Matters
Date: Wednesday, 22 October 2025 9:54:17 AM
Attachments: GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Ministerial Information Brief - Barr - Employment Matters.tr5
image001.png

Good morning,

The Chief Minister has signed the above brief agreeing to the recommendations, with nil comments.

A copy is saved in container CMTEDD2025/3974 in TRIM.

Kind regards,

Isabelle Howse | Directorate Liaison Officer – Chief Minister
Phone: MS Teams | Email: CMCDDLO@act.gov.au
Chief Minister Treasury and Economic Development Directorate |GPO Box 158, Canberra ACT 2601 **ACT Government**
| www.act.gov.au

Image

From:	Prowse, Fay on behalf of CMTEDD, Office of the EGM EIR
To:	CMTEDD, DDG Office OIRWS
Cc:	CMTEDD, Office of the EGM EIR; Lawless, Brian; Matthews, EmmaC; Allars, Alex
Subject:	*URGENT* CMTEDD2025/3993 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment matters
Date:	Thursday, 6 November 2025 9:41:02 AM
Attachments:	image001.png GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment matters.tr5
Importance:	High

OFFICIAL: Sensitive - Legal Privilege

Hi Liza can you please provide this package through to Robert for early consideration, I believe he will be expecting to receive this.

The below email advises considerations for Robert and seeks his direction prior to the team progressing with next steps.

Action officer for this work is Brian Lawless.

Hi Robert

We are seeking your urgent review and decision on the letters to LAMS staff regarding their termination payments.

Sch 1 s 1.2

Sch 1 s 1.2

Thank you,
Etc.

Regards

Fay Prowse
Executive Officer to Alex Allars, EGM Employment and Industrial Relations Group
Office for Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate (CMTEDD) | ACT Government
Level 5, 220 London Circuit, Canberra City ACT 2601 | www.act.gov.au
E: fay.prowse@act.gov.au **P**: 02 6205 0358
Chief Minister Treasury and Economic Development Directorate | **ACT Government**
GPO Box 158, Canberra ACT 2601 | www.act.gov.au

A close-up of a logo AI-generated content may be incorrect.

From: Matthews, EmmaC
To: Austin, Scott
Subject: Accepted: Act of Grace Payments

From:	Matthews, EmmaC
To:	Prowse, Fay
Subject:	FW: Question?: *URGENT* CMTEDD2025/3993 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment matters
Date:	Friday, 21 November 2025 8:54:00 AM
Attachments:	image001.png GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment matters.tr5
Importance:	High

Leanne was going to check with the HOS whether the HOS wanted to be briefed on the approach.

But yes, I think it would be good to prompt the DDGO – thank you!

From: Prowse, Fay <Fay.Prowse@act.gov.au> **On Behalf Of** CMTEDD, Office of the EGM EIR
Sent: Friday, 21 November 2025 8:49 AM
To: Matthews, EmmaC <EmmaC.Matthews@act.gov.au>
Cc: Allars, Alex <Alex.Allars@act.gov.au>; CMTEDD, Office of the EGM EIR <CMTEDD.OfficeoftheEGMEIR@act.gov.au>
Subject: Question?: *URGENT* CMTEDD2025/3993 : GOVERNMENT & STAKEHOLDER RELATIONS - Government & Assembly Matters - Employment matters
Importance: High

OFFICIAL: Sensitive - Legal Privilege

Hi Emma, I note this item has been with DDG for a couple of weeks, should I send a reminder or are there reasons for the pause?

Fay Prowse
Executive Officer to Alex Allars, EGM Employment and Industrial Relations Group
Office for Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate (CMTEDD) | ACT Government
Level 5, 220 London Circuit, Canberra City ACT 2601 | www.act.gov.au
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Chief Minister Treasury and Economic Development Directorate | **ACT Government**
GPO Box 158, Canberra ACT 2601 | www.act.gov.au

A close-up of a logo AI-generated content may be incorrect.

Duplicate

Duplicate

Duplicate

From: Lawless, Brian
To: Johnston, Fiona
Cc: Matthews, EmmaC
Subject: Letters for DDG signature
Date: Tuesday, 25 November 2025 1:47:15 PM
Attachments: Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]
Letter from OIRWS to [redacted]

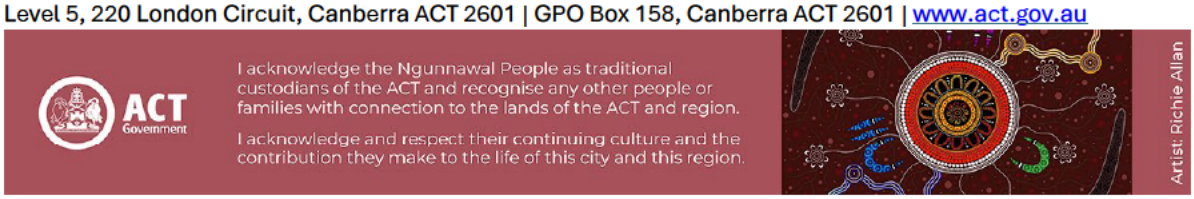
OFFICIAL: Sensitive - Personal Privacy

Hi Fiona

I think Emma messaged you earlier today about this, but we have 14 letters that need Robert's signature. I've added all the relevant employee details, etc and will arrange to send them out from the LAMS inbox once they're signed and PDF'd. I'm hoping you can insert the signatures and send them back to me?

Thank you,
Brian.

Brian Lawless | A/g Senior Director *(he/him)*
Secure Employment
Chat with me on Microsoft Teams | Email: brian.lawless@act.gov.au
ACTPS Employment and Industrial Relations Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au



From: Matthews, EmmaC
To: Bird, Lucas
Subject: Accepted: FBG - act of grace payments

These tables provide a set of scenarios that may occur to where a LAMS Employment Agreement terminates under the LAMS Act.

- A LAMS Termination Payment may be applied when a termination occurs under the LAMS Act.
- A termination reason should be provided to payroll when a termination occurs under the LAMS Act. The termination reason will impact the employee's final entitlement to a redundancy payment under the FW Act and how the payment is taxed (for example, whether there is a non-genuine redundancy or genuine redundancy). Payroll may also need to check the LAMS Termination Payment against FW Act entitlements to ensure it remains more advantageous.
- A LAMS Termination Payment may be applied when a termination occurs under the LAMS Act, depending on the reason for termination it may also be taxed together as part of an employee's final genuine redundancy package.

Termination at initiative of Member or Office Holder (covering termination under LAMS Act s8(4) & s13(3) and notice entitlements under B6.3).NOTE this section does NOT apply to any termination resulting from the death or cessation of the relevant Member or Office Holder (LAMS Act s8(1), s8(2), s13(1) and s13(2))

Employment type	**Termination Type (for payroll use - suggested for determining taxation)**	**Termination Reason**	**LAMS Termination payment (yes/no)**	**Exceptions**	**ETP payment**	**FWA entitlement**	**FWA compliance check**
Ongoing Employee – employees continuing, OR continuing, contingent to their employer being a Member of the Assembly. .	Termination prior to expected end date (end of the Assembly term)	Discretionary (e.g. underperformance or similar processes outlined under the LAMS EA)	Yes. (note: if an exception under B7.2 applies, please refer to the relevant table entry)	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate.	LAMS Termination payment (covers 4 wks in lieu of notice + severance)	Notice period applies	Please periodically check entitlement remains above the FWA – NES entitlement. (e.g check the severance still covers entitlement to

Employment type	Termination Type (for payroll use - suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
i.e. Employment arrangement notes expected end date of employment.				e.g. Misconduct/serious misconduct/job role not required/ Public Sector Secondment/			additional wk for over 45 yrs)
	dismissal	Misconduct	No.	B7.2.1 dismissal for misconduct applies.	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act 117 is not provided)	Notice period applies	Please check: Rate of pay calculation to apply per the FWA s117
	Summary dismissal	Serious misconduct	Nil	Nil	Nil	Nil	N/A
	Genuine Redundancy	**Job role** no longer required (e.g. due to current member undertaking a restructure during	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies	Portion of LAMS Termination Payment above tax	Notice period applies If over 12 months continuous	Check FWA to confirm which entitlement is higher (e.g redundancy+

Employment type	Termination Type (for payroll use - suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
		their relevant Assembly term)		then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate. e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/	free limit (if applicable) (4 wks notice + genuine redundancy) NOTE – Portion of LAMS termination payment below the tax free limit is payable as a NON-ETP lump sum.	service worked Redundancy applies	notice must be higher that LAMS termination payment)
	Non-Genuine Redundancy (Age)	**Job role** no longer required (e.g. due to current member undertaking a restructure during their relevant term)	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies, then this entry is not applicable.	LAMS termination payment (4 wks notice + severance)	Notice period applies per FWA If over 12 months continuous service worked -	Check FWA to confirm which entitlement is higher (applies to both Notice and Redundancy)

Employment type	Termination Type (for payroll use - suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
		– employee is over retirement or age pension age		Please confirm no other 'termination reasons' is more appropriate. e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/		Redundancy pay applies per FWA	
	Non-Genuine Redundancy (Voluntary)	Volunteer to become redundant (e.g. reduction in number of similar roles during Member's relevant term) – employee self-selects to have their role made redundant	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies, then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate.	LAMS termination payment (4 wks notice + severance)	Notice period applies per FWA If over 12 months continuous service worked - Redundancy applies per FWA	Check FWA to confirm which entitlement is higher

Employment type	Termination Type (for payroll use - suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
				e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/			
	Voluntary Separation	Volunteer to become redundant AND over retirement/age pension age (non-genuine redundancy scenarios in this table apply)	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies, then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate. e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public	LAMS termination payment (4 wks notice + severance)	Notice period applies per FWA	above NES entitlement in all circumstances (severance covers entitlement to additional wk for over 45 yrs)

Employment type	Termination Type (for payroll use - suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
				Sector Secondment/			
	Early Termination of Secondment Arrangement	Secondment or similar agreement is terminated early	No.	B7.2.2 An employee who has a right of return to secure employment in the public sector Subject to terms of PSMA / or other relevant public sector legislation	N/A	Nil	N/A
	Termination during probationary period	Discretionary	No.	B7.2.5 A probationary employee	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act 117 is not provided)	Notice applies	Rate of pay calculation to apply per the FWA s117
Fixed term (backfill or specific project	Early Termination of Contract	Discretionary	No.	B7.2.3 - Fixed term (backfill or specific project – as	Payment in lieu of notice (ONLY where	Notice applies	Rate of pay calculation to

Employment type	Termination Type (for payroll use - suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
– as prescribed under the FW Act) NOTE – Fixed term contracts which are in breach of the FW Act are to operate as per arrangements for continuing, contingent to member term employees (as above)				prescribed under the FW Act)	sufficient notice of termination per FW Act 117 is not provided)		apply per the FWA s117
	Summary dismissal	Serious misconduct	Nil	Nil	Nil	Nil	N/A
	Early Termination of Secondment Arrangement	Any termination reason under LAMS act, where employee has the right to return to Public Sector Employment	No.	B7.2.2 An employee who has a right of return to secure employment in the public sector Subject to terms of PSMA	Nil	Nil	N/A
Casual Employee	End casual employment	Nil	No.	B7.2.6 –Casual Employee	Nil	Nil	Nil

LAMS termination payment for termination resulting from the death or cessation of the relevant Member or Office Holder (LAMS Act s8(1), s8(2), and s13(1))

Employment type	Termination Type (for pay-roll use – suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
Ongoing Employee – employees continuing, OR continuing, contingent to their employer being a Member of the Assembly. i.e. Employment arrangement notes expected end date of employment.	Termination at expected end date	Cessation of appointment for relevant office holder/member/ End of assembly term.	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reasons' is more appropriate. e.g. Discretionary /Misconduct/serious misconduct/job role not required/ Public	LAMS Termination payment (4 wks in lieu of notice + severance)	Nil	N/A

Employment type	Termination Type (for pay-roll use – suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
				Sector Secondment/			
	Redundancy	**Job role** no longer required (e.g. due to current member death or early cessation of appointment)	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reason' is more appropriate. e.g. Cessation of appointment/ Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/	Portion of LAMS Termination Payment above tax free limit (if applicable) (4 wks notice + genuine redundancy) NOTE – Portion of LAMS termination payment below the tax free limit is payable as a NON-ETP lump sum.	Notice applies If over 12 months continuous service worked - redundancy applies	Check FWA to confirm which entitlement is higher

Employment type	Termination Type (for pay-roll use – suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
	Non-Genuine Redundancy (Age)	B7.1 **Job role** no longer required (e.g. due to current member death or early cessation of appointment) – over retirement or age pension age	Yes.	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reason' is more appropriate. e.g. Cessation of appointment/ Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/	LAMS termination payment (4 wks notice + severance)	Notice applies If over 12 months continuous service worked - redundancy applies	Check FWA to confirm which entitlement is higher

Employment type	Termination Type (for pay-roll use – suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
	Non-Genuine Redundancy (Voluntary)	B7.1 Volunteer to become redundant (e.g. reduction in number of similar roles due to current member death or early cessation of appointment) – employee self-selects to have their role made redundant	Yes,	Nil. Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reason' is more appropriate. e.g. Cessation of appointment/ Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/	LAMS termination payment (4 wks notice + severance)	Notice applies If over 12 months continuous service worked - redundancy applies	Check FWA to confirm which entitlement is higher
	Voluntary Separation	Volunteer to become redundant AND	Yes	Nil.	LAMS termination payment (4	Notice period applies	above NES entitlement in all circumstances

Employment type	Termination Type (for pay-roll use – suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
		over retirement/age pension age (non-genuine redundancy scenarios in this table apply)		Please confirm that no exceptions under B7.2 apply. If an exception applies then this entry is not applicable. Please confirm no other 'termination reason' is more appropriate. e.g. Cessation of appointment/ Discretionary /Misconduct/serious misconduct/job role not required/ Public Sector Secondment/	wks notice + severance)		(severance covers entitlement to additional wk for over 45 yrs)
	Termination of Secondment Arrangement	End date of secondment arrangement, where employee	No.	B7.2.2 End date of secondment arrangement, where employee has a right	N/A	Nil	N/A

Employment type	Termination Type (for pay-roll use – suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
		has a right to return to secure employment in the public sector.		to return to secure employment in the public sector.			
	Termination during probationary period	termination due to current member death or early cessation of appointment for office holder.	No.	B7.2.5 probationary period	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act 117 is not provided)	Notice applies	Rate of pay calculation to apply per the FWA s117
- Fixed term (backfill or specific project – as prescribed under the FW Act) NOTE – Fixed term contracts	Early Termination of Contract	Current member death or early cessation of appointment for office holder.	No.	B7.2.3 An employee who is engaged for a fixed period, to fill a vacancy caused by a staff member being absent on leave.	Payment in lieu of notice (ONLY where sufficient notice of termination per FW Act	Notice applies	Rate of pay calculation to apply per the FWA s117

Employment type	Termination Type (for pay-roll use – suggested for determining taxation)	Termination Reason	LAMS Termination payment (yes/no)	Exceptions	ETP payment	FWA entitlement	FWA compliance check
which are in breach of the FW Act are to operate as per arrangements for continuing, contingent to member term employees (as above)				B7.2.4 An employee who is engaged to undertake a specified project, where the project has been completed.	117 is not provided)		
	Termination at contract end date	Termination at contract end date		Nil	Nil	Nil	N/A
	Termination of Secondment Arrangement	End date of secondment arrangement, where employee has a right to return to secure employment in the public sector.	No.	B7.2.2 Where employee has a right to return to secure employment in the public sector. Subject to terms of PSMA	Nil	Nil	N/A
Casual Employee	End casual employment	Nil	No.	B7.2.6 – Casual Employee	Nil	Nil	Nil

I was hoping to check with you on the termination types I have highlighted in green to see if these are actually relevant in this scenario, and if I have applied these correctly. I also need to check the FW redundancy entitlement to make sure the LAMS entitlement would be the higher payment in all scenarios – but I can do that at a later stage, or payroll can confirm 😊. I also think it may be worth providing the notice and redundancy entitlements from the FWA in a table for payroll, so they can build these checks into their estimate calculators for future reference. Happy to talk it through this morning at the meeting.

Employment Arrangements for LAMS Staff.

Abbreviations/definitions:

- FW Act (Fair Work Act 2009)
- LAMS Act (Legislative Assembly (Members' Staff) Act 1989)
- LAMS EA (ACT Legislative Assembly Members Staff Enterprise Agreement 2023-2026)
- NES (FW Act - National Employment standards)
- Employment Agreement (Schedule 1 - Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 202) and (Schedule 1 - Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2021 (No 1))
- Members – (members and/or office holders under the LAMS Act)
- Severance – compensation that an employee receives when their job contracts end early.
- Genuine redundancy – compensation for early termination where the person's job doesn't need to be done by anyone.
- ATO – Australian Taxation Office

Table 1: Arrangements for on-going employees

On-going employees	
What is an on-going employee?	An on-going employee is an employee who does not have a contract end date. An on-going employee instead have termination conditions that are triggered under the LAMS Act and agreed to in their Employment Agreement. For example, staff employed to advise a member or office-holder in a continuous manner while their employer holds their position in the ACT Legislative Assembly (i.e. employees employed for the assembly term).
How to complete an on-going employment arrangement under the 'Employment Agreement'	Item 3 'Type of Employment' should be completed with either 'full-time' or 'part-time' or 'casual' Item 4 'Period of Agreement' should be completed with '[Commencement Date] until this Agreement is determined under the Act'. *Note: If an end date is required for administrative purposes (including payroll), a date [the end date of the next Assembly] can be provided separately.* o Where it is anticipated that inclusion of end dates in HR/Payroll systems will cause confusion it may be necessary for payroll/HR to brief either employee's or Members on the function of these end dates (i.e. end dates which appear in HR/Payroll systems prevent overpayments/reduce liability).
Is the employee entitled to probation?	Yes.

	Item 5 'Probation' must specify the probationary period. *Note: The probationary period would normally be 6 months or less.*
Is a FWC fixed term contract information statement required?	No.
Ending employment	**On-going employment ceases through operation of the LAMS Act unless there has been serious misconduct, or the employee resigns.** - A LAMS Termination Payment may be appropriate when a termination occurs under the LAMS Act. - A termination reason should be provided to payroll when a termination occurs under the LAMS Act. The termination reason will impact the employee's final entitlement to a redundancy payment under the FW Act and how the payment is taxed (for example, tax will change where there is a non-genuine redundancy vs. genuine redundancy). Payroll may also need to check the LAMS Termination Payment against FW Act entitlements to ensure it remains more advantageous. *Termination due to employee's resignation* An employee may terminate their Employment Agreement through resignation at any time. - **Is there a notice period requirement/ agreement:** A minimum of 2 weeks written notice should be given to the employing Member unless a shorter notice period is agreed in writing between parties per clause B6 of the LAMS EA. - **Is the employee entitled to a LAMS Termination Payment:** No - **Is this a redundancy under the FW Act:** No *Termination due to the employee's serious misconduct (summary dismissal)* Employment may be terminated if an employee is found guilty of serious misconduct. - **Is there a notice period requirement/ agreement:** No. Where the employee is found guilty of serious misconduct they may be dismissed without notice or pay in lieu. - **Is the employee entitled to a LAMS Termination Payment:** No - **Is this a redundancy under the FW Act:** No

	Termination due to the employee receiving notice from their Member that employment is terminated.
	Employment may be terminated by written notice under the LAMS Act section 8 (4) and 13(3). Termination by written notice means the Member writes to the employee with the intention of ending the employee's Employment Agreement prior to the arrangement's anticipated or agreed to end date.
	
	- **Is there a notice period requirement/ agreement:** Yes. Where termination occurs at the initiative of the Member the employee is entitled to notice, or pay in lieu of notice.
	  ○ **Does B7.1 of the LAMS EA apply:** The termination payment under clause B7 will constitute payment or part payment of compensation in lieu of notice for the purposes of section 117 of the Fair Work Act.
	  ▪ IMPORTANT! If the payment to which the employee is entitled to under clause B7 is less than that to which the employee would be entitled to under section 117 of the Fair Work Act, the employee will be entitled to be paid compensation in lieu of notice equal to the difference between the termination payment in subclause B7.1 and the employee's entitlement under section 117 of the Fair Work Act. This would be an additional payment if this were to occur.
	  ○ **Does B7.2 of the LAMS EA apply:** Where an employee is not entitled to a termination payment under subclause B7.1, the employee may be entitled to notice, or pay in lieu of notice, in accordance with section 117 of the Fair Work Act.
	- **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply.
	- **Is this a redundancy under the FW Act:**
	
	  ○ **No.** If the termination is at the Member's initiative and the employee receives notice and/or payment or pay in lieu of notice as agreed to in their Employment Agreement and outlined under the LAMS EA per clauses B6 and B7, this termination is not a redundancy.
	  Examples-
	  ▪ An employee terminated before the end of the Assembly term (i.e. before the anticipated end of their employment arrangement) for reasons that do not include the employee's job roll no longer being required.
	  ▪ An employee terminated because the Member intends to retire or resign (and there was further employment available).
	  ▪ An employee terminated during probation.
	  ▪ An employee terminated due to misconduct (which is not serious misconduct).

	▪ An employee terminated due to underperformance. ○ **Possibly.** If the termination is at the Member's initiative and the employee receives notice and/or payment or pay in lieu of notice as agreed to in their Employment Agreement and the reason for termination is the employee's job role is no longer required. If there was no alternative position available or where there would be a substantial change to the position description in their Employment Agreement making the work substantially different then this may meet redundancy requirements. *Examples-* ▪ An employee terminated due to a Member undertaking a restructure during their relevant term. ▪ An employee terminated due to changes in the Member's staffing needs (i.e. where a Member changes their position in the Assembly and the individual's Job Roll is no longer required as a result). ▪ An employee terminated because the Member intends to retire or resign (and they were unable to be offered an alternative employment arrangement). *Automatic termination due to the employee's Member dying.* Employment may be immediately terminated where certain events occur through operation of the LAMS Act. Where the Member under whom the employee is dies, the employee's Employment Agreement will immediately terminate per sections 8(1), or 13(1) of the LAMS Act - **Is there a notice period requirement/agreement:** Where the event is unexpected or unanticipated, the Member may not be able to reasonably provide notice to the employee prior to employment automatically terminating under the LAMS Act. ○ IMPORTANT! If the payment to which the employee is entitled to under clause B7 is less than that to which the employee would be entitled to under section 117 of the Fair Work Act, the employee will be entitled to be paid compensation in lieu of notice equal to the difference between the termination payment in subclause B7.1 and the employee's entitlement under section 117 of the Fair Work Act. This would be an additional payment if this were to occur. - **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply. - **Is this a redundancy under the FW Act:** No. TBC.

	○ In the present circumstances, by virtue of the operation of the statutory provisions the termination of the employment does not occur "at the employer's initiative"; rather, the employment terminates by operation of law. ○ **However,** this advice was provided where termination was occurring during an election it is unclear whether this would also apply to a scenario where the Member dies. *Automatic termination due to the employee's Member ceasing because of a general election.* Employment may be immediately terminated where certain events occur through operation of the LAMS Act. Where the Member under whom the employee is employed ceases to be a Member or Office Holder during an election they have ceased to hold office/be a member and the employee's Employment Agreement will immediately terminate per sections 8(1), 8(2), or 13(1) of the LAMS Act. - **Is there a notice period requirement/agreement:** Yes. On-going employment arrangements are anticipated to continue for the length of an Assembly term. As noted in the Employment Agreement it is expected that employment may cease during a general election. The employee is made aware of election dates in advance. - **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply. - **Is this a redundancy under the FW Act:** No. ○ In circumstances of a change in Ministerial portfolios following the re-election of a Member, and consequent change in staffing requirements for the relevant Member, the ending of a staff member for that reason is not a genuine redundancy. ○ In the present circumstances, by virtue of the operation of the statutory provisions the termination of the employment does not occur "at the employer's initiative"; rather, the employment terminates by operation of law.
Is the employee entitled to a LAMS Termination payment?	**Yes. An ongoing employee is entitled to a termination payment unless they fall into the employment categories listed in B7.2.** ○ Sections 8 and 13 of the LAMS Act state that employment terminates automatically where the employing member or office holder ceases to hold office or be a Member.

	○ Clause B7 of the LAMS EA provides a termination payment to employees terminated under the sections 8 and 13 of the LAMS Act. ○ Clause B7.2 The LAMS termination payment is not payable where the employee: ○ Is on probation. ○ Has resigned. ○ Is immediately re-employed under the LAMS Act. ○ Is returning to secure work with the public sector ○ Is engaged for a fixed period to fill a vacancy caused by a staff member being absent on leave or to undertake a specific project. The LAMS Termination Payment on its own is currently considered a severance payment for tax purposes unless it is paid as part of a redundancy package.
Is the employee entitled to a redundancy payment?	**Yes. A redundancy payment may be provided as per the NES.** - The LAMS EA does not contain any term which supplements the NES entitlement; thus, the entitlement to redundancy pay arising under the NES is the sole source of redundancy entitlement for staff undergoing a redundancy. Section 119 of the Fair Work Act establishes an employee's entitlement to redundancy pay as follows: - Section 119 (1) An employee is entitled to be paid redundancy pay by the employer if the employee's employment is terminated: ○ (a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour ○ (b) because of the insolvency or bankruptcy of the employer. Redundancy pay is the amount prescribed under the NES.
What happens when both FW Act redundancy and LAMS Act termination conditions are met?	**In this scenario the employee is entitled to two payments:** - A termination payment under the LAMS EA. - A redundancy payment under the FW Act.

	For example, where an on-going employee is terminated, and the termination conditions/reason satisfy section 119 of the FW Act, If an employee is entitled to redundancy pay under s 119 of the FW Act **AND** has been terminated through operation of the LAMS Act, any termination payment made to them under clause B7 of the LAMS EA would be reduced by an amount equal to the redundancy payment made under the FW Act in accordance with clause B7.3. *Note: If this is a redundancy scenario then both payments may be taxed together as part of an employee's final redundancy package.* *The tax amount will depend on the reason for termination and whether the circumstances surrounding the termination were a genuine or non-genuine redundancy as determined by the ATO.*

Table 2: Arrangements for fixed-term employees

LAMS fixed-term employees	
What is a fixed-term employee?	A fixed term employee is an employee who has a contract that terminates at the end of a set period. A fixed-term employee has an Employment Agreement with an agreed to end date. For example, - Staff employed for a project with a set start and end date. - Staff employed to replace an employee on leave.
How to complete the 'Employment Agreement' if an employee is fixed-term?	Item 3 'Type of Employment' should be completed with either 'full-time' or 'part-time' or 'casual' Item 4 'Period of Agreement' should be completed with '[Commencement Date] until [End Date]. *Note: The employer **MUST** follow Fair Work fixed-term time limitations unless an exception applies.*
Is the employee entitled to probation?	No. Item 5 'Probation' must specify that '[a probationary period does not apply].'

Is a FWC fixed term contract information statement required?	Yes. Employers must give every employee engaged on a new fixed term contract a copy of the Fixed Term Contract Information Statement (fairwork.gov.au) when they enter into the contract.
What are fixed-term contract limitations?	Section 333E of the FW Act provides limitations of fixed-term contracts. *The limitations* • **Time limitations:** A fixed term contract can't be for longer than 2 years. This includes any extensions or renewals. • **Renewal limitations:** A fixed term contract can't have an option to: o extend or renew the contract so the period of employment lasts for longer than 2 years, or o extend or renew the contract more than once. **Consecutive contract limitations:** An employee cannot be employed on a new fixed term contract if: o the contract is for mainly the same work as a previous fixed term contract, o there isn't a substantial break in the employment relationship between the previous and new contracts, and o any of the following apply: o the total period of employment for the previous contract and the new fixed term contract is more than 2 years, or o the new fixed term contract can be renewed or extended, or o the previous fixed term contract was extended, or o there was an initial fixed term contract in place (before the previous contract) that: o was for mainly the same work, and o there was continuity of the employment relationship from the period of time (if any) between the initial contract and the previous contract.
Can an exception be applied?	Section 333F of the FW Act provides exceptions to the limitations on fixed-term contracts that apply under section 333E.

	Please review Fixed-Term-Contracts-Fair-Work-Exceptions-and-Examples.pdf if you believe an exception applies. *Relevant exceptions that may be relevant (non-exhaustive list):* 1. **Specialised skills for a specific task:** Work only on a specific task that requires the employee's specialised skills. 2. **Training arrangements:** Engaging an employee under a formal training arrangement made under State or Territory law. 3. **High Income employees:** If the employee's guaranteed salary is more than the high income threshold in the year the contract is entered into. 4. **Temporary circumstances:** Working to replace someone who is temporarily away (i.e. employee's on leave)
Ending employment	A fixed-term employee's employment ends as per their contract end date.
Ending employment before the contract end date.	If a contract is ended prior to the contract end date the employee may be entitled to a Termination Payment and/or Redundancy under the FW Act. - the Employment Agreement is terminated prior to the agreed end date by written notice at the initiative of the Member - *please see relevant section under ongoing employment as the same rules would apply.* - the Employment Agreement is terminated early due to automatic termination when employee's Member retires/resigns/dies - *please see relevant section under ongoing employment as the same rules would apply.*
Is the employee entitled to a LAMS Termination payment?	No, if a fixed-term employee's employment ends as per their contract end date. Maybe, where contract is terminated prior to the agreed end date or by written notice and/or Member retiring/resigning/dying and clause B7.2 of the LAMS EA does not apply – *please see relevant section under ongoing employment.*
Is the employee entitled to redundancy payment?	No, if a fixed-term employee's employment ends as per their contract end date.

	Maybe, where contract is terminated prior to the agreed end date by written notice and/or Member retiring/resigning/dying and redundancy conditions are met per the FW Act – *please see relevant section under ongoing employment*.
What happens when both redundancy and LAMS Act termination conditions are met?	**In this scenario the employee is entitled to two payments:** - A termination payment under the LAMS EA. - A redundancy payment under the FW Act. For example, where an on-going employee is terminated, and the termination conditions/reason satisfy section 119 of the FW Act, If an employee is entitled to redundancy pay under s 119 of the FW Act **AND** has been terminated through operation of the LAMS Act, any termination payment made to them under clause B7 of the LAMS EA would be reduced by an amount equal to the redundancy payment made under the FW Act in accordance with clause B7.3. *Note: If this is a redundancy scenario then both payments may be taxed together as part of an employee's final redundancy package.* *The tax amount will depend on the reason for termination and whether the circumstances surrounding the termination were a genuine or non-genuine redundancy as determined by the ATO.*
What happens when a contract is non-compliant with FW Act fixed-term contract limitations and there is no applicable exception?	If a fixed term employee's employment is in contravention of s 333E the employee will be considered an on-going employee: - OIRWS-IR's current advice when the ACTPS is found non-compliant with the FW Act fixed-term contract rules is that the employee becomes an 'ongoing' temporary employee and will need to be treated similarly to (but not as a) 'permanent' employee for the purposes of the FW Act until such time that they could be officially appointed to a permanent position. - Under the current LAMS Framework this would mean the employee is treated as an 'on-going' employee (see Table 1) without formally being an on-going employee (noting that they may not have employment contract in this scenario) until they can be offered an on-going employment contract with the Member under whom they were previously employed. - If there is no on-going employment available, they would be entitled to notice and redundancy payment under the FW Act.

	- As their on-going employment is under the FW Act and not the LAMS Act they would not be entitled to a Termination Payment.

Other LAMS Employment arrangements:

Example 1: Employees on leave from the ACTPS with a LAMS Employment contract.

An employee 'on transfer' from the ACTPS should be considered on-going employee unless stated otherwise in their employment contract. For example, if they were the employee is being engaged for a short fixed-period (i.e. for project work) or filling in for a LAMS employee on leave then a fixed-term contract should be issued.

An employee on leave from the ACTPS is not entitled to a termination payment per clause B7 of the LAMS EA. However, should redundancy conditions be met under the FW Act they may be entitled to a redundancy payment.

Example 2: Employees deferring their termination entitlement for 3 months after a general election (see Legislative Assembly (Members' Staff) Variable Terms of Employment of Office-holders' Staff 2005 | HTML view and Legislative Assembly (Members' Staff) Variable Terms of Employment of Members' Staff 2005 | HTML view)

Where offered by the Member, an employee has the option to continue employment for up to 3 months following a general election. There should be no break in employment, meaning the employee remains on-going.

Where the employee is 'on-going':

- The arrangement has the effect of deferring the employee's termination under the LAMS Act and preserves their entitlement to the Termination payment. This employment arrangement should remain on-going.
- In this scenario, there should be no update to Item 4 'Period of Agreement' as employment is still ending employment through operation of the LAMS Act. However, there may need to be an adjustment to end dates recorded in payroll and HR systems.

Example 3: Employees with employment 'deemed to continue' during a general election. (see Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment Of Office-holders' Staff Direction 2015 | HTML view and Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Members' Staff Direction 2020 (No 1) | HTML view)

In this scenario, there should be no update to Item 4 'Period of Agreement' as employment is still ending employment through operation of the LAMS Act. However, there may need to be an adjustment to end dates recorded in payroll and HR systems.

Example 4: Casual employees:

The limitations also don't apply to casual employees.

A person is a casual employee if, when they start employment:

- the employment relationship has no firm advance commitment to ongoing work, taking into account a number of factors, and
- they're entitled to a casual loading or specific casual pay rate under an award, registered agreement, or employment contract.

Ministerial and Members' staff employment instruments by jurisdiction

This document provides a comparative summary of the industrial instruments used to employ ministerial advisers and members of parliament staff across Australian jurisdictions.

<table>
<tr><th>Jurisdiction
Instruments</th><th>Status arrangements</th><th>Redundancy / End-of-Contract Entitlements</th></tr>
<tr><td>Commonwealth
Members of Parliament (Staff) Act 1984
Enterprise Agreement 2024–27
Determinations under MOP(S) Act</td><td>Enterprise Agreement 24-27
B) Employment Options (13-17)
- Ongoing (permanent) employment</td><td>Enterprise Agreement 24-27 - I) Termination of employment (73-74)
Severance benefits (not redundancy) payable according to length of service:<table><tr><th>Years service</th><th>Benefit</th></tr><tr><td>Less than 1 year</td><td>4 weeks</td></tr><tr><td>1-2 years</td><td>8 weeks</td></tr><tr><td>2-3 years</td><td>10 weeks</td></tr><tr><td>3-4 years</td><td>12 weeks</td></tr><tr><td>4-5 years</td><td>13 weeks</td></tr><tr><td>5-7 years</td><td>14 weeks</td></tr><tr><td>7 years +</td><td>2 weeks plus 2 weeks for each year – up to 48 weeks maximum</td></tr></table>Total is increased by 30 per cent if an employee's MOP(S) Act employment terminates as a result of the employing Parliamentarian ceasing to hold office (i.e. under section 14 of the MOP(S) Act).
APS and State/Territory public servants on leave from their nominal roles have no severance benefit entitlements.</td></tr>
<tr><td>NSW
Members of Parliament Staff Act 2013
Members' Staff Conditions of Employment Determination of the Presiding Officers March 2025</td><td>Determination 2025 – Chapter 2 – Terms of Employment
- All new staff employed temporarily for 6 months
- Permanent conversion after 6 months if supported by the Member</td><td>Determination 2025 – Chapter 5 – Termination of Employment
Separation payments include:
- notice period (4-5 weeks), plus
- severance benefit of 3 weeks per year of service (max 39 weeks) plus an additional payment based on length of service equal to:
○ 1-2 years - 4 weeks
○ 2-3 years - 6 weeks
○ 3+ years - 8 weeks.
Total increases by 30% when a member ceases to hold office and the ATO does not continue the separation to be a bona fide redundancy.</td></tr>
</table>

<table>
<tr><td></td><td></td><td>No entitlement for permanent employees of the public service. Binder 2, 280</td></tr>
<tr><td rowspan="2">Victoria
Public Administration Act 2004
Parliamentary Administration Act 2005
PS IR Policies 2015 & Redundancy Policy</td><td>Ministerial officers & parliamentary advisers:
- FTCs up to 4 years</td><td>Ministerial officers & parliamentary advisers are equivalent – allocated either to Ministers or Opposition office holders. No redundancy entitlements.
Public sector industrial policies apply; redundancy packages may be considered in limited circumstances.</td></tr>
<tr><td>Electorate officers:
- Permanent employment</td><td>Electorate officers are employed by the parliament; termination upon the point at which the member of Parliament ceases to be a member.
Public sector industrial policies apply; redundancy packages may be considered in limited circumstances.</td></tr>
<tr><td rowspan="2">Queensland
Industrial Relations Act 2016
Ministerial and Other Office Holder Staff Act 2010
Parliamentary Service Act 1988
Parliamentary Service Electorate Office Staff Certified Agreement 2023
QUEENSLAND PARLIAMENTARY SERVICE AWARD - STATE 2015</td><td>Ministerial staff employed under Ministerial &OOHS Act 2010; subordinate in part to the IR Act 2016.
- Permanent employment (standard)</td><td>Ministerial staff redundancy entitlements on Minister ceasing to hold that office (entitlement taken from - subdivision 2 – IR Act 2016).
<table>
<tr><th>years of service</th><th>entitlement</th></tr>
<tr><td>1 – 2 years</td><td>4 weeks</td></tr>
<tr><td>2 – 3 years</td><td>6 weeks</td></tr>
<tr><td>3 – 4 years</td><td>7 weeks</td></tr>
<tr><td>4 – 5 years</td><td>8 weeks</td></tr>
<tr><td>5 – 6 years</td><td>9 weeks</td></tr>
<tr><td>6 – 7 years</td><td>10 weeks</td></tr>
<tr><td>7 – 8 years</td><td>11 weeks</td></tr>
<tr><td>8 – 9 years</td><td>12 weeks</td></tr>
<tr><td>9 – 10 years</td><td>13 weeks</td></tr>
<tr><td>10 – 11 years</td><td>14 weeks</td></tr>
<tr><td>11 – 12 years</td><td>15 weeks</td></tr>
<tr><td>more than 12 years</td><td>16 weeks</td></tr>
</table></td></tr>
<tr><td>Electorate office staff under the Parl-Serv Act 1988 subject to the Agreement, and the Award.
- Permanent employment (standard)</td><td>Electorate office staff severance (redundancy) entitlements on employing member ceasing to hold office (Clauses 9-10 – Award):
<table>
<tr><th>Years of service</th><th>Entitlement</th></tr>
<tr><td>Less than 1</td><td>4 weeks</td></tr>
</table></td></tr>
</table>

<table>
<tr>
<td></td>
<td>- Fixed term (limited circumstances)
- Casual (limited circumstances)</td>
<td>
<table>
<tr><td>1 – 2 years</td><td>6 weeks</td></tr>
<tr><td>2 – 3 years</td><td>8 weeks</td></tr>
<tr><td>3 – 4 years</td><td>10 weeks</td></tr>
<tr><td>4 – 5 years</td><td>11 weeks</td></tr>
<tr><td>5 – 7 years</td><td>12 weeks</td></tr>
<tr><td>7 years plus</td><td>12 weeks plus additional 2 weeks for each completed year in excess of 6 years up to a maximum of 52 weeks</td></tr>
</table>
Additionally, employees with at least 1 continuous year service will receive additional payment of accrued long service leave on basis of 1.3weeks accrued LSL per year of service (and proportionate amount for incomplete year).
</td>
</tr>
<tr>
<td rowspan="2">Western Australia
Public Sector Management Act 1994
Public Sector CSA Agreement 2024
Electorate & Research Employees Agreement 2024
Electorate Officers Award 1986
Public Sector Management (Redeployment & Redundancy) Regulations 2014</td>
<td>Ministerial staff employed under PS CSA Agreement 2024:
- Permanent employment</td>
<td>Ministerial staff redundancy entitlement if employing member ceases to hold office, except those with less than 12 months service (clause 13 – Regulation);
- 4 weeks pay after 1 year service, and
- additional 3 weeks pay per year, up to 52 weeks.</td>
</tr>
<tr>
<td>Electorate staff employed under Electorate Employees Agreement 2024:
- Permanent employment</td>
<td>Electorate office staff severance entitlements payable if employing member ceases to hold office [8.(3) – Electorate Officers Award]:
- 2 weeks pay per year of service to a maximum of 48 weeks.</td>
</tr>
<tr>
<td rowspan="2">South Australia
Public Sector Act 2009 (Ministerial Staff – S. 71)
Fair Work Act 1994 (Electorate staff)
Assistants to the Members of the South Australian Parliament Enterprise Agreement 2021</td>
<td>Ministerial staff
Individual instruments of appointment under Public Sector Act 2009.</td>
<td>*Enquiries have been sent to the Office of the Commissioner for Public Sector Employment seeking confirmation of legislative arrangements, any updates received will be provided.*</td>
</tr>
<tr>
<td>Electorate staff (Assistants)
- Permanent employment</td>
<td>Electorate staff entitled to ‘notice or payment in lieu of notice’ of termination (20.8 of Agreement) if employing member loses office:
<table>
<tr><th>Continual service</th><th>Notice payable</th></tr>
<tr><td>Less than 26 weeks</td><td>1 week</td></tr>
<tr><td>26 weeks up to 1 year</td><td>8 weeks</td></tr>
<tr><td>1-2 years</td><td>12 weeks</td></tr>
<tr><td>2-4 years</td><td>13 weeks</td></tr>
</table>
</td>
</tr>
</table>

		4-6 years: 14 weeks 6-8 years: 15 weeks 8+ years: 16 weeks plus additional 2 weeks per additional year after the eighth year, up to maximum of 28 weeks
Tasmania *State Service Act 2000* *State Service Regulations*	Individual instruments of appointment.	*Enquiries have been sent to the Tasmanian Industrial Commission seeking confirmation of legislative arrangements, any updates received will be provided.*
ACT *Legislative Assembly (Members' Staff) Act 1989* *Legislative Assembly Member's Staff Enterprise Agreement 2023-26*	(B1 – Types of Employment; Agreement) - Fixed term - Casual	Where employing office holder (MLA or Minister) ceases to hold office, or if the employee is terminated (except for misconduct and the likes), the employee is entitled to payment (B7 – Agreement) of: - 4 weeks salary irrespective of length of service; and - 2 weeks salary for each completed year of continuous service; and - A pro-rata payment for additional completed months of service, up to 48 weeks' salary.
Northern Territory *Contract Act 1978* *Report and Determination No. 1 of 2025 - Salaries and Other Entitlements of Assembly Members* *Redeployment and Redundancy Regulations (Employment Instruction number 14)*	**Ministerial staff (***Contract Act 1978***):** - No standard employment status indicated	No publicly available industrial instrument stipulating employee entitlements for the NT ministerial staff has been identified. Public sector employees on secondment to a Ministerial office are covered by Guidelines for NTPS employees and elections 2024 (see 5.2).
	Electorate office staff: - Individual employment contracts (*11.6 - Determination*)	**Electorate office staff** entitled to notice period or payment in lieu of notice on employing member ceasing to hold office (11.32-11.36 - Determination). Notice will be 2 weeks pay, unless notice on termination owed is greater under the *Fair Work Act 2009.* Employees with seven years or greater, continuous service, they will also receive: - two weeks' pay for each full year of continuous service up to a maximum of 26 weeks; and - a pro-rata payment for each completed month of continuous service in any part year.

From: CMTEDD, LAMS Liaison
To: [redacted]
Subject: RE: LAMS matter
Date: Wednesday, 26 November 2025 12:30:00 PM
Attachments: image001.jpg
Letter from OIRWS to [redacted]
CMTEDD FORM re termination payments January 2025.pdf
4 September estimate.pdf
23 October estimate.pdf
CMTEDD FORM re termination payments January 2025.docx
Attachment B Act-of-Grace-Policy-and-Procedures-Guide .docx

Dear [redacted]

Please find a letter attached from the A/Deputy Director-General, Office of Industrial Relations and Workforce Strategy, regarding your submission about the taxation of termination payments.

Kind regards,

Brian.

Brian Lawless | A/g Senior Director *(he/him)*
Secure Employment

Chat with me on Microsoft Teams | Email: brian.lawless@act.gov.au
ACTPS Employment and Industrial Relations Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au

[redacted]

From: [redacted]
Sent: Thursday, 30 January 2025 10:44 AM
To: Matthews, EmmaC
Cc: CMTEDD, LAMS Liaison ; Northam, Madeline (CPSU) ; Joshua Polak ; Wright, Robert
Subject: Re: LAMS matter

Some people who received this message don't often get email from [redacted]. Learn why this is important

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Emma

Please find attached the completed form as requested, along with the two estimates I was provided - on 4 September and 23 October 2024.

Kind regards

[redacted]

On 28 Jan 2025, at 08:59, Matthews, EmmaC <EmmaC.Matthews@act.gov.au> wrote:

OFFICIAL: Sensitive - Personal Privacy

Good morning

You are receiving this correspondence as you worked as a staff member for an office-

holder and held that position at the end of the 10th Assembly. Thank you for your patience as we worked through the issues resulting from the incorrect information you received. In consultation with our colleagues in the Treasury and the Government Solicitor's Office, the Office of Industrial Relations and Workforce Strategy has developed a form for use by staff of office-holders at the conclusion of the 10th Legislative Assembly (attached). The form seeks information from affected persons to enable the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) to consider their circumstances in determining the Territory's response.

The team here at CMTEDD will be greatly assisted by comprehensive responses to the requests for information in the form and invites affected persons to provide any additional information that they think is relevant or important.

It is important to note that the Law Officers Legal Services Direction 2023 (in particular, paragraph 10) and the Act of grace payments: policy and procedures guide will guide the consideration of any claim or application for an act of grace payment, respectively, made by a staff member of an office-holder.

The information sought in the form will assist CMTEDD in determining the Territory's response. Provision of that information and any additional information should not be taken as indicating what the Territory's response will be. Affected persons are free to obtain their own legal advice about their circumstances at any time.

Please find the attached document, which includes the form labelled Attachment A. Attachment Bis separately attached.

Please complete and return the attached form at your earliest convenience. I have copied union representatives to this email.

If you have any questions, please do not hesitate to respond by reply email or contact me directly at EmmaC.Matthews@act.gov.au

Kind regards

Emma

Emma Matthews on behalf of
The Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate I ACT Government
E: LAMSLiaison@act.gov.au
M: 0411 772 362

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

Employment Arrangements for LAMS Staff.

Abbreviations/definitions:

- FW Act (Fair Work Act 2009)
- LAMS Act (Legislative Assembly (Members' Staff) Act 1989)
- LAMS EA (ACT Legislative Assembly Members Staff Enterprise Agreement 2023-2026)
- NES (FW Act - National Employment standards)
- Employment Agreement (Schedule 1 - Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 202) and (Schedule 1 - Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2021 (No 1))
- Members – (members and/or office holders under the LAMS Act)
- Severance – compensation that an employee receives when their job contracts end early.
- Genuine redundancy – compensation for early termination where the person's job doesn't need to be done by anyone.
- ATO – Australian Taxation Office

Table 1: Arrangements for on-going employees

On-going employees	
What is an on-going employee?	An on-going employee is an employee who does not have a contract end date. An on-going employee instead have termination conditions that are triggered under the LAMS Act and agreed to in their Employment Agreement. For example, staff employed to advise a member or office-holder in a continuous manner while their employer holds their position in the ACT Legislative Assembly (i.e. employees employed for the assembly term).
How to complete an on-going employment arrangement under the 'Employment Agreement'	Item 3 'Type of Employment' should be completed with either 'full-time' or 'part-time' or 'casual' Item 4 'Period of Agreement' should be completed with '[Commencement Date] until this Agreement is determined under the Act'. *Note: If an end date is required for administrative purposes (including payroll), a date [the end date of the next Assembly] can be provided separately.* o Where it is anticipated that inclusion of end dates in HR/Payroll systems will cause confusion it may be necessary for payroll/HR to brief either employee's or Members on the function of these end dates (i.e. end dates which appear in HR/Payroll systems prevent overpayments/reduce liability).
Is the employee entitled to probation?	Yes.

	Item 5 'Probation' must specify the probationary period. *Note: The probationary period would normally be 6 months or less.*
Is a FWC fixed term contract information statement required?	No.
Ending employment	**On-going employment ceases through operation of the LAMS Act unless there has been serious misconduct, or the employee resigns.** - A LAMS Termination Payment may be appropriate when a termination occurs under the LAMS Act. - A termination reason should be provided to payroll when a termination occurs under the LAMS Act. The termination reason will impact the employee's final entitlement to a redundancy payment under the FW Act and how the payment is taxed (for example, tax will change where there is a non-genuine redundancy vs. genuine redundancy). Payroll may also need to check the LAMS Termination Payment against FW Act entitlements to ensure it remains more advantageous. *Termination due to employee's resignation* An employee may terminate their Employment Agreement through resignation at any time. - **Is there a notice period requirement/ agreement:** A minimum of 2 weeks written notice should be given to the employing Member unless a shorter notice period is agreed in writing between parties per clause B6 of the LAMS EA. - **Is the employee entitled to a LAMS Termination Payment:** No - **Is this a redundancy under the FW Act:** No *Termination due to the employee's serious misconduct (summary dismissal)* Employment may be terminated if an employee is found guilty of serious misconduct. - **Is there a notice period requirement/ agreement:** No. Where the employee is found guilty of serious misconduct they may be dismissed without notice or pay in lieu. - **Is the employee entitled to a LAMS Termination Payment:** No - **Is this a redundancy under the FW Act:** No

	Termination due to the employee receiving notice from their Member that employment is terminated.
	Employment may be terminated by written notice under the LAMS Act section 8 (4) and 13(3). Termination by written notice means the Member writes to the employee with the intention of ending the employee's Employment Agreement prior to the arrangement's anticipated or agreed to end date.
	
	- **Is there a notice period requirement/ agreement:** Yes. Where termination occurs at the initiative of the Member the employee is entitled to notice, or pay in lieu of notice.
	  ○ **Does B7.1 of the LAMS EA apply:** The termination payment under clause B7 will constitute payment or part payment of compensation in lieu of notice for the purposes of section 117 of the Fair Work Act.
	  ▪ IMPORTANT! If the payment to which the employee is entitled to under clause B7 is less than that to which the employee would be entitled to under section 117 of the Fair Work Act, the employee will be entitled to be paid compensation in lieu of notice equal to the difference between the termination payment in subclause B7.1 and the employee's entitlement under section 117 of the Fair Work Act. This would be an additional payment if this were to occur.
	  ○ **Does B7.2 of the LAMS EA apply:** Where an employee is not entitled to a termination payment under subclause B7.1, the employee may be entitled to notice, or pay in lieu of notice, in accordance with section 117 of the Fair Work Act.
	- **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply.
	- **Is this a redundancy under the FW Act:**
	
	  ○ **No.** If the termination is at the Member's initiative and the employee receives notice and/or payment or pay in lieu of notice as agreed to in their Employment Agreement and outlined under the LAMS EA per clauses B6 and B7, this termination is not a redundancy.
	  Examples-
	  ▪ An employee terminated before the end of the Assembly term (i.e. before the anticipated end of their employment arrangement) for reasons that do not include the employee's job roll no longer being required.
	  ▪ An employee terminated because the Member intends to retire or resign (and there was further employment available).
	  ▪ An employee terminated during probation.
	  ▪ An employee terminated due to misconduct (which is not serious misconduct).

	▪ An employee terminated due to underperformance. ○ **Possibly.** If the termination is at the Member's initiative and the employee receives notice and/or payment or pay in lieu of notice as agreed to in their Employment Agreement and the reason for termination is the employee's job role is no longer required. If there was no alternative position available or where there would be a substantial change to the position description in their Employment Agreement making the work substantially different then this may meet redundancy requirements. *Examples-* ▪ An employee terminated due to a Member undertaking a restructure during their relevant term. ▪ An employee terminated due to changes in the Member's staffing needs (i.e. where a Member changes their position in the Assembly and the individual's Job Roll is no longer required as a result). ▪ An employee terminated because the Member intends to retire or resign (and they were unable to be offered an alternative employment arrangement). *Automatic termination due to the employee's Member dying.* Employment may be immediately terminated where certain events occur through operation of the LAMS Act. Where the Member under whom the employee is dies, the employee's Employment Agreement will immediately terminate per sections 8(1), or 13(1) of the LAMS Act - **Is there a notice period requirement/agreement:** Where the event is unexpected or unanticipated, the Member may not be able to reasonably provide notice to the employee prior to employment automatically terminating under the LAMS Act. ○ IMPORTANT! If the payment to which the employee is entitled to under clause B7 is less than that to which the employee would be entitled to under section 117 of the Fair Work Act, the employee will be entitled to be paid compensation in lieu of notice equal to the difference between the termination payment in subclause B7.1 and the employee's entitlement under section 117 of the Fair Work Act. This would be an additional payment if this were to occur. - **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply. - **Is this a redundancy under the FW Act:** No. TBC.

	○ In the present circumstances, by virtue of the operation of the statutory provisions the termination of the employment does not occur "at the employer's initiative"; rather, the employment terminates by operation of law. ○ **However,** this advice was provided where termination was occurring during an election it is unclear whether this would also apply to a scenario where the Member dies. *Automatic termination due to the employee's Member ceasing because of a general election.* Employment may be immediately terminated where certain events occur through operation of the LAMS Act. Where the Member under whom the employee is employed ceases to be a Member or Office Holder during an election they have ceased to hold office/be a member and the employee's Employment Agreement will immediately terminate per sections 8(1), 8(2), or 13(1) of the LAMS Act. - **Is there a notice period requirement/agreement:** Yes. On-going employment arrangements are anticipated to continue for the length of an Assembly term. As noted in the Employment Agreement it is expected that employment may cease during a general election. The employee is made aware of election dates in advance. - **Is the employee entitled to a LAMS Termination Payment under B7 of the LAMS EA:** Yes. Unless the conditions under B7.2 apply. - **Is this a redundancy under the FW Act:** No. ○ In circumstances of a change in Ministerial portfolios following the re-election of a Member, and consequent change in staffing requirements for the relevant Member, the ending of a staff member for that reason is not a genuine redundancy. ○ In the present circumstances, by virtue of the operation of the statutory provisions the termination of the employment does not occur "at the employer's initiative"; rather, the employment terminates by operation of law.
Is the employee entitled to a LAMS Termination payment?	**Yes. An ongoing employee is entitled to a termination payment unless they fall into the employment categories listed in B7.2.** ○ Sections 8 and 13 of the LAMS Act state that employment terminates automatically where the employing member or office holder ceases to hold office or be a Member.

	○ Clause B7 of the LAMS EA provides a termination payment to employees terminated under the sections 8 and 13 of the LAMS Act. ○ Clause B7.2 The LAMS termination payment is not payable where the employee: ○ Is on probation. ○ Has resigned. ○ Is immediately re-employed under the LAMS Act. ○ Is returning to secure work with the public sector ○ Is engaged for a fixed period to fill a vacancy caused by a staff member being absent on leave or to undertake a specific project. The LAMS Termination Payment on its own is currently considered a severance payment for tax purposes unless it is paid as part of a redundancy package.
Is the employee entitled to a redundancy payment?	**Yes. A redundancy payment may be provided as per the NES.** - The LAMS EA does not contain any term which supplements the NES entitlement; thus, the entitlement to redundancy pay arising under the NES is the sole source of redundancy entitlement for staff undergoing a redundancy. Section 119 of the Fair Work Act establishes an employee's entitlement to redundancy pay as follows: - Section 119 (1) An employee is entitled to be paid redundancy pay by the employer if the employee's employment is terminated: ○ (a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour ○ (b) because of the insolvency or bankruptcy of the employer. Redundancy pay is the amount prescribed under the NES.
What happens when both FW Act redundancy and LAMS Act termination conditions are met?	**In this scenario the employee is entitled to two payments:** - A termination payment under the LAMS EA. - A redundancy payment under the FW Act.

	For example, where an on-going employee is terminated, and the termination conditions/reason satisfy section 119 of the FW Act, If an employee is entitled to redundancy pay under s 119 of the FW Act **AND** has been terminated through operation of the LAMS Act, any termination payment made to them under clause B7 of the LAMS EA would be reduced by an amount equal to the redundancy payment made under the FW Act in accordance with clause B7.3. *Note: If this is a redundancy scenario then both payments may be taxed together as part of an employee's final redundancy package.* *The tax amount will depend on the reason for termination and whether the circumstances surrounding the termination were a genuine or non-genuine redundancy as determined by the ATO.*

Table 2: Arrangements for fixed-term employees

LAMS fixed-term employees	
What is a fixed-term employee?	A fixed term employee is an employee who has a contract that terminates at the end of a set period. A fixed-term employee has an Employment Agreement with an agreed to end date. For example, - Staff employed for a project with a set start and end date. - Staff employed to replace an employee on leave.
How to complete the 'Employment Agreement' if an employee is fixed-term?	Item 3 'Type of Employment' should be completed with either 'full-time' or 'part-time' or 'casual' Item 4 'Period of Agreement' should be completed with '[Commencement Date] until [End Date]. *Note: The employer **MUST** follow Fair Work fixed-term time limitations unless an exception applies.*
Is the employee entitled to probation?	No. Item 5 'Probation' must specify that '[a probationary period does not apply].'

Is a FWC fixed term contract information statement required?	Yes. Employers must give every employee engaged on a new fixed term contract a copy of the Fixed Term Contract Information Statement (fairwork.gov.au) when they enter into the contract.
What are fixed-term contract limitations?	Section 333E of the FW Act provides limitations of fixed-term contracts. *The limitations* • **Time limitations:** A fixed term contract can't be for longer than 2 years. This includes any extensions or renewals. • **Renewal limitations:** A fixed term contract can't have an option to: o extend or renew the contract so the period of employment lasts for longer than 2 years, or o extend or renew the contract more than once. **Consecutive contract limitations:** An employee cannot be employed on a new fixed term contract if: o the contract is for mainly the same work as a previous fixed term contract, o there isn't a substantial break in the employment relationship between the previous and new contracts, and o any of the following apply: o the total period of employment for the previous contract and the new fixed term contract is more than 2 years, or o the new fixed term contract can be renewed or extended, or o the previous fixed term contract was extended, or o there was an initial fixed term contract in place (before the previous contract) that: o was for mainly the same work, and o there was continuity of the employment relationship from the period of time (if any) between the initial contract and the previous contract.
Can an exception be applied?	Section 333F of the FW Act provides exceptions to the limitations on fixed-term contracts that apply under section 333E.

	Please review Fixed-Term-Contracts-Fair-Work-Exceptions-and-Examples.pdf if you believe an exception applies. *Relevant exceptions that may be relevant (non-exhaustive list):* 1. **Specialised skills for a specific task:** Work only on a specific task that requires the employee's specialised skills. 2. **Training arrangements:** Engaging an employee under a formal training arrangement made under State or Territory law. 3. **High Income employees:** If the employee's guaranteed salary is more than the high income threshold in the year the contract is entered into. 4. **Temporary circumstances:** Working to replace someone who is temporarily away (i.e. employee's on leave)
Ending employment	A fixed-term employee's employment ends as per their contract end date.
Ending employment before the contract end date.	If a contract is ended prior to the contract end date the employee may be entitled to a Termination Payment and/or Redundancy under the FW Act. - the Employment Agreement is terminated prior to the agreed end date by written notice at the initiative of the Member - *please see relevant section under ongoing employment as the same rules would apply.* - the Employment Agreement is terminated early due to automatic termination when employee's Member retires/resigns/dies - *please see relevant section under ongoing employment as the same rules would apply.*
Is the employee entitled to a LAMS Termination payment?	No, if a fixed-term employee's employment ends as per their contract end date. Maybe, where contract is terminated prior to the agreed end date or by written notice and/or Member retiring/resigning/dying and clause B7.2 of the LAMS EA does not apply – *please see relevant section under ongoing employment.*
Is the employee entitled to redundancy payment?	No, if a fixed-term employee's employment ends as per their contract end date.

	Maybe, where contract is terminated prior to the agreed end date by written notice and/or Member retiring/resigning/dying and redundancy conditions are met per the FW Act – *please see relevant section under ongoing employment*.
What happens when both redundancy and LAMS Act termination conditions are met?	**In this scenario the employee is entitled to two payments:** - A termination payment under the LAMS EA. - A redundancy payment under the FW Act. For example, where an on-going employee is terminated, and the termination conditions/reason satisfy section 119 of the FW Act, If an employee is entitled to redundancy pay under s 119 of the FW Act **AND** has been terminated through operation of the LAMS Act, any termination payment made to them under clause B7 of the LAMS EA would be reduced by an amount equal to the redundancy payment made under the FW Act in accordance with clause B7.3. *Note: If this is a redundancy scenario then both payments may be taxed together as part of an employee's final redundancy package.* *The tax amount will depend on the reason for termination and whether the circumstances surrounding the termination were a genuine or non-genuine redundancy as determined by the ATO.*
What happens when a contract is non-compliant with FW Act fixed-term contract limitations and there is no applicable exception?	If a fixed term employee's employment is in contravention of s 333E the employee will be considered an on-going employee: - OIRWS-IR's current advice when the ACTPS is found non-compliant with the FW Act fixed-term contract rules is that the employee becomes an 'ongoing' temporary employee and will need to be treated similarly to (but not as a) 'permanent' employee for the purposes of the FW Act until such time that they could be officially appointed to a permanent position. - Under the current LAMS Framework this would mean the employee is treated as an 'on-going' employee (see Table 1) without formally being an on-going employee (noting that they may not have employment contract in this scenario) until they can be offered an on-going employment contract with the Member under whom they were previously employed. - If there is no on-going employment available, they would be entitled to notice and redundancy payment under the FW Act.

	- As their on-going employment is under the FW Act and not the LAMS Act they would not be entitled to a Termination Payment.

Other LAMS Employment arrangements:

Example 1: Employees on leave from the ACTPS with a LAMS Employment contract.

An employee 'on transfer' from the ACTPS should be considered on-going employee unless stated otherwise in their employment contract. For example, if they were the employee is being engaged for a short fixed-period (i.e. for project work) or filling in for a LAMS employee on leave then a fixed-term contract should be issued.

An employee on leave from the ACTPS is not entitled to a termination payment per clause B7 of the LAMS EA. However, should redundancy conditions be met under the FW Act they may be entitled to a redundancy payment.

Example 2: Employees deferring their termination entitlement for 3 months after a general election (see Legislative Assembly (Members' Staff) Variable Terms of Employment of Office-holders' Staff 2005 | HTML view and Legislative Assembly (Members' Staff) Variable Terms of Employment of Members' Staff 2005 | HTML view)

Where offered by the Member, an employee has the option to continue employment for up to 3 months following a general election. There should be no break in employment, meaning the employee remains on-going.

Where the employee is 'on-going':

- The arrangement has the effect of deferring the employee's termination under the LAMS Act and preserves their entitlement to the Termination payment. This employment arrangement should remain on-going.
- In this scenario, there should be no update to Item 4 'Period of Agreement' as employment is still ending employment through operation of the LAMS Act. However, there may need to be an adjustment to end dates recorded in payroll and HR systems.

Example 3: Employees with employment 'deemed to continue' during a general election. (see Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment Of Office-holders' Staff Direction 2015 | HTML view and Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Members' Staff Direction 2020 (No 1) | HTML view)

In this scenario, there should be no update to Item 4 'Period of Agreement' as employment is still ending employment through operation of the LAMS Act. However, there may need to be an adjustment to end dates recorded in payroll and HR systems.

Example 4: Casual employees:

The limitations also don't apply to casual employees.

A person is a casual employee if, when they start employment:

- the employment relationship has no firm advance commitment to ongoing work, taking into account a number of factors, and
- they're entitled to a casual loading or specific casual pay rate under an award, registered agreement, or employment contract.

From:	Turner, Rachel
To:	Szandurski, Kim; Mirzabegian, Sanaz
Cc:	Taylor, Nina; Szanto, Juliet; Rogers, Emma; Mison, Matt; Duncan, Tom; Walsh, AmyL; Henry, Tracey; Wright, Steven
Subject:	Urgent: LAMS Fixed-term contracts
Date:	Wednesday, 2 October 2024 2:16:20 PM
Attachments:	image001.png image002.jpg
Importance:	High

OFFICIAL: Sensitive

Good afternoon Sanaz and Kim

As you would be aware, over recent weeks it has become apparent that LAMS employment provisions are being applied differently across Executive and Non-executive teams. As a result we have identified concerns about the Chief Minister Hiring Arrangement Determinations for both Office-holders and Members' staff. Specifically, whether the employment arrangements in Schedule 1 of the *Legislative Assembly Members (Members' Staff) Act* (LAMS Act) comply with the recent changes to fixed term employment under the *Fair Work Act 2009* (FWA).

Last week we became aware OIRWS had legal advice from GSO from July regarding these arrangements. This advice has heightened our concerns about compliance, particularly regarding Section 333E of the FWA, which restricts fixed-term contracts to a maximum of two years unless specific exceptions apply. Given that many LAMS staff contracts align with the four-year term of the Assembly—and considering likely continuity of employment from previous Assemblies—we are facing potential compliance issues that require urgent resolution.

We acknowledge the potential reliance on the FWA exception for *'specialised skills for a specific task,'* however it is important to recognise that many non-executive roles are often administrative in nature, not necessarily specialised and most do not exceed the high income threshold. Our commitment to compliance with both the FWA and the LAMS Act is paramount as the ACT Legislative Assembly shapes laws and upholding these standards reflects our dedication to legal integrity and enhances the credibility of our institution.

Additionally, I must express concern about the delay in correspondence with OLA regarding this matter, which only surfaced last week, sometime after GSO provided its advice. This delay is particularly frustrating given the pressing timeline and the significant implications for the Speaker and Non-executive Members' employment arrangements as the new Assembly approaches.

We understand that OIRWS is currently operating under resource constraints; however, CMTEDD holds the responsibility for administering the LAMS legislative frameworks and Chief Minister Determinations and in only a few weeks we will begin preparing contracts for LAMS staff for the 11th Assembly.

I am therefore seeking your advice and/or assurance that it is your view as per the advice received below that the "Legislative Assembly should continue to rely on the exception of 'Specialised skills for a specific task' under the *Fair Work Act 2009* (FW Act) when hiring future staff. This is the exception that LAMS staff are employees engaged for a specified task as described in clause B1 of the Legislative Assembly Members Staff Enterprise Agreement 2023 -2026."

Please let me know if you would like to meet to discuss and/or if we can provide any assistance.

Regards

Rachel

Rachel Turner

Executive Manager, Business Support | Office of the Legislative Assembly
Phone: (02) 6205 0181 | Mobile: Sch 2 s 2.2(a)(ii)
Email: rachel.turner@parliament.act.gov.au
GPO Box 1020 Canberra ACT 2601
www.parliament.act.gov.au



The Office of the Legislative Assembly:
Providing professional services and reliable, impartial advice to support, strengthen and promote the institution of parliament in the ACT.

From: Szanto, Juliet <Juliet.Szanto@act.gov.au>
Sent: Friday, September 27, 2024 1:29 AM
To: Rogers, Emma <Emma.Rogers@parliament.act.gov.au>
Cc: Henry, Tracey <Tracey.Henry@act.gov.au>; Turner, Rachel <Rachel.Turner@parliament.act.gov.au>; Szandurski, Kim <Kim.Szandurski@act.gov.au>; Perkovic, Sophia <Sophia.Perkovic@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>
Subject: RE: LAMS Fixed-term contracts

OFFICIAL: Sensitive

Hi Emma,
Thank you for noting your concerns here and providing us with your draft amendments to probation entitlements.
To ensure we are all on the same page I am sharing all work the ORIWS has currently undertaken in relation to the current RLA on LAMS fixed-term contract.
To note: this email has a few attachments, so I have renamed and provided a list here for readability:

- Attachment A - ACTGS Request for Legal Assistance - LAMS Fixed-term contracts - *(this was the initial RLA submitted by OIRWS)*
- Attachment A1 - (with amendments) Legislative Assembly Members Hiring Arrangements - *(this document was submitted to GSO alongside our RLA)*
- Attachment B - Advice LAMS Act Fixed Term Employment 644260 - *(this is the advice received from GSO)*

Sch 1 s 1.2

- Attachment D - Legislative Assembly (Members' Staff) Members' Hiring Arrangements_Draft Probation Clause - *(this is the draft probation clause provided by OLA)*

Fixed term contracts:
While our team is happy to provide feedback and support in reviewing proposed updates to the LAMS employment contract instruments, we do not currently have the resources needed to undertake the revisions you are requesting below or support the notification process.
However, OIRWS may offer assistance should OLA seek to request further legal advice or seek clarity on any of the points/recommendations already raised and provided by GSO. We understand you wish to request GSO consider potential avenues for a restructure/revision of the Chief Minister's Hiring Arrangements Determinations (Office-holders and Members). To note, in our initial request for advice we asked the following questions of GSO:

- "Please advise whether further updates are required to the employment

agreement and agreement attachment provided …The proposed update would reinforce the position that fixed-term employment by office holders or members under the LAMS Act and termination under sections 8(1), 8(2), 8(4), 13(1) and 13(3) would meet an exception to the fixed-term contract limitations per section 333F(1) of the FW Act."

- "…please advise whether further updates to the employment agreement or agreement attachment are required to distinguish or highlight when the employment agreement would be subject to fixed-term contract limitations per section 333F(1) of the FW Act. If further updates are required, please provide

Sch 1 s 1.2

Until this review occurs the Legislative Assembly should continue to rely on the exception of 'Specialised skills for a specific task' under the *Fair Work Act 2009* (FW Act) when hiring future staff. This is the exception that LAMS staff are employees engaged for a specified task as described in clause B1 of the Legislative Assembly Members Staff Enterprise Agreement 2023 -2026.

Probation:

With regard to the proposed probation clause.

We do not see issue with the inclusion of this probation clause as it is aligned and compliments probation provisions already in the LAMS EA. The clause provides detail not in the LAMS EA covering commencement and the termination of an employee's probation which is informative and sets clear expectations for employees and Members. In the past, our team has noted that there were no immediate concerns with extending the probation of LAMS Staff as long as the total probation period was no longer than 6 months. We have also noted a lack of processes/steps to extend probation as something that might be addressed during enterprise bargaining or in the employment contract. Your proposed clause aims to close this gap in information.

However, I would caution against the inclusion of lines such as:

'(b) the length of the extension (up to a maximum of an additional 6 months);' and

When the probation period is extended beyond what is set under the *Fair Work Act 2009* - which is 6 months - then employment is annulled within this extended period, the employee has a right to bring an unfair dismissal case to Fair Work.

When advising on the ability to extend probation under similar *Public Sector Management Act 1994* (PSM Act) provisions, we always recommend that once the initial 6 months' probation period has past, even where probation has been extended under the PSM Act, that a performance management process be undertaken where performance is unsatisfactory. This may be informed by any relevant probation reports and noting any extension.

In considering the above, OIRWS supports the inclusion of this probation clause should OLA wish to undertake appropriate consultation and progress this change to the Chief Minister for approval.

Kind regards,

Juliet Szanto | Industrial Relations and Employment Conditions Officer
Whole of Government Industrial Relations and Public Sector Employment
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | **ACT Government**
220 London Circuit Canberra City | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Rogers, Emma <Emma.Rogers@parliament.act.gov.au>
Sent: Thursday, September 26, 2024 11:09 PM
To: Taylor, Nina <Nina.Taylor@act.gov.au>
Cc: Szanto, Juliet <Juliet.Szanto@act.gov.au>; Henry, Tracey <Tracey.Henry@act.gov.au>; Turner, Rachel <Rachel.Turner@parliament.act.gov.au>; Szandurski, Kim <Kim.Szandurski@act.gov.au>; Perkovic, Sophia <Sophia.Perkovic@act.gov.au>
Subject: RE: LAMS Fixed-term contracts
Importance: High

OFFICIAL: Sensitive

Hi Nina
Thanks to you and Juliet for sending the GSO advice, I have shared this with Rachel but note your

Sch 1 s 1.2

Kind Regards,

Emma Rogers
HR Projects | Business Support Branch
E emma.rogers@parliament.act.gov.au

From: Szanto, Juliet <Juliet.Szanto@act.gov.au>
Sent: Wednesday, September 25, 2024 8:22 PM
To: Rogers, Emma <Emma.Rogers@parliament.act.gov.au>; Henry, Tracey <Tracey.Henry@act.gov.au>
Cc: Taylor, Nina <Nina.Taylor@act.gov.au>; Szandurski, Kim <Kim.Szandurski@act.gov.au>; Perkovic, Sophia <Sophia.Perkovic@act.gov.au>
Subject: FW: [ADVICE Pls] RLA LAMS Fixed-term contracts advice

OFFICIAL: Sensitive

Hi Emma and Tracey,

Nina/Kim have requested that I share the below correspondence and Sch 1 s 1.2 advice for you own information.
Please note that this is not for broader circulation.
Kind regards,
Juliet.

Sch 1 s 1.2

From: Sch 2.2(a)(ii) @act.gov.au>
Sent: Monday, April 8, 2024 2:44 PM

To: Szandurski, Kim <Kim.Szandurski@act.gov.au>
Cc: Sch 2.2(a)(ii) @act.gov.au>; Noud, Russell <Russell.Noud@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>; Szanto, Juliet <Juliet.Szanto@act.gov.au>
Subject: RE: Short Term Contract Changes Brief

Thanks Kim, and team.
Appreciate the quick advice on this.
Kind regards,
Sch 2.2(a)(ii)

From: Szandurski, Kim <Kim.Szandurski@act.gov.au>
Sent: Thursday, April 4, 2024 5:28 PM
To: Sch 2.2(a)(ii) @act.gov.au>
Cc: Sch 2.2(a)(ii) @act.gov.au>; Noud, Russell <Russell.Noud@act.gov.au>; Taylor, Nina <Nina.Taylor@act.gov.au>; Szanto, Juliet <Juliet.Szanto@act.gov.au>
Subject: Short Term Contract Changes Brief

OFFICIAL

Dear Sch 2.2(a)(ii)

Thank you for your time to discuss this matter the other week.
I confirm that we do not believe that the short-term contact changes will not have any substantial impact on staff at the Legislative Assembly.
We have reviewed the employment arrangements of Legislative Assembly staff and determined they are employees engaged for a specified task as described in clause B1 of the Legislative Assembly Members Staff Enterprise Agreement 2023 -2026 (LAMS EA). This means they would meet the exception of 'Specialised skills for a specific task' under the *Fair Work Act 2009* (FW Act) and the fixed- term contact limitations don't apply. The specific task referred to involves specialist skill, including advising and forming a close/exclusive working relationship with a specific member or office-holder of the ACT Legislative Assembly under whom the staff member is employed as per the *Legislative Assembly (Members' Staff) Act 1989 (LAMS Act).* Employment to perform such a task is only available for a specific period of time being the term of office until election upon which there is no ongoing work available as the office holder or member ceases to hold their position in the Assembly

Sch 1 s 1.2

Sch 1 s 1.2 and we shall keep you informed when we have an updated template for your review and consideration.
Please let us know if we can assist further.
Kind regards
Kim

Kim Szandurski | Executive Branch Manager *(she/her)*
Public Sector Industrial Relations & Secure Local Jobs Code
Office of Industrial Relations & Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate| ACT Government
Level 5, 220 London Circuit | GPO Box 158 Canberra City ACT 2601 | Web: www.act.gov.au
Phone: +61 2 6207 0810 | Mobile: Sch 2 s 2.2(a)(ii) | Email: kim.szandurski@act.gov.au

From: Sch 2.2(a)(ii) @act.gov.au>
Sent: Friday, March 15, 2024 10:59:36 AM
To: Szandurski, Kim <Kim.Szandurski@act.gov.au>

Cc: CMCD DLO <CMCDDLO@act.gov.au>; Sch 2.2(a)(ii) @act.gov.au>
Subject: Short Term Contract Changes Brief

Hi Kim,

As discussed – Can you please get me some background information on whether the short term contract changes will have any impact on LAMS staff?

All staff are employed on fixed term (often 4 years) contracts, and a lot of them are over the income threshold – I couldn't see an exception that would clearly apply but would appreciate some advice on this.

Kind regards,

Sch 2.2(a)(ii)
Deputy Chief of Staff (Mon-Thu)
Chief of Staff (Fri)
Office of the Chief Minister
Andrew Barr MLA



From: Wright, Robert
To: Sch 2.2(a)(ii)
Subject: Fwd: Exec Staff with Non-Exec Prior Service
Date: Wednesday, 18 September 2024 11:54:08 AM
Attachments: image001.jpg

OFFICIAL

Hi Sch 2.2(a)(ii)

See email trail below confirming previous handling by OLA.

Cheers

Robert Wright
EGM Corporate CMTEDD

From: Bolton, Martin
Sent: Wednesday, September 18, 2024 8:58 AM
To: Wright, Robert ; Taylor, Nina ; Szandurski, Kim
Subject: FW: Exec Staff with Non-Exec Prior Service

OFFICIAL

Hi All,
Below is the confirmation from OLA that previously they did process these as VR's and not ETP's.
Not sure what prompted the tax advice from KPMG.
Thanks
Martin

Martin Bolton | Executive Branch Manager | Payroll and HR Systems
Phone: 620 58700 | Email: Martin.Bolton @act.gov.au
Shared Services | Office of Industrial Relations and Workforce Strategy | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 3, Winyu House, 125 Gungahlin Place, Gungahlin ACT 2601 | GPO Box 158 Canberra ACT 2601 | act.gov.au

---

From: Khem, Deepika
Sent: Tuesday, September 17, 2024 4:23 PM
To: Bolton, Martin ; Palic, Richard
Subject: FW: Exec Staff with Non-Exec Prior Service

OFFICIAL

FYI

From: Polkinghorne, Michelle <Michelle.Polkinghorne@parliament.act.gov.au>
Sent: Thursday, July 25, 2024 8:36 AM
To: Khem, Deepika <Deepika.Khem@act.gov.au>
Subject: RE: Exec Staff with Non-Exec Prior Service

OFFICIAL

Hi Dee,
We have not yet received the tax advice.
In the past we have treated end of term payments to staff that were working for members that were retiring at the end of term as a redundancy.

Regards
Michelle Polkinghorne
Senior Payroll and HR Officer
HR and Entitlements
Business Support Branch
P 02 62050444| E michelle.polkinghorne@parliament.act.gov.au



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http://www.parliament.act.gov.au

From: Khem, Deepika <Deepika.Khem@act.gov.au>
Sent: Thursday, July 25, 2024 8:28 AM
To: Polkinghorne, Michelle <Michelle.Polkinghorne@parliament.act.gov.au>
Subject: RE: Exec Staff with Non-Exec Prior Service

OFFICIAL

Thanks Michelle,
I've passed this on to the team to check and we will let you know.
On a separate note, I remember Emma mentioning that your team was seeking tax advice on the treatment of the Termination Payments.
Just wondering if you have heard anything? Do you currently apply the same rules as a redundancy payment?
Thanks,
Dee

Deepika Khemchandani | Director | Payroll Services
Phone: +61 620 55294
Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
GPO Box 158 Canberra ACT 2601 | www.act.gov.au
Please note: I work part time Monday – Thursday.

From: Polkinghorne, Michelle <Michelle.Polkinghorne@parliament.act.gov.au>
Sent: Wednesday, July 24, 2024 11:16 AM
To: Khem, Deepika <Deepika.Khem@act.gov.au>
Subject: Exec Staff with Non-Exec Prior Service

OFFICIAL

Hi Dee,
I hope you are well.
The following Exec employees were employed by Non-Exec Members before they went to work for a Minister. Can you please let me know if they all have prior service recorded in Chris21 or if I need to provide as their Non-Exec service will count towards their end of term payment?

Sch 2 s 2.2(a)(ii)

Sch 2 s 2.2(a)(ii)

Regards

Michelle Polkinghorne
Senior Payroll and HR Officer
HR and Entitlements
Business Support Branch
P 02 62050444| E michelle.polkinghorne@parliament.act.gov.au

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http://www.parliament.act.gov.au

From: Henry, Tracey
To: Sch 2.2(a)(ii)
Subject: Termination of Ministerial Staff at a General Election - Q&A, Guidelines and termination estimate
Date: Wednesday, 21 August 2024 9:52:52 AM
Attachments: Payroll Guide- Termination payment LAMS Staff.pdf
Termination of Ministerial Staff after a general election 2024.pdf

OFFICIAL

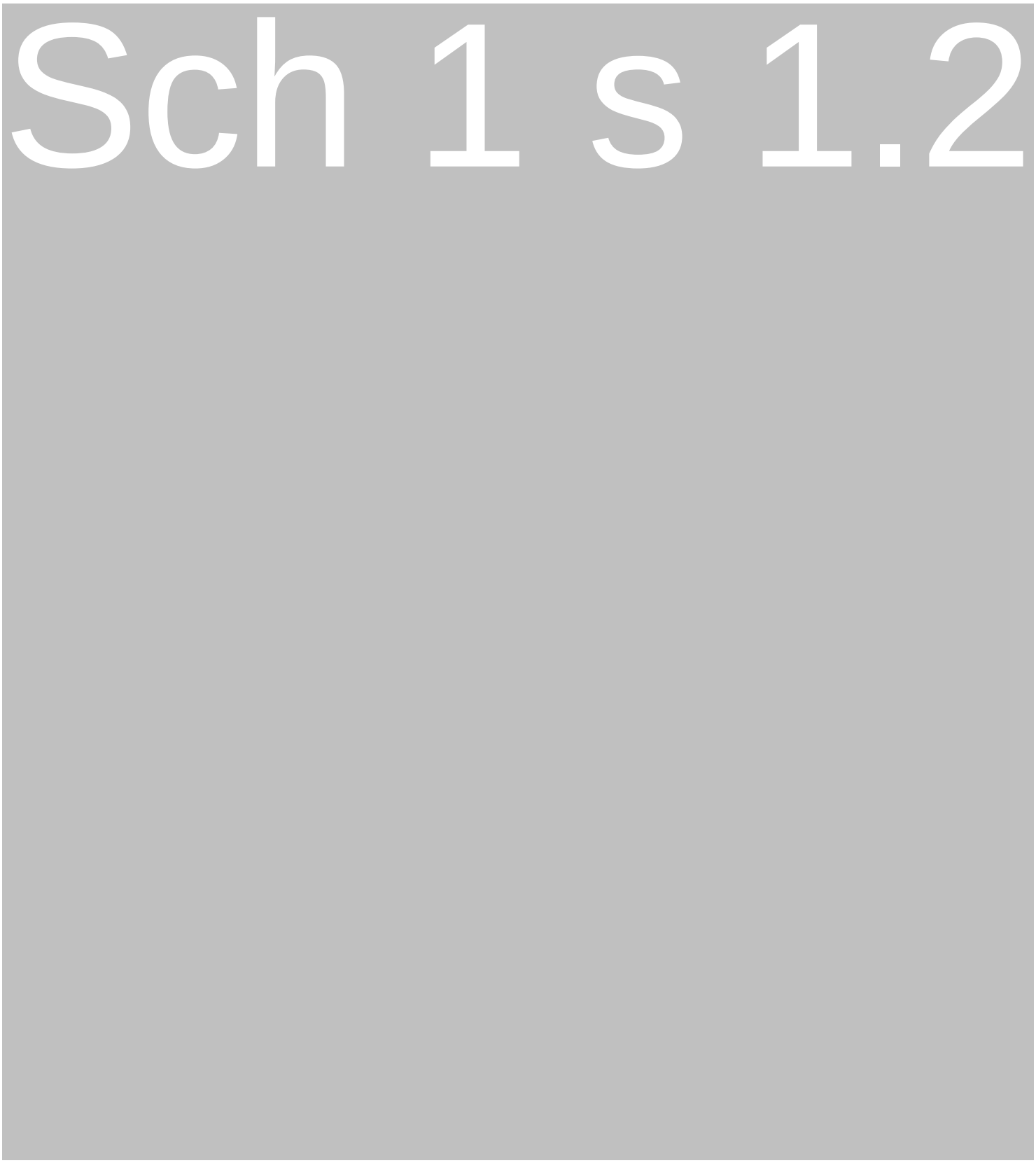
Hi Sch 2.2(a)(ii)
Can you please confirm you are happy with the information in this email (and attachments) to be circulated with all termination calculations?
Thank you
Tracey
********* start here *********
Good morning XXXXX,
With the election coming up in October attached are guidelines that address some queries around the termination of ministerial staff at a general election.

I have also attached your termination estimate provided by payroll for your information, but please note:

- Your estimate is based on data that we currently hold in the system, and does not include any future pay rises.
- It is based on this current financial year tax rates, and does not include the potential change in rates, particularly for the tax free portion of the severance component.
- It is also based on the leave records that are currently in the system, and are likely to change if there is any change to your leave record.

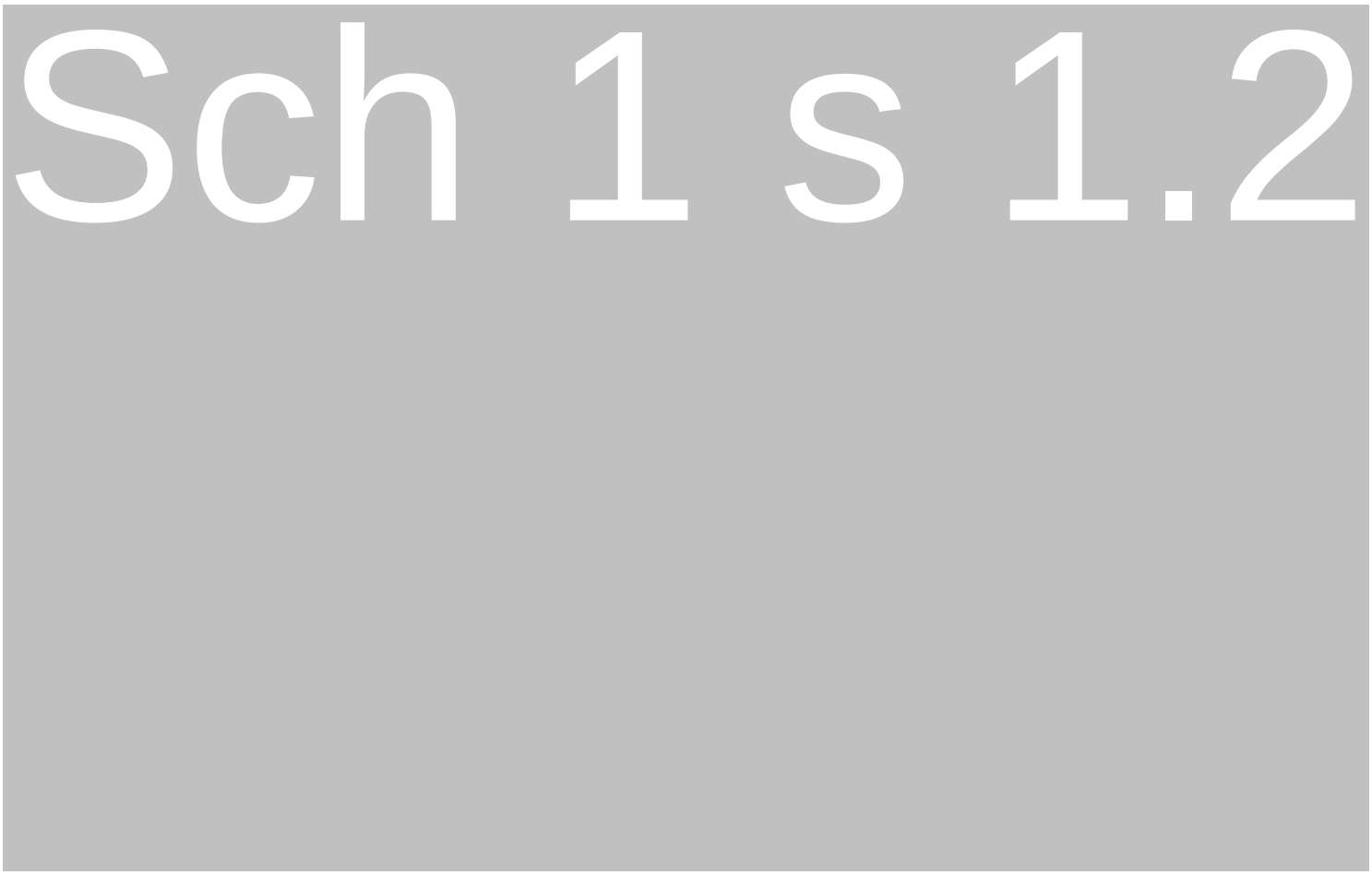
If you have any questions that have not been addressed in the attached guidelines, please do not hesitate to contact me.
Kind regards
Tracey

Tracey Henry |Senior Director | Ministerial and Executive Support
Workforce and Information Services| CMTEDD Corporate
Phone: 02 6207 0372 or via MS Teams | Email: Tracey.Henry@act.gov.au


Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2


Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

From: Northam, Madeline (CPSU)
Sent: Wednesday, 2 October 2024 12:21 PM
To: Mison, Matt
Subject: FW: Urgent CPSU correspondence
Attachments: MN to MC LC - Redudancy provisions - LAMS EA.pdf

Importance: High

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Maddy Northam(She/Her)
Regional Secretary | National Secretariat
m: Sch 2.2(a)(ii)

Duplicate

From: Carmody, Lisa
To: Sch 2.2(a)(ii)
Cc: Leigh, Kathy; Mirzabegian, Sanaz; Wright, Steven
Subject: Termination payments to staff of Members of the Legislative Assembly
Date: Wednesday, 16 October 2024 6:49:48 PM
Attachments: Summary of the Legal Position - LAMS.docx

OFFICIAL: Sensitive - Legal Privilege

Duplicate


Duplicate

Duplicate

Duplicate

Duplicate

Duplicate

From: Irvine, Lisa on behalf of Carmody, Lisa
Subject: Important update on pay estimates for final entitlements
Date: Thursday, 17 October 2024 3:43:06 PM

OFFICIAL: Sensitive

Good Afternoon

During August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff).

We are writing to provide you with an important update on these estimates and the calculation of final entitlements. This position reflects recent independent advice.

The key changes to the estimates are as follows:

- Termination Payments under B7 of the LAMS EA must be taxed as a termination payment, which, subject to an individual's circumstances, may result in a higher amount of tax withheld in accordance with the *Income Tax Assessment Act (ITAA) 1997*.
  The previous estimate incorrectly treated the termination payment as a redundancy payment, which is not permitted under the ITAA. Further information on the taxation requirements can be found here: https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees
- The calculation of termination payments is based on an employee's salary (including whether the employee is part-time or full-time) at the time their employment terminates.
- The previous estimate applied an averaging methodology that affected periods of part-time service which is not applicable in these circumstances.

These updates align the way your estimates are calculated with all other staff of Members of the Legislative Assembly.

We understand these changes are important to you and Payroll has prioritised preparing and providing updated estimates to all staff. Due to the complexity and volume of these estimates, we anticipate that they will be made available to Executive Staff mid-next week.

As always, the estimates will provide you with an indication of the expected final entitlements, but may change due to date of final cessation, leave taken and other factors.

We appreciate that the above advice might be concerning and we apologise for the incorrect information previously provided. We understand that you may have questions about this information, and we are here to support you in this regard.

We have established LAMSLiaison@act.gov.au as a dedicated mailbox to receive your queries. The mailbox will be live shortly, and we will send you an email to advise you of that. Alternatively, please telephone Emma Matthews, Executive Branch Manager, Public Service Employment on 0411 772 362.

In addition, we are mindful that the uncertainty at this time may cause concern, and remind you that the EAP is available to support you and family members. Information on how to access the EAP can be found on the Executive Portal – under Popular resources.

Kind regards,
Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy

Mobile: Sch 2 s 2.2(a)(ii) |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: Matthews, EmmaC on behalf of CMTEDD, LAMS Liaison
Subject: Email inbox live: Important update on pay estimates for final entitlements
Date: Friday, 18 October 2024 1:24:06 PM

OFFICIAL: Sensitive

Good afternoon
As outlined below, this email is being sent to you from the dedicated mailbox to which you may direct your enquiries. The mailbox is now live. Please remember that if you prefer you can telephone me on Sch 2 s 2.2(a)(ii).
Kind regards
Emma

Emma Matthews on behalf of
The Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate I ACT Government
E: LAMSInquiries@act.gov.au
M: Sch 2 s 2.2(a)(ii)

From: Irvine, Lisa <Lisa.Irvine@act.gov.au> **On Behalf Of** Carmody, Lisa
Sent: Thursday, October 17, 2024 3:43 PM
Subject: Important update on pay estimates for final entitlements

OFFICIAL: Sensitive

Good Afternoon

During August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff).
We are writing to provide you with an important update on these estimates and the calculation of final entitlements. This position reflects recent independent advice.
The key changes to the estimates are as follows:

- Termination Payments under B7 of the LAMS EA must be taxed as a termination payment, which, subject to an individual's circumstances, may result in a higher amount of tax withheld in accordance with the *Income Tax Assessment Act (ITAA) 1997*.
  The previous estimate incorrectly treated the termination payment as a redundancy payment, which is not permitted under the ITAA. Further information on the taxation requirements can be found here: https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees
- The calculation of termination payments is based on an employee's salary (including whether the employee is part-time or full-time) at the time their employment terminates.
- The previous estimate applied an averaging methodology that affected periods of part-time service which is not applicable in these circumstances.

These updates align the way your estimates are calculated with all other staff of Members of the Legislative Assembly.
We understand these changes are important to you and Payroll has prioritised preparing and providing updated estimates to all staff. Due to the complexity and volume of these estimates, we anticipate that they will be made available to Executive Staff mid-next week.
As always, the estimates will provide you with an indication of the expected final entitlements, but may change due to date of final cessation, leave taken and other factors.
We appreciate that the above advice might be concerning and we apologise for the incorrect information previously provided. We understand that you may have questions about this information, and we are here to support you in this regard.

We have established LAMSLiaison@act.gov.au as a dedicated mailbox to receive your queries. The mailbox will be live shortly, and we will send you an email to advise you of that. Alternatively, please telephone Emma Matthews, Executive Branch Manager, Public Service Employment on Sch 2 s 2.2(a)(ii).
In addition, we are mindful that the uncertainty at this time may cause concern, and remind you that the EAP is available to support you and family members. Information on how to access the EAP can be found on the Executive Portal – under Popular resources.
Kind regards,
Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: Sch 2 s 2.2(a)(ii) |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: Hodshon, Gerard on behalf of CMCD DLO
To: Sch 2.2(a)(ii)
Cc: Sch 2.2(a)(ii)
Subject: URGENT - CMTEDD Brief - LAMS Termination Payment Options (MM) 24.4323
Date: Wednesday, 6 November 2024 9:09:02 AM
Importance: High

OFFICIAL: Sensitive

Dear Sch 2.2(a)(ii)

The above brief has been saved to your folder for attention.

Get back to me with any comments.

Kind regards,

Gez

Gerard Hodshon (Gez)| CMTEDD Directorate Liaison Officer
Office of the Chief Minister | ACT Government
Ph: Sch 2.2(a)(ii) | CMCDDLO@act.gov.au | **MS Teams**
ACT Legislative Assembly | GPO Box 158 CANBERRA ACT 2601| www.act.gov.au

From: Sch 2.2(a)(ii)
To: #LA, ALP
Subject: Important Information as we approach the Election
Date: Monday, 9 September 2024 11:02:01 AM
Attachments: image001.png
LAMS Timesheet and Leave Policy.pdf
Employee Assistance Program (EAP) Information.pdf

Good morning everyone,
Sending this email ahead of **todays' meeting at 12:45pm** – please ensure all staff are attending.
Firstly, thank you all for your hard work and important contributions over the last (almost) 4 years. Hard to believe we kicked off the first year or so of the term with a global pandemic, no wonder its felt like a whirlwind.
I wanted to take a moment to send you all some reminders as we approach the beginning of the caretaker period and the election.

Duties during Campaign and Caretaker

Caretaker starts from midnight Friday September 13 – all staff should be familiar with these conventions – Yersheena has run a number of sessions on these, however if you have questions or require further information please let Yersheena know.
During Caretaker there will be some Government/Assembly work that needs to be completed, Offices will need to remain contactable and available to constituents, respond to correspondence and phone calls, process briefs and assembly business as well as other routine matters of administration and advice provision, however it is expected that most of your time will be spent out helping/supporting your MLA in their campaign.
While undertaking any campaign activity during caretaker – such as street stalls, letterboxing, door knocking, phone banking etc – you will need to be on either your own time, or approved leave such as TOIL or Annual Leave. Please ensure that if you are taking leave during the normal work day that it is recorded and approved in advance via the TOIL form or HR21.
At times staff may also be requested to contribute expertise to the central campaign team, this will be a hybrid model where people are called on as required – your assistance at these times is appreciated.

Staff Supports

The campaign can be exciting, but also overwhelming and uncertain – if you are struggling remember that Employee Assistance Program supports are available to all staff both during and after the campaign period – Information on how to access the EAP is available in the attachment

Timesheets

It is critical that all staff are up to date with their timesheets – we are under the most scrutiny and highest risk at this point in the political cycle, so please ensure all of your timesheets are lodged and approved by the commencement of Caretaker on Friday – and then continue to be lodged and approved through the caretaker period. Attached for your reference is the Timesheet and Leave policy.

Social Media and Public Commentary

Staff are under the most public and opposition scrutiny over the next 6 weeks – while we are all here because we are passionate about the cause, please do not engage in public debate on issues at this time – this particularly includes the comments section on the Canberra Times and other news sites – anything you say during this period will be taken to be a reflection on government and your MLA – If there is any doubt, don't say it/post it.

Termination Payment Estimates

If you haven't received your termination payment estimate by now you should receive it very soon – These are issued so that you can inform your decision making and plan for the future regardless of the outcome of the election, if you have any questions on these – for Executive Staff please speak to Executive Support, for Non-Exec please speak to OLA.

Kind regards,

Sch 2.2(a)(ii)

Deputy Chief of Staff (Mon-Thu)

Chief of Staff (Fri)

Office of the Chief Minister

Andrew Barr MLA



Office of the Legislative Assembly

Timesheet and leave policy for members' staff

OLARIS	OLA22/0222
Version approved	July 2023
Updated	May 2024
Next review	July 2026

Contents

1. Background and purpose 2

2. Authority 2

3. Application 2

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Members' staff who assist with campaigns 5

Timesheet requirements leading up to an election 5

7. Escalation process for unsubmitted timesheets 6

1. Background and purpose

1.1. The Legislative Assembly Members' Staff Enterprise Agreement (the EA) requires the employer to keep records relating to employees' work, including records about attendance and pay in accordance with the requirements of the *Fair Work Act 2009*, Fair Work Regulations and the *Territory Records Act 2002*.

1.2. Employees (members' staff) are required to record the time of commencing and ceasing duty for each and these records must be certified by the employing member, or other nominated supervisor, and lodged with the relevant corporate area in a timely fashion.[1]

1.3. Non-compliance with the maintenance of accurate and complete records can give rise to potential reputational and fraud and corruption risks for MLAs and their staff. These are matters that have been examined by the ACT Integrity Commission and the Auditor-General.

1.4. This policy sets out relevant compliance requirements to continuously maintain and submit timesheets, obligations in the lead up to and following an election, and the process that the Office adopts to escalate occasions of non-compliance.

2. Authority

2.1 This policy has been endorsed by the Speaker, the Standing Committee on Administration and Procedure, and approved by the Clerk as part of the Office's obligation to maintain adequate internal controls under s 31 of the *Financial Management Act 1996*.

3. Application

3.1 This policy applies to non-executive members, their staff and the Office's HR and Entitlements area. All non-executive members and their staff are strongly encouraged to familiarise themselves with this policy.

[1] in the case of staff of non-executive members, the HR and Entitlements area of the Office of the Legislative Assembly is the 'relevant corporate area'.

4. Legislative requirements and obligations

Employee responsibilities

4.1 As per the EA, members' staff must record the time that they commence and cease duty each day. To record time worked and/or leave taken, staff must complete and submit a weekly timesheet (and any associated leave applications) through the HROnline self-service portal to their employing member or manager for approval.

4.2 The onus is on individual staff members to submit accurate and complete timesheets that record actual times of attendance for arrival and departure, including any absences during the day (lunch breaks, appointments etc.). Time Off In Lieu (TOIL) entitlements are only calculated and updated in the HROnline system after a timesheet has been approved by the member/manager.

4.3 Providing false or inaccurate information on timesheets may constitute a breach of the code of conduct[2] or a fraud against the Territory.

4.4 For assistance on completing timesheets and leave applications in HROnline, please refer to the following guides or contact HR and Entitlements area:

- How to Guide – Timesheet Dashboard
- Submitting a timesheet [Video Length: 5m 34s]

Members' responsibilities

4.5 Members must ensure that their staff submit accurate timesheets and leave applications.

4.6 To satisfy their employment obligations, members are required to review and approve timesheets and applications regularly. MLAs should be aware that by approving a staff member's timesheet, the MLA (or the nominated supervisor in the MLA's office) is attesting that the timesheet accurately reflects the hours that have worked by the staff member.

4.7 A failure to diligently check and validate timesheets or leave applications before approving them gives rise to the risk of potential breaches against the Members' Code of Conduct,[3] the Code of Conduct for Staff, or may even enliven provisions of the Integrity Commission Act. For instance, in the event that a staff member was being paid by the Territory for work that had not been performed, this could amount to a fraud against the Territory.

[2] Legislative Assembly (Members' Staff) Code Of Conduct For Staff Of Non-Executive Members Determination 2015 (the Code of Conduct for Staff).

[3] Continuing resolution 5—*Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory*. It is a requirement under the code that members 'at all times act with integrity, honesty and diligence' and 'act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory'.

4.8 MLAs (or the nominated supervisor in the MLA's office) will receive an email notification to log into the HROnline system when a staff member has submitted a timesheet or leave application for approval.

4.9 For more information, please refer to the Managers' video tutorial [Length: 4m 21s].

5. Frequency of submission

5.1 Timesheets should be submitted by staff to members or nominated supervisors each week.

6. Election period

6.1 As a general matter of principle, the use of staffing or other Territory resources by MLAs is restricted to purposes that form part of their official parliamentary and electorate related duties.

6.2 In the period leading up to the election - *defined as 1 January of an election year to caretaker period* - members must take particular care to ensure that their staff do not perform work, at the expense of the Territory, that is directed towards party political, electioneering, or campaigning purposes (e.g. doorknocking, distributing campaign materials that solicit votes, donations or volunteers etc).

6.3 Staff are permitted to support their member in activities that form part of the members electorate related duties. (e.g. undertaking surveys on local issues through a range of communication channels.)

6.4 Upon commencement of the caretaker period, members will need to ensure staff do not perform any work, at the expense of the Territory, that is directed towards party political electioneering and electorate related duties that should not be undertaken while the Assembly is operating under caretaker conventions.

6.5 The use of Territory resources, through the payment of staff salaries or by accessing Assembly facilities, to support the campaign efforts of individual members or political parties may engage relevant provisions of the Code of Conduct for Members, the Integrity Commission Act, and the Code of Conduct for Staff.

Members' staff who contest a Territory election

6.6 While there is no requirement for a staff member of an MLA to resign from their position when campaigning for their own election,[4] the staff member should not remain on duty working for the MLA and should instead take some form of approved leave (staff can elect to take any kind of leave to which they are entitled).[5]

6.7 This approach avoids any perception that the staff member is the beneficiary of Territory funding (through their salary) or use of other Territory resources to advance their candidacy to be an MLA.

Members' staff who assist with campaigns

6.8 For the same reason, members' staff undertaking a campaign role in support of a candidate or political party should be on a form approved leave. The LAMS Enterprise Agreement makes provision for members to grant staff annual leave, time off in lieu, or leave without pay in such instances.

Timesheet requirements leading up to an election

6.9 Members obligations to approve their staff timesheets and leave applications in HROnline continue throughout the lead up to the election.

6.10 It is imperative that staff continue to complete and submit in a timely manner accurate timesheets that record actual times of attendance and ensure that to record absences (and approved leave) during any time periods during which they have participated in campaign or election related activities.

6.11 When approving a timesheet, the members (or nominated supervisor) must be satisfied that the timesheet accurately reflects the hours worked by the employee on duties associated with the official roles and functions of the member and that appropriate leave or time off in lieu is recorded for periods of times where the staff member has participated in campaign or election related activities.

[4] Note on eligibility: under s 103 of the *Electoral Act 1992*, a person is not eligible to be an MLA (though they are not prohibited from nominating for election) if, inter alia, the person is employed by the Territory, the Commonwealth, a State or another Territory. To avoid jeopardising their eligibility, any staff member who is elected as an MLA must take great care to ensure they have resigned prior to the day on which the official declaration of the election result after election day.

[5] The LAMS Enterprise Agreement makes provision for members to grant staff up to three months campaign leave for staff who are standing for election to the ACT Legislative Assembly, Commonwealth or State House of Parliament, or other approved legislative or advisory body. The leave is without pay and does not affect other entitlements.

7. Escalation process for unsubmitted timesheets

7.1 The HR and Entitlements area reports on the status of timesheets to identify those timesheets which may need following up due to an error, have not been completed or have not been submitted for approval. The report can also be used to identify any timesheets which have been submitted but not yet approved by the member/nominated supervisor.

7.2 The following escalation process that was endorsed by the Assembly's Administration and Procedure Committee on 20 July 2023 is followed by the Office's HR and Entitlements area to ensure members and their staff meet their attendance reporting obligations.

2 weeks overdue	•A reminder email is sent to employee requesting that the outstanding timesheet and leave applications be completed and submitted for approval.
3 weeks overdue	•Prior to escalating to the next stage, the employee will be contacted via phone or in person to ensure they have received the email and that action is required. •Note: if the employee is uncontactable the escalation process will continue.
4 weeks overdue	•An email is sent to relevant MLA notifying them of the issue and request that they follow-up with their employee to ensure that they submit outstanding timesheets and leave applications for their approval.
6 weeks overdue	•The matter is escalated to the Manager, HR and Entitlements who will formally write to employee and MLA advising that if the matter is not remediated in a reasonable timeframe payment of salary may be withheld. •If the employee is ceasing employment any final payment will be withheld until timesheets and associated leave applications have been submitted and approved. •Executive Manager, Business Support will be notified.
8 weeks overdue	•Executive Manager will brief the Clerk and Speaker if matter has not been resolved. Further action will be considered.

Employee Assistance Program (EAP)

The Office of the Legislative Assembly places the highest priority on employee health and wellbeing and proudly offers counselling and support services for Members, their staff and staff of the Office of the Legislative Assembly and their families - you don't need to struggle on your own.

The Employee Assistance Program (EAP) offers free, professional and confidential services to support you and your immediate family members through both personal and work-related issues. You can access help now, or any time you need it.

What is the Employee Assistance Program?

All Members, their staff and the Office of the Legislative Assembly staff (permanent and temporary) and members of their immediate family and/or members of their household can access the services of the EAP free of charge with up to six sessions, per issue, for each employee/immediate family member every financial year.

EAP services are provided by **Converge International.** You could benefit from EAP support if you are experiencing work-related or personal issues relating to:

- workload or work pressures, including career concerns;
- emotional stress, anxiety, conflict, tension or depression;
- personal or professional relationship programs including dealing with separation or divorce;
- health and lifestyle issues (including addiction, alcohol and other drug issues);
- grief and loss;
- interpersonal conflict, bullying and harassment, management issues or change in the workplace;
- child and family issues;
- general health and medical issues; or
- financial and legal strain.

You are encouraged to access the EAP service as early as possible. The sooner you seek support, the less likely it is that it will impact on your work and life or escalate into something more serious.

Additional Services

Converge International offers an additional three key services available alongside the EAP, which include:

- Manager Support – short term and solution focused assistance for staff supervising other employees. Managers and supervisors can receive coaching and advice to support mental health in the workplace.
- Critical Incident Support – targeted support of employees who have been impacted by a major event including, but not limited to, critical incidents, organisational change, workplace violence and grief and loss.
- Early Intervention, Prevention and Education Services – proactive and educational sessions designed to develop and enhance employee resilience or awareness of an issue.

Contact Details

Converge International phone lines are open 24 hours a day. EAP staff will triage your call depending on your circumstances. For example, you may have an appointment organised for you at a suitable time, or you may be connected directly to out of hours practitioners if immediate support is required.

Website	Phone	Email	Location
Converge International	1300 687 327 (1300 OUR EAP)	info@convergeintl.com.au	Ethos House, Level 1, Suite 6, 28-36 Ainslie Place, Canberra Belconnen Specialist Centre, Shop103B Level 1, Westfield Shopping Centre, Belconnen Tuggeranong Family Medical Practice, Site 237, 140 Anketell Street Tuggeranong Ochre Medical Centre, 2 Garran Place, Garran

When making an appointment with Converge International you must clearly identify as being a member of one of the following employer groups:

(1) Executive
(2) Non-Executive
(3) Office of the Legislative Assembly

For access to more resources, log into the Converge Online Client Portal. Go to the Converge website and click on the 'Portal Login' link.

Username: converge
Password: eap

Appointment Timeframes

Converge practitioners are well trained and qualified to work with a diverse range of people no matter who they are, but if you would feel more comfortable you can request that your practitioner be male, female or be in some other way representative of you. In general, a practitioner should be available to have an appointment within the following timeframes:

Medium	Time to Service being Delivered
Telephone	Within 2 business days
Audio Visual Conferencing	Within 2 business days
Fact to Face	Within 5 business days
Urgent Counselling (Phone, audio visual or face to face)	Immediate if life threatening or same day

However, if you request that your practitioner is a particular gender or cultural group AND you would like a face-to-face appointment then this may impact on the timeframe for getting an appointment due to the availability of practitioners in the area.

EAP FREQUENTLY ASKED QUESTIONS

Who can access EAP providers?

All Members, their staff and the Office of the Legislative Assembly staff and their immediate family members may use the program whenever they are experiencing personal or work-related difficulties. EAP offers you:

- a safe place to discuss concerns knowing you are working with a professional and what you say will remain confidential;
- a chance to deal with things before they get out of control the possibility of feeling more; contented and productive at work;
- ways to learn how balance work and personal life; and
- support to work through personal and family matters.

On occasions, Members or managers may wish to suggest to a staff member that they may benefit from using the services of an EAP provider. There may be some employees who are in need of help or who are not performing or coping with their work. The decision on whether or not to attend is entirely up to the employee under these circumstances.

Members and managers may also seek the guidance of an EAP consultant to:

- determine the appropriateness of referring employees who might be experiencing work performance issues due to personal issues;
- locate appropriate referrals to other services for problems that are either work-related or have an apparent impact on an employee or the workplace; or
- manage complex staff problems including: interpersonal conflict, cultural issues or concerns, team functioning, developing management skills, advice regarding human resources policy development and broader organisational issues plus advice and guidance on ACT Public Service employee performance processes.

Will my Member/Manager know about my EAP sessions?

Unless you advise your Member or manager that you are attending an EAP session, they will not be informed of your attendance. **You must however, notify your Member or manager if you are leaving the workplace during core hours and you could mention that you have a medical appointment.**

Confidentiality is paramount and Converge International are bound by Australian privacy law, including very strict information about the privacy of health information. No personal or identifiable information is provided to employers about EAP sessions.

The only time your information will be shared with anyone is if the counsellor is required to be law, as part of a subpoena or where there is a duty of care to ensure the safety of the employee or others. Your information will not be shared unless you authorise this in writing.

High level de-identified statistics and aggregated data is reported back to your employer throughout the year to monitor trends and the services utilised.

How do you access EAP?

You do not have to inform anyone in your workplace that you want to access EAP. You are entitled to six free sessions, per issue, per financial year and you may be able to bring your partner or a family member with you.

When you contact Converge International you will be asked to identify your employer (Executive, Non-Executive or OLA) and at your first appointment you may be asked for proof of identity, such as a payslip, for example.

You may use the EAP in your own time and appointments can be face-to-face or over the phone.

If you, or your family member has difficulty in accessing any EAP services, you are encouraged to contact the HR Manager in the relevant Corporate Services area who can escalate your request to access these services without you needing to provide any personal information. It may simply be that a call back is arranged through the EAP provider's employer relationship contact.

What happens when you attend a session?

During initial contact may be asked to give some general indication of the issue you wish to discuss so the appropriate professional can be available to support you.

Strategies are focused on resolving issues with a short timeframe and generally two or three sessions are sufficient to resolve a particular issue. The counselling discussion is informal, friendly and focused on your needs. It can be either face-to-face or over the phone, whichever option is more convenient for you.

EAP consultants provide advice on resilience strategies and offer referral and follow-up services for anyone requiring additional support.

Who is classified as an immediate family member?

Immediate family means a person who is:

- a domestic partner (including a former domestic partner)
- a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or domestic partner of the employee
- a person related to the employee by Aboriginal and/or Torres Strait Islander kinship structures, or
- a child through a care and protection order.

Additionally, the Member or Executive may consider that the definition of 'immediate family' be extended for a particular decision involving an employee where exceptional circumstances exist. This might include other close family members or an employee who lives alone and has no-one to nominate as 'immediate family', may nominate one person, in similar circumstances, for the purpose of caring circumstances.

What are the specialty helplines I can access?

To minimise barriers related to special needs access, Converge has developed specialist helplines to cater for a diversity of service users. These include:

First Nations Helpline – 1300 287 432

Converge will ensure Territory Employees receive culturally respectful and sensitive services for indigenous peoples and other cultures through the provision of a dedicated First Nations Helpline to encourage Aboriginal and Torres Strait Islander Peoples to seek support for personal, work and/ or mental health related issues.

Employees and Immediate Family will have access to specialist practitioners from Aboriginal and Torres Strait Islander backgrounds on request for EAP. They will also be able to access specialist practitioners who have had comprehensive and current training in cross-cultural awareness. Through professional development in this area, Converge practitioners are elevated in their knowledge and skills to be able to provide a level of service with sensitivities to specific issues affecting this community.

LGBTQI+ Helpline – 1300 542 874

Converge acknowledges the importance of providing ethical and exceptional professional services to all clients. Employees and Immediate Family who identify as members, family and friends of the LGBTQI+ community can access upon request, support from appropriately qualified and experienced EAP practitioners who specialise in LGBTQI+ issues with an in-depth understanding of sensitivities and required approaches. These EAP practitioners can be quickly accessed, and appointments scheduled.

All Converge practitioners are required to adhere to ethical and "best" practice guidelines outlined specifically by the Australian Psychological Society in responding to the LGBTQI+ community.

Domestic and Family Violence Helpline – 1300 338 465

Converge will ensure sensitive services for clients at risk of domestic violence through the provision of a dedicated Domestic and Family Violence Helpline.

Territory Employees and Immediate Family will have access to specialist practitioners with family violence expertise who have had comprehensive and current training in conducting domestic violence assessments and are aware of reporting procedures and how best to support the individuals involved.

Eldercare Helpline – 1300 035 337

Converge are aware that there has been a rise in issues related to taking care of elderly parents or relatives. It often requires leave of absences from work and working with multiple health stakeholders, leading to increased strain on the Employee and employer. Through Converge Eldercare service, Employees and Immediate Family will have access to information and resources to assist in their decision making and support around this time. The service will assist with the presenting issue as well as the full range of services and support available to them regarding caring for elderly parents or relatives.

Disability and Carers Helpline – 1300 243 543

Specialist helpline for those Employees and Immediate Family wanting to talk about their role as a carer or assisting someone with a disability. The helpline is also for those Employees and Immediate Family who have a disability and would like some extra support or resources navigating a complex world of NDIS.

Converge have identified practitioners who have specific qualifications and experience to work in this space and if requested, can provide a match at intake. Converge practitioners will be able to ensure Employees and Immediate Family have access to information and resources to assist in their decision making and support around this time. The service will assist with the presenting issue as well as the full range of services and support available to them regarding caring for family members with a disability.

Youth and Student Helpline – 1300 687 399

Specialist helpline specifically targeting young people, staffed by young people who want to make a positive difference. There are many pressures on young people today. Whether they are in the senior years of their schooling, or commenced tertiary studies, or out in the world working toward building a fulfilling life, it can be tough sometimes. It can be lonely and hard to know who is in your corner. This is where this helpline comes in.

Spiritual and Pastoral Helpline – 1300 772 435

An individual's spiritualism and journey can take on many guises. In accessing this specialist helpline, you will be offered connection with counsellors from a number of different specific faiths, or you may choose to speak to a counsellor who consults outside any specific faith-based context.

From: Irvine, Lisa on behalf of Carmody, Lisa
Subject: Important update on pay estimates for final entitlements
Date: Thursday, 17 October 2024 3:43:05 PM

OFFICIAL: Sensitive

Good Afternoon

During August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff).

We are writing to provide you with an important update on these estimates and the calculation of final entitlements. This position reflects recent independent advice.

The key changes to the estimates are as follows:

- Termination Payments under B7 of the LAMS EA must be taxed as a termination payment, which, subject to an individual's circumstances, may result in a higher amount of tax withheld in accordance with the *Income Tax Assessment Act (ITAA) 1997*.
  The previous estimate incorrectly treated the termination payment as a redundancy payment, which is not permitted under the ITAA. Further information on the taxation requirements can be found here: https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees
- The calculation of termination payments is based on an employee's salary (including whether the employee is part-time or full-time) at the time their employment terminates.
- The previous estimate applied an averaging methodology that affected periods of part-time service which is not applicable in these circumstances.

These updates align the way your estimates are calculated with all other staff of Members of the Legislative Assembly.

We understand these changes are important to you and Payroll has prioritised preparing and providing updated estimates to all staff. Due to the complexity and volume of these estimates, we anticipate that they will be made available to Executive Staff mid-next week.

As always, the estimates will provide you with an indication of the expected final entitlements, but may change due to date of final cessation, leave taken and other factors.

We appreciate that the above advice might be concerning and we apologise for the incorrect information previously provided. We understand that you may have questions about this information, and we are here to support you in this regard.

We have established LAMSLiaison@act.gov.au as a dedicated mailbox to receive your queries. The mailbox will be live shortly, and we will send you an email to advise you of that. Alternatively, please telephone Emma Matthews, Executive Branch Manager, Public Service Employment on 0411 772 362.

In addition, we are mindful that the uncertainty at this time may cause concern, and remind you that the EAP is available to support you and family members. Information on how to access the EAP can be found on the Executive Portal – under Popular resources.

Kind regards,
Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy

Mobile: Sch 2.2(a)(ii) |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

ACT Government
Chief Minister, Treasury and Economic Development

Request for consideration of individual circumstances: Staff of office-holders at the conclusion of the 10th Legislative Assembly

Background

1. Toward the end of the 10th Legislative Assembly, estimate payments were provided to office-holder staff. These estimates represented the final monies that would be paid to office-holder staff who were not continuing to be employed in the 11th Legislative Assembly because their employment would be terminated in accordance with the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act).

2. In August and September 2024, the Office of the Legislative Assembly (OLA) and CMTEDD separately prepared and sent estimates to Members' staff.

3. On 17 October 2024, office-holder staff were advised the previous estimates provided were calculated incorrectly. The Office of Industrial Relations and Workforce Strategy (OIRWS, CMTEDD) set up a dedicated mailbox and executive contact officer, to provide a centralised point of communication for office-holder staff.

4. Updated estimates were provided on 23 October 2024 to staff of office-holders reflecting estimated final monies properly calculated as termination payments.

5. Concerns were raised by office-holder staff and employee representatives about the discrepancies and changes to the estimates of final monies payable.

Consideration of individual circumstances

6. The form at Attachment A has been developed for use by staff of office-holders at the conclusion of the 10th Legislative Assembly. The form seeks information from affected persons to enable the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) to consider their circumstances in determining the Territory's response.

7. CMTEDD will be assisted by comprehensive responses to the requests for information in the form and invites affected persons to provide any additional information that they think is relevant or important.

Important information about the form and response

8. The guidance material outlined above is for informational purposes only. It is important to note that the *Law Officers Legal Services Direction 2023* (in particular, paragraph 10) and the Act of grace payments: policy and procedures guide will guide the consideration of any claim or application for an act of grace payment, respectively, made by a staff member of an office-holder.

9. Prior to the completion of this form, staff of office-holders may wish to review the attached Act of grace payments: policy and procedures guide and the *Law Officers Legal Services Direction 2023* – in particular paragraph 10. The completed form, or a claim in another format, or any enquiries about this process, should be addressed to LAMSLiaison@act.gov.au.

10. The information sought in the form will assist CMTEDD in determining the Territory's response to what has happened. Provision of that information and any additional information should not be taken as indicating what the Territory's response will be. Affected persons are free to obtain their own legal advice about their circumstances at any time.

Attachment A

NAME: Click or tap here to enter text.	DOB: Click or tap here to enter text.
PHONE: Click or tap here to enter text.	EMAIL: Click or tap here to enter text.
POSTAL ADDRESS: Click or tap here to enter text.	Preferred method of contact: *Phone / Email / Post* Click or tap here to enter text.

I acknowledge that I have read the *Law Officers Legal Services Direction 2023* , and in particular paragraph 10

The information that I provide in completing this form is true and correct. I acknowledge that I may be contacted to clarify the information I provide, or to provide additional information.

Click or tap here to enter text. Click or tap to enter a date.
Name Date

A clear explanation of the incident/situation and how it occurred.	*Noting the background outlined at paragraphs 1-5 above, please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What actions on the Government's part contributed to the situation.	*Noting the background outlined at paragraphs 1-5 above, please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What do you consider to be your loss and how have you calculated this?[1]	*Please detail how values have been determined.* Click or tap here to enter text.
In what ways did you rely on the original estimate and what evidence can you provide that relates to this reliance?[2]	*Please provide information relevant to your personal circumstances.* Click or tap here to enter text.
Do you have any comments on what made this reliance reasonable?[3]	*Please provide any additional information relevant to your personal circumstances and/or your views.* Click or tap here to enter text.
How many estimates for final monies have you received during your employment as staff of an office-holder?[4]	*Please outline how many estimates you have received and include a reference to your understanding of the tax treatment applied to those estimates. If you do not know, please enter N/A.* Click or tap here to enter text.
What actions or factors, relating to yourself or to other relevant individuals or organisations	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.

[1] See paragraph 10 (Settlement of claims against the Territory) of the *Law Officers Legal Services Directions 2023*
[2] See paragraph 10 (Settlement of claims against the Territory) of the *Law Officers Legal Services Directions 2023*
[3] See paragraph 10 (Settlement of claims against the Territory) of the *Law Officers Legal Services Directions 2023*
[4] See paragraph 10 (Settlement of claims against the Territory) of the *Law Officers Legal Services Directions 2023*

have contributed to the situation in either a positive or negative way.	
Why the situation warrants being considered a special circumstance.	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
What other avenues have been explored (including legal and financial), and with what outcomes.	*Please provide any additional information relevant to your personal circumstances.* Click or tap here to enter text.
Why a payment would be appropriate, and the value of the payment being sought.	*Please provide your views and the value of the payment being sought.* Click or tap here to enter text.
Supporting evidence should include • how the value of the payment being sought has been estimated; • documentary evidence, for example, correspondence, agreements and other documents in support of any claimed loss	*Please provide relevant information, and/or attach relevant documentation when submitting this form. If you do not intend to provide supporting evidence, please write 'Nil' in the textbox provided.* Click or tap here to enter text.
Previous correspondence with Government.	*Noting paragraphs 1-5 above, please detail any other correspondence with government if relevant.* Click or tap here to enter text.
Other information that is likely to be relevant.	**Optional - please provide any other information you believe to be relevant.* Click or tap here to enter text.
Any additional comments you would like to make.	**Optional - please provide any other comments you would like to make.* Click or tap here to enter text.

Attachment B – Act of grace payments: policy and procedure guide (2024)

From: Matthews, EmmaC on behalf of CMTEDD, LAMS Liaison
Subject: Email inbox live: Important update on pay estimates for final entitlements
Date: Friday, 18 October 2024 1:24:06 PM

OFFICIAL: Sensitive

Good afternoon
As outlined below, this email is being sent to you from the dedicated mailbox to which you may direct your enquiries. The mailbox is now live. Please remember that if you prefer you can telephone me on Sch 2.2(a)(ii)
Kind regards
Emma

Emma Matthews on behalf of
The Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate I ACT Government
E: LAMSInquiries@act.gov.au
M: Sch 2 s 2.2(a)(ii)

From: Irvine, Lisa <Lisa.Irvine@act.gov.au> **On Behalf Of** Carmody, Lisa
Sent: Thursday, October 17, 2024 3:43 PM
Subject: Important update on pay estimates for final entitlements

OFFICIAL: Sensitive

Good Afternoon

During August and September this year, pay estimates for final entitlements were circulated to the staff of the Executive Members of the Legislative Assembly (Executive Staff).
We are writing to provide you with an important update on these estimates and the calculation of final entitlements. This position reflects recent independent advice.
The key changes to the estimates are as follows:

- Termination Payments under B7 of the LAMS EA must be taxed as a termination payment, which, subject to an individual's circumstances, may result in a higher amount of tax withheld in accordance with the *Income Tax Assessment Act (ITAA) 1997*.
  The previous estimate incorrectly treated the termination payment as a redundancy payment, which is not permitted under the ITAA. Further information on the taxation requirements can be found here: https://www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/leaving-your-job/employment-termination-payments-for-employees
- The calculation of termination payments is based on an employee's salary (including whether the employee is part-time or full-time) at the time their employment terminates.
- The previous estimate applied an averaging methodology that affected periods of part-time service which is not applicable in these circumstances.

These updates align the way your estimates are calculated with all other staff of Members of the Legislative Assembly.
We understand these changes are important to you and Payroll has prioritised preparing and providing updated estimates to all staff. Due to the complexity and volume of these estimates, we anticipate that they will be made available to Executive Staff mid-next week.
As always, the estimates will provide you with an indication of the expected final entitlements, but may change due to date of final cessation, leave taken and other factors.
We appreciate that the above advice might be concerning and we apologise for the incorrect information previously provided. We understand that you may have questions about this information, and we are here to support you in this regard.

We have established LAMSLiaison@act.gov.au as a dedicated mailbox to receive your queries. The mailbox will be live shortly, and we will send you an email to advise you of that. Alternatively, please telephone Emma Matthews, Executive Branch Manager, Public Service Employment on 0411 772 362.
In addition, we are mindful that the uncertainty at this time may cause concern, and remind you that the EAP is available to support you and family members. Information on how to access the EAP can be found on the Executive Portal – under Popular resources.
Kind regards,
Lisa

Lisa Carmody | Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Mobile: Sch 2 s 2.2(a)(ii) |Email: Lisa.Carmody@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government

Sch 1 s 1.4, Sch 2 s 2.2(a)(ii)

Sch 1 s 1.4, Sch 2 s 2.2(a)(ii)

From: Northam, Madeline (CPSU)
To: Northam, Madeline (CPSU)
Subject: CPSU Update: Termination payments
Date: Wednesday, 23 October 2024 5:34:15 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon

The CPSU has been working closely with the Territory to address the concerns that have arisen following the email to Ministerial staff outlining that the Territory had received advice that a different taxation approach would be applied to your final payment.

Your union and delegates met with CMTEDD today and they advised that the Territory is considering options that would address the concerns that you have shared with us. This is only after your union pushed for more options to be considered.

The CPSU understands that you will be advised today what a termination payment would be. It is important that you know that we are continuing to work to ensure that the amount that is outlined in the email you receive today will not be the only payment you receive as a staff member of a Minister at the end of your employment.

Please get in touch with us before taking any action. Give me a buzz on 0424 041 390 or email back if you have any questions.

In unity

Maddy Northam

Maddy Northam(She/Her)| Regional Secretary | National Secretariat | CPSU

m: Sch 2 s 2.2(a)(ii)

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

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

This e-mail message and any accompanying attachment is intended for the use of the recipient only and may contain confidential, commercially valuable or legally privileged information. If you are not the intended recipient, or an agent responsible for delivering it to the intended recipient, you are notified that any use, review, copying or dissemination of this communication is strictly prohibited. If you have received this message in error, please notify the sender immediately and delete this message. Before opening any attachments, please check them for viruses and defects.

From: Wright, Robert
To: Manzoney, Lisa; Austin, Scott; Matthews, EmmaC
Cc: Clarke, Elissa; Allars, Alex; CMTEDD, Office of the EGM EIR
Subject: Re: RLA LAMS terminations - delegations and restructure Fund
Date: Tuesday, 24 December 2024 4:28:58 PM
Attachments: image001.png
image002.jpg

OFFICIAL: Sensitive - Legal Privilege

Thanks Lisa

Emma can we please organise a meeting with Treasury early in the new year to discuss this advice and determine a way forward.

Kind regards

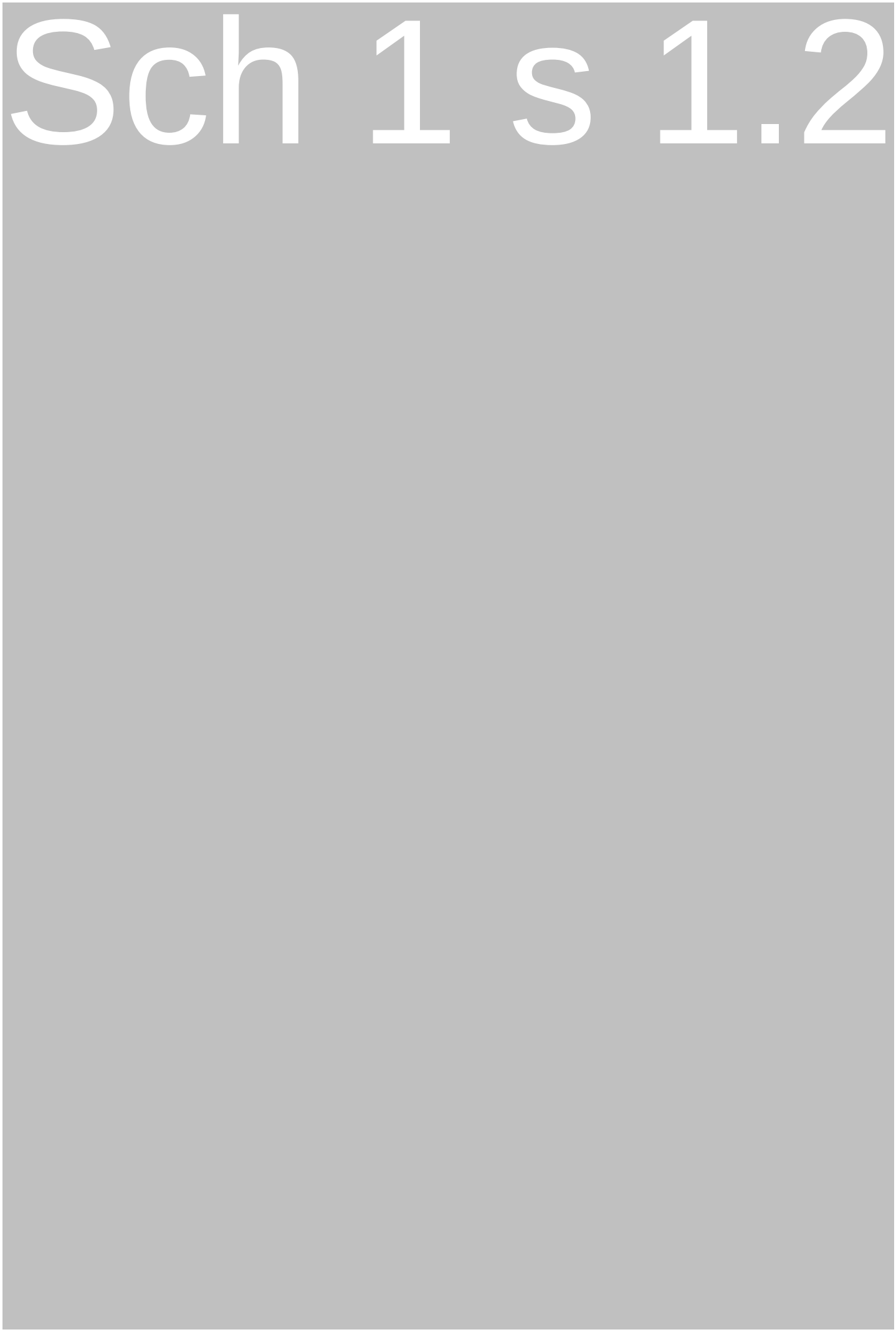
Robert Wright
Acting DDG OIRWS

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2


Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

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From: Campbell, Russ
To: Austin, Scott
Subject: RE: RLA LAMS terminations - delegations and restructure Fund
Date: Wednesday, 8 January 2025 1:09:30 PM
Attachments: image003.png
image004.png
image005.jpg

OFFICIAL: Sensitive - Legal Privilege

Hi Scott. Did you end up receiving the legal advice as per your request below?

Russ Campbell
A/g Under Treasurer
Chief Minister, Treasury and Economic Development Directorate
Ph: Sch 2.2(a)(ii)
220 London Circuit | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Austin, Scott <Scott.Austin@act.gov.au>
Sent: Friday, 3 January 2025 5:20 PM
To: Campbell, Russ <Russ.Campbell@act.gov.au>
Subject: Fw: RLA LAMS terminations - delegations and restructure Fund

OFFICIAL: Sensitive - Legal Privilege

Happy new year, mate. Something to discuss next week

Regards,

Scott

Scott Austin

Deputy Under Treasurer (a/g)

Budget, Procurement ACT, Investments & Borrowing, and Shared Services Finance

Chief Minister, Treasury and Economic Development Directorate

ACT Government | Level 1, 220 London Circuit, Canberra

Email: scott.austin@act.gov.au | Mobile: Sch 2 s 2.2(a)(ii) |GPO Box 158 Canberra ACT 2601

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Sch 1 s 1.2

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Sch 1 s 1.2

Sch 1 s 1.2

From: Wright, Robert
To: Callaghan, Thomas; Austin, Scott
Cc: Matthews, EmmaC; Lowery, Deborah; Mele, Rowena
Subject: RE: Advice - further clarification on termination payments to staff of MLAs
Date: Thursday, 19 December 2024 1:56:52 PM
Attachments: image001.png
image002.jpg

OFFICIAL: Sensitive - Legal Privilege

Thanks Thomas
Much appreciated.
Kind regards
Robert Wright

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

From: Matthews, EmmaC
To: Austin, Scott
Cc: Cameron, Susan; Wright, Robert
Subject: Former Legislative Assembly Members Staff who received advice about estimated termination payments applying the incorrect taxation treatment
Date: Wednesday, 26 November 2025 3:59:35 PM
Attachments: Letter from OIRWS to affected individuals.docx
image002.png
image003.png
image001.png

OFFICIAL: Sensitive - Legal Privilege

Hello Scott

I understand you spoke with Robert Wright today about correspondence received today by Legislative Assembly Members Staff who received advice about estimated termination payments applying the incorrect taxation treatment. I have attached a template letter for your information.

We have subsequently advised the cohort via email that, for probity reasons, we recommend that in circumstances where they wish to have their submission considered under the act of grace framework that they provide their submission to aog@act.gov.au

Thank you in advance – and especially to Susan.

Emma

Emma Matthews | Executive Branch Manager, Workforce Strategy and Recruitment *(she/her)*
Phone: Sch 2.2(a)(ii) | Email: EmmaC.Matthews@act.gov.au
Chat with me on Microsoft Teams
ACTPS Employment and Industrial Relations Group | Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158, Canberra ACT 2601 | www.act.gov.au

From: Austin, Scott
To: Campbell, Russ; Dowdell, Michelle
Subject: FW: Information form - Michael Cook - LAMS entitlements
Date: Friday, 28 November 2025 5:00:00 PM
Attachments: image001.jpg
Re RLA LAMS terminations - delegations and restructure Fund.msg

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We probably should discuss this early next week. Russ, this is the issue Robert raised with us earlier this year (some context in the attached email).

Regards,

Scott

Scott Austin
Executive Group Manager, Finance and Budget Group | Chief Minister, Treasury and Economic Development Directorate | **ACT Government** | Level 1, 220 London Circuit, Canberra
Email: scott.austin@act.gov.au | Mobile: 0402 121 781 |GPO Box 158 Canberra ACT 2601

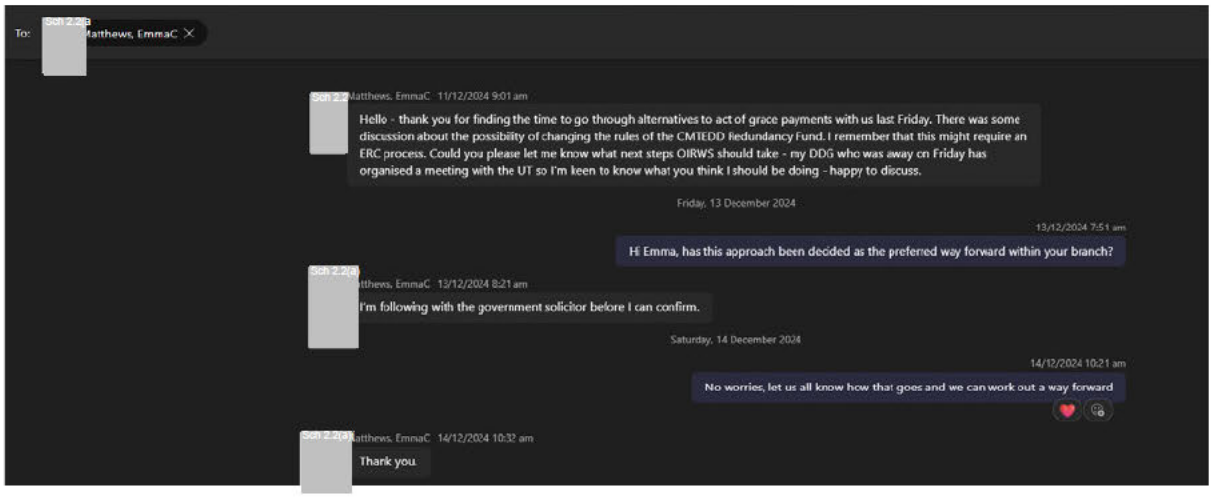
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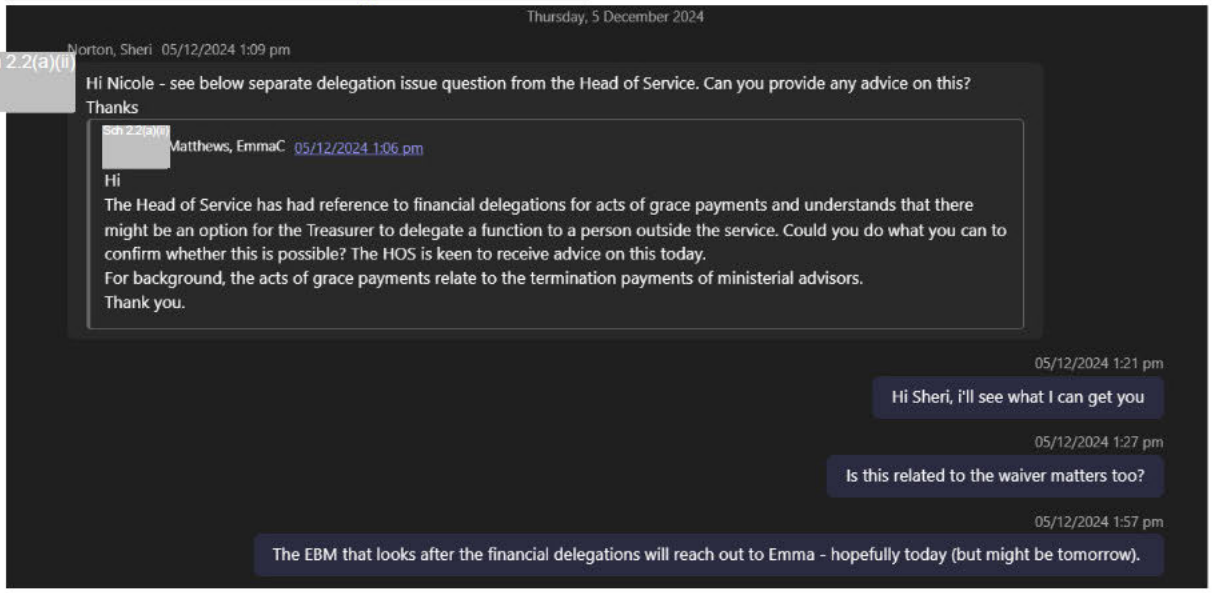
Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

Natasha Bourke and Emma Matthews – MS Teams Chat



Sheri Norton and Nicole Wong – MS Teams Chat



Margaret Barnes and Nicole Wong – MS Teams Chat

Thursday, 5 December 2024

Norton, Sheri 05/12/2024 1:09 pm

Sch 2.2(a)(ii)

Hi Nicole - see below separate delegation issue question from the Head of Service. Can you provide any advice on this?
Thanks

> Sch 2.2(a)(ii) Matthews, EmmaC 05/12/2024 1:06 pm
> Hi
> The Head of Service has had reference to financial delegations for acts of grace payments and understands that there might be an option for the Treasurer to delegate a function to a person outside the service. Could you do what you can to confirm whether this is possible? The HOS is keen to receive advice on this today.
> For background, the acts of grace payments relate to the termination payments of ministerial advisors.
> Thank you.

05/12/2024 1:21 pm

Hi Sheri, i'll see what I can get you

05/12/2024 1:27 pm

Is this related to the waiver matters too?

05/12/2024 1:57 pm

The EBM that looks after the financial delegations will reach out to Emma - hopefully today (but might be tomorrow).

Norton, Sheri 05/12/2024 2:24 pm

Sch 2.2(a)(ii)

> **Wong, Nicole** 05/12/2024 1:57 pm
> The EBM that looks after the financial delegations will reach out to Emma - hopefully today (but might be tomorrow).

Thanks. Who is the EBM? I will let Emma know so she can keep an eye out.

05/12/2024 2:24 pm

Natasha Bourke

Binder 5, 53

Thursday, 5 December 2024

Norton, Sheri 05/12/2024 1:09 pm

Sch 2.2(a)(ii)

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05/12/2024 2:24 pm

Natasha Bourke

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

Sch 1 s 1.2

ACT Government
Chief Minister, Treasury and Economic Development

Our ref: CMTEDD2025/3993

DRAFT for staff who provided additional information
Personal title and name
Organisational title
Address line 1
Address line 2
CITY STATE POSTCODE

via e-mail: email address

Dear title and surname

Consideration of submissions about taxation treatment of termination payments

On 28 January 2025 the Office of Industrial Relations and Workforce Strategy (OIRWS, CMTEDD) wrote to you in relation to the termination payment you received under the *Legislative Assembly (Members' Staff) Act 1989* following the 2024 ACT Legislative Assembly general election (the election). Staff were invited to write to OIRWS, CMTEDD about the impact of the provision of revised estimates for termination payments. A form was provided to assist affected staff to provide as much information as possible. Affected staff were invited to provide any additional information they consider relevant or important.

Guidance material was provided for information purposes, with the explanation that the *Law Officers Legal Services Direction 2023* (in particular, paragraph 10) and the *Act of grace payments: policy and procedures guide* would guide the consideration of any claim or application for an act of grace payment, respectively. The letter noted that affected staff are free to obtain their own legal advice about their circumstances at any time.

Responses were received and considered between February and November 2025. We thank you for your patience during this period. All responses and information have been treated confidentially. Having now considered all responses, the Territory provides the following information.

Your response identified two related issues:

1. the provision of initial and revised termination payment estimates before the election which differed in the taxation rate applied; and
2. the final characterisation of the termination payments as Eligible Termination Payments rather than redundancy payments.

Estimates provided to affected staff

Estimates provided to staff which applied the redundancy payment taxation rate were revised and reissued as soon as possible. It is noted that all estimates were clearly identified as estimates for the purpose of seeking independent advice.

It is further noted that the End of Term – Termination payments Payroll Guide provided to affected staff contained the following statement:

> *Information provided in this document in relation to taxation is of a general nature and does not constitute financial advice. The treatment of termination payments for the purposes of taxation is subject to ATO ruling as it applies at the time of cessation and in context of individual circumstances. For information regarding your personal circumstances, we recommend seeking independent advice from a registered tax agent.*

The nature of termination payments under the *Legislative Assembly (Members' Staff) Act 1998*

The employment of all staff employed under the *Legislative Assembly Members' Staff Enterprise Agreement 2023-2026* (LAMS Act) terminated, by operation of law, shortly after the election. This occurs regardless of whether the Member who employed you on behalf of the Territory was re-elected or not. The termination of employment by operation of law in this way is not a redundancy. The termination payment made to staff who meet the criteria set out in clause B7 of the LAMS Act is not a redundancy payment; it is a termination payment, and it is taxed according to Commonwealth taxation law. This is how your termination payment was treated. Clause B7 of the LAMS Act is enclosed for reference.

The Territory's consideration of your response

The Territory acknowledges concerns expressed about consistency in the taxation applied to termination payments historically and now. However, it was not a term of your employment contract that the Territory would apply differential taxation treatment to your payments, and it is not an option that the Territory may consider now.

We acknowledge your disappointment at receiving a net termination payment which was lower than initially estimated. However, this does not necessarily give rise to a legal entitlement. Decisions made in anticipation of receiving a higher net termination payment do not necessarily give rise to a legal entitlement. While we acknowledge the circumstances identified in your response, we do not consider that those circumstances give rise to a legal entitlement.

DRAFT

After carefully considering your response and the information you provided, the Territory does not consider that you are legally entitled to receive additional amounts in termination payments. Amounts deducted from termination payments were amounts the Territory was required to deduct, and payable to the Commissioner of Taxation. The Territory is only able to make payments to staff according to law.

Applications for act of grace payments

The Territory previously advised that the information provided in the templates on 28 January 2025 could be used to request an act of grace payment, if there was no clear legal basis to provide additional payment.

Section 130 is the relevant provision in the *Financial Management Act 1996* (FM Act) permitting the Treasurer to approve act of grace payments in certain circumstances. The Territory has prepared policy guidance in relation to section 130 of the FM Act – Act of Grace Payments – Policy and Procedures Guide. Paragraph 28 of the guide outlines the following:

> *Act of grace requests are not likely to be approved in cases where a requestor's sole assertion is that it is unfair that the individual or organisation has been historically ineligible to receive a benefit for which a person or organisation in a similar contemporary situation would now be eligible. They are also not likely to be approved in cases where a person or organisation was historically eligible for a payment but is now ineligible due to a change in certain criteria.*

Should you wish to request an act of grace payment, the Act of grace fact sheet provides details on what to do. You will note that any correspondence seeking an act of grace payment should be directed to the Treasurer via e-mail: steel@act.gov.au.

You will recall that the Act of grace policy informed the elements of the CMTEDD form (*Request for consideration of individual circumstances: Staff of office-holders at the conclusion of the 10th Legislative Assembly)* which you were invited to complete as part of your submission to the Territory. For your convenience, we have included your submission as an enclosure. If you elect to make an application for an act of grace payment you may wish to include this material in your submission to the Treasurer.

DRAFT

I acknowledge the delay in receiving this information while the Territory considered your response. While it may be disappointing, I hope that this information provides some clarity.

Yours sincerely

Robert Wright
A/ Deputy Director-General, Office of Industrial Relations and Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate
220 London Circuit, Canberra ACT 2601
26 November 2025

Encl.

- Clause B7 of the ACT Legislative Assembly Members' Staff Enterprise Agreement 2023-2026,
- Act of grace factsheet
- Submission provided to OIRWS

DRAFT

B7 Termination Payment

B7.1 Subject to this clause and subclause B7.2, an employee whose employment is terminated by the operation of sections 8(1), 8(2), 8(4), 13(1) and 13(3) of the LAMS Act is entitled to be paid all of the following:

- B7.1.1 A sum equal to 4 weeks salary irrespective of length of service.
- B7.1.2 A sum equal to 2 weeks salary for each completed year of continuous service.
- B7.1.3 A pro-rata payment for additional completed months of service, up to a maximum of 48 weeks' salary.

B7.2 The following employees are not entitled to a termination payment under subclause B7.1:

- B7.2.1 An employee whose employment is terminated by resignation or dismissal for misconduct.
- B7.2.2 An employee who has a right of return to secure employment in the public sector.
- B7.2.3 An employee who is engaged for a fixed period, to fill a vacancy caused by a staff member being absent on leave.
- B7.2.4 An employee who is engaged to undertake a specified project, where the project has been completed.
- B7.2.5 A probationary employee.
- B7.2.6 A casual employee.
- B7.2.7 An employee who is immediately re-employed under the LAMS Act.

B7.3 Where an employee is entitled to be paid redundancy pay under section 119 of the Fair Work Act, any termination payment made under subclause B7.1 will be reduced by an amount equal to that redundancy payment.

DRAFT

OFFICIAL SENSITIVE

MINISTERIAL BRIEF

Chief Minister, Treasury and Economic Development Directorate

To:	Chief Minister	**Tracking No.: CMTEDD2024/4323**
Date:	31/10/2024	
CC:	Head of Service	
From:	Deputy Director-General, Office of Industrial Relations and Workforce Strategy	
Subject:	Arrangements for staff of office-holders at the time of termination	
Critical Date:	**08/11/2024**	
Critical Reason:	To enable the progression of options for affected staff of office-holders	

Recommendations

That you:

- **note** the shorter-term or one-off options outlined in Attachment A, and the longer-term options in Attachment B;

Noted / Please Discuss

- Subject to your views on shorter-term or one-off options, agree that OIRWS communicate an act of grace option to affected staff; and

Agreed / Not Agreed / Please Discuss

- **note** that the longer-term implementation of any recommendations will be the subject of a future brief.

Noted / Please Discuss

Andrew Barr MLA 22/11/24

Minister's Office Feedback

Background

1. On 16 October 2024, you were provided with a Hard Copy brief outlining changes to the LAMS Termination Payment. For ease of reference, relevant background information in that Brief is included below.

2. Toward the end of the 10th Legislative Assembly, estimate payments were provided to staff of Members (Member staff) and staff of office-holders (Office-holder staff) (together, referred to as staff). These estimates represented the final monies that would be paid to staff who were not continuing to be employed in the 11th Legislative Assembly because their employment would be terminated in accordance with the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act).

    (a) The Office of the Legislative Assembly (OLA) prepared and sent the estimates to Member staff using calculations by the pay team at the OLA. These estimates were sent in or around August/September 2024.

    (b) CMTEDD prepared and sent the estimate to Office-holder staff using calculations by the pay team at CMTEDD. These estimates were sent in or around August/September 2024.

3. At the beginning of October 2024, a discrepancy of approach between the OLA pay team and the CMTEDD pay team was identified. It was confirmed that:

    (a) the OLA pay team had a practice of calculating the payments as terminations, which had a particular tax implication; and

    (b) the CMTEDD pay team had a practice of calculating the payments as redundancies, which had a particular tax implication.

4. The OLA approach was supported with taxation advice from KPMG. The advice was based, among other things, on an Australian Tax Office *Ruling TR 2009/2 - Income tax: genuine redundancy payments*.

5. Subsequent advice indicated that the estimates for payments in these circumstances under the LAMS Act and the *Legislative Assembly Members' Staff Enterprise Agreement 2023-2026* (LAMS EA) should be characterised as terminations rather than redundancies. As such, the approach of the OLA pay team, which attracted a higher taxation component than the approach of the CMTEDD pay team, was the appropriate approach.

6. On 17 October 2024, the Office-holder staff were advised that the previous information and estimates provided were not consistent with the updated tax and legal advice. Updated estimates were provided to all Office-holder staff of the 10th Assembly on 23 October 2024 based on the approach applied by the OLA pay team, being termination payments (not redundancy payments). The OIRWS set up a dedicated mailbox and executive contact for office-holder staff.

7. A number of Office-holder staff, as well as their employee representatives, have been in contact with CMTEDD to raise their concerns about the proposed approach to taxing their final monies. The concerns include:

   (a) Reliance on the original estimates, with decisions made including booked holidays, planned periods of leave, residential moves, partners resigning from work or reducing hours/pay arrangements, or cancer treatment;

   (b) That their relevant office-holder had lost the election, and therefore genuinely redundant;

   (c) That this represents a shift from custom and practice that ought to be relied upon; and

   (d) That they have suffered from mental distress, anxiety and panic arising from the discrepancy between the original estimate payments and the second estimate payments.

8. Following a meeting on 17 October 2024 between senior officers of the Office of Industrial Relations and Workforce Strategy (OIRWS) with officials Sch 2 s 2.2(a)(ii) on 18 October 2024, Sch 2 s 2.2(a)(ii) to propose two options for consideration, which are reflected in the longer-term options at Attachment B:

   (a) CPSU and Government jointly approach the Fair Work Commission (FWC) seeking an urgent hearing on the basis of ambiguity around the termination payment, with the Unions and Government agreeing on a set of words to put forward to the FWC.

   (b) Varying the LAMS EA (re-balloting), to include a clause very similar to the Australian Government's Members of Parliament Staff Enterprise Agreement 2020-2023 (MOPS EA), noting that any resulting provisions of the LAMS EA would be applied retrospectively to ensure current impacted staff are covered.

9. On 23 October 2024, Office-holder staff were provided with new estimates based on a termination event (not a redundancy event).

10. In response to our brief of 16 October 2024 on this matter, you queried in the comments section whether it might be appropriate to request an Australian Taxation Office ruling on this matter. This query and other options are addressed in this Brief.

11. Before considering the options, it is useful to outline the legal framework in relation to the termination of staff employed under the LAMS Act.

Office-holder staff

12. Under section 8(2)(a) of the LAMS Act, office-holder staff employment is terminated when the relevant office-holder ceases to hold office. As the relevant office-holder,

you cease to hold office when the Chief Justice convenes the first sitting of the 11th Legislative Assembly on 6 November 2024 (refer s.46 of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)*).

13. I note that there are 17 office-holder staff whose Minister (office-holder) is losing office (without returning) on the first sitting day of the 11th Assembly.

14. The *Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Office-holders' Staff Direction 2015* (Direction 2015) directs that the employment of office-holders' staff is deemed not to have been terminated under s.8 of the LAMS Act, but to continue until 2 weeks after the date on which the employment would otherwise have been terminated (refer s. 8(1) of Direction 2015).

15. This period is described as the notice period under the *Fair Work Act 2009* (Cth) (FWA) and a termination payment is paid to staff who are not subsequently re-employed (refer s. 8(2) of Direction 2015). The deeming period ends if the staff of the office-holder resigns during the deeming period (refer s. 8(3) of Direction 2015).

16. Office-holder staff are currently all employed by the Chief Minister. The LAMS Act provides for employment by an office-holder. It is therefore not inconsistent with the legislation that the Chief Minister is the employing office-holder for all Office-holder staff.

17. It is open to the Chief Minister to re-employ all existing office-holder staff following the termination of their employment.

Member staff

18. Under s.13(1) of the LAMS Act Member staff employment terminates when a member ceases to hold office. A member ceases to hold office on polling day (see s.10 of the *Australian Capital Territory (Self-Government) Act 1988*).

19. There is no corresponding deeming provision in the *Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Members' Staff Direction 2020 (No 1)* (Direction 2020).

20. Further, under s.8 of the *Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2021 (No 1)*, Member staff who receive a termination payment under the applicable enterprise agreement, are not able to recommence employment under the LAMS Act before the expiry of the period of time, in weeks and days, that is equivalent to the termination payment (for example if a member's staff receives the equivalent of six weeks termination payment, the exclusion period is six weeks).

21. There are eight Member Staff who were terminated at the end of the 10th Assembly in accordance with the relevant provisions of the LAMS Act – Sch 2 s 2.2(a)(ii) [redacted]

Practice in other jurisdictions

22. OIRWS has undertaken a review of the practices in other jurisdictions related to the termination of parliamentary and electorate staff. A summary of the jurisdictions for which information on termination payments was available is as follows:

    (a) **Australian Government** – under the MOPS EA, termination payments are treated as an employment termination payment (ETP), not a genuine redundancy. The MOPS EA provides that 'severance benefits payable under clause 73 of the MOPS EA will be increased by 30 per cent if an employee's MOP(S) Act employment terminates as a result of the employing Parliamentarian ceasing to hold office.'

    (b) **New South Wales** – Staff of Parliamentarians are treated similarly to staff under the MOPS EA, where termination payments are generally treated as an ETP, not a genuine redundancy due to their fixed role type. However, on-going staff of office-holders receive a severance payment which is treated as a genuine redundancy.

    (c) **Queensland** - Queensland Parliamentary Service electorate staff (excluding those employed under the *Parliamentary Service Act 1988*) receive a severance entitlement treated as an ETP, not a genuine redundancy.

    (d) **Victoria** – the termination payment is a redundancy type payment, and no allowance is provided to individuals. It is possible that the tax treatment in this case is in accordance with a genuine redundancy payment, however it is unclear how the tax component is treated as it is not stated in the relevant enterprise agreement.

23. Employment arrangements of parliamentary staff across jurisdictions is varied and can include "ongoing" or "fixed term" employment arrangement options. The nature of the employment arrangement affects the way termination payments are treated in various end of employment events which may arise during the course of employment.

24. Currently, the ACT LAMS employment framework is based on "fixed term" employment arrangements as per subclause B1.1.1 of the LAMS EA.

Issues

Options overview

25. Working in consultation with the CPSU, the OIRWS has developed options to address the impact of the end of employment payment estimates that were provided in August and September 2024 based on a redundancy event.

26. The one-off or short-term options in Attachment A (private tax ruling, deed of settlement, act of grace payments and a Chief-Minister determination) mainly aim to address office-holder staff in the 10th Assembly who received advice that OIRWS now

understands to be incorrect, have outlined that they relied upon that advice, and have experienced a detriment.

27. The longer-term options in Attachment B (amending the LAMS EA or LAMS Act) incorporate CPSU's options and may recognise the insecure employment arrangements for staff of office-holders and members.

28. All options come with some risk, particularly acknowledging that the ACT Government has no scope to vary established taxation law with respect to redundancy payment.

29. Payments under a deed of settlement and act of grace mechanism appear to be the most practicable to address the immediate concerns raised by Office-holder staff. Both are consistent with the current advice on the characterisation of payments, while offering payments of compensation where appropriate.

30. It is advisable to undertake a thorough and considered review of the LAMS EA and LAMS Act to consider longer term policy and options, following the end of the caretaker period.

One-off or short-term options

31. Overall, the payments under a deed of settlement and the Act of Grace payments appear to be the two most practicable short-term or one-off options. If the option of a private tax ruling is utilised, consideration should be given to whether it is prudent to proceed with the instrument, settlement, or act of grace options until the outcome of the private ruling is known.

32. A **private tax ruling** may be sought from the Australian Taxation Office, noting that it has longer-term ramifications, and so may be used to inform longer term options.

- A **private tax ruling** is binding and will apply to all staff terminated under the same circumstances and may put beyond doubt whether the circumstances that arise at the end of an Assembly term could give rise to a redundancy payment rather than a termination payment.
- Depending on the complexity of the matters, this option may take longer than the usual 28 days, and may not change the current advised position. A private tax ruling may be for a specified period. If the private ruling is contrary to past treatment, any need for remediation would need to be considered in light of the circumstances, including whether any legislated periods of review have elapsed.
- For these reasons, among other things, to minimise the risk of administrative complications, if this option is utilised, consideration should be given to whether it is prudent to proceed with the instrument, settlement, or act of grace options until the outcome of the private ruling is known.

33. **Payments under a deed of settlement**, are viable, provided the facts of the relevant circumstances demonstrate reasonable prospects of success. The relevant process is in the Law Officers Legal Services Directions 2023 (**LOLSD**).

34. Paragraph 10(5) of the LOLSD provides that it 'should be a condition of any settlement involving the payment of money to a claimant that the claimant sign a suitable release and, where appropriate, an indemnity against claims by third parties that arise from the event or circumstances giving rise to the settlement.'

35. Under paragraph 10.7 of the LOLSD, any term of settlement imposing a confidentiality obligation 'must incorporate an exception to enable voluntary disclosure of the settlement (in whole or in part) as required or authorised by law, or to the Auditor-General, the Legislative Assembly, the Integrity Commissioner, or an Assembly Committee.'

36. **Act of Grace payments** approved by the Treasurer (or a delegate) would be based on individual circumstances of the relevant staff, noting the Act of Grace Payments: Policy and Procedures Guide (**Guide**) indicates this would be available where all other options have been exhausted.

    (a) Details on Acts of Grace payments are reported in the notes to financial statements in accordance with the *Financial Management Act 1996* (**FMA**), which will detail the amount and grounds for each payment made that financial year.

    (b) The FMA prohibits the disclosure of details in relation to the payee, unless disclosure was agreed to by the payee as a condition of the Treasurer authorising the payment.

37. The options to provide payments through deeds of settlement or acts of grace depend on the individual circumstances of the Office-holder Staff and their individual reliance on the original estimates and any subsequent loss suffered.

38. These are recommended for consideration as they provide a mechanism to potentially address the quantum of the losses identified by the current cohort of affected Office-holder staff.

39. To date, most Office-holder staff contact with Public Sector Employment has noted reliance on the advice to their detriment, with nine of those staff providing some specific details. Office-holder staff might provide further details if requested.

40. A **Chief Minister Determination** as a disallowable instrument may be made pursuant to s.6(3) of the LAMS Act as a Chief Minister determination to vary the variable terms of employment of the Office-holder staff, so long as it is a matter not provided for under the LAMS Act or employment agreement, and consequently, not covered by the LAMS EA, for example, a form of allowance or to provide a longer deeming period period for Office-holder staff who are not re-employed.

41. Similar provisions exist to make a disallowable instrument for Member Staff under s.11(3) of the LAMS Act. Advice suggests that it is likely that the Chief Minister could not make a determination under ss. 6(3) or 11(3) of the LAMS Act so as to increase the amount of any termination payment, given that cl. B7 of the LAMS EA already covers termination payments. In any case, it would be complex for the instrument to introduce provisions that would address the quantum of the losses identified by the current cohort of Office-holder staff.

42. Preliminary advice from the Parliamentary Counsel's office suggests that there might be options for retrospectivity, if it does not prejudice a person.

43. It would be a decision of the Chief Minister whether to make any employment conditions available to all Staff, or to limit any allowance to Office-holders Staff only. It is also likely that once an instrument is made, it would be challenging to set it aside, that is, to take away a more preferential or beneficial term of employment.

Longer-term options

44. Having regard to practices in other jurisdictions in relation to the termination payments provided to staff of members of Parliament, longer term options, which may also be applied to future staff include:

    (a) **Varying the LAMS EA**:
        i. initiated by employers and employees under s207 of the FWA and requires a ballot; or
        ii. to remove an ambiguity or uncertainty under s217 of the FWA; or
        iii. to correct or amend errors, defects or irregularities under s218A of the FWA.

    (b) **Amending the LAMS Act** or LAMS EA to include a termination allowance. OIRWS has modelled this option and compared it with the calculations for redundancy and termination payments:

        i. For staff in the highest income bracket, a 30% loading as outlined above would increase their net ETP by approximately 15%.

        ii. For staff in the next income bracket, a 30% loading as outlined above would increase their net ETP by approximately 20%.

45. These increases are less than the monies that would be received if those monies were taxed as redundancies. Whilst it is not yet known which staff of office-holders will not continue on new contractual arrangements after the first sitting day of the 11th Assembly, 17 staff of office-holders have indicated that they are unlikely to return.

46. Of those staff, the difference in the net amount they were estimated to receive as redundancy payments when compared with the net amount they were estimated to receive as ETP termination payments was up to 40% more favourable as redundancies. The difference was as low as 13% for some staff of office-holders. The average was a

24% difference in the net payment estimated when comparing redundancy net payments with net ETP.

47. This option does not directly address the quantum of the losses identified by the current cohort of office-holder staff (that is, the difference between the redundancy estimated calculations and the recently provided termination estimated calculations).

48. The options to change legislation, legislative instruments, or the enterprise agreements are limited during the caretaker period, which at this stage, is anticipated to end on 6 November 2024.

49. Amending the LAMS EA or the LAMS Act, and the corresponding coverage would have implications, including that once the relevant instrument is made, it would be challenging to take away a more preferential or beneficial term of employment.

50. The longer-term options require further policy development to deal with any complexities and unintended consequences.

Financial Implications

51. The Ministerial Liaison team in CMTEDD has advised that 17 office-holder staff have indicated they may not return to work under the LAMS Act. The CMTEDD pay team has estimated that the difference in net payments for those 17 staff is no more than $200,000. Calculations indicate that the net payment difference is close to $110,000.

52. For reference, there were 63 office-holder staff at the conclusion of the 10th Legislative Assembly, although as noted previously, it is likely that not all will be departing. That said, the estimated net payments calculated as a termination event for the 63 office-holder staff when compared with the estimated net payment received as a redundancy event is approximately $700,000 less in total.

53. Act of grace payments are discretionary amounts based on individual circumstances and do need to exactly match the difference for each staff.

Consultation

Internal

54. OIRWS has consulted with the CMTEDD Ministerial Liaison team in the preparation of this Brief.

Cross Directorate

55. Nil.

External

56. OIRWS has consulted with the OLA, the ACT Government Solicitor and the CPSU in the preparation of this Brief. The CPSU is broadly comfortable with the options. ACT Government Solicitor oral feedback has been incorporated into this Brief.

Work Health and Safety

57. A number of the affected staff have identified distress, panic and anxiety as a result of receiving information that the original estimates received by staff would be superseded by estimates with less favourable taxation treatment.

58. The timely resolution of this matter will assist to manage the psychosocial impact on affected staff of office-holders.

Benefits/Sensitivities

59. The timely resolution of this matter has the benefit of managing the legal risk to the Territory of affected staff of office-holders seeking resolution of this matter under the tort of damages.

60. Future options will need to be cognisant of the amendments that were made to the FWA, which were effective from 6 December 2023, limiting fixed term contracts to a maximum of two years and prohibiting multiple consecutive fixed-term contracts for the same employee, with certain exceptions.

61. The options outlined above relate to termination of employment for Office-holder staff, when an office-holder ceases to hold office. There are other circumstances during the term of a Member or office-holder's office, where termination of a LAM staff employment contract may be considered a genuine redundancy, giving rise to a redundancy payment. An example of what might be considered a genuine redundancy could occur during the restructure of an office, where a position is no longer required. This depends on the circumstances.

62. In circumstances where affected staff do not receive a resolution to the concerns that they have raised, those staff could commence proceedings in the Fair Work Commission or the Federal Court, depending on the particular circumstances and the nature of the claim. This can be examined further if settlement of any claims is considered.

Communications, media and engagement implications

63. These are private employment matters. There are no communications, media or engagement implications.

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Attachments

Attachment	Title
Attachment A	Table – One-off or short-term Options
Attachment B	Table – Longer-term Options

Attachment A – Table – One-off or short-term Options

One-off or short-term options				
	Private Tax Ruling	**Deed of Settlement**	**Act of Grace Payment**	**Chief Minister Determination**
Description	A private tax ruling (PTR) from the Australian Taxation Office to put beyond doubt whether the circumstances that arise at the end of an Assembly term could give rise to a redundancy payment rather than a termination payment.	Office-holder staff who suffered a loss as a result of relying on a redundancy event pay estimate may have the matter settled through a deed of settlement under the Law Officers Legal Services Directions 2023 (LOLSD).	An Act of Grace payment may be made to Office-holder staff under section 130 of the *Financial Management Act 1996*	A Chief Minister Determination under s.6(3) of the *Legislative Assembly Members Act 1989* (LAMS Act) as a disallowable instrument to vary the variable terms of employment, eg, including a form of allowance or to provide a longer deeming period at termination
Overview of Process	• Prepare the factual information to seek the PTR • Lodge the relevant form for the PTR (need an ABN) • Commissioner considers the matter and issues a PTR. **Note1:** A private ruling is binding advice that sets out how a tax law applies to in relation to a specific scheme or circumstance. **Note 2:** Edited versions of a private ruling may be published. **Note 3:** The Commissioner may decline the request to make a PTR in a range of circumstances. **Note 4:** The Commissioner decision may be reviewable under the *Administration Decisions (Judicial Review) Act 1977* (ADJR).	• Office-holder staff who wish to do so, prepare the factual scenario (claim) and submit it to OIRWS. • ACTGS assesses each claim consistent with the LOLSD. A claim may only be settled if written advice is received from the Government Solicitor that the settlement is in accordance with legal principle and practice, and the Director-General (or authorised officer or chief executive officer), having regard where relevant to the views of ACTIA, agrees with the settlement (refer paragraph 10.3 of LOLSD). • Depending on the outcome, ACTGS prepares a Deed for the relevant Office-holder staff. • Shared Services Payroll to make payment to each employee as specified in the deed. **Note 1:** As part of settlement, a claimant should sign a suitable release and, where appropriate, an indemnity against claims by third parties that arise from the event or circumstances giving rise to the settlement (refer paragraph 10.5 of the LOLSD). **Note 2:** it is open to the Chief Solicitor to agree to an alternative process in respect of a claim or class of claims. Further, the Attorney-General may be satisfied that exceptional circumstances exist which justify a departure from the process for settling a claim set out in the LOLSD (refer paragraph 10.4 of the LOLSD. **Note 3:** Taxation of payment is a matter for each employee.	• Office-holder staff who wish to do so, prepare the factual scenario (claim) and submit it to OIRWS. • OIRWS collates and submits the claims to the Treasurer (or delegate) through a Brief; • Treasurer (or delegate) assesses the nature of special circumstances and the appropriateness of making a payment of a relevant amount, including whether the Territory has any moral obligation in relation to the particular matter. 'Special circumstances' and 'relevant amount' are not defined in the FMA and are for the Treasurer or delegate, as decision-maker, to assess and decide on; • The outcome of the decision is notified to the requester in writing; • Where a request is successful, the Treasurer will sign a financial instrument; and • Shared Services Payroll will arrange for payment of the authorised amount, subject to any conditions having first been met. **Note 1:** While the Act of Grace Payments Policy and Procedures Guide provide guidance, and Treasury provides advice to the Treasurer, the Treasurer has full-discretion in relation to an Act of Grace payment. **Note2:** Taxation of payment is a matter for each employee	• Discuss the precise arrangements with the Chief Minister • Seek advice on whether the matters are permitted (see below in risks) eg, an allowance or increasing the deeming period for Office-holder staff who are not re-employed. • If permitted, draft the Determination as a disallowable instrument; and • Seek formal agreement from the Chief Minister to make the determination. • Tabling the Determination **Note 1:** Similar provisions exist to make a disallowable instrument for Member Staff under s.11(3) of the LAMS Act. **Note2:** The payment would be treated separately to the *Legislative Assembly Members' Staff Enterprise Agreement 2023-2026* LAMS EA termination payment and would be revoked when the LAMS EA is updated in the future (although see risks).
Estimated timeframe	Timeframes would depend on the time taken by the Commissioner to provide the Ruling. The Australian Tax Office aims to provide private rulings within 28 calendar days of receiving all	Timeframes would depend on the time taken by the Office-holder staff to make a claim, the number of Office-holder staff who make a claim and the complexity of the claim.	Depending on the number of applications, this option would take approximately **three to six weeks**:	This option would take approximately **four weeks**: • paperwork, preparation and consultation: **Two weeks**

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One-off or short-term options				
	Private Tax Ruling	**Deed of Settlement**	**Act of Grace Payment**	**Chief Minister Determination**
	the necessary information, but this can be longer if the matter is complex.		• Submission of applications: **One to three weeks** • approvals and application: **Two to three weeks**	• approvals and application: **Two weeks**
Benefits	A PTR has longer-term ramifications, and so may be used to inform longer term options.	It specifically addresses Office-holder staff who have a legal claim. **Note:** It may clarify whether a person has a legal claim	It specifically addresses office-holder staff who have may <u>not</u> otherwise have a legal claim. **Note:** It is not necessary for a person to go through a deed of settlement process before seeking an act of grace payment. The Treasurer or his delegate may seek legal advice as to prospects as part of relevant considerations for an act of grace payment.	• If the matters are permitted (see risks) potentially allows coverage to all staff covered by the LAMS Act. • Consistent with the Australian Government approach. • Preliminary advice from the Parliamentary Counsel Office suggests that there might be options for retrospectivity, if it does not prejudice a person for example, potentially, if it applies to all staff employed under the LAMS Act.) Further Advice would need to be sought to confirm the position.
Risks	• A Ruling may take time and not change the position advised. • A private tax ruling may be for a specified period. If the private ruling is contrary to past treatment, any need for remediation would need to be considered in light of the circumstances, including whether any legislated periods of review have elapsed. • To minimise the risk of administrative complications, if this option is utilised, consideration should be given to whether it is prudent to proceed with the instrument, settlement, or act of grace options until the outcome of the private ruling is known.	• This option may only be justified for Office-holder staff who received incorrect estimates. • This option may not be suitable for Member staff who received correct estimates.	• An act of grace payment is generally an avenue of last resort and not used where there are other options available to provide redress. • The scope of payment could extend beyond the person intended. • The cost incurred by the Territory could significantly increase if there is no cap or calculation method or rules.	• Advice suggests that it is likely that the Chief Minister could not make a determination under ss 6(3) or 11(3) of the LAMS Act so as to increase the amount of any termination payment, given that cl. B7 of the LAMS EA already covers termination payments. Anything covered would need to be a matter not provided for under the LAMS Act or the LAMS EA. • It would be complex for the instrument to introduce provisions that would address the quantum of the losses identified by the current cohort of Office-holder staff. • May create the expectation that this would be reflected in any proposed LAMS EA or LAMS Act reviews.

Longer-term Options			
	Amending the *Legislative Assembly Members' Staff Enterprise Agreement 2023-2026* (LAMS EA) and a hearing with the Fair Work Commission	**Amending the LAMS EA to include an allowance**	**Amending the *Legislative Assembly (Members' Staff) Act 1989 (LAMS Act)***
Overview	The ACT Government and the CPSU may jointly apply for a LAMS EA variation in accordance with s217/s218A of the *Fair Work Act 2009 (Cth)* (FWA). This approach would seek an urgent hearing on the basis of addressing an ambiguity of the LAMS EA.	The LAMS EA would be re-balloted to include a clause similar to clause 63.1 of the Australian Government's Members of Parliament Staff Enterprise Agreement the 2020–2023 (MOPS EA) which states: 'Severance benefits payable under clause 62 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 … 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.' **Note1:** The severance benefits payable to an employee under clause 62 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*. **Note2:** The MOPS EA provides that 'severance benefits payable under clause 73 of the MOPS EA will be increased by 30 per cent if an employee's MOP(S) Act employment terminates as a result of the employing Parliamentarian ceasing to hold office.'	An amendment to include a termination allowance
Process	• Define the ambiguity and the associated issues in the LAMS EA the FWC would be asked to consider • Develop a set of proposed changes to the LAMS EA at clause B7 to treat termination payment as a redundancy payment where the Section 389 of the FWA criteria for genuine redundancy are met. • Consult the varied agreement and the F1 application with the unions and submit to the FWC for approval. • Email the F1 application to the Fair Work Commission seeking a joint request for urgent review on the basis that clause B7 is ambiguous. **Note:** under this variation process, employees are not required to be consulted or vote on the variation if it is based on an ambiguity or error.	• Follow the processes set out by section 207 of the FWA and providing an opportunity for staff to be involved in the variation discussions • Draft provisions for the LAMS EA and consultation with unions and bargaining parties • provide access and ballot processes to allow employees to vote on the proposed variation. • Following vote, if the matter is voted by a majority of staff, lodge the variation with the FWC. • FWC approves the variation to the LAMS EA.	The LAMS Act may be amended to include an allowance for payment at termination similar to that proposed for the LAMS EA. The usual passage of legislation process needs to be followed.
Estimated timeframe	This option would take approximately **four to six weeks** as follows: • preparation of the replacement language and necessary forms and letters: **one to two weeks.** • Standard timeframes for FWC approvals are **three to four weeks**, but this can vary.	This option would take approximately **three months** as follows: • paperwork, preparation, consultation and approvals: **four weeks.** • access and ballot processes: **four weeks.** • Standard timeframes for FWC approvals are **three to four weeks**, but this can vary.	This option would take approximately **12 months**, allowing for the usual drafting, consultation, scrutiny and notification processes.

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Attachment B – Table – Longer-term Options

Longer-term Options			
	Amending the *Legislative Assembly Members' Staff Enterprise Agreement 2023-2026* (LAMS EA) and a hearing with the Fair Work Commission	**Amending the LAMS EA to include an allowance**	**Amending the *Legislative Assembly (Members' Staff) Act 1989 (LAMS Act)***
Benefits	Potentially quick and cost-efficient, as no ballot required	Although less cost-efficient, as a ballot is required still potentially quick (see Note under risks)	Allows Government to form a considered policy position.
Risks	• The FWC may not agree that the current clause is ambiguous and may not approve the application to amend the LAMS EA. • The LAMS EA cannot determine how tax law (i.e., treating a termination payment as an ETP payment) can be applied to employees. • Changing the termination payment to be treated as a redundancy payment could create unintended interactions/consequences with other clauses in the LAMS EA. • This option may not be able to change the way the Termination payment is treated as the circumstances in which the payment is treated for tax rules is derived from the LAMS Act.	• This change would not be finalised prior to the termination of the current Office-holder staff. • Until the LAMS EA is varied, termination payments are required to be made based on the current legal advice that has been received. • While introducing a retrospectivity clause is possible, it has the potential to cause over/underpayments where payroll will need to recalculate the payments in the future. • Without a thorough review of the effect of the changes to the LAMS EA on the LAMS Act and LAMS instruments, to minimise the risk of unintended or complicated matters arising in relation to termination and payment.	• This option would not be finalised prior to the termination of the employees in question. • The LAMS Act does not contain entitlements and conditions of employment. Inclusion of an allowance in the LAMS Act would set an unnecessary precedence. • It is prudent to consider the impact of the changes to the LAMS Act on the LAMS EA and LAMS instruments, to minimise the risk of unintended or complicated matters arising in relation to termination and payment.

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