

FURTHER EXPLANATION TO PROPOSALS INCORPORATED IN THE GOVERNMENT OFFER 20 JULY 2011.

A9.1 – Termination of Agreement

The existing clause was developed during the 2007 agreement negotiations specifically as a response to controversial provisions that were included in the *WorkChoices* legislation. The *WorkChoices* provisions enabled an employer to unilaterally terminate an agreement once it had reached its expiry date with no scope for the industrial tribunal to be involved in the process.

These *WorkChoices* provisions are not included in the *Fair Work Act 2009* (FW Act) and for this reason there is no longer any need for clause A9.1.

Under the FW Act, enterprise agreements cannot be terminated unless Fair Work Australia approves the termination. In considering whether an agreement can be terminated Fair Work Australia must take into consideration the views of employees, employers and employee representatives.

The Government is proposing that clause A9.1 be replaced with a clause that states that agreements may be terminated in accordance with the FW Act. This clause would be similar in wording to the existing clause A8.1 regarding variation to agreements which reads:

This agreement may be varied in accordance with the Fair Work Act.

The new proposed wording would read:

This agreement may be terminated in accordance with the Fair Work Act.

B1.1 – Types of Employment

This existing clause is unnecessary and provides no specific entitlement. Clause B1.1 refers to how staff are engaged under the Public Sector Management Act 1994 (PSM Act). Divisions 5.3 and 5.7 of the PSM Act deal comprehensively with how staff are engaged in the ACTPS.

Additionally, the Dictionary sections of agreements contain specific definitions of the various categories of employees (e.g. employee, officer, casual employees, temporary employees, long term temporary employees).

Other provisions in agreements clearly identify which categories of employees are entitled to particular terms and conditions in the agreement. For example, there is now specific eligibility or application provisions included under the revised leave format in agreements. There are also provisions at the commencement of the sections on under-performance, discipline and internal review that identify which employees are covered by these sections.

B13.1 – Filling Nominal Vacancies

The Government wishes to remove this clause from agreements because it does not provide any specific entitlements to employees. The PSM Act and Standards deal comprehensively with employment-related processes in the ACTPS including the creation of offices, appointments, promotions and temporary transfer. Clause B13.1 deals with a process related to a position vacancy and as such it is properly a matter for the PSM Act and Standards.

B3.1 Selection Committees

As a result of amendments made earlier this year, the PSM Standards now contain comprehensive provisions dealing with selection committees and related issues - see Part 3.3. These provisions include the establishment and composition of Joint Selection Committees and Management Selection Committees, which are in similar terms to what is contained in clause B3.1.

The clause itself does not contain any entitlements to employees. As such, there is no need for agreements to duplicate what is already in the PSM Standards.

Good citizen allowances

Currently most Directorates pay an allowance to all staff who are elected as first aid officers and who are qualified to undertake the role. In recent agreements two Directorates have paid similar allowances to staff performing the fire warden function. Without detracting from the importance of the fire warden function the level of qualification needed does not equate to that of the first aid officer role. It also creates an anomalous situation across the Service where others performing the fire warden role do not receive like remuneration. To pay all fire wardens across the Service an equivalent allowance would cost in excess of \$1m and this would impact of the Government's overall pay offer.

Substitute public holiday

The current agreements allows for a substitute public holiday on the following Monday if Anzac Day falls on a Saturday or Sunday and states that this is in accordance with the *Holidays Act 1958*. The *Holidays Act* does not provide for a substitute public holiday when Anzac Day falls on a Saturday.

Additionally, this agreement provision is generally inconsistent with Anzac Day public holiday observance nationally. This does not, however, precluded the Minister declaring an additional public holiday under the Act when it is appropriate to do so, as occurred this year when Easter Monday and Anzac Day coincided and as happened in 2009 when Anzac Day fell on a Saturday. Therefore there is no need for this provision within enterprise agreements.