

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Finance and Administration Portfolio

Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(1)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

How many MoPS staff are currently on AWAs, is it limited to SES-level staff or more broadly?

Answer:

There are currently 104 MOP(S) employees employed under the terms of an AWA and all of these employees are employed at SES-equivalent levels.

Senate Finance and Public Administration Legislation Committee

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Finance and Administration Portfolio

Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(2)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Are there any plans to broaden the use of AWAs to all staff currently covered by the Certified Agreement?

Answer:

As noted in the introduction to the Certified Agreement, it is the intention of the Special Minister of State to offer AWAs to those staff who wish to enter into one.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(3)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Please give a brief outline of how the AWAs were amended to remove the provision for cashing out of personal leave – why was this decision made, who made it and when?

Answer:

The decision to remove the provision for cashing out or converting personal leave to annual leave from AWAs was made to comply with Government policy. The policy advice, issued by the Department of Employment and Workplace Relations in July 2003, states that the cashing out of personal leave was no longer to be included in the employment conditions of Australian Government staff. The advice states that the cashing out or conversion of personal leave is considered to be inconsistent with the rationale for personal leave, which is to assist employees when they fall ill or have emergency caring responsibilities.

In November 2003 the Special Minister of State agreed that the provision allowing the cashing out of personal leave not be included in AWAs for all new senior staff employed under the MOP(S) Act. Following the Prime Minister's agreement in February 2004, the provision was not included in new AWAs offered to existing senior MOP(S) Act staff on promotion or re-employment.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(4)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

How was this decision implemented?

Answer:

The AWAs offered to new senior MOP(S) Act staff since November 2003 have not included the clause that enabled staff to cash out or convert personal leave. Since 7 February 2004 any existing employee offered a new AWA (for example, upon promotion or re-engagement after a termination of employment) has not been able to cash out or convert personal leave.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(5)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

What does the phrase “removed from the template AWA” actually mean?

Answer:

This phrase means that the option to cash out or convert personal leave is no longer included in the set of employment terms and conditions that apply under AWAs.

Senate Finance and Public Administration Legislation Committee

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(6)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Doesn't the fact that the PM can unilaterally order the removal of this entitlement make a farce of the Govt's position that these are individual contracts? How do you enforce a template AWA if they were indeed individual contracts?

Answer:

The Prime Minister sets the terms and conditions of employment of staff employed under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act) and under sections 14(3) and 21(3) of the Act may "by writing determine that the terms and conditions of employment of a person are varied as specified in the determination".

The terms and conditions of employment are set by the Prime Minister within the parameters for agreement making in the Australian Public Service. Since July 2003 Government policy has been that the ability to cash out or convert personal leave is inconsistent with the rationale for the provision of such leave (which is to assist employees when they fall ill or have emergency caring responsibilities) and, as such, the provision was to no longer be included in the employment conditions of Australian Government staff. This was reaffirmed in a letter from the Prime Minister to the Special Minister of State on 7 February 2004 in relation to MOP(S) Act employees.

The provision to cash out or convert personal leave was not removed from existing AWAs. It was a provision that was not made available in new AWAs.

AWAs for MOP(S) Act employees are individual contracts between the Commonwealth and a staff member and they are prepared in accordance with the terms and conditions approved by the Prime Minister.

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Estimates 2004-05 –Additional written questions February 2005

Question: F40(7)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Under 'template' AWAs, what role is there for any negotiation at all? If a staff member had insisted on this provision, what action could they have taken to have this clause included in the AWA?

Answer:

The Government has implemented AWAs through an approved set of terms and conditions, which are consistent across each classification.

In preparing AWAs for senior staff on behalf of the Government, the Department of Finance and Administration acts in accordance with Government policy – the Department would, therefore, be unable to include a provision to cash out personal leave in an AWA at the request of an individual staff member as this would be contrary to current Government policy, and inconsistent with the Prime Minister's advice in his letter to the Special Minister of State on 7 February 2004.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(8)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Can you confirm that the cashing out provision remains in the Certified Agreement currently in place?

Answer:

There is no provision in the Certified Agreement to cash out or convert personal leave, nor has there ever been such a provision.

Under the Certified Agreement, staff may cash out up to two weeks annual leave per year, where they have used at least two weeks of annual leave in the previous year.

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Estimates 2004-05 –Additional written questions February 2005

Question: F40(9)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

And if the Government wanted to remove that provision from the CA, it would have to inform staff of that removal and negotiate with them about it's removal and/or its replacement with a different entitlement, is that correct?

Answer:

See answer to Question F40(8). There is no provision to cash out or convert personal leave in the *Members of Parliament Staff (Commonwealth) Certified Agreement 2003-2006*.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(10)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

That was not the case with the staff on AWAs, was it?

Answer:

See answer to Question F40(8). There is no provision to cash out or convert personal leave in the *Members of Parliament Staff (Commonwealth) Certified Agreement 2003-2006*.

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Estimates 2004-05 –Additional written questions February 2005

Question: F40(11)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Given that this was the removal of an entitlement which had been in the AWA for some years, what effort was made to inform the staff of the change? If not why not?

Answer:

Staff with access to the flexibility to cash out personal leave at the time of the Prime Minister's decision, as specified in the letter to the Special Minister of State of 7 February 2004, were not notified of that decision because the decision did not impact on the terms of their current AWA.

All staff offered new AWAs who had previously had access to the provision were advised by letter that the provision was not included in the new AWA.

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Estimates 2004-05 –Additional written questions February 2005

Question: F40(12)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

And given that there has been a longstanding confusion about who is the employer in the MoPS arrangement, what effort was made to inform the MPs and Senators who actually sign the employment contracts on behalf of the Commonwealth, ie the officeholders, Ministers, the Leader of the Opposition etc? If none why not?

Answer:

Senators and Members employ their staff on behalf of the Commonwealth under the terms and conditions of employment determined by the Prime Minister. It was, therefore, not considered necessary to advise employing Senators and Members of the change.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(13)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Was consideration given in the Dept to the desirability of informing staff or officeholders of the change in the template AWA at the time it occurred?

Answer:

The Department considers many options in developing and implementing policy. It is not usual practice to disclose the nature or the content of these deliberations.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(14)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Was advice provided to the Minister dealing with this issue of informing staff of the removal of an employment entitlement?

Answer:

It is not usual practice to disclose advice that may have been provided to the Minister.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(15)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

If not, whose decision was it to not inform staff and/or officeholders?

Answer:

Staff were informed of the removal of the provision in a covering letter to their new AWA when they were offered one. Since 7 February 2004 all existing staff who were offered a new AWA have received a covering letter to their new AWA from the Department of Finance and Administration stating that the new AWA does not contain the provision and giving the reasons for its removal.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(16)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

If staff had been informed of this removal they would have been in the position to exercise the entitlement before its removal wouldn't they?

Answer:

Staff are always able to access an existing entitlement: in this case staff could have elected to cash out personal leave provided they were eligible to exercise the option.

Staff were able to access their entitlement up to and including the date their AWA ceased, providing they were eligible to exercise the option. (i.e. they had not done so in the preceding 12 months since their last accrual date).

There was no retrospectivity associated with the decision to withdraw the provision.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(17)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

But given that they were not informed until after the expiry of their AWAs after the election, they could not decide to exercise this entitlement until the entitlement no longer existed, is that correct?

Answer:

No. They could have exercised this entitlement at any point up to the expiry of their AWA.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(18)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Are there any staff on AWAs who still have this entitlement?

Answer:

No.

Senate Finance and Public Administration Legislation Committee

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(19)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Given that the new AWAs offered to staff after the election made it clear that this entitlement had been removed, what was the date of this advice, can you confirm that this was the first time staff were informed of the decision, and can you confirm that their previous AWAs had already expired at that time?

Answer:

The date on which staff were notified of the removal of the cashing out provision varied for individual staff depending on when the Department of Finance and Administration was notified that a staff member was to be re-engaged following the election.

A number of staff did not have access to this provision as a result of a change in their employer following the Ministerial reshuffle on 18 July 2004, or other staffing changes made after the Prime Minister agreed to remove the cashing out provision from the AWA template on 7 February 2004.

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Finance and Administration Portfolio

Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(20)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Can you also confirm that the staff who received these AWAs had already signed the MoPS Employment Contracts with their employing officeholder weeks earlier, with neither party to that contract aware that the resulting AWA would be different to the AWA previously in place?

Answer:

Senators and Members employ their staff on behalf of the Commonwealth under the terms and conditions of employment determined by the Prime Minister. Thus awareness of a new AWA template before the signing of employment contracts was immaterial, since the terms of the AWA could only be negotiated in accordance with the terms and conditions approved by the Prime Minister.

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Finance and Administration Portfolio

Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(21)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

Can you give me a breakdown of how many staff entitled to this benefit actually exercised it between the PM's decision to remove it from the template, and expiry of the previous AWAs after the election?

Answer:

Between 7 February 2004 and 9 November 2004, 31 staff accessed the provision to cash out their personal leave. In the period 10 November 2004 to 31 December 2004, no staff accessed the provision.

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Department of Finance and Administration

Estimates 2004-05 –Additional written questions February 2005

Question: F40(22)

Outcome: 3.1

Topic: MOPS staff

Written Question on Notice: 21 February 2005

Senator Evans asked:

How many staff exercised this entitlement between the election and the expiry of the AWAs? Without going to the names of these staffers, can you tell us whether these were from Govt or Opp staff?

Answer:

Three Government employees cashed out personal leave between the election and the expiry of their AWAs on 9 November 2004. The personal leave accruals of all three employees occurred prior to the election.