

C. Employment agreements

Background

There are three categories of employment under the Act: consultants, employed under Part II (of whom there is currently one); those covered by the Certified Agreement (CA), and those on Australian Workplace Agreements (AWA).

- 7. Are there any employees being paid out of the public purse and working for any Minister or in any Minister's office, other than people employed under the Act and DLO's?**

The *Ministers of State Entitlements* handbook provides that a Minister's home department is responsible for relief arrangements for personal staff absences of less than 12 weeks. This may occur through the use of departmental staff or staff hired through an employment agency with the costs being borne by the home department.

The Department of Finance and Administration does not have access to information concerning the employment of staff under these circumstances.

8. Are all MOPS staff covered either by consultancy, the CA or an AWA? If not, what other arrangements exist?

Staff employed under the MOP(S) Act are generally covered either by a consultancy contract, an Australian Workplace Agreement or the Certified Agreement. A copy of the 2003-06 Certified Agreement ratified by the Australian Industrial Relations Commission on 20 August 2003 is attached for the Committee's information.

There have been two recent occasions where senior personal staff, who would normally be covered by an AWA, have declined to sign an AWA. In such cases a Determination has been made under section 14(3) of the MOP(S) Act by the Special Minister of State which sets out the terms and conditions of their employment. The relevant MOP(S) staff have been advised of the contents of the Determination.

9. Can the committee get data on the use of AWAs and consultancy contracts across the MOPS service? For example, how many employees are in each category in the following groups: government Part IV staff; opposition Part IV staff; other Part IV staff; ministerial Part III staff, other government Part III staff; opposition Part III staff; other Part III staff?

As at 2 September 2003, one consultant was employed by the Government under a contract.

Only senior Government and non-Government staff above adviser level are currently employed under Australian Workplace Agreements. These are staff employed under Part III of the Act. There are currently no Part IV staff employed under Australian Workplace Agreements. These staff are employed under the terms and conditions set out in the 2003-06 Certified Agreement.

The joint Departmental submission to the Inquiry (page 11) advised that as at 1 May 2003 there were 103 Government and non Government staff employed under AWAs. As at 2 September 2003 this total had increased to 105 staff.

The following is a breakdown between the Government and non-Government of those staff on AWAs as at 2 September 2003:

Government staff employed under an AWA (as at 2 September 2003): 94	Non-Government staff employed under an AWA (as at 2 September 2003): 11
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These figures do not include two staff of the Presiding officers who are employed under AWAs but are paid for by the Parliamentary Departments.

10. Is some aggregate data available on the salaries and conditions encapsulated in the AWAs / contracts, in a form that can be compared with the terms and conditions of the CA? Can the Committee get a copy of the AWA template referred to in the submission (p.11)?

The salary bands for senior staff on AWAs (government and non government) were included in the joint Departmental submission to the Inquiry (appendices 4 and 4(a)). The submission also mentioned that salaries may be paid above the relevant band for both government and non-government staff with the approval of the Prime Minister.

It is not usual practice to make the AWA template publicly available and the Special Minister of State has requested that, as AWAs set out the terms and conditions of employment, it remain confidential.

It is established practice in the Australian Public Service not to disclose the details of salaries payable to individuals under AWAs but to disclose ranges applicable to classification levels.

A copy of the 2003-06 Certified Agreement ratified by the Australian Industrial Relations Commission on 20 August 2003 is attached.

Other employment-related questions

11. In graphs at the back of the Departmental submissions, which outline the salary ranges for different office holders, the numbers '1', '3' and '5' appear within the bars on the chart. What do they mean?

The salary bands attached to the joint Departmental submission come from the performance review framework for senior staff. This framework states:

“Each salary band has three indicative points. Office holders should use these as a salary guide when appointing new staff. The three points mark the degree of experience and competence of a person to undertake work in a particular classification. In setting salaries, Office holders should consider the skills and experience of the employee. Employees with limited skills and experience are to be placed below the mid point; those with extensive skills and experienced may be placed above the mid point.”

12. What is the average rate of turnover of ongoing MOPS staff if one excludes terminations resulting from MP's losing office in elections, reshuffles and leadership changes? Is it possible to analyse the data to see whether turnover rates are different for ministerial and opposition (Part IV) staff compared to electorate officers (Part III) staff? How do these rates compare to, for example, turnover in a public service department, or other organisations?

The Department does not keep turnover statistics for MOP(S) staff in the form requested. However, we have provided data (attached) on staff cessations for ongoing staff over a non-election year. The data has been disaggregated into cessations by Part III staff (staff of office holders) and by Part IV staff (electorate staff of Senators and Members).

It is not possible without additional resources to further disaggregate by staff group (eg Ministerial staff and Opposition staff) or by reason for cessation other than standard system codes (eg resignation, retirement, termination under the Act). Departmental data is not sufficiently disaggregated to determine the reason for termination. Terminations may occur when a Senator or Member dies or loses office or for other reasons, such as poor staff performance or office restructures. As terminations can be mutual or involuntary, caution should be exercised in including the number of staff terminated under the MOP(S) Act in calculations of the rate of staff turnover. For this reason we have provided two turnover figures (including and excluding terminations) calculated as a percentage of total ongoing staff numbers.

The Committee should also note that electorate staff of Office Holders are employed under Part III of the Act and therefore some electorate staff figures may be included in the Part III cessation data.

The total staffing figures given in the attachment differ from those given in the submission because the cessation data is calculated on the basis of the number of staff employed, while the data in the submission is calculated on the basis of the number of positions.

Data on turnover in selected agencies in the Australian Public Sector can be obtained from *Audit Report No.50 2002-2003 'Managing People for Business Outcomes Year Two, Across Agency'*. This report is published by the Australian National Audit Office.

Cessations of ongoing MOP(S) Act staff - 1 July 2002 to 30 June 2003

Turnover	Type of MOP(S) Act employment	Reason for cessation of employment	Number of cessations 1 July 2002 to 30 June 2003	Number of staff as at 1 July 2003	Turnover % rate	
Number of cessations of Ongoing staff (part-time and full-time)	Part III	Cessation - return to APS	24	624	Excluding terminations 20.0% Including terminations 23.2%	
		Resignation	100			
		Retirement	1			
		Termination under MOPS Act	20			
			<i>Sub Total</i>	145		
	Part IV	Cessation - return to APS	5	599	Excluding terminations 21.0% Including terminations 26.0%	
		Resignation	120			
		Retirement	1			
		Termination under MOPS Act	30			
			<i>Sub Total</i>	156		
	Total	Cessation - return to APS		29	723	Excluding terminations 20.5% Including terminations 24.6%
		Resignation		120		
		Retirement		2		
		Termination under MOPS Act		50		
		<i>Total</i>	10			

Note: Terminations under the MOP(S) Act includes terminations due to loss of Office of Senator/Member as well as terminations for other reasons.

D. Financial Management and Accountability Act 1997 (FMA Act) Compliance

13. What are the issues with ensuring compliance with the FMA Act requirements regarding MOPS staff? Does the agency have a view about whether the framework under the regulations is the most efficient way of meeting the objectives of the FMA Act for MOPS staff?

The interaction of the requirements on MOP(S) Act staff under the FMA Act is assisted by analysis of how the FMA Act applies generally, and in relation to legislative entitlements regimes specifically.

The FMA Act deals with the financial management framework for the Executive Branch of the Commonwealth, that is, the Australian Government. MOP(S) Act staff have been allocated to the Finance Chief Executive as part of a long standing approach that notional accountability should follow the relevant appropriation. Through this arrangement, MOP(S) Act staff are, therefore, notionally accountable to the Finance Secretary, as the Chief Executive under the FMA Act, and should ensure that they act in accordance the FMA Act to the extent that the Act applies to their activities.

Further, in accordance with sub-section 57(1) of the *Public Service Act 1999*, “the Secretary of a Department, under the Agency Minister, is responsible for managing the Department and must advise the Agency Minister in matters relating to the Department”.

The MOP(S) Act is allocated under the Administrative Arrangements Orders to the Finance portfolio. This means that, in effect, the Special Minister of State together with the Secretary, administer the entitlements regime for MOP(S) Act staff.

This is significant because the FMA Act operates behind other specific legislation dealing with financial issues. For example, both the MOPS Act and the Parliamentary Entitlements Act, and related arrangements, provide for entitlements that are relevant when considering the activities of MOP(S) Act staff.

MOP(S) staff can only properly enter into financial commitments that fall within the entitlement regime. Provided the entitlements regime is complied with, the FMA Act has very limited practical application to MOP(S) Act staff. However, the principle of efficient, effective and ethical administration of Government resources, contained in subsection 44(1) of the FMA Act, must be adhered to when Finance is processing accounts. This is undertaken by Ministerial and Parliamentary Services and is conducted by public servants who are directly accountable to the Secretary under the *Public Service Act 1999*.

Good financial management requires oversight and accountability. The MOP(S) Act staff do need to be allocated to a Chief Executive for the purposes of the FMA Act. While the Finance Chief Executive holds the appropriation to pay MOP(S) Act entitlements, Finance is the most logical agency to receive the allocation. However, the Secretary of Finance does not have any direct role in the employment of MOP(S) Act staff.

The preferred model is that the accountability for the employment and financial management of an individual rests with the same person. However, this is not always possible. The position of the MOP(S) Act staff is one example of arrangements where there is a separate accountability for employment and financial management. Other examples include agencies that are prescribed under the FMA Act but are not otherwise separate from their portfolio department (eg Geoscience Australia).

Another example is those people who are not engaged under the *Public Service Act 1999*, but are clearly within a portfolio, such as members of the Australian Defence Force (ADF) who are allocated to the Department of Defence as officials, for the purposes of the FMA Act, and are accountable to the Secretary of Defence for financial management purposes, even though they are accountable to the Chief of the Defence Force in terms of their chain of command.

MOP(S) Act staff are, however, different from ADF personnel because they are not otherwise part of the Finance portfolio, in terms of their actual employment. They report to their employer, who is either a Senator or a Member of Parliament.

Although not part of the Executive Branch of Government, Senators and Members have a statutory ability to employ a MOP(S) Act staff person, on behalf of the Commonwealth. This is, of course, in accordance with arrangements approved by the Special Minister of State under the authority of the Prime Minister (MOP(S) Act, section 20). Similar rules apply to MOP(S) Act staff engaged by office holders (section 13) and consultants engaged by Ministers under Part II of the MOP(S) Act (section 4).

As noted, the MOP(S) Act is currently administered as part of the Finance portfolio by the Special Minister of State, who is authorised to act on the Prime Minister's behalf under the MOP(S) Act for the purpose of approving employment arrangements.

14. Does the Department think DoFA is in compliance with the FMA Act in respect of MOPS staff? Is it in fact able to tell?

The Department of Finance and Administration is in compliance through the oversight provided by Ministerial and Parliamentary Services within the Department.

Ministerial and Parliamentary Services has implemented controls to provide assurance that the relevant appropriations are only accessed when the entitlement regime is complied with. These arrangements are designed in order to meet the obligations for the efficient, effective and ethical use of public money as required by section 44 of the FMA Act.

The Department has in place control systems designed to ensure, so far as is practicable, that payments are not made unless and until the employing Senator or Member signs off on the appropriateness of the payment being made, for example for overtime or travelling allowance claims.

15. How are DoFA's considerations progressing?

Finance has been considering the interaction and operational aspects of the MOP(S) and FMA Acts.

The consideration was principally to assess the circumstances in which MOP(S) Act staff could commit the Commonwealth to expenditure outside of the entitlements regime.

In these circumstances the FMA Act could apply to the expenditure and the MOP(S) Act staff would be accountable for the decision. Other aspects of the FMA Act also required some consideration in terms of their possible applicability to MOP(S) Act staff.

After investigating these issues, Finance has determined that the FMA Act has limited practical effect in relation to MOP(S) Act Staff (see response to question 13). Finance's consideration of these issues has now concluded.

16. In what timeframe does the Department expect to deal with the issues?

See response to question 15.

17. What are the options to which the submission refers?

See response to question 15.