



Ref: 2013/236

### COMMISSIONER'S BULLETIN

#### Recent Amendments to the *Fair Work Act 2009*

There have been amendments to the *Fair Work Act 2009* ('the FW Act') that commenced on 1 January 2014 and will affect your employment conditions. In many cases, existing conditions in Northern Territory Public Sector (NTPS) enterprise agreements and the *Public Sector Employment and Management Act* ('the PSEM Act') and its subordinate legislation exceed the minimum standards set out in the FW Act. The principal changes are set out below:

- **Amendment of the Modern Awards Objective to secure penalty rates** – This amendment requires the FWC to take into account the need to provide additional remuneration for employees working:
  - overtime;
  - unsocial, irregular or unpredictable hours;
  - on weekends or public holidays; or
  - shifts.

Penalty rates and overtime payments for NTPS employees are maintained through relevant enterprise agreements

- **Consultation about changes to regular rosters and ordinary hours of work** – Modern awards and enterprise agreements are required to include clauses that require employers to consult with employees about changes to their regular rosters and ordinary hours of work; in addition, enterprise agreements must have a provision that requires employers to consult with employees about major workplace change that is likely to have a significant effect on them. In relation to consultation about changes to rosters or ordinary hours of work consultation terms in enterprise agreements must require employers to:
  - provide information to the employees about the change;
  - invite the employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
  - consider any views given by the employees about the impact of the change.

Apart from the new provision about changes to regular rosters and ordinary hours, NTPS enterprise agreements have contained detailed provisions requiring consultation about change that exceed the minimum standards set out in the FW Act.

- **Bullying at Work** – a worker who has been bullied at work may apply to the Fair Work Commission ('the FWC') for an order to stop the bullying; in this case the anti-bullying provisions can extend to persons other than employees, as is the case with the *Work Health and Safety (National Uniform Legislation) Act*; a worker is bullied at work if an individual or a group of individuals repeatedly behave unreasonably towards the worker or a group of workers of which the worker is a member and that behaviour creates a risk to health and safety; the FWC is required to deal with an application in relation to allegations of bullying at work within 14 days of the application being made; the FWC may make any orders that it considers appropriate (other than an order requiring the payment of a pecuniary amount); in making the order the FWC must take into account:

- any final or interim outcomes arising out of an investigation into the matter;
- any procedure available to the worker to resolve grievances or disputes;
- any final or interim outcomes arising out of the grievance or dispute procedures;
- any other relevant matters;

further, a worker is permitted to take action under the *Work Health and Safety (National Uniform Legislation) Act*, at the same time as taking action under the FW Act, despite the prohibition of multiple actions under the *Work Health and Safety (National Uniform Legislation) Act*.

The PSEM Act; its subordinate legislation and NTPS enterprise agreements have provisions with the objective of preventing inappropriate behaviour and bullying in the workplace.

- **Changes to the Right of Entry Provisions for Permit Holders** – There have been changes to the provisions relating to trade union officials who hold a permit to enter premises to either investigate a breach of the FW Act or an enterprise agreement or to hold discussions with members or employees who are eligible to be members of their unions. The principal changes are:
  - enabling the FWC to issue orders about misuse of the right of entry provisions;

- requiring a person not to refuse or unduly delay entry by a permit holder, or intentionally hinder or obstruct a permit holder exercising rights of entry;
- providing for a permit holder to give the occupier of the premises notice for the entry; having given that notice, the permit holder may hold discussions with any employees who work in the premises and whose industrial interests the permit holder's organisation is entitled to represent; and who wish to participate in those discussions;
- empowering the FWC to deal with disputes over the frequency of requests for entry to hold discussions;
- requiring interviews or discussions to be held in rooms in which employees ordinarily take meals or breaks if the permit holder and the occupier of the premises cannot agree on where interviews (i.e. relating to a breach) or discussions are to take place;
- empowering the FWC to deal with a dispute about whether the request to take a particular route to the place set for interviews or discussions is reasonable; and
- providing for arrangements to be made to assist with accommodation or transport (including allowing the occupier to charge an appropriate fee for these arrangements on a cost recovery basis) for permit holders to exercise these rights; and empowering the FWC to deal with a dispute about the provision of accommodation or transport or both to remote localities to enable the permit holder to exercise right of entry.

NTPS enterprise agreements and policies provide more generous provisions for trade unions to access workplaces and represent their members and employees who are eligible to be their members than the minimum standards provided in the FW Act. Further information can be found in the [Commissioner's Guideline: Working with Unions](#).

If you require additional information about these changes, please contact Employee Relations in this office on 08 8999 4282 or [enquiries.ocpe@nt.gov.au](mailto:enquiries.ocpe@nt.gov.au).



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