



Express law *fast track information for clients*

23 March 2009

Observing the 2009 Anzac Day Public Holiday

In 2009 Anzac Day falls on a Saturday. In most States and the Northern Territory, the public holiday will be observed on that day. However, in Western Australia and the Australian Capital Territory, a public holiday has been proclaimed on the following Monday, 27 April 2009.

Agencies should look to workplace agreements to determine their obligations

Whether or not your agency should observe 27 April 2009 as a holiday, and, if so, whether that holiday should be observed nationally or by employees working in WA and the ACT only, depends on the terms of your workplace agreement(s).

Some agency collective agreements specify that only proclaimed public holidays will be observed. For example, the *Department of Communications, Information Technology and the Arts' Collective Agreement 2007 – 2010* relevantly specifies:

220 Employees will observe the officially gazetted public holidays that apply in the locality in which they are employed.

In this case, only employees in WA and the ACT will observe a holiday on 27 April 2009.

Other agency collective agreements specify that Anzac Day will be observed on 25 April or the next working day. For example, the *Australian Customs Service Collective Agreement 2007 – 2010* relevantly provides:

11.14.1 Employees will observe the following holidays each year:

... 25 April (Anzac Day) or, if that day falls on a Saturday or a Sunday, the first day following that is not a Saturday, Sunday or Public Holiday.

In this case, all employees will enjoy a holiday on 27 April 2009 or else attract any penalty rates applicable for work on a public holiday. In effect, the 'public holiday' is created by the agency agreement, not by government proclamation.

What if the agency workplace agreement contains no reference to the public holiday?

If your agreement is silent on the matter then the provisions relating to the minimum entitlements of employees in the *Workplace Relations Act 1996* apply, with the result that employees will be entitled to the holiday on 25 April 2009 or a gazetted substitute day: see s 612 of the *Workplace Relations Act 1996*.

As the above examples illustrate, the situation is not uniform across the Australian Public Service.

If employees are entitled under your agency agreement to observe a holiday on 27 April 2009 then failure by you to allow the holiday may result in legal action being brought by your employees or their union asserting a contravention of your collective agreement: see item 4 of s 718 of the *Workplace Relations Act 1996*.

Different arrangements may apply to employees who work under individual agreements, and different arrangements may apply to employees who would ordinarily work on the Saturday. If you are uncertain, seek legal advice.

For further information please contact:

Virginia Masters
Senior Executive Lawyer
T 02 6253 7470 F 02 6253 7381
virginia.masters@ags.gov.au

Craig Rawson
Senior Executive Lawyer
T 03 9242 1248 F 03 9242 1317
craig.rawson@ags.gov.au

Julie Chandler
Senior Executive Lawyer
T 02 9581 7326 F 02 9581 7413
julie.chandler@ags.gov.au

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