Government of South Australia

Office of the Commissioner for Public Sector Employment

DETERMINATION AND GUIDELINE OF THE COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT:

EMPLOYMENT RELATIONS

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Date of Operation 13 September 2018
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Commissioner's Standard 3.3 "Responsive and Safe Employment Conditions – Employment Relations" is rescinded effective from the date of operation of this Determination and Guideline.

Who is covered by this Determination?

This Determination applies to:

- employment in the Public Service; and
- public sector employment outside the Public Service that is declared by another Act or the regulations under the *Public Sector Act 2009* ('PS Act') to be employment to which Part 7 of the PS Act applies; and
- employment to which Part 7 of the PS Act otherwise applies; and
- employment outside of the Public Service to which the Commissioner for Public Sector Employment is empowered to make determinations pursuant to section 16 of the PS Act and regulation 9 of the *Public Sector Regulations 2010*.

Specifically, the Determination applies to employment outside of the Public Service as follows:

- employment to whom Part 7 of the PS Act applies by force of the provisions of a Notice of the Premier transferring them within the public sector pursuant to section 9(1) of the PS Act;
- employment under the *Courts Administration Act 1993* – per section 21B; and
- employment to which Part 7 of the PS Act applies either in whole or in part by section 41 of the PS Act and regulation 13 of the *Public Sector Regulations 2010*.

Where the Determination is not binding upon a public sector agency or particular employment in it (refer to the above), it is intended that this is a whole of Government policy for South Australian public sector agencies as defined by the *Public Sector Act 2009* .

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1. CONSULTATION

A strong public sector is vital to delivering the strategic and operational priorities of the South Australian Government and consultation is important when undertaking workforce reform and change across the public sector.

Consultation processes are a legal and industrial obligation binding on public sector agencies; and chief executives, agency heads and delegates as decision makers. It is a requirement that employees and relevant employee associations are consulted as soon as practicable where significant change is being considered. Consultation does not mean agreement, but it does include a meaningful opportunity to contribute to the decision making process.

A refusal by a party to participate in consultation does not mean that consultation has not occurred, or that there has been a failure to consult.

1.1 LEGAL OBLIGATIONS

The PS Act contains a mandatory requirement for public sector agencies to "consult public sector employees and public sector representative organisations on matters that affect public sector employment" [1]

The *Code of Ethics for the South Australian Public Sector* requires public sector employees to treat others with respect and courtesy and this also extends to consultative processes.

The obligation to consult is legal and binding on all public sector agencies and the requirement for consultation on matters will be unique and specific according to the relevant facts and circumstances.

Awards and enterprise agreements that apply to public sector employment also contain various consultation provisions.

Aside from any legal obligation, consultation helps build awareness and commitment as well contributing to positive working relationships.

An award, enterprise agreement or other industrial instrument may include a detailed process for consultation in a particular circumstance and it is essential that these processes are adhered to in a thorough and timely manner.

Where an award, enterprise agreement or other industrial instrument refers to the implementation or impact of "significant change/s", an agency must objectively determine the signficance of the change in the context of the specific facts and circumstances. A number of factors will be relevant to an assessment of whether intended change is significant, including:

a) the nature of the intended change/s;
b) specific requirements contained in the relevant Award or enterprise agreement,
c) the size, demographic and culture of the workplace; and
d) the proportion of the workforce likely to be affected by the proposed change/s to be implemented.

The Commissioner for Public Sector Employment has also issued separate publications in relation to the management of excess employees which provide additional information in relation to consultation to that detailed in the relevant enterprise agreements.

Where an agency is contemplating change which, if implemented, will result in an employee/s being declared excess the following documents must be referred to and complied with, dependent on the employment arrangements applicable to the individual employees:

> *Determination and Guideline 7: Changes to Workforce Composition and Management of Excess Employees – Redeployment, Retraining and Redundancy* which applies to agencies and employees covered by the *South Australian Modern Public Sector Enterprise Agreement: Salaried 2017* I the *Forestry SA Enterprise Agreement 2013* (in accordance with the *Public Sector Variation Regulations 2015*); and employees covered by the *South Australian Public Sector Wages Parity Enterprise Agreement: Weekly Paid 2015.*

The *Work Health and Safety Act 2012* also contains consultation provisions for matters that affect workplace health and safety. This includes managing hazards and risks in the workplace, resolving health or safety issues, making decisions about the provision of welfare facilities and when proposing changes to work systems,

processes or the work environment that have the potential to impact on health and safety. Where a workplace has appointed a health and safety representative, consultation must include this person. Due to the broad definition of ‘worker’ under the *Work Health and Safety Act 2012*, consultation requirements may include people other than employees e.g. contractors and volunteers, where the matter has the potential to affect their health and safety in the relevant workplace.

1.2 COMMENCEMENT OF THE CONSULTATIVE PROCESS

Early notification of the proposed change will assist agencies to anticipate the need for, and the extent of the consultation required.

Consultation may take the form of but is not limited to:

- establishment of employer/employee (and employee representative) committees, e.g. health and safety committees;
- regular meetings and communication with employees and employee associations including by email and/or newsletters;
- regular written communications seeking feedback on specific matters;
- encouragement of direct employee feedback; and/or
- one-on-one, face-to-face discussions with employees.

All consultative processes must take into account cultural, language and disability requirements within the relevant workforce. This approach aims to increase understanding of the consultation process and the substantive issues that are the subject of consultation.

Agencies are required to provide employees and their representatives with information in writing and discuss the changes in a meaningful and objective manner. The information to be provided includes:

1. the nature of the proposed change/s and the reasons for the proposal;
2. the effects the proposed changes are likely to have on employees; and
3. any measure to prevent or reduce any adverse effects on employees arising from the proposed change/s.

The timeframes for the consultation process should be established as early as practicable, and allow sufficient time for the effective provision of information and meaningful discussion in respect of that information. Where timeframes are stipulated in either an award, enterprise agreement, other industrial instrument or a Determination of the Commissioner for Public Sector Employment the agency must ensure compliance with those legal obligations as a minimum.

For a consultative process to be effective, agencies must give prompt and objective consideration to matters raised by employees and/or their representatives. This may from time to time, include the request for additional information. Reasonable requests for additonal information should be favourably considered.

While an agency must give meaningful and objective consideration to matters raised during consultation, the agency is not obliged to obtain the consent or agreement of employees and/or their representatives in order to implement change/s.[2]

Consultation is a process that provides a genuine opportunity for employees who will be affected by the proposed change and/or their representatives to meaningfully contribute to the decision making process.

1.3 KEY STEPS IN THE CONSULTATIVE PROCESS

The Office of the Commissioner for Public Sector Employment has available on its website the “Change Management Toolkit” which is available for SA public sector employees. This Toolkit is designed to help public sector organisations lead sustainable and productive change and is a practical tool that can be used to support consultation associated with organisational change.

Further information on how agencies can meet the requirements for consultation relating to work, health and safety matters can be found in the approved code of practice “*Work Health and Safety Consultation, Co-operation and Co-ordination*” is available on the SafeWork SA website.

The following are key steps for an agency to consider in the consultative process. Where there are differences between the following steps and a detailed approach contained within an award, enterprise agreement, other industrial instrument, or a Determination of the Commissioner relating to redeployment, retraining or redundancy, and agency must ensure they observe obligations outlined in the detailed approach as a minimum.

Step 1: Notify and provide information to employees and their representative/s

a) what change is being proposed and why;
b) the impact on employees;
c) the intended consultative process; and
d) how and when a final decision is intended and who is the decision maker.

Step 2: Consult by:

a) communicating organisational needs and priorities (e.g. use a combination of team meetings, existing regular union meetings, newsletters, noticeboards, emails or intranet sites);
b) seeking views and opinions from affected employees and their representatives (e.g. team or individual meetings, online intranet forums, surveys or focus groups);
c) encouraging a two-way flow of information;
d) reviewing and as necessary adjusting communication processes to ensure the information on ideas and feedback is being received and considered in a timely manner; and
e) identifying and notifying reasonable timeframes for the consultation process and decision making allowing sufficient time to objectively consider feedback.

Step 3: Review and implementation

a) objectively consider information and ideas obtained and assess against organisational requirements;
b) record any decisions made and the reasons;
c) communicate the decisions and reasons why to employees and their representatives; this may include further discussions and review as appropriate;
d) implement change in accordance with any agreements or undertakings given. This may include the use of documentation such as “HR Principles” depending on the nature of the change; and
e) consider any feedback on the consultative and decision making process in order to improve future processes.

2. UNIONS AND EMPLOYEE ASSOCIATIONS

2.1 INTRODUCTION

The legislative arrangements that apply to unions and employee associations are diverse and this reflects the diversity of occupations across the South Australian public sector.

In February 1993, Australia ratified the obligations of the International Labour Organisation (ILO) Convention 135, the “Workers Representatives Convention 1971”. [3] This ratification is still in force and is set out in Schedule 11 of the *Fair Work Act 1994*.

The terms “union” and “employee association” have specific definitions depending upon which Act (for example the *Fair Work Act 1994* or the PS Act) is being cited and it therefore follows that specific Acts will establish the entitlements of a union or employee association in the interaction and access to employees, worksites and employee information. These legislative arrangements will, in some circumstances, also identify who may represent employees and establish the criteria for representation.

In addition to the legislative arrangements, the South Australian public sector also has in place a number of awards, enterprise agreements and other industrial instruments which set out the arrangements for union or employee association access to employees, worksites and employee information.

The intention of this Determination and Guideline is to establish, in the absence of any expressed or defined entitlement in any legislation, award, enterprise agreement or other industrial instrument, the minimum entitlements and arrangements to apply for a union or employee association in relation to:

1. workplace delegates or representatives of a union or employee association; and
2. access to employees, worksites and employee information.

2.2 WORKPLACE DELEGATES AND/OR REPRESENTATIVES

Every union or employee association will have its own definition of the role and responsibilities of a delegate and workplace delegates are sometimes workplace representatives or shop stewards. [4]

For the purposes of this Determination and Guideline, the reference to a union or employee association has the same meaning as "public sector representative organisation" as defined in the PS Act.

2.2.1 ADVICE OF ELECTION

Following the election of a workplace delegate or representative, it is expected that the Secretary of the relevant union or employee association will advise the chief executive or agency head of the relevant public sector agency, in writing, of each elected workplace delegate. The workplace delegate or representative will be issued with written credentials by the Secretary authorising that member to act in accordance with the duties of a workplace delegate or representative as prescribed in the rules and/or by-laws of the relevant union or employee association.

2.2.2 ROLES, RIGHTS AND RESPONSIBILITIES OF WORKPLACE DELEGATES AND/OR REPRESENTATIVES

Workplace delegates or representatives are expected to perform a representative role. Matters raised should reflect issues that are raised by members and employees employed at the worksite or workplace. Chief executives, agency heads or delegates should attempt to assure that when consultation with a workplace delegate or representative is initiated, the views being sought are those of the members employed on the work site or workplace and not the personal views of the workplace delegate or representative.

Should a member or members inform their workplace delegate or representative of a matter as defined by the rules and/or by-laws of the union or employee association and request appropriate assistance, the workplace delegate or representative will inform the immediate management of the agency worksite of the nature of the matter.

A workplace delegate or representative may choose to inform the union of the matter or matters for the purpose of seeking advice and assistance where necessary.

Workplace delegates or representatives are required at all times to act in accordance with the rules and/or by-laws of the union and, as public sector employees, comply with the Code of Ethics for the South Australian Public Sector.

Workplace delegates or representatives will be allowed reasonable time within normal hours of duty to perform their duties as Delegates within their respective workplaces.

Where it is alleged that a workplace delegate or representative is acting contrary to the union or employee association constitution rules and/or by-laws, a chief executive, agency head or delegate or the Commissioner for Public Sector Employment may communicate with the relevant Secretary in respect of the matter.

2.2.3 WORKPLACE DELEGATES AND/OR REPRESENTATIVES CONFERENCE

In the interests of the public sector and the members of a union or employee association, some reasonable time during normal hours of duty should be available to all workplace delegates or representatives to permit them to attend a workplace delegates or representatives Conference, or equivalent.

Public sector unions and employee associations generally schedule such Conferences at times which involve the minimum of interference with the normal working of agencies. A maximum of three days every two years will be available to employee delegates and representatives for the purposes of attending such Conferences.

Workplace delegates or representatives must be granted time off without pay to enable them to attend a Conference to the extent that it is held during normal working hours.

Leave provided to an employee to permit them to attend a Conference does not meet the criteria for Trade Union Training Leave (refer to the Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave which provides for such special leave with pay and the criteria for this leave to be approved. Subject to the approval of a chief executive, agency head or delegate, an employee may be able to utilise recreation leave and/or flexi time.

It is expected that public sector unions and employee associations will inform the Commissioner for Public Sector Employment and the relevant chief executive, agency head or delegate at least 28 days prior to a scheduled Conference, including detail/s of workplace delegates or representatives eligible to attend, the venue, date/s and times.

It is the responsibility of the individual employee to make an application for leave of absence as required in order to attend a Conference.

2.2.4 REGIONAL COUNCIL MEETINGS

It is accepted that, due to the particular difficulties caused by the geographical dispersal of members of unions or employee associations in country areas, some time off during normal hours of duty should be available to all workplace delegates or representatives permanently stationed outside of the metropolitan area, to enable them to attend Regional Council meetings or equivalent.

Subject to organisational convenience, those workplace delegates or representatives who are permanently stationed outside of the metropolitan area, may be credited with up to one day leave without pay, not more than four times per year, for the purpose of travelling to and attending Regional Council meetings or equivalent.

Subject to the approval of a chief executive, agency head or delegate, an employee may additionally be able to utilise recreation leave and/or flexi time.

It is the responsibility of the individual employee to make an application for leave of absence as required in order to attend a Conference.

2.2.5 TRANSFER OF WORKPLACE DELEGATES AND/OR REPRESENTATIVES

Wherever possible, the relevant chief executive, agency head or delegate is/are to discuss with workplace delegates or representatives matters that affect their ability to properly carry out their duties and responsibilities as workplace delegates or representatives. In particular, where it becomes necessary to transfer, relocate, or change the duties of an employee who is a workplace delegate or representative, management is to inform the workplace delegate or representative to enable the relevant union reasonable time to make appropriate arrangements for continued representation at the worksite/workplace.

2.2.6 RESOLUTION OF COMPLAINTS ETC.

To assist workplace delegates or representatives and local management in allowing reasonable time within normal hours of duty to permit workplace delegates or representatives to perform their duties within their respective worksites, it will be appropriate to have regard to the responsibilities of workplace delegates or representatives in the worksite/workplace as set out in the rules and/or by-laws of the relevant union or employee association.

A workplace delegate or representative, having referred a matter to the relevant union or employee association for industrial assistance, will normally not be required to be involved in further discussion occurring away from the worksite/workplace. As a general guide, the involvement of a workplace delegate or representative in discussions away from the worksite/workplace would normally require acceptance by local management that the presence of

the workplace delegate or representative is essential to the appropriate resolution of the matter raised.

If a matter is not resolved by consultation and/or discussion between the workplace delegate or representative and local management, the workplace delegate or representative will normally refer the matter to an official of the union. The official and worksite delegate should then seek to confer with the appropriate agency manager on the matter. Normally such a conference should commence within 24 hours. However, if there is agreement between the workplace delegate or representative, official and the relevant chief executive, agency head or delegate, the period may be longer.

If the matter is not resolved at that conference or is such that it has wider implications than the particular worksite/workplace, then it would be appropriate for the official to seek further industrial assistance, and for the relevant chief executive, agency head or delegate to advise officers in their agency as necessary and/or the Office of the Commissioner for Public Sector Employment, as the case may be. Normally a workplace delegate or representative would not be required to participate in discussions other than those that involve local management.

2.2.7 RECRIMINATION

There are a number of legislative prescriptions which relate to the conduct of workplace delegates or representatives at the workplace and are not repeated in this Determination and Guideline. This also includes access to the worksite/workplace, members, information and in respect of industrial disputes.

As a minimum, a workplace delegate or representative who carries out union or employee association functions in accordance with the rules and/or by-laws of the relevant union and acts on behalf of the members within that workplace delegate's or representative's workplace, will be permitted by a chief executive, agency head or delegate to do so without fear of recrimination or detriment to that person's appointment as an employee in the public sector.

Where an employee claims that they have been discriminated against or treated adversely in connection with that employee's role as a workplace delegate or representative, it is incumbent upon the relevant chief executive, agency head or delegated representative to make immediate inquiries to establish the factual circumstances and manage the matter appropriately.

3. ACCESS TO EMPLOYEES, WORKSITES/WORKPLACES AND EMPLOYEE INFORMATION

Chief executives, agency heads and delegates/workplace representative must comply with the legislative arrangements regarding access to employees, worksites/workplaces and employee information.

There are a number of legislative requirements that prescribe the arrangements which must be complied with. All public sector agencies must adhere to the requirements of the *Work Health and Safety Act 2012* and the *Work Health and Safety Regulations 2012*.

With the exception of the Rail Commissioner and SA Water who must comply with the Commonwealth *Fair Work Act 2009* and the *Fair Work Regulations 2009*, public sector agencies are required to comply with South Australia's *Fair Work Act 1994* and associated Regulations.

Any award, enterprise agreement or other industrial instrument provisions relating to access to employees, worksites/workplaces and employee information must also be complied with.

To assist public sector agencies Table 1 identifies the relevant parts and sections of the South Australian legislation which detail workplace entry, permit holders and obligations under the relevant Acts and Regulations.

Information relating to the Rail Commissioner and SA Water who are covered by the Commonwealth's *Fair Work Act 2009* and the *Fair Work Regulations 2009,* should refer to the Commonwealth Fair Work Ombudsman's website for detailed information on the union's rights of entry (www.fairwork.gov.au).

Note: Details in Table 1 are current as at September 2017

TABLE 1 – RIGHTS OF ENTRY

Work Health and Safety Act 2012	**Fair Work Act 1994**
Part 7—Workplace entry by WHS entry permit holders	Chapter 4 – Associations Part 4—Provisions generally applicable to associations Division 2—Powers of entry and inspection Section 140 Powers of officials of employee associations (Extract provided below)
Work Health and Safety Regulations 2012	
Part 4—Workplace entry by WHS entry permit holders Regulations: 25—Training requirements for WHS entry permits 26—Form of WHS entry permit 27—Notice of entry—general 28—Additional requirements—entry under section 117 29—Additional requirements—entry under section 120 30—Additional requirements—entry under section 121 31—Register of WHS entry permit holders	

Section 140 of the *Fair Work Act 1994* states:

(1) An official of an association of employees may enter any workplace at which 1 or more members of the association work and—

(a) inspect time books and wage records, at the workplace; and

(b) inspect the work carried out at the workplace and note the conditions under which the work is carried out; and

(c) if specific complaints about non-compliance with this Act, an award or an enterprise agreement have been made—interview any person who works at the workplace about the complaints.

(1a) The powers conferred by subsection (1) may be exercised at a time when work is being carried out at the workplace.

(2) Before an official exercises powers under subsection (1), the official must give reasonable notice to the employer.

(2a) For the purposes of subsection (2)—

(a) the notice must be given in writing; and

(b) a period of 24 hours notice will be taken to be reasonable unless some other period is reasonable in the circumstances of the particular case.

(2b) An official exercising a power under subsection (1) must not interrupt the performance of work at the workplace.

(3) A person exercising powers under this section must not—

(a) harass an employer or employee; or

(ab) address offensive language to an employer or an employee; or

(b) hinder or obstruct an employee in carrying out a duty of employment; or

(c) use or threaten to use force in relation to an employer, an employee or any other person.

Maximum penalty: $5 000.

(4) If SAET is of the opinion that a person has abused powers under this section, SAET may withdraw the relevant powers.

4. INDUSTRIAL ACTION AND DISPUTES

All public sector enterprise agreements have procedures for the prevention and settlement of disputes (regardless of the jurisdiction in which they have been approved).

All chief executives, agency heads and delegates/workplace representatives and all employees are required to comply with the requirements and processes set out in those enterprise agreements. The requirement to comply also applies to the union/s who are parties or respondents to the respective Award or Enterprise Agreement.

If a chief executive, agency head, delegate/workplace representative receives notification or is advised of the intention of employees to take industrial action, the chief executive, agency head or delegate is required to assess the nature of the action and where appropriate determine contingency plans. The Office of the Commissioner for Public Sector Employment must be notified immediately of any proposed or actual industrial action and where relevant provided with a copy of the notification received from the union/s along with details of the impact of the industrial action and the agency's contingency plan/s to mitigate that impact.

There are legislative requirements that relate to:

a. not discriminating against/acting adversely towards an employee for taking part in an industrial dispute or taking industrial action; and
b. an employee becoming or remaining a member of a union or employee association.

4.1 ATTENDANCE AT WORK

All employees who want to work or perform their duties during industrial action (sometimes referred to as industrial disputation depending upon the nomenclature in particular legislation or industrial instrument) are permitted to do so.

Employees are to be informed that they are required to attend for duty and perform the duties of their role and that any absence will be regarded as unauthorised. If necessary, they should be directed to perform their full or particular duties and advised that failure to comply with such direction may be misconduct and may result in the agency directing that an employee not be paid remuneration for any day (or part of a day) on which the employee refuses or fails to carry out those duties.

Any unauthorised absence/s will have the same effect on other entitlements as leave without pay. Flexi time cannot be used to cover any unauthorised absence. Where the industrial action involves unauthorised absence from duty, immediate steps should be taken to record the period of absence for each employee involved. Similarly, detailed records of any managerial directions issued and, where relevant, contravention or failure by an employee/s to comply with such direction should be kept.

4.2 USE OF GOVERNMENT FACILITIES AND EQUIPMENT

Government facilities and equipment such as meeting rooms, telephones (incuding mobile telephones), faxes, computers etc. are not to be used for the purpose of promoting industrial disputation.

4.3 REPORTING REQUIREMENTS AND INFORMATION REQUIRED

The Australian Bureau of Statistics (ABS) requests the provision of a monthly statistical report about industrial action in the South Australian public sector and on that basis Agencies are requested to provide the Industrial Relations and Policy Branch, Department of Treasury and Finance, information for use in completing the ABS return.

The Treasurer may also request information provided by public sector agencies in relation to the occurrence of industrial action that results in cessation of work and any consequential decisions by the public sector agency (whether pursuant to section 69 of the PS Act, or otherwise) to not make a payment of remuneration to the relevant employees.

In the case of industrial action, the following information will be requested in writing by the Industrial Relations and Policy Branch, Department of Treasury and Finance:

- Agency/Administrative unit(s) involved, and locations.
- Main activity undertaken at the location/by the group of employees.
- Date, time and duration of the industrial action.
- Nature of industrial action (e.g. unauthorised stop work meetings, strikes, rolling stoppages).
- Reason for the industrial action (explanation of issues involved and demands being made).
- The number of employees involved in the dispute directly (e.g. physical presence at stopwork meeting). Each employee involved in the dispute is to be counted once only. For example, if 10 employees stopped work for 2 days, then 8 of the same people stopped work for a further day, the total number of employees to be reported is 10.
- Usual hours worked per day by the employees involved in the industrial action and their classification level for each employee involved.
- The number of employees who were involved indirectly (e.g. having to pick up additional tasks to cover absences).
- Name(s) of Employee Association(s) [Unions] involved.
- Award and Enterprise Agreement coverage (if appropriate).
- Effection of action (particularly on health, welfare and security).
- Any repercussive action, including operational impacts and contingencies, that the industrial dispute may cause and how the agency/administrative unit proposes to maintain workflow and minimise inconvenience to the public.
- Process responsible for employees resuming work. This refers to the process directly responsible for ending the industrial action, and not necessarily to the process (or processes) responsible for settling all matters in dispute.

The above information should be provided in the attached Industrial Action Report template.

4.3.1 DEDUCTION OF REMUNERATION PURSUANT TO THE *PUBLIC SECTOR ACT 2009*

To assist chief executives, agency heads and delegates, section 69 of the PS Act is set out below. It contains the arrangements that are to apply for not paying an employee (covered by Part 7 of the PS Act).

“**69 – Reduction in remuneration arising from refusal or failure to carry out duties**

> (1) If an employee of a public sector agency is absent from his or her duties without lawful authority, the agency may direct that the employee not be paid remuneration for the period of the absence.
>
> (2) If, in consequence or furtherance of industrial action, an employee of a public sector agency refuses or fails to carry out dities that the employee has been lawfully instructed to perform, the agency may direct that the employee not be paid remuneration for any day (or part of a day) on which the employee refuses or fails to carry out those duties.
>
> (3) A direction under subsection (2) is effective to prevent payment of remuneration to an employee despite the fact that, on any day (or part of a day) to which the direction relates, the employee performs some (but not all) of the duties that the employee has been lawfully instructed to perform.
>
> (4) The power conferred by this section is in addition to the power to take action to deal with the employee’s misconduct under Part 7 Division 3.”

5. REFERENCES

[1] Section 5(5) *Public Sector Act 2009*

[2] Fitszjohn v Southern Cross Protection Pty Ltd [2015] FWC 2601 (15 April 2015)

[3] www.ilo.org, “Ratifications for Australia”

[4] Delegates’ Guide to the Fair Work Act, produced by the ACTU Organising Centre, www.actu.org.au