

The Senate

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Education and Employment  
References Committee

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Siege of attrition: the Government's APS  
Bargaining Policy

November 2016

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# RECOMMENDATIONS

## Recommendation 1

**2.57** The committee recommends that the Minister Assisting the Prime Minister for the Public Service take steps to ensure that the APSC issues all agencies with instructions that: the agency must ensure all APS employees may be represented on workplace matters by a person of their choice, including a union representative; and that agencies consult employees on matters that affect them prior to decisions being made.

## Recommendation 2

**3.40** The committee recommends that the government adjust the annual wage cap contained in the 2015 bargaining policy to a more realistic level, consistent with economy wide outcomes in enterprise bargaining, and facilitate agency access to a portion of the savings accrued through the delays in settlement to allow for improved wage offers that do not come at the expense of cuts to pre-existing rights and conditions.

## Recommendation 3

**4.20** The committee recommends that the government urgently amend the prohibition on back pay or provide another mechanism such as a payment upon agreements commencing to allow agencies to provide some limited and appropriate financial recompense to employees who have had their wages frozen for the past three years.

## Recommendation 4

**6.31** The committee recommends that the Minister Assisting the Prime Minister for the Public Service and relevant portfolio Ministers take immediate steps to ensure that agencies affected by machinery of government changes such as the Department of the Prime Minister and Cabinet, the Department of Immigration and Border Protection, the Federal Courts and the Administrative Appeals Tribunal are encouraged to reach enterprise agreements that align employment pay and employment conditions without loss.

## Recommendation 5

**6.32** The committee recommends that the bargaining policy should be amended to specifically allow for the maintenance of existing negotiated agreement provisions, including in the case of agencies affected by machinery of government changes.

## **Recommendation 6**

**6.36** The committee recommends that the bargaining policy should be amended to allow agencies and employee bargaining representatives to agree on improvements and encourage provisions in enterprise agreements that support victims of domestic violence including access to leave.

## **Recommendation 7**

**6.39** The committee recommends that the Minister Assisting the Prime Minister for the Public Service and the Minister for Immigration and Border Protection take immediate steps to ensure the Department of Immigration and Border Protection fairly address disparities arising from the integration of Customs and Immigration and the creation of the Australian Border Force and ensures officers of the Department can receive current pay and conditions.

## **Recommendation 8**

**6.40** The committee recommends that the Minister Assisting the Prime Minister for the Public Service and the Minister for Immigration and Border Protection take immediate steps sufficient to ensure the Department of Immigration and Border Protection can and will seek to genuinely reach early agreement with employee representatives and put an agreed position to the Fair Work Commission arbitration of a workplace determination.

## **Recommendation 9**

**7.26** The committee recommends that the government amend its bargaining policy to allow for the retention of existing rights and conditions in full, including but not limited to removing the prohibition on enhancements and defining previously agreed agreement provisions as enhancements in circumstances such as machinery of government changes.

## **Recommendation 10**

**7.27** The committee recommends that the government amend its bargaining policy to allow and encourage the retention of access to family friendly conditions, including hours of work protections, to facilitate and support the employment of those with caring responsibilities.

## **Recommendation 11**

**7.28** The committee recommends that the Minister Assisting the Prime Minister for the Public Service and the Minister for Human Services take immediate steps to ensure that the Department of Human Services can and will seek to maintain enterprise agreement provisions that preserve existing family

friendly conditions, provide employee protections for rostering and hours of work, maintain current consultation provisions and provide that ongoing employment remains the preferred type of employment in the Department.

#### **Recommendation 12**

**7.30** The committee recommends that the government amend its bargaining policy so that it no longer requires the removal of existing agreement content in various areas above the legislated National Employment Standards and the minimum provisions required by the *Fair Work Act 2009*.

#### **Recommendation 13**

**7.32** The committee recommends that the government amend its bargaining policy to allow for the retention of existing and long-standing consultation and dispute resolution rights.

#### **Recommendation 14**

**8.25** The committee recommends that the Minister Assisting the Prime Minister for the Public Service take immediate steps to ensure that where decisions with respect to bargaining outcomes rest with the Minister or with the APS Commissioner, the decision maker engages in bargaining and acts in accordance with the good faith bargaining requirements of the *Fair Work Act 2009*.

#### **Recommendation 15**

**10.13** The committee recommends that the Minister Assisting the Prime Minister for the Public Service takes immediate steps to ensure that the APS Commissioner acts to remove the existing impediments and works with employee representatives and agencies to enable a reasonable conclusion to be reached to the current protracted Commonwealth public sector bargaining.

#### **Recommendation 16**

**10.14** The committee recommends that the Minister Assisting the Prime Minister for the Public Service take immediate steps to facilitate a discussion with the CPSU about a possible resolution of this extended dispute, with due consideration for the other recommendations in this report.

### **Recommendation 17**

**10.33 The committee recommends that the APSC and the CPSU consider a range of approaches for future enterprise bargaining and settle on the best and most productive approach for the APS and other Commonwealth agencies well in advance of the nominal expiry of this round of enterprise agreements.**

# Chapter 1

## Inquiry terms of reference

1.1 On 13 October 2016 the Senate referred an inquiry to the Education and Employment References Committee into the impact of the Government's Workplace Bargaining Policy and approach to Commonwealth public sector bargaining.<sup>1</sup>

1.2 The terms of reference for the inquiry were:

- (a) the failure of the Government to conclude workplace bargaining across the Australian Public Service almost three years after the process began – a process that has impacted on more than 150 000 staff nationally and 115 agencies during that time;
- (b) the impact of the protracted dispute on service provision, particularly in regional Australia, and for vulnerable and elderly people;
- (c) the impact on Australia's tourism industry and international reputation as a result of ongoing international port and airport strikes;
- (d) the impact on agency productivity and staff morale of the delay in resolving enterprise agreements across the Australian Public Service;
- (e) the effect of the implementation of the Government's Workplace Bargaining Policy on workplace relations in the Commonwealth public sector;
- (f) the effect of the implementation of the Government's Workplace Bargaining Policy on the working conditions and industrial rights of Commonwealth public sector employees;
- (g) the extent to which the implementation of the Workplace Bargaining Policy impacts on employee access to workplace flexibility, and with particular regard to flexibility for employees with family or caring responsibilities;
- (h) whether the Workplace Bargaining Policy and changes or reductions in employees' working conditions and industrial rights, including access to enforceable domestic and family violence leave, are a factor in the protracted delay in resolving enterprise agreements;
- (i) the effect of an expanded role for the responsible Minister in the Government's Workplace Bargaining Policy; and
- (j) any other related matter.<sup>2</sup>

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1 *Journals of the Senate*, No. 11, 13 October 2016, p. 329.

## Conduct of the inquiry

1.3 The inquiry was publicised on the committee's website.<sup>3</sup> The committee also wrote to key stakeholder groups and organisations to invite submissions.

1.4 The committee received 637 submissions as detailed in Appendix 1.

1.5 The committee held two public hearings:

- 11 November 2016 in Canberra; and
- 15 November 2016 in Townsville.

1.6 The witness lists for these hearings are available in Appendix 2.

## Structure of the report

1.7 During the course of the inquiry, the committee identified a range of matters related to the government's Australian Public Service (APS) bargaining policy. Many of these matters are closely inter-related. For ease of navigation, however, these matters are dealt with separately as follows:

- Chapter 2: Background
- Chapter 3: Annual cap on pay increases
- Chapter 4: The wage freeze
- Chapter 5: Wage increases must be completely offset by productivity gains
- Chapter 6: The no 'enhancements' rule
- Chapter 7: 'Streamlining': shifting conditions to policy documents
- Chapter 8: 'The most divisive and least productive bargaining round in 30 years'
- Chapter 9: Adverse impacts of the bargaining policy on APS staff morale
- Chapter 10: Concluding comments

## Acknowledgement

1.8 The committee thanks those organisations and many individuals who contributed to this inquiry by preparing written submissions and giving evidence at the public hearings. The committee particularly thanks those witnesses who put in

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2 *Journals of the Senate*, No. 11, 13 October 2016, pp. 329–330.

3 Senate Standing References Committee on Education and Employment, *Impact of the Government's Workplace Bargaining Policy and approach to Commonwealth public sector bargaining*, [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/APSBargaining](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/APSBargaining) (accessed 21 October 2016).

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extra time and effort to answer written questions on notice and provide further valuable feedback to the committee as it gathered evidence.

### **Notes on references**

1.9 References to the *Committee Hansard* are to proof transcripts. Page numbers may differ between proof and official transcripts.



# Chapter 2

## Background

### Introduction

2.1 This chapter sets the broader context to the inquiry by providing a brief background to enterprise bargaining in the Australian Public Service (APS). This is followed by a specific focus on the current bargaining round including a timeline of the current bargaining dispute and a summary of the votes on proposed enterprise agreements.

### Enterprise bargaining in the APS

2.2 In the early 1990s, the Keating government promoted enterprise bargaining in the private sector in order to facilitate greater flexibility in the labour market and improve labour productivity and work practices.<sup>1</sup>

2.3 Concurrently, the Keating government introduced decentralised agency-based enterprise bargaining in the APS in order to allow agencies to improve productivity in ways that were difficult under single, centralised bargaining agreements.<sup>2</sup>

2.4 However, commentators such as Mr Paddy Gourley have argued that the Keating government did not intend the devolved system to operate for more than one or two pay rounds.<sup>3</sup> Indeed, the last APS bargaining round under the Keating government was a centralised agreement: *Continuous Improvement in the Australian Public Service Enterprise Agreement: 1995-96: Agreement Between the Commonwealth Government and the Public Sector Unions*.<sup>4</sup>

2.5 Nevertheless, after the 1996 election, the Howard government reverted to agency-based bargaining. Employment conditions were included within the bargaining framework along with an attempt to link any increase in remuneration to productivity gains.<sup>5</sup>

2.6 Subsequent Labor governments maintained essentially the same approach to APS bargaining.<sup>6</sup>

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1 Professor Andrew Podger, private capacity, *Submission 207*, p. 2; Professionals Australia, *Submission 205*, p. 3.

2 Professor Andrew Podger, private capacity, *Submission 207*, p. 2; Professionals Australia, *Submission 205*, p. 3.

3 Mr Paddy Gourley, 'Senate: save us from this mess', Public Sector Informant, *Canberra Times*, 1 November 2016, p. 6.

4 Professionals Australia, *Submission 205*, p. 3.

5 Professionals Australia, *Submission 205*, p. 3.

6 Professionals Australia, *Submission 205*, p. 3.

## Background to the current bargaining dispute

2.7 As this report details, the current bargaining policy differs markedly from the bargaining policies adopted under previous governments.

2.8 Furthermore, the current APS bargaining dispute has taken place against a backdrop of 17 000 job cuts across the APS since the election of the Abbott Coalition government in 2013. As a consequence of these job cuts, the Commonwealth government is expecting its employees to do 'significantly more with less'.<sup>7</sup>

2.9 In March 2014, the Abbott government issued the *Australian Government Public Sector Workplace Bargaining Policy* (the 2014 bargaining policy).

2.10 The 2014 bargaining policy stated that any remuneration increase must be completely offset by productivity gains:

Agencies can only negotiate remuneration increases which are affordable, consistent with Australian Government policy, and offset by genuine productivity gains which satisfy the Australian Public Service Commissioner.<sup>8</sup>

2.11 Productivity was narrowly defined as:

...demonstrable, permanent improvements in the efficiency, effectiveness and/or output of employees, based on reform of work practices or conditions, resulting in measurable savings. Arbitrary reductions in staffing are not considered genuine productivity gains.<sup>9</sup>

2.12 A 1.5 per cent per year pay cap was also applied under the 2014 bargaining policy. In November 2014, the Defence Force Remuneration Tribunal approved the Abbott government's offer of a 1.5 per cent a year pay deal until 2016 for the Defence Force.<sup>10</sup> Following this decision, then Prime Minister Abbott stated:

I would be very surprised if anyone in the Commonwealth public sector receives more than is received by our Defence Forces.<sup>11</sup>

2.13 After a significant backlash against the pay cap and associated conditions cuts, the ADF was ultimately awarded a 2.0 per cent a year pay rise and maintenance of existing conditions.<sup>12</sup>

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7 Community and Public Sector Union (CPSU) (PSU Group), *Submission 196*, p. 2.

8 Australian Public Service Commission, *Australian Government Public Sector Workplace Bargaining Policy*, section 3.1, p. 16.

9 Australian Public Service Commission, *Australian Government Public Sector Workplace Bargaining Policy*, subsection 3.1.3, p. 16.

10 Mr Harley Dennett, 'Deal done: government gets its Defence Force pay offer approved', *The Mandarin*, 3 November 2014, [www.themandarin.com.au/8779-defence-pay-deal-approved/](http://www.themandarin.com.au/8779-defence-pay-deal-approved/) (accessed 10 November 2016).

11 Mr David Donaldson, 'Commonwealth pay unrest: a 'return to command and control'', *The Mandarin*, 5 November 2014, [www.themandarin.com.au/9088-job-cuts-return-command-control/](http://www.themandarin.com.au/9088-job-cuts-return-command-control/) (accessed 10 November 2016).

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2.14 In December 2014, the government announced in the *Mid-Year Economic and Fiscal Outlook 2014–15* a three year 1.5 per cent pay cap for the APS along with a requirement for wage increases to be offset by productivity gains:

Given the position of the budget, the Government has indicated its intention to keep average annual wage rises across the public service to 1.5 per cent or less over the next three years. Wage rises will also have to be offset by productivity gains, to ensure that they are affordable, sustainable and in line with community expectations.<sup>13</sup>

2.15 In November 2015, the Turnbull government introduced the *Workplace Bargaining Policy 2015* (the 2015 bargaining policy) that superseded the 2014 bargaining policy.<sup>14</sup> The 2015 bargaining policy retained most aspects of the 2014 bargaining policy, but lifted the pay cap from 1.5 per cent to 2 per cent per annum. Some of the key elements of the 2015 bargaining policy were that:

- remuneration increases may be negotiated up to an average of 2 per cent per annum;
- existing pay scales are not be modified to provide for new top pay points, removal of existing pay points, or other mechanisms to accelerate salary advancement;
- remuneration increases are to apply prospectively;
- remuneration increases must be offset by productivity improvements. Productivity improvements can be achieved by ensuring that new workplace arrangements do not contain clauses that restrict an agency's ability to operate efficiently and effectively;
- remuneration increases are to be affordable and funded from within existing agency budgets, without the redirection of programme funding;
- APS and Commonwealth employment conditions generally meet or exceed community standards. An enhancement of existing conditions would only be contemplated in exceptional circumstances. Ministerial approval of any enhancement would be required;
- Consultation and workplace relations arrangements in agencies are to be balanced and agencies may make provision for consultative structures including with employee representatives, regarding employment relations matters;

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12 The Hon Tony Abbott MP, Prime Minister, the Hon Kevin Andrews MP, Minister for Defence, *Australian Defence Force Pay*, Joint Media Release, 4 March 2015.

13 The Hon Joe Hockey MP, Treasurer, and Senator the Hon Mathias Cormann, Minister for Finance, *Mid-Year Economic and Fiscal Outlook 2014–15*, December 2014, p. 26.

14 Australian Public Service Commission, *Workplace Bargaining Policy 2015*, [www.apsc.gov.au/priorities/workplace-relations/australian-government-public-sector-workplace-bargaining-policy](http://www.apsc.gov.au/priorities/workplace-relations/australian-government-public-sector-workplace-bargaining-policy) (accessed 1 November 2016).

- enterprise agreements should only contain clauses that are required by legislation to support the effective operation of the agreement and provide entitlements to employees;
- a draft enterprise agreement, or other collective workplace arrangement, is to be provided to the Commissioner for approval prior to tabling a final position to staff; and
- where the Commissioner considers that a proposed workplace arrangement is inconsistent with Government policy or there are unresolved policy issues, the matter will be referred to the Minister Assisting the Prime Minister for the Public Service and the portfolio Minister for consideration.<sup>15</sup>

### **Timeline of the current bargaining dispute**

2.16 This section provides a brief timeline of the APS bargaining dispute and a summary of the results of various votes on proposed enterprise agreements. More detail about the lack of engagement of the government and the APSC can be found in Chapter 8.

2.17 With APS enterprise agreements due to expire on 30 June 2014, the Community and Public Sector Union (CPSU) wrote to the then Minister for Employment, Senator the Hon Eric Abetz, and the APS Commissioner on 18 December 2013 seeking to commence the bargaining process for the new round as early as possible in 2014.<sup>16</sup>

2.18 On 7 February 2014, the CPSU wrote to Minister Abetz raising concerns about a lack of consultation about the bargaining framework and delays in its finalisation. On 24 March 2014, the CPSU again wrote to Minister Abetz about the delay to the start of bargaining and sought immediate discussions about commencing bargaining.<sup>17</sup>

2.19 On 28 March 2014, the Abbott government released its *Public Sector Workplace Bargaining Policy*. Agencies could not commence bargaining until the policy was released.<sup>18</sup>

2.20 By the time that existing APS agreements expired on 30 June 2014, only 5 out of over 100 agencies had issued the Notice of Employee Representational Rights (NERR), the Fair Work Act mechanism to allow negotiations to formally commence.<sup>19</sup>

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15 Australian Public Service Commission, *Workplace Bargaining Policy 2015*, pp. 1–4.

16 CPSU (PSU Group), *Submission 196*, p. 39.

17 CPSU (PSU Group), *Submission 196*, p. 39.

18 CPSU (PSU Group), *Submission 196*, p. 39.

19 CPSU (PSU Group), *Submission 196*, p. 39.

2.21 Four months after the government released its 2014 bargaining policy, the first pay offer was released by the Department of Human Services (DHS).<sup>20</sup>

2.22 In December 2014, the first agreement under the 2014 bargaining policy was put to a vote of staff in the Department of Employment. The proposed agreement was rejected with a resounding 95 per cent no vote.<sup>21</sup>

2.23 In December 2014, the government's *Mid-Year Economic and Fiscal Outlook 2014-15* announced a three year, 1.5 per cent pay cap for the APS along with the requirement that wage increase would be offset by productivity gains.<sup>22</sup>

2.24 By February 2015, almost a year after the 2014 bargaining policy was released, only 8 agencies had tabled pay offers (DHS, the Department of Employment, Australian Financial Security Authority (AFSA), the Department of Veterans' Affairs (DVA), the Department of the Prime Minister and Cabinet (PM&C), the Australian Tax Office (ATO), the National Health Performance Authority (NHPA), and the Department of Infrastructure).<sup>23</sup>

2.25 On 2 November 2015, the Turnbull government issued the revised *Workplace Bargaining Policy 2015*.<sup>24</sup>

#### ***Agreements accepted under the 2014 bargaining policy***

2.26 Seven agencies accepted agreements under the 2014 bargaining policy.<sup>25</sup> These agencies are listed in Appendix 3.

2.27 On 2 November 2015, the Turnbull government issued the revised Workplace Bargaining Policy.<sup>26</sup>

#### ***Agreements accepted under the 2015 bargaining policy***

2.28 As at 27 October 2016, 58 enterprise agreements had been made under the 2015 bargaining policy.<sup>27</sup> The agencies that have accepted new agreements under the 2015 bargaining policy are listed in Appendix 3.

2.29 According to figures from the APS Commissioner, the average 'yes' vote in this bargaining round across enterprise agreements accepted in APS and non-APS agencies is 67 per cent.<sup>28</sup>

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20 CPSU (PSU Group), *Submission 196*, p. 39.

21 CPSU (PSU Group), *Submission 196*, p. 39.

22 The Hon Joe Hockey MP, Treasurer, and Senator the Hon Mathias Cormann, Minister for Finance, *Mid-Year Economic and Fiscal Outlook 2014-15*, December 2014, p. 26.

23 CPSU (PSU Group), *Submission 196*, p. 39.

24 CPSU (PSU Group), *Submission 196*, p. 39.

25 Australian Public Service Commissioner, *Submission 202*; Attachment A, p. 11.

26 CPSU (PSU Group), *Submission 196*, p. 39.

27 Australian Public Service Commissioner, *Submission 202*; Attachment B, pp. 12-13.

28 Australian Public Service Commissioner, answer to question on notice, 11 November 2016.

2.30 However, the CPSU argues that 'even where agreements are being voted up, it is with deep reluctance, a fact borne out by very close employee votes, averaging 55 per cent 'yes', 45 per cent 'no' across these agencies'. The CPSU also notes that since the 2016 federal election, 10 of the agencies that secured a 'yes' vote had less than 100 staff.<sup>29</sup>

2.31 As at 21 November 2016, 25 per cent of APS employees (38 794 employees) were covered by a new enterprise agreement. However, only 9 per cent of APS3 employees and 12 per cent of APS4 employees were covered by a new enterprise agreement. This is compared to 41 per cent of EL2 employees that were covered by a new enterprise agreement.<sup>30</sup>

2.32 Executive Level staff generally have greater capacity to ensure their views are heard and are more likely to be heard. APS level staff are much more likely to be concerned about changes to rights about representation and consultation. Executive Level employees constituted 37 per cent of those covered by agreements that have been voted up.

2.33 This suggests that departments such as DHS and DIBP with large numbers of lower-paid employees at APS3 and APS4 classifications have rejected the cuts to family-friendly conditions, the cuts to overtime and the derisory wage rises on offer.

***Agencies where no agreement has been reached***

2.34 Despite agreements being reached at the agencies listed in Appendix 3, more than two thirds of APS employees (over 100 000 workers) work at agencies where the bargaining dispute is unresolved. The overwhelming majority of these workers (88 000) are employed by four large agencies: the Department of Human Services, the Department of Immigration and Border Protection, the Department of Defence and the Australian Tax Office. These employees have now been without an enterprise agreement for more than 1000 days since their previous agreements expired.<sup>31</sup>

2.35 According to the CPSU, over 100 000 employees will have voted 'no' to proposed agreements in 2016 alone.<sup>32</sup>

2.36 Below is a summary of proposed agreements that have been rejected up to four times at the following departments.

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29 CPSU (PSU Group), *Submission 196*, p. 3.

30 Australian Public Service Commissioner, 'Number of APS public servants by classification and those covered by new enterprise agreements, by classification', answer to question on notice, 11 November 2016.

31 CPSU (PSU Group), *Submission 196*, pp. 2 and 12.

32 Ms Nadine Flood, National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 49.

**Table 2.1—Rejected proposed APS agreements****Department of Immigration and Border Protection<sup>33</sup>**

	<b>Date</b>	<b>Result (per cent 'no')</b>
<b>First vote</b>	September 2015	91
<b>Second vote</b>	March 2016	81
<b>Third vote</b>	November 2016	82

**Australian Tax Office<sup>34</sup>**

	<b>Date</b>	<b>Result (per cent 'no')</b>
<b>First vote</b>	December 2015	85
<b>Second vote</b>	May 2016	72

**Department of Human Services<sup>35</sup>**

	<b>Date</b>	<b>Result (per cent 'no')</b>
<b>First vote</b>	September 2015	83
<b>Second vote</b>	February 2016	80
<b>Third vote</b>	November 2016	74

**Department of Defence<sup>36</sup>**

	<b>Date</b>	<b>Result (per cent 'no')</b>
<b>First vote</b>	March 2016	60
<b>Second vote</b>	May 2016	55

33 See CPSU Department of Immigration and Border Protection members, *Submission 198*, p. 8; Mr Noel Towell, 'Department of Immigration and Border Protection rejects government's public service industrial policy', *Canberra Times*, 7 November 2016, [www.canberratimes.com.au/national/public-service/department-of-immigration-and-border-protection-rejects-governments-public-service-industrial-policy-20161107-gsjh1v.html](http://www.canberratimes.com.au/national/public-service/department-of-immigration-and-border-protection-rejects-governments-public-service-industrial-policy-20161107-gsjh1v.html) (accessed 22 November 2016).

34 Ms Jacqui Curtis, Chief Operating Officer, Australian Tax Office, Correction to *Committee Hansard*, 11 November 2016.

35 See CPSU Department of Human Services Bargaining Team, *Submission 200*, pp. 2–3; Noel Towell, 'Not even close: Department of Human Services workplace offer smashed', *Canberra Times*, 14 November 2016, [www.canberratimes.com.au/national/public-service/not-even-close-department-of-human-services-workplace-offer-smashed-20161114-gsomew.html](http://www.canberratimes.com.au/national/public-service/not-even-close-department-of-human-services-workplace-offer-smashed-20161114-gsomew.html) (accessed 22 November 2016).

36 CPSU Defence Bargaining Team, *Submission 299*, p. 1.

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**Department of Agriculture and Water Resources<sup>37</sup>**

	<b>Date</b>	<b>Result (per cent 'no')</b>
<b>First vote</b>	October 2015	67
<b>Second vote</b>	December 2015	52
<b>Third vote</b>	March 2016	51
<b>Fourth vote</b>	November 2016	54

2.37 The size of the 'no' votes at the Department of Immigration and Border Protection (ranging from 81–91 per cent) is indicative of the enormous discontent in that department.

2.38 Indeed, it is clear that if 91 per cent of staff rejected a proposed enterprise agreement, then not even the Executive Level managers who are required to advocate the agreement to other employees could themselves have voted for it.

2.39 Following the third 'no' vote at the Department of Human Services, it was reported that staff had been advised by the head of Human Resources that there would be 'no change in approach' by the department's management bargaining team.<sup>38</sup>

2.40 Employees at the Administrative Appeals Tribunal and the National Museum of Australia also recently voted in November 2016 to reject proposed agreements with both ballots returning a 'no' vote of 55 per cent.<sup>39</sup>

2.41 As at 21 November 2016, there had been a total of 73 votes by public sector workers to reject proposed enterprise agreements developed under the 2014 and 2015 bargaining policies.<sup>40</sup>

2.42 After a third 'no' vote at the Department of Immigration and Border Protection, that dispute went to the Fair Work Commission for compulsory arbitration.<sup>41</sup>

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37 See CPSU, 'Third strike for Agriculture as 51% no vote sinks deal', [www.cpsu.org.au/content/third-strike-agriculture-51-no-vote-sinks-deal](http://www.cpsu.org.au/content/third-strike-agriculture-51-no-vote-sinks-deal) (accessed 22 November 2016); CPSU, 'Agriculture staff vote 54% no to reject fourth dud deal', [www.cpsu.org.au/content/agriculture-staff-vote-54-no-reject-fourth-dud-deal](http://www.cpsu.org.au/content/agriculture-staff-vote-54-no-reject-fourth-dud-deal) (accessed 22 November 2016); Noel Towell, 'Agriculture Department public servants make history with a fourth no-vote to EBA', *Canberra Times*, 21 November 2016, [www.smh.com.au/national/public-service/agriculture-department-public-servants-make-history-with-a-fourth-novote-to-eba-20161120-gstq32.html](http://www.smh.com.au/national/public-service/agriculture-department-public-servants-make-history-with-a-fourth-novote-to-eba-20161120-gstq32.html) (accessed 22 November 2016).

38 Mr Noel Towell, 'Not even close: Department of Human Services workplace offer smashed', *Canberra Times*, 14 November 2016.

39 Mr Noel Towell, 'Agriculture Department public servants make history with a fourth no-vote to EBA', *Canberra Times*, 21 November 2016.

40 Mr Noel Towell, 'Agriculture Department public servants make history with a fourth no-vote to EBA', *Canberra Times*, 21 November 2016.

41 Mr Noel Towell, 'Department of Immigration and Border Protection rejects government's public service industrial policy', *Canberra Times*, 7 November 2016.

2.43 However, even at the Fair Work Commission, the Department of Immigration and Border Protection failed to engage in good faith:

In that particular case, the Commonwealth's current approach is to frustrate and obstruct to the point where Commissioner Nick Wilson in Fair Work last week considered that the Department of Immigration and Border Protection had not complied with his directions and therefore cancelled conciliation, considering that there was no point in attempting to further conciliate this matter. I think part of it is that the element of the bargaining policy is actually making it quite difficult for agencies to deal with this, even in Fair Work.<sup>42</sup>

2.44 The CPSU subsequently asked that a full bench of the Fair Work Commission be constituted to hear the matter.<sup>43</sup>

2.45 Ms Flood indicated that employees at other agencies 'would love to get access to arbitration' but it is not an avenue currently available to them.<sup>44</sup>

### ***Protected industrial action***

2.46 As at 27 October 2016, 27 agencies had experienced protected industrial action during the bargaining round<sup>45</sup> (see Appendix 4).

2.47 The following example of protected industrial action taken by employees of the Department of Immigration and Border Protection illustrates the restraint with which employees have approached the bargaining process.

2.48 As the submission from CPSU members of the Department of Immigration and Border Protection makes clear, employees did not apply to take protected industrial action until April 2015, more than nine months after their previous enterprise agreements had reached their nominal expiry dates.<sup>46</sup>

2.49 The approval for taking various forms of protected industrial action was approved by an average of 95 per cent of CPSU members.<sup>47</sup>

2.50 The CPSU DIBP bargaining team noted that the approach to taking protected industrial action by members has been an absolute last resort and has at all times been conducted in a safe and reasonable manner:

CPSU members working in DIBP are expert and professional, and feel a deep sense of responsibility in their roles. ABF members who work on the front line are acutely aware of the requirements of their roles and have approached the taking of PIA in a considered and safe manner. Having applied to take PIA in April 2015, and become able to do so in June 2015,

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42 Ms Nadine Flood, National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 54.

43 Ms Nadine Flood, National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 54.

44 Ms Nadine Flood, National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 54.

45 Australian Public Service Commissioner, *Submission 202*; Attachment C, p. 14.

46 CPSU Department of Immigration and Border Protection members, *Submission 198*, p. 9.

47 CPSU Department of Immigration and Border Protection members, *Submission 198*, p. 10.

CPSU members did not commence taking serious and sustained PIA until September 2015. From these dates alone it can be seen that CPSU members did not frivolously or unreasonably take PIA. This sustained September 2015 action was taken following the worst Enterprise Agreement offer in the Department's history being made to staff.<sup>48</sup>

### **Committee view**

2.51 The evidence from this bargaining round shows quite clearly that the current bargaining policy and the hard-line approach adopted by the APS Commissioner and the government through the Minister Assisting the Prime Minister for the Public Service differ markedly from the bargaining policies adopted under previous governments.

2.52 The results of numerous votes on enterprise agreements speak for themselves. For workers in the Department of Human Services, many on very modest wages, to vote 'no' to an agreement three times in just over a year confirms that the government's bargaining framework is an absolute shambles.

2.53 The size of the 'no' vote at the Department of Immigration and Border Protection indicates the enormous discontent in that department. Indeed, it is clear to the committee that if 91 per cent of staff rejected a proposed enterprise agreement, then not even the Executive Level managers who are required to advocate the agreement to other employees could themselves have voted for it. No clearer illustration is needed of the toxic nature of the government's approach to enterprise bargaining.

2.54 Given there have now been a total of 73 'no' votes by public sector workers rejecting proposed enterprise agreements developed under the government's bargaining policies, it is incumbent on the government to admit failure and work speedily to resolve this festering sore.

2.55 The committee urges the government to sit down in good faith with the CPSU and make genuine attempts to heal the wounds of division that its bargaining policy has caused.

2.56 Finally, noting that under the bargaining policy agencies may make employment relations consultative structures which involve employee representatives, the committee recommends that agencies must clarify for all their employees their rights with respect to representation and consultation.

### **Recommendation 1**

**2.57 The committee recommends that the Minister Assisting the Prime Minister for the Public Service take steps to ensure that the APSC issues all agencies with instructions that: the agency must ensure all APS employees may be represented on workplace matters by a person of their choice, including a union representative; and that agencies consult employees on matters that affect them prior to decisions being made.**

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48 CPSU Department of Immigration and Border Protection members, *Submission 198*, p. 10.

# Chapter 3

## Annual cap on pay increases

### Introduction

3.1 This chapter assesses the annual pay cap of 1.5 per cent (subsequently 2 per cent) imposed by the Coalition government's bargaining policy against both actual public sector remuneration and the key economic indicators over the bargaining period.

3.2 Before making these assessments, the committee recognises that the Australian Public Service (APS) bargaining process has been conducted against a backdrop of misleading claims that Commonwealth public servants are somehow paid exorbitant wages and enjoy extravagant conditions. These assertions have been propagated by interest groups with an extreme ideological agenda such as the Institute of Public Affairs (IPA). Moreover these narrow and erroneous views have been endorsed and supported by the Coalition government.

3.3 For example, Mr Aaron Lane who is a Legal Fellow at the IPA argued that 'all APS agreements contain generous allowances which have the effect of increasing the overall salary by up to tens of thousands of dollars each year.'<sup>1</sup> Mr Lane persisted with this contention despite acknowledging that the benchmark comparison for the IPA's research was the basic minimum thresholds contained in the National Employment Standards.<sup>2</sup>

3.4 In a similar fashion, on 15 October 2015, the Minister for Employment, Senator the Hon Michaelia Cash accused public servants of failing to live in the 'real world':

...in the real world where Australians live, in the real world where people open businesses and risk their own money, you do not actually get a pay rise if you do not give a productivity gain. In voter land, when you are out having a coffee at a cafe, when you are having a beer at a pub, when you are having a sandwich at the local sandwich shop, the idea that you would get a pay rise and not have to offset that pay rise with a productivity gain, quite frankly, is unacceptable.<sup>3</sup>

3.5 As a counterpoint to the negative and false depictions of public servants and their employment conditions, Mr Andrew Greenan, who is a member of the Administrative Appeals Tribunal Bargaining Team, provided some real-life context by describing his family's lifestyle on public service wages:

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1 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 12.

2 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 13.

3 Senator the Hon Michaelia Cash, Minister for Employment, Parliamentary Debates, *Senate Official Hansard*, 15 October 2015, p. 7809.

I am a public servant and I do not have an extravagant life. It is very modest. I do not drink and I do not smoke. We have one car for a family of six. We live in a modest three-bedroom home. Because of years of delays on pay rises and an increasingly bleak outlook for the future I am increasingly relying on seasonal part-time work to keep my family going, on top of the wage I get as a public servant. I do not think I am the only one in that boat.<sup>4</sup>

### **APS and private sector remuneration**

3.6 This section compares private and public sector remuneration in order to determine whether the wages of APS employees are in fact above or below those in the private sector and whether the majority of APS employees earn above or below the average Australian wage.

3.7 Drawing on data from the Australian Bureau of Statistics (ABS), the Community and Public Sector Union (CPSU) calculated that the majority of APS employees earn less than the average income. The CPSU pointed out that as at May 2016, the majority of APS employees (53 per cent) were classified as APS5 or below and that the median base salary for an APS5 employee was \$74 451 per annum which was below the adult average ordinary full time earnings of \$78 832 per annum.<sup>5</sup>

3.8 In 2011, the APSC commissioned Mercer Consulting to conduct a comparison of private and public sector remuneration. The CPSU noted that Mercer found that, apart from APS1 and APS2 (which made up less than 6 per cent of the APS workforce as at 30 June 2016), median base salaries in the private sector were above the corresponding APS median salary for the equivalent classification. Furthermore, total remuneration packages in the private sector were even higher than corresponding APS total remuneration packages.<sup>6</sup>

3.9 Table 3.1 below illustrates the differences between private and APS salaries at equivalent classifications.

3.10 However, the figures in Table 3.1, although quite stark, only show half the picture. For example, employees at an APS5 classification or lower 'are most likely to be public servants in frontline roles in the Department of Human Services or Australian Border Force'.<sup>7</sup>

3.11 The wage profile of lower paid public servants is examined later in this chapter with reference to employees in the Department of Human Services.

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4 Mr Andrew Greenan, CPSU, Administrative Appeals Tribunal Bargaining Team, *Committee Hansard*, 11 November 2016, pp. 32–34.

5 CPSU (PSU Group), *Submission 196*, p. 14.

6 CPSU (PSU Group), *Submission 196*, p. 16.

7 CPSU (PSU Group), *Submission 196*, p. 14.

**Table 3.1—Total remuneration package analysis—APS1 to EL2—31 December 2010**

Equivalent Classification	APS Median	Private Sector Median	Difference	Difference %
APS1	\$47 546	\$34 738	\$12 808	37%
APS2	\$56 933	\$51 816	\$5117	10%
APS3	\$63 238	\$64 854	-\$1616	-2%
APS4	\$70 347	\$77 892	-\$7545	-10%
APS5	\$77 483	\$92 083	-\$14 600	-16%
APS6	\$89 882	\$112 945	-\$23 063	-20%
EL1	\$112 788	\$137 116	-\$24 328	-18%
EL2	\$140 397	\$168 608	-\$28 211	-17%

Source: Mercer Consulting, 2010 Broader Market Comparison—APS SES and Non-SES Remuneration, August 2011, in CPSU (PSU Group), *Submission 196*, p. 16.

### ***Superannuation***

3.12 The committee heard views expressed that the superannuation received by public servants was particularly generous. However, several witnesses made the point that remuneration should be considered as a total package rather than as isolated elements.

3.13 For example, Mr Esmond Smith argued that terms of employment are a package:

You cannot conclude that any one condition should be reduced because it appears generous (relative to what other employees get in the Australian economy) in isolation to all other terms and conditions of employment.<sup>8</sup>

3.14 With respect to superannuation, Professor Andrew Podger made the following points about the provisions for superannuation in the APS:

- first, they originated as a means of retaining staff in the context of the then view of the APS as a career for life;
- second, the value and costs have been included in total remuneration figures and agency running costs since the mid-1980s;
- third, reforms to public sector superannuation since that time has steadily shifted the system away from unfunded benefits-promise schemes rewarding

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8 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, answer to question on notice, 11 November 2016 (received 20 November 2016).

most those (generally male) longer-term and senior employees at high cost towards fully-funded defined contributions schemes more attuned to the modern APS workforce at more modest cost; and

- finally, while the employer contribution of 15.4 per cent is above the private sector minimum of 9.5 per cent, that minimum is legislated to increase to 12 per cent, and most workers on median earnings and above will need to contribute of the order of 15 per cent in total to achieve reasonable income replacement rates in retirement, even if retiring at age 67, that is the public sector figure is nearer the optimum that the private sector might consider moving towards for the sorts of employees that are in the APS today.<sup>9</sup>

### **Economic outlook over the bargaining period**

3.15 This section looks at some of the key economic indicators including the cost of living index, inflation rate, and average annual wage rises over the bargaining period in order to ascertain the financial impact of the bargaining dispute on APS employees and to determine what a reasonable wage rise would be for this period.

3.16 The committee received evidence from the CPSU (see Table 3.2 below) indicating the 2 per cent per annum cap imposed by the 2015 bargaining policy (previously 1.5 per cent per annum under the 2014 bargaining policy) is below the wage rises received in both the private and Australia-wide public sectors over the last three years.<sup>10</sup> This evidence is based on official figures from the ABS and the Department of Employment.

**Table 3.2—Key economic indicators**

Measure	June 2014 (%)	June 2015 (%)	June 2016 (%)
Consumer Price Index	3.0	1.5	1.0
Employee Living Cost Index	2.3	0.9	1.0
Wage Price Index (All)	2.6	2.3	2.1
Wage Price Index (Private)	2.5	2.2	1.9
Public Sector AAWI (Approved)	3.5	3.8	3.0
Private Sector AAWI (Approved)	3.3	3.1	3.1

Key: AAWI = Average Annualised Wage Increase

Source: ABS 6467.0 — Selected Living Cost Indexes, Australia, June 2016, 6345.0 — Wage Price Index, Australia, June 2016, 6401.0 — Consumer Price Index, Australia, June 2016, Trends in Federal Enterprise Bargaining (June quarter 2016), in CPSU (PSU Group), *Submission 196*, p. 14.

9 Professor Andrew Podger, *Submission 207*, p. 4.

10 CPSU (PSU Group), *Submission 196*, p. 14.

3.17 Furthermore, given that the bargaining policy prohibits back pay, APS employees who have been unable to secure an agreement with their employer have endured three years without a pay rise. In effect, this means that those employees' wages have not kept pace with inflation and those employees have fallen even further behind. Even a 6 per cent pay increase over three years is effectively about a 1.2 per cent per annum increase as a result of the two and a half earlier years of failed negotiations without a pay rise.

3.18 Beyond the last three years, Treasury figures from May 2016 (see Table 3.3 below) indicate that inflation is expected to rise to 2 per cent in the 2016-17 fiscal year and increase further to 2.25 per cent in 2017-18 and 2018-19 and 2.5 per cent in 2019-20.

**Table 3.3—Major economic parameters**

	Outcomes	Forecasts			Projections	
	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Real GDP	2.2	2.5	2.5	3.0	3.0	3.0
Unemployment rate	6.1	5.75	5.5	5.5	5.5	5.5
Consumer price index	1.5	1.25	2.0	2.25	2.25	2.5

Source: Extract from The Treasury, *Pre-Election Economic and Fiscal Outlook 2016—Economic Outlook*, [www.treasury.gov.au/PublicationsAndMedia/Publications/2016/PEFO-2016/HTML/Economic-outlook](http://www.treasury.gov.au/PublicationsAndMedia/Publications/2016/PEFO-2016/HTML/Economic-outlook) (accessed 15 November 2016).

3.19 The inflation figures given in Table 3.3 indicate that if an enterprise agreement were to be concluded at the present juncture, even a 2 per cent per annum pay rise would now have the effect of leaving APS employees worse off in real terms over the course of a three year enterprise agreement. This would be compounded by the previous two and half to three years where APS employees have had an effective pay freeze due to the intransigent approach taken by various agencies, the APS Commissioner, and the government to the APS bargaining framework.

### **Wage profile of staff in the Department of Human Services**

3.20 This case study of DHS looks at the staff profile of an agency where a large number of employees delivering important frontline services are women on low wages, many of whom also have caring responsibilities. It then considers the impact of the government's bargaining policy on DHS employees.

3.21 DHS is the largest Commonwealth government agency and employs 36 594 staff. DHS maintains over 400 offices throughout Australia delivering services to Australia's most vulnerable citizens.<sup>11</sup>

11 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 2.

3.22 Over the last five years, the level of permanent employment at DHS has gone down and non-ongoing employment has gone up from 4.2 per cent of the total workforce in 2011 to 13.6 per cent. At present, 63 per cent of the non-ongoing staff are employed on a casual basis.<sup>12</sup>

3.23 The CPSU DHS bargaining team pointed out that women make up 73 per cent of the total workforce of DHS. The majority of staff (64 per cent) are employed at the APS3 and APS4 classification and have a salary range of \$56 069 to \$69 239. Thirty four per cent of DHS staff are employed part-time, and of these staff, 78 per cent are employed at the APS3 and APS4 classification.<sup>13</sup>

3.24 Ms Elida Faith, CPSU Department of Human Services Section President told the committee:

These are the people that you talk to on the phone and who serve you at the counters. Seventy per cent, which is a significant majority, earn less than the average Australian wage, and one-third of the total workforce is part time. Insecure employment has increased in the last five years, from approximately four per cent to well over 13 per cent. These numbers scare staff. We are questioning why this government does not seem to care about us or the work that we do for the community. We feel that the department now only cares about meeting time frames and not outcomes for our customers.<sup>14</sup>

3.25 The department's employment profile results in a substantial majority of DHS staff (70 per cent) earning less than the average Australian wage of \$78 832 per year.<sup>15</sup>

### **Pay disparities across the APS**

3.26 The committee heard evidence from Professor Podger, a former APS Commissioner, that the agency-based approach to enterprise bargaining in the APS had led to substantial pay disparities across the APS amongst employees at the same classification. Table 3.4 below shows the difference between salaries at the 5<sup>th</sup> and 95<sup>th</sup> percentile. Professor Podger argued that the application of agency-based bargaining had led to a series of problems including the serious wage discrepancies shown above:

This has caused very serious damage to the integrity of the whole pay system in the Public Service with tangible impact on mobility within the service, serious management problems for agencies affected by machinery of government changes, justified complaints of unfairness across and within

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12 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 2.

13 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 2.

14 Ms Elida Faith, CPSU Department of Human Services Section President, *Committee Hansard*, 15 November 2016, p. 1.

15 CPSU (PSU Group), *Submission 196*, p. 14.

agencies, and unknown impacts on attraction and retention of the skills the APS requires.<sup>16</sup>

**Table 3.4—Salary disparities across the APS**

Classification	Salary at P5 (\$)	Median Salary (\$)	Salary at P95 (\$)	P5-P95 range % of median
Graduate	53 652	60 158	69 456	26.3
APS1	39 144	47 736	49 697	22.1
APS2	48 525	54 588	56 435	14.5
APS3	55 511	61 512	62 560	11.5
APS4	62 493	69 239	70 144	11.1
APS5	69 395	74 451	76 624	9.7
APS6	78 842	86 923	90 890	13.9
EL1	101 278	108 382	115 778	13.4
EL2	122 032	133 905	151 097	21.7
SES1	159 125	181 006	215 662	31.2
SES2	208 711	232 644	277 897	29.7
SES3	275 000	312 000	380 692	33.9

Source: Professor Andrew Podger, Tabled Document 1, Canberra, 11 November 2016.

3.27 Alongside the inequity and adverse impacts on mobility across the APS, Professor Podger also emphasised that an agency-based bargaining mechanism failed to address crucial aspects of APS recruitment and retention, namely:

...whether the APS is attracting and retaining the skills it needs to deliver the services the government, the parliament and the public rightly expect, and whether the resulting pay and conditions promote high performance by individuals and organisations.<sup>17</sup>

3.28 In light of the above, Professor Podger recommended an APS-wide approach to determining pay that could still include a firm cap on APS-wide pay increases. Professor Podger suggested the APS-wide bargaining policy could include:

...undertaking market surveys of pay and conditions for comparable work, reviewing data on APS experience regarding attraction and retention and

16 Professor Andrew Podger, private capacity, *Committee Hansard*, 11 November 2016, p. 1.

17 Professor Andrew Podger, private capacity, *Committee Hansard*, 11 November 2016, p. 1.

explaining in more detail changing demand for particular skill sets and whether the APS-wide classification structure needs modification or complementary arrangements such as allowances for particular high-demand skills required.<sup>18</sup>

3.29 According to Professor Podger, a key advantage of an APS-wide approach to remuneration would be the substantial gains in efficiency and productivity that would arise from relieving individual agency executives of the need to devote resources to finding spurious efficiency gains to meet the 'productivity' test embedded in the current decentralised approach to bargaining policy.<sup>19</sup>

### **Committee view**

3.30 It is clear from the ABS data presented earlier in this chapter that the majority of APS employees earn less than the average income. Furthermore, the evidence commissioned by the APS Commission from Mercer Consulting found that, apart from APS1 and APS2 (which made up less than 6 per cent of the APS workforce as at 30 June 2016), median base salaries in the private sector were above the corresponding APS median salary for the equivalent classification, and private sector and total remuneration packages were even higher than corresponding APS total remuneration packages.

3.31 Furthermore, a strict focus on total salary ignores the fact that, for example, at the largest Commonwealth agency—DHS—women make up almost three quarters of that department's total workforce. Almost two thirds of Human Services staff have a salary range of \$56 069 to \$69 239, and one third are employed part-time. In short, 70 per cent of Human Services staff earn less than the average Australian wage.

3.32 This evidence flatly contradicts the ludicrous assertions emanating from interest groups such as the IPA that public servants somehow enjoy overly generous wages and conditions when compared to the private sector.

3.33 In addition, official figures from the ABS indicate that the 2 per cent per annum cap imposed by the 2015 bargaining policy (previously 1.5 per cent per annum under the 2014 bargaining policy) is below the wage rises received in both the private and the broader public sectors over the last three years.

3.34 Looking to the future, Treasury figures from May 2016 indicate that inflation is expected to rise to 2 per cent in the 2016-17 fiscal year and increase further to 2.25 per cent in 2017-18 and 2.5 per cent in 2019-20. Therefore, enterprise agreements concluded with even a 2 per cent per annum pay rise would now leave APS employees worse off in real terms over the course of a three year enterprise agreement. This would be compounded by the pay freeze that has occurred over the past two and half to three years.

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18 Professor Andrew Podger, private capacity, *Committee Hansard*, 11 November 2016, p. 2.

19 Professor Andrew Podger, private capacity, *Committee Hansard*, 11 November 2016, p. 4.

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3.35 The evidence from both the ABS and the Treasury reveals the remarks by the Minister for Employment that public servants somehow do not live in the 'real world' to be utterly baseless and gratuitous.

3.36 Furthermore, as numerous submitters and witnesses have pointed out, the dismissive attitude of the Minister for Employment towards public servants takes no account of the fact that the Coalition government has cut 17 000 public service jobs. In an unstinting effort to maintain service delivery, public servants are now working harder and longer due to these massive job cuts. In the real world, this surely would count as a quite remarkable productivity gain.

3.37 Yet, at the same time as these job cuts were occurring, the bargaining policy imposed a pay freeze, the offer of a pay rise below the rate of inflation, and cuts to conditions including the removal and reduction of existing previously negotiated rights.

3.38 The committee notes that the CPSU and many employee bargaining representatives have shown courage and leadership during this dispute. The CPSU has surveyed its members on a pay outcome and, as a result, publicly and explicitly reduced its wage claims during the bargaining process to a level that was below what other enterprise agreements in the public and private sectors had been delivering.

3.39 It seems to the committee that the CPSU has been entirely reasonable during the course of this bargaining round and that the failure to secure an agreement for the majority of public servants can be laid squarely at the door of an intransigent government.

## **Recommendation 2**

**3.40 The committee recommends that the government adjust the annual wage cap contained in the 2015 bargaining policy to a more realistic level, consistent with economy wide outcomes in enterprise bargaining, and facilitate agency access to a portion of the savings accrued through the delays in settlement to allow for improved wage offers that do not come at the expense of cuts to pre-existing rights and conditions.**



# Chapter 4

## The wage freeze

4.1 This chapter considers the impacts of the wage freeze that has been imposed on Commonwealth public servants over the last two and half to three years.

4.2 The 2015 bargaining policy states that remuneration increases are to apply prospectively. In other words, the bargaining policy prohibits 'back-pay' for employees working in an agency where the previous enterprise agreement has expired and a new agreement has not been approved.

4.3 In practice, this means that for every year that employees at an agency are unable to secure an enterprise agreement, their salary does not keep pace with increases in the inflation rate, effectively decreasing in real terms.<sup>1</sup>

4.4 The prohibition on back-pay has had a disastrous impact on many lower and middle-ranking public servants who are now struggling to meet their financial commitments.

4.5 However, the prohibition on back-pay has had an insidious impact on the bargaining process because it removes the incentive for agency heads to bargain in good faith to secure an agreement. This point was highlighted by staff bargaining representatives from the Commonwealth Scientific and Industrial Research Organisation (CSIRO) who submitted:

These guidelines have removed the ability our agency had to actually negotiate. They can claim that they have little control over their position and that this is the best that they can do under the bargaining guidelines, and that offer has been strongly rejected by staff. The government has no need to negotiate as they can claim it is the responsibility of the agencies to sort out their agreements. So we are stuck after three years of non-negotiation. As you know, we do not get back pay so, as this drags on, all the costs fall back onto staff and we go backwards. We have had the over cuts to research and now it seems we are having these bargaining guidelines working as a covert savings measure.<sup>2</sup>

4.6 The committee received a raft of evidence that the interminable delays and failure of agency heads to come to an agreement with their employees was a deliberate strategy because any delay in coming to an agreement saved the agency money because staff miss out on a pay rise.

4.7 The view was also put to the committee on several occasions that the intransigent approach adopted by the government and the APS Commissioner in the bargaining policy amounted to deliberate industrial blackmail that was being used to force public servants into submission. For example Mr Esmond Smith, an employee

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1 Community and Public Sector Union (PSU Group), *Submission 196*, p. 14.

2 Mr Mike Collins, Delegate, CSIRO Staff Association, *Committee Hansard*, 15 November 2016, p. 21.

bargaining representative for Australian Competition and Consumer Commission (ACCC) staff stated that, in his view:

...the government has deliberately delayed making enterprise agreement offers in order to reduce real wages. For example, in the ACCC, the first wage offer, or offer, was put to the vote in March 2016, when the enterprise agreement's nominal expiry date was 30 June 2014.<sup>3</sup>

4.8 Mr Erik Rasmussen, a CPSU delegate from the Australian Tax Office (ATO) bargaining team stated that as an APS3 superannuation auditor in the ATO, he earned \$62 500 per year. He noted that the ATO had cut 4400 jobs over the last few years and that many of the most experienced staff had left at a time of huge reorganisation and an increasingly complex workload. Mr Rasmussen pointed out that the bargaining policy 'requires a reduction in rights and conditions in exchange for almost nothing':

You will be glad to know that tax officers can do their sums, and we see the bargaining policy as blackmail. There is no prospect of back pay so we know that the longer we say no to a cut to our conditions and a low pay offer the smaller the effective pay outcome. Really, it is a pay cut.<sup>4</sup>

4.9 Submitters like the ACCC CPSU bargaining team pointed out that the wage freeze, which has resulted from the combined effect of the stalled negotiations and the prohibition on back pay, has effectively halved the pay offer being put to staff. It has meant that a 3 year pay agreement of 2 per cent per annum, equates to an overall 6 per cent increase over 6 years, or an effective rate of 1 per cent per annum, once the impact of 3 years without a pay rise is taken into account:

Of major concern to staff is lack of any remuneration since July 2013. The Workplace Bargaining Policy only allows for pay increases of 2 per cent per year and does not allow for reimbursement for delays through back pay or sign on bonuses. This means a pay increase of 2 per cent is actually more like around 1 per cent per year. This does not even get close to covering cost of living increases. Many APS staff rely on these increases to balance household budgets and therefore are struggling financially.<sup>5</sup>

4.10 A number of employees from the Department of Immigration and Border Protection (DIBP), the ATO and the Department of Human Services (DHS) highlighted how the pay freeze was impacting their financial situations. For example, Mr David Plorer who is a Border Force Officer within DIBP told the committee:

Currently most Australian Border Force Officers are being offered a pay rise of 4.7% over 3 years but considering we haven't had any pay rise in 3

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3 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 18.

4 Mr Erik Rasmussen, CPSU, Australian Tax Office Bargaining Team, *Committee Hansard*, 11 November 2016, p. 33.

5 Australian Competition and Consumer Commission CPSU bargaining team, *Submission 247*, p. 2.

years this is really 4.7% over 6 years. That is less than 0.8% for 6 years — much less than the CPI.<sup>6</sup>

4.11 Several submitters and witnesses drew attention to the fact that, despite the government's failure to resolve the bargaining disputes, the government had shown no appetite for resolving matters other than by committing to an ongoing siege of attrition against its own employees. Mr Ian Reid, a CPSU Defence representative, told the committee:

I want to talk about is how our staff that I work with in my workplace feel. Our staff feel undervalued. We work really hard to provide a very professional result, but we believe we are not being consulted. We believe that we are being lied to. There was a brief at the Lavarack Barracks conducted by an SES member in relation to the bargaining after the first no vote. At that bargaining brief, I asked the SES member, 'If we vote no again, what will happen?' and they simply said, 'We will go back and vote it again.' So I asked them about consultancy, and they said, 'No, we're not doing that; we're just going back to the vote again.' So the 'attrition by siege' mentality seems to be where my superiors are coming from.<sup>7</sup>

4.12 Indeed, for many APS employees, it felt like the government was punishing them for not simply accepting pay cuts and a loss of conditions.<sup>8</sup>

### **Committee view**

4.13 There is no doubt that the prohibition on back pay during this bargaining round is an outright case of industrial blackmail designed to starve Commonwealth public servants into accepting a range of cuts to real wages and previously agreed family-friendly rights and conditions.

4.14 The prohibition on back pay effectively creates a perverse incentive for departments and agencies to prolong negotiations, because the longer pay disputes drag on, the greater the salary savings for departments which do not provide reasonable pay increases.

4.15 As a consequence, it is clear to the committee that the mass of submitters and witnesses to this inquiry are entirely correct in their view that the bargaining policy is an absolute travesty of the true meaning of consultation and negotiation. This bargaining round is best characterised as a 'take it or leave it' approach from agency management, the APS Commissioner, and ultimately, the government.

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6 Mr David Plorer, Border Force Officer, Department of Immigration and Border Protection (private capacity), *Submission 215*, p. 1. See also Mr Grant Hildyard, Centrepay, National Business Gateway, Department of Human Services (private capacity), *Submission 32*, p. 1; Ms Suzanne Hope, *Submission 132*, p. 1; and Mr Mark Gillespie, Excise Product Leadership, Indirect Tax, Australian Taxation Office (private capacity), *Submission 460*, p. 1.

7 Mr Ian Reid, Community and Public Sector Union member, Defence Community and Public Sector Union Member Representatives, *Committee Hansard*, 15 November 2016, p. 13.

8 See for example, Mrs Kelly Miller, Department of Agriculture and Water Resources Bargaining Team, *Committee Hansard*, 11 November 2016, p. 24; CPSU (PSU Group), *Submission 196*.

4.16 Indeed, the committee was told on numerous occasions that agency management told bargaining representatives and employees to their face that if they did not like an offer of a cut to real wages and a loss of previously agreed basic rights and conditions, they could simply pack up and go elsewhere.

4.17 This is shabby and appalling treatment of hard working and dedicated public servants across the APS. It stands as a shameful indictment of a cruel and callous government that it has turned its back on tens of thousands of its own workers on average and below-average incomes and dismissed their legitimate claims with comments that are not only snide and insulting, but also deliberately false and misleading.

4.18 The committee notes that the government has made very substantial savings through not paying wage rises due in 2014, 2015 and 2016. This has occurred while their employees are suffering acute financial hardship.

4.19 The committee is therefore firmly of the view that the government should amend its policy to allow agencies to provide some limited and appropriate financial recompense or 'back-pay' to employees. This is altogether reasonable given the extensive and unnecessary delays to resolution of this bargaining process, which have been caused by both the government's harsh attack on employees' rights, conditions and pay and the patently inflexible nature of the bargaining policy itself.

### **Recommendation 3**

**4.20 The committee recommends that the government urgently amend the prohibition on back pay or provide another mechanism such as a payment upon agreements commencing to allow agencies to provide some limited and appropriate financial recompense to employees who have had their wages frozen for the past three years.**

## Chapter 5

### Wage increases must be completely offset by productivity gains

5.1 As noted in Chapter 2, enterprise bargaining was initially introduced in the 1990s as a way to increase labour market flexibility and improve labour productivity. Under the Howard government and subsequent Labor governments, there has been a link between remuneration and increases to productivity.

5.2 The bargaining policies introduced under the Abbott and Turnbull governments have taken a much more dogmatic approach by insisting that any remuneration increase be completely offset by productivity gains. These productivity gains are very narrowly based on reform of work practices or conditions.<sup>1</sup>

5.3 Yet the committee heard evidence from Professor Andrew Podger, a former APS Commissioner, about the impracticality of firmly linking supposed productivity gains to pay rises. Professor Podger explained that the rationale for productivity-based bargaining used in the private sector did not translate effectively to the public sector. For example, under-performing businesses in the private sector either increase their efficiency or go out of business, while businesses that achieve productivity gains can afford to pay higher wages. In essence, the funds to pay wages in the private sector are determined by the market and the demand for relevant skills.<sup>2</sup>

5.4 By contrast, agency budgets in the public sector are determined by the political process. While acknowledging that productivity improvements are important, Professor Podger argued that:

...the requirement for pay increases to be fully offset by so-called 'productivity improvements' within each agency is not consistent with the way productivity translates into labour market outcomes, including rates of pay, whether in the public sector or the private sector.<sup>3</sup>

5.5 Professor Podger elaborated further, saying that the link between productivity and wage increase was not appropriate in the longer-term:

Perhaps there was a case for pressing hard some productivity offsets within each agency in the 1990s as a short-term tactic to drive needed reforms, but it was never a sensible long-term strategy...

There is no doubt that the public sector, no less than the private sector, can find productivity gains over time, and this is not a process that happens once and does not happen again; it is a continuing expectation that productivity gains will be made, though they tend to come in fits and starts,

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1 Australian Public Service Commission, *Australian Government Public Sector Workplace Bargaining Policy*, subsection 3.1.3, p. 16.

2 Professor Andrew Podger, private capacity, *Committee Hansard*, 11 November 2016, pp. 1–2.

3 Professor Andrew Podger, private capacity, *Committee Hansard*, 11 November 2016, p. 1.

depending on your agency opportunities such as new technology investments, changed patterns of work and so on.<sup>4</sup>

5.6 Ultimately, Professor Podger explained that the imperative for agencies and employees to identify productivity gains was counterproductive and 'will only exacerbate the problem':

I think now everybody is scrambling round to try and find something which passes the test, even if it is not actually a genuine productivity gain. So I do not think people are holding off productivity for this; I think what is really happening is that we have got extraordinary ongoing running around by management and staff in every agency over very long periods of time—frankly, wasting an awful lot of the services' resources—which could be better handled.<sup>5</sup>

5.7 The committee also heard evidence that agency management has flatly turned down innovative staff solutions to improve productivity. Mr Leo Vukosa, a CPSU delegate who has worked 35 years for the Department of Parliamentary Services, told the committee:

The government says that the bargaining policy is about productivity. Our experience says it is not. In the initial phases employees actually begged to be able to provide innovative solutions that would result in true productivity savings that could feed into an agreement. We were told that they were not allowed, and there are a number of workplace changes that have not been recognised as productivity for bargaining. The bargaining policy has actively inhibited innovation across the department.<sup>6</sup>

5.8 Mr Michael Tull, Assistant National Secretary of the CPSU, argued that perversely, the interpretation of the bargaining policy is denying the opportunity for genuine productivity gains:

One of the things that is very disappointing for us is that in this round of bargaining the bargaining policy and the way that it has been interpreted and implemented means that there is no space for genuine productivity discussions. I have made any number of public sector and private sector agreements over many years where, at the end of the process, everybody involved could say, 'This has made a material change, a material improvement, to the operation of this organisation,' and we just do not get the opportunity to do that now. To come back to the start point, one of our responses to fiscal constraints is to try to work through better ways of working—free up money, free up funding and so on—and produce genuine

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4 Professor Andrew Podger, private capacity, *Committee Hansard*, 11 November 2016, p. 2.

5 Professor Andrew Podger, private capacity, *Committee Hansard*, 11 November 2016, pp. 4–5.

6 Mr Leo Vukosa, CPSU, Department of Parliamentary Services, *Committee Hansard*, 11 November 2016, p. 23.

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productivity improvements that create the space for productivity-based pay increases. We do not have that opportunity now.<sup>7</sup>

5.9 Professionals Australia pointed out the flaws in the concept of linking productivity with wage increases:

Measuring public sector productivity is a challenge particularly as the business of policy and program development and implementation often requires qualitative rather than quantitative assessment. Also, to properly understand whether changes to approaches to work processes have delivered more "productive" outcomes can only be done in review. Yet in terms of this bargaining process "productivity offsets" had to be measurable to the last dollar from day one of an agreement and relate to employment costs in each agency. This meant that prospective approaches to productivity such as retention and attraction initiatives that would build capability and reduce staff turnover in critical roles would not be considered. Instead, the bargaining policy drives agencies to consider inputs only, ignoring outputs, which is against any sensible notion of productivity. The need to quantify such offsets meant that the most common changes ended up being reductions in leave, pay progression or allowances.<sup>8</sup>

5.10 Professionals Australia provided a number of examples of what have been deemed to be 'productivity offsets' but which essentially are reductions in employee conditions:

For example in the Australian Communications and Media Authority "productivity" was to be achieved through reducing additional leave provided to Executive Level 1 staff, which had been provided through the previous agreement negotiation in recognition of the value and effort of their work; in Defence it was through reducing leave days and reducing the rate of progression through pay structures; in CASA by reducing some remote localities allowances; and in DAWR by taking an axe to the existing veterinary officer structure.<sup>9</sup>

5.11 It was argued that 'in no sense could any of these initiatives be described as changes to processes that were likely to deliver improved outcomes for Government or broader stakeholder groups'.<sup>10</sup>

5.12 According to Professionals Australia, the government's approach to bargaining has led to impasses in agreement negotiations across the public sector.<sup>11</sup>

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7 Mr Michael Tull, Assistant National Secretary, CPSU, *Committee Hansard*, 11 November 2016, pp. 28–29.

8 Professionals Australia, *Submission 205*, p. 5.

9 Professionals Australia, *Submission 205*, p. 6.

10 Professionals Australia, *Submission 205*, p. 6.

11 Professionals Australia, *Submission 205*, p. 6.

5.13 Despite Mr Lloyd's claim that the policy encourages flexibility initiatives,<sup>12</sup> Professionals Australia stated that the insistence on productivity offsets 'has provided no flexibility to agencies to truly engage in enterprise or workplace bargaining'.<sup>13</sup>

### **Committee view**

5.14 On the evidence before the committee it is clear that the government's ongoing insistence that agencies identify so-called productivity offsets to justify reasonable wage increases has been a significant contributor to the three year industrial dispute within the public sector.

5.15 The committee notes the evidence presented by several inquiry participants that the government's fixated drive for productivity offsets based on such a narrow definition of productivity is having a counterproductive impact. The committee further notes that the interpretation of the bargaining policy by the APSC in this regard is having a detrimental impact on those employees and agencies that are genuinely seeking to advance enterprise agreement negotiations.

5.16 The committee believes that as long as the government and the APSC continue to interpret productivity improvements as requiring reduced employment conditions and increased working hours, the current protracted negotiations will continue.

5.17 Accordingly, the committee urges the government to take a more constructive and modern approach to productivity within the public sector with a view to resolving the impasse in the current bargaining round.

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12 The Hon John Lloyd, Australian Public Service Commissioner, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 40.

13 Professionals Australia, *Submission 205*, p. 6.

# Chapter 6

## The no 'enhancements' rule

6.1 This chapter considers the application of the no 'enhancements' rule in the bargaining policy and its impact on public servants including those subject to machinery of government changes. It also considers the prohibition on 'enhancements' in relation to various proposals to include domestic violence leave in enterprise agreements.

6.2 The 2015 bargaining policy prohibits any so-called 'enhancements' to conditions. Clause 45 of the policy reads:

APS and Commonwealth employment conditions generally meet or exceed community standards. An enhancement of existing conditions would only be contemplated in exceptional circumstances. Ministerial approval of any enhancement would be required.<sup>1</sup>

6.3 This clause closely mirrors the related provision in the March 2014 bargaining policy:

Core APS terms and conditions of employment should not be enhanced unless otherwise approved by the Ministers.<sup>2</sup>

6.4 Aside from a restriction specific to existing redundancy arrangements, there is no equivalent provision in the 2011 bargaining policy.<sup>3</sup> As such the no 'enhancements' rule is a new restriction introduced by the government into the Australian Public Service (APS) bargaining framework.

6.5 The Australian Public Service Commission's (APSC) justification for the no-enhancements prohibition relies on a generalised and unsubstantiated claim of generous conditions:

Public service employment conditions are generous. In the current fiscal environment, enhancing conditions would place further pressure on agency budgets. This would not be defensible to the Australian taxpayer. For this reason, the Workplace Bargaining Policy 2015 does not allow existing employment conditions to be enhanced.<sup>4</sup>

6.6 Ms Nadine Flood told the committee that this bargaining round was highly unusual in that enhancements to conditions had been redefined under the bargaining policy to mean that agencies had been told by the APS Commissioner that they would

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1 Australian Public Service Commission, *Workplace Bargaining Policy 2015*, November 2015, Clause 45, p. 4.

2 Australian Public Service Commission, *Australian Government Public Sector Workplace Bargaining Policy*, March 2014, Clause 4.1, p. 7.

3 Australian Public Service Commission, *Australian Public Service Bargaining Framework*, January 2011, Part 4.2, pp. 27–31.

4 Australian Public Service Commission, *Submission 202*, p. 7.

be unable to maintain previously agreed and existing enterprise agreement conditions.<sup>5</sup>

6.7 Mr Tom Carrigg, a member of the Community and Public Sector Union (CPSU) Australian Competition and Consumer Commission (ACCC) Bargaining Team, explained how the head of his agency had been 'overruled by the APSC' regarding 'modest' enhancements:

...the chair of the ACCC, Rod Sims, supported modest improvements for his workforce but was overruled by the APSC. Bargaining representatives were advised on 4 August 2016 that Rod Sims was seeking APSC approval for relatively modest improvements to the ACCC offer. On 14 October 2016, ACCC bargaining representatives informed the CPSU that discussions with the APSC had not been productive.<sup>6</sup>

### ***Machinery of government changes***

6.8 The impact of the no enhancements rule has had particularly acute ramifications for staff that are transferred between agencies during machinery of government changes.

6.9 For example, machinery of government changes in 2013 saw staff from nine other agencies moved into the Department of the Prime Minister and Cabinet (PM&C). As a result, there were 10 different enterprise agreements in PM&C.<sup>7</sup>

6.10 Ms Joanne Kerr, a member of the CPSU bargaining team works in the Indigenous Affairs Group at PM&C in the Sydney regional office. She told the committee that the employee bargaining team was advised that the PM&C agreement was the baseline agreement and that the bargaining policy prohibited the inclusion of rights and conditions contained in the other nine agreements, even though some staff may have had those conditions for over 20 years.<sup>8</sup>

6.11 Ms Kerr also informed the committee that PM&C would not seek an exception to the bargaining policy from the minister, thereby undermining the ability to conduct genuine negotiations between employer and employees over rights and conditions.<sup>9</sup>

6.12 Similar concerns were expressed by Mr Andrew Greenan from the CPSU Administrative Appeals Tribunal (AAT) bargaining team. Mr Greenan previously

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5 Ms Nadine Flood, National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 50.

6 Mr Tom Carrigg, CPSU, Australian Competition and Consumer Commission Bargaining Team, *Committee Hansard*, 11 November 2016, p. 33.

7 Ms Joanne Kerr, CPSU, Department of Prime Minister and Cabinet, *Committee Hansard*, 11 November 2016, p. 25; CPSU, answers to questions on notice, 11 November 2016 (received 18 November 2016).

8 Ms Joanne Kerr, CPSU, Department of Prime Minister and Cabinet, *Committee Hansard*, 11 November 2016, p. 25.

9 Ms Joanne Kerr, CPSU, Department of Prime Minister and Cabinet, *Committee Hansard*, 11 November 2016, p. 25.

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worked for the Social Security Appeals Tribunal (SSAT). When the SSAT was moved into the AAT under machinery of government changes, the former SSAT employees lost the conditions that they had at the SSAT. Furthermore, the pay scales at the AAT were lower than at the SSAT. This means that it will be years before former SSAT employees get a pay rise because they have to wait for AAT employees to reach the same pay rate through years of incremental increases.<sup>10</sup>

6.13 Mr Greenan explained that the bargaining policy prohibited him from retaining the conditions he formerly had at the SSAT and he told the committee that the low morale at the AAT was exacerbated by negative commentary in the media and some in the parliament that described public servants as 'having it too good and needing conditions cut'.<sup>11</sup>

6.14 The recent merger of Customs into the Department of Immigration and Border Protection was another prominent example of a machinery of government changes which resulted in employees losing significant pay and conditions. Miss Susan Jones, who is the CPSU's Section Secretary at the Department of Immigration and Border Protection, told the committee:

Many of my colleagues have already lost money from their fortnightly wages due to the government decision to amalgamate the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service without providing an appropriate framework to mesh these two workforces together in a fair and decent manner. This policy seeks to penalise people trying to provide a critical service to this country, by not allowing people who do the same work at the same location with the same skills and qualifications to be paid the same pay and have the same conditions. My understanding is that this is because trying to get equality in pay and conditions is, under this policy, deemed to be an enhancement—which is banned, rather than them being seen as sensible terms of employment to support our workforce.

The enforcement of this policy has created a deep mistrust between the workforce and senior management, who are required to implement it. My colleagues and I, through our union, have always worked collaboratively with the department to achieve the objectives of government, such as the implementation of the integrity framework and during the integration process. We do this to ensure the highest standards and to meet community expectations. We have had our points of difference at times but we have always managed to find common ground—but not this time, due to the rigid and unacceptable demands of this bargaining policy...<sup>12</sup>

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10 Mr Andrew Greenan, CPSU, Administrative Appeals Tribunal Bargaining Team, *Committee Hansard*, 11 November 2016, p. 32.

11 Mr Andrew Greenan, CPSU, Administrative Appeals Tribunal Bargaining Team, *Committee Hansard*, 11 November 2016, p. 32.

12 Miss Susan Jones, Community and Public Sector Union Section Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 15 November 2016, p. 31.

6.15 A DIBP bargaining representative colleague of Miss Jones, explained that the 'enhancements' prohibition was one of the key problems with the bargaining framework that had led to thousands of dollars of lost wages:

Prohibition on enhancements—ex-Customs allowances cannot be allowed in new agreements. So after the merger, there were some allowances that were preserved through determinations and other ones that were not preserved at all. They are things that we had just over a year ago, and things that we can no longer have or can have going forward because they are deemed to be enhancements moving into a new agreement. Examples of this are a reduction in night shift penalties. This has already cost me and other Perth Airport workers up to \$2,500, which is what we are out of pocket now. Another example are the proposed changes to remote locations conditions, costing these employees thousands of dollars...<sup>13</sup>

6.16 The loss of wages was particularly acute in situations where employees were deployed to remote locations:

And that [loss of wages due to the DIBP merger] is mirrored exactly the same all through remote WA as well—the same situation. I have had members come up and approach me and say, 'What will my conditions be if I move post 1 July?' And either I cannot tell them, because we do not have an EA signed up, or I can let them know that it will be significantly worse than the person they will be sitting next to, to the tune of \$15,000 difference in their pay packets for doing exactly the same job, sitting side by side.<sup>14</sup>

### ***The rejection of domestic violence leave proposals***

6.17 Another key area where the no 'enhancements' rule was seen to have a major impact was with respect to proposals to include new arrangements for domestic violence leave. Employment law academics from the University of New South Wales outlined their analysis of approved agreements in this regard:

As our submission details, preliminary analysis of APS agreements that have been certified in the current round confirm some important employment conditions have been removed or reduced in some agreements.

Our analysis shows a range of gender equitable provisions have been reduced or removed. These include a clause for domestic violence leave, which has been removed from one agreement [the Department of Social Services]. A study conducted by the Australian Domestic and Family Violence Clearinghouse found that domestic violence leave is good for employee morale, with 65 per cent of employees surveyed believing that workplace entitlements could reduce the impact of domestic violence in their organisation. We understand that the government position is that domestic violence leave should be available through existing leave provisions and contained in HR policy. Enshrining [domestic violence]

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13 Mr Mike Suijndorp, CPSU Bargaining Team, Department of Immigration and Border Protection, *Committee Hansard*, 15 November 2016, p. 33.

14 Mr Mike Suijndorp, CPSU Bargaining Team, Department of Immigration and Border Protection, *Committee Hansard*, 15 November 2016, p. 32.

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leave provisions in an agreement rather than in a policy which is subject to change without consultation gives employees security in their entitlements...

We also recommend including domestic and family violence leave in agreements, as this would be of minimal cost to agencies but would send a clear signal to employees that the Australia government is committed to assisting those affected by domestic violence.<sup>15</sup>

6.18 While the Department of Social Services has removed the provision of domestic violence leave from its current agreement, there are several other agencies that have provisions retained from earlier agreements. These agencies are the Workplace Gender Equality Agency, the Department of Employment, the Department of Education, and parts of PM&C.<sup>16</sup>

6.19 Senior APSC representatives reminded the committee that the no 'enhancements' rule precludes the introduction of domestic violence leave into new employment agreements:

The bargaining policy, as you know, says no enhancements. So if the leave type does not exist already, you cannot insert it. The policy around how to support staff who are experiencing domestic violence points to all of the different sorts of leaves that agencies will have and encourage people to use it.<sup>17</sup>

6.20 Notwithstanding the outright ban imposed by the government's bargaining framework, several employee bargaining team representatives raised it with their departments due to the importance of the issue for members. For example, the bargaining representative from the ACCC told the committee:

With regard to domestic violence, we have put that up a number of times to the bargaining committee, but, because of the bargaining framework, they just will not consider it.<sup>18</sup>

6.21 Similarly the ATO's bargaining team representative told the committee:

Yes, domestic violence leave was certainly one of our claims. In a period of time where there is such a focus on dealing with domestic violence, that was a core claim for us. It was completely ignored by the tax office. There were some changes to the miscellaneous leave guidelines to allow for it, but that is not the same thing as having it in the agreement, where it is

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15 Dr Sue Williamson, Senior Lecturer, Human Resource Management, University of New South Wales, *Committee Hansard*, 11 November 2016, p. 7.

16 Mr Marco Spaccavento, Group Manager, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 45.

17 Ms Stephanie Foster, Deputy Australian Public Service Commissioner, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 47.

18 Mr Tom Carrigg, Community and Public Sector Union, Australian Competition and Consumer Commission Bargaining Team, *Committee Hansard*, 11 November 2016, p. 37.

something that we could actually enforce in the Fair Work Commission if we needed to.<sup>19</sup>

6.22 Ms Beth Vincent-Pietsch, a Deputy Secretary at the CPSU explained that these rejections were widespread across the public sector:

...virtually no APS agency has been able to negotiate domestic violence leave into an agreement, because they did not have it in the previous agreement. Even where managers at the table were very sympathetic and were keen to add it in, under the bargaining policy it is deemed to be an enhancement; therefore it is not able to be discussed. It has been a cause of genuine frustration, and obviously, with the focus on domestic violence as a significant issue that we all recognise needs to be addressed, I think it is a real cause of frustration not only for our members but for the secretaries of departments and agency heads, who would really like to be able to move meaningfully into that space.<sup>20</sup>

6.23 By contrast the CPSU bargaining representative for the ABC explained that the ABC had successfully concluded its enterprise bargaining negotiations which included a new provision for domestic violence leave:

In return for workplace change ABC management were able to offer employees a fair-pay outcome and enhanced conditions, including domestic violence leave. Employees were able to genuinely negotiate with their employer and, just as importantly, the employer was able to genuinely listen to the feedback of staff and to amend their claims accordingly.<sup>21</sup>

6.24 It is clear from Ms Sinddy Ealy's evidence that the inclusion of domestic violence leave under the ABC's new enterprise agreement, an inclusion that has been rejected in other negotiations as an 'enhancement', was only possible because the ABC refused to be bound by the APS bargaining framework:

...it is my view that a successful agreement [including domestic violence leave] was able to be made in the ABC because the ABC was not subjected to the government's workplace bargaining policy. The ABC agreement maintained existing workplace rights, such as pre-decision consultation. Those things are important to employees and contribute to the efficient operation of the workplace.<sup>22</sup>

### **Committee view**

6.25 The APSC's rigid application of the no 'enhancements' rule during the current bargaining round has caused enormous frustration to thousands of public servants,

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19 Mr Erik Rasmussen, Community and Public Sector Union, Australian Taxation Office Bargaining Team, *Committee Hansard*, 11 November 2016, p. 38.

20 Ms Beth Vincent-Pietsch, Deputy Secretary, Community and Public Sector Union, Bargaining Team, *Committee Hansard*, 11 November 2016, p. 39.

21 Ms Sinddy Ealy, ABC Section Secretary, Community and Public Sector Union, ABC Bargaining Team, *Committee Hansard*, 11 November 2016, p. 32.

22 Ms Sinddy Ealy, ABC Section Secretary, Community and Public Sector Union, ABC Bargaining Team, *Committee Hansard*, 11 November 2016, p. 32.

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particularly those that have been subject to machinery of government changes. The resulting damage to staff morale (see Chapter 6) across the APS is incalculable.

6.26 The solution to this problem is straightforward. The CPSU has already outlined a common sense approach in its response to a question on notice.<sup>23</sup> In essence, the CPSU stated that agencies affected by machinery of government changes such as PM&C, DIBP, the Federal Courts and the AAT must be allowed to reach enterprise agreements that align employment pay and employment conditions.

6.27 This would require flexibility in pay outcomes and the abandonment of the absurd situation where decades old already-agreed working conditions are now suddenly deemed to be an 'enhancement'.

6.28 Agencies should be allowed to consolidate disparate pay rates and conditions to provide an integrated set of salaries and conditions without loss.

6.29 Furthermore, the bargaining policy should be amended to allow the retention of existing rights and conditions. This change alone would remove a major barrier to making agreements, and make a significant contribution towards repairing workplace morale and good workplace relations.

6.30 The committee strongly agrees with this eminently sensible point of view.

#### **Recommendation 4**

**6.31 The committee recommends that the Minister Assisting the Prime Minister for the Public Service and relevant portfolio Ministers take immediate steps to ensure that agencies affected by machinery of government changes such as the Department of the Prime Minister and Cabinet, the Department of Immigration and Border Protection, the Federal Courts and the Administrative Appeals Tribunal are encouraged to reach enterprise agreements that align employment pay and employment conditions without loss.**

#### **Recommendation 5**

**6.32 The committee recommends that the bargaining policy should be amended to specifically allow for the maintenance of existing negotiated agreement provisions, including in the case of agencies affected by machinery of government changes.**

6.33 The committee notes that the high incidence of domestic violence in Australia has rightly been the focus of increased public and government attention. However, the committee heard evidence from numerous employee bargaining representatives that agencies had rejected the inclusion of domestic violence leave proposals in enterprise agreements because they were seen as 'enhancements'. The Deputy APS Commissioner confirmed that the bargaining policy prohibited the inclusion of domestic violence leave in an agreement if that leave type did not already exist in the agreement.

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23 CPSU, answer to questions on notice, 11 November 2016 (received 18 November 2016).

6.34 The committee notes the successful conclusion of an enterprise agreement at the ABC occurred because management were not constrained by the bargaining policy. As a result ABC management and staff were able to reach a fair-pay outcome and enhanced conditions, including domestic violence leave in exchange for workplace change. It is notable that these genuine negotiations could only occur because the ABC refused to be bound by the government's bargaining policy.

6.35 The committee is firmly of the view that the bargaining policy should be amended to allow agencies and employee bargaining representatives to agree on improvements including domestic violence leave.

### **Recommendation 6**

**6.36 The committee recommends that the bargaining policy should be amended to allow agencies and employee bargaining representatives to agree on improvements and encourage provisions in enterprise agreements that support victims of domestic violence including access to leave.**

6.37 In addition to the above over-arching recommendations, the committee is of the view that specific issues affecting the Department of Immigration and Border Protection and the Australian Border Force warrant urgent attention.

6.38 In particular, the committee is of the view that the government should:

- fairly address disparities arising from the integration of Customs and Immigration and the creation of the Australian Border Force; and
- no longer seek to cut the pay or conditions of officers.

### **Recommendation 7**

**6.39 The committee recommends that the Minister Assisting the Prime Minister for the Public Service and the Minister for Immigration and Border Protection take immediate steps to ensure the Department of Immigration and Border Protection fairly address disparities arising from the integration of Customs and Immigration and the creation of the Australian Border Force and ensures officers of the Department can receive current pay and conditions.**

### **Recommendation 8**

**6.40 The committee recommends that the Minister Assisting the Prime Minister for the Public Service and the Minister for Immigration and Border Protection take immediate steps sufficient to ensure the Department of Immigration and Border Protection can and will seek to genuinely reach early agreement with employee representatives and put an agreed position to the Fair Work Commission arbitration of a workplace determination.**

## Chapter 7

### 'Streamlining': shifting conditions to policy documents

7.1 The paramount concern of a great many submitters and witnesses to this inquiry was the fact that the government's Australian Public Service (APS) bargaining policy effectively forced agencies to strip conditions out of their enterprise agreements. The ongoing protection of conditions was particularly important for employees with caring responsibilities and employees that regularly worked substantial additional hours or in remote locations.

7.2 Indeed, many submitters and witnesses stated that they would readily have accepted a low wage offer if the conditions in their previous agreements remained untouched.<sup>1</sup>

7.3 Mr Leo Vukosa, a Community and Public Sector Union (CPSU) delegate at the Department of Parliamentary Services, explained that his department had adopted an approach to the bargaining process whereby any conditions from the previous enterprise agreement were automatically stripped out of the current agreement because they were classed by management as enhancements and therefore not allowable under the bargaining policy:

The bargaining framework has been designed in such a way, as mentioned earlier, that no enhancements are permitted at all. Any enhancements that staff or union members wanted were dismissed entirely from the beginning. We were not allowed them, and I have never, ever come across a bargaining framework before where somebody says, 'This is what we want,' puts it in front of you and runs a line through any entitlements and conditions that you currently have that are not protected by law. This is what has happened. When we have asked for them back—because we never had an opportunity to bargain or debate them—they were never put back into the agreement. They were saying: 'This is what it is. We have to show savings to fund this agreement, or the APSC will not approve it'.<sup>2</sup>

7.4 Mr Vukosa also pointed out that the Department of Parliamentary Services ignored the arguments that employees valued their conditions more than a pay rise. He also stated that some of the conditions that were stripped out of the agreement had 'no monetary value to them whatsoever'.<sup>3</sup>

7.5 The DHS CPSU Bargaining Team echoed the sentiments of many employees when they stated that the cuts to pay and conditions were unfair:

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1 See for example, Mrs Kelly Miller, Department of Agriculture and Water Resources Bargaining Team, *Committee Hansard*, 11 November 2016, p. 24.

2 Mr Leo Vukosa, CPSU delegate, Department of Parliamentary Services, *Committee Hansard*, 11 November 2016, p. 31.

3 Mr Leo Vukosa, CPSU delegate, Department of Parliamentary Services, *Committee Hansard*, 11 November 2016, p. 31.

These cuts are unacceptable, and will continue to be unacceptable, to a workforce composed of average income earners with mortgages to pay, families to feed, and a need for workplace conditions that allow them to balance the two. The three years they have spent without any pay increase is particularly galling when compared with the Department Secretary, Kathryn Campbell, whose pay has risen by 7.5 per cent (just under \$50 000) since 2013.<sup>4</sup>

7.6 The flawed 'streamlining' requirement was also addressed by the long-standing President of the CSIRO's Staff Association, Dr Michael Borgas:

...Given the arguments that they [CSIRO management bargaining representative] make—that this is all about an efficiency of streamlining agreements—what you end up doing is sticking bits of policy all over the place rather than having it consolidated in a single document. I have wasted many negotiating meetings pointing this out to them. A streamlined agreement would be one that runs from end to end without sidetracks and disruption.<sup>5</sup>

7.7 Dr Borgas went on to explain that the existing CSIRO enterprise agreement is a 'manageable document' which would reduce the document from '100-odd pages down to about 30-odd' under a streamlining requirement.<sup>6</sup> However, he pointed out the obvious consequence of the so-called 'streamlining' requirement by stating:

None of the pages disappear; they are going off to sit in a different part of a website. That is a point that has been made to me by numerous delegates—that they often have trouble finding a specific policy for a specific purpose.<sup>7</sup>

7.8 Representatives of the CPSU Bargaining Team for the Department of Immigration and Border Protection's negotiations also criticised the streamlining requirement. Mr Mike Suijendorp explained that important consultation mechanisms over conditions such as working hours were being removed from agreements on the basis of streamlining:

With regard to streamlining, there is the reduction of consultation clauses on things like working hours. These clauses give me and my co-workers the ability to influence our work hours and this is particularly important to parents and carers.<sup>8</sup>

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4 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 2.

5 Dr Michael Borgas, President, CSIRO Staff Association, *Committee Hansard*, 15 November 2016, p. 24.

6 Dr Michael Borgas, President, CSIRO Staff Association, *Committee Hansard*, 15 November 2016, p. 24.

7 Dr Michael Borgas, President, CSIRO Staff Association, *Committee Hansard*, 15 November 2016, p. 24.

8 Mr Mike Suijendorp, CPSU Bargaining Team, Department of Immigration and Border Protection, *Committee Hansard*, 15 November 2016, p. 33.

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***Case Study—the impact of 'streamlining' at the Department of Human Services***

7.9 This case study looks at the impact on staff from the proposed removal of previously-agreed conditions from the enterprise agreement at the Department of Human Services (DHS) and the introduction of new conditions.

7.10 As noted in Chapter 3, women make up 73 per cent of the total workforce of DHS. The majority of staff (64 per cent) are employed at the APS3 and APS4 classification and have a salary range of \$56 069 to \$69 239. Thirty four per cent of DHS staff are employed part-time, and of these staff, 78 per cent are employed at the APS3 and APS4 classification.<sup>9</sup>

7.11 DHS is trying to include provisions in the new agreement that would force staff to work different hours on different days. This could include employee hours being changed while at work.<sup>10</sup>

7.12 The committee received numerous submissions from DHS employees outlining the devastating impact that this change would have on working parents with childcare arrangements.<sup>11</sup>

7.13 The CPSU DHS bargaining team emphasised that DHS employees 'care deeply about the work they do' and 'are committed to delivering high quality service outcomes for government'. However, DHS staff are dealing with increasing workloads, high levels of customer aggression, and numerous, complex changes to their work.<sup>12</sup>

7.14 As a DHS employee explained:

We're an agency made up of part-time working mums. We're not earning a million dollars! We live in the communities we serve and we do the job because we care about it.<sup>13</sup>

7.15 On top of this, DHS employees have been severely impacted by the government's failure to conclude workplace bargaining. This is borne out by the pressure to accept a deal that 'would make them worse off, give them less control over any element of their working lives, and put them under increasing personal and workplace pressure'.<sup>14</sup>

7.16 The committee received large numbers of submissions from individual DHS employees that echoed the sentiments expressed above and also outlined the adverse

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9 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 2.

10 CPSU (PSU Group), *Submission 196*, p. 2.

11 See for example Ms Kristi Farrell, *Submission 50*; Mr Mark Longmuir, *Submission 76*; Ms Skye Garrett, *Submission 77*; Ms Sharon Roddis, *Submission 78*; Ms Shirley Lyon, *Submission 92*; Mr Tony Maxwell, *Submission 97*; Ms Deborah Downey, *Submission 109*.

12 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 2.

13 DHS worker, CPSU survey 2016, in CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 2.

14 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 2.

consequences that the government's bargaining policy was having on them and their families as well as their ability to do their job and serve the community.<sup>15</sup>

7.17 DHS has proposed significant changes to employee working conditions in the new agreement that would have a significant effect on the ability of employees with caring responsibilities to manage their work/life balance. Amongst other things, DHS has proposed to:

Remove employees' rights to any control over their own working hours. Currently the system balances the interests of management and staff and requires genuine negotiation of working hours between an employee and their supervisor. If agreement about a suitable pattern of working hours cannot be reached, the agreement contains a safety net for workers; they can opt to revert to 'default hours' (8:30am to 5pm.) Not only has the department proposed to remove the rostering protocols that allow staff to have some say over their hours of work, they have recently begun denying staff access to the default hours safety net under the current agreement.

Introduce the ability to roster staff on 'split shifts' (e.g. working from 8am until 12pm and then from 2:30pm until 6pm) or to roster staff according to their average hours for the week instead of for a set amount of hours each day (e.g. staff could be rostered to work 10 hours one day and 6 hours the next).

Exclude casual employees from access to yearly salary advancement despite many casual employees being long-term employees working near to standard hours.<sup>16</sup>

7.18 The DHS CPSU Bargaining Team pointed out that as a result of the proposed changes outlined above:

...a customer service officer who needs to leave work at 3pm to pick up her children from school, who has worked a 7:30am to 3pm roster for years in order to do this, has no guarantee that she will not be moved to a 9am to 5pm roster without having her preferences or needs considered. A casual staff member, employed as an 'irregular or intermittent worker' despite having worked full time hours fulfilling an ongoing requirement for years, will have no control over his hours at all. CPSU members are telling their union they face having to leave their jobs if family-friendly rostering and consultation provisions are taken away.<sup>17</sup>

### ***Disproportionate negative impact on female employees***

7.19 Dr Sue Williamson and Professor Michael O' Donnell have conducted long standing research on gender equality and collective bargaining in the APS. They submitted that the current bargaining framework will have a disproportionately

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15 See footnote 11.

16 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 4.

17 CPSU Department of Human Services Bargaining Team, *Submission 200*, p. 3.

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negative impact on female APS employees because gender equality or flexible working arrangements clauses have been amended or removed from some agreements:

For example, one agency has amended the relevant clause in their agreement so that employees no longer have the right to work part-time on returning from parental leave. Instead, the ability to work part-time is dependent on managerial discretion.<sup>18</sup>

7.20 Dr Williamson and Professor O'Donnell recommended:

- as a priority, the Australian Government facilitate timely negotiations and end the bargaining impasse;
- in the longer term, the Australian Government review the system of agreement-making in the APS and the Bargaining Framework, in order to expedite bargaining and achieve fair and equitable outcomes which will also contribute to increased employee morale and productivity; and
- the Australian Government amend the Workplace Bargaining Policy 2015 to require that clauses which progress gender equality in the workplace remain in agreements in full.<sup>19</sup>

### **Committee view**

7.21 The committee is greatly concerned that APS employees are being threatened with the removal of existing rights and conditions from enterprise agreements. This move is unconscionable and leaves employees vulnerable to the whim of management over a raft of basic workplace rights such as the ability to arrange part-time and flexible working hours, and access to leave.

7.22 APS employees justifiably feel alarmed at this loss of security. This aspect of the bargaining policy has caused needless heartache for many tens of thousands of workers. Perhaps the largest impact will be felt by those workers who are also the principal carer for others. This burden falls most heavily, although not exclusively, on women.

7.23 The committee heard from countless carers who are haunted by the prospect of losing control over their work-life and as a consequence may be unable to continue working because they cannot maintain their previously agreed work timeframes that would allow them to juggle their other responsibilities.

7.24 The committee is firmly of the view that the government should amend its bargaining policy to allow for the retention of existing rights and conditions. This is particularly the case with respect to existing family-friendly conditions that facilitate and support the employment of those with caring responsibilities. This includes but is

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18 Dr Sue Williamson and Professor Michael O' Donnell, University of New South Wales, *Submission 193*, p. 5.

19 Dr Sue Williamson and Professor Michael O' Donnell, University of New South Wales, *Submission 193*, p. 6.

not limited to part-time work arrangements, scheduling hours, existing flexible working hours and access to leave.

7.25 The committee is also of the opinion that where agency management and employee bargaining representatives believe existing content previously negotiated is acceptable, this content should be allowed by the APS Commissioner and the Minister.

#### **Recommendation 9**

**7.26 The committee recommends that the government amend its bargaining policy to allow for the retention of existing rights and conditions in full, including but not limited to removing the prohibition on enhancements and defining previously agreed agreement provisions as enhancements in circumstances such as machinery of government changes.**

#### **Recommendation 10**

**7.27 The committee recommends that the government amend its bargaining policy to allow and encourage the retention of access to family friendly conditions, including hours of work protections, to facilitate and support the employment of those with caring responsibilities.**

#### **Recommendation 11**

**7.28 The committee recommends that the Minister Assisting the Prime Minister for the Public Service and the Minister for Human Services take immediate steps to ensure that the Department of Human Services can and will seek to maintain enterprise agreement provisions that preserve existing family friendly conditions, provide employee protections for rostering and hours of work, maintain current consultation provisions and provide that ongoing employment remains the preferred type of employment in the Department.**

7.29 The committee heard that the current bargaining policy requires the removal of existing agreement content in various areas where it is considered above the legislated National Employment Standards and the minimum provisions required by the *Fair Work Act 2009*. The committee notes that compelling examples were provided by bargaining team representatives from the CSIRO, DIBP and DHS including the removal of consultation clauses and changes to family-friendly working hours. The committee is of the view that the bargaining policy should be amended in this regard.

#### **Recommendation 12**

**7.30 The committee recommends that the government amend its bargaining policy so that it no longer requires the removal of existing agreement content in various areas above the legislated National Employment Standards and the minimum provisions required by the *Fair Work Act 2009*.**

7.31 Evidence to the committee also indicated that agencies were proposing to remove long-standing consultation and dispute resolution rights from new enterprise agreements. No substantive evidence was received during the inquiry to support the removal of these rights. In the committee's view, these rights help to minimise industrial conflict and promote productive working arrangements, and they should be retained.

### **Recommendation 13**

**7.32 The committee recommends that the government amend its bargaining policy to allow for the retention of existing and long-standing consultation and dispute resolution rights.**



## Chapter 8

### 'The most divisive and least productive bargaining round in 30 years'

8.1 Mr Michael Tull, Assistant National Secretary of the Community and Public Sector Union (CPSU), told the committee that the current Australian Public Service (APS) bargaining round was the most divisive and unproductive that he had ever experienced:

I am a CPSU official and I have been involved in public sector bargaining for nearly 30 years. I have made hundreds of agreements under every form of industrial legislation and under all the policy variations since 1990. I have made agreements in large agencies and small ones, for public sector, private sector, individual contracts, AWAs, common law agreements—I have dealt with every form on industrial setup in the public sector. I can say, based on that experience, that this round of bargaining is the most divisive and least productive round in those 30 years.<sup>1</sup>

8.2 Mr Tull was very clear that the reason the dispute had remained unresolved for so long was due to the government's bargaining policy:

As you have heard from bargaining reps—the people who are at the table who are in the workplace and who deal with this every single day—it should be abundantly clear that there are some serious problems with this round of bargaining. There is the substantial human cost and there are also clearly problems for the agencies. It should be abundantly clear that these are problems caused by the workplace bargaining framework, the approach taken and the implementation of that framework. It is also clear, as we have heard from the people preceding me, that this is a very different round of bargaining with a different approach and a different mindset. It is that approach that is fundamental to causing the problems and it is the change of that approach that would be fundamental to getting a resolution. CPSU has been trying to resolve this for more than three years and there is clearly no end in sight.<sup>2</sup>

8.3 Mr Esmond Smith who is an employee bargaining representative for over 90 Australian Competition and Consumer Commission (ACCC) staff pointed out that 'the ACCC bargaining process, driven by the government's hard line bargaining framework, has been extremely slow and difficult', and that the current bargaining framework 'is unfair and unreasonable'.<sup>3</sup>

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1 Mr Michael Tull, Assistant National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 25.

2 Mr Michael Tull, Assistant National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 25.

3 Mr Esmond Smith, *Submission 192*, p. 1.

8.4 Mrs Kelly Miller, a member of the Department of Agriculture and Water Resources Bargaining Team pointed out that employees in the department had worked cooperatively with management to manage the transition in the wake of the 2013 budget cuts. However, that cooperation had now disappeared as a result of the government's bargaining policy:

In 2013 huge budget cuts meant a massive round of redundancies. We formed what we called the transition committee and we worked with management. We had equal management representation, staff representation and CPSU delegates like me. That transition committee lasted nearly 12 months, I think, and we worked together to transition from a large workforce to a smaller workforce and manage that workload. We did have to cooperate, we did have to work together and we helped that change go through because we worked together. Three years later, I do not see that. I do not feel that same cooperation in the workplace.<sup>4</sup>

#### ***APS Commissioner's rejection of good faith proposals***

8.5 The CPSU advised the committee that this was the first time a bargaining policy had required the minister's delegate, namely the APS Commissioner, to approve a pay offer before it can be put to employees. The CPSU further submitted that numerous agencies had told the respective CPSU bargaining teams and their staff that agency management was negotiating with the APS Commissioner about what could be included in the enterprise agreement offered to staff. For example, the CPSU stated that the Australian Research Council (ARC) had to submit a proposed enterprise agreement to the APS Commissioner 17 times before securing approval to put the offer to a vote.<sup>5</sup>

8.6 According to the CPSU Delegate on the Enterprise Bargaining Committee at the ARC this was the 'primary contributor to the delay at the ARC, other than the untimely release of the Government bargaining policy only three months prior to the nominal expiry date of agreements'. As a consequence this 'meant that negotiations did not start until February 2016 when the draft ARC Enterprise Agreement was finally tabled as the ARC's position at a bargaining committee meeting.'<sup>6</sup>

8.7 The committee heard several examples of reasonable and fair offers being rejected by agency management and/or the APS Commissioner. For example, Mr Smith told the committee that that he had proposed to ACCC management an increase in salary levels on commencement of a new agreement equivalent to the average wage increase across the Australian economy since the last salary increase staff received on 1 July 2013, and increases over the next two years based on forecast

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4 Mrs Kelly Miller, Department of Agriculture and Water Resources Bargaining Team, *Committee Hansard*, 11 November 2016, p. 26.

5 CPSU (PSU Group), *Submission 196*, p. 23.

6 Ms Amy Phillips, CPSU Delegate, Enterprise Bargaining Committee, Australian Research Council, *Submission 197*, p.1.

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average economy-wide wage growth. Yet, ACCC management had rejected these proposals on the basis that they did not meet the tenets of the bargaining policy.<sup>7</sup>

8.8 Furthermore, offers to end the ACCC's dispute through arbitration by the Fair Work Commission were also rejected on the basis that the bargaining policy does not permit arbitration.<sup>8</sup>

8.9 However, Mr Smith held the government rather than agency management responsible for the lack of good faith bargaining:

I have offered constantly to change my proposals, to try to reach agreement, but there has been no flexibility by management in terms of their application of the bargaining policy. I do not hold that against management. I believe they are precluded from doing so by the position of the government. It is an enormous frustration for me, that people in government who are openly claiming not to be bargaining representatives under the Fair Work Act, and therefore not obliged to give genuine consideration to my claims under the law, are making decisions on my proposals.<sup>9</sup>

8.10 Mr Tom Carrigg, a member of the CPSU ACCC Bargaining Team, is an economic analyst at the ACCC involved in monitoring and regulating Australia's largest airports. He told the committee that ACCC employees did not feel that bargaining had been conducted in good faith because the APS Commissioner overruled clauses where employees and ACCC management had already reached agreement:

The first point is that employees feel that bargaining at the ACCC has not been conducted in good faith. Employer and employee representatives were able to reach agreement on a number of clauses that were subsequently overruled by the Australian Public Service Commission. To us, this means that employee representatives were given no opportunity to put their case to the decision-maker, the Australian Public Service Commission; nor has the APSC genuinely considered the merits of the employee representatives' proposals. With no access to influence the decision-maker, the employee reps, including I myself, feel that we are denied a fair process.<sup>10</sup>

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7 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 19.

8 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 19.

9 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 19.

10 Mr Tom Carrigg, CPSU, Australian Competition and Consumer Commission Bargaining Team, *Committee Hansard*, 11 November 2016, p. 33.

8.11 Furthermore, Mr Carrigg advised the committee that the chair of the ACCC was hamstrung by the bargaining policy because the APS Commissioner had dismissed recommendations that the chair of the ACCC had put to him.<sup>11</sup>

8.12 Likewise, Mr Smith drew the committee's attention to the enormous frustrations felt by staff because there was no genuine consideration of their concerns merely because the concerns did not fit within the strict confines of the bargaining policy.<sup>12</sup>

### ***Agency proposals have not met the BOOT test***

8.13 Another indication of the extraordinary nature of the current negotiations is the fact that a number of agencies have not met the 'better off overall test' (BOOT). The BOOT is a legislative requirement under the Fair Work Act. It requires the Fair Work Commission, prior to approving an enterprise agreement, to ensure that each of the employees to be covered by the agreement are better off overall than under the relevant modern award.<sup>13</sup>

8.14 The CPSU gave evidence that six agencies were required by the Commission to give undertakings because their agreements did not satisfy the BOOT:

[Six Commonwealth agencies] have not met the Fair Work better off overall test because of the matters that have been removed or reduced from agreements. It is highly unusual. We have had Commonwealth agencies, such as the Department of Finance, having to give undertakings in Fair Work because of these agreements that remove a number of existing provisions and not meeting the BOOT.<sup>14</sup>

### ***Government and APSC intransigence***

8.15 It became clear to the committee that once the government had established the highly lopsided bargaining framework, there was no genuine desire or good will on the government's part to progress any meaningful negotiations. This has been an enormous source of frustration, not only for the CPSU and thousands upon thousands of Commonwealth employees, but also to many government agencies which have all been forced to negotiate under the government's flawed framework.

8.16 The Secretary of the CPSU, Ms Nadine Flood, effectively summed up the prevailing mood regarding the government's failed bargaining framework and process:

[Appearing before a Senate Committee] is, frankly, the last place that both employees or our union wanted to be sitting at the end of 2016—still in the

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11 Mr Tom Carrigg, CPSU, Australian Competition and Consumer Commission Bargaining Team, *Committee Hansard*, 11 November 2016, p. 33.

12 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 18.

13 Section 193, *Fair Work Act 2009*.

14 Ms Nadine Flood, National Secretary, Community and Public Sector Union, *Committee Hansard*, 11 November 2016, p. 53.

largest and most protracted industrial dispute in 30 years of enterprise bargaining in the Commonwealth. As you have seen from hundreds of submissions, this bargaining round is profoundly different, with a very significant human cost. I take no pride or joy whatsoever in still being bargaining in the Commonwealth after more than 1,000 days. We have workers on average wages—many of whom I have met with as recently as this week—who face their third Christmas without a pay rise. They and their families are doing it very tough where they have had to go through a three-year industrial dispute because they cannot give up the family-friendly and hours provisions they signed up to in these jobs that they previously negotiated in enterprise agreements and that they rely on to pick up their kids and juggle their work and family. There are also groups of workers who face additional challenges, such as at Immigration and Border Protection where we still have thousands of officers who face an actual cash pay cut to what they have earned since 2013...

I have told the story of this dispute to business leaders, industry groups, senior public servants from other government and, rarely, when I have had the opportunity, to members of this government. Many have reflected that a bargaining policy that requires removal and reduction of existing previously negotiated rights, bans any improvements and provides no pay rise for, effectively, three of six years that these agreements will cover is unrealistic and highly unusual in any sector of the economy. They are more surprised when I say that the government, in fact, will not talk to us at all about bargaining...

And, as we have seen again today, there is a refusal to admit that there is a problem, including from the Public Service Commissioner. It may surprise the committee, but the CPSU remains committed and willing to sit and talk at any point, including in sensitive, confidential discussions not played out in the media, or, indeed, in the parliament, to actually resolve this situation. That is what employees need and it is what agency needs, and I would be delighted to have that opportunity.<sup>15</sup>

8.17 Ms Flood then explained the CPSU's multiple attempts to engage the government on the bargaining process:

[In late 2013] we were discussing this matter with [the then Employment] Minister Abetz and discussing what the government's bargaining policy would be. So in the first few months of the Abbott government we were actually having a dialogue. In fact, I think we may be the only union in the country that invited the Prime Minister to address our national council—much to the shock of some of my colleagues! And Minister Abetz came. It was only a matter of months later when the government decided to stop talking, and then some time after that this policy [the March 2014 version] was released.<sup>16</sup>

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15 Ms Nadine Flood, National Secretary, Community and Public Sector Union, *Committee Hansard*, 11 November 2016, p. 49.

16 Ms Nadine Flood, National Secretary, Community and Public Sector Union, *Committee Hansard*, 11 November 2016, p. 52.

8.18 Over time, as the negotiations became protracted, the CPSU was forced to take an unprecedented approach and release its bargaining position:

I flagged that [the CPSU's intention to publicly release its revised bargaining position] with Commissioner Lloyd in March 2015, one of the only times we sat in a room together. Then we went through a process to actually put that out explicitly in public. I sat down with Minister Cash in the only meeting we have had after she took the portfolio on in October [2015]. We sent to government, in writing, our full outcomes position—again, something that you do not normally do: exactly what the CPSU would accept on everything, in writing.

I went through it with the minister...<sup>17</sup>

8.19 Ms Flood explained that the CPSU's position was 'ignored by the government':

...a revised bargaining policy was put out shortly afterwards that did not address what our outcomes position had said: 'The key issue for workers is not money; it is maintaining existing rights and conditions, particularly family-friendly conditions. That is the issue you need to address. People accept this is not a round of bargaining that is going to produce higher wage outcomes.' That was entirely ignored in that the revised bargaining policy [of November 2015] did not address that issue, and as recently as today we still have agreements going to votes that remove existing rights and conditions because the policy has not dealt with that matter.<sup>18</sup>

8.20 Finally, Ms Flood outlined her more recent contact with the APSC in August 2016, which demonstrates the disregard shown by the APS Commissioner regarding good faith bargaining and reaching a negotiated outcome:

It has been a very long time since the commissioner and I spoke. He did ring me on day 1,000 of this dispute to tell me that there was no interest whatsoever from the minister or him in meeting and discussing this matter at all back in August [2016]. That was the most recent contact. I thought it was an interesting day to pick.<sup>19</sup>

### **Committee view**

8.21 The committee is extremely disappointed that the government and its representatives at the APSC have presided over a public sector bargaining round described as 'the most divisive and least productive round in 30 years'. Given the evidence presented in over 500 public submissions, the committee reluctantly endorses this description.

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17 Ms Nadine Flood, National Secretary, Community and Public Sector Union, *Committee Hansard*, 11 November 2016, p. 52.

18 Ms Nadine Flood, National Secretary, Community and Public Sector Union, *Committee Hansard*, 11 November 2016, p. 53.

19 Ms Nadine Flood, National Secretary, Community and Public Sector Union, *Committee Hansard*, 11 November 2016, p. 55.

8.22 The committee is of the view that essentially the government has conducted a phoney bargaining process. The utter contempt displayed by successive Ministers for Employment and the Public Service, and the APS Commissioner towards more than one hundred and fifty thousand dedicated public servants is breathtaking.

8.23 The committee notes that several agencies have sought to negotiate with their employees in good faith but these efforts have been stymied by the government's rigid bargaining framework and its implementation by the APSC. The recent successful agreement reached between ABC management and staff, which was negotiated outside the confines of the bargaining framework, is a clear illustration of what could be achieved if the government and the APSC were not so ideologically driven.

8.24 Finally, the committee urges the government to reconsider its approach to APS bargaining with a view to ending the three year-long disputation which has caused incalculable harm to the public sector's reputation, its service delivery and its workers.

#### **Recommendation 14**

**8.25 The committee recommends that the Minister Assisting the Prime Minister for the Public Service take immediate steps to ensure that where decisions with respect to bargaining outcomes rest with the Minister or with the APS Commissioner, the decision maker engages in bargaining and acts in accordance with the good faith bargaining requirements of the *Fair Work Act 2009*.**



## Chapter 9

### Adverse impacts on APS staff morale

9.1 This chapter examines the impact on staff morale in the public service of the bargaining policy and the hard-line approach to bargaining taken by the APS Commissioner and the government.

9.2 The devastating impact on staff morale resulting from the government's rigid application of the bargaining policy and the lack of genuine negotiations was a recurring theme throughout this inquiry.

9.3 Mr Esmond Smith is an Employee Bargaining Representative for 115 Australian Competition and Consumer Commission (ACCC) staff at both the ACCC and the Australian Energy Regulator (AER). He told the committee that staff morale at the ACCC and AER risked being permanently damaged by the current bargaining policy and the unfair and unreasonable approach taken by the government and the APS Commissioner.<sup>1</sup>

9.4 Mr Smith recounted the blatantly dismissive attitude of certain agency management towards employees, the anger that the whole bargaining process has engendered, and the acute impacts on staff morale:

I think it is fair to say that a large proportion of the staff I represent are extremely angry with the process. They feel the process has been going nowhere. The government has essentially been saying, 'Sign up to this or get a new job.' The former executive general manager of the ACCC's corporate services department said in a bargaining meeting, 'Take the offer or go down the road.' After a long period people find that very disrespectful. It makes them angry and it does not make them want to work for their managers or work for the [commission]. The reason we get such a good outcome in our work is that people believe in the work they do, and this whole process is undermining that whole work ethic and culture.<sup>2</sup>

9.5 Ms Jennifer Bryant was a principal federal prosecutor with the Commonwealth Director of Public Prosecutions (CDPP) for 29 years. Ms Bryant recently left the CDPP driven, in part, by the divisive nature of the government's bargaining policy and the concomitant negative impact on staff morale.<sup>3</sup>

9.6 Ms Bryant expressed her disappointment at the offensive language used by the government to describe public servants in the press and the parliament:

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1 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 20.

2 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 20.

3 Ms Jennifer Bryant, private capacity, *Committee Hansard*, 11 November 2016, p. 24.

I devoted 29 years to prosecuting criminals on behalf of Australian citizens, and I frankly find the language used to refer to me during many of these negotiations as offensive and denigrating.<sup>4</sup>

9.7 Ms Deb Hayman who is the CPSU Defence Section President, explained the impact the government's approach was having on staff morale at the defence department:

In my experience, not just with my CPSU hat on but with my HR hat on, I am seeing an increase in stress-related injuries. People really want to go out of their way to help, particularly in the ADF. They are 100 per cent committed to that area. But, as Ian has said, we have seen reductions in staff, which means that those employees left behind are doing more. When the department comes out and says, 'This is the best offer that we can give to you,' when it sees a lot of already negotiated conditions taken out, which means that that certainty disappears—the conditions are in a policy document which could then be modified by the department—there is a disconnect. 'I'm doing this for you, yet you can't give me anything that recognises that I am respected in the workforce.'

I would say we are seeing disengagement and an increase in absences. Even when you talk to members and other employees and ask, 'How do you think we can do this better?' they say, 'I don't care.' That is the type of response that you get, which is actually quite concerning because Defence APS employees have always cared a lot. The flip side of that is they are so much more staunch in saying no to these agreements, because they do not believe that it is a respectful offer. Therefore, we are seeing participation rates in voting no increase but also participation in the workforce, as far as being engaged in the work that they are doing, decrease.<sup>5</sup>

9.8 The President of the CSIRO Staff Association, Dr Michael Borgas, also told the committee of the impact on staff morale and the divide it is creating between the CSIRO executive and some of Australia's leading scientists:

But the current staff survey, after what has been a year of turmoil, certainly did not show marked improvement. They showed probably a lack of engagement with—or at least of belief in whether—the strategic goals of the organisation could be achieved. They showed polarisation between the management and the workers of the organisation—and when I say 'workers', those are many of the very most senior scientists in the country.<sup>6</sup>

### ***Poor outcomes for the broader community***

9.9 Mr Smith explained that AER staff who undertake price determinations assess and determine the revenue proposals of electricity network businesses. Electricity

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4 Ms Jennifer Bryant, private capacity, *Committee Hansard*, 11 November 2016, p. 24.

5 Ms Deb Hayman, Community and Public Sector Union Defence Section President, Defence Community and Public Sector Union Member Representatives, *Committee Hansard*, 15 November 2016, p. 18.

6 Dr Michael Borgas, President, CSIRO Staff Association, *Committee Hansard*, 15 November 2016, p. 22.

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network prices make up between 35 and 60 per cent of residential electricity bills. Since May 2014, as a result of assessing and determining 19 revenue proposals, the AER has saved consumers \$13.7 billion relative to what the network businesses wanted to charge consumers in nominal terms.<sup>7</sup>

9.10 In light of the critical work done by highly skilled, professional and dedicated staff at the AER and ACCC, Mr Smith expressed grave concern about the decline in staff morale as a result of their poor treatment by the government and the feeling by staff that their work was not valued and that there was no avenue available under the bargaining policy for genuine consideration of their concerns.<sup>8</sup>

9.11 As a consequence, Mr Smith told the committee that staff were either searching for alternative work or undertaking protected industrial action. Given the nature of the work performed by ACCC and AER staff, Mr Smith warned the committee of the potentially significant adverse impacts of the bargaining policy on the broader Australian community:

The ACCC and the AER make decisions directly worth billions of dollars to consumers that routinely involve enormously costly and stressful litigation. To stand up in a tribunal or court, a case or regulatory decision must be both theoretically sound and well-argued. To achieve this requires highly skilled and motivated staff who will work very hard (well beyond any legal obligations) when required. This work effort is required to win in a highly litigiously competitive environment. The businesses involved in litigation with the ACCC and AER are often worth billions of dollars and routinely spend millions of dollars on litigation which they see as a cost of doing business. The highly disrespectful approach of the government to bargaining over wages and conditions being put to ACCC and AER staff, one of essentially accept it or get another job, seems unlikely to motivate their staff to work hard to achieve the best outcomes for the community.<sup>9</sup>

9.12 Mr Smith concluded that the current bargaining policy and approach was counter-productive because it:

...gives talented staff a strong incentive to find work elsewhere and reduces the attractiveness of the Public Service to new applicants. I have seen both

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7 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 18.

8 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 18.

9 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Submission 192*, p. 1. Emphasis in original.

of these effects occur in the AER directly as a result of the bargaining process.<sup>10</sup>

9.13 Ms Bryant pointed out that most federal prosecutors are APS4 employees on \$66 371, which is less than the average wage. She confirmed that senior lawyers were leaving the CDPP and moving to the private sector or to state agencies because of poor pay rates. This has resulted in serious cases being handled by more junior lawyers:

CDPP staff are on the front line of prosecutions involving terrorism, major drug trafficking and internet child pornography, and such cases are being dealt with increasingly by junior lawyers, while having an adverse impact on the ability of the organisation to perform their work.<sup>11</sup>

9.14 Similar sentiments were expressed by Mr Erik Rasmussen who told the committee that the bargaining process had damaged staff morale to such an extent that it was now having a negative effect on the work of the Australian Taxation Office (ATO):

A savvy employer recognises the importance of staff morale and seeks an enterprise agreement that will maintain that morale and enhance productivity. This process has greatly reduced enthusiasm and commitment to the organisation. I have seen firsthand the bitterness growing in my colleagues as they reflect on an employer that does not seem to care about them anymore.

Tax officers are consummate professionals committed to serving the public. Those attributes should not be abused nor taken for granted. This process has brought a great deal of surprise and disappointment to the office, and that sentiment is having a negative impact on tax collection and superannuation administration.<sup>12</sup>

9.15 Mr Tom Carrigg made essentially the same point from the perspective of dedicated employees performing critical work at the ACCC who are now 'frustrated and angry' with the bargaining policy:

ACCC employees are frustrated and angry. With no pay rise for three years, employees are under growing financial pressure. Subjecting employees to a process that they cannot influence is detrimental to the workplace relations and trust in the government. Like my colleagues across the public service, the ACCC's employees work incredibly hard. The ACCC is a high-profile government agency that expects its staff to produce quality products or outcomes, day in, day out. Staff are dedicated and work long hours. Their efforts ensure that consumers are not ripped off, markets are competitive

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10 Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at the ACCC and the Australian Energy Regulator, *Committee Hansard*, 11 November 2016, p. 19.

11 Ms Jennifer Bryant, private capacity, *Committee Hansard*, 11 November 2016, p. 24.

12 Mr Erik Rasmussen, CPSU Australian Tax Office bargaining team, *Committee Hansard*, 11 November 2016, p. 33.

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and monopolies are adequately regulated or monitored in Australia. For this sort of effort, we believe it is not unreasonable to expect salary increases that at least cover inflation and to keep existing conditions in our new EA.<sup>13</sup>

### **Committee view**

9.16 The committee is of the view that bargaining should be a two-way street involving genuine consultation and negotiation.

9.17 However, the evidence from over 600 submitters and numerous witnesses was that, with the exception of the ABC (see Chapter 6), this bargaining round has had no genuine negotiation whatsoever.

9.18 Instead, employee bargaining representatives have effectively been handed a done deal and told to take it or leave it or, even worse, to take it or pack up and go elsewhere.

9.19 Numerous APS employees fronted the committee at its two public hearings. Some had never been bargaining representatives before and some had never given evidence to a committee before.

9.20 The committee was greatly impressed with their professionalism and commitment to their work. At the same time, the committee was appalled at the disrespectful and shabby manner in which they and their colleagues have been treated.

9.21 Witnesses repeatedly emphasised that the current bargaining round is entirely different from previous rounds due the severe trade-offs mandated by the government's bargaining policy.

9.22 The committee was repeatedly told that public servants are already working harder and longer due to the massive cuts instituted by the Abbott government. Many public servants submitted that their continued efforts with fewer resources had gone unnoticed and unrecognised. As a consequence, many public servants felt that their work is under-valued.

9.23 As noted in Chapter 3, insult has been added to injury by certain politicians and conservative commentators who peddle the offensive myth that somehow all public servants are highly paid and enjoy excessively generous working conditions.

9.24 The dedication shown by many public servants is admirable, but it should not be used as an excuse by the government to downgrade their working conditions. Public sector workers accept that they are less well-remunerated than their private sector counterparts despite often having more responsibility. However, the failure of pay offers to meet the rising cost of living is unfair and particularly miserly given the staffing cuts the APS has endured in recent years.

9.25 It causes the committee great distress to realise the extent to which staff morale across the APS has plummeted, and that large numbers of APS employees no longer have any faith or trust in their managers.

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13 Mr Tom Carrigg, CPSU, Australian Competition and Consumer Commission Bargaining Team, *Committee Hansard*, 11 November 2016, p. 33.

9.26 These are hugely damaging developments for the APS and appear to be almost entirely attributable to the unprecedented nature of the current bargaining framework. It is incumbent on government to take action to fix this mess.

9.27 The committee has made several recommendations throughout this report to address these matters, and will set out further recommendations for the current and future bargaining rounds in its concluding comments in the next chapter.

# Chapter 10

## Concluding comments

10.1 The committee begins this concluding chapter by acknowledging the incredible importance of the work performed by just over 150 000 Australian Commonwealth public servants. It is clear from the testimony of countless public servants that these people care deeply about the work that they do, and that their commitment to that work stems in large part from a recognition of the value that their services provide to all sections of the Australian community.

10.2 Yet, it is also abundantly clear, based on the wealth of evidence received by the committee, that the 2014 bargaining policy implemented under the Abbott government, and the subsequent 2015 bargaining policy implemented by the Turnbull government, is not only cruel and heartless in its treatment of the government's own public servants, but has also been an abject failure in terms of facilitating and concluding genuine bargaining negotiations.

10.3 The brutally hard-line and combative approach to the bargaining policy adopted by the APS Commissioner and the Coalition government is needlessly dogmatic. Not only is it a travesty of true consultation and negotiation, this destructive approach has come at huge human cost to public service employees, a large proportion of whom earn below the average Australian wage. These are the very people that the government relies on to implement its policies and deliver a raft of services that benefit the broader community.

10.4 The fact that the government has not successfully concluded enterprise agreements for the majority of its workforce after three years of protracted and painful negotiations is unprecedented in over 30 years of public sector bargaining.

10.5 It is hard to avoid the conclusion that the bargaining policy is driven by an ideological disdain for public servants and a thoughtless disregard for the services that they deliver. The government has risked the very fabric of the public service ethos by undermining the goodwill of countless public servants and engendering hostility between senior management and employees. In fact, the government has given every appearance of being willing to cut off its nose in spite of its ideological face.

10.6 The committee received submissions and heard testimony from public servants from all walks of life. These are upstanding citizens who, contrary to the insulting remarks made about them by the Minister for Employment, Senator the Hon Michaelia Cash, absolutely live in the real world. They raise families, they pay taxes, they hold mortgages and they value the work they do.

10.7 Unfortunately, it is all too apparent that a doctrinaire adherence to a rigid and unworkable bargaining policy by the APS Commissioner and the government has caused unnecessary tension in the workplace and significantly eroded trust across the public service.

10.8 Ironically, the government's intransigent approach to the application of its bargaining policy has hampered productivity, placed the delivery of important

services under huge strain, and compromised key elements of government policy. As a consequence, there is now a heightened risk that beneficial outcomes for all citizens will be forgone.

10.9 And yet, despite the lack of good faith displayed by some agency heads and the APS Commissioner toward genuine negotiation, the committee heard from the CPSU and other employee bargaining representatives that they remain ready and willing to engage in genuine negotiations and that they continue to put forward fair and reasonable proposals.

### *Overcoming the impasse*

10.10 In terms of the current bargaining round, the committee's strong view is that the government should acknowledge that its current approach has not only failed, but has been counter-productive.

10.11 In the interests of both the APS and the broader community, this bargaining dispute needs to be resolved as a matter of urgency. Accordingly, the government should moderate its approach and amend the bargaining policy to allow for a fair, reasonable and speedy resolution to the current dispute.

10.12 To this end, it is critical that the government allows agencies to genuinely negotiate and agree various matters with employee representatives. In addition, the government should ensure that the APS Commissioner is required to adopt a collaborative approach with employee bargaining representatives.

### **Recommendation 15**

**10.13 The committee recommends that the Minister Assisting the Prime Minister for the Public Service takes immediate steps to ensure that the APS Commissioner acts to remove the existing impediments and works with employee representatives and agencies to enable a reasonable conclusion to be reached to the current protracted Commonwealth public sector bargaining.**

### **Recommendation 16**

**10.14 The committee recommends that the Minister Assisting the Prime Minister for the Public Service take immediate steps to facilitate a discussion with the CPSU about a possible resolution of this extended dispute, with due consideration for the other recommendations in this report.**

### *The APS Commissioner's role*

10.15 The committee recognises the vital role played by the APS Commissioner in implementing the government's APS bargaining policy. Sadly, the committee is distinctly unimpressed with the performance of the current APS Commissioner, the Hon John Lloyd.

10.16 For example, when asked specifically about changes being proposed to access to flexible hours and rostering control in agencies such as DHS, Mr Lloyd responded: 'There has been no removal of those sorts of conditions. If they are there and they are available now, they will remain'.<sup>1</sup>

10.17 The committee received extensive evidence which clearly contradicts Mr Lloyd's assertion that those sorts of conditions are not being removed. For example the CPSU provided the following detailed list:

The information provided below is by way of example. It is not a complete list of cuts to employee rights with respect to employee flexibility on rosters and hours of work. Examples are provided from 20 agencies involved in this bargaining round and DHS is addressed separately. Cuts identified below include:

- Removal of the right to access part time work on return from parental leave.
- Removal of clauses that provide positive support for employees seeking flexible working arrangements such as part time work.
- The National Museum of Australia (and others) have proposed that overtime for part time employees be paid at single time until full time hours are worked. 70% of NMA staff are women and 36% of all staff are part time. The effect of this provision is that overtime hours worked by part time staff in these circumstances have a lower effective rate of pay than equivalent full time staff. This is because the overtime hours do not accrue superannuation or leave.
- Domestic Violence leave has been removed from Miscellaneous Leave provisions in enterprise agreements.
- Removal of notice requirements for rotations between work locations.
- Removal of provisions providing access to personal leave to support elderly parents.
- Provisions that allow part time hours to be varied by the agency without employee agreement.
- Reductions in the amount of unpaid leave an employee has an entitlement to access for parental leave purposes.
- Removal of rights for an employee to revert to full time employment before the end of the term of a part time agreement.<sup>2</sup>

10.18 The full list of the CPSU's examples is included at Appendix 5.

10.19 The committee is extremely concerned by the seemingly dismissive approach taken by the current APS Commissioner. His approach to the negotiation process

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1 The Hon John Lloyd, Australian Public Service Commissioner, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 47.

2 CPSU, answer to questions on notice, 11 November 2016 (received 18 November 2016).

shows a distinct lack of good faith bargaining and in the committee's view his actions and decisions have caused significant and unnecessary disputation and delays.

### ***Future bargaining rounds***

10.20 The committee received evidence during the inquiry about both the mechanism and the approach to enterprise bargaining in the APS.

10.21 Based on evidence received, the committee recommends that future bargaining rounds must allow for genuine negotiation that provides a proper opportunity for parties to exchange information and ideas, and results in fair and reasonable outcomes for employees. This would include the opportunity for employees to receive some reasonable form of back-pay or financial recognition if the conclusion of the bargaining process is unduly delayed.

10.22 In particular, future rounds must avoid a situation where intractable positions become entrenched because the minister's delegate, the APS Commissioner, is constrained by the bargaining policy and is either unable or unwilling to facilitate genuine negotiations.

10.23 It was put to the committee that future bargaining rounds should retain already-agreed rights and conditions and that substantive and procedural rights should be retained in enterprise agreements rather than being removed and put into unenforceable policy. These seem entirely reasonable and sensible requirements for an industrial relations policy and the committee endorses them.

10.24 Finally, it is important that the government gives serious consideration to the actual mechanism by which enterprise bargaining occurs across the APS. The committee heard evidence from several submitters and witnesses that the current agency-based approach may not be serving the APS well in terms of recruiting and retaining the best available talent.

10.25 Furthermore, it was put to the committee that an agency-based approach to enterprise bargaining involves significant transaction costs and has led to significant wage disparities across the APS, a lack of mobility across the APS, and has bred a level of frustration and resentment amongst employees performing the same work on sometimes substantially different wages. This is further exacerbated by machinery of government changes as demonstrated by the evidence from PM&C, DIBP and the AAT in this process.

10.26 It is apparent to the committee that APS remuneration should be set with reference to the wider labour market with the specific intention of attracting and retaining the skills and capabilities of the 'best and brightest'.

10.27 Consideration should also be given to moving towards APS-wide remuneration policies. This would help facilitate movement across the APS, thereby improving outcomes for both agency management and employees alike. It would also begin to address the serious pay inequities that exist both within agencies and across the APS.

10.28 It was put to the committee that the current bargaining round exemplifies a key problem with the current approach to enterprise bargaining in the APS. That is,

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the current system uses agency-based bargaining, but retains strict APSC central control over the precise extent to which agencies can negotiate.

10.29 Various propositions were put to the committee for the conduct of future bargaining by Professionals Australia, Professor Andrew Podger, and the CPSU amongst others.

10.30 One proposition was the approach adopted in the Australian Capital Territory (ACT) public sector. The ACT has moved away from agency-based bargaining to an approach based on professions and occupations. It was submitted that this has allowed the ACT Government to rationalise the number of bargaining processes and ensure that employees doing similar work in different ACT Government agencies could be covered by the same agreement. This in turn has meant that changes to ACT agencies or departments, machinery of government changes, no longer have unintended consequences for employees as it does not impact on their agreements. While the ACT Government has continued to take a central approach to general pay increases it provides more scope for differentiated outcomes for employees based on their particular occupational or professional skills.

10.31 Another proposition was a return to APS-wide bargaining. It was submitted that this approach would relieve agency heads of the need to engage in enterprise bargaining and would rationalise the bargaining processes because negotiations would be conducted directly with the Australian Government. However, submitters noted that the challenge would be both how to unscramble the differences between agencies across the public sector, align bargaining periods, and also ensure that individual groups with critical skills within the public service are appropriately recognised and supported.

10.32 In light of the above propositions, and based on the evident failures of the current bargaining framework, the committee recommends that the APSC and the CPSU begin discussions well in advance of the next bargaining round to determine the best and most productive way to conduct enterprise bargaining across the APS. The committee stresses that an agreed approach must be finalised at least six months prior to the nominal expiry of this round of enterprise agreements.

### **Recommendation 17**

**10.33 The committee recommends that the APSC and the CPSU consider a range of approaches for future enterprise bargaining and settle on the best and most productive approach for the APS and other Commonwealth agencies well in advance of the nominal expiry of this round of enterprise agreements.**

**Senator Gavin Marshall**

**Chair**



# Coalition Senators' Dissenting Report

## Introduction

1.1 At the outset, Coalition senators commend the vital services performed by dedicated Commonwealth public servants right across Australia. Coalition senators acknowledge that public servants bring high levels of skill and dedication to their work that is often undertaken in challenging situations.

1.2 The government's workplace bargaining policy provides agency heads with a level of autonomy and flexibility over enterprise bargaining negotiations and yet at the same time, it retains some measure of control.

1.3 This is no different to the numerous bargaining policies that have been promulgated by both sides of politics over the preceding two decades. It is fanciful in the extreme for Labor senators and the Community and Public Sector Union (CPSU) to pretend otherwise.

1.4 Indeed, the APS Commissioner, the Hon John Lloyd, submitted that:

It is common practice for the Commonwealth Government to set parameters and policies that establish the scope for wage outcomes and changes to employment conditions. The policies and parameters apply to all Government agencies. This has been Commonwealth Government practice over many decades. Most State and Territory governments also guide agency bargaining with similar approaches.<sup>1</sup>

1.5 The APS Commissioner noted that the government has three key objectives for this round of bargaining:

- moderate and responsible remuneration increases, noting that the Federal Budget has been in deficit since 2008-09;
- the removal of superfluous content and detail from enterprise agreements that compromise the capacity to efficiently manage an agency; and
- support for an employee's right to freedom of association.<sup>2</sup>

1.6 The APS Commissioner also pointed out that the government had actually lifted the wage offer and relaxed certain elements of the bargaining framework with the release of the *Workplace Bargaining Policy 2015*:

- the general wages offer was raised from 1.5 to 2 per cent per annum averaged over the life of the agreement;
- productivity gains, achieved through the removal of restrictive work practices, were recognised;

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1 Australian Public Service Commissioner, *Submission 202*, p. 2.

2 Australian Public Service Commissioner, *Submission 202*, p. 2.

- the requirement to remove all non-essential content from agreements were relaxed, so long as remaining clauses did not impose restrictions on an agency operating efficiently; and
- approval requirements were simplified. Streamlined approval processes for remuneration increases and agreement content were introduced, with the approval of Ministers only required where an exemption from the policy was sought.<sup>3</sup>

1.7 As the APS Commissioner has pointed out, the government's workplace bargaining policy is clearly designed to improve and modernise workplace relations in the Commonwealth public sector. Unfortunately however, the CPSU opposes a policy that reflects the community's desire for the government to set a responsible example because it threatens its control in the workplace:

The Government policy is focused on achieving sound, modern workplace relations that engender this mutual trust and understanding. This is something that union leaders resist because they perceive it as a threat to their already diminished role in many Government workplaces.<sup>4</sup>

1.8 Coalition senators believe it is vital to correct the false assertions propagated by the CPSU regarding the so-called removal of existing conditions of employment. This is patently untrue, and is mere propaganda designed to confuse employees and serve the self-interested motives of the CPSU.

1.9 Contrary to the myths peddled by the CPSU, the APS Commissioner sets out the true picture quite clearly:

The bargaining policy does not require the removal or reduction of existing conditions of employment. Conditions such as annual leave, personal/carer's leave, maternity and parental leave, employer superannuation contributions and redundancy provisions are protected. Union campaigns against new agreements have conflated the removal of restrictive work practices and union privileges with the removal of employment conditions.<sup>5</sup>

## **APS remuneration**

1.10 Any consideration of the government's bargaining policy must start from the premise that, as the APS Commissioner has submitted, 'public service employment conditions are generous'.<sup>6</sup>

1.11 Certainly the bargaining policy imposes a cap on remuneration of 2 per cent per annum. Given Australia's debt position and the corresponding budgetary constraints that the government faces, it would be fiscally irresponsible and directly

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3 Australian Public Service Commissioner, *Submission 202*, pp. 2–3.

4 Australian Public Service Commissioner, *Submission 202*, p. 5.

5 Australian Public Service Commissioner, *Submission 202*, p. 7.

6 Australian Public Service Commissioner, *Submission 202*, p. 7.

contrary to community expectations for any government not to impose a fair and reasonable cap on wages growth across the public sector.

1.12 Regarding the question of community expectations, although CPSU representatives objected to the phrase contained in the bargaining policy that 'APS and Commonwealth employment conditions generally meet or exceed community standards', when presented with some real life examples, Mr Michael Tull, the Assistant National Secretary of the CPSU conceded that APS conditions do indeed exceed community expectations:

Senator McKENZIE: Sorry, Mr Tull. You might want to review the Hansard of the earlier witnesses, Dr Williamson and Professor O'Donnell, about, for instance, maternity leave. Twelve weeks paid maternity leave is the community standard and yet the range for APS employees is 14 to 18 weeks. So that looks to me—I am no industrial relations lawyer—to exceed the community standard.

Mr Tull: When you put it that way, you can certainly answer your own question in that regard...<sup>7</sup>

1.13 In short, the government cannot afford further additional salary increases to public sector employees and the Australian public would rightly object if such increases were granted. Beyond this, there is a risk that wage increases above productivity gains may flow through to the private sector, which does not have the same capacity to absorb costs through increased taxation or by running continued budget deficits.

1.14 Let's be clear: in the current economic climate, a 2 per cent per year pay rise over three years is entirely reasonable. Inflation in 2014-15 was 1.5 per cent.<sup>8</sup> The latest ABS Consumer Price Index released on 26 October 2016 put inflation at 1.3 per cent over the year to September 2016.<sup>9</sup> This demonstrates that the bargaining policy allows public service salaries to more than keep pace with inflation. Claims that the government's bargaining policy leaves public servants worse off financially frankly do not add up.

1.15 Furthermore, the latest ABS Wage Price Index shows that, over the last year, public sector wage growth of 2.3 per cent was higher than private sector wage growth of 1.9 per cent.<sup>10</sup> The rhetoric from the CPSU that somehow private businesses are paying out higher wage rises than the government sector again does not stack up.

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7 Mr Michael Tull, Assistant National Secretary, CPSU, *Committee Hansard*, 11 November 2016, p. 30.

8 The Treasury, *Pre-Election Economic and Fiscal Outlook 2016—Economic Outlook*, [www.treasury.gov.au/PublicationsAndMedia/Publications/2016/PEFO-2016/HTML/Economic-outlook](http://www.treasury.gov.au/PublicationsAndMedia/Publications/2016/PEFO-2016/HTML/Economic-outlook) (accessed 25 November 2016).

9 Australian Bureau of Statistics, *6401.0—Consumer Price Index, Australia*, Sep 2016, [www.abs.gov.au/ausstats/abs@.nsf/mf/6401.0](http://www.abs.gov.au/ausstats/abs@.nsf/mf/6401.0) (accessed 25 November 2016).

10 Australian Bureau of Statistics, *6345.0—Wage Price Index, Australia*, Sep 2016, [www.abs.gov.au/ausstats/abs@.nsf/mf/6345.0](http://www.abs.gov.au/ausstats/abs@.nsf/mf/6345.0) (accessed 25 November 2016).

1.16 Let us remember too that, in addition to the annual pay rise, there are plenty of opportunities for incremental salary increases throughout the public service. This occurs by virtue of the fact that, subject to a satisfactory classification in a performance review, there is provision for further salary increases as employees advance through the increments within each APS classification. As detailed in research undertaken at the economic think tank, the Institute of Public Affairs (IPA), these annual incremental advances have the effect of boosting APS salaries for those employees by an average of \$2420.<sup>11</sup>

1.17 However, beyond the opportunities for annual pay rises built into the APS system, the submission from the IPA noted that 'there is clear evidence in the ABS statistics that public sector wages are, on average, higher than the private sector'.<sup>12</sup>

## **APS allowances and entitlements**

### ***Generous APS allowances***

1.18 During the inquiry, the committee received a wealth of research evidence from the IPA regarding a range of allowances enshrined in APS enterprise agreements that are particularly generous, when compared to what is on offer in the private sector.<sup>13</sup> Based on the IPA's research, these allowances are detailed in the sections below.

1.19 All APS agreements contain a raft of generous allowances. These allowances have the effect of increasing salary by potentially up to tens of thousands of dollars per annum. The IPA found that these allowances are paid:

- to employees with first aid qualifications;
- to those working in regional and remote locations (even where relocation was not necessary);
- for professional development costs;
- for gym memberships;
- for financial advice;
- for child care; and
- for home office costs—amongst many others.<sup>14</sup>

1.20 Mr Aaron Lane, a Legal Fellow at the IPA, provided the committee with examples of the unique and generous allowances that are available in the public sector:

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11 Institute of Public Affairs, *Submission 208*, p. 2.

12 Institute of Public Affairs, *Submission 208*, p. 2.

13 See Institute of Public Affairs, *Submission 208*; Mr Aaron Lane and Mr James Paterson, *Driving a soft bargain: Examining the Commonwealth Public Sector Enterprise Agreements 2011–2014*, Institute of Public Affairs, December 2015; Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, pp. 12–17.

14 Institute of Public Affairs, *Submission 208*, p. 2.

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The three [allowances] that we have detailed in the report, the three examples that we have pulled out—and these are just three examples; there are certainly more that exist, but the three examples we took—are fairly representative of the sorts of things that are in agreements. For example...in the Department of Health agreement you can get \$165 for your prescription eyewear. In the department of agriculture agreement, you can get flu vaccinations, for example, and also in that agreement \$300 a year for gym or fitness memberships. That is reimbursement of that particular membership, not whether you have actually attended.<sup>15</sup>

1.21 When asked about the Treasury's \$600 healthy lifestyle allowance Mr Lane responded:

Some are more; some are less. These are just some of them. That would be a middle-of-the-road figure for these sorts of agreements.<sup>16</sup>

1.22 Mr Lane also pointed out that some of the remarkable allowances available to public sector workers would clearly not align with community expectations. When an example of members of a APS departmental netball team receiving paid leave for participating in the master games was raised, Mr Lane responded:

I think these sorts of entitlements would be considered overly generous. I must admit, when doing this paper, I was surprised at the extent of some of these leave provisions. Moving house, for example, was the classic one. The Department of Defence have what is called a 'Defence day', where you get to take a day off with no reason and nothing required. It is not part of your annual leave, it is not part of your sick leave and it is not part of your personal leave. You just take a day off when you feel like it.<sup>17</sup>

1.23 Importantly, clause 21 of the government's bargaining policy provides the flexibility of restructuring allowances into the base rate of pay. As noted by the IPA, clause 21 also provides scope for negotiation to offset remuneration increases beyond 2 per cent.

1.24 Another important issue that was raised during this inquiry was whether a new leave provision should be made for those experiencing domestic violence. Representatives of the APSC clarified that victims of domestic violence already have access to leave entitlements in their agreements:

Mr Spaccavento: [Those experiencing domestic violence access appropriate leave] through other existing leave types—so, for instance, through personal leave and miscellaneous leave; there may be other forms of leave, but those would typically be the two main forms of leave that would be available.

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15 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 15.

16 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 15.

17 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 17.

Mr Lloyd: It is very important that every agency gives every support possible to people suffering domestic violence, and leave is available. If there is no domestic violence leave, there is no question they have access to appropriate leave under personal and carers leave or special miscellaneous leave. And that is unambiguously the policy of the government and all government employers.<sup>18</sup>

1.25 The committee received evidence that there is a broad range of policy development regarding domestic violence leave arrangements across different agencies. At one end of the spectrum is DHS which has a comprehensive policy which representatives agreed was probably 'best practice across the public service'.<sup>19</sup> At the other end of the spectrum was the CSIRO which has a 'newly drafted policy document that formed part of the negotiations'.<sup>20</sup>

1.26 Coalition senators therefore believe that it is appropriate for individual agencies to develop tailored leave arrangements that suit their particular circumstances. In this regard Coalition senators endorse the APSC initiative to develop a model domestic violence policy for agencies, based on agencies with best practice policies in place. The model policy was recently shared with agencies so they could tailor it to suit their particular circumstances.<sup>21</sup> A copy of the model policy was provided to the committee.<sup>22</sup>

### ***Generous superannuation entitlements***

1.27 All APS agreements have a generous superannuation entitlement. The Commonwealth's agreed employer superannuation contribution is 15.4 per cent. This is substantially higher than the standard 9.5 per cent Superannuation Guarantee that applies in the private sector.<sup>23</sup>

1.28 Coalition senators are of the view that the very generous superannuation entitlements available to APS employees should be factored in when considering further remuneration increases.

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18 Mr Marco Spaccavento, Group Manager, Australian Public Service Commission and the Hon John Lloyd, Australian Public Service Commissioner, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 45.

19 Ms Lisa Newman, Deputy National President, Community and Public Sector Union; Community and Public Sector Union Bargaining Team, Department of Human Services, *Committee Hansard*, 15 November 2016, p. 10.

20 Dr Michael Borgas, President, CSIRO Staff Association, *Committee Hansard*, 15 November 2016, p. 27.

21 Ms Stephanie Foster, Deputy Australian Public Service Commissioner, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 46.

22 Australian Public Service Commissioner, answer to question on notice, 11 November 2016, [www.apsc.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/APSBargaining/Additional\\_Documents](http://www.apsc.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/APSBargaining/Additional_Documents) (accessed 29 November 2016).

23 Institute of Public Affairs, *Submission 208*, p. 2.

1.29 Moreover, because the entitlement is expressed as a percentage, every dollar increase in salary will translate to a greater difference in the total compensation package as compared to the private sector.

### ***Generous leave entitlements***

1.30 All APS agreements have leave entitlements that exceed those provided for in the National Employment Standards in the *Fair Work Act 2009*.<sup>24</sup>

1.31 Some employees have greater than 4 weeks annual leave, and miscellaneous leave entitlements such as volunteer leave or leave for moving house further increase this entitlement.<sup>25</sup>

1.32 Again, Mr Lane outlined the fact that not only are leave conditions in the public service very generous, but unlike the private sector, leave can be accrued on a year-on-year basis:

**Mr Lane:** Something that I can point you to in terms of the IPA's research paper, on page 15, is the personal and carers leave provisions. Under the National Employment Standards it is 10 days a year, and table 5 sets out the personal leave that is available under the various different agreements. They range from a minimum at the Department of Defence of 15 days up to 20 days, which is, obviously, double the NES. The other thing to note is that that leave entitlement is accrued. You have 20 days in one year, and, if you do not take any of those days, the following year you would have 40 days and then 60 days and so on. I think they are very generous provisions that exist under the current agreements.

**Senator McKENZIE:** After 10 years effectively you could, potentially, have a year off?

**Mr Lane:** That is my understanding.

**Senator McKENZIE:** Are there any other workplaces outside of the Public Service that would have that sort of provision after 10 years—you could accrue leave to ensure that you have your 11th year paid in full?

**Mr Lane:** Not to my knowledge. It is certainly not something I have seen in any private sector agreement.<sup>26</sup>

### ***Severance benefits***

1.33 APS agreements provide extensive notice periods of up to seven months. APS employees are also entitled to a severance benefit on termination for redundancy which, in some cases, is quadruple that under the National Employment Standards in the *Fair Work Act 2009*.<sup>27</sup>

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24 Institute of Public Affairs, *Submission 208*, p. 3.

25 Institute of Public Affairs, *Submission 208*, p. 3.

26 Mr Aaron Lane, Legal Fellow, Institute of Public Affairs, *Committee Hansard*, 11 November 2016, p. 16.

27 Institute of Public Affairs, *Submission 208*, p. 3.

1.34 In light of the above, Coalition senators note that clause 16 of the government's bargaining policy states that 'productivity improvements can be achieved by ensuring that new workplace arrangements do not contain clauses that restrict an agency's ability to operate efficiently and effectively'.

### ***Performance management clauses***

1.35 Most APS agreements contain highly prescriptive clauses on the performance management system. This can make it difficult and time-consuming for management to dismiss underperforming employees.<sup>28</sup>

1.36 For example, in one department, it takes more than 24 weeks for the mandated time-period to elapse. On top of this, the decision to terminate can then be internally and externally reviewed. This is far in excess of the equivalent provisions that apply to most private sector employers, especially smaller employers. This is also far in excess of what the Australian public would consider is a fair and reasonable process to deal with incompetent or non-performing public sector employees.

1.37 Removing these clauses would achieve productivity improvements envisaged by clause 16. This is ultimately a matter for bargaining between agencies and staff.

### ***Union privilege***

1.38 Union-privilege clauses exist in APS agreements which provide direct taxpayer-funded benefits to unions and union members. Under the agreements, union delegates can undertake their roles on taxpayer's time as well as having access to taxpayer-funded department facilities.<sup>29</sup>

1.39 These union benefits go far beyond the proper role of union representation. Yet again, the government's bargaining policy provides the opportunity to trade these generous union benefits for an increase in employee remuneration.

1.40 It is likely to be of concern to the Australian public that all APS agreements entitle union delegates to paid leave to undertake union training and engage in industrial proceedings at taxpayers' expense.

## **The bargaining policy provides flexibility for negotiating agreements**

1.41 Coalition senators are of the view that the existing generous entitlements set out in the sections above should be factored in when considering whether additional conditions are warranted.

1.42 The latitude for agency heads to negotiate and bargain over wages and conditions is amply illustrated by the case of the Australian Public Service Commission (APSC).

1.43 In June 2015, the APS Commissioner was able to offer APSC staff a 1.5 per cent per annum pay rise with no loss of entitlements or conditions. This offer was possible because the APSC had cut costs and reduced executive level staff over the

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28 Institute of Public Affairs, *Submission 208*, p. 3.

29 Institute of Public Affairs, *Submission 208*, p. 3.

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previous year. These cost savings and productivity gains then allowed the APSC to offer the proposed agreement while still complying with the government's bargaining policy.<sup>30</sup>

1.44 The APSC was able to preserve the Christmas shutdown, leave provisions, incremental pay advances, flexible working arrangements, health and wellbeing benefits and redundancy provisions. Furthermore, the APS Commissioner was able to guarantee that staff would not be required to work extra hours.<sup>31</sup>

1.45 In short, the APSC was able to protect the conditions that were important to staff because it had secured the necessary saving elsewhere in its budget.

### **Intransigent approach to bargaining by the CPSU**

1.46 Like Labor senators, Coalition senators also believe that bargaining is a two-way street. This is a fundamental principle of workplace bargaining and one to which this government's bargaining policy resolutely adheres.

1.47 The bargaining policy provides the scope for agency heads to increase the remuneration that they offer to their employees provided that those increases can be met by increases in productivity. There is nothing new or unusual about this. While it is a standard arrangement in the private sector, the quest for productivity gains in the public sector by both sides of government had once been a matter of bipartisan accord for many years.

1.48 In other words, the government's bargaining policy gives agency management the flexibility to negotiate in good faith and offset productivity gains with appropriate remuneration increase. This would, of course, require the CPSU to come to the table and negotiate in good faith. But instead, the union has come with a set of unrealistic wage demands and has been totally unwilling to offer anything in return. Any objective observation of the progress of negotiations over the last two and half years would have to conclude that union intransigence was the major factor in delaying agreement between employer and employees. During that period, many public servants have gone without any wage increase. The single biggest reason for this state of affairs has been the intransigence of the CPSU.

1.49 It is of great concern to Coalition senators that the APS Commissioner has had cause to comment on the misleading and destructive approach taken by the CPSU during this bargaining round:

The CPSU's campaign has sought to undermine the employer-employee relationship. On occasions, union material has been wrong, misrepresenting management's position. This occurred in the APSC, which we quickly countered with advice that conveyed the true management position.

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30 Mr Noel Towell, 'Public Service Commission scores best pay offer', *The Canberra Times*, 2 June 2015, [www.canberratimes.com.au/national/public-service/public-service-commission-scores-best-pay-offer-20150602-gheux1.html](http://www.canberratimes.com.au/national/public-service/public-service-commission-scores-best-pay-offer-20150602-gheux1.html) (accessed 25 November 2016).

31 Mr Noel Towell, 'Public Service Commission scores best pay offer', *The Canberra Times*, 2 June 2015.

I have been concerned about the union calling employees in some agencies 'strike breakers' simply because they were exercising their lawful right not to participate in industrial action. This reflects an attitude that pays little regard to the rights of employees and can result in unnecessary division in the workplace.<sup>32</sup>

1.50 It is no-ones interest for this bargaining round to drag on. The government, the APS Commissioner, and agency heads would all like to see public servants get the reasonable and fair wage rises on offer. Yet the CPSU seems determined to deny APS employees this preferable outcome by pursuing a self-interested campaign against the new enterprise agreements. And all the while the union engages in a negative blame game rather than taking responsibility for its actions and the impacts that this has had on union and non-union members alike. It is difficult to avoid the conclusion that rejecting a fair and reasonable offer from management while offering nothing in return is simply hard-wired into the CPSU's DNA.

### **Conclusion**

1.51 In summary, Commonwealth public servants already enjoy salaries and work benefits equal to or higher than community standards. As the APS Commissioner has noted, the entitlement to various forms of leave, overtime and shift penalties, remote locality allowances, assistance with childcare, travel, training and education are of a high standard. Furthermore, the employer contribution of 15.4 per cent to Commonwealth superannuation accumulation funds is well above the 9.5 per cent employer contribution for most of Australia's workforce.

1.52 As has been demonstrated by the more than 60 enterprise agreements already successfully concluded, the government's bargaining policy provides ample scope for negotiation on both sides. However, the CPSU continues to deny public servants the opportunity to accept reasonable wage offers by pursuing unrealistic pay claims and seeking additional entitlements without any consideration of trade-offs.

1.53 Coalition senators are disturbed that the CPSU has such scant regard for employee rights that it has misrepresented the bargaining policy, and in doing so, has deliberately sought to drive a wedge between management and employees.

1.54 Coalition senators call on the CPSU to start engaging constructively in the bargaining process and to end this dispute for the benefit of those public servants who are still without a concluded enterprise agreement.

1.55 In light of the above, Coalition senators are firmly of the view that the government's bargaining policy is eminently fair and reasonable.

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32 Australian Public Service Commissioner, *Submission 202*, p. 4.

1.56 Finally, Coalition senators repudiate the recommendations contained in the majority report. The recommendations are based on the false premise that the government and the APSC are to blame for the difficulties experienced by the CPSU in the current bargaining round. Unfortunately the recommendations represent an unwarranted overreach by the majority committee members.

**Senator Bridget McKenzie**  
**Deputy Chair**

**Senator James Paterson**



# Appendix 1

## Submissions and Additional Information

### *Submissions*

<b>Number</b>	<b>Submitter</b>
1	Mr Christopher Oates
2	Mr Anthony Nelson
3	Ms Cassandra Walker
4	Mr Andrew Parr
5	Mr Christopher Castelino
6	Bharathi Mohan
7	Ms Cheryl Faulkner
8	Ms Cara Wright
9	Mr Anthony Godfrey
10	Mr David Bray
11	Mr Damian Holloway
12	Mr Frank Hunyadi
13	Mr Bruce McAndie
14	Mr Clinton Rakich
15	Mr Ian Bradbury
16	Ms Gillian Wall
17	Mr Graeme Tunks
18	Ms Cheryl Martin
19	Mr Brad Wood
20	Mr Alexander Goldie
21	Mr David Oehlers
22	Mr Derek Heathfield
23	Ms Heather Bonnes
24	Ms Julie Schwarzer
25	Mr Andrew Skipper
26	Mr Peter Neville
27	Mrs Kim Antonio
28	Mr Gerard Flannigan
29	Ms Annamarie Guzzardi
30	Ms Ann Carroll
31	Ms Helen Banks
32	Confidential
33	Confidential
34	Ms Alyson Williams
35	Mr Bradley West
36	Mr Bernie Maloney
37	Ms Katherine Morrison
38	Mr Clive Fox

39	Mr Glenn Lyons
40	Mr Alan McNeill
41	Mr Darren Muir
42	Lee Davy
43	Ms Katherine Grebneff
44	Mr Grant Lewis
45	Mr Jay Doyle
46	Mr Les Devers
47	Ms Amy Groth
48	Meri Penglis
49	Ms Linda Schutt
50	Ms Kristi Farrell
51	Ms Kathy Devaney
52	Mr Craig Lynch
53	Ms Kristy Campbell
54	Ms Lisa Irving
55	Ms Glenis Hunter
56	Jamie Saltmarsh
57	Confidential
58	Ms Christine Gorrie
59	Mr Jeffrey Barson
60	Mr Peter Zardo
61	Mr Martin Kropf
62	Mr Jason Lam
63	Ms Karen Nava
64	Mr Greg Campbell
65	Nejat Haydardedeoglu
66	Ms Anne Robinson
67	Ms Rachel Barker
68	Mr Peter Irvin
69	Ms Pamela Mackie-Schneider
70	Ms Julianne Danson
71	Mr John Vuceric
72	Ms Zoe Heinrichs
73	Mr Michael Neville
74	Ms Clare Miller
75	Mr John Kennett
76	Mr Mark Longmuir
77	Ms Skye Garrett
78	Ms Sharon Roddis
79	Ms Sue Mala
80	Ms Jenny Koenig
81	Kim Bartle
82	Ms Rae Askew
83	Kim Mottley
84	Mr Julian Cook
85	Ms Ruth Jones
86	Mrs Susanne Smith

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87	Ms Andrew Russell
88	Mr Mike Crowther
89	Mr Matthew Wilkinson
90	Mr Chris Michael
91	Ms Linda Spruce
92	Ms Shirley Lyon
93	Mr Mitchell Hall
94	Ms Natalie Moss
95	Ms Yvette Clancy
96	Mr Rod Covell
97	Mr Tony Maxwell
98	Ms Sue Sherritt
99	Mr Peter Taylor
100	Ms Jackie McGee
101	Mr Stuart Schodde Jr
102	Ms Lea Foley
103	Mr Lawrence Smith
104	Ms Marissa Pascual
105	Mr Chris Reynolds
106	Ms Alana Green
107	Ms Rosie Meng
108	Mr Scott Nitschke
109	Ms Deborah Downey
110	Ms Kathleen Lane
111	Mr Paul Betts
112	Ms Susan Baker
113	Ms Su Brown
114	Ms Susan Hall
115	Ms Carol Collins
116	Mr Terry O'Brien
117	Mr Glenn Donnelly
118	Mr Neil Whitehead
119	Mr Richard Cullen
120	Mr Tim Connors
121	Mr Daniel Walker
122	Mr Robert Bushby
123	Mr Troy Bishop
124	Ms Linda Mortimer
125	Ms Karen White
126	Ms Miranda Ball
127	Ms Johanna Mestanza
128	Mr Brian Mckerrow
129	Mr Terence Turner
130	Mr Roger Mouser
131	Mr Robert Gomez
132	Ms Suzanne Hope
133	Ms Anna Klovdahl
134	Ms Sue Sketch

135	Ms Susan Farley
136	Mr Rick Nevill
137	Mr Richard Urbach
138	Ms Chrissy Boadle
139	Ms Tracey Orchard
140	Ms Tanya Ellsworth
141	Ms Shirley Cavey
142	Mr Christopher Currie
143	Ms Catherine Doherty
144	Ms Marina Roseby
145	Mr David McKenzie
146	Ms Sue Gurnett
147	Ms Kerryn Molloy
148	Mr Joe Kosic
149	Mr Steven Singleton
150	Mr Peter Strous
151	Mr Derek Weber
152	Ms Christine Constantinou
153	Mr Gregory Kelly
154	Ms Christina Holt
155	Gill Munn
156	Mr Julian Sault
157	Ms Cheryl Lynch
158	Elio Minato
159	Ms Kylie Lowrey
160	Mr Ross Cameron
161	Mr Jean Lemessenger
162	Ms Aisha Olesinski
163	Mr Rory Heddles
164	Ms Kate Iskandar
165	Ngaire Evans
166	Ms Rachel Jackson
167	Confidential
168	Ms Cherie Chapman
169	Mr John Chirgwin
170	Ms Michelle Bullock
171	Daryl Hagg
172	M Y Rashid
173	Ms Jennifer Peacock
174	Ms Mardi Derrett
175	Ms Rosanna Giustra
176	Mr Peter Byrne
177	Mr Howard Bevan
178	Louie Bogdanovski
179	Ms Heather Gent
180	Ms Ellen Nielsen
181	Mr James Johnson
182	Anish Singh

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183	Mr David Nash
184	Ms Jenny Sturrock
185	Ms Jeannie Jeffrey
186	Ms Samantha O'Hanlon
187	Mr Stuart Cook
188	Ms Kim Cook
189	Pradip Gautam
190	Ms Mary-Jane Farrer
191	Mr Bill Kitson
192	Mr Esmond Smith
193	Dr Sue Williamson and Professor Michael O'Donnell
194	CPSU Department of Employment Section Council
195	Australian Council of Trade Unions
196	CPSU (PSU Group)
197	Ms Amy Phillips
198	CPSU Department of Immigration and Border Protection
199	CPSU Department of Social Services Section Council
200	CPSU Department of Human Services Bargaining Team
201	CPSU Australian Bureau of Statistics Interviewers Bargaining Team
202	Australian Public Service Commissioner
203	CPSU IP Australia Bargaining Team
204	CPSU Department of Infrastructure and Regional Development Bargaining Team
205	Professionals Australia
206	CPSU Department of Agriculture Section Council
207	Professor Andrew Podger
208	Institute of Public Affairs
209	CPSU Australian Public Service Commission
210	CPSU Administrative Appeals Tribunal Bargaining Team
211	CPSU Bureau of Meteorology Bargaining Team
212	CPSU Commonwealth Director of Public Prosecutions Bargaining Team
213	Civil Air Operations Officers Association of Australia
214	Mr Bill Kitson
215	Mr David Plorer
216	Mr Paul Tierney
217	Ros Johnston
218	Ms Silvana Hristoski
219	Ms Leyla Biondini
220	Ms Glenys Doll
221	Mr Chris Berg
222	Ms Rebecca Coles
223	Ms Rita David
224	Ms Kerrie Norris
225	Ms Julie Croft
226	Mr Peter Smith
227	Ms Gwen Mcevoy
228	Mr John Mauger
229	Mr Glen Hepburn

230	Ms Jodie Wilson
231	Mr Chris Mitchell
232	Ms Glenys Mackay
233	Mr Martin Leggett
234	Mr Graham Nitschke
235	Confidential
236	Ms Christine Thomas
237	Mr Tony Bovo
238	Mr Brad Stubbs
239	Kerry Bullard
240	Ms Katie Ceramidas
241	Roula Karzis-Wyatt
242	Mr Dean Turner
243	Mr David Barker
244	CPSU Federal Court Bargaining Team
245	CPSU Department of Prime Minister and Cabinet Bargaining Team
246	CPSU ABC Bargaining Team
247	CPSU Australian Competition and Consumer Commission Bargaining Team
248	CPSU CSIRO Bargaining Team
249	CPSU Department of Parliamentary Services Bargaining Team
250	Confidential
251	Mr Samuel Collins
252	Ms Dianne McKenzie
253	Mr Don Hodgkinson
254	Ms Rebecca Dean
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299	CPSU Defence Bargaining Team
300	Confidential
301	Confidential
302	Confidential
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304	Confidential
305	Confidential
306	Ms Belinda Rocka
307	Mr Warren Duff
308	Mr Tim Birch
309	Ms Kathy Binns
310	Mr Alan Posselt
311	Ms Annie Walters
312	Mr Michael Barr
313	Ms Monica Long
314	Name Withheld
315	Mr David Porter
316	Mr Ian Ashted
317	Mr Lachlan Mullins
318	Ms Beth Rogers
319	Name Withheld
320	Ms Nancy White
321	Ms Mala Krishnamoorthy
322	Mr Alan Young
323	Confidential
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338 Confidential  
339 Confidential  
340 Mr Bert Wauchope  
341 Ms Wanita Pilcher  
342 Confidential  
343 Ms Susan Brennan  
344 Ms Georgina Haney  
345 Mr Kenneth Finch  
346 Ms Karina McKinnell  
347 Ms Kartika Hardjosantoso  
348 Ms Rose Rowland  
349 Ms Vanessa Sacco  
350 Ms Kassandra O'Hare  
351 Mr Cameron Henderson  
352 Mr Ty Newton  
353 Mr Matthew Ryan  
354 Mr Lindsay Gordon  
355 Mr Stephen Ewart  
356 Ms Dianne Jones  
357 Mr Robin Hicks  
358 Ms Mona Au  
359 Ms Karen Mennell  
360 Mr Garry O'Sullivan  
361 Mr Ryan Vanderwert  
362 Ms Kylie Hemphill  
363 Ms Danielle Atkinson  
364 Ms Athena Sikiotis  
365 Mr Steve Spokes  
366 Mr Kenneth Jessen  
367 Mr Travis Cooper  
368 Dr Andrew Charles  
369 Mr Anthony Zappia  
370 Ms Natalie Kalow  
371 Ms Eva Poon  
372 Ms Kim Ross

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373 Ms Jackie Northey  
374 Ms Karen Nichols  
375 Ms Vicki Falconer  
376 Ms Kathy Stannard  
377 Ms Abby Shore  
378 Ms Clara Witheridge  
379 Mr Chris Boulton  
380 Confidential  
381 Ms Sally Toussaint  
382 Ms Katerina Check  
383 Mr Michael Tham  
384 Ms Davina Brooks  
385 Australian Federal Police Association  
386 Mr Peter Manning  
387 Mr John Turnbull  
388 Mr Dimitri Markotsis  
389 Mr Greg Bridger  
390 Ms Julianne Stewart  
391 Confidential  
392 Ms Helen Exten  
393 Confidential  
394 Mr Sanjay Bhosale  
395 Ms Denise Wilson  
396 Ms Lynn Faranda  
397 Mr Brett Catton  
398 Mr Tony Bolduan  
399 Ms Julie Green  
400 Mr Sean Fitzgerald  
401 Mr Mark Lynch  
402 Mr Robert Nichols  
403 Ms Andrea Marklew  
404 Mr Paul Room  
405 Ms Christine Russell  
406 Ms Diane Lochran  
407 Confidential  
408 Confidential  
409 Mr Bob Lovett  
410 Ms Jennifer Pearce  
411 Kyri Diacolabrianos  
412 Mrs Lou Morrison  
413 Jan Jackowiak  
414 Mr Doug Overton  
415 Mr Antonio Cerra  
416 Ms Christine Adams  
417 Ms Katie George  
418 Ms Anne Sattler  
419 Mr Vincent Tyrrell  
420 Mr Brett Walker-Roberts

421 Ms Robyn Gordon  
422 Ms Erica Evans  
423 Mr Mike Collins  
424 Confidential  
425 Ms Alannah Flood  
426 Mr Kez Majkut  
427 Ms Hayley Allison  
428 Lindsay Fairhead  
429 Ms Mauria Cover-Sutherland  
430 Ms Karlene Shirley  
431 Ms Fiona Duffy  
432 Mr Glen Elliot  
433 Mr Stephen Stefanac  
434 Ms Teresa Rogers  
435 Ms Jo Overell  
436 Ms Edwina Ferguson  
437 Ms Claire Mehtonen  
438 Mr Jeremy Sibbald  
439 Ms Melissa Starling  
440 Mr Greg Miller  
441 Ms Vivienne Wheaton  
442 Ms Deborah Bourke  
443 Mr Luis Vazquez-Recio  
444 Ms Rebecca Hunter  
445 Ms Kelly Fenner  
446 Mr Andrew Jones  
447 Mr Michael Pearson  
448 Ms Brooke Elliott  
449 Ms Marisa Hewitt  
450 CPSU Australian Criminal Intelligence Commission  
Bargaining Team  
451 Ms Rae Riley  
452 Ms Rosie Tropea  
453 Ms Karen Seah  
454 Ms Lesley Keating  
455 Ms Susanne Gard  
456 Ms Joanne Kerr  
457 Ms Elizabeth Hulm  
458 CPSU Aboriginal Hostels Limited Bargaining Team  
459 Mr Guye Allan  
460 Mr Mark Gillespie  
461 Mr Danie Burke  
462 CPSU Department of Education and Training Bargaining Team  
463 Mr David Jansen  
464 Ms Rebecca Kabelka  
465 Ms Deborah Barratt-Woodbridge  
466 Dr Tanya McIntyre  
467 Ms Vivienne Simon

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468	Mitzi Abiera
469	Ms Jenny Neale
470	Ms Kylee McKinlay
471	Ms Meg Field
472	Ms Barb Baker
473	Mr Adam Griffiths
474	Ms Fiona DiGiacomo
475	Mr Luke Hourihane
476	Ms Emily Frain
477	Ms Ali Woodward
478	Mr Marty Dibden
479	Ms Johanna Toneman
480	Ms Bev Zecchini
481	Mr Lance O'Neill
482	Ms Lyn Young
483	Ms Tracy Thomassen
484	Mr Paul Klopf
485	Mr Joseph Fallon
486	Ms Melinda Crumblin
487	Mr Evan Walton
488	Mr Kieran Eadie
489	Miss Jules Picard
490	Ms Jessica Quist
491	Ms Eliana Cantrileo
492	Mr Leandros Prountzos
493	Ms Susan Vardy
494	Ms Edwina Blenkinsop
495	Ms Louise Mackintosh
496	Ms Beth Hancock
497	Mr Peter Davies
498	Ms Julie Harvey
499	Ms Natalie Ramsay
500	Mr Evan Matthews
501	Mr Douglas Smith
502	Ms Renee Goodly
503	Mr Gus Matute
504	Mr Kyle McLean
505	Lee Chiv
506	Mr Wayne Ames
507	Ms Suzanne Shanley
508	Ms Moira Lawrie-Martyn
509	Ms Heidi Vellacott
510	Mr Paul Aalto
511	Mr Tim Binns
512	Ms Bronwyn Glenn
513	Ms Zoe Oram
514	Ms Karen Hong
515	Mr Paul Bockman

516	Ms Sharon Reid
517	Mr Peter Gillett
518	Ms Isabel Gonzalez
519	Mr Haris Grigoriadis
520	Mr Steve Moutafis
521	Ms Clare Mullen
522	Mr Steven McGibbony
523	Mr Adrian Dawson
524	Kerry Suwald
525	Mr Larry Martin
526	Ms Elizabeth Crowe
527	Ms Alexis Dubaj
528	Mr Timothy Liersch
529	Mr Rodney Jones
530	Ms Ursula Linhoff
531	Ms Ann Eades
532	Mr Darren Cameron
533	Mr Noel Johnstone
534	Lurley Brodie
535	Mr Christopher Cole
536	Mr James Bradley
537	Mr Evan Tsogas
538	Mr Nicholas Pain
539	Ms Kaylene Moodie
540	Ms Gilian Stenhouse
541	Mr Damian Mosele
542	Ms Cheryl Huntriss
543	Ms Kerry Forrest
544	Mr Mark Bowling
545	Ms Bonnie Harris
546	Mr Alan DeAudney
547	Ms Siu Campbell-Lamont
548	Ms Sue Scott
549	Sivan Krishnaswami
550	Ms D-Ann Johnson
551	Ms Tanya Sargeant
552	Ms Meg Edwards
553	Mr Robert Wilson
554	Ms Annabelle Ford
555	Ms Martine Masse
556	Annick Beyderwellen
557	Mr Ralph Pachulicz
558	Ms Leanne Gilmour
559	Mr Brett Odlum
560	Ms Anne-Marie Moore
561	Ms Carmen Boutcher
562	Mr Richard Lourensz
563	Ms Kelly Borradale

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564	Mr Anthony Pollard
565	Mr Colin Jennings
566	Sonnie Bruce
567	Mr Ed Coogan
568	Mr Robert Tennyson
569	Ms Vicky Fry
570	Mr Steve Cocker
571	Ms Anne Rowlands
572	Mr Paul Morgan
573	Confidential
574	Confidential
575	Jeshurun Kulasingham
576	Ananda Fraser
577	Mr Jonathan Sacha Fielden
578	Ms Sonia Morgan
579	Kerin Vaughan
580	Delcie Rimes
581	Me Melanie Cleary
582	Val Liddell
583	Mr John Fraser
584	Ram Krishna
585	Ms Norma Jackson
586	Ms Karen Faulks
587	Mr David Lynch
588	Ms Rosemary Baker
589	Ms Anna Masi
590	Confidential
591	Ms Cristina Duran
592	Ms Cara-Lyn Caudle
593	Ms Vanessa Yule
594	Ms Mary Conway
595	Mr Glen Tanner
596	Mr Tom Stojanovski
597	Mr Mark Dawson
598	Mr Ray Whitehead
599	Mr Peter Esse
600	Mr Glen Hyde
601	Mr Terry McKay
602	Mr Jason Gade
603	Ms Lisa Millard
604	Ms Wendy Clayfield
605	Ms Tammie Barolo
606	Mr Nick Elder
607	Mr Robert Allum
608	Confidential
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627	Confidential
628	Confidential
629	Confidential
630	Confidential
631	Mr Steve Fuller
632	Confidential
633	Confidential
634	Ms Roslyn Starr
635	Iluca Silvestri
636	Department of Parliamentary Services
637	Mr Dylan O'Callaghan

### ***Additional information***

- 1 Additional information provided by Professor Michael O'Donnell at a public hearing in Canberra, 11 November 2016.
- 2 Additional information provided by Mr Esmond Smith, 14 November 2016.
- 3 Clarification of evidence provided by Mr Erik Rasmussen, CPSU Tax Section Secretary, 21 November 2016.
- 4 Clarification of evidence provided by Ms Jacqui Curtis, Chief Operating Officer, Australian Taxation Office, 22 November 2016.
- 5 Additional information provided by Mr Barry Jackson, Deputy Secretary, Department of Human Services, 21 November 2016.
- 6 Additional information provided by Mr Murali Venugopal, 22 November 2016.

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- 7 Additional information provided by Ms Lisa Newman, Deputy National President, CPSU, 28 November 2016.
  - 8 Additional information provided by Mr Rupert Evans, Deputy National President, CPSU, 29 November 2016.

***Answers to questions taken on notice***

*Public hearing in Canberra, 11 November 2016 and Townsville, 15 November 2016*

- 1 Answers to questions taken on notice by Dr Sue Williamson, Senior Lecturer, Human Resource Management, UNSW Canberra.
- 2 Answers to questions taken on notice by the Australian Public Service Commission.
- 3 Answers to questions taken on notice by Community and Public Sector Union representatives.
- 4 Answers to questions taken on notice by Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at both the ACCC and the Australian Energy Regulator.

*Written question on notice provided by Senator McKenzie, 15 November 2016*

- 1 Answer to written question on notice by the Department of Human Services.
- 2 Answer to written question on notice by the Department of Immigration and Border Protection.
- 3 Answer to written question on notice by the Australian Taxation Office.
- 4 Answer to written question on notice by the Department of Employment.
- 5 Answer to written question on notice by the Australian Public Service Commissioner.

***Tabled documents***

*Public hearing in Canberra, 11 November 2016*

- 1 Document tabled by Professor Andrew Podger.
- 2 Document tabled by Mr Esmond Smith.



# **Appendix 2**

## **Public Hearings**

*Canberra, 11 November 2016*

**Committee members in attendance:** Senators Marshall, McKenzie, Paterson and Moore (participating)

### **Witnesses**

Professor Andrew Podger, private capacity

Dr Sue Williamson, private capacity

Professor Michael O'Donnell, private capacity

### **Institute of Public Affairs**

Mr Aaron Lane, Legal Fellow, Institute of Public Affairs

Mr Esmond Smith, Employee Bargaining Representative for Australian Competition and Consumer Commission (ACCC) staff at both the ACCC and the Australian Energy Regulator

### **Community and Public Sector Union (CPSU)**

Ms Joanne Kerr, Section Secretary, Department of Prime Minister and Cabinet, CPSU

Mrs Leonie Henricks, Organiser, Federal Court Bargaining Team, CPSU

Mrs Kelly Miller, Department of Agriculture and Water Resources Bargaining Team, CPSU

Mr Leo Vukosa, Community and Public Sector Union Delegate, Department of Parliamentary Services, CPSU

Mr Michael Tull, Assistant National Secretary, CPSU

### **CPSU Bargaining Team Panel**

Mr Tom Carrigg, Australian Competition and Consumer Commission Bargaining Team, CPSU

Ms Sinddy Ealy, ABC Section Secretary, ABC Bargaining Team, CPSU

Mr Andrew Greenan, Administrative Appeals Tribunal Bargaining Team, CPSU

Mr Erik Rasmussen, Australian Taxation Office Bargaining Team, CPSU

Ms Beth Vincent-Pietsch, Deputy Secretary, CPSU

### **Australian Public Service Commission**

The Hon John Lloyd, Australian Public Service Commissioner

Ms Stephanie Foster, Deputy Australian Public Service Commissioner

Mr Marco Spaccavento, Group Manager, Australian Public Service Commission

**CPSU**

Mr Alistair Waters, National President, CPSU

Ms Nadine Flood, National Secretary, CPSU

**Department of Employment**

Mrs Moya Drayton, Group Manager, People and Communications Group, Department of Employment

Mr Stuart Watson, Branch Manager, People Branch, Department of Employment

**Australian Taxation Office**

Ms Jacqui Curtis, Chief Operating Officer, Australian Taxation Office

Mr Brad Chapman, Acting Deputy Commissioner, ATO People

**Department of Human Services**

Ms Jenet Connell, Deputy Secretary, Enterprise Strategy and Reform Group, Department of Human Services

Mr Michael Outram, Deputy Commissioner, Operations, Department of Human Services

Mr Murali Venugopal, First Assistant Secretary, People Division, Department of Human Services

*Townsville, 15 November 2016*

**Committee members in attendance:** Senators Marshall, McKenzie and Moore (participating)

**Witnesses**

**CPSU Bargaining Team, Department of Human Services (DHS)**

Ms Lisa Newman, CPSU Deputy National President, CPSU Bargaining Team, DHS

Ms Elida Faith, CPSU DHS Section President, CPSU Bargaining Team, DHS

Ms Emma White, CPSU DHS Section Secretary, CPSU Bargaining Team, DHS

Mr Mark Hargreaves, CPSU Workplace Delegate, DHS

**CPSU Bargaining Team, Defence**

Mr Bill Marklew, CPSU Queensland Regional Secretary, Defence CPSU Member Representatives

Ms Deb Hayman, CPSU Defence Section President, Defence CPSU Member Representatives

Mr Ian Reid, CPSU member, Defence CPSU Member Representatives

**CSIRO Staff Association Bargaining Team**

Dr Michael Borgas, President, CSIRO Staff Association

Mr Mike Collins, Delegate, CSIRO Staff Association

**CPSU Members Team, Department of Immigration and Border Protection (DIBP)**

Mr Rupert Evans, Deputy National President, CPSU

Miss Susan Jones, CPSU Section Secretary, DIBP

Mr Mike Suijendorp, CPSU Bargaining Team, DIBP

Mr Ric Selim, CPSU Delegate, DIBP Marine Unit

Ms Fiona Powell, Member, CPSU



## **Appendix 3**

### **Agreements accepted under the 2014 bargaining policy**

- Australian Public Service Commission
- Australian Office of Financial Management
- Australian Transport Safety Bureau
- Comsuper (On 1 July 2015, Comsuper was merged into the Commonwealth Superannuation Corporation)
- Department of Communications and the Arts
- Department of Social Services
- Department of the Treasury

Source: Australian Public Service Commissioner, *Submission 202*; Attachment A, p. 11.

### **Agreements approved under the 2015 bargaining policy**

APS agencies

- Australian Public Service Agencies
- Australian Bureau of Statistics
- Australian Centre for International Agricultural Research
- Australian Commission on Safety and Quality in Health Care
- Australian Electoral Commission
- Australian Financial Security Authority
- Australian Fisheries Management Authority
- Australian Human Rights Commission
- Australian Institute of Health and Welfare
- Australian Institute of Marine Science
- Australian Law Reform Commission
- Australian National Audit Office
- Australian Securities and Investment Commission
- Australian Trade and Investment Commission
- Australian Transactions Reports and Analysis Centre
- Clean Energy Regulator
- Comcare

- Commonwealth Grants Commission
- Defence Housing Australia
- Department of Agriculture and Water Resources (Meat Inspectors' Agreement)
- Department of Education and Training
- Department of Employment
- Department of the Environment and Energy
- Department of Finance
- Department of Foreign Affairs and Trade
- Department of Health
- Department of Industry and Science
- Department of Infrastructure and Regional Development
- Department of Veterans' Affairs
- Food Standards Australian New Zealand
- Geoscience Australia
- Independent Hospital Pricing Authority
- Inspector-General of Taxation
- National Blood Authority
- National Health Funding Body
- National Health Performance Authority
- Office of the Australian Information Commissioner
- Office of the Fair Work Ombudsman
- Office of National Assessments
- Office of Parliamentary Counsel (two agreements)
- Organ and Tissue Authority
- National Transport Commission
- Royal Australian Mint
- Safe Work Australia
- Workplace Gender Equality Agency

#### Non-APS agencies

- Australian Federal Police (Executive Agreement)
- Australian Hearing
- Australian Maritime Safety Authority

- Australian Rail Track Corporation (NSW Agreement)
- Australian Reinsurance Pool Corporation
- Australian Sports Commission
- Civil Aviation Safety Authority
- Grains Research and Development Corporation
- National Transport Commission
- NBN Co. (one agreement)
- Office of the Official Secretary of the Governor-General
- Special Broadcasting Service
- Sydney Harbour Federation Trust

Source: Australian Public Service Commissioner, *Submission 202*; Attachment B, pp. 12–13.



## Appendix 4

### Agencies that have experienced protected industrial action during the bargaining round

- Administrative Appeals Tribunal
- Australian Bureau of Statistics
- Australian Communications and Media Authority
- Australian Competition and Consumer Commission
- Australian Institute of Criminology
- Australian Radiation Protection and Nuclear Safety Authority
- Australian Rail Track Corporation
- Australian Taxation Office
- Bureau of Meteorology
- Civil Aviation Safety Authority
- Commonwealth Director of Public Prosecutions
- Commonwealth Scientific Industrial Research Organisation
- Department of Agriculture and Water Resources
- Department of Defence
- Department of Education and Training
- Department of the Environment and Energy
- Department of Employment
- Department of Human Services
- Department of Immigration and Border Protection
- Department of Parliamentary Services
- Department of the Prime Minister and Cabinet
- Department of Veteran's Affairs
- IP Australia
- Murray Darling Basin Authority
- National Library of Australia
- Geoscience Australia
- NBN Co.

Source: Australian Public Service Commissioner, *Submission 202*; Attachment C, p. 14.



## Appendix 5

### Changes to rosters and hours of work in APS enterprise agreements

Source: CPSU, answer to questions on notice, 11 November 2016 (received 18 November 2016), [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/APS\\_Bargaining/Additional\\_Documents](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/APS_Bargaining/Additional_Documents).

The table below provides information about proposed or actual changes to conditions that relate to matters raised [at the public hearing on 11 November 2016] on three occasions:

- the impact of proposed agreement changes on encouraging women into the workforce and making conditions favourable to the recruitment and retention of women employees (Senator Moore to the CPSU Bargaining Team panel –p36)
- in response to comments by Mr Lloyd that there has been no removal of conditions around employee flexibility on rosters and hours of work (Senator Moore / Mr Lloyd p47)
- Mr Waters offer to provide evidence that there had been changes to people’s entitlements in response to Mr Lloyd’s comments (Senator Moore / Mr Waters pp 55-56)

The information provided below is by way of example. It is not a complete list of cuts to employee rights with respect to employee flexibility on rosters and hours of work. Examples are provided from 20 Agencies involved in this bargaining round and DHS is addressed separately. Cuts identified below include:

- Removal of the right to access part time work on return from parental leave
- Removal of clauses that provide positive support for employees seeking flexible working arrangements such as part time work
- The National Museum of Australia (and others) have proposed that overtime for part time employees be paid at single time until full time hours are worked. 70% of NMA staff are women and 36% of all staff are part time. The effect of this provision is that overtime hours worked by part time staff in these circumstances have a lower effective rate of pay than equivalent full time staff. This is because the overtime hours do not accrue superannuation or leave.
- Domestic Violence leave has been removed from Miscellaneous Leave provisions in enterprise agreements.
- Removal of notice requirements for rotations between work locations.
- Removal of provisions providing access to persona leave to support elderly parents.
- Provisions that allow part time hours to be varied by the agency without employee agreement.
- Reductions in the amount of unpaid leave an employee has an entitlement to access for parental leave purposes.
- Removal of rights for an employee to revert to full time employment before the end of the term of a part time agreement.

Employer	Current EA provision (by clause reference)	Proposed / New EA provision (by clause reference)	Summary
CSIRO	<p><b>75. PART-TIME/JOB SHARE ARRANGEMENTS</b>            (a) <b>Definition</b> – A part-time officer is an member of staff who:</p> <ul style="list-style-type: none"> <li>· works less than ordinary hours of duty (36 3/4 hours) per week;</li> <li>· has specified hours of work; and</li> </ul>	<p><b>(Voted down November 2016. First “No” vote in CSIRO history)</b></p> <p><b>52. PART-TIME WORK ARRANGEMENTS</b>            52.1 Definition – A part-time officer is a member of staff who:</p> <ul style="list-style-type: none"> <li>• works less than ordinary hours of duty (36 3/4</li> </ul>	<p>Requirement for agreement in writing is removed. Requirement that no pressure be exerted on staff to convert to part-time or to transfer to another position is removed. Requirement that part time work can only be varied by agreement is</p>

<p>· receives on a pro rata basis, equivalent pay and conditions to those of full-time officers of equivalent classification.</p> <p>(b) <b>Agreement in writing</b> – Prior to commencing part-time work, CSIRO and the officer shall agree in writing on a regular pattern of work, specifying the hours worked each day, which days of the week the officer will work, the actual starting and finishing times each day, and whether the part-time work is for a specified period. No pressure will be exerted on fulltime officers to convert to part-time work or to transfer to another position to make way for part-time work.</p> <p>(c) <b>Variation</b> – Any part-time work arrangement may be varied by agreement. Such variation shall be recorded in writing.</p> <p><b>(d) Rate for ordinary and additional hours worked</b> – A part-time officer shall be paid for ordinary hours worked at the rate prescribed for the officer’s classification. Additional hours may be worked in accordance with Clause 24.</p> <p>(e) <b>Consideration of officer initiated proposals</b> – Officer initiated proposals for part-time work will be considered promptly and with due consideration for the reasons put forward by the officer in support of the proposal. Such consideration will be subject to operational requirements.</p> <p>However, if after maternity leave a female officer proposes to return to work on a part-time basis, her proposal should be approved unless there are strong reasons for not doing so.</p> <p>Having an operational need for a full-time person is not, of itself, an acceptable reason for denying an application for part-time work.</p> <p>Where management receives a part-time or job share proposal in writing from an officer, any</p>	<p>hours) per week;</p> <ul style="list-style-type: none"> <li>• has specified hours of work; and</li> <li>• receives on a pro-rata basis, equivalent pay and conditions to those of full-time officers of equivalent classification.</li> </ul> <p>52.2 Rate for ordinary and additional hours worked – A part-time officer shall be paid for ordinary hours worked at the rate prescribed for the officer’s classification. Additional hours may be worked in accordance with clause 18.</p>	<p>removed. Requirements for staff initiated part-time proposals to be considered and the process to do so are removed. Right of reversion for full-time staff having entered part-time work arrangements is removed.</p>
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	<p>rejection by management must be justified in writing to the officer concerned.</p> <p>(f) <b>Reversion</b> – Where a full-time officer has entered into a part-time work arrangement, the following provisions apply:</p> <p>(i) Where the arrangement is for a specified period, the officer will revert to full-time employment at the expiry of the specified period in the absence of an agreement for the arrangement to continue or be otherwise varied.</p> <p>(ii) Where the arrangement is not for a specified period, and the officer wishes to revert to full-time employment, the officer will notify CSIRO. CSIRO will revert the officer to full-time status as soon as practicable.</p>		
<p><b>DSS (formerly FaHCSIA)</b></p> <p>(NB: The DSS was established during negotiations for an EA as the result of a Machinery of Government change)</p>	<p>Family Violence / Domestic Violence leave c7.65 access to miscellaneous leave for family violence reasons</p> <p>Part-time work Part-time work c5.20-5.22 - Removes detail regarding content of part time agreements and detail regarding varying or ending agreement</p>	<p><b>(Voted up September, 2015)</b></p> <p>No equivalent provision</p> <p>No equivalent provision</p>	<p>Cut: removed from replacement EA</p> <p>Cut: removed instructional detail regarding making, varying or ending a P/T arrangement</p>
<p><b>National Museum of Australia</b></p> <p>(NB: 70% of all staff are women and 36% of staff work P/T. Of</p>	<p>National Museum of Australia Enterprise Agreement 2011 – 2014</p> <p>28.2 Hours of work 28.2.1 A full-time employee's ordinary hours of work will be 7 hours and 21 minutes per day. 28.2.2 However employees agree to continue to work an additional 4 minutes as reasonable</p>	<p><b>(currently being voted on)</b></p> <p>National Museum of Australia Enterprise Agreement 2016 – 2019</p> <p>4.01 Hours of work (1) For a full-time employee, ordinary hours of work are 74 hours and 10 minutes over a 2 week period or 148 hours and twenty minutes over four weeks (the settlement period) [7:25/day].</p>	<p>Part-time employees can be directed to work overtime. Where this occurs and under this proposed clause, a P/T worker receives an effectively lower rate of pay compared to that that of a full-time employee; full time employees</p>

<p>P/T staff 40% are women) APS Statistical Bulletin 2015 - 2016</p>	<p>additional hours, on completion of ordinary hours each day, in return for two days paid time-off per year for days between Christmas and New Year which would otherwise be working days, as provided in Part 6 of this Agreement.</p> <p>31 Overtime 31.2.1 Overtime will be paid, or TOIL granted to APS Level 1 to 6 Employees, as follows: Approved time worked Overtime/TOIL rate Monday to Friday Time and a half Saturday and Sunday Double time Public holidays Double time and a half</p> <p>31.2.2 Overtime is paid, or TOIL granted, based on the actual overtime worked. Employees who are required to undertake overtime that is not continuous with ordinary duty will receive a minimum payment or TOIL of one hour. If overtime exceeds one hour, payment or TOIL reflects the actual time worked.</p> <p>31.2.3 Employees must elect to be paid salary or to access TOIL when they complete the Overtime Approval form. (a) for P/T employees, O/T is payable for actual time worked outside their agreed hours of duty</p>	<p>3.12 Overtime — general (1) Overtime is work performed: (a) outside the ordinary span of work hours on a day between Monday to Friday (inclusive); or (b) within that ordinary span of work hours, but in excess of 10 hours in any one day; or (c) on a Saturday, Sunday or public holiday. (2) In addition to subclause (1), for part-time employees, work outside their agreed hours of duty up to 37 hours and 5 minutes per week, but within the ordinary span of hours, is paid on an hour for hour basis at the ordinary rate. If there is a break of 30 minutes between their agreed hours and any additional hours 3.12.3 Subject to section 62 of the FW Act, an employee may be directed to perform overtime.</p>	<p>receive the O/T rate. A P/T employee will only receive O/T for additional hours worked where the employee works beyond the 0700 – 1900 bandwidth and or the employee reaches full time hours of 37 hours 5 minutes. This proposal means that a P/T employee can be directed to work additional hours, noting the above, at the single hour rate where a F/T employee is subject to no such restriction.</p>
<p><b>DAWR</b></p>	<p>20.5 Work Rotation for Biosecurity Operations Employees For Biosecurity Operations staff, reasonable notice in relation to work rotation will normally be regarded as four weeks, where operationally possible.</p>	<p><b>(fourth vote opened 16/11/2016, will close 8:00 pm AESDT 19/11/2016)</b> No equivalent provision exists for biosecurity employees. General roster provisions require post-decision consultation.</p>	<p>Cut: removed reasonable notice of work rotation generally regarded as four weeks. Large numbers of bio-security staff are working mothers who rely on adequate notice for effective work / life balance</p>
<p><b>ATO</b></p>	<p>ATO Enterprise Agreement 2011 (AG2011/13473)</p>	<p><b>(Second EA rejected in all-staff vote of April 2016)</b> ATO Enterprise Agreement 2016</p>	<p>Removed. An employee's can revert to</p>

	<p>Regular Part time Employment</p> <p>85.15 A full time employee permitted to perform their duties on a part time basis for an agreed period may, if circumstances alter before the expiry of the agreed period, revert to full time duties as soon as practicable, but no later than the expiry of the period.</p>	No equivalent provision.	F/T hours before expiry of the agreed term a.s.a.p (but not later than the agreed expiry date). Under the proposal, an employee who may need full time wages may be at a financial disadvantage no longer being able to revert to F/T hours.
<b>DFAT</b>	<p>Department of Foreign Affairs and Trade Enterprise Agreement 2011-2014 (AG2011/10758)</p> <p>3.1 iii. in considering requests for access to work-life balance provisions (e.g. leave or part-time employment), supervisors are required to take into account the views and interests of employees and endeavour to achieve mutually acceptable outcomes;</p> <p>3.6 The department acknowledges ..... The department is committed to providing opportunities for employees at all levels to work on a regular part-time basis, <i>especially parents of children under five years of age. Accordingly, employees will be entitled to apply for and have access to part-time work</i>, including job-sharing, subject to the terms of paragraph 3.7*.) For part-time employees, remuneration and other benefits will be calculated on a pro rata basis, with the exception of those allowances of a reimbursable nature, in which case part-time employees will be paid in full. The workload will be adjusted to reflect the hours of the permanent part-time employee, as per HRM guidelines.</p> <p>(*3.7 P/T work possible in another area which can support P/T – CPSU emphasis</p>	<p><b>(Voted up December, 2015)</b></p> <p>Department of Foreign Affairs and Trade Enterprise Agreement (AG2015/7443)</p> <p>31. Flexible Work Arrangements</p> <p>31.1. Employees may request flexible work arrangements. Access to flexible work arrangements in Canberra and State and Territory Offices should be presumed suitable, <i>unless there are operational reasons</i> as to why this may not be possible.</p>	<p>Cut: Right to return to P/T hours</p> <p>New test for employer refusal is determined on “operational reasons”.</p>
<b>NBA</b>	National Blood Authority Enterprise Agreement	<b>(Voted up December, 2015)</b>	Cut: removed guaranteed access to P/T

	<p>2011-2014 AG2011/9993</p> <p>Part time work 62. Employees returning from maternity or parental leave <i>will be provided</i> with access to part-time work for a period upon application.</p>	<p>National Blood Authority Enterprise Agreement 2015-2018 (AG2016/2035)</p> <p>D2 Flexible working arrangements 36. An employee may request flexible working arrangements in accordance with section 65 of the FW Act.</p>	<p>work following a period of parental leave</p>
<b>RA MINT</b>	<p>ROYAL AUSTRALIAN MINT ENTERPRISE AGREEMENT 2011-2014 (AG2011/12645)</p> <p>6.11.3. All employees returning from parental leave (including Maternity, Supporting Partners, Adoption and Foster Parent Leave) <i>will have access to part-time work</i> in accordance with Clause 5.3 until the child has attained school age.</p>	<p><b>(Voted up February, 2016)</b> Royal Australian Mint Enterprise Agreement 2016 – 2019 AG2016/2419</p> <p>4.2. Part-time work 4.2.1. The Chief Executive Officer may approve reasonable requests for regular part-time work, subject to operational requirements. These requests may be initiated by a manager or by an employee and may be varied from time to time with agreement by both parties.</p>	<p>Cut: removed guaranteed access to P/T work following a period of parental leave</p>
<b>AIHW</b>	<p>Australian Institute of Health and Welfare Enterprise Agreement 2012 - 2014 (AG2012/11590)</p> <p>Flexible work arrangements for parents 1.77 Employees returning directly from Maternity, Parental Leave or Adoption Leave or Foster Leave <i>will be provided with access to regular part-time work upon application in writing</i>. This entitlement will be available for two years from the date of birth or, in the case of adoption or fostering, from the date of placement of the child. The employee may choose to return to full-time work within that period. If they do so, any subsequent changes to working hours would be by agreement</p>	<p><b>(Voted up September, 2016)</b> Australian Institute of Health and Welfare Enterprise Agreement 2016 (AG2016/5794)</p> <p>Flexible work arrangements for parents 139. In addition to the provisions of the <i>Fair Work Act 2009</i> that permit employees to request a change in working conditions, an employee who has completed at least 12 months of continuous qualifying service and has responsibility for the care of a child under school age or a child under 18 who has a disability will be provided with access to regular part-time work where the requested work pattern is at least three full-time days (that is, three days of 7 hours 25 minutes) or no less than 25 hours per week spread over four or five days. 140. Where an employee as described in the preceding clause requests a work pattern that is less than three</p>	<p>Cut: removed guarantee to access regular P/T work following a period of parental leave.</p>

	between the employee and their supervisor.	full-time days or less than 25 hours per week spread over four or five days, the request for part-time hours will be subject to approval in accordance with legislation and clauses 68-7~ of this agreement.	
<b>Administrative Appeals Tribunal</b>	<p><b>Administrative Appeals Tribunal EA 2011</b></p> <p>Part time work Employment 283. Employees returning from Maternity or Parental Leave will be provided with access to PTE for a period of 3 years upon application. Applications for part time employment beyond the initial 3 year period will be considered in line with the Part-Time Employment provisions under this Agreement.</p>	<p><b>2<sup>nd</sup> offer to go to a vote (vote underway now)</b></p> <p>Part time employment 147. An employee returning to duty from Maternity Leave will have access to part-time employment for up to 3 years from the birth of the child in accordance with the agreed pattern of hours (see clause 141). Further applications for part-time employment will be considered in line with the part-time work provisions of this Agreement.</p>	New restriction which calculates the duration of P/T working arrangements from the birth of the child rather than from the employee's return to work.
<b>BoM</b>	<p><b>Bureau of Meteorology Enterprise Agreement 2011-2014 (AG2011/14281)</b></p> <p>Return to work after parental leave 74.7 On ending parental or maternity leave, an employee is entitled to return to:</p> <ul style="list-style-type: none"> <li>the employee's pre-parental/maternity leave duties; or</li> <li>if those duties no longer exist, to another available position for which the employee is qualified and suited at the same classification and pay as applied pre-parental/maternity leave. However, where this is not possible, the Agency Head must employ the employee in available duties that are nearest in status and remuneration to the duties referred to in this clause.</li> </ul> <p>For the purpose of this clause, duties means those performed: (a) if the employee was moved to safe duties because of the pregnancy – immediately before the move; or</p>	<p><b>(2<sup>nd</sup> offer rejected in all staff vote of March, 2016)</b></p> <p>Bureau of Meteorology Enterprise Agreement 2016-19</p> <p>D1 Working Flexibly D 1.1 This Agreement includes a range of workplace arrangements designed to provide employees with flexible working and leave measures to assist in balancing their work and personal lives. These measures also support employees with family responsibilities and mature aged employees</p> <p>Return to Work after Parental Leave E 8.9 On ending any form of parental leave, employees have the return to work guarantee and the right to request flexible working arrangements that are provided by the FW Act.</p>	Cut: removed guaranteed access to P/T work on return from a period of parental leave (parental, foster, adoption and maternity leave)

	<p>(b) if the employee began working part-time because of the pregnancy – immediately before part-time employment began; or</p> <p>(c) otherwise – immediately before the employee commenced maternity or parental leave.</p> <p><i>74.8 Notwithstanding the above, an employee returning to duty from parental, foster carer's, adoption and maternity leave will, on application by the employee, be given access to part-time employment. If the duties referred to above cannot be performed on a part-time basis, the Agency Head must provide other part-time duties at the same classification and pay or, where that is not possible, part-time duties that are nearest in status and remuneration to the duties referred to above.</i></p>		
<b>AGD</b>	<p><b>Attorney-General's Department Enterprise Agreement 2011 (AG2011/12133)</b></p> <p>No equivalent limitation</p>	<p><b>(offer rejected May 2016 – 61.2% No vote)</b> Proposed Attorney-General's Department Enterprise Agreement 2016</p> <p>Clause 4.06(5) Employee initiated part-time work arrangements must be reviewed at a frequency no longer than every 12 months</p>	<p>Employees will now be required to obtain approval to extend part-time employment arrangements beyond 12 months.</p>
<b>Department of Finance</b>	<p><b>Finance Enterprise Agreement 2011-2014 (AG2011/10544)</b></p> <p>Clause 123 – Caring for Elderly Parents The Secretary will support the use of an Employee's personal leave credits to care for elderly parents in accordance with the personal leave provisions set out in clause 122, in support of the ageing Australian population.</p> <p>Clause 121 – Purchased additional annual leave Purchased leave may be taken at half pay</p>	<p><b>(Voted up December, 2015)</b> <b>Department of Finance Enterprise Agreement 2015-2018 (AG2015/7527)</b></p> <p>No equivalent provision</p> <p>Clause 17.9 (b)- Purchased additional leave. Purchased leave must be taken at full pay unless otherwise approved by the delegate as an exceptional</p>	<p>More difficult to access personal Leave for this purpose.</p> <p>More difficult to access Purchased leave at half pay.</p>

	<p>Clause 102 – Flexible working requests for parents The Secretary will seek to accommodate the part-time work requests of parents up until the child is of school age.</p>	<p>circumstance.</p> <p>Clause 21.7(a) – Return from parental leave. Prior to an employee returning from parental leave the manager will discuss with the employee their return to work, including any request for part-time work.</p>	
<b>Department of Defence</b>	<p><b>Defence Enterprise Collective Agreement 2012-2014 (AG2012/4554)</b></p> <p>Clause H4 – Employment support for partners. Where an employee is relocated in the interests of Defence and their partner chooses to relocate with the Defence employee, Defence will assist that partner to identify potential Defence or other APS employment opportunities in the new location. This support is also provided to partners of ADF members.</p>	<p><b>(2<sup>nd</sup> offer rejected in all staff ballot May, 2016 54.9%)</b> Proposed Defence Enterprise Agreement 2016-2019 rejected in employee vote on 4 May 2016.</p> <p>No equivalent provision. <i>[Just reinstated in a proposed EA to be voted on shortly]</i></p>	<p>Removal of commitment to ameliorate the financial disruption associated with relocation.</p>
<b>Department of Employment</b> NB. Machinery of Government change established two new agencies in place of former DEEWR; Education and Training, and Employment	<p><b>DEEWR Enterprise Agreement 2011 – 2014 (AG2012/1881)</b></p> <p>Clause 134. Where agreement cannot be reached on the pattern of ordinary hours the issue should be resolved in accordance with the Dispute Resolution procedures of this Agreement. While the dispute is being resolved the employee will work a Standard Day.</p> <p>Clauses 117 and 120 (Part-time employment) 117. The department and an employee may enter into part time employment arrangements. A full time employee cannot be compelled to work part time.</p> <p>120. The terms of a part time agreement cannot be varied without the agreement of the employee and the Secretary. This includes reversion or</p>	<p><b>(Voted up February, 2016)</b> <b>Department of Employment Enterprise Agreement 2016-2019 (AG2016/414)</b></p> <p>Clause 80. An employee’s pattern of ordinary hours should be agreed between the employee and their manager. These agreed hours may on occasions need to be varied by either the employee or the manager to accommodate operational or personal requirements. In the event that agreement cannot be reached, a manager may direct an employee to work a standard day, or for part time employees, ordinary hours as per their part time arrangement, or for rostered employees, ordinary rostered hours.</p> <p>No equivalent provisions in new EA.</p>	<p>Where agreement could not be reached on a pattern of working hours an employee could seek resolution through the dispute resolution provisions of the EA. This option is no longer available under the new EA.</p> <p>Removed there be no variation to hours of a P/T agreement with the employee’s consent. This removal extends to</p>

	conversion to full time arrangements before the originally agreed date. Any request for review by the employee will be considered within one month. Part time hours can be varied by agreement between the employee and the manager on a short term basis to facilitate access to training or other departmental opportunities. At the end of the part time agreement the employee can either return to full time work or apply for a further period of part time employment.		insulating an employee from being compelled onto full time hours before the expiry of an agreed P/T working arrangement. Working women with caring responsibilities rely upon the predictable nature of working hours that the previous EA provided.
<b>Department of Education and Training (DET)</b>	<b>DEEWR Enterprise Agreement 2011 – 2014 (AG2012/1881)</b>	<b>(voted up March 2016)</b> Department of Education and Training Enterprise Agreement 2016 – 2019 (AG2016/687)	Removed there be no variation to hours of a P/T agreement without the employee’s consent. This removal extends to protecting an employee from being compelled onto full time hours before the expiry of an agreed P/T working arrangement. Working women with caring responsibilities rely upon the predictable nature of working hours that the previous EA provided.
NB. Machinery of Government change established two new agencies in place of former DEEWR; Education and Training, and Employment	120. The terms of a part time agreement cannot be varied without the agreement of the employee and the Secretary. This includes reversion or conversion to full time arrangements before the originally agreed date. Any request for review by the employee will be considered within one month. Part time hours can be varied by agreement between the employee and the manager on a short term basis to facilitate access to training or other departmental opportunities. At the end of the part time agreement the employee can either return to full time work or apply for a further period of part time employment.	No equivalent provision in the new EA.	
<b>AHRC</b>	<b>Australian Human Rights Commission Enterprise Agreement 2011 – 2014 (AG2011/3793)</b>	<b>(voted up October, 2016)</b> <b>Australian Human Rights Commission Enterprise Agreement 2016 – 2019 (AG2016/5476)</b>	Removes the previous commitment of the Commission to favourably consider requests to work standard hours outside the bandwidth. Specific hours of attendance for client service-related employees of 0830 to 1700 may limit the scope of any P/T arrangement sought by an employee in a client-facing role within the hours of 0830 to 1700
	27.4 Notwithstanding subclause 27.3, standard hours may be worked outside of the bandwidth stipulated where an employee and the Commission so agree and where operational requirements may be met. The Commission recognises the importance of employees achieving	26.6 Start and finish times: Starting and finishing times within the bandwidth are to be determined by the Commission, after consultation with employee/s. To optimise effective client service supervisors may require employees (including part-time employees where this is consistent with their ordinary	

	<p>a balance between work and personal life and acknowledges that many employees have carer responsibilities. Where operational and security requirements permit, the Commission will favourably consider requests to work standard hours outside the bandwidth. Supervisors at the EL 2 level may approve their employees to work outside the bandwidth hours subject to the above requirements and in consultation with the Personnel Manager. Supervisors and employees should agree on a mutually beneficial arrangement regarding hours of work that recognises operational considerations. Agreement should be reviewed on a regular basis to ensure they are operating effectively. Where agreement cannot be reached over a request to work outside the bandwidth times it may be referred to the Personnel Manager or Executive Director for resolution.</p>	<p>hours) to attend at specific times during general business hours of 8.30am to 5pm. It is understood that these arrangements should provide employees flexibility to balance work and personal obligations subject to operational requirements of the Commission, the need for appropriate supervisory arrangements to be in place and Work Health and Safety principles.</p>	
<b>AHRC</b>	<p><b>Australian Human Rights Commission Enterprise Agreement 2011 – 2014 (AG2011/3793)</b></p> <p>Home based work  28.1 Where consistent with client service, the inherent requirements of the role and other operational requirements, an employee may request the Commission to approve home based work on either an on-going or temporary basis.  28.2 Guidelines for on-going arrangements, including criteria for approval, security and WHS requirements, will provide for a simple and cost effective scheme that does not compromise excellence in service and confidentiality to clients and employees. Approval for an on-going home based work arrangement may be conditional upon an employee's willingness to meet costs associated</p>	<p><b>(voted up October, 2016)</b>  <b>Australian Human Rights Commission Enterprise Agreement 2016 – 2019 (AG2016/5476)</b></p> <p>Home based work  27.1 The President may approve applications for home based work on either an on-going or temporary basis, where consistent with client service, the inherent requirements of the role and other operational requirements. Further information can be found in the Home Based Work policy and guidelines. 27.2 Any on-going or temporary arrangement may be terminated by the President for reasons such as ineffectiveness of the arrangement, or failure of the employee to comply with requirements. Where the President has decided to terminate an arrangement, the employee concerned shall be given reasonable notice of the termination.</p>	<p>Removes the previous guarantee that approval of a request for home based work where it is agreed between the employee and the Commission at the outset that the arrangement is for a short and fixed period only.</p>

	<p>with necessary modifications to the home based site.</p> <p>28.3 Approval for home-based work shall be subject to client service and operational needs being met after consideration of the effect of the proposal on individual workloads and the work area as a whole.</p> <p>28.4 A temporary arrangement may only be approved where it is agreed at the outset that it is for a short and fixed period only. The arrangement may only be approved where it is capable of implementation at minimal or no cost to the Commission. Any request for remote access at home or other locations is to be approved by the Executive Director.</p> <p>28.5 Any on-going or temporary arrangement may be terminated by the Commission for reasons such as ineffectiveness of the arrangement, or failure of the employee to comply with requirements. Where the Commission has decided to terminate an arrangement, the employee concerned shall be given reasonable notice of the termination.</p> <p>28.6 The Commission may approve for an employee to work from home whilst recovering from an injury/illness or where there are short term carer responsibilities in exceptional circumstances.</p>		
<b>AIATSIS</b>	<p><b>Australian Institute of Aboriginal and Torres Strait Islander Studies Enterprise Agreement 2012 - 2014 (AG2012/5084)</b></p> <p>46 - Employees returning to work after the expiration of fostering, adoption and or maternity leave, or those who have responsibility for a dependant under 18 years who has a disability, may apply for part time work in cumulative</p>	<p><b>(no vote conducted yet)</b></p> <p><b>Australian Institute of Aboriginal and Torres Strait Islander Studies Enterprise Agreement 2016 – 2019</b></p> <p>34 - Employees returning from Maternity, Parental or Adoption/ Foster Care Leave will be provided with access to part time employment, upon application, until the child reaches three years of age. Thereafter, an employee may request flexible working arrangements in</p>	<p>Right to return to part-time work following a period of parental leave is reduced by 2 years from 5 to 3 years.</p>

	periods up to a maximum of five years from the date of commencement of part time work.	accordance with the Fair Work Act.	
<b>ARPANSA</b>	<p><b>ARPANSA Agreement 2011 - 2014 (AG2011/14176)</b></p> <p>80. Parental Leave 80.1 Application: In addition to any paid parental leave prescribed in the sub-clauses below, employees will be entitled to a <i>maximum of 24 months unpaid parental leave</i>.</p>	<p><b>(no vote conducted yet)</b> <b>ARPANSA Agreement 2016 - 2019</b></p> <p>81. Parental Leave 81.4 An employee is entitled to 52 weeks leave of absence for each confinement. An employee, on ending the initial 52 weeks leave, may request an extension of unpaid parental leave for a further period of up to 52 weeks. The second period of unpaid leave is to commence immediately following the initial 52 weeks leave period. An employee may apply to alter the dates and/or the duration of an absence at any time provided the following conditions are satisfied:</p> <ul style="list-style-type: none"> <li>• where an employee on maternity leave applies for, and is eligible for that leave, the application will be granted;</li> <li>• an employee who is pregnant is required to be absent from duty six weeks before the expected date of confinement until six weeks after the actual date of birth of the child, unless the employee provides a doctor's certificate declaring that the employee is fit to either continue or return to duty and the CEO gives permission in writing.</li> </ul>	<p>Removes the current EA guarantee of access to a total of 24 months unpaid parental leave. The proposed EA reflects the NES which provides a right to request, (not a right to access), the additional 52 weeks unpaid leave comprehended in the current EA. This means the proposal does not guarantee access to the second half of unpaid parental leave.</p>
<b>DVA</b>	<p>DVA Enterprise Agreement 2012-2014 (AG2011/14169)</p> <p>271 Where an employee is personally available to return to full-time work and requests to do so before the end of an agreed period, the employee will have a right to revert to full-time employment.</p>	<p>DVA Enterprise Agreement 2015-2018 (AG2015/7082)</p> <p>132 The manager and the employee may agree to vary the part time work agreement, including a reversion to full time hours, before the end of the agreement.</p>	<p>An employee no longer has a right to revert to full time employment before the end of an agreed period of part time employment.</p>