

Impact of the Government's Workplace Bargaining Policy and approach to Commonwealth public sector bargaining

Department of Defence: Key details for bargaining team submission

Current Agreement Name	<i>Defence Enterprise Collective Agreement 2012-2014</i>
Nominal expiry date	30 June 2014
Staffing	<p>ASL as per budget papers</p> <ul style="list-style-type: none"> • 2016-2017: 17, 950 <p>Headcount from APS Statistical Bulletin 2016-17</p> <ul style="list-style-type: none"> • Total: 18,567 7638 (female)/10, 929 (male); 18, 456 (Ongoing)/ 111 (Non-Ongoing); 17, 277 (Full Time)/1290 (Part-Time); 336 ATSI <p><i>Current headcount is about 18,200</i></p>
Date CPSU claim lodged	17 December 2013
Date NERR issued	16 September 2014
Date NERR re-issued	20 September 2016
1 st Bargaining meeting	25 September 2014
1 st full agreement tabled	Preliminary Draft DECA provided 22 January 2016.
EA Ballot 1 Date Outcome Staff participation	<p>2 March 2016</p> <p>50.9 % NO / 49.1% YES</p> <p>80.96%</p>
EA Ballot 2 Date Outcome Staff participation	<p>4 May 2016</p> <p>54.9 % NO / 45.1 % YES</p> <p>84%</p>
Current status of bargaining	<ul style="list-style-type: none"> • Defence currently involved in a FWC conciliation process as a result of a CPSU Good Faith Bargaining application. 1st meeting to be confirmed. • Last bargaining team meeting was 14 October 2016 • Defence indicated they are likely to finalise another proposed agreement shortly.

Comments against the terms of reference as relevant for this agency

(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;

Bargaining was not timely

The facts of the matter are that:

- The current Enterprise Agreement had a Nominal Expiry Date of 30 June 2014.
- CPSU sought to commence bargaining as early as possible following the serving of our Bargaining Claim on 17 December 2013.

- The employer issues the Notice of Employee Representation Rights on 16 September 2014 and the formal bargaining process started shortly after.
- The first ballot was not until 2 March 2016, some 20 months after the nominal expiry date of the current agreement.
- The second ballot, two months later, saw an increase in the no vote.

The Federal Government, and the Australian Public Service Commissioner, frequently make public comment that delays in pay increase are to be blamed on the CPSU. However, as the above makes clear Defence staffs were not even given the opportunity to formally consider a new agreement until 20 months after the nominal expiry date of the current agreement.

There has been a clear failure of Government to take any reasonable steps to resolve this matter in a timely fashion. For Defence APS employees the process has been demoralising, frustrating and has significantly eroded trust in their employer. This is an agency of 18,200 APS staff. They view the Government's Bargaining Policy as an abject failure for APS workers.

- (b) the impact of the protracted dispute on service provision, particularly in regional Australia, and for vulnerable and elderly people;*
- (c) the impact on agency productivity and staff morale of the delay in resolving enterprise agreements across the Australian Public Service;*

Staff in regional areas have been disproportionately affected by job cuts, unfilled vacancies and increased workloads. Combined with the distraction of this dispute, this has put considerable strain on the support provided to military personnel.

The extremely long time that the process has taken has taken its toll on normal work in two ways; for bargaining teams the process has required a lot of additional work as the Department has made it as difficult as possible by limiting access to communication, long delays in providing documentation and refusing to allow meetings on work time to discuss bargaining issues with union members. For employees more generally, the bargaining process dominates many, if not most, discussions with managers including team meetings and planning activities.

The impact on agency productivity and staff morale of the delay in resolving workplace bargaining has been massive. The Defence 'Your Say' survey clearly demonstrates that the Department's APS staff are demoralised as well as losing faith and trust in management.

In the most recent available Your Say survey (February 2015) almost half of the Defence APS workforce described workplace morale as "low" or "very low" compared to 34 per cent in 2013. The majority of remaining respondents considered morale to be "moderate" while only 16 per cent considered it "high" or "very high".

One-fifth of respondents said the employment conditions and stalled pay negotiations were to blame. "Not back-paying even though it's the government's fault DECA negotiations are so late and slow," one respondent said. "The threat of no or low pay rises... We have had enough."

This was acknowledge by the Department in the report, which said that "APS workplace morale was found to have declined over the past two years, in contrast with the permanent ADF which has improved over the same time".

"The association of workplace morale with employee engagement, productivity, resilience, organisational commitment and retention provides a basis for Defence to invest in improving workplace morale."

Poor leadership was identified as a cause for low morale with comments from public servants citing poor planning, a lack of direction and clarity of roles and micro-management.

Confusion about organisation restructures and downsizing caused confusion and motivation issues for some staff. Others blamed "a lack of respect, a lack of fairness and a non-inclusive environment" for low morale.

Underpinning all of this is a sense of foreboding fuelled by the departments drive to remove protections, rights and conditions from the DECA and the knowledge that many large change activities, with big impacts on the workforce, are 'stalled' waiting for a new agreement to be in place that requires the Department to consult less with employees and allows the imposition of poorly designed business processes and structures.

(e) the effect of the implementation of the Government's Workplace Bargaining Policy on workplace relations in the Commonwealth public sector;

The previously cooperative workplace relations environment in the Department between management and employee representatives has also been severely damaged. It is highly likely that the stripping of rights and conditions from the agreement, is an inevitable consequence of the Government's bargaining policy if it remains unchanged, and the imposition of templated 'model terms', will result in increased disputation as it will be critical to engage formal processes as early as possible to protect vulnerable employees.

It is clear to us that the Department at the bargaining table is often very uncomfortable with the positions the bargaining policy compels them to put to the workforce. The bargaining team gives credit to the departmental representatives for challenging aspects of the bargaining policy, and it's often ludicrous interpretation by the Australian Public Service Commission (APSC). It is also clear that we are often trying to bargain with people who are not 'at the table'.

In effect, both sides are grappling with three bargaining policies; the policy as written, the policy as interpreted by the APSC and the policy as interpreted by Defence. In any given discussion on terms and conditions, all three 'layers' of policy can be in play making it almost impossible for the Unions to put proposals that the department sees as 'compliant' with the framework. There have been instances such as the inclusion award rates for Apprentices and a 'default mechanism' for performance progression where managers do not record a decision, where we have reached agreement on issues with the department only to have the APSC apply a new interpretation of the policy and direct the department to recant their position. So while the Government claims that the responsibility for bargaining sits at the Agency level it is evident that Defence do not have the authority to bargain in the way they want.

The failure of the Government to conclude workplace bargaining across the Australian Public Service, almost three years after the process began, has been a litany of delay and misrepresentation on the part of the Department and the Government:

- **The Unions were prepared to begin bargaining 6 months prior to the expiry of the Defence Employees Collective Agreement (DECA).** The Department were prevented from bargaining by the Government's delays in releasing a bargaining policy and its prohibition on agencies commencing bargaining.
- **The Department did not put an offer to the workforce for 18 months,** although they had the power to do so at any time and the Unions did not seek to prevent them.
- **The Department deliberately delayed bargaining by 8 months,** while it 'improved its offer', an offer never put to staff for a vote, and sought to blame the Unions for this in both internal and external written communications.
- It is the view of the bargaining team that while Unions have tried to expedite and accelerate the process the Department has 'dragged out' the process. In the final round of bargaining before the first NO vote the CPSU Defence Section Secretary put it this way, **"We have had 8 rounds of preamble from the Department and 2 rounds of bargaining; not 10 rounds of bargaining!"** Throughout the process the Unions have tried to expedite and accelerate the process.
- So, clearly **the delay belongs to the Department and the Government;** not the Defence APS workforce or its elected representatives. The workforce should be appropriately compensated for that delay.
- The maximum pay rise on offer (2% a year for a three year agreement) under the bargaining policy is effectively 6% over 6 years as it does not compensate for the delays in bargaining which are entirely the fault of the Government and the Department.
- **The pay offer hurts staff. Capped by the bargaining policy, is around 1.0% per annum (AAWI NED to NED) over the full period;** from the Nominal Expiry Date of the current DECA to the likely end of any proposed DECA. This is well below CPI and sees all APS employees go backwards financially in real terms.

Overall, the bargaining process under the government's bargaining policy has damaged the relationship between the Defence department and its APS workforce and caused hardship for the staff affected.

ADF and APS Pay Relativity

Defence Department secretary Dennis Richardson has stated on a number of occasions that equity between the civilian and military arms of Australia's defence establishment is a crucial principle. The Defence Department confirmed in March 2015 that pay increases for the ADF since 1992 had totalled 78.14 per cent while public servants working in the department received pay rises totalling 76.14 per cent. The pay gap has grown since then with the ADF receiving at least a further 4% rise since that time while there has been no APS pay rise since July 2013.

The CPSU acknowledges the substantial differences in the nature of ADF and APS service, and as Mr Richardson has explained to a Senate committee, the 'unique nature of military service' was already

built into a series of special benefits, including tax-free treatment and a \$150 daily allowance while serving overseas.

Mr Richardson said the base salary was calibrated to ensure equity and good relations between the ADF and the Australian Public Service, whose staff frequently report to each other and work side by side, "The greater the differential you have, between base salaries in the ADF and base salaries in the defence APS, the greater are the difficulties we are going to run into in terms of an integrated workforce."

There has been criticism that the governments handling of the ongoing APS pay dispute is destroying decades of work building a fair system for setting soldiers' and defence civilians pay.

(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;

The latest version of the proposed replacement Defence Enterprise Agreement 2016-2019 includes cuts to a range of existing conditions and workplace rights; including

- a diminution of consultation rights
- a reduction in the time to undertake performance management processes
- reductions to current performance pay progression arrangements
- reductions in a number of other rights and conditions such as miscellaneous leave arrangements and workplace delegates right through transfer to unenforceable policy of provisions contained in the current agreement.

The effect of these proposals is to reduce the capacity of staff to have any influence on the decisions being made about their work, to make their work less secure, lessen their capacity to access workplace support and representative from their union, reduce their pay progression benefits and remove certainty about entitlements to a range of leave provisions. During periods of significant organisational change such as that currently underway in Defence, rights around consultation, representation and job security become even more important. Historically, Defence has been subject to frequent, large scale organisational reviews. The importance of proper consultation rights to employees cannot be understated. These current rights allow employees views on the best way to achieve productive outcomes to be taken into account, and provide real mechanisms to reduce job loss and minimise and mitigate negative consequences for employees.

In relation to leave the Department is proposing to remove Annex C from the current agreement. This Annex currently provides a comprehensive guide to employees on the various circumstances that support Miscellaneous Leave being granted." The Department wants to include only some of

the leave categories identified in that Annex in the main body of their proposed replacement enterprise agreement. The CPSU and other involved unions do not support the removal of Annex C which provides a comprehensive guide to employees on the various circumstances that would support miscellaneous leave being granted. While the Department continues to advise employees that Domestic Violence Leave is available (DECA News No 57, 11 March 2016) the refusal to include this as an enforceable entitlement in the agreement, consistent with our claim served on the Department of Defence (Commonwealth) in December 2013, raises serious concerns about access to this type of leave.

We also fail to see how taking detail out of an agreement and putting it into unenforceable policy can be seen as a productivity improvement. All it does is create ambiguity, and create another document that needs to be checked to determine an entitlement or condition. It is clearly about reducing rights, and nothing else.

(i) the effect of an expanded role for the responsible Minister in the Government's Workplace Bargaining Policy

For the CPSU Defence Bargaining Team, having the Minister sit down and review the Government's bargaining policy so that current conditions can be maintained and a fair pay rise negotiated, would make a settlement of this issue that everyone can live with much more likely and immediate than seems currently possible. As the Minister for Employment and Minister Assisting the Prime Minister for the Public Service this hardly seems like an expanded role. It seems a lot like what should be a normal part of the job.

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