

**SENATE STANDING COMMITTEE ON
FINANCE AND PUBLIC
ADMINISTRATION**

REFERENCES COMMITTEE

**Reform of Australian Government
Administration**

SUBMISSION

SUBMISSION NUMBER: 8

SUBMITTER

Australian Services Union Tax Officers' Branch

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Ms Christine McDonald
Secretary
Standing Committee on
Finance and Public Administration
The Senate
Parliament House
Canberra

16 August 2010

Dear Ms. McDonald

Inquiry into Reform of Australian Government Administration

I have set out below the ASU's submission for the consideration of the Committee.

Yours sincerely

Jeff Lapidos

Executive Summary

ASU Tax on Reform of Australian Government Administration

The unity of the Australian Public Service comes from the Public Service Act. It should be amended by strengthening the roles and powers of the Public Service and Merit Protection Commissioners, so they can develop unifying standards for the APS.

The APS Bargaining Framework should set new minimum standards of employment with agencies free to bargain above them. It should include a Charter of APS employee charter that addresses standards of management-employee relationships. The Framework should be negotiated with the APS unions. It should also address the fair sharing of APS wide productivity initiatives, through reductions in efficiency dividends and improved inflation supplementation.

A single enterprise agreement for the APS would break the link between productivity and improvements in pay and conditions. Agency bargaining should be retained and strengthened so agencies focus on the need to increase productivity and share the gains with their employees, the community they serve and the government.

The Public Service Commissioner should work with the Secretaries of the Agencies with the lowest pay and conditions to identify projects that if funded by Government would create significant productivity gains. Government should fund such initiatives from those agencies where the returns from investment will be properly shared with all stakeholders so these equity issues are addressed.

ASU Tax on Reform of Australian Government Administration

A Unified Australian Public Service

The ASU is supportive of steps being taken to further unify the Australian Public Service. However we submit that the public interest requires that Departmental Secretaries remain responsible for the administration of their Departments.

The CPSU proposal for a single collective agreement to cover the pay, employment conditions and employment policies of the whole Australian Public Service would be a substantial blocker to Departmental Secretaries ability to improve the efficiency and effectiveness of their Department. The CPSUJ proposal also removes the current strong link between improvements in pay and conditions and improvements in productivity and effectiveness of Departments.

APS wide efficiency should be properly shared with stakeholders

The CPSU makes the point that the Government intends reaping efficiency gains from its overall administration of the Australian Public Service through investment in service wide initiatives, but the current bargaining framework makes no provision for the sharing of those efficiency gains.

The types of APS wide changes that are expected to deliver increased productivity include service wide travel arrangements and may extend to new ICT systems, new accommodation arrangements and other areas of expenditure where the Commonwealth's bulk purchasing power can be utilized more effectively.

We submit that just as increases in productivity over time are enhanced through sharing the gains through agency bargaining, so should APS wide be shared across the Australian Public Services. The obvious method of sharing is through an offset to the efficiency dividend and improved supplementation of the inflation component of salary increases. This should be negotiated with the APS unions as part of the APS Bargaining Framework.

Amend the Public Service Act 1999 and Regulations to further unify the APS

The unity of the APS should come from the Public Service Act, through the APS Values, the Code of Conduct and common provisions in relation to promotion on merit, promotion appeals, reviews of employment action and whistleblower provisions, as well as through the setting of minimum employment standards Australian Government's Bargaining Framework for the Australian Public Service.

There should be a greater and clearer division of powers and responsibilities between the Merit Protection Commissioner and the Public Service Commissioner. Employees and other stakeholders should not have to scratch their heads and wonder who would be the best person to address their issue. An example is whistleblower reports which may be addressed to either the MPC or PSC, with the legislation generally giving no indication which is the appropriate statutory officer to deal with a particular situation.

We set out below our proposals, in general terms, for amendments to the Public Service Act and Regulations that we believe would increase the productivity of the APS through improved accountability and responsibility of Departmental Secretaries and increased transparency of the work of both the Public Service Commissioner and the Merit Protection Commissioner.

- The Merit Protection Commissioner (MPC) should have power to determine appeals against determinations that an employee has breached the APS Code of Conduct. The MPC currently only has the power to make a recommendation to the relevant Departmental Secretary.
- The MPC should have power to determine appeals against sanction for breach of the APS Code of Conduct. The MPC currently only has the power to make a recommendation to the relevant Departmental Secretary.
- The MPC should have power to determine primary or secondary reviews of action, rather than have only recommendatory powers.
- APS employees should have a right to be represented in any appearance or representation before the MPC or PSC.
- The code for reviews of actions should be amended to provide for a quick, impartial and fair review of action on its merits.
- The right to seek review should be extended so it can also be sought by a number of employees who are personally affected by the same action.
- The code for reviews of action should be amended so an APS employee can press a Departmental Secretary or the MPS for prompt action if the review process is dilatory. APS Employees should have power 21 days after making a request for review to require an agency or the MPC, as the case may be, to report on the progress of the review and to request it be expedited.
- The whistleblower framework needs to be amended to make the process more transparent from the perspective of the whistleblower. Currently, there is no provision for a Departmental Secretary, the Public Service Commissioner or the Merit Protection Commissioner to inform the whistleblower of the progress of an investigation, its scope or its outcome. The current one way mirror process discourages the use of these provisions and leads to frustration and apprehension for those who use the process.

Revise the APS Bargaining Framework

A revised APS Bargaining Framework supporting a continuation of agency bargaining, through provision for minimum core standards across the APS.

It should direct agencies on approaches they should take to enterprise bargaining. This should include good faith bargaining. The Framework should require agencies to include a provision that they will consult and negotiate with the unions about their employment policies and guidelines.

The Bargaining Framework should direct that agencies ensure their enterprise agreements support mobility across the APS. Provisions should be included for the maintenance of pay levels when an employee transfers at level from an agency with a higher pay level to an agency with a lower pay level until general pay increases catch up. See clause 18 of the ATO (General Employees) Agreement 2009 for an example of this type of clause.

APS Bargaining Framework should provide for APS Employees Charter

The APS Bargaining Framework should encompass an 'APS Employees' Charter'. This should include accepted industrial rights, translating the proposed APS Values to APS workplaces and stating employer service standards. The following are examples.

An APS Employees' Charter – examples of commitments

- The employee and employer will deal with each other in good faith, assuming each other's honesty unless there is evidence to the contrary.
- Agencies will conduct reviews of action under the Public Service Act within one month.
- The Merit Protection Commissioner will conduct appeals against misconduct decisions within one month.
- The Merit Protection Commissioner will conduct secondary reviews of action under the Public Service Act within one month.

Bargaining Framework

The ASU opposes a single APS wide Enterprise Agreement

The ASU is opposed to a single enterprise agreement for the Australian Public Service. This is being advocated by the Community and Public Sector Union (CPSU). An APS wide pay and conditions agreement would be far removed from workplaces in APS agencies. The process of bargaining for a single APS wide agreement would be unable to identify or deliver real productivity improvements where they need to take place, at the agency level. Rather, the bargaining process for an APS wide agreement would, as a result, inevitably focus on trading off conditions and the degree to which pay increases are to be suppressed in high performing agencies.

This will lead to employee discontent and disengagement. The opposite of what is needed for a high performing public service.

APS wide bargaining for a single agreement is disincentive for productivity

APS wide bargaining does not support investment in productivity improvements at the agency level. Agencies will not be inclined to identify and deliver productivity gains for a system over which they have little, if any influence. In practice small agencies will look to piggy back on the efficiency gains generated by the large agencies. Large agencies are already required to share their productivity gains amongst their employees, the government and the community they serve. If large agencies are required to share their productivity gains with lower performing agencies (in terms of ability to generate productivity gains), they will have reduced incentive to do so. This will be reinforced at the employee level. This is one of the ways in which the link between productivity gains and improvements in pay and conditions for agency employees will be broken.

APS wide bargaining will lead to loss of employee engagement

Bargaining for a single APS wide agreement will result in a loss of staff engagement in the bargaining process. Employees will be far removed from the negotiations and the negotiators. This will result in a loss of employee 'buy in' to the bargaining process and the outcome. This in turn will reinforce the lack of connection between the bargaining process/outcome and the need for increases in productivity to fund improvements in real pay and conditions, especially where the latter are not achieved for all.

Agency bargaining facilitates investment to improve productivity

Agency bargaining provides departmental secretaries with a special opportunity to show how their plans for their agency will benefit the community they serve, the government and their employees. Agency bargaining should link in with the budget process. Together, they should illustrate how the government's investment in the agency will deliver for its stakeholders. Agency employees should expect a fair share of the benefits of this investment. Improving the productivity and effectiveness of the agency increases its capacity to improve

the pay and conditions of its employees, provide a return to government and improve its services to the community.

Bargaining in the APS should follow the system for the private sector

The APS is akin to an industry, not an enterprise. It should follow the same rules as apply to the private sector in making enterprise agreements. The ASU believes a single APS wide enterprise agreement is contrary to the intent and provisions of the Fair Work Act on making enterprise agreements. The appropriate enterprise in the APS is the agency. The Public Service Act gives each departmental secretary all the rights, duties and powers of an employer in respect of the APS employees in their Agency. This is appropriate and should continue to be the case.

The Secretaries of both large and small agencies have the same interest of all employers, to negotiate with their employees for salaries and conditions of employment that are appropriate for that employer. The Fair Work Act properly requires such negotiations to be conducted in good faith. This is so the legitimate interests of both employers and employees are properly taken into account. The Fair Work system encourages the employer to invest in the enterprise to increase its productivity and effectiveness and to fairly share the benefits with its employees. Employers who are unable to generate the productivity increases needed to fund improvements in pay and conditions for their employees will inevitably experience difficulty in recruiting and retaining the numbers and quality of employee they would prefer. This is the market mechanism working in practice through the enterprise bargaining system. It is the system in place for the private sector. It is the best system for the private sector and should apply to the public sector for the same reasons.

CPSU's view is short sighted and for its own convenience

The CPSU has complained about the burden it suffers in having to negotiate collective agreements with 104 agencies. The CPSU has expressed concern at the fact it has had to negotiate 36 agency agreements concurrently. The CPSU's clear view is that this burden will be reduced if one agreement can be negotiated for the whole of the Australian Public Service at the same time. The CPSU wants the agreement to cover all conditions of employment and all employment policies in order to simplify the administration of its own organization. This would mean policies that are not tailored to the needs of agencies and deny both agency management and staff the opportunity to make the employment policies that address their needs. The CPSU proposal should be rejected as a self indulgent desire to cater to its own convenience.

The CPSU's ostensible concerns about large differentials in salaries across the APS creating barriers to mobility have little basis in reality. However the ASU accepts that it is desirable to address the reasons some agencies have not been able to generate the productivity gains needed to keep up with median APS pay and conditions. We address that issue below.

Costs and benefits of agency bargaining

The view that bargaining enterprise agreements agency by agency is costly compared with bargaining a single APS wide enterprise agreement is short sighted. It does not take account of the benefits that agency bargaining can generate, which a single APS wide agreement cannot. In any case, many of the costs of agency bargaining would still apply under bargaining for a single APS wide enterprise agreement.

The direct costs of bargaining for a single APS wide enterprise agreement

The normal process of unions canvassing their members in developing their claims and in reporting progress of the negotiations would be similar for both agreement types. The Government, presumably, would want agency heads to feed into the negotiating process as well. Agencies would also need to canvas their staff in advance of, during and about the outcome of negotiations. In fact the only savings from a single APS wide enterprise agreement would appear to be that instead there being a negotiating group in each agency, there would be only one negotiating group for the whole of the APS. However it will be a much larger group than occurs in any single agency agreement negotiation, as all unions will have to be represented throughout the negotiations. We anticipate that negotiations would be complex, difficult and protracted if they are lawful at all and if Fair Work Australia permits the enterprise to be defined at the APS level.

Agency bargaining should remain the key determinant of pay and conditions

Agencies need individual enterprise agreements negotiated directly with their employees and their unions to ensure pay and working conditions are tailored to the operational needs of each agency.

The benefit of enterprise bargaining is that the employer and employees who run the business have a direct say in their working arrangements. This increases the efficiency, flexibility and productivity of the enterprise with the benefits shared between the various stakeholders.

Enterprise bargaining is a key process through which the agency and its employees engage with one another. It is the opportunity for employees to regularly renegotiate their conditions of employment in light of their recent experiences and developing needs. From the agency perspective, enterprise bargaining is an effective mechanism to develop, set and communicate its goals for the future and to engage employees in changing the way work is done. It is unfortunate that some Departmental Secretaries see agency bargaining as a chore to be endured rather than an opportunity for leadership.

The CPSU proposes that the task of setting APS wages and conditions be carried out by a small group in Canberra once every three or so years, distant from those who would be covered by such an agreement. The costs savings to the CPSU would be substantial.

The practical effect for our members in the ATO, and all APS employees, is that they would no longer have any real say in their actual working conditions. The bargaining relationship would not be between the employees, their unions and the employer, but between the CPSU National Executive and central APS IR managers.

CPSU proposal to standardise APS pay and conditions counter-productive

The CPSU proposes suppressing pay increases in agencies that have salaries above the average to supplement funding of greater pay increases in agencies with below average salaries.

This approach will be opposed by the staff in agencies paying above the average salary level. It will penalise employees of agencies that have made the greatest productivity gains since 1998 and reward those who have made the least productivity gains. It will remove the link between increasing productivity and negotiating pay rises and improvements in conditions. This is counter to the underlying theme of the Moran Review of increasing the productivity and the accountability of the Australian Public Service.

Pay disparities across the APS

A disparity in pay levels across the APS is a natural and inevitable consequence of agency bargaining based on sharing productivity gains. Those agencies that have generated the greatest productivity gains have shared those gains with their staff as well as the Government and the general public.

Agencies with the lowest pay levels seem to be the smaller agencies or have higher proportions of female workers than average. It is a concern that agencies with a focus on indigenous affairs also have low salaries. These are not acceptable reasons for low levels of productivity growth or failing to fairly share the benefits of growing productivity.

Lowest common denominator versus minimum standards

There are a myriad of differences in conditions of employment across the APS. Some agencies have funded wage increases by a direct trade off in conditions, such as increasing the length of the working day. Any attempt to impose a common set of conditions across the APS will create large numbers of winners and losers. The CPSU approach is to impose the lowest common denominator for the conditions of employment it defines as 'core'. In general, this approach will create losers from agencies that have generated the greatest growth in productivity and winners from agencies that have generated the least productivity growth. Staff from agencies with above average conditions can be expected to oppose such change. They are the agencies that have delivered the greatest productivity gains under agency bargaining.

The best approach is to use the bargaining framework to create minimum standards for the APS and to permit agencies to bargain above those minima.

An additional agency funding criteria to address APS pay disparities

The ASU proposes the Government adopt a new approach to funding agencies that will address the needs of agencies with the lowest pay levels and lowest conditions of employment. We submit the best mechanism is to use the budgetary process to invest additional funds in those agencies which develop plans to encourage growth in productivity and propose to fairly share these productivity gains.

The disparity between pay levels across the APS is best dealt with by addressing its fundamental cause. Pay levels generally can only increase in real terms if labour productivity also increases. Productivity is a function of investment in technology, systems and human capital, such as training and development of APS employees. Agencies need to develop funding proposals for government that will address the need to increase labour productivity. The APSC should encourage such proposals for Government funding.

The idea that pay disparities can be solved by taking from Peter to pay Paul is short sighted and would be a substantial disincentive to productivity growth. It cannot be supported.