

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.¹

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.²

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.³ 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*.⁴

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.⁵

2.6 Subsequent Labor governments maintained essentially the same approach to APS bargaining.⁶

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'.⁷

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.⁸

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.⁹

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.¹⁰ 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.¹¹

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.¹²

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/ (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/ (accessed 10 November 2016).

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.¹³

2.15 In November 2015, the Turnbull government introduced the *Workplace Bargaining Policy 2015* (the 2015 bargaining policy) that superseded the 2014 bargaining policy.¹⁴ 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;

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 (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.¹⁵

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 2014.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹

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).²⁰

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.²¹

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.²²

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).²³

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

Agreements accepted under the 2014 bargaining policy

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

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

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.²⁷ 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.²⁸

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.²⁹

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.³⁰

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.³¹

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

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

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 Protection³³**

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

Australian Tax Office³⁴

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

Department of Human Services³⁵

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

Department of Defence³⁶

	Date	Result (per cent 'no')
First vote	March 2016	60
Second vote	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/departement-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 (accessed 22 November 2016).

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

Department of Agriculture and Water Resources³⁷

	Date	Result (per cent 'no')
First vote	October 2015	67
Second vote	December 2015	52
Third vote	March 2016	51
Fourth vote	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.³⁸

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.³⁹

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.⁴⁰

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.⁴¹

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 (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 (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 (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.⁴²

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

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.⁴⁴

Protected industrial action

2.46 As at 27 October 2016, 27 agencies had experienced protected industrial action during the bargaining round⁴⁵ (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.⁴⁶

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

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,

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.⁴⁸

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.

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