

Senate Finance and Public Administration References Committee

Inquiry into Australian Public Service Employment Matters

**First Report - *Australian Workplace Agreements*
Government Response**

Recommendation 1 – *The Government, as the ultimate employer, should direct agency heads that:*

- *AWAs with SES and APS employees are not to be kept confidential; and*
- *APS agencies are to make AWAs available on request, allowing appropriate deletion of personal information but retaining remuneration details in the published document.*

Recommendation 2 – *The committee recommends that all agency heads authorise the Office of the Employment Advocate, under the provisions of the Workplace Relations Act, to release copies of their AWAs to DEWRSB and the PSMPC.*

Response: Disagree.

Under section 170VG(2) of the *Workplace Relations Act 1996* (the WR Act) Australian Workplace Agreements (AWAs) must not prohibit or restrict the disclosure of details of the AWA by either party to another person. Implicit in this requirement is that disclosure is a matter for the parties to an AWA. A Government direction that mandates disclosure of Australian Public Service (APS) AWAs would therefore be contrary to the clear statutory intent of the Parliament that any disclosure is a matter for the parties themselves.

Unilateral disclosure by the employer of the details of an AWA, even where personal information is deleted is likely to result in employee concerns about confidentiality and privacy.

It would be open under the WR Act for APS agencies and employees to mutually agree to disclose information regarding their AWA. However, the Government believes that disclosure of the details of the remuneration of individual public servants should not be made public although the framework within which remuneration is paid needs to be public, as it is in the case of the APS (see response to Recommendations 3 and 6 below). Consistent with the then Government's response to the Committee's 1993 Report on performance pay, the Government believes that "*the remuneration ranges of public servants in the APS be public knowledge but that the precise remuneration (involving any performance elements) paid to individuals, and the reasons for this, should remain confidential.*"

With regard to Recommendation 2, s.83BS of the WR Act precludes the Employment Advocate from disclosing protected information which may identify a person as being, or having been, a party to an AWA unless disclosure is authorised in writing by that person. As indicated above, the decision to disclose information regarding an AWA rests with the parties to the AWA.

Recommendation 3 – The committee recommends that:

- DEWRSB undertake a more rigorous program of information gathering in relation to APS AWAs;
- service-wide reporting on agreement-making and remuneration be conducted annually and on a financial year basis by DEWRSB, with compulsory participation by all agencies covered by the Public Service Act; and
- DEWRSB's service-wide reports be tabled in Parliament on the same cycle as the Public Service Commissioner's reports on the state of the APS.

Response: Disagree.

The Government believes that existing arrangements meet the thrust of this recommendation.

For instance in respect of remuneration issues, the Department of Employment, Workplace Relations and Small Business (DEWRSB) currently coordinates and/or undertakes surveys of remuneration arrangements in APS agencies. The outcomes of these surveys are published on the DEWRSB internet home page, and are used by DEWRSB in analysing broader APS developments.

Specifically, the 1999 and 2000 non-SES pay surveys covered all APS agencies, while the 1999 and 2000 SES Remuneration Surveys respectively covered 97% and up to 99% of APS SES staff. Against that background, the Government sees no reason for participation in these remuneration surveys to be made compulsory.

However, to further enhance the quality of information available regarding non-SES remuneration, DEWRSB intends revising the non-SES pay survey so that in future it will provide data regarding non-SES similar to that available in respect of SES remuneration. This survey will encompass staff working under a collective or an individual agreement.

This data regarding remuneration is complemented by:

- the *Review of Agreement Making in the Australian Public Service* undertaken by DEWRSB in 1999, with a further review to be conducted later this year;
- the information contained in the Public Service Commissioner's *State of the Service Report* on service-wide agreement making and remuneration; and
- the Auditor-General's recent report on *Certified Agreements in the Australian Public Service*.

In addition, the *Requirements for Departmental Annual Reports – May 2000* state that annual reports must include an assessment of a department's

effectiveness in managing and developing its staff to achieve its objectives. This may include consideration of features of certified agreements and AWAs, and their impact.

In these circumstances, the Government sees no reason to significantly modify the existing approach to information gathering and reporting in relation to APS agreement making.

Recommendation 4 – *The committee recommends that the Public Service Commissioner considers AWAs as a distinct category when exercising her statutory functions, in particular, to develop, promote, review and evaluate APS employment policies and practices and in her evaluation of the extent to which agencies incorporate and uphold the APS Values.*

Response: Disagree, as the proposed action is unnecessary.

Under the *Public Service Act 1999*, agency heads are required to promote and uphold the Values and act in accordance with the Code of Conduct. Through the State of the Service reporting process, the Public Service Commissioner addresses issues relating to the Values and the Code of Conduct, including progress made by agencies in their organisational and management approaches. This includes the role of, and developments in, agreement making. In this particular area, the Commissioner's judgement may be informed by agency responses to particular questions, including questions that may be directed to staff on the request of the Commissioner through staff surveys. DEWRSB reports regularly on SES remuneration arrangements which provides further information to inform judgements in this area.

In relation to agreement making generally, information available from certified agreements is supplemented by reports such as the DEWRSB remuneration and agreement making surveys and the ANAO's Performance Audit of Certified Agreements in the APS. Together this provides a broad base of information for the Public Service Commissioner's consideration of agreement-making.

In her consideration of the state of the APS from a Values perspective, the Commissioner must necessarily address a broad range of organisational, management and cultural approaches which, in aggregate, reflect on the promotion and application of the Values across the APS and within agencies.

Recommendation 5 – *The committee recommends that the OEA should make the full range of AWAs available to researchers, retaining the current confidentiality protections.*

Response: Agree.

The Employment Advocate already allows access to AWAs in a number of different ways. General research into AWAs has always been via the "first AWA" sampling method. However, if a researcher requests more specific information requiring a different method of selecting AWAs, the OEA has always provided other samples which are more appropriate to the purpose of the research. If a researcher wishes access to particular information, they

simply need to ask. Such requests would, however, need to be considered on a case by case basis, taking into account matters such as practicality and cost.

Recommendation 6 – *The committee recommends that the annual and financial reporting requirements for the Australian Public Service be at least as rigorous as those applying to the private sector.*

Response: Agree with qualification.

The Government believes that the overall reporting requirements for the APS, which derive from a wide range of sources, including the requirements for financial statements, are at least as rigorous as those applying to the private sector. It agrees that this situation should be maintained as private and public sector reporting requirements continue to evolve.

The Committee's recommendation was made in the context of discussion of section 300A of the *Corporations Law*, which requires one type of private sector entity – listed companies – to disclose in their directors' reports the nature and amount of each element of the emolument of each director and each of the five named officers of the company receiving the highest emolument. While this particular disclosure requirement does not apply to APS executives, the conditions that led to its introduction for listed companies do not exist in the APS.

Further, extensive disclosure requirements of other types, some not applicable to the private sector, make the overall requirements on APS departments and agencies to disclose remuneration more rigorous than those applying in the private sector. For instance, in addition to the continuing and one-off, whole-of-government reports listed in the response to recommendation 3, information on APS remuneration systems is accessible by request under *the Freedom of Information Act 1982* (FOI Act) and in response to parliamentary questions and the inquiries of parliamentary committees, including Senate estimates committees. The FOI Act and parliamentary scrutiny elements exceed the level of disclosure normally required of any entity in the private sector.

Full details of the remuneration framework applicable to departmental Secretaries and APS agency heads are publicly available in the various determinations which set these conditions. The only element of the remuneration packages of Secretaries and agency heads not required to be disclosed or accessible on inquiry is the amount of performance bonus, if any, paid in a particular year. Even there, the framework of the performance bonus system is public, for example, that performance bonuses to departmental Secretaries are payable at the rates of 10 per cent or 15 per cent.

The objective of the section 300A approach of complete disclosure of the actual remuneration of the five highest paid officers involved in management is to ensure that shareholders are aware of and can respond to decisions by those officers that may influence the level of their remuneration. This objective would not be advanced by providing for full disclosure of top executive remuneration in the APS because the remuneration framework of

departmental Secretaries and agency heads has always been public and their remuneration is determined outside the departments and agencies they head.

Requiring disclosure of full details of remuneration, while adding little to the transparency of decision making, would also have privacy implications. As noted in the response to recommendations 1 and 2, successive governments have considered publication of information on actual bonuses paid to be inconsistent with the operation of an appraisal-based performance pay system.

The reporting of directors' and executives' remuneration, including in Australian public sector entities, is currently under consideration by the Australian Accounting Standards Board (AASB) which is expected to issue an exposure draft of a new accounting standard on this issue later in 2001. For the reasons outlined above, the Government is opposed to extending the section 300A approach to the APS and will be putting that view to the AASB.

The Government acknowledges in this context that, although the APS is subject to very rigorous disclosure requirements, information is disclosed in a variety of forms and in a way which may make comparisons difficult on occasion. In considering its response to the AASB exposure draft, the Government will also consider possible revisions to the annual reporting guidelines to improve accessibility to the information required to be disclosed.

Recommendation 7 – The committee recommends that the reporting of remuneration above a threshold of \$100,000 should not be limited to SES managers. In addition to reporting on SES managers as a group, the same details should be provided in the financial statements for other staff whose remuneration exceeds \$100,000.

Response: Disagree.

The Finance Minister's Orders (FMOs) set out the reporting requirements that apply to Commonwealth agencies and authorities regarding Director/Manager remuneration.

The current FMO requirements regarding Director/Manager remuneration reflect the private sector reporting arrangements as set out in Accounting Standard AASB 1034 regarding *Financial Report Presentation and Disclosures* (which deals with Executives) and AASB 1017 regarding *Related Party Disclosures* (which focuses on Directors).

Specifically, AASB 1034 requires "disclosing entities" to report on remuneration above \$100,000 for "executive officers" of the entity. In defining an executive officer, AASB 1034 calls up the definition used in the *Corporations Law*, ie. a person "who is concerned in, or takes part in, the management of the body (regardless of the person's designation and whether or not the person is a director of the body)". In the private sector, executive officers are considered to be those members of the senior management team involved in the strategic and operational management of the business. In the public sector, managers (the terminology used in the FMOs) are defined more broadly as "executives of an agency, ie. SES or their equivalents".

Against that background, the Government sees no current need to widen the FMO reporting requirement to include other staff whose remuneration exceeds \$100,000 per annum. As mentioned in the response to Recommendation 6, the AASB is expected to issue later this year an exposure draft of a new accounting standard on the reporting of directors' and executives' remuneration. Following the release of the draft accounting standard, the Government will consider the implications of the draft standard, if any, for the FMO requirements on reporting remuneration above \$100,000.

Further, the Government considers that the information provided by reporting on this issue could be further improved if separation and redundancy payments were to be shown separately. This will avoid distortion of the data in circumstances where a long serving senior executive is made redundant. The Government will amend the FMOs to require agencies to report on this basis and include information regarding the aggregate level of redundancy payments to "managers" as defined in the FMOs in the notes to financial statements. This new requirement will commence with the 2001-2002 reporting period.

Recommendation 8 – *The committee recommends that individual performance bonus payments be discontinued in the Australian Public Service.*

Recommendation 9 – *The committee recommends that if performance bonuses continue to be paid, they must be for outstanding individual or team service, not for achieving the minimum expected of all APS employees, that is, competent performance.*

Recommendation 11 – *The committee recommends that if performance bonuses continue to be paid, these should be capped. Uncapped bonuses should not be allowed.*

Response: Disagree.

The Government's APS reform agenda is aimed at promoting a high performance APS capable of operating in an increasingly competitive environment that emphasises contestability, value for money and a focus on client service.

To achieve these objectives, APS agencies not only need to be able to attract and retain suitably qualified staff, but also need to be able to appropriately reward employees, particularly high performing staff and those who deliver results in exceptionally difficult circumstances. Performance related payments are one means through which agencies are endeavouring to attract, retain and reward high performing staff. Any decision to remove scope for individual performance bonuses may therefore result in the APS being unable to retain some highly skilled staff.

With almost all APS agencies now covered by agreements, it is clear that agencies are taking advantage of the flexibilities available to them to tailor their terms and conditions of employment to their particular needs and those of their employees. The diversity of arrangements adopted in agencies in respect of performance-linked remuneration systems, which include different performance rating systems

and payment levels and in some instances team based rewards, provide evidence of the success of the Government's policy stance.

It would be inconsistent with the Government's policy of devolving responsibility for workplace relations issues to APS agencies for a prescriptive, "one size fits all" approach to be imposed in respect of performance related payments.

- Further, the Government's APS remuneration policy provides that improvements in pay and conditions be linked to productivity gains and are to be funded from within agency appropriations. In this context, there is no cap on the quantum of pay increases that may be agreed at the agency level. A cap on performance bonuses would therefore be inconsistent with this policy setting.

Recommendation 10 – *If performance bonuses continue to be paid, the committee also recommends that there should be complete disclosure of all payments in annual reports, including the following:*

- *the number of APS employees at each classification level who received one-off bonus payments;*
- *the aggregate amount of such bonus payments at each classification level;*
- *the average bonus payment and the range of such payments at each classification level; and*
- *the aggregate bonus payment for the agency as a whole.*

If such a disclosure were, in the case of a small agency, or a small number of SES officers, to identify payments to individuals, the committee would be prepared to accept the information grouped by SES and non-SES officers.

Response: Agree.

The *Requirements for Departmental Annual Reports* will be amended, subject to the approval of the Joint Committee of Public Accounts and Audit, so that annual reports for 2000-2001 will incorporate information regarding performance related payments but in a form that protects the privacy of individuals.