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**Senate
Finance and Public Administration
References Committee**

**AUSTRALIAN PUBLIC SERVICE
EMPLOYMENT MATTERS**

FIRST REPORT

AUSTRALIAN WORKPLACE AGREEMENTS

OCTOBER 2000

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TABLE OF CONTENTS

CHAPTER 1 – CONDUCT OF THE INQUIRY	1
Reference from the Senate.....	1
Contents of the report	1
Conduct of the inquiry.....	2
Acknowledgments	2
The committee's concerns.....	2
The committee's previous findings on APS employment issues	3
Report structure	5
CHAPTER 2 – THE NEW APS EMPLOYMENT FRAMEWORK.....	7
Background.....	7
The Policy Parameters	9
The Employment Advocate	10
Funding.....	11
Confidentiality requirements and practices	13
Decentralised bargaining in the APS.....	15
The union perspective.....	16
Decentralised bargaining in the APS - an academic perspective	20
Conclusion.....	20
CHAPTER 3 – AUSTRALIAN WORKPLACE AGREEMENTS IN THE APS.....	23
Making an AWA in the APS	23
Number of AWAs in the APS	24
The use of AWAs in the APS.....	25
Small agencies	26
Criticism of use of AWAs in the APS.....	27
Specific agency responses to criticisms	28
The committee's view	31
CHAPTER 4 – PUBLICLY AVAILABLE INFORMATION.....	33
Introduction	33
Sources of information	33
Private sector reporting requirements.....	43
Conclusions	45

CHAPTER 5 – REMUNERATION	47
Introduction	47
Findings of the DEWRSB remuneration survey	48
The rationale for performance pay	51
Performance appraisal	56
Remuneration and its reporting in some state jurisdictions.....	57
Private sector comparisons	59
Conclusions	60
 CHAPTER 6 – CONCLUSIONS AND RECOMMENDATIONS	 63
Introduction	63
Confidentiality.....	63
Central responsibility for information gathering.....	64
Accountability and reporting requirements	66
Performance pay	68
 APPENDIX A – LIST OF SUBMISSIONS	 71
 APPENDIX B – PUBLIC HEARINGS AND WITNESSES.....	 72
 APPENDIX C – APS VALUES	 75
 APPENDIX D – POLICY PARAMETERS FOR AGREEMENT MAKING IN THE APS (APRIL 2000)	 76

LIST OF ABBREVIATIONS

AASB	Australian Accounting Standards Board
AIRC	Australian Industrial Relations Commission
AMWU	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
ANAO	Australian National Audit Office
ANZSIC	Australian and New Zealand Standard Industry Classification
APS	Australian Public Service
ASCO	Australian Standard Classification of Occupations
AWA	Australian Workplace Agreement
CA	Certified Agreement
CPSU	Community and Public Sector Union
DETYA	Department of Education, Training and Youth Affairs
DEWRSB	Department of Employment, Workplace Relations and Small Business
DIR	Department of Industrial Relations
DOFA	Department of Finance and Administration
FMA Act	<i>Financial Management and Accountability Act 1997</i>
OEA	Office of the Employment Advocate
PM&C	Department of the Prime Minister and Cabinet
PS Act	<i>Public Service Act 1999</i>
PSMPC	Public Service and Merit Protection Commission
SES	Senior Executive Service
WR Act	Workplace Relations Act 1996

The Australian Public Service is required by the *Public Service Act 1999* to be openly accountable to the Government, the Parliament and the Australian public.

CHAPTER 1

CONDUCT OF THE INQUIRY

Reference from the Senate

1.1 On 28 June 1999 the Senate referred the following matters to the Finance and Public Administration References Committee for inquiry and report:

Australian Public Service employment matters, including:

1. the evolving changes in the nature of the Senior Executive Service, including chief executive officers, as a result of the devolution of responsibility for staffing matters to individual agencies, such changes including, but not limited to, selection, tenure and independence, remuneration, including relativities, mobility and career development;
2. the impact of agency-based bargaining in contributing to the development of a more efficient, productive and independent Australian Public Service, accountable to the Australian Parliament; and
3. the extent to which performance pay is being incorporated into agreements negotiated by individual agencies, the disparity between agency agreements in performance pay and the impact of such agreements on agency performance, accountability and transparency.¹

Contents of the report

1.2 After an initial delay caused by the reference to the committee of an inquiry into business taxation reform, the committee conducted a round table introductory discussion on 18 February 2000 to set the context for APS employment.

1.3 It has become clear that there are particular areas of contention associated with the use of Australian Workplace Agreements (AWAs) in the Australian Public Service (APS). This first report addresses these issues.

1.4 The committee has however received evidence addressing all the terms of reference. Further reports covering other aspects of the terms of reference will be tabled at a later date.

1 *Journals of the Senate*, 28 June 1999, p. 1334.

Conduct of the inquiry

1.5 The committee invited submissions by way of press advertisements and direct requests to interested persons and organisations, with a closing date of 31 August 1999. Nineteen submissions were received and published by the committee. The submissions are available on the committee's web site at www.aph.gov.au/senate_fpa and a hard copy compilation of submissions and other published documents is tabled with this report. A list of submitters is included at Appendix A.

1.6 So far, four public hearings have been held. Forty-eight witnesses have given evidence, including representatives of government agencies, academics, and private individuals. Submissions and witnesses have addressed a wide range of issues under the broad terms of reference, not only those issues of interest in this report.

1.7 A full list of hearing dates and witnesses is included at Appendix B. The *Hansard* transcripts of evidence are tabled with this report and are also available electronically via the committee's website.

Acknowledgments

1.8 The committee would like to thank individuals and agencies for their assistance by way of submissions, additional information or appearance at public hearings.

1.9 The high quality services of Hansard staff and the Senate Printing unit are also gratefully acknowledged.

The committee's concerns

1.10 The committee notes that the *Public Service Act 1999* requires the Australian Public Service to be openly accountable to the Government, the Parliament and the Australian public.

1.11 At the outset, the committee recognises that industrial relations is a policy issue on which political agreement is not likely. The committee is keen in this report to avoid discussion of whether or not AWAs per se are an appropriate vehicle for use in the Australian Public Service as the views of all political parties are well known. Against this background, this report concentrates on an issue of cross partisan concern, that is, the lack of transparency of AWA processes and contents in the APS.

1.12 The committee has singled out this aspect because it believes the APS approach to be in conflict with community values and expectations of an accountable public service. The strict level of confidentiality surrounding the use of AWAs by the public sector, the effectiveness of any scrutiny and the adequacy of external reporting are examined in this report.

1.13 The source of the committee's concerns about AWAs is reflected in the following statement, made after the committee's examination in 1993 of the performance pay schemes of the 1990s:

A system in which public servants are permitted to make payments of public money to each other based on subjective assessments of performance and without disclosure of the amounts paid, except in aggregate, is very difficult to reconcile with ... public accountability.²

The committee's previous findings on APS employment issues

1.14 The committee's interest in APS employment issues and in particular performance pay goes back to 1990, when in the course of its inquiry into the Senior Executive Service (SES) it produced two reports which addressed the topic. In the first,³ the committee recommended that the system of performance based pay then proposed not be introduced until a formal study of its costs and benefits had been undertaken and had established that significant net benefits were likely – a result the committee believed unlikely. In the event that performance pay were to be introduced, the committee recommended that details of all performance payments be made public. In its second report, it reiterated its concerns about the underlying policy motivation and the proposed implementation arrangements.⁴

1.15 Performance pay was nevertheless introduced in late 1992 as part of the APS Workplace Bargaining Agreement. In the following year the committee inquired into and reported on its implementation, and also collaborated with the Australian National Audit Office (ANAO) on a survey of pay results.⁵ It found that the assumptions about motivation and organisational behaviour underpinning performance pay systems were not necessarily applicable in the Australian Public Service:

It will frequently be impossible to assess the contribution of any particular senior public servant to organisational goals with sufficient precision to support a performance bonus system that will be seen to be fair ... In the absence of [perceptions of fairness] the motivational effects on which expectancy and goal-setting theory rely will not occur.⁶

1.16 The committee reported a number of problems with the then performance pay scheme. There was a widespread lack of acceptance of the scheme within the APS, even at top management levels. In particular the moderation process, in which

2 Senate Finance and Public Administration Committee, *Performance Pay*, 1993, p. 44.

3 Senate Finance and Public Administration Committee, *The Development of the Senior Executive Service: Performance Based Pay*, May 1990.

4 Senate Finance and Public Administration Committee, *The Development of the Senior Executive Service*, September 1990.

5 Australian National Audit Office, *Audit Report No. 16, 1993-94*.

6 Senate Finance and Public Administration Committee, *Performance Pay*, 1993, p. 26.

individual performance ratings were reassessed by more senior officers, increased the view that the system was inequitable. While moderation may have been designed to guard against individual prejudice or incompetence, it was widely viewed as an attempt to make ratings fit a ratings 'profile' and hence be more budget friendly.

1.17 The problems associated with the linkage of performance appraisal with pay were also explored, as was the effect of performance pay on teamwork. More broadly and relevant to the APS at the time, the committee noted a perceived failure of central management to obtain a uniform system across the APS.

1.18 Perhaps the issue which most perturbed the committee was the level of secrecy surrounding the scheme. The committee noted that a major strand of motivational theory suggested that many individuals were motivated as much by their relative position in terms of ratings as by the attached monetary incentives. If, therefore, that position was not known, it could not serve as a motivator. The committee further noted that if public servants did not know which of their colleagues had been selected for special reward, they would be less clear on the type of behaviour valued by their organisation.

1.19 The committee's specific recommendations in its 1993 report related primarily to the performance pay scheme then in place. In its response tabled on 30 May 1994, the Government broadly supported the existing scheme, but did agree to improved reporting arrangements, both at agency level and service-wide, and to reconsider the issues during negotiations over the successor APS Workplace Bargaining Agreement. One recommendation was of broader relevance: '... any above standard remuneration to individuals will be public knowledge'. To this, the Government replied:

The Government holds firmly to its longstanding view, also adopted by previous governments irrespective of political affiliation, that 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. In its view the viability of [performance appraisal] arrangements would be seriously jeopardised if the outcome of confidential discussions on individuals' performance were made public.⁷

1.20 The present committee notes that, under the then performance pay scheme, it was open to agencies to fold the funding for performance pay for senior officers into the pool of funds available for agency bargaining – and that many chose to do so.

1.21 One aspect of the performance pay scheme of the early 1990s was that, flawed as it might have been, it was associated with a somewhat greater level of accountability than is presently required. Annual reports were required to contain details of the total number of individuals eligible for payment and the aggregate

7 Senate, *Hansard*, 30 May 1994, p. 885.

amount paid, in each senior officer level and for the SES, provided that there were three or more officers in each classification. In agencies with fewer numbers, aggregated figures could be provided.

1.22 The then Department of Finance compiled and provided for tabling in the Parliament on a yearly basis an across-service report on performance payments, broken down by senior officer and SES groupings and by gender.⁸ The across-service reporting was discontinued after the 1994-95 report. The more recent discontinuation of the centralised Department of Finance pay system was a significant factor in the move away from service-wide reporting, as was greater devolution of remuneration powers to agency heads, resulting in data not being comparable.

Report structure

1.23 Chapter 2 outlines the legislative basis of the new APS employment framework and the funding arrangements under which agencies operate and describes decentralised bargaining from employer and union perspectives. The confidentiality requirements for AWAs are also examined.

1.24 Chapter 3 details the use of AWAs in the APS and sets out criticisms of the process. In Chapter 4 the committee describes the sources of publicly available information, the reporting requirements of the public and private sectors and outlines the committee's concerns about accountability.

1.25 Finally, remuneration paid through AWAs is covered in Chapter 5. Issues relating to performance pay are also discussed.

1.26 The committee's conclusions and recommendations are contained in Chapter 6.

8 See, for example, Department of Finance, *Performance Pay and Ratings in the Australian Public Service – Report for 1994-95*, tabled in the Senate on 18 June 1996.

CHAPTER 2

THE NEW APS EMPLOYMENT FRAMEWORK

Background

2.1 Since its election in 1996, the Government has been pursuing public sector reform in three areas: workplace relations, public sector employment and financial management. The Government has moved to 'settle terms and conditions of employment in the Australian Public Service on the same basis as applies to the rest of the Australian workforce'¹.

2.2 The vehicle for change has been the *Workplace Relations Act 1996* (WR Act) which applies to private and public sector employment. Its principal objective is stated as 'to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare' of Australians. The changes aimed to improve the ability of agencies to tailor terms and conditions of employment to the particular needs of employers and employees. This signalled the end of the 'one size fits all' culture in the APS.

2.3 Outcomes sought for the public sector were 'improved remuneration and working arrangements for staff, linked to achieved improvements in the productive performance of each agency'². The changes were to give public servants 'the same opportunities to access better pay for higher productivity that exist in other sectors'.³

2.4 The *Public Service Act 1999* implemented a principles-based approach to public sector employment and is far less prescriptive than its 1922 predecessor. **The APS is required by the Act to be openly accountable to the Government, the Parliament and the public.**

2.5 On the day the Public Service Bill passed through the Senate, the Minister Assisting the Prime Minister for the Public Service, the Hon. Dr David Kemp MP expressed delight with the 'biggest overhaul and reform of the APS in more than 75 years...Red tape has been stripped away, but parliamentary scrutiny and public accountability of the APS has been enhanced'.⁴ The Shadow Minister for Public Administration and Government Services, Senator the Hon. John Faulkner, described

1 DEWRSB, *Submission*, Attachment A, p. 1.

2 DEWRSB, *Submission*, Attachment A, p. 7.

3 The Hon. Dr D Kemp MP, *A New Act for a New Century*, Address to mark the commencement of the *Public Service Act 1999*, 2 December 1999, p. 4.

4 The Hon. Dr D Kemp MP, Media Release, 20 October 1999.

the document as 'a legislative framework for the Public Service which will be acceptable to both Labor and Liberal Governments of the future'.⁵

2.6 In the 1999 Act, Parliament identified a clear image of what is distinct and unique about APS employment. Today the public interest characteristics of the APS are embodied in primary legislation: through the APS Values, the Code of Conduct and an accountability regime built on public reporting. Merit is now defined in the Act and continues to be the cornerstone of employment decisions in the APS. It is protected by the requirement for the APS to be apolitical and the prohibition on patronage and favouritism. The Values delineate the responsibility of the APS to recognise and utilise the diversity of the community; to promote equity in employment; and to be openly accountable for its actions. The full text of the APS Values is reproduced at Appendix C.

2.7 Through the new Public Service Act and Workplace Relations Act, responsibility for employment decisions has been given to agency heads, affording them increased flexibility and authority to manage their own workplaces within the values-based framework.

2.8 Terms and conditions of employment in the APS are now set at agency level by agreement with employees through Certified Agreements (CAs) or Australian Workplace Agreements (AWAs). Neither form of agreement affects employee tenure which is provided for in the Public Service Act.

2.9 Certified agreements are collective agreements made between an employer and either a group of employees or one or more unions. When agreed by the parties, the Australian Industrial Relations Commission (AIRC) considers it against specific criteria, such as compliance with the 'no disadvantage test', and if satisfied, the agreement is certified. AWAs are an alternative mechanism for setting terms and conditions of employment, made between an employer and individual employee. The approval requirements are outlined in Chapter 3.

2.10 The Department of Employment, Workplace Relations and Small Business (DEWRSB) describes this as a move away from 'the excessive prescription and inflexibility of the traditional centralised system'.⁶ However, the Government expects certain common principles to apply to APS employment, not the least of which is a common classification structure to facilitate mobility at level and to protect a career-based service in the long-term interests of Australia.

The real basis and integrating element of a career public service lies not in its regulations and procedures but in its ongoing values, its professionalism, its integrity and its impartial and responsive service to the government of the

5 Senator the Hon. J Faulkner, *Public Service Bill Passes – Fourth Time Lucky*, Media Release, 20 October 1999.

6 DEWRSB, *Submissions Volume 1*, p. 78.

day... [The APS Values] are a manifestation of the democratic society that we serve and they reflect the expectations of that society.⁷

2.11 DEWRSB, in its submission to this inquiry, noted:

The expectation of the Government, as an employer, has been that the APS would be a leader in workplace relations reform. The APS has risen to this challenge, becoming a central player in the micro-economic reform agenda and taking the lead in utilising the opportunities provided by the [Workplace Relations] Act.⁸

The Policy Parameters

2.12 An important principle underlying the new workplace relations regime is that employers and employees should be able to tailor terms and conditions of employment to suit their particular circumstances. Dr Peter Shergold, Secretary of DEWRSB, described the application of this principle as 'a bold step for the Australian Public Service'.⁹ Even so, an agency head acts 'on behalf of the Commonwealth'¹⁰ in agreements with employees and must adhere to a framework established by the Government, the ultimate employer in all APS agreements.

2.13 Agencies are guided in the negotiation of agreements by Government policy, which is set out in a document titled *Policy Parameters for Agreement Making in the Australian Public Service* (the parameters). This very briefly states the Government's requirements in relation to freedom of association, remuneration, funding of agreements, redundancy provisions and maintenance of a cohesive APS. The parameters are reproduced at Appendix D of this report.

2.14 The fine detail of the Government's requirements is contained in a second document, *Supporting Guidance for the Policy Parameters*. The two documents were first issued in early 1997 and have undergone several revisions in response to policy and legislative changes. For example, the 1997 parameters required agreements to be supported by accountability reporting against indicators that demonstrate performance improvement from agreements, for example in annual reports. This was not required following the release of revised parameters in May 1999.

2.15 The latest versions are dated April 2000.

2.16 The parameters apply to both certified agreements and Australian workplace agreements, but there are some differences. The parameters are set out in two parts -

7 The Hon. Dr D Kemp MP, *A New Act for a New Century*, Address to mark the commencement of the *Public Service Act 1999*, 2 December 1999, p. 5.

8 DEWRSB, *Submissions Volume 1*, p. 78.

9 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 5.

10 *Workplace Relations Act 1996*, s. 170WK.

the first, Government policy objectives which apply to both CAs and AWAs; the second, Government approval requirements, relate to CAs only.

2.17 Prior to May 1999, draft certified agreements were required by the parameters to be submitted to the then Department of Industrial Relations (DIR) for that department's 'advice' on the application of the policy parameters, before finalising an agreement for endorsement by employees. If an agency did not agree with DIR's views, it had to raise the matter with the Minister for Industrial Relations through its own portfolio Minister.

2.18 Following the 1999 review, these clearance requirements were dropped. Agencies are now required to provide DEWRSB with their draft agreement and an assessment of it against the parameters. Then, in seeking the approval of its Minister, an agency had to advise any policy issues identified by DEWRSB. The secretary of DEWRSB, Dr Shergold, described the change:

DEWRSB's role has been significantly shifted from a policing role in a two-stage clearance process of agreements to a simple one-stage assessment in which agencies are now themselves responsible for resolving any policy issues which my department identifies. ... The focus of our work has clearly moved from a regulatory role to a facilitative role.¹¹

2.19 No such clearance requirements apply to Australian workplace agreements before they are lodged with the Office of the Employment Advocate for approval. Although agencies are required to comply with the Government's position when negotiating AWAs, there is no centralised scrutiny of draft AWAs as there is for CAs. Essentially, it is a matter of trust for the Government that its agency heads are complying with the parameters.

The Employment Advocate

2.20 The Office of the Employment Advocate (OEA) is central to any examination of how Australian workplace agreements are made and what information is available about them. The functions of the Employment Advocate include providing assistance and advice to employees and private and public sector employers (in particular employers in small business) on the Workplace Relations Act, especially AWAs and freedom of association. The Employment Advocate is also responsible for filing and approving AWAs, handling alleged breaches of AWAs and the freedom of association provisions and providing legal assistance to parties in proceedings concerning AWAs or freedom of association, where appropriate.

2.21 The Employment Advocate approves an AWA if it meets the requirements of the WR Act. This includes ensuring that the agreement passes the no-disadvantage test and meets additional approval requirements such as that the employee must have genuinely consented to the agreement.

11 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 6.

2.22 Another requirement of the Advocate is to assure himself that, if an employer did not offer an agreement in the same terms to all comparable employees, the employer did not act unfairly or unreasonably. 'Comparable employees' are defined in the Act as employees who do the same kind of work as the employee who is party to the AWA.

2.23 The filing processes carried out by the OEA are the same for all AWAs.¹² The OEA does not examine APS AWAs for any unique factors, such as whether an AWA is in keeping with the APS Code of Conduct or the APS Values.

2.24 Similarly, the OEA does not keep any separate records relating specifically to APS employers or employees. There is no separate database showing numbers of APS AWAs, or cataloguing the terms, conditions and pay rates occurring in the APS, or indeed the public sector more generally.

2.25 While there is an expectation of accountability in the APS, the role of the OEA does not include provision of detailed and specific information about APS employment which would enhance accountability.

Funding

2.26 Since 1997 the Government's parameters have been consistent in requiring that agencies fund their CAs and AWAs from within their appropriations. Agencies are not allowed to increase their prices or reduce the level of services to pay for their agreements. They have been assisted in this by a small supplementation to salary-related running costs, commencing in 1997-98 with supplementation of 1.5 per cent reducing to 1.3 per cent in 1999-2000. The efficiency dividend has also been reduced from 3 per cent to 1 per cent in the same period.

2.27 Some aggregated information on wage outcomes across AWAs and CAs was provided in the *Review of Agreement Making in the APS*. Factors determining wage outcomes included agency budgets (55 per cent), productivity (42 per cent), savings in operations (23 per cent) and savings in administration (18 per cent). Nineteen per cent of agencies indicated that they would need changes to the funding arrangements currently operating to accommodate future rounds of agreement-making.¹³

2.28 There is a law of diminishing returns which must inevitably come into play in terms of productivity increases and assorted savings. Productivity cannot be increased indefinitely without adverse consequences in terms of staff morale, unless the agency was operating very inefficiently beforehand. And proving productivity benefits to the

12 Senate Finance and Public Administration References Committee, *Hansard*, 5 May 2000, p. 102.

13 DEWRSB, *Review of Agreement Making in the Australian Public Service*, 1999, p. 2.

satisfaction of the ANAO and the Parliament is a challenge, as the ANAO's recent report on certified agreements showed.¹⁴

2.29 The committee is concerned that a remuneration system whose affordability is based on the previous quality of financial management of agencies is unfair. The efficient agencies would have little to no scope for further efficiencies to fund pay rises or incentives, and would be forced to seek assistance from the Department of Finance and Administration (DOFA) or, alternatively, they may need to shed staff.

2.30 Defence secretary, Dr Allan Hawke, made the situation quite clear: 'each time you have a pay rise it is effectively a trade-off between the amount of the pay rise and the number of people you can employ'.¹⁵ Equally, one person's bonus payment could equate to another person's job – as Mr Ted Evans said of Treasury, 'If ... we paid more performance pay than we may have expected in designing the budget, we would operate with fewer numbers'.¹⁶

2.31 In smaller agencies, funding pay increases and performance bonuses is a particular challenge. As Mr Ron McLeod, the Commonwealth Ombudsman, pointed out, in his office the first round of agreements coupled with portfolio budget savings had meant that his discretionary non-staff related running costs as a proportion of expenditure on staff costs had almost halved, down to about six per cent of budget. He added:

It does not take too much to see that, unless there is a change in the current arrangements in the future, the only way in which I will be able to ensure that under my industrial agreements the competitiveness of the pay rates and conditions of employment in my office are kept in reasonable balance with the rest of the Public Service will be at the expense of reducing my staff further and, in turn, cutting back in the quality of service that I am able to deliver under current arrangements.¹⁷

2.32 For some large agencies, meeting the salary cost increases from their existing appropriations has not presented major difficulties. Mr Keith Fairbrother of Environment Australia (EA) told the committee that his agency spent \$68 million on salaries, and that performance pay was very much 'around the margins'. Mr Fairbrother informed the committee that there was no direct impact yet on overall staffing numbers, but he warned that there might be if pay moved a significant amount.¹⁸

14 Australian National Audit Office, *Certified Agreements in the Australian Public Service*, Audit Report No. 13, 2000-2001.

15 Senate Finance and Public Administration References Committee, *Hansard*, 5 May 2000, p. 138.

16 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 67.

17 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 169.

18 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 74.

2.33 DOFA presented another perspective stating that a basic premise of its performance system was that it increased productivity and hence was affordable.¹⁹ When asked about the range of performance pay available through AWAs in DOFA the committee was told 'There is no minimum level and there is not an upper level', and that a high-level remuneration committee provides a safeguard against 'extremes'.²⁰

2.34 When asked how AWAs impact on the availability of funds for other staff covered by a certified agreement, DOFA representatives replied that AWAs have no impact at all. This contrasted with the view expressed by Mr Ron Brent of ScreenSound Australia that, should AWAs contain features that result in increased costs, this would result in reduced funds being available for the CA - a situation he found unacceptable.²¹

2.35 This divergence of views creates the impression that a very different financial situation exists across agencies. The committee asked DOFA secretary, Dr Peter Boxall, to comment on the view expressed by a number of small agencies that their ability to find efficiencies is more limited than larger agencies and agencies with program dollars. Dr Boxall's view is that 'they have the same sort of margin for manoeuvre as large agencies'²²

Confidentiality requirements and practices

2.36 AWAs are not confidential documents unless both parties to an agreement choose not to disclose its contents. There is nothing in the WR Act which prevents a party to an AWA from disclosing its contents to whomever they wish.²³ Indeed, the Act provides that AWAs are not permitted to include any provisions that prohibit or restrict disclosure of the details of the AWA by either party to another person.²⁴

2.37 At its public hearings, the committee found that there is misunderstanding of the confidentiality requirements relating to AWAs, with a common belief that it is illegal to disclose the contents of an AWA. This error probably arises from misapprehension of the confidentiality provisions in the WR Act, which cover particular players in the AWA process – the Office of the Employment Advocate and the Australian Industrial Relations Commission.

19 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 219.

20 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 214.

21 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 176.

22 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 220.

23 OEA, *AWA Information Sheet No. 1: Confidentiality Issues*, p. 1.

24 *Workplace Relations Act 1996*, s. 170VG(2).

2.38 Section 83BS of the WR Act prohibits the Employment Advocate or his delegates from identifying the parties to an AWA, unless:

- the disclosure is made in the course of performing functions or duties as an AWA official; or
- the disclosure is authorised by the regulations; or
- the disclosure is required or permitted by another Act; or
- the disclosure is authorised in writing by one of the parties to the AWA.

2.39 These confidentiality provisions are mirrored in the Act in relation to the role and actions of the Australian Industrial Relations Commission.²⁵

2.40 In addition, proceedings in the Office of the Employment Advocate and before the AIRC are held in private. The only people who are allowed to make submissions, or to be heard, in relation to the filing and approval of an AWA, are the parties to the agreement and their appointed bargaining agents, or if requested by the Employment Advocate, a person authorised by a party to an AWA.²⁶

2.41 Neither the Employment Advocate nor the AIRC may publish the names of the parties to an AWA in a decision or an extract.

2.42 Maintaining the confidentiality of AWAs in the APS, on the part of the employer, appears to be a matter for decision by individual agencies. Some parties to AWAs have chosen to publish the contents of their agreements. The Department of the Senate is one example - the collective AWA covering its SES is published on the Senate's website, with only the individual officers' addresses deleted for privacy.

2.43 The Treasury Secretary, Mr Ted Evans, told the committee that pay rates for everyone in Treasury, including those on AWAs, were known within the department. He noted that there were no secrecy provision in respect of the AWAs, and added:

This is a deliberate design feature agreed with staff from our performance management system. It says that openness about pay outcomes will signal to staff what is valued, provide discipline to fair management decisions consistent with Treasury's expressed values and give credibility to management processes.²⁷

2.44 Other departments that gave evidence to the committee maintained the confidentiality of their AWAs.²⁸ The Department of Finance and Administration told

25 *Workplace Relations Act 1996*, s. 170WHB.

26 OEA, *AWA Information Sheet No. 1: Confidentiality Issues*, p. 1.

27 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 71.

28 Eg. Environment Australia and Department of Defence in Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 71.

the committee that it does not make public within DOFA the details of AWAs on the understanding that such disclosure 'is not consistent with the law'. The Secretary of DOFA, Dr Boxall, explained that even without a legal requirement for confidentiality, his department would not publish AWA details. He stated:

... what might suit Treasury is their business; what suits DOFA is to proceed in the way we have done over the last three years, which is not to make public details of AWAs; moreover, we do not believe we have a legal basis to do it. We have received no requests from staff to do that, and it is not management's position to unilaterally do it.²⁹

Decentralised bargaining in the APS

2.45 The committee received evidence from a number of agencies, unions and academics on how decentralised bargaining is working in the APS and the use of AWAs. In particular, DEWRSB provided a comprehensive submission and further evidence at public hearings. Much of the evidence received by the committee related to negotiation and implementation of certified agreements, but some points were also relevant to AWAs and issues specific to AWAs were covered in evidence.

2.46 The change from a 'one size fits all culture' in the APS to one of agency level bargaining was described by the Secretary of DEWRSB, Dr Peter Shergold, as 'highly significant' and 'crucial'. He stated that the APS has taken a 'lead role' in utilising opportunities provided by the WR Act and that it has not been found wanting when benchmarked against market performance standards.³⁰ No elaboration was provided.

2.47 Dr Shergold stated that the new framework balances agency flexibility with the interests of the government as the ultimate employer. This view reflects the stated purpose of the parameters, as set out in the supporting guidelines:

The [parameters] promote the government's interests as the ultimate employer while continuing to devolve responsibility for agreement-making to agencies. ... The purpose of the supporting guidance is to elaborate on the policy objectives underpinning the parameters and to assist agencies in applying the government's policy on agreement making in the APS.³¹

2.48 Dr Shergold stressed that the responsibility of agencies to manage their own workplace relations is balanced with public accountability requirements of government bodies.³²

2.49 The committee sought Dr Shergold's response to criticism that the parameters allow no real flexibility and independence in the bargaining process at agency level.

29 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 207.

30 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 5.

31 DEWRSB, *Supporting Guidance for the Policy Parameters*, April 2000, p. 1.

32 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 6.

He described such criticism as 'remarkably ill-informed'. In his view, the parameters entailed 'an extraordinary amount of flexibility'. He stated:

The parameters are very broad indeed and give a department almost complete flexibility in the form of agreement making they choose and issues that they want to address through those agreements. We have parameters which say that in negotiating agreements you have to be consistent with the government's workplace relations policy, remuneration policy and industry development policy, and agreements have to be funded within agency appropriations. ... It is very broad indeed.³³

2.50 In 1998, the government reviewed the policy parameters and, in doing so, undertook a 'wide ranging consultation process' with APS agencies. The DEWRSB submission reports that agencies were 'generally positive' about the influence of the parameters in the agreement-making process, but that agencies had faced some difficulties in 'delivering their agenda' on terms and conditions against delays due to resistance from unions and/or staff to government policy requirements. The submission notes:

It was clear that, without the parameters and advice from DEWRSB, agencies would have found it very difficult to negotiate agreements which promoted government interests.³⁴

2.51 The submission notes that unions had, in particular, opposed the requirement for an AWA facilitation clause in every certified agreement. However, the government saw this requirement as 'an important facilitative clause, rather than one which compelled a particular action'.³⁵

The union perspective

2.52 The committee received submissions and evidence criticising the agreement-making process from the Community and Public Sector Union (CPSU), the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) and the Australian Council of Trade Unions (ACTU).

2.53 Apart from their obvious concern with industrial issues, unions have a formally recognised role in the agreement-making process under the Workplace Relations Act. In relation to AWAs, that role is limited, but includes acting as a bargaining agent for an employee if he or she so wishes.

2.54 The unions were very critical of the agreement-making process in the APS. Most of their concern was expressed in relation to negotiation of certified agreements, with which they have been heavily involved. Nonetheless, some of their general points

33 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 8.

34 DEWRSB, *Submission*, Attachment A, p. 13.

35 DEWRSB, *Submission*, Attachment A, p. 14.

are relevant to AWAs, and they are particularly disquieted by the increasing use of AWAs in the APS.

2.55 The unions' major concerns are:

- that bargaining for employment conditions in the public sector has not been undertaken in the same manner as the private sector;
- that 'Government policies and central agency controls have imposed a highly restrictive regime on the forms and content of agreements'; and
- that 'the right to have collective bargaining and representation by a union is increasingly under challenge where agencies offer AWAs as the only form of agreement-making available to employees'.³⁶

2.56 The ACTU submission emphasised that bargaining in the public sector is not conducted under the same conditions as apply in the private sector because of the dual role of the government, as both employer and legislator. In a copy of correspondence attached to its submission, the ACTU noted that the government intended pursuing amendments to legislation prescribing employment conditions in the APS. The Council commented:

The government should not use its unique position as a legislator and employer to change these conditions unilaterally through the Parliament. In most other industries, the equivalent conditions are set by awards or agreements,³⁷ but the Workplace Relations Act precludes this for APS employees.³⁷

2.57 The Council urged that there should be full negotiation and resolution of employee interests before any legislation is submitted to the Parliament.³⁸ The CPSU supported this position, commenting that legislation should generally have the role of defining the basic principles, values and distinctive characteristics of public service employment, while leaving pay and conditions matters to be determined through industrial relations processes.³⁹

2.58 The CPSU also noted that the public sector differs in the way that agreements are financed. Ms Wendy Caird, National Secretary of the CPSU, derided any view that there is a 'normal, healthy market arrangement' applying in the APS. She commented:

In fact, agencies are constrained to be able to pay for any improvements from their existing appropriation, they are subject to an efficiency dividend which is just an arbitrary cut to their staffing budget every year, and there is no direct relationship between measurement of productivity and actual pay

36 CPSU, *Submissions Volume 1*, p. 25.

37 ACTU, *Submissions Volume 2*, p. 297.

38 ACTU, *Submissions Volume 2*, p. 297.

39 CPSU, *Submissions Volume 1*, p. 39.

increases that are granted. ... the process in the public sector is not like the private sector. There are arbitrary constraints applied to what sort of money is available.⁴⁰

2.59 The most sustained criticism of the APS agreement-making process related to the policy parameters.

2.60 The CPSU was critical of what it perceived as the government saying one thing and doing another. The union noted that government policy advocated decentralised bargaining and cited statements by Minister Reith that APS arrangements should be 'essentially the same as those of the private sector'.⁴¹ It noted in particular a press release by Minister Reith on funding and APS agreements, in which he is quoted as saying:

Under the Howard government, agencies will not be constrained by any APS-wide agreement with prescriptive rules about what they can or can't do. Agency agreements will be at centre stage, and they will be supported by a much more flexible set of options under the Workplace Relations Act.⁴²

2.61 The CPSU contrasted these statements with the government's requirements as set out in the parameters, describing them as 'highly prescriptive guidelines for the enforcement of the government's workplace relations and wages policies'.⁴³ The union stated:

The effect of [the parameters] is that agencies, their employees and unions are not free to bargain within the framework of the Workplace Relations Act, but have significant restrictions applied to outcomes which they may choose as most appropriate for the enterprise.⁴⁴

2.62 The CPSU described the government's approach as 'contrary to the scheme of the Act and its own rhetoric on decentralised agreement-making'.⁴⁵ Ms Caird gave examples of agencies being restricted by the parameters from freely making agreements. She cited personal experience of a certified agreement negotiation where a clause ruling out the use of AWAs, which the employer wanted to have in the agreement, was disallowed by DEWRSB. She commented:

40 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 81.

41 The Hon. P Reith MP, *Towards a Best Practice Australian Public Service*, Discussion Paper, November 1996, quoted in CPSU, *Submissions Volume 1*, p. 24.

42 The Hon. P Reith MP, *Government decision on funding and APS Agency Agreements*, Media Release, 11 May 1997, quoted in CPSU, *Submissions Volume 1*, p. 24.

43 CPSU, *Submissions Volume 1*, p. 25.

44 CPSU, *Submissions Volume 1*, p. 25.

45 CPSU, *Submissions Volume 1*, p. 25.

In fact, the irony of the so-called decentralised environment is that it is more centralised than it was under the previous arrangement where we had a negotiated framework agreement and agency bargaining occurring.⁴⁶

2.63 The requirement in the parameters that certified agreements must contain an AWA facilitation clause is an area of major concern to the unions. Such a clause is required by the Workplace Relations Act for AWAs to be negotiated during the life of a certified agreement and for the terms of the AWA to prevail over those of the CA. Without a facilitation clause, an agency could not negotiate AWAs for employees covered by a certified agreement.

2.64 The union stated that in its experience, when employees were asked they invariably chose to have a collective agreement negotiated by a union and agreed between the employer and a union (that is, a s.170LJ certified agreement). It argued that the requirement that all APS agreements must contain a facilitation clause denied the right of workers to choose agreement-making solely on a collective basis.⁴⁷

2.65 The ACTU commented that the use of AWAs 'has been promoted for political purposes'.⁴⁸ In a similar vein, the CPSU stated:

The government as an employer has pursued wherever possible the making of non-union agreements and Australian workplace agreements with political zeal, regardless of the views expressed by employees on their preferred forms of agreement-making.⁴⁹

2.66 The representative of the AMWU, Mr Mike Nicolaides, concurred with the CPSU views, in particular that the parameters focus on policy issues important to the Government's own political and industrial agenda.⁵⁰ He described how a draft agreement between the union and the Department of Defence had been sent back by the then Department of Workplace Relations to be renegotiated, 'not on the basis of efficiency or productivity', but because it 'offended' against particular policy parameters.⁵¹

2.67 The CPSU considered that the imposition of the parameters' detailed controls over the terms of all agreements amounted to 'pattern bargaining'. It stated:

46 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 92.

47 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, pp. 78-79.

48 ACTU, *Submissions Volume 2*, p. 291.

49 CPSU, *Submissions Volume 1*, p. 27.

50 CPSU, *Submissions Volume 1*, p. 24.

51 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 92.

As an employer, the government is guilty of exactly the same industrial behaviour that it publicly condemns industrial parties for in other industries.⁵²

Decentralised bargaining in the APS - an academic perspective

2.68 Dr John O'Brien and Dr Michael O'Donnell, of the University of New South Wales School of Industrial Relations and Organisational Behaviour, have examined the tension between the government's role as policy generator, employer and financial controller. Their submission to the committee appended several relevant research papers which examined the process of agreement-making in the APS, the 'cultural change' which is being attempted by APS management, and the unions' response to their changed level of involvement and influence. Dr O'Brien summarised some of their conclusions in relation to the agreement-making process:

... the broader responsibilities of government, as well as its responsibility as an employer, require that it retain both substantive and substantial control over the agreement making process, despite having a policy agenda to further decentralise and devolve the process of agreement making.⁵³

2.69 Drs O'Brien and O'Donnell conducted interviews with agency managers as part of their research and were told by some that the policy parameters 'set boundaries and limits on their ability to negotiate'. However, they found that agency managers were also able to use the policy parameters to advantage by 'claiming that government policy left them with no choice but to insist that particular issues be included in agreements'.⁵⁴ They commented:

While the heads of government agencies may be given considerable autonomy in making agency-specific arrangements, they are, in the end, agents of government, both in its role as employer and policy generator. This apparent contradiction was explained [to the researchers] by likening government to a large corporation with a number of enterprises within its structure. While the corporation might allow its constituent enterprises considerable autonomy in its employment arrangements, they are formulated within a framework of overall corporate policy.⁵⁵

Conclusion

2.70 The committee accepts that governments have the right to require that when significant policy reforms are implemented, the public service employment framework will also move to reflect the change.

52 CPSU, *Submissions Volume 1*, p. 30.

53 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 187.

54 Dr J O'Brien and Dr M O'Donnell, *Submissions Volume 1*, p. 138.

55 Dr J O'Brien and Dr M O'Donnell, *Submissions Volume 1*, p. 138.

2.71 Rhetoric about the decentralised environment of the Workplace Relations Act in which agency heads have flexibility to negotiate terms and conditions to suit their workplace has been misleading. The reality is that, while agencies have greatly increased flexibility, the Government is the ultimate employer and has in place policy parameters and guidelines to protect its policy interests.

2.72 The DEWRSB submission advised that the government aims 'to ensure robust mechanisms of accountability to the Government and the Parliament' and put forward that the responsibility of agencies to manage their own workplaces is balanced with accountability requirements under the new framework.⁵⁶

2.73 While it is true that some accountability measures are in place, the committee has difficulty seeing that those relating to the process of making AWAs could be described as robust or an appropriate balance. AWAs are made between secretaries and public servants in their departments. The framework for establishing and approving these individual agreements involves no external scrutiny to ensure consistency with the APS Values or other ethical standards, or that the rewards to individuals are fair or within acceptable limits.

2.74 The committee notes that there is no restriction on agency managements publishing or disclosing the contents their agencies' AWAs. It views the secrecy surrounding AWAs in the APS as unnecessary and detrimental to the establishment of open relations between management and staff. The committee commends the two approaches taken by the Department of the Treasury and the Department of the Senate in this regard.

2.75 The committee is not confident that APS Values are being given any regard in the highly confidential environment in which AWAs are being made. The secrecy surrounding individual negotiations and setting of terms and conditions of employment do not promote a perception that equity and fairness are the prevailing considerations.

56 DEWRSB, *Submissions Volume 1*, p. 81.

CHAPTER 3

AUSTRALIAN WORKPLACE AGREEMENTS IN THE APS

Making an AWA in the APS

3.1 Agency level bargaining under the Workplace Relations Act began in 1997 in the APS. Since then, collective and individual agreements have been made throughout the Service and many agencies are now operating under their second certified agreement.

3.2 The process for making an AWA in the APS does not differ from that in any other employment sector. However, the contents of an APS AWA are constrained by the policy parameters set by the Government as the 'ultimate employer'.

3.3 From the outset of agency level bargaining, the Government made known its expectation that SES staff should be covered by AWAs and excluded from certified agreements.¹ The rationale for this policy appears to be that AWAs give the agency 'flexibility' in relation to recruitment and retention of senior staff by tailoring rewards to the particular challenges presented by different SES positions. The need to differentiate SES conditions has been explained in the following terms:

The Government's key objectives in relation to SES remuneration are to enhance the capacity of the APS to attract and retain high quality personnel to its Senior Executive ranks, to reward high performance and to more effectively link functions and responsibilities, performance and remuneration. This process has provided greater flexibility for wider differentiation of pay within the SES, including scope for improved SES pay relative to the wider market and linked to *performance*; and appropriate accountability.²

3.4 The Government's policy of individualising employment arrangements also extends to other ranks of the APS. Initially, the Government presented the use of AWAs among non-SES ranks as a 'niche tool'³ but the clear policy now is that 'agencies should consider extending the use of AWAs to staff below the SES'.⁴

3.5 Some agencies are promoting the use of AWAs more actively than others. For example, the Department of Finance and Administration told the committee that AWAs are on offer to everyone in the department and have been taken up by more

1 DEWRSB, *Supporting Guidance for the Policy Parameters*, April 2000, p. 5.

2 DEWRSB, *Supporting Guidance for the Policy Parameters*, April 2000, p. 17.

3 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 90.

4 DEWRSB, *Supporting Guidance for the Policy Parameters*, April 2000, p. 5.

than half of all staff.⁵ The way this has been achieved is discussed later in this chapter. Other agencies are so far limiting the offer to staff at senior levels or specialists.⁶

Number of AWAs in the APS

3.6 To date, nearly 7000 AWAs have been registered for APS employees, the first in 1997.⁷ This figure includes agreements which have expired or become obsolete due to the employee changing jobs or leaving the workforce.

3.7 Data on the number of AWAs in the APS is derived from the databases of the Office of the Employment Advocate. The OEA regularly provides DEWRSB with figures for the number of AWAs registered for the APS. However, due to the way the databases are set up, the OEA is unable to indicate the number of replacement agreements, or whether there has been a reduction in other current AWAs through resignation, retirement or death.

3.8 DEWRSB conducts its own survey of AWA numbers every few months by asking each APS employer for information on the number of AWAs current in each agency. The most recent DEWRSB survey showed that at the end of May 2000, there were 4841 'live' AWAs in APS agencies and the parliamentary service.⁸

3.9 The growth in the number of AWAs registered for the APS over the past 18 months is shown in Table 1.

Table 1: Number of AWAs registered for APS employers⁹

Date (end of:)	Number of AWAs registered
May 1999	3840
July 1999	4290
January 2000	5880
June 2000	6930

5 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, pp. 199, 208.

6 Eg.: DEWRSB, *Submissions Volume 1*, p. 84; Environment Australia, *Submission Volume 2*, p. 223.

7 DEWRSB, *Current Issues in Agreement Making: Australian Public Service*, August 2000.

8 DEWRSB, *Correspondence*, 18 August 2000.

9 Source: DEWRSB, *Agreement Making in the Australian Public Service – The First Round (May 1997 – June 1999)*; DEWRSB, *Submissions Volume 1*, p. 80; Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 6; DEWRSB, *Current Issues in Agreement Making: Australian Public Service*, August 2000.

The use of AWAs in the APS

3.10 The committee received evidence from several sources that illustrated how AWAs are perceived at agency level.

3.11 An interim report by DEWRSB, *Review of Agreement Making in the APS* (December 1999), details the results of a survey of 92 APS agencies undertaken in mid 1999. The report covered certified agreements and AWAs separately. The following are some relevant points taken from the survey:

- difficulties with negotiation of agreements were less common for AWAs than for CAs;
- 'time, work and cost' was the most stated difficulty for negotiation of AWAs;
- the main reason for introducing AWAs, apart from meeting Government policy (this applied primarily to SES AWAs) was flexibility in conditions and wages; retention of staff was a significant factor for non-SES AWAs;
- it was evident that agencies 'are not adopting a pattern bargaining approach for AWAs', as the range of features included in them was wide and varied;
- Government policy restrictions were cited as a difficulty by only 1 per cent of respondents; and
- there is recognition that initial AWAs are still relatively standardised, and that greater variation in conditions could be introduced in future.¹⁰

3.12 DEWRSB's submission contained a selection of comments from APS agencies illustrating a high level of support for 'the directions of workplace reform' and confirming that a major attraction of AWAs is the ability of agencies to tailor terms and conditions of employment to their particular needs.¹¹

3.13 In October 2000, the OEA and DEWRSB released a joint publication *Australian Workplace Agreements in the Public Sector, Early experiences: tips and case studies*. It provides a glossy picture of agency experiences with AWAs, put together after interviews with 20 agencies, mostly unnamed. Its purpose is to guide human resource managers and senior managers through some of the issues associated with introducing AWAs to staff, presumably below the SES level.

10 *Review of Agreement Making in the APS*, An interim report by the Department of Employment, Workplace Relations and Small Business on a survey conducted by Twyford Consulting, December 1999, pp. 3, 41, 48, 51, 52.

11 DEWRSB, *Submission*, Attachment B.

3.14 The booklet promotes AWAs as a tool to implement particular initiatives, to encourage employers and employees to focus on commitments and objectives, and to introduce cultural change. It points out that AWAs can either give detailed descriptions of terms and conditions or may contain very little prescription of working arrangements. AWAs can be 'part of a performance management system with incentive payments linked to "bottom-line" performance' and provide additional flexibility with remuneration packaging.

3.15 The document is dotted with references to additional administration costs and the benefits to offset these against. Readers are advised not to underestimate the amount of time and resources required to develop AWAs. In one case study the Australian Bureau of Statistics (ABS) described the initial process for developing AWAs as 'an iterative, resource intensive process' that involved in-house resources and various public and private sector consulting and legal organisations. In a second case study, the Australian Prudential Regulation Authority noted that 'the individual nature of AWAs creates a lot more work... AWAs take a lot more effort, but in the end, the dividend is greater'.

Small agencies

3.16 The committee received evidence from a group of small agencies which presented a refreshing view of today's public service. Their evidence revealed an acute personal awareness on the part of CEOs of the valuable contributions made by their staff, a product of the very direct relationship between employment decisions and trade-offs in a small agency.¹² They expressed general support for the move away from the constraints of the previously tight central controls, but feel they have yet to be released from the 'one size fits all' culture.

3.17 Mr Ron Brent, Director of ScreenSound Australia, described the move to independence in negotiating pay and conditions at agency level as having

...a very substantial up-front burden that has drained our resources significantly... the gains that we are able to make are in many ways quite limited. Many of them we might not see the benefit of for some time... Many of them will work well for larger organisations, but carry with them a lot of diseconomies of scale, if I can use that term, for small agencies... The difference between negotiating a certified agreement for 200 staff or 80-odd or 2,000 is not all that great.¹³

12 Office of the Commonwealth Ombudsman, Office of Parliamentary Counsel, ScreenSound Australia, in Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000.

13 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 174.

Criticism of use of AWAs in the APS

3.18 The unions see the spread of AWAs as a strategy by the Government to undermine collective action in agreement-making and diminish union involvement.¹⁴ The CPSU commented:

Agencies are using every opportunity to extend AWA coverage beyond the Senior Executive Service and into middle management and professional occupations which are currently under certified agreements.¹⁵

3.19 Ms Wendy Caird of the CPSU noted that the widespread use of AWAs across whole departments appears counter to the Government's initial intention that AWAs be used in the SES or niche areas.¹⁶

3.20 The CPSU challenged the value of individualising employment arrangements, noting that SES remuneration practices have not changed significantly as a result of the introduction of AWAs and 'pay increases are not exceeding those achieved from collective bargaining'. It continued:

In this case there is no practical reason for agencies to go to the trouble and expense of developing and administering individual contracts for SES staff when collective agreements could be used to achieve the same results more efficiently and without compromising transparency.¹⁷

3.21 This argument was given some credence in evidence given to the committee by the representative of ScreenSound Australia, Mr Ron Brent, in relation to that organisation's SES officers. He commented that the capacity for negotiating individual outcomes in AWAs in his organisation is 'very limited', mainly because it would not be considered fair to do anything other than mirror the pay movements set out in the certified agreement. He stated:

There is very little scope for using the flexibility of an AWA in an organisation like mine, particularly where, essentially, two SES officers would determine our own conditions at the expense of other staff if we provide any greater benefits to ourselves.¹⁸

3.22 The purpose of using AWAs is brought into question if their terms and conditions are merely a reflection of a parallel certified agreement. This was illustrated in an example given in the AWA tips and case studies publication, where the Australian Statistician made a commitment to his staff who were parties to AWAs

14 CPSU, *Submissions Volume 1*, pp. 30, 31; Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 78.

15 CPSU, *Submissions Volume 1*, p. 28.

16 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 90.

17 CPSU, *Submissions Volume 1*, p. 37.

18 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 176.

that any improvements to remuneration and employment conditions from a subsequent certified agreement would flow through to them.¹⁹

3.23 The unions noted the 'disturbing trend' which they perceived to be emerging towards AWAs being the only form of agreement on offer to APS employees. In particular, the union cited DOFA as 'refusing to abide by its commitment' to make a new certified agreement with its employees.²⁰

3.24 The Department of Education, Training and Youth Affairs (DETYA) was also cited by the CPSU as an example of how AWAs are being promoted in APS agencies. It stated:

[DETYA] has even sought to put its graduate trainees on AWAs, using misinformation to suggest such a step is necessary for their advancement in the agency.²¹

3.25 The CPSU also questioned the efficiency of the decentralised bargaining process. The union thought there must be a 'relatively high cost' for replication of the same activity across the APS. It noted:

In many cases, agencies do not appear to have had the expertise and confidence to undertake the agreement-making task themselves, and have engaged expensive consultants to handle all aspects.²²

Specific agency responses to criticisms

3.26 The Department of Finance and Administration has been the subject of some criticism of its employment practices, particularly its apparent refusal to negotiate a new certified agreement. The CPSU perceived this 'refusal' to negotiate as a deliberate strategy to sway employees to take up AWAs. 'The only means being offered to employees to advance their pay and conditions beyond the expired agreement is an AWA'.²³

3.27 The committee notes that the DOFA certified agreement did indeed nominally expire on 30 June 1999. However, an expired certified agreement continues to have effect until such time as one of the parties, or the AIRC, has it terminated. Nonetheless, until a new agreement is negotiated and certified, employees do not have the opportunity to significantly alter their collective terms of employment or rates of remuneration. The committee also notes that the expired certified agreement contains

19 DEWRSB and OEA, *Australian Workplace Agreements in the Public Sector, Early experiences: tips and case studies*, October 2000, p. 23.

20 CPSU, *Submissions Volume 1*, p. 28.

21 CPSU, *Submissions Volume 1*, p. 28.

22 CPSU, *Submissions Volume 1*, p. 31.

23 CPSU, *Submissions Volume 1*, p. 28.

a clause in which the employer, DOFA, agreed to enter into consultations with employees on a replacement agreement no later than 3 months before the nominal expiry date.

3.28 DOFA provided the committee with a submission which summarised its position regarding its certified agreement as follows:

Our CA is very flexible and after consultation with employees, it is clear that it continues to serve well the needs of DOFA and of employees. In particular:

- while the CA has passed the nominal expiry date, it continues to remain in force and provide a basis for ongoing pay rises for staff;
- there has been no major change to DOFA's business needs which require a different approach;
- there remains untapped flexibility within the arrangement;
- DOFA employees have not expressed any significant interest in a new certified agreement;
- there is a cost associated with negotiating another CA;
- there is an increasing level of employees capitalising on the flexibilities offered by AWAs to tailor terms and conditions of employment to their personal circumstances and the needs of their local workplace; and
- DOFA remains competitive in attracting and retaining good staff and the CA does not need to be changed to enhance our relative market position.²⁴

3.29 At the committee's public hearing, representatives of DOFA stated that although the department's certified agreement had nominally expired, it 'remains alive and active and will continue to do so until it is replaced by another agreement or it is terminated'.²⁵

3.30 The department noted that it had held meetings with the CPSU regarding the expired CA, but that:

The department's consistent position, after consulting with staff, was that we thought our current certified agreement was still operational and that our preference was not to negotiate a new agreement at that stage.²⁶

3.31 Ms Barbara Sullivan, representing DOFA, told the committee that although the union had in fact served the department with a log of claims for a new certified agreement, DOFA had not sought to negotiate with the union: 'there was not a sufficient case for us to negotiate a new certified agreement and we declined to do that'. Ms Sullivan stated:

24 DOFA, *Submissions Volume 2*, pp. 380-381.

25 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 199.

26 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 200.

... our certified agreement was with our employees and we consulted with all of our employees through a number of mechanisms, and we also discussed the issues with the union and consulted with them. As a result of that and the feedback we got from people we decided that people were happy with the certified agreement and did not see a need for it to be renegotiated.²⁷

3.32 Ms Jenny Morawska-Ahearn, General Manager of DOFA's Corporate Branch, sought to clarify the situation by noting the department had 'not refused to negotiate as such' and that 'discussions' with the union were scheduled for the following week. She would not say whether the discussions would be negotiations, as she did not wish to 'pre-empt the outcome'.²⁸

3.33 The department subsequently advised the committee that at the meeting with the CPSU on 29 June 2000 the union had sought 'a yes/no answer on whether DOFA wanted to negotiate a new CA'. DOFA deflected this direct question, as follows:

DOFA representatives sought further information from the CPSU as to why they, or their members, thought the current CA was no longer appropriate, as issues raised may be of an individual nature and more appropriately resolved at the individual level.²⁹

3.34 The committee was told that some 375 people, just over half of the department's employees, had moved onto AWAs. Ms Morawska-Ahearn commented:

Those employees who choose to be on the certified agreement presumably want the certified agreement. Others have made the choice to be on an AWA. It is very much an individual choice; it is up to the individual staff member.³⁰

3.35 The DOFA representatives emphasised that it was a matter of choice for an employee as to which form of agreement best suits their circumstances. They noted that the department has a combination of agreements that best meet their business and employees' needs.³¹

3.36 The committee also sought the response of DETYA to criticism by the unions. The department strongly rejected any view that it has sought to move towards individual contracts being the only form of employment agreement available to its employees. It stated that AWAs have only been offered where consistent with business needs. Employees offered AWAs are free to choose whether to accept the offer or not.

27 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 209.

28 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 211.

29 DOFA, *Submissions Volume 2*, p. 391.

30 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 208.

31 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 200.

3.37 DETYA also gave a detailed response to the issue of AWAs for graduate employees. It stated that in offering AWAs for graduates the intention was to provide graduate-specific provisions, including accelerated advancement, which could not be facilitated within the existing certified agreement. Graduates were specifically advised that if they decided not to enter into an AWA, their salary and advancement would be those applying under the CA. 'It was for each individual to decide whether or not to accept the additional options available under the proposed AWA.'³²

The committee's view

3.38 The committee has concerns about the way in which AWAs are being used in the public sector. It is evident that agencies believe that there is benefit in the ability to tailor individual agreements to the circumstances of the agency and the employee. However, the committee is concerned that encouragement, indeed championing, of the use of AWAs in the APS has not been accompanied by serious evaluation of their costs and benefits.

3.39 The committee also has concerns about the degree of secrecy surrounding the process, which gives rise to doubts that :

- the important core value of accountability is accorded sufficient weight;
- there is any service-wide perspective on the impact of AWAs – it is difficult to even find out how many there are;
- small agencies have sufficient resources to cope with devolved negotiation of employment agreements; and
- employees have genuine bargaining power, that active negotiation by employees is encouraged and that employees are being given genuine choice in the form of agreement they wish to make.

32 DETYA, *Submissions Volume 2*, pp. 394-5.

CHAPTER 4

PUBLICLY AVAILABLE INFORMATION

Introduction

4.1 Any examination of AWAs in the APS is constrained by the nature and extent of the information which is publicly available. The conditions of confidentiality which have been imposed legislatively and also by management choice make specific and detailed information difficult to obtain and limited in use.

4.2 Information about the rewards available to the senior ranks of the APS is already limited. The advent of AWAs has added another dimension to this. The extension of AWAs into non-SES ranks has not been accompanied by any change to the standard of reporting on total remuneration for SES or non-SES staff. In relation to total remuneration, the provision of non-monetary rewards through AWAs and the absence of any information about the value attributed to these compound the problem.

4.3 In this chapter, the committee outlines the sources of information that are publicly available or accessible on application in relation to AWAs in the APS. It also examines the reporting requirements that apply to particular aspects of AWAs, such as remuneration. A comparison with the requirements applying to the private sector is made.

4.4 The committee also sets out its views on the adequacy of the range and nature of information that is available. It recommends changes to the availability of information and to reporting requirements that would bolster the transparency and accountability of AWAs in the APS and alert the APS to any unintended impact of individual agreements, such as on members of EEO target groups.

Sources of information

4.5 There are several main sources of information on AWAs in the APS. These are:

- the Office of the Employment Advocate which holds copies of all AWAs for the public and private sectors and maintains various databases covering all aspects of AWAs. It provides some aggregate information to DEWRSB;
- DEWRSB conducts or commissions a range of surveys of agreement-making in the APS and particular aspects of APS employment such as remuneration;
- the annual reports of departments and agencies;
- the annual financial statements of departments and agencies; and

- reports on the state of the APS by the Public Service Commissioner.

The Office of the Employment Advocate

4.6 The OEA is permitted under the WR Act to publish or make available some information about AWAs, on condition that the names of the parties are not divulged. Thus, the OEA is able to provide aggregate information to DEWRSB and to contribute to reports on agreement-making which are required under the Workplace Relations Act.

4.7 The OEA maintains two separate databases of information about AWAs. The following descriptions are reproduced from the latest report on agreement-making for 1998 and 1999.

The Australian Workplace Agreements Management System (AWAMS)

4.8 AWAMS is a workflow/document management system used by the OEA in the filing and assessment of AWAs. AWAMS contains its own database, which holds information about the parties to the AWAs lodged with the OEA. The AWAMS database provides the following information:

- industry (by Australian and New Zealand Standard Industry Classification code);
- occupation (by Australian Standard Classification of Occupations code);
- sector;
- size of employer (by numbers of employees);
- location of employer and employee;
- hours worked by employees (part-time/full-time);
- type of employment (casual/permanent);
- trainees/apprentices;
- junior employees (under 21 years old); and
- gender of employees.¹

The Australian Workplace Agreements Research Information System (AWARIS)

4.9 AWARIS contains information on the content of AWAs. The data are collected from the first AWA approved from each employer. Information on types of clauses within an AWA and their relationship to the relevant or designated award is held by the AWARIS. Such information includes:

- information on clauses on hours worked;

1 DEWRSB and OEA, *Agreement making in Australia under the Workplace Relations Act: 1998 and 1999*, 2000, pp. 13-14.

- leave entitlements,
- human resource practices;
- work and family clauses; and
- penalty payments.

4.10 The AWARIS also provides more detailed ANZSIC code (to four digits as opposed to single digit) information than that provided by AWAMS. It holds data on ASCO, number of employees and date of approval of AWAs.

4.11 Neither AWAMS nor AWARIS collects data on pay due to the individual, rather than collective, nature of AWAs and the associated complexity of this task.²

OEA's Research Access Program

4.12 The OEA has instituted a research access program. Applicants to the program must show themselves to be bona fide researchers and must sign strict confidentiality agreements. Researchers do not have access to the AWAMS database. Access is allowed only to paper copies of the first AWA approved for each employer and to the AWARIS, which also contains information on the first AWA for each employer.³

4.13 The AWARIS database represents data on 1747 employers (as at December 1999) and is one of the information sources for reports on agreement-making required under the WR Act. The way that the database is used for the reports is explained as follows:

For this report, to analyse the employee-based outcomes from AWAs, the employer sample has been weighted to provide indicative population estimates for employees. Most of the employment conditions data are indicative rather than actual, because these data are collected from the first AWA approved with each employer. All later AWAs from an employer are assumed to contain the same provisions as this first AWA and are entered into the database as such, because it is not feasible to code each individual AWA. The employee information (personal details) for the employees is backpopulated into AWARIS to then apply these conditions to the individual employees of the given business.⁴

2 DEWRSB and OEA, *Agreement making in Australia under the Workplace Relations Act: 1998 and 1999*, 2000, p. 14.

3 OEA, *Correspondence*, 5 September 2000, p. 4.

4 DEWRSB and OEA, *Agreement making in Australia under the Workplace Relations Act: 1998 and 1999*, 2000, p. 75.

4.14 The OEA's research access program and AWARIS were the subjects of criticism at a public hearing. The committee was told by Ms Kristin van Barneveld, who undertakes research on AWAs and employment related matters, that the access granted by the OEA is 'far from ideal and does not allow full pictures of AWAs to be drawn by anyone'.⁵ Ms van Barneveld noted the difficulty of gaining a representative sample through the first AWA approved methodology:

For example, if an employer registers a batch of AWAs covering gardeners first and later has one approved covering its managing director, only the first, the gardeners' AWA, which is approved gets put onto this RIS. Second and third generation agreements from the same employer are not recorded on the RIS either. This has obvious implications for the representativeness of data which is produced by the OEA as well as for research organisations that access AWAs from this database.⁶

4.15 To illustrate the inadequacy of the information available under this methodology, in relation to the APS it is possible to assume that the first AWA approved for each agency would have been for an SES officer. Thus, the information available to researchers will throw no light on what has subsequently happened as AWAs have spread into non-SES ranks. Similarly, it will not enable any conclusions to be drawn about the evolution of AWAs in the APS as experience has been gained and later generation agreements have been made.

4.16 The committee notes the oddity of assuming that all subsequent AWAs contain the same provisions as the first, especially when one of the most quoted reasons for implementing AWAs is the ability to tailor them to individual needs and escape a 'one size fits all' culture. It is worrying that the information drawn from this exercise is used to report on the process and progress of agreement-making.

4.17 The OEA responded to criticism of the research access program by noting that it takes its role of providing information 'very seriously'. The access program was described as providing information 'which is accessible and available and relevant' and cheaper than an FOI request.⁷ It defended the first AWA approved methodology by stating that it 'generally provides an adequate picture of what employers and employees are doing with AWAs'.⁸ The OEA described the methodology as 'particularly appropriate', given that the OEA's primary statutory responsibilities are to assist employers and employees in making AWAs and that it is constrained by resource limitations.⁹

5 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 190.

6 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 191.

7 OEA, *Correspondence*, 5 September 2000, p. 8.

8 OEA, *Correspondence*, 5 September 2000, p. 4.

9 OEA, *Correspondence*, 5 September 2000, p. 4.

4.18 The OEA conceded, however, that concerns about lack of information on second and third generation AWAs are 'pertinent'. It stated:

Because AWAs are for the most part in their first generation as the OEA is just over three years old and most agreements have a three year duration, the measurement of generational AWAs will be an issue of relevance in the near future and something the OEA will consider in the near future.¹⁰

4.19 The committee sought information from the OEA on its new IT system, which had been discussed at an estimates committee hearing.¹¹ In particular, the committee asked the OEA whether the new system would address any of the deficiencies in the integrity of information that the office provides externally.

4.20 The OEA refuted the description of information it provides as deficient, saying that proper consideration of resource requirements 'and the balancing thereof' needs to occur before such a description could apply.

4.21 The OEA confirmed that a new IT system is in the process of development which will assist in more streamlined processing of AWAs. It was noted that 'in particular, the reporting module is being redeveloped'. This was followed, however, with a statement that the information provided by the new reports module will be of the same nature as that provided by the current AWAMS. Further, the new IT system will not extend the range of information available to researchers:

The Research Access program will continue unchanged though some of the matters raised on generational issues with AWAs have and will continue to merit consideration.¹²

Provision of information by OEA to Parliament

4.22 Earlier this year, the Employment Advocate, Mr Jonathon Hamberger, gave evidence to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee at estimates hearings in relation to provision of information about AWAs, and the documents themselves, to a parliamentary committee.¹³

4.23 At a hearing on 3 May 2000, Mr Hamberger agreed to provide that committee with copies of a research report and the first 100 AWAs. He did so on the basis of advice provided to the OEA by the Attorney-General's Department some time previously. The advice indicated that the Employment Advocate could provide

10 OEA, *Correspondence*, 5 September 2000, p. 5.

11 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Hansard*, 3 May 2000, p. 83.

12 OEA, *Correspondence*, 5 September 2000, p. 7.

13 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Hansard*, 3 May 2000 and 14 August 2000.

information to a parliamentary committee, which identified the parties to an AWA, without breaching his obligation under s. 83BS of the Workplace Relations Act. This was because such action would be covered by the Parliamentary Privileges Act.¹⁴

4.24 Subsequent to that hearing, Mr Hamberger discussed the matter with officers in the OEA and DEWRSB, as well as the Minister for Employment, Workplace Relations and Small Business. On 9 May, he wrote to the secretary of the committee, indicating that he now believed it was 'not appropriate for the OEA to provide the committee with copies of individual agreements or the names of employers with AWAs'. He gave three reasons:

- such action would run counter to the clear statutory intent of the Workplace Relations Act that any disclosure of the identity of a party to an AWA is a matter for the parties themselves;
- the parties to AWAs entrust the Employment Advocate with details of their individual employment arrangements and should be able to expect that those details would not be publicly ventilated without their permission; and
- concern about comments reported in the *Australian Financial Review* of 5 May 2000 which could be read as implying that the committee process would provide public access to the names of employers who have AWAs with their employees and that this could result in the inappropriate targeting of those employers.¹⁵

4.25 At the Employment committee's hearing on 14 August, Mr Hamberger reiterated his understanding that 'there was not a legal problem in terms of s. 83BS in identifying parties to AWAs before this committee'.¹⁶ He then set out his reasons for withdrawing his offer of information to the committee. He noted that the WR Act 'evinces a strong intention' that the OEA not disclose the identity of parties to AWAs and that he and his staff took the prohibition of s. 83BS very seriously. The wish to protect the personal information contained in an AWA was also a central consideration. He stated:

Nearly 2,500 employers and over 100,000 employees have filed AWAs with the OEA on the legitimate understanding that the arrangements they had entered into would remain confidential unless they wished to disclose those arrangements themselves or unless they gave permission for us to do so. It is worth emphasising that AWAs are not secret—either party can disclose their contents. If an employee wants to show his AWA to a union, for example, or, indeed, to a member of parliament, then he or she is free to do so.

14 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Hansard*, 3 May 2000, pp. 84, 87; 14 August 2000, p. 369.

15 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Hansard*, 14 August 2000, p. 370.

16 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Hansard*, 14 August 2000, p. 370.

Indeed, the legislation protects that right. Moreover, either party may give us permission to disclose that they have entered into an AWA. However, these agreements do not belong to the OEA, they belong to the parties. For me to disclose their identity without their permission could be regarded as failing to abide by the trust they have shown in the OEA.¹⁷

4.26 Mr Hamberger also cited prevention of interference by uninvited third parties as a reason for his decision. He noted that in the *Australian Financial Review* article, it had been made 'abundantly clear' that information given to the committee, and thus made public, would be used against parties to AWAs. Mr Hamberger said:

This was, from my point of view, a telling point and one that led me to reconsider my willingness to disclose the identities of parties to AWAs without their permission, certainly unless I was required to do so.¹⁸

4.27 The Employment Advocate's final argument in support of his position was that he had been asked by a member of the committee, not the committee itself, for the information. Should a formal request be made by the committee, he 'would clearly need to consider such a requirement very carefully'.¹⁹

DEWRSB

4.28 DEWRSB receives some aggregated information on AWAs from the OEA. This seems mainly to relate to updates of the numbers of AWAs approved for APS agencies. The latest OEA data indicates that 6930 AWAs have been registered for APS employers. DEWRSB has established that there are actually 4841 live AWAs.²⁰

4.29 Otherwise, DEWRSB commissions a range of surveys, the most significant of which for the purposes of this report is the SES remuneration survey. At its first public hearing on this reference, the committee was told that this survey is the only centralised record of remuneration negotiated under AWAs, although it did not cover remuneration of staff below the SES level on AWAs.

4.30 The most recent SES survey was conducted by Mercer Cullen Egan Dell on behalf of DEWRSB. It states that its results are directly comparable to those of the 1998 survey, which was conducted by the Australian Bureau of Statistics. The

17 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Hansard*, 14 August 2000, p. 371.

18 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Hansard*, 14 August 2000, p. 371.

19 Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Hansard*, 14 August 2000, p. 371.

20 DEWRSB, *Current Issues in Agreement Making: Australian Public Service*, August 2000; DEWRSB, *Correspondence*, 18 August 2000.

information given by agencies is taken on trust and no audit is conducted of the accuracy of the information provided.²¹

4.31 Agencies participate in the survey on a voluntary basis and contribute to its costs which totalled \$122,000 in 1999. Individual agency contributions ranged from \$300 to \$4,200.²²

4.32 In 1999 the survey covered 97 per cent of the SES, as one major agency, DOFA, and a number of small agencies did not participate.²³ When asked by the committee why DOFA did not participate, Dr Boxall replied that the department does not require the information collected by the survey and 'we do not think it is a good use of taxpayers' money in DOFA'.²⁴

4.33 The detailed survey results were provided to participating agencies only. They were set out in two booklets: the first was aggregated service-wide information and the second provided agency-specific information, including comparative information about how a particular agency's SES remuneration compared to that paid in other agencies surveyed (in aggregate).

4.34 DEWRSB provided the committee with the service-wide survey results, but not the agency specific information. Initially, the department urged the committee not to make the survey results publicly available, as it was concerned that agencies would not participate in future if they thought that they could get the survey information without contributing. The committee decided to publish the document.²⁵

4.35 The second part of the SES Remuneration Survey 1999 was a wider market comparative study of executive remuneration in the APS, state and territory governments and the private sector.

4.36 DEWRSB also publishes on the internet Key Pay Indicators Online to inform agencies of key indicators in the wider environment of agreement-making.

4.37 Another survey-based report, *Pay Increases in APS Agencies - June 2000*, relates to the earnings of staff below SES level. This information is mainly drawn from certified agreements, although two agencies included AWA information in their response. The AWA pay outcomes are not identifiable in the aggregated data. The mixed source of its data limits the usefulness of this report - it is not an account of

21 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 22.

22 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 29.

23 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 29.

24 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 207.

25 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, pp. 37-38.

outcomes from certified agreements only, and it is not based on total APS remuneration outcomes. It is described as an 'overview of general pay increases'.²⁶

4.38 The *Review of Agreement Making in the Australian Public Service* is an interim report dated December 1999 which resulted from a DEWRSB-commissioned research project to identify experiences, trends and emerging issues facing agencies during July and August 1999. This report provides some information about the use of AWAs, but certified agreement-making processes are its primary focus. The next step is to be a set of six case studies drawn from the survey, to assist agencies by outlining 'lessons learned'. This information may be available later this year, some 16 months after the survey was conducted.

4.39 A third document, *Australian Workplace Agreements in the Public Sector, Early experiences: tips and case studies* appears to be designed to assist agencies with the introduction of AWAs for staff below SES level, although it is unclear to what extent the information it provides is drawn from AWAs for the non-SES group. It too is a very general overview.

Annual reports of APS agencies

4.40 The *Public Service Act 1999* requires departments of state and executive agencies to prepare annual reports. These are required to be prepared in accordance with guidelines approved by the Parliament. As a matter of policy, the requirements also apply to prescribed agencies under section 5 of the *Financial Management and Accountability Act 1997* (FMA Act).

4.41 The current annual reporting guidelines, *Requirements for Annual Reports*, was issued by the Department of the Prime Minister and Cabinet (PM&C) in May 2000. They identify the primary purpose of annual reports as 'accountability, in particular to the Parliament'. They list four underlying principles and include advice that the content of annual reports should 'provide sufficient information and analysis for the Parliament to make a fully informed judgement on departmental performance' and that the relative benefits and costs of reporting should be considered.²⁷

4.42 There is no specific requirement in relation to reporting the remuneration of staff who are on AWAs. The requirements *suggest* that agencies include in their annual reports an explanation of how the nature and amount of remuneration for SES officers is determined. Reporting of non-monetary rewards, performance pay and any other remuneration to staff outside what is required for the financial statements, has been left to the judgement of individual agencies.

26 DEWRSB, *Pay Increases in APS Agencies – June 2000 Report*, 2000, p. 1.

27 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, May 2000, p. 3.

Annual financial statements

4.43 The only audited public reporting of remuneration paid to public servants is provided in the annual financial statements. The financial statements of agencies subject to the *Financial Management and Accountability Act 1997* must show the aggregate remuneration of all managers whose remuneration is \$100,000 or more and the number of managers whose total remuneration falls within each successive \$10,000 band commencing at \$100,000. 'Manager' is defined in the explanatory notes as the executives of an agency, which in turn are defined in the Finance Minister's Orders as including the Chief Executive Officer and persons in the SES who have a role 'in the management of the Agency'.

4.44 The earnings of public servants whose total remuneration exceeds \$100,000 who are SES officers but not managers, for example, specialists, and non-SES officers who are in the same remuneration bracket are not required to be recorded with this group.

4.45 The financial statements are prepared by the agency head before being given to the Auditor-General who must examine them and report to the Minister responsible for the Agency. The Minister tables in the Parliament the annual report, a copy of the financial statements and the Auditor-General's reports on the statements.

4.46 A reduction in the disclosure levels required in the financial statements took effect from August 1999. The change most relevant to this report is that the Finance Minister's Orders no longer require agencies to report separately on the aggregate amount of performance payments made in a financial year. Performance pay remains covered by the definition of 'remuneration' so is included in an aggregated figure with 'wages and salaries, accrued leave, accrued superannuation, the cost of motor vehicles, housing, allowances and fringe benefits tax included in remuneration agreements'.

4.47 The explanatory notes to the Finance Minister's Orders (FMOs) state that 'the policy is based on the equivalent requirement for executive officers of companies in AASB 1017 and AASB 1034', however, more stringent requirements for private sector reporting pre-date the August amendment.

Reports on the state of the APS

4.48 Under the Public Service Act, the Public Service Commissioner is required to include with the annual report for her agency, a report on the state of the APS for presentation to the Parliament. To date, no specific information relating to AWAs is included in these reports. The Act requires agency heads to give the Commissioner whatever information she needs for the report. The introduction to the 1998-99 report expressed her disappointment at the quality and timeliness of responses to her request for information and canvassed some mitigating factors that may have affected the ability of agency heads to comply. Nevertheless the committee hopes that agencies have made a greater effort this year to accommodate the Commissioner's needs for the 1999-2000 report.

Private sector reporting requirements

4.49 Currently the reporting requirements for the remuneration of APS managers are less detailed than those that apply to private sector executives.

4.50 Corporations Law requires financial reports of listed companies to contain certain disclosures relating to executive remuneration, following the relevant accounting standard. Section 12 of AASB 1034 provides that the following information must be disclosed in financial reports:

(a) the aggregate remuneration of all *executive officers* of the *entity* whose remuneration for the *financial year* is \$100,000 or more

(b) the number of executive officers of the entity whose total remuneration for the financial year falls within each successive \$10,000 band, commencing at \$100,000 ...

4.51 This applies to each entity required to prepare financial statements in accordance with Part 3.6 of the Corporations Law. It was the inspiration for the parallel requirement in the FMA Act for public sector departments of state, executive agencies and certain other prescribed agencies.

4.52 Recent Corporations Law amendments have included more stringent reporting requirements, albeit in the director's report, not the audited financial statements. New section 300A, inserted by the *Company Law Review Act 1998*, requires the following:

- disclosure of the policy for determining the nature and amount of emoluments of board members and senior executives;
- a discussion of the relationship between the policy and the company performance; and
- details of the nature and amount of each element of the emolument of each director and each of the 5 named officers of the company receiving the highest emolument.

4.53 The *Company Law Review Act 1998* was reviewed by the Joint Statutory Committee on Corporations and Securities in 1999. That committee revealed that the new provisions were similar to those in operation in the UK and other major overseas jurisdictions, and that there was broad support for the additional disclosure mandated. The committee concurred with the legislation framers that the public interest in such disclosure outweighed the privacy considerations of the individuals concerned.²⁸

28 Joint Statutory Committee on Corporations and Securities, *Report on Matters Arising from the Company Review Act 1998*, 1999.

An example of the type of information now provided in directors' reports follows:

'Executive director and senior executive remuneration

Executives receive competitive remuneration packages which include a base salary; additional benefits, such as superannuation; annual performance related incentives; and retirement and termination entitlements.

The compensation committee reviews these remuneration packages and other employment terms annually. This review is based on performance goals set at the start of the year, relevant market information and independent expert advice.

Our short-term incentive scheme is based on performance benchmarks, aligning the interests of executives with those of shareholders. The level of executive reward is determined by performance measured against :

- an accumulation index of 20 peer companies
- business unit and individual objectives ...'(Western Mining Corporation Annual Report 1999, p. 34)

4.54 In the case of Western Mining Corporation in 1999, the following information was provided for two named executive directors and eight named senior executives: base cash; annual variable compensation; total cash; superannuation; other compensation, such as the package value of a motor vehicle, car parking, telephone, health management etc; total compensation; share options, exercise price and date of first exercise. 'Annual variable compensation' or bonus payments ranged from a low of \$38,000 (in a total compensation package of \$367,946) to a high (excluding one executive with a different bonus structure) of \$255,350 (in a total compensation package of \$1,386,436).²⁹

4.55 Other companies, while taking a different approach to senior executive remuneration, nevertheless present the required information. Telstra, for example, in its 1999 annual report, described its scheme of short-term and long-term incentives for senior executives for meeting or exceeding key business objectives.

4.56 At its public hearing on 14 April the committee asked representatives of PM&C if consideration was being given to reflecting the changes in the Corporations Law in the next issue of the annual reporting requirements released in May 2000. The question was taken on notice and a reply provided six months later. The committee was advised that the change will require the Australian Accounting Standards Board to consider if the change is warranted, and if so, a consultative process and the release of an exposure draft will follow. The reply advised that this is expected to happen in the first quarter of 2001.

4.57 If Parliament has seen fit to legislate for the provision of such information for the private sector, which the public sector is increasingly being exhorted to emulate, it is curious that the latter is lagging so far behind in terms of the requirements for transparency of executive remuneration details. As Senator Faulkner pointed out:

²⁹ Western Mining Corporation, *Annual Report 1999*, p. 35.

We find ourselves now where there are more stringent reporting requirements in the private sector than the public sector, which appears to me to be philosophically indefensible.³⁰

Conclusions

4.58 At present, there is no agency with responsibility for gathering and holding information in relation to the content of APS AWAs, remuneration rates being offered, aggregated information across agencies and the whole APS, or comparative information in relation to other public sectors and the private sector. Such a resource would be invaluable to properly evaluate the position of the APS and individual agencies, detect service-wide trends over time, and to evaluate the effectiveness of changes to the APS employment framework in bringing about Government objectives - and to keep the APS in line with them. It would also serve to build an important historical record.

4.59 The only agency with anything approaching a comprehensive database of AWAs is the Office of the Employment Advocate. In the committee's view, it is utterly unacceptable that the information held by this agency is not available to other arms of the APS, particularly DEWRSB and the Public Service and Merit Protection Commission (PSMPC). The barrier between the OEA and these agencies is built on the premise that the OEA is required by law to maintain the confidentiality of AWAs and takes no account of the exceptions in the WR Act. This false necessity is a serious impediment to those agencies' ability to improve service-wide information.

4.60 Under the provisions of paragraph 83BS(2)(d) of the Workplace Relations Act, it is open to the Government as the ultimate employer, through its agency heads, to authorise the OEA to release copies of APS AWAs to DEWRSB and the PSMPC. This would enable DEWRSB to provide a more rigorous information program about devolved agreement-making in the APS and improve the quality of reporting on APS remuneration. It would also enhance the Public Service Commissioner's ability to perform her statutory reporting role and open the way for monitoring AWAs as a distinct management tool.

4.61 The committee is concerned that the information available from the OEA is inadequate and the sampling technique is flawed. The committee recognises that the OEA must balance resource considerations in granting research access to AWAs. However, it considers the methodology of the first approved AWA for each employer to be grossly inadequate and highly likely to misrepresent the full population of AWAs. Given that the OEA is the only source of information about AWAs in the APS that has full access to all approved documents, this is particularly significant.

4.62 The committee considers that the OEA should review, as a matter of urgency, the range of material available to researchers. It would not seem unreasonable for a

30 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 36.

greater range, if not the full range, of AWAs to be available for research purposes, not just a sample chosen by the OEA.

4.63 The committee notes that the generational problem inherent in the OEA's databases casts doubt on the integrity of available information on AWAs. It doubts the OEA's assertion that AWAs are mostly first generation agreements. A quick look at the APS figures in the previous chapter supports a view that a significant number of AWAs may be second or third generation agreements and that the OEA needs to urgently address the information problem. The OEA's insubstantial commitment to consideration of the matter is disappointing, to say the least.

4.64 Public sector annual and financial reporting requirements have reduced in spite of legislative changes that increase the accountability of the private sector. The committee is concerned that this indicates that APS accountability obligations are out of step with community standards.

4.65 In relation to annual reports, the committee will wait to examine the 1999-2000 annual reports to see how fully the discretion to report on executive remuneration has been exercised before making any recommendations in this regard. The discretion provided in the annual reporting guidelines, concerns the committee as a matter of principle, because agencies' decisions about an appropriate level of external reporting includes the option of whether to report at all.

4.66 It is the committee's aim to see more publicly available information on the contents of salary packages, a view shared by the Auditor-General, Mr Pat Barrett.³¹ He also drew to the committee's attention the need to introduce enhanced accountability arrangements to match the increased management flexibility that accompanies the devolution of pay and employment conditions.

Measuring or at least assessing productivity is an essential element in public accountability. It can provide assurance to Parliament and the general public that the organisation and its staff are operating efficiently and effectively and that wage increases are based on productivity gains.³²

31 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, pp. 7-23.

32 Australian National Audit Office, *Certified Agreements in the Australian Public Service*, Audit Report No. 13, 2000-2001, p. 75.

CHAPTER 5

REMUNERATION

Introduction

5.1 As the committee noted in Chapter 3, AWAs permit the tailoring of individual agreements between an employer and an employee. Those agreements may cover a range of matters over which, generally speaking, the committee has few concerns – matters such as family-friendly work practices, hours of work, the timing of leave, et cetera. Where the committee takes a particular interest is in the subject of public sector remuneration. Public money is being used, and Parliament has a right to be informed.

5.2 Because of the information constraints noted in previous chapters, the committee will consider primarily the remuneration provided for in AWAs covering members of the Senior Executive Service (SES). It will also consider what information should be available to ensure the robust accountability to the Parliament which is one of the aims of the Government's reforms.

5.3 While AWAs may provide for other than monetary forms of reward, the cornerstone of the Government's APS remuneration policy is performance-linked remuneration. In its submission to the committee, DEWRSB took this a little further, indicating that the objective of reforms to SES remuneration was to enhance the capacity of the APS to attract and retain high quality personnel to its SES ranks and to reward high performance.¹ Its *Review of Agreement Making in the Australian Public Service* commented that the reforms were designed:

- to motivate and reward higher productivity and performance;
- to make SES officers more accountable for performance; and
- to introduce performance management and performance incentives.

5.4 This policy makes a number of assumptions which are addressed only briefly in this report but which are worthy of closer consideration: that the APS has difficulty in attracting or retaining high quality staff; that remuneration is a major factor in attracting or retaining such officers; that remuneration is a performance motivator; that levels of productivity can be ascertained; and that performance can be attributed reliably to a given officer.

1 DEWRSB, *Submissions Volume 1*, p. 80.

Findings of the DEWRSB remuneration survey

5.5 As the committee noted in the previous chapter, the only information about remuneration negotiated for APS officers under AWAs is that gleaned from an SES remuneration survey of agencies, commissioned by DEWRSB. The survey is voluntary and, while it covered 97 per cent of the SES, one major agency, DOFA, and a number of small agencies did not participate.² Further, no check is made of the accuracy of the information provided by agencies.³

5.6 DEWRSB published selected 1999 survey findings in their Key Performance Indicators (KPI) Online, including the following information broken down by SES Band level: number of individuals; base salary; total remuneration package; actual incentive; and total reward. Both averages and medians were given in each case, along with the percentage increase over the preceding year.

Base salaries

5.7 The survey findings provided to the committee were much more revealing than the ones presented in KPI Online. For example, decentralisation of the APS has resulted in a significant widening of salary band ranges. SES Band 1 salaries ranged from a low of \$68,228 to a high of \$112,888; Band 2 from \$84,493 to \$130,000; and Band 3 from \$93,403 to \$163,200. This represents differential salary ranges for Band 1 of \$44,660; for Band 2, \$46,507; and for Band 3, \$65,797. Thus the salary levels for senior executives in the same band, the value of whose work is considered to be equal before any performance criteria are considered, can now vary by up to \$65,797.

5.8 The differentials for each band are widening exponentially: the difference between the upper and lower points in the salary range for Band 3 officers (being the most senior level under the secretary or chief executive) in 1996 was \$26,643; in 1998, \$44,504; and in 1999, \$65,797.⁴

5.9 The average base salary movements from 1998 to 1999 are: for Band 1, 3.6 per cent; for Band 2, 4.3 per cent; and for Band 3, 7.5 per cent. This suggests that, with the exception of the top, or Band 3, executives, the base salary movements are on a par with those negotiated under certified agreements.

Total reward

5.10 The DEWRSB-commissioned survey indicated that for 1999, the median sample on sample increase in 'total reward' (defined as base salary, superannuation, motor vehicle, other fixed benefits and incentive payments) had increased over 1998

2 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 29.

3 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 22.

4 DEWRSB, *APS SES Remuneration Survey*, Revised version, April 2000, p. 8.

levels by 3.7 per cent for Band 1 officers, by 2.8 per cent for Band 2 officers and by 7.2 per cent for Band 3 officers.

5.11 Broadly speaking, this supports the unions' view that pay increases are not exceeding those achieved under collective bargaining. This is attributed by the CPSU to the fact that agencies recognise that the nature of public service employment is not compatible with widely divergent salaries between staff performing the same work, or working in teams.⁵ But there are exceptions, primarily linked to performance bonuses. And it is the exceptional payments, unsupported by public disclosure of what was done to merit them, that causes the committee some concern.

Bonus payments

5.12 As noted in a recent ANAO report, performance-linked remuneration usually takes the form of either:

- performance-linked advancement - an ongoing payment generally at a high pay point which becomes the employee's nominal salary; and
- performance-linked bonuses (commonly termed performance pay) which usually take the form of a one-off bonus payment in recognition of performance but which do not become part of the employee's nominal salary package.⁶

5.13 In this section the committee examines the latter.

5.14 The exact percentage of APS AWAs which allow for the payment of performance bonuses is unknown and because of the secrecy surrounding AWAs, such information as is available is indicative only. Eighty-four per cent of agencies which took part in the DEWRSB-commissioned 1999 remuneration survey reported that they provided 'performance-based incentives' for their SES officers.⁷ The committee is aware that non-participants in the survey, such as DOFA, also provide for bonus payments under their SES and other AWAs. Other agencies, such as Defence, make a virtue of not doing so.

5.15 As the survey disclosed, 58 per cent of officers from the participating agencies received an incentive payment. Average actual incentive payments ranged from \$5,921 for SES Band 1 officers (up 25.6 per cent on 1998) to \$10,864 for Band 3 officers (up 39.1 per cent on 1998).⁸ Because not all officers received incentives, it is not possible to calculate what percentage of total reward the incentive payments represent. Statistically, however, the fact that all median payments were beneath

5 CPSU, *Submissions Volume 1*, p. 37.

6 ANAO, *Certified Agreements in the Australian Public Service*, Audit Report No. 13, 2000-2001, p. 128.

7 DEWRSB, *APS SES Remuneration Survey*, Revised version, April 2000, p. 12.

8 DEWRSB, *Key Performance Indicators Online – March 2000*, p. 7.

average payments implies a clumping of payments at the lower dollar end counterbalanced by fewer, but larger payments. Mr Rex Hoy of DEWRSB confirmed that bonus payments ranged up to 38 per cent of base salary.⁹ Using the lowest base salary reported for a Band 1 officer and the highest paid to a Band 3 officer, this bonus was between \$25,926 and \$62,016.

5.16 Some further information based on the survey was provided by Ms Lyn Tacy, Deputy Secretary of DEWRSB. She indicated that since 1998, median incentive payments increased by 13 per cent, a trend 'consistent with the private sector trend towards increased use of incentive rewards'. Further, the proportion of incentive payment to total remuneration was modest, ranging from 4.8 to 6 per cent across the SES bands.¹⁰

5.17 The committee explored the use of performance pay in a selection of APS agencies. Mr Alan Henderson, of the Department of the Prime Minister and Cabinet (PM&C), outlined aspects of that department's practices. In 1998-99, 15 out of 44 SES officers received performance bonuses, amounting to in total \$119,830. No cap was set by the department on the dollar amount or number of employees to be rewarded. To guard against nepotism, a senior executive group of the department reviewed all proposed bonuses. Performance criteria which are seen to relate meaningfully to the tasks of senior PM&C officers are: achieves results; cultivates productive working relationships; shapes strategic thinking; communicates with influence; and exemplifies personal drive and integrity. Mr Henderson stressed that the department took care to reassure staff that prominence through high profile tasks did not equate to high performance ratings.¹¹

5.18 However, refinements are planned for the future. A five-point rating scale is proposed, with differential bonuses for persons ranked three or above. The department proposes to extend performance bonuses to executive level 2 staff but following staff disquiet at the linkage of appraisal with pay, not beneath that level.¹²

5.19 Defence, on the other hand, uses an increment-based pass or fail assessment of its SES. Executives who pass on their annual performance assessment go up an increment equal to 4.5 per cent of salary until they reach the top of their salary band, while those who fail can be regressed. Assessments are not published, though Mr Paddy Gourley speculated that the grapevine worked well. Secretary Dr Allan Hawke stressed that the system was transparent in that everyone in the department knew the pay bands for the SES.¹³

9 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 42.

10 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 30.

11 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, pp. 52-61.

12 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 58.

13 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 71; 5 May 2000, p. 138.

5.20 Environment Australia's AWAs (which extend to SES officers only) have a performance pay component of between five and 17 per cent of salary; most SES officers received some performance payment in the last round if they met certain prescribed standards, though less than five per cent got the maximum amount. Again, no preset percentage was allocated to each rating; and the actual amounts of performance pay were kept confidential.¹⁴

5.21 The committee was told that most Treasury SES received performance pay, in a system that had two elements: a grading up to 15 per cent; and an adjustment of a similar order to base salary for a six-monthly period if the performance was expected to be ongoing. A deliberate design feature of the Treasury system is that the performance management system enables staff to identify what others are being paid.¹⁵

5.22 The Department of Finance and Administration provides performance bonuses to reward staff at all levels for performance which is competent or better. DOFA officers told the committee that over 95 per cent of staff in the organisation had received performance bonuses in the last round. Ms Sullivan indicated that for staff on AWAs there is no cap on the performance payments: 'It is whatever the individual negotiates.'¹⁶ A high-level remuneration committee, headed by the secretary, oversees the outcomes to ensure against 'extreme examples' and the results are confidential. Ms Morawska-Ahearn stressed that Parliament could scrutinise DOFA's remuneration payments through the aggregate performance pay figures published in the annual report.

5.23 In other agencies, such as the Office of Parliamentary Counsel, performance pay for both the SES and lower levels has been tried, and abandoned on the grounds that there was no evidence that it motivated people to work harder or better. On the contrary, there was evidence that it tainted the performance management process.¹⁷

The rationale for performance pay

5.24 Following the change of Government in 1996, a discussion paper, *Towards a Best Practice Australian Public Service*, was issued by Minister Reith. Its general thrust was the development of a 'performance culture' in the APS:

The Government believes that Agency Heads should decide, and be publicly accountable for, the application of [performance related pay] arrangements within their agencies subject to overall budget parameters set by government. There is a need for greater flexibility in the way agencies recognise and reward performance, both through tangible and non-pay

14 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, pp. 68-69.

15 Treasury, *A Performance Management System for Treasury*, December 1999.

16 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 212.

17 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, 172.

rewards. The Government supports greater experimentation and sharing of experience in how best to reward outstanding team performance or individual goal achievement.¹⁸

5.25 The current remuneration regime, which developed following the introduction of the *Workplace Relations Act 1996* and the DEWRSB Policy Parameters for Agreement Making, is significantly different to that which pertained a decade ago when supplementation was provided to departments.

5.26 As Dr Shergold, DEWRSB secretary, told the committee:

Performance pay ... can cover a wide range of different relationships between the management of performance and how it is reflected in salary. For example, a number of agencies – I think most – link annual advancements in salaries now to performance. Other agencies allow for accelerated advancement through salary rungs on the basis of performance.¹⁹

5.27 He went on to describe other methods of structuring rewards - a salary increase on the basis of an annual performance review, one-off bonuses or a combination of two or three different approaches.

5.28 The committee is broadly supportive of the approach that salary increments, at whatever level, should not be paid automatically but should be awarded only following a review of performance in a transparent process. It does not regard such a practice as ‘performance pay’ in the generally accepted sense of that expression. Accelerated advancement through pay points might be a different matter, as might skills and responsibilities loadings. It is unclear how widely used these practices are, but they are certainly matters which warrant further attention at another time.

5.29 It has been argued that it is inappropriate to single out one aspect of remuneration for special attention, without considering its place in the whole remuneration framework. While acknowledging that there are broader issues involving total remuneration that are worthy of consideration, the committee believes that performance pay is of quite specific interest in itself. The committee’s starting point is that Parliament has a right to know how public money is being used. Covert payments have no place in a public service. Parliaments have to judge agencies not only against their achievement of outcomes but also as to how appropriately they have used the public funds allocated to them to conduct their affairs to progress towards those outcomes.

18 Minister Reith, *Towards a Best Practice Australian Public Service*, Discussion Paper, November 1996, p. 21.

19 Senate Finance and Public Administration References Committee, *Hansard*, 18 February 2000, p. 16.

Attracting and retaining staff

5.30 DEWRSB indicated in its submission that the objective of reforms to SES remuneration generally was to enhance the capacity of the APS to attract and retain high quality personnel to its SES ranks and to reward high performance.²⁰ In the committee's view, the APS has been remarkably successful in attracting and retaining high quality senior officers who have assisted its work greatly.

5.31 The evidence on the role of remuneration generally in the public service is equivocal. A number of witnesses suggested that pay was not a major factor in attracting people to the APS. Former departmental secretary Mr Tony Blunn posited that factors such as the opportunity to do interesting work, to help the community, to do work that was important, and in an exciting environment, were more significant.²¹ Ron Brent of ScreenSound Australia indicated, 'my staff work where they do because of a real passion about what they do'.²²

5.32 The effect of remuneration on retaining employees may be a different matter. But disaggregating the effects of different aspects of remuneration such as performance pay, from other monetary incentives, such as retention bonuses and skills loadings, is not easy. And the non-monetary incentives which may have attracted staff to the APS in the first place cannot be discounted as factors in retaining them in the service. As the Deputy Public Service Commissioner, Mr Peter Kennedy, indicated, 'a lot of people join the Public Service because they see it as important work that they want to do. Everything else being equal, they are quite likely to stay.'²³ A similar view was voiced by Mr Gourley of Defence:

...in terms of either recruitment or retention, pay is well down on the list of factors that will bring people in, or enable the organisation to hang on to them ... if [remuneration] is grossly inadequate, it will have an effect but, if it is broadly in the ballpark, of what people would regard as being fair and reasonable, other factors are a much greater influence on an individual's motivation ...²⁴

5.33 Research findings, while quite varied, tend on the whole to downplay the significance of performance pay as a motivator for the public sector in general, though questions have been raised as to whether it may operate differently on employees at different employment levels and at different stages of their careers.

5.34 The Community and Public Sector Union (CPSU) questioned the assumption that monetary bonuses were a significant motivator for APS employees. It suggested

20 DEWRSB, *Submissions Volume I*, p. 80.

21 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 161.

22 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 177.

23 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 155.

24 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 68.

that in choosing a career in the senior levels of the APS, SES employees accepted that the financial rewards would not match those available elsewhere and would derive satisfaction from performing well and providing a public service. Performance pay was ‘more likely to cause offence than to provide motivation’.²⁵

5.35 It may well be that the capacity to attract and retain generalists in the APS is not at issue but that specialists present a challenge. Treasury Secretary Mr Ted Evans made the point that performance pay was critical for a certain group of staff, namely those readily attracted to higher pay in the private sector. He indicated that, while Treasury was still losing staff to the private sector, it was doing so less than in the past. He went on to explain:

In some cases we have used AWAs to do that. That is the most important part of AWAs as far as we are concerned - that it gives us the ability to pay people who may be at risk in that sort of circumstance who have skills that we do not think we could readily duplicate, at least in the short term.²⁶

5.36 Defence also regarded performance pay as being likely to assist in holding on to people rather than attracting them.²⁷ Environment Australia suggested that its recent recruitment experience was that most applicants expected the agency to have a performance pay system; however, EA concentrated on making its total remuneration package attractive as a means of positioning itself in the market.²⁸

5.37 DOFA was another department to discuss the marketability of its staff to other areas of the public sector and the private sector. It cited a staff turnover level of about 22 per cent per annum, which it stated was consistent with the finance sector but high for the APS.²⁹ From figures provided in the *State of the Service Report* for 1998-99, the committee calculates that the ‘separation’ rate of permanent officers across the APS was 13.4 per cent,³⁰ confirming that the DOFA separation figures were noteworthy. DOFA suggested that it was probably a result of officers wishing to experience life in a central agency and then move on.³¹

5.38 This is an admirable role for all central agencies, and one that might usefully be formalised by way of performance indicators proposing a regular level of inter-agency mobility for staff developmental purposes, for the good of the APS as a whole. The existence of a formal mobility scheme would alleviate some of the concern

25 CPSU, *Submissions Volume 1*, p. 37.

26 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 67.

27 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 68.

28 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 68.

29 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 201.

30 Public Service and Merit Protection Commission, *State of the Service Report*, 1998-99, pp. 8-9.

31 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 203.

arising from the increasing use of 'retention' bonuses, an entitlement that, on the surface at least, does not seem to be in the interests of a career service.

5.39 The committee is of the view that if remuneration is not set at an appropriate level for APS positions to be attractive to specialists, this should be addressed by confronting openly the question of pay rates, not by awarding secret bonuses.

Rewarding high performance differentially

5.40 As noted before, the public sector workplace relations reforms were designed in part to motivate and reward higher productivity and performance and to make SES officers more accountable for performance. This presupposes that overall productivity can be measured, that the level of an individual's contribution to organisational goals can be assessed fairly, and that the rewards, in whatever form they take, are valued.

5.41 In terms of measuring overall agency productivity, a recent ANAO report into certified agreements suggested that many of the agencies surveyed did not have systems in place to determine whether productivity gains had occurred.³² The Auditor-General singled out two agencies for praise, the Australian Taxation Office and Centrelink, both of which are huge service delivery agencies whose activities, in part because of their scale, are more susceptible than most to quantifiable productivity measurement.

5.42 In terms of individual senior officers in agencies whose operations have less tangible outputs, the question remains as to the robustness of the links between performance and remuneration. As Mr Gourley of Defence explained to the committee, 'policy advice in particular is composite in its preparation, and it is not easy to assess the contribution of individuals to the final piece of advice that goes forward'.³³ When the pay outcome is known only to the appraiser and the appraisee, the fairness of the process can only be guessed at. However tightly performance is assessed against established criteria, the process is still subjective.

5.43 The best defence against accusations of bias or malpractice is openness. Openness about pay outcomes also has the advantage of displaying for all to see what behaviours are valued in the organisation and of providing a relative assessment of officers' performance. The committee applauds the stance of Treasury, whose management model is founded on openness for employees, whatever their form of workplace agreement:

Staff will be able to obtain copies of Job Statements for any roles. This will apply to all employees whether employed under AWAs or the Certified Agreement.

32 Australian National Audit Office, *Certified Agreements in the Australian Public Service*, Audit Report No. 13, 2000-2001, Chapter 3.

33 Senate Finance and Public Administration References Committee, *Hansard*, 14 April 2000, p. 63.

Openness about pay outcomes will signal to staff what is valued, provide discipline to fair management decisions consistent with Treasury's expressed values, and give credibility to management processes.³⁴

5.44 The committee noted with interest that even those executives who discounted the motivational value of performance pay in some cases used it in their organisations. Commonwealth Ombudsman Mr Ron McLeod, while admitting the difficulty of rewarding members of a closely-knit and highly-achieving team differentially, stated, 'I have no illusions about performance pay being a motivator; I do not believe it is, at least in my organisation'.³⁵ He went on to suggest, however, that it might be more applicable in public sector organisations with a strong business focus or in policy departments with a more elitist culture which might cope better with the concept of differential pay for performance.

5.45 Mr McLeod may be right about the differential acceptability levels of performance incentives within the public service. But as a matter of principle, the committee unanimously supports the position enunciated so clearly by the committee in its previous reports and by Dr Hawke of Defence on this occasion:

I do not approve of performance pay and do not have it in the organisations that I am in.³⁶

Performance appraisal

5.46 In its public hearings process, the committee encountered widespread support for performance appraisal as an end in itself. Mr Ron Brent, Director of ScreenSound Australia, spoke for many when he suggested that performance improvement through performance appraisal, and performance pay through performance appraisal 'are entirely separate and conflicting concepts'.³⁷ The crucial factor appears to be the level of staff acceptance of the assessment process.

5.47 Views on the linkage of appraisal and performance pay were more equivocal. One approach was the view that the value of the appraisal process would be lost if money were at stake; at the other end of the spectrum was the view that without the pay linkage, appraisal would not be treated seriously.

5.48 The committee finds it curious that an agency head would not be able to ensure, through SES officers, that performance appraisal processes are conducted professionally throughout the agency without resorting to a link to pay. After all, one of the key reasons for using AWAs is to promote cultural change.

34 Treasury, *A Performance Management System for Treasury*, December 1999, p. 15.

35 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 180.

36 Senate Finance and Public Administration References Committee, *Hansard*, 5 May 2000, p. 141.

37 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, p. 175.

5.49 One chief executive to discuss the appraisals process with the committee was Ms Hilary Penfold, First Parliamentary Counsel. Ms Penfold described the difficulties she faced in providing useful appraisals to ten or more SES officers whose work she did not supervise closely. She concluded that too much work was involved in producing a defensible set of figures to explain why some people were getting performance pay and some were not. The point of the feedback was lost when dollars were attached.³⁸

5.50 On the basis of the findings to date from University of NSW research, Dr Michael O'Donnell concluded that the limited motivational impact of performance pay was a result of the widespread concern regarding the fairness of the performance appraisals. He cited other research highlighting the subjectivity of the process and the perception that the employees rewarded under performance pay schemes were those with political skills and ingratiating personalities, rather than those who had genuinely demonstrated quality work performance.³⁹

Remuneration and its reporting in some state jurisdictions

Victoria

5.51 Executive employment policy in Victoria is currently under review, with a report expected in February 2001 tipped to advocate major change. The situation at present is that a standard contract between the executive and employer governs executive employment; total remuneration for all executives is within three broad bands as approved by the Public Employment Minister, who approves employment and employment remuneration and conditions for the top, or Band 1, executives; agency heads approve employment and employment remuneration and conditions for the lower executive bands. The Victorian Public Service 'does not aim to be a leader in the executive remuneration market'⁴⁰; bottom of the range Band 3 executive remuneration, effective 1 July 1999, was \$84,542; top of the range for Band 1 executives, such as departmental secretaries, was \$337,424.

5.52 All executives are eligible for annual performance bonuses of up to 20 per cent of total remuneration. A four-point rating scale applies: a rating of 1 indicates 'improvement required' and attracts no bonus; 2 equals 'competent' and no bonus; 3 equals 'superior' and attracts a bonus of up to 10 per cent of total remuneration; 4 is 'exceptional' for a bonus of between 11 and 20 per cent and is only awarded when the executive exceeds the requirements of all criteria and far exceeds expectations on the most critical areas. The Premier's approval is required for payments above 15 per cent. Executive performance reviews are conducted and ratings agreed, generally in July of each year, and proposed bonus payments are subject to the confirmation of an

38 Senate Finance and Public Administration References Committee, *Hansard*, 23 June 2000, pp. 173-174.

39 Senate Finance and Public Administration References Committee, *Hansard*, 5 May 2000, p. 119.

40 Industrial Relations Victoria, *Executive Remuneration Handbook*, 1999, p. 4.

agency remuneration committee. Any bonuses are paid annually and can be taken in the form of cash or a superannuation contribution.

5.53 The annual reports contain certain information on executive officers' remuneration in the notes to the financial statements. The numbers of executives whose total remuneration exceeded \$100,000 during the reporting period is provided in ten thousand dollar bands, as are the comparative numbers in similar bands for the relevant base salary. Comparative information is provided for the previous year. As total remuneration includes accrued leave entitlements, however, it can be a poor indicator of the level of bonus payments. In addition, the remuneration received by the 'accountable officer' – that is, the chief executive, however titled - is provided for the review year and preceding year.

New South Wales

5.54 Senior executives in the New South Wales public service are appointed by the Governor on the recommendation of the department head; they are employed under an employment contract with that chief executive. Chief executive contracts are with the relevant minister. The Statutory and Other Offices Remuneration Tribunal determines the broad remuneration ranges, while the exact remuneration of a chief executive is established in negotiation with the relevant minister. The Tribunal also determines the range of performance pay for each level of the SES. In its determination dated 28 August 1998, covering the period up to 30 June 2000, the maximum amount of performance pay for a level 1 officer was set at \$7,000 while the maximum for a level 8 officer was \$20,000. The performance pay was to apply to those officers 'where it has been certified by the Minister or the Department Head, through performance review systems, that the officer's performance has been evaluated as very satisfactory, superior or outstanding'.⁴¹

5.55 An executive's performance must be reviewed at least annually by the officer's employer or nominee, having regard to the agreed performance criteria.⁴² Annual reporting legislation requires the inclusion of a statement on the performance of each executive of level 5 or above in the agency's annual report.⁴³

5.56 The NSW Audit Office recently conducted a compliance review of CEO contracts which found, amongst other things, that the contracts of four Chief Executive Service CEOs did not include a formal performance agreement, yet despite this, two were paid a performance bonus. Fifty-eight CEOs, regardless of whether performance agreements and appraisals were in place, received a bonus payment; one

41 Statutory and Other Offices Remuneration Tribunal, *Determinations of the Remuneration Packages of the Chief Executive Service and the Senior Executive Service*, Report 9, 1998.

42 *Public Sector Management Act 1988 (NSW)*, s. 421.

43 *Annual Reports (Departments) Regulation 2000 (NSW)*, s. 7.

received an additional four weeks annual leave; and 14 agencies (24 per cent) failed to include the required performance statement in the annual report.⁴⁴

5.57 Following the tabling of the audit report, the Premier issued a memorandum to all Ministers to advise that on 28 August 2000 the NSW Cabinet had determined that in future performance pay would not be available to members of the Senior and Chief Executive Service.⁴⁵

5.58 The compliance audit followed a broader 1998 performance audit report on the NSW SES, which had shown that just over a third of respondents (37 per cent) were eligible for 'merit pay' and of these, 78 per cent had received it. Only 15 per cent valued merit pay as a factor guiding their performance. The findings were based in part on a survey distributed in November 1997 to all CES officers, all SES officers on Level 2 or above and on a random sample of SES Level 1. It attracted a low (36 per cent) response rate, however, casting some doubt on the findings.⁴⁶

Private sector comparisons

5.59 The committee outlined in chapter 4 and noted with approval the detailed information on the composition of the remuneration packages of senior private sector executives that is now being disclosed in annual reports.

5.60 The SES remuneration survey showed that for the year 1999, the APS paid, on average, about half as much in incentive payments as did the private sector for executives earning similar levels of total remuneration. In the case of SES band 3 and equivalents, while average incentives as a percentage of total remuneration amounted to six per cent in the APS, it was 12.5 per cent in the private sector (excluding long-term incentives, share options and the like). A comparative figure was also provided for NSW and Victorian SES, of 9.8 per cent.

5.61 In its own publications, Mercer Cullen Egan Dell (MCED) stresses the increasing importance of executive incentives in today's competitive marketplace. Its surveys show that 91 per cent of organisations have short-term incentive schemes in place for their executives, compared with 62 per cent in 1997; 61 per cent now offer long-term incentives as well. MCED cites the widely held belief that if executives' remuneration is linked to the organisation's returns, they will do all they can to maximise gains for stakeholders.⁴⁷

44 NSW Auditor General, *Report to Parliament 2000*, Volume 4, 2000.

45 NSW Premier's Department Memorandum No. 2000-21, 29 August 2000.

46 NSW Auditor General, *NSW Senior Executive Service*, December 1998.

47 E. Egan, 'When performance pays', 22 September 2000, Article by MCED's Communications Manager, on website www.ced.com.au/site/article.cfm?article_id=196.

Conclusions

5.62 The committee questions the applicability of the private sector remuneration model to much of the public sector. In general, private sector executives can be expected to show measurable outcomes for their endeavours against which their rewards can be assessed openly. The majority of public servants cannot.

5.63 The committee's starting point on APS remuneration issues is that there must be transparency. The Parliament has enforced transparency on executive remuneration in the private sector; logically, it can expect no less for the public sector. The present level of transparency of public sector remuneration paid through AWAs is, in the view of the committee, inadequate. The numbers of SES managers receiving total remuneration within \$10,000 bands over the \$100,000 threshold is of some value and should continue to be reported in the financial statements of agency annual reports. But the Parliament and the people it represents have a right to know more than this. It is simply inappropriate that a public servant can receive an incentive payment amounting to some 38 per cent of base salary, with no disclosure outside the agency (and probably none within) as to what he or she has done to merit such a reward. The potential for fraudulent misuse of public money is far too great to let such a situation continue unchallenged.

5.64 The NSW Auditor-General's report on that state's CEOs and executive service provides concrete examples of what this committee sees as potential risks if accountability is not accorded a higher priority in the APS.

5.65 The committee notes that views and practices on remuneration in general, and on performance pay in particular, are not uniform across the APS. Major agencies such as Defence do not support bonus payments; Treasury uses them to remain competitive but insists on transparency; the Commonwealth Ombudsman uses bonus payments but does not believe in their efficacy. The committee seriously questions whether the divergences in remuneration and conditions which appear to be developing across the APS are in the best interests of a cohesive, career-based APS.

5.66 In the present employment climate, the committee accepts that there may need to be differential remuneration for senior public servants with highly specialised or in-demand skills. It is worth noting here that the long-term practice of publishing differential remuneration between departmental secretaries on work value terms in the reports of the Remuneration Tribunal continues under the *Public Service Act 1999*.

5.67 More accountability is possible without limiting the scope of individual agencies to accommodate special needs. The committee would like to see more formal guidance on acceptable remuneration parameters for specialist categories within the APS. It considers that DEWRSB is well placed to provide such assistance to agencies, in the same way that the Remuneration Tribunal now provides advice on secretaries' conditions to the Prime Minister.

5.68 The committee does not believe that one-off individual performance bonuses have any place in a public service, particularly when they are secret. It believes that in

the majority of public service activities individual performance cannot be assessed with sufficient rigour and fairness to warrant linkage to an individual reward.

5.69 The committee has expressed this view several times in previous reports, although to little effect as performance pay continues to flourish. It is aware that the current fashion is to focus on outcomes, not dwell on inputs. Nonetheless, the committee still believes that the cost and performance of the public service is a vital element in the effective delivery of outcomes and must be open to scrutiny. Performance pay is an area where accountability is of particular necessity.

5.70 Agency pay rates should be adequate compensation for satisfactory, or competent, performance. It is evident that some agencies award bonus payments for staff assessed as 'competent' at their work. If bonus payments are to be awarded at all, they must be for outstanding individual or team service, not for achieving what is expected of all APS employees.

5.71 The committee is particularly opposed to uncapped bonus payments. In April 2000 the Prime Minister issued a determination which set a limit to the performance bonus payable to a departmental secretary for superior performance (10 per cent) and outstanding performance (15 per cent), continuing the previous limitation applied by the Remuneration Tribunal. Similar limits do not apply to SES or other ranks in the APS unless the agency chooses to apply them.

5.72 The committee acknowledges that there will be instances where a public servant's contribution is so outstanding that it demands public recognition. There are already established honours, such as the Public Service Awards and some agency-sponsored schemes that give public recognition to excellence. These have the committee's full support, as they are open, valued, send appropriate signals as to what is esteemed, and meet the Government's desire for recognition of high performance. The committee would not be opposed to monetary reward in association with such public recognition.

5.73 In all of these matters, there must be more adequate disclosure of all remuneration payments than exists at the moment. The committee is at pains to point out that while it does not want to see public sector remuneration constrained by past 'one size fits all' solutions, it wants decisions and outcomes to be reported openly, fully and fairly. In the committee's view, the privacy concerns of individuals are outweighed by the public good of transparency in the use of public money.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

Introduction

6.1 The committee's first principle in relation to APS employment matters is that there must be transparency. The Public Service Act requires the APS to be openly accountable to the Government, the Parliament and the Australian public. They have a right to information about how public resources are expended. It is the most necessary prerequisite to any examination of whether there is efficient, effective and ethical use of public resources.

6.2 Australian workplace agreements are a relatively recent occurrence and have been used in the Australian Public Service for less than five years. In that time, there has been a shift from their use only within the Senior Executive Service to, in some agencies, AWAs being on offer to all employees. Yet a commensurate advance in knowledge of their content, cost and effect has not accompanied their increasing presence. This information gap can be attributed to conditions of confidentiality that are maintained by agencies, to a lack of central responsibility for information gathering, and to inadequate reporting requirements.

6.3 The recent overhaul of the legislative base of the Australian Public Service sought to articulate the principles, values and ethical standards, which underpin the Service. The *Public Service Act 1999* sets out these defining characteristics as the APS Values. Among them are affirmations that the APS is openly accountable for its actions, promotes equity in employment and is a career-based service.

6.4 The committee is not satisfied that these principles are being advanced by the way AWAs are being used in the APS. This chapter sets out the committee's major areas of concern and makes recommendations in relation to each.

Confidentiality

6.5 It is the committee's view that the level of confidentiality of AWAs maintained by agencies is inappropriate for the Australian Public Service. Publication of the contents of AWAs is the biggest single step towards bridging the information gap.

6.6 The committee found that there is some misunderstanding of the confidentiality requirements relating to AWAs, with a common belief that it is illegal to disclose the contents of an AWA. There is nothing in the Workplace Relations Act which prevents either party to an AWA from disclosing its contents to whomever they wish. Indeed, confidentiality clauses within AWAs are specifically prohibited. Maintaining confidentiality of AWAs in the APS, on the part of the employer, appears

to be a matter for decision by individual agencies. It is within the prerogative of the employer to reject confidentiality, as a matter of policy and practice, and publish its AWAs.

6.7 Arguments that AWAs should not be published because they contain personal information are specious. Genuinely personal information such as private addresses can easily be deleted for publication. The public benefit in disclosure of the conditions and remuneration going to public employees outweighs superficial privacy concerns.

6.8 The committee would like to see a consistent level of transparency applying to all forms of agreement making in the APS. There are already principles of transparency that apply to other forms of agreements and determinations. For example, when an agency head is appointed, the Prime Minister's or Minister's determination of remuneration and conditions must be published in the Gazette. Certified agreements are also publicly available documents that can be obtained through the Australian Industrial Relations Commission and are often published on individual agency websites. The committee sees no compelling reason for APS AWAs not to follow the same principle.

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.

Central responsibility for information gathering

6.9 The committee's examination of AWAs revealed an environment that is not 'devolved' so much as one which affords agency heads sufficient authority to determine independently employment matters for their agencies without reference to a central authority. They act on behalf of the Commonwealth. What has been lost in the devolution process is a service-wide perspective. The current environment sees agencies attempting to compete with each other, and the private sector, in terms of remuneration and conditions offered under AWAs. Yet agencies appear to have no reliable way of gauging what a competitive offer might be, as there is no central repository of knowledge about APS AWAs which is comprehensive and accessible.

6.10 Service-wide information is currently collected and provided on an almost casual basis. Demand comes from various sources and there does not appear to be any strategic plan. The SES remuneration survey was conducted at the request of a group of departmental secretaries to meet their own needs. A subsequent survey of pay outcomes of non-SES staff was also initiated within the APS. The coordinating agency for these surveys, DEWRSB, has no access to the AWAs of other agencies. The voluntary inclusion of agencies in the first survey and the random inclusion of

AWA information in the second means that the quality of each is less than desirable for research or accountability purposes. In the committee's view, it is unacceptable that it is open to a major agency such as DOFA to opt out of any survey on APS remuneration, thus distorting the findings.

6.11 Some data from CAs and AWAs is provided in annual reports. However, this data is highly aggregated, a common cause of complaint by Parliamentarians attempting to examine service-wide trends and implications and the performance of the APS and individual agencies.

6.12 The Public Service Commissioner's responsibilities include evaluating the extent to which agencies incorporate and uphold the APS Values and to develop, promote, review and evaluate APS employment policies and practices. Information about the negotiation and use of AWAs in the APS would be an important element in the scrutiny of these processes, yet the Commissioner has no direct access to APS AWAs.

6.13 DEWRSB's current approach has provided interesting information and has responded to some needs identified by the APS. However, a more strategic approach is needed to provide accountability, continuity and enable trends to be monitored. Information about AWAs must be matched and compared with the parallel certified agreements, otherwise, only a partial picture of APS employment emerges.

6.14 At present, there is no agency with responsibility for gathering and holding information in relation to the content of APS AWAs, remuneration rates being offered, aggregated information across agencies and the whole APS, or comparative information in relation to other public sectors and the private sector. Such a resource would be invaluable to properly evaluate the position of the APS and individual agencies, to detect service-wide trends over time, to evaluate the effectiveness of changes to the APS employment framework in bringing about Government objectives - and to keep the APS in line with them. It would also serve to build an important historical record.

6.15 The only agency with anything approaching a comprehensive database of AWAs is the Office of the Employment Advocate. In the committee's view, it is utterly unacceptable that the information held by this agency is not available to other arms of the APS, particularly DEWRSB and the PSMPC. Under the provisions of the Workplace Relations Act, it is open to the Government as the ultimate employer, through agency heads, to authorise the OEA to release copies of APS AWAs to DEWRSB and the PSMPC. This would enable DEWRSB to provide a more rigorous information program about devolved agreement-making in the APS and improve the quality of reporting on APS remuneration. It would also enhance the Public Service Commissioner's ability to perform her statutory reporting role and open the way for monitoring AWAs as a distinct management tool.

6.16 The OEA's research access program, which allows academic and other researchers access to some AWA material for the APS, is inadequate and flawed in its

sampling technique. The committee recognises that the OEA must balance resource considerations in granting research access to AWAs, but considers the methodology likely to misrepresent the full population of AWAs. Given that the OEA is the only source of information about AWAs in the APS that has full access to all approved documents, this is particularly significant.

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.

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.

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.

Recommendation 5

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

Accountability and reporting requirements

6.17 DEWRSB advised the committee that the Government aims 'to ensure robust mechanisms of accountability to the Government and the Parliament' and asserted that the responsibility of agencies to manage their own workplaces is balanced with accountability requirements under the new framework.

6.18 While it is true that some accountability measures are in place under the new APS employment framework, the committee has difficulty seeing that those relating to the process of making AWAs could be described as robust or an appropriate balance. AWAs are made between secretaries and public servants in their departments. The framework for establishing and approving these individual agreements involves no external scrutiny to ensure consistency with the APS Values or other ethical standards, or that the rewards to individuals are fair or within acceptable limits.

6.19 No information is available about the costs of administering AWAs, or devolved agreement-making more generally; nor are agencies' estimates of costs arising from their collective and individual agreements scrutinised by DOFA for accuracy and ongoing affordability. The establishment of high quality, rigorous performance indicators, targets or measures on which to base individual pay and rewards is another area that should be more transparent.

6.20 The committee does not seek to have public sector remuneration practices wound back in time to conform to past 'one size fits all' solutions. It was clear from witnesses that agencies value the added flexibility to determine employment matters that suit their own circumstances. The committee wants decisions and outcomes to be reported openly and fully and its firm view is that both are achievable.

6.21 The present level of transparency of public sector remuneration paid through AWAs is inadequate. The Parliament has enforced transparency on executive remuneration in the private sector; logically, it can expect no less for the public sector. It is unacceptable that a lower level of disclosure is required of the Australian Public Service.

6.22 The numbers of SES managers receiving total remuneration within \$10,000 bands over the \$100,000 threshold is of some value and should continue to be reported in the financial statements of agency annual reports. It is unacceptable that public servants who are specialists or non-SES officers, but whose remuneration is above the \$100,000 threshold, are not included in the current reporting requirements.

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.

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.

Performance pay

6.23 The committee does not believe that one-off individual performance bonuses have any place in a public service, particularly when they are secret. It believes that in the majority of public service activities individual performance cannot be assessed with sufficient rigour and fairness to warrant linkage to an individual reward.

6.24 The committee has expressed this view several times in previous reports, although to little effect as performance pay continues to flourish. It is aware that the current fashion is to focus on outcomes, not dwell on inputs. Nonetheless, the committee still believes that the cost and performance of the public service is a vital element in the effective delivery of outcomes and must be open to scrutiny. Performance pay is an area where accountability is of particular necessity.

6.25 Agency pay rates should be adequate compensation for satisfactory, or competent, performance. It is evident that some agencies award bonus payments for staff assessed as 'competent' at their work. If bonus payments are to be awarded at all, they must be for outstanding individual or team service, not for achieving what is expected of all APS employees.

6.26 The committee is particularly opposed to uncapped bonus payments. In April 2000 the Prime Minister issued a determination which set a limit to the performance bonus payable to a departmental secretary for superior performance (10 per cent) and outstanding performance (15 per cent). These limits were previously in place under a determination of the Remuneration Tribunal, yet similar limits do not apply to SES or other ranks in the APS unless the agency chooses to introduce them.

6.27 The committee acknowledges that there will be instances where a public servant's contribution is so outstanding that it demands public recognition. There are already established honours, such as the Public Service Awards and some agency-sponsored schemes that give public recognition to excellence. These have the committee's full support, as they are open, valued, send appropriate signals as to what is esteemed, and meet the Government's desire for recognition of high performance. The committee would not be opposed to monetary reward in association with such public recognition.

6.28 The committee is concerned by the reduction in the disclosure levels required in the financial statements to the effect that the Finance Minister's Orders no longer require agencies to report separately on the aggregate amount of performance payments made in a financial year.

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 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.

Recommendation 11

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

Senator George Campbell

Chairman

APPENDIX A

LIST OF SUBMISSIONS

1. Australian Sports Commission
2. Community and Public Sector Union
3. Professor Richard Mulgan
4. Merit Protection and Review Agency
- 4A. Merit Protection Commissioner
5. Department of Employment, Workplace Relations and Small Business
6. Mr Denis Ives, AO
7. Dr John O'Brien and Dr Michael O'Donnell
- 7A. Dr John O'Brien and Dr Michael O'Donnell
8. Dr Patty Renfrow
9. Australian National Audit Office
10. The Treasury
11. Department of the Environment and Heritage
12. Department of Defence
13. Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union
14. Australian Council of Trade Unions
15. Institute of Public Administration, Australia (ACT Division)
16. Public Service and Merit Protection Commission
17. Mr Paul Riggs
18. Department of Finance and Administration
- 18A. Department of Finance and Administration
- 18B. Department of Finance and Administration
19. Department of Education, Training and Youth Affairs

APPENDIX B

PUBLIC HEARINGS AND WITNESSES

Friday, 18 February 2000, Canberra

Australian National Audit Office

Mr Patrick Barrett AM, Auditor-General
Ms Amanda Brown, Audit Manager
Mr Michael Lewis, Executive Director

Department of Employment, Workplace Relations and Small Business

Dr Peter Shergold, Secretary
Ms Kate Bosser, Acting Group Manager, Workplace Reform Group
Ms Viveca Moodie, Team Leader, Age Workplace Relations Team
Ms Michalina Stawyskyj, Assistant Secretary

Public Service and Merit Protection Commission

Ms Helen Williams, Public Service Commissioner
Mr Alan Doolan, Merit Protection Commissioner
Mr Peter Kennedy, Deputy Public Service Commissioner
Mr Jeffrey Lamond, Team Leader

Friday, 14 April 2000, Canberra

Department of Employment, Workplace Relations and Small Business

Ms Lynne Tacy, Deputy Secretary
Ms Kate Bosser, Acting Group Manager, People and Performance Management
Mr Rex Hoy, Group Manager
Mr Roger Tarlinton, Director, Australian Government Employment Remuneration and Conditions Team

Department of the Prime Minister and Cabinet

Mr Alan Henderson, Executive Coordinator, Government and Corporate Group
Mr Richard Oliver, Assistant Secretary, Corporate Support

Treasury

Mr Ted Evans, Secretary
Mr Max Gillard, Specialist Adviser, Workplace Relations
Ms Pamela Henderson, Manager, Human Resources

Environment Australia

Mr Keith Fairbrother, Assistant Secretary, People Management Branch
Ms Marilyn Hopkins, Director, Workplace Strategies Section

Department of Defence

Mr Patrick Gourley, First Assistant Secretary, Personnel Executive
Mr Adrian Wellspring, Director, Civilian Personnel Management Policy

Community and Public Sector Union

Ms Wendy Caird, National Secretary
Mr Doug Lilly, Assistant National Secretary
Mr Matthew Reynolds, National President and Professional Division Secretary
Mr John Stapleton, National Organiser

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union

Mr Michael Nicolaides, Assistant National Secretary

Friday, 5 May 2000, Canberra**Office of the Employment Advocate**

Mr Andrew Dungan, Deputy Employment Advocate
Mr David Rushton, Senior Legal Manager

Dr Michael O'Donnell, School of Industrial Relations and Organisational Behaviour, University of New South Wales (Private capacity)

Mr Paul Riggs (Private capacity)

Department of Defence

Dr Allan Hawke, Secretary
Mr Patrick Gourley, First Assistant Secretary, Personnel Executive

Friday, 23 June 2000, Canberra

Mr Anthony Blunn (Private capacity)

Department of Finance and Administration

Dr Peter Boxall, Secretary
Ms Jenny Morawska-Ahearn, General Manager, Corporate
Ms Barbara Sullivan, Manager, People Strategies Branch
Ms Julia Burns, Branch Manager, Comcar

ScreenSound Australia

Mr Ronald Brent, Director

Public Service and Merit Protection Commission

Mr Peter Kennedy, Deputy Public Service Commissioner
Mr Jeffery Lamond, Team Leader, Staffing, Structures and Performance Team
Ms Jennifer Harrison, Team Leader, Values, Conduct and Diversity Team

Mr Ron McLeod AM, Commonwealth Ombudsman

Dr John O'Brien, School of Industrial Relations and Organisational Behaviour, University of New South Wales (Private capacity)

Office of Parliamentary Counsel

Ms Hilary Penfold PSM, First Parliamentary Counsel

Ms Kristin van Barneveld (Private capacity)

APPENDIX C

APS VALUES

Public Service Act 1999

Section 10 APS Values

(1) The APS Values are as follows:

- (a) the APS is apolitical, performing its functions in an impartial and professional manner;
- (b) the APS is a public service in which employment decisions are based on merit;
- (c) the APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
- (d) the APS has the highest ethical standards;
- (e) the APS is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public;
- (f) the APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
- (g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- (h) the APS has leadership of the highest quality;
- (i) the APS establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace;
- (j) the APS provides a fair, flexible, safe and rewarding workplace;
- (k) the APS focuses on achieving results and managing performance;
- (l) the APS promotes equity in employment;
- (m) the APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
- (n) the APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government;
- (o) the APS provides a fair system of review of decisions taken in respect of APS employees.

APPENDIX D

POLICY PARAMETERS FOR AGREEMENT MAKING IN THE APS (APRIL 2000) ¹

Agreement making in the APS will be subject to the following Policy Parameters. Agency Heads will be responsible for ensuring that their agreements are consistent with them. The Parameters apply to both AWAs and certified agreements, unless otherwise indicated.

Government policy objectives for agreement making

Agencies are responsible for managing relations with their employees consistent with the *Workplace Relations Act 1996* (WR Act).

Certified agreements and AWAs are to:

1. be consistent with the Government's workplace relations policy, including:
 - fostering more direct relations between employers and employees;
 - protecting freedom of association and securing appropriate right of entry;
 - not limiting future agreement making options;
 - providing, within certified agreements, for comprehensive AWAs to be made with staff; and
 - being comprehensive agreements (at a minimum, by displacing existing agreements and wherever possible, awards)
2. be consistent with the Government's APS remuneration policy that improvements to pay and conditions be linked to productivity gains and not to changes in general taxation arrangements
3. be funded from within agency appropriations
4. provide for access to compulsory redeployment, reduction and retrenchment and ensure that:
 - any revision to redundancy provisions, including in an AWA, is not an enhancement of the existing redundancy obligations applying to an agency; and

¹ DEWRSB, *Supporting Guidance for the Policy Parameters*, April 2000, pp. 18-19.

- any separate financial incentives to resolve major organisational change are to be cost neutral to the agency in the context of that change and subject to the approval of the Agency Minister, in consultation with the Public Service Minister
5. facilitate mobility and maintain a cohesive APS by:
- maintaining the APS classification structure (with the ability to broadband it further), or an authorised agency structure, with effective performance management arrangements to guide salary movement; and
 - retaining portability of accrued paid leave entitlements, with future entitlements being those of the receiving agency.

Government approval requirements for certified agreements [1]

Agencies are to:

- provide to the Department of Employment, Workplace Relations and Small Business (DEWRSB) their draft certified agreement and their assessment of it against the Government's policy objectives; and
- in seeking his/her approval of the agreement, advise the Agency Minister of any policy issues identified by DEWRSB.

[1] In addition to the Supporting Guidance on the Parameters, DEWRSB will support agencies, generally on a cost recovered basis, in order to promote effective agreement making processes. Guidance will be updated to take account of policy and legislative developments and emerging issues identified by agencies.

The Public Service and Merit Protection Commission will also provide advice and guidance to agencies on those policy areas for which it is responsible.