ATTACHMENT C

SUPPORTING GUIDANCE

for the

Policy Parameters *for* Agreement Making in the APS

(May 1999)

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SUPPORTING GUIDANCE FOR THE POLICY PARAMETERS (MAY 1999)

Introduction

APS agencies and their employees are taking a leading role in utilising the opportunities provided by the *Workplace Relations Act 1996* (WR Act) to improve productivity and provide better paid and more rewarding jobs. The continued relevance and success of the APS and those employed within it will depend on the ability to become truly high performance organisations with contemporary workplace practices and cultures which encourage and reward excellence.

To support its micro-economic reform agenda, the Government expects its workplace relations policies to be applied in its own area of employment. From time to time, the Government may issue workplace relations policies to apply in APS agencies which may extend beyond agreement making (for example, in relation to industrial action).

Over the last two years agreement making in the APS has been guided by the Government's Policy Parameters for Agreement Making in the APS. In August 1998 a review of the Government's 1997 Parameters was announced by the Minister Assisting the Prime Minister for the Public Service, the Hon Dr David Kemp MP. The review process was based on extensive consultations with APS agencies and other stakeholders.

The resulting *Policy Parameters for Agreement Making in the APS* promote the Government's interests as the ultimate employer while continuing the process of devolving responsibility for agreement making to agencies. A copy of the Parameters is provided at Attachment A.

The supporting guidance is set out under the relevant Policy Parameter.

Some aspects of the guidance are more in the nature of good practice advice for effective agreement making.

> For example, future developments are difficult to predict and an agreement which tries to cover all issues in prescriptive detail is unlikely to facilitate longer term flexibility. A good approach would be to include details in guidelines or, where undertaking reviews, to include facilitative provisions in agreements which allow for the implementation of review outcomes by agencies.

Further information and developments are reported on DEWRSB's home page *(http://www.dewrsb.gov.au/group_wr/default.htm).*

1. WORKPLACE RELATIONS POLICY

Certified agreements and AWAs are to 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).**

As an employer the Government is seeking workplace structures, management systems and cooperative cultures which emphasise innovation and are directed at continuous improvement.

Direct Relations Between Employers and Employees

The WR Act is based on a recognition of the mutuality of interests between employers and employees in creating more efficient and productive workplaces and the need to provide the basis for progressing these interests in a cooperative manner, rather than having outcomes imposed from outside.

Previous industrial relations systems have emphasised the settlement of disputes by third parties with considerable reliance on tribunals, unions and employer associations (or central agencies in the public sector) rather than encouraging employers and employees to reach innovative outcomes based on their own particular needs and circumstances.

Consistent with the 'APS Values' agencies need to promote better ways of communicating and consulting with their employees to establish a cooperative workplace culture. The focus of communication and consultation should be between management and employees with any provision for employee representation to include choice for employees. Effective agreement making, including consultative and voting processes, is facilitated by open, two-way communication between management and employees.

Consultation with Employees & Facilities for Employee Representatives

The emphasis on direct employer-employee relationships favours consultative mechanisms which encourage broadly-based, timely input from those who are affected by proposed changes in working patterns and arrangements. Agencies may therefore make different choices about the nature of such mechanisms, given the diversity of agency objectives, structures and workforces.

The Government expects that consultative arrangements will cover all staff while focussing on the particular circumstances of an agency in delivering their priority outcomes. Agencies should therefore retain flexibility to adapt consultative arrangements progressively as agency circumstances and priorities change and to reflect any changed preferences among employees regarding union membership. Agencies may wish to establish terms of reference for their consultative committees to ensure that the purpose and operational protocols are clearly understood.

This approach would include providing staff with appropriate information, rather than relying on unions as a channel to communicate with staff. Where consultative practices are fully integrated with ongoing operations of the workplace, less need should exist for separate employee representative facilities. By involving staff in significant corporate decisions affecting them, participation of staff would be part of their normal duties.

In the case of special purpose consultative mechanisms, for example agreement making committees, there may be grounds for providing facilities related to such purposes in recognition of the benefits to the agency. Where the particular circumstances of an agency warrant the provision of separate facilities, they should be accessible by all staff with such duties, regardless of their membership or otherwise of a union.

The detail of any employee facilities, including any provisions in agency agreements, is for agencies to determine, consistent with the need to observe freedom of association and employees' choice of representation. Accordingly, it would not be appropriate for agencies to provide facilities exclusively for the use of one group but not for another which is legitimately representing the interests of employees.

Freedom of Association and Right of Entry

Freedom of Association (FOA)

Consistent with the provisions of the WR Act, freedom of association is a key area of the Government's policy which provides, amongst other things, that employees should be free to choose:

- whether or not to join a union;
- whether to remain a member of a union;
- which union to join, if they do decide to join a union (which is eligible to represent their industrial interests); and
- to participate or not to participate in any union activities.

Staff must not be subject to any victimisation or discrimination on the grounds that they are, or are not, a member of a union.

Common areas where agreements need to be consistent with the Government's policy include ensuring that:

- agreements do not encourage or discourage union membership or representation;

- consultative arrangements encompass all employees – including non-union representatives – throughout the agreement

  - for example, the use of the inclusive term 'employee representative' rather than 'union representative' will ensure non-union members scope for involvement;

  - where the use of the term 'union' is considered appropriate by the agency, it is important to ensure that there is also scope for non-union members to be consulted and have representation of their choice by the use of terms such as 'employees and their representatives, including unions'; and

- dispute prevention and settlement procedures provide all employees (union members and non-union staff) with common access to processes.

The use of agency facilities to promote union membership – for example, use of agency facilities to distribute union recruitment material to new starters (such as membership forms, publications, etc) or giving union representatives access to induction programs, may be seen as encouraging or endorsing union membership.

The Government expects agencies to adopt a neutral stance on activities which might impinge on the freedom of association policy. CAs or AWAs should not incorporate provisions inconsistent with this policy.

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* includes provision for a prominent role for unions which is inconsistent with the Government's policy on freedom of association. The Government will progress consideration of this issue in the near future.

Agencies should note that, although the award simplification process has been substantially completed in the APS, the APS Award contains provisions which are inconsistent with the Government's workplace relations policy. To ensure consistency with the Government's freedom of association policy, where agreements will operate in conjunction with the APS Award, agencies should displace subclauses 30.1.7 (Averaged shift penalties) and 30.3 (Twelve hour shifts) of the APS Award. These clauses provide for notification and representation to unions. If needed, these provisions may be incorporated into agreements, appropriately reworded to meet the Government 's policy on choice of representation.

Dispute Prevention and Settlement Procedures (DPSPs)

The WR Act provides that the AIRC must not certify a CA unless it includes DPSPs about matters arising under the agreement between the employer and the employees whose employment will be subject to the agreement (ss. 170LT(8)). The focus of DPSPs should be on resolving issues within the workplace at the level closest to where the dispute is occurring before involving external bodies.

In developing DPSPs to meet their particular needs, agencies need to ensure that they allow all staff access to equivalent procedures, regardless of their union

membership or otherwise. To provide access to DPSPs only for union members, or for such matters to be progressed only through unions or their representatives, potentially disadvantages non-union members. Essentially, equivalent procedures include equal access for all employees, the same role for any third party and the same decision making process and outcome.

DPSPs may provide for the involvement of a third party (eg as a mediator/conciliator/arbitrator/etc). The framework for how matters are to be referred is an issue to be addressed in this context. Agreements should also clearly specify the powers being given to the third party regarding the settlement of matters in dispute and acceptance of such decisions by the parties to the dispute. Examples of how referral may be arranged include any one of, or a combination of, the following:

- an employee (or their representative);
- agreement between the employee (or their representative) and the employer; or
- management (either on their own behalf or on behalf of an employee).

Agencies may wish to consider less formal avenues for dispute resolution in agreements as employees and their representatives may be more comfortable with less formal facilitative approaches. For example, while mediation involves third parties in dispute resolution, it is a less formal approach than AIRC processes.

Managing Industrial Action

Agencies should advise their responsible Minister, copied to the Minister Assisting the Prime Minister for the Public Service, of any industrial disputes which could significantly affect the delivery of services and the agency's proposed response.

Where an industrial issue or dispute arises, agencies are required to follow DPSPs under agreements or awards which apply to them. Any industrial action – whether 'protected' under a bargaining period or otherwise – is to be addressed by agencies consistent with the 'no strike pay' provisions of s.187AA of the WR Act, which prohibits the payment of wages to employees for any period they are engaged in industrial action. The definition of industrial action includes unauthorised absence from the workplace; bans and limitations; and work to rule.

Industrial action occurring during the life of an agreement would generally not be protected industrial action and therefore would be unlawful. The WR Act provides for financial penalties in relation to industrial action taken before the nominal expiry date of an agreement. Agencies should actively consider available measures to deal with industrial disputes, including orders to prevent or stop industrial action under s.127 of the WR Act – which can lead to enforcement by the Federal Court – and the prohibition of secondary boycotts under the *Trade Practices Act 1974*.

Industrial action taken during a bargaining period is not necessarily protected – for example, if the union/employees have not genuinely sought to reach agreement, or have failed to appropriately notify the type and timing of action to their agency.

Further advice and guidance on managing industrial disputes consistent with the Government's policy and legislative framework is provided in the *Dispute Management in Australian Government Employment: A Workplace Relations Handbook*. The Handbook can be ordered from DEWRSB on (02) 6299 7736.

Right of Entry for Union Representatives

The WR Act provides a right for unions eligible to represent employees in the agency to enter premises without the permission of the employer for prescribed purposes – to investigate during working hours suspected breaches of the WR Act or obligations under the WR Act, or for discussions with employees in their own time. The WR Act makes entry conditional on union representatives holding a permit issued by the Industrial Registrar and providing at least 24 hours notice to the employer. (Verbal notice is sufficient under the WR Act.)

These provisions reflect the balance struck between the interests of unions in representing their members and the interests of the employer in conducting efficient operations, while at the same time respecting the rights of other employees not to belong to a union. Where agencies have previous agreements or arrangements that are inconsistent with Government policy, these need to be complied with while they remain in force, although appropriate action should be taken to bring them into line with this policy as soon as practicable.

It would be inappropriate for enhanced right of entry arrangements to be established through CAs or AWAs. Agencies need to ensure that agreements and informal practices are consistent with Government policy.

To ensure ongoing consistency with the legislation, agencies should consider the need to include any right of entry provisions in their agreements (as WR Act provisions will prevail) or to simply refer to the provisions of Part IX, Division 11A of the WR Act, as amended from time to time.

Future Agreement Making Options

Agencies should not make commitments through agreements which may inhibit how replacement agreements are to be developed, thus limiting their future agreement making options. In particular, agencies should ensure that any provisions for future agreements allow future agreements to be made directly with their employees.

Accordingly, if any provision is made for future agreements, it should ensure that consultations are between the agency, its employees and their representatives. Being silent in an agreement about who consultations/negotiations will be with when making a replacement agreement may imply the automatic inclusion of all persons bound by the agreement.

Facilitating Access to AWAs

Agencies are required to provide for access to all agreement making options under the WR Act and retain the capacity to offer AWAs to all employees. Agency Heads have been given the authority to make AWAs on behalf of the Commonwealth as

employer.

While agencies will negotiate CAs to cover many of their staff, they will need to make explicit provision within the terms of the CA to enable them to subsequently offer AWAs to employees. Such provision should enable a subsequent AWA to operate to the exclusion of the CA. Agencies should not make commitments in their CA, which raise the threshold of future AWA terms and conditions above the No-Disadvantage Test in the WR Act – for example, by stating that the CA will provide the basis for terms and conditions in AWAs.

An AWA can adopt any or all of the terms of an agency's CA by incorporating them directly or by reference. Where an AWA draws on the terms of a CA, it is desirable that the AWA avoid overlap between the provisions of the AWA itself and the provisions adopted from the CA. This will avoid unnecessary complexity in the subsequent administration of the AWA.

The Government expects that, given the level of their duties, SES staff would be covered by AWAs, rather than certified agreements, and that agencies should consider extending the use of AWAs to staff below the SES (eg Executive Level 2 staff).

Comprehensive Agreements

Multiple authorities for terms and conditions of employment can create ambiguity for both employees and managers in determining which authority prevails. Such difficulties are avoided by making a stand alone agreement which provides for all of the pay and conditions entitlements of employees.

However, agencies should consider the extent to which their policies and processes are included in agreements. In order to retain the flexibility to improve the effectiveness of policies and processes during the life of an agreement, these issues may be covered in supplementary guidelines or agency handbooks.

Expired Agreements

Agency agreements should list out any relevant matters from the *Continuous Improvement in the APS Enterprise Agreement 1995-96* [the Continuous Improvement Agreement] and agreements currently applying to the agency, but otherwise displace these agreements. Where agencies wish to retain access to particular provisions from existing agreements, they must be incorporated into the new agreement. Agencies should note that it is DEWRSB's intention to terminate the Continuous Improvement Agreement as soon as practical.

Agencies are encouraged to terminate expired agency agreements under s.170MH of the WR Act when they put their new CA in place (ie immediately following certification of the new agreement). By terminating the expired agreement, it is much simpler to keep track of which agreements apply and avoids old agreements "coming back to life" at some time in the future. This will also avoid confusion between multiple expired agreements.

APS Award

Wherever possible agencies should displace the APS Award through their certified agreement. Where agencies decide their CA will operate in conjunction with the APS Award (or incorporate the provisions of the award as at the date of certification), there are two award clauses concerning averaged shift penalties and twelve hour shifts that should be displaced (refer to the FOA section above).

As AWAs operate to the exclusion of any award that would otherwise apply to the employee, AWAs should be fully comprehensive so that there is a clear understanding of the full terms and conditions of employment that are to apply.

Public Service Act (PS Act) and Determinations

Agency agreements, including AWAs, cannot override or displace provisions under Commonwealth legislation, including regulations or other instruments, unless specifically authorised by regulations made under the WR Act. PS Act provisions can only be displaced by agency agreements to the extent allowed under WR Regulation 30ZE (CAs) and Regulation 30ZJ (AWAs).

In summary, PS Act provisions, which could be displaced under the Continuous Improvement Agreement, can continue to be displaced. For example, a CA or an AWA may include provisions which change or displace provisions in s.82D Determinations. However, in relation to SES staff, a CA or an AWA cannot override the Public Service Commissioner's power to specify any benefits under s76R of the PS Act (which is not a prescribed condition under WR Regulations 30ZE or 30ZJ).

Agencies need to consider whether to displace all other determinations (current and/or future) or specify the determinations displaced by the agreement. Generally agencies are encouraged to displace determination provisions where it is intended that the agreement will cover those terms and conditions. There may, however, be provisions which agencies prefer to remain outside the agreement making process (eg agency determinations for overseas allowances or conditions).

Agencies now have responsibility for determining overseas conditions of employment and therefore should ensure that they do not include a reference to Public Service Determination 1994/162 in new agreements. If needed, arrangements for overseas conditions might best be provided through a facilitative provision in the agreement (eg providing for reimbursement of costs or referring in an agreement to a subsidiary document such as an Overseas Conditions Handbook for that agency).

Agency agreements must remove access by employees to avenues of appeal against termination of employment other than through the unfair dismissal provisions of the WR Act (Part VI Division 3) by providing in agreements for the WR Act as the sole avenue of appeal against termination of employment.

Other Acts

Commonwealth legislation regulating various conditions of employment continues to apply and cannot be overridden by agreements – ie, long service leave, maternity leave, superannuation, workers' compensation, occupational health and safety and

grievance and appeal mechanisms.

Maternity Leave (Commonwealth Employees) Act 1973

Some agencies have included, as part of their agreement, an administrative option that the payment of the 12 weeks required absence for maternity leave purposes can be spread over a period of 24 weeks – that is, half pay maternity leave. If agencies are considering this option, it should be noted that half pay maternity leave can be provided as an administrative arrangement only – that is, payment of the 12 weeks pay is spread over 24 weeks – with the second 12 weeks not counting as service.

Long Service Leave (Commonwealth Employees) Act 1976 (LSL Act)

There is currently minimal scope for flexibility on long service leave provided under the LSL Act. In particular, agencies cannot currently amend the rate or basis of calculation of entitlements or provide for cashing out.

One aspect of the administration of long service leave that agencies can amend through their agreements, as it is not stipulated in the legislation, is the minimum length of long service leave that can be granted. The current standard is that long service leave should not be granted for less than 15 calendar days on the basis that long service leave is intended to provide employees with a substantial break from work after a period of continuous long service. If agencies do reduce the minimum period of absence to less than 15 calendar days, they should calculate the deductions on the basis that it does not increase the individual's entitlements.

The restrictive nature of the LSL Act is currently under review. Any resulting changes to the legislation and long service leave arrangements will be reflected in a Workplace Relations Advice to all agencies.

Superannuation Act 1976 (the 1976 Act); *Superannuation Act 1990* (the 1990 Act), *Superannuation (Productivity Benefit) Act 1988* (the PB Act) and the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* (the SB(SM) Act)

Most Commonwealth employees are required to be Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation Scheme (PSS) members. The CSS and PSS are established under the 1976 Act and in the Trust Deed and Rules under the 1990 Act respectively. Agencies with employees that are not CSS or PSS members (eg, where they might be ineligible to join) are required to provide superannuation for those employees in accordance with the PB Act.

The SB(SM) Act establishes the framework within which all agencies must provide superannuation for employees who do not have superannuation provided for them under other legislation. Currently, this framework does not generally permit APS agencies to provide alternative superannuation arrangements for their employees.

Review of Employment Decisions

Procedures for preventing and settling disputes under the WR Act complement, rather than replace, the review procedures available under the PS Regulations because agency agreements cannot override or displace provisions included in a Commonwealth Act, including regulations or other instruments, unless specifically

authorised by regulations made under the WR Act.

Agencies need to be aware that, in developing internal mechanisms for resolving individual grievances in the workplace, the PS Regulations establish a two tier framework for the formal consideration of complaints relating to decisions or actions which affect the employment of employees. The first tier, which requires complaints to be considered by the employing authority under Regulation 83, recognises that disputes should be resolved in the workplace wherever possible. The second tier, external review by the Merit Protection and Review Agency, generally cannot be undertaken without a prior internal review.

The PSMPC will be issuing separate advice on the principles that might be adopted by agencies in developing internal mechanisms for resolving individual grievances in the workplace.

Further information may be obtained by contacting the PSMPC's Helpline on (02) 6272 3609.

A summary table outlining the interaction of new certified agreements with other instruments for APS agencies is provided at Attachment B.

2. APS REMUNERATION POLICY

Certified agreements and AWAs are to be consistent with the Government's APS remuneration policy that improvements to pay and conditions be linked to productivity gains.

Remuneration outcomes through agreements should be linked to achieved improvements in productivity, consistent with maintaining low inflation over the course of the business cycle.

Improvements in pay and conditions under agreements, generally offset by productivity gains, should not result in either increased prices or reduced quality of the services. For Budget-funded agencies, that result is best secured through meeting the cost of agreements from within their appropriations, as determined in the Budget context – including efficiency dividend and specific Budget decisions.

There is no arbitrary cap on the quantum of salary increases that may be agreed at agency level: this will be a matter to be settled at agency level.

Pay increases should generally apply prospectively and be linked to productivity initiatives achieved under an agency's agreement. Improvements in remuneration and conditions under agreements should generally be framed consistent with the realisation of productivity benefits – for example, phasing, an appropriate mix of bonus or ongoing pay increases, and any warranted conditionality.

Industrial practice has been to avoid retrospective pay increases, which also add significantly to processing costs, as noted in the MAB/MIAC *Achieving Cost Effective Personnel Services* report.

It is recognised, however, that issues favouring some modest degree of retrospectivity in salary increases may arise in special cases. For example, factors may emerge from the negotiation process where there are specific milestones that have been achieved in the lead-up process to finalising agreements – separate from efficiencies and changes introduced under previous enterprise or agency agreements.

Recognition of any such special circumstances may be appropriate through a one-off bonus payment, for example, on certification. If some limited backdating is justified by special circumstances, it should be framed to encourage finalisation of the agreement, rather than an open-ended commitment to pay increases from a specific date, regardless of when certification occurs.

Agencies also need to be aware of the time necessarily required to:

- inform employees about proposed agreements prior to voting;
- conduct the voting process itself; and

- arrange certification by the AIRC.

No-Disadvantage Test *(NDT)*

Consistent with the Government's workplace relations policy, agencies are required to ensure that their agreements are made in accordance with the WR Act and other relevant legislation. The NDT established under the WR Act applies to both AWAs and CAs.

This means that agreements must not result in a reduction in employees' overall terms and conditions of employment when compared with the relevant award and any relevant laws. This comprehends not only current award provisions but also various legislated provisions – including determinations and terms and conditions created under enabling legislation and subordinate instruments. The NDT is a 'global' test of the overall outcome, not a 'line-by-line' comparison with previous provisions.

Following the award simplification process, agencies have more flexibility to revise their terms and conditions of employment consistent with the NDT. For example, RRR retention periods under the former APS General Employment Conditions Award 1985 have not been included in the APS Award.

To maximise the potential advantages which agreement making arrangements offer to agencies, it is important to understand how agreements reached under the WR Act can affect, or be affected by, such instruments as:

- the APS Award;
- agreements certified under the previous Industrial Relations Act 1988 and the WR Act;
- the PS Act and Public Service Determinations made under s.82D of the PS Act; and
- other Commonwealth legislation covering employment conditions.

Attachment B also points out which instruments form part of the no-disadvantage test under the WR Act.

The statutory declarations required by the AIRC for the certification of an agreement require the identification of the reductions and benefits in relation to the relevant award and legislation. The Employer Filing Application form for AWAs requires a description of how the AWA differs from the relevant award.

Flexible Remuneration Packaging

Agency Heads are responsible for setting remuneration and conditions for their employees and for the construction and valuation of any remuneration packages that may be offered – including Senior Executive packages and determination of any 'cash in lieu' amounts for non-salary benefits, such as official vehicles.

Agreements may set the total remuneration available, with employees able to

'package' the remuneration in the form of pay or other benefits, taking into account all costs to the agency – including any FBT, administration and superannuation costs – and the agency's remuneration policy (for example, regarding the non-salary benefits such as a vehicle or additional superannuation that may be 'purchased').

Where remuneration packaging arrangements are in place, agencies should specify what constitutes salary for various purposes particularly superannuation, severance and termination payments.

Agencies also need to be aware of the implications of the FBT reporting changes which took effect from 1 April 1999.

Salary and Superannuation

APS employers, and employees who are CSS or PSS members, can reach agreement on superannuation salary or the method for determining that salary, and these outcomes can be included in an AWA or CA.

Where a superannuation salary is not set in an agreement the normal CSS and PSS salary rules continue to apply. These rules provide that, generally, superannuation salary cannot decrease for an employee because the current superannuation regulatory legislation does not generally permit reduction in accrued benefits. Where a decrease in actual salary occurs – even by agreement – the rules generally provide for the automatic maintenance of the superannuation salary that applied before the decrease, updated by movements in Average Weekly Ordinary Time Earnings.

Agencies can also arrange top-up superannuation cover. Top-up arrangements, which must satisfy certain conditions, are permitted if a CA or an AWA incorporates flexible remuneration arrangements that include salary sacrifice. The top-up arrangements enable all employees to have additional superannuation cover and will not affect CSS or PSS membership.

The employer superannuation payments paid through ComSuper are adjusted, over time, to reflect the superannuation costs of the particular agency. Agencies need to assess the superannuation costs of proposed remuneration changes – including from cashing out of other benefits – to ensure that any increases in superannuation costs are fully taken into account in decisions on CAs and AWAs.

Agencies are required to meet the full resultant superannuation cost increases for past service of the employees affected. For example, cost increases could be substantial in respect of long serving employees granted large salary increases close to retirement – including cashing out of non-wage benefits into salary.

New Superannuation Arrangements: Commonwealth Civilian Employees

The Government has introduced legislation to give Commonwealth employees more choice and control over their superannuation savings and to improve the flexibility of their superannuation arrangements, including by providing more portable arrangements.

These arrangements, together with the introduction of 'choice of fund' for the

community generally, were due to commence on 1 July 1999. In June 1999 the Government announced the deferral of the start date for the new arrangements. The Government indicated that it remains committed to the passage of the Bills and, in particular, the closure of the PSS, and to giving Commonwealth employees greater choice of superannuation fund.

Agencies should not make commitments in their agreements which pre-empt the legislation, but should note that the proposed arrangements will allow flexibility to adjust the mix between salary and superannuation contributions for new staff where agreements provide for remuneration packaging on a salary sacrifice basis.

Redundancy benefits

Agencies should note that the existing CSS and PSS legislation provides for a restriction, from 1 July 2000, on the availability of cash lump sums from the CSS or the PSS on redundancy.

Junior Rates and New Apprenticeships (including Traineeships)

The Government's view is that employers should be encouraged to employ juniors, where appropriate to their needs. The Government supports retention of junior wages as important in protecting and promoting jobs for young people. Junior rates are an integral part of the new eight level APS classification structure and should be included in agreements which include the base level classifications.

The WR Act makes available workplace relations arrangements for new apprenticeships and traineeships. The new arrangements provide agencies with flexibility to implement entry level training strategies, including above base entry levels, specifically tailored to meet their needs. Wage arrangements provide for wages to be adjusted to reflect the reduction in productive time due to time spent in training under the traineeship or apprenticeship, as determined by an approving authority.

3. GOVERNMENT INDUSTRY DEVELOPMENT POLICY - AUSTRALIAN-MADE VEHICLES

Certified agreements and AWAs are to be consistent with the Government's industry development policy in relation to Australian-made vehicles.

Subject to agency policies on the operation of salary packaging, the following information sets out the general arrangements in the APS.

APS Vehicles and Remuneration

Individual APS employees may access a vehicle as part of a remuneration package. Generally this would be on a salary sacrifice basis, and may include SES employees accessing additional vehicles beyond their official vehicle. Under remuneration packaging, the vehicles may be leased directly by individuals, including on a novated lease basis, from any source (that is, not limited to DASFLEET).

Agency decisions about the type of vehicle which can be accessed on a salary sacrifice basis (including whether vehicles such as utilities and motor cycles may be accessed) must be consistent with the Government's industry development policy in relation to Australian-made vehicles.

Industry Development Policy Advice

The Department of Industry, Science and Resources has indicated that, consistent with the Government's commitment to a viable Australian automotive industry:

- the current limit on access by Commonwealth employees to leases on imported vehicles should remain below 1500cc until 30 June 1999;
- after this date, for the time being the 1500cc limit remains in place for Executive Vehicle Scheme (EVS) vehicles – further advice will be issued as soon as possible on this matter;
- for other vehicles, access to imported vehicles after 30 June 1999 should be for those below 2000cc;
- access to four wheel drive, and/or to 'all wheel drive', vehicles by all Commonwealth employees should continue to be denied; and
- agencies should carefully consider limiting the existing access to imported passenger vans to circumstances of special needs (such as employees with large families) as passenger vans are close and rapidly growing substitutes for locally manufactured passenger motor vehicles.

These restrictions relate to new vehicles, and second hand vehicles less than three years old. Second hand vehicles more than three years old are exempt from the above restrictions.

Agencies will also need to exercise some judgment in respect of vehicles sought by staff stationed overseas, where application of the Australian-made policy may not b practicable.

Novated Leases

If an agency's remuneration policy allows for novated lease arrangements, the deta of the lease is a matter for the individual employee. The vehicle would be for privat purposes with any official use reimbursed on the same basis as occurs now when employees utilise their own vehicles for business purposes. Agencies need to carefully consider how novated leases work, in particular the taxation liability implications.

Additional DASFLEET Leases

In addition to SES official vehicles, an agency's remuneration policy may allow access by employees to a vehicle leased by the agency with costs met through salary sacrifice. Such vehicles must (until 2002) be leased from DASFLEET and agencies would need to decide on guidelines applying to such arrangements.

SES Official Vehicles and Remuneration

In accordance with the terms of the sale of DASFLEET, agencies are tied to DASFLEET until 2002 for leasing official vehicles.

The *EVS Guidelines* are the basis for agencies to take decisions on the provision of official vehicles for SES employees.

Agency Heads will continue to administer the EVS (as revised from time to time), being responsible for its application within their agencies, consistent with Government vehicle industry policy and any agency policy on administration of the EVS.

Issues to be considered by agencies, particularly in relation to official vehicles for t SES, include: use of specific agency vehicle costs, rather than Service-wide ave costs; basing 'cash in lieu' amounts for vehicles on the costs of previous benchma vehicles, rather than on costs of typical Service-wide or agency vehicles; and how any variations above or below these costs should be reflected in adjustments to the employee's remuneration.

4. FUNDING AND AGREEMENT MAKING

Certified agreements and AWAs are to be funded from within agency appropriations.

This section outlines the financial arrangements to facilitate agreement making in the APS on a financially sound and fair footing, including the indexation of salary-related running costs.

Agreements are to be funded (including any increased employer superannuation liabilities) from within agency appropriations as generally determined in the Budget context, including efficiency dividend and specific budget decisions.

The Government has no intention to reduce the salaries of its employees as a result of the shift to agency level agreement making.

- The Budget figuring incorporates an allowance for inflation. This allowance is composed of a wage and non wage component. The wage component is based on the outcome of the most recent AIRC Living Wage Case decision converted to a percentage of Average Weekly Ordinary Time Earnings. The non wage component is based on the Treasury Measure of Underlying Inflation.

Within this framework agencies are required to provide for improved remuneration and conditions under their own funding arrangements, including any 'outside budget' funding, as appropriate (noting the potential and actual 'downstream' effects of the costs of such improvements).

5. REDEPLOYMENT, REDUCTION AND RETRENCHMENT

Certified agreements and AWAs are to 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**
- **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 responsible Minister, in consultation with the Minister Assisting the Prime Minister for the Public Service.**

Consistent with current provisions under awards and arrangements applying to agencies over many years, agencies should retain the capacity to resolve excess staff situations where the agreement of the employee concerned cannot be achieved.

Compulsory Redeployment, Reduction and Retrenchment

All certified agreements and AWAs must provide for access to compulsory redeployment, reduction and retrenchment for excess APS staff. This will ensure that agencies maintain the capacity to resolve excess staff situations by either:

- moving the employee to another suitable position at or below level; or
- retiring the employee if they do not wish to accept voluntary redundancy and there is no useful work for them to perform.

No Enhancement of Existing Obligations

While agencies are able to adapt their redundancy arrangements to meet their specific needs, any revision must not be an enhancement of existing obligations in terms of the arrangements already in place in the organisation. For example,

- the severance benefit of two weeks' salary for each completed year of continuous service to a maximum of 48 weeks' salary available to staff under the APS Award must not be exceeded even if retention periods are removed or reduced, but
- an agency may wish to provide payment in lieu of the one month consultation period, the one month consideration period, and/or the four or five weeks' notice period set out in the former APS General Employment Conditions Award 1995.

Under the APS Award, redundancy benefits are payable to a retrenched employee

regardless of whether the employee has been terminated with or without consent.

Where an agency agreement allows for access to an extended period of retention under the redeployment and retirement provisions, the agency will need to ensure that a severance benefit is not made available to an employee who has rejected voluntary retrenchment and has elected to access the extended period of retention in employment.

Major Organisational Change

Where an agency wishes to make a separate financial payment to a particular group of staff to facilitate the early resolution of a major one-off restructuring or change then it must obtain the approval of the responsible Minister and the Minister Assisting the Prime Minister for the Public Service.

In seeking approval an agency will need to:

- demonstrate that special circumstances exist;
- ensure that the making of this separate financial payment is cost neutral to the agency and that it does not exceed what would otherwise have been the overall cost of implementing the change
  - for example where a particular function is to cease or an office in a specific location is to close and there are savings to be made in terms of accommodation and other overheads if all staff leave by a specific date; and
- identify any savings to be achieved by making the special payment.

Such a payment must not create a precedent for other agencies and there must be a clear benefit to the Commonwealth. It is likely that this provision will be used only in very rare circumstances.

To enable a separate payment to be made, agencies will need to either vary their existing agreement in accordance with the WR Act (but this could overly delay the organisational change) or include a facilitative clause in their next agreements along the following lines:

> "Where a separate payment would facilitate the speedy resolution of major organisational change and it can be demonstrated that special circumstances exist, the [Agency Head] may, with the agreement of the responsible Minister and the Minister Assisting the Prime Minister for the Public Service, make a separate financial payment in addition to and separate from the entitlements prescribed in the RRR provisions in this agreement for excess employees."

Further advice on this aspect of the Parameter can be obtained from Richard Collis at the PSMPC on 02 6272 3676.

Statutory Obligations

Agencies also need to be aware that:

- an agency agreement or an AWA cannot override statutory obligations relating to:

  - termination of employment under the WR Act; in particular in relation to minimum periods and payment in lieu of notice, and provisions relating to consultations with unions on significant redundancy exercises (i.e. affecting 15 or more employees) - see s.170CM and s.170GA of the WR Act); and

  - the discretion of the Public Service Commissioner to determine the level of any special benefit for an SES officer under s.76R of the PS Act; and

- before they can retire a non-SES excess employee without consent, the approval of the Public Service Commissioner is required in accordance with subsection 76W(2) of the PS Act:

  - this provision applies to all involuntary retirements regardless of whether the employee is covered by an agency specific agreement, an AWA or the APS Award; and

  - under the PS Act, the Public Service Commissioner is required to take such action as is reasonable to find alternative employment for an employee and be satisfied, before approval is given, that it is not in the interests of the efficient administration of the Service to transfer an employee to another agency. Agencies should therefore provide the Commissioner with details of what efforts have been made to redeploy the employee within the agency and elsewhere in the APS when seeking approval for their involuntary retirement.

Further information may be obtained by contacting the PSMPC's Helpline on (02) 6272 3609.

6. FACILITATING MOBILITY AND MAINTAINING A COHESIVE APS

Certified agreements and AWAs are to 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;**
- **retaining portability of accrued paid leave entitlements, with future entitlements being those of the receiving agency; and**
- **including facilitative provisions to apply transitional terms and conditions to those staff transferring from another agency as a result of Machinery of Government changes.**

Classification Structures

New APS Structure

In 1998, a new eight level APS classification structure was authorised under s.28 of the PS Act. The single APS structure was designed to address identified problems associated with the old classification structures, focus attention on sophisticated management of human resources by agencies and accommodate agency concerns regarding greater flexibility.

The APS classification structure reduces the number of classification levels and structures with scope for further broadbanding by agencies to suit their needs, while maintaining the basis for mobility across the APS. Actual translation into the new structure can only occur on an agency basis under agency CAs and AWAs. In translating employees to the new structure, each agency had the flexibility to determine the time-frame and necessary implementation processes, provided that the new structure was implemented by the end of 1998.

The new structure also provides for associated training classifications covering trainees, cadets, graduates and apprentices. Remuneration arrangements for these classifications should be included in agreements for those agencies considering employing staff in these classifications.

Agencies had the choice of relying on the existing Service-wide work level standards (WLS) when first moving to the new structure, but were required to commit to writing their own during the life of their first agreement. While they may differ in format, and be linked to an agency's remuneration strategy, agency WLS must be broadly consistent with the current Service-wide standards.

Not only do the new arrangements provide flexibility in designing the way work is done, but also flexibility in the way remuneration is delivered. Agencies should have a remuneration policy in place that sets any pay points and associated

arrangements for accessing the rates. The new structure does not have increments attached to it, nor are there centrally set salary maxima. Minima, maxima, pay point and the process for salary movement within each classification level are determined by each agency.

Performance management must guide movement within salary ranges. Agencies have the opportunity to pay based on both the job and person, with scope for a component to be paid as a supplement, allowance or one-off lump sum.

The old classification structures will remain in place until fully displaced by the rationalised structures under agency agreements after which they will be withdrawn. The remuneration and other flexibilities offered by the new APS Structure have allowed most agencies to meet their specific needs.

Alternatively, some agencies have had an agency-specific structure established under their agency agreement – linked to Service-wide benchmarks – where adaptation of the APS Structure could not meet the needs of an organisation. However, any such structures will first need to be formally authorised by DEWRSB under the PS Act. Agencies considering a separate structure should contact DEWRSB to discuss their proposals.

SES Classification and Remuneration Arrangements

The existing formal three Band classification framework for the SES has been retained. The Government expects APS agencies to have entered into AWAs with their SES staff. 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.

Portability Of Accrued Leave Entitlements

Agreements are to retain portability of accrued annual leave and personal/carers leave entitlements (however described), with future entitlements being those prevailing in the receiving agency.

In respect of the portability of accrued annual leave and personal/carers leave entitlements, an employee moving between agencies will need to be able to transfer any accrued sick (however described) or annual leave entitlements to the receiving agency. This can be provided through administrative arrangements or through CAs or AWAs. Subsequent leave will accrue at the rate applying in the receiving agency.

Receiving agencies should act on the advice of employees' former agencies in determining what constitutes accruable leave. For example agencies have used a range of terms to describe personal/carers leave in their existing agreements and have provided it for varying reasons. Receiving agencies are required to recognise leave accruable in employees' former agencies even if the purpose for which it was provided is not recognised in receiving agencies' agreements.

As noted previously certain conditions of employment – as set out in various Commonwealth legislation – will continue to apply and are not able to be overridden by agreements: in particular long service leave; maternity leave; workers' compensation; and occupational health and safety.

Machinery of Government (MoG) Changes

Background

From time to time, Governments make changes to the composition of Ministries, which require changes to administrative arrangements. Such re-arrangements commonly result in staff being transferred, with their functions, between APS agencies. It is important that such re-arrangements be implemented as quickly and efficiently as possible to enable the business of Government to continue.

The PS Act includes powers which have the effect of moving staff between APS departments and agencies following either legislative amendments or a decision by Government to revise Ministerial or departmental responsibility for administering the business of government.

Major administrative rearrangements are carried out under ss.29 & 51AA of the PS Act, while s.51(3) has often been used to handle smaller scale administrative rearrangements and to mop up any outstanding issues in larger scale exercises. The PS Act also includes mechanisms to enable the movement of unattached staff and temporary employees as a result of an administrative rearrangement (ss.33C & 82BA respectively):

- section 29 makes provision for the abolition of offices in one agency and the creation of substitute offices *of the same classification and salary* in another APS agency in circumstances where the function, or substantially the same function, is to be performed in the gaining agency. Subsection 51AA(2) then operates to automatically transfer the substantive occupants of the abolished offices to the newly created substitute offices. The operation of these sections ensures that the salaries of affected staff are not reduced as a consequence of the transfer;

- subsection 51(3) allows the Public Service Commissioner to transfer both officers and employees between APS agencies in the interests of the efficient administration of the Service. This power is used where it is appropriate to handle the transfer administratively rather than seeking Ministerial approval. There are no automatic salary protections associated with the use of this power – normal salary on transfer rules apply.

Where significant employment conditions issues arise, agencies may need some flexibility to manage these issues for staff transferred following MoG changes. Agencies are therefore required to include facilitative provisions in agreements to apply transitional arrangements on terms and conditions to those staff transferring from another agency as a result of MoG changes.

The MoG Model Clause

The model clause at the end of this section has been developed for CAs on the basis of legal advice to give agencies greater discretion to manage any employment conditions issues arising from MoG changes. Incorporating the clause in CAs will provide agencies with two options if they believe that the circumstances require such transitional arrangements. (In relation to AWAs, see the section below on ***Application of the MoG Model Clause***.)

1) The first option is to continue to apply a specified clause (or clauses) of the losing agency's CA to transferred staff, via a determination specific to those staff.

2) The second option is to continue to apply the losing agency's CA conditions in full to transferred staff.

The MoG clause could be used where, for whatever reason, an agency does not wish to take action to vary or replace its agreement to provide different employment conditions for staff as a consequence of gaining staff and functions from another agency. However, variation or replacement of the gaining agency's agreement would remain an option where such action is warranted.

Where an agency believes that no significant employment conditions issues arise for the staff affected by the MoG transfer, the clause need not be used. Transferred staff will automatically be covered by the gaining agency's agreed conditions, unless their former agency or sub-agency CAs continue in their own right.

Period of Operation

A determination under the MoG clause may be expressed to operate for a specified period or until a specified event. A determination could, for example, extend until the certification of a new certified agreement for the agency. This would provide the gaining agency with a transitional period in which to consider the desirability of any consequential changes to the agency's total conditions package.

A determination may also be varied or revoked. This may be necessary where unforeseen circumstances arise, or where the particular issues giving rise to the determination are resolved by other means, for example via the use of AWAs (see below).

Because any determination will be made under the terms of an agency's agreement, it will cease to operate when that agreement ceases to operate.

Consultation with Employees

Employees would of course need to agree to include the attached MoG clause in CAs. Agencies should therefore fully explain the intended uses of the clause in the event of any future MoG changes.

Where the model clause is incorporated in agreements, the agreement of staff would not be required before a Secretary can use the determination making power. However, agencies are encouraged to consult employees in the process of making such a determination about its effect and period of operation.

Use of AWAs

AWAs provide an additional, and complementary, mechanism for dealing with issues arising from MoG changes.

For example, AWAs may be useful where specialist staff transfer into an agency, or where transferred staff require particular conditions of employment not provided in the gaining agency's agreement, and not required elsewhere in the agency. Affected staff could be offered AWAs designed to continue those particular conditions, either as an alternative to, or following, the use of the power provided under the MoG clause.

Application of the MoG Model Clause

As noted above, agencies are required to include facilitative provisions in their agreements to enable them to apply transitional terms and conditions to staff transferring to the agency as a result of MoG changes. The effectiveness of the model relies on its general adoption by agencies. Agencies are therefore strongly advised to incorporate the MoG model clause into their CAs unchanged.

Agencies wishing to incorporate different MoG provisions in their CAs should seek legal advice on the effect of any such provisions as well as seeking advice from DEWRSB against the Government's policy objectives.

Agencies would not usually need to include the MoG model clause in their AWAs to facilitate staff transfers. Unless the job performed by the employee is altered, an existing AWA will generally continue to apply after MoG changes. Depending on the terms of an existing AWA, it may need to be renegotiated by the gaining agency following a MoG change. (The more specific the references are to the losing agency's terms and conditions in an AWA, the more likely the need to consider variations following a MoG change.) Agencies may wish to seek legal advice on this issue in drafting their AWAs.

MoG Model Clause

The model clause is as follows:

PRESERVATION OF FORMER TERMS AND CONDITIONS FOR CERTAIN EMPLOYEES EMPLOYED IN THE DEPARTMENT OF X AS A RESULT OF ADMINISTRATIVE RE-ARRANGEMENTS

1.1 Objective

1.1.1 The parties acknowledge that where employees become employed in the Department of X as a result of the implementation of administrative re-arrangements in the Australian Public Service, those employees will, except where their former agency or sub-agency agreements continue to apply to them, be bound by the terms of this agreement. However, where transferred employees would be significantly affected by the immediate application of this agreement, this clause allows the Secretary to make transitional terms and conditions arrangements.

1.1.2 It is the parties' intention that the standard terms of this agreement should ultimately apply to all transferred staff, and that the use of these transitional arrangements should not detract from this aim.

1.1.3 Irrespective of whether transitional arrangements are made, employees' fortnightly salary at the date of transfer will not be reduced as a consequence of transfer (but this will not affect normal pay variations).

1.2 Secretary may make interim determination

1.2.1 In this clause:

> **'transferred employee'** means an employee who becomes employed in the Department of X as a result of action taken by the Prime Minister or the Public Service Commissioner, under the *Public Service Act 1922* or any subsequent legislation establishing the Australian Public Service, to implement administrative re-arrangements in the Australian Public Service.
>
> **'group of transferred employees'** means one or more transferred employees identified by instrument in writing signed by the Secretary for the purposes of this clause as comprising a distinct group.

1.2.2 Subject to this clause but despite anything else in this agreement, the Secretary may determine, in relation to a group of transferred employees:

> (a) that the terms and conditions of employment to apply to those employees in their employment in the Department of X are the terms and conditions that applied to the employees under the certified agreement of the losing Department immediately before they became employed in the Department of X; or
>
> (b) that a specified clause from the certified agreement of the losing Department, being a clause which applied to the employees immediately before they became employed in the Department of X, is to apply to the employees in their employment in the Department of X instead of a specified clause of this agreement, or in addition to the provisions of this agreement.

1.2.3 A determination under subclause 1.2.2 may be expressed to operate for a specified period or until a specified event and may be varied or revoked.

1.2.4 A determination under subclause 1.2.2 ceases to operate if this certified agreement ceases to operate.

GOVERNMENT APPROVAL REQUIREMENTS FOR CERTIFIED AGREEMENTS

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 responsible Minister of any policy issues identified by DEWRSB.**

Agency Heads are responsible for the management of their workplace relations, including agreement making, consistent with the WR Act and the Government's workplace relations policies, as advised from time to time.

Assessment of certified agreements

Agency Heads and relevant Ministers are now responsible for ensuring that APS agreements are consistent with the Government's policy objectives by assessing their agreements and resolving any policy issues identified in the one-stage DEWRSB assessment.

Agencies may wish to use the assessment checklist provided at Attachment C as a basis for assessing their draft agreements against the Parameters when providing their agreements to DEWRSB.

Agencies should provide their agreement and assessment to DEWRSB for assessment at the final draft stage before seeking their Minister's approval and subsequently, the endorsement of their staff.

Support and assistance

DEWRSB, including through its Client Contacts, will provide support and advice to agencies on the Government's policy on agreement making in order to promote effective agreement making across the APS. Guidance material will be periodically updated to take account of policy and legislative developments and emerging issues identified by agencies.

The PSMPC will also provide advice and guidance to agencies on those policy areas for which it is responsible.

DEWRSB is in the process of developing a service charter which will set out the process for addressing client concerns and APS agencies will be included in consultations during this process.

DEWRSB has introduced a service under the banner of Workplace Partners to assist agencies on a cost recovery basis. This includes a range of training courses and

seminars on current issues: advocacy and consultancy services; networking [illegible] agencies; and the publication of key resource materials. For example, if agen[illegible] wish to seek additional assessments of policy issues under their agreements, or further technical advice beyond the assessment against policy objectives, this wou[illegible] be available through Workplace Partners.

Further information on DEWRSB services, publications and updates to the supporting guidance is available on the Internet:
http://www.dewrsb.gov.au/group_wr/default.htm

ATTACHMENT A

POLICY PARAMETERS FOR AGREEMENT MAKING IN THE APS (MAY 1999)

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

3. be consistent with the Government's industry development policy in relation to Australian-made vehicles

4. be funded from within agency appropriations

5. 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
   - 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 responsible Minister, in consultation with the Minister Assisting the Prime Minister for the Public Service.

6. 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;

- retaining portability of accrued paid leave entitlements, with future entitlements being those of the receiving agency; and

- including facilitative provisions to apply transitional terms and conditions to those staff transferring from another agency as a result of Machinery of Government changes

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 responsible Minister of any policy issues identified by DEWRSB.

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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 across the APS. 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.

ATTACHMENT B

INTERACTION BETWEEN NEW AGENCY CA/AWA AND OTHER INSTRUMENTS

	IR Act agreements, including APS Agreement 1995-96	**WR Act CAs – passed nominal expiry date**	**APS Award 1998** *Part of no disadvantage test*	**PS Dets under s82D of PS Act** *Part of no disadvantage test*	**PS Act** *Part of no disadvantage test*	**Other APS legislation** *Part of no disadvantage test*
New agency CA	CA prevails over agreement to the extent of any inconsistency	Expired CA ceases to operate when replaced	CA prevails over award to the extent of any inconsistency	CA prevails over Dets to the extent of any inconsistency (Reg 30ZE)	CA prevails over those parts prescribed in Reg 30ZE to the extent of any inconsistency	Legislation prevails over CA
AWA	AWA prevails over agreement to the extent of any inconsistency	AWA operates to the exclusion of an expired CA	AWA operates to the exclusion of any award	AWA prevails over Dets to the extent of any inconsistency (Reg 30ZJ)	AWA prevails over those parts prescribed in Reg 30ZJ to the extent of any inconsistency	Legislation prevails over AWA

ATTACHMENT C

ASSESSMENT CHECKLIST - 1999 POLICY PARAMETERS

Agencies may use this checklist to assess their draft agreements against the 1999 Policy Parameters before seeking DEWRSB's assessment. The checklist should be read in conjunction with the supporting guidance which will be updated and made available on the Internet **http://www.dewrsb.gov.au/group_wr/default.htm**

KEY ISSUES TO CHECK	RELEVANT CLAUSES	AGENCY COMMENTS
Policy Parameter 1: Workplace relations policy: ❑ direct communications between the agency and its employees; ❑ equivalent consultative arrangements for all staff that do not encourage or discourage union membership; ❑ protects freedom of association (eg DPSPs) and ensures that right of entry provisions do not go beyond the WR Act; ❑ provisions for future agreements ensure consultations are between the agency, its employees and their representatives; ❑ unlimited access to AWAs; ❑ comprehensive, displacing existing agreements (and preferably awards and Public Service Determinations); ❑ sole avenue of appeal against unfair dismissal through the WR Act; and ❑ consistent with legislative provisions (eg maternity leave and long service leave).		

KEY ISSUES TO CHECK	RELEVANT CLAUSES	AGENCY COMMENTS
Policy Parameter 2: APS remuneration policy: ❑ improvements to pay and conditions are linked to productivity gains; ❑ productivity linked pay increases should apply prospectively unless there are special circumstances; ❑ where appropriate, defines salary for purposes such as superannuation, leave, severance and termination payments; and ❑ relevant training classifications and junior rates are included.		
Policy Parameter 3: Consistent with the Government's industry development policy on Australian-made vehicles.		
Policy Parameter 4: Agreements are funded from within agency appropriations.		
Policy Parameter 5: Redeployment, reduction and retrenchment (RRR): ❑ access to compulsory RRR; ❑ any revision to redundancy provisions does not enhance existing redundancy obligations applying to an agency; and ❑ any separate financial incentives in CAs or AWAs are cost neutral in the context of a major organisation change and subject to Government approval – facilitative clause included in the agreement.		

KEY ISSUES TO CHECK	RELEVANT CLAUSES	AGENCY COMMENTS
Policy Parameter 6: Facilitate mobility and maintain a cohesive APS: ❑ APS classification structure, or an authorised agency structure, with effective performance management arrangements to guide salary movement; ❑ SES excluded consistent with Government expectation that they are covered by AWAs; ❑ retain portability of accrued paid leave entitlements, with future entitlements being those of the receiving agency; and ❑ include facilitative provisions for Machinery of Government changes (see model clause).		

Additional comments:

ACTU

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North Wing
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STD (03) 9663 5266
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ATTACHMENT D

In reply please quote:
TP:kla

2 December, 1998

Mr B Yates
Department of Employment, Workplace Relations and Small Business
GPO Box 9879
CANBERRA ACT 2601

Dear Bernie,

I refer to your letter of 9 November 1998 inviting the ACTU and its Australian Public Service affiliates to make input to the Federal Government's review of Policy Parameters for APS agreement-making.

Context of Union Position

We make the following comments on the content of policy parameters, based on our experience with the agreement-making process in APS agencies over the past 18 months, and our views of significant issues likely to arise in future bargaining.

In doing so, we should not be taken to be endorsing the Government's policy preference for the continuation of agreement-making at the agency, sub-agency or individual employee level in the APS. The unions adhere to our position that the APS is a single employer. Consistent terms and conditions of employment necessary to maintain the career service should be set by collective bargaining on a Service-wide basis.

The extent of the industrial mess which has resulted from the recent Administrative Arrangements changes affecting a significant number of APS agencies is a very good argument in support of the union position. It is unfortunate that the Government's drive to fragment and dismember public sector employment standards prevents it being open to such considerations.

Predicated on the continuation of agency-level agreement-making and a Government policy framework, the specific points we wish to put forward are the following:

Transparency of Policy

Parties should be as free to bargain in the APS within the framework of the Workplace Relations Act as anywhere else in the community. The Department, in applying Government workplace relations and wages policies, has imposed significant constraints on the terms of certified agreements which the direct parties to negotiations have been otherwise prepared and able to make. This approach has amounted to pattern-bargaining by an employer who at the same time is espousing the virtues of decentralised agreement-making. If the Government wishes to impose such constraints, then the direct parties are entitled to transparency through full disclosure of policy detail at the outset of the process. Advices issued from time to time by the Department do not meet that requirement.

Legislation-based Conditions

The unions note that the Government has announced its intention to pursue amendments to certain legislation which prescribes important employment conditions for our members in the APS. The Government should not use its unique position as legislator and employer to change these conditions unilaterally through the Parliament. In most other industries, the equivalent conditions are set by awards or agreements, but the Workplace Relations Act precludes this for APS employees. If the Government has a legislative change agenda, there should be full negotiation and resolution of employee interests before any legislation is submitted to the Parliament.

Pay Retrospectively

Retrospectively of pay increases has been a frequent matter where the Department has required a change to the position of the direct parties. The device of a one-off bonus on certification has been used to circumvent the real issue. If the parties are able to agree to retrospective pay adjustments within the funding constraints, then prima facie there are sufficient productivity/efficiency gains to sustain this, and they should be able to do so. This is particularly the case where negotiations have been protracted.

Budget Impacts on Bargaining

The Government must desist from the recurrent practice of imposing efficiency dividends and other arbitrary productivity measures on APS agencies through the Budget processes. Such practice is inconsistent with a true productivity bargaining system, and renders the task of agreement-making even more difficult than it already is in the public sector. It also makes a mockery of the cost-neutrality parameter, in that agencies are required to return financial savings to the Budget before any funding can be allocated to bargaining outcomes. In the current Centrelink bargaining process, the substantial arbitrary staffing cuts are a major factor in the disputation occurring.

Freedom of Association

The Department has displayed an excessive pre-occupation with provisions in agreements going to the role of unions as representatives of their members. His has gone well beyond the Freedom of Association requirements of the Act. There can be no objection on FOA grounds to provisions explicitly referring to a representative role for unions, encouraging union membership, leave and facilities arrangements for employees acting in a union capacity if such provisions are not exclusive to unions. A recent decision by a senior Presidential member of the Industrial Relations Commission is instructive on this point [see *Print Q7710 – Clout Engineering Pty Ltd* Certified Agreement].

Inter-agency Mobility

In view of the general union position stated above, we would support measures which preserve and facilitate mobility between APS agencies, including annual and sick leave entitlements. The reference to sick leave should be broadened to encompass personal leave, as the latter has generally subsumed the former in agency agreements. We note the Government's foreshadowed change to allow varying standards for Long Service Leave would be another factor inhibiting the operation of mobility. We are not in a position to respond any further on the issue of LSL until the detail of the Government proposal is known.

Redundancy Provisions

The substantial reduction in award prescription of redundancy processes means that agreements will have a more important role to play in the continued availability of retention and redeployment provisions for excess staff. It should be noted here that CPSU and AMWU are still awaiting a response to their written requests in October for consultation with PSMPC on the terms of a proposed advice to APS agencies on future redundancy arrangements. We note again that the Government has foreshadowed a more flexible approach on this issue in agreement-making. The union position is that the protection available for our members not accepting voluntary retrenchment is an essential component of the redundancy package in the APS.

Pay Rates for Bargaining

Although it was not included in the policy parameters, the Government did adopt a position at the outset of the bargaining round that pay rates applying under the 95/96 APS Agreement would be the starting point for the negotiation of agency agreements, notwithstanding the terms of the no-disadvantage test. We consider that this position should be reiterated in respect of pay rates which have applied under the first round agency agreements. Furthermore, agreements should not be made on the basis that the interests of employees in minority classifications or work situations are detrimentally affected.

The unions do not challenge the merit of properly-motivated classification reform. However, such reform should not be used as a pretext for the introduction of performance pay. The issues should be considered separately. Parties to agency agreements should be allowed the discretion to determine the pay advancement arrangements best suited to their needs, rather than having one approach imposed on them.

Comprehensive Agreements

"*Comprehensiveness*" has been a feature of the majority of agency agreements, although this is an illusion in view of the effect of S170LZ of the Workplace Relations Act. The unions can understand the sense of displacing all previous agreements applying to an agency when making a new agreement. However, the practical effect of displacing awards has been to make agreements much longer than they need be. If the Government is genuine in its desire to make terms and conditions more accessible and comprehensible to employees, then it would encourage the use of employment handbooks in each agency covering all conditions, regardless of their source. This cannot be done through agreements. Perhaps the Department could assist with an appropriate handbook template.

Australian Workplace Agreements

In no case has an APS agency failed to make a certified agreement as the outcome of bargaining. Australian Workplace Agreements have had only limited application, generally in senior management levels. Even very small agencies with less than 50 staff have preferred to conduct their industrial business through collective processes rather than with individual employees. The union position is that collectively negotiated settlements which have been accepted by a majority of employees and certified by the IRC should operate for their specified duration to the exclusion of AWAs. If the Government continues to insist on AWA facilitation clauses, then such provisions should identify the classes of employees which may be covered by AWAs rather than be in general terms.

Form of Agreements

In many agencies, the form of certified agreement to be made has been a matter of some controversy at the outset of the bargaining process, particularly where an Agency Head has had a strong predisposition to a S170LK agreement regardless of the views of employees. The unions consider that, consistent with Object 3(c) of the Workplace Relations Act, there should be an agreed mechanism in such situations allowing employees to have a meaningful say in the form of agreement to be made in their agency. Where the agreement-making process is occurring under S170LK, there should be an open, democratic process for the election and accountability of employee representatives. Employer or self appointment to this role should not be permitted.

The establishment of majority employee support for a proposed agreement is the key event prior to certification. The actual and perceived integrity of this process is of crucial importance, and in cases of a narrow valid majority could determine if an agreement is certified. The unions express concern that in one major APS agency the votes on two agreements were conducted through the in-house electronic mail system, which had the potential for management monitoring of voting behavior of individuals and localised workplaces. This should be declared to be unacceptable. Voting arrangements should guarantee complete anonymity and privacy as to whether, when and how an employee votes on a proposed agreement.

Administrative Arrangements Changes

Most of the problems that the parties have had to deal with in sorting out the industrial consequences of the AA changes stem from the view held by the Department that agency agreements generally do not transmit between agencies. Setting aside the legal debate over this view, the unions wish to establish whether there is a mutual interest in avoiding a recurrence of this situation in the future. It should be possible to devise suitable wording for "*parties bound*" clauses in future agreements which would focus on functions performed or legislation administered rather than merely the name of the agency. This would ensure that there is some security for employees' entitlements under agreements, rather than having them removed at the administrative whim of the Government. Such clauses could include a commitment that in the event of AA changes involving a shift of agency, the intention is to rationalise agreements as soon as possible after the change to achieve fair and consistent employment standards within agencies.

The unions are prepared to elaborate on and discuss the above views at our meeting with the Department on 8 December. We would expect to receive prior to that date information on the Government's proposed amendments to the policy parameters and any other changes affecting agreement-making in the APS, so that these can also be discussed at the meeting.

Yours sincerely,

Tim PALLAS
Assistant Secretary

CPSU

Community and Public Sector Union

PSU Group • National Office, Sydney

C42/27

Ms L Riggs
Department of Employment, Workplace Relations and Small Business
GPO Box 9879
Canberra ACT 2601

Dear Leslie,

CPSU wishes to make the following comments on the draft DEWRSB Agency Advice which accompanied the release of Government's Policy Parameters on 17 May 1999. These views are in addition to those put forward by the ACTU in December 1998 in relation to the operation of the 1997 Parameters.

Introduction

The continued imposition of the Government's workplace relations policies on APS agreement-making means 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. The Government's approach is contrary to the scheme of the Act and its own rhetoric on agreement-making.

The advice on the need to incorporate mechanisms in agreements to facilitate longer-term flexibility is completely employer-oriented. The interests of employees should be protected by such mechanisms requiring the agreement of parties, or even formal variation of a certified agreement if significant matters are subject to review or change. It should also be mentioned that agreements which are too open-ended may attract the attention of the Industrial Relations Commission in performing its duty to properly apply the no-disadvantage test.

Direct Employer/ Employee Relations

The advice should include a statement that, consistent with Freedom of Association and the Objects of the Act, those employees who choose to join a union are entitled to have their industrial interests represented by that organisation. The current wording suggests that provision for employee representation is an option. This is an important point, as some agencies refuse to include an explicit reference to industrial representation in the dispute-settling procedure or other relevant provisions of their agreements.

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The assertion that two facilitative provisions of the Australian Public Service Award 1998 "limit notification and representation to unions" is misleading. There is no such limitation, as the award does not preclude other arrangements. These provisions were arbitrated by the IRC which has a statutory duty to consider whether award provisions breach Freedom of Association.

Managing Industrial Action

The unqualified statement that industrial action taken during the life of an agreement is unlawful is misleading, given the clearly stated views of the IRC on the application of Section 127 and the recent Federal Court decision in Thiess v CFMEU on the scope of Section 170MN of the Act. DEWRSB has a duty in framing this advice to inform agencies on current judicial and IRC interpretation of the Act, not what the Government would like it to be.

APS Award

This section needs to be updated for the outcome of the IRC proceedings on the leave provisions. CPSU considers that agreements should be able to reflect, or allow for the continued operation of, the leave arrangements incorporated into Clause 9 of the Award.

Superannuation - Commonwealth Employees

This section needs to be updated to reflect the recent announcement by the Government on its legislative timetable. Given the uncertainty surrounding the extent and timing of any changes, agencies should be advised not to take any action anticipating the implementation of the Government's policy position on superannuation.

RRR Issues

The straitjacket imposed on the specific matter of the severance payment, in the context of a so-called decentralised bargaining system, is unjustifiable, inconsistent with the treatment of other employment conditions, and tantamount to the much-derided practice of pattern bargaining. CPSU notes that the Government will tolerate reductions in the level of the benefit but no enhancements.

The advice should include a statement that agencies may still choose to observe full retention periods and referral to APSLMAP for redeployment if this suits the enterprise and the parties.

CPSU has already raised with PSMPC the inaccuracy of the statement concerning the non-availability of severance benefit if an employee has had access to any retention period. Agreements have been certified which provide for a reduced retention period to permit APSLMAP referral or a similar process to occur prior to retrenchment with payment of benefit. Such arrangements should not be precluded.

MOG Clause

CPSU notes that the model clause contains a single course of action through a unilateral employer determination, with no requirement for consultation. CPSU seeks an explanation as to why the option of a more co-operative approach, providing for discussions between the parties and an agreed outcome, has been ruled out. Such an approach was incorporated into the relevant clause of the recently certified Centrelink Agreement.

Agreement-making Process Issues

In the ACTU's December submission and subsequent discussions, certain issues relating to important aspects of the agreement-making process in APS agencies were raised. There was some acknowledgement of these matters by DEWRSB representatives at the time, and an indication that they may be addressed within the Agency Advice on the new Parameters. CPSU notes that this material is not included in the draft, and seeks clarification of where these issues will be addressed.

Yours sincerely,

Wendy Caird

Wendy Caird
National Secretary

Administrative Arrangements Order October 21, 1998

ATTACHMENT E.