

Submission No. 15

**THE FINANCE AND PUBLIC ADMINISTRATION
REFERENCES COMMITTEE INQUIRY INTO
AUSTRALIAN PUBLIC SERVICE EMPLOYMENT
MATTERS**

SUBMISSION

BY

**THE INSTITUTE OF PUBLIC ADMINISTRATION,
AUSTRALIA (ACT DIVISION)**

NOVEMBER 1999



**Institute of
Public Administration
Australia**

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INTRODUCTION

The Institute of Public Administration Australia (IPAA, or the Institute) is a national body whose mission is 'to promote and strive for excellence in public sector management in Australia'.

In the ACT, the Institute serves as an important source of information and opinion on issues of government policy, innovation and reform in the Commonwealth and ACT governments. It actively promotes debate and facilitation of public administration issues and public sector change affecting government and non-government sectors. The Institute also promotes ethical standards and integrity in the practice of public administration, and national and international exchange of ideas, networking and best practice in public administration and management.

The Committee's current inquiry into Australian Public Service employment matters is clearly one to which it is appropriate for the Institute to contribute, its views gleaned in large part from the information and debate which arises in the course of the many activities sponsored by the ACT Division.

For ease of reading and consideration, this short submission commences with a background section, and is then divided according to the three terms of reference identified by the Committee.

The general approach of this IPAA submission is not to argue for particular outcomes; nor does the submission seek to reflect a particular policy agenda. Rather, it points to issues that are of relevance to IPAA and public sector administration generally and seeks to identify possible options and approaches that might assist the Committee in its deliberations.

BACKGROUND

The Constitution

The Australian Public Service (APS) is an institution in Australia's system of Executive Government. It derives from the Australian Constitution but has continued to evolve.

Section 64 of the Constitution provides that "the Queen's Ministers of State for the Commonwealth" will "administer such departments of State of the Commonwealth as the Governor-General in Council may establish". The "departments of customs and excise in each State" were to be transferred to the Commonwealth "on its establishment" and other specified State public service "departments" were to be transferred to the Commonwealth later, by a date or dates to be proclaimed, under section 69 of the Constitution. Further, until specific legislation by the new Parliament provided some other approach, section 67 of the Constitution gave the Governor-General in Council the role of appointing and removing public servants (or the section enabled the Governor-General in Council to delegate these functions).

Legislation

The Parliament enacted the *Commonwealth Public Service Act 1902*, that commenced on 1 January 1903. That Act was repealed by the *Public Service Act 1922* which has been extensively amended during the past 77 years. The *Public Service Act 1999* (PS Act), which will replace the 1922 Act, will come into effect next month.

The PS Act, at Section 9 provides that,

“The Australian Public Service consists of Agency Heads and APS employees”.

The “main objects” of the new Act, specified in Section 3, “are:

- (a) to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public; and
- (b) to provide a legal framework for the effective and fair employment, management and leadership of APS employees;
- (c) to define the powers, functions and responsibilities of Agency Heads, the Public Service Commissioner and the Merit Protection Commissioner; and
- (d) to establish rights and obligations of APS employees.”

Historical perspective

The APS owes its origins to a British style civil service. Drawing from 19th century British developments in the Westminster civil service, consistent strands of the APS have required it to be apolitical, with staffing decisions based on the relative merits of applicants.

The ‘APS Values’ contained in section 10 of the PS Act reinforce those long-standing strands and provide a checklist of values which are consistent with past principles but spelt out in more detail.

Recent trends

While the APS continues to play its role as an institution in our system of Government, it has also been subject to considerable change since 1901, especially in more recent years.

Over the past two decades, Governments from both sides of politics have moved to reduce the size of the public service workforce, and there has been a reconsideration, though not always articulated, of the responsibilities government should and should not undertake directly, leading to some reductions in public sector responsibilities.

Public service operations with commercial roles have been corporatised and some have been sold off, including in large-scale privatisation exercises. Some formerly public service areas have been restructured to become statutory bodies with a non-PS Act workforce. Across the board, including for public service departments and agencies, greater emphasis has been placed on contestability of services, often with a resultant contracting out of activities that were previously undertaken by a PS Act workforce.

A movement of responsibility from a centrally controlled environment to a far more devolved one in both financial and personnel management began in earnest in the 1980s and those trends have continued. Departmental and agency structures have been revisited in a range of examples to separate areas with policy responsibilities from those with delivery and administrative functions. The adoption of purchaser/provider models has added a further layer.

Recent budgetary changes, with the move to an accrual budget process and the associated output-outcomes reporting framework, continue these approaches, seeking to entrench and improve a

government's whole of government oversight while at the same time enhancing flexibility for agencies in how they perform the functions for which they are to be held responsible.

The PS Act will enhance the role of departmental Secretaries but also their accountability in relation to their agency head roles. Similarly, in the financial management area, the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997* seek to give chief executives greater internal financial management flexibility but within a framework of increased accountability to government and the Parliament.

Accompanying all these developments and very relevant to any consideration of APS employment issues, is the increasing trend for workers generally to view their working lives as involving a series of different jobs, rather than a single long-term career with just one employer. This has certainly been apparent in the APS, in part of course because of the reduced job opportunities as the size of the public sector has reduced and as parts of its operations have ceased to exist as APS bodies. Even setting those aspects aside, it is increasingly the case that APS staff will seek opportunities to work in different non-APS agencies, including in other levels of government, international organisations, the private sector and not-for-profit bodies. Similarly, some whose experience is from outside the APS will seek to work within the APS for a time, although there is a perception that this has, to date, been less widespread. This continued interaction between traditionally different employment sectors increases the need for flexible employment practices to be available to APS agencies, as they are outside the APS environment.

RESPONSE TO TERMS OF REFERENCE

1. The Senior Executive Service

For the purposes of this submission, the Senior Executive Service (SES) is taken to include Chief Executive Officers who are statutory office holders, but not departmental Secretaries.

The calibre, professionalism and integrity of the senior management cadre are key determinants of organisational success in both the private and public sectors. A private sector company is reliant on its senior managers to drive the bottom line, and to ensure the organisation remains profitable.

The same is true in the public sector, but the relationships are often more complex. First, the bottom line is not usually limited to a profit and loss statement, and the 'profitability' of a department or agency is more likely to be defined according to a framework of both quantifiable and non-quantifiable outputs. Indeed, there is a fundamental question as to whether success ('profitability') is a construct relating to an organisation such as a department or agency, or whether it is the APS as a whole that is a single institution, of which the SES forms the top management structure.

IPAA contends that the SES must form the central core of the APS as a whole, and that to fragment the senior management group into particular subsets of the institution (i.e. as specialists in particular departments) is to fail to take advantage of a capacity to deploy skilled policy and managerial resources to wherever the Government most needs them at any given time.

Central to this thesis is a necessity to separate SES appointments from the political process, as the PS Act does, to ensure that well rounded policy skills are available across the APS. The Institute recognises the need for some flexibility of approach, but considers that caution needs to be exercised in moving too far into political appointments to the SES, where policy skills are by no means the only requirement.

Leadership and management skills are essential criteria in determining merit for SES appointments. The APS must be led by those who understand the need to create the new cultures sought by the Government of the day, and who have the skills to do this by exhibiting leadership, and by

demonstrating the required behaviours to their staff. An entrepreneurial outlook, and an ability to 'manage upwards', to respond effectively to departmental Secretaries and to Ministers, are necessary but not sufficient conditions to ensure the degree of rapid change the modern APS is facing.

The core values elucidated in the PS Act set an important framework for the attitudes and behaviours required of the SES. Complementing these values, the Senior Executive Leadership Capability Framework recently released by the Public Service and Merit Protection Commission (PSMPC), and copied at Attachment 1, is more specific about the types of behaviours which are likely to deliver the change outcomes required. These leadership elements have now become the SES core selection criteria, and are also likely to form a ready tool against which to hold performance appraisal discussions for SES officers.

If it is accepted that it is in the Government's best interests to have the SES form an overall APS leadership group, there are then workplace relations issues to be dealt with. Notwithstanding the additional discipline provided by the move to output based funding, there is and will remain scope for some agencies (particularly the larger ones) to lead the SES labour market. Almost all SES positions are now covered by Australian Workplace Agreements (AWAs), and while the flexibility offered by such agreements in matching organisational and individual needs is commendable, there is a risk that smaller agencies may find themselves unable to compete for the most skilled resources. Where this accords with the Government's own priorities, this will not be a problem, but where it does not, there may be a need to take a broader view to ensure mobility of skilled people.

In this context, it is worth noting the situation of Chief Executive statutory office holders, the majority of whom have their salaries and conditions (as set by the Remuneration Tribunal) based on Deputy Secretary or Division Head equivalence. These agency heads have departmental Secretary responsibilities, which have become increasingly weighty in recent years as the Department of Finance and Administration, and the PSMPC, have devolved powers previously held by them. However, the Remuneration Tribunal's salary determination of 24 March 1999 broke the nexus whereby these officers had received the same percentage salary increase as Secretaries. Now that Deputy Secretaries and Division Heads can negotiate AWAs, and be rewarded flexibly without the added responsibilities of running an agency, there may be a question about the attractiveness of some statutory offices (particularly those covered by the stringencies of the *Commonwealth Authorities and Companies Act 1997*).

If the SES is to form the core of the APS, a major (but not exclusive) source of high quality, professional advice to Government, and the leadership cadre which ensures the Government's desired outcomes are delivered 'on time and on budget', there will continue to be an important role for an agency which is able to advise the Government on the overall picture.

IPAA supports a continued role for the PSMPC in making SES appointments, in monitoring SES remuneration and conditions (although not necessarily in approving them), and in monitoring skills levels and advising on where in the APS particular skills may best be found. This will require regular reporting to the PSMPC by APS agencies, although care must be taken to ensure that this does not become a significant additional administrative burden. There is an argument that such arrangements should relate to all budget dependent agencies, not all of which are currently classified as part of the APS.

The PSMPC should also retain a responsibility for skills development, by coordinating cost effective development opportunities and ensuring that these opportunities are taken by all SES officers, in the interests of the APS as a whole.

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.

Agency bargaining is a reality for Commonwealth agencies. A large number of agreements have now been negotiated between agencies and their staff so there is a base of experience on which to judge the impact of agreements on the APS.

The experience suggests that there have been benefits as well as costs and difficulties as a result of the introduction of agency bargaining.

The principal benefits of agency bargaining have arisen from the simplification and streamlining of conditions of service and the extent to which agencies and their staff have been able to agree on arrangements that are more relevant to their circumstances and aspirations. The capability offered through agency bargaining to link conditions of service with agency values, desired behaviours and business goals is likely to contribute to organisational cohesion and efficiency improvements. A number of agencies have been able to include such elements in their agreements.

It is arguable that the conditions for simplification and streamlining were created by changes to legislation and regulation covering financial management and workplace relations rather than attributable to agency bargaining. It is also arguable that the simplifications achieved by individual agencies could have been achieved more quickly, efficiently and cost effectively if they had been negotiated centrally.

One element of the changes arising from agency bargaining, which is clearly beneficial at the agency level, is the adaptation of conditions of service to individual agency business needs and preferences. It is not clear whether these agency-specific variations have been significant features of the agreements, though it appears that the main thrust of changes introduced through agency agreements related to areas relevant to a majority of agencies. As experience in bargaining increases and stakeholders become more willing to be innovative, the agency-specific elements may become more significant in second-round agreements.

Another benefit of agency level bargaining is the potential for innovation to flourish through application to a wide range of situations. This innovation has the potential to form a body of collective knowledge and best practice to be spread across the sector increasing productivity and quality of conditions as a result.

Experimentation across agencies on terms and conditions does have its costs, however, including the direct cost and time involved in negotiations and administration, as well as the efficiency implications if results are below expectations. There is potential also for competitive bidding to put pressure on agencies to match improvements elsewhere. Small agencies would be particularly at risk in this process due to their limited scope to match the offers of larger agencies with bigger pools of resources and more avenues to pursue productivity improvements to offset the cost of improved conditions.

The maintenance and dissemination of knowledge on good practice agreements and bargaining arrangements is an essential requirement for the benefits of greater experimentation to be realised. The Department of Employment, Workplace Relations and Small Business have recently established a consultancy and information service called Workplace Partnerships to facilitate the dissemination of knowledge. It remains to be seen whether this service will provide an efficient and effective way for the Commonwealth to spread the benefits of knowledge. This will depend to some extent on the transparency of agreements, the quality and accessibility of the Workplace Partnerships service and its affordability, particularly for small agencies.

One risk associated with diversity of conditions across the public service is its potential to create significant gaps in conditions between agencies. This would have implications for mobility and

flexibility of administrative arrangements orders. Again, larger agencies would be better able to accommodate change than small agencies.

Mobility and changes in administrative arrangements are likely to add further upward pressure on terms and conditions because attempts to 'normalise' varying conditions within an agency will be achieved most smoothly by raising less generous conditions than by reducing more generous conditions.

There is a number of factors that will limit the risks associated with diversity of agreements across the APS. These include the scrutiny provided by regulatory arrangements and the Parliament, financial constraints and contestability of service provision that will limit the capacity of agencies to finance improvements in pay and conditions. Greater transparency of the cost of outputs under the new financial management arrangements should also help to avoid cost shifting by agencies to fund improvements in conditions.

Agency bargaining will almost inevitably result in a greater focus on efficiency and effectiveness of individual agencies. It is likely to improve the cohesion and focus within the agency and result in employment conditions that are more suited to the business and management of each organisation. At the same time, these impacts will work against some of the major advantages seen in the previous public management framework. These include common values, behaviours and standards across the service, broad and flexible career opportunities, ease of mobility across agencies and cooperation and cohesion engendered through identification of a single public service.

The tension created by agency bargaining on the merits of a single common public service could be mitigated by retention of a core framework that agencies can work within. This could include a common set of values, behaviours, principles, standards and incentives that would apply to all agencies within which they could establish their own variants. This central framework does exist already, however there may be merit in further public debate about the content of the framework. The elements and characteristics of the central framework could be subject to negotiation with agencies and public servants through central collective bargaining processes. This could simplify negotiations at agency level by limiting them to a smaller set of agency-specific issues. While this would reduce the flexibility of agencies in negotiations to some extent, it could result in a more efficient outcome that maintained a strong public service-wide framework.

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

Clearly, APS agencies are taking up the opportunity offered by the new industrial relations arrangements to include performance pay in CAs and AWAs. Thus, the flexibility to design performance pay arrangements to suit each agency via the CA and each staff member via an AWA is available and is being used. Some agencies have moved slowly and have no performance pay arrangements in place. Others have decided to lead from the front by using features of their performance pay arrangements to encourage staff to agree to CAs and AWAs (although such features are not limited to performance pay).

The upside is that this enables agencies to design performance pay arrangements to suit their particular circumstances of culture, work conditions and processes. Performance pay is thus easier to implement successfully. However, it does have the risk of increasing the separation in conditions between departments referred to earlier in this submission. Staff considering a move to another agency even at the same level now need to consider the package of conditions available, including performance pay. For the individual this provides the opportunity of gaining a higher potential remuneration without requiring a promotion. This is nothing more than common practice in the private sector. But, the APS is not just a collection of unconnected organisations. Some care will be

needed to prevent large agencies from abusing their power in the employment market at the expense of small agencies.

It is possible for agencies to have different approaches to,

- the range and levels of agency staff who can access performance pay;
- the amount of performance pay that can be accessed (in total and as a proportion of base salary);
- the scoring system used (eg. 1 to 5 or 1 to 10); and
- the precise links to performance management (eg. via performance improvement programmes).

It is not clear how great the differences between agencies will become. Given that there is regular contact between many agencies at CEO and other levels, the differences in the long term may not be great. Those designing the performance pay arrangements may well stay in touch with the market sufficiently to ensure that the packages they offer are close to the market trend.

Unlike in the private sector, there is a risk of agencies bidding up packages in competition for staff. The greatest discipline will be imposed by the new accrual budgeting arrangements which include regular reviews and benchmarking of the price of agency outputs. Hopefully, that process will disclose cases where the price of outputs is too high because of unrealistic pay and conditions.

Given that CAs are normally published to all staff of an agency and are not treated as confidential, those arrangements are no less transparent than the previous situation. AWAs, however, are generally treated as confidential to staff and supervisors. Thus, their provisions, including any performance pay are not as transparent as before. This may engender fears about secret pay and condition agreements in the APS. However, some agencies have instituted remuneration committees with the role of ensuring consistency across the organisation. Such committees also reduce fears of secret deals and the risk of bad practices.

Performance pay was introduced in an attempt to make managerial flexibilities and motivators of the private sector more available to the APS. The main objective was increased performance. However, performance pay in the APS is not an exact copy of private sector systems which can reward staff in proportion to the financial success of the firm as well as individual performance. The nearest APS approximation to that would be to reward staff directly for achieving cost savings, which has a high risk of counter-productive outcomes. Public servants generally can only be assessed against the amount of work they complete, the way in which they perform and the quality they achieve.

Performance pay is today an accepted element of performance management in the APS. Nonetheless, there is still debate about its utility. This suggests that, despite the theoretical arguments that performance pay is important, it cannot work if the practical aspects are not properly addressed. Achieving better performance is dependent on successful implementation in the context of each agency. This was made clear by the centrally driven process to introduce performance pay in the early 1990s which led to problems when,

- agencies did not match the scheme to their own culture and internal requirements; or
- performance pay was treated as a form of pay rise to which all were entitled, making performance management even more difficult.

Although performance pay is important, the linkage with performance can become tenuous:

- Performance pay must be implemented well to avoid the risk of it becoming a disincentive or at the minimum receiving poor staff acceptance.
- The trend to offer greater scope for performance pay in CAs and AWAs suggests that the amount of reward needs to be significant.
- Intrinsic acknowledgments of performance may be just as, if not more, effective.

On the other hand, linking performance with pay may help ensure that staff and supervisors take the performance management regime seriously. Pay has always been linked to performance through the opportunities for advancement and in most agencies, processes for advancement are meant to be based on performance. However, performance pay provides a stronger link especially where opportunities for promotion are limited.

Particular aspects of implementation can cause problems:

- Most agencies try to ensure consistent application of performance pay across all staff. Thus many use some form of “moderation” by higher level managers. The moderation process itself, however, can have negative consequences if done in secret, without explanation, or without regard to individual circumstances (eg. in order to maintain a particular results profile such as a ‘bell curve’).
- Scoring systems can cause much argument. Some agencies use a 1-5 scale, others a 1-10 scale and the descriptions for each level also vary. Much can ride on the definition of terms such as: “superior”, “competent”, “satisfactory”, “adequate”, “borderline” etc.
- Performance pay can be a reward for doing more, “making an extra effort” in the search for results, or a reward for doing as expected.
- Performance pay arrangements need to fit well with arrangements for handling underperformance.
- Although performance pay can help to stimulate discussion on performance between staff and supervisors, some supervisors only provide feedback when required to do so for purposes of performance pay. That small level of feedback is usually insufficient and may signal wider problems. In agencies that provide performance pay only for middle and high ranked staff, lower level staff can miss out on performance feedback.

Recent experiments with using performance pay processes to inculcate performance cultures have also had mixed results:

- Making performance pay available to staff at all levels can contribute to a more cohesive workplace. Lower level staff, however, usually have to lose their overtime payments or other conditions and so their response may be mixed.
- Another approach involves “Raising the bar” from one year to the next. It implies that staff need to improve their performance each year in order to gain the same level of performance pay. This does focus on a performance improvement culture; staff are on notice that they can’t stand still. However, it can contribute to reduced trust and lower morale if it doesn’t take into account surrounding circumstances. eg. a year of particularly difficult work.

There are some lessons to be drawn from past experience with performance pay:

- Performance pay should be implemented as part of the whole of managing an agency and the relations between staff.

- Performance pay and performance management arrangements generally, must be owned by the agency and integrated with other aspects of management including strategic and business planning, skills development and HRM.
- Performance pay can work well when its role is understood and agreed by staff and supervisors but, can fail where there is mistrust or resentment. Implemented poorly, performance pay can add to mistrust, resentment and low morale and so damage performance.
- Performance pay is but one motivation for people to perform well. Supervisors need to understand the wider range of motivators and their linkages with performance pay. Performance pay cannot replace the impact good leadership has on performance.
- Performance pay, together with the recent changes to industrial relations arrangements, reinforces the need for public sector managers to be able to judge, provide constructive feedback on and reward performance. They must be active managers of performance; able to accurately assess the value of the efforts of staff and to decide on a fair reward.
- Agencies need to spend time and effort, including by training staff, to build up their capacity to manage appraisal well.
- Agencies need to consider carefully how complex their performance pay systems should be. Performance pay systems have their own costs in the commitment of time, risk and effort by staff and supervisors which need to be balanced against the benefits to the agency.

In developing their performance pay arrangements, APS agencies should,

- provide transparency in their procedures and practices ensuring staff can see that the results are fair and particularly, that the merit principle is properly applied;
- consider some form of “fair treatment” process to maintain consistency and good decision making across the organisation but in a way which is open rather than secret;
- be aware of the morale benefits in publicly rewarding high performing staff but be wary of revealing individual payments where it would be counterproductive; and
- consider providing some form of performance pay for all staff recognising that high performance does occur at all levels.

Institute of Public Administration Australia (ACT Division)
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SENIOR EXECUTIVE LEADERSHIP CAPABILITY FRAMEWORK

ACHIEVES RESULTS

- Builds organisational capability and responsiveness
- Marshals professional expertise
- Steers and implements change and deals with uncertainty
- Ensures closure and delivers on intended results

CULTIVATES PRODUCTIVE WORKING RELATIONSHIPS

- Nurtures internal and external relationships
- Facilitates cooperation and partnerships
- Values individual differences and diversity
- Guides, mentors and develops people

SHAPES STRATEGIC THINKING

- Inspires a sense of purpose and direction
- Focuses strategically
- Harnesses information and opportunities
- Shows judgement, intelligence and commonsense

COMMUNICATES WITH INFLUENCE

- Communicates clearly
- Listens, understands and adapts to audience
- Negotiates persuasively

EXEMPLIFIES PERSONAL DRIVE AND INTEGRITY

- Demonstrates public service professionalism and probity
- Engages with risk and shows personal courage
- Commits to action
- Displays resilience
- Demonstrates self awareness and a commitment to personal development