



Community and Public Sector Union

Rupert Evans
Deputy National President

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Mr Stephen Palethorpe
Secretary
Senate Education and Employment Reference Committee
PO Box 6100
Parliament House
Canberra ACT 2600

by email: eec@aph.gov.au

Inquiry into Impact of the Government's Workplace Bargaining Policy and approach to Commonwealth public sector bargaining

Dear Mr Palethorpe

We write in response to the Department of Immigration and Border Protection (DIBP) correspondence of 22 November 2016 commenting on the evidence provided by the CPSU DIBP Bargaining Team on Monday 11 November 2016 and Tuesday 15 November 2016.

The following is provided in regard to the DIBP comments.

Proof Committee Hansard, 11 November 2016. Page 54, paragraph 2.

CPSU is aware of at least two occasions where senior DIBP representatives Murali Venugopal and David Leonard addressed staff and asserted or implied that DIBP could put forward a worse offer in arbitration than the proposed agreement that was subject to an all staff vote.

- Meeting at Immigration Parramatta NSW – Thursday 27 October. Delegates report Mr Venugopal saying words to the effect that “this offer is your best chance at pay parity. If you vote no, then Mr Leonard and I will be the ones involved in the Arbitration process at the Fair Work Commission and the offer we will put on the table will be very minimal and nothing like the current offer”.
- Meeting at the Australian Border Force, Detector Dog Unit NSW – Wednesday 26 October 2016. CPSU delegates advised the CPSU organiser that Mr Venugopal had stated that a different offer could be put forward to the FWC after members asked whether the offer at the time would be the basis for arbitration. Members believed Mr Venugopal was implying that the offer would be worse. However, he was not as explicit as at the Parramatta meeting above.

Potential length of arbitration featured strongly during management roadshows and in staff communications. Written examples from the employer to all staff about arbitration in the lead up to and during the ballot are attached. I refer you specifically to Enterprise Agreement Update Number 8 of Thursday, 6 October 2016 (Attachment A) which states:

“The well-known 2011 arbitration matter between Qantas and the Australian and International Pilots Association took 529 days”

Also attached for your reference is:

- Enterprise Agreement bargaining Update 9: Vote and FWC update – reference to lengthy arbitration process (Attachment B)
- Enterprise Agreement bargaining Update 13: It’s time to make a choice – reference to lengthy arbitration process (Attachment C)
- Employer Fact sheet Arbitration on Intranet - Reference to arbitration taking between 6-18months dependant on complexity of outstanding matters (Attachment D)
- Message from the Secretary and Acting Commissioner: Termination of all Protected Industrial Action – referring to 6-18 month arbitration process (Attachment E)

In addition to this and since the DIBP correspondence to the Committee, the Department has now put a draft workplace determination to the Fair Work Commission that is in fact worse than that proposed in the most recent agreement (that was voted down by 82.4% of voting staff). This further supports the CPSU comments in relation to the Department’s approach to Arbitration.

Proof Committee Hansard, 15 November 2016. Page 35, paragraph 2 - 15

It is difficult to provide exact figures around average earnings at airports/seaports due to variations of shifts; however, the average remuneration outcome that the Department has provided looks inflated and would include significant amounts of regular overtime. For example;

- An APS 3 Officer undertaking regular overtime at Melbourne Airport would earn on average \$85,000 per year (compared to the employer claim of \$91,000). Their base salary would be a maximum of \$61,970, the highest increment for an APS under the 2011-2014 Australian Customs & Border Protection Service Agreement.
- An average APS 3 officer Sydney Airport would earn approximately \$80-85,000
- One CPSU delegate at the APS 3 level at Sydney Airport who undertakes high levels of overtime (up there with the highest rates undertaken at that Airport) earned about \$127,000 last financial year. The highest remuneration outcome claimed by the employer at Sydney Airport is \$172,000. The Department’s figures seem excessive in this particular example.

To achieve these salary levels above their base salary, people working in Airports and Sea Ports undertake difficult and dangerous work, shift work and additional hours remunerated as overtime. For example they may: work in confined spaces; be exposed to a wide range of hazardous materials, work in extremely cold weather, and inspect and investigate organised crime. Officers can also face a lack of access to infrastructure, facilities and public transport at their place of work and work unsociable hours including nights and weekends, this can include:

- Working 12 hour shifts
- Commencing work at 3:00am in the morning
- Working night shift commencing at 9:00pm and concluding work at 7:00am

These factors needs to be considered when looking at average yearly earnings. They are not wages for a 9-5, Monday to Friday job of an average 37 hours a week.

Proof Committee Hansard, 15 November 2016. Page 37, paragraph 5 -7

In 2011, after three rounds of Enterprise bargaining negotiations in the Australian Customs and Border Protection Service (ACBPS), a package of district office and geographical allowances was secured that members supported. These allowances were preserved in the Section 24 Determination issued on integration of ACBPS and DIBP as part of the integration transition payment for ex-Customs Officers. Officers who commenced work in a remote area post integration (1 July 2015) are now subject to the DIBP enterprise agreement conditions. DIBP 'remote' conditions are mainly inferior (compared to the ACBPS EA 'remote' conditions) primarily because ACBPS worked in different physical locations and for different periods of time. In particular the rates of rental subsidies in DIBP are much lower than ACBPS meaning officers working side by side are on different conditions of employment.

In Customs pre-integration, remote conditions (including relocation assistance) applied when officers voluntarily undertook fixed terms assignments. This package of allowances was provided to help compensate staff for working in remote, isolated and harsh conditions with limited access to essential services and amenities.

In October this year, DIBP released a policy around domestic relocation conditions for consultation. This policy is not yet finalised. The policy states that officers who select to relocate to a remote locality will not receive relocation assistance instead relocation will be at the employee's expense. CPSU has been directly advised by members and delegates that staff are becoming increasingly reluctant to put their hand up for a temporary transfer as:

1. The DIBP conditions are less attractive and result in officers paying much higher rates of rent in particular, and
2. Relocation costs may be required to be met by the employee.

The Australian Border Force has commenced moving to a postings model where staff will be required to be mobile and deployable and can be directed to work in different parts of the organisation to address operational needs, identified risks, peak periods.

ABF Officers could be forcibly posted to a remote locality and whilst they will be afforded relocation assistance in this model, they will be on conditions of employment that are significantly less than pre-integration.

Remote conditions on offer in the employer's draft agreement are worse again which would result in Officers being up to \$15,000k worse off due to cuts to rental subsidies. ABF Officers do not believe the current DIBP conditions sufficiently compensate staff, let alone what was proposed in the draft agreement.

Yours sincerely

Rupert Evans
Deputy National President
Community and Public Sector Union

YOUR EA

Enterprise Agreement bargaining Update 8: Vote update

Colleagues,

Further to yesterday's message from the Secretary and Acting Commissioner, I am writing to confirm that we will be proceeding to a ballot on the proposed EA.

Following yesterday's decision by the Fair Work Commission (FWC), here is an outline of what we know:

- there cannot be any further Protected Industrial Action (PIA)
- we will be working with bargaining representatives over the next 21 days to identify areas of agreement and disagreement. Matters that cannot be agreed will be subject to arbitration by the Full Bench of the FWC
- arbitration and a ballot can occur concurrently
- arbitration can be a lengthy process and is unlikely to deliver an outcome in the short to medium term. The well-known 2011 arbitration matter between Qantas and the Australian and International Pilots Association took 529 days. Closer to home, a 2012 matter between the Victorian Government and the CPSU took 192 days
- you do not get to vote on the outcome of arbitration. The decision of the FWC is final and, once made, it operates like an EA

The EA that we have proposed and circulated to you would deliver:

- an immediate pay rise of 3% for all of you
- pay increases in excess of 6 % over the life of the agreement for a majority of you
- grand-parenting and other new allowances – your take home pay is protected

The FWC can approve EAs that are voted up by staff even when it is considering an arbitration-matter. When this happens, the arbitration ends.

The ultimate decision must be yours and no one else's. These are the choices before you:

- vote YES to the EA and secure the pay rises and conditions in it; or
- wait for an unknown outcome for an unknown period of time and accept what the independent arbiter decides will be your pay and conditions

I know you have not had a pay increase in three years, and some of you are hoping for a better outcome through the arbitration process. As I have mentioned in previous emails, we have developed the best-possible offer within our financial constraints. These constraints will not change and any decision maker is obliged to consider financial and other constraints faced by the employer when ordering outcomes from arbitration.

I encourage you to consider your choice carefully.

A range of information about the EA is available on the [EA intranet page](#). You can also email any questions to [EA@fsc.gov.uk](#). We are organising information sessions across our network and we hope to discuss this in person with most of you in coming weeks.

Murali Venugopal
First Assistant Secretary
PeopleDivision

YOUR EA

Enterprise Agreement bargaining Update 9: Vote and FWC update

Colleagues,

I am writing to update you on our plans for a ballot for a new enterprise agreement (EA) and current status of proceedings at the Fair Work Commission (FWC).

Ballot

You get to vote on our EA from 31 October to 6 November 2016. From next week you will start to receive detailed information about the ballot process.

We are proceeding with a ballot to give you a say and a choice, whereas, as I have outlined previously, the outcome of an arbitration process is a workplace determination. You do not get to vote on a workplace determination; it is binding and final.

Fair Work Commission process update

The FWC has scheduled conciliation meetings for 14 and 21 October 2016. I will keep you apprised on this matter as we have more updates.

About Arbitration

Arbitration can be a lengthy process and may not deliver an outcome in the short to medium term—particularly where a range of matters are in dispute. Previous cases in FWC show a correlation between the range of matters in issue and the time it has taken the FWC to deliver an outcome through arbitration. In cases where there have been shorter arbitration periods, the

matters in issue have been limited.

The budget available and existing government policies have been previously acknowledged by the FWC as relevant considerations in the making of a workplace determination.

Therefore, relevant considerations in our context include the 2016–17 Commonwealth Budget position that forecasts a cumulative deficit of \$85 billion over the forward estimates, and that we entered the 2016–17 financial year with a reduction of 4.5 per cent to our Departmental budget and a reduction of 305 to our Average Staffing Level (ASL) cap.

Our proposed EA will cost us \$206 million and would require a reduction of 752 ASL over the three year life of the agreement. Sustaining an ASL reduction of this size is going to be challenging. In comparison, a 3 per cent average annual pay raise over three years, a claim which has been made by at least one bargaining representative, will cost us around \$300 million and will require us to reduce our ASL by 1,290 over three years. ASL reductions of this scale will have a critical impact on our ability to deliver the important services we provide to the Australian community.

Our proposed EA guarantees

- An immediate pay rise of 3 per cent for all staff.
- Grand-parenting and other new allowances—your take home pay is protected.
- Pay increases of 6.4 to 10.7 per cent for the majority of you over the life of the agreement through a combination of general pay increases and performance based increments.
 - 99.97% of you met the requirements for an increment on 1 July 2016. The proposed EA replaces Effective with Met Expectations. This is, effectively, the same performance requirement.
 - 83% of you who were rated as Met Expectations did not get an increment because you were at the top of the range for your classification.
 - This offer provides most of you access to new top of the range salaries and to future increments.
 - Do you belong in this category? Visit the [Ready Reckoner](#) to find out
- Retention of current standard working hours, over the life of the proposed agreement, for colleagues from the former Customs—recognising that some of these colleagues will receive the lower end of the pay offer (4.7 per cent) while the majority of you will receive 6.4 to 10.7 per cent.

Your Rights and Conditions

Your rights are enshrined in legislation and cannot be taken away through bargaining. I encourage you to familiarise yourself with the detail provided in

[Fact Sheet 3 — How your rights are protected](#) on the [EA intranet page](#).

Some of you are concerned that the Department could unilaterally change policies that support conditions in the EA without any input from you. This is not correct. Your EA has a specific clause that guarantees consultation on policies with employees and elected employee representatives (clause 1.7).

Your choice

There is an alternative to the unknown outcome of the FWC arbitration process. If a majority votes for the EA the Department will seek approval by the FWC and if the EA is approved the Department considers there will be no need for any arbitration.

A majority YES vote means the wait ends; you will have your pay rise and we can move forward, together.

Please consider these choices when casting your vote.

A range of information about the proposed EA is available on the [EA intranet page](#). You can also email any questions to [\[redacted\]](#). I hope to discuss this in person with most of you in coming weeks.

Murali Venugopal
First Assistant Secretary
People Division

YOUR EA

Enterprise Agreement update 13: It's time to make a choice

Colleagues,

On Monday, 31 October 2016 you will be able to start voting on our new Enterprise Agreement (EA).

I am acutely aware that you have not had a general pay raise since 2013. This has already impacted you in several ways, including lost superannuation savings. Together, you have a real opportunity to end this wait. A 'yes' vote offers that certainty now. At least two other agencies voted up their EAs earlier this week. More than 60 others will soon be entering negotiations for their **next** EA, having benefited from early agreement and subsequent pay rises.

In discussing the offer with thousands of you over past weeks, it has become clear to me that there is a lot of misinformation being promoted. I am confident that you will, in the end, make your decision after fully informing yourself of the facts.

A 'yes' vote means you will receive a 3% pay raise before Christmas. It also guarantees that the majority of you will receive pay rises of between 6.4 – 10.7% over the life of the proposed agreement. Just over 3,000 staff, already on pay scales above 11,000 of you, will receive the minimum pay raise of 4.7%. Contrary to popular belief, those of you who are **APS 1, 2, 4 or 5 officers**, irrespective of whether you are from the former Customs or Immigration departments or have joined this Department since integration, will have access to pay raises in excess of 6%. See the [ready reckoner](#) to confirm these figures for yourself.

A 'no' vote means your pay and conditions will be subject to arbitration. As a consequence, there will be further delays, and an unknown outcome with no guarantees.

A new [short video](#) is available on Bordernet providing an overview of what a 'yes' and 'no' vote will mean. You can also use the [ready reckoner](#) to estimate your pay rise under the proposed EA.

Fair Work Commission update

The second and final pre-arbitration conciliation meeting occurred on 21 October. The 21 day negotiation period (which included two conciliations) concluded on 26 October 2016.

Yesterday the CPSU wrote to the Commission requesting it institute a formal arbitration process, notwithstanding the ballot opening on 31 October 2016. By voting 'yes' when the ballot opens on Monday, you have an opportunity to influence whether the matter proceeds.

If the matter does proceed to arbitration, there is no guarantee over the outcome and the process is likely to be lengthy with some uncertainty about when it would even commence.

Your questions answered

My team and I have had the privilege of talking to thousands of you—face to face—over the past few weeks. Thank you for your questions and we hope we have answered them comprehensively. This ASM includes links to two new questions that have been raised by many staff in regional EA information sessions this week.

- **I am an ABF officer. How will I know if I am going to receive the ABF Composite Allowance?**
If you are in the ABF and your role requires operational readiness – Yes, you will receive \$1,800 upon the proposed EA coming into effect and \$1,500...[Read more](#)

- **What will happen if the FWC workplace determination costs more than the current offer?**
The current offer represents the most that we can afford. The Department will not be allocated any additional money to pay for a workplace determination that costs more than the current offer...[Read more](#)

Other common questions that have been addressed on our [dedicated Q&A page](#), include:

- **Will arbitration result in a better offer?**
Arbitration does not guarantee a better offer and you do not get to vote on the outcome. [Read more...](#)
- **Will arbitration result in back pay and give staff more than a two per cent pay rise each year?**
There is no guarantee that arbitration will result in back pay or higher pay increases. [Read more...](#)

- **Can our hours of work be changed without consultation?**
No. All employees have a right to be consulted about, and provide input on, changes to their working hours. [Read more...](#)
- **Does the proposed EA remove my right to flexible work arrangements?**
No. The proposed EA does not remove your access to flexible work arrangements. [Read more...](#)
- **What is the proposed pay increase?**
All staff will receive a minimum 4.7% pay increase over the life of the agreement. The majority of staff will also have access to higher top of range salaries. [Read more...](#)
- **Will my take home pay be affected?**
The proposed EA protects your take home pay through extensive grand-parenting of allowances and working hours. [Read more...](#)
- **Is the process for salary advancement changing?**
No. Salary advancement will occur the same way it does now. [Read more...](#)
- **Does the proposed EA remove my rights and conditions?**
Your rights are protected through legislation and the EA and its supporting policies. [Read more...](#)
- **What does a Yes vote mean?**
A 'yes' vote provides certainty about your pay and conditions, an immediate 3% pay rise, protection of your take home pay and more. [Read more...](#)
- **What does a No vote mean?**
A 'no' vote means no guarantees, no pay rise before Christmas, and may result in a lengthy process. [Read more...](#)

All of these questions are answered in full on the [dedicated Q&A page](#).

Policies

I promised to share all policies with you in advance of the ballot – they are now available on the [EA intranet page](#).

Get the facts and have your say

I strongly encourage you to find out what the offer means for you. A range of information is available on the [EA intranet page](#), including the [new video](#) and [commonly asked questions](#), a [What's new, what's different](#) overview, the [pay increase ready reckoner](#), and additional [factsheets and other information](#).

The ballot is open from 31 October to midnight 6 November (AEDT).

A 'yes' vote will end arbitration. A 'yes' vote will provide certainty.

Now is the time to make a choice.

Murali Venugopal

First Assistant Secretary
People Division



YOUR EA

Arbitration Fact Sheet

What is arbitration?

Arbitration is a formal process where an independent third party is appointed to settle a dispute by making a legally binding decision.

In the current context the arbitration being referred to is the process by which the Full Bench of the Fair Work Commission (FWC) makes a workplace determination. The workplace determination is legally binding and would operate as the Department's enterprise agreement.

How does the FWC arbitrate?

The arbitration will be a formal proceeding in the FWC between the Department and all bargaining representatives. It is expected that the parties would provide written submissions and evidence, and that the FWC will hold one or more hearings.

Matters that have been agreed between the Department and all bargaining representatives will be included in the workplace determination. All matters that have not been agreed will be decided by the FWC and form part of the workplace determination.

A decision and subsequent workplace determination will only be made after all parties have had a chance to present their evidence and arguments.

What does the Commission take into account when arbitrating?

The FWC Full Bench will be informed by the Commonwealth and Department's position as the employer and the position of all bargaining representatives.

The FWC must take into account a range of factors when deciding which terms to include in the workplace determination, including: the merits of each proposal; the interests of employees and the employer; the public interest; how productivity might be improved,

compliance with the good faith bargaining requirements and the conduct of bargaining representatives.

How long does/can arbitration take?

The length of arbitration will depend on the number and complexity of the matters in dispute. Shorter arbitrations, where the parties have agreed on most matters have been resolved in a few months. Arbitrations where there are complex issues, or a large number of matters in dispute, have taken between 6 to 18 months to resolve.

How long will a workplace determination run for?

The workplace determination can run for a maximum of 4 years after the date the determination comes into operation, but the length will depend on what the FWC considers appropriate. Previous workplace determinations have run for between 2 and 3.5 years. Once the workplace determination expires, it will continue to apply until a replacement enterprise agreement is made (just like an enterprise agreement).



Termination of all Protected Industrial Action

Colleagues,

Following a hearing today, the Fair Work Commission has made an order to terminate Protected Industrial Action (PIA) in the Department. This means that PIA can no longer be taken.

Consistent with the requirements of the Fair Work Act, discussions will now occur between the Department and bargaining representatives over the next 21 days to identify areas of agreement. Matters that cannot be agreed will be subject to arbitration by the Full Bench of the Fair Work Commission.

We know that arbitration is a lengthy process. Based on past cases, it may take between 6-18 months and there is no guarantee as to the outcome.

The Department has been bargaining in good faith throughout the process—for this, and previous agreements—and remains firmly committed to achieving the best outcome possible for staff within budgetary and policy settings.

We will keep you informed in the coming days as further information becomes available.

Michael Pezzullo
Secretary

Michael Outram APM
Acting ABF Commissioner