

Chapter 10

Concluding comments

10.1 The committee begins this concluding chapter by acknowledging the incredible importance of the work performed by just over 150 000 Australian Commonwealth public servants. It is clear from the testimony of countless public servants that these people care deeply about the work that they do, and that their commitment to that work stems in large part from a recognition of the value that their services provide to all sections of the Australian community.

10.2 Yet, it is also abundantly clear, based on the wealth of evidence received by the committee, that the 2014 bargaining policy implemented under the Abbott government, and the subsequent 2015 bargaining policy implemented by the Turnbull government, is not only cruel and heartless in its treatment of the government's own public servants, but has also been an abject failure in terms of facilitating and concluding genuine bargaining negotiations.

10.3 The brutally hard-line and combative approach to the bargaining policy adopted by the APS Commissioner and the Coalition government is needlessly dogmatic. Not only is it a travesty of true consultation and negotiation, this destructive approach has come at huge human cost to public service employees, a large proportion of whom earn below the average Australian wage. These are the very people that the government relies on to implement its policies and deliver a raft of services that benefit the broader community.

10.4 The fact that the government has not successfully concluded enterprise agreements for the majority of its workforce after three years of protracted and painful negotiations is unprecedented in over 30 years of public sector bargaining.

10.5 It is hard to avoid the conclusion that the bargaining policy is driven by an ideological disdain for public servants and a thoughtless disregard for the services that they deliver. The government has risked the very fabric of the public service ethos by undermining the goodwill of countless public servants and engendering hostility between senior management and employees. In fact, the government has given every appearance of being willing to cut off its nose in spite of its ideological face.

10.6 The committee received submissions and heard testimony from public servants from all walks of life. These are upstanding citizens who, contrary to the insulting remarks made about them by the Minister for Employment, Senator the Hon Michaelia Cash, absolutely live in the real world. They raise families, they pay taxes, they hold mortgages and they value the work they do.

10.7 Unfortunately, it is all too apparent that a doctrinaire adherence to a rigid and unworkable bargaining policy by the APS Commissioner and the government has caused unnecessary tension in the workplace and significantly eroded trust across the public service.

10.8 Ironically, the government's intransigent approach to the application of its bargaining policy has hampered productivity, placed the delivery of important

services under huge strain, and compromised key elements of government policy. As a consequence, there is now a heightened risk that beneficial outcomes for all citizens will be forgone.

10.9 And yet, despite the lack of good faith displayed by some agency heads and the APS Commissioner toward genuine negotiation, the committee heard from the CPSU and other employee bargaining representatives that they remain ready and willing to engage in genuine negotiations and that they continue to put forward fair and reasonable proposals.

Overcoming the impasse

10.10 In terms of the current bargaining round, the committee's strong view is that the government should acknowledge that its current approach has not only failed, but has been counter-productive.

10.11 In the interests of both the APS and the broader community, this bargaining dispute needs to be resolved as a matter of urgency. Accordingly, the government should moderate its approach and amend the bargaining policy to allow for a fair, reasonable and speedy resolution to the current dispute.

10.12 To this end, it is critical that the government allows agencies to genuinely negotiate and agree various matters with employee representatives. In addition, the government should ensure that the APS Commissioner is required to adopt a collaborative approach with employee bargaining representatives.

Recommendation 15

10.13 The committee recommends that the Minister Assisting the Prime Minister for the Public Service takes immediate steps to ensure that the APS Commissioner acts to remove the existing impediments and works with employee representatives and agencies to enable a reasonable conclusion to be reached to the current protracted Commonwealth public sector bargaining.

Recommendation 16

10.14 The committee recommends that the Minister Assisting the Prime Minister for the Public Service take immediate steps to facilitate a discussion with the CPSU about a possible resolution of this extended dispute, with due consideration for the other recommendations in this report.

The APS Commissioner's role

10.15 The committee recognises the vital role played by the APS Commissioner in implementing the government's APS bargaining policy. Sadly, the committee is distinctly unimpressed with the performance of the current APS Commissioner, the Hon John Lloyd.

10.16 For example, when asked specifically about changes being proposed to access to flexible hours and rostering control in agencies such as DHS, Mr Lloyd responded: 'There has been no removal of those sorts of conditions. If they are there and they are available now, they will remain'.¹

10.17 The committee received extensive evidence which clearly contradicts Mr Lloyd's assertion that those sorts of conditions are not being removed. For example the CPSU provided the following detailed list:

The information provided below is by way of example. It is not a complete list of cuts to employee rights with respect to employee flexibility on rosters and hours of work. Examples are provided from 20 agencies involved in this bargaining round and DHS is addressed separately. Cuts identified below include:

- Removal of the right to access part time work on return from parental leave.
- Removal of clauses that provide positive support for employees seeking flexible working arrangements such as part time work.
- The National Museum of Australia (and others) have proposed that overtime for part time employees be paid at single time until full time hours are worked. 70% of NMA staff are women and 36% of all staff are part time. The effect of this provision is that overtime hours worked by part time staff in these circumstances have a lower effective rate of pay than equivalent full time staff. This is because the overtime hours do not accrue superannuation or leave.
- Domestic Violence leave has been removed from Miscellaneous Leave provisions in enterprise agreements.
- Removal of notice requirements for rotations between work locations.
- Removal of provisions providing access to personal leave to support elderly parents.
- Provisions that allow part time hours to be varied by the agency without employee agreement.
- Reductions in the amount of unpaid leave an employee has an entitlement to access for parental leave purposes.
- Removal of rights for an employee to revert to full time employment before the end of the term of a part time agreement.²

10.18 The full list of the CPSU's examples is included at Appendix 5.

10.19 The committee is extremely concerned by the seemingly dismissive approach taken by the current APS Commissioner. His approach to the negotiation process

1 The Hon John Lloyd, Australian Public Service Commissioner, Australian Public Service Commission, *Committee Hansard*, 11 November 2016, p. 47.

2 CPSU, answer to questions on notice, 11 November 2016 (received 18 November 2016).

shows a distinct lack of good faith bargaining and in the committee's view his actions and decisions have caused significant and unnecessary disputation and delays.

Future bargaining rounds

10.20 The committee received evidence during the inquiry about both the mechanism and the approach to enterprise bargaining in the APS.

10.21 Based on evidence received, the committee recommends that future bargaining rounds must allow for genuine negotiation that provides a proper opportunity for parties to exchange information and ideas, and results in fair and reasonable outcomes for employees. This would include the opportunity for employees to receive some reasonable form of back-pay or financial recognition if the conclusion of the bargaining process is unduly delayed.

10.22 In particular, future rounds must avoid a situation where intractable positions become entrenched because the minister's delegate, the APS Commissioner, is constrained by the bargaining policy and is either unable or unwilling to facilitate genuine negotiations.

10.23 It was put to the committee that future bargaining rounds should retain already-agreed rights and conditions and that substantive and procedural rights should be retained in enterprise agreements rather than being removed and put into unenforceable policy. These seem entirely reasonable and sensible requirements for an industrial relations policy and the committee endorses them.

10.24 Finally, it is important that the government gives serious consideration to the actual mechanism by which enterprise bargaining occurs across the APS. The committee heard evidence from several submitters and witnesses that the current agency-based approach may not be serving the APS well in terms of recruiting and retaining the best available talent.

10.25 Furthermore, it was put to the committee that an agency-based approach to enterprise bargaining involves significant transaction costs and has led to significant wage disparities across the APS, a lack of mobility across the APS, and has bred a level of frustration and resentment amongst employees performing the same work on sometimes substantially different wages. This is further exacerbated by machinery of government changes as demonstrated by the evidence from PM&C, DIBP and the AAT in this process.

10.26 It is apparent to the committee that APS remuneration should be set with reference to the wider labour market with the specific intention of attracting and retaining the skills and capabilities of the 'best and brightest'.

10.27 Consideration should also be given to moving towards APS-wide remuneration policies. This would help facilitate movement across the APS, thereby improving outcomes for both agency management and employees alike. It would also begin to address the serious pay inequities that exist both within agencies and across the APS.

10.28 It was put to the committee that the current bargaining round exemplifies a key problem with the current approach to enterprise bargaining in the APS. That is,

the current system uses agency-based bargaining, but retains strict APSC central control over the precise extent to which agencies can negotiate.

10.29 Various propositions were put to the committee for the conduct of future bargaining by Professionals Australia, Professor Andrew Podger, and the CPSU amongst others.

10.30 One proposition was the approach adopted in the Australian Capital Territory (ACT) public sector. The ACT has moved away from agency-based bargaining to an approach based on professions and occupations. It was submitted that this has allowed the ACT Government to rationalise the number of bargaining processes and ensure that employees doing similar work in different ACT Government agencies could be covered by the same agreement. This in turn has meant that changes to ACT agencies or departments, machinery of government changes, no longer have unintended consequences for employees as it does not impact on their agreements. While the ACT Government has continued to take a central approach to general pay increases it provides more scope for differentiated outcomes for employees based on their particular occupational or professional skills.

10.31 Another proposition was a return to APS-wide bargaining. It was submitted that this approach would relieve agency heads of the need to engage in enterprise bargaining and would rationalise the bargaining processes because negotiations would be conducted directly with the Australian Government. However, submitters noted that the challenge would be both how to unscramble the differences between agencies across the public sector, align bargaining periods, and also ensure that individual groups with critical skills within the public service are appropriately recognised and supported.

10.32 In light of the above propositions, and based on the evident failures of the current bargaining framework, the committee recommends that the APSC and the CPSU begin discussions well in advance of the next bargaining round to determine the best and most productive way to conduct enterprise bargaining across the APS. The committee stresses that an agreed approach must be finalised at least six months prior to the nominal expiry of this round of enterprise agreements.

Recommendation 17

10.33 The committee recommends that the APSC and the CPSU consider a range of approaches for future enterprise bargaining and settle on the best and most productive approach for the APS and other Commonwealth agencies well in advance of the nominal expiry of this round of enterprise agreements.

Senator Gavin Marshall

Chair

