

Question: 3

Topic: Advice received from within the APS related to the establishment of the notice of employee representational rights (NoERR)

Asked: 17 October 2016

Dr Laing: You may be aware that there was a case before the full bench of the Fair Work Commission on Uniline that threw many bargaining initiatives across the Commonwealth into some if not disarray then uncertainty. In that case, quite a hard technical line was taken in relation to documentation associated with the bargaining process and, in particular, the notice of employee representational rights or NoERR. Looking at the implications of that case, the department looked at our NoERR and discovered that there was a very minor technical error in that our NoERR did not reference the words 'schedule 2.1' and 'regulation 2.05'. It seems like a very minor technical deficiency but, in light of decisions across the Commonwealth for agencies to start again, I took the decision on the basis of the risk of our agreement being thrown out by the Fair Work Commission that we should abandon our previous process and start again. We have done that and we have issued a fresh notice of employee representational rights. The date that we issued that was 28 September. I made the decision to cease bargaining on 27 September. We reissued the NoERR the following day. Our first bargaining meeting in the fresh process will occur on the 26th of this month. We hope to make reasonably fast progress in the new process given that we had, in the series of bargaining meetings held under the previous process, almost completed working through the agreement with the bargaining representatives.

Senator McALLISTER: In establishing the NoERR the first time, had you sought advice from others within the Australian Public Service about the appropriate way to do this so you would be in compliance with the legal requirements?

Dr Laing: I will take that on notice. We certainly followed the process we had followed in the last round, but I will take on notice whether there was further consultation.

Answer:

No, advice was not sought from others within the Australian Public Service about the appropriate way to draft the Notice of Employees Representational Rights (NERR). The department issued its NERR on 12 June 2015, at a time preceding the current concerns around the strict approach taken by the Fair Work Commission to NERR form requirements, and followed the same form that was used for the previous enterprise bargaining process in 2012.