



CPSU (PSU Group)

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

October 2016

## **At a glance**

Our submission will attempt to answer the following key questions about the failure of the Turnbull Government's approach to Commonwealth Bargaining.

A number of CPSU bargaining teams have also made submissions to this Inquiry. Those submissions have generally been made by CPSUU workplace leaders who have been directly involved in negotiations and the protracted bargaining process in their Agencies. This submission is supported by and should be read in the context of those submissions.

## **What has gone wrong and why?**

- This is the first time in more than 30 years a Commonwealth Government has been unable to resolve workplace bargaining for the vast majority of staff within a term of government.
- After more than 1,000 days, over two thirds of the Australian Public Service (over 100,000 employees) still do not have new agreements.
- Employees in the APS care deeply about the services and policy they deliver to the Australian community, yet they face the invidious choice of an ongoing pay freeze or accepting losing key rights and conditions without a dollar to compensate for three years without a pay rise.
- The Commonwealth policy is a triple hit combining requiring removal of existing conditions and rights from agreements with banning any improvements to existing agreement with a low pay offer. This has meant agencies are unable to genuinely negotiate and make reasonable offers.
- The ban on so-called 'enhancement' of any conditions means important conditions like Domestic Violence Leave are off limits for public servants despite the issue of domestic and family violence being a priority for Government.
- Multiple agencies are trying to remove family friendly conditions, for example the Government's largest agency the Department of Human Service where the offer means working parents in Centrelink, Medicare and Child Support could be forced to work different hours on different days, including having hours changed while at work – the negative impact this change will have on working parents with childcare arrangements cannot be overstated.
- The Commonwealth is almost unique among major employers in Australia in attacking employees existing pay and conditions at the same time it cuts thousands of jobs and expects employees to do significantly more with less. This attack on employees' rights, conditions and pay comes on the back of over 17,000 job cuts across the APS. In the ATO alone 4,400 jobs have been cut.
- The Government has reduced the idea of 'productivity' to cutting employees' rights, conditions and pay. This definition of productivity is wrong and not accepted by credible economists or in other areas of public policy.
- The fact that the Government's Bargaining Policy is so unreasonable and unworkable has led to an unprecedented amount of industrial action, including widespread strikes at international airports and other workplaces.
- The Government's harsh and inflexible Bargaining Policy is preventing agencies from offering agreements staff can accept, with an unprecedented number of no votes in agencies, some multiple times. Over 75,000 employees have voted no to agreements in 2016 alone at the time of writing, some for the third time.

- Even where agreements are being voted up, it is with deep reluctance, a fact borne out by very close employee votes, averaging 55% Yes, 45% No across these agencies. Agreement votes since the Federal Election continue this pattern, with 10 of these being agencies with less than 100 staff.
- The Employment Minister has repeatedly refused to meet with the union and has publicly misrepresented the CPSU's position.
- There is a raft of Fair Work Commission actions in train in relation to the Government's failure to bargaining good faith.
- Despite all of this evidence, the Government still refuses to acknowledge there is a problem and still refuses to engage with the CPSU to try and resolve this issue.

### **What is the impact of the failure of the Bargaining Policy?**

- Tens of thousands of hard-working public servants have been left demoralised. They face a rising cost of living, bills that have to be paid and three years without a pay increase.
- Tens of thousands of working parents including in agencies like Centrelink and Medicare face uncertain futures because the family-friendly employment conditions they rely to balance their work and family commitments are being targeted by the unfair Bargaining Policy. If these cuts are imposed, experienced and dedicated workers will have no option but to give up their jobs.
- Public servants care deeply about the service they provide to the Australian community and they want to work positively and effectively with agencies to develop and improve those services. The value of this service is being denigrated by the Government's bargaining approach. Employees are effectively being shut out by the Government's approach.

### **What has the CPSU has done to try and resolve the issue?**

- Back in October 2015 in an attempt to create the space to allow a settlement, the CPSU consulted members and re-calibrated our bargaining position, including a lower pay outcome. This significant move was ignored by the Government.
- CPSU bargaining teams have worked hard to find common ground and have agreed to thousands of sensible non-contentious changes put forward by agencies at bargaining tables, while resisting the unacceptable cuts to rights set down by the Bargaining Policy.
- The CPSU has made many direct and indirect approaches to Government at all levels to try and find a path to a fair settlement.

### **What needs to happen to fix the bargaining mess?**

- The Government needs to listen to the very real concerns of its own employees and work with the CPSU to find a middle way that will allow fair agreements to be made rather than continue to be an obstacle to resolution.

## TEN UNUSUAL FACTS ABOUT APS BARGAINING

1. Half of Australian public service employees, including 70% of DHS employees, earn less than the average Australian wage. Yet these employees, many of whom are working parents, have faced three years without a pay rise because they cannot receive a pay rise without giving up the family friendly conditions are critical to their employment. A number of working parents in DHS Centrelink, Medicare and Child Support have advised CPSU they will have to quit their jobs if forced to the uncertain working hours proposed by DHS.
2. The single comment made by Government that is most objected to by employees and is still raised regularly is Minister Cash commenting they are not living in the 'real world'.
3. Thousands of Immigration and Border Force officers in counter terrorism, intelligence, organised crime, marine and detention centres faced proposals for over 18 months to cut their current pay (including allowances) by an average of \$8,000. Thousands of officers still face proposals to cut their pay by an average of \$3,000 per year.
4. The Department of Human Services management bargaining team sat at the table for over two years before even accepting that the current enterprise agreement as previously agreed should be the basis of negotiations.
5. For the first time in 25 years, the Secretary of the Prime Minister's Department has had to advise staff they are unable to reach an agreement. The Department has floated options, including offering different pay and conditions to different areas of the Department, which could result in Indigenous Affairs Group employees on a separate agreement with lower pay, as a way to offer agreements complying with Government policy.
6. Just weeks ago the Commonwealth argued in the Fair Work Commission for Department of Immigration and Border Protection (DIBP) strikes to be temporarily suspended until 22 November with no role for Fair Work in resolving the dispute. This would have meant DIBP staff could and would need to strike at Airports in the leadup to Christmas. The Government was opposing the CPSU's successful move to terminate all DIBP strikes and have Fair Work arbitrate an outcome.
7. Multiple agencies have advised CPSU bargaining teams and their staff that they are negotiating with the APSC about what they are allowed to offer staff. The ARC had to submit their proposed Enterprise Agreement to the APSC 17 times before gaining approval to put it to staff. Three years after CPSU submitted its bargaining claim, staff in the Federal Court have not yet even had a vote on a proposed agreement.
8. At least two women working in the Department of Human Services who experienced family violence were put on performance management for their work output declining or using too much of other forms of leave. One was moved to a lower classification and pay as a result, making her unable to leave her violent partner for a period due to financial hardship. Yet the Minister and APSC have refused agencies permission to include clauses providing family violence leave in enterprise agreements if they did have an existing clause as it is considered an 'enhancement'.
9. At the Prime Ministers request to alleviate community concern in the wake of the Brussels attack, the CPSU in a matter of hours suspended long-planned, complex strike action in hundreds of workplaces across international Airports. , In response, the Government would not agree to meet and discuss the concerns of DIBP officers.

10. Despite all of this, the Government has directly spoken to the CPSU about bargaining for only one 45 minute meeting in the last 12 months – far less time than it has spoken about the CPSU repeatedly in Senate Estimates and the Parliament.

## CPSU recommendations

The CPSU's recommendations address:

- A. Changes to the current Bargaining Policy to resolve the current Commonwealth bargaining dispute; and
- B. Principles for future Commonwealth bargaining to avoid this kind of disputation.

### A. Current Bargaining Policy

Government should make changes to the policy to facilitate resolution as a matter of urgency to allow for a fair, reasonable and fast resolution to the current bargaining dispute.

### Approach to wages, conditions and rights

#### 1. Removal of existing rights and conditions

That the policy be changed so as not to require the removal of existing content or stripping rights and conditions. Where agencies and employee bargaining representatives in that agency believe existing content previously negotiated is acceptable, this content should be allowed by the Minister and APS Commissioner.

#### 2. Family friendly conditions

That the Government should take steps sufficient to ensure that no Commonwealth agency requires employees to give up existing family friendly conditions that facilitate and support the employment of those with caring responsibilities. This includes but is not limited to part-time work arrangements, scheduling hours, existing flexible working hours and access to leave.

#### 3. Retaining existing rights above legislative minimums

That the Bargaining policy requirement to remove existing agreement content in various areas above the legal NES and the minimum provisions required by *the Fair Work Act 2009 (Cth.)* should be changed.

#### 4. Consultation and dispute resolution

That the Bargaining Policy be changed to allow for the retention of existing and long-standing consultation and dispute resolution rights which provide the opportunity for employees, unions and APS agencies to minimise industrial conflict and work together to improve public services and working arrangements and deliver better outcomes for the community.

**5. Allowing negotiation on improvements - enhancements**

That the Bargaining policy be changed to allow agencies and employees' bargaining representatives to agree on improvements (currently barred as enhancements) as is usual in bargaining.

**6. Domestic violence leave**

That the policy be changed to allow and encourage agencies to provide paid domestic and family violence leave, rather than the addition of domestic violence clauses being considered an 'enhancement' barred under the policy, as is currently the case.

**7. Compensation for the three year pay freeze**

Noting that Government has made very substantial savings through not paying pay rises due in 2014, 2015 and 2016 while employees are suffering financial hardship, the Government policy be changed to allow agencies to provide some limited and appropriate financial recompense or 'back-pay' to employees. This is reasonable given the extensive and unnecessary delays to resolution of this bargaining process, which have been caused by the Government's harsh attack on employees' rights, conditions and pay and the inflexible nature of the Bargaining Policy itself.

**8. Machinery of government**

In the case of agencies affected by machinery of government moves in particular, the policy should specifically allow for the maintenance of existing negotiated agreement provisions.

Agencies should be allowed to consolidate disparate pay rates and conditions to provide an integrated set of salaries and conditions without loss.

**Agency specific issues**

In addition to the recommendations above, in respect of the following agencies the CPSU would support specific recommendations:

**9. Department of Immigration and Border Protection and the Australian Border Force**

Regarding the resolution of DIBP bargaining, the Minister Assisting the Prime Minister on the Public Service and Minister for Immigration and Border Protection should take immediate steps sufficient to;

- 9.1 ensure officers can receive the current pay and conditions received by various DIBP and Border Force staff from the terms of previous enterprise agreements;
- 9.2 fairly address disparities arising from the integration of Customs and Immigration and the creation of the Australian Border Force;
- 9.3 no longer seek to cut the pay or conditions of officers, including but not limited to, officers in the ABF Marine Unit, Counter Terrorism Unit, Investigators, Surveillance, Detention, Compliance and Removals, onshore and offshore Immigration Detention Facilities including Irregular Maritime Arrivals, and various frontline staff at sea ports, Airports, inspection facilities and remote and District offices;

- 9.4 make material improvements in the current offer being put forward by DIBP;
- 9.5 allow DIBP and CPSU to reach agreement and propose an outcome to the Full Bench of Fair Work early in arbitration; and
- 9.6 not subject DIBP officers to another 12-18 months of protracted legal wrangling over arbitration, as threatened by DIBP in writing to staff.

#### **10. Department of Human Services**

The Minister Assisting the Prime Minister on the Public Service and the Minister for Human Services should take immediate steps sufficient to ensure DHS can and will ensure;

- 10.1 preservation of all existing family friendly conditions that facilitate and support the employment of those with caring responsibilities;
- 10.2 current rostering and hours of work protections continue to reflect the needs of the 73% female and 34% part time workforce;
- 10.3 current rights on consultation are maintained to ensure professional and collaborative engagement where significant change occurs; and
- 10.4 permanent employment continues to be the preferred type of employment for addressing the business as usual workload.

#### **11. Prime Minister and Cabinet**

The Minister Assisting the Prime Minister on the Public Service and the Prime Minister should make the necessary changes to the Bargaining Policy to ensure PMC can offer a single agreement for staff which includes fair and equitable pay and conditions, and does not require multiple enterprise agreements for PMC staff, such as staff in the Indigenous Affairs Group having a separate instrument with lower pay.

#### **12. Agencies with approved agreements - right to be represented and consulted**

Employees in multiple agencies which have had approved agreements endorsed by a narrow majority of staff are concerned at the loss of key rights. The Minister and APSC should take steps where agencies have removed or reduced the right to be represented through enterprise agreements. This should include but not be limited to reinstating the right that APS employees are in fact allowed to have a workplace union delegate speak in an interaction with their management, instead of only acting as a silent witness or support person. The Minister should take steps to ensure that where agencies have removed or reduced the right for employees to be consulted through enterprise agreements that this right be reinstated.

#### **Facilitating a settlement**

#### **13. Negotiators with the power to agree**

To facilitate settlements in this long-running dispute the Government must address the ongoing issue where agencies are not allowed to negotiate and agree various matters as the decision-makers on those matters are the APSC and the Minister, who refuse to engage in bargaining. The Minister Assisting the Prime Minister on the Public Service should ensure that her representative, the Public Service Commissioner or otherwise attend and participate in bargaining in agencies and relevant Fair Work Commission proceedings to ensure that there is an appropriate

decision-maker to genuinely engage with CPSU and reach settlement on outstanding matters.

#### **14. Collaborative approach**

The Minister Assisting the Prime Minister on the Public Service should ensure that the APSC is required to adopt a collaborative approach with the stakeholders in bargaining, including bargaining representatives. This would allow for genuine engagement aimed at resolving bargaining, by facilitating reasonable discussions between parties, providing clarity around the policy environment, and exploring solutions in a consistent manner across agencies.

### **B. Future Bargaining**

In consideration of the matters raised in this submission, the CPSU makes the following recommendations in relation to future rounds of Commonwealth bargaining, so that they may not suffer the same afflictions as the current round.

That the following recommendations be incorporated into any future approach to bargaining

- (a) The Government shall be an exemplar employer, respecting the contribution of employees and working with employees and their unions to deliver fair and reasonable outcomes.
- (b) The bargaining process shall be genuine which shall involve a proper opportunity for parties to exchange information and ideas and does not result in the entrenchment of intractable positions, particularly where those are determined by representatives sitting to the side of the negotiation process.
- (c) There shall be a genuine opportunity for employees and their unions to discuss the proper system of bargaining in the APS, including the structure and number of enterprise agreements and how they are to be negotiated. This should be undertaken well in advance of agreements reaching their nominal expiry date.
- (d) A recognition that the starting point for negotiations shall be maintaining current entitlements and that important rights and conditions, which workers rely on, shall not be stripped away arbitrarily through an inflexible approach to bargaining.
- (e) Recognition of enterprise bargaining as an important feature of modern industrial relations, and the inclusion of substantive and procedural rights in enterprise agreements, not policy.
- (f) Making reasonable and sensible changes to enterprise agreements
- (g) Pay rises shall be fair and recognise the contribution of employees, with the possibility of back pay or some form of financial recognition where there have been delays to the conclusion of the bargaining process.
- (h) The Government shall work towards secure, comprehensive, service-wide standards across the APS and address pay inequities to achieve equal pay for work of equal value across the APS through an agreed mechanism.

That the role of unions, as representatives of the workforce, be recognised, respected and promoted.



## Introduction

As the primary union representing Australian Public Service (APS) employees, the Community and Public Sector Union (CPSU) is committed to providing a strong voice for members in key public policy and political debates.

Australian Public Service employees are enormously committed to their work helping ordinary citizens and making Australia a better place now and in the future. However, APS employees have been in bargaining since agreements across the Australian Public Service expired on 30 June 2014. After over 1,000 days, over 115,000 APS employees or 75% of the APS is still without an agreement that had commenced. This current round of Commonwealth enterprise bargaining has been a failure.

After nearly three years of bargaining, it is unprecedented to have APS employees in agencies like the Department of Prime Minister and Cabinet, Department of Defence, Department of Human Services and the Australian Tax Office consistently vote no to agreements and continue to take industrial action.

The failure must be attributed to the content of the Government's Workplace Bargaining Policy and the Government's approach to the implementation of the policy. The policy has sought to:

- Strip away the working rights and conditions of APS employees
- Explicitly ruled out enhancements to rights and conditions
- Provided for below inflation pay increases and ruled out compensation for delays.
- Reduced consideration of productivity to the meanest level of cutting pay, rights and conditions

After three years without a pay rise, employees are forced to choose between the status quo or losing hard won rights and conditions and a pay increase that is actually a real wage cut.

Bargaining is occurring at a time when the Government has launched a serious attack on the jobs of public servants who deliver services to the Australian public. Over 17,000 jobs have been cut, increasing pressure on remaining staff and on the services they deliver.

This protracted dispute is also putting an additional strain on already stretched government services, and is impacting on the community as well as on those doing the work. The time to do something about this is well overdue. Urgent steps must be taken to address the failure and bring APS bargaining to a resolution.

The Government strategy is essentially a form of industrial blackmail:

- The only way an employee can gain access to a pay rise is by agreeing to cuts to working conditions and rights.
- Those cuts can impact on take home pay, compromise the effective operation of agencies and undermine workplace relations, and reduce, or in some cases, remove the ability of employees to balance work and family life.
- Workers will not willing agree to these cuts. And so the Bargaining Policy uses a prohibition on back pay to gradually increase the financial pressure on employees and ratchet up the costs to employees of rejecting cuts.
- The intended end result of the policy is to place employees in a position where financial pressure outweighs the need to retain working condition and rights.

As a result of the pressure from this strategy, some agreements have been voted up, but those agreements remain a failure of workplace relations. The agreements do not improve productivity, reduce trust in the workplace and increase workplace division.

For the majority of employees, the Government's strategy will not resolve the dispute as:

- The costs to employees of the loss of conditions and rights outweigh any benefits from the small pay increases on offer, and
- Agency heads are prevented by the inflexible policy, and by the APSC's enforcement of that policy, from genuinely negotiating in good faith and thereby reaching an agreement.

The CPSU has made numerous formal and informal approaches to both the Minister Assisting the Prime Minister for the Public Service and the Prime Minister's office to try and get a dialogue going that will help resolve this dispute. The response is always the same that the Minister and APSC are not bargaining agents and it is the responsibility of agencies.

The CPSU will continue to use all the legitimate mechanisms available to get Government to engage with us on a fair and sensible resolution. This includes protected industrial action, pursuing Good Faith Bargaining orders through the Fair Work Commission and public campaigning. What the CPSU really wants to do though is resolve this process through genuine discussion and negotiation. All of our actions are to this end.

CPSU therefore makes a number of recommendations that would assist the APS, staff and unions to reach genuine agreement, which would benefit agencies, workers and the public.

A number of CPSU bargaining teams have also made submissions to this Inquiry. Those submissions have generally been made by CPSU workplace leaders who have been directly involved in negotiations and the protracted bargaining process in their Agencies. This submission is supported by and should be read in the context of those submissions.

**The failure of the Government to conclude workplace bargaining across the Australian Public Service almost three years after the process began – a process that has impacted on more than 150,000 staff nationally and 115 agencies during this time**

*The APS Bargaining Policy (Policy) sets out the parameters for bargaining across the Commonwealth public sector.*

Australian Taxation Office, All staff: Enterprise Agreement - information about the pay offer, 22 April 2016

### **The Government released a Bargaining Policy in 2014 that sought to strip away rights and conditions**

The Bargaining Policy represents the Government's position for bargaining with 155,000 APS employees and thousands more Commonwealth Government employees. The Government released its first Australian Government Public Sector Workplace Bargaining Policy on 28 March 2014. The long delayed release came after CPSU action to push Government to allow bargaining to commence.

In December 2013, having surveyed our members and formulated a claim, the CPSU wrote to APS agencies requesting the commencement of bargaining so that negotiations could be

concluded in time for replacement agreements to come in to force ahead of the 30<sup>th</sup> June 2014 nominal expiry date. The Government, however, delayed the release of its Workplace Bargaining Policy until 28 March 2014, preventing agencies from commencing negotiations until after that date.

Agencies took some time to issue Notices of Employee Representational Rights (NERRs) even after the policy was released, and at 30 June 2014, only 5 APS agencies had done so. For example, the CPSU wrote to the Department of Immigration and Border Protection on 15 April 2014 seeking agreement to bargain for an enterprise agreement. The response from the Department on 2 May 2014 was that it did not agree to start bargaining. There have therefore been very substantial delays between requests from CPSU to negotiate and the commencement of formal bargaining.

The Workplace Bargaining Policy took an aggressive stance to bargaining by introducing arrangements that restricted bargaining outcomes, with new and onerous restrictions on pay, conditions, rights at work and agreement content. There were no central negotiations on these common requirements. The policy established that bargaining will occur at the agency level, however, the policy limited the capacity of agencies to genuinely bargain over key wages, conditions and rights. Proposed agreements with a 0% pay offer were tabled in some agencies coupled with cuts to existing rights and conditions.

The first agreement put to a vote of staff under this policy was in the Department of Employment in December 2014, some 5 months after the nominal expiry date of the existing agreement. The agreement was resoundingly rejected with a 95% no vote.

### **A revised Bargaining Policy was released in 2015 but it still cuts real wages and conditions**

After multiple no votes, the Government announced changes to its approach to bargaining on 21 October 2015, and released a revised Bargaining Policy on 2 November, the Workplace Bargaining Policy ('Bargaining Policy'). The Bargaining Policy superseded the Australian Government Public Sector Workplace Bargaining Policy 2014.

While the new policy showed that sustained CPSU campaigning had caused a shift in the Government's approach, it was clear that the Government's policy had not changed sufficiently to enable agencies to reach agreement with their workforces. The specific changes made were evidently not designed to create the space to resolve the bargaining dispute. The revised Bargaining Policy formalised changes already made in bargaining over the course of 2015 and any changes largely reflected Minister Assisting the Prime Minister for the Public Service Michaelia Cash's announcement on 21 October 2015. The changes made by Government in the Bargaining Policy sent mixed signals and could be characterised as somewhat strange, with some elements now tougher and more hard-line than the previous Bargaining Policy.

While some of the worst aspects of the Government's Australian Government Public Sector Workplace Bargaining Policy, such as the necessity to link any pay rise to a demonstrable productivity gain, was replaced, in practice, by the ability for agencies to offer pay rises of up to two per cent per annum; the key barriers to resolution still remained. Notwithstanding some softening in wording such as removal of the word 'streamline', the overall requirement for agencies to remove a range of content from enterprise agreements and potentially include these in policy still remained.

The Bargaining Policy retained a strong focus on stripping rights and conditions from agreements, a key issue for employees. It wrongly characterises existing provisions as restrictive content, something which has not been said about public service agreements in

any recent rounds of bargaining and which agencies are struggling to convincingly argue to their employees. On key issues such as workplace consultation and delegates' rights, the Bargaining Policy saw scant meaningful change. The Bargaining Policy focussed heavily on pay and tightens the existing policy, with the explicit pay cap, no sign on bonuses and other requirements. There is no obvious move that would allow real wages to be maintained.

As a result of the unwillingness of the Minister Assisting the Prime Minister for the Public Service to genuinely consider the CPSU claims, agencies have had no choice but to work within the ongoing rigidity imposed by the Government's Bargaining Policy, without further consideration. It has left this bargaining round at an impasse.

### **Bargaining still remains unresolved for most of the public sector**

By the Australian Public Service Commission's (APSC) own performance measures, this round of APS bargaining has been a failure. The APSC's 2015-19 Corporate Plan had as a measure of success that the APSC would 'partner with entities to conclude the enterprise agreement round by March 2016' and that it would 'develop a policy framework to support the next round of bargaining by March 2017'.<sup>1</sup>

Agreements covering two thirds of APS employees, over 100,000 workers, remain unresolved. The last pay rise for most of them was in July 2013. The overwhelming majority of these staff work in four agencies: DHS, ATO, DIBP and Defence. Combined, these agencies employ about 88,000 people. Staff have voted up to three times in these agencies to reject the Government's proposed agreements.

There have been significant delays that have been caused by the agency. For example, in the Department of Human Services bargaining team sat at the table for over two years before even accepting that the current enterprise agreement should be the basis of negotiations. In some instances, staff have not even voted on proposed agreements. Three years after CPSU submitted its bargaining claim, staff in the Federal Court have not yet had a vote on a proposed agreement.

This Government is the first in more than thirty years, and the first since enterprise bargaining was introduced in the APS in 1994, to fail to settle APS bargaining. There have been more no votes, repeated no votes, more FWC disputes, more industrial action and for the first time ever industrial action was terminated. Previous rounds of bargaining received high levels of support by employees and from the employer and achieved continuing improvements in productivity.

### **The APS Commissioner is pretending it is nothing out of the ordinary**

Despite the ongoing failure to settle bargaining, APS Commissioner John Lloyd has pretended that it is nothing out of the ordinary. Mr Lloyd told Senate Estimates when asked if there anything that he would do differently during the next round stated that:

*'It is too early to say. To me it has been an exercise which has, as you have mentioned, been protracted. But there has been nothing extraordinary about it, except for some of those issues that I mentioned. In any case, I will think about it and give advice to the Government. But it is the Government's call, obviously, as to what approach is taken in the next round.'*<sup>2</sup>

<sup>1</sup> Australian Public Service Commission (2015, August 28). *Australian Public Service Commission Corporate plan: 2015-19*. Retrieved from <http://www.apsc.gov.au/publications-and-media/archive/publications-archive/apsc-corporate-plan>

<sup>2</sup> Finance and Public Administration Legislation Committee. (2016, 17 October). *Senate Estimates – Prime Minister and Cabinet Portfolio - Australian Public Service Commission*.

The Commissioner even indicated to Senate Estimates that he is looking at providing advice to the Government about the next bargaining round in the first half of 2017,<sup>3</sup> despite bargaining not being resolved for the majority of the public sector.

The attitude of the Government throughout this round of bargaining has been to avoid genuine, constructive negotiations. Its approach is at odds with the objectives of the enterprise bargaining system. The *Fair Work Act 2009 (Cth.)* s 171 states that it is 'to provide a simple, flexible and fair framework that enables collective bargaining in good faith, particularly at the enterprise level, for enterprise agreements that deliver productivity benefits.' The experience of APS bargaining to date has been contrary to the spirit of that section. It has been neither simple nor flexible nor fair. Agencies have not been allowed to genuinely bargain with employees and their unions. As one example, the Australian Research Council was forced to resubmit their proposed Enterprise Agreement to the APSC 17 times. This example demonstrates that there is something fundamentally wrong.

### **Divisive tactics are being used to pressure employees to support agreements**

While the CPSU acknowledge that some agreements have been approved, the vast majority of APS employees remain on agreements that expired more than two years ago. Many of the agencies that have voted up agreements have been agencies that had yes votes early in previous rounds of APS bargaining or are smaller specialist agencies. In many cases, yes votes have only passed narrowly after repeated ballots. Where agreements have been voted up narrowly, on average, approximately 45% of staff voting in those agencies have still voted no, despite such a long delay, highlighting employee concerns with the agreement. Agreement votes since the Federal Election continue this pattern, with 10 of these being agencies with less than 100 staff. Narrow yes votes do not represent endorsement of the Coalition's agenda or process but rather reflects the result of financial pressure from the war of attrition waged against APS employees. The Government's bargaining approach has been to increase financial pressures and hope employees resign themselves to what is on offer.

It has become evident that the Government has shifted its approach after the failure to ram through agreements, using the impact of the pay freeze to get narrow majority yes-votes. A number of agencies have targeted sections of the workforce to get agreements voted up. Divisive proposals have been offered in an attempt to get agreements over the line with a majority of staff, taking advantage of Machinery of Government changes. The approach of the Government to its own workforce has created division, disenchantment and disillusionment in workplaces. A good example of this is agreement for the Department of Social Services which was only narrowly voted up 52% to 48%.

The Department of Social Services experienced two Machinery of Government changes and the removal of the Social Security Appeals Tribunal which resulted in a complex offer. The agreement's pay offer was extremely divisive with pay outcomes significantly different depending on the agency staff came from. The better pay offer of approximately 6.4% over the life of the agreement was to former FaCHSIA employees who constituted nearly half of employees in the hope of getting it over the line. Many former DEEWR employees who constituted nearly twenty per cent of employees would only receive a one-off payment of 2%, no actual salary increase. Furthermore, the pay increases were funded by the removal of conditions, something that had already occurred during the process of aligning conditions.

The Department of Prime Minister and Cabinet is another example where there are significant disparities in pay and conditions as ten different sets of pay and conditions

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<sup>3</sup> Finance and Public Administration Legislation Committee. (2016, 17 October). *Senate Estimates – Prime Minister and Cabinet Portfolio - Australian Public Service Commission*.

arrangements apply. Staff who work in Indigenous Affairs Group and the Office for Women generally earn less than their PM&C counterparts in similar roles. The inflexibility of the bargaining framework to allow enhancements, combined with the pay cap, has meant a proposed agreement that cuts rights and conditions for particular staff and maintains unequal pay. The inability to reach an agreement has led to a number of proposals being floated, which could lead to different areas of the Department being on different enterprise agreements with different pay and conditions and could result in Indigenous Affairs Group staff on a separate instrument with lower pay. It is uncertain whether the Department will pursue this approach at this time, rather the example highlights the problems with the existing Bargaining Policy.

The examples of the Department of Social Services and the Department of Prime Minister and Cabinet highlight some of the difficulties for agencies affected by Machinery of Government changes under the Bargaining Policy. It shows that the Bargaining Policy's combination of mandated cuts, no enhancements and pay cap have made it impossible to fairly and effectively align conditions in agencies that have experienced significant Machinery of Government changes. The Department of Prime Minister and Cabinet and the Department of Immigration and Border Protection are two other notable agencies that face this issue. Agencies affected by Machinery of Government changes must be given the opportunity to fairly align their pay rates and conditions. The Bargaining Policy should be amended to specifically allow for the maintenance of existing negotiated agreement provisions where agencies are affected by Machinery of Government changes.

In the case of the Department of Prime Minister and Cabinet, the Minister Assisting the Prime Minister on the Public Service and the Prime Minister should intervene to ensure the Department can offer a single agreement for staff which includes fair and equitable pay and conditions, and does not require multiple enterprise agreements, such as staff in the Indigenous Affairs Group having a separate instrument with lower pay.

### **The Government's pay cap is out of step with community standards**

The ongoing failure by the Government to resolve bargaining has had a significant financial impact on APS employees. Most APS employees have not had a pay rise in three years while wages continue to rise in other sectors of the economy and the rising cost of living has eroded real wages. Data from the 2015 APS Remuneration Survey shows that for the previous two years, there has been a 0.1% increase for APS classifications.<sup>4</sup> Despite the extensive delays to bargaining, the Bargaining Policy prohibits back pay, unless both an Agency's Minister and the Public Service Minister approve back pay.

Contrary to many assertions, the majority of Australian Public Service employees earn below average incomes. In May 2016, trend full time adult average ordinary time earnings were \$78,832 pa,<sup>5</sup> above the median base salary for APS 5 (\$74,451).<sup>6</sup> Those at an APS5 or lower classification constitute the majority of APS employees (53%)<sup>7</sup> and are most likely to be public servants in frontline roles in the Department of Human Services or Australian Border Force.

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4 Australian Public Service Commission (2016, August 3). *APS Remuneration report 2015*. Retrieved from <http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys/aps-remuneration-report-2015/historical-data>

5 Calculation based on Australian Bureau of Statistics (2016, 18 August). *Average Weekly Earnings, Australia, May 2016*. Retrieved from <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6302.0>

6 Australian Public Service Commission (2016, August 3). *APS Remuneration report 2015*. Retrieved from <http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys/aps-remuneration-report-2015/key-remuneration-concepts#f21>

7 Australian Public Service Commission (2016, 23 September). *APS Statistical Bulletin 2015-16*. Retrieved from <http://www.apsc.gov.au/about-the-apsc/parliamentary/aps-statistical-bulletin/statisticalbulletin1516/table3total>

In Senate Estimates, APS Commissioner John Lloyd has claimed that the 2% pa pay offer is in line with other public sector wage policies.<sup>8</sup> Even where pay caps exist, employees in state and territory jurisdictions have not waited for nearly three years to get a pay increase or been asked to give up many of their existing rights and conditions.

A range of economic measures have also shown that the 2% per annum cap imposed by the Bargaining Policy is below the level of pay increases that others in the community have been receiving. Wage Price Index data shows that private sector wages growth has been in excess of an average of 2% per annum over the past three years. Department of Employment Trends in Enterprise Bargaining data also shows that agreements approved over the last three years had an average annualised wage increase of at least 3% in both the public and private sectors.

**Table 1. Key Economic indicators**

Measure	June 2014 (%)	June 2015 (%)	June 2016 (%)
Consumer Price Index	3.0	1.5	1.0
Employee Living Cost Index	2.3	0.9	1.0
Wage Price Index (All)	2.6	2.3	2.1
Wage Price Index (Private)	2.5	2.2	1.9
Public Sector AAWI (Approved)	3.5	3.8	3.0
Private Sector AAWI (Approved)	3.3	3.1	3.1

Source: ABS 6467.0 - Selected Living Cost Indexes, Australia, Jun 2016, 6345.0 - Wage Price Index, Australia, Jun 2016, 6401.0 - Consumer Price Index, Australia, Jun 2016, Trends in Federal Enterprise Bargaining (June quarter 2016)

The CPSU notes recent comments from the Reserve Bank Governor that almost half of the 18,000 individual jobs being tracked for wage increases had a wage increase of between 2% and 3%,<sup>9</sup> higher than the 2% cap being imposed by the Government's Workplace Bargaining Policy. Furthermore, the pay increase the APS received in previous bargaining rounds was in line with community standards. In 2010, almost 40% of the 18,000 individual jobs being tracked by the ABS received a wage increase in excess of 4%.<sup>10</sup>

The economic data highlights that the CPSU's claims are far from unreasonable and in line with pay increases that other sectors of the economy are receiving. The caricature of overpaid public servants is not reflective of the Australian Public.

### **APS employees are paid less than in comparable jobs**

The Government has also on a number of occasions sought to dismiss claims for improvements and even maintaining existing rights and conditions. The Bargaining Policy states that APS pay and conditions are above community standards and would only be improved in exceptional circumstances with Ministerial approval. APS Commissioner John Lloyd has asserted that employment provisions in the Australian Public Service were 'quite generous' by 'community standards'.<sup>11</sup>

In March 2015, during a debate with CPSU National Secretary Nadine Flood, the APS Commissioner argued that public servants had 'soft' working conditions and there should be

<sup>8</sup> Finance and Public Administration Legislation Committee. (2016, 17 October). *Senate Estimates – Prime Minister and Cabinet Portfolio - Australian Public Service Commission*.

<sup>9</sup> Phillip Lowe (2016, 18 October). Inflation and Monetary Policy. *Reserve Bank of Australia*. Retrieved from <http://www.rba.gov.au/speeches/2016/sp-gov-2016-10-18.html>

<sup>10</sup> Phillip Lowe (2016, 18 October). Inflation and Monetary Policy. *Reserve Bank of Australia*. Retrieved from <http://www.rba.gov.au/speeches/2016/sp-gov-2016-10-18.html>

<sup>11</sup> Finance and Public Administration Legislation Committee. (2016, 17 October). *Senate Estimates – Prime Minister and Cabinet Portfolio - Australian Public Service Commission*.

cuts to union consultation.<sup>12</sup> This is despite the fact that the Ministers who were responsible for bargaining for much of the period when these rights and conditions were negotiated were Peter Reith, Tony Abbott and Kevin Andrews.

In October 2015, Minister Cash claimed that that public servants were not living in the 'real world' and that idea that a pay rise should not be linked to cuts in rights and conditions '*quite frankly, is unacceptable.*'<sup>13</sup>

The assertion that the public sector employees should be 'appreciative' that they have conditions above the minimums in the National Employment Standards is based on a false premise. It fails to compare public sector employment against equivalent jobs which have much higher levels of remuneration.

In previous years, the APSC commissioned Mercer to conduct a Broader Market Comparison which highlighted the difference in remuneration between the APS and general market. The Broader Market Comparisons have previously found that except for APS 1 and APS 2 (which constituted less than 6% of the APS workforce at 30 June 2016), private sector median base salaries are higher than the corresponding APS median salary for the equivalent classification.<sup>14</sup> Private sector total remuneration packages are even higher than corresponding APS total remuneration packages.<sup>15</sup> Unfortunately the most recent APSC commissioned Mercer comparison looked at 2010 data and none have occurred since.<sup>16</sup>

**Table 2. Total Remuneration Package (TRP) Analysis – APS1 to EL2 – 31 December 2010<sup>17</sup>**

Equivalent Classification	APS Median	Private Sector Median	Difference	Difference %
APS1	\$ 47,546	\$ 34,738	\$ 12,808	37%
APS2	\$ 56,933	\$ 51,816	\$ 5,117	10%
APS3	\$ 63,238	\$ 64,854	-\$ 1,616	-2%
APS4	\$ 70,347	\$ 77,892	-\$ 7,545	-10%
APS5	\$ 77,483	\$ 92,083	-\$ 14,600	-16%
APS6	\$ 89,882	\$ 112,945	-\$ 23,063	-20%
EL1	\$ 112,788	\$ 137,116	-\$ 24,328	-18%
EL2	\$ 140,397	\$ 168,608	-\$ 28,211	-17%

Mercer conducted a similar remuneration review for the New South Wales Public Service Commission in 2015 which does provides some limited information on relative pay for APS employees in June 2014.<sup>18</sup> The Mercer report showed the median jurisdictional remuneration relative positioning. This is the point at which 50% of organisations pay less for positions of equivalent work value and 50% pay more. The report clearly shows that the APS is below the median. More than 50% of organisations in the general market pay more to non-executive staff than the APS does for employees doing work of similar value. With no pay rises since June 2014 for most of the APS, the position of the APS is likely to have worsened.

12 Phillip Thomson (2015, 27 March), Public Service Commissioner John Lloyd debates CPSU's Nadine Flood. *Canberra Times*. Retrieved from <http://www.canberratimes.com.au/national/public-service/public-service-commissioner-john-lloyd-debates-cpsus-nadine-flood-20150326-1m8xxx.html>

13 Michaelia Cash (2015, 15 October). Question on Notice – Australian Public Service: Workplace Relations, *Senate Hansard*.

14 Mercer Consulting (2011, August). *2010 Broader Market Comparison - APS SES and Non-SES Remuneration*

15 Mercer Consulting (2011, August). *2010 Broader Market Comparison - APS SES and Non-SES Remuneration*

16 Mercer Consulting (2011, August). *2010 Broader Market Comparison - APS SES and Non-SES Remuneration*

17 Mercer Consulting (2011, August). *2010 Broader Market Comparison - APS SES and Non-SES Remuneration*

18 Mercer Consulting (2015, 15 April). *Review of NSW Public Service Remuneration for the NSW Public Service Commission*.

Retrieved from <http://www.psc.nsw.gov.au/reports---data/other-publications/review-of-nsw-public-service-remuneration>



CPSU members just want a reasonable pay offer that does not cut real wages and compensates them for the delay caused by the inflexible Bargaining Policy. An October 2015 survey of members reinforced that members want to ensure that workers' take home pay was not cut (88.8%), including current salary and allowances and maintaining real wages (86.0%) by ensuring a fair and reasonable pay outcome, recognising the extended delay.<sup>19</sup> It reinforces the need for the Bargaining Policy's pay cap and prohibition on back pay to be changed.

### **The Government's failure to resolve bargaining has affected employees in a range of Commonwealth agencies**

The failure of the Government to bargain in good faith and agree to reasonable conditions has had a substantial adverse impact on the employees of APS agencies. CPSU Bargaining Teams from the following agencies have made separate submissions outlining bargaining issues in their agencies.

- Aboriginal Hostels Limited
- Australian Public Service Commission
- Australian Taxation Office
- Federal Court
- Administrative Appeals Tribunal
- Australian Competition and Consumer Commission
- Department of Parliamentary Services
- Department of Immigration and Border Protection
- Department of Human Services
- Department of Defence
- Commonwealth Scientific Industrial Research Organisation
- IP Australia
- Department of Employment
- Department of Education and Training
- Department of Social Services
- Department of Prime Minister and Cabinet
- Commonwealth Department of Public Prosecutions
- Australian Broadcasting Corporation
- Australian Bureau of Statistics - Interviewers
- Australian Criminal Intelligence Commission

For further detail, the CPSU refers the Committee to those submissions.

### **High levels of industrial disputation**

This bargaining round is also different from previous bargaining rounds due to the level of industrial disputation.

The Termination of Industrial Action in DIBP Is dealt with in detail in the submission from that CPSU Bargaining Team.

The CPSU has sought to use the Good Faith Bargaining provisions of the *Fair Work Act 2009 (Cth.)* to try to resolve this impasse. On 29 July 2016, the CPSU wrote to agencies and

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<sup>19</sup> Community and Public Sector Union (2015, October). *CPSU Delegates and Members Bargaining Outcomes Survey Results Report*. Retrieved from <http://www.cpsu.org.au/resources/cpsu-delegates-and-members-bargaining-outcomes-survey-results-report>

to the Minister Assisting the Prime Minister for the Public Service outlining the ways in which the Commonwealth had failed to bargain in good faith in: DHS, ATO, Defence, DIBP, DAWR, PM&C, BOM, the Department of Environment and Energy, IP Australia, AACQA, and NDIA.

In August 2016 the CPSU lodged Good Faith Bargaining applications with the Fair Work Commission on behalf of members in 11 agencies in a further effort to encourage the Commonwealth to genuinely engage with us on resolving this dispute.

The CPSU is more than willing to work towards settlement of this bargaining round, however, it requires good faith on the part of the Government, which has been lacking to date.

On a number of occasions, the Minister Assisting the Prime Minister for the Public Service has suggested that the CPSU should focus on resolving bargaining at bargaining tables. The CPSU has continued throughout this protracted bargaining dispute to actively participate in bargaining, attending literally hundreds of bargaining meetings in over 100 agencies. The people missing from efforts to resolve bargaining are the Minister and the PS Commissioner.

**The effect of the implementation of the Government's Workplace Bargaining Policy on workplace relations in the Commonwealth public sector**

*We have sought to provide employees with the best possible outcome within the Government's policy framework and our budgetary position.*

Department of Agriculture and Water Resources staff, All Staff email, 10 December 2015

*We continue to work through this process as quickly as possible, but we have to ensure the ATO's draft agreement remains:*

- *affordable;*
- *consistent with the APS Bargaining Policy; and*
- *offset by genuine productivity gains.*

*There are also a range of approvals we must obtain before making any revised remuneration offers.*

Australian Taxation Office, ALL STAFF: Enterprise agreement bargaining update, 9 July 2015

*The Commission has at all times bargained in good faith and provided consistent information to staff on the constraints of operating under the Government bargaining framework.*

Australian Human Rights Commission, Enterprise Agreement update, 17 March 2016

*We had sought to offer you the best Agreement that was possible under the Government's Bargaining Policy.*

Torres Strait Regional Authority, Moving forward on a proposed TSRA Enterprise Agreement, 27 October 2016

## **The Bargaining Policy is a barrier to resolution**

CPSU bargaining teams have worked hard to find common ground and have agreed to thousands of sensible non-contentious changes put forward by agencies at bargaining tables, while resisting the unacceptable cuts to rights set down by the Bargaining Policy.

The Bargaining Policy has been a barrier to resolving bargaining, meaning agencies, staff and unions are not able to reach a final agreement. The ATO Commissioner, for example, has acknowledged that many employees felt initial offers were not fair and that the stripping out of conditions was a factor behind the proposed ATO agreement being voted down.<sup>20</sup> However, the ATO Executive has also indicated that the Bargaining Policy restricts the offer that they can present to staff.<sup>21</sup>

There are numerous other examples of agencies informing staff that the offer put forward is the best within the constraints of the Bargaining Policy. For example, following a no-vote, the Australian Human Rights Commission emailed all stated that it had *'at all times bargained in good faith and provided consistent information to staff on the constraints of operating under the Government bargaining framework.'* Similarly the Torres Strait Regional Authority stated in an all staff email on 27 October 2016 that *'we had sought to offer you the best Agreement that was possible under the Government's Bargaining Policy.'*

Even the Productivity Commission has noted that Bargaining Policy 'places some restrictions on the Australian Government's bargaining representatives. When bargaining, they are able to neither offer nor reach agreement on any term that is not consistent with the Bargaining Policy without special dispensation from the agency's Minister and the Public Services Minister.'<sup>22</sup>

In some cases, agencies have attempted to get around this impasse by repeatedly putting the same bad agreement out to a vote of employees again and again. Notable examples of this strategy have included the Department of Agriculture and Water Resources and Defence.

The hard-line implementation of the Bargaining Policy has fundamentally damaged the relationship between key stakeholders in this bargaining round. The unwillingness to take a productive approach to the bargaining process by the Government and the pursuit of a combative approach by the APS Commissioner has made it impossible to have a constructive relationship. The CPSU also notes that that the APS Commissioner informed the CPSU directly on behalf of the Minister that there was no interest in having any type of discussion with the CPSU.

## **It is difficult to genuinely bargain in the public sector if the Government is unwilling**

The practical reality of enterprise bargaining in the public sector is that it is complex and lengthy and protracted negotiations can occur, leaving workers and unions with little formal redress for workers and their unions when employers appear to comply with good faith bargaining requirements but do not in fact substantively participate in bargaining in a meaningful way.

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20 Noel Towell (2016, 9 March). Australian Taxation Office offers new deal to its 20,000 public servants. *Canberra Times*. <http://www.canberratimes.com.au/national/public-service/australian-taxation-office-offers-new-deal-for-its-20000-public-servants-20160308-gndafu.html>

21 Noel Towell (2016, 7 April). Tax Office's bosses off on a three-week campaign caravan. *Canberra Times*. <http://www.canberratimes.com.au/national/public-service/tax-offices-bosses-off-on-a-threeweek-campaign-caravan-20160407-goOpfd.html>

22 Productivity Commission (2015). *Workplace Relations Framework, Final Report*. Canberra.

In the current round of APS enterprise bargaining, attempts by the CPSU to genuinely bargain and reach fair and reasonable settlements are not helped by shortcomings in the current Act. A rigid centrally controlled Bargaining Policy has meant no genuine negotiations have occurred between parties on a range of claims. The primary decision-makers mandating what agencies may offer are the APS Commissioner and the Minister's office, whereas negotiations take place at an individual agency level. This means employees and unions are effectively barred from genuinely negotiating with the independent authorities of the Commonwealth responsible for determining the employer's position.

The Good Faith Bargaining requirements are largely procedural. Notwithstanding that the Good Faith Bargaining requirements have been construed as requiring an intention to conclude an agreement.<sup>23</sup> In practice this can be difficult to ascertain.

Problems around the genuineness of bargaining processes are compounded by the fact that the Fair Work Commission has no, or limited, scope to intervene in bargaining disputes and ensure resolution. The current setting, which provides only conciliation of bargaining disputes in most situations, does not encourage parties to reach agreement in the way that the availability of arbitration would. The limited role of Fair Work Commission, the *Fair Work Act 2008 (Cth.)* means there is often no sensible way to resolve intractable bargaining disputes.

Bargaining conduct would improve if the Fair Work Commission had a stronger role in the bargaining process. In our experience, the introduction of Good Faith Bargaining saw a marked change in the bargaining conduct of major employers without recourse to Fair Work Commission. That is, major parties understood the provisions and amended their conduct to ensure they met those standards. There is every reason to suppose that introducing a stronger role for the Fair Work Commission in resolving intractable bargaining disputes would have a similar effect and encourage bargaining parties to resolve bargaining disputes.

The CPSU supports an effective bargaining system for the APS which would involve a degree of centralisation; however, for enterprise bargaining to be both genuine and efficient it is important that the parties can deal directly with the relevant decision maker.

The Government should be a model employer. As such, the Government's aim in enterprise bargaining should be to adhere to established principles, genuinely negotiate, exercise good faith, and reach a reasonable outcome. To the extent that budgetary or fiscal goals are pursued, this should not be done rigidly or in such a way that ignores that fact that public servants are workers who have lives, families and budgets of their own.

### **Staff are voting no to keep their conditions, not because 'the CPSU told them to'**

Some of the assertions by the APS Commissioner and Minister Cash that employees are only voting no because of a supposedly 'misleading campaign against the Government's Bargaining Policy'<sup>24</sup> by the CPSU is offensive to APS employees and demonstrates an unwillingness to acknowledge the impact of their bargaining position on APS employees. It shows a greater interest in attacking unions than genuinely negotiating with employees.

The CPSU does not vote in enterprise agreement ballots, APS employees do. In 2016 alone, more than 74,000 people in the APS have voted NO to these agreements, some for the second and third time. APS staff are neither ignorant nor incapable of assessing their own or

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23 *Endeavour Coal Pty Limited v Association of Professional Engineers, Scientists and Managers, Australia* [2012] FCA 764; see also *Collective Bargaining in the Public Service: A Way Forward*, International Labour Conference 2nd Session, 2013, 281 [http://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--relconf/documents/meetingdocument/wcms\\_205518.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_205518.pdf)

24 Senator the Hon Michaelia Cash (2015, 21 October). *Media Release - Government announces public sector bargaining reforms*. Retrieved from <https://ministers.employment.gov.au/cash/government-announces-public-sector-bargaining-reforms>

their families' interests. APS employees simply consider the Government's proposals as worse than a wage freeze, despite the delays. They are voting no because, despite the difficulties of staying on a pay freeze since 2013, it is the only way to keep existing rights and conditions. The size of many no votes demonstrates this is a common view of employees.

Furthermore, the CPSU is a member-led union. The position the CPSU puts forward in bargaining is shaped by the feedback of our members and delegates who are directly involved in bargaining teams and decision making. Our claims are developed through extensive consultation with thousands of members. The development of the CPSU's 2014 bargaining claim, for example, involved an extensive survey of members on a range of issues, followed by face-to-face meetings. Furthermore, the claim required members' endorsement before it was put forward.

### **Industrial action is only occurring because there is no other option**

Throughout this period CPSU members in a number of the affected agencies have taken protected industrial action in an effort to get the Government involved in genuine negotiations about a sensible resolution to this matter. The impasse has resulted in escalating industrial action with the biggest public service strikes in a decade across the public service to try to resolve the deadlock. For thousands of employees this was the first time they had taken industrial action. The significant industrial action that has taken place has included ongoing industrial action, in the form of bans, limitations and work stoppages in a number of agencies.

CPSU members are enormously committed to their work helping ordinary citizens and making Australia a better place now and in the future. They are conscious of the temporary disruption caused by industrial action, but feel they have had no other choice.

### **The Bargaining Policy mandates the removal of consultation rights**

A lack of respect afforded to APS employees comes through in the attempts to remove consultation rights from agreements as required by the Bargaining Policy. The Bargaining Policy prevents agencies from including consultation clauses going beyond the minimum provisions required by *the Fair Work Act 2009 (Cth)*.

The removing of pre-decision and post-decision procedures run contrary to building and maintaining constructive and productive workplace relations within APS agencies where staff are involved to help determine the best outcomes. The ability to have a say before a decision is made is materially different to consultation after the fact.

There has been no positive case made that existing consultation processes are restrictive arrangements that confine the operation of an agency. Involving employees in decision making is particularly important in an environment where there are fiscal pressures. Decisions made by management may have adverse impacts that may not be immediately apparent to those not on the frontline.

In fact there is strong evidence that a consultation process that allows staff to contribute to the decision making process improves the effectiveness of decisions and provides for better outcomes for the Australian public. The ATO modernisation process in the 1990s is one clear example.

The current major change process in the ATO called Reinventing the ATO is occurring under enterprise agreement terms that give staff the opportunity to contribute to the decision making process. Decision making rests clearly with management of the agency but staff

participation has deepened staff engagement in the change process and is assisting in identifying changes, sometimes quite small, that have significant productivity benefits.

In a number of agencies, the removal of consultation rights from enterprise agreements has resulted in delegate representation being cut. For example, Employment, Education, Infrastructure and more have cut delegate representation on their consultative committees. Previously the terms and membership of the Consultative Committee were in agency agreements.

With details on the composition of agency consultative committees removed from agreements, as well as any protection linking policies to dispute settlement procedure or guarantee that they will not change without agreement, employee rights have been weakened or removed in a number of agencies under new agreements. This includes making it easier to terminate staff, cutting access to flex leave, making it easier for managers to refuse leave and removing allowances.

In the case of the APSC, the removal of consultation rights into policy resulted in an aggressive approach towards employee consultation. John Lloyd's agency has refused to consult with the CPSU, stating that employees had to individually indicate to management that they wanted to be represented by the union. Many may see it as a form of intimidation.

The CPSU seeks a return to productive workplace relations in the Commonwealth public sector. A requirement on the APSC to act collaboratively with stakeholders, including bargaining representatives would help restore some confidence and trust in the process. It would help facilitate discussions between parties, provide clarity around the policy environment and help to ensure consistency across agencies.

Amending the Bargaining Policy to resolve the current Commonwealth bargaining dispute should be prioritised. Changes should include but not be limited to:

1. some limited and appropriate financial recompense or 'back-pay' to employees
2. allowing the retention of existing and long-standing consultation and dispute resolution rights.
3. the requirement to remove existing agreement content in various areas above the legal NES and the minimum provisions required by *the Fair Work Act 2009 (Cth.)* should be changed.

Furthermore, the Minister and APSC should take steps where agencies have removed or reduced the right to be represented through enterprise agreements. This should include but not be limited to reinstating the right that APS employees are in fact allowed to have a workplace union delegate speak in an interaction with their management. The Minister should take steps to ensure that where agencies have removed or reduced the right for employees to be consulted through enterprise agreements that this right be reinstated.

To avoid a repeat of the current problems in future rounds of bargaining, the CPSU also recommends the role of unions, as representatives of the workforce, be recognised, respected and promoted in future rounds of bargaining and that a range of additional principles and actions that should be incorporated into future rounds of Commonwealth bargaining. These include that

- (a) The Government shall be an exemplar employer, respecting the contribution of employees and working with employees and their unions to deliver fair and reasonable outcomes.
- (b) Bargaining process shall be genuine which shall involve a proper opportunity for parties to exchange information and ideas and does not result in the entrenchment of

- intractable positions, particularly where those are determined by representatives sitting to the side of the negotiation process.
- (c) There shall be a genuine opportunity for employees and their unions to discuss the proper system of bargaining in the APS, including the structure and number of enterprise agreements and how they are to be negotiated. This should be undertaken well in advance of agreements reaching their nominal expiry date.
  - (d) A recognition that the starting point for negotiations should be maintaining current entitlements and that important rights and conditions, which workers rely on, should not be stripped away arbitrarily through an inflexible approach to bargaining.
  - (e) Recognition of enterprise bargaining as an important feature of modern industrial relations, and the inclusion of substantive and procedural rights in enterprise agreements, not policy.
  - (f) Making reasonable and sensible changes to enterprise agreements
  - (g) Pay rises shall be fair and recognise the contribution of employees, with the possibility of back pay or some form of financial recognition where there have been delays to the conclusion of the bargaining process.
  - (h) The Government shall work towards secure, comprehensive, service-wide standards across the APS and address pay inequities to achieve equal pay for work of equal value across the APS through an agreed mechanism.

### **The effect of an expanded role for the responsible Minister in the Government's Workplace Bargaining Policy**

*As with all other APS agencies we need to ensure our pay position is affordable, consistent with the APS Bargaining Policy, and offset by genuine productivity gains which satisfy the Australian Public Service Commissioner. This is a complex process that we have been methodically undertaking in response to your feedback about our original offer.*

All ATO employees: Enterprise agreement status update - 20 May 2015

For the first time the Minister's delegate, the Public Service Commissioner, is required to approve a pay offer before it can be put to employees. On behalf of the Minister, the APSC has been deeply involved in every aspect of bargaining. Multiple agencies have advised CPSU bargaining teams and their staff that they are negotiating with the APSC about what they are allowed to offer staff. Staggeringly the Australian Research Council had to submit a proposed enterprise agreement 17 times before securing APSC approval to put the offer to a vote.

### **There has been a failure by the Government to engage constructively in bargaining**

The Government has repeatedly refused to engage constructively with the concerns raised by the CPSU. The Government has spent more time talking about the CPSU than with the CPSU. To date, since the change of Prime Minister, there has only been a single face to face 45 minute meeting with Minister Cash.

Directly after Michaelia Cash was sworn in as Minister Assisting the Prime Minister on the Public Service, the CPSU sought dialogue to discuss a resolution to bargaining. The Minister briefly met with the CPSU on 6 October 2015, and the CPSU advised the Minister of the CPSU's revised position in bargaining, including its revised position on pay.

The CPSU wrote to Minister Cash on 6 November 2015 with a proposed outcomes position. This included a revised pay position of 2.5% to 3% p.a. (previously 4% p.a.) with recognition

for the delays in bargaining, and identified maintaining existing rights, conditions and take home pay as key priorities for settlement.

Since then the Minister has refused to meet further with the CPSU and has not attempted to engage with the CPSU in anyway to resolve this matter. The Minister claims that she is not a bargaining agent and therefore does have to be involved.

Even after receiving the 6 November 2015 correspondence from the CPSU, the Minister continued to misrepresent the CPSU's position referring to the 'CPSU's 12% pay claim', and publicly stated that CPSU had not changed its position in bargaining. For example, on 11 February 2016, the Minister commented, in relation to APS bargaining:

*'Can I make a comment? If Senator Cameron is saying, 'Why hasn't this been resolved?' I am sure that he goes off to the head of the CPSU every day and says, 'You've been demanding 12 per cent for all this time, with no productivity increases.'.... Are you going to change your position to Ms Flood? I think the public would understand there is a reason this has not been resolved.'*<sup>25</sup>

In late February 2016, the CPSU organised a delegation of APS employees to speak to parliamentarians in Canberra about the impact that the bargaining was having on them and the financial pressures they felt. Not a single MP from the Government was willing to meet with these workers who had come from around the country while they were at Parliament House.

Since the 2016 election a number of Government Ministers, or their staff, have met with the CPSU in Ministerial and electorate meetings, as have a number of back bench Government MPs and Senators. The Minister Assisting the Prime Minister for the Public Service is not one of them.

### **The Minister keeps denying she has a role in resolving bargaining**

The Minister's approach of not engaging in resolving bargaining appears at odds with the Minister's statement in October 2016 Estimates that *'at this stage, obviously, the Government is focussed on this round of bargaining...'* Engaging in discussions with key stakeholders, directly and through staff and the APSC, is clearly an available step that the Minister is refusing to take. History shows that discussions and engagement are much more likely to lead to a resolution than continuing to refuse to talk.

On 1 May 2016 Minister Cash wrote to CPSU saying she was not a bargaining representative, implying she did not have responsibility for resolution of this matter. The correspondence noted the CPSU revised position on wages for the first time, but the Minister did not agree to meet with the CPSU to discuss the CPSU's position.

The CPSU has also written to the Prime Minister on four occasions about this matter and our correspondence has only been acknowledged.

On 26 February 2016, the CPSU wrote to the Prime Minister, seeking his intervention in bargaining, and raising concerns that the Minister Assisting the Prime Minister for the Public Service had repeatedly mischaracterised the CPSU's pay position and incorrectly claimed that the CPSU had not changed its bargaining position.

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<sup>25</sup> Education and Employment Legislation Committee (2016, 11 February). *Senate Estimates – Employment Portfolio - Department of Employment*.



The CPSU wrote to the Prime Minister again on 24 March 2016, in the context of protected industrial action at airports.

On 27 July 2016 the CPSU wrote to the Prime Minister, seeking the opportunity to discuss bargaining with the Prime Minister's office, or with the Minister.

On 12 September 2016, the CPSU again wrote to the Prime Minister to seek discussions to resolve bargaining to resolve the protracted bargaining dispute.

### **Greater clarity is needed about responsibility for decisions to resolve bargaining**

The unwillingness of the Minister to be involved with resolving bargaining at an agency level and the requirements of the current Bargaining Policy reinforces the need for change. There is clearly no barrier preventing the Minister from being involved but her actions suggest the Minister will only engage if forced to.

To achieve settlements, there needs to be greater clarity as to who the relevant decision makers are, and these decision makers must be engaged at the appropriate moments. This includes identifying responsibility for decision making where it is clear that a decision is unable to be made at the agency level because they are not allowed to negotiate and agree various matters as the decision-makers on those matters are the APSC and the Minister, who refuse to engage in bargaining.

The Minister Assisting the Prime Minister on the Public Service should ensure that her representative, the Australian Public Service Commissioner or otherwise attends and participates in bargaining in agencies and relevant Fair Work Commission proceedings to ensure that there is an appropriate decision-maker to genuinely engage with CPSU and reach settlement on outstanding matters.

### **The effect of the implementation of the Government's Workplace Bargaining Policy on the working conditions and industrial rights of Commonwealth public sector employees**

*While it is true that the Bargaining Policy does not say, for example, 'agencies must remove the fieldwork allowance', the policy does require remuneration increases to be offset by productivity improvements and funded from within existing agencies budgets without any redirection of programme funding.*

Australian Taxation Office, All staff: Enterprise Agreement - misleading material distributed by unions, 26 October 2016

### **The Bargaining Policy forces agencies to fund pay rises via cuts**

The Government has denied the Bargaining Policy requires cuts with John Lloyd claiming in Senate Estimates that 'there is no requirement to strip out conditions of employment.' Mr Lloyd places a particular definition on conditions and in the same breath acknowledges that there are:

*'some strategies which are really about where they conflate excessive content in agreements, particularly about consultation, union representation rights, some approval requirements for the taking of leave and the process involved in that and*

*how you deal with underperformance and the process involved in underperformance.*<sup>26</sup>

The CPSU says that these are existing conditions of employment. There is no question that these rights are highly valued by staff and the APSC's continued 'strategy' to remove these rights is a critical reason for the ongoing impasse in bargaining.

Cuts to conditions are also occurring because there is no other way to fund pay rises.

The Bargaining Policy provided no additional funding for wages, conditions and entitlements, and puts further pressure on the ability of agency budgets to deliver public services and fund staffing costs. While there is no longer an explicit link between pay rises and cuts to conditions, agencies are essentially forced to fund their own pay increases through cuts.

The Bargaining Policy also rules out any enhancement to core APS terms and conditions. When considered in conjunction with Part 3 of the Bargaining Policy, which requires agencies to offset remuneration increase with 'productivity improvements' which are limited to cuts to employee conditions of employment, the Bargaining Policy continues to lead many agencies to pursue cuts to entitlements and rights, and prohibit agencies from entertaining any improvement to conditions.

### **Agencies are removing conditions from agreements**

In every agency bargain, content has been removed from draft agreements put forward. Agencies have previously tried to remove the rights. Big 'no' votes and industrial action forced the Government to move its position many times on key issues like superannuation, productivity, pay, and some conditions. In many instances, the removal of conditions has only been stopped by staff voting down agreements by a large margin.

A small number of agencies have moved to include provisions in policy, but as APS Commissioner John Lloyd has noted, rights in policy can be wound back at any time without any say from employees,<sup>27</sup> and if there is an issue with accessing rights in policy, the Fair Work Commission cannot assist as the independent umpire.

The conditions and rights that agencies have sought to remove do nothing to improve genuine 'productivity' and merely take away flexible working arrangements that those with family and caring responsibilities rely on.

Rather than being innovative and showing leadership, the removal of content shows how the Bargaining Policy is out of touch with the needs of the modern workplace and ignores the reality that many APS employees have caring responsibilities.

### **The Government has ignored the impact of prior cuts and pressures**

The Government's position to exclude most 'productivity improvements' that workers have already delivered is viewed very negatively. Many APS employees are pointing out the major changes to their work, significant restructuring and expectations of taking on additional and different work, including from work pressures after years of budget and staffing cuts.

The cumulative impact of years of budget cuts and job losses has resulted in significant pressure on services and on those who design and deliver them. Between September 2013

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<sup>26</sup> Finance and Public Administration Legislation Committee. (2016, 17 October). *Senate Estimates – Prime Minister and Cabinet Portfolio - Australian Public Service Commission*.

<sup>27</sup> Senate Finance and Public Administration Legislation Committee (2016, 8 February). *Senate Estimates – Prime Minister and Cabinet Portfolio - Australian Public Service Commission*.

and February 2015, the public sector lost over 17,300 staff.<sup>28</sup> Core public sector staffing in 2016-17 is projected to be lower than 2006-07 staffing levels.<sup>29</sup> The ATO has been amongst the most heavily affected by budget cuts and job losses with 4,400 jobs lost in 19 months. By the end of 2016-17, it is scheduled to have lost nearly a quarter of its workforce since September 2013.<sup>30</sup>

Though the size of the public sector workforce has shrunk, demands on it have not. The most recent ABS population data indicates that the Australian population increased by 15.5% between June 2007 and the most recent data from March 2016 while the core Australian public sector staffing levels decreased by 0.3% over the same period.<sup>31</sup>

Increases in the efficiency dividend since 2007-08 have taken an additional \$6 billion from the Commonwealth public sector on top of the base rate.<sup>32</sup> The increased efficiency dividend announced in the 2016-17 Budget is projected to take another \$1.924 billion by 2019-20.<sup>33</sup> This does not include additional targeted savings announced over the past decade and further cuts from the Government's Contestability Programme.

Despite the rhetoric about cost, the public sector wages are a small proportion of total government expenditure. In 2016-17, total employee expenses are estimated to be 6.1% of Australian Government general government sector expenses.<sup>34</sup> CPSU members merely want to maintain real wages and conditions. This is a deliberate choice by the Government.

The CPSU notes that the Bargaining Policy does not apply to the Australian Broadcasting Corporation and their recent enterprise bargaining negotiations did not include attempts to remove rights conditions as seen in the APS.

Furthermore, the removal of content from enterprise agreements in the name of removing restrictive content is likely to create problems and tensions. Much of the process in enterprise agreements was inserted in response to issues that arose in previous rounds of bargaining. The processes were included to resolve these issues in a fair, agreed manner.

The revision of the Government's bargaining position in October 2015 was an acknowledgement by the Government that the previous Australian Government Public Sector Workplace Bargaining Policy was unworkable, however, as previously stated there continue to be a range of issues with the Bargaining Policy that prevent settlement.

The Bargaining Policy should be changed so as not to require the removal of existing content or stripping rights and conditions. Where agencies and employee bargaining representatives in that agency believe existing content previously negotiated is acceptable, this content should be allowed by the Minister and APS Commissioner.

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28 Australian Government (2015, 12 May). *2015-16 Budget Paper No.4 - Staffing of Agencies*. Retrieved from [http://www.budget.gov.au/2015-16/content/bp4/html/bp4\\_part\\_02.htm](http://www.budget.gov.au/2015-16/content/bp4/html/bp4_part_02.htm)

29 CPSU calculations based on Average Staffing Levels figures from previous Budget Papers.

30 Phillip Thomson (2014, 25 November). Australian Taxation Office slashes 4700 staff, brings in \$250,000-a-year spin doctor. *Sydney Morning Herald*. Retrieved from <http://www.smh.com.au/national/public-service/australian-taxation-office-slashes-4700-staff-brings-in-250000ayear-spin-doctor-20141125-11st9m.html>

31 CPSU calculation based on Australian Bureau of Statistics (2015, 24 September). *Australian Demographic Statistics, Mar 2015*. Retrieved from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Mar%202015?OpenDocument>

32 CPSU calculations based on previous Budget Papers and 2010 Election Costings.

33 Australian Government (2016, 3 May). *2016-17 Budget Paper 4 – Preface*. Retrieved from [http://www.budget.gov.au/2016-17/content/bp4/html/02\\_preface-01.htm](http://www.budget.gov.au/2016-17/content/bp4/html/02_preface-01.htm)

34 CPSU calculation based on Australian Government (2016, 3 May). *2016-17 Budget Paper 1*. Retrieved from [http://budget.gov.au/2016-17/content/bp1/html/bp1\\_bs9.htm](http://budget.gov.au/2016-17/content/bp1/html/bp1_bs9.htm)

**The extent to which the implementation of the Workplace Bargaining Policy impacts on employee access to workplace flexibility, and with particular regard to flexibility for employees with family or caring responsibilities**

**Flexible working arrangements are important to APS employees**

Flexible working arrangements are important to APS employees. Findings from the CPSU's most recent *What Women Want* survey in 2016 confirm this. The survey is Australia's largest survey of working women and it found that the ability to balance work and personal/family responsibilities is very important to women. This includes flexible working hours and working arrangements, as well as fair access to leave entitlements.<sup>35</sup> Women also nominated flexible working hours as the issue most important to them. Women who work part-time and have dependent children were even more likely to nominate flexible working hours as their number one issue.<sup>36</sup>

**Agencies have attempted to remove flexible working arrangements**

Despite the importance of these flexible working arrangements, APS agencies have sought to water down the rights of workers to access flex time and flexible working arrangements during this round of APS bargaining. Proposals have included watering down part time agreement rights and putting them into policy, with part time employees not being eligible for overtime penalty rates unless they are *directed* to work outside their ordinary pattern of hours or outside the bandwidth.

Agencies have also sought to remove family friendly conditions at work by stripping out contents from enterprise agreements such as commitments to be a breast feeding friendly workplace, lactation breaks and rights for workers returning from parental leave.

In the Department of Human Services, the proposed agreement that staff voted down removed and altered existing clauses that would affect the ability of employees to access family friendly conditions and meet caring responsibilities. Some of the changes included:

- A new clause that allows the department to direct staff to work any roster regardless of whether a staff member agrees or not. The department is only required to take into account employee needs and preferences. Currently, there are clauses that set out a process for when staff cannot reach agreement on working hours.
- Removing a clause that allows employees to supplement 2 weeks of paid supporting partner leave with an additional 2 week leave taken from personal leave credits, effectively reducing paid supporting partner leave by 2 weeks.
- Changing clauses requiring all reasonable efforts to accommodate requests for part-time work and that requests must not be unreasonably refused. It now reads that employees needs and preferences are taken into account when considering requests for part-time work.
- Replacing the current clause sets out that a part time work arrangement will apply for a 12 month period, unless an employee requests a shorter period with a new clause that a part-time work arrangement will apply for a maximum of 12 months. This will affect employees accessing part-time work need maximum stability around hours, often to make childcare arrangements.
- Replacing the current clause that requires the department and employees to reach agreement on working hours, genuinely negotiating where necessary with a clause that only requires employees and supervisors to balance the employee's needs and preferences and operational requirements.

35 Community and Public Sector Union (2016, March). *What Women Want 2015/16 Survey Report*.

36 Community and Public Sector Union (2016, March). *What Women Want 2015/16 Survey Report*.

- A new clause that does not provide access to a regular hours agreement and allows the department to change and employees hours at any time. If employees do not agree with the proposed changes they revert to default hours after 4 weeks. Removing an employees ability to negotiate hours for a fixed period significantly reduces work life balance.

While the three year pay freeze is causing Department of Human Services employees hardship, a number of working parents have informed the CPSU that they would not be able to stay in their current jobs in they lost the capacity to have some control over their working hours because of the requirements of child care and managing before and after school arrangements.

The Minister Assisting the Prime Minister on the Public Service and the Minister for Human Services should take immediate steps sufficient to ensure the Department can and will maintain current family friendly conditions, current rostering and hours of work protections, rights on consultation and ensures that permanent employment continues to be the preferred type of employment

Rostering and scheduling proposals in ATO bargaining continue to be a significant concern for employees and would affect people's ability to manage their work life balance.

It is not only larger agencies where staff have been concerned about attempts to remove flexible workplace conditions in this round of bargaining. Employees at the Productivity Commission voted down the proposed agreement because of changes to the treatment of working significant additional hours by Executive Level staff.

### **The erosion of conditions is increasing dissatisfaction**

These family friendly and flexible work conditions are extremely important to many APS employees and they have noticed there has been an erosion of these conditions and pressure placed on them to not use them. The 2015 *What Women Want* survey found that fewer women agree that entitlements are sufficient to enable balancing work and non-work commitments than in 2013. Since the last survey in 2013 there had been a noticeable shift in culture with women feeling less comfortable accessing leave and that prioritising family and personal commitments will be disadvantageous to their career prospects. It seems that the workplace culture in the APS is shifting away from being perceived as a family friendly employer. Most notably: there has been a significant decline in those who agree or strongly agree that entitlements are sufficient to enable balancing work and non-work commitments: from 64.7% in 2013 to 53.8% in 2015. The Government's current bargaining approach which seeks to remove family friendly conditions is an obvious contributor to this growing disaffection. The removal of these family friendly conditions from enterprise agreements into policy or all together will only worsen this trend.

The Bargaining Policy needs to be amended to ensure that no Commonwealth agency requires employees to give up existing family friendly conditions that facilitate and support the employment of those with caring responsibilities. This includes but is not limited to part-time work arrangements, scheduling hours, existing flexible working hours and access to leave.

**Whether the Workplace Bargaining Policy and changes or reductions in employees' working conditions and industrial rights, including access to enforceable domestic and family violence leave, are a factor in the protracted delay in resolving enterprise agreements**

### **The CPSU has shifted its position to try to resolve bargaining**

Maintaining rights and conditions is the key concern for CPSU members in this bargaining round. In October 2015, the CPSU surveyed over 1,000 delegates and 7,000 members about the outcomes they would like from bargaining. The biggest priority for members was the protection of rights and conditions (89.8%) within the agreement not in policy, maintaining existing standards, and not reducing conditions in agencies that are subject to Machinery of Government changes.<sup>37</sup>

The CPSU developed an Outcomes Position following this extensive surveying of union delegates and members on what they saw as fair and realistic bargaining outcomes in the current environment. Members were advised that this would form a 'road map' for discussions with agencies and Government about resolving bargaining. The CPSU Outcomes Position proposed:

1. That rights and conditions be maintained;
2. That take home pay be protected; and
3. Maintaining real wages with a pay outcome of 2.5%-3% per annum, with compensation for the effective 18 month pay freeze (now 24 months), revising the CPSU's original pay claim of 4% per annum.

APS bargaining could be settled if rights and conditions were protected and maintaining real wages was on offer. Unfortunately, the current Bargaining Policy does not allow these outcomes to be met. The Workplace Bargaining Policy provides that agencies are responsible for ensuring that workplace arrangements are consistent with the policy. As such, under the terms of the Bargaining Policy none of the bargaining agencies could agree to the CPSU's proposal. Rather, it only allows proposed agreements that force APS employees to choose between maintaining rights and conditions or accepting a pay increase that in reality is a real wage cut.

### **The Bargaining Policy is designed to pressure APS employees to accept**

The Bargaining Policy has been designed to increase pressure on APS employees to accept cuts to conditions or be financially disadvantaged. Enterprise agreements proposed cuts to conditions and allowances have been rejected. The rejection delays agreement making and because the Bargaining Policy rules out back pay, APS employees are financially penalised for rejecting the erosion of their rights and conditions. As previously mentioned, the ban on back pay is a deliberate strategy by the Government to use financial pressure to eventually force acceptance of cuts to rights and conditions. It is a form of industrial blackmail.

The frustration and futility of attempting to bargain under the Government's current Bargaining Policy is demonstrated by the example of back pay for the ACCC. The CPSU understands that to address the financial cost of delays in bargaining, the Chair Rod Sims met with APSC Commissioner John Lloyd with a view to discuss a pay package for ACCC staff. That included a pay offer marginally above the average 2% annual cap, more frequent pay increases to provide a compounding benefit, and back pay to 1 July 2016. The CPSU understands this approach was dismissed by the APSC Commissioner, then rejected by the Treasury (on behalf on the Treasurer) and was referred to Minister for the Public Service Senator Michaelia Cash who also refused the application.

The Productivity Commission has acknowledged that the requirements for good faith bargaining are largely procedural and that *'in the public sector, this may enable a*

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<sup>37</sup> Community and Public Sector Union (2015, October). *CPSU Delegates and Members Bargaining Outcomes Survey Results Report*. Retrieved from <http://www.cpsu.org.au/resources/cpsu-delegates-and-members-bargaining-outcomes-survey-results-report>

government in pursuit of its preferred fiscal outcome to apply pressure on employees by drawing out the bargaining process, rather than finding agreement through genuine back and forth negotiating.<sup>38</sup> This is what we are currently seeing in the round of APS bargaining.

### **Domestic violence leave shows how the Bargaining Policy is absurd**

*We'd also like to advise staff that in March we wrote to Minister Cash to request that the Government reconsider their policy on Domestic Violence Leave. We have now received a response from the Minister advising that she considers that existing leave provisions will suffice.*

Australian Human Rights Commission, Enterprise Agreement, 12 May 2016

The Bargaining Policy's ban on 'enhancements' to conditions means that bargaining is restricted to what is already within agreements and sensible changes that have widespread community support cannot be agreed to. The absurdity of the Bargaining Policy is best highlighted by its treatment of domestic violence leave. The CPSU's claim includes the introduction of domestic violence leave into agency agreements. Proposed domestic violence leave provisions have been blocked by Government as they are seen as an 'enhancement' to existing conditions and hence are contrary to the Government's Workplace Bargaining Policy. The application of the policy is so rigid that it treats something that White Ribbon Australia has advocated for as a form of 'enhancement'.<sup>39</sup>

This is despite domestic and family violence being one of the key areas of focus identified by the Turnbull Government following its re-election in July 2016.<sup>40</sup> Contrary to public pronouncements about the Government's commitment to reducing the effect of family violence on women and children, it continues to refuse to allow its own employees to negotiate provisions in their enterprise agreements.<sup>41</sup> Further, while domestic violence leave has been adopted by a range of public sector employers including local government, state governments and universities, the Australian Public Service Gender Equality Strategy 2016–19 'Balancing the Future' states that Commonwealth public servants who are dealing with domestic violence are to have access to no more than their existing leave provisions.

*Agencies recognise that domestic and family violence is a workplace issue, with both victims and perpetrators present in their workforce; that domestic and family violence can take several forms including verbal, social, economic, psychological, spiritual/cultural, sexual, emotional and physical abuse; and that workers can be significantly affected. Agencies will develop a consistent, supportive, and respectful approach to the safety of their employees and their workplaces. This includes clear policies relating to domestic and family violence, and training managers to recognise and respond appropriately to staff. Managers will be active in promoting access to support and respond with generous and flexible access to existing leave provisions for victims.<sup>42</sup>*

38 Productivity Commission (2015). *Workplace Relations Framework, Final Report*. Canberra.

39 Noel Towell (2016, 8 March). Malcolm Turnbull's public servants lose domestic violence leave. *Canberra Times*. Retrieved from <http://www.canberratimes.com.au/national/public-service/malcolm-turnbulls-public-servants-lose-domestic-violence-leave-20160308-gndjcr.html>

40 Prime Minister (2016, 17 October). COAG Summit to address violence against women and their children. Retrieved from <https://www.pm.gov.au/media/2016-10-17/coag-summit-address-violence-against-women-and-their-children>

41 Noel Towell (2016, 19 May). Fresh domestic violence dispute breaks out in public service. *Canberra Times*. Retrieved from <http://www.canberratimes.com.au/national/public-service/fresh-domestic-violence-dispute-breaks-out-in-public-service-20160519-goz33m.html>

42 Australian Government (2016). *Balancing the Future: The Australian Public Service Gender Equality Strategy 2016–19*

For example, the Human Rights Commission sought to include domestic violence leave in this current bargaining round but it was rejected by the APS Commissioner.<sup>43</sup> The Commissioner claimed it is not necessary stating that 'any APS employee affected by domestic violence is offered, and has complete access to, the support and flexible leave options they need.'<sup>44</sup> Demonstrating a complete lack of understanding of the complexity of the issue and a clear lack of empathy, the Minister responsible suggested that it would be a 'perverse disincentive' to provide specific domestic violence leave.<sup>45</sup>

Furthermore, the CPSU is aware of at least two instances in the Department of Human Services where employees who experienced domestic violence have been placed on performance management for overuse of leave. One was moved to a lower classification and rate of pay as a result. These examples lay bare the APS Commissioner's claim that employees experiencing domestic violence have access to the leave they need.

While the ban on including domestic violence leave in agreements is not the primary reason that enterprise agreements have been voted down, it demonstrates how out of touch the Bargaining Policy is with community standards. The false claims by the Minister and Commissioner that domestic violence leave is not prevented by the Bargaining Policy contributes to the broader sense among their own employees that this round of bargaining is a failure that is not being conducted in good faith.

The refusal to allow clauses on domestic violence leave in enterprise agreements is clearly at odds with Government rhetoric about prioritising domestic violence. It reinforces the need to overhaul the Bargaining Policy.

Government should make changes to the Bargaining Policy to facilitate resolution as a matter of urgency to allow for a fair, reasonable and fast resolution to the current bargaining dispute. Changes to the Bargaining Policy to allow agencies and employees bargaining representatives to agree on improvements (currently barred as enhancements) as is usual in bargaining. Policy should also be changed to allow and encourage agencies to provide paid domestic and family violence leave

### **The impact on agency productivity and staff morale of the delay in resolving enterprise agreements across the Australian Public Service**

#### **The protracted dispute has led to low morale**

The dragging out of the bargaining process has a significant impact on staff morale. Leaked internal surveys have also highlighted that morale in agencies is at an all time low because staff are so unhappy with pay and work conditions. CPSU Bargaining Team submissions also provide further detail about the impact it has had on morale in a range of agencies.

In the Department of Defence, civilian staff report low morale due to a lack of leadership and respect, along with poor communication and stalled pay negotiations. The research, carried out by YourSay and presented to Department management in March 2016, found that public

43 Noel Towell (2016, 25 May). Human Rights Commission asked Cash to relent on domestic violence leave. *Canberra Times*. Retrieved from <http://www.canberratimes.com.au/national/public-service/human-rights-commission-asked-cash-to-relent-on-domestic-violence-leave-20160524-gp2m7p.html>

44 Noel Towell (2016, 24 May). Public service victims supported, but domestic violence 'inevitable': John Lloyd. *The Age*. Retrieved from <http://www.theage.com.au/national/public-service/public-service-victims-supported-but-domestic-violence-inevitable-john-lloyd-20160523-gp1jje.html>

45 Noel Towell (2016, 27 May). Domestic violence leave would mean fewer jobs for women: Cash. *Canberra Times*. Retrieved from <http://www.canberratimes.com.au/national/public-service/domestic-violence-leave-would-mean-fewer-jobs-for-women-cash-20160527-gp5h1z.html>



servants in the Defence Department are more likely to be unhappy with their pay and work conditions than Australian Defence Force (ADF) personnel.<sup>46</sup>

The report indicated that in 2015, 27% were actively seeking jobs outside of the department, up from 10% in 2013.<sup>47</sup> Nearly half described morale as 'low' or 'very low' in 2015, with just 16% considering morale 'high' or 'very high'.<sup>48</sup> In addition one in five identified poor employment conditions and ongoing pay negotiations as reasons for low morale.<sup>49</sup> The report stated, '*APS workplace morale was found to have declined over the past two years, in contrast with the permanent ADF which has improved over the same time.*'<sup>50</sup>

The Department of Defence is not the only agency where internal Departmental surveys have found low morale. The *One Department* survey of Department of Immigration and Border Protection, conducted by Nous Group in January and February 2016, found that 70% have no confidence in the Departmental leadership, 20% of Department staff believed their top bosses were open and transparent, and only 10% thought there was 'two-way communication across the department'.<sup>51</sup>

The survey also found that the failure to resolve bargaining was a contributor to low morale in the Department. The survey found that '*some staff also cite unequal pay conditions as a key area of frustration and a contributor of low employee morale. Many staff advocate for a fair enterprise agreement that treats staff at the same level equally in terms of salary and conditions to help reduce the 'us and them' mentality and support staff feeling valued for their contribution.*'<sup>52</sup>

### **The APS Census data publicly available is limited**

The low morale found in internal agency surveys challenge assertions that employee engagement results show employees are satisfied. Even data provided by the APSC shows that agencies that are still bargaining have much lower levels of employee engagement.<sup>53</sup> Satisfaction with remuneration and conditions are also much lower with just over half (55%) believing they are fairly remunerated. Unfortunately limited APS Census data is publicly available and it is not available by agency so it is difficult to compare against these survey results. The results available do, however, suggest that staff want to keep their conditions and that staff are far from satisfied with offers.

The APS Census data does highlight that the vast majority of people are satisfied with their non-monetary employment conditions (e.g. leave, flexible working arrangements, other benefits).<sup>54</sup> This should be of no surprise. APS employees value their conditions which is why they have repeatedly voted against proposed agreements that stripped out existing rights and conditions.

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46 Learning and Development Professional (2016, 13 October). *Low morale a blight on Defence Department, says research*. Retrieved from <http://www.ldphub.com/general-news/low-morale-a-blight-on-defence-department-says-research-224942.aspx>

47 Learning and Development Professional (2016, 13 October). *Low morale a blight on Defence Department, says research*. Retrieved from <http://www.ldphub.com/general-news/low-morale-a-blight-on-defence-department-says-research-224942.aspx>

48 Learning and Development Professional (2016, 13 October). *Low morale a blight on Defence Department, says research*. Retrieved from <http://www.ldphub.com/general-news/low-morale-a-blight-on-defence-department-says-research-224942.aspx>

49 Learning and Development Professional (2016, 13 October). *Low morale a blight on Defence Department, says research*. Retrieved from <http://www.ldphub.com/general-news/low-morale-a-blight-on-defence-department-says-research-224942.aspx>

50 Learning and Development Professional (2016, 13 October). *Low morale a blight on Defence Department, says research*. Retrieved from <http://www.ldphub.com/general-news/low-morale-a-blight-on-defence-department-says-research-224942.aspx>

51 Noel Towell (2016, May 12). 'Command and control': Immigration staff slam militaristic culture. *Canberra Times*. Retrieved from <http://www.canberratimes.com.au/national/public-service/command-and-control-immigration-staff-slam-militaristic-culture-20160511-qoskdm.html>

52 Nous Group (2016). *One Department, Pulse check findings summary*

53 Australian Public Service Commission (2016). *Enterprise agreement bargaining data*. Retrieved from <https://stateoftheservice.apsc.gov.au/enterprise-agreement-bargaining-data/#Table3>

54 Australian Public Service Commission (2016). *Enterprise agreement bargaining data*. Retrieved from <https://stateoftheservice.apsc.gov.au/enterprise-agreement-bargaining-data/#Table3>

## **The Government is misusing productivity**

The Government's approach to bargaining has distracted focus from genuine 'productivity' improvements that would deliver better outcomes for everyone. The CPSU is supportive of discussions about how to improve 'productivity'. The Australian community deserve the highest quality public services and public policy delivered effectively and equitably. Unfortunately, the Bargaining Policy's interpretation of 'productivity' is a good example of how it is commonly misinterpreted and misapplied for ulterior motives.

In the current round of APS bargaining, the Government has defined productivity as largely constituting employee-related cashable savings, such as reducing employment conditions and increasing working hours in the public sector. This insistence on any pay increases being offset 'productivity' improvements is problematic and flawed.

This approach fundamentally misunderstands, and therefore will consequently fail to deliver, genuine productivity improvements. Even success in implementing these measures, such cuts to employment conditions would not mean that Government agencies or the employees within them are more productive.

The Productivity Commission's Workplace Relations Framework report also highlighted problems with the interpretation of 'productivity improvement' as a reduction in entitlements or agreements to work longer hours. This does not meet the standard definition of productivity used by economists or statistical agencies. Rather it only changes the form of compensation with little actual gains in productivity.<sup>55</sup>

Instead the Productivity Commission states that a genuine productivity increase requires a change in the way an organisation uses its resources to better perform its core activities, including improved quality of its outputs. This relates more to the adoption of new processes and technologies, rather than simply working harder or changing the mix of entitlements in a worker's overall compensation.<sup>56</sup> In light of this, the Government should stop using this misinterpreted definition of 'productivity improvements' which is one of the factors holding back the resolution of bargaining.

## **The impact of the protracted dispute on service provision, particularly in regional Australia, and for vulnerable and elderly people**

### **The protracted dispute is affecting service provision**

This protracted dispute is also putting an additional strain on already stretched government services, and is impacting on the community as well as on those doing the work. For people working in the APS, the impacts and frustrations are felt across employees and senior management. The time to do something about this is well overdue.

The impasse in bargaining has resulted in the most widespread industrial action since agency-based bargaining was introduced which has affected services to the public. For example, in the Department of Human Services, the protracted delays in concluding bargaining are having an increasing impact on DHS' ability to deliver services to vulnerable Australians. The erosion of employees' confidence in their employer has decimated workplace morale, and caused a corresponding increase in resignations, stress leave and unplanned absences, which in turn increases the strain on remaining employees and impacts the services they are trying to deliver. An overworked and undervalued workforce

<sup>55</sup> Productivity Commission (2015). *Workplace Relations Framework, Final Report*. Canberra.

<sup>56</sup> Productivity Commission (2015). *Workplace Relations Framework, Final Report*. Canberra.

means mistakes are made, staff turnover is high, and customers wait longer for the services they need. The impacts on service delivery of an exhausted, disillusioned workforce cannot be underestimated:

- In 2015, DHS blocked 29 million calls to its call centres in 2015. For the calls that did get through, wait times were, and continue to be, well over an hour.<sup>57</sup>
- Call wait times are the single largest cause of complaints made to DHS by customers.<sup>58</sup>
- Indigenous communities in remote communities can take more than a day to access telephony services.<sup>59</sup>
- Customer aggression has risen, with increasing numbers of DHS offices requiring permanent security guards.<sup>60</sup>
- This year we have seen reports of impacts of the delays in payments for Austudy and Youth Allowance resulting extreme financial hardship and the deferment or abandonment of study.<sup>61</sup> DHS staff have also reported significant delays of carer's payments that have put vulnerable families in a desperate position.

DHS employees are committed to their jobs and the crucial service they provide to the community, but as long as the Government continues its dangerous attacks on its own workforce, we will continue to see impacts not only on workplace relations within the department, but on service delivery outcomes for Australians.

### **Protected industrial action is not the only impact on service provision**

It has not just been Protected Industrial Action that has affected the provision of services delivered by APS employees. For example, the protracted dispute has meant that in the Department of Parliamentary Services the capacity of those involved in the bargaining process, both management and staff, to carry out normal duties has been affected.

In Aboriginal Hostels Limited, the delay in resolving an agreement has exacerbated the problem of high staff turnover, caused by poor pay and working conditions, in two ways:

- The financial position of AHL staff has deteriorated as they have not had pay increase for three years.
- The insulting initial offer and long delay in providing a revised offer has further cemented the view that AHL is not an attractive employer.

AHL is already among the lowest paid agencies in the Commonwealth, the Government's Bargaining Policy and funding is exacerbating this situation.

Similarly, as a result of the Commonwealth Department of Public Prosecution's (CDPP) poor pay and conditions, staff turnover has increased. The best prosecutors are highly sought by the various State DPPs and private law firms. As a result of stagnant wages, and poor conditions, dozens of the most experienced Federal Prosecutors have left the Commonwealth DPP in the last three years, increasing workload pressure on remaining staff.

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57 Noel Towell (2016, 21 October). Centrelink hangs up on 29 million calls, Senate estimates hears. *Canberra Times*. Retrieved from <http://www.canberratimes.com.au/national/public-service/centrelink-hangs-up-on-29-million-calls-senate-estimates-hears-20161020-qs7ecj.html>.

58 Commonwealth Ombudsman (2016). *2015-16 Annual Report*. Canberra

59 Australian National Audit Office (2015, May). *Audit Report No.37: Management of Smart Centres' Centrelink Telephone Services*. Canberra

60 Marie Sansom (2015, 31 August). Centrelink staff deal with 24 aggressive incidents a day. *GovernmentNews*. Retrieved from <http://www.governmentnews.com.au/2015/08/centrelink-staff-deal-with-24-aggressive-incidents-a-day/>

61 Hack (2016, 21 April). *Centrelink payments delayed up to four months, students freakin out*. Retrieved from <http://www.abc.net.au/triplej/programs/hack/students-waiting-four-months-centrelink-payments-delayed/7346960>

There are further examples of how the protracted dispute has affected services in CPSU Bargaining Team submissions which the CPSU encourages the Committee to read.

### **The impact on Australia's tourism industry and international reputation as a result of ongoing international port and airport strikes**

#### **Background**

Protected Industrial Action (PIA) in the APS, undertaken by CPSU members, does not take place in a vacuum. It is usually a last resort response to an unreasonable position being taken by an employer.

All protected industrial action taken by CPSU members would have, and could have, been avoided by the simple act of the Government issuing a Bargaining Policy that did not seek radical cuts to employee wages, conditions, allowances and workplace rights.

That CPSU members in the DIBP and ABF have engaged in widespread industrial action across international ports and airports during this round of bargaining is reflective of the Government's failed approach to bargaining which has broadly consisted of:

- Employer-initiated delays to bargaining;
- The unwavering pursuit of cuts to rights and entitlements; and,
- The emphatic refusal to consider any improvements to working conditions.

It is in this context that DIBP and ABF members of the CPSU have exercised their legal rights to take protected industrial action, and have done so in full accordance with the law.

#### **Environment**

Overall, the industrial action engaged in by CPSU members, while significant, has not been without precedent in the tourism and transport industry.

Industrial disputation, including strike action, has occurred at seaports in 2016 and prior. There are also numerous examples of protected industrial action being taken at airports. Aviation security screening of outbound passengers is predominantly performed by contracted security providers and industrial action has occurred during enterprise negotiations. Perhaps the most extreme example of industrial action in the tourism and transport industry was in 2011 when Qantas took the decision to ground its entire fleet.

In the international context, October alone has seen: pilots in Kenya threaten strike actions; strike action taken by airport workers in Brussels; strike action being planned by immigration workers at Dublin airport; strike action being threatened by workers at Gatwick airport; Domestic airline cabin crew in Germany organising strike action; and, air traffic controllers in Greece notifying and then cancelling industrial action.

It is not only industrial action which has an effect on passenger flows in an airport environment. Failures of computerised check-in facilities can and have had a major impact on airline operations. Likewise, a now current ban on carriage of the Samsung Galaxy Note mobile telephone by Qantas, in the interests of safety, has led to significant queueing and an increase of persons in domestic departure halls at any one time.

### **Last resort**

CPSU members in the DIBP cannot be criticised for the timing of taking protected industrial action.

The CPSU sought to initiate bargaining in late 2013. Both the Australian Customs and Border Protection Service (ACBPS) and DIBP (then distinct entities) refused to bargain on the basis that there was no Government Bargaining Policy at the time. It was not until 30 June 2014 – the nominal expiry date of the agreements which currently cover staff in the DIBP – that the DIBP agreed to commence bargaining. This was some two months after the release of the Commonwealth's Australian Government Public Sector Workplace Bargaining Policy. The ACBPS did not agree to commence bargaining until September 2014. By the time that DIBP and ACBPS members applied to take protected industrial action in April 2015, bargaining had been underway for 9 months, and members had not received a pay rise since mid 2013.

Staff have undertaken ongoing protected industrial action because they feel they have no other option. They have dedicated their lives and their careers to protecting our citizens and keeping our country and our borders safe. The only proposals put by the Government to date will cut not just their rights and conditions like other Commonwealth workers but will mean big losses on take-home pay. Thousands of Border Force officers in counter terrorism, intelligence, organised crime, marine and detention centres faced proposals for over 18 months to cut their current pay (including allowances) by an average of \$8,000. Thousands of officers still face proposals to cut their pay by an average of \$3,000 per year.

### **Protected Industrial Action at airports and ports**

CPSU members do not shy away from the fact that the industrial action which they took was widespread and effective. However, we dispute the imputation that industrial action was engaged in in an irresponsible or unsafe manner. On the contrary, CPSU members who work on the frontline are acutely aware of their responsibilities and would never take action which is unsafe.

The CPSU maintains that it was the decisions which management made in their attempts to mitigate the protected industrial action which created risk factors. It bears reminder that the CPSU provided over 50 exemptions of members from taking protected industrial action and agreed to extend the notice of all action from 3 to 7 business days.

### **Responses to Protected Industrial Action**

The *Fair Work Act* aims to strike a balance between the rights of employees to take industrial action and the interests of employers.

During this round of bargaining, and in respect of the protected industrial action taken in the DIBP; the DIBP has regularly used the mechanisms available to it under *the Fair Work Act* to respond to protected industrial action.

To deter CPSU members from taking protected industrial action, the DIBP has reduced their pay and even threatened to refuse to accept their work at all (if they propose to participate in workplace bans). On one occasion, the Fair Work Commission found that the reductions the DIBP applied to members in the ABF marine unit who engaged in partial bans were excessive and should be reduced. The DIBP has also twice now applied to suspend workers' rights to take protected industrial action. On the first of these occasions, the Fair Work Commission suspended protected industrial action for 90 days. On the second occasion, the Fair Work Commission terminated protected industrial action in the DIBP.

At any point throughout the course of CPSU members taking protected industrial action, the DIBP could have applied to suspend or terminate industrial action, provided they could demonstrate that the protected industrial action created a sufficient level of risk.

In addition to the options available to the DIBP to restrain or prevent protected industrial action from occurring, there are much more straightforward ways in which these risks can be averted. At any point, a genuine and reasonable approach to bargaining would have obviated the need for CPSU members to take protected industrial action.

The Commonwealth just weeks ago argued in the Fair Work Commission for Department of Immigration and Border Protection (DIBP) strikes to be temporarily suspended until 22 November with no role for Fair Work in resolving the dispute, meaning DIBP staff could and would need to strike at airports strike in the leadup to Christmas, while opposing the CPSU's successful move to terminate all DIBP strikes and have Fair Work arbitrate an outcome.

Further, the CPSU was willing to, and did, consider the security environment and the effect that protected industrial action had on the public. The CPSU did just this when it decided to not to proceed with protected industrial action in the wake of the March 2016 Brussels terrorist attack. Even after the CPSU in a matter of hours suspended long-planned, complex strike action in hundreds of workplaces across international Airports to alleviate community concern in the wake of the Brussels attacks at the Prime Ministers request, the Government would not agree to meet and discuss the concerns of DIBP officers.

### **Resolving DIBP bargaining**

Regarding the resolution of DIBP bargaining, the Minister Assisting the Prime Minister on the Public Service and Minister for Immigration and Border Protection should take immediate steps sufficient to;

1. Ensure officers can receive the current pay and conditions received by various DIBP and Border Force staff from the terms of previous enterprise agreements;
2. fairly address disparities arising from the integration of Customs and Immigration and the creation of the Australian Border Force;
3. no longer seek to cut the pay or conditions of officers, including but not limited to, officers in the ABF Marine Unit, Counter Terrorism Unit, Investigators, Surveillance, Detention, Compliance and Removals, onshore and offshore Immigration Detention Facilities including Irregular Maritime Arrivals, and various frontline staff at sea ports, airports, inspection facilities and remote and District offices;
4. make material improvements in the current offer being put forward by DIBP;
5. allow DIBP and CPSU to reach agreement and propose an outcome to the Full Bench of Fair Work early in arbitration; and
6. not subject DIBP officers to another 12-18 months of protracted legal wrangling over arbitration, as threatened by DIBP in writing to staff.

**APPENDIX 1 - Timeline of interaction with Government on bargaining**

<b>Date</b>	<b>CPSU Action</b>	<b>Government Action</b>
23 September 2013	CPSU wrote to new Minister Eric Abetz to congratulate on appointment and request to meet.	
18 December 2013	CPSU wrote to Minister Abetz and the APS Commissioner seeking the commencement of bargaining as early as possible in 2014	
7 February 2014	CPSU wrote to Minister Abetz raising concerns about a lack of consultation about the bargaining framework and delays in its finalisation.	
11 February 2014	CPSU wrote to the APS Commissioner for a copy of the draft bargaining policy prior to a planned meeting	
24 March 2014	CPSU wrote to Minister Abetz about the delay to the start of bargaining and sought immediate discussions about commencing bargaining	
25 March 2014		Minister Abetz wrote to the CPSU stating that agencies were making preparations to bargain.
28 March 2014		Government release of the Australian Government Public Sector Workplace Bargaining Policy. Agencies could not commence bargaining until policy was released.
30 June 2014		APS agreements expired. Only 5 agencies had issued NERR.
19 August 2014	CPSU wrote to Minister Abetz raising concerns about the removal of rights and conditions as per the bargaining policy and seeking a meeting	
August 2014		First pay offer released four months after the release of the policy in DHS.
2 September 2014		Minister Abetz replied to August correspondence stating that he was not a bargaining representative and resolution should occur at an agency level.

December 2014		<p>The first agreement under this policy was put to a vote of staff in the Department of Employment in December 2014. Agreement was resoundingly rejected with a 95% no vote.</p> <p>Government unilaterally announces 1.5% pay cap for the APS in MYEFO</p>
February 2015		<p>Almost a year after the policy was released only 8 agencies had tabled pay offers (DHS, Employment, AFSA, DVA, PM&amp;C, ATO, NHPA, Infrastructure)</p>
25 March 2015	<p>CPSU wrote to the APS Commissioner seeking a meeting to discuss workplace relations and workforce management in the APS.</p>	<p>The Government position on super changes (announced by APS Commissioner). Agencies advised they were now being permitted to keep a reference to the employer super contribution of 15.4% in EAs.</p>
26 March 2015		<p>APS Commissioner replied to 25 March correspondence and agrees to meet.</p>
15 April 2015	<p>APS Commissioner met with CPSU National Secretary</p>	
21 September 2015	<p>CPSU wrote to new Minister Michaelia Cash to congratulate on appointment and request to meet.</p>	
October 2015	<p>CPSU surveyed members about bargaining outcomes. Develops Outcomes Position that revises bargaining position.</p>	
6 October 2015	<p>CPSU met with Minister Cash for the first and only time.</p>	
October 2015	<p>CPSU telephoned and emailed Minister Cash's office seeking further discussions.</p>	
20 October 2015		<p>Minister Cash announced changes to the government's bargaining policy.</p>
2 November 2015		<p>Government issues revised Workplace Bargaining Policy.</p>
5 November 2015	<p>CPSU wrote to the Minister about the new Bargaining Policy seeking further discussions about bargaining.</p>	
29 November 2015		<p>Minister Cash wrote to CPSU acknowledging revised</p>



		bargaining position but states that she is not a bargaining representative at an agency level. States that she will not meet with the CPSU again at this time.
4 December 2015	CPSU wrote to Minister Cash regarding Concern that Good Faith Bargaining Requirements in the AEC.	
8 December 2015		Minister Cash wrote to CPSU in response to AEC letter stating she is not a bargaining representative and that concerns should be addressed to the AEC.
26 February 2016	CPSU wrote to Prime Minister.	
Late February 2016	CPSU organised a delegation of APS employees to speak to parliamentarians in Canberra about bargaining. Not a single MP from the Government was willing to meet.	
11 March 2016	CPSU wrote to Minister Cash about Good Faith Bargaining requirements not being met in the AEC.	
23 March 2016	CPSU cancels DIBP airport strike.	Prime Minister calls on CPSU to cancel DIBP airport strike.
24 March 2016	CPSU wrote to Prime Minister about DIBP employee concerns and strike action.	
30 March 2016		Minister Cash wrote to CPSU stating that she is not a bargaining representative and that issues at the AEC should be addressed at an agency level
27 July 2016	CPSU wrote to Prime Minister seeking opportunity to discuss bargaining.	
29 July 2016	CPSU wrote to Minister Cash about her failure to meet Good Faith Bargaining requirements.	
8 August 2016		APS Commissioner telephoned CPSU National Secretary to confirm neither he nor Minister Cash would meet.
August 2016	CPSU lodged good faith bargaining applications with Fair Work Commission.	
17 August 2016		Minister Cash wrote to CPSU

		stating that bargaining has been proceeding in good faith.
7 September 2016		Minister Cash wrote to CPSU in response to July correspondence to the Prime Minister stating that changes would not be made to the bargaining policy.
12 September 2016	CPSU wrote to the Prime Minister to seek discussions on bargaining.	
22 September 2016		APS Commissioner wrote to CPSU alleging misconduct re. DIBP surge deployment
24 September 2016	CPSU wrote to APS Commissioner outlining DIBP employee concerns re. surge deployment	
12 October 2016		Minister Cash wrote to CPSU in response to September correspondence to the Prime Minister stating that issues should be resolved at an agency level.
24 October 2016		APS Commissioner wrote to CPSU alleging misleading statements in bargaining.