



Australian Government
Australian Public Service Commission

Australian Public Service Commissioner

Workplace Relations Inquiry
Productivity Commission
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via email: workplace.relations@pc.gov.au

I provide a submission about the workplace relations arrangements that apply to Commonwealth Government employment.

Productivity Commission Issues Paper 5 asks:

How should WR arrangements in state and public services ... be regulated? In particular, to what extent and why, should WR provisions vary with the public or private status of an enterprise?

My submission addresses this question.

Yours sincerely

John Lloyd\PSM

26 March 2015



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Productivity Commission Inquiry into the Workplace Relations Framework

**Submission by the Australian Public Service
Commissioner**

The Hon. John Lloyd PSM

Introduction

1. This submission is made in response to the questions posed by the Productivity Commission in Workplace Relations Issues Paper 5.5, about whether the regulation of workplace relations in public services and state-owned enterprises should vary to that which operates in the private sector.
2. This submission does not address state public service employment, which is generally subject to State regulation.
3. Nor does this submission address the terms and conditions setting arrangements for the Australian Defence Force. The ADF has historically been subject to separate arrangements from other public sector workers, reflecting both the unusual nature of the ADF workplace, and the fact that ADF members are not considered to be employees.
4. The Commonwealth is a large and diverse employer, with approximately 350,000 employees engaged in a variety of occupations. Commonwealth employment covers occupations of administrative and clerical public servants, engineers, veterinarians, scientists, cleaners, security, law enforcement and border protection.
5. The experience of the Commonwealth has been that, despite some differences in the nature of public sector employment, the workplace relations frameworks that apply to the private sector are increasingly suitable for the public sector.
6. It remains appropriate to consider whether any of the current minor differences in the regulatory framework for the public sector are necessary and in the broader public interest.

Overview of Commonwealth employment

7. Employment arrangements for Commonwealth employees vary, depending on the establishing legislation and governance frameworks of the employing entity.
8. The Commonwealth is directly the employer of some employees, specifically approximately 150,000 Australian Public Service (APS) employees, who are employed under the *Public Service Act 1999*. Commonwealth authorities outside of the APS generally engage staff on behalf of the Commonwealth by powers conferred in their establishing legislation. Commonwealth Government Business Enterprises engage staff in much the same way as other corporate entities.
9. Some specific employment conditions are set directly by legislation, particularly in relation to APS employees. This includes legislation covering worker's compensation, occupational health and safety, superannuation and long service leave. However, generally, Commonwealth agencies operate within the same workplace relations framework as private sector employers.

Historical trends

10. For much of its history, Commonwealth public sector workplace relations was subject to separate regulation. Since the 1980s there has been an increasing trend towards frameworks that mirror, or are the same as, those that operate in the private sector.
11. This trend coincides with changes that have seen management functions and financial accountability increasingly devolved to individual government agencies.
12. Many terms and conditions of employment in the federal public service prior to 1984 were largely determined by a special tribunal, the Public Service Arbitrator. The Public Service Board also had a centralised role in managing workplace relations.
13. Throughout the 1990s and 2000s, terms and conditions of employment in the APS moved away from award based arrangements determined by an industrial tribunal towards enterprise bargaining.
14. The APS initially developed a single central APS-wide agreement. Over time, agencies were able to negotiate their own terms and conditions, underpinned by a safety net of minimum rates awards and legislated minimum conditions. These changes reflected changes occurring more broadly across the economy. The changes reinforced agency head responsibilities for managing agency resources and delivering productivity improvements.
15. The Public Service Act 1999 (the PS Act) vested employer powers in agency heads and moved from detailed prescriptive regulation to a simpler, principles based legislative framework underpinned by the APS Values, APS Employment Principles and a Code of Conduct.

Current arrangements

16. Commonwealth agencies now operate within the same workplace relations environment as any other Australian employer.
17. The majority of Commonwealth employees have their terms and conditions of employment set through comprehensive enterprise agreements made under the *Fair Work Act 2009*. Some Commonwealth employees are covered by modern industry awards. This has brought terms and conditions of employment in the Commonwealth more into line with those operating in the private sector.
18. Bargaining occurs at the agency level. Successive governments have determined a workplace bargaining policy that establishes the parameters within which bargaining in the APS is to occur. In this respect, the APS is like large and multi-faceted private sector employers that devolve responsibility for bargaining to individual business unit managers within a head office approved framework.
19. Many Commonwealth agencies, including all APS agencies, are currently involved in bargaining for agency level enterprise agreements under the FW Act. The Australian

Government Public Sector Workplace Bargaining Policy sets out the policy parameters for such bargaining. A copy of the Policy is available at www.apsc.gov.au/wr-bargaining-2014.

20. The Policy focuses on ensuring that enterprise agreements are streamlined and flexible, that pay and conditions arrangements are affordable, and that any improvements are offset by genuine productivity gains.
21. The Australian Public Service Commission provides advice to agencies about the scope of the policy to assist agencies with bargaining, but does not have a role in an agency's bargaining process.
22. The Parliament has reserved the right to make public service employment law that cannot be displaced by enterprise agreements or awards. Laws that establish employment conditions in the areas of superannuation, workers compensation, long service leave and maternity leave are examples.
23. The PS Act also sets down principles and standards of conduct that are considered appropriate for public employment. The principles and standards are designed to ensure the APS is apolitical, and is efficient and effective in serving the Government, the Parliament and the Australian public. These notions are contained in the PS Act and are enunciated through APS Values, APS Employment Principles and the APS Code of Conduct that are also set out in the Act.
24. The PS Act allows the Australian Public Service Commissioner to issue directions about employment matters including in relation to engagement, promotion, redeployment, mobility, termination and training. Agency heads also have the power to determine the terms and conditions of employees. A determination cannot reduce an entitlement under an agreement or award. Such powers when invoked follow careful consideration that is mindful of community standards and the PS Act object that employment arrangements are fair.
25. The Prime Minister is able to issue general directions to agency heads about the management and leadership of the APS. The Public Service Minister may determine the terms and conditions of APS employees in exceptional circumstances. Such determination is made by legislative instrument.
26. In practice these powers are used as reserve powers and are invoked infrequently. For example, they have been used to minimise the impact on operations where Government decisions require the movement of large numbers of employees between agencies very quickly.

Concluding remarks

27. It is my view that the progressive integration of the APS into the mainstream workplace relations system under successive governments has assisted it in responding flexibly to changing demands and adapting to the increasingly complex challenges that it faces.

This, in turn, has benefitted successive governments and the Australian public. The APS should continue to operate under the workplace relations framework that applies more generally.

28. At the same time the role of the APS in serving the Government, the Parliament and the Australian public involves some particular responsibilities that are not replicated in the private sector. It is appropriate that different arrangements affecting employment be available for application in special circumstances.