

# Chapter Five

## From Workplace Bargaining to Workplace Relations: Industrial Relations in the Australian Public Service under the Coalition Government

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The purpose of this chapter is to examine the implementation of the *Workplace Relations Act 1996* (Cth) (the 'WR Act') and the potential impact of the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) (the 'Work Choices Act') within the Australian Public Service ('APS') — where the Coalition government has the greatest opportunity to influence the working conditions of its own employees. The chapter argues that when governments seek to regulate the working conditions and wages of their own employees in a decentralising industrial relations environment, there is potential for tension between the roles of government as employer, as policy generator and financial controller. A government's financial and political responsibility requires that it control the cost of its own employees; its industrial relations policies may also require that more direct relationships between employers and employees be facilitated by the regulatory system. Nevertheless, as an employer, the government needs to retain ultimate control of its own employees. In the APS, the Coalition government attempted to resolve these tensions by providing policy 'parameters', via the Department of Employment and Workplace Relations ('DEWR'),<sup>1</sup> to its managerial agents within agencies and departments of state. These parameters devolved some autonomy to the government's managerial agents, but also required them to adhere to a process of centralised oversight of agency agreement-making by DEWR.

The principal public service union, the Community and Public Sector Union ('CPSU'), was compelled to respond to a process that was procedurally decentralised but where there was considerable potential for ongoing and substantial central intervention in workplace bargaining. For public sector unions, there are both threats and opportunities in this environment. The threat lies in the capacity of employers to minimise union involvement in the

agreement-making process. The opportunity for unions is to counter this threat through organisation at the agency level and through efforts to increase union membership. The chapter explores the CPSU's attempts to retain its legitimacy at workplace level in three lowly-unionised agencies. These efforts are compared with union-management bargaining in an agency in which unions had a greater presence and organisational capacity.

## **The Coalition's General Industrial Relations Policy**

The key objective of the Coalition's industrial relations policies was to foster a more direct relationship between employers and employees at the workplace/enterprise level.<sup>2</sup> This involved reducing the power of 'outside bodies' that were said to interfere with or complicate the fostering of those direct relationships. In practice, this meant that the power of unions and of some (but not all) external regulatory bodies, such as the Australian Industrial Relations Commission ('AIRC'), would need to be reduced further. The first objective was to be achieved by removing the bargaining monopoly that had been exercised by unions. The second objective was to be achieved by reducing the powers of the AIRC to intervene in workplace-level negotiations and outcomes, to that of simply ensuring that the agreements met specified legislative requirements.<sup>3</sup> The reduction of the powers of the AIRC indeed had been begun by the previous Labor government, although it had been much more cautious about reducing the role of unions in a decentralised bargaining environment.

While the Coalition made some significant changes to the bargaining environment that had been established by the Labor government, it followed in the tradition established by the former government in using the APS as a testing ground for its general industrial relations policies. The Labor government needed to demonstrate that its approach to workplace bargaining was a fairer and more effective system than the Coalition model. The obvious place to conduct such an experiment was in the APS. There was some scepticism, however, that productivity-based bargaining could work effectively in a budget-funded environment. A study involving three academics, Professors John Niland, William Brown and Barry Hughes, considered the utility of a number of methods used in the APS to measure productivity and opted for a system of productivity measurement that combined general performance indicators and quality-focused approaches to their development and application at the agency level.<sup>4</sup> They were of the view, however, that 'measures of APS wide productivity growth of an acceptable standard (were) ... not available and (were) ... unlikely to be so in the future'.<sup>5</sup> Productivity could only be regarded as a 'sub-set' of performance.<sup>6</sup>

The arguments about productivity measurement in the APS were in part designed to convince the unions that there could be workable agency-level bargaining that would not compromise the regime of service-wide wages and conditions.

Achieving the policy objective of introducing workplace bargaining for its own employees did not, however, sit comfortably with the desire of the unions to maintain a high level of common conditions. Moreover, a group of departmental secretaries had conducted a separate enquiry,<sup>7</sup> and the consultants agreed on one issue: that it was difficult to measure productivity in non-market environments.

In fact, the CPSU had no real choice but to accept some model of decentralised bargaining given that both the government and the ACTU wanted a shift in that direction. Of more immediate concern was the impending federal election. The government (and the unions) needed to demonstrate that its model of decentralised industrial relations could work more effectively and equitably than that proposed by the Opposition parties. In December 1992, the government and 27 public service unions signed an agreement on the introduction of agency-level wage bargaining. This agreement provided for the development of 'more flexible' employment conditions at the agency level to be achieved in agency-specific agreements provided that there was 'no overall disadvantage to employees'.<sup>8</sup>

During 1993 and 1994, most APS agencies either managed to negotiate an agency level agreement or gain access to a 'foldback' fund.<sup>9</sup> Among the agencies that relied on this latter arrangement were the Department of Finance and the Treasury. This was a considerable source of angst amongst the agencies that had reached agreements.<sup>10</sup> The central agencies were accused of being 'free riders' on the efforts of other agencies. An evaluation of the system conducted by the Department of Finance and the then Department of Industrial Relations confirmed this view, and also indicated that small agencies had experienced particular difficulty in identifying productivity savings.<sup>11</sup>

This episode of agency bargaining was followed by a return to a more centralised mode of bargaining and illustrates the conflicting objectives of governments in regulating their own employees. The government had a clear agenda to decentralise the wage bargaining system. The best way to do this was to demonstrate that it could work for its own employees. In the short term, there was an imperative to demonstrate its superiority over the more radical agenda of the opposition. On the other hand, the government needed to maintain control over the costs of such a system. Thus, the central agencies acted as the regulators on behalf of the government. In that sense, the system was not wholly decentralised. The government also needed to wrestle with the practical problems of productivity measurement and the expectation from the unions that all employees would receive a similar wage outcome. The solution to these problems through the 'foldback' mechanism meant that some public service managers, who had been able to bargain, had to finance the non-bargaining agencies or free-riders. Even for the bargaining agencies, it was difficult to see how

productivity gains could be made without either continuing job losses and/or work intensification for the remaining employees. Nevertheless, the process facilitated further the incorporation of public sector unions into a recasting of the APS.

## **The Coalition's 'Loose-Tight' Model**

The incoming Coalition government, however, saw the process of decentralisation and then the subsequent recentralisation of industrial relations in the APS as a sham. The government declared itself determined to implement 'real workplace relations' in the APS.<sup>12</sup> The shift of discourse here is significant. Whereas the Labor government had talked about 'workplace bargaining', the Coalition preferred the term 'workplace relations', which did not necessarily envisage bargaining between public service unions and agencies, but rather more 'direct' relations between APS employees and managers.

Yet the Coalition government still faced the same dilemma faced by any business: the need to control the costs of its own employees. This could only be achieved through its control of budgetary arrangements. Departments and agencies needed to pay for the costs of their employees through their normal budget provision rather than to rely on supplementation from the government. Such an approach would have been less difficult to implement if the government had not also made it a policy objective to decentralise industrial relations and give greater autonomy to APS managers to organise their own employment arrangements.<sup>13</sup> How then could the government reconcile these two apparently contradictory objectives? The parameters for bargaining in the APS issued in 1997 in preparation for the next round of bargaining or agreement-making in the APS attempted to place the prime responsibility for bargaining on agency managers while maintaining a considerable degree of supervision of the process by the Department of Industrial Relations and the agent of the government in its role as the 'ultimate' employer.

The key provision of these guidelines, which have been re-issued periodically, was that any agency-level agreement must be consistent with government policy. Other principal 'parameters' were that:

- agreements were to be funded within agency appropriations;
- the accrual of sick leave and annual leave entitlements was to be portable across agencies;
- agencies were to introduce a rationalised classification structure linked to Service-wide benchmarks;
- flexible remuneration arrangements were to be permitted;
- redundancy provisions were to be cost-neutral to the agency;
- all certified agreements were to provide for the making of Australian Workplace Agreements (individual contracts);

- agreement-making be subject to coordination arrangements, including consultation with the (re-named) Department of Workplace Relations and Small Business ('DWRSB'); and
- agreements be subject to Ministerial clearance where significant policy issues were raised by the agreement.<sup>14</sup>

## **Decentralising While Controlling: The Department of Workplace Relations and Small Business**

The parameters for agreement-making provided a specific role for the (re-named) DWRSB to act as coordinator of agreement-making in the agencies. This continued a long-established tradition within the APS of central agency supervision of employment relationships. The Department was responsible for reviewing agreements at both the proposal and offer stages. The final draft would have to be cleared by the Department's staff against the government's policy parameters before agency management could put it to a staff vote. To ensure consistency, three policy sections within the department reviewed all draft agreements: pay, freedom of association and working conditions. Once this had taken place, the department would inform the agency whether the agreement met with its approval or whether changes were required to ensure it complied with the government's policy parameters. Clearly, the government was cautious about devolving too much responsibility to agencies as some might not abide by government policy or retain, from the government's perspective, too close a relationship with public sector unions.

Thus the central agency's oversight role remained necessary under the Coalition. For while there was considerable flexibility for agencies to vary some matters such as allowances, access to higher duties, span of hours and overtime arrangements to reflect their individual circumstances, ultimately all agencies had to comply with the policy parameters set down by the Department.<sup>15</sup> This was reflected in the Department's advice to agency management:

Authority to make agreements now rests with agencies, within broad policy arrangements that recognise the Government's responsibility as the ultimate employer. This is consistent with the practice of other major employers. This framework balances the responsibility of an agency to conduct its own workplace relations with the requirements of public accountability of government bodies.<sup>16</sup>

There are clear limits to the devolution of employment relations in government agencies. While the heads of government agencies may be given considerable autonomy in making agency-specific arrangements, they are, in the end, agents of government in both its roles of employer and policy generator. This apparent contradiction was explained by a senior DWRSB officer as being akin to a large corporation with a number of enterprises within its structure.<sup>17</sup> While the

corporation might allow its constituent enterprises considerable autonomy in its employment arrangements, they are formulated within the framework of overall corporate policy.<sup>18</sup> During interviews, agency managers conceded that the policy parameters set limits on their capacity to negotiate.<sup>19</sup> For instance, DWRSB examined the changes to the Centrelink classification structure carefully and expressed concern about its comparability with the APS structure and mobility between the two. Furthermore, the Freedom of Association provisions resulted in the Department revising the Centrelink agreement to omit specific mention of unions. To some extent, these tensions between DWRSB and line agencies reflected difficulties associated with the first round of a new system. In subsequent rounds, the role of DWRSB was confined to checking the final drafts of agreements. Indeed, it could be argued that the need to conform to government policy was sufficiently internalised by managers responsible for agreement-making so as to make close supervision by a regulating agency less necessary in subsequent rounds of bargaining.

The more important test, however, may be the degree to which the government's other agreement-making objectives were implemented in the various agencies and to what extent any variations were mediated by union action. The issue of remuneration systems provides a fruitful area of investigation in this context.

## **Performance-Related Pay**

Initial moves to introduce performance-related pay began under the former federal Labor government in 1992, and were restricted to members of the Senior Executive Service ('SES') and to senior officers, the next classification of APS employees below the SES. The Senate Finance and Public Administration Committee undertook an initial inquiry into the operation of this pay scheme in 1993 and received submissions noting the potential for performance-related pay to increase the politicisation of the public service.<sup>20</sup> Performance appraisal ratings were also viewed as being highly subjective and influenced by the biases of supervisors.<sup>21</sup> The committee therefore recommended that performance pay in the APS be abandoned.<sup>22</sup> Subsequent research into performance-related pay in the APS from 1992 to 1996 found that supervisors often rewarded their 'favourites' with the highest performance appraisal ratings, while senior managers and those working in high profile areas also tended to receive the highest ratings.<sup>23</sup>

Nevertheless, the Coalition government elected in 1996 was determined to introduce a rationalised classification structure linked to performance appraisal and pay. The new parameters for agreement-making consequently developed by DWRSB insisted that all agency agreements contain a commitment to develop flexible remuneration arrangements. Research into the effects of the performance-related pay schemes introduced into the APS from 1998 highlighted

employee concerns over the potential for increased managerial discretion in the selection of performance criteria. Unless such criteria were specific and clearly linked to the major work tasks that employees undertook, there was the very real potential for supervisors to make arbitrary judgments regarding employee behaviour and work performance:

You need to have specific responsibilities agreed/outlined to protect yourself from the possibility of supervisors coming up with various unrelated duties/expected outcomes at assessment time.<sup>24</sup>

Many APS employees also perceived the assessment of their performance by their supervisor to represent an inherently subjective process. For example, a number of employees pointed to favouritism in the performance appraisal system:

1. Managers forget things you have done that meet the criteria.
2. Personality differences and differences in style affect managers' decision-making regarding ratings.
3. Sometimes [they] rely too much on hearsay and not evidence.
4. Some managers lack the objectivity and intelligence to apply ratings fairly.<sup>25</sup>

There were also widespread concerns among employees that budgetary pressures were causing initial performance assessments provided by supervisors only to be moderated downwards by more senior management in order to increase the number of employees who were eligible for a bonus payment. There were also admissions by at least one departmental secretary that the payment of performance bonuses to some employees could result in other APS employees losing their jobs. The Secretary of the Treasury told the Senate Finance and Public Administration References Committee in 2000 that while he welcomed the new performance-based pay system in the Treasury, he noted that

managers, in making assessments, were to be aware that there were budgetary considerations. If there were a clash, for example, if we paid more performance pay than we may have expected in designing the budget, we would operate with fewer numbers.<sup>26</sup>

He agreed with the comment of the Chair of the Committee, 'so in effect you could be trading off one person's job for one person's performance payment?'<sup>27</sup>

Nevertheless, for some managers, performance-related pay schemes have formed a central element of their agenda to inculcate a 'performance culture' within their organisations.<sup>28</sup>

Management efforts to introduce cultural change via performance-related pay represents an attempt to alter employee values, beliefs and behaviours and encourage increased commitment by individual employees to the goals of the organisation. It may also aim to weaken collective bargaining and the role of trade unions while strengthening the power of middle managers in

decision-making over pay.<sup>29</sup> A good example of such experimentation was in the Department of Finance and Administration ('DoFA').

## **Implementing Performance Pay: The Department of Finance and Administration and the Department of Defence**

The 1997 DoFA collective workplace agreement refers to a commitment to the promotion of 'a working culture based on high performance, quality outcomes and modern management and work practices'.<sup>30</sup> Within DoFA, management adopted a very uncompromising approach to the promotion of this new high performance culture; and in staff newsletters, employees were encouraged to become 'action-oriented', to develop a 'will to win' and to be 'creative' in how they 'get the runs on the board'.<sup>31</sup> The corporate culture orientation of the agency was also revealed in the principles and objectives of the agreement that were concerned to provide the environment where 'the employer and employees agree to work collaboratively and in consultation' to enhance a working culture based on high performance, quality outcomes and modern management work practices; and promote a performance culture by rewarding good performance and managing poor performance well and encouraging people to achieve their full potential.<sup>32</sup>

In addition, the performance management system in DoFA included a system for managing underperformance. Management used the performance rating scale to remove those staff who had not accepted the new culture by providing them with an 'unsatisfactory' assessment ('fundamental job requirements are inconsistently met') that resulted in the offer of a redundancy package.<sup>33</sup> Even those staff who received a 'borderline' performance assessment ('fundamental job requirements are barely met') were also being sent a message that they did not fit into the new 'can do' culture of the department.<sup>34</sup> Management was alleged to be adamant that it did not want 'closet cynics' who would be critical of the new culture.<sup>35</sup> Such cynics were invited to accept voluntary redundancy packages while those who remained were expected to align themselves with the new culture.<sup>36</sup> As a result of the pressure on staff to conform, a workplace culture of fear was alleged to be developing in DoFA.<sup>37</sup> The very real threat of redundancy ensured at least behavioural conformity from the majority of staff to the new culture.<sup>38</sup>

The system established within DoFA, however, represented only one end of the spectrum of pay arrangements within the APS. At the other end was the Department of Defence that established a more rigorous system for movement through incremental scales and specifically rejected the notion of performance bonuses. Indeed the Secretary of the Department, Dr Allan Hawke, told the Senate Finance and Public Administration References Committee in 2000 that he did

not believe in linking this sort of performance framework to performance pay or to any sort of model that involves notions like that — pay at risk, bonuses and the like. What we do is: at the end of the 12-month period it is simply a tick in the box if people have performed well, and if they have performed well then they go up to the next increment in the pay scale.<sup>39</sup>

He went on to insist that he did 'not approve of performance pay and do not have it in an organisation that I am in'.<sup>40</sup> He also expressed concern about the development of pay dispersion within the APS. As an experienced senior public servant, he had always subscribed to the notion of 'getting a fair day's pay for a fair day's work'; people therefore 'should get roughly equivalent to what they would get in a like job elsewhere in the Public Service'.<sup>41</sup>

The significance of these remarks is that one of the most senior members of the APS was taking issue with two central aspects of the government's pay agenda: performance-based remuneration and agency-specific pay rates. Yet the Department was allowed to establish a pay system that, while it had a performance element, fell far short of the government's objectives and stood in stark contrast with the pay system established in DoFA. Presumably, the government could have insisted on a much more performance-driven pay system, but accepted a system that was inconsistent with its overall objectives. This case illustrates one of the dilemmas of a decentralised mode of industrial relations. On the one hand, the government wanted to use the APS as a site for implementing its policies and enhancing agency-specific managerial prerogative. In the case of the Department of Defence, managerial independence was asserted at an apparent cost to government policy, while in DoFA managerial prerogative was used to implement government objectives in a manner that went well beyond the ambitions of the government.

## **Union Response: Staying at the Bargaining Table**

The Coalition's industrial relations policies envisaged a much less direct role for unions in the negotiation of agreements between employees and employers. In the APS, however, public sector unions had historically a strong presence, although its density in the APS in the early 2000s had fallen below 50 per cent.<sup>42</sup> The capacity of the public sector unions to influence industrial relations arrangements had been enhanced by the previously centralised employment arrangements within the APS. The Labor government had attempted to shift the focus of industrial bargaining towards the agency level in the face of strong opposition of the unions. Following the election of the Coalition government, the unions sought to negotiate a framework agreement with the government within which agency level negotiations would take place. The government resisted all attempts to negotiate such an agreement and so the unions in general

— and the CPSU in particular — were forced to accept that negotiations would take place agency by agency.<sup>43</sup> Moreover, the WR Act and more recently the Work Choices Act effectively removed unions from exercising a bargaining monopoly on behalf of APS staff. As a result, the first problem that the public service unions faced was to assert their rights to be at the bargaining table. Having established a right to be involved, then it was necessary for unions to demonstrate their capacity to modify the government's bargaining agenda and to restrict the capacity for agency level managements to further enhance their managerial prerogative.

Under the provisions of the WR Act, management representatives had no stronger an obligation than to 'meet and confer' with unions.<sup>44</sup> In agencies where unions had a strong presence, at the level of being the representative of a significant minority of staff, management could not really avoid dealing with relevant unions. Nevertheless, in agencies where unions had a significant, but minority presence, managements tried to establish bargaining arrangements where the union had to run candidates for positions as employee representatives.<sup>45</sup> In the Department of Employment, Education, Training and Youth Affairs, the union ran a ticket in the election for staff representatives and won all positions.<sup>46</sup>

In agencies where unions had a much stronger presence, the CPSU had less difficulty in asserting its claim to represent most staff. In DEWRSB, the Secretary attempted to establish an employee consultation mechanism that was designed to exclude union members.<sup>47</sup> Ironically, the Department found itself in breach of the 'freedom of association' provisions of the WR Act in attempting to use such a mechanism to marginalise unions.<sup>48</sup> Moreover, the secretary was forced to deal with unions who were able to insist that the final agreement would be with the unions rather than with employees: an option widely used in agencies where unions had a weak presence.

Indeed, in 2000 the CPSU complained to the Senate Committee on Finance and Public Administration enquiry on APS employment matters that it had been involved in the negotiation of most agreements even if it was not party to a significant number of them, particularly in smaller agencies.<sup>49</sup> While allowance must be made for a tendency to exaggerate its role, the CPSU's complaint indicates that it and the other public sector unions had not been excluded or marginalised in the overall process. Nevertheless, the fact that nearly half of the agreements in the first round were with employees, rather than with unions, indicated that the government had been successful in removing the unions' bargaining monopoly, particularly in smaller agencies.

In the bargaining round from November 2000 until July 2002, some 42 agreements were made. All but 13 agreements were made with public service unions rather than employees directly. The 13 agreements with employees covered some 3,300 employees. whereas the union-negotiated agreements covered

some 55,000 employees.<sup>50</sup> On the face of it, the government had some success in de-legitimising the role of unions as the principal bargaining agent of APS employees during the first bargaining round. In subsequent agreements, however, the unions seemed to have made somewhat of a comeback with the CPSU claiming that it had negotiated on behalf of 80 per cent of APS staff. These raw figures, however, say nothing about the level of influence that the unions had on bargaining outcomes. All they do is illustrate that unions had not been rendered irrelevant to the bargaining process with the APS. It is instructive, therefore, to make some comparisons between the agencies where unions had a weak presence with those agencies where their capacity to organise was much stronger.

## **Agreement-Making in Three Agencies**

### **The Guardian of Public Service 'Values': The Public Service and Merit Protection Commission**

The strongest tests for the unions in 1997-8 were in agencies where they lacked numbers and organisational capacity. This was particularly the case in three agencies: the Public Service and Merit Protection Commission ('PSMPC'), DoFA and the Department of Foreign Affairs and Trade ('DFAT'). The PSMPC had the carriage of the government's changes to the *Public Service Act 1999* (Cth), replacing the *Public Service Act 1922* (Cth) and its public service reform agenda generally. Its agreement needed to be a 'best practice' instance of the government's approach to both industrial relations and public service reform. Notably, the agency was not a stronghold for public service unions, with union membership below 35 per cent.

The former Public Service and Merit Protection Commissioner, Dr Peter Shergold, was determined that the agreement in his agency would demonstrate the direction of the new public service environment.<sup>51</sup> In July 1997, Shergold told a gathering of public servants that there was a

need to remove central controls that are premised on the false assumption that the APS is a single labour market and in which every employment decision is driven by the relentless pursuit of uniformity. We need to free ourselves from the red tape that binds our management decisions in layers of prescription. We need to wind back the cumbersome mechanisms of bureaucratic control.<sup>52</sup>

Moreover, the management of the PSMPC saw the explicit linkage between individual performance and pay as the crucial element in shifting the agency from a rule-bound 'red tape' culture to one of 'high performance' and 'continuous improvement'.<sup>53</sup> Therefore, a performance-based remuneration system was to be the centrepiece of the agreement; and the only means for receiving pay

increases. The agreement outlined a new 'high performance culture' that would be promoted by:

- setting out individual responsibilities and the standard of performance expected from employees;
- providing regular feedback on performance;
- making decisions on salary advancement based on performance; and
- establishing a basis for managing poor performance.<sup>54</sup>

While the PSMPC management was not opposed to union participation in the process of achieving this 'culture', it saw the agreement as part of the transition from an 'industrial' relations model to a 'workplace' relations environment characterised by direct engagement with employees. The agreement was also to be consistent with other organisational changes such as a team-based structure and further 'de-layering' of the management hierarchy.<sup>55</sup> The Public Service and Merit Protection Commissioner moreover, had some success in extending the incidence of individual contracts within the agency in the form of Australian Workplace Agreements ('AWAs'). While all members of the SES were required to sign AWAs, the incidence of this arrangement also reached into middle management and AWAs were characterised by a 'much sharper performance edge' than the collective agreement.<sup>56</sup>

### **'Going the Extra Mile': The Department of Finance and Administration**

DoFA is one of the key financial regulators of the public service. It seeks to bring 'best practice' in the private sector to bear on the 'business' of government. This disposition was reinforced when the new government appointed an 'outsider' from the private sector, Dr Peter Boxall, as its secretary. The DoFA management adopted a very uncompromising approach to the promotion of the new corporate culture. The department leadership extolled staff to become 'high performers', to be 'action-oriented', to develop a 'will to win' and to be 'creative' in how they 'get the runs on the board'. Indeed the organisation was said to need 'people who want to get things done and make a difference, working in a key agency at the centre of the business government'.<sup>57</sup>

The cultural orientation of the agency was revealed in the principles and objectives of the Department of Finance and Administration Certified Agreement 1997-1999 that were concerned to provide the environment where 'the employer and employees agree to work collaboratively and in consultation' to:

- foster corporate values and objectives;
- enhance a working culture based on high performance, quality outcomes and modern management and work practices;

- promote a performance culture by rewarding good performance and managing poor performance well and encouraging people to achieve their full potential; and
- promote self-management and flexibility by empowering people at the workplace level to work in a way which best suits them to support a work/private life balance.<sup>58</sup>

Indeed, the agreement gave prime attention to the performance management scheme, to the management of under-performance, and the new classification system that would underpin this performance culture.<sup>59</sup>

DoFA has a long history of hostility to unions.<sup>60</sup> The effect of this hostility had been lessened, however, by the existence of service-wide employment arrangements. The new regulatory environment enabled the management not only to break down these arrangements, but also further undermine union influence. Thus the DoFA management was empowered in its pursuit of broader government objectives, such as union marginalisation, in the new era of 'workplace relations'. So, while the PSMPC agreement was seen as a means of inculcating a new public management culture, DoFA saw the process as reinforcing already strongly held assumptions and practices. Agency management did not welcome union involvement in the agreement-making process, although it made a 'corporate decision' to consult the union.<sup>61</sup> The central propositions of the management agenda, including the introduction of performance pay and the abolition of overtime payments were not negotiable, although it was prepared to talk about issues of implementation. In the post-agreement environment, the union's role has been largely reduced to pursuing the personal grievances of an increasing number of members who were regarded as the casualties of the 'can do' culture of DoFA.<sup>62</sup> Indeed, the union marginalisation strategy has been compounded by a continuing refusal by the agency to negotiate with employees or their representatives in any manner in order to update the collective agreement. Individual contracts were now the only means of gaining pay increases.<sup>63</sup> By February 2004, there was still no collective agreement for the agency to replace the agreement made in 1997.<sup>64</sup> Indeed the DoFA Annual Report 2002-03 reported that 89.5 per cent of the staff of DoFA were covered by individual contracts in the form of Australian Workplace Agreements. Only 10.5 per cent of employees (excluding COMCAR drivers) were covered by a collective agreement that had not been updated since 1997.<sup>65</sup>

The agreement with staff legitimised the pursuit of the management's cultural agenda within the agency. The performance management system and the promotion of individual contracts by senior management were seen as central to the organisational life of the agency. If staff were aligned with the new corporate culture then, in management's view, they should be willing to sign an AWA. By December 1998, 211 of 1,082 staff covered by formal employment

agreements were on AWAs.<sup>66</sup> By mid-2000, however, 56 per cent of staff had such arrangements — an increase from 32 per cent since mid-1999.<sup>67</sup> By mid-2002, the figure was 90 per cent and by mid-2004, it was 99 per cent of non-COMCAR staff.<sup>68</sup> The main difference between the agency agreement and an AWA was the offer of a performance bonus of up to 25 per cent compared to 15 per cent in the agency agreement.<sup>69</sup> Indeed, the management told an enquiry on APS employment matters conducted by a Senate Committee in 2000, that there was no formal limit on the amount of performance pay that could be available to 'high performers'.<sup>70</sup>

The unions were either unable to resist this agenda or to modify the management-determined processes that enforced its implementation. The CPSU was reduced to tending to the 'most seriously wounded' of its members. Nevertheless, the actions of the DoFA management provided a useful and continuing source of complaint for the unions.<sup>71</sup> Its actions were touted as what was possible when the position of unions were weakened by legislation and by a determination to limit the role of 'outside parties' in workplace agreement-making. In achieving the latter objective the DoFA management has had spectacular success.

### **'Turning Policy Officers into Managers': The Department of Foreign Affairs and Trade**

DFAT places great store on its policy expertise, but it eschews the business orientation of Finance and Administration and is less of a generic public service department than many other agencies. It has a well-established and distinctive policy 'culture'. The requirement for overseas service also means that its detailed employment conditions, particularly relating to families, are the subject of considerable interest by staff.

The objectives of the management of DFAT in the agreement-making process were twofold. On a practical level, the agreement needed to take account of the fact that there had been considerable reductions in staff and in the running costs in the Department in the previous two and half years. There also needed to be greater flexibility in employment conditions to enable the agency to operate more efficiently and effectively. Second, the agreement needed to assist in the establishment of a new management culture within the Department, whereby managers could 'engage' with their staff more actively and effectively. Moreover, while the management recognised that employees had highly developed policy skills, their generic skills as managers, particularly in dealing with staff, needed to be enhanced.<sup>72</sup>

It was decided these objectives would be met through a performance management system that would include 'upward appraisal' mechanisms and through the devolution of responsibility for employment conditions to middle management.<sup>73</sup>

The allocation of staff to overseas postings would be more dependent on managerial performance than had been the case in the past.<sup>74</sup> Senior management was conscious of the need to provide significant family-related employment benefits for those serving overseas, particularly for the education of children. Thus, the traditional 'welfarist' orientation of the agency had to be integrated with a more explicitly managerial orientation, while maintaining the policy tradition central to the department's sense of itself. The new regulatory environment enabled DFAT management to attempt to graft a more explicit 'culture' of 'strategic people management' on to the existing policy and welfare 'cultures' of the department.

At the time the process was initiated, union density in the agency was below 40 per cent. Management was determined that it would only negotiate with employee representatives and not with union officials,<sup>75</sup> while the long-standing existence of an in-house staff association provided a structure for non-union negotiations. After some argument with the unions, it accepted a combination of union workplace delegates and representatives of the staff association as the employee bargaining team. The CPSU was able to coordinate its objectives and tactics with the non-union representatives. The unions used intranet communication systems and held regular meetings with both union and non-union staff. The management, however, was able to maintain communication with overseas staff in a manner not available to the unions. Senior management teams visited a number of overseas missions to explain the agreement-making process to staff. It was argued that this was necessary because the proposed agreement would involve the incorporation of overseas allowances into a more explicitly performance-oriented pay system.<sup>76</sup> The unions were confined to paper-based and electronic forms of communication. This lack of contact with overseas staff was reflected in the staff vote on the agreement. The unions organised a strong campaign against the draft agreement. In all, 58 per cent of employees who voted supported that agreement, but in Canberra — where the unions were most effectively organised — a majority of staff voted against the agreement.<sup>77</sup>

The experience in these three agencies makes an interesting contrast with the experience of the more unionised Centrelink agency.

### **From a Welfare Culture to a Customer Service Culture: Centrelink**

Centrelink is the largest agency in the APS, with approximately 25,000 employees, or about 25 per cent of all employees in the APS. It is significantly unionised and has a considerable history of industrial action that dates back to its former incorporation within the former Department of Social Security. It is one of the strongholds of the CPSU. In the 1980s, CPSU members made

widespread use of selective industrial bans to preserve employment conditions. The long-standing industrial tradition within the agency significantly influenced the tactics of Centrelink management in the process of agreement-making.

Centrelink is a service delivery agency which had a formally devolved or indirect relationship with government, in that it was established by the *Customer Service Delivery Act 1997* (Cth) as a statutory authority with a Chief Executive Officer (CEO) and an independent Board. Under a series of Business Partnership ('Business Alliance') Agreements with 'client' agencies, Centrelink delivered services on behalf of departments such as Family and Community Services, Employment and Workplace Relations, as well as the Health Insurance Commission and the Australian Taxation Office. These services include transfer payments, the provision of jobseekers to Job Networks, and the implementation of regulations based on government policy decisions.

These arrangements placed continual pressure on Centrelink to provide services in a timely and cost efficient manner, and the CPSU conceded that negotiations with the agency took place within the context that services provided through Centrelink Call Centres could be provided more cheaply by similar operations located in the private sector.<sup>78</sup>

Centrelink was important to all sides in the industrial relations arena in the APS. The CPSU needed to illustrate that it was able to modify government and management agendas. The government and the Centrelink management needed to demonstrate that their agenda could be achieved in agencies where unions had a significant presence. The WR Act made that task easier. In the past, employees could impose selective industrial bans. Employers could invoke the 'no work as directed, no pay' remedy and stand down employees or dock full pay for the period in which the bans had been applied. Many employers chose not to take this course, preferring to resolve the dispute and resume normal operations rather than worsen the dispute. The WR Act however made it mandatory that employees not be paid if any industrial action were taken. Thus the weapon of selective bans, without cost to employees, which was widely used in the APS during the 1980s, was no longer available to unions. This resulted in the virtual absence of industrial action during the agreement-making period in 1997-1998 and during subsequent bargaining periods. In the view of a senior official formerly responsible for coordinating agreement-making in the APS, this provision in the legislation enabled quite 'significant structural change and downsizing' to be achieved in the APS 'without significant industrial disruption'.<sup>79</sup>

Throughout the negotiation of four Centrelink Development Agreements ('CDAs'), the union's role in the implementation of the agreements was recognised, although the hold of the union was loosened by the explicit recognition that any processes in which it was involved would be matched by parallel

arrangements for non-union members. This was seen by management as important in shifting the consultative framework within the agency away from union domination towards direct employee consultation.<sup>80</sup> The management also saw the CDAs as an important initial step towards more fundamental changes in the agency along business-oriented and customer service lines. The CEO, Sue Vardon, saw workplace bargaining as a means of 'buying' a new organisation. Formerly the Head of Corrective Services and Public Service Commissioner in South Australia, she was, unlike most of her senior colleagues in the APS at that time, used to dealing with unions:

I didn't want the unions to think that I was running the Reith agenda, I was appalled. Because what I was running was Sue Vardon's agenda for public sector reform. I knew what the government wanted, but I didn't have any problem with that as long as I could use this tool to buy a revolution (sic). I wasn't using this tool to impose the wish of the government upon the workers. It's very different. And I think the union understood that.<sup>81</sup>

She faced a well-organised CPSU division led by one of the union's most experienced industrial officers, Mark Gepp, who subsequently became National President of the union. Centrelink also inherited a strong tradition of militant rank and file organisation within the former Department of Social Security. In the words of Sue Vardon:

Every time Social Security wanted to do something they took them to the cleaners. They had the strikes. The day the Prime Minister opened us the union tried to close every office. I was hysterical with rage. Because this is what you do, you protest by striking and so there was an incredible culture of striking ... well I'd never seen anything like it in my life. Social Security was a hot bed.<sup>82</sup>

The WR Act however made it more difficult for unions to engage in industrial actions in the form of bans:

I considered that our first agreement was a major success with the union because the union could see that their power was diminishing, they couldn't have all those strikes anymore because of the *Workplace Relations Act* which I must say I'm extremely grateful for that piece of legislation.<sup>83</sup>

Nevertheless, management conceded that the union has a considerable degree of influence in the organisation. There was also a large group of non-union staff who were keen for the union to negotiate on their behalf:

I learnt a very important lesson. It doesn't matter how small they are, everybody who is not a union member wants to know that the union is

negotiating with management. At one stage I said we can get this through because there are hardly any union members. And something happened and the take home message to me was they don't want to be members of the union but they want to know they're there.<sup>84</sup>

## 1997 Collective Agreement

Vardon saw the negotiation of the first enterprise agreement in 1997 as 'establishing an environment that would enable the personalisation of our services to our customers' principally through greater flexibility in opening hours of Centrelink offices and shopfronts'.<sup>85</sup> The key objective of the agreement was to provide an 'efficient and cost effective service by committed and skilled employees'.<sup>86</sup>

While this first agreement, the Centrelink Development Agreement 1997-1998, concentrated on producing greater flexibility in the provision of services, the management had a longer-term agenda to align the remuneration system to the strategic objectives of the organisation. Some two per cent of the pay rise agreed in the first CDA was contingent on all Centrelink offices implementing customer service improvement plans and the organisation as a whole demonstrating improvements against a range of performance indicators. The first CDA delivered a comprehensive enterprise agreement overriding existing APS awards and bringing together into one document all employee pay, classifications and working conditions. Customer focus was to be achieved in the first instance by maximising access to Centrelink services through extended hours of opening. The first CDA involved substantial changes to opening hours, with staff losing the Wednesday afternoon office closure from 1.30pm. This time was meant to enable staff to hold meetings and to catch up on processes but the newly appointed CEO was opposed to this practice. Other managers though saw some value in providing staff with time to catch up on backlogs in work and with changes in social security legislation.

Other changes to hours included a broader span of hours, from 7am to 7pm. The former core hours were abolished and replaced with 'regular hours'. It was up to individual employees to negotiate their regular working hours with their supervisor over a four-week period. Nevertheless, Centrelink staff retained access to 'flex' time and to overtime payments when requested by management to work beyond their regular hours. Employees who worked beyond their regular hours voluntarily could accumulate 'flex' hours. On the whole, the outcomes negotiated in the first CDA were consistent with the promotion of a customer service agenda across Centrelink.

## Centrelink Development Agreement 1999-2002

The second CDA, the Centrelink Development Agreement 1999-2002, was certified in May 1999 and represented a three-year comprehensive agreement.<sup>87</sup> It introduced a Centrelink-specific classification structure in place of the APS-wide structure and linked employee advancement through this structure to the outcome of a performance assessment. Centrelink had to find much of the resources required to fund the second CDA internally. The organisation received merely 1.3 per cent in extra funding from the Commonwealth government as part of the safety net wage adjustment and found itself in the difficult position of making a trade-off between staff cuts and pay rises. Centrelink also identified a number of productivity measures that needed to be met before the pay rises could be paid. On the whole, Centrelink management believed that productivity across the organisation had improved with the introduction of new technology, the 'One Contact officer' approach, and the elimination of reworking and the establishment of customer service teams.<sup>88</sup>

## Centrelink Development Agreement 2003-2005

Substantive negotiations over the third agreement began in March 2002. By October, a preliminary agreement had been negotiated with the CPSU though this agreement was rejected by the union's Section Council. The management was concerned to secure an agreement with the minimum of industrial disruption. Vardon feared that there were members of the government who were not friends of Centrelink who would use significant industrial disruption to undermine the agency.<sup>89</sup> The CEO took the unusual step of attending the Centrelink Section Council meeting of the Employment Services Division to plead with the union to work with the management to preserve Centrelink. Nevertheless, negotiations proceeded without resolution and the union notified Centrelink of its intention to undertake industrial action in early December. On 2 December 2002, a stopwork meeting of CPSU members across Centrelink was organised and was followed by a half-day strike. In the aftermath of this industrial action, Centrelink decided to test the degree of support it had among Centrelink employees, and, in late December, the management put the draft negotiated to date to a ballot of staff in the form of a section 170 LK (non-union) agreement under the WR Act. The ballot was overseen by the Australian Electoral Commission and was held on December 19 and 20, 2002. Staff on leave at that time were given the opportunity to cast a postal vote.<sup>90</sup> Despite management's best endeavours to encourage a 'Yes' vote, the non-union agreement was overwhelmingly rejected by over 70 per cent of Centrelink staff who voted in the ballot. The union claimed that the timing of the issuing of the draft agreement had incensed a large number of staff.<sup>91</sup>

Following the rejection of the vote, management and the CPSU resumed negotiations in early 2003. By May 2003, the third CDA was certified for two and a half years until October 2005.<sup>92</sup> The pay rises comprised an initial \$600 performance bonus, a four per cent pay rise in May 2003, a further four per cent pay increase in November 2003 and a final four and a half per cent pay rise in September 2004. The payment of the bonus on certification recognised that productivity improvements had been achieved since July 2002. The pay rises for November 2003 and September 2004 were 'linked to specific balanced Scorecard targets in relation to the number of correct payments made, improvements in customer satisfaction levels and reductions in the levels of unplanned leave'.<sup>93</sup> Centrelink management reported that, of those staff who voted, some 73 per cent voted in favour of accepting the agreement.<sup>94</sup> Overall, the agreement provided for: an extension of opening hours; the linking of accredited learning to advancement through Centrelink's classification system (which survived largely unchanged from the second agreement); the simpler performance assessment process outlined above; the establishment of senior practitioner roles; and the reclassification of team leader positions.<sup>95</sup>

## Centrelink Agreement 2006-2009

The fourth Centrelink Development Agreement was certified on 23 January 2006.<sup>96</sup> It covers a three-year period to January 2009 and provides for three guaranteed pay rises for Centrelink employees. The first pay rise of four per cent was made in January 2006. A second four per cent pay rise was made in December 2006, with a third four per cent payment due in December 2007. The agreement also provides for a conditional payment of half a per cent in September 2008 'if Centrelink's average unplanned absences figure does not exceed 11.53 days per full time equivalent employee for the financial year ending 30 June 2008'.

The negotiation of the fourth agreement highlighted tensions over the flexible scheduling of hours for Centrelink call centre employees. The agreement confirmed that employees were entitled to screen breaks of five minutes after 60 minutes of continuous work with screen-based equipment. The agreement also confirmed that Centrelink Call employees would be provided with ten minutes at the beginning of their shifts to review computer systems and five minutes to close down these systems at the end of their shifts.<sup>97</sup>

## Implications of Work Choices Legislation for Union Organisation within the APS

In December 2006, the Coalition government succeeded in legislating significant amendments to the WR Act that had considerable implications for most Australian workplaces and the APS, in particular. As far as public sector unions were concerned, union access to APS workplaces was further restricted; a strike could

only occur during a bargaining period if a majority of voting employees supported the action; collective agreements were to be lodged with the Employment Advocate (later renamed the Workplace Authority), rather than certified by the Australian Industrial Relations Commission; the latter body, moreover, would be largely reduced to a conciliation role with the power to arbitrate on disputes only when all parties agreed. In addition, the Minister for Workplace Relations could veto any provision in agreements which he deemed opposed to government policy.<sup>98</sup> In some respects, these provisions were similar to those that had operated in the APS since 1997, except that they would have broader application. Indeed the Secretary of the Department of the Prime Minister and Cabinet, Dr Peter Shergold, considered that the provisions of the Work Choices legislation would have far less impact in the APS than in many other workplaces.<sup>99</sup>

This view was contested by the CPSU. It warned its members that it would find it more difficult to service its members in the workplace. Moreover, when access to a workplace is granted, employers will be able to exercise greater control when and how staff meet union officials.<sup>100</sup> Indeed, there was a fear that the union would need to rely on telephone, email and out-of-work meetings for communicating with them.<sup>101</sup> More significantly, the safety net is only five minimum standards set out in the Act (plus, where applicable, the recently introduced Fairness Test). To ensure that the agreements provided more comprehensive standards, members may be forced to bargain away some benefits or pay rise in exchange for maintaining other provisions, such as redundancy that was not one of the minimum standards and has been particularly important for the APS where restructuring of agencies often means loss of staff.<sup>102</sup> In agencies where there are low levels of unionisation and where agreements are made with employees directly, unions would have even more restricted access to workplaces and would not be bound by the agreements as had been the case previously, thus enabling the unions to pursue disputes arising out of these non-union agreements.

The greatest fear of the union, however, was that the government and agency managements would exploit this more difficult collective bargaining environment to promote individual Workplace Agreements. The worst-case scenario was DoFA where more than 95 per cent of staff were on individual agreements because the management had successfully refused to negotiate any kind of collective agreement since 1997. Although the CPSU had succeeded in thwarting a similar tactic being used by the management of the more highly-unionised environment of DEWR in late 2005, the greater restrictions on industrial action would make a similar campaign more difficult in the new environment. While the union had not given great priority to servicing members on individual contracts, it was

concerned that a union official could only visit a workplace after such a member lodged a formal written request to the agency management for union access.<sup>103</sup>

It is too early to say how the CPSU will cope with this bargaining environment. It had spent much of the 1990s centralising the organising and financial resources of the union in order to be able to use them more flexibly. In the new bargaining environment, where access and bargaining would be more difficult, it would need to rely more heavily on its workplace delegates. The internal structure of the union was an issue in the CPSU elections in late 2005. The leadership group was faced with two dissident groups, CPSU Action and Members First. Both groups called for more activist-oriented approach by the union rather than a heavy reliance on the 'whole of union' approach espoused by the leadership. The CPSU candidate for National Secretary, Shane O'Connell, a long time activist in the Tax section and former national official, pledged 'to take the union back to its members, and away from the centralized union bureaucracy that has opened up such a large gap between national officials and members and delegates'.<sup>104</sup> The leadership candidate won narrowly over the opposition candidates by 6,182 to 5,699 votes.<sup>105</sup> In so far as one can interpret union election results, these reveal the tensions between organisational effectiveness through centralisation on the one hand, and member activism on the other. The tension remains a live issue within the union.

## Conclusion

This account of three agencies with low union presence and an agency with a more significant union presence illustrates the contradictions faced by a government that wished to pursue its overall policy agenda while espousing an industrial relations policy that provides for a significant degree of managerial autonomy. In DoFA, DFAT and the PSMPC, the government's managerial agents were able to implement a comprehensive performance-related pay system and marginalise unions in the agreement-making process. On the other hand, in the Department of Defence and Centrelink much less progress was made in implementing the government's agenda.

The public service unions could not impose a template across the APS, although they could modify the impact of management agendas in particular agencies where they had both presence and organisational capacity on the ground. If nothing else, this reinforced the arguments of the proponents of delegate activism that 'union organisation and bargaining capacity, rather than management style, are decisive elements in maintaining and extending the union membership base'<sup>106</sup> and, as a consequence, a capacity for effective bargaining. Indeed, the newly elected National Secretary of the CPSU, Stephen Jones, told the governing Council of the union in May 2006 that:

We have 70 agreements to negotiate in the next twelve months. We will not be able to do this in areas where we have low density, low levels of membership activism and no delegates.<sup>107</sup>

The legitimacy of the government's industrial relations policy lies in its espousal of creating organisational environments where employers and employees negotiate arrangements that suit the particularities of the organisation. In the APS, however, the government is the ultimate employer: it cannot be indifferent to the outcomes achieved in particular agencies. Moreover, as the financial guardian of the nation it must be mindful of the costs of its own employees. Government control of budgets places considerable constraint on the capacity of any agency to offer generous remuneration. In the end, wage increases contained in agency agreements must fit within the overall budget provision. In the current environment, the government is insisting that any collective agreements be based on statements of principles, rather than setting out detailed entitlements. Their availability of entitlements is likely to be even more at the discretion of management than it has been in the past.<sup>108</sup>

On matters of employment conditions, the government clearly attempted to constrain the capacity of its agents to negotiate arrangements that fell outside its parameters. Even so, there was a degree of diversity in the performance-based remuneration arrangements from agency to agency, reflecting, in part, both management preference and union organisational capacity. Nevertheless, there is a remarkable sameness about the words used in many APS agreements, although there is clearly some diversity in specific implementation within any given agency.<sup>109</sup> While there may be some similarity in employment conditions across agencies, a degree of dispersion in salary rates has emerged after nearly ten years of the system's operation. In July 2006, at the middle range classification APS 6 (or equivalent) the dispersion was between \$55,612 and \$58,584 at the minimum point and between \$63,110 and \$67,214 at the highest point in the classification.<sup>110</sup>

The APS is not the monolith that it may have been when a service-wide employment framework prevailed. On the other hand, it would be misleading to conclude that the APS employment arrangements have been radically altered in the direction of a series of quasi-independent agencies. In the end, public service departments and agencies are instruments of government. The government's 'loose-tight' model of employment arrangements in the APS is tighter in some and looser in others: how loose and how tight is both a product of management preference and union organisational capacity. In the existing bargaining environment management has been endowed with more 'choices' albeit within tighter parameters set by government, while the CPSU and other public unions face even more challenges to their capacity to organise their members and to preserve their employment conditions.

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## ENDNOTES

<sup>1</sup> In the period covered by this chapter, the Department was variously named the Department of Industrial Relations until 18 July 1997, then the Department of Workplace Relations and Small Business until 21 October 1998, then the Department of Employment, Workplace Relations and Small Business until 26 November 2001, and then the Department of Employment and Workplace Relations.

<sup>2</sup> The Hon Peter Reith MP, *Better Work for Better Pay: The Federal Coalition's Industrial Relations Policy*, roneo, Canberra (1996).

<sup>3</sup> Ibid.

<sup>4</sup> John Niland, William Brown and Barry Hughes, *Breaking New Ground: Enterprise Bargaining and Agency Agreements for the Australian Public Service: A Report Prepared for the Australian Minister for Industrial Relations* (AGPS, 1991) 9-20.

<sup>5</sup> Ibid 61.

<sup>6</sup> Ibid. See also Graham Glenn, *An Approach to Workplace Bargaining in the Australian Public Service: A Paper Prepared by a Committee of Heads of Australian Public Service Agencies for the Minister for Industrial Relations* (1992).

<sup>7</sup> Department of Industrial Relations, *Improving Productivity: A Challenge for the Australian Public Service: A Discussion Paper prepared by a Committee of Heads of Australian Public Service Agencies for the Minister for Industrial Relations* (1991) 13.

<sup>8</sup> Department of Industrial Relations, *Improving Jobs, Productivity, Pay in the Australian Public Service* (1992) 4.

<sup>9</sup> John O'Brien, 'Employment Relations and Agency Bargaining in the Australian Public Service' in G Singleton (ed), *The Second Keating Government: Australian Commonwealth Administration 1993-1996* (1997) 175-192. The 'foldback' mechanism enabled agencies unable to negotiate an agreement to draw on a central fund created by the efficiencies return to government by agencies that had made agreements.

<sup>10</sup> John Halligan, Ian Mackintosh, and Hugh Watson, *The Australian Public Service: The View from the Top* (Coopers and Lybrand/ University of Canberra, 1996) 46.

<sup>11</sup> Department of Industrial Relations and Department of Finance, *Interim Evaluation of Bargaining in the Australian Public Service* (1994).

<sup>12</sup> Hon Peter Reith, *Towards a Best Practice Australian Public Service — Discussion Paper* issued by the Minister for Industrial Relations and Minister Assisting the Prime Minister for the Public Service, November 1996 (1996).

<sup>13</sup> Ibid.

<sup>14</sup> Hon Peter Reith, 'Agreement Making in the APS' (Press Release, 5 May 1997); Hon Peter Reith, 'Government Decision on Funding and APS Agreements' (Press Release, Department of Workplace Relations and Small Business, *Workplace Relations Advices 1997*, vol 1) 22.

<sup>15</sup> Interview with official in Australian Government Employment, Workplace Relations and Small Business, 6 August 1998.

<sup>16</sup> Department of Workplace Relations and Small Business 1998, *The Workplace Relations Act: A Pocket Guide for Australian Government Employment 2*.

<sup>17</sup> Bernie Yates, 'Workplace Relations and Agreement Making in the Australian Public Service' (1998) 57 (2) *Australian Journal of Public Administration* 82-90.

<sup>18</sup> Ibid.

<sup>19</sup> John O'Brien and Michael O'Donnell, 'Government, Management and Unions: The Public Service under the *Workplace Relations Act*' (1999) 41 *Journal of Industrial Relations* 446-467.

- <sup>20</sup> Senate Finance and Public Administration Committee, Commonwealth Parliament, *Performance Pay* (1993) 22.
- <sup>21</sup> Ibid 19-26.
- <sup>22</sup> Ibid 65.
- <sup>23</sup> Michael O'Donnell, 'Creating a Performance Culture? Performance-based Pay in the Australian Public Service' (1998) 57 (3) *Australian Journal of Public Administration* 28, 33-4.
- <sup>24</sup> Comment by Administrative Service Officer, Department of Foreign Affairs and Trade, in CPSU 1999 Survey of members. See M O'Donnell and J Shields, 'Performance Management and the Psychological Contract in the Australian Federal Public Sector' (2002) 44 *Journal of Industrial Relations* 435.
- <sup>25</sup> Comment by Administrative Service Officer, Department of Family and Community Services, in CPSU 1999 Survey of Members.
- <sup>26</sup> Senate Finance and Public Administration References Committee, Commonwealth Parliament, *Australian Public Service Employment Matters*, Official Committee Hansard, (14 April 2000) 65. Access via <<http://www.aph.gov.au/hansard/senate/commtee/s911.pdf>> [July 2007].
- <sup>27</sup> Ibid 66.
- <sup>28</sup> Interview with Senior Manager, The Australian Bureau of Statistics, 25 February 1999; Statement by Barbara Sullivan, Manager, People Strategy Branch, Department of Finance and Administration, to Senate Finance and Public Administration References Committee, above n 26, (23 June, 2000) 198-202. Access via <<http://www.aph.gov.au/hansard/senate/commtee/s914.pdf>>.
- <sup>29</sup> I Kessler and K Purcell, 'Performance Related Pay: Objectives and Application' (1992) 2(3) *Human Resource Management Journal* 16-33.
- <sup>30</sup> Department of Finance and Administration Certified Agreement 1997-99 2.
- <sup>31</sup> John O'Brien and Michael O'Donnell, 'Creating a New Moral Order: Cultural Change in the Australian Public Service' (2000) 10 (3) *Labour and Industry* 66.
- <sup>32</sup> Department of Finance and Administration Certified Agreement 1997-99.
- <sup>33</sup> Interview with union delegates and DoFA, July 1998.
- <sup>34</sup> Interview with two Industrial Officers, CPSU, August 1998; Interview with former manager, DoFA 25 June 2001.
- <sup>35</sup> Ibid.
- <sup>36</sup> Ibid.
- <sup>37</sup> Ibid.
- <sup>38</sup> O'Brien and O'Donnell, above n 31.
- <sup>39</sup> Senate Finance and Public Administration References Committee, Commonwealth Parliament, *Australian Public Service Employment Matters*, Official Committee Hansard, (5 May 2000) 137. Access via <<http://www.aph.gov.au/hansard/senate/commtee/s913.pdf>>.
- <sup>40</sup> Ibid 144.
- <sup>41</sup> Ibid: 141.
- <sup>42</sup> CPSU, *Annual Report 2001-2* (2002). In 2001, it claimed over 60,000 members. By 2005, membership had fallen to 57,803. During that period, the APS itself had between 123,000 and 128,000 personnel. See also CPSU, *Concise Financial Report for 2003-4* (2004) and *Financial Statement for 2004-5* (2005). The CPSU membership extends beyond the APS to entities such as Telstra and the ABC.
- <sup>43</sup> Yates, above n 17.
- <sup>44</sup> Unions are still able to serve logs of claims on management and open bargaining periods. These rights mean very little unless the union has the organisational capacity to enforce bargaining in 'good faith'.
- <sup>45</sup> Interview with CPSU Industrial officer responsible for the Department of Education and Training and Youth Affairs, 23 February 1999.
- <sup>46</sup> This has also happened in the two subsequent bargaining rounds. Arguably the propensity of the union team to win these elections has the effect of legitimising the union's role as bargaining agent on behalf of employees.
- <sup>47</sup> Interview with union delegate, Department of Workplace Relation and Small Business, 25 February 1999.
- <sup>48</sup> Ibid.

- <sup>49</sup> Statement by Wendy Caird, National Secretary, Community and Public Sector Union to Senate Finance and Public Administration References Committee, Parliament of Australia, Canberra 14 April, 2000 78. (May be accessed via website, see n 26).
- <sup>50</sup> Heaney and Associates 2002 *Agreements made in the Australian Public Service*.
- <sup>51</sup> Dallys Bennett and Peter Shergold 'Commission Impossible? A New Approach to Workplace Relations in the PSMPC', (1998) 57 *Australian Journal of Public Administration* 91, 91-97.
- <sup>52</sup> Peter Shergold, 'A New Public Service Act: The End of the Westminster Tradition', (Lunchtime Seminar Series, Public Service and Merit Protection Commission, 8 July 1997 <[www.apsc.gov.au/media/shergold080797.htm](http://www.apsc.gov.au/media/shergold080797.htm)>[July 2007].
- <sup>53</sup> Ibid.
- <sup>54</sup> Public Service and Merit Protection Commission, PSMPC Certified Agreement 1997-1999.
- <sup>55</sup> Interview with senior manager, Public Service and Merit Protection Commission, 16 August 1999.
- <sup>56</sup> Ibid.
- <sup>57</sup> Via information through Department of Finance and Administration 1997 website.
- <sup>58</sup> Department of Finance and Administration Certified Agreement D0776 Cas S Doc P 8746, Part A.
- <sup>59</sup> Ibid.
- <sup>60</sup> Interview with Industrial Officer, above n 34.
- <sup>61</sup> Senate Finance and Public Administration References Committee, Parliament of Australia, *Australian Public Service Employment Matters*, 23 June 2000, Transcript, accessed via <[www.aph.gov.au/hansard/senate/committee](http://www.aph.gov.au/hansard/senate/committee)>.
- <sup>62</sup> Interview with Organiser, CPSU, 23 August 1999.
- <sup>63</sup> Senate Finance and Public Administration References Committee, Parliament of Australia, *Australian Public Service Employment Matters First Report, Australian Workplace Agreements*, 2000.
- <sup>64</sup> There is, however, a certified agreement for the period 2002-2005 covering COMCAR drivers.
- <sup>65</sup> Department of Finance and Administration, *Annual Report 2002-3* (2003). This report is available online at <<http://www.finance.gov.au/annualreport>>. There have been no certified agreements covering DoFA employees, other than COMCAR drivers, since 1997. As of June 2004, 99 per cent of all non-COMCAR staff are now on Australian Workplace Agreements: Department of Finance and Administration, *Annual Report 2003-2004* (2004) This report is available online at <[www.finance.gov.au/annualreport](http://www.finance.gov.au/annualreport)>.
- <sup>66</sup> House of Representatives, *Answer to Question from Mr Arch Bevis to the Minister for Finance and Administration*, 8 February 1999, question no. 351.
- <sup>67</sup> Department of Finance and Administration, *Annual Report 1999-2000*. Accessed via <<http://www.finance.gov.au/pubs/annualreport99-00/index1.htm>> [August 2007]
- <sup>68</sup> Department of Finance and Administration, *Annual Report 2002-3* (2003), available <<http://www.finance.gov.au/annualreport>>; *Annual Report 2003-2004*, available <<http://www.finance.gov.au/annualreport>>.
- <sup>69</sup> Interview with union delegates, DoFA, (22 July 1998).
- <sup>70</sup> Senate Finance and Administration References Committee, above n 26, (23 June 2000): 74, 77.
- <sup>71</sup> Senate Finance and Public Administration Reference Committee, above n 26, (14 April 2000) 57-8.
- <sup>72</sup> Interview with senior manager, Department of Foreign Affairs and Trade, 25 February 1999.
- <sup>73</sup> Ibid.
- <sup>74</sup> Ibid.
- <sup>75</sup> Ibid.
- <sup>76</sup> Ibid.
- <sup>77</sup> Industrial Officer, above n 34.
- <sup>78</sup> Interview with Mark Gepp, CPSU (13 July 1998). Even so, the Australian Electoral Commission has contracted Centrelink to provide an election information service in the 2004 federal election: Interview with Sue Vardon, Chief Executive, Centrelink, (10 October 2004).
- <sup>79</sup> Yates, above n 17, 85.
- <sup>80</sup> Interview with senior manager, Centrelink (25 February 1999).
- <sup>81</sup> Interview with CEO, Centrelink (10 October 2002).
- <sup>82</sup> Ibid.

- <sup>83</sup> Ibid.
- <sup>84</sup> Ibid.
- <sup>85</sup> See Vardon 'Centrelink' in C Clark and D Corbett (eds) *Reforming the Public Sector: Problems and Solutions* (1999) 193.
- <sup>86</sup> *Centrelink Development Agreement 1997-8* AG 774565, 2.
- <sup>87</sup> *Centrelink Development Agreement 1999-2002* AG 776674; Centrelink, *Annual Report 1989-1999* (1999) 65.
- <sup>88</sup> Ibid.
- <sup>89</sup> Interview with Vardon, above n 78.
- <sup>90</sup> Quality Committee, Centrelink, *Minutes of Meeting*, 10 December 2002 8-9.
- <sup>91</sup> Interview with senior officials, CPSU (location/form of interview 19 August 2004).
- <sup>92</sup> Centrelink Development Agreement 2003-2005 AG 824090 Print PR 931237. The agreement was with Centrelink, the CPSU, Professional Officers Association (Victoria), and the Media, Entertainment and Arts Alliance.
- <sup>93</sup> Centrelink 2003 *Centrelink's Proposed Agreement Explained*, internal memorandum.
- <sup>94</sup> Centrelink Quality Committee, *Minutes*, 8 April, 13 May and 10 June, 2003.
- <sup>95</sup> Centrelink, *Annual Report 2002-2003*, chapter 7. The comprehensive agreement was 141 pages in length.
- <sup>96</sup> Centrelink Agreement 2006-2009 AG 846162 Print PR 967825.
- <sup>97</sup> Centrelink Agreement 2006-2009. Section 170LJ Agreement under the Workplace Relations Act between Centrelink and Media, Entertainment and Arts Alliance and Professional Officers Association (Victoria) and CPSU, the Community and Public Sector Union, 23 January 2006 (AG2006/2449).
- <sup>98</sup> *Workplace Relations Amendment (Work Choices) Act 2005* (Cth). For a critique of the Act see Andrew Stewart, 'Work Choices in Overview: Slow Burn or Big Bang?' (2006) 16(2) *Economic and Labour Relations Review* 25, and all articles in issue: (2006) 19 *Australian Journal of Labour Law*.
- <sup>99</sup> CPSU, *All Public Service Members: New IR laws to hit APS hard* (2005) News, 11 October 2005, <[http://www.cpsu.org.au/news/1128983987\\_21577.html](http://www.cpsu.org.au/news/1128983987_21577.html)> [May 2006].
- <sup>100</sup> Ibid.
- <sup>101</sup> Terry Costello and Sue Bolton *Bunker Politics Prevail at CPSU Council Meeting* (2005) *GreenLeft Weekly* <<http://www.greenleft.org.au/back/2005/622/622p10.htm>> at 1 May 2006, reproduced in <<http://www.members-first-org/news.html>>.
- <sup>102</sup> CPSU, *All Public Service Members: New IR laws to hit APS hard* (2005) News, 11 October 2005, <[http://www.cpsu.org.au/news/1128983987\\_21577.html](http://www.cpsu.org.au/news/1128983987_21577.html)> [May 2006].
- <sup>103</sup> CPSU, *Your Rights at Work: Fact Sheet 4 — Australian Workplace Agreements* (2005) <<http://www.cpsu.org.au/campaigns/IRCampaign/resources/files/YRAWOCT4.pdf>> at 1 May 2006.
- <sup>104</sup> CPSU 2005, Candidates' statements, 1 November.
- <sup>105</sup> CPSU *All CPSU Members: CPSU election — Jones/Gillespie Team Returned* (2005) News <[http://www.cpsu.org.au/news/1134436139\\_18745.html](http://www.cpsu.org.au/news/1134436139_18745.html)> at 1 May 2006.
- <sup>106</sup> Michael Alexander, Roy Green and A Wilson, 'Delegate Structures and Strategic Unionism: Analysis of Factors in Union Resilience' (1998) 40 *Journal of Industrial Relations* 663; A Morehead et al, *Changes at Work: The Australian Workplace Industrial Relations Survey* (1997) 142; Jeremy Waddington, and Allan Kerr 'Membership Retention in the Public Sector' (1999) 32 *Industrial Relations Journal* 164.
- <sup>107</sup> CPSU *All CPSU members: Govt IR Campaign Not Working Says CPSU National Secretary* (2006) News <[http://www.cpsu.org.au/news/1146804809\\_26969.html](http://www.cpsu.org.au/news/1146804809_26969.html)> at 1 May 2006.
- <sup>108</sup> Department of Employment and Workplace Relations, *Supporting Guidance for the Workplace Relations Policy Parameters for Agreement Making in the Australian Public Service* (April 2006) 24 [Access via <[www.workplace.gov.au](http://www.workplace.gov.au)>]. See also S Ramsay, 'Work Choices' (Presentation by Legal Officer, CPSU, seminar on Work Choices legislation, College of Law, Australian National University, 10 May 2006).
- <sup>109</sup> One workplace consultant active in the APS who has spoken to the authors characterised the process as 'photocopy bargaining'.
- <sup>110</sup> HBA Consulting, *Commonwealth Remuneration Guide, May 2005, Featuring Analysis in the Commonwealth by 1st Quartile, Median, 3rd Quartile and Average over a Three Year Period from January*

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*2005 to January 2008* (2005) 2. The median for minimum point was \$56,714 and average \$57,270 and for the maximum point; \$64,925 median and \$65,231 average.