

Commonwealth Enterprise Bargaining

Background

1. The current Commonwealth bargaining round commenced on 6 February 2018 with the release of the [Government's Workplace Bargaining Policy 2018 \(the Policy\)](#).
2. The Policy covers the Australian Public Service and non-APS Australian Government entities and Members of Parliament Staff. It does not cover the Australian Defence Force. In simple terms, all the organisations named on the [Department of Finance Flipchart](#) of PGPA Act Commonwealth entities and companies.
 - a. 46 enterprise agreements have been voted up in 41 agencies under the Policy.
 - b. There have been successful ballots in 10 agencies this year, including at the Department of Health, Department of Agriculture, Department of Industry, Innovation and Science, Australian Bureau of Statistics, Geoscience Australia and Airservices Australia.
 - c. Only six enterprise agreements have been voted down across six different agencies. All were voted up in subsequent ballots.
 - d. 14 agencies remain in bargaining, five APS and nine non-APS.

Determinations

3. As at 13 November 2019, the APS Commissioner has approved determinations providing pay increases in 35 Commonwealth agencies, in lieu of bargaining a new enterprise agreement.
4. The Policy allows agencies to adopt any form of workplace arrangement/s, which suits their business needs. Agencies are using this flexibility to make determinations, in lieu of bargaining, where it suits their circumstances and their employees.
5. This option is where an agency provides annual wage increases on an enterprise agreement that has passed its nominal expiry date. The terms and conditions of the enterprise agreement continue, and salary increases are delivered via a determination.
6. This option allows for remuneration increases of two per cent per annum for salary and salary related allowances, over three years – subject to productivity offsets and affordability.
7. The determination operates for three years, similar to an enterprise agreement.
8. The determination option is not available to agencies in bargaining.
9. The same approval processes under the Policy are required for both the making of an enterprise agreement or a determination in lieu of bargaining. This includes getting the APS Commissioner approval for a draft remuneration proposal and employment instrument – draft determination or draft proposed enterprise agreement.

Benefits of a determination

10. Determinations are a simple way to offer staff timely pay increases when there is no need to bargain any other changes in an enterprise agreement.
11. Agencies can seek approval of a draft determination well before their agreement's nominal expiry date and the determination's first pay increase can be made the day immediately following the nominal expiry date of the current agreement.

Power to make a determination

12. For APS agencies, a determination providing pay increases is made under section 24(1) of the *Public Service Act*. Such a determination cannot legally reduce an employee's term or condition of employment.
13. For non-APS agencies, a determination providing pay increase is made under their own enabling legislation.
14. Determinations have been made in large and small agencies. Determinations have been made at the Department of Infrastructure, Transport, Cities and Regional Development, the Australian Maritime Safety Authority, the Australian Transport Safety Bureau, the Royal Australian Mint and Civil Aviation Safety Authority.

Communicating with employees about a determination

15. The critical element of making a determination is educating staff on the proposed approach and ensuring staff are supportive of it, before proceeding with making a determination.
16. In very small agencies, this could be as simple as lunchroom conversations. However, medium-sized and larger agencies will usually take multiple steps. This may include surveying staff about their current arrangements, an education piece on determinations and sentiment surveys.
17. Engaging with employees is not a legal requirement under the *Fair Work Act* or the *Public Service Act*. However it is important that agencies know that staff are comfortable with the proposed approach.
18. Employees retain their rights under the *Fair Work Act* to force their employer to bargain through a Fair Work Commission approved majority support determination.

Common staff questions about determinations

19. The following are questions employees have asked as part of the education and engagement process.
 - a. **Can the determination include more than just remuneration?** Not under the Government's Policy. Terms and conditions of employment may only be changed through negotiating a new enterprise agreement. The determination provides increases to salary and salary-related allowances.
 - b. **Can the determination frontload pay increases?** No. The Government's Policy has a principle of 'reasonable spread' which is an even spread. Frontloading is reasonable after a protracted period of bargaining in recognition of the time that has passed since the agreement has passed its nominal expiry date.
 - c. **Can an Agency Head unmake a determination?** Technically, yes the Agency Head has the power to revoke or replace the determination at any time. However, agencies will have committed to have the determination remain in place for at least three years. This is consistent with the Government's policy intent.
20. If you are responsible for workplace relations at your agency and want to discuss this further, please get in touch with your relationship manager at the APSC. If you do not know who your APSC relationship manager is, please contact the WR mailbox at workplacerelations@apsc.gov.au.

Other resource – APSC Q&A on using determinations

<https://www.apsc.gov.au/determinations-providing-remuneration-increases>

Workplace Relations Capability Program

1. The Program seeks to build the industrial relations capabilities of WR and HR practitioners in Commonwealth agencies. The former APS Commissioner launched the Program in late 2017.

Small group sessions

2. The Program brings together small groups of Commonwealth HR and WR practitioners to discuss contemporary issues and, on occasion, listen to guest speakers.
3. We ran 13 small group sessions in 2018, and a further 10 sessions in 2019.
4. These sessions have covered a wide range of HR and WR topics, including: communicating with employees; good faith bargaining; using individual flexibility arrangements; developing bargaining positions; support for victims of family and domestic violence; and making determinations.
5. In October 2019, we also ran a full day of small group sessions for Commonwealth HR and WR practitioners based in Melbourne.

Bargaining guide

6. Outside small group sessions, the APSC published a three-part guide to enterprise bargaining in December 2018. The guide provides useful information for agencies to consider when managing the bargaining process. This guide is available on the APSC website.
7. The guide does not constitute legal advice and the Fair Work Commission's enterprise agreements benchbook remains a technical legal manual to bargaining.

Closing

8. If you would like to attend any of our upcoming sessions or register your interest please send an email to the WR Capability inbox: WR.Capability@apsc.gov.au