

Implementation of the Australian Government's Workplace Bargaining Framework

Across Entities

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Canberra ACT
13 December 2018

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit across entities titled the *Implementation of the Australian Government's Workplace Bargaining Framework*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Summary and recommendations

Background

1. Enterprise bargaining is the process of negotiating an agreement between employers and employees regarding employment conditions and remuneration. The *Fair Work Act 2009* (Fair Work Act) sets out the rules and obligations on how the negotiation process should occur, including rules about bargaining, the content of enterprise agreements, and how an agreement is made and approved.

2. Workplace bargaining at the entity level in the Australian Public Service (APS) was first introduced in 1993 through the *Industrial Relations Reform Act 1993*. This allowed each entity to have pay and conditions specific to the work performed. The APS returned to a centralised, whole of APS agreement with the *Continuous Improvement in the Australian Public Service Enterprise Agreement: 1995–96: Agreement Between the Commonwealth Government and the Public Sector Unions*. The Government reintroduced entity based bargaining for the APS at the conclusion of that agreement in 1996 and has continued to negotiate remuneration and conditions at the entity level since.

The 2014 and 2015 Enterprise Bargaining Frameworks

3. In March 2014 the Government released the *Australian Government Public Sector Workplace Bargaining Policy* (2014 policy).¹ The 2014 policy outlined a number of conditions that entities were expected to comply with when negotiating their enterprise agreements, including:

- remuneration increases to be offset by genuine productivity gains;
- remuneration increases to be affordable and funded from existing and known entity budgets without the redirection of program funding, a reduction of services or outputs, or increases in fees for services;
- remuneration increases to apply prospectively and not include any sign on bonuses;
- core APS terms and conditions of employment not be enhanced without Ministerial approval;
- agreements to include the model consultation clause established in the *Fair Work Regulations 2009*; and
- entities not to expand on the right of entry provisions set out in the *Fair Work Act 2009*.

4. The 2014 policy introduced the requirement for all entities to detail their proposed productivity improvements and for these to be approved by the Australian Public Service Commissioner, and the Department of Finance where required, prior to any proposed remuneration increases being offered to employees.²

1 This policy superseded a previous 2011 bargaining policy.

2 Under previous bargaining policies, only entities requesting an average wage increase above three per cent were required to provide additional evidence of their productivity improvements to support the increased remuneration.

5. In October 2015, a revised *Workplace Bargaining Policy 2015* (2015 policy) was released. The 2015 policy retained most of the requirements of the 2014 policy, but introduced a remuneration cap of two per cent annually on average. The intent of the 2015 policy changed to enable all productivity requirements to be achieved through the removal of restrictive work practices. Entities were still encouraged to implement other productivity improvements to support more efficient operations, either within or outside of the workplace arrangement. Additionally, accountable authorities were required to provide only an estimate of the cost of the agreement including remuneration and allowance increases. Accountable authorities were no longer required to provide detailed information on the productivity offsets to the Australian Public Service Commissioner for approval, but were required to sign a declaration that the entity had sufficient productivity improvements to fund the proposed remuneration increase.³

6. Agencies and the Australian Public Service Commission (APSC) were to work together to develop agreements that were consistent with the policies. Both the 2014 and 2015 workplace bargaining policies outlined the responsibility of the accountable authority to ensure that their entity complied with the bargaining policy. The APSC has responsibility for the administration of workplace bargaining policies, including the 2014 and 2015 policies. In addition, the APSC also has responsibility for providing support and guidance to entities to develop enterprise agreements compliant with the bargaining policies. Under both the 2014 and 2015 policies, the APSC approved draft agreements prior to them being provided to employees to vote on. Under the 2014 policy, the APSC also approved proposed productivity improvements in consultation with the Department of Finance.⁴

Rationale for undertaking the audit

7. Enterprise agreements apply to around 98 per cent of APS employees. To support the significant cost associated with remuneration increases negotiated as part of enterprise agreements (estimated at around \$1.6 billion over three years), the 2014 and 2015 Workplace Bargaining Frameworks were expected to deliver wage increases based on productivity improvements rather than increased costs to taxpayers or reduced service delivery. There has also been Parliamentary and stakeholder interest in the effectiveness of the frameworks in delivering consistent agreements and productivity improvements, as well as compliance with the bargaining policies. The audit also aimed to identify lessons learned that could be used to inform the implementation of future bargaining frameworks.

Selected entities

8. In conducting the audit, the ANAO examined the implementation of the 2014 and 2015 bargaining policies by seven entities: APSC, Australian Sports Anti-Doping Authority (ASADA), ComSuper⁵, Department of Agriculture and Water Resources (DAWR), Department of Foreign

3 In February 2018, the Government introduced the Workplace Bargaining Policy 2018. Any entity that had not reached an agreement with its employees under either the 2014 or 2015 policy were required to negotiate its agreement under the terms of the 2018 policy. This audit did not examine the 2018 policy.

4 The approval process for the enterprise agreements is set out in Figure 1.1.

5 ComSuper was merged into the Commonwealth Superannuation Corporation (CSC) as part of a statutory change on 1 July 2015. The enterprise agreement reviewed as part of this audit was completed by the now abolished ComSuper, however at the time of this audit CSC continues to employ around 300 staff that are covered by the ComSuper enterprise agreement. Given the change, the analysis of ComSuper's implementation of the policy is based on documentary evidence provided by CSC.

Affairs and Trade (DFAT), Department of Human Services (Human Services), and Indigenous Business Australia (IBA). These entities were selected to provide a mix of entities according to size, function and the bargaining policy that they reached agreement under.

Audit objective and criteria

9. The objective of the audit was to assess the Australian Public Service Commission's and selected entities' implementation of the Australian Government's Workplace Bargaining Framework.

10. To form a conclusion against the audit objective, the ANAO adopted the following high level criteria:

- Does the APSC have effective arrangements in place to support the implementation of the workplace bargaining framework?
- Have selected entities implemented the workplace bargaining framework effectively?
- Have selected entities developed and monitored productivity improvements appropriately?

11. The audit did not assess the compliance of the approved enterprise agreements for the selected entities against all aspects of the relevant workplace bargaining policies.

Conclusion

12. The Australian Public Service Commission and selected entities largely implemented the required processes in the 2014 and 2015 bargaining policies, except some entities implemented arrangements that are inconsistent with the intent of the policies and there is limited transparency of productivity gains and compliance at a whole-of-service level.

13. The Australian Public Service Commission (APSC) designed effective arrangements to support the implementation of the 2014 and 2015 enterprise bargaining frameworks, except it could not demonstrate that it implemented effective quality assurance processes to ensure the consistent assessment of agreements. The Government does not require the APSC to monitor entities' implementation of the bargaining policies, limiting the visibility of compliance at a whole-of-service level. Two of the selected entities implemented arrangements outside their enterprise agreements that are inconsistent with the intent of the bargaining policies.

14. The development of governance and communication arrangements by selected entities were largely appropriate, although no entity established a complete set of governance and communication arrangements.

15. The documented evidence base regarding the source of funds to pay for remuneration increases reduced once the requirement to have productivity measures approved by the APSC was removed. There is currently no requirement for entities or the APSC to monitor and report on either the achievement of identified productivity measures, or sources of funding for remuneration increases, limiting the transparency of productivity gains (including from the removal of restrictive work practices).

Supporting findings

16. The APSC provided a range of guidance and support mechanisms to assist entities in developing their agreements.
17. The APSC developed a process to assess proposed agreements which included elements such as checklists, consultation with subject matter experts and peer reviews. However, the APSC could not demonstrate that these processes were regularly implemented to support a consistent assessment of agreements over time for each entity. In addition, the APSC did not demonstrate that it developed or implemented a process to support the consistency of assessments between entities.
18. The APSC has undertaken regular reporting to its minister on enterprise bargaining matters, such as the number of agreements reached and to highlight difficulties encountered by entities in reaching agreement with staff. The absence of a government requirement to monitor and report on the implementation of the framework, including whether entities implemented identified productivity savings, redirected program funds or lowered services, limits the visibility of and accountability for key aspects of the 2014 and 2015 bargaining policies. Additionally, two of the selected entities implemented arrangements outside their enterprise agreements that are inconsistent with the intent of the bargaining policies and limited advice on this was provided to the Government by either the APSC or the entities involved.
19. The completeness of the governance arrangements established to support the implementation of the bargaining policies varied. All selected entities established a bargaining team, with four of the seven entities commencing bargaining prior to the expiration of their previous enterprise agreement. Three entities developed complete implementation plans. None of the selected entities completed all steps of developing, documenting, and actively updating risk management arrangements, although selected entities advised that risk management arrangements were often managed as part of business as usual arrangements.
20. All selected entities developed a communications strategy at some point during their bargaining process to inform staff of the impact of a yes or no outcome for their respective enterprise agreements.
21. Four of the seven selected entities did not fully quantify or document the productivity offsets used to fund remuneration increases, and the level of documentation reduced once the requirement to have detailed productivity measures approved by the APSC was removed. The ANAO was not provided with evidence to demonstrate that any entities provided explicit documented assurance to their accountable authorities that remuneration increases would be funded without the re-direction of program funding, a reduction of services or outputs, or increases in fees for services and products. Selected entities undertook limited monitoring of the extent to which specific productivity measures achieved the envisaged savings.

Recommendations

Recommendation no.1 That the APSC strengthen, fully implement and document its quality assurance processes to support the consistent assessment of agreements over time and between entities.
Paragraph 2.20

Australian Public Service Commission response: *Agreed.*

Recommendation no.2 That for future bargaining rounds, all selected entities establish key governance arrangements such as implementation plans, communication plans and risk management documentation prior to the commencement of bargaining activities and actively use these throughout the process.
Paragraph 3.15

Australian Public Service Commission response: *Agreed.*

Australian Sports Anti-Doping Authority response: *Agreed.*

Department of Agriculture and Water Resources response: *Agreed.*

Department of Foreign Affairs and Trade response: *Agreed.*

Department of Human Services response: *Agreed.*

Indigenous Business Australia response: *Agreed.*

Summary of entity responses

22. Summary responses from selected entities are provided below. The full responses are provided at Appendix 1. CSC did not provide a response to the report or Recommendation No.2.

Australian Public Service Commission

The APSC notes the report's conclusion that the APSC, as the agency responsible for the administration of workplace bargaining policies, designed effective arrangements to support implementation of the 2014 and 2015 policies across the Commonwealth. It also notes in terms of its own bargaining, that governance and communication arrangements were largely appropriate, with management of risk being the main area for improvement.

The APSC accepts the findings of the ANAO report and has already made improvements to its existing quality assurance processes.

Australian Sports Anti-Doping Authority

ASADA was provided with a copy of the proposed audit report for comment. A summary of the Agency's response is below and the full response is at Appendix 1.

ASADA agrees with the ANAO's recommendation to agencies included in the audit, and specific areas of improvement for ASADA. The agency acknowledges that there are a number of areas that it needs to focus on in relation to future bargaining rounds.

Department of Agriculture and Water Resources

The department welcomes the audit's overall conclusions and findings. The department is pleased that the ANAO found that overall its implementation of the Government's

Workplace Bargaining Framework was broadly effective and that appropriate governance arrangements were established.

The department agrees with the recommendation directed to the department to ensure that for future bargaining rounds, entities establish key governance arrangements such as implementation plans, communication plans and risk management documentation prior to the commencement of bargaining activities and actively use these throughout the process.

Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade acknowledged and agrees with the findings in the audit report. The audit process was a valuable exercise and the feedback provided by the ANAO will assist DFAT to strengthen governance arrangements during future Enterprise Agreement bargaining processes.

Department of Human Services

The Department of Human Services (the department) acknowledges the report and will continue to ensure it remains compliant with the relevant workplace bargaining policies during future bargaining rounds.

The department agrees with recommendation two (noting that recommendation one applies specifically to the APSC) and will ensure key governance arrangements are again established for future bargaining rounds.

The department notes the ANAO's position that accountable authorities may have benefited from more detailed documentation on proposed remuneration increases when developing new enterprise agreements. The department's view remains that, over the course of its extended bargaining process, the then Accountable Authority was provided with sufficient information to meet the requirements under the workplace bargaining framework.

With respect to the ANAO's commentary on the use of supplementary arrangements, the department notes that there was no requirement to obtain the APSC's approval for these arrangements. Notwithstanding this, the department voluntarily provided copies of draft protocols to the APSC for comment and made all requested changes prior to finalisation. On this basis, the department maintains that the protocols it put in place alongside the enterprise agreement are appropriate and consistent with the intent of the applicable bargaining policy.

Indigenous Business Australia

Indigenous Business Australia's (IBA's) involvement in this Audit has been a useful precursor for the planning of a new enterprise agreement.

IBA notes the ANAO's conclusion which is drawn from a sample of seven micro to extra-large entities with a wide range of resources, funding arrangements and purposes. IBA, a small Corporate Commonwealth entity, will utilise fit for purpose implementation, project and communications plans and risk management documentation in its planning for a new enterprise agreement and these will be actively used throughout the process.

Key messages for all Australian Government entities

23. Below is a summary of key messages, including instances of good practice, which have been identified in this audit that may be relevant for the operations of other Commonwealth entities.

Performance and impact measurement

- When seeking accountable authority approval for remuneration increases, entities should ensure that this is supported by sufficient evidence to provide assurance that the costs of the enterprise agreement can be met within existing departmental resources without negatively reducing performance.

Records management

- Sound record keeping, including documented rationales for key decisions, can assist in providing transparency and accountability of decision making. This is of particular importance for re-occurring activities, such as the negotiation of enterprise agreements, to provide consistency in assessments, as well as providing future bargaining teams with a solid basis to undertake bargaining activities.

Governance

- When negotiating future enterprise agreements, entities may benefit from adopting more structured governance arrangements, such as those used for other projects, including development of dedicated implementation plans, communication strategies and risk management systems.

Audit findings

1. Background

Introduction

1.1 Enterprise bargaining is the process of negotiating an agreement between employers and employees regarding employment conditions and remuneration. The *Fair Work Act 2009* (Fair Work Act) sets out the rules and obligations on how the negotiation process should occur, including rules about bargaining, the content of enterprise agreements, and how an agreement is made and approved.

1.2 Workplace bargaining at the entity level in the Australian Public Service (APS) was first introduced in 1993 by the Government through the *Industrial Relations Reform Act 1993*. This allowed each APS entity to have pay and conditions specific to the work performed.

1.3 The APS returned to a centralised, whole of APS agreement with the *Continuous Improvement in the Australian Public Service Enterprise Agreement: 1995-96: Agreement Between the Commonwealth Government and the Public Sector Unions*. The Government reintroduced entity based bargaining for the APS at the conclusion of that agreement in 1996 and has continued to negotiate remuneration and conditions at the entity level since.

Recent Enterprise Bargaining Frameworks

The 2014 Framework

1.4 In March 2014 the Government released the *Australian Government Public Sector Workplace Bargaining Policy* (2014 policy).⁶ The policy applied to the Australian Public Service, with ministers to direct (or where they were unable to direct, strongly encourage) the non-APS entities in their portfolios, including Government Business Enterprises, to apply the policy.⁷

1.5 The 2014 policy outlined a number of conditions that entities were expected to comply with when negotiating their enterprise agreements, including:

- remuneration increases to be offset by genuine productivity gains;
- remuneration increases to be affordable and funded from existing and known entity budgets without the redirection of program funding, a reduction of services or outputs, or increases in fees for services;
- remuneration increases to apply prospectively and not include any sign on bonuses;
- core APS terms and conditions of employment not be enhanced without Ministerial approval;
- agreements to include the model consultation clause established in the *Fair Work Regulations 2009*; and

⁶ This policy superseded the previous 2011 bargaining policy.

⁷ The Australian Defence Force was excluded from the policy. The Australian Defence Force salaries and allowances are determined by the Defence Force Remuneration Tribunal. The policy also did not apply to members of the Senior Executive Service (SES) as they have their own individual agreements. The policy did note that these agreements were required to be consistent with the policy.

- entities were not to expand on the right of entry provisions set out in the *Fair Work Act 2009*.

1.6 The 2014 policy introduced the following new requirements for all entities:

- to detail their proposed productivity improvements and for these to be approved by the Australian Public Service Commissioner, and the Department of Finance, prior to any proposed remuneration increases being offered to employees.⁸
- to streamline agreements by removing clauses that were contained in legislation elsewhere, as well as work practices that could confine the operations of the entity; and
- to gain ministerial support for proposed remuneration increases, productivity measures, and draft enterprise agreements.

1.7 Productivity was defined in the policy as:

...demonstrable, permanent improvements in efficiency, effectiveness and/or output of employees, based on reform of work practices or conditions, resulting in measurable savings. Arbitrary reductions in staffing are not considered genuine productivity gains.⁹

1.8 When it was released, the policy did not include an explicit maximum annual pay increase. The expectation for entities to keep pay increases at or below one and a half per cent annually was noted in the Government's *Mid-Year Economic and Fiscal Outlook 2014–15* released in December 2014. The 2012–13 Government sector wage bill was \$18.5 billion suggesting that each one per cent wage increase would cost around \$185 million per annum.

1.9 Eleven agreements were reached in nine entities under the 2014 bargaining policy.¹⁰ These entities had an average remuneration increase of 1.4 per cent each year, as ComSuper reached an agreement with a remuneration increase below 1.5 per cent each year.¹¹

The 2015 Framework

1.10 A revised *Workplace Bargaining Policy 2015* (2015 policy) was released on 20 October 2015. The 2015 policy retained most of the requirements of the 2014 policy, with key revisions relevant to this audit noted below.

1.11 The remuneration cap was increased to two per cent annually on average (equating to an estimated additional cost of \$580 million over three years). Following the release of the 2015 policy, entities that reached their agreements under the 2014 policy were able to increase their

8 Under the 2011 bargaining policy entities requesting an average wage increase above three per cent were required to provide additional evidence of their productivity improvements to support the increased remuneration.

9 Australian Public Service Commission, *Australian Government Public Sector Workplace Bargaining Policy*, 2014, p. 16.

10 Some entities may have more than one agreement due to the different roles employees may have. For example, NBN Co made three separate agreements under the 2014 policy covering three distinct groups of employees.

11 ComSuper agreed to an enterprise agreement with a total remuneration increase of 2.6 per cent over three years, thus lowering the average increase across the entities.

remuneration offer to the equivalent of that allowed under the 2015 policy (an additional 0.5 per cent annual increase), provided their accountable authority deemed the increase to be affordable.¹²

1.12 The 2015 policy amended expectations regarding productivity offsets. The policy still stated that remuneration increases must be offset by productivity improvements, however the requirement to quantify and submit productivity improvements for approval by the APSC and the Department of Finance was removed. The intent of the 2015 policy was now that the removal of restrictive content¹³ from enterprise agreements would provide sufficient productivity to offset the total cost of remuneration increases.¹⁴ The APSC advised the ANAO that, as the 2015 policy did not require entities to calculate the financial impact of removing restrictive content from agreements, no advice was produced to assist entities in undertaking such calculations.¹⁵

1.13 The declaration signed by accountable authorities to certify compliance to the APSC on key areas of the policy was amended to include a declaration that the entity had sufficient productivity improvements to fund the proposed remuneration increase.

1.14 The requirement to gain ministerial support for proposed remuneration increases, productivity measures, and draft enterprise agreements was removed. Instead the APS Commissioner was empowered to approve remuneration proposals and proposed agreements, referring to ministers only where there was inconsistency with the policy. The APSC advised the ANAO that draft agreements were only approved if restrictive content was removed or moderated.

1.15 One-hundred and twenty-eight agreements were reached in 116 agencies under the 2015 bargaining policy. Nine entities covering 11 agreements remained in bargaining when the 2015 bargaining policy was superseded.

Comparison of the 2014 and 2015 bargaining frameworks — productivity and timeliness

1.16 Productivity requirement changes between the 2014 and 2015 policies are listed in Table 1.1.

Table 1.1: Productivity requirement changes between the 2014 and 2015 policies

	2014 Policy	2015 Policy
Affordable within an entity's existing budget.	✓	✓
Funded without re-direction of program funding, reductions in output or services, or increases in fees for services and products.	✓	✓

12 Six entities implemented the additional salary increase. These entities were: Department of Social Services; Australian Public Service Commission; Department of the Treasury; Australian Office of Financial Management; NBN Co Limited (for three agreements); and the Department of Communications.

13 Restrictive clauses are defined as clauses that act to confine the operations of the entity, curb the effective operation of legislation, and can lead to disputes being raised at the Fair Work Commission via the enterprise agreement's dispute term. Examples of restrictive clauses include requiring employees' agreement before working hours can be changed, or having to consult with employees before any decision is made and/or exhaustive consultation provisions.

14 Entities were still encouraged to implement other productivity improvements to support more efficient operations, either within or outside of the workplace arrangement.

15 The APSC provided some individual case studies to entities in 2014. In 2015 the APSC provided some examples of restrictive content, see paragraph 2.29.

	2014 Policy	2015 Policy
Sufficient productivity improvements to fund the proposed remuneration costs.	✓	✓
Individual productivity offsets detailed and submitted to the APSC for approval.	✓	✗
Productivity improvements can be achieved by ensuring that new workplace arrangement do not contain clauses that restrict an agency's ability to operate efficiently and effectively.	✓ ^a	✓
Accountable Authorities declarations to the APSC certifying compliance. (with the first three requirements above).	✓ ^b	✓

Note a: A change to the APSC's administration of the policy in May 2015 allowed entities to include non-quantifiable productivity measures, including the removal of restrictive clauses, provided they could demonstrate in a business case that these would still produce productivity.

Note b: Under the 2014 policy, productivity measures were to be detailed, submitted and assessed by the APSC in consultation with the Department of Finance. As such, this was not included in the 2014 accountable authority declaration.

Source: ANAO analysis of APSC documentation.

The 2018 Framework

1.17 In February 2018, the Government introduced the *Workplace Bargaining Policy 2018* (2018 policy). This policy retained the two per cent annual average remuneration increase cap and the requirement for increases to be offset by productivity improvements. Any entity that had not reached an agreement with its employees under either the 2014 or 2015 policy were required to negotiate their agreement under the terms of the 2018 policy.¹⁶

Role of The Australian Public Service Commission in enterprise bargaining

1.18 The APSC was responsible for providing advice to Government on the 2014 and 2015 workplace bargaining policies, as well as the administration of the policies. The APSC was also responsible for providing support and guidance to entities on employment and workplace relations policies, including the bargaining policies.

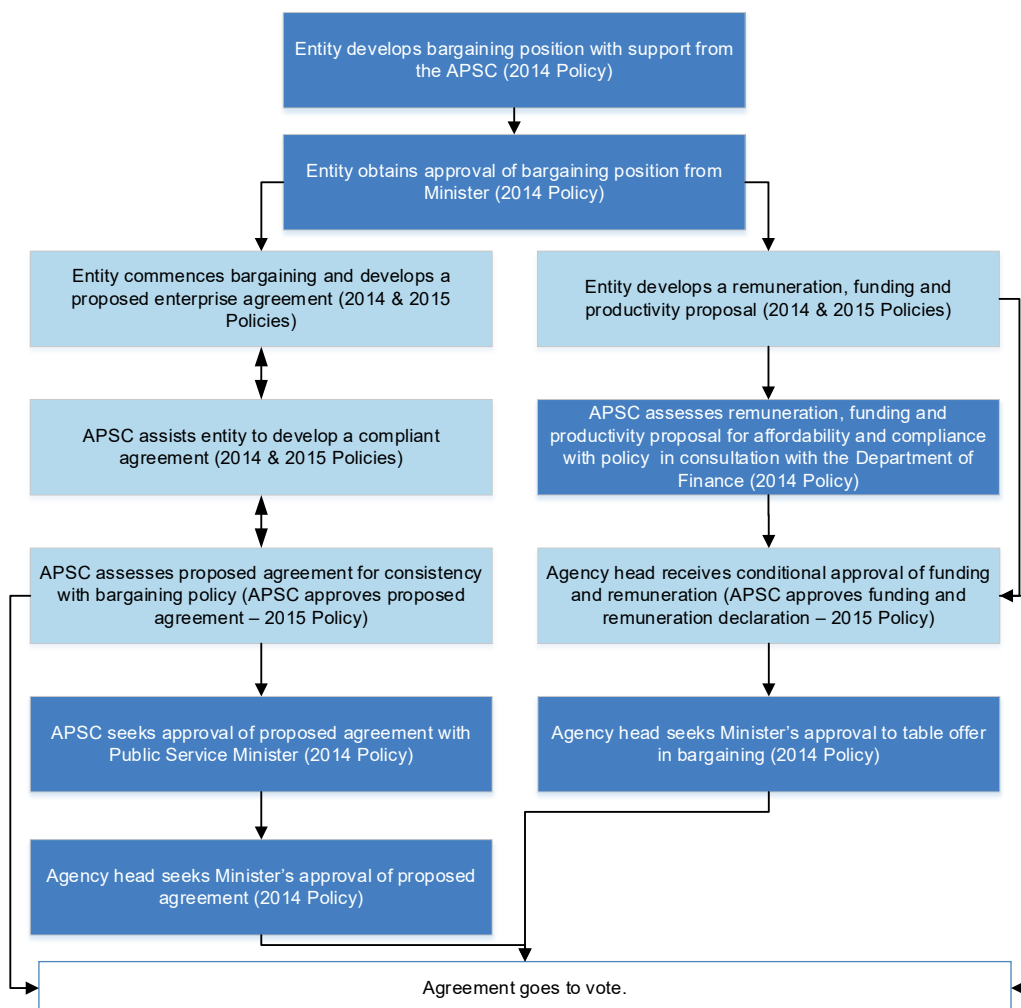
1.19 Agencies and the APSC were to work together to develop agreements that were consistent with the policies. Both the 2014 and 2015 workplace bargaining policies outlined the responsibility of the accountable authority to ensure that their entity complied with the bargaining policy. However, the APSC was also responsible for ensuring agreements complied with the policy, by approving remuneration proposals prior to them being provided to employees for negotiation. Under the 2015 policy the APSC was also empowered to approve agreements prior to them being voted on by employees. As noted in paragraph 1.14, the APS Commissioner was to refer draft enterprise agreements to ministers where there was an inconsistency with the policy.

¹⁶ The 2018 bargaining policy is not within the scope of this audit.

1.20 The APSC, along with the Department of Finance, was responsible for approving productivity measures under the 2014 policy.¹⁷ The 2015 policy removed the requirement for APSC and the Department of Finance approval of proposed productivity measures.

1.21 Figure 1.1 outlines the approval process under both the 2014 and 2015 policies.

Figure 1.1: Approval process for the 2014 and 2015 bargaining policies



Note: The above diagram depicts a standardised process, however in practice this was iterative in nature and included ongoing consultation and commentary from entities and the APSC.

Entities would generally work with the APSC to develop a compliant agreement prior to submitting it to the Commissioner for approval. Only in exceptional circumstances would a negative assessment be referred to the relevant minister.

Source: ANAO analysis of APSC information.

Other reviews of the 2014 and 2015 Bargaining Framework

1.22 In November 2016 a Senate Inquiry released a report: *Siege of attrition: the Government's APS Bargaining Policy*. The committee received 637 submissions and made 17 recommendations in relation to workplace bargaining in the Australian Public Service. Of these, the Government's response to the report rejected 15 of the recommendations and noted two recommendations. A

¹⁷ In consultation with the Department of Finance.

dissenting report co-authored by two of the senators on the committee was also published. In December 2016 the Minister Assisting the Prime Minister for the Public Service wrote to the APSC to communicate that the Government would not be changing its position on workplace bargaining in response to the *Siege of Attrition* report.

1.23 The 2015 Independent Review of Whole of Government Internal Regulation (Belcher Red Tape Review) made two recommendations in relation to APS remuneration.¹⁸ These recommendations were:

- The APSC continue to examine ways in which the current enterprise bargaining process can be streamlined within the Government's policy parameters, tailored to the range of employment environments, diversity of roles and the size of entities within the public sector.
- The APSC review guidance and communication strategies in relation to remuneration and enterprise bargaining arrangements to assist entities develop a more comprehensive understanding of arrangements and processes.

1.24 The Secretaries Board agreed to implement these two recommendations.

Rationale for undertaking the audit

1.25 Enterprise agreements apply to around 98 per cent of APS employees. To support the significant cost associated with remuneration increases negotiated as part of enterprise agreements (estimated at around \$1.6 billion over three years), the 2014 and 2015 Workplace Bargaining Frameworks were expected to deliver wage increases based on productivity improvements rather than increased costs to taxpayers or reduced service delivery. There has also been Parliamentary and stakeholder interest in the effectiveness of the framework in delivering consistent agreements and productivity improvements, as well as compliance with the bargaining policies. The audit also aimed to identify lessons learned that could be used to inform the implementation of future bargaining frameworks.

Audit approach

Characteristics of selected entities

1.26 In conducting the audit, the ANAO examined the implementation of the 2014 and 2015 bargaining policies by seven entities: APSC, Australian Sports Anti-Doping Authority (ASADA), ComSuper¹⁹, Department of Agriculture and Water Resources (DAWR), Department of Foreign Affairs and Trade (DFAT), Department of Human Services (Human Services), and Indigenous Business Australia (IBA). These entities were selected to provide a mix of entities according to size, function and the bargaining policy that they reached agreement under. Table 1.2 sets out some relevant characteristics of the seven entities.

18 B Belcher, *Independent Review of Whole-of-Government Internal Regulation — Report to the Secretaries Committee on Transformation*, August 2015.

19 ComSuper was merged into the Commonwealth Superannuation Corporation (CSC) as part of a statutory change on 1 July 2015

Table 1.2: Characteristics of audited entities

	Type of entity	Entity size ^a	Workplace bargaining policy agreement was reached under	Total remuneration increase	Estimated total cost of remuneration increase (\$)
ASADA	Non-corporate Commonwealth	Micro	2015	6%	860,000
IBA	Corporate Commonwealth	Small	2015	6%	2,800,000
APSC	Non-corporate Commonwealth	Medium	2014	4.5% ^b	2,789,800 ^c
ComSuper	Corporate Commonwealth	Medium	2014	2.6% ^d	2,834,000
DAWR	Non-corporate Commonwealth	Large	2015	6%	67,920,000
DFAT	Non-corporate Commonwealth	Large	2015	6%	50,036,604
Human Services	Non-corporate Commonwealth	Extra-large	2015	6%	399,245,883

Note a: Micro entity (less than 100 employees), small entity (101-250 employees), medium entity (251-1000 employees), large entity (1001-10,000), and extra-large entity (over 10,001).

Note b: APSC initially reached agreement for a 4.5 per cent remuneration increase over three years as allowed under the 2014 policy, though later made a determination to receive the additional 0.5 per cent annual increase on the release of the 2015 bargaining policy. This raised the remuneration increase to six per cent over three years.

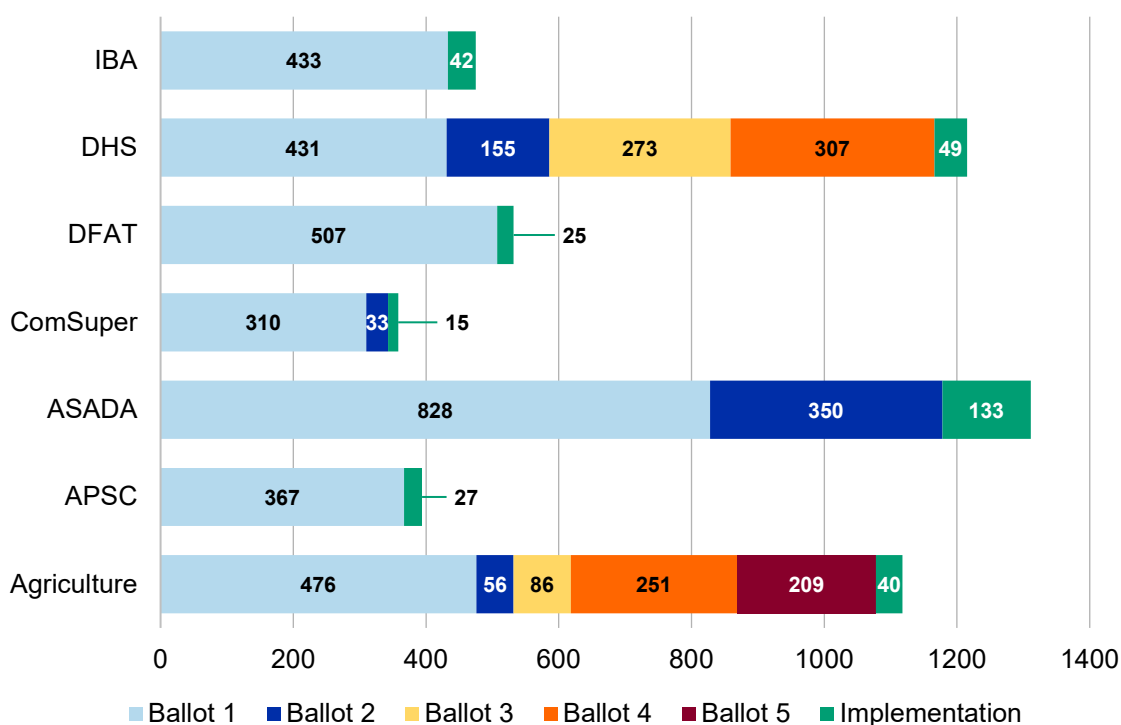
Note c: Estimated cost of the total remuneration increase (6 per cent).

Note d: ComSuper had been abolished before the 2015 policy was released and CSC did not seek to amend the remuneration offer.

Source: ANAO analysis.

1.27 Figure 1.2 shows the time taken in days by audited entities to negotiate their enterprise agreement based on the nominal expiry date of the previous enterprise agreement.²⁰

²⁰ The nominal expiry date for audited entities previous enterprise agreements was 30 June 2014, with the exception of IBA's enterprise agreement, which expired on 30 December 2014.

Figure 1.2: Comparative bargaining timelines for audited entities

Source: ANAO analysis.

Audit objective, criteria and scope

1.28 The objective of the audit was to assess the Australian Public Service Commission's and selected entities' implementation of the Australian Government's workplace bargaining framework.

1.29 To form a conclusion against the audit objective, the ANAO adopted the following high level criteria:

- Does the APSC have effective arrangements in place to support the implementation of the workplace bargaining framework?
- Have selected entities implemented the workplace bargaining framework effectively?
- Have selected entities developed and monitored productivity improvements appropriately?

1.30 The audit did not assess the compliance of the approved enterprise agreements for the selected entities against all aspects of the relevant workplace bargaining policies.

1.31 ComSuper was merged into CSC as part of a statutory change on 1 July 2015. The enterprise agreement reviewed as part of this audit was completed by the now abolished ComSuper, however at the time of this audit, CSC continues to employ around 300 staff that are covered by the ComSuper enterprise agreement. Given the change, the analysis of ComSuper's implementation of the policy is based on documentary evidence provided by CSC.

Audit methodology

1.32 The audit methodology included:

- reviewing documentation from the APSC in relation to the implementation and monitoring of the bargaining policies;
- reviewing documentation from selected entities, including implementation plans, risk management documentation, stakeholder engagement, communication plans and internal reporting; and
- conducting interviews with relevant staff at the APSC and selected entities.

1.33 The audit was conducted in accordance with ANAO auditing standards, at a cost to the ANAO of approximately \$536,402.

1.34 The team members for this audit were Tara Rutter, Alice Bloomfield, Joel Smith, Michael Commens and David Brunoro.

2. The APSC's implementation of the 2014 and 2015 bargaining frameworks

Areas examined

This chapter examines the arrangements the APSC had in place to support entities to develop enterprise agreements and assess these agreements against the Government's policy settings. This chapter also examines the arrangements in place to monitor and report on the implementation of the bargaining frameworks.

Conclusion

The APSC designed effective arrangements to support the implementation of the 2014 and 2015 enterprise bargaining frameworks, except it could not demonstrate that it implemented effective quality assurance processes to ensure the consistent assessment of agreements. The Government does not require the APSC to monitor entities' implementation of the bargaining policies, limiting the visibility of compliance at a whole-of-service level. Two of the selected entities implemented arrangements outside their enterprise agreements that are inconsistent with the intent of the bargaining policies.

Area for improvement

The ANAO made one recommendation aimed at improving the APSC's quality assurance procedures when assessing enterprise agreements, including documenting which assessments were undertaken, key decisions made and changes to the administration of the policy.

Did the APSC provide guidance and support to assist entities in developing their agreements?

The APSC provided a range of guidance and support mechanisms to assist entities in developing their agreements.

2.1 The APSC established a range of guidance materials to support entities in developing their proposed agreements. This material covered topics such as general drafting guidance, communications, and the bargaining process. Other more specific guidance was created as required.

2.2 The APSC also established several cross-entity discussion forums. Workshops were held to assist entities in drafting clauses for their agreement that would be compliant with the bargaining policies. The APSC facilitated entity lead negotiators and nominated bargaining personnel accessing guidance materials, sharing information and asking questions. The APSC also facilitated a range of forums to provide confidential settings for employers to discuss bargaining. The frequency of these forums reduced as more entities reached agreements.

2.3 The 2014 bargaining policy specified that enterprise agreements should not contain clauses that could restrict an entity's ability to operate efficiently and effectively (a 'restrictive clause'). In July 2014, the APSC provided entities with detailed advice relating to key principles to be considered when developing remuneration and productivity proposals. Case studies on topics such as reducing unscheduled absences and workforce re-profiling were also included to provide entities with some examples of potential productivity measures and how to calculate the value of the measure.

2.4 A change to the assessment of remuneration proposals, released to entities in May 2015²¹, allowed for the removal of restrictive clauses to be included as a productivity improvement. Entities still needed to quantify productivity initiatives in a business case but they were no longer required to quantify the impact to a precise dollar amount.

2.5 With the shift to the 2015 bargaining policy in October 2015, remuneration increases still had to be offset by productivity improvements, however entities were no longer required to submit quantified productivity estimates to the APSC for approval. In addition, entities were informed that, in effect, all productivity improvements could be achieved through the removal of restrictive clauses.

2.6 The APSC advised the ANAO that, as the 2015 policy did not require entities to calculate the financial impact of the removal of restrictive clauses, no additional advice was produced to assist entities in quantifying the specific impacts this might have achieved.

Relationship Managers

2.7 Each entity was assigned a relationship manager at the APSC as a single point of contact. The role of relationship managers was to:

- liaise with and advise entities on government policy;
- assess bargaining proposals and enterprise agreements against government policy;
- coordinate referrals to relevant APSC teams in support of assessments;
- draft formal correspondence to entities;
- draft ministerial briefings relating to specific issues in entity bargaining, requests for exemptions from policy, and approval of agreements;
- maintain entity files/records; and
- prepare bargaining status reports as required.

2.8 Prior to the commencement of the 2014 policy, the APSC had a Key Performance Indicator (KPI) of ten days for the assessment of proposed agreements against the bargaining policy. The APSC advised the ANAO that the KPI was removed when the 2014 policy was released as the impact of the new policy on the APSC's ability to meet the KPI was unclear, particularly given the requirement for additional approvals from relevant ministers and the Department of Finance. Entities were advised of indicative approval timeframes in writing once they submitted their agreements for approval. The APSC maintained a tracking spreadsheet noting the timeframes achieved for each individual enterprise agreement assessment. The ANAO's analysis of the timeframes maintained by the APSC for assessing enterprise agreements for the period 29 May 2015 to January 2018 for audited entities was on average 13 days for preliminary assessments and 2.43 days for final assessments.²²

21 Prior to the release of the 2015 bargaining policy in October 2015.

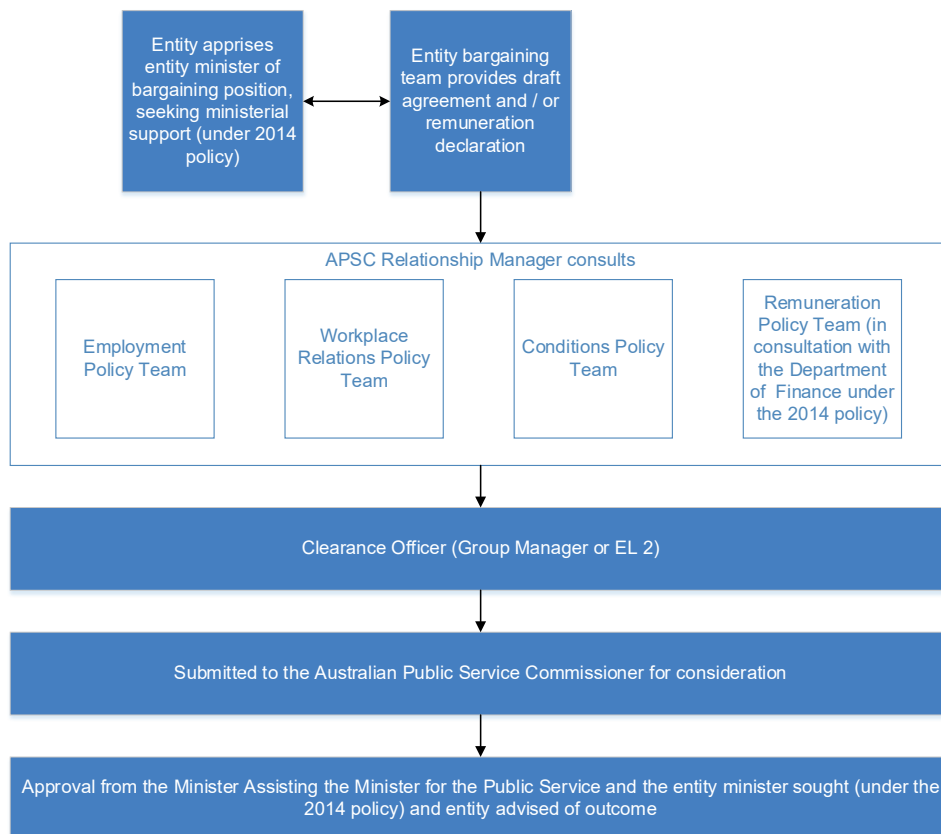
22 Other assessments were undertaken as required.

Were there processes in place to support the consistent assessment of proposed agreements?

The APSC developed a process to assess proposed agreements which included elements such as checklists, consultation with subject matter experts and peer reviews. However, the APSC could not demonstrate that these processes were regularly implemented to support a consistent assessment of agreements over time for each entity. In addition, the APSC did not demonstrate that it developed or implemented a process to support the consistency of assessments between entities.

2.9 The Workplace Relations Group within the APSC is responsible for assessing proposed enterprise agreements and preparing approval briefs for the Australian Public Service Commissioner. Figure 2.1 outlines the APSC's internal process for assessing proposed enterprise agreements.

Figure 2.1: APSC internal assessment process



Note: The above diagram depicts a standardised process, however in practice this was iterative in nature and included ongoing consultation and commentary from entities and the APSC.

Source: ANAO analysis of APSC documentation.

2.10 As shown in Figure 2.1, there are four separate subject matter teams that assess the relevant parts of the agreement for compliance with the policy. The APSC advised that when the 2014 policy was first released, assessments of proposed agreements were conducted as a whole team. After this, the APSC advised that the assessments were completed in pairs. The APSC was not able to provide evidence of this peer review process. The APSC further advised that regular meetings were

held where the assessment of agreements was discussed, and where policy changes occurred, team sessions were held to review the changes.

2.11 To support the assessment of agreements, the APSC developed a checklist and assessment form to be completed by the remuneration team and placed on the agency file.²³ The APSC provided some examples of the use of the checklists and assessment forms, but not for all selected entities.

2.12 The APSC further advised that the relevant relationship manager would receive the consolidated comments from each team, which would then be provided to entities if there were concerns or issues. Once the entity had addressed these, the draft agreement and / or remuneration proposal was provided to the Commissioner for approval prior to being tabled in bargaining or provided to staff to vote on. The APSC provided some examples of the consolidated comments made during this process.

Consistency of advice to entities

2.13 The APSC advised that the primary mechanism for entities to seek advice on their agreements was through their relationship manager. Advice was provided by telephone or email. APSC advised that where decisions were made during telephone calls, it was standard practice to prepare a file note or follow-up email noting what was discussed or agreed to, however the APSC could produce limited evidence of this.

2.14 In some instances, where there was a change in the administration of the policy for proposed agreements, information was provided to all entities. One example of this is shown in Box 1 below.

Box 1: Change to allow the inclusion of employer superannuation contribution clauses

In April 2015, the APSC advised entities that current employer superannuation contribution clauses could be retained in proposed agreements, provided there were no enhancements to the clause.

The APSC advised entities that this change had been made due to consistent and strong feedback from entities that the proposed change to remove this clause from enterprise agreements was of significant concern to employees. The APSC further advised that, as the clause was not of material impact to the other governance and legislative arrangements that govern superannuation entitlements, the Commissioner was of the view that it was not a fundamental matter in bargaining.

2.15 Under both bargaining policies, entities sent their proposed enterprise agreements to the APSC to be assessed for compliance with the policy. The assessment from the APSC was typically provided via tracked changes in the proposed document. Comments could also include non-policy related advice or suggestions. The ANAO reviewed the APSC's comments on the selected entities' proposed agreements to assess the effectiveness of the process the APSC had in place to ensure

23 The checklist focused on nine key aspects of remuneration mainly related to ensuring that any changes to salary or allowances were approved and accurately reflected in the proposed agreement, for example where changes to working hours were used as a productivity measure that these new hours were reflected in the proposed agreement. The checklist also notes the relationship manager should be aware of any other remuneration and non-remuneration matters and raise these.

that advice from the APSC in relation to non-compliance with the bargaining policies was addressed by entities. The ANAO did not assess the accuracy of the advice provided by the APSC.

2.16 The ANAO's analysis indicated that, where entities had not addressed specific comments raised by the APSC there was not a consistent process in place to document the rationale for this. Further, the APSC assessments did not consistently articulate the nature of the advice (for example whether it was related to policy compliance, a query, legislation, or general drafting advice). Over time the APSC implemented changes to more clearly articulate what the advice was related to. The APSC advised that verbal discussions were usually held with entities to talk about the comments. Given the technical and iterative nature of the assessment process, there would be benefit in the APSC documenting the outcomes of these discussions.²⁴

2.17 The APSC advised the ANAO that there were a number of informal mechanisms in place to share cross-entity learnings within the APSC including: regular weekly and fortnightly meetings; team leader meetings; and 'refresher' sessions where the group would go through an example agreement on a clause-by-clause basis to provide a shared understanding of current approaches to assessing enterprise agreements. The APSC also developed a case studies document to support internal assessments of productivity measures proposed by entities in order to facilitate the sharing of information between teams. However, this does not appear to have been regularly updated and only includes case studies for three entities.

2.18 The APSC advised the ANAO that, when approving agreements, the principles established within the bargaining frameworks were considered within the context of each entity. This included a range of factors, such as: duration of bargaining; number of 'no' votes; degree of improvement made; and the actual application/implication of individual clauses in the workplace.

2.19 The assessment of entity level enterprise agreements is context specific and iterative in nature. Despite this, such situations raise the importance of following systematic quality assurance processes and documenting key assessment decisions. This improves the transparency of decision making and supports consistency.

Recommendation no.1

2.20 That the APSC strengthen, fully implement and document its quality assurance processes to support the consistent assessment of agreements over time and between entities.

Australian Public Service Commission response: *Agreed.*

2.21 *The APSC will continue to review and update its existing quality assurance processes in the administration of the workplace bargaining policies. We note however that the overall approach to bargaining will continue to adapt over time due to changing industrial circumstances in bargaining processes of individual agencies.*

24 A Workplace Relations Risk Assessment in 2014-15 noted the risk of poor record keeping to support decision making was a high risk. The mitigation strategies for this were: ensuring the effective transfer of knowledge between teams; ensure all employees receive adequate training in the records management system; and the use of paper-based systems where necessary.

Does the APSC regularly monitor and report on the implementation of the framework against its key objectives?

The APSC has undertaken regular reporting to its minister on enterprise bargaining matters, such as the number of agreements reached and to highlight difficulties encountered by entities in reaching agreement with staff. The absence of a government requirement to monitor and report on the implementation of the framework, including whether entities implemented identified productivity savings, redirected program funds or lowered services, limits the visibility of and accountability for key aspects of the 2014 and 2015 bargaining policies. Additionally, two of the selected entities implemented arrangements outside their enterprise agreements that are inconsistent with the intent of the bargaining policies and limited advice on this was provided to the Government by either the APSC or the entities involved.

2.22 There was no single written objective for either the 2014 or 2015 policies. However, as detailed in paragraphs 1.5 and 1.6, the policies noted requirements that:

- remuneration increases to be offset by genuine productivity gains;
- remuneration increases to be affordable and funded from existing entity budgets without the redirection of program funding or increases in fees or services; and
- entities streamline agreements by removing clauses that were contained in legislation elsewhere, as well as work practices that could confine the operations of the entity.

2.23 Agencies and the APSC were to work together to develop agreements that were consistent with the policies. Accountable authorities were responsible for ensuring they complied with the policy. The APSC was responsible for approving draft agreements and referring draft agreements to ministers where there was inconsistency with the policy.²⁵

2.24 There was no formal requirement under either policy for entities to monitor or report on implementation progress. There was also no requirement for the APSC to centrally monitor that entities had taken action to implement productivity savings, had not redirected program funds or had not lowered services to the community. The APSC advised the ANAO it does not currently undertake any whole of government oversight in these areas.

2.25 Within the public service the APSC has however provided reporting on bargaining statistics to bodies upon request or as part of their facilitated forums.

2.26 The APSC has also regularly reported on enterprise bargaining progress to the Government. The APSC advised that under the 2014 bargaining policy, weekly phone hook-ups were held with the Minister Assisting the Prime Minister for the Public Service, with regular email updates being provided under the 2015 policy. These provided an update on: the number of agreements that had been agreed to by staff; the number of agreements being negotiated; and any other issues that had arisen. Regular reports on industrial action in entities were also produced. Advice provided to government in March 2015 noted the difficulties entities were experiencing in reaching an agreement with staff. In October 2015, further advice was provided to government regarding the difficulties entities were experiencing in meeting the requirements of the policy, leading to the release of the new policy later that month.

25 See paragraph 1.19 for further detail.

2.27 Regarding public reporting, the APSC provides limited high level reporting on the progress of the implementation of the workplace bargaining policy in its annual report and corporate plan. Reporting is mainly limited to the number of finalised agreements.

Side arrangements

2.28 Prior to 2014, clauses outlining the terms by which employee unions would be consulted could be included in enterprise agreements. Both the 2014 and 2015 policies required entities to:

- not impose restrictive work practices and other arrangements that confine the operations of the entity or the Australian Public Service, or curb the effective operation of legislation;
- implement arrangements consistent with the model consultation clause contained in the Fair Work Act 2009;
- not expand on right of entry provisions in the Fair Work Act 2009; and
- establish consultative arrangements with employees on employment and workplace relations matters that do not unreasonably favour one group of employees over another.

2.29 Following the release of the 2015 policy, the APSC provided advice to accountable authorities on what would be considered restrictive enterprise agreement content. This included:

- requiring employees' agreement before working hours can be changed;
- being unable to move an employee to another work location within their current city without their agreement;
- having to consult with employees before any decision is made and/or exhaustive consultation provisions;
- a requirement to reach agreement with employees on the content of human resources policies;
- prescriptive processes about performance management, restricting the capacity to make quick decisions;
- extensive right of entry and facilities arrangements for union officials and delegates;
- clauses that give preference to ongoing over non-ongoing employees; and
- extensive additional processes for recruiting employees.

2.30 There was no explicit prohibition in either the 2014 or 2015 policies that entities could not enter into arrangements related to but outside of their enterprise agreements. There was also no explicit requirement for side arrangements to be approved by the APS Commissioner, before they were entered into with a union. However, under the 2014 and 2015 policies there were requirements for entities to advise the APSC about any significant employment relations matters. The 2018 bargaining policy now requires all side arrangements to be approved by the APS Commissioner before they are entered into with a union.

2.31 ANAO's analysis identified that two of the selected entities (the Department of Human Services (Human Services) and the Department of Agriculture and Water Resources (DAWR)) had protocols in place that, although related to the enterprise agreement, are not included as part of the agreement.

Department of Human Services protocol

2.32 On 2 August 2017, the APSC approved Human Services' draft enterprise agreement to enable it to be provided to employees to be voted on. The draft enterprise agreement and supporting workplace policies were published on the department's intranet page on 2 August 2017. On 3 August 2017, correspondence from the APSC to Human Services noted strong concern regarding the consultation arrangements for an employee union group and rostering arrangements contained in the supporting workplace policies, outlined in a proposed email to Human Services staff.²⁶ The correspondence referenced arrangements that, although not part of the enterprise agreement, contained provisions that in the APSC's view were inconsistent with key tenants of the bargaining policy. The APSC advised Human Services to reconsider this arrangement or discuss the matter further with the APSC. The APSC advised the ANAO that conversations with Human Services took place, however there were no records made of these conversations.

2.33 On 3 August 2017, Human Services provided the APSC with four documents that were not included in the department's enterprise agreement, however did prescribe arrangements for various workplace relations rights and obligations. These included right of entry arrangements, information provision by unions to departmental employees, an agreed rostering policy which cannot be changed without the agreement of the employee union group, and the establishment of the National Consultative Committee as the peak consultation forum for the department and employees which consists of management representatives and representatives appointed by the employee union group.

2.34 On 9 August 2017, the APS Commissioner wrote to Human Services adding conditions to the earlier approval of the draft enterprise agreement, relating to right of entry and information provision by unions. The correspondence from the Commissioner did not add conditions relating to rostering policies or National Consultative Committee membership. Human Services made the edits to the relevant documents to satisfy the Commissioners' conditions and re-published the documents on the department's intranet page on 10 August 2017.

2.35 The Human Services final union protocol and National Consultative Committee terms of reference retain an agreed rostering policy which cannot be changed without the agreement of the employee union group and the ability of the employee union group to appoint all employee representatives to the National Consultative Committee.

Department of Agriculture and Water Resources protocol

2.36 The DAWR enterprise agreement came into effect on 26 July 2017. Correspondence between the APSC and DAWR during August 2017 noted the APSC had become aware of a consultation and representation protocol that the department had entered into with an employee union group. The protocol came into effect June 2017.

2.37 Correspondence from the APS Commissioner to DAWR in late August 2017 states that the content of the protocol was not shared with the APSC until after the protocol had been put in place and that the protocol contains provisions that would not be permitted in an enterprise agreement because they conflict with Government policy. The letter detailed three specific elements relating

26 The arrangement between Human Services and the employee union group was agreed on 1 August 2017.

to consultation arrangements, the expansion of dispute resolution provisions that cover policies, procedures and guidelines and special privileges for union delegates.

2.38 DAWR advised the APSC that it had been transparent in its approach to the development of the protocol with the APSC and that it would do all it could to ensure that the protocol is implemented in a way which is consistent with the Commonwealth's bargaining policy.

Reporting of side arrangements

2.39 Both the Human Services and DAWR protocols contain elements that are inconsistent with the intent of the 2015 bargaining policy as outlined in paragraph 2.28 and examples provided in paragraph 2.29.

2.40 While the APS Commissioner raised strong concerns with the side arrangements of the above entities via email to the Minister Assisting the Prime Minister for the Public Service's office, there was no formal brief to the Minister provided by the APSC. This is despite the 2015 policy statement that where a proposed workplace arrangement is inconsistent with government policy or there are unresolved policy issues, the matter will be referred to the Minister Assisting the Prime Minister for the Public Service, and the responsible portfolio minister for consideration.

2.41 Both DAWR and Human Services advised the ANAO that they did not provide any correspondence relating to their protocol documents to their relevant minister. DAWR advised that it did not consider it necessary to advise the minister as the protocol reflected similar arrangements that pre-existed within the department and that it had been transparent in its approach to the development of the document with the APSC. DAWR further advised that discussion relating to the protocol document being inconsistent with the bargaining policies was undertaken after both the protocol and enterprise agreement had been entered into. Human Services advised that after making changes to the protocols as requested by the APS Commissioner, the department was of the understanding that the draft agreement and associated documents were compliant with the bargaining policies, therefore there was no requirement to inform its minister.

3. Selected entities implementation of the 2014 and 2015 bargaining frameworks

Areas examined

This chapter assesses the governance and communication arrangements entities had in place to support the implementation of the 2014 and 2015 workplace bargaining policies.

Conclusion

The development of governance and communication arrangements by selected entities were largely appropriate, although no entity established a complete set of governance and communication arrangements.

Area for improvement

The ANAO recommends that for future bargaining rounds, key governance arrangements such as implementation plans, communication plans and risk management documentation be established prior to the commencement of bargaining activities and actively used throughout the process.

Were governance arrangements established to support the implementation of the policy?

The completeness of the governance arrangements established to support the implementation of the bargaining policies varied. All selected entities established a bargaining team, with four of the seven entities commencing bargaining prior to the expiration of their previous enterprise agreement. Three entities developed complete implementation plans. None of the selected entities completed all steps of developing, documenting, and actively updating risk management arrangements, although selected entities advised that risk management arrangements were often managed as part of business as usual arrangements.

Governance arrangements

3.1 Table 3.1 summarises the governance arrangements each entity had in place to support the implementation of the policies. The ANAO examined each entity's governance arrangements to support implementation of the policy, with a particular focus on: establishing a bargaining team; early planning and negotiation; implementation planning; and risk management. Communication and stakeholder engagement is considered separately in the following section, and monitoring arrangements are considered in the following chapter.²⁷

Table 3.1: Summary of entity governance arrangements

	APSC	ASADA	ComSuper	DAWR	DFAT	Human Services	IBA
Did the entity establish a bargaining team?	●	●	●	●	●	●	●

²⁷ See Department of the Prime Minister and Cabinet, *Guide to Implementation Planning*, licensed from the Commonwealth of Australia under Creative Commons Attribution 3.0 Australia Licence, 2014.

	APSC	ASADA	ComSuper	DAWR	DFAT	Human Services	IBA
Did the entity commence planning for and negotiation of their new agreement prior to the expiry of the previous agreement?							
Did the entity have an implementation plan?							
Did the entity assess, manage and monitor risk?							
Overall establishment of governance arrangements							
Key: For the individual elements, assessed entities received a rating for each of the following: established/planning commenced; established in a timely way; fit-for-purpose; used as a management tool. Overall assessment: No governance arrangements established Limited governance arrangements established Some governance arrangements established Most governance arrangements established All governance arrangements fully established							

Source: ANAO analysis of entity documentation.

3.2 As shown in Table 3.1, all selected entities established a bargaining team, and commenced some planning for their new agreement, including management meetings to discuss the bargaining policy and consideration of productivity measures. Entities were required under the bargaining policies to develop a remuneration proposal for APSC approval prior to commencing bargaining.

Commencement of planning and negotiations

3.3 Three of the seven selected entities (ComSuper, DAWR, and Human Services) commenced bargaining before the expiration of their previous agreement.

3.4 The previous enterprise agreements for the APSC, DFAT and ASADA expired on 30 June 2014. The APSC established its Management Bargaining Team in April 2014, prior to the nominal expiry date of its previous agreement to begin planning for the new agreement. The APSC held its first bargaining meeting on 4 February 2015, approximately seven months after the nominal expiry date of its previous agreement. DFAT began the process of identifying potential productivity offsets for its agreement in February 2014, prior to the release of the policy, with the Notification

of Employee Representation Rights (NERR) issued on 3 September 2014.²⁸ DFAT held its first preliminary bargaining meeting with both staff and union representatives on 23 September 2014. ASADA's management team did not develop a bargaining position until January 2016, after the release of the 2015 bargaining policy, with the NERR issued on 22 January 2016. IBA's previous enterprise agreement expired on 31 December 2014. IBA tabled and endorsed an agenda for bargaining at a board meeting held 11 December 2014. The agenda included a breakdown of the bargaining environment and outlined the IBA's intention to wait on the outcome of other negotiations across the APS. IBA issued its NERR on 25 June 2015 and released their bargaining position without a remuneration offer on the 28 July 2015.

Implementation planning

3.5 Three of the selected entities (APSC, DAWR and Human Services) developed a complete implementation plan.

3.6 Two of the selected entities (DFAT and ComSuper), while not having developed an overarching implementation plan, had separate documentation that identified elements of what should be included in an implementation plan. DFAT developed separate documentation outlining the roles of the bargaining representatives, the bargaining process and the workload of each team member. Additionally, a timeline for the negotiation process was created in February 2014. CSC advised the ANAO that, following a review of the available ComSuper documentation, it was not able to identify the development of an overarching implementation plan for the bargaining process. However, separate documentation showed an indicative timeline including key milestones and responsibilities for the negotiation of the new enterprise agreement.

3.7 IBA did not develop an overarching implementation plan, but separate documentation from 2015 identified key milestones in bargaining. IBA advised the ANAO that, while there was not a formal process in place the executive board frequently discussed progress, issues and concerns associated with bargaining. Action taken to address issues and concerns raised at the executive meetings were not documented.

3.8 ASADA did not establish implementation plans. ASADA advised the ANAO that a structured project plan was not established as it is a micro entity, and that regular discussion on the enterprise agreement negotiation process took place at various levels across the agency.

Risk management arrangements

3.9 As shown in Table 3.1, none of the selected entities developed fully effective, documented risk management arrangements.

3.10 The APSC, ASADA and ComSuper did not establish risk management plans. ASADA advised the ANAO that formal risk management arrangements were not established for the same reasons as the decision to not establish an implementation plan (see paragraph 3.8). The APSC advised the ANAO that it did not establish risk management plans as there were no issues identified at the commencement of bargaining that required formal risk management arrangements. CSC advised the ANAO that, following a review of the available ComSuper documentation, it was not able to identify the development of any risk management plans for the bargaining process.

28 The issuing of the NERR is a formal process that gives employees that will be covered by the proposed agreement the notice that they have the right to be represented by a bargaining representative. The NERR is required to be issued within 14 days of the agency agreeing to commence bargaining for an agreement.

3.11 DAWR also did not establish an overarching plan identifying risks and mitigation strategies at the commencement of bargaining activities, although it did develop an industrial action contingency plan in June 2014, which was updated in September 2015. Following DAWR's fourth unsuccessful ballot, in March 2017, a communications plan was developed which included five risks associated with communications and a single risk associated with industrial action. Communications and stakeholder engagement were targeted to mitigate the identified risks.

3.12 In its March 2014 draft Communications and Consultation Strategy, DFAT identified inadequate consultation and communication as key risks in negotiating a new agreement and having it approved by staff in a timely manner. While there was not a formal process in place to manage risks arising from the enterprise agreement, there was evidence of issues and risks to the negotiation of the enterprise agreement being reported to the department's Secretary, along with suggested actions to address these.

3.13 Prior to the commencement of bargaining, Human Services identified and documented a number of risks relating to the negotiation of its new enterprise agreement, including risks related to industrial action. Human Services advised the ANAO that formal risk assessments were not developed following the second ballot with identified risks being managed as part of business as usual activities. Progress in bargaining, industrial action, industrial disputes, communications and adverse media reporting were periodically reported throughout bargaining to the department's Executive Committee. Significant events briefs detailing industrial action and bargaining activities as well as Secretary/Minister briefing notes were developed at regular intervals to provide the Executive with high level updates on the progress of bargaining and the impacts of industrial action.

3.14 IBA did not develop a risk management framework for negotiating its enterprise agreement. While some risks and mitigation approaches were identified in a May 2014 executive brief, there was no evidence that these were actively monitored or managed during the bargaining process. IBA advised that risk was managed as part of business as usual activities, as well as during Executive and Board meetings.

Recommendation no.2

3.15 That for future bargaining rounds, all selected entities establish key governance arrangements such as implementation plans, communication plans and risk management documentation prior to the commencement of bargaining activities and actively use these throughout the process.

Australian Public Service Commission response: *Agreed.*

3.16 *The APSC has just concluded bargaining for a replacement agreement, the Australian Public Service Commission Enterprise Agreement 2018–21. Appropriate governance arrangements informed by this audit process were put in place prior to the commencement of bargaining.*

Australian Sports Anti-Doping Authority response: *Agreed.*

3.17 *ASADA agrees to the recommendation and will ensure key governance arrangements such as implementation plans and risk management documentation are in place prior to the commencement of future bargaining activities, and will actively use these throughout the process.*

Department of Agriculture and Water Resources response: *Agreed.*

3.18 *The department acknowledges the importance of timely and appropriate governance arrangements to effect government, business and legislative outcomes. The department will implement additional mechanisms to improve the governance arrangements across the enterprise, including those relating to enterprise bargaining.*

Department of Foreign Affairs and Trade response: *Agreed.*

3.19 *The Department of Foreign Affairs and Trade acknowledges and agrees with this recommendation. The department adopted strengthened governance arrangements throughout the 2018 Enterprise Agreement bargaining process and will continue these arrangements in future bargaining processes.*

Department of Human Services response: *Agreed.*

3.20 *The department agrees with this recommendation and will ensure that key governance arrangements are again established for future bargaining rounds.*

Indigenous Business Australia response: *Agreed.*

Were effective communication strategies in place to inform staff of the impact of a yes or no outcome?

All selected entities developed a communications strategy at some point during their bargaining processes to inform staff of the impact of a yes or no outcome for their respective enterprise agreements.

3.21 Developing a communication strategy was recommended for all entities by the Minister Assisting the Prime Minister for the Public Service, and the APSC developed a Communication Guide to assist entities in developing their own communications strategy. The ANAO examined the communication and staff engagement arrangements entities had in place.

Table 3.2: ANAO's assessment of selected entities' communications plans and stakeholder engagement activities

	APSC	ASADA	ComSuper	DAWR	DFAT	Human Services	IBA
Did the entity establish a communications strategy?	●	◐	●	●	●	●	◐
Did the entity undertake staff engagement activities?	◐	◐	◐	●	●	●	◐
Key: <input type="radio"/> Did not establish a communications strategy or undertake staff engagement activities <input type="radio"/> Did establish a communication strategy or undertook staff engagement activities, but not timely or complete <input checked="" type="radio"/> Established a communications strategy or undertook staff engagement activities in a timely way							

Source: ANAO analysis of entity documentation.

Communication Strategies

3.22 As shown in Table 3.2, five of the seven selected entities (APSC, ComSuper, DAWR, DFAT, and Human Services) developed communication strategies prior to the commencement of bargaining that identified: key messages, different mediums of communication, intended audiences for the communication, and timeframes for these communications. Both Human Services and DAWR developed multiple communication strategies.

3.23 ASADA did not establish a formal communications plan while developing its bargaining position or ahead of the first ballot. ASADA advised the ANAO that it relied on informal communications via email at relevant points in the process and after each bargaining meeting. ASADA established a communications plan in May 2017, following the agency's first unsuccessful ballot. ASADA employs a casual workforce larger than its ongoing and non-ongoing workforce to undertake its test collection work. The plan identified the need to engage with the casual workforce through face-to-face sessions with ASADA's Chief Executive Officer (CEO) to gain feedback on the staff concerns with the agreement that was not approved, as well as to provide information on the new proposed agreement. The communication plan further recommended disseminating information in staff updates and explanatory documents covering the pay offer, as well as the draft agreement and draft policies to support the agreement.

3.24 IBA developed an "Enterprise Agreement Project/Communications Outline" which identified key milestones for bargaining but did not outline objectives, key messages, audience segmentation, evaluation or intended communications channels. Despite the absence of a formal communications strategy or plan, IBA utilised a variety of methods to communicate with its employees during bargaining, such as news bulletins, facts sheets and an intranet page.

3.25 The ANAO reviewed a selection of available communication material from each selected entity, including brochures, internet pages and email communications. These communications outlined the requirements of the bargaining policies, and the benefits employees would receive under the proposed agreement. The ANAO did not identify any communication material that was inconsistent with the bargaining policy.

Staff engagement

3.26 As shown in Table 3.2, all entities undertook staff engagement activities during the process of negotiating their new enterprise agreement. These activities included: developing stakeholder strategies, surveying staff, and conducting consultation sessions.

3.27 DFAT, ComSuper, APSC and Human Services developed stakeholder engagement strategies ahead of the expiry of their previous agreements. ASADA, DAWR and IBA did not establish a formal stakeholder engagement strategy prior to the commencement of negotiations for their new enterprise agreements.

3.28 ComSuper, DAWR, and Human Services conducted surveys of staff views on employment and remuneration issues ahead of the expiry of their previous agreements. Both DAWR and Human Services also surveyed staff following unsuccessful ballots. The APSC also surveyed staff shortly after the expiry of the previous agreement.

4. Selected entities' development and monitoring of productivity improvements

Areas examined

This chapter examines the arrangements entities had in place for developing and monitoring productivity improvements to fund remuneration increases.

Conclusion

The documented evidence base regarding the source of funds to pay for remuneration increases reduced once the requirement to have productivity measures approved by the Australian Public Service Commission (APSC) was removed. There is currently no requirement for entities or the APSC to monitor and report on either the achievement of identified productivity measures, or sources of funding for remuneration increases, limiting the transparency of productivity gains (including from the removal of restrictive work practices).

Area for improvement

The ANAO suggests that for implementation of the 2018 bargaining policy, entities clearly document costing information and the sources of funding to provide assurance to their accountable authorities that all costs associated with the enterprise agreement can be met from within existing departmental resources.

Did selected entities document the funding sources to support proposed remuneration increases?

Four of the seven selected entities did not fully quantify or document the productivity offsets used to fund remuneration increases, and the level of documentation reduced once the requirement to have detailed productivity measures approved by the Australian Public Service Commission was removed. The ANAO was not provided with evidence to demonstrate that any entities provided explicit documented assurance to their accountable authorities that enterprise agreements would be funded without the re-direction of program funding, a reduction of services or outputs, or increases in fees for services and products. Selected entities undertook limited monitoring of the extent to which specific productivity measures achieved the envisaged savings.

4.1 As detailed from paragraph 1.5, both the 2014 and 2015 policies contained requirements for remuneration increases to:

- be affordable within an entity's existing and known budget;
- be funded without the re-direction of program funding, a reduction of services or outputs, or increases in fees for services and products; and
- have sufficient productivity improvements to fund the proposed remuneration increases.

4.2 Accountable authorities were required under both policies to sign a *Remuneration and Funding Declaration* to the (APSC certifying compliance with the above conditions.²⁹

4.3 The ANAO reviewed the evidence developed and documented by selected entities to support the signing of the declaration by accountable authorities focusing on productivity measures, as these are the primary means of funding the costs associated with the remuneration increases. The ANAO did not assess the affordability of enterprise agreements.

Entity approaches under the 2014 bargaining policy

4.4 Under the 2014 policy, entities were required to detail and submit to the APSC for approval of the individual productivity offsets that would be used to fund remuneration increases.³⁰ Both ComSuper and the APSC reached agreement with employees for their enterprise agreements under the 2014 policy.

4.5 To fund its proposed remuneration increase, ComSuper identified ten productivity offsets which were outlined in the bargaining proposal submitted and approved by the APSC. ComSuper estimated that these productivity measures would lead to \$2.841 million in savings, with the estimated cost of the agreement over three years to be \$2.834 million, equating to a 2.6 per cent increase over the life of the agreement.³¹ These productivity measures related to staffing reductions, changes to employee conditions/entitlements, and removal of restrictive work practices.

4.6 The APSC estimated the total cost of the agreement to be \$2.105 million, equating to a 4.5 per cent increase over the life of the agreement. To offset the costs of the proposed remuneration increase, the APSC identified two key productivity measures related to staffing reductions and ongoing reorganisation of business operations. The above measures accounted for 99 per cent of the savings required to offset the remuneration increase. The APSC estimated that removing restrictive work practices would fund the remaining one per cent and identified a number of clauses which it considered restrictive. The APSC also identified a workforce restructure which would allow for the abolishment of one SES Band 1 position. The APSC's agreement came into effect on 29 July 2015. Following the release of the 2015 bargaining policy, in November 2015 the acting Commissioner agreed to a determination to increase the remuneration for APSC staff to be in line with the revised salary increase under the new policy of two per cent each year, totalling six per cent over the life of the agreement. The APSC estimated this would cost an additional \$684,800 over the life of the agreement, taking the total estimated cost of the agreement to around \$2.7 million. The business case supporting the determination for an additional 0.5 per cent remuneration increase each year did not include any productivity measures.

29 For enterprise agreements reached under the 2015 policy, a declaration that there were sufficient productivity improvement to offset the proposed remuneration increase was also required. Productivity offsets were assessed by the APSC in consultation with the Department of Finance for the 2014 policy. The declaration for the 2018 policy also requires compliance with these conditions, while also requiring entities to describe the productivity initiatives that will be used to support the entity's remuneration increase.

30 In consultation with the Department of Finance — see Figure 1.1 for further detail.

31 The maximum remuneration increase allowed under the 2014 policy was 4.5 per cent over the three years of the agreement.

Entity approaches under the 2015 bargaining policy

4.7 With the release of the 2015 policy, entities were no longer required to quantify and submit their productivity offsets for approval by the APSC. The 2015 policy changed to enable all productivity requirements to be achieved through the removal of restrictive work practices, although entities were still encouraged to implement other productivity improvements to support more efficient operations, either within or outside of the workplace arrangement.

4.8 For its proposed agreements under the 2014 policy, DAWR quantified the productivity measures which would be used to offset the remuneration increase of the 4.5 per cent allowable under the policy.³² The proposed productivity measures included service delivery modernisation, removing miscellaneous leave, and removing travel time accrual for APS1–6 employees for overseas travel. DAWR estimated these productivity measures would achieve around half of the \$38 million or \$42 million required.³³ DAWR estimated that unquantifiable productivity measures³⁴ achieved through simplification of the proposed agreement, and absence and leave initiatives would save the remaining amount, equating to a total of \$42.40 million. The proposal was approved by the APSC on 8 July 2015.

4.9 For proposed agreements under the 2015 policy, DAWR's accountable authority signed Remuneration and Funding Declarations on 4 November 2015, 23 December 2015, and 19 May 2017. The signed declarations confirmed that all costs arising from the proposed remuneration increases could be funded from within the agency budget and revenue streams and that there was sufficient productivity improvements to fund the proposed remuneration increases. Supporting evidence was developed to support these declarations. However, the costings were based on the original productivity measures, with the unquantifiable savings component of the costings increasing to match the shortfall required for each proposed agreement. DAWR did not identify where the unquantified savings component would be sourced from or the rationale for its increase over time. Estimates included in the final declaration from May 2017 noted that the total cost of the remuneration increases was \$67.92 million over the life of the agreement.

4.10 Human Services developed multiple funding and remuneration proposals under the 2014 policy. On 26 June 2015, prior to the department's first voting round, the department provided a remuneration proposal to the APSC for approval, which included an average 1.5 per cent per year salary increase. The remuneration offer was offset by a range of measures including: changes to performance and learning and development arrangements; reduced increment advancement; workforce and ICT re-profiling; and removal of higher duties allowance. As required under the 2014 policy, Human Services quantified productivity measures to offset the cost of each of the proposed agreements and these were approved by the APSC.

32 DAWR sought APSC approval for an agreement in February 2015 for a 2.5 per cent remuneration increase which was provided, however, following employee feedback on the proposal, the department did not proceed to a vote of employees on this proposal.

33 DAWR's proposal included two options: one consisting of a 1.5 per cent salary increase each year over the three years of the agreement, or two per cent of the remuneration increase being front loaded in the first year of the agreement.

34 In May 2015, the Australian Public Service Commissioner released revised guidance on the assessment of productivity proposals. This revised guidance noted that productivity initiatives which produced genuine improvements that were in the interests of the employer to pursue, but were not precisely quantifiable, could be put forward as productivity offsets. This could include changes to employee terms and conditions, restrictive or inefficient enterprise agreement clauses, or entity procedures and processes.

4.11 For proposed agreements under the 2015 policy, Human Services' accountable authority signed Remuneration and Funding Declarations on 16 November 2015, 24 August 2016 and 6 April 2017. The November 2015 proposal estimated the total cost of remuneration increases at around \$344 million. Documentation to support the signing of the declaration identified productivity measures equating to around \$222 million, or approximately 65 per cent of the estimated cost of the agreement. These productivity measures included: reducing incremental salary advancement; workforce and ICT re-profiling; changes to some allowances; changes to performance and learning and development arrangements; including the model consultation clause in the enterprise agreement as well as streamlining consultative committees; and delays in recruitment activities.

4.12 The August 2016 declaration estimated the total cost of the remuneration increase at around \$368 million. Documentation to support the signing of the declaration identified similar productivity measures as in November 2015, equating to around \$206 million or approximately 56 per cent of the estimated cost of the agreement.³⁵

4.13 The April 2017 declaration estimated the total remuneration increase at \$399 million. To offset the cost of the remuneration increase, Human Services identified 18 productivity measures (similar to those identified previously), including: workforce and ICT re-profiling; changes to some allowances; including the model consultation clause in the enterprise agreement and streamlining consultative committees; and a recruitment lag. Human Services estimated this would offset around \$205 million or around 51 per cent of the cost of the proposed enterprise agreement.

4.14 ASADA did not quantify measurable productivity offsets to fund the remuneration increase. ASADA's Chief Executive Officer signed a Remuneration and Funding Declaration on 21 January 2016 and on 17 August 2017. These declarations stated that all costs arising from the proposed remuneration increases could be funded from within the known future agency budget and revenue streams and that there were sufficient productivity improvements to fund the proposed remuneration increase. However, the ANAO was not provided with evidence to demonstrate that evidence was provided to the accountable authority to support the signing of this statement. Estimates included in the final declaration from August 2017 indicate that the total cost of the remuneration increase was \$860 000 over the life of the agreement.

4.15 DFAT had a proposed agreement approved by the APSC under the 2014 policy in August 2015, however due to the change in policy soon after approval, it was not put to staff to vote on and DFAT finalised its agreement under the 2015 bargaining policy. DFAT produced detailed costings for the enterprise agreement proposals under the 2014 bargaining policy and identified productivity savings related to business process improvements for the enterprise agreement totalling \$60.8 million. Following the release of the 2015 policy, DFAT increased its remuneration offer to the average of two per cent per annum as allowed under the policy, with the estimated cost of the remuneration increase to be approximately \$50 million, using the previously identified productivity measures to fund the cost of the remuneration increases.

4.16 IBA reached its agreement under the 2015 bargaining policy. IBA developed some preliminary financial modelling under the 2014 policy, identifying the costs of both a 1 per cent and a 1.5 per cent salary increase. The modelling included savings measures to account for 20 per cent

35 For example, removal of the reduction of incremental salary advancement was one productivity measure that was removed.

of the cost of a 1.5 per cent pay increase. IBA did not seek the approval of the APSC for this offer under the 2014 policy. IBA estimated the total cost of its final agreed remuneration increase over the life of the agreement to be \$2.8 million, and identified nine productivity measures (mainly related to property and business re-structuring), estimated to save \$3.3 million over the life of the agreement.

Comparison of 2014 and 2015 approaches to documentation

4.17 The two entities that reached their agreements under the 2014 policy (APSC and ComSuper) quantified productivity measures that fully offset the cost of their remuneration increases, as was required under the 2014 policy.

4.18 With the release of the 2015 policy, entities were no longer required to quantify and submit their productivity offsets for approval by the APSC. Of the six entities who reached agreement under the 2015 policy:

- two entities (DFAT and IBA) quantified and documented how all of the costs of the remuneration costs of their enterprise agreements would be offset by productivity measures;
- three entities (Human Services, DAWR and the APSC)³⁶ quantified and documented how a proportion of the costs associated with their enterprise agreement would be offset by productivity measures; and
- one of the entities (ASADA) did not identify any specific productivity measures.

4.19 The ANAO was not provided with evidence to demonstrate that any entities provided explicit documented assurance to their accountable authorities when signing Funding and Remuneration Declaration that remuneration increases would be funded without the re-direction of program funding, a reduction of services or outputs, or increases in fees for services and products.

4.20 Selected entities advised that advice on the affordability of proposed agreements and ability of the entity to meet the requirements of the policy were provided as part of other briefings with accountable authorities and/or Executive Committees.

4.21 The change in policy requirements between the 2014 and 2015 policies reduced the level of quantification and documentation developed to support productivity measures.

4.22 To support compliance with the 2018 workplace bargaining policy, and in line with good financial management practices and public administration requirements³⁷, entities should clearly quantify and document the productivity measures to be used to offset remuneration increases. Entities should also document information relating to the entity's ability to meet all costs associated

36 The APSC identified the productivity measures to fund the costs of the remuneration increase as required under the 2014 policy, but did not provide any additional documentation as to from where the additional 1.5 per cent increase paid to staff following the release of the 2015 policy would be funded.

37 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out a number of requirements relating to the use and management of public funds by Commonwealth officers, including for: accountable authorities to promote the proper use and management of public resources for which the authority is responsible, as well as the financial sustainability of the entity; and that commonwealth officials perform their duties with a reasonable level of care and diligence.

with the enterprise agreement, including from within existing and known departmental resources, without the redirection of program funding or increases to fees and services.

Monitoring and reporting of productivity and related conditions

4.23 There is currently no requirement for entities or the APSC to monitor or report on whether any of the identified productivity measures have been undertaken and whether they have achieved the level of productivity originally envisaged. Further, removal of restrictive work practices could account for productivity, however there is no requirement or mechanism to monitor, report on or assess the extent to which this might have contributed to increased productivity for entities.

4.24 There is also no specific requirement to monitor or report on whether all costs associated with the enterprise agreement were met from within existing and known departmental resources, without the redirection of program funding or increases to fees for services.

4.25 Selected entities for this audit undertook limited monitoring of the extent to which specific productivity measures achieved the envisaged savings. Entities advised the ANAO that it was not always practical or possible to do so, for various reasons including the types of measures used not being easily trackable, the measure being achieved with the commencement of the new enterprise agreement, and the measures being linked to broader departmental reform.



Grant Hehir
Auditor-General

Canberra ACT
13 December 2018

Appendices

Appendix 1 Entity responses

Formal responses received by ANAO following circulation of the draft report are reproduced in Appendix 1.

Responses were received from:

- Australian Public Service Commission;
- Australian Sports Anti-Doping Authority;
- Department of Agriculture and Water Resources;
- Department of Human Services;
- Department of Foreign Affairs and Trade; and
- Indigenous Business Australia.



Australian Government
Australian Public Service Commission

AUSTRALIAN PUBLIC SERVICE COMMISSIONER

Mr Grant Hehir
 Auditor-General
 Australian National Audit Office
 GPO Box 707
 CANBERRA ACT 2601

Dear Mr Hehir

Thank you for the opportunity to respond to the proposed report under section 19 of the *Auditor-General Act 1997* entitled “Implementation of the Australian Government’s Workplace Bargaining Framework”.

I note the findings that the Australian Public Service Commission (APSC), as the agency responsible for the administration of workplace bargaining policies, designed effective arrangements to support implementation of the 2014 and 2015 policies across the Commonwealth and provided guidance and support material to assist entities in developing agreements.

The audit has already informed improvements to existing quality assurance processes in our administration of the workplace bargaining policy. We will continue to refine these using the outcomes of this audit, as well as through our usual quality assurance processes.

The APSC was also involved as an entity, with the audit examining how the APSC implemented the 2014 and 2015 bargaining policies in relation to its own workforce. We have recently concluded bargaining for a 2018-21 enterprise agreement, and I am pleased to note that the governance arrangements for this round of bargaining were informed and strengthened by the audit process.

The APSC’s response to the proposed report is at [Attachment A](#).

Finally, I would like to take this opportunity to thank your staff involved in the audit for their collaborative and professional approach.

Yours sincerely

Mary Wiley-Smith
 Acting Public Service Commissioner
 23 November 2018

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Australian Government
Australian Sports Anti-Doping Authority

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29 November 2018

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

Thank you for providing the Australian Sports Anti-Doping Authority (ASADA) with the opportunity to comment further on the Australian National Audit Office's (ANAO) proposed report on the Implementation of the Australian Government's Workplace Bargaining Framework.

ASADA agrees with the ANAO's recommendation to agencies included in the Audit and specific areas of improvement for ASADA. The agency acknowledges that there are a number of areas that it needs to focus on in relation to bargaining rounds, and agrees that for future bargaining rounds it will ensure key governance arrangements such as implementation plans and risk management documentation are in place prior to the commencement of bargaining activities, and will actively use these throughout the process. I have included revised responses to the recommendations at Attachment A.

I have asked Mr Darren Mullaly, Deputy CEO Legal, Education and Corporate within my agency to work closely with your office in relation to this audit. Mr Mullaly can be contacted on 62224269.

Yours sincerely

David Sharpe APM OAM
Chief Executive Officer

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Australian Government
Department of Agriculture
and Water Resources

SECRETARY

Ms Lisa Rauter
 Group Executive Director, Performance Audit Services Group
 Australian National Audit Office
 GPO Box 707
 Canberra ACT 2601

Dear Ms Rauter

I am writing in response to your correspondence of 26 October 2018 seeking comment from the Department of Agriculture and Water Resources (the department) on the Australian National Audit Office's (ANAO) proposed report on the *Implementation of the Australian Government's Workplace Bargaining Framework*.

The department welcomes the audit's overall conclusions and findings. The department is pleased that the ANAO found that overall its implementation of the Government's Workplace Bargaining Framework was broadly effective and that appropriate governance arrangements were established.

The department agrees with the recommendation directed to the department to ensure that *for future bargaining rounds, entities establish key governance arrangements such as implementation plans, communication plans and risk management documentation prior to the commencement of bargaining activities and actively use these throughout the process*.

The department's formal response to the proposed report's recommendation directed to the department is at [Attachment A](#).

I would like to thank the ANAO for the cooperation of the audit team and the professional manner in which the audit was conducted.

Thank you for the opportunity to comment on the proposed audit report.

Yours sincerely

Daryl Quinlivan

20 November 2018

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Australian Government
Department of Foreign Affairs and Trade

Secretary

Telephone: 02 6261 2214
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File Number: 18/8586

26 November 2018

Lisa Rauter
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Lisa,

Thank you for your email dated 26 October 2018 regarding the Australian National Audit Office (ANAO) proposed audit report – Implementation of the Australian Workplace Bargaining Framework.

The Department of Foreign Affairs and Trade (DFAT) acknowledges and agrees with the findings in the audit report.

DFAT's response is provided in Attachment A.

I appreciate the professional approach adopted by the ANAO in dealing with DFAT business groups during the audit process.

Yours sincerely

Frances Adamson

R G Casey Building, Barton ACT 0221 www.dfat.gov.au



Australian Government
Department of Human Services

Our Ref: EC18-001922

Secretary
Renée Leon PSM

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

**Australian National Audit Office Performance Audit on the Implementation of the
Australian Government's Workplace Bargaining Framework**

Thank you for providing the Department of Human Services (the department) with the opportunity to comment on the Australian National Audit Office's (ANAO) proposed report, *Implementation of the Australian Government's Workplace Bargaining Framework*.

The department agrees with recommendation two (noting that recommendation one applies specifically to the APSC) and will ensure that key governance arrangements are again established for future bargaining rounds.

The department notes the ANAO's position that accountable authorities may have benefited from more detailed documentation on proposed remuneration increases when developing new enterprise agreements. The department's view remains that, over the course of its extended bargaining process, the then Accountable Authority was provided with sufficient information to meet the requirements under the workplace bargaining framework.

With respect to the ANAO's commentary on the use of supplementary arrangements, the department notes that there was no requirement to obtain the APSC's approval for these arrangements. Notwithstanding this, the department voluntarily provided copies of draft protocols to the APSC for comment and made all requested changes prior to finalisation. On this basis, the department maintains that the protocols it put in place alongside the enterprise agreement are appropriate and consistent with the intent of the applicable bargaining policy.

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Attachment A to this letter details the overall response to the proposed report and to the ANAO's recommendations as they relate to the department.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Renée Leon'.

Renée Leon

21 November 2018



Australian Government
Indigenous Business Australia

iba.gov.au

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PO Box K363, Haymarket NSW 1240
ABN 25 192 932 833
1800 107 107



20 November 2018

Mr David Brunoro
Executive Director, Performance Audit Group
Australian National Audit Office
19 National Circuit
Barton ACT 2600

Email to: david.brunoro@anao.gov.au

Dear Mr Brunoro

Thank you for the providing the proposed report for the Australian National Audit Office (ANAO) performance audit of the implementation of the Australian Government's workplace bargaining framework (**the Audit**).

Indigenous Business Australia's (IBA's) involvement in this Audit has been a useful precursor for the planning of a new enterprise agreement.

IBA notes the ANAO's conclusion which is drawn from a sample of seven micro to extra-large entities with a wide range of resources, funding arrangements and purposes. IBA, a small Corporate Commonwealth entity, will utilise fit for purpose implementation, project and communications plans and risk management documentation in its planning for a new enterprise agreement and these will be actively used throughout the process.

Recommendation - Agreed

Yours sincerely

Rajiv Viswanathan
Chief Executive Officer

IBA
INDIGENOUS
BUSINESS
AUSTRALIA