



Committee Secretary  
Senate Education and Employment Committees  
Parliament House Canberra ACT 2600  
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27 October 2016

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

Dear Committee Secretary

My name is Sinddy Ealy and I am the elected Section Secretary for the ABC Section of the CPSU. I welcome the opportunity to make this submission on behalf of the ABC Section of the union.

The CPSU is the largest ABC staff union and has been actively representing ABC members since the Australian Broadcasting Corporation's inception in 1932. This year I led the CPSU negotiations for the ABC Enterprise Agreement and am pleased to advise the Committee that a new agreement was voted up by the majority of ABC staff on 26<sup>th</sup> October 2016 with a 71% yes vote.

The new agreement will cover the employment arrangements for approximately 5000 ongoing and non-ongoing employees at the ABC. The fact that the CPSU was able to achieve this outcome in just less than six months exemplifies what is possible when an employer is able to genuinely negotiate.

The ABC was not legally required to follow the Australian Government's Workplace Bargaining Policy nor was the ABC Enterprise Agreement subject to approval by the Australian Public Service Commission (APSC). Section 32 of the *Australian Broadcasting Act 1983* clearly identifies that employment matters are to be determined by the Corporation.

Given this, the ABC was able to respond constructively to employee feedback, and the CPSU was able to negotiate significant improvements in the enterprise agreement including:

- Up to 7 days paid Family Violence Leave (Appendix 2);
- Increases to paid maternity leave and supporting partner leave by 2 weeks each;
- Retaining ABC employees' right to pre-decision consultation on major change (Appendix 3);
- Maintaining core rights regarding Performance Management (Appendix 4), Recruitment, and Purposes, Principles and Objectives; and
- Improving performance based pay opportunities for staff at the top of their classification.

In addition, the ABC was also able to offer employees a \$500 sign-on bonus and 100% back pay - both of which were instrumental in securing a yes vote from ABC employees.

Like all negotiations, there were compromises on both sides with the ABC achieving its claims in relation to rostering, recruitment, performance management and the introduction of annual operational closedown.

The CPSU is a union with a long standing, proven-track record of successfully negotiating enterprise agreements across the private and public sectors. It is clear to me that had the ABC been subjected to the same bargaining policy that is being applied to the Australian Public Service, the above achievements for the ABC and its workers would not have been possible.

As identified in the list of achievements above, the new ABC Enterprise Agreement contains constructive content which would otherwise have been prohibited by the APSC. During negotiations the ABC confirmed to the CPSU that the APSC had been in discussions with the ABC on these matters. The ABC also confirmed that the APSC had provided them with written correspondence regarding the ABC's 2013-2016 Enterprise Agreement. More details on these matters would be in the possession of the ABC and APSC, and I respectfully suggest that the Committee seeks those details from these parties.

Again I would like to thank the Committee for the opportunity to provide this submission. I can be contacted on 0424 162 060 or emailed at [sinddy.ealy@cpsu.org.au](mailto:sinddy.ealy@cpsu.org.au) to discuss.

Yours sincerely,

A handwritten signature in blue ink that reads "Sinddy Ealy". The signature is written in a cursive, flowing style.

Sinddy Ealy  
ABC Section Secretary CPSU

## **Appendix 1: Key Dates for ABC Enterprise Bargaining**

- 14 March 2016: National Employee Representation Rights Notice issued
- 1 April 2016: Union Log of Claims provided to employer
- 30 June 2016: Enterprise Agreement Nominal Expiry Date
- 11-25 October 2016: All-Staff vote conducted

## Appendix 2: New Family Violence Clause in the ABC Enterprise Agreement 2016-2019

### 41.1.6

#### Family Violence Leave

- a. The ABC recognises that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work, and is therefore committed to providing support to Employees that experience family violence.
- b. “Family violence” is abusive and/or violent behaviour used by one person to control and dominate another person or persons within a domestic relationship and may include physical, sexual, financial, verbal or emotional abuse by a family or household member.
- c. An employee (other than a casual employee) experiencing family violence will have access to paid leave for:
  - i. attending legal proceedings, counselling, appointments with a medical or legal practitioner;
  - ii. relocation or making other safety arrangements;
  - iii. other activities associated with the experience of family violence.
- d. The paid leave provided in clause 41.1.6(c) is in addition to existing entitlements and may be taken as consecutive or single days, or as a portion of a day.
- e. The paid leave in this clause is to be capped at seven days per annum and does not accrue.
- f. Casual employees are entitled to time off work without pay for the purposes set out in clauses 41.1.6 (a), (b) and (c) above.
- g. If required by the ABC, the employee must provide evidence that would satisfy a reasonable person that the leave is for the purpose set out in clause 41.1.6 and such evidence may include a document issued by the Police Service, a Court, a Doctor, District Nurse, family violence support service or lawyer.

### 41.1.7

An employee may be requested to provide suitable supporting documentation for any miscellaneous paid leave granted under this clause.

### 41.1.8

Miscellaneous paid leave will count as service for all purposes.

## Appendix 3: Consultation clause in the ABC Enterprise Agreement 2016-2019

### 53.1 General

#### 53.1.1

This subclause applies if:

- a. the ABC has made a formal proposal to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise; and
- b. the change is likely to have a significant effect on employees of the enterprise.

#### 53.1.2

The ABC must notify the relevant employees and any union covered by this Agreement of the formal proposal.

#### 53.1.3

The relevant employees may appoint a representative for the purposes of the procedures in this term.

#### 53.1.4

The ABC must recognise the representative in accordance with clause 53.1.3, if:

- a. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- b. the employee or employees advise the ABC of the identity of the representative.

#### 53.1.5

As soon as practicable after the ABC has developed the formal proposal, the ABC must:

- a. discuss with the relevant employees:
  - i. the introduction of the change; and
  - ii. the effect the change is likely to have on the employees; and
  - iii. measures the ABC is taking to avert or mitigate the adverse effect of the change on the employees; and
- b. for the purposes of the discussion – provide, in writing, to the relevant employees:
  - i. all relevant information about the change including the nature of the change proposed;
  - ii. information about the expected effects of the change on the employees; and
  - iii. any other matters likely to affect the employees.

#### 53.1.6

However, the ABC is not required to disclose confidential or commercially sensitive information to the relevant employees.

#### 53.1.7

The ABC must give prompt and genuine consideration to matters raised about major workplace change.

#### 53.1.8

In this term, a major change is **likely to have a significant effect on employees** if it results in:

- a. the termination of the employment of employees; or
- b. major change to the composition, operation or size of the ABC's workforce or to the skills required of employees; or

- c. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- d. the alteration of hours of work; or
- e. the need to retrain employees; or
- f. the need to relocate employees to another workplace; or
- g. the restructuring of jobs.

#### 53.1.9

In this term, relevant employees means the employees who may be affected by the major change.

## **23. Performance Management**

### 23.1 Application

#### 23.1.1

Ongoing employees, employees engaged on Nominated Long Term Specified Task Employment, employees engaged on Nominated Long Fixed Term Employment and employees on Phased Retirement Employment will participate in the performance management system.

### 23.2 Performance Cycle

#### 23.2.1

The performance cycle is generally the 12 month period during which the employee's job is planned, regular feedback is given and received, and the employee's performance is formally appraised.

#### 23.2.2

The common deadline for completing appraisal meetings in respect of the completed performance cycle (Appraisal Due Date) will be 1 March each year, unless the ABC has determined that an alternative date should apply.

### 23.3 Tracking and Feedback

#### 23.3.1

The manager and employee will monitor progress and provide ongoing feedback throughout the performance cycle on what has been achieved against the employees Job Plan.

23.3.2 The Job Plan will provide a clear description of the employee's performance requirements, in accordance with the Work Level Standards and Individual Learning and Development Plan for the forthcoming cycle.

### 23.4 Appraisal Meeting

#### 23.4.1

On or prior to the Appraisal Due Date, the manager and employee will meet to formally review the employee's performance and development over the previous cycle (Appraisal Meeting) and the employees Job Plan. Provided that where an employee is unavailable because of leave, the Appraisal Meeting will be held as soon as possible on their return from leave.

### 23.5 Appraisal Outcome

#### 23.5.1

The provisions of this subclause do not apply where:

- a. the employee has been working to their Job Plan for less than six months during the performance cycle;
- b. the employee has been absent on leave in excess of six months during the performance cycle; or
- c. the employee has been promoted or transferred with a salary increase within six months prior to the end of the performance cycle.

### 23.5.2

Following the appraisal meeting, the manager will evaluate the employee's performance against the requirements of the Job Plan and the Work Level Standards. Performance will be rated in accordance with the following definitions:

Rating		Description
U	Unsatisfactory	Performance fails to meet minimum requirements within the current band. Before an employee is given a 'U' rating, a manager will commence the process under clause 23.7 and clause 23.5.3 (a) will apply.
GNM	Goals Not Met	Performance does not meet some requirements within the current band and clauses 23.5.3 (b) and 23.5.6 will apply.
M	Meets	Performance meets all requirements within the current band and clause 23.5.3 (c)(i) will apply.
E	Exceeds	Performance exceeds all or most requirements within the current band and 23.5.3 (c), (d) or (e) will apply.

### 23.5.3

The rating will be used to govern salary advancement where appropriate, either within the current salary band or to the next higher band in accordance with the Job Plan. The following principles will apply:

- a. No salary increase will be payable to employees who are rated 'U'.
- b. No salary increase will be payable to employees who are rated 'GNM' subject to 23.5.6 below.
- c. Employees in Bands 1-6 will be advanced:
  - i. one salary point within their current band with a rating of 'M'; or
  - ii. two or more salary points within their current band with a rating of 'E'.
- d. Employees in Bands 7 to 8 will be advanced within their current band with a rating of 'E'.
- e. Employees in Bands 1 to 8 who are already at the top of their band at the time of the Appraisal Due Date and receive an 'E' rating will receive a bonus which is equivalent to 2% of their base rate.

### 23.5.4

Salary for employees in Band 9 will be at the discretion of management.

### 23.5.5

Any salary increases resulting from an Appraisal will be paid with effect from the first pay period on or after the Appraisal Due Date that year. Any bonus resulting from an Appraisal will be paid in the first pay period on or after the Appraisal Due Date, unless the ABC determines that an alternative date should apply.

### 23.5.6

Despite 23.5.3b. above, if an employee in Band 1 to 6 who is eligible to be advanced under the current salary band has been rated GNM under clause 23.5.2 in respect of a Performance Cycle;

- a. The employee's manager will conduct a review on or around three months after the Appraisal Due Date (GNM Review);
- b. If at the time of the GNM Review, the employee meets all the requirements of the Job Plan and the Work Level Standards, the employee will be advanced one salary point within their current band; and
- c. Any salary increase under this clause will be paid with effect from the first full pay period backdated to three months after the Appraisal Due Date.



## 23.6 Reconsideration, Appeal and Dispute Resolution

### 23.6.1

Disputes regarding:

- a. a salary outcome or rating of an Appraisal; or
  - b. an employee who believes that they have regularly been performing, and were required to perform, tasks beyond the level specified in their Job Plan;
- will be dealt with in accordance with subclause 60.4 Reconsideration and Appeal against an Appraisal Decision.

## 23.7 Managing Underperformance

### 23.7.1

Discussions about work performance may be held at any time as part of the ongoing tracking and feedback process. Where a problem with an employee's performance is identified and the manager determines that formal processes need to be applied, the manager will:

- a. advise the employee in writing that an underperformance issue/s needs to be addressed;
- b. inform the employee in writing of the performance standards they are expected to achieve and the area/s of performance they need to improve. These standards will be set fairly and be consistent with the Work Level Standards;
- c. provide an opportunity for the employee to respond so that all relevant matters can be considered, including any possible changes to the performance standards expected and any requests by the employee for training, coaching, re-arrangement of duties or changes to the work environment;
- d. set a reasonable period over which the employee's performance will be monitored and a date for review having regard to (c) above; and
- e. advise the employee of the likely consequences if the employee does not meet the required standard, including that the ABC may take action under clause 23.9.3.

## 23.8 Assessment at Review Date

### 23.8.1

If, at the review date, the ABC:

- a. determines that the employee's performance has improved to a satisfactory standard, then appropriate recognition will be provided and the process will be closed; or
- b. considers that adequate progress has not been made, the ABC:
  - i. may decide to transfer the employee to another function or work area with the employee's agreement;
  - ii. will follow the steps outlined in clause 23.9; or
  - iii. Prior to commencing underperformance in accordance with clause 23.9 below, where the employee's role has significantly altered at the initiative of the ABC as a result of technological change, or changes to work practices, the manager in conjunction with a representative of ABC People will consider whether all reasonable effort has been made by the employee to adapt to the altered role. Where, despite all reasonable effort, the employee is unable to perform the altered role to the required standard of performance, the employee will be considered redundant and managed in accordance with Part M – Redundancy.

## 23.9 Failure to Remedy Performance

### 23.9.1

If it is determined that the employee's performance remains unsatisfactory, the employee will be formally notified that they have failed to remedy their performance and will be asked to give reasons as to why the ABC should not take action in accordance with subclause 23.9.3. The notification will identify all concerns relating to the employee's performance and will provide an opportunity for the employee to respond at a meeting or in writing in relation to the performance concerns and the proposed action to be taken under subclause 23.9.3.

### 23.9.2

If a satisfactory response is provided by the employee, the ABC may provide the employee with a further opportunity to address the performance concerns and advise the employee of a new review date. Clause 23.8 will then apply at that new review date.

### 23.9.3

If a satisfactory response is not provided, the delegate may:

- a. redesign the employee's position to an equal or lower salary band;
- b. transfer the employee to another position at an equal or lower salary band; or
- c. dismiss the employee with due notice, or payment in lieu, in accordance with the relevant provisions of clause 57 Termination of Employment.

### 23.9.4

At any stage during the above process the employee may choose to be accompanied or represented.

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## 60.4 Reconsideration and Appeal Against an Appraisal Decision

### 60.4.1

Notwithstanding employees' right of appeal under the provisions of this subclause, it is expected that an employee will raise any matter of concern regarding their Job Plan or performance feedback as soon as it arises during the cycle.

### 60.4.2

If an employee disagrees with their appraisal rating, or an employee in Bands 1 - 8 disagrees with the salary outcome of their appraisal or believes both that they have been regularly performing and were required to perform tasks beyond the level specified in their Job Plan, (Appraisal Concerns), in the first instance the employee should raise this with their Manager/Supervisor for discussion in an effort to resolve their concerns.

### 60.4.3

If the employee's discussions with their Manager/Supervisor do not resolve the Appraisal Concerns, the employee may, within 14 days of the Appraisal Outcome write to ABC People to seek a Reconsideration. The employee will state the reasons they consider the rating or Job Plan was unfair or failed to take into account relevant factors. The employee may provide material in support of the request for reconsideration, including information from two referees.

### 60.4.4

ABC People will consider all relevant information, including, without limitation, material provided by the employee in support of the request for reconsideration and information based on ABC People's own

enquiries, and make a recommendation to the Director of the relevant ABC Division, or their delegate, as to whether the original decision should be upheld or changed.

#### 60.4.5

The Director, or their delegate, will advise the employee of the ABC People recommendation within 30 days of their receipt of the recommendation from ABC People.

#### 60.4.6

The Director, or their delegate, will either reject or accept the ABC People recommendation (Directors Decision) within 30 days and advise the employee of their decision. If ABC People recommend that the original decision should be changed, and the Director or delegate rejects the recommendation from ABC People, they will provide the employee with a written statement which clearly outlines the reasons for rejecting the ABC People recommendation within 30 days of their receipt of the recommendation from ABC People.

#### 60.4.7

If the employee is dissatisfied with the Director's or delegate's decision, the employee can, within 30 days of being advised of the outcome, refer the decision of a Director or delegate made under 60.4.6 to Fair Work Commission for binding recommendation if the employee can establish that the Director or delegate in making the decision:

- a. overlooked or breached a provision of this Agreement, or
  - b. allowed extraneous or irrelevant matters to guide his or her decision;
  - c. mistook the facts; or
  - d. failed to take into account a material consideration,
- provided that the employee must do so within 120 calendar days after the date the Director or delegate advises the employee of their decision under 60.4.6.

#### 60.4.8

In considering whether a Director or delegate has made an error in his or her decision in accordance with clauses 60.4.6, the Fair Work Commission may:

- a. only have regard to the material that was before the Director or delegate at the time of making the decision or recommendation;
- b. make such determination as necessary to correct any established error; and
- c. not substitute its own decision for that of the Director or delegate.

60.4.9 The provisions of subclause 60.1.6 will apply during the process under this subclause 60.4.