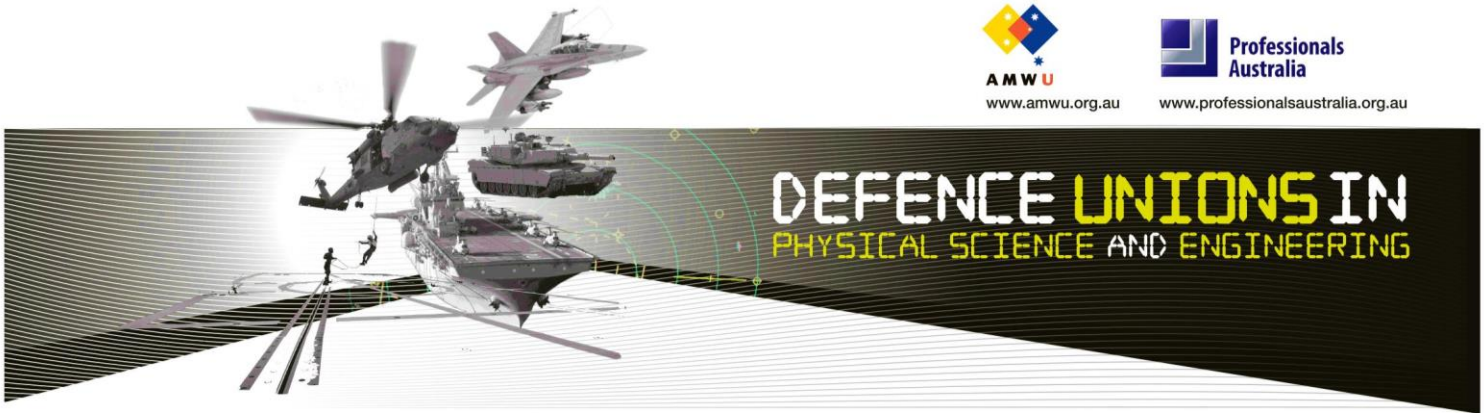

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Beneath the Veils …
what will be left?

The purpose of a collective agreement as perceived by the Department of Defence waxes and wanes through time (no doubt influenced by the government of the day).

Sometimes that purpose is seen in expansive terms, with employees viewed as partners in the processes of change. Consider, for example, the following sentence over the signatures of the then Secretary and CDF taken from the inside cover of the Department's published version of the 2009 DECA:

> "Developed through extensive consultation with our employees and agreed to by Defence and the unions, this DECA is a key enabler to support the Strategic Reform Program."

At other times Defence's view is contractionary, with employees seen merely as (expensive) means to an end - an end at the sole discretion of those paid to manage.

After the fifth day of negotiations to replace the current DECA, it is becoming clear which perception Defence now holds.

A Veil Retained

Further negotiations were held in Canberra on Thursday 30th and Friday 31st October. They discussed:

- some issues arising from the previous days of negotiation;
- Part D and Annex A;
- Part H and Annex B;
- Part B and Annex I.

A previous bulletin advised of Defence's intention to proceed Part by Part through the DECA. The unions inferred from this that last week's meeting would address the Department's proposals for the performance progression payments at Section D6 of the current agreement. However, Defence became coy - it declined to remove one veil. Instead, it proposed to transfer Section D6 to Part G, which deals with remuneration, and it would reveal no more until ready to address that Part.

Our unions had previously speculated that Defence was proceeding through the DECA from the least controversial of its proposals to the most controversial. Last week's meeting did nothing to dispel this speculation.

Authorised by Mike Nicolaides, Assistant National Secretary, AMWU
And David Smith, Executive Officer, Australian Government Division, Professionals Australia

Notwithstanding, Defence has already tabled a number of proposals which should cause members concern.

Some Examples

One of the issues discussed at the meeting on 15th and 16th October concerned the no extra claims provision at paragraph I1.4 of the current agreement. At last week's meeting, Defence proposed to delete that provision (without replacement). The unions objected strongly. Without such a provision, any new agreement may be next to worthless. See the attachment for an elaboration - it reproduces a Q and A published by one of our two unions in April. (Note that a full bench of the Federal Court subsequently upheld the company's appeal, such appeal being mentioned in the Q and A.)

Defence tabled its proposals for Part B of DECA. That Part currently occupies about five pages. It addresses, amongst other things:

- work level standards;
- broadbands;
- (the formerly named) Building Defence Capability Payment (BDCP); and
- employees within training.

Defence's proposed new Part B is one paragraph in length. It addresses broadbands only, with the BDCP to be relocated to Part G. The rest would be either deleted or addressed through policy. This includes the current paragraph B4.3, which contains a commitment to maintain employees within training.

As with so much else, Defence maintains that much of what it wants to "streamline" can be dealt with through discussion at the National Workplace Relations Committee (NWRC) or should be left to management discretion. It does not address what is to happen if such an approach leads to disagreement.

On this theme, the unions objected - again strongly - to Defence's proposal to delete **any reference** to work level standards from the DECA. Such a deletion would effectively deregulate your classifications, raising the potential for payment below the value of your work. To its credit, Defence has undertaken to reconsider its position.

Along the way, Defence also mentioned its ambition to review the formula by which rates of Special Defence Locality Allowance are calculated. It is clear that it does not see that review benefitting affected employees.

There's more, but you get the drift. Fewer enforceable entitlements and protections for you, far greater discretion and control for management.

Workplace Express is an electronic publication for practitioners in industrial relations. On 5th November it quoted the Prime Minister as saying about public sector pay:

> "We're going to see restraint across the whole of the public sector and I would be very surprised if anyone in the Commonwealth public sector receives more than is received by our Defence Forces."
>
> "We'd like to pay our serving Defence personnel more, but there's going to have to be very tight pay restraint across the public sector, including the Defence personnel."

For the PSE Stream, Only a Skeleton Beneath the Veils?

Past bulletins have reported on the crisis within Defence physical science and engineering (PSE). In response, our two unions lodged the following claim on Defence, such claim to be pursued in the current negotiations:

- Replace Annex I of the current DECA with content that moves from commissioning a review to remediating the problems identified by that review.

Defence responded last week. Its proposal is that Annex I be deleted (without replacement) and any necessary actions be taken by the job family sponsor (i.e. DMO), with the unions having input through the National Workplace Relations Committee.

Coupled with the proposed gutting of Part B of DECA, members may feel that they and their work are being offered little - if any - respect.

Just think!

If the speculation of the unions is anywhere near the mark, Defence has not yet revealed what it considers the more controversial aspects of its proposals.

In the meantime, it has all but dismissed the substance of the claims lodged under the heading of "Claims Particular to Physical Science and Engineering Employees" by our two unions on your behalf. Defence would disagree, but policy and discussion through the NWRC are no substitutes for commitments made within an enforceable agreement approved under the Fair Work Act.

Our unions will convene another national telephone hook-up of their delegates after the next two days of negotiations, which are due to consider Defence's proposals on e.g. hours of work and leave. The themes of this bulletin can be elaborated there.

ATTACHMENT

DO YOU KNOW ABOUT NO EXTRA CLAIMS CLAUSES?

Q. What is a no extra claims clause?

A. Such clauses are routinely included within collective agreements. They effectively signal that negotiations over pay and conditions have been concluded for the life of that collective agreement. They provide the parties – the employer, the unions and their members with a large measure of certainty.

Q. Can you give me an example?

A. The Toyota Motor Corporation Australia (TMCA) Workplace Agreement (Altona) 2011 contains a no extra claims provision that reads in relevant part:

> "This comprehensive Agreement resolves the enterprise bargaining claims by the Parties."
>
> "The parties agree they will not prior to the end of the agreement;
>
> - make any further claims in relation to wages or any other terms and conditions of employment; and
> - take any steps to terminate or replace this Agreement without the consent of the other parties."

Q. Why do such clauses exist?

A. Negotiations over the terms of collective agreements can be intense and lengthy; they sometimes result in industrial action. The outcomes almost invariably involve give and take on both sides. In such circumstances, each party wants to be confident that the terms to which they have agreed on balance will be honoured. They understand that consideration of any new claims will be deferred until it comes time to negotiate the next agreement. After all, collective agreements commonly have life for a number of years. For its part, the Toyota agreement cited in the previous answer is more than 140 pages in length, including its appendices, and has a life of approximately three years and three months.

Q. So what's the problem?

A. Since the election of the Abbott Government a handful of companies have sought to vary the terms of their collective agreements over the objections of the other parties to those agreements. In doing so, they have cited cost pressures on their businesses. It is suspected that some have taken this course thinking that they will increase their chances of gaining industry assistance from the new federal government. In particular, Toyota sought to re-open its agreement, leading to proceedings before the Federal Court.

Q. What was Toyota seeking?

A. It sought to make close to 30 variations to the agreement, including: the abolition of annual leave loading; a reduction in the rate paid for overtime on Sunday; the removal of payment for work-related travel undertaken outside ordinary working hours; the abolition of certain allowances; and introduction of a requirement that employees be available for a minimum (rather than the previous maximum) of 20 hours' overtime a month. It said these changes were necessary to offset the cost of future pay increases due under the agreement.

Q. What did the Federal Court decide?

A. The court decided that Toyota was in breach of its collective agreement. It held that, if Toyota was determined to proceed, a two stage process would be necessary. Firstly, the collective agreement would need to be varied by a vote of the workforce to remove or alter the no extra claims clause. Only then could the company put to a second vote the variations that it desired be made.

Q. What has happened since?

A. Toyota has appealed the Federal Court decision, that decision having been cited in cases where other employers have sought to vary their agreements.

Q. What are the implications?

A. Had Toyota been allowed to vary its agreement as the company had originally proposed, the future negotiation of collective agreements would most likely have become more protracted and potentially bitter. Parties could not have been confident that what they were agreeing to today would be respected for the life of the agreement. As a variation, some employers may have sought to require employees in a weak bargaining position to commit to a no extra claims clause whilst seeking to reserve to themselves the right to re-open the terms of the agreement at any time. It is relevant here that protected industrial action may be taken only whilst an agreement is being negotiated but not after it has taken effect.

Q. Anything else?

A. The Federal Minister for Employment, Senator Eric Abetz, described the Federal Court decision as "a disappointing outcome". The implication is that he does not believe that the terms of an agreement once made need be observed. Perhaps predictably, his media release attacked "union bosses" rather than those seeking to escape their legally-binding and negotiated commitments.

One Example

Paragraph H1.8 of the current DECA provides for reform of the arrangements which apply when an employee travels overnight on Defence business. Various proposals have been put by the Department over the past couple of years, with most having been rejected. However, the last proposal put was deemed worthy of further consideration, when the necessary supporting mechanisms had been finalised.

The unions said that when the required work had been completed they would test the proposal with their delegates, **subject to** a guarantee that any new system would not be changed during the life of any new DECA.

It will be difficult for Defence to satisfy this last condition, given that it wants to delete any no extra claims clause from its preferred new DECA**. In effect, it is saying to employees : trust us!**