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This paper represents his personal views.

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**Public service workforce regulatory
frameworks in Australia – a matter of
balance**

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Abstract

Public service workforce regulatory frameworks in Australia – a matter of balance

In this paper the author explores three themes. First, some critical traditional frameworks and features of the public service edifices of Australia were built for very good reasons, most of which are still valid. Second, some significant elements of public sector reform have shaken if not destroyed the foundations of these institutions and created unintended and perverse outcomes which not in the best interests of good public service or of the public interest. Third, these structures need to be rebuilt with clear ideas about what they are to do and look like.

The author compares the recent experience of the federal government and the Western Australian government in undertaking public sector reforms. One conclusion is that independent public service commissions had played a critical role in maintaining core capacities and qualities in both the national and sub-national public service workforces in Australia. Another conclusion is that some of the reforms have pushed the framework of the public service out of the necessary balance between service of the public interest and meeting the needs of the government of the day.

The national government has retained an independent Public Service Commission throughout successive public sector reforms, while most sub-national (State and Territory) governments have replaced them with other less independent institutions. The paper examines the consequences of these differing approaches to public sector workforce reform, especially for workforce planning, the protection of the merit principle in staff appointments, and generally, a boundary-riding or quasi-regulatory function. Among these consequences, it is contended that those jurisdictions without independent public service commissions may be ‘flying blind’ without the benefit of the boundary-riding functions, such as central coordination, risk management, independent policy review, and commitment to workforce research and planning and resourcing that an independent public service commission is able to provide.

The general conclusion is that a public service is the poorer without a boundary-riding independent public service commission or equivalent. The author concludes with observations on future public policy and practice in relation to public service employment frameworks, arguing the case for a return to some of the traditional characteristics of these frameworks to restore its balance in the public interest.

Introduction

Three vignettes summarise my concerns about the current state of the public services in Australia.

For some years I have been doing a running poll of public servants I come across, most recently the groups who attend my training courses. They come from all three spheres of government. I ask them, “Would you recommend a career in the public service to your children?” Responses vary widely, but most say they would not. In contrast, a running ‘quick poll’ I came across some time ago on the website of Institute of Public Administration Canada (IPAC), asking the same question¹ reported the opposite – most respondents (around 70% and increasing over time) would recommend a career in the public service to their children. This result in my survey is a cause of concern, and I’ll return to this concern shortly.

My second concern is around declining public trust in government, and significant public institutions, including the public service. This appears to be a global trend in most western democracies (Job, 2005:3) and in Australia, although in our case the levels of trust are higher than elsewhere. Ryan (2000:5) notes that ‘confidence in the public sector has been in decline in Australia over the period 1983 to 1995, but is still considerably higher than confidence in the federal government and political parties, and somewhat higher than confidence in the parliament.’ The percentage of respondents having ‘a lot or a great deal’ of confidence in the *public service* in Australia declined from 47.3 in 1983 to 37.9 in 1995 (ibid.). The corresponding figures for the *federal government* dropped from 55.3 in 1983 to 26.1 in 1995 (ibid.). I’ll also return later to this concern about public trust and its implications for the future of the public services in Australia.

My third vignette and cause of concern is the recent public stoush between two eminent public service figures, Andrew Podger and Peter Shergold, triggered by Podger’s article in the June 2007 issue of the *Australian Journal of Public Administration* about ‘what really happens’ in senior Australian Public Service (APS) appointments (Podger, 2007; Burgess, 2007; and Buffini, 2007). Podger (op.cit:143-145) argues that there is increasing politicization in the APS, and implies that ‘the balance has shifted too far towards responsiveness and away from apolitical professionalism and its focus on the long-term public interest.’ Shergold is reported to have said that Podger’s article caused ‘damage to the Australian Public Service’. My first concern is that the debate about the politicization of the public service is so prominent and persistent as a theme in the public administration literature, and secondly, that these two prominent public service figures could have such apparently widely divergent views on the issue.²

Like Podger, I have reflected for a long time, both in academic papers (Williams, 1985; 2005; 2006), and while a public servant, on this core dilemma of the public

¹ Unfortunately, this ‘quick poll’ is not longer current on the IPAC website.

² As I write, a similar debate is being held on the appointment processes for High Court judges. See, for example, Davies, 2007, arguing for appointment on merit and the use of an independent expert committee to make recommendations to the government.

services in Australia: where is the balance point between the need for a professional, independent public service, acting always in the public interest, and the ever-increasing demands for responsiveness on the part of ministers and their political agendas? What are the appropriate governance frameworks for achieving this balance? In particular, what should be the framework governing the relationship, including employment, between senior public servants and ministers?

In the course of another study (Williams 2006) of the key reform issues affecting the future of the leadership of the WA public sector workforce, it became apparent that there were significant implications for the governance of the public service arising from one of the reforms in WA – the abolition of the Public Service Commission. These implications, particularly for workforce planning and the protection of the merit principle are detailed in a subsequent paper (Williams, 2007) and will be briefly revisited here.

I then turn my attention to what future frameworks might be appropriate for the public services of Australia to ensure the appropriate balance is maintained between independence in service of the public interest and political responsiveness.

In this paper I propose to address three key themes and arguments:

1. We built some critical frameworks and features of our public service edifice for very good reasons, most of which are still valid.
2. Some significant elements of public sector reform have shaken if not destroyed the foundations of this institution and created unintended and perverse outcomes and imbalances which not in the best interests of good public service or of the public interest.
3. We need to rebuild the structure with clear ideas about what we want it to do and look like.

Foundations of the public service – public perceptions

The main foundations of our independent, professional Australian public services were laid just over 150 years ago with the publication of the Northcote Trevelyan report in 1854. This report had been commissioned by the Chancellor of the Exchequer William Gladstone. Marking the anniversary of the report, Prime Minister Tony Blair noted that the recommendations of Northcote and Trevelyan were ‘firstly, that civil servants should be recruited by open competitive examination (with the examinations conducted by an independent central board) and, secondly, that promotion should be on merit rather than seniority. The endemic patronage of the age would be replaced by an assessment of the ability to do the job’. (Blair, 2004) The report also recommended the establishment of a unified career public service (Greenwood, 1989:101ff). The core characteristic of the new public service was that public servants would be ‘insulated from political influence by being appointed on merit rather than political patronage, and appointed by independent bodies like public service boards rather than by politicians.’ (Williams, 2005:19)

The main point here is that the reforms which were at the heart of establishment of the traditional public service 150 years ago were in response to patronage and perceptions

of patronage in public service appointments. In response, appointments had to be on merit, and had to be seen to be on merit. Public perceptions about the process were just as important as the process itself.

Today, we are having an increasing debate about similar issues. Are our public services becoming more politicized (McGuinness, 2007)? In other words, are appointments being made on merit, or are political considerations coming into play? As noted above, the Podger/Shergold debate was featured in the mainstream media. Recently, in WA, the *West Australian* gave extensive coverage to the release of a report by the Commissioner for Public Sector Standards on the principle of integrity in official conduct with a front page headline, “Politics ‘eroding public service’” (Strutt, 2007:1; see also Strutt, 2007a). The Commissioner’s subsequent report titled *The WA public sector, a system out of balance*, drew the headline ‘Premier’s control ‘erodes public service independence’ (Strutt, 2007b:6). Once again, public perceptions about the public service are just as important as the reality. The framework we have in place for the management of the public services must take these public perceptions into account.

The ‘reformed’ WA public service

In other papers I have documented in detail the so-called New Public Management (NPM) reforms of recent years that have confronted the public sectors in Australia and other Westminster tradition countries, and how these have been applied in WA in particular. (Williams, 2005 and Williams, 2006)³ Generally, the relevant workforce reforms in the public services in Australia have been directed towards achieving greater responsiveness by public sector employees to political direction, and increased flexibility and agility in public sector workforce management.

WA has faced a wave of reform activity in recent decades, commencing with the so-called ‘WA Inc’ era in the early 1990’s, and the resulting Royal Commission in 1992. (See Stanley, 2001: 22 for a listing of WA reforms through the 20th century. See also Government of Western Australia, 2001: 12 for a similar listing.)

This decade saw the enactment of the *Public Sector Management Act 1994 (PSMA 1994)*, which is the current legislative base for the WA public sector and its leadership.

Some critical and radically new principles and mechanisms were implemented in this legislation. The Act lays down ‘general principles’ of public administration and management, human resource management, and official conduct (sections 7, 8 & 9). The Minister for Public Sector Management (the Premier) appoints Chief Executive Officers (CEO’s) and they are the employing authority for all staff within their agency, including SES members. A Commissioner for Public Sector Standards was established who, among other things, makes recommendations to the Minister on CEO appointments and re-appointments.

³ For an overview of these reforms in a range of countries see Norman, 2003; Norman and Gregory, 2003; Denhardt and Denhardt, 2000; Haque, 2001; Torres, 2004; Demke, 2004. For Australia see Colley, 2001; Colley, 2006; and Kelly, 2006.

There was no longer a single independent employer for all public servants - a public service commissioner - as there was under the preceding *Public Service Act 1978*. Centralised, statutory control and coordination of the government workforce was abandoned, and fragmented and diffused arrangements were put in place across a number of central agencies and in the responsibilities placed upon individual agency heads as employers. The Department of the Premier and Cabinet (within the portfolio of the Premier, but also subject to direction by the Minister for Public Sector Management – usually another minister other than the Premier) was vested with responsibility for whole of government workforce planning and development. This dispersion of accountability is a core theme of this paper, which will be revisited shortly.

A further key component of the legislation was the establishment of a senior executive service (SES). It is clear from the purposes of the SES set out in section 42 of the Act that the concept of the SES was for a mobile, collegiate, senior executive group who could be placed in government agencies to suit whole of government priorities. The Act provides for transfers (section 54) and even secondments outside the public sector (section 61) of SES officers.

Various reviews of the *PSMA 1994* have been undertaken (Williams, 2006), variously recommending changes such as the following:

- Reductions in the number of departments and statutory authorities
- Strategic workforce planning, and
- Senior officer recruitment processes, reward systems and performance management.

While significant reductions were made in relation to the number of agencies, few of the changes recommended have been implemented in regard to workforce planning generally, and leadership development in particular (Williams, 2006).

The ‘reformed’ Australian Public Service

In 2003 the APSC published an occasional paper titled *The Australian Experience of Public Sector Reform* (APSC, 2003). The paper contains an excellent summary of the history of the Australian public sector, both at the federal and to a lesser extent at state government levels, albeit from an internal perspective. It is useful to contrast this history with the Canadian experience and drivers which are well-documented in Kernaghan’s (2007) paper which is further discussed below.

The recent reforms in the Australian public services (including the federal public sector) of relevance to this paper are described in this way (APSC, 2003:14-15):

“A new department/agency-based management structure lies behind the emergence of public services whose unity is expressed in terms of statutorily prescribed ‘values’ and ‘codes of conduct’ and where uniformity of employment, pay and conditions has been abandoned. Management powers are now essentially vested in the department or designated agency (often

expressly in the hands of the chief executive officer, even if in fact mostly delegated). There is no longer an overarching administrative authority such as, most usually, a public service board, with comprehensive powers over recruitment, establishments, pay and conditions of employment, or discipline including dismissal. Public service commissioners, where they remain, have a largely professional rather than an employment or management role, and are most visible in training and staff development activities, and articulation and promotion of ethical standards.”

The explanatory memorandum for the *Public Service Bill 1999* (Parliament of Australia, 1999, clause 8 [c]) criticized the old legislation in these terms: ‘its language and organisational layout continue to reflect the climate of a previous age with central regulation of people management policy and operations.’ The APSC paper goes on to explain these changes in terms of a decline in the “value attaching to the concept of a unified public service (first set out in the Northcote-Trevelyan report of 1853)” as well as for “practical” reasons of costs relative to benefits, and the growth of agencies to the point where they can manage their own affairs (APSC, 2003:15).

The paper does not make any mention of possible downsides to this reform activity. Three potential casualties of reform will shortly be discussed by way of illustration, the first relating to workforce planning and management at the ‘whole of government level’; the second, relating to the concept of merit in the selection of public servants, and its protection; and the third relating to the contractual arrangements for the employment of staff, particularly senior staff.

But first, some further details are provided on the functions of post-reform public service commissions and their successors.

The functions of public service commissions and their successors in Australia

Appendix 1 summarises the ‘reformed’ Australian public sector landscape with regard to the approach taken to ‘post-public service commission’ institutional arrangements.

It can be seen that there are significant variations across the jurisdictions in the way in which Australian public sector workforces are managed and regulated. These arrangements range from completely independent statutory bodies that are the employers for all public servants (as in the Northern Territory) to departments that are fully under the control of a minister. Only the Australian Government and the Northern Territory have a truly independent commissioner for the public sector that is not subject to some political direction or embedded administratively in another agency or department. In some cases, as in Western Australia, there is considerable fragmentation and dilution of accountability and of the capacity to achieve whole of sector outcomes.

In most cases, the Prime Minister or Premier now appoints agency heads, and agency heads are the employers of all staff in their agencies.

By way of further illustration of the differences in institutional arrangements, the Australian Government Public Service Commission will be compared with the Western Australian equivalents in more detail.

The Australian Public Service Commissions

Two statutory positions are established under the Australian Government (federal) *PSA 1999*, a Public Service Commissioner (PSC) (Part 5) and a Merit Protection Commissioner (MPC) (Part 6).

The Commission has an independent capacity to prepare reports on matters relating to the Australian Public Service workforce. One of these is the annual *State of the Service Report*, referred to earlier. In addition to providing detailed statistical information about the public sector workforce over time, distinctively, the Report includes discussion of the results of an annual survey of staff across the sector. The current Commissioner undertakes an annual ‘road show’ of public events across the country at which she explains the findings of the survey. The Commissioner has complete freedom to determine the matters that are included in the survey. Some of the issues addressed in the 2005 Report include:

- Staff perceptions of their relations with ministers’ offices
- The application of merit processes
- The impacts of agency restructures, and
- Perceptions about personal productivity.

As a result of this survey activity, the APSC is in a position to understand the issues facing the APS workforce, and its mood, on an annual basis, and is able to respond in a timely way.

For example, the Commission has developed a *Senior Executive Leadership Capability Framework* for the APS (APSC, 2005a).

The Commissioner also acts as Executive Officer and provides the secretariat to a non-statutory body called the Management Advisory Committee (MAC), which comprises the heads of Australian Government agencies. The MAC advises the government on matters relating to the management of the Australian public service, and has published a series of documents on matters relating to performance management, use of IT, organisational renewal, and connected government (see, for example, APSC, 2004).

The Commissioner also regularly comments and publishes on current issues of relevance to the APS (see, for example, Briggs, 2007).

In essence, the Commission provides a well resourced, ‘whole of government’ capacity in relation to workforce planning and development, via an agency with statutory capacity and independence. In other words, it undertakes a vital ‘boundary-riding’ role, rounding up the key issues and setting future directions.

As summarised in Appendix 1, the APSC does not have a direct role as an employer of public servants. The Prime Minister employs agency heads, and agency heads are in turn the employers of staff in their agencies. While agency heads are subject to general direction by the Prime Minister in employment matters, they are not subject to direction by ministers in employment decisions.

The primary role of the MPC is to protect the values of the APS including the application of the merit principle in employment decisions. The PMC also investigates alleged breaches of the APS Code of Conduct. Both the MPC and the PSC can investigate whistle-blowing allegations about APS issues, and protection of whistle blowers is provided for in the PSA 1999.

As noted in Appendix 1, there is a right of appeal on merit for employees at certain levels in the APS against promotion and engagement decisions.

The Western Australian Institutional Arrangements

As summarised in Appendix 1, in Western Australia, the primary statutory body for the protection of public sector principles and standards is the Commissioner for Public Sector Standards (CPSS), established under the *PSMA 1994*. The Governor on the recommendation of the Premier appoints the CPSS.

The CPSS role is, among others, to establish and then monitor compliance with the standards for workforce management by agencies, including employment decisions and the code of ethics and the counterpart codes of conduct of agencies; and to monitor compliance with the principles of public administration and management set out in the *PSMA 1994*. The CPSS is also responsible for the administration of the WA whistle blower legislation, the *Public Interest Disclosure Act 2003*. The Commissioner undertakes and publishes annual reports on compliance with standards, and on matters such as the EEO and diversity profile of the WA public sector.

As is the case in the federal jurisdiction, and as summarised in Appendix 1 the CPSS is not the employer of public servants. As the Commissioner herself puts it, her office “was not given responsibility for the general oversight and administration of the overall public sector administrative system.” (OPSSC, 2006: 5). The Premier employs agency heads, and agency heads are in turn the employers of staff in their agencies. While agency heads are subject to general direction by the Minister for Public Sector Management in workforce matters (*PSMA 1994*, s. 10), they are not subject to direction by ministers in employment decisions.

A non-statutory division within the Department of the Premier and Cabinet (DPC), the Public Sector Management Division, establishes a framework for, and encourages whole of government coordination of public sector workforce management and planning in the Western Australian public sector. It publishes a limited (when compared to the federal APSC counterpart publication) profile of the workforce annually, as mentioned above, and other guidance material for agency heads and other workforce managers across the sector, but has few if any statutory powers to enforce its programs and directions, other than via the Minister for Public Sector Management.

The DPC does in fact have one *de facto* control over the whole of government public sector workforce which it applies rigorously, and that is over the setting of SES classifications levels in agencies. While agency heads have the formal power under the *PSMA 1994* to determine the classification level of SES positions within their agencies, in fact the DPC exercises a veto power over such classifications, and controls ‘classification creep’ very tightly. Anecdotally, agency heads report that this is a major impediment in their capacity to attract suitable candidates to senior positions in the current highly competitive executive employment market in Australia.

There is no broad-ranging annual whole of government survey of the WA public sector workforce. The DPC maintains a Human Resources Minimum Obligatory Information Requirements database framework (HR MOIR⁴) within which government departments and agencies are required to report certain information (demographics, diversity, classifications, and so on) about their employees, and summary data is usually published annually in the overviews referred to above.

Individual agencies undertake periodic morale of climate surveys, of their workforces, but the results are rarely published, and there is no whole of government aggregation of this data. Key whole of government workforce data such as that relating to entry and exit patterns, and analysis of the underlying issues, is not available. Occasional whole of sector studies are undertaken on issues such as pathways to leadership (Government of Western Australia, 2003) and workforce ageing and retirement intentions (Government of Western Australia, 2001a and 2003a) but this is ad hoc and there are no time series data on these core issues.

In summary, in contrast to the Australian Public Service, in WA there is fragmentation of the public sector workforce planning function, which is essentially left to individual agency heads, as employers, with minimal guidance from central agencies.

Some key issues in Australian institutional reforms

Several recent commentators on the Australian public sector reform landscape have alluded to the pendulum of reform having swung too far in certain aspects (see Williams, 2005 on leadership; Colley, 2006 on merit; Kelly, 2006 on the responsiveness of the APS to its political masters; and Prasser, 2006 on a range of similar dimensions). It can be argued that a number of key elements in the institutional arrangements in the reform of workforce management have had critical unintended consequences.

Independence of key institutions

As illustrated in Appendix 1, many of the institutions that have replaced the traditional public service commissions in Australia are no longer independent of political direction and influence. In only three cases (Australian Government, Northern Territory, and Tasmania) could the offices be said to be independent. In two cases (WA and Victoria) the offices are appointed on the recommendation of the

⁴ See <http://www.hrmoir.dpc.wa.gov.au/psmd/index.cfm>

Premier, and in the remaining four cases the offices are employed by the Premier. In some cases, however, there are statutory protections and obligations imposed on the offices to ensure that they act independently.

In Western Australia, the Commissioner for Public Sector Standards had this to say about the independence of her office (OPSSC, 2006: 20):

“Section 22 of the PSM Act requires the Commissioner to ‘act independently in relation to the performance of his or her functions’. Independence means being free from outside control of influence. To properly discharge this responsibility, the Commissioner must be free from pressure, influence or interference from any source that may erode that independence. The Commissioner must act, and be seen to be acting, independently of government agencies, executive government and politics.”

In her *Ten-Year Review*, the commissioner is critical of action taken by the head of the Department of the Premier in making recommendations to the Salaries and Allowances Tribunal that resulted in a relative downgrading of her position and its salary, seeing this as an inappropriate action (op.cit: addendum) potentially affecting the independence of her office: “It is not appropriate that advice concerning the classification of an independent officer who reports directly to Parliament is obtained, not from the Parliament, but from a representative of the Executive Government.”

The accompanying media coverage of this public disagreement between the two offices charged with oversight of the WA public sector, did nothing to enhance the image of the sector, or inspire confidence in these key institutions (Murray, 2006).

On the matter of independence, Prasser (2006: 41) observes: “Public service boards were a great Australian innovation and unfortunately in the drive to ‘managerialism,’ we abolished them around Australia. Their successors, the different public service commissions, have different roles. So there needs to be some sort of independent body to insulate the public service from political interference, and to oversee appointments and promotions.”

As noted above, the notable exception in Australia is the APSC which, in a real sense, operates independently as a boundary rider at least in the federal jurisdiction.

Whole of Government workforce planning

The above analysis has contrasted the approach taken at the national level, which appears to have maintained a whole of government workforce planning capacity, with the situation in WA, where this capacity is fragmented or dormant. The key missing ingredients in WA are first an agency with the necessary statutory power and second adequate resourcing of the effort. In turn, this has resulted in poor data on whole of government trends and issues, most particularly those relating to workforce practices, perceptions and experiences that can be derived from employee surveys.

In WA there are critical research and data deficits, for example, in the understanding of the attitudes and motivations of the workforce and its intentions. Detailed renewal and succession strategies need to be developed, founded on good survey evidence, to

meet the demographic imperatives of an ageing leadership cohort and the feeder groups.

In short, the Australian Government knows its workforce, whereas the WA Government does not.

Senior executive employment arrangements

As shown in Appendix 1, it is generally the case in the Australian public sector that the Prime Minister/Premier/Chief Minister employs agency heads, and they are in turn the employers of staff within their agency. Agency heads and SES staff are employed on five-year contracts. These measures were aimed at achieving greater responsiveness to political direction (Kelly, 2006), leading to ‘an uncomfortable hybrid of old and new practices’ (Colley, 2006: 52).

With other commentators (Colley 2006; Prasser, 2006) I have argued (Williams, 2005) that this reform arrangement can have a severe effect on the capacity and likelihood of senior staff giving ‘frank and fearless’ advice to their ministers, and the recent Australian experience at all levels continues to evidence this trend.

“Merit is increasingly linked to responsiveness rather than general capacity, and responsiveness is increasingly and unnecessarily linked to alignment to a government. New governments can suspect everyone of being a political appointee, rather than recognise the value of career public servants, who deserve tenure or at least an opportunity to prove their worth. This ‘disposability’ and employment ‘precipice’ does not foster ethical and courageous action by public servants.” (Colley, 2006: 58)

It is time to review the current contract employment arrangements of agency heads and senior staff and consider the reintroduction of tenured appointments. ‘Permanent’ heads were created in the nineteenth century for very valid reasons (Colley 2006) and those circumstances are now in evidence once again in Australia. At the very least I agree with Podger’s and Keating’s position that a panel of senior heads and external advisers should advise on agency head appointments and terminations, and that five year contracts for agency heads should be the norm (Podger, 2007). However, I would argue further that there is a strong case for permanency and independence in the employment arrangements of all other senior public servants, with an independent public service commissioner, accountable to parliament, as the employer of all public servants.

Merit protection in public sector appointments

As shown in Appendix 1, appeals on merit against appointment and promotion decisions are available in six jurisdictions, but in three jurisdictions appeals or reviews are only available in relation to a deficiency in the selection process (Victoria, South Australia, and Western Australia). Anecdotally, reviews of process are rarely sought, whereas appeals on merit in those jurisdictions that provide for this are commonplace.

Even in the APS, where there remains an option for a review of employment decisions on merit, there has been a decline in confidence in the process. In the 2005 APSC survey, 53 per cent of employees surveyed agreed that 'my agency routinely applies merit in employment decisions, while 21 per cent disagreed (APSC, 2005: 82). These levels of employee confidence represented a decline relative to the previous year. The APSC undertook a more detailed exploratory study on this issue in 2004 to identify the factors at play in employees' perceptions, which appear in part to be based on poor understanding about the nature of merit.

In those jurisdictions where a review only of process is available, even moderately competent public servants on selection and promotion panels can ensure that a correct process is followed. This renders any review merely of process a fruitless pursuit. As in any other part of administrative law, without any potential for independent scrutiny of the outcome of the process, the merit principle is defeated. As Colley (2006: 54) puts it, "the merit principle was about fair treatment and outcomes rather than adherence to a process."

One of the much-touted characteristics of NPM reform has been a move away from process to a focus on outcomes. Ironically, in the case of the core issue of public sector appointments and promotion in some jurisdictions in Australia, there is a trend to a focus on process rather than on outcomes.

The two masters dilemma – a matter of balance

As mentioned above, I have contended in another paper (Williams, 2005) that the pendulum of reform has swung too far and upset some key balances between service in the public interest and meeting the requirements of the government of the day. I have referred to the trend in the reform away from the traditional, balanced or 'neutralist' typology to what can be called the 'responsive' typology, in which the demands of the government of the day are paramount. This pendulum swing is simply depicted in Figure 1.

[Insert Figure 1 here]

For all its perceived faults, the traditionalist typology at least had the virtue of maintaining the public interest in the foreground of focus for public servants in their dealings with the government of the day and ministers. The ever-increasing demands of governments for responsiveness, penetrating wider and lower in the public service (APSC, 2006b: 4, 5) have shifted the balance of focus too much towards the needs of governments and put at risk the public interest. It is no longer the case that governments in general and ministers in particular can be viewed as impartial custodians and arbiters of the public interest, as any election year amply demonstrates.

Trust and public confidence in public service

Ryan (2000:9) provides some salient analysis of why public perceptions of government may have declined: 'There are strong arguments that many features of new market-orientated public sector management practices have contributed to the decline in public confidence and increasing mistrust of government.' This is partly because the values of competition, efficiency, and individual responsibility which are

characteristic of these approaches are at odds with broader social values of cooperation, community, family, and equality. Further, Ryan sees trust being diminished through the increasing use of contractual arrangements with their emphasis on precise responsibilities and deliverables. Constant reorganizations in an attempt to achieve more market-like competitive structures have also contributed to distrust through organizational instability and role ambiguity. Finally, Ryan (op.cit:10) argues,

‘A critical, professional public sector has been diminished in favour of stronger political control of the public sector. Public trust between the public sector and the public is likely to diminish as the public sector is increasingly identified as an extension of party politics, rather than a professional institution acting in the public interest.’

Ryan concludes by reminding us that there are fundamental differences between the functions of the public service and that of the private sector. This ethos is quite explicit in much of the Australian public sector reform, nowhere more so than in the explanatory memorandum for the Australian *Public Service Bill 1999* which put it this way: ‘The Government considers that the APS should operate, to the maximum extent consistent with its public responsibilities, under the same industrial relations and employment arrangements as apply to the rest of the Australian workforce’. (Parliament of Australia, 1999, clause 3) In my view we have gone too far in simplistic attempts to transfer mores, structures and practices from the latter to the former.

Ryan’s analyses are important considerations in our future attempts to market careers in the public service.

Rebuilding key public service structures – what would they look like?

So what would a governance framework for the public service of the future look like?

First, I believe we have to accept that the public service is fundamentally different career to that of the private sector, and there are good and enduring reasons to put in place special conditions of employment, such as security of tenure and appeals on merit to ensure independence from political influence, and the independence of advice-giving in the ‘frank and fearless’ tradition.

Second, and for similar reasons, governments and the public need to commit to their public services. For a start, public service needs to be better-rewarded. We will simply not attract the best and the brightest if we continue to underpay the crucial work of the public services and the public sector generally (including sectors such as education, health, and justice workers). Similarly, politicians need to be formally educated about the role of the public sector, for example in purpose-built induction courses and agency visits. They should be encouraged by their political leadership to stop criticizing the service and using it as a whipping boy during every election campaign. Fulsome praise of the public service, such as that from Tony Blair (2004), should not be so rare among political leaders. Or as Belcourt and Taggar (2002: viii) put it ‘The most important lesson ... is that organizations must commit to employees before

expecting employees to commit to them.’ The image of the public service does affect its capacity to attract the best and the brightest (Cohen et al. 2004).

Third, if the public service of the future is to responsively address the big issues and the wicked problems, and work across the whole of government, which is one of its biggest challenges (Briggs, 2007a), it needs to have a centralized employer who is able to deploy senior staff in ways that address these problems. Dispersed employment arrangements, where each agency is the employer, will simply not achieve a whole of government approach, simply because there is no incentive for the individual employers to work cooperatively or collaboratively in the common or public interest.

Conclusion

This review of some of the national and sub-national public sector reforms of institutional arrangements in Australia has highlighted some of the drivers of this reform and the resultant institutional re-configurations. This paper contends that some of the reform has created collateral damage in crucial aspects of workforce planning and management, and supports Colley’s (2006: 57) conclusion that the “devil was in the implementation rather than the principle, in which case reforms to the principle may have thrown the baby out with the bathwater.”

Among the many public policy challenges facing the public sector in Australia (Menzies & Weller, 2004), the demographic profile of the current workforce is likely to result in a significant bulge in exits from the sector in the next decade. The public sector labour market is becoming increasingly more competitive at the same time as the demands, expectations and challenges facing the workforce are escalating. In this scenario a well-researched and coordinated workforce-planning framework is essential for all governments. While the Australian Government is well positioned in this regard, the institutional arrangement in WA, as a result of the reforms of recent decades, faces a considerable risk.

In Australia, the institutional public sector workforce governance framework and its resourcing remain critical public policy challenges. In some jurisdictions, such as in WA, there is a need for coordinated whole of government workforce research to inform future public policy. More generally, following the lead of the APSC, most other Australian jurisdictions would benefit from a return to a central, truly independent, boundary-riding public service commission. Further, this paper has argued that such a commission should be the central employer for all but the most senior public servants, and would ensure appointment on merit by retaining appeals on merit and restoring the right at even higher levels in the public service. This, together with a return to enhanced security of tenure and remuneration, including at senior levels, will ensure a more committed public service able to respond in a balanced way in the public interest to the major challenges of the future.

REFERENCES

- Australian Government. 2006. *Public Service Act, 1999*.
<http://www.comlaw.gov.au/comlaw/Legislation/ActCompilation1.nsf/0/9C5BFF498D59C34BCA25715700128794?OpenDocument>
- Australian Public Service Commission. 2003. *The Australian Experience of Public Sector Reform*. Canberra.
- Australian Public Service Commission. 2004. *Connecting Government – whole of government responses to Australia’s priority challenges – summary of findings*. Management Advisory Committee. Canberra.
- Australian Public Service Commission. 2006. *State of the Service Report 2005-2006*. Canberra.
- Australian Public Service Commission. 2006a. *State of the Service Report 2005-2006 – at a glance*. Canberra.
- Australian Public Service Commission. 2005. *State of the Service Report 2004-2005*. Australian Government, Canberra.
- Australian Public Service Commission. 2005a. *Senior Executive Leadership Capability (SELC) Framework*. Australian Government, Canberra.
<http://www.apsc.gov.au/selc/index.html>
- Australian Public Service Commission. 2006b. *Supporting Ministers, Upholding the Values*. Canberra. <http://www.apsc.gov.au/publications06/supportingministers.pdf>
- Blair, T. 2004. Reforming the civil service. *Speech on modernizing the civil service*. <http://www.number-10.gov.uk/output/Page5399.asp> downloaded 13 August 2007.
- Briggs, L. 2007. Why respect matters in the Australian Public Service. *Public Administration Today* 10:10-13 January-March.
- Briggs, L. 2007a. The context and challenges of policy advising. Australian Public Service Commission. <http://www.apsc.gov.au/media/briggs120607.htm> - downloaded 10 August 2007.
- Buffini, F. 2007. ‘Public service ‘damaged’’. *The Australian Financial Review* 27 July p.28.
- Burgess, V. 2007. ‘Round two in public service’. *The Australian Financial Review*. 27 July p.68.
- Cohen, A., Zalmanovitch, Y., and Davidesko, H. 2004. ‘The role of public sector image and personal characteristics in determining tendency to work in the public sector’. In Vigoda-Gadot, E. and Cohen, A. (Eds) *Citizenship in Public*

Administration – Citizenship and Management in Public Administration: Integrating Behavioural Theories and Managerial Thinking. Edward Elgar, Cheltenham.

Colley, L. 2001. 'The changing face of public sector employment'. *Australian Journal of Public Administration* 60(1): 9-20.

Colley, L. 2006. 'Approaches to the merit principle in Queensland public service recruitment 1859-2000. From rich and dumb to gender discrimination to politicisation?' *Australian Journal of Public Administration* 65(1):46-60.

Davies, G. 2007. Merit must rule in choice of judges. *The Australian*, 10 August pages 37-38.

Demmke, C. 2004. *European Civil Services between Tradition and Reform*. European Institute of Public Administration. Maastricht.

Denhardt, R.B. and Denhardt, J.V. 2000. 'The new public service: serving rather than steering.' *Public Administration Review* 60(6):549-559.

Government of Western Australia. 2001. *Government Structures for Better Results*, Ministry of the Premier and Cabinet, Perth, June.

Government of Western Australia. 2001a. *Retirement Intentions – survey of WA public sector employees aged 45 years and older*. Ministry of the Premier and Cabinet. <http://www.dpc.wa.gov.au/psmd/pubs/wac/retireintent/retireprint.pdf>

Government of Western Australia. 2003. *The Wealth Within – pathways to leadership in the Western Australian Public Sector*. Department of the Premier and Cabinet, Perth, April.

Government of Western Australia. 2003a. *Workforce Projections – population ageing and the Western Australian Public Sector Workforce*. Department of the Premier and Cabinet and the Centre for Labour Market Research, Perth.

Government of Western Australia. 2005a. *Profile of the Western Australian State Government Workforce*. Department of the Premier and Cabinet, Perth, June. <http://www.dpc.wa.gov.au/psmd/pubs/wac/prof05/index.html>

Greenwood, J.R. 1989 *Public Administration in Britain Today*. Routledge, London.

Haque, M.S. 2001. 'The diminishing publicness of public service under the current mode of governance.' *Public Administration Review* 61(1):65-82.

Job, J. 2005 'How is trust in government created? It begins at home, but ends in the parliament.' *Australian Review of Public Affairs* 6(1):1–23 December.

Kelly, P. 2006. 'Re-thinking Australian governance: the Howard legacy.' *Australian Journal of Public Administration* 65(1):7-24.

Tait, J. (2000) *A Strong Foundation. Report of the Task Force on Public Service*

Values and Ethics. Canadian Centre for Management Development.
<http://www.myschool-monecole.gc.ca/Research/publications/pdfs/tait.pdf>

Kernaghan, K. (2007) *A special calling: values, ethics and professional public service*. Office of Public Service Values and Ethics, Canada Public Service Agency.
http://www.psagency-agencefp.gc.ca/veo-bve/publications/serie/kernaghan/asc-uvs_e.asp

McGuiness, P.P. 2007. 'A politicised public service?' *Quadrant* Editorial. 93 April.
http://henrythornton.com/article.asp?article_id=4647 downloaded 5 August 2007.

Menzies, J. and Weller, P. 2004. 'Government in 2020.' *Public Administration Today* (1):10-15 September-November.

Murray, P. 2006. 'Public service chooks coming home to roost.' *The West Australian*, 11 May p.16.

Norman, R. 2003. *Obedient Servants? Management freedoms and accountabilities in the New Zealand public sector*. Victoria University Press: Wellington.

Norman, R. and Gregory, R. 2003. 'Paradoxes and pendulum swings: performance management in New Zealand's public sector.' *Australian Journal of Public Administration* 62(4):35-49.

Office of the Public Sector Standards Commissioner. 2006. *Ten-Year Review, One, the Commissioner's role in action. A ten-year reflection*. Government of Western Australia, April.

Office of the Public Sector Standards Commissioner. 2006a. *Ten-Year Review, Four, a separate ethical code for ministerial staff?* Government of Western Australia, December.

Parliament of the Commonwealth of Australia, Senate. 1999. Public Service Bill 1999 - Explanatory Memorandum.

Podger, A. 2007. 'What really happens: department secretary appointments, contracts and performance pay in the Australian Public Service.' *Australian Journal of Public Administration* 66(2):131-147.

Prasser, S. 2006. *Providing Advice to Government*. Unpublished monogram provided to the author in a personal communication on 19 February 2007, based on a lecture presented in the Senate Occasional Lecture Series, Parliament House, Canberra, Australia on 24 February 2006.

Ryan, N. 2000. *Public confidence in the public sector*. Discussion paper prepared for the Office of the Auditor General WA.
http://www.audit.wa.gov.au/pubs/public_confidence.pdf

Stanley, G. 2001. *Public Sector Reform in Western Australia – the role of chief executive officers in leading cultural change in their organisations*. Unpublished PhD thesis, Curtin business School, Curtin University of Technology.

Strutt, J. 2007. 'Politics 'eroding public service''. *The West Australian*. May 9 p. 1.

Strutt, J. 2007a. 'Rules lacking for political lackeys.' *The West Australian*. May 9 p. 8.

Strutt, J. 2007b. 'Premier's control 'erodes public service independence''. *The West Australian*. May 16 p. 6.

Torres, L. 2004. 'Trajectories in public administration reforms in European Continental countries.' *Australian Journal of Public Administration* 63(3):99-112.

Williams, C. 1985. 'The Concept of Bureaucratic Neutrality' *Australian Journal of Public Administration*. 44(1):46-58.

Williams, C. 2005. 'Frank and fearless leadership: can it survive in the 'reformed' public service?' *Public Administration Today*. 3:18-27.

Williams, C. 2006. 'Post-conventional leadership and the 'reformed' public sector - an Australian case study.' *2006 efmd Conference on public sector management development*. Institut de Management Public – Université Paul Cézanne, Aix-en-Provence, France, 14-16 June.

Williams, C. 2007. 'Public Service Commissions as boundary riders – Australian public service regulatory agencies -why have them in a 'reformed' public service?' *World Summit on Public Governance*. Taipei, Taiwan, May.

Appendix 1

A comparison of public service commissions or successors in Australian jurisdictions

(Source: original table drawn from jurisdiction websites - For direct links to the websites and relevant legislation of each of the Federal, State and Territory bodies in Australia, see: <http://www.ocpe.sa.gov.au/default.asp?idL1=20&idL2=21&idL3=1333>)

Jurisdiction	Agency name(s)	Legislation	Independence & Accountability	Powers & Functions in relation to PS workforce
Australian Government	Public Service Commissioner	<i>Public Service Act 1999 Part 5</i>	Statutory agency; appointed by the Governor for 5 year term; annual reports to Parliament.	Promotion of values and statutory Code of Conduct; employment policies and practices; power to give binding directions (e.g. on values and employment conditions for SES) directions to agency heads, and to conduct inquiries. (Prime Minister employs secretaries [department heads] for 5-year terms. Department heads are employers of public servants and not subject to direction by Ministers in making appointments). Commissioner's representative sits on all SES selection panels.
	Merit Protection Commissioner	<i>Public Service Act 1999 Part 6</i>	Statutory agency; appointed by the Governor for 5-year term; annual reports to Parliament.	Conducts inquiries on employment actions by agencies in relation to the APS values (including the merit principle); investigates breaches of Code. (Reviews on merit of engagement and promotion decisions are available at certain classification levels under s.33 and regulations.)

Australian Capital Territory	Commissioner for Public Administration	<i>Public Sector Management Act 1994 s.20</i>	Administratively within the Chief Minister's Department, and reports to and subject to direction of the Chief Minister.	Maintains core employment rules and sets standards for the public service; co-ordinates strategic PS training activities. Required under Act to maintain whole of service employee records. (Chief Minister employs Department heads. Department heads are employers. Promotion appeals on grounds of superior 'efficiency' available under s.84.)
Northern Territory	Commissioner for Public Employment	<i>Public Sector Employment and Management Act Part 3.</i>	Statutory officer appointed and terminated by the Administrator (Governor).	Manages Principles of Public Administration and Code of Conduct; employer of all public servants (can delegate powers to agency heads); sets conditions of employment; manages strategic workforce planning and HR database; conducts inquiries (including promotion appeals on merit via Promotions Appeals Board); gives directions.
Queensland	Public Service Commissioner - head of Office of Public Service Merit and Equity	<i>Public Service Act 1996 Div.2</i>	Statutory office appointed by Governor for 5-year term, employed by Premier; must act 'independently and impartially'; reports annually to Parliament via the Premier.	Promotes principles of public sector management; sets employment conditions for public servants; monitors performance of public service and conducts reviews; determines promotion appeals on merit; can delegate powers. (Agency heads appointed by Governor but are subject to direction in running their department by Premier or minister. Department heads are employers.)

New South Wales	Head, Premier's Department	<i>Public Sector Employment and Management Act 2002, s.4</i>	Non-statutory Head of Department, appointed by and reporting to Premier.	Sets non-statutory Accountability Standards and Code of Conduct; provides direction and leadership, policy development, and effective management of the public sector. (Ministers appoint agency heads who are employers. Promotion appeals available s.21.)
Victoria	State Service Authority (SSA)	<i>Public Administration Act 2004, Part 4.</i>	Statutory Body with chairperson (up to 5 year term) and members appointed by Governor on recommendation of the Premier; reports annually to Premier and Parliament on PS workforce.	Promotes statutory values and employment principles; reviews performance of department heads at direction of Premier; (Premier employs department heads for 5 year terms. Department heads are employers of public servants and not subject to direction in that role). Conducts reviews and prepare reports at request of Premier or ministers (cannot initiate); whole of government workforce planning policy and coordination, including databases and research.
	Public Sector Standards Commissioner	<i>Public Administration Act 2004, Part 4</i>	Statutory member of SSA (3 year term).	Promote standards of integrity and conduct 'independently'; prepares binding codes of conduct based on statutory PS values; reviews employment actions of agencies against standards, but not merit in promotion decisions (only process); requires reports on application of standards, values etc. from agency heads;

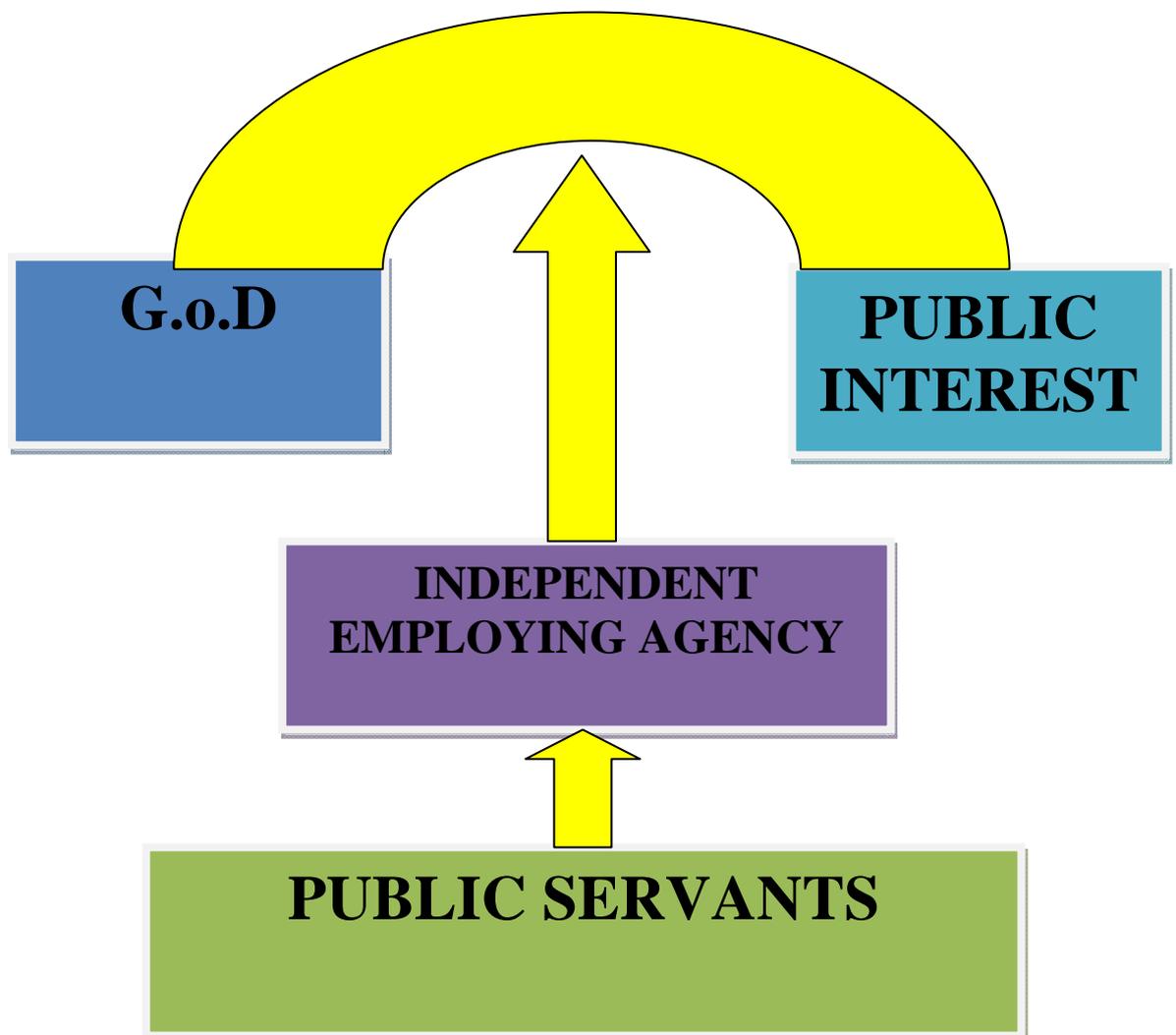
Tasmania	State Service Commissioner	<i>State Service Act 2000, Part 5</i>	Statutory Officer appointed by Governor for 5-year term; same immunity as judge in carrying out functions; annual report to Parliament which has role in removal of Commissioner from office in certain circumstances	Administration of statutory State Service Principles and Code of Conduct; issues directions in relation to these; conducts investigations and reviews including at request of Premier; hears and determines promotion appeals based on merit; reviews employment policy functions delegated to Secretary Department of Premier and Cabinet; agency Ministers employ public servants but can delegate.
South Australia	Commissioner for Public Employment	<i>Public Sector Management Act 1995 Part 5; Industrial and Employee Relations Act 1994.</i>	Statutory office appointed by Governor for 5-year term; Annual reports to Minister, tabled in Parliament; Commissioner subject to limited direction by Minister.	Employer of most public servants under IER Act 1994; establish framework for PS HR management including providing directions on standards and conditions of service (except remuneration); undertake reviews and inquiries; Governor appoints department heads for 5 year terms but contract is with Premier; department heads are employers of public servants. Promotion appeals only on deficiency of process not solely on relative merit.

Western Australia	Department of the Premier and Cabinet	<i>Public Sector Management Act 1994</i>	Department established by and reporting to Premier. No independent statutory powers.	Advice to Premier/Minister for PS management on whole of government workforce planning and development. (Premier employs department heads; Department heads are employers of public servants. No promotion appeals on merit, only process review. Public sector industrial matters managed by Department of Consumer and Employment Protection.)
	Commissioner for Public Sector Standards	<i>Public Sector Management Act 1994, Division 3.</i>	Statutory office appointed by Governor for 5-year term on recommendation of Premier after consulting with Parliamentary party leaders; Parliament has role in removing Commissioner from office. Required to 'act independently' in carrying out functions.	Establishes and monitors binding standards on PS merit, equity and probity, and establishes binding Codes of Ethics; reports to Ministers and Parliament on compliance; conducts inquiries.

Figure 1: THE TWO MASTERS DILEMMA

'No man can serve two masters. For either he will hate the one, and love the other: or he will sustain the one, and despise the other. You cannot serve God and mammon.'
(Matthew 6:24, Douay-Rheims Bible)

A. NEUTRALIST OR BALANCED TYPOLOGY



B. RESPONSIVE, REFORMED OR IMBALANCED TYPOLOGY

