

**Submission to Joint Committee on Public Accounts and Audit Inquiry  
based on Auditor-General's report No. 19 (2017-18).**

1. My name is Paul Munro. I am a retired statutory officeholder, resident in Sydney.
2. I make this submission as a citizen with a background experience of aspects of staffing and procurement for Australian Government Administration. I have a career-long concern for the capability and integrity of services provided directly or indirectly through employment and engagement by the Commonwealth.
3. My relevant experience includes service as a member of the Royal Commission on Australian Government Administration, (the Coombs Commission; the RCAGA), 1974 – 1976; as a member of the Administrative Review Council, 1984 – 1987; 18 years' service as a Presidential Member of the Commonwealth Conciliation and Arbitration Commission and its successors; and voluntary service as a member of the ACTU sponsored Independent Inquiry into Insecure Work in Australia, (the Howe Enquiry) 2012. My first employment was five years' service as an officer of the Administration of Papua New Guinea; that was followed by some 16 years' service as an officer of PNG and Commonwealth Public Sector employee organisations and peak councils.
4. My purpose in making a submission is to raise with the Committee some background matters broadly relevant to the subject matter of its reference. The essence of my submission is that the subject matter of the Committee's reference should be considered in perspective with the background matters I raise. Together those matters establish a trend and developing state of affairs that warrant bipartisan effort to pursue and enforce reform

5. My primary focus is upon what I shall shorthand as staffing public administration. That broad topic comprehends the direct engagement of labour by government agencies through the several engagements, contractual and procurement options available. Those options are extended further by adjunct processes not within this Committee's reference, the increasingly ubiquitous practice of funding administrative and program services through not-for-profit or "competitive tendering" private sector agencies.
6. Procurement contracts and grants of the kind would appear to extend across a wide range of activity, uses and services. The terms of reference of this Committee direct inquiry to items, matters or circumstances connected with any items, matters or circumstances connected with the Auditor-General's report: No. 19 (2017-18) Australian Government Procurement Contract Reporting (the ANAO Information Report)
7. The ANAO Information Report addresses the scale of use, growth in volume and cost of procurement contracts for consultancies. It identifies the broad categories of procurement contracts, the main contracting entities and points to apparent instances of non-compliance with regulatory guidelines and requirements.
8. I cannot claim to be familiar with the detailed background and antecedents of the ANAO Information Report. Perforce, my submission is framed against my understanding of earlier reports and provisions. However, I believe that the points I wish to make to the Committee can be found still to have substantive grounding and resonance into current practice. I believe them to be of sufficient substance to warrant some effort by the Committee to consider their relevance to contemporary settings.

## **The trend away from standing, professional and accountable core administrative services.**

9. There has been no comprehensive review of Australian Government Administration since the delivery of the RCAGA Report in mid-1976.<sup>1</sup> The analysis and recommendations of that report were constructively received and implemented over the following years. In large measure, the successful outcomes of the Report were a product of its building upon widespread consultation across the Commonwealth. It drew upon its own substantial research, consultation with and contribution from administration, political, academic and business circles. The outcomes deployed a relatively high degree of bipartisan consensus about “new complexities” in governance and administrative structures and values. Around that consensus the RCAGA framed the need for changes to ensure that long-trusted signposts, established conventions of behaviour were not barriers to the administration becoming flexible, responsive as well as responsible and accountable.
10. A major premise underlay the RCAGA’s insistence on reforms to ensure greater flexibility, accountability for performance, responsiveness, and responsibility. The paramount premise should be adherence to principles of governance that sounded in overall accountability to Parliamentary and Ministerial control. The RCAGA considered a proposition that it should establish or call for an “official” codification of standards of behaviour for administrators. It was contended that such a code could embody an ethos of administrators conforming to such principles along traditional lines. The RCAGA Report concluded that any such attempt would be likely to be counter-productive to the settings appropriate for a flexible, diverse and responsive administrative structure. However associated RCAGA recommendations reflected a prevailing consensus that an ethos and structure supportive of further development of professional standards across advisory, managerial and operative services of administration should be maintained and developed.<sup>2</sup>
11. One component of that development, since largely implemented, was to remove existing barriers to exploiting to best advantage the capability of a resourceful public service workforce. Thus:
  - the divisional structure was abolished;

---

<sup>1</sup> Royal Commission on Australian Government Administration Report. Available in digitised form online at [apo.org.au](http://apo.org.au)

<sup>2</sup> RCAGA Report at Chapter 2.4

- discriminatory classes of exempt employment were abolished or minimised;
- greater capacity to redress suboptimal performance and redundant personnel or services was introduced;
- more uniform conditions across Commonwealth agencies were provided for; and,
- Commonwealth public sector employment generally was subjected to the industrial relations system applying across public and private sector employment.

12. The RCAGA Report was founded upon unanimous acceptance that, while allowing the need for reforms and changes, the Australian Public Service should continue to be pivotal to the functioning and administration of the machinery of government under Ministerial control and accountability. Changes to the executive structures and to legislative provisions governing the APS since 1976 have not ostensibly reflected any radical departure from that conception of the APS. In that concept, the APS is the administrative entity embedded as a constituent of the Australian system of governance under constitutional arrangements now loosely approximating to the Westminster model. Commitments to maintaining a “strong and responsive” APS, by each Prime Minister, including Mr Turnbull, can readily be found.

13. The RCAGA Report came 50 years after the first comprehensive review of the system of Australian government administration by Commissioner Duncan McLachlan. Particular aspects of administration, notably recruitment and promotions machinery for the Australian Public Service, had been reviewed in 1943-44 and 1956-57. Numerous other aspects of the APS and other agencies had been considered, but more particularly after the RCAGA, were considered by this Joint Committee and the ANAO.

14. My primary submission to the Committee is that an ample case can be made in the public interest for a fresh and comprehensive review of Australian government administration, staffing and funding practices across it. That review should be undertaken by a body of appropriate independence, expertise and balance, with powers at least commensurate with those of a Royal Commission.

- 15. I ask the Committee to give favourable consideration to recommending such a review.** The main grounds for urging such a review stem from my perception of the material before the Committee from the ANAO Information Report 19, and from earlier ANAO and pertinent material that my submission will outline.
16. I doubt that any informed person would dispute the existence of a trend away from sustaining a standing, strong, professional corps undertaking administrative services. That trend is the product of a series of steps. A number made to keep pace with the thrust toward managing with less across all administrative functions. Others were made in pursuit of a sometimes inarticulate objective of bringing about smaller apparent government. Others again, were responses to exigencies, some of which evolved into conditioned responses fuelled by administrative convenience relatively shielded from scrutiny.
17. There is less widespread understanding or acknowledgement of the degree of departure integral to that trend. Nor does there seem to be appreciation or consideration of the institutional ramifications of the trend.

## **Substitution of “independent contractors”, non-APS employment and other staffing options by Commonwealth agencies**

18. APS employees are engaged under the relatively rigorous merit based engagement regime of the *Public Service Act 1999*. Throughout the long history of the Australian Public Service, that statute and its predecessors maintained a fundamental principle. The principle of a merit based standing bureaucracy reflected a socio-political consensus that staffing of administrative agencies should not be part of any “spoils system” presided over by those who gained executive power from time to time through the ballot box. Merit appointment was the founding principle in our Westminster public service tradition, dating back in the UK to the Northcote-Trevelyan report of 1854; adopted in Australia across State and Commonwealth from the 1890s.
19. At all relevant times that principle ensured that a statutory test mandated that no temporary, or ad hoc staffing processes should depart from the presumption that ongoing employment based on merit selection is the usual basis of staffing public administration conducted by Departments of State under the Australian Constitution. The current embodiment of that principle is to be found in Sections 10A and 22 of the *Public Service 1999*. Those sections were worded to ensure that, with minor modifications, the engagement regime based on merit and presumption of continuing employment remained in place as the foundational recruitment and engagement principle.
20. Among changes introduced by the *Public Service 1999* was a code of conduct for most APS employees. That code and the associated charter of APS values in Sections 13 and 0 of the *Public Service 1999*. Their presence reinforces the standing of those covered as engaged in the professional calling of public administration.
21. My background experience and statutory office imbued me with an understanding of that regime, its rationale, and with the application of the Workplace Relations Act to APS employees generally. In July 2003, I was a member of a Full Bench of the Workplace Relations Commission dealt with a matter exposing the extent to which the ostensible APS employment settings were being deliberately bypassed.
22. In *Arends v Department of Defence*<sup>3</sup> the Commission ruled upon whether it had jurisdiction to deal with Mr Arends’ application under the *Workplace Relations Act 1996* for relief against termination of his

---

<sup>3</sup> Department of Defence Re: *Arends v Department of Defence* PR935265 [2003] AIRC 901; (28 July 2003)

employment. Arends was a civilian engaged by the Department of Defence as a contract Health Provider at a Royal Navy establishment. At issue was whether he was a Commonwealth Public Sector employee for purposes of the WR Act. He had been found at first instance to be an employee at common law; on appeal to the Full Bench, the Commonwealth on behalf of the Department of Defence conceded that if the test were a matter for judgment at common law, Arends was an employee.

23. The Full Bench decision is useful still because it delivered a comprehensive analysis of the relevant statutory and subordinate regulatory provisions. I have not been able to review the minutiae of provisions to establish that there have been no changes of substance; should that degree of detail become relevant to this Committee I should expect that the task could readily be undertaken by a person familiar with that field of administrative regulation.
24. What is most pertinent to this submission and to the Joint Committee's inquiry is that the Full Bench found that under the *Defence Act 1910*, related legislation and relevant administrative instruction instruments, notably *DI(G) Admin 24-1*, there had developed a "*systemic use of contracts for services as an alternative option to an employment contract of service*". For reasons it is not necessary to elaborate upon here, the Full Bench determined that the contract in question established an employment relationship causing the applicant to be a "Commonwealth public sector employee".
25. That finding of jurisdiction and the status of the contractual relationship was reversed on appeal to the Federal Court. The Court held that the Defence Department could not have authorised an employment contract under the administrative instruction provisions for the procurement process that it was purporting to apply. It held in effect that the authority conferred by the Defence Administrative instruction (to engage a contractor) determines the relevant character of the relationship established under the law. It was insufficient that the relationship of contractor established under the law may in practice develop features of an employment relationship. The FCA decision placed great reliance on the narrow terms of the *Public Service Act* power of appointment and the restrictive reading it gave to relevant Defence Department Administrative Instructions.

26. Notwithstanding the reversal on judicial review, the FWC decision in *Arends* is relevant to this Committee's work. The Full Bench supplies a still relevant detailed exposition of the relevant statutory and related provisions. That exposition unambiguously documents the basis for finding a systemic use of contracts for services to supplant the creation of what in common law and practical usage are employment relationships. It is also a concrete manifestation of the ease, deliberateness and scale on which the regulatory provisions governing APS employment are systematically bypassed.
27. The Court and FWC Full Bench decisions in *Arends* together established another point. Persons engaged by a Commonwealth Department of State as a *quasi*-employee under a contract for services are thereby denied protections that would otherwise be available if they were employees of the Commonwealth. In that respect protections designed to be applied to all people classed as "federal employees" by the Workplace Relations Act or its current counterpart are denied whatever benefit may be derived from its mandatory application to them.
28. The FWC and FCA decisions in *Arends* may be taken to establish the systemic character of the resort to procurement of contractor services in lieu of employment. It was beyond the tribunals' purview to explore the scale or dimensions of non-APS employment or contracted engagements tantamount to employment. My resources do not extend to supplying accurate up to date information about that scale. My past research extends only to two cogent, albeit dated, but authoritative sources. Each indicates the likelihood of permeating exponential growth in the use procurement contracts to bypass the recruitment and engagement regimes for staffing Australian public administration. Those sources are corroborated by the trends manifest in two additional tables extracted from more recent publications including the ANAO Information Report 19.
29. Almost immediately upon the FCA decision in *Arends*, a triumphant advice was issued by the Australian Government Solicitor. It is available on the internet still, and is presumably currently in force. It was directed to all agencies. It expounded the position prevailing as the result of the Federal Court in *Arends*. The AGS advised:

*"Implications of the decision*

***Generally an employee in the APS will be covered by the unfair dismissal provisions of the WR Act only where the employee is employed as an APS***



***employee under the Public Service Act 1999. Contractors generally will not be covered, even if they are common law employees. Similar observations apply to Commonwealth public sector employees who are engaged under other legislation governing their employment.***

***It is desirable that any statutory instruments relating to engagement of contractors in the Commonwealth public sector should specifically indicate that an employment relationship is not established or intended.***

*It is important to note that this decision relates only to the application of the unfair dismissal provisions of the WR Act. In other contexts when construing the relationship between the parties, the law will look beyond the legal authority for the relationship and will assess all the circumstances to determine whether an employment relationship exists.<sup>4</sup> (Emphasis supplied)*

---

<sup>4</sup> AGS Express Law: Employment by authority of a law of the Commonwealth: 28 September 2005  
<http://www.ags.gov.au>.

30. The AGS advice to agencies reveals no disquiet about the use of procurement contracts as an alternative option to APS employment. Indeed, the advice may be interpreted as encouraging a “full steam ahead” approach to the use of procurement contracts for that very purpose. In this context, the terminology of a “procurement” process to staff an administrative function connotes a degree of commoditization of the human services required. That process contrasts with the regime it is a substitute for, APS employment. For APS employment, a statute enjoins recruitment and engagement of employees who become subject to a code of conduct. That regime might be seen as the antithesis of, as an intended barrier to those thus engaged being treated as supplying a mere commodity: their labour.
31. The ANAO Audit Report No.49 2006–07 *Non-APS Workers* Audit Team<sup>5</sup> provides a second insight into the scale of use of procurement contracts and other processes to avoid the rigors of employing under the *Australian Public Service Act 1999*. Perhaps my reference to it will encourage this Committee to apply its research resources to extract whatever sequels and updating of that report might be made accessible to it.
32. The ANAO *Non-APS Workers* Audit Team Report gave an indication of both the size of the non-APS and non-continuing workforce and the obscurity as to its cost and provenance. The term ‘non-APS workers’ spanned a wide range of individuals engaged by agencies. According to the ANAO,

*“in the most generic form, a worker is any person who provides his or her labour in return for remuneration. The type of work performed by non-APS workers can be in many fields including, information technology; finance, management; audit; business support service; or corporate support. The non-APS workforce can take various forms including casual employees; fixed-term employees; labour hire employees; consultants; and contractors.”*

---

<sup>5</sup> ANAO Audit Report No.49 2006–07 *Non-APS Workers* Audit Team: Charles Higgins David Crossley; report available from <http://www.anao.gov.au>

The term did not cover “consultants” or “staff” of an agency whose appointment is specifically excluded from the Commonwealth Procurement Guidelines (CPGs)<sup>6</sup>

33. For the purposes of its report in 2007, the ANAO audit team surveyed 84 Australian government agencies employing 20 or more APS employees. Survey results disclosed that some 19,000 non-APS workers were engaged by agencies as at 30 June 2006. That figure may be compared with 146,000 APS employees, 92% of whom were ongoing employees and 8% employed as non-ongoing employees. As at June 2006, “non-APS workers” constituted more than 11% of the total workforce serving agencies engaging APS employees.

34. Agencies estimated the total expenditure on non-APS workers was \$2.197 billion in 2005-06.

*Over \$709 million of this total was for longer term contracts for specified personnel. This particular category of non-APS workers are otherwise known as contractors or dependent contractors: workers who are engaged on a contract but with significant elements of their work arrangements consistent with agencies' engagement of APS employees.*

35. The ANAO *Non-APS Workers* Audit Team Report was written with what struck me as an ostensibly disingenuous candor. It blandly reported on practices that came across to me as a smoking gun betraying the elimination or disregard of principles once integral to staffing the administration in a manner consistent with efficiency and equity.<sup>7</sup> The audit showed that, entrenched across agencies, was a cavalier approach to the principles that formally underpin APS employment as an ongoing merit based service according fair terms and conditions to employees. That cavalier disregard can readily enough be discerned in an elliptic and circular response from the Department of Finance. It was made to the second of two ANAO recommendations. With understatement, the ANAO recommended that

---

<sup>6</sup> Department of Finance and Administration, Commonwealth Procurement Guidelines, Financial Management Guidance No. 1, Canberra, 2005, paragraph 2.5.

<sup>7</sup> ANAO *Non-APS Workers Report* at 1.12, Table 2.2: 2.15 to 2.20 re direct procurement practices, 2.21 to 2.23 re tenure of non-APS workers, 3.1 need for strategic planning particularly where “non-APS workers perform core functions in an agency; 3.14-3.18 re significant flow on effects and risks; 4.7-4.9 deviations from Procurement Guidelines and value for money applied to compromise the procurement process; 4.14 inadequate record keeping and documentation; 4.19 absence of performance assessment and observation of contractual terms even where APS Values and Code of Conduct are included as contractual terms.

agencies should review and amend where appropriate, the **necessary arrangements** to align their engagement of non-APS workers with the legislative and policy procurement framework. (emphasis supplied). Stripped of bureaucratic-speak, and taken in context, the Department of Finance response could be rendered more vulgarly as “Go kiss my backside; the agency is free to chose whatever of the several options it prefers at the time”.

The Department of Finance’s quoted response was:

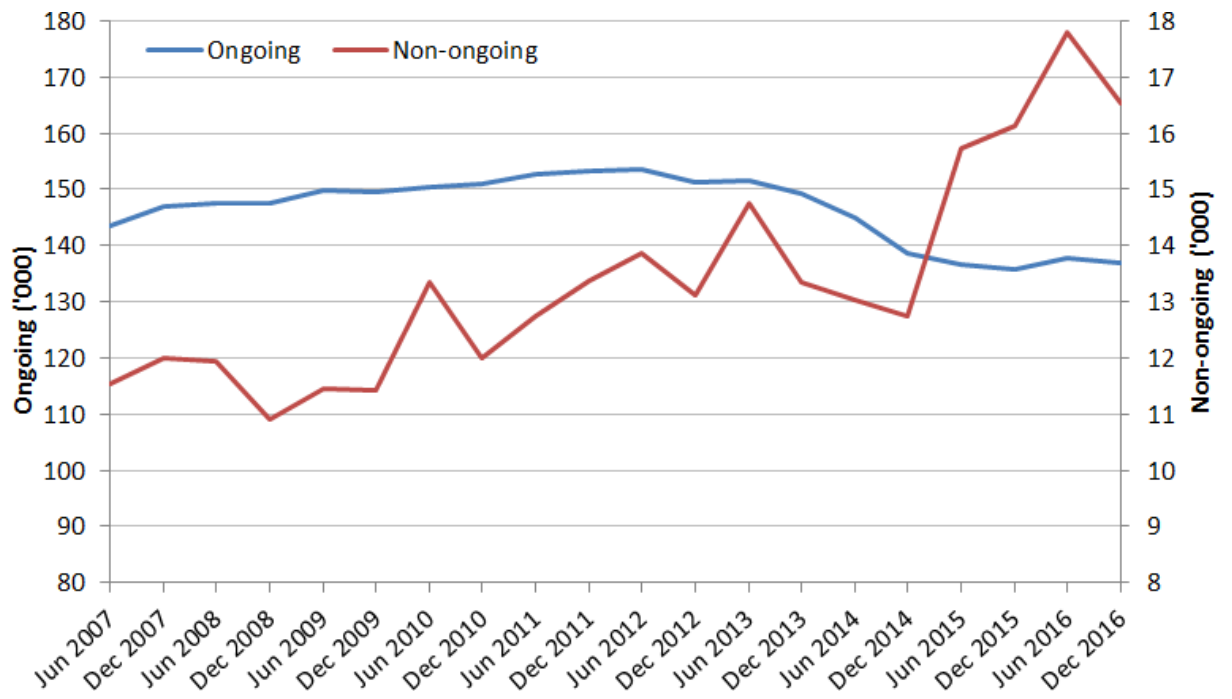
*Whether an agency engages a person under the employment framework or procurement framework is dependent on whether the services being sought are to be provided by an employee or contractor. Employment and workforce planning matters are outside of the procurement policy framework...however a number of agencies that are subject to the Public Service Act 1999 are not subject to the procurement policy framework.<sup>8</sup>*

36. The ANAO Non-APS Report and the material available from submissions provide a substantial basis for concern about the quality and ethical quality of the public administration workforce assembled under Australian Governments generally since the 1990s. I have not discerned any distinction between ALP and LNP governments in this respect although there may be differences in degree of use of the respective options. It is manifest that few politicians come to office with much empathy or supportive convictions about “public servants”. Few votes are to be found in any course other than going with the populist flow antagonistic to the stereotypical bureaucrat or bureaucracy, as commonly portrayed. Contemporary management theories and economic precepts guide both major political parties in Australia toward shrinking government and managing with less.
37. In my submission there is a high probability that the patterns reflected in the ANAO Non-APS Workers Audit Report and other indicators of greater commoditization of government administration workforces will continue to grow. That probability is demonstrable from the shrinking proportion of the stable ongoing element of the APS itself. The Figure below was downloaded from the Australian Public Service Commission Statistical Bulletin for years to end 2016. A decline in ongoing employment, a rise in non-ongoing employment is pronounced.

---

<sup>8</sup> ANAO Non-APS Workers Report at 65

38. Figure 1: All employees by employment category, June 2007 to December 2016



39. Conversely, the overall growth in procurement contract expenditures reflected in the ANAO Information Report 19, despite fluctuations, is clear enough. It evidences an even more pronounced trend toward using outsourced services or at least procurement contracted personnel.

**Table 3.1: Largest product and service categories of contract value by financial year (categories with five-year totals greater than \$5 billion – 2012–13 to 2016–17) (\$000's)<sup>16 17</sup>**

Product and service category	2012–13	2013–14	2014–15	2015–16	2016–17	Total <sup>a</sup>
Commercial and Military and Private Vehicles and their Accessories and Components	9,695,489	8,136,624	9,364,908	10,421,762	4,289,032	<b>41,907,815</b>
Management and Business Professionals and Administrative Services	8,585,409	7,536,104	10,355,005	7,109,743	5,832,384	<b>39,418,644</b>
Information Technology Broadcasting and Telecommunications/Engineering and Research and Technology Based Services <sup>b</sup>	9,977,054	5,667,364	7,360,962	7,175,849	5,707,465	<b>35,888,695</b>
Building and Construction and Maintenance Services	2,684,062	2,288,719	9,578,568	3,963,237	4,233,700	<b>22,748,285</b>
Politics and Civic Affairs Services	1,552,581	4,847,937	798,106	9,441,672	562,084	<b>17,202,381</b>
Healthcare Services	3,459,557	243,929	1,552,659	325,369	9,255,727	<b>14,837,241</b>

40. In the circumstances, I ask the Committee to view kindly my reliance upon the ANAO Non-APS Workers Audit Report as a sufficient basis for a presumption that it gives a substantially accurate picture of what is still happening in the agencies covered. To the extent that is so, the detail of that report provides sufficient grounds to find:

- A lack of adequate disclosure, even it would appear of reporting, within agencies on the use, term of employment or status of non-APS employees;
- Serious deficits in entitlements and access to basic employment rights for non-APS employees are commonplace;
- “value for money for the agency”, the sole criterion set by the Commonwealth Procurement Guidelines, predominates over any explicit regard to principles applicable to public administration, strategic or workforce planning, fair employment/decent work principles, to such a degree that it compromises even the haphazardly fitting Commonwealth Procurement Guidelines;
- The disadvantaging effect of “value for money” procurement of workers falls most heavily on smaller agencies, on women, indigenous workers, affecting organisation capability;
- non-APS staff are used on functions that include core business activity of the APS, to a degree that stimulates the ANAO to offer suggestions about better strategic planning;

**41. If those findings of the *ANAO Non-APS Workers Audit Report* have not yet been considered in detail and addressed by this Committee with a view to proposing remediation, I submit that such a review and consideration is fully merited. If already undertaken, I would ask that whatever was done be revisited in connection with the reference before this Committee.**

42. The movement away from the Westminster model of a strong, responsive merit based public service is very marked. Much of it has been the product of drift, albeit with lip-service still being paid to sustaining the weakening life-force of the merit system model. On the other hand, much of the movement has been in response to direction, including sometimes elusively expressed emulations of reductions in size of government policies. A notably explicit instance of such policy was adopted a recent West Australian Government which implemented a move to have the WA Public Service act merely as a “facilitator” for transferring service delivery to external private sector providers.
43. Movements away from the received APS model of this importance and degree have a substantial impact upon an institution that occupies a crucial place and role in Australia’s ongoing system of governance. It is not a transient role and place. Under our Westminster model, the APS is a functional entity whose role and continuance transcends and displaces the use-by dates of successively elected Governments. The impacts that I have touched upon should not be allowed continue and grow without informed, considered and constructive deliberation at as high a level as is practicable.
44. The submissions and evidence presented to the Howe Inquiry covered public sector employment across most States and Territories. The gist of that information, some of it very carefully prepared and documented, might usefully be summarised for this Committee. Relevant parts of it could be used to fortify points I have raised; it would demonstrate the national scale of degrading the merit system models, and the use of various systems of outsourcing service delivery and policy planning at State levels, the pace and direction of use of procurement processes in place of staff recruitment. It would also substantiate the impact upon individuals and institutions of the policies and practices deployed; in some instances, the effects were harrowing at personal level. However this Committee’s terms of reference do not extend to an examination of collateral issues within State public sector employment and its competitive sources. Were the Committee to be concerned with such examination, it would find many parallels and much cause for concern at the way in which the contractualisation of what once were governmental functions has evolved. Plainly, there are lessons to be learnt from a fuller understanding of the diminution of a “strong and responsive” public service.



45. In advancing this personal submission I have drawn upon, indeed I was very much motivated by, some material and impressions that I worked upon for the Howe Inquiry Report.<sup>9</sup> There is some small overlap with a part of Chapter 4 of that Report but although I commend that document for this Committee's attention, I have not revisited it for the preparation of this submission.
46. The weakening of capacity within the public services has many downstream effects. The institutional integrity, resilience and resource effectiveness is degraded. Opportunities for corrupt practices, within the facilitating outsourcing agencies, and at political and corporate levels are expanded and less subject to effective scrutiny. The existence of such opportunities should not need elaboration in this context. Anyone well acquainted with contemporary administrative, political and commercial scandals, with the egregious instances of extraordinary individual expectations of "entitlement", or with the increasing regularity of post-retirement or post-resignations appointments suggestive of conflict of interest, should recognise the basis for my assertion. Certainly, the scale, level and ubiquity of procurement processes may be a cogent factor weighing in favor of establishing a standing Integrity Commission for Commonwealth Administration generally.
47. Arguably, public confidence in the system of government and its leadership is undermined by a degrading of the standard model of a professional career public service. This undermining of public confidence is more likely to be the outcome when there is no established institutional strength in a service dedicated to advising and administering in the public interest as Ministerial governments come and go. Conversely, when there is no longer such a service, there is also absent a standing and identifiably non-transient body against whom public opprobrium for inevitable flaws in service delivery can be directed. In the Westminster model a standing resilient APS also serves as a convenient and necessary whipping post.

---

<sup>9</sup> *Lives on Hold* : The Report of the Independent Inquiry into Insecure Work in Australia. 2012 available at [www.actu.org.au/report](http://www.actu.org.au/report)

48. Another aspect of the trend away from service delivery under direct control of the Ministry warrants mention. For many years governments of all persuasions have found benefit in transferring rather than merely outsourcing service delivery. The mechanism for doing so is a grant of funds not a procurement contract. There is nothing new in the use of that mode of expenditure and it is far too late to expect any prospect of change in mainstream practices.
49. I draw attention to the process in this context because of aspects I have seen of its operation at the micro level. As a member of an arbitral tribunal, I regularly presided over cases where the recipient of a grant was an employer and the employees of or independent contractors to that recipient were effectively victims of grossly inadequate treatment and conditions of work. In the Howe Inquiry, evidence was also available of instances of considerable individual or institutional hardship subsistence on precariously contingent or inadequate grants of funding for essential services. Instances of analogous precarious funding arrangements within and between Commonwealth government agencies were also brought to notice.
50. Probably the most achievable improvement might be the encouragement of fixed term or longer-term grants. Similar grounds exist for discouraging the use of shorter fixed term contracts across procurement and staffing processes. If more decent working arrangements were to be accorded weight as an objective or criterion, the repeated use of short term contracts or funding arrangements might be discouraged, and adverse effects ameliorated.

The Hon. Paul Munro AM

15 February 2018