

SUBMISSION ON THE PROPOSED INCLUSION OF 'STEWARDSHIP' AS A VALUE IN THE PUBLIC SERVICE ACT

Introduction

The Public Service Act's values reflect the basic principles for the civil service in Australia's democratic government. They stress the importance of an accountable public service dedicated to serving governments and citizens impartially, ethically and respectfully within the framework of ministerial responsibility. The values are integrated and they describe the foundations on which public service employment should be organised.

The values now in the Public Service Act reflect a changed approach over the last 50 years which has placed greater reliance on broadly expressed standards or principles rather than the regulation of behaviour by blanket prohibitions on various activities.

While many of the prohibitions were effective, they had limitations. In particular, they were inflexible, didn't adequately encourage a sense of personal responsibility and they may in some instances have caused staff to think that what they could get away with was good enough. Moreover, they were not supported by statements of general principle about ethical and respectful behaviour for example, as such things were, for better or worse, assumed. When the Bowen Committee Report on public duty and private interests in the late 1970s recommended that prohibition should only be used as a last resort, the need for alternative guidance in the form of values became more pressing. We agree with the Bowen Committee view and the move away from prohibition where possible and we much prefer the use of legislative expressed values as a means of ensuring public servants behave appropriately and take a high degree of personal responsibility for doing so.

In different ways as officials we have been involved in the development and administration of the public service values, including assisting in the preparation of an early statement of them published by the Management Advisory Board in the early 1990s. The essentials of that statement are reflected in the present values although the values in the Public Service Act no longer refer to the principle of merit-based employment.

Amending the Values

Of course, no set of values no matter how thoroughly thought out will ever be beyond improvement or adaptation. However, extreme care should be taken in amending them lest staff be given the impression that as a whole the values are mutable and therefore to be taken less seriously than they should be. Nevertheless, particularly when in the recent past merit-based staffing has been undermined by the use of contractors and labour hire to undertake standard public service jobs, we would see advantage in re-instating the notion of merit into the current values, that being an essential part of public service administration ever since the reforming Northcote-Trevelyan Report in Britain in the 19th century. Yet the question of re-importing merit

into the current values or adding anything further should only be considered in the context of a comprehensive, overall review rather than by simply tacking bits on. Such a review should involve comprehensive analysis of the effectiveness of the present values and the publication of a paper setting out the result of that analysis and options for change. The paper could then be used as a basis for consultation with all departments and agencies, staff and their unions and the community more generally ahead of Parliamentary consideration of proposed changes.

Stewardship

The inclusion of stewardship as a responsibility of Secretaries and the Secretaries Board in the 2014 amendments to the Public Service Act was in response to concerns identified by the Moran Review about public service capability. Concern about capability was also one of the drivers of the new Public Governance, Performance and Accountability Act of 2013. It is therefore understandable that stewardship is being given renewed attention following the 2019 Thodey Review's concerns about erosions of capability.

Nevertheless, there is little evidence the present proposal for including stewardship in the Public Service Act's values has been the result of a thoroughgoing review. Indeed, the written material and videos on the matter on the Department of the Prime Minister and Cabinet website are unconvincing. Our misgivings are not eased by an impression that a decision appears to have been made, at least in principle, to add stewardship to values at the same time as comments are sought on its definition. That is to say, there appears to be agreement to add something to the values without first defining it.

In whatever way it might eventually be defined, we imagine stewardship in its essence as ensuring government administration has the proper resources, laws, processes and structures, together with a clarity of direction, to meet its responsibilities in all their dimensions, both now and into the future.

If so, stewardship is self-evidently not a value. It's a function and wholly different in character to the values in the Public Service Act – committed to service, ethical, respectful, accountable and impartial – which set out responsibilities and guidance for all staff.

It is also clear that stewardship, however it might reasonably be defined, is overwhelmingly the task of Ministers, Secretaries, heads of statutory authorities staffed under the Public Service Act and senior officials: the vast majority of public servants do not have the power or authority to do much about it. For example, the injuries to sound administration by Robodebt were the consequence of actions by Ministers, departmental Secretaries and senior officials and there was precious little junior staff could do to avoid or mitigate the damage.

Particularly in present circumstances, we support stronger action to improve the capability of the APS and its standing as an institution. And we can see that such actions can be better promoted by Ministers, departmental Secretaries, the heads of relevant statutory authorities and SES staff being made legally responsible for stewardship.

We do not, however, support adding stewardship to the values in the Public Service Act. Those values apply more or less equally and adding stewardship to them would make all staff responsible for a function over which few of them can have any power significantly to affect. Legalising such a mismatch of responsibility and power would be a basic and serious governance error and may well cause frustration among middle ranking and junior staff. Indeed, making staff responsible for things over which they have little or no control is not something an organisation aspiring to be a “model employer” should do.

Further, it is far from sound practice for legislation to say that stewardship is a value when clearly it is not. To do so would not only muddle the Public Service Act but risk confusing staff as to exactly what the values are and the purposes they are expected to serve.

Conclusion

Alterations to the Public Service Act’s values should only be done by a comprehensive review and not by piecemeal additions or subtractions. We strongly support such a review.

Including the function stewardship in the Public Service Act values would confound their unity of meaning and purpose. It would also be at odds with Minister Gallagher’s intention to have a “unified vision” for the public service.

It would undermine the effectiveness of the values in regulating and promoting high standards of behaviour.

And it would give rise to a serious risk of disenchantment for those staff given a responsibility they have little power to discharge.

We therefore strongly advise against adding stewardship to the Public Service Act values.

On the other hand, we very much support Minister Gallagher’s wish “to enshrine stewardship in the Public Service Act” as that could provide an important means of promoting APS capability. In our view, that would best be done by extending legal responsibility for stewardship to all Ministers, Secretaries. Heads of statutory authorities covered by the Public Service Act and SES staff, that is, those with appropriate power and authority to meet such responsibilities and be accountable for them.

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