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The Secretary

Senate Finance and Public Administration Committee

Parliament House

CANBERRA ACT

Dear Secretary

I would like to make a brief submission to the Committee on its consideration of the Public Service Amendment Bill 2023.

In the history of the Commonwealth opportunities to amend public service legislation have been rare, probably fewer than once in a generation. While there were major amendments to the Public Service Act in 1984 and 1999, before that they were less frequent. Therefore, it is important for the most to be made of every opportunity. The Public Service Amendment Bill does not do that. Its content is lightweight and in part it is ill-conceived.

This submission first considers the provisions of the Amendment Bill and then lists critical matters it avoids but should include.

## **WHAT'S IN THE BILL**

### **Adding “stewardship” to the public service “values”**

This provision, which was not recommended by the Thodey Review, is seriously flawed. Stewardship is not a value in any meaningful sense; it is a function and adding it to the values risks confusing and debasing them.

The proposed definition of “stewardship” is nonsensical. The mere “understanding of the long term impacts of what it does” is far from the only basis on which the “APS builds its capability and institutional memory...”, which depend on many other actions. Medium and short term “impacts” are also relevant. Indeed, concentration on “long term impacts” can result in the neglect of many factors vital to the proper maintenance of the public service.

So far as staff are concerned, the inclusion of “stewardship” as a value will expose all of them to disciplinary action on the basis of a vague and imprecise definition for things over which the vast majority have little or no control, a demoralising prospect for them.

And the attitudes of staff to this proposals are far from clear. In his second reading speech the Minister seemed proud that 1500 public servants took up the chance to

comment on the stewardship proposal. The more pertinent statistic is that around 160000 did not, a telling display of uninterest and perhaps apprehension.

If stewardship means anything it is seeing that the public service is properly resourced and has the structures, laws and operating procedures to do its job. These things are the responsibility of Ministers, heads of agencies and senior officials.

It is therefore **recommended** that the Public Service Act be amended to express that responsibility accordingly.

### **Developing a “purpose statement” for the public service**

A key problem with this proposal is that the Parliament is only being asked to provide a legal head of power for such a statement which will be developed by a group of officials and approved by the Secretaries Board. The proposed law would reduce the government to the status of a bystander and the Parliament would have no power to disallow any such statement.

It is fundamentally undemocratic for the Parliament to be denied the power to decide the purpose of an organisation regulated by its laws. Indeed, there is no reason in logic as to why the purpose of the public service should be left to large committees of officials to determine. This is a failure of proper governance. No other government organisation has its purpose determined by its staff and nor should that be so for the public service as a whole.

While the functions of government change, the purpose of the public service remains constant and should not be seen as mutable and subject to reconsideration every five years as the Amendment Bill envisages. To repeat, the Parliament - not a group of public servants - should decide the purpose of any organisation whose governing laws it creates.

Further the Bill gives no consideration to how the purpose statement fits with other relevant provisions in the Public Service Act, most notably section 3 dealing with the nature of the public service and the powers and functions of agency heads.

It is therefore **recommended** that if a purpose statement is seen as desirable and that is by no means apparent, the Government propose one for inclusion in Public Service Act with an explanation as to how it fits with provisions in the Act. That is to say, any purpose statement should be approved by the Parliament.

### **Amending section 19 of the Public Service Act**

The proposal to omit the words “An Agency Head is not subject to direction by any Minister” and replace them with the words “A Minister must not direct an Agency Head” makes no material legal difference to section 19 and is redrafting for its own sake, yet is otherwise unobjectionable.

It is **recommended** the Committee support this amendment.

## **Making decisions at the lowest possible classification level**

This proposed amendment is an acknowledgment of disastrous classification creep in the public service in which the heads of agencies have irresponsibly indulged for many years. The amendment is, however, merely exhortatory and does not provide any means of enforcement.

Classification creep has been at its worst at the most senior levels. For example, in 1974 the APS had around 280000 staff, a far wider range of functions and a more complex and varied workforce. At that time it had 20 Deputy Secretaries and 157 First Assistant Secretaries. In 2022, with a narrower range of functions and a less varied workforce of 160000, there were 140 Deputy Secretaries and 662 First Assistant Secretaries. That is, in the last 50 years the number of Deputies has increased sevenfold and First Assistant Secretaries by threefold while the size of the Service has decreased by around 120000 and its functions have become less complex.

Apart from coagulating senior management, this debasement of classification has dragged decision making up the hierarchy. If the classification of senior positions is not put back onto a rational basis and the number of the number of positions at those levels greatly reduced, decisions will continue not to be made at the lowest possible levels or even the most appropriate ones.

It is therefore **recommended** that the Amendment Bill be augmented to provide that:

- the creation of positions at the Deputy Secretary level be approved by the Public Service Commission
- spans of control of usually no fewer than five reports be the primary determinant for the creation of all SES positions
- all current SES positions be continuously reviewed as they become vacant and only retained if they satisfy a span of control test of, in general, no fewer than five reports
- all agencies be required to include in their annual reports and post on their websites explanations as to how they have administered their classification responsibilities including full justification for the creation of all positions at the Deputy and First Assistant Secretary levels, and
- the Public Service Commission include in its Annual and State of the Service reports accounts of its administration of classification together with an assessment as to how effectively decisions are being made at the lowest possible level.

## **Capability reviews**

This amendment is sensible although as it stands is inadequate in that it only requires capability reviews for all departments, Services Australia, the Taxation Office and the Public Service Commission. That is to say, capability reviews are not required for most APS agencies including the Bureau of Statistics, the Bureau of Meteorology, the Productivity Commission, the Australian War Memorial, the National Audit Office, the Ombudsman and the National Library among many others

of like significance. There is no rational reason why capability reviews should not be required for these and all other APS agencies.

It is therefore **recommended** that capability reviews be mandated for all APS agencies.

### **The Secretaries Board**

The proposed amendment is satisfactory although it is not a matter of substance.

A serious inadequacy of governance of the Secretaries Board, however, is that it is unaccountable in that it is not required to provide a report to the Parliament on its activities as are other statutory authorities and its existence has rarely been mentioned in annual reports of the Department of the Prime Minister and Cabinet in which portfolio it resides.

It is therefore **recommended** that this section be amended to require the Secretaries Board to submit an annual report to the Parliament.

### **Long term insight reports**

This proposal is largely unexceptional although likely not to be of significant benefit given that only one such report a year is mandated.

It is worth noting, however, that the proposed amendment is vague as to what might be done with any such reports other than that they can be published as the Secretaries Board sees fit.

If these reports are to be of any consequence, it is important that they be formally referred to Ministers, the Government and the Parliament and that relevant Ministers provide a formal response to them in the Parliament.

It is therefore **recommended this** amendment be amended to require any long-term insight report be referred to relevant Ministers and tabled in Parliament as soon as possible with relevant Ministers providing formal responses to them via parliamentary statements.

### **Publishing APS staff census results**

This minor matter is unexceptional and it is **recommended** that the Committee support the amendment.

### **WHAT'S NOT IN THE BILL**

While there is ample scope to cavil with provisions of the Amendment Bill much of which should be amended, its major failing is in what it doesn't contain. A measure of that inadequacy can be gained by asking if the provisions of this Bill had been introduced 10 years ago, would the Public Service have avoided the many weaknesses and shortcomings that have affected it in that period. That is not an easy question to answer but only a super-optimist could say that it would have and it is certain that such an optimist would likely struggle to explain how the provisions of the Bill would have had that effect. How, for example, would they have prevented Robodebt, the over-use of consultants and contractors, the politicisation of statutory

appointments or community development grants or the weaknesses in the response to COVID?

It is therefore **recommended** that the Amendment Bill be augmented to provide for:

- bolstering the Public Service Commission's functions and powers and providing a mechanism for better coordination between the Commission and other central agencies
- the Secretaries Board to be made a consultative-discussion forum rather than a body with executive functions which, as a standing interdepartmental committee of more than 20 people, it is ill-equipped to undertake, and as indicated above, for it to be required to submit an annual report to the Parliament
- the Public Service Commissioner to be the primary advisor on Secretary appointments as recommended by the Thodey Review
- the abolition of fixed period appointments for departmental Secretaries and an undertaking to find any Secretaries removed from their positions alternative appointments at comparable levels of responsibility and remuneration where possible except in cases of dismissal for reasons of discipline, incompetence or ill-health
- the government to set an annual efficiency dividend benchmark with all agencies to prepare detailed statements on their ability or otherwise to meet the benchmark, with those statements being used in developing the annual government budget and being published on each agency's website and in their annual reports – on this basis the current efficiency dividend could be abandoned
- the merit recruitment provisions of the Public Service Act to make it clear that positions in the APS should only be filled by people whose claims have been considered under those provisions and not by consultants and contractors
- agencies to publish on their websites full details of all consultancy and labour contractor engagements valued at more the \$10000 within a week of any such contracts being agreed to
- a stronger legal base for the oft proclaimed desire for greater diversity, inclusiveness and equality of opportunity in public service employment
- core requirements for appointments to statutory positions that would limit ministers to selecting from a list of suitable candidates verified by independent advisers and not their departments
- stronger legal regulation for decisions about community development grants so they serve the public interest rather than those in marginal or government held electorates (such provisions should probably be included in relevant financial legislation)
- a requirement for agencies to determine standards for the services they provide to citizens, to publish those standards on their websites and provide quarterly reports to Ministers which would also be published on their websites on the extent to which these standards have been met
- procedures for the avoidance of conflicts of interest in the post separation employment of public servants, and

- a legal code of conduct for ministerial staff (this should be placed in the Members of Parliament (Staff) Act.

## Conclusion

The Government has taken significant steps to improve Commonwealth administration – an anti-corruption commission, the abolition of the Administrative Appeals Tribunal to overcome its politicisation, reducing reliance on consultants and contractors, reviving program evaluation, abolishing staff ceilings, and making initial, if tentative, moves to reduce dispersion of remuneration between agencies and more.

In this context it is disappointing that the Public Service Amendment Bill is so flawed and so insubstantial.

When the condition of the public service demands bold and extensive amendments to relevant laws, the Amendment Bill is timid and unimaginative. It fails to address most of the major failings and weaknesses identified in the Thodey Review, the reports of parliamentary committees and the Auditor-General and elsewhere.

The proponents of the Bill, including those making uncannily alike second reading speeches on it, seem to think that exhortation, rhetoric and platitudes will be sufficient to lift the APS from its current state. This is mere vanity as such weak reeds will only have their usual disillusioning effects.

The operations and culture of the public service will only be satisfactorily improved by the correction of the governance errors in the present Bill and its extensive augmentation by a comprehensive package of changes to public service laws that alter the present disposition of powers and introduces a broader and deeper sweep of adjustments to structures and procedures. The list in this submission is indicative and there is scope for a good deal more.

It is likely that this Amendment Bill will be embarrassed by the report of the Robodebt Royal Commission for what it does not do. It is therefore **recommended** that the Bill be held over until the Government is able to consider that report and use it as a basis to correct the Bill's disheartening inadequacy and to comprehensively add to it in ways that make a genuine contribution to the reform of the APS and the well-being of citizens.

Yours sincerely

Patrick Gourley

30 June 2023

