

**SUBMISSION TO SENATE FINANCE AND PUBLIC ADMINISTRATION
REFERENCES COMMITTEE
INQUIRY INTO THE CURRENT CAPABILITY OF THE AUSTRALIAN PUBLIC
SERVICE**

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A. Introduction

This submission addresses the Inquiry's terms of reference, not by focusing on each of the issues identified, but by examining the question of APS capability more broadly including some of the underlying issues affecting the capability required for the provision of quality advice and the delivery of quality services to the Australian public. In summary, there is a close connection between the capability of the APS and its institutional integrity.

Central to its integrity is the APS's Constitutional role and its relationship with the Government, the Parliament and the public.

Other underlying issues affecting APS capability, beyond enhanced use of technology and improved development of its workforce, include:

- The use of contractors, consultants and labour hire, and constraints on APS staffing;
- The way in which administrative expenses ('running costs') are funded including digital investments; and
- The setting of remuneration to attract, retain and develop the skills and capabilities needed and enhance appreciation of APS Values.

B. Background

Concerns have been raised about civil service capability both in Australia and in other advanced democracies over the last decade and longer.

The 2010 Moran Report, *Ahead of the Game*, drew attention to what it considered were significant weaknesses in strategic policy advising and in HR development. It also highlighted the growing importance of integrated, 'citizens centred' service delivery and the need for both more localised authority and better use of information technology. A related theme was to strengthen the 'independence' of the APS in part to foster more long-term analysis and innovation. (See Lindquist, E., 2010, "From Rhetoric to Blueprint: The Moran Review as a Concerted, Comprehensive and Emergent Strategy for Public Service Reform," *Australian Journal of Public Administration*, 69:2, 115-151.)

Subsequently, despite the Gillard Government's withdrawal of the agreed additional funds to implement the Moran Report recommendations, the APS Commission sponsored 'capability reviews' of all departments and most large agencies. These confirmed common weaknesses in strategic policy advising and HRM in particular. Capability was also emphasised in the 2013 post-Moran amendments to the Public Service Act (for example by adding 'stewardship' to secretaries')

responsibilities) and in the new Public Governance, Performance and Accountability Act 2014 (mandating corporate planning, for example).

Unfortunately the capability reviews were discontinued after 2014 and there has been no sign of success in addressing weaknesses in longer-term thinking and capacity.

The 2019 Thodey Report on the Australian Public Service (*Our Public Service Our Future*) also concluded that the APS had lost core capability and recommended significant investment in and better management of APS employees. It proposed a whole-of-service workforce strategy that would include rebuilding APS research and evaluation expertise to underpin evidence-based policy and delivery.

The Report also emphasised the importance of data and digital capacity, finding the APS is behind comparable governments in digital literacy and recommending a comprehensive whole-of-government ICT audit and blueprint. Benchmark analysis, it said, suggests the need to raise APS spending on digital transformation by \$400-900 million a year.

Australia is not alone in having concerns about civil service capability. Our capability reviews drew heavily on the methodology adopted in the UK following reports there of weaknesses in capability. John Halligan in his recently published book, *Reforming Public Management and Governance*, reviews developments over the last 40 years in Australia, the UK, Canada and New Zealand finding management these days is at best 'marking time' following the real improvements in the 1980s and 1990s, with policy capability in particular 'ailing'. In part this relates to Halligan's other theme of 'politicisation' (broadly defined) which has been shifting senior public servants from being 'trustees' to 'agents', encouraging a risk averse culture and short-termism. Only New Zealand, in Halligan's analysis, has resisted the politicisation trend.

There has also been growing concern in the US about declining public sector capability under the Trump administration in particular, and increasing political control. The National Academy of Public Administration has published several reports in the last two years promoting rejuvenation of the civil service and its capability and performance.

Christopher Pollitt and Geert Bouckaert compared different approaches to public administration in their 2004 book (updated in 2011), *Public Management Reform: A Comparative Analysis – New Public Management, Governance and the Neo-Weberian State*, drawing attention to some of the weaknesses (as well as strengths) of those countries which have pursued more market-oriented approaches to public administration and the increasing interest amongst European countries in investing in public sector capability while still promoting more networking through 'governance' arrangements.

C. Current Australian State of Play in Addressing Capability

As mentioned, following the 2010 Moran Report, a number of measures were taken to address capability. Apart from the capability reviews, the Public Service Act was amended to add 'stewardship' to secretary responsibilities, replace the Management Advisory Committee with the Secretaries Board, again with APS-wide stewardship responsibilities, and to strengthen the role of the APS Commissioner.

Around the same time, following the Commonwealth Financial Accountability Review (a Finance Department sponsored study), a new Public Governance, Performance and Accountability Act was introduced to replace the 1997 legislation providing a single principles-based financial accountability framework for all Commonwealth organisations. The PGPA Act mandated corporate plans to

complement Portfolio Budget Statements and to strengthen performance reporting in annual reports against both the PBS targets and corporate plan strategies. The Act also strengthened risk management requirements.

The 2018 Alexander/Thodey review of implementation of the PGPA Act found that agencies' corporate plans were of mixed quality and reporting against them in annual reports was not yet mature. It also criticised the limited extent of evaluation activity and the degree to which the Act's emphasis on risk management had to date been pursued.

Disappointingly, the review did not provide guidance about the respective roles of the PBS and corporate plans as Professor John Wanna and I had suggested in our submissions, merely recommending that Finance do so. Finance's subsequent effort, in my view, is disappointingly narrow, tying corporate plans too tightly to agencies' capability to meet the PBS performance targets for the immediate budget year ahead. The much better approach Professor Wanna and I proposed, consistent with the Public Service Act's emphasis on 'stewardship', is for corporate plans to address capability for future performance, not just the next year, including for possible future performance requirements under future governments. Such an approach would also correspond with the corporate plans being the responsibility of public service leaders and the PBSs, in setting objectives and performance targets, being the responsibility of ministers.

Recommendation 1: The Senate Committee recommend that agency corporate plans address agency capability to meet both the performance targets in the PBS for the budget year and likely medium-term performance requirements.

This clarification of the respective roles of corporate plans and PBSs would also guide the way agencies report on performance against both in their annual reports and offer the opportunity for useful scrutiny of capability by the Parliament. Corporate plans would also be taken more seriously if Senate Estimates Committees dedicated time to examine particular agencies' capability and their annual performance reports against the strategies set out in their corporate plans. Such examinations might also help to reveal agencies whose base-level resources are inhibiting capacity to perform (and those more favourably resourced).

Recommendation 2: The Committee recommend that Senate Estimates Committees focus more closely on the quality of agency corporate plans and on agency annual reports' performance reports, including agencies' assessments of progress on their corporate plans' strategies to enhance capability, dedicating time to examine particular agencies' capability and capability strategies.

Amongst the responsibilities of the APS Commissioner is 'to monitor, review and report on APS capabilities within and between Agencies to promote high standards of accountability, effectiveness and performance' (s41(2)). The Commissioner's State of the Service Report (SOSR) is the obvious means of reporting his assessment of the APS's overall capability ('within and between Agencies'). Apart from some comments following the capability reviews conducted some years ago, the SOSRs have provided little evidence about APS capabilities and there has been little if any detailed scrutiny of the SOSRs by the Parliament. The Senate Committee could usefully address this.

Recommendation 3: The Senate Committee dedicate time every year to examine the APS Commissioner's State of the Service Report including its report on overall APS capability.

The Alexander/Thodey review's highlighting of the importance of evaluation is also directly relevant to the question of capability as evaluations are an essential component of agencies' ability to learn

from the past. While Finance has been actively promoting evaluation activity and capacity in recent years, there is no evidence of improvement across the APS. A recent article by Rob Bray, Matthew Gray and David Stanton ('Performance Management and Evaluation Meets Culture and Politics: Australia's Experience', *Asia Pacific Journal of Public Administration*, August 2020) highlights how the Department of Social Services' performance reporting has deteriorated between 1997-98 and 2017-18. As discussed further below, this is almost certainly caused in part by changes in the relationship between politics and the APS.

It is important to find a way to convince ministers that evaluation of policies and programs, including their own initiatives, is valuable and that their value is dependent on the evaluations being properly and objectively conducted. The Thodey Report recommended a more systematic approach to evaluation similar to that operating in the 1990s through Cabinet and Budget processes (this was consistent with my own submissions to both the Alexander/Thodey Review and the Thodey Review). Unfortunately, the Government rejected this recommendation ostensibly on the advice of the Secretaries Board.

Recommendation 4: The Committee recommend the Government reconsider its rejection of the Thodey Review recommendation to reintroduce Cabinet and Budget processes requiring systematic evaluation of programs and policy initiatives.

There is still opportunity for the Parliament to lend weight to the importance of evaluations and quality performance reporting including by pressing the Government to increase the funding of ANAO. An additional way of doing so, as I suggested to the Alexander/Thodey review, would be for Senate Estimates Committees to dedicate time to examine particular agencies' performance reports or particular programs, going beyond any political point-scoring to serious consideration of the relevant objectives, implementation issues and results and lessons learned.

Recommendation 5: The Committee recommend that Senate Estimates Committees dedicate time to examine particular agencies' performance reports or particular programs, to promote quality evaluation and serious consideration of lessons learned.

The Government agreed to most of the 2019 Thodey Report recommendations aimed specifically at enhancing capability, including;

- Reintroducing capability reviews;
- Conducting an ICT audit across the APS;
- Introducing the professions model to enhance particular areas of expertise including in data and digital technology;
- Undertaking a service wide workforce strategy (but not removing the APS staffing caps as recommended);
- Promoting evaluation and evaluation skills (but not introducing systematic processes through the Cabinet as recommended);
- Reviewing optimal management structures and conducting a review of classifications (but not changing processes for setting pay and conditions as recommended);
- Developing a whole-of-government plan for major capital projects and reviewing the arrangements for funding agencies' minor capital.

I understand that progress has been made on a number of these recommendations (particularly on the professions model) but others have been delayed because of the need to prioritise COVID 19 responses.

Recommendation 6: The Committee seek information from the chair of the Secretaries Board (the Secretary of the Department of Prime Minister and Cabinet), the APSC and Finance on the state of play on implementing these recommendations agreed by the Government, both now and each year for the next three years.

Comments on some of these recommendations, and those not agreed by the Government, are included in the next section of this submission.

D. Underlying Issues

In many respects, the capability of the APS has never been greater. It has a higher percentage of graduates than ever before, greatly improved equal opportunity suggesting it is utilising its inherent talent better, it draws heavily on external expertise, it seems to work more effectively across government than in the past (though this has long been a strength of Australian arrangements) and it has improved its use of technology (though as Thodey suggests it could do much better).

Continuing concerns about its capability, however, suggest there are factors beyond those that have so far been addressed or agreed to by the Government. The following underlying issues are, I believe, having a long term, adverse impact on APS capability.

The relationship between the APS and the Government and the Parliament

A central factor I believe has been constraining capability has been the shift identified by Halligan in the relationship between the political executive and the APS from senior public servants being treated as public ‘trustees’ to them being regarded as ‘agents’ and ministers as ‘principals’. One aspect of this shift has been a reduction in demand from government of the services the APS could and should provide.

In his post-election discussion with departmental secretaries in 2019, Prime Minister Morrison made clear his view that the APS should focus on implementing the Government’s policies, not on offering its own policy advice. This was an unusually frank admission of a long-term trend. Former senior Treasury officer, Paul Tilley, in his 2019 book, *Changing Fortunes: A History of the Australian Treasury*, includes an anecdote from his own recent experience of Treasury being asked to present options for changing the tax system but not to include any advice on its preferred approach – that was a matter for the Treasurer and his office alone. Tilley says that some of the 40 options identified were ‘ridiculous’ but no Treasury advice was given that that was the case. Tilley’s view is that Treasury’s standing had declined since the Global Financial Crisis, having strengthened in the 1980s and 1990s under the Hawke, Keating and Howard Governments, as post-GFC governments have not drawn as heavily on its expertise.

If Treasury’s standing and capability was adversely affected by declining ministerial interest in its expert advice, it seems likely that such ministerial attitudes will have had an even greater adverse impact on less powerful line departments. Anecdotal evidence supports more objective assessments such as those in the Bray, Gray, Stanton article mentioned earlier about DSS performance reporting and analysis, that the decline in capability found by Thodey and others is related in part to changes in the relationship between ministers (and MOs) and the APS.

It is noteworthy that many agencies with reputations for significant expert capability are statutory authorities (such as the ACCC and the Productivity Commission) or have other governance structures

that provide them with considerable independence (such as the TGA and other specialist bodies such as museums and research institutes). It is also questionable whether the 'Robodebt' fiasco would have occurred in the past when there seemed to be greater APS independence and determination to act impartially, particularly under the former Centrelink statutory authority governance structure (similarly whether the ATO's extra degree of independence limits the risk of a similar departure from impartiality and adherence to the law).

That said, COVID 19 seems to have led to a more constructive relationship where the health and economic expertise within the APS has been recognised and openly used by ministers including the Prime Minister. The question is whether such a relationship will be sustained, and applied across the APS, without some structural changes to reinforce the role and capability of the APS. The increasing influence of the political executive including through the changing role of ministerial advisers, the close management of communications and the avoidance of risk, suggest the likelihood of continued close political control of the APS rather than the partnership implied by Westminster principles involving a considerable degree of independence.

More weight on the APS Values of professionalism, impartiality and non-partisanship, still consistent with proper responsiveness to the elected government, could be ensured by the sorts of measures recommended by Thodey that were not adopted by the Government. These imply a move back towards a public trustee relationship rather than principal-agent one. My own preference would be to move further towards the New Zealand model than Thodey recommended by:

- Establishing that the APS Commissioner is the professional head of the APS, with the appointment of the Commissioner being subject to endorsement by the relevant Parliamentary committee (as now occurs for the Auditor-General), and perhaps with longer tenure (the Auditor-General is appointed for 10 years);
- Giving the Commissioner the main role in advising on secretary and other agency head appointments, with some constraint on the Prime Minister not accepting the Commissioner's advice;
- Clarifying the role and accountability of ministerial advisers.

More detail on these and related proposals can be found in my submissions to the Thodey Review and in my September 2019 Parliamentary Library Lecture.

Recommendation 7: The Committee recommend measures to strengthen the professional standing of the APS, particularly its merit base, its impartiality and its non-partisanship, consistent with the democratic principle of responsiveness to the policies and legal directions of the elected government, particularly by strengthening the role and impartiality of the APS Commissioner and by clarifying the role and accountability of ministerial advisers.

The excessive use of consultants/contractors and labour hire

There is good reason to draw on external expertise when it is not constantly needed or when an external perspective is required. It is important, however, that the use of contractors, consultants and labour hire be subject to careful value for money assessments and consistency with legal requirements regarding Commonwealth employment.

The application of staffing caps, in addition to administrative expenses constraints, can and does undermine value for money and distorts APS employment profiles. Contract staff and consultants are commissioned even when not representing value for money when staffing caps have been reached. Agencies are encouraged by the staffing cap to retain more senior staff rather than recruit

more junior staff, and to draw on labour hire. Moreover, the increasing use of contracted staff and labour hire is making a mockery of the effectiveness of the caps in constraining the size of government administration.

It has been suggested that labour hire provides needed flexibility for agencies with fluctuating workloads, but non-ongoing APS employees also offer such flexibility and have the added advantages of carefully managed recruitment and the capacity to ensure appropriate training for the reserve staffing. Agencies can also be confident that such staff are subject directly to the APS Values and Code of Conduct, are subject to merit-based recruitment and are motivated by more than their remuneration in their service to the Australian public. It is hard to believe that the use of labour hire represents genuine long-term value for money over careful use of non-ongoing APS employees. If the current merit recruitment (and/or termination) process for non-ongoing APS employees is seriously inhibiting flexibility, the answer is to streamline recruitment (and termination), not turn to labour hire with no merit process at all.

There are also serious questions about the legality of contractors and labour hire when the people concerned are used regularly or for long periods: if they are akin to employees, the legal question is whether they must be employed under arrangements approved by the Parliament.

Where use of contractors or consultants is justified on value-for-money grounds, it is important that agencies ensure the transfer of relevant skills and knowledge to enhance future capability and reduce the reliance on external support, particularly in fields where such expertise and knowledge is likely to be continuously in demand.

Recommendation 8: The Committee should recommend removal of staffing caps and reliance on administrative expenses controls to manage resources and promote value for money.

Recommendation 9: The Committee should recommend the cessation of labour hire practices and the more extensive use of non-ongoing APS employees to manage workload fluctuations.

Recommendation 10: The Committee should seek legal advice on the extensive use of labour hire and contract staff by APS agencies.

Recommendation 11: The Committee recommend that agencies should only use consultants or contractors when they genuinely represent value for money and, when doing so, they should ensure the individuals concerned are appointed within a spirit of merit and not because of nepotism or personal connections etc.; they should also ensure the transfer of relevant skills and knowledge to the APS.

The resourcing of running costs and capital investment

Agencies' capability is of course related to the resources they have available. There has long been justified criticism that the efficiency dividend has adversely affected capability particularly amongst smaller agencies leading to reductions in the level and quality of services rather than genuine efficiencies. I have previously provided advice to a Senate inquiry on a more appropriate way of funding running costs which would still place pressure to continually improve productivity. Broadly, annual CPI adjustments would ensure the equivalent of output-based funding with economy-wide productivity enhancements.

Recommendation 12: The Committee should recommend (again) the removal of the efficiency dividend and the development of a more appropriate formula for funding administrative expenses.

While continuing to reject recommendations to replace the efficiency dividend with a more appropriate funding formula, the Government has accepted the Thodey recommendation for an audit of ICT requirements and has announced reviews by Finance of a whole-of-government approach towards funding priority major capital investments and of the funding of minor capital. As Thodey highlights, while carefully considered agency and APS-wide strategies are needed to guide all ICT investments, there are dangers in relying upon ‘waterfall’ approaches to funding particular projects and in the related traditional Finance approach of focusing on expected financial rates of return from assessed total investment on each major project. Dennis Trewin, the former Australian Statistician, made similar comments in a recent article on his own experience in managing new technology (‘Managing Technology Effectively in Large Public Organisations’, *Asia Pacific Journal of Public Administration*, August 2020). Instead, a higher proportion of ongoing administrative expenses should be devoted to continuous incremental improvements to agencies’ ICT assets and their use, within properly determined strategies, funded in part by additional moneys otherwise devoted to major capital projects. These improvements may lead to increased efficiency but should also involve continuous improvement in service quality, as is generally expected in private markets to retain and expand demand. In the case of major capital investments (which the ICT audit seems likely to show needs significant increases in funding), risk management may still suggest a more flexible approach involving continuous learning and adapting, and a mix of efficiency and service quality improvements.

While there has yet to be a proper review of the ‘Robodebts’ fiasco, the singular focus on financial gains and lack of consideration of genuine improvements in service quality may have been a factor, as may have been the locking in of assumed budgetary savings into the forward estimates, constraining capacity or willingness to review developments as they emerged.

While investment in ICT is most obviously important for large agencies like the ATO, Services Australia and the ABS, it is increasingly important across all agencies.

Recommendation 13: The Committee seek advice from the Digital Transformation Agency on the state of play of the ICT audit.

Recommendation 14: The Committee seek advice from Finance on the state of play of its reviews of both major capital and minor capital funding.

Recommendation 15: The Committee recommend more emphasis be given to continuous improvement to agencies’ ICT assets and their use, drawing more on (possibly increased) administrative expenses, and delivering a mix of efficiency gains and service quality improvements.

The system of setting pay and conditions

APS capability relies most importantly on attracting, retaining, developing and optimally utilising its employees. A key factor here is the remuneration provided and other non-monetary rewards.

The problems of the current approach towards setting pay and conditions is well documented, though the Government rejected the Thodey recommendation to move towards a common approach across the APS and claimed the current arrangements are working well. They are not. The current approach is administratively cumbersome and costly and, despite calls for more consistency for well over a decade now, differences across agencies have not narrowed and problems when machinery of government changes occur have grown more serious.

More fundamentally, there is no explicit consideration under the current approach of whether pay and conditions are delivering the attraction and retention needed or enhancing development and best use of staff resources. Such consideration requires careful labour market assessments focusing on the markets most relevant to the APS workforce. In place of the current 'enterprise' approach requiring each agency to negotiate pay and conditions based on artificial 'productivity' bargains, a proper market approach would be based on APS-wide assessments for different occupational groups. While the result may well lead to aggregate wage movements similar to those across the economy, the imposition of a cap based on economy-wide movements (as recently decided by the Government) is unnecessary and inconsistent with the market approach needed.

In recommending remuneration levels for secretaries and agency heads, the Remuneration Tribunal has taken into account market comparisons, but there is reason to believe it has not focused on the relevant markets and that remuneration increases over the last decade have been excessive and inconsistent with the remuneration of other APS employees. A focus on public sector markets, including State and Territory markets, would not have led to such increases in secretaries' remuneration or the upward pressure on SES pay that is apparent over the last decade.

Careful consideration is also required of the public sector context where there are public expectations to be considered and where non-financial rewards, particularly from 'public service motivation', are important. A recent book by Jim Perry, a US and international expert in public service motivation, highlights the importance of PSM including in attracting and retaining talent within the public sector and cautions against excessive reliance on financial incentives for performance (*Managing Organizations to Sustain Passion for Public Service*, Cambridge University Press, December 2020).

It is quite likely that a proper market comparison, combined with careful consideration of the public sector context and internal relativities aimed to ensure remuneration corresponds with respective responsibilities, would identify that some APS employees are overpaid and others underpaid. It would certainly confirm that variations across the APS are not justified. It would also have the advantage of greatly reduced transaction costs across the APS by re-introducing centralised negotiations.

The Government has agreed to the Thodey recommendation to streamline management structures and processes, and has announced a review by the APS Commission of its guidance on structures and of classification arrangements for the SES and non-SES. (Declaration: I have been included as an expert adviser in one company's bid in response to a recent APSC call for proposals to assist with this review). While it is possible that this review will assist in developing a more consistent and contemporary approach to management structures and classification rules, it will not be sufficient to achieve appropriate and consistent remuneration across the APS (including for secretaries and agency heads).

Recommendation 16: The Committee recommend that APS remuneration be set on the basis of relevant market comparisons taking into account the public sector context, and that the Remuneration Tribunal review its methodology for setting secretaries' and agency heads' remuneration to focus firmly on relevant markets and to take into account the public sector context.

Recommendation 17: The Committee recommend that the APS Commission be asked, subsequently, to advise on the transition from current remuneration levels across agencies to the recommended market-based levels.

E. Final Comments

The failure of the Government to agree, even with some qualifications, key recommendations in the Thodey Report raises questions about whether such reports into the APS should be subject to assessment by the Government alone, or whether the Parliament should be actively involved. The Parliament does become involved if legislation is presented to give effect to the Government's decisions (as occurred after the Moran Review and CFAR) but even this is sometimes perfunctory (as I suggested in the case of the post-Moran amendments to the Public Service Act ('Mostly Welcome, but are the Politicians Fully Aware of What They have Done? The Public Service Amendment Act 2013', *Australian Journal of Public Administration*, 72(2), June 2013, pp77-81). The Parliament does not at present directly examine the reports themselves or the Government's response.

The High Court confirmed in the Banerji case that 'the maintenance and protection of an apolitical and professional public service is a significant purpose consistent with the system of representative and responsible government mandated by the Constitution'. The Public Service Act refers to its role in 'serving the Government, the Parliament and the Australian public' (s3). Accordingly, I suggest that reviews of the APS should not be considered by the Government alone but, as standard practice, the Parliament should consider the reports provided and the Government's responses. Indeed, in the case of major reviews such as the Moran and Thodey reviews, there is a strong case for the Parliament to be consulted on the terms of reference.

The obvious Parliamentary body to pursue such tasks is the Senate Finance and Public Administration References Committee itself.

Recommendation 18: The Committee agree that in future it should examine any major report on the APS and the Government's response, and that it should ask to be consulted on the terms of reference of future major reviews of the APS.

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