

SUBMISSION TO THE APS REVIEW

Andrew Podger AO

Honorary Professor of Public Policy

Australian National University

The very limited timeframe for submissions has constrained my ability to provide detailed analysis. Instead, this submission attempts to identify the main issues that need to be explored in more detail by the Review, and point to the directions for reform that might be developed further. As indicated in a discussion I had with Mr David Thodey and Mr David Williamson (who heads the Review secretariat) on Friday 22 June 2018, I strongly recommended that the Review conduct at least one (and preferably two) further round(s) of submissions following the release of documents outlining the Review's thinking. I also recommended the commissioning of substantial work to ensure the Review has a strong evidence base and can earn a sufficiently long 'shelf-life' (its research and evidence base goes a long way to explain the enduring impact of the 1976 Coombs Royal Commission).

This submission begins with an overview of the context of this Review before responding to specific matters in the Terms of Reference. This is important to shaping the focus of the Review in addressing its Terms of Reference. The submission then explores the three key elements in the Terms of Reference - the capability, culture and operating model of the APS – and the various issues related to each of these which I believe the Review should consider. The submission does not address separately each element listed under the 'Scope of the Review', but does explore the related matters identified including the 'architecture' of the APS, performance and effective use of taxpayers' money and the governing legislation. The submission also refers to other papers and submissions I have written in recent years which provide more detail on some of the issues addressed here.

A challenge for the Review given its limited time frame is whether to interpret its Terms of Reference widely (which the mention by the Prime Minister of the Coombs Royal Commission Report would suggest, and I would very much prefer if time allowed) with the risk of superficiality, or whether it should focus on selected issues, studying them in some depth and leaving other issues to be examined by some subsequent review process. If the latter approach is taken, I strongly recommend that the Review not focus solely on technological change issues, but also review in particular governance and accountability issues including the relationship between the APS and ministers and the parliament. The release by the Review of a discussion paper on the issues it chooses to focus upon within its Terms of Reference would facilitate more considered responses in a separate round of submissions.

A. CONTEXT

Technology. The Joint Media Release by the PM and Minister Assisting the PM for the Public Service emphasises the range of global, technological and public policy developments that are transforming our economy and our society, and states that the public sector has a critical role in this context, needing to drive policy and implementation, using technology and data to deliver for the Australian community.

Technology change will almost certainly have a profound impact on the way the APS operates in advising government and delivering services. It will also almost certainly affect what government

does as well as how it does so. This has long been the case, of course. One example of the impact of technology on the APS is the dramatic change in its classification profile since 1980 with the proportion of staff at or below the equivalent of APS1 and APS2 levels falling from over two-thirds to around 5% today (see Podger 2017a). Technology was also a major factor in the commercialisation and then privatisation of telecommunications, and the shift from public provision to public purchasing and/or regulation across a range of industries and programs.

Technology change is also affecting citizen expectations of government, providing opportunities for services more tailored to individual needs and preferences, facilitating choice and offering greater convenience. 'Big data' may also facilitate new ways of addressing social problems, and offer opportunities for improved policy advice including through better research and wider involvement of experts outside government, and engagement with citizens and stakeholders.

There are suggestions that the next round of technology change will usher more dramatic shifts and accelerated disruptions. Whether that will be the case is a matter in dispute amongst experts (a brief debate on this occurred only last week at the ANU Crawford Leadership Forum), but whatever proves the case experience suggests that societies and economies can adjust to technological change and that it is possible to limit the adverse impacts on 'losers' and to spread the benefits from increased productivity to ensure most people gain improved living standards. But policies will need to be continually adjusted to ensure this is the case.

Role of government and the APS. It is important for the Review to recognise that other contextual issues are no less important for the APS than technology, and some way well be more important. Some involve less dramatic shifts and some demand a greater degree of stability. For example, the role of government in a Western democracy and market economy continues to focus on providing a stable framework in which markets and individuals can go about their businesses and daily lives with confidence. Governments need to be innovative in how they operate, but they also need to provide the stability that facilitates investment and innovation in the market place and society. 'Innovation' in the public sector is a very different creature to the concept of innovation used in the economic literature applying in the private sector (see Podger 2015). Governments will continue to be involved in providing public goods that the market cannot deliver, in addressing market failures, and in ensuring an equitable distribution of income and wealth. The nature of public goods, and the types of market failures, may well be affected by technology, and there may be important impacts on the distribution of income and wealth that governments must address, but the fundamental roles of government remain essentially unchanged.

This sense of continuity and stability is critical to the institution that is the public service: its values of accountability and impartiality, its due processes under the law, its non-partisanship, its professionalism and emphasis on merit-based employment, and its commitment to the public interest. Central to this is the governance structure of the APS and its relationship with ministers and the parliament, and its relationship with the public.

International context. There is a growing international agenda for governments, driven in part by technological change but also by growing knowledge of wider 'spillover' effects of human (market) behaviour that go beyond national borders. Also, governments are, and should be, actively looking to learn from each other and to cooperate in pursuit of the wider international public good. There is hardly an area of domestic public policy that does not have an international dimension and, in very many cases, an international constraint or obligation; national governments must play a role in both establishing such 'rules' and abiding by them. This does not mean that everything must be

connected to everything else, but it does present challenges in marrying domestic and international agendas and in linking the related vertical and horizontal management systems.

Federalism directions. The role of the Commonwealth also continues to evolve, affected by the maturing of the nation and by the same forces (including technological change) that are broadening the international agenda; moreover, the broadening international agenda is itself affecting the role of the Commonwealth. The role has steadily increased over the last 117 years and seems likely to continue to do so. Much of this increase involves more sharing of responsibilities with the States, requiring close collaboration and information sharing.

Interaction with third parties. While the Commonwealth interacts directly with citizens in some fields, particularly taxation, social security and Medicare, for the most part service delivery funded by the Commonwealth is managed by the States and/or by non-government organisations (both for-profit and not-for-profit). The use of third parties has been steadily increasing in recent years and seems likely to continue to increase with expanding health, aged care and disability services. While offering opportunities for service delivery to be both more efficient and more responsive to citizens' needs and preferences, this also presents challenges both for accountability and for the APS to maintain its links with citizens and communities. There are also dangers of the APS losing its expertise to be an informed 'purchaser' (removing the claimed efficiency gain from contracting) and of third parties' operations under purchaser/provider arrangements not adequately reflecting the values the public rightly expects in the delivery of public services; other risks arise with time-limited contracts such as the third parties not investing sufficiently in their own capability.

Broader trends in public administration. Internationally, despite significant differences in institutional arrangements and public sector cultures, some common trends in public administration can be detected over the last four or five decades.

- Through to the 1970s the dominant model was traditional 'Weberian' public administration with strong hierarchical structures and processes reinforcing neutral professionalism and delivering uniform and reliable services.
- In the period from the 1970s through the 1990s, more emphasis was given to achieving results and less to structures and processes and rules, in part to address growing pressures for flexibility to manage change and to improve public sector efficiency. Under what was later named New Public Management, a lot of management authority was devolved subject to firmer accountability for results; also, increasingly, market-type mechanisms were introduced. Program budgeting and performance management were introduced with vertical lines of accountability through to ministers and the parliament, and the political control by ministers was strengthened.
- From the late 1990s, concerns began to be raised about the emphasis on vertical lines of performance management and accountability for results, and increasing attention was given to 'whole-of-government' or 'joined-up government' to address key policy issues and to improve service delivery. Later known as New Public Governance, this shift also embraced wider networking across governments and beyond government, extending the role of third parties beyond that developed through NPM's use of market mechanisms. This extended role included greater involvement in the policy process and in service delivery through such approaches as 'co-design' and 'co-production', with partnerships replacing some strict competitive tendering processes.

- Over the last decade, there has been some reflection of the impact of NPM and NPG on the capability of the public sector. In Australia this can be seen in the 2010 Moran Report (*Ahead of the Game*) and the subsequent capability review program managed by the APSC. The UK has also conducted capability reviews and the US is showing interest in organisational health and capability. Some European writers have been suggesting that a shift to reinvesting in public sector capability is (or should be) underway in what they refer to as 'Neo-Weberian Governance' implying some marriage of NPG and traditional public administration.

These trends vary greatly across different developed countries, and the above categorisation greatly simplifies the evolution of public administration practice. But there is a sense that the consequences of NPM were not all benign and that some new mix of NPM, NPG and a strong public sector may need to be forged.

Trust. More broadly again, there is evidence of declining trust in government and other institutions internationally. The causes are unclear, but there seems some correlation with increasingly 'professional' partisan politics, modern media focus on immediacy, and fewer forums for substantive public deliberation (notwithstanding the capacity of new media to widen public participation in policy debates and to facilitate access to expert advice). Some correlation has been identified by researchers between trust and government and economic performance (though this might have suggested higher trust in Australia now than 25 or 30 years ago), and between trust and the degree of public participation in government processes. The APS as a significant institution in its own right needs to find a way to re-establish and strengthen its standing and credibility, and to provide some of the response necessary to combat the dangers to the public interest from some of these trends.

B. CAPABILITY

Capability gaps and their causes. Despite the increasing proportion of graduates and post-graduates in the APS, there is evidence of emerging capability gaps. The Moran Review identified weaknesses in strategic policy advising and human resources management, these being confirmed in many of the subsequent capability reviews, along with a risk averse culture, too centralised control within departments and poor project management. The Shergold Review on policy failures made similar findings particularly concerning risk averse behaviour and poor risk management and the need for more robust advice. It should be acknowledged that these findings were in the context of evidence that Australian governments, and the APS, generally perform quite well relative to other OECD countries and their civil services, and that the capability reviews identified areas of strength as well as weakness. The Review should examine the evidence that has already been collected and clarify where capability has been lost and how it might be regained.

A key question is what has been causing the gaps that have been identified. It is hard to ignore the likelihood that the strengthening of political control over the APS has contributed to the risk averse culture that these reviews have identified, and to the loss of capability for strategic policy advising. As discussed further below, it is critical that the Review explore the governance of the APS and its relationship with ministers and advisers in particular.

Another likely contributor is the increasing reliance on third parties for policy advice and service delivery, affecting career paths and the ability to retain specialist knowledge. This is not necessarily to suggest winding back the use of third parties but to highlight the importance of new strategies to maintain sufficient expertise, or ready access to such expertise. There is indeed a risk of the gaps widening if the Commonwealth relies even more heavily on third party service providers and policy

consultants, without building processes for skills transfer and deep engagement. The Review should explore this further.

APS agencies cover an enormous range of functions, and rely upon a wide range of deep specialist expertise as well as high levels of 'generalist' administrative skills (these requiring their own specialist knowledge of government and the law, as well as management skills and skills in purchasing and communication). Care is needed not to generalise too far about the skills needed but to give agencies considerable authority to determine and acquire the skills they require to meet their responsibilities.

New skill requirements. It is important for the Review to also identify some of the new skills likely to be required into the future. This has been done with some success in the past, such as the investment in the 1960s and 1970s into computer programming and related skills, and the investment into both personal computer networks and the use of mobile communication devices in the 1980s and 1990s. It should also be recognised that the introduction of new IT systems is littered with failures, often as a result of excessive enthusiasm for the potential benefits offered and totally inadequate consideration of the HR and other implications of their introduction. The skills required are not just technical but also management and relational skills.

The likelihood of continuing change in an increasingly connected environment suggests the need for more emphasis on both high level tertiary education and investment in ongoing learning and development. This view was a key factor in the establishment of the Australia and New Zealand School of Government in 2003 and may well warrant further investment both across the APS and by individual agencies.

Mobility. A number of recent reviews, including the Moran Review, also called for greater mobility in the APS to address the need for more 'connected' government. I am not convinced this is necessarily the case, noting that mobility can undermine deep specialist and corporate knowledge and can often frustrate those outside the APS trying to engage with it. This has contributed for example to problems in Indigenous service delivery programs and with relations with stakeholders in agencies ranging from health to defence. The Review needs to consider carefully the mix between mobility and stability, recognising the mix should vary with the different functions of different agencies. A range of career paths is likely to be appropriate, these varying across agencies. The paths may include some with limited mobility beyond one agency where a focus on specialist skills and knowledge is particularly important, some involving mobility across like agencies or the APS as a whole, and some involving mobility beyond the APS - with the military, the States and the private sector. Mobility is generally more important for those progressing into APS leadership position (at SES and agency head levels).

The APS has on a number of occasions experimented with interchange programs to facilitate mobility with the private sector, including in the 1970s through the Public Service Board and in the 2000s promoted by PM&C. It is noteworthy that success was at best mixed: the programs certainly did not last. The Review might explore why this might have been the case and consider carefully alternative approaches to ensuring the APS has proper appreciation of business, and appropriate management skills that draw upon business experience while applying the skills in a public sector context. A more productive approach to mobility beyond the APS might be to concentrate on exchanges and combined career paths with the States, particularly where responsibilities are shared with the Commonwealth, and with academia.

Other aspects of organisational capability. Organisational capability goes well beyond the skills of APS members. It relates also to systems and structures, information access and use, relationships and communications, the management of resources and the management of risks. The PGPA Act now mandates the development of corporate plans that should focus on the organisational capability required to meet the performance targets set by government in portfolio budget statements; these plans should also address the capability to meet likely future requirements. The Public Service Act now also makes secretaries responsible for 'stewardship', implying responsibility for ongoing capability. The PGPA Act Review is examining these issues at present, and I have made submissions about the processes that might better address capability as agencies implement the PGPA Act requirements (Podger and Wanna 2017a and 2017b, and Podger 2018a and 2018d). The APS Review might highlight the specific elements of capability it considers likely to warrant increased attention into the future.

C. CULTURE

Organisational culture is the product of a blend of values and beliefs, accepted behaviours and symbols: 'the way we work around here'. In the past it has been shaped by rules and processes and structures; as these have been seen as constraining flexibility, attempts to shape the culture have relied more heavily on articulating the values that must be upheld, and promoting leadership to demonstrate and model the behaviours expected.

APS Values. The APS has reflected this shift in approach with the Public Service Act 1999 (which drew on earlier work by the former Public Service Board, the Institute of Public Administration Australia and the Management Advisory Board), and subsequent work by the APS Commission on embedding the APS Values and on leadership development. This latter work has tried to give substance to the values articulated and how they might be firmly embedded, avoiding the risk of motherhood statements that do not in fact shape behaviour. Amongst the measures suggested is that agency management processes firmly reflect the values, that training include ethical awareness and competence, and that agencies monitor how the values are being upheld through their disciplinary processes and surveys of staff and clients. Equally important is the behaviour of APS leaders.

Organisational culture can be very powerful, underlying organisational performance; it can also at times be a negative force, excusing poor behaviour and isolating the organisation from its customers, stakeholders and broader societal change. The culture is not easily changed, and positive change relies heavily on the leadership. As a rule, core values should only ever change slowly, building on past strengths and responding to changing contexts.

The APS Values were revised in the 2014 legislation to make them simpler and more easily remembered. The changes, however, reduced their meaningfulness and removed the original, and possibly most important value, 'merit' (devalued to just one of many 'employment principles'). To be truly meaningful, the APS Values should reflect the unique role of the APS as an institution, distinguishing it from the role of ministers and their advisers, parliamentarians, the parliamentary service and those outside of government. They should avoid 'feel good' values that might be relevant in any organisation. A good way to do this is to identify the values according to key relationships the APS has:

- with ministers and the Parliament (including accountability, non-partisanship and responsiveness to the elected government);

- with the public (including impartiality and commitment to service and the public interest); and
- internally (including the merit principle, and an emphasis on performance).

Exhibiting the highest ethical standards is also a key value for the APS as its members exercise public power and are financed by the public who therefore reasonably expect the APS to behave not only according to the law but also at higher standards than required (though still desired) outside the public sector.

Some of these values would apply to politicians, ministerial advisers and the parliamentary service, but some would not. This presentation would greatly assist in distinguishing the roles of each.

If the Review considers there is a need to change the culture in light of changes in society and the role of the APS, it should be very careful to articulate the change required and whether this requires a recasting of the APS Values beyond that indicated above. The 1999 articulation certainly gave more emphasis to performance than might have been the case in earlier decades, but it did so while retaining all the traditional civil service values of non-partisanship, impartiality, merit, accountability etc. Aspects that might be worth exploring include the need for continuous learning (arguably covered by 'professionalism') and the importance of external links and attitudes as against an inward-looking culture (arguably covered by 'committed to service'). I strongly advise against including 'agility' despite it being a useful attribute in many circumstances: impartiality and due process rightly constrain flexibility in the APS. And the public interest requires frank and fearless advice, not 'agile' advice.

Legal and political environment. The APS culture is not determined by the articulated values alone, but also by the broader context in which it operates and by an array of legal frameworks including other provisions in the Public Service Act, the PGPA Act, administrative law and the laws governing statutory authorities. There is evidence of some shift in the culture which, as mentioned above, has impacted on the capability of the APS in areas such as strategic policy advising and risk management. This cultural shift relates in particular to the degree of independence exercised by the APS from the political arm of the executive and the extent to which it recognises some direct responsibility to the parliament.

It is important to recognise that the APS is not independent. It is subject to the lawful direction of ministers in the elected government. It must be partial to the elected government, but not in any partisan way. There has always been a challenge in getting the balance right between responsiveness to the elected government and the obligations of impartiality, non-partisanship, commitment to service and the public interest and professionalism (all implying *a degree of* independence), but the challenge would seem to be much greater today. To use Peter Aucoin's term, there are also signs of 'promiscuous partisanship' in Westminster civil services today that give excessive weight to tactical advice bordering on partisanship to whichever political party is in power, driven by the pressures on and from today's politicians and their advisers.

There would certainly appear to be evidence of ministerial departments in particular focusing more on the immediate demands of ministers and their advisers than on longer-term issues or on the quality of service delivery to citizens. As discussed further below, there is a strong case for revisiting some of the legislation governing the APS to re-balance the culture and to strengthen the role of the APS as an institution in its own right separate from the political arm of government though necessarily subservient to it. Consideration needs to be given in particular to the role of the APSC, the processes for appointments and terminations of agency heads and boards, and the governance

arrangements for different types of functions. Consideration also needs to be given to the size, role and staffing of ministerial adviser positions and the way these relate to the APS. These issues are explored further below.

Employment arrangements. The APS culture is also affected by, and reflected in, the APS employment model also discussed further below. Agencies do require a degree of flexibility in staffing matters, and this has been an ongoing theme now for some thirty years, but not at the expense of professionalism, investment in learning, corporate knowledge and experience, application of the merit principle and assurance of consistent, impartial administration and policy advising. There is reason for concern that we have gone too far with devolution of HRM (particularly relating to remuneration and classification), and given excessive emphasis recently to flexibility in employment.

The APS experimented with performance pay between the late 1980s and 2000s with a view to strengthening its performance culture. As has proven to be the case in many OECD countries, the experiment largely failed. To ensure consistency with public service values surrounding merit and fairness, agencies had to invest considerable management time and effort into the processes involved, and they struggled to apply objective measures of performance for those with complex policy and administrative responsibilities. Staff also complained about the impact on teamwork. There was no evidence of improved organisational performance and considerable evidence of staff concern (including in APSC staff surveys). Far more important for organisational performance is ensuring a line-of-sight so each public servant understands how her or his role contributes to the organisation's mission, timely, positive and comprehensive feedback, and management providing an environment conducive to high performance.

Despite this experience, there continues to be calls for the APS to use performance pay, drawing on private sector experience. The Review should reject any such calls which misunderstand the culture that is appropriate in the public sector and often also ignore the growing evidence of problems in the application of performance pay in the private sector.

Freedom of Information Act. It has been suggested that the Freedom of Information Act has had an adverse impact on the culture of the APS, undermining 'frank and fearless' advice and contributing to risk averse behaviour. I am not so sure. For the most part the FOI Act has had a very positive impact on the APS ensuring greater accuracy of records and imposing more discipline on decision-making to ensure it follows due process; it has also rightly brought to light cases of improper use of resources. The fear expressed is that the law is requiring public access to confidential policy advice thereby inhibiting the frankness of advice and the capacity of ministers to consider issues genuinely in the public interest without the public looking constantly over its shoulder.

I am not sure the evidence of FOI case law supports the argument, especially given the exemptions set out in the legislation. The Review might seek more detailed information about actual legal practice before coming to a view on this matter. I also suggest there has been inappropriate behaviour in response to the fears whether justified or not through failure to keep proper records (a constant concern to the ANAO) and even to destroy records (possibly in contravention of the Archives Act). The failure in recent years to publish research and to give public speeches also suggests that the problem is not so much the FOI Act but pressures from ministers and their advisers. Some careful, evidence-based assessment of the legal situation as well as administrative practice would be worth undertaking by the Review.

D. OPERATING MODEL

Broad operating models of public administration. The Review should explore what we can learn from our past operating models, particularly the pre-Coombs traditional approach, the post Dawkins and subsequent NPM approach, our experience so far with NPG and with more collaborative arrangements with the States etc. The Review might seek advice for example from the Productivity Commission on what lessons can be drawn from the use of competition to deliver public services and to provide corporate services to government, and from more recent reforms in the delivery of public services such as disability and aged care services. The PC has already reported on aspects of this, but could provide a more specific overview focused on the APS Review's Terms of Reference, particularly on the implications for the role of the APS and its operating model.

I believe, for example, that there are services that should continue to be managed by the APS if the public is to be confident of due process in line with APS Values, and there are functions best managed by statutory authorities independent of departments (eg in regulating the services provided by third parties); retaining sufficient expertise to be informed purchasers and to retain strategic management control may also influence operating models of purchasing and providing.

Impact of technology. It is likely that technology will continue to affect APS operating model(s), but it is also important to examine past experience. There is much rhetoric about the potential gains of 'Big Data' and the connections that might be made between data sets (and I strongly support pursuing these potential gains which include more effective support for highly vulnerable people, a more citizens' centred service model and a much better research base). Yet there is also evidence of failures in centrally controlled approaches, and of grossly underestimating the time and money required for linking data sets (eg for electronic health records). A common failure is to rely too heavily on the technical experts and to under-invest in both staff and the end-clients. Integrated solutions may be desirable, but it is also important to continue to build upon and respond to the different functions of government such as health, education, social security, housing and tax. Another challenge, as mentioned, is retaining sufficient technical expertise in-house to ensure value for money in engaging with external expertise.

Linking governance structures to different types of functions. The appropriate degree of independence of APS agencies from ministers (and advisers) varies with the functions involved. The following draws upon a more substantial (but not yet published) paper I presented to a workshop last year that I could make available to the review (Podger 2017b). Broadly, there is a continuum of the appropriate degree of independence for different types of functions:

- **Policy advising:** Policy advising is mostly a function for ministerial departments which are rightly expected to work closely with ministers assisting them to pursue the policy agendas that were reflected in their electoral success, and to respond to events as they occur taking into account the government's broad policy and philosophical approach. The selective use of independent authorities such as the Productivity Commission to provide policy advice has also proven to be critically important to evidence-based policy deliberation. Equally, it is vital that ministerial departments have the confidence to publish research and statistics and contribute to public deliberation albeit while keeping confidential specific policy advice.
- **Funding and purchasing:** Similarly, the allocation of public resources should be done closely with ministers reflecting the government's priorities. Usually, this means purchasing or commissioning responsibilities should be managed in ministerial departments. There have, however, been some moves to shift purchasing to

statutory authorities (in the case of the NDIA) or to non-government bodies (in the case of PHNs). The wisdom of this needs examination and, if the practice is to continue, some coherent policy framework established.

- **Service delivery:** While it is important to retain good linkages between policy and administration (to ensure policy takes into account administrative realities, and administrative experience feeds back into the policy agenda), Australia has long used separate agencies to deliver services or undertake other administrative functions (such as the Taxation Office and Customs). There has also been a shift both in Australia and overseas in giving service delivery greater independence, through the use of third parties in particular, to give emphasis to professional delivery and improved quality and client focus. This can be seen in such initiatives as the use of boards to have responsibility for public hospitals, the governance arrangements for Primary Healthcare Networks, and the wider use of NGOs to deliver human services. Despite these moves, oddly, governments have in recent years folded Centrelink, Medicare Australia and the Child Support Agency back into a ministerial department despite the documented success of some of these authorities (particularly Centrelink). This arrangement has not helped to link policy more closely to administration – indeed, the reverse has occurred with administration now in a different ministerial department from those responsible for the policies being administered. A common Australian model for service delivery agencies is a statutory authority. The PS Act also has provision for ‘executive agencies’ but these have rarely been used in Australia despite being fashionable in the UK (and NZ in a slightly different form) at the height of NPM.
- **Regulation:** This generally requires a considerable degree of independence, but is sometimes still managed within departments while bound by the relevant legislation. More commonly, statutory authorities have been established to manage regulation, more visibly doing so with independence from ministers.
- **‘Integrity functions’.** Certain functions involve oversight of government activity in some way where independence from the political arm of the executive is critical, and some direct relationship with the legislature may be warranted. An obvious example is the Auditor-General. Other agencies often regarded as having ‘integrity’ responsibilities include the Ombudsman, the Electoral Commissioner, the Information Commissioner, the Statistician and the Public Service Commissioner. These are usually governed as statutory authorities, some with direct links to the parliament (for example, the Auditor-General’s appointment is subject to consultation with the JCPAA). As suggested further below, such direct links with the legislature might sensibly be introduced for other integrity agencies, particularly the APSC.
- **Government business enterprises:** Since reforms in the 1970s and 1980s, GBE’s have been managed outside the APS on a commercial basis with considerable management independence, with ministers acting more as ‘shareholders’.

The Review should examine the application of these different governance and accountability arrangements, and advise on more consistent and coherent practice, and where some strengthening of independence might be warranted and/or how links between policy and administration might best be maintained. Current Finance Department guidance is useful but seems to place excessive weight on retaining functions in ministerial departments without sufficient consideration of the case for greater independence in exercising some functions.

Regional collaboration in service delivery. Another aspect of the operating model (which was closely examined by the Coombs Royal Commission) is the place management of some public services. A key factor here is the way the Commonwealth interacts with the States on the ground. The States are usually best placed to define the geographic boundaries for service delivery which the Commonwealth should look to use if possible. This is particularly relevant where the integration of Commonwealth and State services is important, such as in health, aged care and disability services. There is also a case for the Commonwealth to have a physical presence in regions to assist with coordination, particularly if, as intimated above, purchasing at the regional level should be managed by public servants in departments or authorities. There is also a strong case for some regional presence to support Indigenous service delivery if a much more community-oriented approach is to be achieved with strong relationships directly with communities. Such a presence might also be given authority to better coordinate services from different agencies and to ensure responsiveness to local needs and priorities.

APS workforce models. There have been suggestions in recent years that the APS should move further towards more individualistic employment with more use of contractual labour and less emphasis on career public servants. These follow more than two decades of increased flexibility in employment arrangements, introduced in part in response to assumptions about the disruptive impact of new technology. I am not yet convinced, noting the continuing emphasis on ongoing and career public service notwithstanding the flexibility available to agency heads to apply more casual employment arrangements. Public service employers have certainly taken advantage of the flexibilities available to make more use of part-time employees, and to recruit new staff laterally into above-base positions, but continue to rely heavily on ongoing staff to ensure appropriate skills and knowledge. Some other jurisdictions have moved to term contracts for their SES ostensibly to gain more flexibility and better performance, but the impact has been to increase political pressures on the civil service and weaken quality and integrity. The Review should commission the APSC to analyse trends in public service employment including career paths, and seek the advice of selected major employers of APS staff as to the workforce arrangements they favour to attract, develop and retain the skills and knowledge they require.

Particularly in the area of remuneration and classification there is good reason to believe devolution of authority has gone too far in Australia, leading to unjustified differences in pay for the same work and unnecessary complications as agency structures change with machinery of government changes. Indeed, APS remuneration policy over the last twenty years and more has been the source of extraordinary transactional costs with no evidence of useful outcomes and plenty of evidence of adverse impacts. A more centralised process based primarily on market assessments of appropriate remuneration levels would avoid the problems the current approach is delivering, and would greatly reduce waste of management time and effort (see Podger 2014). It might also allow for some further effort to counter the classification creep seen over the last decade and more, particularly with the SES.

There is also a strong case for reviewing the way the Remuneration Tribunal sets pay for secretaries and statutory officers. While rightly emphasising market comparisons, the markets chosen are often not the ones relevant to the careers of the people concerned (see Podger 2018b). One impact has been to greatly increase the disparity between agency heads' pay and that of their staff to a degree causing some discomfort within the APS and some political criticism which the independent Tribunal process was meant to overcome. The Review should also look at the composition of the Tribunal and its processes, including whether it should have a better balance of expertise and experience and

whether its processes should be more open with public submissions and public hearings, possibly along the lines of other quasi-judicial bodies like the Fair Work Commission.

E. ARCHITECTURE

Governance arrangements and public trust. As discussed above, the Review should address governance and accountability arrangements for APS agencies with different functions. In doing so, the Review might also explore governance arrangements that might improve community trust in the institution of the APS and in government more generally. One possibility is the broader use of advisory boards with a mix of external expertise and stakeholder or community representation, to advise agency heads. The danger is, if these are instead appointed by and report to ministers, they could further constrain the agency and its independence. Another option is to include on agency executive committees one or two external people.

Roles of the APSC and PM&C. The Review should explore the respective roles of the APS Commissioner and the Secretary of PM&C. The appropriate distinction is hard to define, and some overlap is probably inevitable. My own view is that the Commissioner should be regarded as the 'professional head' of the APS, responsible for overall stewardship of the APS as an institution, and the PM&C Secretary as the 'operational head' (or 'head of government administration'), marshalling the APS to meet the demands of the Prime Minister and Cabinet.

The New Zealand model takes this approach further, its State Services Commissioner being the employer of heads of agencies responsible for appointments and terminations and performance appraisal. I doubt that could be introduced here despite the considerable advantages involved.

It should however be possible to strengthen the role and independence of the APS Commissioner by having the appointment subject to consultation with the JCPAA (as happens with the Auditor-General) and having the Commissioner rather than the PM&C Secretary take the lead role in advising the Prime Minister on secretary appointments (the Secretary still being directly involved). The Commissioner should also have a clearer statutory role in advising on other agency head and board appointments, in consultation with the relevant portfolio secretary. These roles naturally build on the Commissioner's responsibilities in regard to the Senior Executive Service, facilitating more careful succession management consistent with the merit principle, and promoting the concept of 'One Service'. These roles are also consistent with the Commissioner having responsibility for remuneration (and classification) across the APS.

Consistent with this model is for the PM&C Secretary to chair meetings of secretaries designed to discuss Cabinet priority issues and the PM's requirements (the Commissioner being there ex officio), while the Commissioner should chair an APS Management Advisory Committee focused on broader management issues and the capability of the Service, meeting less frequently, involving some external experts as well as selected heads of agencies, and using project teams to pursue particular concerns. The Commission should also make more use of the provision in the legislation for associate commissioners to assist with some projects.

Machinery of government arrangements and portfolio structures. The underlying administrative structure based on portfolios which was introduced in 1987 continues to have merit. The key advantages are in ensuring all departments are represented in Cabinet without making Cabinet unworkable, and in giving portfolio ministers with assistant ministers some discretion to take decisions within their budgets and Cabinet policy positions and so not overloading the Cabinet.

Some action has been taken in recent years to better codify the responsibilities of 'portfolio secretaries' but these might usefully be articulated more clearly.

Less successful has been achieving the intention in 1987 to limit in future the number of machinery of government changes. This might be more likely with some clearer rationale for how activities should be linked within portfolios. The Haldane Inquiry after the First World War identified some principles for setting the responsibilities of different ministerial departments which have met the test of time. These involve a focus on functions, not clients, and separating major functions. I suspect that applying these principles would lead to some important changes to current arrangements, ones that might last longer. It is also possible to usefully group portfolios to promote regular engagement including with respect to senior career paths.

I doubt any need to vary portfolio arrangements to better link international and domestic policy responsibilities, but consideration might be given to revised cabinet committee processes from time to time as international agendas shift (for example, to link security and economic policies).

Policy coordination arrangements. Central to policy coordination is the role of Cabinet and its committees. The Department of Prime Minister and Cabinet has since the 1950s successfully supported the operation of Cabinet, ensuring the administrative arm of the executive is responsive to the collective requirements of the political arm. With the increasing role of the Prime Minister since the 1970s, the Department has also helped to marshal the resources of the APS to deliver the priorities demanded by the PM. A key challenge in doing so is to balance the drive from the centre and the knowledge and experience of line departments. There is no one model for this, the balance varying with the style of the PM, but whatever the balance preferred by the PM, the Department must ensure decisions at the centre are well-informed. If the PM is particularly interventionist, the Department might look to using project teams with secondees from line departments to advance agendas ahead of Cabinet meetings; with less interventionist PMs the Department might make more use of committees of officials, these not always chaired by the Department itself.

Also central to coordination is the budget, both as an instrument of macro-economic policy and as the process for setting priorities across government and reviewing overall performance. Since 1976, Treasury has had responsibility for macro-economic policy and the revenue side of the budget, and the Department of Finance responsibility for the expenditure side of the budget and for oversight of financial management. The split in 1976 is popularly explained as the result of a dispute between Prime Minister Fraser and the then Treasury head and one of his deputies. Whatever influence such a dispute may have had on the decision, there was also consideration at the time of the benefits of the Canadian practice which had separated the different functions, the benefits including a much stronger focus on expenditure performance against the objectives of government programs. By the 1980s, Finance was successfully leading reforms in financial management that placed much needed emphasis on 'management for results', and was also facilitating much more careful reviews of programs and policies and new policy proposals.

In the late 1990s and early 2000s concerns were raised within government as to whether Finance was still delivering the gains seen previously. Two developments occurred: Treasury increased its capability in areas of expenditure policy and management, and new heads of Finance were asked to rebuild the Department's capability. The Review should now reconsider the respective roles of the two departments, and whether the two should now be re-combined. My inclination would be to retain the two departments, but to return to the original model by ensuring Finance is the one responsible for oversight of expenditures and related policies, reducing the degree of overlap that has developed. There could be advantage in Finance and the APSC having the same minister if the

Government wished to give priority to APS capability and management. Alternatively, if Treasury and Finance were to be combined again, care would be needed not to return to the practice of over-emphasising macro-economic considerations at the expense of careful examination of expenditures against their specific program objectives.

It is also important to recognise that other departments often play coordination roles in particular fields, including DFAT on foreign policy implications of other functions and Attorney-Generals on constitutional and legal matters. There are some advantages of this approach over giving the Department of PM&C responsibility for all coordination, including the distribution of power and the increased application of expertise. To the extent that cross-government coordination of new technology application is needed, that might best be managed by the department responsible for communications.

F. PERFORMANCE AND EFFECTIVE USE OF TAXPAYERS' MONEY

The Review of the PGPA Act and Rule has been examining the implementation of this legislation, and its findings should be of considerable assistance to the APS Review with respect to performance management and effective use of taxpayers' money. As mentioned, I have provided submissions to that review; I have also recently published a chapter on Australia's financial management arrangements (Podger 2018c). The following comments address some related issues concerning the control of APS resources: staff numbers, running costs and remuneration increases.

Staffing controls. The application of staffing controls has an unhappy history. Rather than constraining costs of government, such controls inevitably distort the use of taxpayer resources. They discourage employment of junior staff, restrain recruitment of young people and favour the use of contractors and consultants whether they represent value for money or not and/or whether they undermine APS capability. Since the 1980s it has been demonstrated that running cost controls are far more effective in managing APS resources, promoting efficiency in government.

Running costs. There are serious problems, however, with the way running costs (or administrative expenses) are currently controlled. In particular, the continued use of efficiency dividends has caused great damage, not necessarily in ways considered properly by government. There are times when governments need to take tough action to constrain administrative costs, accepting the consequences in terms of reduced services or reduced quality of resources. So long as ministers are informed of such impacts and accept them, there is proper accountability and no reason for APS members to complain. But there is misrepresentation when so-called 'efficiency dividends' are used, with ministers shifting accountability to civil servants and effort is often then given to disguising the impacts. The adverse impact is often greater on small agencies than large ones as the latter may have more frequent access to the new policy process and the opportunity to 'pad' budgets for politically attractive measures.

Annual adjustment of running costs should promote efficiency and productivity but, unless government genuinely is seeking expenditure constraint and accepts consequences for services, this would best be achieved by the simple application of CPI adjustments. The CPI is an output-based price index encompassing economy-wide productivity. Additional allocations to running costs for investments in IT or other enhancements to capability should be expected separately to provide returns to the budget (or agreed enhancement to services justified in the budget process) though, arguably, this with CPI indexation of running costs would impose greater productivity requirements than being achieved elsewhere. Where agencies can identify and measure their outputs and output

prices more directly, there is room for a more targeted approach to adjusting running costs that promote productivity improvements.

Funding pay increases. The current approach for funding pay increases is unnecessarily complex and is based on a false premise about how pay is and should be set. The premise is that pay increases can and should be conditional on productivity improvements within each agency. That is not how the labour market works, whether in the private or the public sector, and it is not how enterprise bargaining works in the private sector. Not surprisingly, the policy now imposed on the APS is not applied by the Remuneration Tribunal for politicians, judges and statutory office-holders, nor applied to ministerial staff, where the notion of internal productivity offsets is more obviously inappropriate. The current APS approach also risks double-counting productivity requirements, again impacting the level and/or quality of services in a disguised way. There is also the risk of ‘gaming’ by agencies as they look for the ‘productivity offsets’ needed to justify pay increases.

Under the more rational approach I suggest of setting pay centrally based primarily on market assessments, no special funding would normally be required. CPI indexation of running costs should be sufficient in most cases to meet APS remuneration increases. Additional supplementation would only be justified on evidence that the agreed pay increases were well above movements in average earnings for a substantial proportion of an agency’s staff, leading to its output prices increasing beyond the CPI.

G. GOVERNING LEGISLATION

The suggestions made above would require a number of amendments to the Public Service Act 1999 including with respect to:

- The APS Values;
- The appointment, role and responsibilities of the APS Commissioner;
- The appointment of secretaries and other agency heads
- The portfolio responsibilities of secretaries;
- The composition and role of the secretaries’ board.

The suggestions about the architecture of the APS might also have implications for the legislation of some statutory functions and authorities.

Other suggestions would require changes in policies and practices, some going beyond the APS (in particular, regarding ministerial advisers).

Andrew Podger

6 July 2018

REFERENCES TO OTHER RECENT MATERIAL I HAVE WRITTEN

- Podger, 2014. 'Public Service Pay: When Prejudice Overwhelms Good Policy'. *Canberra Times Public Sector Informant*, November
- Podger, 2015. 'Innovation in the public sector: Beyond the rhetoric to a genuine "learning culture"', in Wanna, Lee and Yates (eds), *Managing Under Austerity Delivering Under Pressure*, ANU Press, pp119-130
- Podger, 2017a. 'Enduring Challenges and New Developments in Public Human Resource Management: Australia as an Example of International Experience', *Review of Public Personnel Administration*, Volume 37 Number 1, March 2017, pp 108-128
- Podger, 2017b. 'Public Sector Institutional Design: Australian Theory and Practice, and Contemporary Challenges', paper presented to Greater China Australia Dialogue on Public Administration workshop at City University, Hong Kong, June.
- Podger and Wanna, 2017a. 'Submission to the Independent Review of the PGPA Act', November.
- Podger and Wanna, 2017b. 'Supplementary Submission to the Independent Review of the PGPA Act', December.
- Podger, 2018a. 'Further Submission to the Review of the PGPA Act', January
- Podger, 2018b. 'Australian Government Executive Remuneration: Submission to Senate Education and Employment Committee Inquiry', January
- Podger 2018c. 'Making "accountability for results" really work?', in Podger, Su, Wanna, Chan and Niu (eds), *Value for Money: Budget and Financial Management Reform in the People's Republic of China, Taiwan and Australia*, ANU Press, pp95-126
- Podger, 2018d. 'Comments on the Consultation Draft Report of the Independent Review of the PGPA Act 2013 and Rule', June.

Also see my book:

- Podger, 2009. *The Role of Departmental Secretaries: personal reflections on the breadth of responsibilities today*, ANU Press