

Dear Mr Oakeshott and [REDACTED]

Thank you for your time, today, [REDACTED]

We have just become aware of the subject Bill. The following is provided to record some of the comments passed to the Inquiry Secretariat in our telephone conversation, today, while a more formal submission to the Committee is being drafted. I hope to have the draft of a submission into peer review by start of business, tomorrow, with a final copy to your office by the end of the day.

### **Preliminary Analysis**

Usually, the politically correct approach for commenting on such works would be to start off by saying something akin to, "*This Bill and its accompanying Memorandum are fine, as far as they go, although . . . . .*".

Disappointingly, such an opening would be quite inappropriate when commenting on this Bill and its accompanying Memorandum.

Frankly, my first read of this Bill gives me a sense that it is, in my best high school French, a *derriere de cheval*. This is likely the worst piece of Australian Public Service (APS) inspired legislation that we have seen since the Defence Trade Controls Act of 2012.

The extent of this is obvious, with profound shortcomings even in the most fundamental areas of effective and informative, let alone regulatory writing. For example, the words that make up the title of the Bill - '*governance*', '*performance*' and '*accountability*' - are not even defined in the Bill, let alone other important precepts and management practices that the Bill purports to be all about, such as '*risk*' and '*effective risk management*'.

Given Australian risk management practices are considered world class and the Australian standard in Risk Management (AS/NZS 4360) was used as the basis for the international Risk Management Standard, ISO 31000, the paucity of even "*in-principle*" risk management guidelines in the text of the Bill and the cavalier if not contradictory statements in the Memorandum about risk and risk management in the public service seem incongruous if not a total indifference to what is real.

As to the stated purpose of the Bill, this is couched under the passive and somewhat malapropos heading of "*Objects of this Act*", and in language which may best be described as dissembling generalities, devoid of any strategic management performance directives or associated metrics for measuring performance, let alone the accountabilities under the proposed legislation or the effectiveness of such legislation in improving public sector governance.

While the accompanying Memorandum waxes lyrical about what the legislation is intended to achieve, the words in the draft legislation (the Bill) provide little evidence as to how any of the aims of this Bill are to be achieved; that is, what things such as objectives must be met to achieve these aims, let alone what goals or outcomes will arise as a consequence of achieving the aims and how these, in turn, will be determined as well as measured.

From the section entitled “*Objects of this Act*”, things go down hill from there, ending up in Chapter 4 wherein the norms of good governance get inverted, resulting in what may best be described as the classic “*tail wagging the dog*” phenomena.

### **Preliminary Findings and Likely Outcomes**

If this Bill is enacted in its current form, there is a high to extreme level of risk such legislation will further disempower the Parliament in the performance of its Oversight Level of Governance functions while confusing and confabulating the Directing Level of Governance role of the Executive Government by empowering unelected officials in the Australian Public Service to avoid the very things the Bill purports to emplace upon them.

Prima facie, this is a complete inversion of good governance practices and institutionalised corruption of process.

What also concerns us is that after its first reading in the House last week, this Bill has been referred to the Joint Public Accounts and Audit Committee for a single review hearing to be held this Friday, with submissions to PAAC review closing today. The accompanying Memorandum states the first five (5) clauses of this Bill are to be enacted by 01 July this year (2013) with the substantive provisions of the Bill to commence by 01 July 2014 while citing the need for a separate Bill with transitional and consequential amendments which is still being developed.

One could be forgiven for seeing this for what it really is – legislation on the fly.

A question that needs to be asked is if this normal, let alone commensurate with the appropriate level of oversight warranted for a Bill intended to replace pivotal legislation in relation to the governance, performance and accountabilities of the APS, such as the FMA Act of 1997 and CAC Act of 1997?

Common sense says it is not.

### **Submission**

Since time is of the essence, please forgive the Australian plain speak language used. There has not been the time to couch these observations on the Bill and its accompanying Memorandum in the more politically correct terms that some may prefer. We hope to have a peer reviewed submission to the Committee by close of business tomorrow.

Yours sincerely,

*Peter Goon*

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