

Discussion Paper

# **Further Reform of the Australian Public Service**

**Andrew Podger AO FASSA FIPAA**

**July 2024**

# SUPPORT FROM FORMER SENIOR PUBLIC SERVANTS

“While the Government has taken some useful steps to improve Commonwealth public administration, much more needs to be done. Indeed, the Public Service Minister has foreshadowed her intention to do more and has encouraged contributions from any with an interest.

In that spirit, we commend this paper prepared by former Public Service Commissioner and Departmental Secretary Andrew Podger. Robodebt and other recent cases of maladministration demonstrate the urgent need for reform, and also provide a once-in-a-generation opportunity to deliver it.

Andrew has not asked us to endorse every specific proposal in the paper but rather to encourage the Government and its advisers, Members of Parliament and other interested parties to consider them as a serious contribution to the development of further legislative reforms. We are pleased to do so.”

Stephen Bartos FIPAA

Roger Beale AO

Alan Behm

Tony Blunn AO FIPAA

Anne Buttsworth PSM AM

Michael Carmody AO

Marie Coleman AO PSM

Michael Delaney

Meredith Edwards AM FASSA FIPAA

Christine Goode PSM

Patrick Gourley

Jeff Harmer AO FIPAA

Tony Harris

Ken Henry AC FASSA

Joanna Hewitt AO

Michael Keating AC FASSA FIPAA

John McMillan AO FIPAA

Ken Matthews AO FIPAA

John Menadue AO

Ric Smith AO

David Stanton AM FASSA

Meryl Stanton PSM FIPAA FAHRI

Lynne Tacy FIPAA

Dennis Trewin AO FASSA

David Tune AO FIPAA

Sue Vardon AO FIPAA

Peter Varghese AO

Helen Williams AC FIPAA

## **PURPOSE**

1. This paper outlines legislative proposals that have not thus far been prominent among those advanced by the Government.
2. Its purpose is to help promote discussion about the ways in which the efficiency, effectiveness and capability of the Australian Public Service (APS) and its integrity can be improved, and the standing of the APS as a key institution in Australia's democratic system can be restored.

## **BACKGROUND**

3. Competent democratic government in the public interest requires an effective and efficient public service distinguished by probity and accountability. It is a fundamental responsibility of the Parliament and the Government to see that its public service is maintained in the best possible form for if that is not so, the well-being of society and citizens is at risk.
4. There are natural impediments to giving priority to public service laws, structures and procedures. For example:
  - (a) There is a tendency to see the public sector more as a cost than a benefit, a drain of resources that could be used more productively elsewhere. So resourcing of government administration can be based not so much on the basis of what is desirable but what is the cheapest, with the sector being seen more as a source of savings than an avenue for community investment.
  - (b) Public administration does not have the allure of other policies that more directly engage the interests of citizens and politicians – health and social security, education, defence, economics and taxation and national security. In the Commonwealth, for example, it has been rare for Ministers to engage deeply with public service matters except when things go wrong and cause political strife.
  - (c) Inappropriate forms of politics rather than sensible administrative policy can have baleful effects on the public service subverting the support it can give to governments and the services due to citizens. Examples of political and bureaucratic empire building and appointments based on political allegiance rather than merit and much in between are common.
5. These impediments, their inter-action and other influences have combined in the more recent history of the Commonwealth and under successive governments to damage the Australian Public Service (APS). The consequences have been detailed by the 2019 Thodey Review of the Australian Public Service, the Robodebt Royal Commission and numerous reports of parliamentary committees and the Auditor-General.
6. The Thodey review report said that 'the APS is not performing at its best today' and it 'is not ready for big changes and challenges Australia will face'. It said that

‘the service’s ill-preparedness reflects historical challenges in addressing known issues – including its people, its enabling systems and its culture.’ Through a large number of recommendations, it urged ‘a service-wide transformation to achieve better outcomes’. The Morrison government shelved several of Thodey’s most important recommendations and there is little evidence of the transformation it called for.

7. In the Robodebt Royal Commission report, the Commissioner, Catherine Holmes, found ‘dishonesty and collusion’ and ‘ineffectiveness of...institutional checks and balances.’ She made rueful observations about ‘the lengths to which public servants were prepared to go to oblige ministers’ this leading to ‘undermining the concept of impartiality and frank and fearless advice.’ It is heartening that the Government has accepted all but one of the Royal Commission’s recommendations, although some only ‘in principle’. It is to be hoped that these recommendations can be promptly and effectively implemented. The Government’s response did not consider the Royal Commission’s explicit endorsement of key Thodey report recommendations not included in its own recommendations, but the Minister for the Public Service, Senator Gallagher, committed the Government recently to a further tranche of legislation which will address many of these.
8. The Government has also taken notable steps to rehabilitate the public service including by:
  - (a) establishing a National Anti-Corruption Commission
  - (b) replacing the Administrative Appeals Tribunal with a new Administrative Review Tribunal
  - (c) beginning to cut back on the excessive use of consultants and contractors and rebuilding internal capacity including by an investment fund
  - (d) re-establishing program evaluation and undertaking to integrate high quality evaluation into all aspects of program and policy development (though further steps should be taken to reinstate the systematic processes used by the Keating Government).
  - (e) abolishing staff ceilings
  - (f) beginning to fix up the remuneration and classification mess, a legacy of almost 30 years of irrational policy, and
  - (g) undertaking to amend the Public Interest Disclosure Act to improve whistleblowing laws and considering better support for whistleblowers including the possibility of a Whistleblower Protection Authority.
9. Legislation to amend parts of the Public Service Act has also been passed by the Parliament in May 2024. In the main, its provisions are useful although they have been criticised for being too modest and unambitious for the seriousness of the problems now besetting the public service.
10. In acknowledging these criticisms, Senator Gallagher, has said that ‘not everything can be done at once’ and, as mentioned, she has foreshadowed a

further 'phase' of reforms. That is welcome and necessary. Much has changed in government and politics and it is important for the public service to keep up with the times.

11. The Minister has also said that 'everyone who wants to play a role...has a role to play.' This paper is a response to that invitation and it is hoped that it might be helpful to the Minister, the Government and the Parliament.

## **ROLE AND VALUES OF THE AUSTRALIAN PUBLIC SERVICE**

12. The role of the APS is set out in the Public Service Act 1999. The first main object of the legislation in Section 3(a) is: 'to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public'.
13. The way this role is to be performed is set out in the APS Values in Section 10 of the Act. The Robodebt Royal Commission noted 'a lack of understanding on the part of some of those involved of the APS' role, principles and values'. It drew attention to the Thodey Report recommendations which 'were largely directed at the need for a clear understanding of the APS's role' and included the codification of new 'principles' in the legislation to complement the existing APS values. The proposed principles, drawing on New Zealand practice, were apolitical, stewardship, openness, integrity and adherence to merit.
14. The Government has instead only added 'stewardship' to the current APS Values in the legislation passed in May.
15. A more substantial change, avoiding Thodey's possibly confusing addition of new principles, would be to review the current articulation of the APS Values so that they more directly reflect the APS role to 'serve the Government, the Parliament and the Australian public'. Such a revision could address the Royal Commission's recommendation for 'a fresh approach to customer service' while also acknowledging explicitly the central democratic principle of serving the elected government. The current articulation, even with the inclusion of 'stewardship', blurs these responsibilities while also omitting the original Westminster principle for a civil service of merit-based employment.

## **Proposal 1**

Consideration be given to a more substantial revision of the APS Values in the Public Service Act to better reflect Westminster principles of being professional and apolitical, serving the elected government and administering its policies and programs, being accountable to the Parliament and the public through the system of ministerial responsibility, being impartial in its exercise of authority, being committed to serving the Australian public, adhering to the merit principle and having the highest ethical standards (the recently added value of stewardship of the APS could also be retained though that is primarily the responsibility of Secretaries and other senior public servants and there is still work to be done to clarify what this value means in practice for other public servants).

16. The Thodey report also recommended that its proposed 'principles' apply to Commonwealth bodies outside the APS. The above approach to articulating the APS Values – based on relationships with the Government, the Parliament, the Australian public and in the workplace – could clarify distinct values for other Commonwealth employees. That is already the approach for Parliamentary Service employees in the Parliamentary Service Act, recognising they work for the legislature not for the executive arm of government. Value statements could also be included in the Members of Parliament (Staff) Act for both ministerial staff (who work for Ministers) and other employees of Members, including Ministers (whose work relates to the Members' legislative rather than any executive role), all of whom unlike APS employees are allowed to be partisan.

## **Proposal 2**

Consideration be given to review the Parliamentary Service Values in light of the revision to the APS Values, to include in the MOP(S) Act statements of values for ministerial staff and other employees, and to require other non-APS bodies to articulate the values for their employees using the framework developed for the APS.

## **RELATIONS BETWEEN MINISTERS AND DEPARTMENTAL SECRETARIES**

17. Section 57 of the Public Service Act defines the roles of Secretaries as, among other things, 'the principal official policy adviser' to Ministers and for 'ensuring delivery of government programs and collaboration to achieve outcomes with the

Agency Minister's portfolio, and with other Secretaries, across the whole of Government.'

18. In discharging these functions mutual trust and confidence between Ministers and Secretaries is vital for effective government and administration.
19. Trust and confidence between Ministers and Secretaries can be affected by many things often not related to Secretaries' competence. Personal incompatibilities, including working styles, can affect relations to the point where they become unworkable. In such cases it must be possible for Secretaries to be removed from their particular positions.
20. Since the 1990s, it has been unfortunate that this possibility has come to be taken as an opportunity for Secretaries not just to be removed from particular positions but to be sacked for any reason. This has gone against a longstanding tradition that staff in the public service should only be dismissed if they are incompetent, redundant or unfit on medical grounds or if they have been guilty of misbehaviour, a tradition which remains so for all staff except Secretaries. That is to say, the dismissal of Secretaries has, in many cases, not observed standards of merit applied to all other staff. Nor are standards of merit observed when Secretaries' terms of appointment end and decisions are taken about new appointments. These failures of integrity provide a bad example of personnel management at the highest levels.
21. Worse, it creates an environment unconducive to the provision of comprehensive, frank and honest advice, policy or otherwise, to governments and ministers. While not all will be equally affected and some may not be at all affected, it is possible others may be inclined to temper their advice so as to avoid the prospect of falling out of favour and risking dismissal or non-reappointment with consequent damage to their reputations and financial security. These effects are insidious as they can trickle down departmental hierarchies and cause other senior staff to temper their advice in their best interests, as seemed to be the case in the Robodebt saga and some other recent cases of maladministration identified by ANAO.
22. In place of the Hawke Government's system involving appointments with the same tenure as all other public servants but with consideration of rotation after five years in a job, fixed period contracts were mandated in the 1990s removing tenure as a trade-off for a pay increase. A sensible personnel policy rationale for this approach is elusive and no justification has been offered for it in those terms. It's likely that the limited commitment they imply will be reciprocated and those who see no prospects of further appointments will typically spend a good deal of their last year and months looking for an alternative job rather than concentrating fully on the one they have.

### **Proposal 3**

Consideration be given to amending the Public Service Act to:

- (a) provide for Secretary appointees to retain tenure to a position at level but with the expectation that they could be rotated from time to time
- (b) allow for Secretaries to be moved from positions where that is desired by the relevant Minister after consultation with the Prime Minister on the basis of a joint report provided by the Public Service Commissioner and the Secretary of PM&C
- (c) where a Secretary is moved from a particular position, every effort be made to find an alternative one or a position of roughly comparable status elsewhere in Commonwealth employment or any other position the Secretary is prepared to accept with dismissal only where such positions are unavailable and the Secretary is redundant, and
- (d) include the same tenure provisions as for other APS staff, allowing in addition to redundancy, for Secretaries to be dismissed for reasons of incompetence, incapacity for health reasons or improper behaviour.

- 23. In light of such a change, the Remuneration Tribunal should be asked to review Secretaries' remuneration.
- 24. Of course, such amended tenure laws for heads of departments will not guarantee high standards of policy and other advice to ministers and governments. They will however remove an unhealthy impediment to it.
- 25. To achieve the appointment of high-quality people as Secretaries, it is important that their selection is based closely on merit rather than political considerations. Aspects of the existing arrangements are less than ideal.
- 26. Section 58 of the Public Service Act requires appointments to be made by the Governor-General on the advice of the Prime Minister after a report has been provided by the Secretary of the Department of the Prime and Cabinet in consultation with the APS Commissioner and the relevant Minister.
- 27. That is to say, the primary advising role on Secretary appointments is vested in an officer occupying a position often more subject than most to political pressures.
- 28. Further, the consultation arrangements are minimal and do not match the standard required for appointments for other positions in the Public Service where advice is provided by a committee of usually three. In short, the advisory system for Secretary appointments is far less collegial than is the case for other public service appointments or for many statutory offices. And unlike those positions, Secretary vacancies are rarely advertised to provide the opportunity for the widest possible field of applicants.



29. In her recent speech, Senator Gallagher foreshadowed changes to strengthen the appointments process for Secretaries but did not set out the details.

#### **Proposal 4**

Consistent with the recommendations of the Thodey Report (explicitly endorsed by the Robodebt Royal Commission), consideration should be given to amending the Public Service Act to provide for:

- (a) a presumption in favour of advertising unless there are good reasons not to do so
- (b) the independent APS Commissioner to be joint author with the Secretary of PM&C of advice to the Prime Minister on Secretary appointments, and
- (c) the Commissioner and PM&C Secretary to be authorised to consult others if they wish to do so.

30. The current provision requiring consultation with the relevant Minister should be retained.
31. Such arrangements would enable advice on Secretary appointments to be developed at a step removed from political pressures that could distort assessments of merit while preserving a central role for the Secretary of the Department of the Prime Minister and Cabinet.
32. The Thodey Report recommended that the stronger role for the APS Commissioner should be complemented by ensuring the appointment of the Commissioner has firm Parliamentary support through consultation with the Leader of the Opposition. Senator Gallagher's recent speech indicated she may be offering support for this recommendation.

#### **Proposal 5**

Consideration be given to requiring consultation with the Leader of the Opposition before the Prime Minister advises the Governor-General on the appointment of the APS Commissioner.

33. While this should ensure both the independence of the Commissioner and their status, consideration should also be given to requiring the Commissioner to have experience as a Secretary or an equivalent role. The Commissioner's role requires such standing amongst the peer agency heads (including Secretaries).
34. The Thodey Report also recommended clarification of the respective roles of the APS Commissioner and the Secretary of PM&C, the former to be designated 'head of people' and the latter as 'head of the service'. Given the APS

Commissioner's statutory functions (s41(1) of the PS Act) are 'to strengthen professionalism of the APS ...', 'to uphold high standards of integrity and conduct in the APS' and 'to promote, review and report on APS capabilities ... to promote high standards of accountability, effectiveness and performance', it would be better to designate the APS Commissioner as 'the Professional Head of the APS'. The Secretary of PM&C is responsible for coordination of the APS (and of the Commonwealth public sector more generally) to meet the requirements of the Prime Minister and the Cabinet. Given that role, the PM&C Secretary might be better described as 'the Coordinator-General of the APS' (drawing on the term sometimes used in the past to describe the role of the head of Premiers' Departments in the States).

35. In exercising that role, the PM&C Secretary is appropriately the chair of the Secretaries Board on most day-to-day issues. However, when the Board is considering longer-term APS stewardship matters, it would be preferable for the APS Commissioner to take the lead.

### **Proposal 6**

Consideration be given to clarifying in the Public Service Act that the APS Commissioner is 'the Professional Head of the APS' and the Secretary of PM&C is 'the Coordinator-General of the APS'.

36. The APS Commission should also be required to report on the operation of the Public Service Act provisions on the appointment and tenure of departmental Secretaries in its annual report to the Parliament.
37. Consistent with the Thodey report and the Robodebt Royal Commission, Senator Gallagher has also foreshadowed welcome reforms to the performance management of Secretaries and to enhance the powers of the APS Commission to conduct reviews.

## **MINISTERIAL STAFF**

38. The growth in the numbers of ministerial staff and the expansion of their policy responsibilities has affected relations between Ministers and Secretaries and their departments, not always for the good.
39. Difficulties are more likely to confound relations between Ministers and their departments where the roles and responsibilities of ministerial staff are unclear. Further, different Ministers will expect their personal staff to undertake different kinds of roles.

40. Nevertheless, for some years a code of conduct has applied to ministerial staff which, among other things, sets out a broad indication of roles and behaviour. While useful, the code is administrative and it lacks the gravitas and enforceability of the code of conduct in the Public Service Act that applies for staff employed under that Act (and of the code in the Parliamentary Service that applies to members of the Parliamentary Service). Legislating such a code was not only recommended by Thodey and explicitly endorsed by the Robodebt Royal Commission but was also recommended by the Jenkins Report on behaviour in the Parliamentary workplace. While other sensible changes were made in the legislation to amend the MOP(S) Act that was passed by the Parliament in October 2023, this widely supported proposal was not included.
41. Moreover, as mentioned above, the values ministerial staff should uphold are not currently articulated.

### **Proposal 7**

In addition to including a set of values for ministerial staff in the MOP(S) Act, consideration should be given to including a code of conduct for ministerial staff in the Act.

42. Together with a statement of values, this could help to further clarify the roles of these staff and smooth relations between Ministers and departments (the code should explicitly require ministerial staff to facilitate communication between the department and the Minister). If it is good enough for Parliament and governments to require a legislated code of conduct for public servants, and a legislated code for those in the Parliamentary Service, it should equally be good enough for them to have one for their personal staff.
43. Further, a code reflecting the one for ministerial staff but appropriately modified could be legislated for all other staff employed under the MOPS Act.
44. As with others, the quality of ministerial staff will depend significantly on the thoroughness with which they are assessed for appointment. The amendments to the MOP(S) Act made recently will go a long way to improve the appointment, training and management of ministerial staff and other MOP(S) Act employees. But consideration should be given to also include in the Act a requirement for the Prime Minister to determine by regulations related procedures for ministerial staff, with the Presiding officers doing likewise for other MOP(S) Act staff. (There is also a strong case for giving more authority to the Parliament via the Presiding Officers, rather than the Prime Minister, over the allocation of MOP(S) Act staff other than ministerial staff, though this is not directly relevant to the APS and APS reform.)
45. The Prime Minister and the Presiding Officers (or the Parliamentary Service Commissioner) should also provide an annual report to the Parliament on the operation of the MOP(S) Act in relation to their respective responsibilities.

## APPOINTMENTS TO STATUTORY OFFICES

46. Usually in the light of allegations about appointments that owe more to political allegiance than merit, of which the Administrative Appeals Tribunal is but the latest in a long line, considerable attention has been given to procedures to give greater emphasis to merit in statutory appointments.
47. The essential problem has been that the greater the scope for ministerial discretion, the more likely it has been for appointments to be politicised. This is unfortunate because the very reason for statutory office positions is to remove functions from ministerial and political involvement.
48. There is, for example, a clear case with regard to the public broadcasters (the ABC and the SBS), for ministers and governments not to become involved either directly or indirectly in determining what news they will report. The reasons in principle have been similar with the Administrative Appeals Tribunal where there is critical interest in the public being confident that the decisions of this quasi-judicial organisation are fully independent and untainted by political self-interest (some steps in the right direction have recently been made under the new legislation to take effect from 1 July 2024).
49. In the case of the ABC and the SBS, and some other statutory authorities, attempts have been made to ensure appointments are based predominantly on merit by attempting to limit ministerial discretion. Thus, following the advertising of vacancies, independent advisory committees have been set up to make recommendations on appointments with ministers being required to provide statements of reasons if they decide to appoint persons not recommended by the committees. These procedures have succeeded in part only and Ministers and governments of all persuasions have continued to disregard the independent committees' recommendations, at times appointing people with open political allegiances, thus diminishing public confidence in the independence of functions for which they are responsible.
50. If merit is to play a greater part in these appointments, ministerial discretion should be further narrowed.
51. While the Government has engaged Ms Lynelle Briggs to report on procedures for statutory appointments, at the time of the preparation of this document her report was not available. Senator Gallagher has, however, foreshadowed legislation to require a more merit-based approach to appointments of statutory offices.

52. Dr Sophie Scamps last year introduced the Transparent and Quality Public Appointments Bill (also known as the 'Ending Jobs for Mates Bill') which presents a comprehensive and accountable framework for statutory appointments. If adopted, it would make a major contribution to the integrity and depoliticization of such appointments.

### **Proposal 8**

Consideration be given to legislating a basic set of principles to apply to all statutory office appointments with scope to adjust particulars to fit different circumstances along the following lines:

- (a) all vacancies to be advertised;
- (b) an independent committee, including where appropriate the APS Commissioner or their nominee but not as a rule officers of the relevant department (i.e. only if specialist expertise is a factor that is best provided by the department), to prepare advice on suitable candidates;
- (c) Ministers only able to make appointments from the list of suitable candidates recommended by the committee, noting their ability to draw the names of potential candidates to the attention of the advisory committee; and
- (d) departmental annual reports to provide information on the operation of these principles in their portfolios.

## **APPOINTMENT OF AMBASSADORS AND HIGH COMMISSIONERS**

53. Firmer merit processes are also needed for the appointment of ambassadors and high commissioners, and heads of consulates. There are certainly occasions where the role of an ambassador/high commissioner can benefit from the particular skills and networks a former politician offers, but the process should constrain the appointment of former politicians where such valid merit considerations are not demonstrated. Over recent years the proportion of appointments of non-professional career diplomats has increased from around 4% to over 8% (there are around 120 positions at the ambassador/high commissioner level, more including heads of consulates). The merit processes suggested above for statutory office appointments might not easily be translated for filling these positions – advertising the jobs for example beyond the APS might not be appropriate. An alternative approach the Government should consider is to set a ceiling on the proportion of ambassadorial positions filled by people who are not career diplomats or public servants selected on a firm merit basis led by the Secretary of the Department of Foreign Affairs and Trade. Such appointments should also be accompanied by a clear statement by the Minister (or the Prime Minister) explaining the merits of the preferred candidate for the particular

position. A ceiling of no more than 5% would discourage non-meritorious appointments. A period of transition (say, five years) to this ceiling might be allowed.

### **Proposal 9**

Consideration be given to set a ceiling of 5% on the proportion of ambassador/high commissioner positions (and heads of consulates) filled by people who are not career diplomats or public servants selected on a firm merit basis by the Secretary of the Department of Foreign Affairs and Trade.

## **CONSULTANTS AND CONTRACTORS**

54. Reports, including from parliamentary committees, have described the consequence of the extensive use of consultants and contractors in the public service (the most recent report by the Senate Finance and Public Administration References Committee was released on 12 June 2024). While in many instances the use of consultants and contractors is justified, much of it is not as it has:
- (a) reduced the capacity of the public service to do what it is there for
  - (b) added significantly to operating costs, and
  - (c) resulted in consultants and contractors, who are not covered by the Public Service Act values and code of conduct, undertaking jobs within departments and agencies without going through the Act's merit appointment provisions so compromising efficiency and restricting the rights in the Public Service Act of ordinary citizens to have a reasonable opportunity to apply to join the public service.
55. The government is to be commended to taking steps to reduce reliance on consultants and contractors although there would be advantage in giving these efforts legislative backing so that an unfortunate history is not repeated.

## **Proposal 10**

Consideration should be given to legislation which would require:

- (a) the use of consultants and contractors to meet strict tests of essentiality, cost effectiveness and overall value for money
- (b) staff to be employed under the merit provisions of the Public Service Act where they are to be effectively engaged in an employment relationship
- (c) all departments and agencies to provide the Department of Finance and the Public Service Commission with annual plans for the use of consultants and contractors
- (d) all consultancies costing more than \$250k to be based on open tenders that should not be rolled over
- (e) all consultancies costing more than \$1m to be cleared with the Department of Finance and the Public Service Commission
- (f) the details of all consultancies and contractor engagements to be notified on departmental and agency websites within a week of contracts being signed, and
- (g) all department and agency annual reports to include information on their use of consultants and contractors including assessments of value for money and any effects on maintaining inhouse capability.

## **ORGANISATION, HIERARCHY AND CLASSIFICATION**

- 56. A consultants' review of hierarchy and classification initiated by the Public Service Commission several years ago came to the conclusion that much lower-level work was being inappropriately undertaken by higher levels in the hierarchy.
- 57. This is unsurprising as classification standards have been seriously debased. For example, in a much more complex public service of some 280,000 staff in 1975, there were around 25 officers at the Deputy Secretary level. Now, in a public service of around 170,000 staff there are some 150 Deputy Secretaries. This uplift in classification is reflected down the hierarchy. That is to say, it is little wonder that lower-level work is being done at higher levels than can be justified.
- 58. The Public Service Amendment Act 2024 includes a provision saying agencies 'must implement measures that create a work environment...that enables decisions to be made...[at]...the lowest appropriate...[level].' But this provision, however well meaning, is merely exhortatory. No means of enforcement are provided and there is no specific accountability requirement
- 59. Such problems as there are with the misallocation of work begin at the top with the vast increase in the number of Deputy Secretary positions. The initial policy was that these positions would be used where a Secretary's span of policy or management responsibility was too broad and needed to be relieved by the provision of a deputy position. Thus, the former Postmaster-General's Department with around 125,000 staff and an effective monopoly of postal and telecommunications services had two Deputy Secretaries. Some much smaller and much less complex departments now have many more than that.

60. Further, the increase in the number of staff at the senior levels has broken up parcels of work likely to a degree that causes inefficiency, slowness of response and confused accountability.
61. As with consultants and contractors, this is not a problem that is amenable to prompt and ready solution. Nevertheless, a start could be made by putting downward pressure on the hierarchy by better controlling the number of positions at the Deputy Secretary level.

### **Proposal 11**

Consideration be given to amending the Public Service Act to require the APS Commissioner to approve the creation of all positions at the Deputy Secretary level and for agencies to consult with the Commission annually on their SES structures, with the Commission reporting on these matters in its annual report.

## **MERIT**

62. Many of the suggestions in this paper go to the means of improving merit in staffing because it is a critical means for ensuring that the public service is as efficient and effective as it can be as well as providing a fair and equitable workplace in which diversity, inclusiveness and integrity can prosper. Emphasising merit is consistent with pursuing equal employment opportunities as the latter, properly exercised, enhance the talent pool available while also supporting better representativeness within the APS of the Australian population. The provisions of the Convention on the Rights of People with a Disability, which Australia has ratified, should be observed.
63. Merit's centrality should be underlined by including it as suggested earlier in the Values in the Public Service Act, as it once was. Its removal was a mistake, and it is not sufficient for it to merely be mentioned in the Act's employment principles where it is relegated to a secondary status. It is a primary value and one of the most important.
64. Even this is not sufficient to allow merit the scope it needs. It would be useful therefore for the Public Service Act to require departments and agencies to prepare plans setting out how merit is to be applied in all aspects of staffing including recruitment, promotion, separation and training and development.



## **Proposal 12**

Consideration be given to amending the Public Service Act to require:

- a) APS departments and agencies to provide brief merit staffing plans to the APS Commission and to report in their annual reports on the achievements of those plans;
- b) the Merit Protection Commissioner to conduct regular reviews of merit practices in agencies; and
- c) the APS Commissioner to confer with the Merit Protection Commissioner in the promotion of the APS Values, Employment Principles and Code of Conduct.

65. The status of the Merit Protection Commissioner should also be reviewed again by the Remuneration Tribunal with a view to reversing the downgrading which occurred a decade ago.

## **CONFLICTS OF INTEREST**

66. Section 13(7) of the Public Service Act provides that 'An APS employee must (a) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment, and (b) disclose any material personal interest of the employee in connection with the employee's APS employment.'
67. How effective this barebones primary legislation is in regulating conflicts of interest is not clear although it would be interesting to know how many disclosures under sub-section (b) are made each year, or if they are even recorded.
68. It might legitimately be wondered, however, if the Values, Employment Principles and Code of Conduct in the Act are all that is necessary to maintain a flourishing integrity culture.
69. For example, a recent report issued by the Department of the Prime Minister and Cabinet titled 'Louder than Words' recommends that risks associated with post separation employment and other conflicts of interest should be addressed. In particular, the report suggests:
- (a) establishing clear conflict of interest policies and procedures for secondary and post separation employment
  - (b) developing specific processes for declaring and managing conflicts of interest for agency heads and the SES, particularly post-separation employment
  - (c) training, and
  - (d) centrally recorded information about conflict declarations and related matters.

70. The implication in the report is that these things either now do not exist or, if they do, they are insufficient.
71. That procedures for managing conflicts of interest including post separation employment may have withered on the vine implies that that section 13(7) has been ineffective.
72. If that is so, setting up new procedures for post separation employment conflicts on what might be an inadequate legislative base, suggests that base should be strengthened lest any revived administrative procedures again fade away.

### **Proposal 13**

Consideration be given to amending the Public Service Act to provide specific provisions for regulating conflicts associated with post separation employment along the lines of those recommended by the 1979 Bowen Committee report on Public Duty and Private Interest.

73. Such a provision might require any public servant to declare any offer of outside employment where there might be a conflict of interest, especially where that conflict might involve giving the new employer an unfair advantage in competing for Commonwealth contracts. As a result of any such declarations, conditions could be applied to the acceptance of the outside employment or approval could be withheld say for up to two years. There are legitimate questions about the effectiveness of any such conditions but outside employers who are significantly reliant on Commonwealth work have been only too ready to comply where in the past such undertakings have been sought.
74. Further, a legislated approach might be considered in other areas of conflict of interest like outside employment when an officer remains a public servant, the acceptance of gifts or other areas.

## **CONCLUDING REMARKS**

75. This paper does not purport to be a comprehensive outline of all the things needed to rehabilitate and improve the Australian Public Service.
76. Rather it concentrates on legislative proposals that have yet to be pursued by the Government but which could reasonably be considered to complement current proposals and fill out others recently mooted by Senator Gallagher, so the public service can be better protected from the risks of administrative and political whim.
77. The proposals seek in particular to give greater weight to merit to improve effectiveness, efficiency and integrity and promote a fairer and more inclusive

and diverse public service. This is essential to restoring the standing of the APS as a critical institution in Australia's democratic system.