

Inside or outside the tent: the role of the Public Service Commissioner

I was Public Service Commissioner for three years from the beginning of 2002 until the end of 2004. The position is a statutory office under the *Public Service Act 1999* and, once appointed, a commissioner cannot be removed other than by the Parliament. The commissioner nonetheless has a minister (in fact, two: the Prime Minister and the Minister Assisting the Prime Minister on the Public Service).

The following summarises the role from my experience, using similar headings to those of the earlier chapters concerning departmental secretaries, which can be used to summarise the responsibilities of almost all heads of government agencies. The differences in the commissioner's role are reflected in the very different amounts of time spent on the various responsibilities of an agency head.

Table 12.1 Time allocation by secretary and commissioner

Area of activity	Departmental secretary (%)	Public Service Commissioner (%)
(a) Supporting the minister	35–50	< 10
(b) Supporting the government as a whole	< 5	< 5
(c) Working with the Parliament	up to 5 +	5–10
(d) Management of the department/agency	15–30	15–20
(e) Management of the portfolio	up to 5	nil
(f) External relationships		
— with other Commonwealth agencies	5	15
— with other governments	10	< 5
— with non-governmental bodies	5–10	< 5
(g) Contributing to APS capability	up to 5	50

Again, a number of activities could be allocated to several headings. Time spent on APS Commission and MAC reports and on commission events and programs as commissioner has been allocated here to 'contributing to APS capability', while 'supporting the government as a whole' relates mostly to involvement in portfolio secretaries' meetings and related activities not initiated by the commission.

The extra time involved in working with the Parliament was because I was also the Parliamentary Service Commissioner. Since the latter position was created in 1999, the presiding officers have asked the Public Service Commissioner to take the role.

Promoting the APS Values and contributing to APS capability

As these are at the centre of the commissioner's statutory responsibilities, I will describe them first rather than last.

The main elements of this work as commissioner are:

- issuing directions and developing and disseminating guidelines on the APS Values and Code of Conduct
- developing and supporting the leadership cadre of the APS (SES and agency heads)
- working through the MAC to identify good management practice in areas of shared interest across the APS
- evaluating and reporting on how agencies are upholding the APS Values
- succession management and agency head performance assessment.

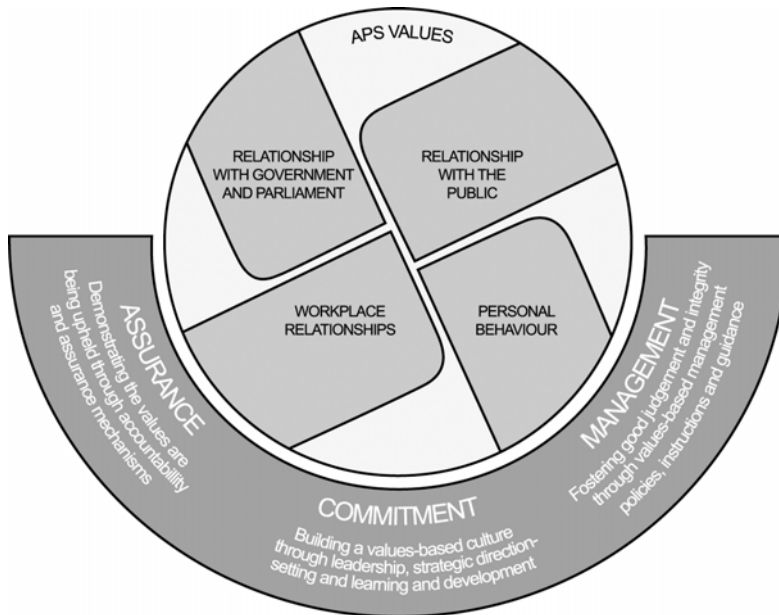
Guidelines

When I was appointed commissioner, my predecessor, Helen Williams, had issued the directions required under the new legislation on the APS Values and Code of Conduct. These, appropriately in my view, clarified the responsibilities of agency heads while leaving them some room to manage how they would promote the values and ensure the code was upheld. My focus was on developing guidelines to help agency heads and their employees to apply the values and Code of Conduct in their practical work situations.

My earlier, practical experience as a departmental secretary made me somewhat sceptical of some of the rhetoric of the management literature and the fads and fashions involved in management theory. I therefore put considerable emphasis on what I called 'hardwiring', whether of the APS Values or of the concept of leadership, both of which were emphasised in the *Public Service Act 1999*.

So, for example, I grouped the 15 values in the act under four headings, which identified public servants' key relationships and behaviours, and clarified how the values reflected the unique role of the Public Service under the Westminster system (for example, responsive to the elected government, non-partisan, impartial, merit based). This grouping of the values guided the structure of the *State of the Service Reports* from 2002 and the rewriting of the Guidelines on Official Conduct in 2003. Using OECD experience, we also identified how agency heads could go about 'embedding' the values in their organisations in practical ways through 'commitment', 'management' and 'assurance' activities. This led to the following diagram (Figure 12.1) to illustrate the practical approach we were advocating and the guidelines we prepared for agency heads on embedding the values in their organisations.

Figure 12.1 The APS Values framework

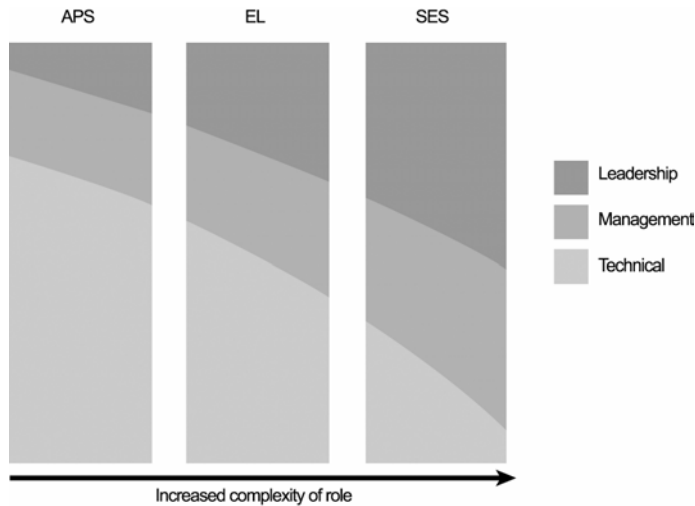


This work recognised the different business responsibilities of agencies and how these might reflect differences in priorities among the APS Values (for example, Centrelink might give more weight to values concerning the relationship its staff have with the public while the Department of PM&C might give more weight to values concerning the relationship its staff has with the government and the Parliament), but confirmed the unifying role and relevance of the full set of APS Values.

Leadership development

Similarly, I was becoming uneasy about the language of 'leadership'. The SES Leadership Capability Framework had proven to be very robust, with richness in its detail and language, but there was a push to apply the framework to everyone at every level. I felt this ran the danger of making it meaningless. We therefore did some extensive research into the skills and attributes that were really required at different levels, recognising that there could be wide disparities for different jobs in different businesses. I was also concerned not to understate the importance of technical expertise or the specific skills required of managers at different levels. The ensuing Integrated Leadership System (ILS), released in 2004, gained considerable credibility throughout the Public Service precisely because of this practical balance, as illustrated by Figure 12.2, which appeared near the beginning of the ILS documentation.

Figure 12.2 The changing mix of skills and capabilities



The ILS led to a substantial refreshment of our suite of APS Commission development programs, though these continued to focus mostly on the SES and the feeder groups into the SES.

My personal involvement in these was extensive, both in the design and in their delivery. I attended all the courses for new SES officers, which were held three or four times a year, to discuss the statutory obligations of SES officers in promoting and upholding the APS Values and in working throughout the APS—not just within their own agencies. Often I would raise common ethical dilemmas and encourage discussion of how they might be handled. I also attended many of the other leadership programs managed by the commission or run by agencies for their own staff.

A particularly useful program was the Career Assessment Centre for staff at EL2 level considered likely to be promoted to the SES in the future. The value of this program for those participating and their agencies was in its direct assessment, without pulling punches. An added value for the commission was the capacity to collate the assessments and to build a picture of common strengths and weaknesses and trends over time, to help in the design of future development activities. This analysis showed that most of these high-flying staffers were skilled in communication and demonstrated personal commitment and integrity, but many were weak in shaping strategic thinking and maintaining productive working relations.

The Management Advisory Committee

Our APS Commission guidelines were prepared through an extensive process of consultation with agencies, mostly using a reference group of secretaries and

drawing on APS-wide case studies. MAC reports similarly used reference groups and case studies, but also employed a team of deputy secretaries to pull the material together. This had the added virtue of allowing secretaries to see close at hand deputy secretaries from other agencies who might be candidates for advancement in the future, thus contributing to succession management.

I was always closely involved in the MAC projects as the commissioner was the 'executive officer' of the MAC under the *Public Service Act*. I initiated some projects, prepared papers for the MAC on the scope of each one and was on every reference group of secretaries.

Those that I contributed most to were the 2002 report *Organisational Renewal*, on the likely demographic impact on the APS and the need for improved workforce planning, and the 2004 report *Connected Government*, on the management of whole-of-government policies and projects. I had previously contributed substantially to the 2001 report *Performance Management in the APS: A strategic framework*.

Table 12.2 Connected Government: improving whole-of-government capacity

Peter Shergold, Secretary of the Department of PM&C, initiated the 2004 MAC review of whole-of-government management, with strong support from me as Public Service Commissioner.

Roger Beale (Environment department) chaired the reference group of secretaries and agency heads and Lisa Paul (later Secretary of Education) led the deputy secretary project team; Lynne Tacy (Deputy Public Service Commissioner) provided the most substantial contribution among the deputies' group.

The project drew on a wide range of case studies of whole-of-government exercises, including the response to the Bali bombings, the management of the Sydney Olympics, the establishment and role of the Australian Greenhouse Office, the COAG Indigenous trials, the Goodna service integration project, the National Illicit Drugs Strategy and *iconsult* (a proposed electronic information exchange on community consultations).

The final report canvassed:

- the most appropriate structures and processes for managing whole-of-government matters (Beale contributed most to this chapter)
- cultural aspects that might facilitate cooperation and collaboration (Tacy and the APS Commission contributed most to this)

- information management and infrastructure (with particular help from Helen Williams from the Department of Communications, Information Technology and the Arts)
- budget and accountability framework (assisted by the Finance department, with considerable cajoling from line department secretaries and me)
- engagement beyond the APS (I contributed substantially to this chapter, along with the heads of several service delivery agencies)
- crisis management (DFAT contributed substantially to this chapter, along with Paul, who had played a key role in the Bali bombings response).

I believe the report has had a significant impact on APS practice, improving capability through shared learning. For example, crisis management is now a well-drilled process throughout the Commonwealth and there is more careful consideration of the structures and processes appropriate for different types of problems than in the past. This body of work also influenced the subsequent development of the Cabinet Implementation Unit.

State of the Service Reports

The main avenue for evaluating and reporting on how agencies are upholding the values is the commissioner's yearly *State of the Service Report*. Helen Williams prepared the first two reports required under the legislation, developing an initial framework and infrastructure including a detailed survey of agencies. I built on this using the grouping of the APS Values I had proposed to clarify the main areas of performance I wished to focus on (relations with ministers and the government, relations with the public, workplace relations and personal behaviour) and adding a weighted random sample survey of APS employees to complement (and test) the survey of agencies.

Together with the commission's own database, which tracked all APS employees, this provided an increasingly comprehensive evidence base to support judgments on performance against the APS Values and on APS capability. In my last report in 2004, I also introduced some information on the views of the public collected by some agencies through their own feedback mechanisms.

The surveys covered sensitive issues such as relations between public servants and ministers and their advisers, and public servants' confidence in upholding the APS Values in this area. The data were fascinating, but caused considerable angst among my colleagues.

Table 12.3 Washing hands: handling sensitive data

The initial APS employee survey included questions on relations with ministers and their officers, whether the employees had had direct contact in the previous 12 months, whether they had faced challenges in upholding the APS Values in these contacts and their confidence in handling challenges.

Peter Shergold, Secretary of the Department of PM&C, asked me to brief portfolio secretaries in advance on the data collected for the *State of the Service Report*. I put together some raw tables that I had not yet fully analysed and about which I had yet to draft any commentary.

I distributed the tables at a meeting of portfolio secretaries highlighting what I felt were the most significant results, including that an amazingly high 26 per cent of all employees (including staff at all levels in all APS agencies including the Tax Office, Centrelink, Customs, the Bureau of Statistics, as well as ministerial departments) said they had had direct contact with the minister or minister's office and that many had faced challenges in upholding the values, though most were confident they could manage them.

There was at first disbelief and then, when I stood by the validity of the data, unease about what it meant and what should be done with it. The data confirmed the growing importance of ministerial staff and the extent of their reach into the Public Service—a matter of some political sensitivity at the time. One secretary said, 'If we are not sure what it means, why are we publishing it?', to which I responded that "'we" are not publishing it, I am'.

Shergold's nervousness, and that of most present, led him to propose that all copies of the data be returned to me there and then so that it was clearly the commissioner's responsibility to analyse and report on it; secretaries then would not feel under any obligation to advise their ministers of the sensitive information until I reported. I was therefore given back all the tables and, somewhat bemused, returned to the commission to continue my analysis and start drafting the report.

While the quality of the reports, and of their underpinning data and analysis, was improving, I was nonetheless cautious about identifying the agencies whose performance was weak. I felt I needed to build our reputation for credible analysis before taking the step of 'naming and shaming'. Instead, I named examples of good practice and provided agency heads with data on their agencies compared with the overall data so they could see where they were or were not performing well and consider whether action was needed to address weaknesses.

Succession management

The commissioner has no statutory role in the appointment of secretaries and agency heads, other than in the case of the Secretary of the Department of PM&C. I did, however, contribute to succession management by the Secretary of PM&C by providing a database on potential candidates and on each agency head position (extending the process developed by Williams). The data were based largely on interviews I held each year with secretaries about their deputies and equivalent, and about other SES officers seen as 'high fliers', and data the secretaries subsequently provided on their experience and strengths and suggestions for future development. I also encouraged confidential discussion at the portfolio secretaries' retreats of the capabilities of deputies and equivalent under protocols that required firsthand evidence to support any view expressed. These discussions were critical, as they facilitated moderation of the claims of each secretary about his or her own staff (and they did reveal some very different assessments of some staff). As commissioner, I generally added my own comments to the information base held in the commission, drawing in part on these conversations.

Secretaries quite often contacted me for suggestions about people they might encourage to apply for senior vacancies, accepting that my advice would reflect my interests in broader capability building throughout the Public Service and not only my views on likely strong candidates for the specific vacancies concerned.

Occasionally, the Secretary of the Department of PM&C and the commissioner took a highly proactive stance on succession management, setting up a committee of secretaries to advise on possible rotations of deputies to help their development. This did not happen while I was commissioner and earlier exercises had mixed success, with secretaries suspicious that individuals offered for transfer might not be high-performing ones and that those secretaries pursuing others' deputies might be motivated by self-interest rather than the broader interests of the APS.

Performance assessment

Once a year, much of my time was taken up with managing the process of performance assessment of departmental secretaries and executive agency heads. This related to the Howard Government's arrangements for performance pay, which I am pleased the Rudd Government has dispensed with. I have described the process in some detail elsewhere.¹ With some modification (including the removal of bonus payments), the process would still be worthwhile in my view.

In summary, secretaries would prepare self-assessments and discuss these with their ministers. They would then forward these to the Secretary of the Department of PM&C and to me. The two of us would subsequently meet the

portfolio ministers and seek comments on the assessments and views on overall performance. I then drafted a short report on each secretary for the Prime Minister, which the PM&C Secretary would consider before a final agreed version went to the Prime Minister. I often checked some of the supporting material, for example, by examining Auditor-General reports during this process. The final reports summarised our views against the suggested criteria (support for the minister, supporting the government as a whole, management, leadership, upholding the APS Values and implementation of government decisions) and the ministers' and our own recommended assessments. The two of us then met the Prime Minister to discuss the reports (after my meeting the Prime Minister on my own to discuss the performance of the Secretary of the Department of PM&C) and I would write to each secretary advising of the Prime Minister's decision.

I also managed the process of assessing the CEOs of executive agencies who were covered by performance pay. In their case, I handled most of the process on my own, seeking the endorsement of the Secretary of the Department of PM&C only at a late stage; the Prime Minister usually wanted only my assurance that the assessments were consistently applied and that the ministers concerned were in broad agreement (he usually accepted my advice to moderate some excessively generous ministerial assessments). My process in these cases included discussion with the relevant portfolio secretary as well as the minister most involved (generally not the portfolio minister).

Despite my strong criticisms of the overall process, it had some strengths that should be preserved in future performance feedback processes for secretaries:

- the suggested criteria were sensible, as long as they were all properly considered and balanced
- a self-assessment based on some agreement with the minister at the beginning of the year and then discussed with the minister at the end provided some structure to the process
- the Secretary of the Department of PM&C and the commissioner both checking with the ministers, and later both talking to the Prime Minister, ensured there was involvement of the operational and professional heads of the APS.

The changes I would like to see are:

- a stronger peer review element, where at least one other secretary (or perhaps a former secretary) participates in the process, making a more careful judgment of the management, leadership and APS Values criteria as well as reviewing the ministers' assessments
- the Prime Minister being asked more to endorse (or not) rather than decide on the performance assessment

- the performance assessment distinguishing only between strong performance, fully competent and not fully competent (the last giving notice that improvement is required).

Such an approach would line up more closely with the Canadian process; the New Zealand arrangement (where the State Services Commissioner is the employer of the secretaries) is even more independent of the political process.

Working with ministers

Governments have policies on public service management and the APS Commission advises ministers on these policies, seeks clarification of the policies and consults ministers on the commission's strategies and programs to ensure consistency with the government's policies. In this sense, the commissioner's role has similarity to that of a departmental secretary. The ministers concerned, however, have other portfolio responsibilities, which greatly overshadow those concerning the commission. The Prime Minister has very limited time to spend on public service matters and the minister assisting in my time was also Minister for Employment and Workplace Relations (under the Rudd Government, he is the ministerial Cabinet Secretary as well as Special Minister of State within the finance portfolio).

I sought monthly meetings with the minister assisting, partly to remind him we were there and to ensure a level of comfort with what we were doing. I was conscious of the risk of others displacing the commissioner as the key adviser on public service matters, including in particular the secretary of the minister's department. I also encouraged the minister assisting (without success) to have an adviser with clear responsibilities for public service matters, who was not just the department's liaison officer (DLO). It was not possible to justify a full-time officer to be a dedicated DLO for the commission, though I also tried to have the minister's chief of staff consider one of my people to play the shared role with the department. To be fair, the department's DLO generally played the liaison role with the commission quite effectively, but I still felt it was not the optimal solution for us.

Table 12.4 Advising on workplace relations within the APS

The APS Commission did not have responsibility for industrial relations matters in my time: that was the responsibility of the Employment and Workplace Relations department. Nonetheless, I did have statutory responsibilities to explain and promote the APS Values, which included a number relevant to industrial relations (for example, the merit principle, fairness, managing performance, consultations), and to develop APS employment policies and practices and facilitate continuous improvement.

When the minister, Tony Abbott, was pressing for all public servants to be on individual AWAs, I was concerned that his department was encouraging him without adequate advice on the issues and the problems involved. I became aware that the department had received legal advice that it would be possible to require all new appointees to the APS to be on AWAs, though not to require current employees to do so or to apply this as a condition for promotion. While this advice on the law might have been technically correct, it did not include consideration of the broader issues involved in any attempt to push for universal use of AWAs and I was not amused that it was sought and given without consultation with me (as required by standing rules on legal advice from the Attorney-General's Department).

I advised the minister of my statutory role to evaluate the extent to which agencies incorporated and upheld the values and that wider use of AWAs would require agencies to satisfy me that they were meeting the requirement of the merit principle. In my view, they would need clear, public remuneration policies, consistent with classification principles, and to demonstrate that open competition for promotion was not being circumvented by individually negotiated pay deals.

I also advised that organisational performance was not necessarily enhanced by individual-based pay flexibility even if this enhanced individual performance (and it was not clear if it did). More important elements include alignment with the organisation's objectives; timely, positive and fair feedback; and management addressing obstacles to individual and team performance.

Finally, I drew to his attention the views of the CEOs of every large APS agency (including the Tax Office, Centrelink, Customs and the Bureau of Statistics) that the administrative workload to manage individual AWAs for all staff would be excessive.

The minister said he appreciated my advice, but it was clear he was more appreciative of the advice I believe he received from the secretary of his department.

I generally only met the Prime Minister each year when advising on agency heads' performance and at joint forums such as the portfolio secretaries' retreat. While my written communications were usually with the minister assisting, I did send the Prime Minister some minutes directly, particularly on highly significant issues (for example, after the 2004 election, I advised him on a range of public administration matters for the next term of government including ministerial advisers' code of conduct and secretaries' contracts and performance pay).

Whole-of-government work

The commissioner is involved in many forums of secretaries, not only those focused on the APS management matters described above. This serves two purposes:

- it ensures the commissioner is fully aware of the challenges facing agencies, and can help to ensure the APS Commission work is relevant and helpful
- the commissioner is usually an experienced senior public servant sometimes able to contribute to discussions on particular policies, programs and processes other than through the prisms of the responsible agency heads. I certainly contributed my views on such matters as population ageing, Indigenous welfare and Commonwealth–state relations, for example.

Working with the Parliament

My interaction with the Parliament related to both my statutory responsibilities: as Public Service Commissioner and as Parliamentary Service Commissioner. The two roles are quite distinct and it is only by convention that the Public Service Commissioner is invited by the presiding officers (the Speaker of the House of Representatives and the President of the Senate) to be the Parliamentary Service Commissioner, a role created by the *Parliamentary Service Act 1999*.

Public Service Commissioner and the Parliament

My interaction with the Parliament as Public Service Commissioner was more limited than it had been as a departmental secretary. I suspect this is because there are fewer sensitive political issues involved for Members of Parliament to pursue.

The APS Commission was always listed on the agenda for Senate Estimates, but I think we were only once asked to appear during my time as Public Service Commissioner.

This surprised me given the opportunity my *State of the Service Report* presented for senators to explore my views of the performance of individual agencies as well as the APS as a whole, and the degree to which the APS Values were being upheld under the Howard Government. Notwithstanding increasing media interest in the reports, as we introduced a survey of employees that contained such sensitive issues as relations with ministers and their offices, I was never asked questions on my reports by the Parliament.

I was asked to contribute to the Senate Committee inquiries into a Certain Maritime Incident ('Children overboard') and ministerial staff. I took the opportunity in these to argue in favour of a code of conduct for ministerial staff as part of a process to improve their professionalism given their increasingly important role. In contrast with my earlier experience as a departmental secretary

appearing before Senate Committees, these times I was treated far more as a professional expert rather than as a manager of government programs or an adviser on government policies.

Parliamentary Service Commissioner's role

My role as Parliamentary Service Commissioner was initially low-key. I established regular meetings of the heads of the parliamentary departments to discuss matters of common interest relating to people management and the Parliamentary Service Values (which differed in important respects to the APS Values given the independence of the Parliamentary Service from the executive arm of government). We canvassed ways in which the parliamentary departments might adapt some of the public service developments led by the APS Commission in areas such as leadership development, embedding values, workforce planning and performance management. I also prepared a very short annual report describing developments in the Parliamentary Service.

In 2003, however, the presiding officers asked me to conduct a review of the administration of the Parliament—an exercise that required much more of my time. I engaged a consultant with financial management experience to assist me and also drew on some resources within the APS Commission. I was pleased that the review led to a major restructuring of the departments, after many decades of failed attempts to do so.

Table 12.5 Parliamentary Service Commissioner's review of the administration of the Parliament

In 2003, the President of the Senate and Speaker of the House formally requested that I review the administration of the Parliament. They were concerned generally about government criticism of the costs involved and the need to demonstrate to the government that they had fully considered opportunities for improvements in efficiency, and they were specifically concerned that security arrangements had not been reviewed since 11 September 2001.

Given the APS Commission's lack of expertise in financial management, I engaged a former senior finance official, Len Early, to work with me and my corporate manager, Mike Jones, on the review. We worked in close consultation with the three heads of the five parliamentary departments (one headed the three departments serving both houses) and their offices; we also consulted the Finance department but carefully maintained our independence from it. With advice from security agencies, I presented an initial report on security, recommending centralisation of security services and a strategic reassessment (almost certainly requiring additional funds), with a 'common services' model where the

different parliamentary departments would purchase services from a central provider.

In discussion with the two presiding officers, I indicated that the common services model might not be the optimal solution for the overall administration of the Parliament, and they invited me to look more broadly in my final report. I was very conscious, however, that the alternative of a rationalisation of the five departments had been debated and rejected many times during the previous 100 years and was passionately opposed by some, including the Clerk of the Senate.

Accordingly, I asked the commission's librarian, Jill Adams, to prepare a research paper reviewing the history of these debates and the arguments involved. This paper proved to be the critical element of the review: it identified the two major issues as the separation of the legislature from the Executive and bicameralism. If my recommendations could satisfactorily address these concerns, the option of rationalising the departments was feasible.

I noted in my final report the provisions in the new *Parliamentary Service Act 1999* that protected the independence of the legislature and the independence of the two clerks. I recommended a move to three departments (previous reviews had mostly proposed one or two departments), thereby not threatening bicameralism through the continued operation of separate departments for each house. I also recommended a somewhat independent Parliamentary Librarian within the (combined) Parliamentary Services department, thereby ensuring a considerable degree of independence in the support given to Members of Parliament.

The presiding officers firmly supported my recommendations, but the Clerk of the Senate campaigned strongly against them. The Senate eventually accepted my recommendations on condition of some further strengthening of the role of the Parliamentary Librarian, and both houses agreed to the proposed changes.

Management of the commission

The commission was far smaller than the departments I managed and I used a more streamlined approach to structures and plans, and was able to work in direct contact with most staff.



APSC Executive team in 2004: Lynne Tacy, Andrew Podger and Jeff Lamond (with Podger's favourite Garry Shead painting) (photo by kind permission of the Australian Public Service Commission)

Nonetheless, I still found strategic planning very useful. In the initial planning when I arrived in 2002, we agreed it was important to build on Helen Williams' achievements in implementing the new *Public Service Act 1999*, looking to take advantage of its provisions to enhance the role and contribution of the commission in enhancing the performance and capability of the APS. Our approach relied heavily on strengthening relations with APS agencies, which in turn relied on our credibility and expertise. Later on, we revised the plan to take advantage of Peter Shergold's appointment as Secretary of the Department of PM&C and his interest in reinvigorating the MAC.

Among the developments foreshadowed in our plans that we successfully pursued during my time as commissioner were:

- major guides on the APS Values and Code of Conduct
- strengthening of the *State of the Service Report* with the introduction of a sample survey of employees, allowing more robust and independent evaluation
- new MAC reports including on organisational renewal and connected government

- the extension of the SES leadership capability framework into the broader Integrated Leadership System and refocusing the commission's leadership and management development activities.

Part of this success was due to strengthening what was already a pretty good team in the commission. When Jeff Lamond became the Merit Protection Commissioner, we had a strong and united executive team (Lamond, Lynne Tacy and myself). We were also fortunate to recruit several excellent analysts from the Department of Employment and Workplace Relations (DEWR), who were pleased to transfer away from an environment they felt was not supportive of traditional APS values, and who complemented the expertise we already had in human resources and in decision review processes. I also recruited a rather flamboyant but highly skilled human resources expert from the Queensland Government. While not every appointment I made was successful, I was able to pass a very strong team on to my successor.

One aspect of agency management that was very different in the commission was its reliance on non-appropriation revenue. Just less than half of the commission's revenue comes from the services it provides on a user-pays basis. These include training and development programs and assistance to agencies in managing staff selection processes. Such revenue is not guaranteed: the commission must earn it on the basis of the quality of its services. A significant part of this revenue-raising activity is undertaken in the commission's state offices, working where most APS staff are located: outside Canberra. The offices in Western Australia, South Australia and Victoria were particularly successful, not only in serving APS staff but in linking with state government agencies and partnering with the IPAA. In most states, the APS Commission hosted the Regional Directors' Forums of APS agencies.

While this market discipline helps the commission to ensure the relevance and quality of its work, the risks involved constrain management's capacity to employ continuing staff and they also require smart investment in developing new and relevant products and services. We did not always do this well, but I was grateful to Ian Watt, Secretary of the Department of Finance, who agreed to a capital injection to allow us to review our leadership development strategy and introduce a new and revised set of products. In the event, this proved highly successful.

External relations

In the commission, many statutory responsibilities involve working with other APS agencies. The most time consuming is certifying the processes for SES appointments or promotion. While much of the workload involved was carried out by the commissioner's representative (usually an SES officer from another agency) on the relevant selection committee and by the deputy commissioner, agency heads frequently rang me to discuss who might be my representative

and potential candidates for transfer or promotion; later, they might telephone to give me advance information on who they were likely to be appointing to the job. In the event of a potential problem over my certifying a selection process, there was certainly extensive discussion.

Table 12.6 Protecting the merit principle

My representative on an SES selection committee, and the secretary concerned, contacted me when a minister made it clear that he would not work with the preferred candidate for a deputy secretary position. My representative stated firmly that the preferred candidate had clearly won the job on merit and the second-ranked candidate fell well behind. The secretary agreed. The minister's objections were not based on close knowledge of the individual, but on an unwillingness to have someone from an academic institution that had publicly provided expert advice to the then Opposition.

I provided the secretary with my advice by email. The person concerned was not partisan and had won the job on merit. I would not certify the current process if it led to a candidate being appointed other than the currently preferred one. The job could be readvertised, but if the currently preferred candidate applied, I would only certify a process recommending someone else if, on merit, that person was clearly better.

The secretary spoke to the person concerned, noting the minister's attitude.

The person decided not to apply when the job was readvertised.

I sent a minute to my minister on the matter noting that, while the relevant minister had not contravened the *Public Service Act* by giving the secretary a direction, he had broken the spirit of the legislation and the merit principle by indicating refusal to work with the person selected on merit. The person affected would have been an excellent choice and, in time, I have no doubt he would have worked well with the minister. I also advised my intention to refer to the matter in the *State of the Service Report*, but without mentioning the department as this could lead to a breach of privacy.

The reference in the *State of the Service Report* was evidently too oblique, as it attracted no public or parliamentary interest.

Other statutory responsibilities include whistleblower cases and investigating possible breaches of the Code of Conduct by agency heads. It was not often that such matters were raised, but they did occur once or twice a year where my personal involvement was necessary. Most of the work was done by commission

staff under my direction, ensuring procedural fairness, independent assessment and protection of any whistleblower.

Apart from my statutory responsibilities, I also maintained informal networks among key agency heads, including a monthly lunch of a selected group of the 'old guard' of agency heads. These were not necessarily longstanding secretaries, but a group with very strong personal commitment to the APS and its traditional Westminster values.

There is also a forum of commissioners or equivalent from all Australian jurisdictions. This met at least once a year mostly to share experiences but sometimes to explore opportunities for joint activities. The commissioners sat on an industry training and accreditation board to foster accredited vocational training for public sector employees. They also established a project to develop improved workforce statistics on public sector employees across jurisdictions (the APS Commission's database was the envy of all the other jurisdictions). I also used the network to collect information on processes for appointment, contracts and performance assessment of secretaries and the SES across jurisdictions, which I published in the *State of the Service Report*.

Unlike the Commonwealth–state forums of secretaries, this forum did not work to any ministerial council but set its own agenda.

Internationally, I was involved in three networks:

- the Commonwealth Association of Public Administration and Management (CAPAM), with membership drawn from many Commonwealth countries
- the Pacific Nations' Public Service Commissioners Forum, a less-structured network I encouraged with support from New Zealand
- the Eastern Region Organisation for Public Administration (EROPA), a creature of the United Nations involving practitioners and academics from Asia.

CAPAM was by far the strongest of these. I was on the boards of CAPAM and EROPA, but our finances generally allowed me to travel overseas only once or twice a year. I also had some involvement with the United Nations itself, being invited to speak at a major conference in Mexico and to receive a major award on behalf of the APS in New York.

In 2003, we prepared a book for CAPAM on *Australia's Experience with Public Sector Reform*, drawing together not only Commonwealth initiatives but initiatives across the states. This was a major project in which I took close personal interest, and the book has attracted considerable international interest.

Involvement outside the public sector was limited while I was commissioner. Helen Williams did bequeath me, however, membership of a most useful informal network of top human resources managers, mostly from big private companies. I met the group a couple of times a year over lunch, mostly in Melbourne, where one or two would make a brief presentation on a current issue such as managing cultural change after a company merger, trends in industrial relations or the use of AWAs and workforce planning.

Working with the media

As a statutory officer, I did not feel as inhibited as I did as a secretary in responding to the media. Media interest was, however, generally much more limited, except from a few aficionados. My speeches and commission publications were core aspects of our work and we ensured easy access to them by the APS and the public. On occasions, the media picked them up. I certainly always briefed the media on the *State of the Service Report* (Minister Abbott, however, made it clear he was not too happy about this).

Issues raised: inside or outside the tent?

The issue that was on my mind every day in the commission was the extent to which I was inside the tent, or outside. I was acutely conscious of the danger of being too weak, of not standing up when it counted. If the commissioner does not draw a line in the sand, how can we expect agency heads let alone other APS employees to behave with integrity in upholding the APS Values?

On the other hand, the commissioner is not like the Auditor-General. He or she is not an officer of the Parliament but has a minister with policy authority; the commissioner also has statutory obligations for promoting leadership in the APS and building capability—obligations that necessarily involve being inside the tent—helping agencies to manage their responsibilities and helping the government overall to deliver its policies and programs. These cannot be exercised if the commissioner does not participate in the many forums of secretaries discussing current policy and management challenges.

I suspect I was a little more independent than some other commissioners, but it is interesting that in hindsight my main regrets are that I was not independent enough.



Canberra Times/Public Sector Informant 2002 Christmas edition: Podger admonishing while Moore-Wilton departs, Shergold scooters in and Jane Halton packs away some bandaids in a Christmas stocking. With kind permission from the *Canberra Times* and cartoonist, Pat Campbell.

Table 12.7 My guidelines or the minister's?

The revised *Guidelines on Official Conduct* I issued in 2003 took a long time to finalise. They needed considerable work to line up with the new legislation with its statutory APS Values and Code of Conduct, but I was also keen to canvass a wide range of practical dilemmas public servants faced. Among these was working with ministerial offices with many more advisers than in the past and with wider influence over the Public Service.

While the guidelines would be mine, I felt their influence could be constrained if they did not have broad support among my colleagues or if the minister did not agree with them. Accordingly, I decided to put a draft to the MAC, after first getting some level of comfort from the minister, Tony Abbott.

The minister was not at all impressed with the draft section on working with ministers and their offices. He wanted me to promote a 'seamless' partnership, while I was concerned to clarify the different roles and responsibilities of public servants and advisers and to highlight that advisers had no authority to direct public servants. Over several months, I sent him three different drafts of this section, seeking his reactions and any suggested amendments. At a meeting to discuss the last of these drafts, Abbott told Lynne Tacy and me of his experience as a reporter dealing with a subeditor. 'Sometimes,' he said, 'the subeditor would not try any more to edit an article, but would simply say he doesn't like it. Andrew, I don't like your draft.'

He was challenging me to see if I would stand on my statutory independence. I decided, however, to have one further go at getting his endorsement of our advice, or at least to ask Tacy to do so. Abbott said he would be willing to look at one more draft, but only if it highlighted how a good relationship worked, not what the limits should be.

Tacy did an excellent job, keeping all my concerns in (such as the lack of authority of advisers to direct and the importance of understanding the distinct roles), but only after first describing the ideal form of partnership.

Abbott not only endorsed the next version, he gave the revised guidelines (*my* guidelines as commissioner) public support when they were released. (The guidelines ran into some other interference in the MAC, particularly Max Moore-Wilton's more liberal views than mine on the propriety of accepting hospitality from business, but they clearly benefited from the close scrutiny they received during their development.)

A related issue is the role of the commissioner vis-a-vis that of the Secretary of the Department of PM&C. My view remains that the commissioner should be seen as the professional head of the APS and the Secretary of the Department of PM&C the operational head. In practice, however, that has not been widely endorsed by the people who matter. The commissioner in my time had no statutory role in top appointments, for example. I was also aware that Moore-Wilton was not supportive of the APS Commissioner having equal status with secretaries; Peter Shergold was known to have expressed a similar view from time to time, though on at least one occasion he used my formulation of

the commission as a professional head and he as the operational head. My view could hold, however, only if the person appointed commissioner had no lower standing than departmental secretaries, and preferably had significant experience at that level to be able to advise on appointments and on performance with credibility among peers.

I am also of the view that the APS Commission should have responsibility for pay and industrial relations within the APS, not the Department of Employment and Workplace Relations. The latter's focus is inevitably on ensuring the government's wider industrial relations policies are followed in the APS or, better still, modelled in the APS. It is not likely to focus on the business objectives of APS agencies and concern for the capability of the APS as a whole and its upholding of the APS Values. This is a matter of getting the balances right: the APS and APS agencies must operate consistently with the government's wider industrial relations policies, but they should do so with a view to meeting their particular policy and program objectives effectively and efficiently, and to strengthening their capacity to continue to do so into the future.

How prescriptive should the commissioner be in issuing instructions and guidelines? For the most part, the commissioner's directions under the act are not prescriptive, but set out the specific responsibilities of agencies and employees in order to comply with the principles in the act. Beyond that, the commission's approach has been to use guidelines developed cooperatively, rather than rules set from above. Areas where perhaps a firmer stance could be warranted include on classification management and the merit principle and on SES involvement in commission leadership development activities.

The concurrent role of Parliamentary Service Commissioner requires demonstrating independence from the executive arm of government—considerably more so than as Public Service Commissioner. Another challenge is to devote sufficient time and resources to the role. I was assisted by the provision of additional funds for the consultant who helped with the review of the administration of the Parliament, but I had to fund resources for the other work involved from the APS Commission's budget. There would be benefit if the funding for the Parliament included a specific allocation to the commission for the role of Parliamentary Service Commissioner.

Lessons learned as commissioner

Constantly reflecting on whether to be in the tent or outside is healthy. The commissioner might not always come to the right answer, but keeping the balance at the front of one's mind is no bad thing.

Not shirking an issue is an important element of this. If there is an active debate in the APS about any values issue, the commissioner cannot afford to duck it. The commissioner's answer might include a discussion of 'on the one hand' and

‘on the other’, without an unequivocal judgment in a particular case, but should give genuine guidance on the factors involved and, preferably, a personal weighing up of the arguments, and a view.

The APS Commission’s credibility requires it to strengthen its evidence base constantly and to ensure it has top expertise in key areas such as human resource management. The commissioner’s own credibility is also vital and relies on past experience and continuing personal learning and development, including through monitoring and discussing developments in and throughout APS agencies.

Clearly, I would like to see some further strengthening of the role of the Public Service Commissioner, who needs to be an experienced CEO with the clout among secretaries to exercise the role. In particular, the commissioner should play a stronger role in succession management.

Table 12.8 Possible further reform agenda for the Australian Public Service Commission

The *Public Service Act 1999* represents the culmination of more than a decade of public sector reform in Australia and remains a good model for a modern public service with a well-embedded culture of professionalism, impartiality and non-partisan responsiveness to elected governments.

There is a need now, however, to reflect on our experience and to make a number of modifications.

1. The commissioner as well as the Secretary of the Department of PM&C should be required to advise (not just provide a report to) the Prime Minister on secretary appointments and on equivalent-level agency head appointments.
2. There should be room to appoint part-time or temporary assistant commissioners along the lines of the Victorian or the Productivity Commission arrangements, to help in agency heads’ performance assessments, mentoring and succession management and to undertake specific management reviews from time to time at the request of the minister or the commissioner.
3. The commission should have responsibility for public service pay and conditions and classification management.
4. The coverage of the act should be widened to include most if not all non-commercial and non-military/police agencies.
5. Complementary legislation for the Parliamentary Service and staff of Members of Parliament should be reviewed and updated to include corresponding provisions on values and codes of conduct (reflecting the different roles and responsibilities involved).

6. Policies for those employed by Australian Government agencies outside these laws should include the need to specify values and codes of conduct consistent with the public interest.

Endnotes

¹ 'What Really Happens: Departmental Secretary Appointments, Contracts and Performance Pay in the Australian Public Service', *Australian Journal of Public Administration*, June 2007.