

The 'New' Old Broom – Andrew Metcalfe, Department of Immigration and Multicultural Affairs

Andrew Metcalfe was plucked from the Department of the Prime Minister and Cabinet to head the Immigration department last year at the height of its troubles over the wrongful detention, or deportation, of citizens. In PM&C Metcalfe had been responsible for advice on the hot issues of counter-terrorism, security, defence and intelligence and was being tipped for promotion in this area. But the crisis in Immigration changed all that. Metcalfe, who had a long association with Immigration going back to 1981, and had gone to PM&C to get wider experience, became the obvious choice to head the troubled department. Over his 25 year career he has had stints in Immigration's interstate and overseas offices, its legal branch and as a Deputy Secretary, as well as a period as chief of staff for the previous Minister for Immigration, Philip Ruddock.

Throughout last year, and on into this year, the department has had its many failings exposed in official inquiries. It has been accused of having a culture that is overly self-protective and defensive. Staff were said to lack training and understanding of the legislation covering their enforcement powers. Former Federal Police Commissioner, Mick Palmer, said in one of the reports into the department's activities that DIMIA, as it then was, operated without proper management oversight, with poor information systems and with no genuine quality assurance, or constraints on the exercise of its powers.

Given his long involvement with the department, what does Metcalfe say about his role in the problems and the part the Government and the minister played in their development? "I'd say that I think it's up to others to judge ultimately as to where culture comes from and what's good and what's bad," he says. "As far as I'm personally concerned, I've always sought to act in the most professional way I possibly can to ensure that the work we do is legally and properly supported. I'm legally trained and I've got a long history through the organisation. I've had a long history working in operational areas with clients, in Melbourne, Brisbane and Hong Kong in particular. And I'm very proud of the work that I was able to do in helping refugees and in helping migrants deal with some of those issues."

But did the Government and Minister Ruddock's policies play a part in the lack of balance in the department's activities? "No. I don't think so," he says. "The thing that Philip Ruddock was very strong about, and still is, is a word he uses – integrity. That is essentially that people who stick by the rules, and have an eligibility, should be given the easiest possible way through the process." As

an example, he says, Ruddock introduced the electronic travel authority and revolutionised the way services were provided to clients. "The department through the last 10 years has faced some enormous challenges and clearly has got some things very, very wrong," Metcalfe says. "There's no getting away from that. And that's the starting point for where we are today."

As deputy secretary under Bill Farmer, between 1999 and 2002, Metcalfe says he had a very strong sense of an organisation often in crisis management mode. "Did I have a sense of the culture being not right? Not to the extent that events have now shown," he says. Metcalf adds that, as one individual, Farmer should not shoulder the blame alone: "there were a whole group of us responsible for running the department. I know Bill very well and it's anathema to suggest that he, or any of us, would for a moment tolerate or accept as reasonable some of the things that happened. So the question is: Were the management controls in place? And clearly there was a breakdown in management controls through the organisation, perhaps fuelled by the crisis mode we were in, the fact that the organisation was then incredibly stretched."

"Did I have a sense then of the negative aspects of culture? I hadn't. I had a sense of an organisation that was very focused on delivering in some very difficult areas where you have to constantly pay attention to culture and clearly events have shown that the organisation failed in some areas. A lot of my work now is about trying to make sure that that doesn't happen again."

Metcalf draws attention to the can-do attitude of the department in the past and the way it responded to challenges such as the evacuation of the UN compound in East Timor, and the evacuation of the Kosavars in the late 1990s. He says the extraordinary pressure the organisation was under with boat arrivals in 2000-01 is well documented. "It's easy in hindsight to look back and say you should have had detention centres built and ready, and contracts in place, and workers available for an unforeseen group of 4,000 people to arrive because the people smugglers chose to send them this particular way. But the reality of having to establish facilities wherever you possibly could, so that at least there was some ability to maintain border controls, and some ability to maintain health checking and processing of claims, and whatever, was an enormous task. It was at that time that some of these issues that we are now seeing had their seed sown – poor work, assumption cultures."

Metcalf notes that Palmer talks a lot about an assumption culture, where something happened and assumptions were made about the event. He also notes the criticism of record keeping and says the department has recently published a report dealing with the difficulties thrown up by the transition from paper records to a hybrid of paper and electronic records. On this issue the department is not alone. In the case of Vivian Alvarez, an Australian citizen who was wrongfully deported, Metcalfe says fragmented computer systems and poor

record keeping contributed to the assumption culture. "Ultimately it wasn't a conspiracy," he says. "It was a series of stuff-ups that led one thing to another." What was concerning was that nothing was done when it became known within parts of the department that Ms Alvarez had been removed.

Since his appointment in July 2005 Metcalfe has shaken up the department. Three new deputy secretaries have been appointed – two from outside the department – and 16 of the 37 senior executive service branch heads are from outside the department. A change management process is underway and the Government has announced a \$230 million package to redress problems. Metcalfe says this is not just about responding to problems in the detention and compliance part of the department. He says there are many positive stories to tell – the physical changes in detention, the health measures, the mental health strategies and the fact that women and children are now out of detention. The department is now trying to be "as open as we can". "We've got to be outward looking. We've got to engage with our critics, with commentators, with people who have an interest in what we do. And we are doing that all the time."

Some critics say the Immigration Act itself is too complicated and needs reform. Metcalfe, who has been working closely with the Act and its regulations since 1981, agrees it is complicated. "It's grown from I think 66 sections in 1981 to well over 500 sections now," he says. "I think there were 19 Migration Regulations in 1981. There are now volumes of them." The growth is a direct result of the changes in administrative law in Australia. Up until 1989 the two key provisions in the Migration Act were Section 6 which said, "The Minister may grant a person a visa" and Section 11 which said, "The Minister may grant a person an entry permit". Those two sections have been replaced by about two metres of documents. Metcalfe says the reason for this is that as the system moved to merit review it became necessary to replace very broad discretions in a minister and his or her delegates, with rules. What was previously loosely described, turned into dozens of different visa classes with multiple criteria designed to try and foresee almost every possible human circumstance.

Would it be better to go back to discretion? Metcalfe says that would provide great flexibility but far less certainty of outcome. Successive Australian Governments had seen it as a key aspect of executive authority that they would determine the eligibility of who should migrate to Australia and who should get a visa to travel to Australia. "The way that that's achieved is ultimately through regulations which have the force of law," he says. Safety nets exist through the minister's intervention powers.

Metcalfe says we would all like a simpler system, and the minister has asked him how it might be made simpler. But he also observes that the system has become more complex because it is more contestable, because more people seek review, and because more lawyers are involved in pursuing matters through

the courts on behalf of their clients. Metcalfe recalls that former minister Ian Macphee introduced *Section 6A*, the very small descriptive element into the legislation. This was designed to provide some guidance from the Parliament as to who would be able to stay in Australia on a permanent basis, after having come in on temporary basis. That was described as being a safety net for a very small number of people. Within a few years it had grown to 20,000 cases a year because it was opened up by successive judicial interpretations.

The explosion of administrative law has resulted in the department having over 3,000 matters in the courts at any one time. These are largely appeals about refugee decisions. In March there were 168 active matters before the Administrative Appeals Tribunal and 2952 matters before the courts. Last financial year the department spent \$46.8 million on legal services, \$37.7 million externally and \$9.1million internally. Its legal division has around 158 staff. "It's a big industry," he says. "[W]e make millions of decisions every year. It's really important to get things right. It's important that people have the opportunity to have someone else look at them."

One of the key things Metcalfe says he has wanted to focus on is client service in the organisation. "At the end of the day we're here as an organisation that serves the Australian community. We serve the interests of all Australians through the administration of a balanced migration program, through multicultural policies, through citizenship and settlement policies. But we have a more immediate group of clients who are applicants for services of the department, whether they are interpreter services, or whether they're visas or whether it's citizenship or whatever ... we are working over time to try and act as if we're not a monopoly, to give people choice about how they access us, to open up the ways that people can contact us and ultimately to be respectful in the way we deal with people and to be fair and reasonable."

Metcalfe says Immigration has a very ambitious set of projects underway – not just in response to the Palmer Report. They are re-engineering the relationship between the state network and the national office and modernising the computer systems which have been the subject of deserved criticism. At this stage they think it would be too risky to junk all the old computer systems. "What we're looking at is preserving the existing systems but using modern technology to put over the top, and around it, a system that allows us to interrogate the systems as if they were one."

Metcalfe says he knows full well he is asking a great deal of his staff. "I'm asking them to keep the business running everyday, I'm asking them to commit to this major change agenda not just in specific areas associated with practices in the past but more broadly as to how we do our jobs," he says. He says the department cannot back away from the fact that it has been, and will continue to be, the subject of deserved criticism.

Interviewed on March 7, before the release of the Ombudsman's report into Mr T's wrongful detention, he said there would be more reports coming from the Ombudsman about cases of detention that had happened in the past where the department deserved serious criticism. These were largely cases where establishing identity was a major problem and in some cases where mental health issues were a problem. Metcalfe says he is open to comment and criticism and there have been healthy discussions in the organisation. As part of the feedback he has had the first staff survey conducted in Immigration for many years. "I have found over the years that you get a far better outcome when you have a bunch of people sitting around talking through the issue than when you have one person who says 'I know the answer and this is what we're going to do'."

The impact the Department of Immigration could have on people's lives was driven home to Metcalfe early in his career. As a 28 year old acting state director in Melbourne in 1989 Metcalfe was thrown into the midst of a traumatic inter-country adoption case. The Immigration Minister is the guardian of children entering Australia under adoption orders. Routinely this power is delegated to the state child welfare authorities, so that the adoption authority in each state operates with the powers of a federal minister. In 1989 a young Indian girl came to Australia as part of the program and went to live with her adoptive parents in Melbourne.

One of the rules imposed by the Victorian child welfare authorities was that adoptive parents were to use contraceptive measures for at least a year following the adoption. In the particular case the couple had been trying to have a family for many years and had failed. At their first or second visit with the child welfare authorities the mother said, "I've got some wonderful news. You won't believe that I'm pregnant". At that stage the social worker said, "Oh, that's interesting. Let's just get the nursing sister to take the baby outside for a while and we'll have a talk about this." The woman was then reminded that she had been told to take contraceptives and, as a result of her pregnancy, the placement of the adopted baby would be reviewed.

In telling this story Metcalfe emphasises that these were state officials. A decision was made to take the child from the adoptive parents and place her into foster care with another family. That family were also on the inter-country adoption waiting list and claimed later that they were told that the child would be given to them for adoption. "The first we heard about it was when we were served with a writ," Metcalfe says. This sought to compel the minister, as guardian of the child, to produce the baby, take it from the second set of parents and return it to the first. Ultimately the minister, Robert Ray, decided that he would try and solve the problem by appointing an expert panel of eminent persons, including a senior department officer, to provide him with advice.

Metcalfe was involved in discussions with both families, the lawyers and the minister. The panel recommended, and Ray agreed, that the best interests of the child were served by its being returned to the first parents. The second set of parents reluctantly agreed. The minister's representative, Andrew Metcalfe, was assigned to collect the baby from the foster home. With two social workers, a male and a female, and with TV crews everywhere, they went in. "The family was surrounded by friends and supporters who were less than happy to see us ... and I had to physically take the baby from the mother to secure its welfare and place it in the baby capsule. It was the most emotional experience I've had to that time." The media followed as he drove to the other side of Melbourne where he delivered the baby to "scenes of euphoria". "That drove home to me more than anything before, or since, how we are dealing with people's lives."

Metcalfe was born in Toowoomba in Queensland in 1959 and has a long family connection with the district. His father was a public servant, deputy head of the Commonwealth Employment Service in Toowoomba, and is well remembered for finding many people their first job. Attending Toowoomba Grammar School in the 70s, Metcalfe was appointed senior day-boy prefect, an unusual choice because he was not a sporting star and was not in the first XV or the first XI. He was, however, captain of the debating team, ran the school newspaper, and was dux of the school in 1976.

After studying arts-law in Brisbane, Metcalfe began his career as an administrative trainee in Canberra but with a girlfriend back in Brisbane studying law, he applied to a number of departments for a transfer back to Queensland and got a job in Immigration at the beginning of 1981. He rose rapidly in the state office and when his girlfriend and later wife, Jenny, completed her articles they returned to Canberra where Metcalfe took up the position of executive officer to department head, Bill McKinnon. In Brisbane Immigration, one of his jobs was liaison between federal members of Parliament and the department. "I recall one unpleasant experience where a very senior politician rang me personally – I was a very junior public servant – and told me in no uncertain terms what he thought of me and the department," he says.

Five minutes later he was phoned by the electorate secretary, very apologetic because the mistake in question had occurred in the MP's office. "That was the first time I realised there could be an unfair attack on you." Before he had received the second call, Metcalfe says he had walked in to the regional director virtually in tears to tell him what had happened. About 24 hours later the Member of Parliament rang and acknowledged he had got his facts wrong. He says the Brisbane incident taught him the lesson that you need to get your facts right before you go in. Metcalfe says he has probably in the past blasted someone and then realised he was wrong, although he cannot recall specific instances. "No-one's perfect and I'll say yes it has happened. I think it is rare. And I don't

think it happens these days because I tend to be far more measured in what I do.”

Metcalfe says he rose rapidly in the Brisbane office because he was there at the dawn of administrative law and he had studied law. Bill McKinnon heard about him and he transferred to Canberra. Not long after he came back an earlier application for a job in the Office of the Status of Women was successful and he joined it in the Department of the Prime Minister and Cabinet. The office headed by Anne Summers had at that time four men and 40 women, the reversal of usual public service balance of the day. Metcalfe says he found it fascinating. He co-ordinated the women’s budget program, giving him an insight into the whole budget process across portfolios.

Promoted back to Immigration he headed the section looking after Freedom of Information and then moved to the legal branch to run the in-house legal advice and later the legislation section co-ordinating changes to the Act and regulations. After a period of consolidation he had a phone call from the then division head saying they had vacancies in Bangkok, Kuala Lumpur and Melbourne. “I said ‘I’m interested but I’ll have to talk to my wife ... I’ll give you a call in the morning.’ Jenny at this stage was a lawyer in AGS in Canberra. Neither of us had lived overseas. We thought that Bangkok sounded like a fascinating place for a couple of people in their mid twenties and the whole range of work, refugees, Indo-Chinese refugees and other things.” Metcalfe rang back the next morning and said he’d like to go to Bangkok only to be told, “too late – you can go to Melbourne instead” where they lived for two years.

He then talked to the secretary about possibly going to Adelaide as state director but took another call from the division head responsible for placements asking if he would like to go to Hong Kong. “I said I was sort of thinking about Adelaide. Hong Kong wasn’t quite in our thinking at that stage. We were starting to think about starting a family and so I said, ‘Look I’m not sure. Let me talk with Jenny and I’ll ring you back’. I rang Jenny ... and she said ‘Ring him back and tell him we want to go!’”

So six weeks later, in September 1989, three months after Tiananmen Square, Metcalfe was in Hong Kong. Hong Kong had its eyes firmly fixed on the change of sovereignty scheduled for 1997. “From my point of view it was one of the best jobs I’ve ever done,” he says. “It was a time when our office in Hong Kong, within the Consul General, grew from a medium sized post to our biggest overseas post. At one stage we had 14 Australian migration officers and 60 local staff. We produced more migrants out of Hong Kong in one quarter than out of the UK, the first time in Australia’s history – business migrants, skilled migrants – just a fabulous group of people.”

Metcalfe says many may have gone back to Hong Kong but there is a connection between the two places. In the four years he was in Hong Kong there were some

difficult issues, working with people under a lot of stress. He returned to Canberra in May 1993, just after the election and was promoted to Assistant Secretary in legal branch where he had worked previously. For the next three years he worked closely with Dennis Richardson, later to head ASIO and now ambassador to Washington, supporting the changes Labor minister Nick Bolkus was making to the Migration Act.

Then came the 1996 election and Metcalfe's life changed again. He'd met Philip Ruddock on a couple of occasions when Ruddock as Opposition Immigration spokesman was in Hong Kong. After the 1996 election Ruddock made it known that if Metcalfe was available he would offer him the position of chief of staff in his office. "So," Metcalfe says, "in the time honoured way of many public servants I went and worked for the minister, for just over 18 months." In the office he was employed under the *Members of Parliament Staff Act*. But, he says, "I was a public servant before I went. And I was a public servant when I came back."

The period in Ruddock's office was one of significant change. Pauline Hanson had been elected to Parliament riding a wave of anti-Asian immigration and opposition to aboriginal welfare. Metcalfe says Ruddock played an important role in educating Australians about the reality of migration. "The lies that were being peddled about migrants ... were debunked by Ruddock and by [Deputy Prime Minister] Tim Fisher and by others." Metcalfe notes that the Government significantly reduced the immigration numbers in 1996, then adds that it has steadily increased the numbers over the last 10 years. "We've now got record number of migrants coming into Australia," he says.

This article was first published in the Canberra Times on 3 April 2006