

Chapter 5. Aligning the service: the impact of workplace relations

While it has become almost a commonplace to point to the likely link between secretaries' contracts of employment and the politicisation of the public service,¹ this issue has arisen much less frequently in relation to ordinary public servants, probably because of the widespread association of public servants with secure employment. Nevertheless, the contract model has been increasingly extended into the usual activities of public servants. State governments make widespread use of fixed-term contracts for senior executives² while, at the Commonwealth level, relations are increasingly being structured along the lines of a contract. Under the outcomes and outputs structure, the budget has been changed, at least in language, from a funding mechanism into a contractual arrangement under which government purchases outputs from agencies. Agencies enter into contractual (or quasi-contractual) arrangements with each other for services, and then parts of agencies contract with other parts to provide, for example, legal or corporate services. Staff are required to enter into performance agreements with their senior managers. Until the change of Government in 2007, there was increasing pressure on individuals to enter into individual industrial agreements that set their terms and conditions of employment. According to DEWR data, by the end of June 2005, a total of 11,823 employees had done so: 1937 (virtually all) of the Senior Executive Service, 5966 executive level staff (21 per cent), and 3837 APS 1–6 staff (around 3 per cent).³

In short, the industrial arrangements governing the employment of public servants, introduced alongside the broader suite of NPM reforms, have increasingly mimicked and reproduced broader systemic change. They have introduced contestability, performance assessment and devolution into the terms under which individual staff are employed, changing not only the employment contract but also the 'psychological contract' between public servants and those who employ them. These industrial arrangements were structured to discourage the growth of service-wide 'connective tissue', to isolate employees industrially and to increase their sensitivity to managerial prerogative. As will be seen, they have a rhetoric of their own that does not necessarily represent workplace realities—a kind of industrial spin—and that can contribute to the development in agencies of an assumption culture. While individual contracts have contributed to the making individual public servants more 'results-oriented', they have also had the effect of encouraging a narrow and short-term interpretation of the requirement for 'responsiveness'.

Industrial relations in theory

In the early to mid-1980s, NPM was gathering momentum and so was a new model of employment relations. Like the broader changes to the public sector, Human Resource Management (HRM) drew its authority from globalisation and the drive to increase cost efficiency. Just as there were different models of NPM there were also different models of HRM, although they had a common policy goal: to create an adaptive workforce capable of maximum productivity through maximum utilisation. Employers had the capacity to take a high- or low-cost approach to establishing an adaptable workforce. The high-cost option was called 'functional flexibility' and relied on building employees' skills over time and using job security to encourage a long-term creative engagement with production issues. The low-cost option was called 'numerical flexibility' and relied on strengthening managerial capacity to employ, direct and dismiss individual staff as required. These alternatives, as they were embedded in organisations, were known as 'soft' and 'hard' HRM respectively and were characterised in the work of Karen Legge in 1995 along the following lines:

The 'soft' normative model of HRM is depicted as individualistic with committed employees working flexibly and 'beyond contract' in pursuit of competitive advantage. The 'hard' model implies that employees are a resource to be used like any other, at management's discretion, in whatever way best achieves strategic objectives.⁴

The rhetoric of HRM as it was to apply in the Commonwealth was largely of the 'soft' or humanistic type. It was characterised by a preference for a committed rather than a merely compliant workforce—a preference that called for changes to both cultural and industrial arrangements.⁵ In its early days, the rhetoric of 'soft' HRM had a brave new worldishness to it: it was about hearts and minds and how they could be made to internalise the organisation's goals.⁶ It is the rhetoric used by the Minister Assisting the Prime Minister for the Public Service in introducing the Public Service Bill 1997, when he said that 'in place of the old adversarial system both the public and private sectors are now encouraged to place emphasis on direct workplace relationships and mutual interest'.⁷

In practice, this internalisation of mutual interests was believed to be best served by individual rather than collective bargaining. Unions and industrial tribunals, unlike employers and employees, did not have the interests of the organisation at heart. They were outsiders, and they tended to involve other outsiders. They favoured industry-based awards made by independent tribunals and inserted themselves into workplace collective bargaining. Individual agreement making would build closer, more mutually satisfying relations between employer and employee. These individually based arrangements were to be as flexible as possible, increasing individual adaptability as well as individual dependence on and trust in the organisation's managers and their application of its human

resource policies. This would result in increased employee commitment and willingness to adapt in the interests of the firm (or in the case of the APS, the agency), resulting in continuous productivity improvement in response to the global challenge.

In this narrative, 'soft' HRM appears to be the opposite of 'hard' HRM. Both call for an increase in management prerogative but for opposite reasons: 'soft' managers would use their prerogative to build employee commitment and 'hard' managers would use theirs to buy and sell skills as required by the interests of the organisation. Thus the implementation of 'hard' HRM leads in a different direction from 'soft' HRM: away from a reliance on employee commitment:

In particular if flexibility takes the form of casualising labour and outsourcing, this may make it more difficult to encourage employee commitment to the enterprise. It does not seem plausible to expect that an employee who is not assured of job security will have much reason to show much loyalty, and where outsourcing takes place, the worker's primary loyalty will logically be to another organisation altogether.⁸

Despite the very considerable notional differences between the two versions of HRM, academic studies would suggest that the actual distinction was largely the one between theory and practice, that is, that 'even if the rhetoric of HRM is "soft", the reality is almost always "hard", with the interests of the organisation prevailing over those of the individual'.⁹ It would appear that as management prerogative becomes increasingly influential, the organisational focus shifts from eliciting the commitment of workers to gaining control over them, and 'soft' HRM practice hardens, although often more opportunistically than strategically. The rhetoric of 'soft' HRM, Legge argues, can change more slowly than actual workplace practice and so provide a rhetorical cover for the transition from a 'soft' to a 'hard' management approach to HRM.¹⁰ Although her argument is based on the experience in the United Kingdom, it reflects similar developments in the public sector observed in Australia. In fact, she argues that in the UK public sector services were prominent among organisations in which 'hard' HRM practices were adopted.¹¹ Does the experience of the APS conform to the same pattern?

In 1995, in Australia, Kitay and Lansbury were commissioned by the Productivity Commission (then the Economic Planning Advisory Commission, or EPAC) to map workplace practices in Australia against developments in HRM overseas. As part of this exercise they developed a table setting out the key features of the old and new systems (see Table 3). In so doing they emphasised that the table represented 'a comparison between the practice of the old—typically a warts-and-all portrayal, with an emphasis on the warts—and the theory of the new, emphasising the positive aspects'¹² or 'soft' HRM approach, and that it could not therefore be relied on to predict how HRM would work itself out in

practice. This, as shall be seen, proved to be the case. Nevertheless, the table offers a fair overview of the discourse and priorities of ‘soft’ HRM at a point in time when NPM was giving agency heads the capacity to shape public sector employment relations—or, in the terminology used in the table, to make the *locus of control* of employees ‘internal’ to the agency, breaking down its external links to service-wide industrial arrangements. Industrial relations would become workplace relations and then employee relations.

Table 3. Assumptions Underlying ‘Old’ and ‘New’ Models of Employment Relations

	Compliance	Commitment
<i>Psychological contract</i>	Fair day’s work for a fair day’s pay	Reciprocal commitment
<i>Locus of control</i>	External	Internal
<i>Employment relations</i>	Pluralist Collective Low trust	Unitarist Individual High trust
<i>Organising Principles</i>	Mechanistic Formal/defined roles Top-down Centralised	Organic Flexible Roles Bottom-up Decentralised
<i>Policy goals</i>	Administrative efficiency Standard performance Cost minimisation	Adaptive workforce Improving performance Maximum utilisation

Source: Guest 1991, from EPAC, Human Resource Management and Workplace Change (May 1995) p. 27

Now that we are in a better position to see how the ‘soft’ rhetoric of HRM has translated into practice, the EPAC table also presents a useful analytical framework within which to examine how agency heads have gone about settling their contracts with employees and aligning their human resources towards delivering the government’s priority outcomes. We will leave the ‘psychological contract’ for last and begin with the ‘locus of control’.

Locus of control

Devolution of the industrial framework for public service employment was meant to focus employees’ attention on the government’s goals for their agency and their own roles in enabling the agency to reach those goals. It localised power, making the agency head an employer and creating a direct line of sight between the manager and the managed. It was part of a broader system involving organisational performance targets and individual performance management and assessment that was intended to increase productivity and responsiveness.

In practice, however, APS agency heads have never had all of the powers of a private sector employer over their human resources. They are in fact ‘responsible for ensuring that all of their agency agreements are consistent with the ... policy requirements’ articulated by DEWR, requirements which in turn ‘promote the Government’s interests as the ultimate employer of APS employees’.¹³ Before

the *WorkChoices* amendments, DEWR's policy parameters for agreement making in the APS focused on the Government's interests in shifting the locus of control to exclude third parties from the workplace and in supporting individualised bargaining. They recommended:

- fostering more direct relations between agencies and their employees;
- protecting freedom of association;
- providing scope for comprehensive AWAs to be made with staff; and
- displacing existing agreements and, wherever possible, awards.¹⁴

DEWR would vet all agency agreements and where it identified deficiencies from the point of view of the Government's interests, agency heads were required to draw those concerns to the attention of their minister when seeking ministerial approval of any agreements they may have reached. As early as 1998 it had been observed that 'the current watchdog role of the Department of Workplace Relations and Small Business (DWR&SB) appears to be a highly interventionist one that is obviously attempting to ensure high degrees of procedural, if not substantive, uniformity across all federal government employment'.¹⁵ In theory, the DEWR parameters call for a shift in the locus of control from outside to inside the workplace. In practice, they represent yet another of the 'brace of instruments for working the system strategically and at several levels' described in Chapter 4, which have the effect of asserting vertical political control over the operations of devolved agencies.

From an HRM perspective, this leaves the locus of control for human resources vexed. The model calls for control to be established by management and internalised by employees. In fact, employees are presented with a compliance-based framework based on 'the Government's interests as the ultimate employer' transmitted to them through the agency head in the shape of an individual or collective agreement. The agency head's interests (as the less-than-ultimate employer) are well down the pecking order, after the Minister for Employment and Workplace Relations (also, usually, the Minister Assisting the Prime Minister for the Public Service), the Secretary and relevant staff of DEWR, and the agency head's own minister. It would appear that some things just cannot be devolved, and that as a consequence '[t]o some extent a command and control process has been reinvented but in a very new guise, one in which employees are expected to take control of their work and achieve outcomes, but what is achieved and how it is achieved is centrally determined and structurally imposed'.¹⁶ Employees are well aware of these arrangements and know also that when terms and conditions of employment are at issue the devolved framework applies only as long as it is consistent with a centralised locus of control.

Employment relations

While key vertical controls persist in the employment framework, much of the service-wide 'connective tissue' has been removed, including 'the concept of public office, common conditions of employment and the 'special' labour market arrangements that existed for the APS.'¹⁷ Before devolution, the public service had been characterised by common job classifications and transferable terms and conditions of employment presided over by the old Public Service Board. These, in turn, were underpinned by a highly unionised environment, an industrial determination (later award) and some generally applied industrial legislation (such as that relating to superannuation and maternity leave). From an agency point of view, employment relations were pluralist, that is, they were based on the view that employer and employee interests would not always coincide and, therefore, there was a legitimate role for mechanisms such as the Public Service Arbitrator (later the Australian Industrial Relations Commission) and union consultative forums to prevent and resolve disputes.

In 1986, the Public Service Legislation—Streamlining Act 1986, as its title suggests, streamlined appointment, promotion and redundancy procedures, giving public service managers increased control over process issues associated with staffing matters by reducing or eliminating avenues of review. The legislation had been developed without union consultation (and with minimal departmental participation, other than through the Cabinet processes), and when consultation did occur, it was undertaken essentially on the basis that the reforms, which had then been approved by the Government, were not negotiable in relation to their general tenor and key content. The following year awards were restructured and classifications simplified from over 100 to 8, enabling employees to undertake a wider range of tasks at their classification level. It meant, among other things, that employees would be expected to undertake routine work such as photocopying, filing and keying in final drafts of documents in addition to their substantive tasks, and that, over time, a number of lower-level positions would no longer be required. This was a matter of industrial and not legislative reform, and accordingly the Labor Government proceeded along the lines it was recommending to other sectors undergoing award restructuring.¹⁸ Departments were required to establish joint union/management committees which in turn were involved in examining improvements to work organisation made possible by the intersection of award restructuring, simplified classifications and information technology. The Management Advisory Board (MAB) reported that 'experience with a co-operative rather than an adversarial approach to industrial relations has paid off ... (and) ... union organisations can positively contribute to the outcome of any organisational change initiative'.¹⁹

In December 1992, the scope for workplace change in agencies was broadened when, following the introduction of the *Enterprise Bargaining Principle*, a

framework agreement was reached that allowed for service-wide pay increases to be linked to service-wide productivity initiatives while at the same time providing for agency-based increases to be linked to agency-level initiatives. Again, the Government saw the necessity of using its own workforce as an exemplar of how productivity gains could be made, particularly in the service sector. Many public servants felt that because of their budget-dependency, all they had to trade off for wage increases under enterprise bargaining was, effectively, the jobs of other public servants. Nevertheless, enterprise bargaining was as much part of the broader union agenda as it was part of the broader Government agenda, and the public sector unions had little choice but to make the best of it, as the President of the ACT Branch of the Community and Public Sector Union (CPSU) during the period is reported to have admitted:

The acceptance of agency bargaining was a pragmatic choice made by the union in the belief that the government would not be shifted from its determination to impose it on its employees. She noted that the framework agreement for the APS had only been accepted by the membership after 'very and [sic] strong and bitter debate'. There was a lingering 'dislike of agency bargaining from a theoretical and practical points of view'. Nevertheless, the system provided an opportunity for the union to promote its long standing policies on such issues as child care and part time work.²⁰

Following the passage of the Industrial Relations Reform Act 1993, agency-specific agreement making accelerated. The 1994 *Enterprise Bargaining Report* found that 24 agreements covering 33 agencies had been certified under the APS framework agreement, covering 55 per cent of employees and bringing to 73 per cent the number of employees covered by agency agreements.²¹

With the change of Government in March 1996, and the introduction of the *Workplace Relations Bill*, bargaining was further decentralised. Framework agreements were no longer available. Agency heads were always able, subject to the DEWR parameters, to develop their own remuneration policies, negotiate their own rates of pay, broadband agency classifications, and to seek through negotiation to establish their preferred form of industrial instrument. These administrative changes were reinforced through the Public Service Act.²² The APS award became a minimum rates award, increasing the dependence of public servants on agency agreements to maintain or improve their existing rates of pay.

Like the previous Labor Government, the new Coalition Government used its position as employer to position the APS as an operational model of its industrial policy.²³ Public servants were advised early on that 'this Government starts from a fundamental proposition: namely that the industrial and staffing arrangements for the public service should be essentially the same as those of

the private sector'.²⁴ While these arrangements were nominally neutral about freedom of association, the Government as employer did not favour union involvement in any of its workplaces. Employees were advised by the minister that they had been 'victims of workplace structures, systems and cultures which seek to control through regulation rather than through trust'²⁵ and that accordingly they 'should have an opportunity to benefit from a more direct relationship with their employers rather than be managed through rules, regulations and third party relationships'.²⁶ People formerly known as union officials became union 'bosses'²⁷ and unions became 'third parties'. Public servants were instructed that in future the process of settling workplace agreements was to be called 'agreement making', rather than 'bargaining' or 'negotiating', in order to convey a community of interests between employer and employee.

At the same time, consistent with the DEWR parameters, support was being offered to those employees choosing to enter into more direct relationships with their employers. Employees were advised by the Minister Assisting the Prime Minister for the Public Service, Peter Reith, that (whether or not they were aware of it) 'in particular they want more direct relationships with their employers'.²⁸ Peter Reith's successor, David Kemp, translated:

The *Workplace Relations Act* has been significant in recasting the role of unions in the public sector workplace. It has removed their privileged position and replaced it with one that better reflects members' preferences and ensures more responsible behaviour. Meanwhile, the Government is strongly pressing Agency Heads to actively pursue agency level agreements with their staff to advance the Government's reform agenda.²⁹

Following the passage of the Workplace Relations Act 1996, agencies were advised of the Government's decision that the payroll deduction of union dues should be contingent on individual employees in Australian Government employment confirming each year that in fact they did not want more direct relations with their employers but rather wished to continue to have union dues deducted from their pay. Not surprisingly, some employees discontinued their union membership; others took union advice and had their dues deducted from their bank accounts rather than be obliged to signal their continued union membership to a less than enthusiastic employer. Kemp was clearly gratified:

In the event almost 40% of staff using this payroll deduction facility opted to have the deduction cease. It is clear that very large numbers of public servants, dissatisfied with the representation provided by the CPSU and other public sector unions, voted with their feet. They left the unions.³⁰

Agency heads and managers were put on notice that providing opportunities for more direct relations would 'be a key responsibility of agencies and a major test of leadership'.³¹ By June 2004, the parameters were advising that consistent with the Government's legislation uninvited 'third parties' would find that their access to workplaces had been constrained.³²

The Howard Government's clear preferences regarding the state of unionism in their workplaces had the effect of foregrounding the either/or argument at the more doctrinaire end of 'soft' HRM. The rhetoric assumed that, in the absence of third parties, employment relations would be unitarist rather than pluralist, meaning that there would be 'one set of objectives common to all members of an enterprise ... usually defined in terms of the goals of senior executives'. Organisational goals cascaded down from the top to employees, who were encouraged to enter into direct relations with their senior management consistent with the minister's vision for the APS of the future. For most employees, 'direct relations' meant being offered non-union collective agreements by the agency head; for more senior employees, it meant individual contracts.³³ For employers, it meant increasing employee dependence on managerial prerogative—referred to in 'soft' HRM language as 'building a culture based on trust'—and increasing the role of managerial prerogative in workplace agreements as well as in overall agency management practices.

One of the few analyses of the embedding of HRM principles in agencies is in a study of the Australian Taxation Office (ATO) conducted by Anderson, Griffin and Teicher between 1999 and 2002. By that time cultural change and the institutional arrangements required to support it were sufficiently mature to show the initial impact of HRM principles. The researchers found that although agency agreements had been formalised, the major policy defining the employment relationship at the ATO was its *People Strategy*: 'an HRM strategy that defines the employment relationship in terms of desired values and behaviours [and] ... seeks to achieve a cultural shift from a dependent workforce with an entitlement culture and requiring close supervision, to a self-managed workforce that exhibits flexibility and responds to continuous change within a performance culture'.³⁴ Consistent with the progressive management of that cultural shift, the Senior Executive Service were on individual contracts and executive level 2 employees were on a non-union collective agreement, while staff at lower classification levels remained on union-negotiated collective agreements. Overall, the authors concluded:

There is some evidence of movement toward a managerially controlled employment relationship. Union representation and the degree to which staff are able to participate in decision-making have declined considerably. Decision-making has been centralised to senior managers, client responsive behaviours have been encouraged, performance

management has been initiated and temporary employees engaged to fulfil organisational requirements. Undoubtedly, the employment relation has moved from traditional industrial relations toward direct workplace relations.³⁵

While APS human resource practices in agencies continued their nominal progress toward a unitarist, individual, high-trust model of employment relations, employees themselves did not find the transition so seamless. Apparently they were not all convinced that they really did want more direct relationships with their employers, or that the outcome of such relationships had always justified their trust: over time, numbers of non-union agency agreements in the APS fell. According to the Public Service Commissioner's *State of the Service* reports, the percentage of agency agreements made with unions under section 170LJ of the *Workplace Relations Act 1997* grew from 55 per cent in 1999 to almost 70 per cent in 2005,³⁶ including DEWR's own union agreement, made in that year after a considerable and high-profile struggle. For its part, DEWR's Secretary, Peter Boxall, sought to institute direct, high-trust relationships with his employees by making individual agreements compulsory for all promotions and for staff seeking to join the public service through that agency.³⁷

After 2005, the *WorkChoices* legislation greatly strengthened secretaries' bargaining positions and their capacities to 'promote the Government's interests as the ultimate employer of APS employees'. By the time that legislation had been passed:

- agency heads had the power to dismiss any employees because of an operational requirement, or for reasons that include that ground;
- both union access to workplaces and industrial action had been further constrained,³⁸ decreasing employee access to protected industrial action to press any claim for a collective agreements;
- a range of matters had become 'prohibited content' for workplace agreements including those that dealt with: '... allowing for industrial action during the life of the agreement; deductions from an employee's pay or wages for union membership subscriptions ... providing for paid leave to attend union training or union meetings; union bargaining fees; providing unions with information about employees bound by the agreement; ... union right of entry; encouraging or discouraging union membership ... mandating union involvement in dispute resolution';³⁹ and
- individual contracts could be required of anyone wishing to accept a promotion or transfer.

Furthermore, agency heads had the power at any time after the nominal expiry date of an agreement made under the *WorkChoices* framework to unilaterally terminate that agreement so that employees would fall back onto the new 'fair

pay standard' drawing on old award classification rates as adjusted from time to time by the Fair Pay Commission.

Table 4 shows what this would have meant, on average, if it were to apply to APS employees based on 2004 APS award rates, and their actual rates of pay under agreements current as at 31 December 2005. Executive-level staff who had their individual or collective agreements terminated could lose nearly half of their annual income (and a number of conditions). The 'fair pay standard' would become the new benchmark for their next 'agreement'. Employers could choose not to settle a new collective agreement and leave employees on the 'fair pay standard' indefinitely, or until they were able to jump the new hurdles required to access protected industrial action, or until they accepted individual agreements.

Table 4: 2005 Non-SES Base salaries and Award Minimum Classification Rates

Classification	Base Salary	APS award minimum classification rates
Graduate	\$41,000	\$29,276
APS 1	\$33,935	\$27,099
APS 2	\$39,028	\$29,798
APS 3	\$43,923	\$32,791
APS 4	\$48,944	\$35,699
APS 5	\$53,931	\$38,964
APS 6	\$62,775	\$41,384
EL 1	\$77,767	\$47,539
EL 2	\$96,063	\$51,973

Sources: 2005 APS Remuneration Survey (current as at 31 Dec. 2005) at <http://www.workplace.gov.au/workplace/Organisation/Government/Federal/Reports/2005APSRemunerationSurvey.htm>, viewed 24 June 2006; Australian Public Service Award 1998 (AW766579) (varied to 16 Dec. 2004 (variation PR954310)) at <http://www.wagenet.gov.au/WageNet/Search/View.asp?docid=259460&query=%28PUBLIC+SERVICE+AWARD+1998%29&quickview=Y&page=0#dochit1>

The *2005–06 State of the Service Report* also indicated that the Public Service Act had been subject to a review that was likely to reinforce the *WorkChoices* changes listed above by 'liberalising non-ongoing arrangements'—by which was meant increasing the scope to employ non-permanent staff and to decline to convert them to permanent after a set period of employment. According to the report, this was one of the changes identified as worthy of consideration to ensure that the Act 'meets the future needs of agencies'.⁴⁰ Ongoing employment has traditionally been associated with a capacity for apolitical professionalism—which in turn is one of those Westminster-based values described in Chapter 1 as having a less than seamless intersection with the NPM-based APS Values. Other Westminster-based values may also have been on the table, including 'refining the [APS] values and Code of Conduct', although further information was deferred until after the 2007 election.⁴¹

Following that election, some of the powers made available to employers under *WorkChoices* will be rolled back. It was unlikely that APS employers would ever have deployed them in a wholesale way under the previous Government, although *WorkChoices* enhanced their capacity to target individuals who were no longer wanted in the workplace. But the fact remains that everyone would have known that the powers available under *WorkChoices* would have been there if they were wanted. It remains to be seen what will happen to the overall emphasis on management prerogative that has been strengthening progressively since the introduction of HRM principles into public service workplaces.

Organising principles

While organisational goals were meant to cascade down the direct line between employers and employees, as discussed in Chapter 3, 'soft' HRM expected day-to-day work to be organised from the 'bottom up'. 'Soft' HRM theorists envisaged committed, highly skilled employees with a capacity for teamwork and the flexibility to work out what needed to be done and to organise themselves to do it as well as it could be done—in return for ongoing high levels of job security, remuneration and skills investment. The new vision set out by the Secretary of the Department of the Prime Minister and Cabinet in 2005, was as follows:

To the casual observer, walking around an office, it will be increasingly difficult to distinguish who is a public servant. Within departments there will be full-time, part-time and casual public servants. They will work with, and often sit alongside, contract providers and short-term consultants. They will be bound together by the work they do, not the conditions under which they are employed. The Australian Public Service, in the American language, will be 'a blended, multi-dimensional workforce'.⁴²

It may be that the public servants concerned would find it almost as difficult as casual observers to distinguish who was or was not a public servant. This is devolution taken to extremes, resulting in a workplace without a common history or culture, supporting only the most impersonal and operational of interactions. Its organising principle is neither organic nor bottom up, as envisaged by 'soft' HRM, but top down like 'hard' HRM, reliant to a significant extent on management-initiated contracts with casuals, contractors and consultants. Any differences between ongoing staff and the rest would not, apparently, reflect any differences in the nature of 'the work they do'. This is not where 'soft' HRM was meant to be taking the APS—towards the Minister's 1996 vision of 'a quality job within a learning organisation, in which their creativity is actively sought [and they] have more autonomy over their work practices'.⁴³ Did something happen, or was it always just spin?

Policy goals

Remember that reforms conducted in the name of NPM varied from country to country and that in Australia, as elsewhere, 'the reform program shifted emphases according to political and administrative circumstances'.⁴⁴ A critical political circumstance relevant to HRM reforms in the public service was the Government's ongoing industrial agenda. On this, DEWR's guidance was very explicit:

The government expects that APS agencies will lead the way in utilising the flexibilities and opportunities for reform available under the *Workplace Relations Act 1996 (WR Act)*. The Policy Parameters allow APS agencies the flexibility to develop agreements that are tailored to their particular needs and circumstances and are exemplars of the government's workplace reforms.⁴⁵

The Government presented its industrial agenda to its employees in the same way that it presented that agenda to the workforce generally: as a matter of improving productivity by fostering direct relations between employees and employers that would have the effect of aligning their interests. What the Government delivered in the APS as elsewhere was an increase in employer control that would facilitate such alignment by eliminating 'third parties' (such as unions and industrial tribunals) from the workplace and enhancing the flexibility with which workplace relations could be conducted. As the ATO case study considered above suggests, this program had the effect of ratcheting up management prerogative and the systems (considered in Chapters 3 and 4) that make its presence felt. Australian research into private sector management has shown that the Australian experience has not varied significantly from that in the UK: in general, as an organisation's focus shifts from eliciting the commitment of workers to gaining control over them, 'soft' HRM practice hardens, although the rhetoric of 'soft' HRM tends to remain in place to ease the transition.⁴⁶ In addition to formal agreements and performance management arrangements, this emphasis can also be seen in the APS in the conduct of consultation processes more broadly. Evidence in the *2004–05 State of the Service Report* suggests that while managerial prerogative and management systems were being strengthened, the predicted cultural change was lagging behind:

Time series data suggests that there has been a slight downward trend in employee data in a number of indicators that cluster around workplace relationships. Compared to 2003–04, public servants were somewhat less likely to feel that merit processes have been applied; less satisfied with the consultative mechanisms in their workplaces; less satisfied with their overall say in decisions that impacted on their work; and less likely to agree with most of the effectiveness indicators describing the impact of their agency's performance pay system.

...[In particular] this year employees reported being significantly less satisfied that the meetings they attended provided a forum in which to contribute their views on issues that impact on their work and with the overall say they have in decisions impacting on their work.⁴⁷

The Government 'started from a fundamental proposition: namely that the industrial and staffing arrangements for the public service should be essentially the same as those of the private sector',⁴⁸ and, like the private sector, it moved on to the (re)assertion of 'management authority'. This involved a change in the psychological contract between employees, their employers, and, in the case of public servants, their 'ultimate employer', the Government.⁴⁹

The psychological contract

The psychological contract has generated a significant literature. It been defined by Rousseau as the individual employee's subjective perceptions of the obligations binding both the employee and the employer.⁵⁰ Because it is subjective, it takes in matters outside a conventional formal contract, such as fair dealing, expectations of transparency, loyalty, and support in ethical decision making. The psychological contract 'both fills the perceptual gaps in the employment relationship and shapes day-to-day employee behaviour in ways that cannot necessarily be discerned from a written contract'.⁵¹ Rousseau identifies a number of possible psychological contracts between employees and employers lying along a continuum, from 'relational contracts' at one end to 'transactional contracts' at the other. 'Relational' contracts look very like those governing employee expectations in a 'soft' HRM workplace; transactional contracts', on the other hand, look very like those governing employee expectations at 'hard' HRM workplaces. According to O'Donnell and Shields, the psychological contract for APS employment has been moving along the continuum away from relational and toward transactional contracts and 'hard' HRM since the early 1990s:

Relational contracts are long-term, entailing considerable investment by both parties in training and development and a high degree of mutual interdependence, and involve rewards that are not explicitly performance contingent. Transactional contracts, by contrast, focus on short-term and monetised exchange, where rewards are explicitly tied to individual performance and low membership commitment by the employee (Rousseau and Ho 2000, 297-304). In general terms, the changes experienced by employees in the federal public sector since the early 1990s can be said to have involved a shift from a relational to a transactional employment regime.⁵²

How this distinction applied in practice in the APS was examined in a study by O'Donnell and Shields of the operation of performance management in the

Departments of Finance and Administration (Finance) and Defence drawing on data gathered between 1998 and 2001. The study found that Defence—an atypical organisation in this respect—declined to move to transactional performance contracts with employees, opting instead, in the words of the then Secretary of the Department, Allan Hawke, to stay with a relational contract ‘based on building performance through feedback and a developmental focus—without scores and ratings’.⁵³ He based this decision on the view that where the psychological contract is focused around short-term and monetised exchange, the process ‘can lead to distorted results and raise issues of equity, ratings moderation and forced distributions’.⁵⁴

The Department of Finance and Administration, in contrast, was characteristic of the growing majority of agencies that pursued transactional performance contracts.⁵⁵ In 2001, after several years without any access to collective bargaining, 62 per cent of its employees were already on individual AWAs and employees were being further motivated through an individual performance agreement and assessment system. While Finance’s system called for a ‘solid contribution to organisational objectives’, the O’Donnell and Shields study found that, overall, it was weighted to reward certain ‘behaviours’ rather than particular outputs, effectively maximising management discretion over winners and losers. The behaviours sought by agency senior leadership were those defined by the senior leadership as characterising senior leadership, namely ‘expertise in the field, creativity, will to win, ability to learn and people management’. Clearly the aim of the system was to align employee behaviour to the behaviour of their senior managers. Not surprisingly, individual outcomes—as judged by senior leadership—were believed by many individuals to be biased and subjective and, according to O’Donnell and Shields, resulted in considerable cynicism about the objectivity of the scheme.⁵⁶

However, for the truly cynical, biased schemes are at least as effective in aligning employee behaviour to implicit management requirements as transparent schemes are in aligning employee behaviour to explicit requirements:

Anthony (1990) argues that when a small senior management group attempts to superimpose a new set of espoused values upon subordinates that are discordant with the latter’s sense of reality, the result may be that they act out the surface signals of the ‘new culture’ but cynically and without internalisation. Existing bureaucratic structures (hierarchy, appraisal, promotion ladders) ensure that negative, critical, even whistleblowing feedback is unlikely to occur. On the contrary, the skilled performance enacted by employees may confirm senior management in its view that the new culture has taken ...⁵⁷

Whether compliance reflects conviction or cynicism, the awarding of a single rating point focuses employee attention at the same time that it focuses employer

control. In the event, Peter Boxall, the then Secretary of Finance, was given by Government the management of DEWR and with it responsibility for policing all agencies' bargaining outcomes.

What does responsiveness mean in this framework? Is its meaning set through the broad APS Values in the *Public Service Act*, a narrow transactional performance contract with senior management, or 'the interests of the Government' as what DEWR calls the 'ultimate employer'? When these coincide, there is of course no issue. But if, *in practice*, they do not, transactional contracts will invite attention to managerial authority before service-wide ethos. If it is to the agency head that employees look, then responsiveness will be framed in terms of whatever employees think the senior management wants; if it is the 'ultimate employer', then responsiveness may be to whatever the employees think the Government wants.

The Community and Public Sector Union has repeatedly raised concerns about politicisation and about public servants who feel compromised and concerned about their roles and responsibilities in an increasingly politicised workplace. Of course the union as a third party does not have organisational alignment at heart; but we know directly from employees that nearly a third of them have not been prompted by their experience to agree that their senior management acts in accordance with the APS Values.⁵⁸ Many of them were also aware (following Senate consideration of 'A Certain Maritime Incident' and 'Staff Employed under the *Members of Parliament (Staff) Act 1984 (MoP(S) Act*') that the then Government had no enthusiasm for ministerial advisers being bound by a code of conduct embodying a set of values of its own. And yet the system—not the law but the system—has focused them on the kind of responsiveness developed through alignment with both of these groups: senior management, and 'ultimate employers' and their advisers.

There are other problems with transactional contracts. Because they emphasise vertical relations, they tend to weaken attention outward, to the public. In effect they induce a performance orientation like that created at the then DIMIA, or at the ATO: "'do our work, do it well and pass back to the other business lines what is theirs, because we're not funded for it and all it does is make our performance look bad'".⁵⁹ The problem is that there has been a common view among agency heads (and the ultimate employer) that:

... the Australian community now expects high quality, seamless, accessible and responsive service delivery that is tailored to individual needs, and where outcomes are transparent. They also expect a greater say in the development of policies and programmes.⁶⁰

To do this, the public service needs employees who are licensed to take account of changing circumstances and to innovate, consistent with the rhetoric of 'soft'

HRM. Nevertheless, in 2005–06, 59 per cent of APS employees did not agree that their agency involved them in decisions about their work.⁶¹ As early as 2002, the Prime Minister advised that his Government had ‘put the partnership between government and the community at the heart of our policy making.’⁶² Three and a half years later, 43 per cent of employees did not agree that their agency encouraged the public to participate in shaping and administering policy.⁶³ And, as will be seen in the next chapter, outsourced service deliverers also report themselves to be pretty firmly cast in the role of rowers and not steerers.

In theory, the government as employer, regardless of the party in power, needs to establish genuinely mutual relationships with the people with whom it works inside and outside the APS itself. This theory is publicly endorsed by the heads of government as well as heads of the public service and key agencies.⁶⁴ And yet, while government calls for exchange, creativity and innovation, it has wanted these to occur within a strictly controlled and increasingly asymmetrical power relationship based on transactional contracts. This issue is explored further in the next chapter.

ENDNOTES

¹ See, for example, Andrew Podger, ‘What Really Happens: Department Secretary Appointments, Contracts and Performance Pay in the Australian Public Service’, *Australian Journal of Public Administration* 66(2),(2007), and ‘Looking Upwards and Downwards: Key Issues and Suggestions for Managing Board/Minister/Departmental Relations’, University of Canberra Conference on Governance, Mar. 2006, pp.10ff.

² See Public Service Commissioner, *2003–04 State of the Service Report* (Canberra, 2004), Appendix 4, Jurisdictions’ Arrangements for the Appointment of Secretaries, Chief Executives and Senior Executives.

³ Public Service Commissioner, *2004–05 State of the Service Report* (Canberra, 2005), 98.

⁴ Karen Legge, *Human Resource Management: Rhetorics and Realities* (Macmillan: London 1995), 247.

⁵ See Jim Kitay and Russell Lansbury, ‘Human Resource Management and Industrial Relations in an Era of Global Markets: Australian and International Trends’, *Human Resource Management and Workplace Change*, Proceedings of an Economic Planning Advisory Commission roundtable, 6 Feb. 1995, pp. 31–2.

⁶ See Legge, *Human Resource Management*, Ch. 9.

⁷ Peter Reith, Public Service Bill 1997, Second Reading Speech, 30 June 1997, at <http://www.apsc.gov.au/circulars/billadvice972.htm>, viewed 24 Feb. 2008.

⁸ See Kitay and Lansbury, ‘Human Resource Management and Industrial Relations’, 34.

⁹ Catherine Truss, Lynda Gratton, Veronica Hope-Hailey, Patrick McGovern and Philip Stiles, ‘Soft and Hard Models of Human Resource Management: A Reappraisal’, *Journal of Management Studies* 34(1) (1997) 70.

¹⁰ Legge, *Human Resource Management*, Ch. 8.

¹¹ *Ibid.* 330.

¹² Kitay and Lansbury, ‘Human Resource Management and Industrial Relations’, 36.

¹³ See Department of Employment and Workplace Relations, ‘APS—Supporting Guidance for the Workplace Relations Policy Parameters for Agreement Making in the Australian Public Service’ (June 2004), 4.

¹⁴ Department of Employment and Workplace Relations, ‘APS—Workplace Relations Policy Parameters for Agreement Making in the Australian Public Service’ (Dec. 2003).

¹⁵ See Duncan Macdonald, ‘Public Sector Industrial Relations under the Howard Government’, *Labour and Industry* 9(2) (Dec. 1998), 43–59.

¹⁶ Eve Anderson, Gerard Griffin and Julien Teicher, 'From Industrial Relations to Workplace Relations in the Australian Tax Office: An Incomplete but Strategic Transition', *Journal of Industrial Relations* 47(3) (Sept. 2005), 350.

¹⁷ Tony Blunn, 'Public Service values in the New Millennium', *Canberra Bulletin of Public Administration* no 107 (Mar. 2003), 30.

¹⁸ See John O'Brien, 'Workplace Productivity Bargaining in the Australian Public Sector', in Jenny Stewart (ed.), *From Hawke to Keating: Australian Commonwealth Administration 1990–1993* (Canberra, n.d.), 90.

¹⁹ Management Advisory Board/Management Improvement Advisory Committee, *The Australian Public Service Reformed: An Evaluation of a Decade of Management Reform* (Task Force on Management Improvement: Canberra, 1992), 150.

²⁰ John O'Brien, 'Employment Relations and Agency Bargaining in the Australian Public Service, 1993–1996', in Gwynneth Singleton (ed.), *The Second Keating Government: Australian Commonwealth Administration 1993–1996* (Canberra, 1997), 178.

²¹ Department of Industrial Relations, *1994 Annual Report Enterprise Bargaining in Australia: Developments under the Industrial Relations Reform Act* (AGPS: Canberra, 1995), 29.

²² The Public Service Act and Parliamentary Service Act 1999 made provision for departmental secretaries to enter into collective and/or individual employment contracts and agreements.

²³ See Department of Employment and Workplace Relations, 'APS—Workplace Relations Policy Parameters for Agreement Making in the Australian Public Service' (Dec. 2003) on the need to 'lead the way.'

²⁴ Peter Reith, *Towards a Best Practice Australian Public Service: Discussion Paper Issued by the Minister for Industrial Relations and the Minister Assisting the Prime Minister for the Public Service* (Canberra, 1996), 5.

²⁵ *Ibid.* 2.

²⁶ *Ibid.* p. viii.

²⁷ See, for a characteristic example, Coalition arguments cited in the Parliamentary Library's *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000, Bills Digest No. 18 2000–01*, at <http://www.aph.gov.au/library/pubs/bd/2000-01/01BD018.htm>, viewed 24 July 2006.

²⁸ Reith, *Towards a Best Practice Australian Public Service*, 2.

²⁹ David Kemp MP, 'Reforming the Public Service to Meet the Global Challenge', address to the Committee for Economic Development of Australia, Melbourne, 25 Feb. 1998, at <http://www.apsc.gov.au/publications98/apsreformminister.htm>, viewed 15 Aug. 2007.

³⁰ *Ibid.*

³¹ Reith, *Towards a Best Practice Australian Public Service*, p. viii.

³² See Department of Employment and Workplace Relations, 'APS—Supporting Guidance for the Workplace Relations Policy Parameters for Agreement Making in the Australian Public Service' (June 2004), 12: 'The *WR Act* makes entry conditional on union representatives holding a permit issued by the Industrial Registrar and providing at least 24 hours notice to the employer (verbal notice is sufficient under the *WR Act*). It is important that agencies ensure that union representatives observe the provisions of the *WR Act*. Given the provisions of the *WR Act*, there is no need for agencies to include right of entry provisions in their agreements, nor would it be appropriate for enhanced right of entry arrangements to be established through agreements.'

³³ David Kemp, 'Agreement Making and Reforms in the APS', address to 'Agreement making and achieving corporate goals', Canberra, 26 Mar. 1998, Section on 'Achievements under the Workplace Relations Act.'

³⁴ Anderson et al., 'From Industrial Relations to Workplace Relations', 342–3.

³⁵ *Ibid.* 349.

³⁶ See the *2001–02 State of the Service Report*, Ch. 4, at <http://www.apsc.gov.au/stateoftheservice/2002/chapter04.htm>, viewed 4 Sept. 2006; and *2004–05 State of the Service Report*, 97.

³⁷ Stephen Smith, Shadow Minister for Industry, Infrastructure and Industrial Relations, media release: 'Andrews Caught Red-handed Forcing Staff onto Contracts', 21 June 2005.

³⁸ Kevin Andrews, media release, 9 Oct. 2005: 'The Australian Government recognises that abuse of right of entry has the potential to cause disruption and damage at the workplace and therefore changes will be made that: tighten the requirements for the granting of an entry permit, including the introduction

of a “fit and proper persons” test; make it clear there is no right of entry for discussion purposes where all the employees are on AWAs; only allow entry to investigate a breach of an AWA if the employee party to the AWA provides written consent; require a union official to provide particulars of a breach he or she is proposing to enter to investigate to the employer; confirm a union official can only access the records of union members when investigating a breach, unless an order is made by the AIRC that non-member records can be investigated; require a union official to comply with a reasonable request by an employer that the meeting or interview should be conducted in a particular room or areas of the premises and that a specified route should be taken to that venue; and allow right of entry for Occupational Health and Safety (OHS) purposes under state legislation where the union official has a federal right of entry permit and the official has complied with all requirements of the relevant state OHS legislation.’ Available at <http://www.apsc.gov.au/publications98/apsreformminister.htm>.

³⁹ Department of Employment and Workplace Relations, ‘APS—Supporting Guidance for the Workplace Relations Policy Parameters for Agreement Making in the Australian Public Service’ (Apr. 2006), 13, at <http://www.workplace.gov.au/NR/rdonlyres/68451B6C-5FBD-4F53-B705-0A8B3C623031/0/SupportingGuidanceGovernmentsPolicyParametersApril2006.pdf>, viewed 24 June 2006.

⁴⁰ Public Service Commissioner, *2005–06 State of the Service Report*, 56.

⁴¹ *Ibid.*

⁴² Peter Shergold, ‘The Australian Public Service in 2035: Back to the Future’, speech to CPA Annual Conference, Melbourne, 18 May 2005, at http://www.pmc.gov.au/speeches/shergold/aps_2035_back_to_the_future_2005-05-18.cfm, viewed 23 June 2006.

⁴³ Reith, *Towards a Best Practice Australian Public Service*, 22.

⁴⁴ Glyn Davis and R. A. W. Rhodes, ‘From Hierarchy to Contracts and Back Again: Reforming the Australian Public Service’, in Michael Keating, John Wanna and Patrick Weller (eds), *Institutions on the Edge? Capacity for Governance* (Allen and Unwin: Sydney, 2000), 76ff.

⁴⁵ Department of Employment and Workplace Relations, ‘APS—Supporting Guidance for the Workplace Relations Policy Parameters for Agreement Making in the Australian Public Service’ (June 2004), 4.

⁴⁶ Carol Gill, ‘Use of Hard and Soft Models of HRM to Illustrate the Gap between Rhetoric and Reality in Workforce Management’, RMIT School of Management Working Paper no. 99/13 (Nov. 1999), 41–2.

⁴⁷ Public Service Commissioner, *2004–05 State of the Service Report*, 5, 178. Note that employee satisfaction in their overall say returned to 2003 levels in 2006 while responses relating to performance pay were somewhat more positive than those in 2005. See Australian Public Service Commission, *2005–06 State of the Service Employee Survey Results*, 21, question 27, and 50, question 70.

⁴⁸ Reith, *Towards a Best Practice Australian Public Service*, 5, cited above.

⁴⁹ For an extended discussion, see M. O’Donnell and J. Shields, ‘Performance Management and the Psychological Contract in the Australian Federal Public Sector’, *Journal of Industrial Relations* 44(3) (2002), 435–57.

⁵⁰ Denise Marie-Therese Rousseau, ‘The “Problem” of the Psychological Contract Considered’, *Journal of Organisational Behavior* 19 (1998), 665–6.

⁵¹ O’Donnell and Shields, ‘Performance Management and the Psychological Contract’, 439.

⁵² *Ibid.* 440.

⁵³ Allan Hawke, then Secretary of Defence, quoted *ibid.* 445.

⁵⁴ *Ibid.*

⁵⁵ According to the Department of Employment, Workplace Relations and Small Business, *APS non-SES Remuneration Survey* of October 2001 and the 14 June 2002 *APS SES Remuneration Survey*, 55% of agencies surveyed indicated their non-SES employees were eligible to participate in performance payment plans and 85% of agencies provided pay incentives to their senior executives. See <http://www.workplace.gov.au/workplace/Organisation/Government/Federal/Reports/OtherAPSRemunerationSurveys.htm>, viewed 15 July 2007.

⁵⁶ O’Donnell and Shields, ‘Performance Management and the Psychological Contract’, 446–9.

⁵⁷ Legge, *Human Resource Management*, 200.

⁵⁸ Agreement varied between 63% in 2003 and 73% in 2006. See Australian Public Service Commission, *2005–06 State of the Service Employee Survey Results*, 4.

⁵⁹ Anderson et al., ‘From Industrial Relations to Workplace Relations’, 345.

⁶⁰ Lynelle Briggs, ‘The Australian Public Service: Looking to the Future’, Department of Finance and Administration seminar series: Challenging Tomorrow, 24 Mar. 2006, p. 8. Cf Shergold, ‘The Australian

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Public Service in 2035'; and Management Advisory Committee, *Connecting Government: Whole of Government Responses to Australia's Priority Challenges* (Canberra, 2004), Chs 3 and 6.

⁶¹ See Australian Public Service Commission, *2005–06 State of the Service Employee Survey Results*, 19, question 23.

⁶² John Howard, 'Strategic Leadership for Australia: Policy Directions in a Complex World', Nov. 2002, at www.dpmc.gov.au/speeches/pm/leadership/contents.cfm, viewed 4 Sept. 2006

⁶³ See Australian Public Service Commission, *2005–06 State of the Service Employee Survey Results*, 20, question 23.

⁶⁴ See Management Advisory Committee, *Connecting Government*, Ch 6, especially pp. 93ff.