

Review of the Australian Public Service

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Dear Review Team,

Thank you for the excellent approach you are taking to the consultation process for your review. My response is largely limited to the area of governance.

I agree with and support your proposals to make the APS more flexible, introduce a head of service and increase the ability to harness the power of technology to draw on government's data holdings. However, it is my submission that without very substantial change in the nature of the constitutional and legal relationship between the elected government and the APS many of these goals will remain unattainable in any sustainable way.

At the heart of my concern is that the constitution, the structure of statute, and convention will continue to cruel attempts at achieving a more unified APS and better whole-of-government outcomes. For as long as departments continue to be accountable to Ministers who continue to be individually accountable to Parliament for the decisions they make under legislation assigned to them and for the performance of their departments, it is hard to see how real whole-of-government flexibility can be achieved. While Cabinet will continue to coordinate and guide ministers, without giving it (Cabinet) legal standing and justiciable authority, the siloed nature of government will remain intact. Individual Ministers and Secretaries will still make most of the legally enforceable decisions of government. They will have to do so within the constraints of the law, and that may well constrain the effectiveness of cross-agency work where expenditure and decisions under statute are required, particularly if those decisions need to be made by Ministers.

The second structural problem—alluded to in Tiernan et al's paper—is that there is a need for clarity in the who the APS really serves. Section 3(a) of the *Public Service Act 1999* says one object is, “to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public”. Under current arrangements, any service to Parliament and the public is substantially at the direction of the government. In other words, the APS is the loyal

servant of the elected government of the day and, in broad terms, is expected to do what it's told.

The review proposes the APS has:

- a head of service with defined responsibilities that extend beyond coordination;
- a Secretaries Board with decision-making power to drive government outcomes, the duty to provide a vision and purpose to bind the APS and the duty to produce a national outlook; and
- obligations to report to the Parliament on goals and outcomes more clearly articulated and measurable than is currently the case.

At the very least these will give the APS an ability (and even a duty) to expose Ministers to criticism for failure and poor performance in their portfolios. A national outlook, combined with highly transparent reporting, is likely to expose elected government's policy commitments as inconsistent and probably impossible to achieve.

To the extent that these reforms improve transparency and lead to a considerable improvement in the integrity and performance of government drawing better on the very considerable capability of the APS, they are highly desirable. However, at the very least, they will fundamentally shift the relationship between Ministers and the APS. They require an APS substantially independent from elected officials and considerably more resistant to operational interference. They are unlikely to be able to be made to work in the confines of current accountability structures.

Combined with other reforms proposed to make the structure and spending of the public service more fluid and flexible, this independence will have to include an ability for the APS to reshape itself quickly and easily, reallocate responsibility for expenditure amongst agencies. This will probably require significant change in how the budget is drawn and accounted for and will shift significant levels of accountability from Ministers to the APS. A significantly more independent APS will have to report directly to Parliament for the new arrangements to maintain proper integrity.

These proposals for reform are cast against a backdrop of an increasing push by Ministers and their largely unaccountable staff to control more and more of the detail of APS agencies' operations in order to ensure as little damage as possible can be done to the governing party. Given they strike at the heart of that push, sadly, it does not seem likely they will be acceptable to any government.

Perhaps I am missing something critically important, but nothing I've read in your paper encourages me to believe that the proposed reforms can achieve the hoped-for results without a major change in the constitutional and legislative structure of the Australian Government.

I have five specific suggestions to add.

1. Restoration of the notion of the indivisibility of the Crown. There once used to be a view that something known to one organ of the crown, could and should be known to such other organs of the crown without having to be collected separately. To enable the APS to draw on the wealth of knowledge and information it holds this notion should be revived and the artificial and limiting constraints on the sharing of information between agencies should be removed. Of course, of necessity, there will have to be limitations, but they should be based in the question 'why should we not share' rather than 'why should we'. The obsession with privacy in recent decades has a lot to answer for.
2. The notion of a 'head of service' is an excellent one. The notion of a 'head of people' is not such a good one. To the extent that it harks back to the past where an statutorily independent commission or board was the employer of all public servants and a powerful entity in its own right, it serves merely to reintroduce another potential level of bureaucratic power struggle from which we've moved on.

It would be far better for the APSC to be abolished and the Secretary of PM&C to be appointed head of service. In making decisions about the employment and conditions of service of APS employees under the Act, the head of service should have to be guided by an advisory board of secretaries of all departments of state.

Clearly that would require the Secretary of PM&C to enjoy considerable statutory independence.

3. All heads of agency should be appointed largely in the way you recommend—by the Governor on the recommendation of the Prime Minister. There should be a statutory requirement for the PM to consult the Parliament on all appointments. Further, the circumstances on which an agency head can be removed from office should be set out in the Act. Any recommendation to the Governor must be supported by a motion of both Houses of the Parliament. Secretaries should be appointed for a fixed term of no less than five years and should be able to re-appointed. The reappointment process should be simple, maybe simply requiring a brief Parliamentary consultation.

Agency heads who find themselves without a role as a result of machinery of government changes should have a right to request and receive a redundancy from the APS.

4. The scope of authority vested in a Secretaries Board should be very carefully considered, unless the current structural arrangements are reviewed. A board with the legal power to direct members who, to comply, have to make a decision under a statute has an inherent structural problem. A member may find themselves either having to act in a way they believe is contrary to the law or good governance, or be placed in conflict with their Minister, or having to refuse to comply with what may be argued to be a lawful direction. I appreciate that people appointed to the office of Secretary of an APS agency are likely to be able to manage this sort of conflict, but it would be better not to create a structure containing this inherent tension.

As Dr de Brouwer notes in [his interview](#) on the review's website, the accountability structures of government are more complex than those of the private sector.

5. Fifthly, mechanisms that limit the ability easily to make machinery of government changes should be considered. It is hard to overstate the disruption caused by these changes and the temporary paralysis they introduce just at a time when a clear focus and renewed energy is called for. Some of the technological and operational changes recommended by the

review will ameliorate some of the costs, but they will not limit or prevent the costs to productivity. It is also worth noting that organisations subject to constant change are never likely to achieve the sorts of cultural change and subsequent stability demanded of them; they are certainly never likely to achieve the levels of risk-taking and focus of a mature organisation.

Finally, I apologise for this seemingly relentlessly negative response to your hard work. I hope I'm wrong and you've already figured the way around the problems I've highlighted. The broad vision you've identified for the APS in 2030 is excellent. It would be a pity if much of it cannot be achieved.

I am happy for you to publish my submission.

Yours sincerely

George O'Farrell