# Submission to the Independent Review of Queensland Public Employment

# ‘A fair and responsive public service for all’

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## Introduction

This is a personal submission to the Review, largely based on my extensive experience working in and dealing with the Queensland Public Service (QPS). My intent is to offer suggestions to enhance the performance of the QPS and its potential contribution to the overall governance of the State and a more productive political environment.

The suggested enhancements will require changes to the legislation, The ‘Public Service Act’ (PSA), which sets out the establishment of and arrangements for the QPS.

My experience involves over 40 years of employment with the QPS, with some short secondments to the Commonwealth Public Service. I have worked in both central agencies and line departments.

Some 25 years of my employment was at an SES or equivalent level, including almost 9 years as a CEO. As a public servant I have served Governments of both persuasions.

In more recent years, I have served as Chair and member of various Commonwealth and State statutory bodies. As a result my overall dealings with Governments and various public services extends over some 50 years.

## Current Political Environment.

My purpose in making some observations on the sad state of our polity, is that the conduct and status of political processes influences the public service and importantly a better public service may make a contribution to a better political environment.

There has been extensive commentary about the current state of politics in Australia (1), and its ability to address the problems facing everyday citizens. Many citizens feel disenfranchised, with about a third not registering to vote, not voting, voting informally or voting for candidates other than from the major parties. Even for the major parties, support is often lukewarm. A recent study found that only some 42% of Australians were satisfied with their democracy. The same study shows survey data, that in 2016 less than 40% of participants had only ever voted for one party, this is down from over 70% 50 years earlier (2).

While the situation in Australia is better than in many developed democratic countries, the trends indicate likely further disillusionment, and disengagement.

The reasons for the current situation have been speculated on widely (see references above). Social media plays a role as does parts of the media commentariat and the 24 hour news cycle. There are also cultural and economic divides so that groups in our society live widely different lives and have very different beliefs and values. Our already inadequate meritocracy has broken down and many don’t feel included. Elites are widely blamed with a loss of trust not only in our political institutions but other institutions especially business, churches, unions, professional associations and even some community organisations. There seems to be less of a general commitment to the ‘common good’. Few appreciate the fragility of our democracy and its vulnerability from widespread cynicism.

The impact on politics is particularly problematic:

* It has become more partisan. There is much less willingness to work together and debate issues based on facts and mutual respect,
* Politicians appear unable to negotiate, to give and take in order to at least, start to solve problems. Often proponents take self-righteous positions, making solutions more difficult,
* There is very much a short-term focus on ‘political fixes’ versus a long –term vision of a better, more inclusive society. These ‘fixes’ often don’t work and some are reversed. This further impacts, on trust and increases perceptions of lack of competence,
* The short-term is also about political ‘point scoring’, which might work well with the small minority of the converted, but just increases the cynicism of the majority. The community is sick of the common refrain, ‘it was the other side and we inherited the problem’ and ‘we can’t fix it because of the Feds (or conversely, the States)’,
* Continuous campaigning also contributes to short-termism and the resultant simplistic appeal by an opposition in particular, to narrow interest groups,
* The vested and largely narrow interests of big business, industry, unions and specific issue groups and their lobbyists drive policy making and make decisions in the overall public interest difficult,
* There is more of a focus on the political message (often simplistic slogans) rather than the substantive issue under debate. Often there are no shared facts and the various fact checking services are kept busy with claim and counter claim that are a minor inconvenience to a political argument. A list of some of the more important recent claims are referenced in (3). Hopefully we are not heading towards a Trumpian style of debate where not only the positions of opponents are dismissed, but facts highlighted by an independent media become ‘fake news’.

## Current Public Service Environment.

The focus on the short-term, the political fixes and the partisan nature of politics have impacted the public service. It has given primacy to politics over policy. Ministers and their advisers too often focus on ‘the fix’ rather than longer-term policy in the overall public interest. Public servants are there to implement policy rather than contribute to it. They can be dominated by ministerial offices and as a result the inevitable priority of politics over policy.

Managerialism is embraced, at least in form, but only to the extent of safe short-term objectives. This pushes public service management into short-term thinking, in order to ensure that the short-term objectives are met. Furthermore performance indicators to measure the quality of policy advice are not easy to specify, further down grading the priority given to policy.

Short-term contracts for senior public servants combined with the partisan nature of politics, has resulted in a ‘revolving door’ of senior public servants and the loss of policy and operational expertise and corporate knowledge. Consequently my observations of the public service and the QPS in particular are:

* It has become risk averse, particularly in challenging Ministers and their advisers on policy positions. There is a tendency for ‘second guessing’,
* This is further reflected in the use of consultants even for core business such as policy development and prioritisation. The incentive for further work means that some consultants will shape advice to what people want to hear,
* Often ‘frank and fearless’ advice is not appreciated at the political level,
* There has been a significant loss of expertise, policy capacity and problem solving skills. The public service has diminished as the custodian of expertise and dispassionate analysis,
* Ministers can be overly involved in operational matters and may occasionally influence selection and retention. Meeting of senior officers are less focused on policy and strategy and more on issues management. A further result is the centralisation of decision making within Departments,
* Not in the sense that public servants may be involved in party political matters, but all the above leads to the public service serving or being perceived to serve a Government of a particular persuasion, rather than the Government of the day,
* Because some public servants come and go with a particular Government, this contributes to the declining status of the whole public service and any sense of independence.

These developments have emerged over the last 30-40 years but were particularly accelerated during the Newman Government. The same issues are prevalent at the Commonwealth level and in other States.

It is the current condition of the public service that will make, fixing the sad state of our polity much more difficult. Rebuilding the QPS is likely to help our political system focus more on long-term policies that are efficient and effective and in the public interest. It may provide a means to rebuild trust, respect and belief in our political system.

## Role of the Public Service

The legislation needs to be based on a clear definition of the role of the QPS. In my view there are four major roles

### Policy Advice

Ministers and Cabinet determine Government policy. My experience with Ministers is that they are invariably committed to good outcomes, but they get caught up in the politics of the day, and in some cases, if they have had a mainly party political background, the politics of the party. They are not trained or selected for their policy skills and come from a narrow background (although if left long enough in a portfolio many become quite skilled). At the same time policy skills are now even more important because of an increasingly complex world.

They will receive policy advice of variable quality from a range of sources, including from various vested interests. Perceptions about the quality of advice from vested interests are further compromise by political donations from those interests. However an apolitical public service is potentially uniquely placed through experience, expertise and dispassion to provide policy advice that is in the long-term public interest. The advice of all others needs to be measured against the advice of the public service. After all, public servants have ongoing responsibility and have to live with the consequences. Good public service policy advice will separate ends and means and be based on facts, evidence, praxis and experience.

The traditional and still relevant way of ensuring that external policy advice is appropriately tested is to have rigorous and ‘best-practice’ Government policy processes that inter-alia, looks at the full gamut of options and the research available, long-term and short-term costs, impacts on economic, social and environmental outcomes, implementation issues as well as evaluation etc. There have been significant contributions to what the optimal process might be since the early significant work of Althaus, Bridgman and Davis (4).

### Service Delivery

Particularly at a State level, Governments have extensive service delivery functions including, health, education, public safety, various regulatory services etc. They are the key to the delivery of the Government’s objectives. Given the extent of delivery and its cost, citizens rightly expect that service delivery will effective, efficient and innovative. Inefficiencies make prudent budget management more difficult and leave fewer resources for emerging community needs.

### Manage service delivery not directly provided by Government

While there may be increasing scepticism about ‘privatisations’, there has been no suggestion that, activities such as the construction of large Government buildings and infrastructure, narrow specialist services, as well as large aspects of social services, will be other than contracted out.

This is a complex area where outputs and outcomes need to be carefully specified, to avoid perverse incentives. Government needs the expertise in the public service to advice on what might and what might not be contracted out, how contracts are specified and how they are managed.

### Enhance overall Government accountability

Separating the making of laws and the administration of law is fundamental in a free and equal society. It is most clearly seen in the criminal jurisdiction where the law needs to be administered without ‘fear or favour’, equally and fairly.

The same principles apply in the regulation of aspects of business and community life, where decisions on sanctions are particularly sensitive. But also generally in administration e.g. who gets employed, who gets on a waiting list, who is eligible for a licence, who gets a contract etc.

That is not to say that the Governments don’t have an oversight role to ensure laws are administrated as the legislation intended and in an open and fair manner. Governments, rightly sets up processes so that the decisions of the administration can be tested.

## Features of an Effective Public Service

These roles if undertaken effectively require a public service with particular features.

The basic foundation is that the public service is apolitical. It serves the Government of the day, not a political party. It must not, at senior levels, be involved in party politics. The public service needs to be an institution with an expert, independent view of the long-term public interest of the State. In making administrative decisions the principle must be ‘all are equal before the law’.

Clearly in a Westminster system, the Government and Ministers determine policy. But it is in the public interest if policy is tested against the independent view of the policy experts.

I have used the word independent above, I do not use it in the sense that the public service is not a creature of and hence subservient to Government. My argument is an independent view of policy options is critical in the Government making good policy decisions. Further independence in administrative decisions is important to overall Government accountability. Good Governments will vest the public service with a degree of independence. It needs to be a separate institution but subordinate to Government.

The ability to provide frank and fearless advice flows from the discussion above. One of the building blocks for this is job security. It may not be possible to roll back current arrangements and reinstate ‘permanent heads’ but current arrangements are inadequate and do not foster a public service capable of undertaking its functions in an optimal manner.

The public service must be professional, on top of the data, the evidence, the science and practice and like professionals have a commitment to the profession. The big issues, for example climate change and energy, tax reform, resource development, resource management, inequality to name but a few, need the best expert input.

Associated with having the best professionals is merit selection. Merit, of course needs to be defined in a way so that true talent from all groups in society is recognised.

My final feature is values driven and ethical in all aspects of that term, use of public monies, treating staff fairly, being open and honest etc.

The features I have identifies,

* Apolitical
* Independent in the context of Westminster
* Frank and fearless
* Professional and expert
* Merit based selection
* Job security
* Ethical,

need to be included in the PSA, in both the objects of the Act and operationalized in relevant sections. They will contribute to better Government policy and a more effective and fair administration and provide a base to enhance the status of our polity.

## Specific Issues

I do not intend to comment on all the questions in the discussion paper, rather a few areas where the discussion above has most relevance.

## CEOs

The current Act sets out the purpose, responsibilities and contractual arrangements for CEOs. I have argued above about the critical policy role of the public service. The CEO needs to be the key policy adviser and has responsibility for developing the policy capacity of the Department and protecting its corporate memory. With other CEOs they need to be part of maintaining rigorous and optimal policy processes. The CEO policy role needs to be reflected in the legislation.

The Act specifies that CEO contracts are to be no longer than 5 years and the contract is to be with the Minister (currently and traditionally the Premier). There is no specific reference to the process of selecting the CEO.

To reinforce the features of the public service outlined above there is merit in looking at the NZ Act. The NZ Act requires CEO contracts be with the PSC. The NZ Act also sets out the process for the selection of CEOs. Ministerial input is both constrained and specified.

Both these features might also foster more CEO rotation, which will further strengthen a ‘whole of Government approach’.

While currently CEO contracts can be up to 5 years, my experience was that most were 3 year plus 2 year contracts. In addition termination payouts when contracts were not renewed were modest.

All these current features work against an appropriate level of independence and the provision of ‘frank and fearless’ advice. While I don’t suggest going back to the notion of a ‘Permanent Head’, I would strongly suggest that contracts be at least 5 years, with the norm 7 years, with reasonable compensation for non-renewal. A further benefit of this, is likely less pressure on CEO salaries.

## The SES

The Discussion Paper raises a range of issues concerning the SES, including contracts, establishment control and mobility and development.

I am strongly in the camp that believes that the current contracts discourage ‘frank and fearless’ advice. I have previously mentioned the issue of risk aversion and the anxiety of at least some SES at contract renewal time. Many will have seen some of their colleagues dealt with unfairly (at least as perceived). I also believe that some good non-SES officers are consequently discouraged from seeking an SES position.

Other than Deputy CEOs (whose contracts could be similar to CEOs), I would strongly suggest that SES2 to SES4 officers are moved back to permanent arrangements.

As a previous DG of mine, the late Bob Marshman argued, the public service is like an apprenticeship. It takes years of experience to master the complexity of policy areas in order to provide optimal advice. That experience means, they have been through various crisis, have worked for different Governments, served a range of Ministers, have seen what has worked and what hasn’t, understand how complex things fit together, know the stakeholders and their real positions and are able to think ahead.

Some might argue that permanency makes it harder to deal with non-performers and works against renewal. The renewal argument needs to be balanced with the importance of experience in a world of increasingly complex problems. In any case it doesn’t stand up as there is a cohort of some 900-1000 SES and equivalent with reasonable turnover. In addition, appropriate mobility arrangements could be more strongly promoted.

I agree the management of non-performance might be an issue. There are unlikely to be many, but there does need to be a robust process to manage non-performers, this can include innovative alternative career options.

I understand the desire of Government to control the number of higher paid positions. The current arrangements, which controls the number of SES positions but has different rules for similar S122 positions appears rather pointless. A better system is to set an establishment for all on going highly paid positions. S122 positions in this category need to be converted to SES positions. As in NZ the PSC could nominate the majority of these positions as available generally for career development and the rotation of officers. A small number of positions might be unique specialist/technical positions, e.g. a position requiring specific medical skills.

Separate to this the PSC might approve genuine term limited positions, which in general won’t be renewed. This will also ensure that S122 positions are only used for the purpose they were designed for.

Such a permanent group of highly skilled SES officers will be of great benefit to the State. But they need to be more highly trained and developed through formal, informal programs and rotation arrangements. Some will want to focus on policy in particular areas while others will want to focus on operations. In both cases exposure to whole of Government issues and the ability to link issues across Government will be critical. Just as critical will be a range of personal skills but particularly evidence based policy, the content and context of complex policy and where appropriate the ability to interpret the science (inc. social science) and the strengths and limitations of the scientific method. Those working in operational areas of high demand, need to be innovative and use the full range of management strategies to provide services in an optimal way within constrained resources.

I identified earlier that an absolutely critical feature of the public service is that it be apolitical. One option is to include in a code of conduct for SES, Deputy CEOs and CEOs a prohibition on membership of any political party.

## The Public Service Generally (non SES)

I will make only a few specific observations other than endorse the general theme of the Discussion Paper that the QPS is an important institution, which affects the lives of all Queenslanders. It does need to be responsive and inclusive in terms of both the Government and the community.

What will drive this is internal fairness and inclusiveness. Public servants can do great things if they are motivated and well lead. They are not hard to motivate as most public service jobs deliver worthwhile outcomes that make a difference for the community. There are two aspects of current arrangements, which do affect morale and performance.

Firstly disciplinary and integrity matters have, at times been dealt with atrociously. Some investigations and the resultant decisions have taken years to resolve. This not only affects the public servants directly involved, but also casts a negative mood over their colleagues so that whole units can be affected. We must do better so that these matters are resolved quickly and effectively.

The second point is about aspects of leadership, which in my view has been affected by the revolving door of CEOs and the SES and their own job insecurity. One of the tasks of leaders is to create an environment where public servants can work conscientiously, try things to improve outcomes and yes!, occasionally make a mistake or misjudgement. Such officers need to be protected from a ‘blame culture’ and ‘buck passing’, that only generates risk aversion and dissatisfaction.

My other comment is on public service industrial relations. The current wages (and conditions) system works on rounds of enterprise bargaining. This sucks up resources and energy and creates much antagonism. Industrial action, while not a regular feature of public service life can have significant impacts on affected citizens and in some cases, may impact public safety and health as well as the economy.

Many democratic countries deal, with at least some aspects of this by compulsory arbitration. Independent tribunals determine, wages, conditions and other industrial disputes.

Such a scheme was recommended by former Prime Minister, Bob Hawke in a report to the Queensland Government in the early 2000s. I suggest that this needs to be reconsidered for key sensitive, service delivery areas.

## Machinery of Government Issues.

After each election a feature of Governments in Australia is to restructure and/or rename components of the Public Service.

It is clearly the right of Governments to determine their priorities, but it is often assumed that this has to be done structurally. Often, aspects of the restructure is at the whim of particular Ministers, who want responsibility for a component of Government service even if it is unrelated to their other responsibilities.

The resultant disruption can impact the performance of public administration for months and if internal restructures are also involved even longer. In addition it can affect the lives and careers of individual public servants.

To minimise the impacts, super Departments have been implemented in Victoria. They were also tried here after the 2009 election. My view is that at least the Queensland experiment was a failure. As DG of then DEEDI, I reported to 4 Ministers. Two of these Ministers also had other Departments in their portfolios.

We must be able to do better and it would be worth exploring some principles that could guide those at the political and senior bureaucratic level who have responsibility for the MOG arrangements. They might be set out in the PSA so that they are applied in the same way when there is a change of Government.

By no means complete my suggestions include:

* Find potentially long lasting generic names for groups of Government functions. We already have some like Treasury, Premiers, Transport etc. Both the US and UK have been able to retain more generic Departmental names,
* Generally have one Department and one Minister,
* Avoid conflicted objectives and the dangers of regulatory capture. As DG of DEEDI, my prime responsibility was industry development, yet I also had significant aspects of industry regulation,
* Re-examine the shared services model so that we get the balance right between efficient processing and responsiveness to individual Departmental needs. IT is a particular area of concern, as the public service has not fully realised the full range of benefits,
* Portfolios need to be reasonably balanced in terms of work-loads.
* While related functions need to be together, there are a number of almost stand-alone activities which are not big enough to be Departments, and have tended to be shuffled between portfolios. Some examples are Office of Industrial Relations, Office of Fair Trading, Local Government and Sport. There seems to be a desire to integrate such units, when only 3 years down the track they are again moved to a different portfolio. The current provision for ‘Office of the Public Service’ in the PSA would seem to be part of a solution and could be used more,
* Use other integrative mechanisms, rather than restructuring to get the benefits of better integration, such as joint task forces, rotation of senior staff, performance criteria for the SES etc.

## Conclusions

I appreciate the opportunity to make this submission. My contention is that our political system is in a rather sad state. The reform of the public service, picking up more traditional features as outlined in the submission, can provide greater emphasis on policy that is in the long-term public interest. This can only be beneficial in rebuilding the status of and respect for our political processes and institutions.

## References

(1) Most references discuss politics at the Federal level, but I contend the situation is similar at the State level. Some references are;

Tingle L “Political Amnesia – How we Forgot how to Govern”, Quarterly Essay 60 2015 1.

Keanne B “The Mess We’re In”, Allen and Unwin 2018.

Kelly P “We’re Running on Borrowed Time”, The Australian, 22/12/18.

Douglas B and Wodak B (eds.) “ Who Speaks for and Protects the Public Interest in Australia”,(esp. Ch1), Australia 21, 2015.

(2) Evans M, Halupka M and Stoker G; “How Australians Imagine their Democracy”, Museum of Australian Democracy and Institute for Governance and Policy Analysis, 2018.

(3) Beamann L, “Fact or Furphy: How many can you Spot” The Conversation 20/12/2018.

(4) Althaus C Bridgman P and Davis G, “The Australian Policy Handbook”, Allen and Unwin, 2017