

## **Response to Andrew Podger's Allan Barton Memorial Lecture**

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I must congratulate Andrew on a masterful review of such a wide range of issues broadly related to government and accountability. His lecture does more than ample justice to the memory of Allan Barton who was himself a scholar of broad interests, devoted to breaking down the barriers between accounting and other disciplines. In responding to such a comprehensive survey, I cannot hope to cover all the topics that Andrew discusses. Instead, I will concentrate selectively on matters relating to two major, and interrelated issues - strengthening the integrity system and reform of the Australian public service (the APS).

On integrity, Andrew has some wise words of caution on the proposed anti-corruption commission, noting that it may be necessary but not sufficient. The decade-long campaign for a federal ICAC, as it has been widely known, was spearheaded by the Greens with the support of various integrity groups and only recently, and reluctantly, adopted by the major parties. To advance their cause, its advocates tended to attribute any identified instance of unethical conduct or corruption in the federal government to the absence of such a commission. They overlooked inconvenient facts, such as the persistence of government corruption in New South Wales despite that state's having the original, gold standard version of an anti-corruption commission. Similarly, each year, when Australia's annual decline in the Transparency International rankings was announced, they did not mention that most countries ahead of Australia lacked the equivalent of an anti-corruption commission. They also glossed over questions of whether an anti-corruption commission would have the power to prevent all unethical acts that might be considered corrupt. Instead, wherever lack of

integrity was the problem, an anti-corruption commission, or integrity commission as it became known, was said to be the answer.

In the lead-up to the last election, integrity gradually became a major election issue thanks to the Auditor-General's scathing reports on government community grants and thanks to the then prime minister's open contempt for truth and accountability. An anti-corruption or integrity commission, on which the Coalition had dragged its feet, was the obvious policy response, highlighted by the new breed of urban independents and now fully backed by the Labor opposition. Concern about integrity and support for an integrity commission were everywhere paired as a single election issue.

I mention this recent history because it helps us understand the situation we now find ourselves in. As the integrity commission was such a key election issue, the government felt obliged to establish one as soon as possible. But in doing so, it came up against many of the issues that have been suppressed because of the oversimplification of public discussion. Public expectations of what a commission can achieve have been elevated to impossible levels. As a result, any concession to institutional reality by the government was likely to be seen as a betrayal of its electoral commitments. On the whole, the government's proposed model does a good job of establishing a potentially strong and effective commission while lowering unrealistic expectations of what it may achieve. One first step, has been the insistence on the more specific title of 'anti-corruption' commission rather than the more grandiose 'integrity commission'. In so doing, the government has stepped away from the larger objective of Helen Haines and others that the commission should have overall oversight of an integrity system. Although this lack of ambition may be regretted, it may in the long run assist the commission in becoming a more effective agency, taking its place as simply one among a series of integrity agencies, alongside the Auditor-General, the Ombudsman, and the Australian federal police.

On reform of the APS, Andrew mentions a large number of issues. In particular, he stresses the need to strengthen the independence of the public service not only as a repository of knowledge and experience and but also as a bulwark against dishonest and dishonourable government. This critical function of the public service is often summed up in the catchphrase 'frank and fearless advice'. Public servants do not have the right to oppose an elected government's policy direction but they should give considered, objective advice, telling ministers what they ought to know if they wish to achieve their policy objectives. Equally important, public servants have an obligation to push back against ministers and their advisers when asked to act against public service values as set out in the Public Service Act. In this respect public servants are expected to act as an ethical brake on the political class.

This ethical role of public servants has been downplayed in recent decades as a result of the understandable emphasis on managerial efficiency and effectiveness. This neglect, I hasten to add, has not been shared by our admirable auditors-general who have been fearless in pointing out instances of government wrongdoing and impropriety. But ministers are naturally more comfortable in urging greater efficiency and effectiveness than they are in encouraging public servants to keep the government honest. In a public service culture where responsiveness to government is a dominant value, senior public servants take their cues from their political masters. As a result, in spite of regular revelations of official negligence, no public service leader has publicly championed the duty of public servants to remind ministers of obligations to respect due process. This is not to say that no public servants have taken such steps in private. But without public affirmation any value will wither on the vine.

Andrew rightly argues for the reinstatement of the merit principle as a frontline APS value that encapsulates the essence of a Westminster-based bureaucracy grounded in the nineteenth-century Northcote-Trevelyan report. The fact that merit was deliberately downgraded in the most recent revision of the Public Service Act represents a dangerous loss

of historical memory and neglect of constitutional principle on the part of the senior public service. Though there was room to promote managerial values within public service values this shift in emphasis should not have come at the expense of potentially eroding key differences between the public and private sectors.

Merit, that is the appointment of the best qualified person, is a good example of how an organisational value can operate in both sectors but with significantly different connotations. In the private sector, appointment on merit is a matter of managerial discretion and can be readily overridden if, say managers prefer to appoint their friends or relations. In the public sector, however, the ban on nepotism and cronyism is a non-negotiable principle. It is based on fundamental values of fairness and due process quite apart from any considerations of government effectiveness. Public officials whose own positions are themselves based on due process without political interference are much more likely to defend due process in their own dealings both with the public and with ministers and their advisers. In the APS, while merit generally applies to the ranks of deputy secretary and below, the appointment of secretaries has been compromised by the influence of prime ministers and the weakening of tenure.

Using the Thodey report as a starting point, Andrew has offered several other reforms intended to reinforce the ethical independence of the APS. In particular, he supports strengthening the role of the public service commissioner along the lines of the New Zealand state services commissioner. In New Zealand, the state services commissioner plays a central role in administering the public service, formally appointing and employing department heads, after consultation with the prime minister. By contrast, the head of New Zealand's department of prime minister and cabinet is focused on managing the government's program and has no formal role in public service matters. Thodey had recommended a shift towards the New Zealand model with the public service commissioner to take on the role of 'head of

people' with wide responsibilities for developing the public service. However, the key function of advising the prime minister on secretarial appointments was still to be shared with the Secretary of PM&C who was to remain chair of the secretaries board with the public service commissioner as deputy chair. The present structure, which enshrines the secretaries of PM&C as the head of service and the commissioner in a subsidiary role, was left intact. As Andrew rightly points out, this falls well short of the New Zealand structure with the commissioner as professional head of the service. Clearly, Thodey and his colleagues bowed to what they saw as political reality. Given the currently entrenched position of the secretary of PM&C, a slight diminution and sharing of that office's power was the most that could be hoped for. But without a major redistribution of functions between the PM&C secretary and the commissioner, and without the consequent reduction in the power of the PM&C secretary over other secretaries, the benefits of the New Zealand model are unachievable.

A little history may be instructive. New Zealand did not establish a separate prime minister's department until 1990 by which time the state services commissioner, holder of a century-old office, was firmly entrenched as the senior public servant. In addition, in the late 1980s, the New Zealand government's obsession with institutional economics encouraged a contractual view of government in which elected ministers purchased clearly defined policies from bureaucratic agencies. One effect of this theory was to see the public service as institutionally quite separate from ministers, operating as independent contractors rather than as responsive subordinates. The theory was unworkable in practice and was gradually abandoned in the face of entrenched Westminster traditions of responsible government. But one feature that survived intact was the continuing role of the state services commissioner as a guarantor of public service independence.

Australia's experience has been markedly different. The managerial reforms of the 1980s and 1990s were driven by powerful heads of PM&C and later Finance who had little

time for New Zealand's extreme theories or for public service independence. They brought about the abolition of the old public service board and its replacement by a much smaller and weaker public service commission. Since then the commission has clawed back some of its influence, particularly over public service values, most notably in Andrew's time at the helm. But it remains a poor relation in the bureaucratic pantheon. Any serious attempt to give the commissioner powers similar to those of the New Zealand state service's commissioner would require a major breach with recent institutional practice.

That New Zealand should be looked to as a source of innovation is a new and unusual development in Australia, with the normal go-to Westminster exemplars being the UK and Canada. However, recent disquiet about public service politicisation, combined with New Zealand's continuing strong performance in the anti-corruption index, have encouraged taking a second look. Thodey was clearly impressed by the New Zealand public service model which Andrew refers to as best-practice.

This view is now well represented in the leadership of the APS. Both the new secretary of PM&C, Glynn Davis, and the secretary for public service reform, Gordon de Brouwer, were members of the Thodey review panel. New Zealand, we may note, was also the first destination chosen by de Brouwer in his survey of international experience. Davis himself is in a prime position to engineer the necessary reduction in his own office. Whether he takes the opportunity and whether his political masters concur remains to be seen. Labor ministers have talked promisingly of trusting the public service and of encouraging frank and fearless advice. But, when the crunch comes, how much political capital will they be prepared to expend on strengthening the bureaucracy? Much will depend on the attitude of the opposition. Will the Coalition be willing to rethink its suspicion of the public service which began under John Howard and continued under every subsequent Coalition prime minister

with the exception of Malcolm Turnbull? Without the support of a broad political consensus, any major reform is likely to be short-lived or even still-born.

However, even within the existing legal structure, there is room for considerable improvement. As Andrew points out, public service culture is a key component of effective professionalism. Culture, in turn, is heavily influenced by the tone set by leaders. With the support of a sympathetic government, public service leaders now have an opportunity to emerge from their bunkers and publicly endorse the values of a career public service, including not only loyalty to government of the day but also the duty to give honest objective advice and to uphold the principles of due process. In particular, the current public service commissioner could step out of the shadow of the secretary of PM&C and more visibly assert his statutory role to uphold high standards of integrity and conduct in the APS. These standards include reminding ministers and their advisers of their ethical obligations. Such plain speaking would make rank-and-file public servants sit up and take notice far more than the bland platitudes with which the leadership usually seeks to inspire the troops.

One final comment relates to Andrew's heartfelt plea for more openness from public servants, including fully embracing the principles of FOI (freedom of information). Certainly, most public servants are extremely risk-averse in relation to disclosing information, fearing retribution from their superiors if any information is disclosed that might be politically awkward for the government of the day. Few public servants take any notice of a clause in the FOI Act that forbids them from considering whether disclosure would embarrass the government or cause loss of confidence in the government. On the contrary, saving the reputation of the government appears to be their overriding concern. Such timidity is another sign of a public service that is overly responsive to the partisan interests of its political masters.

On the other hand, in the present politicised climate, any attempt to open up more internal documents to FOI disclosure is likely to discourage officials even more from writing down any politically awkward information or advice in the first place. That is, if public servants are to give their ministers frank and fearless advice in writing, they are more likely to do so if they know the advice will remain confidential. There is thus a clear tension between the demands of FOI and the demands of impartial, objective advice. Ideally, of course, we might wish to see respect for both values - openness and frankness. For the present, choices may have to be made. Public servants may need to learn to give forthright advice in private before it is exposed to the full light of public scrutiny.