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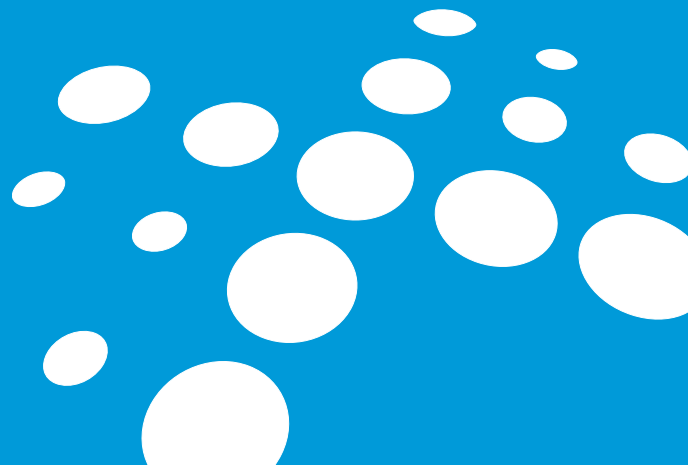
Views from the Inside No. 2

Public service renewal: reform, tradition and challenge

Peter Shergold



Public service renewal: reform, tradtion and challenge

Manion Lecture, Toronto Canada 2007

Peter Shergold

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Series Foreword

I am delighted to be associated with this exciting new publishing venture at ANZSOG.

Views from the Inside will be a series of papers written on challenging issues in public sector management. Their purpose will be not only to disseminate new thinking and offer new insights into problems, but will allow all who read them to gain an insight into the ways that public sector leaders go about the task of doing things better.

Most of the papers will be written by senior public servants with an intimate practical knowledge of the issue at hand. They will be accessible and able to be read for profit by all people interested in the issue and not just by those acquainted with the research literature.

This second paper in the series has grown out of a presentation I gave to the Canada School of Public Service in 2007. I offer it in the hope that readers will find my insights into the similarities and differences between Australian and Canadian models of public administration to be of interest.

Dr Peter Shergold AC

Chair, ANZSOG
Secretary, the Department of Prime Minister and Cabinet, Australia

Preface

As an Australian I am particularly honoured to be asked to present this year's Manion Lecture, not least because it bears homage to John (Jack) Lawrence Manion, a fine public servant deservedly recognised for outstanding achievement. I was surprised and pleased in preparing my remarks to discover that my own public service career has been marked by similar points of reference.

Jack joined the Canadian Immigration Service in 1953: I was recruited into the Australian Public Service in 1987 to establish the Office of Multicultural Affairs. He became a Deputy Minister with responsibility, among other things, for manpower and employment: I served almost four years as Secretary for employment with responsibility for the delivery of labour market programmes. He became Associate Secretary in the Cabinet: I serve as Secretary of the Department of the Prime Minister and Cabinet. He was appointed the first principal of the Canadian Centre for Management Development which is now part of the Canada School of Public Service: I am currently the chair of the Australia and New Zealand School of Government.

I discern, then, a neat framework of coincidences in public service which bridge an ocean and a generation. My ambition is to structure this paper to achieve the same result.

Dr Peter Shergold AC

Managerialism, contestability and scrutiny

The reform of public administration is a tale that spans more than three decades. It is an account of processes still in train and developments which have at various times, from diverse quarters, been vehemently criticised and opposed. But it is, from my perspective, a story of organisational renewal. One can tell the tale from different perspectives and with different emphases. For me the recurrent motifs are managerialism, contestability and scrutiny. They are interwoven in complex ways.

The distinctive elements of long–term managerial change in the public sector are clear. First and foremost the process has been marked by an increased devolution of organisational responsibility and a stronger emphasis on the achievement of results. Managerial prerogative and responsibility have been shifted from central to line agencies. Public sector CEOs now have almost exclusive control of their organisation's human, financial and communications resources. They have been encouraged prudently to manage risk.

Their powers have been delegated downwards. On the basis of strategic 'business plans' individuals within the organisation have been given a clear understanding of their duties. Against these their performance is measured, assessed and rewarded. Consideration of process and inputs has been reduced and, concomitantly, the focus on outputs and outcomes increased. Many of the bold slogans of reform already seem tired — 'managing for results' or 'letting the managers manage' — but the purposes they articulated remain current.

Accompanying these developments, the presentation of public policy advice to ministers, once the virtual monopoly of the public service, has become contestable. Governments can now look to advocacy organisations or public policy think–tanks for alternative views. Professional lobbyists seek every opportunity to present their particular interests. Most controversially, and driven by an understandable desire to balance the public service's institutional scepticism with partisan support, ministers can now turn to their own political advisers for an alternative view to that presented by their departments.

At the same time governments have been attracted to 'benchmarking' public service performance against best practice in the private sector. When the latter is assessed to be more efficient and effective (and even, on occasion, when it ain't necessarily so), the delivery of services has been contracted out. At the same time many of the businesses of government have been privatised. Those that have not are now operated along commercial lines, under conditions of competitive neutrality.

Many of the corporate activities that used to be undertaken by public servants are today purchased from the private sector. Bolder still, government programmes are now routinely tendered to and delivered by the market under contract. Again the managerial jargon designed to represent the demarcation between the purchase and provision of government

services — 'steering not rowing' — sounds dated, but the commitment to outsourcing remains.

As the traditional work of public servants has been subjected to the rigours of competition so accountability for their actions has been intensified. They are exposed to much greater scrutiny than a generation ago. A plethora of administrative review mechanisms have been introduced by which those who are dissatisfied with public service decisions can seek information or redress. The behaviour of public servants is subject to investigation not just by Parliamentary committees but by the Ombudsman and Auditor–General acting on their behalf. Many of the documents that reveal government decision–making can be sought not just by members of the public but by FOI editors of daily newspapers. Public servants now operate within a network of integrity unimagined in an earlier era.

This, then, is the short synopsis of a large story of three related elements of public service reform played out over four decades. You could be forgiven for thinking that it is Canadian in its origins. It might begin in the early 1960s with the Glassco Royal Commission on Government Organisation, which concluded that government was weakened by outmoded concepts of public administration that needed fundamental restructuring. It might continue through the Lambert Commission of 1976–77 which bemoaned inadequate managerial training and ability amongst the most senior public servants or, perhaps, through the D'Avignon Commission's 1979 recommendations that management powers should be delegated and performance judged by results.

The introduction of ministerial staffers by Prime Minister Mulroney, the establishment of the new Management Category in 1980, the Increased Ministerial Authority and Accountability regime of 1986, the 1987 internal review (Public Service 2000) with its focus on client service and La Relève in the second half of the 1990s. Properly referenced, it could footnote the *Access to Information Act, 1983; the Public Service Reform Act, 1992 the Public Service Modernisation Act, 2003; or, for this is a story that continues to unfold, the Federal Accountability Act, 2006.*

Yet, as you have probably discerned already, it is no such thing. I have presented an Australian story. From my antipodean perspective the origin of partisan ministerial advisers lies with Prime Minister Gough Whitlam in 1972; the emphasis on improved, results-oriented public management finds its roots in the 1974 Coombs *Royal Commission on Australian Administration and the 1983 White Paper on Reforming the Australian Public Service; and the increased flexibility, responsibility and public scrutiny given to agency heads are set out in the Public Service Reform Act, 1984; the Financial Management and Accountability Act, 1997; the Charter of Budget Honesty Act, 1998; and the Public Service Act, 1999.*

It is not an unexciting story. Periodically the process of reform has been invigorated by public dramas which are interpreted as indications that the structures of governance are collapsing under the weight of secrecy, incompetence or corruption. There are dark, conspiratorial mutterings of plausible deniability and public service politicisation.

The recent government events which have influenced me are not those which Justice Gomery has investigated in Canada. I have been more concerned with the Palmer and Comrie enquiries into Australia's Department of Immigration conducted in 2005 (which found that, as a result of administrative incompetence, Australian citizens were being wrongly detained and even deported). I have had my eyes firmly on the 2005–06 Royal Commission conducted by Justice Cole into the behaviour of certain Australian companies in relation to the UN Oil–for–Food Programme (which had been a source of Canadian complaint in 2000).

The inquiry found that the Board and management of the Australian Wheat Board (AWB) had failed to create, instil or maintain a culture of ethical dealing. It recommended that consideration should be given to whether proceedings should be commenced for breach of various laws against a number of those who ran AWB. But, to the disappointment of headline writers, the inquiry made no adverse findings on the alleged failure of public service agencies or ministers adequately to oversight the Programme.

Beyond shared scandals, one thing is apparent. The challenges that have faced the Federal public services in Australia and Canada, and the responses to them, are similar. This is only in part because of the extent to which they, and other Commonwealth countries, have been informed by each other's search for workable solutions to emerging problems. More importantly it reflects the fact that the Westminster origins of the two systems of democratic governance have experienced the same pressures from global connectedness, economic restructuring and the information revolution.

Governments have realised that they now need to respond at once to media scrutiny and demand higher levels of timeliness and responsiveness from the public service that supports them. The public has come to expect the equivalent level of service from the government as it receives from an increasingly competitive private service sector. Public service leaders themselves, frustrated by central controls and hierarchical structures, have been keen to wield the same powers, and enjoy the same freedoms, as are available to business executives.

In both Canada and Australia much of the renewed impetus for administrative reform in the 1980s lay in the need to respond to budget deficits with fiscal rectitude, to exert greater rationality over financial decision–making and to bring more discipline to the use of public funds (not least within the public sector itself). Today those economic pressures have diminished. Political pressures have not. In both countries, governments — and their public services — find that the expectations that citizens have of them continue to rise faster than their capacity to respond. The drive for more efficient and effective public service is likely to continue unabated.

Voices of dissent

I do not wish to suggest that my story is one of continuous progress. Indeed there have always been vocal critics of each of these trends in the public service.

First, there are those who believe that in spite of greater scrutiny and administrative review the decision–making of governments is still too closed. The processes that remain hidden from public view are perceived to undermine 'open government'. They feel that freedom of information continues to be encumbered by legislative constraint.

These critics are wrong. They fail to grasp the essential truth that the Westminster system — and in particular the relationship between government and public service — depends upon officials being able to provide frank, unvarnished and robust policy advice to ministers in secret. Often they confuse whistleblowers (who expose corruption or illegality) with leakers (who anonymously steal and circulate details of honest decisions, legally made, by elected government.) The leaker corrodes the trust upon which good governance depends. Ministers who cannot be sure that the advice they hear and the views they express stay secure with their public service interlocutors will be tempted to keep their own counsel or be guided only by their trusted partisans. That way leads to ill–informed and ill–considered public policy. Confidentiality is an essential part of the Westminster system.

My concerns are quite different to the critics. My worry (and I know it is shared by the Clerk of the Privy Council) is that public servants, feeling the unrelenting pressure of scrutiny, may opt for safety and lose the will to manage risk. In part this reflects the fact that greater transparency is too often transformed by political contest and media criticism into a public culture focused on wrongdoing. Ironically, openness may have contributed to the diminution of public trust in the institutions of governance.

Second, there are the strenuous critics of the contracting out of government services to the private and not–for–profit sectors. They argue that 'contractualism' threatens the integrity of public funding.

They too are wrong. Outsourcing of corporate services allows public service agencies to concentrate on their core activities of providing policy advice, developing legislation and oversighting the delivery of government services and programmes. It enables them to buy in particular skills, often required only occasionally, from businesses competing on price and quality. Outsourcing of programme implementation empowers government to purchase the most cost–effective and innovative service, delivered under conditions imposed by contract, with payment made only on results.

Third, there are ardent critics of the organisational changes associated with 'new public administration'. The reform process has been attacked from across the political spectrum on a variety of grounds. Some interpret managerialism (generally a term of opprobrium) as a handmaiden of neo–liberalism, implicitly justifying the decline of welfare policies, undermining democratic processes, reducing the quality of public services and naively glorifying the comparative virtue of private enterprise.

I find these claims both curious and spurious. Directly or indirectly, it is the community that bears the cost of inefficient bureaucracy. Whatever the merits of the policy decisions of government they should be executed so as to get the best outcomes from the public monies by which they are funded. 'Best', of course, refers not just to programme cost and quality but to the fairness, equity and integrity with which they are delivered. In that regard the need explicitly to set out and publish outcomes and performance indicators and to account, in both cash and accrual terms, for departmental and programme expenditure, should be recognised as a positive boon to democratic process.

Of course I would say this. I've got form as an economic rationalist. As Public Service Commissioner in the mid–1990s I fought for a new legislative framework that would free managers from the prescriptive shackles that tied too many of their decisions. Later, as Secretary of the Department of Employment, Workplace Relations and Small Business I oversighted the outsourcing of labour market programmes. As Secretary of the Department of Education, Science and Training I moved to increase public engagement in decision–making. I introduced an 'Open for Business' initiative, designed to encourage my staff to form on–going relationships with the advocates who shared our interest in public policy. As Secretary of the Department of the Prime Minister and Cabinet I have spoken out positively on the complementary roles of public servants and political advisers.

Yet I think even many of my critics would not argue with the proposition that the devolution of management authority, and assessment of organisational performance on the basis of results, has increased the productivity of the public sector. It has improved the administrative capacity and capability available to governments. Equally important, but too little appreciated, it has made the workplace a more enjoyable place to be — more mobile, less bound in red tape, more flexible, and less hierarchical. There are far more women in senior positions, far more graduates, far more career support and far greater opportunities to work in teams.

Continuing challenge

Of course there are continuing challenges. In large measure they are born not of failure but of success. At present I am focused on three in particular.

The devolution of powers and responsibility to the 18 Departments of State and 71 key portfolio agencies that comprise the Australian Public Service has spurred managerial innovation and administrative efficiency. The danger, I discern, is that unity of purpose and commonality of value may be lost if public sector organisations, and indeed the business units within them, do not perceive themselves as part of a greater whole. I fear that devolutionary zealots might trigger the re–emergence of the territoriality that marked the turf wars of officialdom in an earlier era.

The whole of the public service is greater than its constituent parts. Good governance depends on public policy being informed by all those agencies who share knowledge of its implications. In my role as notional head of the Australian Public Service I seek to ensure that a whole–of–government approach does not founder on the rocks of bureaucratic demarcation. I actively promote inter–organisational committees and task groups; extol the benefits of a single Senior Executive Service and encourage mobility within it; and try to exert my leadership through inspiring a culture of collegiality. Devolved responsibility needs to be balanced by collaborative impulse.

I am also a firm believer that the effective delivery of government policy is of equal importance to its development. Public servants, to my mind, need to exhibit commitment to the execution of policy such that programmes are delivered on time, on budget and to government expectations. They need to be biased … in favour of action.

It is for that reason that in 2003 I established a Cabinet Implementation Unit in my department. It ensures that new initiatives being submitted to Cabinet have given consideration to their project management. It provides the Prime Minister and his ministerial colleagues with a quarterly report on the delivery of government policies and suggests remedial action on occasions when implementation is floundering.

There is danger, however, that the successful outsourcing of government services may lull public servants into a false belief that their implementation role is limited to the management of contracts. An associated risk is that the act of contracting may be perceived to lessen the responsibility of the public servant. It is important to ensure that no public servants mistakenly believe that they can outsource accountability for the efficiency, effectiveness and ethical standards by which the programme is executed.

Finally, I am ill at ease about one aspect of the enhanced emphasis on service quality. It is entirely beneficial that public administrators should seek to meet, or even exceed, the standards of service delivery provided by the private sector. The danger is that the officials inspired by such a worthy goal come to be beguiled by the rhetoric of business. They start to refer to, and thence to treat, those that they serve as customers.

They are not. A customer has choice of whether to purchase, from whom and under what conditions. That does not apply to most of those to whom we deliver pensions, welfare payments or health support. Those we serve as public servants must always be seen as citizens. We are delivering responsibilities as well as rights, obligations as well as entitlements. For that profound reason it is a far more important and challenging vocation.

A question of values

Perhaps these musings have alerted you to the fact that, while I am an ardent 'modernist' when it comes to the reform processes that have enhanced the organisational performance of public service, I remain an unreconstructed 'traditionalist' when it comes to preserving our distinctive attributes.

Values, to me, are the 'basics' which a public service must maintain and periodically re–articulate and renew. The problem is that the basics are not straight–forward. Rather the values that sustain public service are often qualified, sometimes ambiguous and frequently controversial. Some values of a professional public service are clear enough: appointments and promotions made on merit; services delivered with honesty and equity; decisions made through processes that are reasonable and fair; and records of those decisions created and managed for prosperity. These are the antithesis of the nepotism and administrative corruption that bedevil political democracy in so many countries. They must be vigorously defended.

other fundamental values require careful balancing. The respective virtues of openness and confidentiality I have already discussed. Another instance is the countervailing weight given to responsiveness and non–partisanship. It is entirely appropriate, for example, that public servants should be responsive to the directions set by the government of the day, but retain their apolitical impartiality to the extent that they can serve succeeding governments with equal commitment. The matters for judgement are the extent to which the frankness and fearlessness of policy advice should be tailored to political will and the extent to which commitment to programme delivery can be portrayed as public service endorsement or enthusiasm for the government's agenda.

The notion of 'independence' presents the most profound dilemma. The heart of the matter, exposed when there are crises of governance, is the extent to which the public service has a constitutional personality separate from the government it serves.

Once again the misapplication of private sector language — by which the minister is portrayed as a 'client' and the public servant as a 'facilitator' of policy–making through bringing 'stakeholders' together — has contributed to the confusion. The minister is a minister, no more and no less. The debate should focus on the dimensions and particular attributes of 'more' and 'less'.

There are those who like to imagine the public service as a 'fourth estate', with independent standing from elected government. There are others who, recognising that public servants manage 'under the minister', believe that they have little independence of action and no answerability, responsibility or accountability separate from the ministers they serve. Some extol — or fear — activist, bureaucratic elites. Others imagine public servants as passive implementers of politically dictated public policy.

Curiously the same people — often academics or journalists — can hold antithetical positions according to the matter in dispute. On occasions when public servants are perceived

to lack the courage to provide advice at odds with government policy they are portrayed as weak, careerist toadies unwilling to exhibit their independence. On other occasions, when public servants accept full responsibility for departmental failings, they are depicted as weak, careerist toadies, unwilling to shift responsibility to their minister. The good thing, from the critics' point of view, is that both dependence and independence can be cited as evidence of politicisation.

My world–weary cynicism should not suggest that I think the matter inconsequential. Far from it. The question of the nature of public service independence is of profound significance. The extent to which secretaries have autonomy, and the extent to which they are accountable to Parliament through the minister they serve, underlies much of contemporary Australian debate. The issue is central to the Gomery Commission and the on going Canadian debate about deputy ministers as accounting officers. It is about the administrative space co–habited by senior public servants and ministers and whether constitutional identities can be demarcated.

There are learned treatises, both in Canada and Australia, that have examined the respective role of ministers and their officials in terms of authority (exercising the statutory power over the conduct of a department); responsibility (for the duties or obligations assigned); and accountability (answering for departmental actions). As a practitioner I find this theoretical discussion quite hard going. The simplest way in which I can seek to resolve the dilemma of whether the public service has a separate persona is ask the most basic of questions: Can public servants say no to their minister?

Here, informed as much by experience as by reading, is my view. It is that the considerable powers of ministers are constrained not only by their considerable dependence on public service advice but by the fact that secretaries and deputy ministers possess their own statutory responsibilities and are able to wield delegated power independently of their minister.

Reflection on personal responsibility

The shadow minister, for quite understandable reasons, had hoped to see the documents (which were assumed to reveal the secrets of how the government had prepared for the dispute). On the face of it the applicant had available to him limited merit review powers under the *Administrative Decisions (Judicial Review) Act 1977* (itself part of the stronger framework of scrutiny to which I earlier referred). However it was alleged, first before a single member and then in front of a full bench of the Federal Court, that I had breached my legal obligations in the way I had reached my conclusion, and that my decision was subject to review.

And so, for seven long years, *Shergold vs Tanner* rolled through the judicial processes. By the time that proceedings were discussed by consent in December 2004 the minister who had delegated me his powers had left the department, political life and the country. My minor contribution to Australian legal history left no doubt, however, that it was I and not my minister long–gone, who was accountable for the delegated actions taken on his behalf.

It was ironic then that the *Sydney Morning Herald* persuaded itself that the outcome had been rigged to benefit my minister. The government, it was suggested, had sought to influence my outcome in favour of church and charitable organisations, particularly those delivering services in government–held marginal electorates. The implication was that my delegated responsibility had been perverted to achieve politically advantageous decisions.

Thus I found myself in 1993 hauled as respondent before an eminent Queens Council, conducting an inquiry under the *Racial Discrimination Act, 1975*. The incident was, after some days of intense deliberation, adjudged to be unlawful and the response of management inadequate. The organisation which I headed was to take action against the Aboriginal employee, make an apology and pay $10,000 by way of damages for the pain, humiliation, distress and loss of personal dignity suffered by the white employee. Similar conditions were set on the Aboriginal man who had done the swearing.

No doubt I would have agreed to do as was ordered but for the fact that matters were taken out of my hands by the Aboriginal employee, Harry Brandy. He adamantly refused either to apologise or make amends and instead appealed the decision to the High Court. And so, two years later, a 30–second incident became the spur to a highly significant decision on the limitations in the Commonwealth Constitution on the bodies that may exercise judicial power. It was found in *Brandy v Human Rights and Equal Opportunity Commission* that the Commission was an administrative body not a court of law and that its orders were not legally enforceable. Mr Brandy never said sorry.

Conclusion

Public servants can never say no to a policy decision of the minister which is supported, through Cabinet, by the elected government. That does not mean they should not provide frank and fearless advice to their minister. They may — indeed should — point out in a robust and unvarnished manner the drawbacks to a policy path to which a minister feels attracted. It is important that public servants set out, orally or in writing, the potentially adverse (and often unanticipated) consequences of the proposed course of action; the barriers to successful implementation; even, on occasion, the likelihood of negative public reaction to its announcement. It is entirely appropriate to suggest to a minister that a proposed policy requires further work (generally a more effective approach than roundly criticising a proposal as 'ill–thought–out'). It is equally important to suggest alternative and perhaps better ways to meet the minister's policy objectives (always a better tack than simply indicating that a particular policy 'won't work'). It may be necessary on occasion to characterise a policy as likely to be 'costly', 'risky', 'ineffective' or even 'courageous'.

Yet public servants should never say no to a policy decision. They should not pursue their own vision of the public interest. It is elected representatives, and in particularly those that comprise executive government, who exercise public authority — the powers of the state — on the basis that ultimate sovereignty rests with the people through the democratic electoral process. Policy is a decision that rightly rests with elected government. Public servants that begin to feel that they have an intellectual or ethical superiority over their minister, or believe that they are better able to determine what is in the national interest, have lost their moral compass.

The job of public servants, once their policy advice has been rejected, is to do their utmost to make the best of what they may feel (rightly or wrongly) to be a bad decision. In the Westminster system it is the electorate, at the ballot box, who will determine what they think of the government's policy prowess. It is the public servant's job to influence. It is the minister's job to decide. It is the public servant's job to implement. A government may lose popular support because its policies are unworkable or its goals unrealistic — but no government should be punished at the ballot box because the public service has failed to implement its decisions adequately.

However the public servant does not simply work, through their secretary or deputy minister, under a minister. That is why a public servant must on occasion be willing to say no, even though it may take nerve. It is why, concomitantly, it is unrealistic to believe a minister should be held responsible for all the actions of public servants under them.

Public servants, in many of the decisions they make, wield the coercive powers of the state on behalf of government. That places a responsibility on them to ensure that ministers, individually or collectively, operate within the law and democratic convention. An implicit role of a public servant is to protect citizens by ensuring that executive power is exercised within a framework of rules and protocols. It is rarely necessary only because both ministers and secretaries generally have an innate sense of their respective roles and powers.

Let me provide just a handful of instances in which Australian secretaries have a degree of autonomy. A minister who was to ask a public servant to spend public funds in a manner for which there was neither an appropriation nor government authority; or who sought to determine a particular outcome on a matter which has been delegated to a public servant; or who wished to be given the departmental policy presented to a previous government; or who intended to take major policy decisions, without the agreement of the opposition, during a pre–election caretaker period — that minister should face a firm if polite negative response from a well–informed secretary acting with integrity.

The public servant is obliged by law, parliamentary practice and convention to act, on occasion, independently of the minister. Whether the minister's will is delivered through an adviser, or whether it is oral or in writing, is immaterial: it is the content of the request that should determine the secretary's response.

It is normal etiquette, on an occasion such as this, for the host organisation to present a generous introduction extolling the career highlights of the speaker. Kevin Lynch, on behalf of the Canada School of Public Service, has done so tonight. Yet I suspect that one can often learn more from the low points. Let me share with you a few of mine, for it is at such moments that the separate accountability of the public servant is most keenly felt.

The first relates to my time as the secretary responsible for industrial relations. It relates to a decision by my minister, in the aftermath of a bitter and sometimes violent waterfront dispute, to delegate to me the responsibility for a claim made under the Freedom of Information Act. In December 1997 I decided to issue what is termed a conclusive certificate that, for a variety of reasons set out in legislation, many of the government documents sought were wholly or in part exempt from public scrutiny. Foolishly – for I am an economist not a lawyer — I assumed that conclusivity was conclusive. I was wrong.

Unhappy that it could be thought that my careful deliberations had been 'infected with error' I sought and was granted leave to appeal to the High Court. The full bench decided against me, opening the prospect of judicial invalidation of my certificate by reasons of defect in the decision–making process. I then found myself back in the Federal Court arguing as to which documents might be discovered for the purposes of examining my reasoning.

Let me continue with the nadirs of my public service career. My next instance, too, relates to the exercise of delegated power. As secretary responsible for labour market programmes my minister asked me to conduct the Employment Services Tender for the Job Network. It took many days of my time, often late into the evening, to review the performance of competing public, private and not–for–profit organisations and, on that basis, to allocate government business.

The result, announced in December 1999, was one of the most difficult decisions I have ever had to present to my minister. The outcome was that the public provider, Employment National, which had until then had enjoyed almost half the contract, lost virtually everything. Given the employment consequences for the public service, and the controversy that beckoned, it was not a decision likely to be welcomed by government. The tension was palpable as I conveyed my decision. But, having delegated me to conduct the $3 billion tender, the minister at once accepted the outcome.

Having spent many anxious hours with an external probity adviser peering over my shoulder I was not amused to be portrayed as a political lackey in 14 news reports, opinion columns and an editorial over the first five months of 2000. The newspaper suspected political inter-

ference. I was determined to exhibit administrative independence and took my case to the Australian Press Council which, in its adjudication, partially upheld my complaint. It was not the shining victory of which I had dreamed — but at least its publication bore testimony to the fact that secretaries have authority distinct from the ministers they serve, and are to be held accountable for how they wield it even when it is delegated to them.

Now let me share with you a low watermark in my relationship with parliament. In February 2001 the Senate Committee of Privileges had referred to it by an Opposition Senator a suggestion that the previous May I had improperly interfered with a witness appearing before the Employment Committee. It was suggested that I had lent on the Employment Advocate to change his evidence. I am relieved to say that the Committee found 'no evidence to support any conclusion that a contempt of the Senate [had] occurred'. That does not lessen my painful memory of the investigation. Again it was evidence that I, as secretary, could be held accountable to parliament for actions quite separate from that of my minister. Although I appeared before the Senate Committee as a representative of the minister, I alone was answerable and responsible for the alleged misbehaviour.

Let me conclude this rather disheartening personal history by recounting one of the more bizarre episodes I faced. It was during my time as the CEO of the Aboriginal and Torres Strait Islander Commission.

Before my arrival at the organisation there had been an unpleasant but minor incident in which one staff member had verbally abused another, shouting a vulgarity which had as its adjective a colour and as its noun a part of the female anatomy. The subject of the attack (who was white) alleged that its perpetrator (who was black) had behaved in a racially discriminatory manner. Discontented with the response of management (who had severely counselled the indigenous officer against a repetition of the offence) the aggrieved then sought a hearing before the Human Rights and Equal Opportunity Commission.

These four vignettes show the unexpected demands that can be imposed upon public servants by parliamentary scrutiny, judicial action, administrative review and media criticism. Pressures at the top can be significant. But the underlying message, and the reason I have hung out my dirty washing, is that each of the instances reveals in a different way that the secretary (or deputy minister) does not only have to account, but can be held responsible, quite separately from the ministers they serve. Even within the framework of ministerial responsibility senior public servants on occasion hold responsibility in their own right.

It is why a minister is only in part a chief executive officer. It is also the reason that I see a limited ambit for the concept of 'ministerial responsibility'. If a minister was not told of departmental maladministration, could not reasonably have known of it, or who — once becoming aware — acted to prevent it, then there is no reason for a minister to resign. The minister certainly has to account, through parliament, to the public for what has occurred but to my mind it is the secretary or deputy minister who must bear responsibility.

End Notes

The lecture is based largely on my personal experiences. In understanding the Canadian context I have benefited greatly from discussions over the last few years with my Canada colleagues Maria Barrados, Jocelyn Bourgon and Ruth Dantzer. I am grateful for a presentation given to me in 2005 by Wayne Wouters, Secretary to the Treasury Board on the 'Federal Accountability Act and Action Plan'. It inspired me to peruse *Canada's New Government: Federal Accountability Action Plan: Turning a New Leaf*, April 11 2006.

In terms of reading I learned much from Allan Tupper, 'The Contested Terrain of Canadian Public Administration in Canada's Third Century', *Journal of Canadian Studies*, Winter, 2001; O.P. Dwivedi and John Halligan, 'The Canadian Public Service: Balancing Values and Management', in John Halligan ed., *Civil Service Systems in Anglo-American Countries*, Cheltenham, UK, 2003; Donald J. Savoie, 'The Search for a Responsive Bureaucracy in Canada', in B. Guy Peters and Jon Pierre, *Politicisation of the Civil Service in Comparative Perspective: The Quest for Control*, London, UK, 2004; Peter Aucoin and Mark D. Jarvis, *Modernizing Government Accountability: A Framework for Reform*, Canada School of Public Service, 2005; Peter Aucoin, 'Naming, Blaming and Shaming: Improving Government Accountability in Light of Gomery', Canadian Federation for the Humanities and Social Sciences, Seminar Series, May 11 2006; Donald J. Savoie, 'The Canadian Public Service has a Personality', *Canadian Public Administration*, Vol. 49, No. 3, Fall 2006; Herman Bakvis, 'Drawing the Line: Political Influence & Democratic Governance', speaking notes, seminar at the University of Victoria, March 2 2006; Herman Bakvis and Luc Juillet, *The Horizontal Challenge: Line Departments, Central Agencies and Leadership*, Canada School of Public Service, 2004; Evert Lindquist, *A Critical Moment: Capturing and Conveying the Canadian Public Service, Canada School of Public Service*, 2006; and Peter Aucoin, Jennifer Smith and Geoff Dinsdale, *Responsible Government: Clarifying Essentials, Dispelling Myths and Exploring Change*, Canadian Centre for Management Development, 2004. On the long flight to Ottawa I was able to read the well-considered views of my counterpart Kevin G. Lynch, Clerk of the Privy Council, in his *Fourteenth Annual Report to the Prime Minister on the Public Service of Canada* for the year ending March 31, 2007.

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ary 2000; Michelle Grattan, 'Three-year lifeline for jobs agency', *Sydney Morning Herald*, 10 February 2000; Paul Kelly, 'Jobs agency bungled tender', *The Australian*, 14 February 2000; Laura Tingle, 'A conspiracy of dunces', *Sydney Morning Herald*, 20 May 2000; Australian Press Council Adjudication No. 1082, June 2000 reprinted in the *Sydney Morning Herald*, 29 June 2000, (on my battle with the *Sydney Morning Herald*); Parliament of the Commonwealth of Australia, The Senate Committee of Privileges, 'Possible Misleading Evidence to and Improper Interference with Witnesses before the Employment, Workplace Relations, Small Business and Education Legislation Committee', 96th Report, June 2001, (on my alleged breach of privilege); and Australian Government Solicitor Casenotes, No. 42, 27 May 2002 (on *Shergold v Tanner*).

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