

SUBMISSION TO ADVISORY GROUP ON REFORM OF AUSTRALIAN GOVERNMENT

"Whole-of-Government" and Non-departmental Public Bodies

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As a long-time teacher and researcher in Australian public administration, I support much of the commentary and many of the propositions in the Advisory Group on Reform of Australian Government document *Reform of Australian Government Administration: Building the world's best public service* (hereafter *Best public service*). There is, however, one matter that I regard as relevant and of considerable importance that has, in my view, received inadequate attention in this document, and it is that matter that I focus on in this submission.

In Section 1, I present some general background, including an indication of what has prompted me to make this submission. In Section 2, I identify a number of points of connection between *Best public service* and the area of my concern. And, in Section 3, I spell out the reasons for that concern and point to what I see as an important qualification needed to the "whole-of-government" flavour that heavily influences this report and much other current commentary that shares that approach.

1. The issue of non-departmental public bodies

My submission is based on research I have been carrying out over many years on the use of non-departmental public bodies (NDPBs: mostly statutory bodies and government-owned companies) in Australia and elsewhere. It can probably be best thought of as representing the old machinery-of-government tradition in the study of public administration, and reflects my sadness that that tradition seems no longer to get much attention in preparing people for managerial careers in the public service.

Both in the specific context of your report and in much more general discussion about public sector reform issues today, I believe too little attention is given to important structural issues relating to the use of NDPBs, including of course the question of their relationship with ministers and portfolio departments. These issues mostly get swept under the carpet in the massive current concern for "whole-of-government" or "joined-up government", and it seems to me fair to say that *Best public service* assumes throughout that a high-quality public service will be dedicated to achieving that condition, with the establishment of system-wide collaboration and coordination processes of the utmost importance.

In presenting my own concern, I need to point to the ambiguity in use of the word "agency" that is commonly found in these discussions. This word is in widespread use in at least three ways: as a way of referring (1) to all organisations, departmental and other, within any governmental system, (2) to the whole population of NDPBs, and (3) to bodies

associated with the British notion of "executive agencies". The rise of the process word "agencification" is connected: its originators saw it as describing the then massive (now much reduced) British movement of civil service functions to a group of organisations described as "executive agencies", separated from direct ministerial/departmental control, but with less autonomy than the better-known NDPB forms of the past – the statutory bodies (authorities and corporations) and government-owned companies, which the executive agency enthusiasts mostly ignored!

It would be helpful if usage could be clarified in a glossary of terms in reports such as *Best public service*, accompanied by an attempt to be as consistent as possible in the use of such terms.

2. Treatment of machinery-of-government in "Best public service"

The report touches on relevant issues in several places, and I note some of them here before offering my own commentary:

1. The opening recognises (p.1) that the Australian government sector includes both APS employees engaged under the Public Service Act and other organisations engaging staff under their own enabling legislation etc; and also that the "APS is the largest component of the Australian Government workforce" and is made up of 97 "agencies". Then the figure at the top of p.2 claims in its heading to identify the largest and smallest "Australian Government agencies" and includes both departments and NDPBs – but, despite the all-embracing figure title, presumably it is dealing only with APS bodies. The figure 6.3 on p.33 ranges fairly widely over the NDPB group though, again, they are probably all APS cases. Where the proliferation of small agencies is noted, with "some scope to rationalise" (pp.44, 45), it is now public sector rather than APS.

2. In many parts, the discussion is limited to APS bodies (or is perhaps slightly contradictory) – eg on attitudes, the primary identification might be with the agency specifically or with the APS more broadly -- but not with the public sector as a whole (pp.4, 17 and elsewhere); on working across boundaries (again seemingly APS only: pp.6, 23 and elsewhere); on "whole-of-government", this seems mostly also to be the case, though the p.11 dot-point mention admits the possibility that whole-of-government and whole-of-public-service might be different constructs; on p.25, "adoption of an overarching human capital strategy" is again APS-limited; as are the references to a "one-APS culture" made more difficult to achieve because of salary and classification differentials (pp.36, 38, 40); the "devolution of management to agencies" has arguably become a barrier, but that seems just to the achievement of APS efficiency gains (p.44).

3. Specific attention is given to the issues raised by the separateness of ministerial staff (p.15 and elsewhere), and by portfolio structures (pp.26-27). At p.26, there is a hint of a distinction between policy departments and service-delivery agencies. Closer to my concerns, "fit for purpose" bodies within portfolios are acknowledged (p.27), but only because they enhance the quality of service to ministers. Then on p.31 the report notes that, "(i)n the past, individual service delivery agencies were established in order to encourage innovation and creativity at the frontline of service delivery", arguing that that approach has costs as well as benefits. It does not seem to recognise that the initiative in getting these agencies established has often come from concerned citizen groups, representing a bottom-up rather than top-down governance process.

4. From p.30 the need to connect the Commonwealth government with other levels of government and not-for-profits is discussed, but a single unified Commonwealth approach seems to be assumed.

5. Chapter 5 is said (at p.33) to discuss structural options, but it is mostly about the policy-advising process, with a liking for cross-agency (in the broad sense) "strategic agency hubs" (p.25). Except that it recognises the need to preserve the role of "independent statutory office holders" (p.26), it does not get much into the kinds of structural (machinery-of-government) issues I am addressing here.

3. The need to consider the separateness and degrees of autonomy of NDPBs

To repeat, I acknowledge that the treatment of these matters in *Best public service* is similar to that in much public discussion of government reform issues today. To the extent that what I am saying here is a criticism, therefore, it applies very generally to a great deal of this discussion. Indeed, in the various reviews of *Best public service* I have seen, only Gourley (*Public Sector Informant*, November 2009, p.19) gets close to the point I am making when he urges a clear abandoning of the mantras of the now pretty-well-discredited Uhrig report commissioned by the Howard government, and a recognition that there was much good sense in the NDPB reviews conducted in the early days of the Hawke government.

My submission is to urge an appreciation that there has been good reason for establishing many NDPBs (not just "statutory office holders") with degrees of separation from departments and degrees of autonomy from close ministerial and departmental control. The fringes – they are large fringes! – of the Commonwealth public sector are populated by agencies of this sort, as are the public sectors of most countries around the world. And, if "whole-of-government"/"joined-up government" thinking does not allow for variable degrees of attachment (sometimes stronger, sometimes weaker) to the systems established in the service of that thinking, then there is necessarily a serious clash between it and all the (mostly good) rationales for the establishment of such bodies.

Calls for rationalisation that involve a reduction in the number of NDPBs are to be expected, and necessary from time to time. It is likely that we do use too many of them, and sometimes grant autonomy when it is not warranted. However world experience shows that governments need many NDPBs to relieve pressures on themselves (in decision-making, service delivery and so on), and that differentials (in various forms of closeness to and detachment from ministerial, financial and public-service centres) are therefore inevitable. Indeed, they are often desirable in the interests of efficient/effective discharge of the involved functions.

Whole-of-government thinking pushes towards a monolithic conception of the machinery of government – indeed, people now speak of a vertical management system replacing the horizontal management system that came with NPM-style devolution. Of course I believe in good policy coordination, and I lament the breaking up of the effective single civil service that came with the abolition of the Public Service Board and the shifting of so much in the personal management field to individual departments (and the firms they began to contract with!). But any projection of that view requires an important qualification:

- that the public sector is not all part of a single tightly-government-controlled monolith,

- that a wide variety of forces in the community contribute to the shaping of the public sector and the management of its more out-lying parts (this is the bottom-up part of the whole public sector process),

- that too much stress on its supposedly (or aspirationally) monolithic character is likely to present hurdles that stand in the way of an operation that values democratic inputs, which include collaboration (running to actual participation in many cases) with that wide variety of community forces. and

- that, while this may produce argument, some dissent, and sometimes inconsistency in operational areas, it will often produce better long-run policy outcomes than those emerging from the more closed processes of a tightly integrated system.

The NDPB fringe areas will provide the theatre in which much of this is played out, and my submission is that they deserve to receive greater attention than they normally do in general reports about public service/public sector reform. This is, unfortunately, an area of governance that is usually reserved for small special-purpose inquiries such as that conducted for the Howard government by Uhrig. And there one sees another significant problem, one indirectly associated with the one discussed in the last paragraph, that seems almost to be a disease affecting all public service inquiry activity where public servants themselves play leading parts. (Uhrig, of course, was not a public servant, but he was closely connected to the Howard government and inappropriately imported corporate governance ideas from the private sector in furtherance of his pro-ministerial views.)

The problem lies in the assumption that all power should rest with ministers, and the failure to acknowledge that they are capable of acting unwisely, unlawfully, and in ways that serve essentially short-term interests rather than longer-term interests that could be of more value to the community. Thus, in establishing the early Australian statutory corporations, care was taken to give commissioners and the like sufficiently long terms of office to distance them from the capricious exercise of ministerial appointive power, but modern practice is to make them subservient to ministers in this and other ways that often make effective performance of the functions entrusted to them in legislation more difficult. Given the importance of the NDPB sector, a return to earlier tenure practice is, perhaps, one of the issues all reports on modern public service/public sector reform should be considering. We have attended to a few particular cases, such as that of the Auditor-General – but it is a question with much more general application. We have a variety of accountability devices today, so that it is not necessary that ministers should be seen as presiding over all (other, of course, than judicial) public sector operations.

My argument is essentially that recognition is needed:

- that the public sector contains elements that require greater grants of autonomy than do the organisational units of the public service (I think serious thought also needs to be given to the extent of inclusion of statutory bodies within the public service), and
- that whole-of-government thinking needs to be tempered by such recognition.
