

# 17. The challenges for the public service in protecting Australia's democracy in the future<sup>1</sup>

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*As the outgoing Secretary of the Department of the Prime Minister and Cabinet, Terry Moran is the most influential Australian public servant to leave office since former Treasury Secretary Ken Henry. Moran's public service career began in 1973 as a Commonwealth Public Service Board Administrative Trainee; he would spend half his career at the federal level. Before commencing his role as Secretary of the Department of the Prime Minister and Cabinet in 2008, Moran had held several influential posts in public service, including Chief Executive of the Victorian State Training Board, Chief Executive of the Australian National Training Authority and Director-General of Education in Queensland. In 2008-09, Terry Moran worked closely with departmental colleagues, the Prime Minister and senior ministers on the formation of the Economic Stimulus Plan.*

Democracy has at its heart a simple goal – government by the people. Power and authority rest with citizens, not with a narrow elite. The people's interests are sovereign. The idea is simple, but the practice of democracy has grown and changed over the centuries. Australia's system of parliamentary democracy has its roots in the 'Glorious Revolution' in Britain of 1688. Democracy looked different in those days. For one thing, the elections themselves were much more arduous and time-consuming. Orders to conduct the election were issued and carried to every town in the realm by men on horseback. They were pinned up in prominent places for all to see. After a suitable interval, ballot papers were distributed in a similar way, and only then did voting occur. Another big difference was that only one in ten of the population had the right to vote. And their choice was no private matter; the electorate was confined to a small knot of voters who generally obeyed implicitly the orders of their landlord. It took months to tally the vote and announce the result.

In 1901, when Australia went to the polls for the first time as a nation, the telegraph and the railway line had transformed not just elections, but many other aspects of life. Trains carried ballot papers promptly across the country, while telegrams provided running updates on election results. Yet even with these technological advances the process was still a drawn-out affair. In Sydney

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<sup>1</sup> This is an edited version of the John Paterson Oration, delivered by Terry Moran at the Australia and New Zealand School of Government Annual Conference, Sydney, 28 July 2001.

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on election night crowds thronged outside the offices of *The Sydney Morning Herald*, where a tally board had been erected to display the results. The Prime Minister, Sir Edmund Barton, had been appointed three months earlier, pending the first election. He set up residence in a hotel directly across the road from the *Herald* to monitor the tally board. Even with these facilities, it was more than a week before the outcome was known with confidence.

That first Commonwealth election was conducted under state electoral laws – as the Parliament had not yet convened to make any laws of its own. By the time of the next election, in 1903, the vote had been extended to all adult British subjects resident in Australia for six months – although there were exceptions, notably for Indigenous Australians, Asians and Africans; defects that were not fully rectified until 1962.<sup>2</sup>

Today, the franchise has been extended to all adult Australian citizens, and we have come to expect to vote during the day and know the result before we go to sleep. Today the process of counting votes and transmitting the tally has been vastly accelerated by improvements in communication. Last year's delayed outcome occurred in spite of technology; of course the delay wasn't because of any problem in counting votes and transmitting the result, but because of the political negotiations required to form a government. It may be reassuring that the human dimension of politics at times can trump technological advance, but of course the two forces are bound inextricably together. Democratisation and industrialisation have been among the most crucial forces for change in the modern world. The technological advances brought by the industrial revolution have changed democracy in significant ways. And the advent of democracy was a key driver of the industrial revolution.

Democracy came first, and contributed to industrialisation. The Glorious Revolution weakened the power of the monarchy, helping create an affluent middle class. The middle class had influence and interests separate from those of the monarchy and the aristocracy; its rise led to the greater empowerment of individuals. Industrialisation and democracy together brought improvements in education and drove the growth of the public service.

These changes continue to affect the nature and conduct of democracy. We should embrace, not fear, such change, while making sure we remain faithful to the overarching goal of democracy – government by the people.

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<sup>2</sup> This was separate from the 1967 referendum that gave the Commonwealth the power to make laws relating to Aborigines.

## Australia's democracy

Australia's democracy is one of the oldest and best in the world. We have our own versions of the institutions and practices that make a democracy. Our liberal democracy is based on democratic institutions of governance, a liberal conception of the rights of individuals and a market-based economy. The institutions of our liberal democracy divide power between levels of government – federal, state and local – and among three branches of government – the legislature, the executive and the judiciary. By convention there are informal divisions within the executive branch. On the one hand, there are its leaders – the prime minister and his or her ministers – and on the other the departments of states and various agencies that provide ongoing support to them.

The formal institutions of our democracy have not changed greatly since 1901. But the practice of government has. There have been changes in the balance of power between the legislature and the executive; changes in the balance of power between ministers and the prime minister; and changes in the balance of power within the policy and administrative arms of the executive – that is, between the cabinet and the public service. The current minority government arrangements have also prompted changes, with modified parliamentary procedures and a greater role for private members' business.

The biggest change has been in the broader environment that shapes the way our democracy functions – an environment shaped by interest groups, the media and by society as a whole. A key aspect of this changing broader environment has been in the ways we communicate within society. It's not trivial that the conduct of elections, and news about politics, are transmitted instantly these days by fibre optic cable or satellite – not on horseback, as in the 17th century, nor by telegraph, as in 1901.

## The executive and the legislature

Over our history, power has been shifting from the legislature to the executive. This has occurred because of changes in practice, rather than in the structure of government. The argument is sometimes made that this shift has diminished the 'separation of powers'; but this overlooks the historical origins of our system. The close links between the executive and legislature in Australia originated before federation. The American emphasis on the separation of the executive and the legislature is tempered in Australia by the principle of responsible cabinet government, derived from Britain, where it evolved in the mid-19th century. The cabinet comes from the legislature, but its function is to rule the nation. As Walter Bagehot wrote in 1867, cabinet is 'a hyphen which joins, a

buckle which fastens, the legislative part of the state to the executive part of the state. In its origin it belongs to the one, in its functions it belongs to the other.<sup>3</sup> Where the Australian system more closely resembles the American is in the separation of the judiciary from the legislature and the executive.

One driver of the shift in power to the executive was the increasing dominance of political parties, which imposed tight discipline on their parliamentary members. This occurred very early. The period without party dominance was an aberration, a quirk of the period before the political alignments of the first parliaments had a chance to settle. As early as the 1903 election, parliament was dominated by three political groups. By 1910 these had coalesced into a two-party structure. The composition of the party groupings has changed since then, but the structure has persisted. This structure underpins an avowedly combative and adversarial approach to politics in Australia.

The dominance of the political parties allows party leaders to exercise considerable control, reducing the discretion of individual members.<sup>4</sup> Australia has one of the strongest cultures of party discipline of any Westminster system. This has provided much greater stability for governments. Bagehot described the lower house of the British parliament as being 'in a state of perpetual potential choice'.<sup>5</sup> It would be more difficult to support that notion now. Today in Australia, and in Britain, governments tend to be more stable than in the world Bagehot was writing about.

Another trend that many consider troublesome is that over the past century, the executive branch has increasingly dominated the legislature. As the volume of legislation put before the parliament has increased, the time and resources available to consider legislation has declined. Together with the strength of party discipline, this has led to greater deference to the executive. As a result, the role of the parliament as a forum of contestability and accountability has been reduced. It is true that the current minority government stands against this trend. But minority government is the exception in our system, not the rule.

Other factors have contributed to the strengthening of the executive. The growth in the size and scope of government administration empowers the executive. It is ministers who control the administration, not the Parliament. There's a chicken-and-egg question here. Did the growing size of government make the executive stronger, or did a stronger executive exploit its position to increase the size and

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3 Bagehot, *The English Constitution*, 1867, p 15.

4 Summers, Woodward and Parkin, eds, *Government, politics and power in Australia* (3rd ed, 1990), at p 14ff.

5 Bagehot, *The English Constitution*, at p 176.

role of government? Suffice to say it was a bit of both. The executive had become stronger because of greater party discipline, but there were also external factors that increased the size and scope of government.

Two world wars greatly increased the role of government. And after World War II government expanded further with the growth of the state-sponsored social welfare system. As in other countries, industrialisation led to – and relied on – growth in services such as education, health and transport.

The growing weight of legislative business has also played a part in the growing power of the executive. The legislation is drafted by the executive, and there is so much of it that the parliament has less opportunity to give it detailed scrutiny.<sup>6</sup>

These changes are important, but we still have a strong and effective system of formal and informal checks and balances that includes the states, the Senate and the public service.

## Accountability within the executive

The public service barely rates a mention in the Australian constitution. Its role as the administrative arm of the executive took root in Britain after the Northcote-Trevelyan Report of 1853, which led to the development of an apolitical, professional civil service. By the time of federation in Australia the independent role of the public service was taken for granted.

The role of both arms of the executive has continued to evolve, along with the relationship between them. There are well established checks and balances between the cabinet – traditionally regarded as the policy arm of the executive – and the public service – the administrative arm.

The predominant institutions of the executive arm are departments of state. Their role is: to provide impartial professional advice, including strategic advice; to administer programs; and to offer caution to ministers in the face of risky decisions.

Within the administrative arm there are other agencies with varying degrees of independence and different accountability mechanisms. For example, the Reserve Bank and the Australian Competition and Consumer Commission have high degrees of independence. Their activities are conducted on an entirely professional basis, without being subject to the pressure that inevitably arises in

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<sup>6</sup> John Summers, Dennis Woodward, Andrew Parkin, eds *Government, politics and power in Australia*, 4th ed.

departments under the direct authority of a minister. This relationship between Cabinet and the Public Service is one of the checks and balances in our system of government with origins in conventions which predate federation.

But a new element has emerged that has muddied the water – the rise since the 1970s of a new sort of public sector employee: the ministerial adviser. The support that leaders of the executive branch receive from advisers varies from country to country, and is the subject of robust debate. In the French system, ministers are supported by a *cabinet*, comprising a majority of highly capable public servants and a minority of political officers. The *cabinet* system influenced a proposal by the Labour Party in Britain in the late 1960s that ministers be supported by a political staff of up to four people.<sup>7</sup> The proposal was not immediately taken up, but the Conservative Party experimented with the idea in the 1970s, and nowadays ministers are supported by special advisers, a practice which continues to stimulate political and academic debate.

In Australia, the reformist tendencies of the Whitlam government led to a significant reshaping of ministerial offices. The new arrangements were influenced by the British experiments with partisan advisers.<sup>8</sup> ‘Ministerial officers’ have increased in number. There were 209 of them by the end of 1974.<sup>9</sup> Their ranks have swelled further since then, with a growing proportion of political appointees compared with advisers whose backgrounds are in the public service. In recent years, though, their numbers have been cut and their remuneration capped.

The growing number and role of advisers raises some questions for the functioning of our democracy, as the role of this cadre of officers of the Commonwealth is poorly defined. In a sense, they are an extension of the persona of the minister. They are portrayed by many as a source of contestable advice on public policy.

But the mechanisms for holding advisers accountable are murky. Unlike other public sector employees, they are not called before parliamentary committees, nor are they subject to some of the other bodies that oversee public servants. Nonetheless, the government now operates under a formal code of conduct for ministerial staff that is exacting in its guidance.

The real issue here is actually best viewed through the prism of ministerial responsibility. The doctrine of ministerial responsibility has contributed to the rise of advisers and lies at the heart of uncertainty about their role. Tradition has it that ministers are answerable for all actions taken by the departments

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7 RFI Smith, in Royal Commission on Australian Government Administration, Appendixes to Report, vol 1 at 293.

8 Ibid, at 293.

9 Ibid, at 298.

under their control.<sup>10</sup> But the size and scale of modern government makes this impossible. Do we really think ministers can be responsible for every significant transaction and all manner of decisions in every part of a complex public service? And it is hardly more plausible that even with a bevy of advisers they could overcome this problem. In seeking to track so many matters through advisers it is possible that ministers find themselves accepting a very broad view of ministerial responsibility, a view at odds with the reach of all the other mechanisms established by the parliament to hold the administration accountable. We must strive for the right balance in the exercise of executive power, and clarify ministerial responsibility.

## The arena of democracy has changed

The greatest source of change in our democracy has been the immense changes in society at large. British sociologist Anthony Giddens has described some of the dilemmas in public policy that reflect – and are driving – these big social changes.<sup>11</sup> I want to focus on four of the dilemmas he identified – and I will add a fifth factor. The four dilemmas identified by Giddens are globalisation, the new individualism, the changing nature of government<sup>12</sup> and ecological issues. These four issues are driving changes in society that demand flexible and creative responses from government.

Globalisation not only means increasing economic integration, it also refers to the transformation of time and space in our lives thanks to revolutions in communications and transport. The second dilemma, 'new individualism', is linked to the retreat of tradition and custom, partly a response to globalisation. The first two dilemmas have led to a third dilemma, a change in the role of the nation-state and of national government which requires governments to find ways to reconcile the divergent claims of special-interest groups and of an increasingly diverse community. Engaging citizens in policy and service delivery is one way that government is addressing this. The fourth dilemma, responding to ecological issues, requires policies that focus on the idea of sustainable development.

These four dilemmas are forcing changes in our traditional approaches to government. The fifth dilemma that I would add to Giddens' four dilemmas arises from the changing nature of communications media.

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10 Singleton, Atkins, Jinks, Warhurst, *Australian Political Institutions*, 7th ed. at p 171.

11 Anthony Giddens, *The Third Way*, 1998, at pp 27ff.

12 Giddens calls this the dilemma of 'political agency'.

## Democratic discourse has changed

In some respects, the changes in the media are deeply troubling; yet they also hold hope for improvement. Competition within the *mass* media is becoming more intense. Technological changes, the growth of the internet and the advent of social media are diversifying sources of information, changing the commercial drivers of the mass media, and weakening the implicit subsidy for strong journalism that advertising sometimes provides.

Not so long ago the changes in mass media would have been the end of the story. But today the change goes beyond the mass media: new technologies are dispersing our channels of communication much more widely, making it much easier for individuals to communicate through the new social media of the internet such as Facebook, Twitter and YouTube. All these changes occur and are influenced by broader changes in society and the economy. And many of them are connected.

The advent of social media is changing political debate, both by increasing the channels of communication and giving politicians and the public avenues for sidestepping the traditional media and the filtering it applies. Some of this is noisy and ugly, but other features of this change are encouraging. The new media will continue to evolve, strengthened by the National Broadband Network, and will create further new channels of debate. My hope is that a new generation of trusted institutions will provide the means for a new breed of online analysis and commentary, driven by serious contributors to the policy debate who can bypass the mass media and go directly to the sources of information and to their audiences.

As for the traditional media, you could call me a health nut, but I am depressed by the increasing saturation of traditional news media with high energy, low nutrition debates. One reason for this poor news diet is that commercial pressures are increasing the populist tone of newspapers, the traditional outlet for informed political debate. In the electronic media, the increasing number and diversity of media outlets intensifies the pressure.

Newspapers are declining in importance. The proportion of people buying daily newspapers has been steadily falling for decades, eroding their profits. So for many proprietors, maintaining a newspaper is almost a philanthropic activity, and many newspapers rely increasingly on fringe advertising and cross subsidies from other activities to survive.

News used to come in 24-hour cycles shaped by daily newspapers. Nowadays the need to feed electronic media has increased the tempo of the news cycle. Journalists and politicians all work harder and faster to keep feeding the beast.

This is driving populism, and displacing reporting of difficult, longer term issues. It contributes to the decline of trust in the traditional media that was reported recently in an *Essential Research* poll. The professionalisation of politics – often inspired by developments in the US – adds to these pressures. Political operatives are becoming more skilled in techniques for appealing quickly to wide and varied audiences – but often at the cost of more considered debate.

A few weeks ago a writer in *The Economist* argued that the changing character of the media was undermining the legitimacy of government – as an aside, it's interesting that this article was published not in the printed magazine, but in one of the paper's blogs. The writer argued that a key feature of a healthy democracy is that citizens communicate problems to government so that government can respond. In his view,

'The constant crisis-atmosphere contrarianism of the current media and internet environment overwhelms the signal-to-noise ratio...and preoccupies government with addressing blaring non-issues.'<sup>13</sup>

I do not agree with the writer's conclusion that this could lead to an increasing number of important issues being considered by non-democratic institutions. The public service – which is democratically accountable – has a crucial role in ensuring that this bleak prediction does not come to pass. We in the public service must protect democracy not only through our traditional role of providing advice to ministers, but by creating better mechanisms for engaging with citizens. I don't mean that public servants should have carte blanche; we must all adhere to the code of conduct. I am not suggesting public servants should become involved in partisan political debate. We need to remember the vital importance of remaining impartial and apolitical, and of retaining public and political trust.

That said, the new media holds tremendous potential for creating better ways of engaging with citizens. The internet and social media provide us with tools that have great potential to improve both democratic debate and the way government is conducted. Some of the most valuable and constructive contributions to Australia's policy debate occur on the net – such as *Australian Policy Online* and *The Lowy Interpreter*.

Beyond providing an alternative medium for debate, the new technology gives us in the public service new ways to engage with citizens that could be far-reaching in their impact.

I am optimistic about our ability to respond to these changes. Last year we produced a blueprint for reform the Australian Public Service called *Ahead*

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13 <http://www.economist.com/blogs/democracyinamerica/2011/07/democracy-v-china>

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*of the Game*, which aims to respond to the dilemmas Giddens describes. Its overarching goal is to improve the way we deliver services to citizens. Many of the proposals in *Ahead of the Game* are directly focused on this goal, both by improving services, and by finding new ways to collaborate with citizens both before and after decisions are made. In a world where citizens are more demanding than ever, we need to bolster the relationship between government and the community.

Public servants are held in high regard by the public. A recent poll conducted by Roy Morgan Research found that most respondents ranked public sector workers such as nurses, school teachers, police highly for their honesty and ethical standards.<sup>14</sup> The integrity of government in Australia is also ranked very highly in international comparisons. A highly trusted and fully effective public service will engage with citizens in a wide range of ways that reflect changing needs and new technologies.

To engage more effectively we need to make full use of new communications technologies. The report of the Government 2.0 Taskforce makes a compelling case for using the internet and other new technologies to make government more open, accountable, responsive and efficient. It shows how the new tools will give public servants the opportunity to engage with and respond to the community. I am encouraged that almost all the taskforce's recommendations were accepted by government, although there is still a lot more work needed to put them in practice.

## **As democracy evolves, our conception of democracy must grow**

Improving citizen engagement is just one of the ways our conception of democracy can change and grow for the better. Democracy should mean more than just our right to vote in elections every three or four years. Good government has always required effective communication and collaboration between government and citizens.

Going right back to the emergence of the right to petition Parliament, which emerged from the Glorious Revolution, the conversation between government and the citizens has been a crucial feature of democracy. Changes in society and in the economy demand new and better ways for that conversation to occur. Although the explosion in communication media has made that conversation

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<sup>14</sup> Roy Morgan Image of Professionals Survey 2010.

rather noisy, new information technology also provides us with some tools to help constructive dialogue. The Australian Public Service has a key role in facilitating that process.

Notwithstanding the shifts I have described, we have a strong system of checks and balances between various sources of power and influence: through constitutions and conventions, the two chambers of parliament, a professional and impartial public service, political contest, elections, the media, think tanks, universities, courts and tribunals, the federal system, and the participation of citizens.

Our democracy is one of the strongest and most robust in the world. But as in all democracies, there are things we can improve. We should not be afraid of change. The institutions of government will continue to evolve, the balance between the various parts may shift, and the practice of democracy will grow. Our overriding goal should be to ensure that amidst all this change, we keep sight of the central purpose of democracy – to ensure good government, under the authority of the people, to the greatest benefit of the greatest number of people. As public servants we may all be Benthamite utilitarians in practice, but this fits neatly within the constitution, legislation enacted under it and the evolving conventions which give them life.