

Chapter 4. Devolution

As the performance assessment and pay data indicate, the impact of broader systems changes introduced under the rubric of NPM is best understood in the context of agency-specific systems and culture. While the 'single, distinctive ethos of public service'¹ underpinned by the legislated APS Values and Code of Conduct was meant to sustain a service-wide link between APS employees, agency systems shape their daily experience. These systems implement the direct controls that agency heads and their executive are able to exercise over individuals; they 'hardwire' service-wide performance assessment requirements and other human resource practices into the daily experience of public servants. These in turn condition agency culture, including unwritten protocols around internal communications, record-keeping practices, and interactions with ministers and their advisers. The Comrie report pointed to the intersection of agency systems and culture when it referred to:

... inadequate training programs, database and operating systems failures, poor case management, and a flawed organisational culture all [of which] contributed to the approach taken in Vivian's case. The convergence of these systemic problems provided the platform for failure.²

On the face of it, it would appear that the transfer of managerial power from central agencies to agency heads would mean a corresponding reduction in the power of the centre to affect the conduct of agency businesses. This was the experience with the implementation of NPM in the UK public sector, where it reinforced the relatively greater autonomy already in place and resulted in an increased diminution of control, referred to as the 'minimalist state'.³ In Australia, however, the institutional and practical implications of devolution have been quite different. Service-wide procedures and conventions were displaced by vertical controls.⁴ Devolution increased the managerial and operational power exercised by departmental heads over public servants, but it also increased the power over departmental heads exercised by ministers and by the Prime Minister in particular: control over appointment and termination as well as performance assessment and pay. Within agencies, this has left employees increasingly exposed to the direction of senior managers, ministerial advisers and the ministers whom they serve.

Devolution in theory

Devolving the public service was critical to the implementation of NPM.⁵ The process was slow and progressive, consistent with the desire to change cultures as well as systems. The aim was a public service reoriented along market lines, in which 'the responsibilities of departmental secretaries and agency heads were

... similar to those wielded by CEOs in the private sector.⁶ The analogy between the agency head in the public sector and the CEO in the private sector may be less than comprehensive, but it was clearly important to Minister Reith to pursue it:

The Government is considering the introduction of formal performance agreements for all Agency Heads. This acknowledges the important strategic leadership role of Agency Heads. Their role as Chief Executive Officers, responsible to the Minister for their agency's performance, needs to be explicitly recognised. The exercise of their wide-ranging managerial powers needs to be set in an accountability framework which articulates criteria for the measurement of performance. For these reasons, it is proposed that Agency Heads/Secretaries would be re-classified commonly as Chief Executive Officers.⁷

In addition to the reasons given, one further possible appeal of the term 'CEO' to Minister Reith was that it would reinforce on a daily basis how far agency heads had come from being 'permanent heads' since 1984, when the Hawke Government had amended s. 25(2) of the Public Service Act 1922 to make it clear they were no longer 'permanent heads' but departmental secretaries appointed to particular positions for a term of five years. In 1994 the Keating Government had introduced letters of appointment (commonly referred to as 'contracts') for secretaries that enabled the government of the day to terminate the appointment 'at any time for any reason'.⁸ The term 'CEO' reaffirms this arrangement rhetorically, setting departmental heads at an even further remove from permanent heads and closer to a model in which they can be terminated on 'lack of confidence of a minister, whether or not lack of confidence was well founded'.⁹ Importantly, Reith identified the expression CEO as explicitly recognising departmental heads' responsibilities *to* the minister and *for* agency performance. It was his intention to free these CEOs from the 'unnecessary restrictions and arcane details'¹⁰ generally associated with the public sector, so that they could harness their 'strategic leadership' to their 'wide-ranging managerial powers' in the interests of more effectively 'achieving the outcomes set by government'.¹¹ Using performance pay 'as a tool for motivating people,' and assisted by more flexible practices, they would enable the public service to 'to operate efficiently and competitively within a dynamic environment that has made improved performance imperative for all sectors of the economy'.¹²

In institutional terms, devolution began with the progressive transfer to agency heads of responsibility for 'running costs' and proceeded to the dismantling of the centralised staffing controls of the then Public Service Board over fixing pay, establishing employment conditions, appraising staff and overseeing industrial relations. Between them, the *Financial Management and Accountability Act 1997* and Public Service Act formalised the control of agency heads over

staff management, workplace relations, agency finances, assets, resources and technology. By the time these pieces of legislation were passed, they were mostly confirming actual arrangements that had already been put in place administratively, some of which had been operating for some years.¹³ By 2000, agency heads experienced relatively little regulatory interference from central agencies in staffing matters (with the exception of Public Service Commission controls over Senior Executive Service appointments and promotions and the strict controls maintained by DEWR on what agency heads could *not* do through their workplace agreements). As for other matters, the impact of NPM on the role of central agencies was for a time 'resounding'. Progressive changes had:

... reduced the old Public Service Board to a shadow of its former self (Campbell and Halligan 1993). Finance moved through several stages during the reform era, eventually adopting a 'strategic' role (Wanna and Bartos 2003), but was so heavily purged in the second wave of market reform (in the second half of the 1990s) that debate came to centre on whether it would survive organisationally (one option being to re-integrate it with Treasury from whence it was originally derived). Finance's experienced a loss of 'policy' competence (Campbell 2001) as its role was diminished by this pursuit of a minimalist agenda. The Department of Prime Minister and Cabinet had withdrawn from active intervention except where required and was no longer providing leadership for the public service.¹⁴

There appears to be widespread agreement at the top of the public service that the efficiency impact of devolution 'has been largely beneficial', that '[p]roductivity has risen progressively' and that '[p]ublic servants now do more, better, with less'.¹⁵ The former Secretary of the Department of the Prime Minister and Cabinet and the former Public Service Commissioner agree on this point¹⁶ and there has been research broadly supporting their views—although no research can precisely quantify the productivity impact of developments in information and communications technology. The Management Improvement Advisory Committee of the Management Advisory Board (forerunner of the Management Advisory Committee) undertook the review of how best to achieve cost-effective personnel services in selected agencies and reported early gains in November 1995;¹⁷ in 2001–02 and 2002–03, the ANAO undertook a benchmarking study of nine 'people management practice areas' in selected agencies and reported further improvements;¹⁸ the DEWR bargaining guidelines have consistently required that 'improvements in pay and conditions are to be linked to improvements in organisational productivity and performance'¹⁹ in agencies. Despite the absence of measures of productivity growth in the APS (the Australian Bureau of Statistics does not produce measures of productivity growth in public administration²⁰) the government demonstrated its belief in

agency productivity growth by further increasing the efficiency dividend that it reaps annually from agency resources.²¹

However, devolved systems have also been in operation during many of those 'failures of public administration'²² considered by Dr Shergold to be the consequence of:

... inadequate managerial control, weak direction and poor organisational communication exacerbated by an unacceptable tardiness in acknowledging and correcting the mistakes that had been made. In the first matter [children overboard] there was a failure to balance carefully the twin demands of timeliness and accuracy—information was passed from public servants to ministers before it had been adequately corroborated. In the second instance [mistreatment of Cornelia Rau and Vivian Solon] relatively junior officers were not adequately trained or supervised to exercise appropriately the considerable powers that they wielded. Worst by far, failures in both instances were compounded by organisational silos, poor record-keeping, a reluctance to clarify the record and, in a few instances it would seem, attempts to cover up the initial mistakes.²³

Were these failures simply isolated instances of bureaucratic inefficiency—'inadequate managerial control, weak direction and poor organisational communication'—compounded by failures of individual integrity? If so, undoubtedly they are of the type that could occur in any management framework. But the problem in the case of Children Overboard was not simply a 'failure to balance carefully the twin demands of timeliness and accuracy'; it was the fact that 'within three days of the initial statements, the story was known to be untrue',²⁴ but no correction was made until after the election, a month later. The problem in the cases of Cornelia Rau and Vivian Solon was not simply lack of training, organisational silos, and poor record-keeping. In the case of Cornelia Rau it was also that 'through its actions and approach, executive management has sent staff a clear message that process is paramount and should not be questioned'.²⁵ In the case of Vivian Solon, it was also, as DIMIA staff told the Comrie inquiry:

... that in some situations they deliberately left their actions unrecorded. They said they did this because of perceptions that they would be in breach of departmental policy if they tried to help suspected unlawful non-citizens with welfare-related matters.²⁶

These are more than simple administrative lapses; they go to staff understanding of agency and ministerial expectations, and they resulted in broader systems failures. Could they have happened under old service-wide procedures and arrangements? In the case of DIMIA, Palmer referred to arrangements that were

‘process-rich’ and ‘outcomes poor’—the same criticisms that had been levelled at public service throughout the period under consideration; but he also found that this conduct was not the result of outmoded practices but of a ‘clear message’ from management. The question, then, is not whether process-rich systems would have performed better; it is whether having, as we now do, a devolved system, there is scope for systems failure which is a consequence of devolution itself. How much does due process rely on systems themselves and how much on ‘strategic leadership’ and the agency culture in which the systems are embedded? To what extent do agency cultures interact with the service-wide culture that remains after systems are devolved? How has devolution worked in practice?

Devolution in practice

Devolution has meant substantial change in the day-to-day operations of agencies. Agencies run their own recruitment campaigns; they have their own human-resource management strategies and industrial agreements. This means they have their own classification structures, job titles and pay scales. These changes overlay other agency-specific arrangements that reinforce the daily experience of public servants that they are agency employees: agencies have their own intranets featuring management billboards and staff billboards and agency newsletters. Employees have passes to get into their agency that do not work for other agencies—an arrangement that may not be directly traceable to devolution but certainly reinforces it every time an employee walks in the door. Even where service-wide administrative arrangements have been introduced they have to be ‘tailored’ to agency differences, as in the case of performance-assessment schemes. All this difference is intended to support the variation in the type of work done in diverse agencies, and their need to go about it differently in order to be effective. For this reason, agencies have their own CEOs, as Minister Reith wished them to be known, and those CEOs issue their own Chief Executive Instructions. These market-based operational models were intended to remove many of the long-standing protocols that agencies had in common while at the same time strengthening vertical connections running between agency employees and agency heads and through them to ministers, who were, in turn, intended to reap the benefits of the new arrangements in the form of increased productivity and responsiveness.

At the time it was recognised that ‘to achieve greater flexibility it was probably going to be necessary to sacrifice many of the aspects of the public service which had provided the “connective tissue”²⁷—and these sacrifices were duly made. Certainly some of the ‘connective tissue’ of the public service was largely symbolic to begin with, but it was no less important for all that: organisational cultures often draw on symbols. When, for example, it was decided that agencies should move from service-wide to agency-specific logos, the change was regarded

as symbolic of the new emphasis on a service-delivery culture and on building direct relations between agencies with the public. When the Government later decided—for reasons considered below—that it wanted ‘the removal of individual agency logos and establishment of a single distinctive “brand”, the Australian government, represented by the Australian coat of arms’, the change was met with ‘territorialism’ and ‘unexpected and sustained resistance’²⁸ from agencies. Why was the resistance to abolishing agency-specific logos unexpected? The devolved model was never intended to support a ‘single distinctive “brand”, the Australian government’; indeed, the introduction of logos was part of a deliberate strategy of cultural change intended to align the hearts and minds of public servants—as well as those of the Australian public—to the agency’s particular business focus.

As the logo episode suggests, the alignment process appears to have been effective: by 2005, 60 per cent of APS employees saw themselves as primarily employees of their agency rather than of the APS.²⁹ And so they were: their employer was their agency head; their workplace and performance agreements were with that agency head and with their line managers; they were bound by the agency head’s Chief Executive Instructions; they were accountable through the agency head to the minister. It was a ‘highly devolved public management model, [in which] the individual agency was the focus, individualisation provided the basis for public servant employment, and a disaggregated public service was the result’.³⁰ The remaining service-wide cultural link between APS employees was described in 2003 by the Secretary of the Department of the Prime Minister and Cabinet (who had been the Public Service Commissioner between 1996 and 1998) as ‘a single, distinctive ethos of public service’³¹ sustained by the statutory APS Values and Code of Conduct. And even these were expected to be adapted to agency operations/priorities/activities through agency systems and then supplemented by agency-specific values if the agency head wished.³²

Many agency heads did wish to have business-specific values: by 2004–05, 78 per cent of agencies had their own values in addition to those that were in legislation and meant to apply service-wide. The annual *State of the Service Report* gives an indication of how effective the resulting combination of APS-wide and agency-specific values was in sustaining a common service-wide ethos in 2004–05. Responses to the *Employee Survey* showed that the proportions of employees in the 21 large agencies who reported that they were familiar with the actual legislated APS Values varied quite widely, as in previous years, ranging from 65 per cent in some agencies to 93 per cent in others.³³ In addition, employees were often confused about which were the legislated values and which were specific to their own agency: the proportion of employees from large agencies which had their own agency-specific values, principles or behaviours and believed this to be the case varied from 25 to 81 per cent in 2004–05. In

large agencies that had not developed their own values, between 33 per cent and 63 per cent of employees thought that they had.³⁴

Under the provisions of the Public Service Act (s.12), departmental secretaries and agency heads are not only responsible for arrangements that uphold and promote the APS Values, but also for supporting their employees in applying them. These are the individuals, as public servants in their agencies well know, who are operating on contracts (or letters of appointment) and under performance assessment and pay systems that to a greater or lesser extent have shaped their own application of the APS Values:

All secretaries are affected, and they are being dishonest or fooling themselves if they deny it. They will hedge their bets on occasions, limit the number of issues on which to take a strong stand, be less strident, constrain public comments, limit or craft more carefully public documents and accept a muddying of their role and that of political advisers. To some extent, there has always been an incentive to please; and public servants have a tradition of caution and anonymity, relating to their role to protect the public interest and to defer to politicians particularly in the public arena. But the political messages to secretaries today are more explicit, and secretaries are, I believe, more cautious in avoiding disputes with ministers and in ensuring any public image of themselves is aligned with the government's position. This is not to suggest a significant lack of courage, but to acknowledge the reality of the incentive framework that has purposely been put into place.³⁵

Not only has the incentive framework for secretaries purposely been put in place, but so too have secretaries themselves. Staff know whether they have a history as ministerial advisers, or as members of interest groups favoured by the government of the day. If they are long-standing public servants, they know their history and reputation, and whether or not they have been known to pull their punches. They know what the secretary said (or did not say) when the new minister announced that the department would be regarded as an extension of his/her ministerial office. They know which senior executives refer to government policy as 'our policy' and which obligingly revise draft responses to parliamentary questions to insert the usual political gibes. They know which do not. They hear (in person or on the net) the responses to Senate Estimates questions and compare them to their own experience of what occurred. Word gets around very quickly. When asked, 38 per cent of employees responding to the *2005–06 State of the Service Employee Survey* agreed that the leadership in their agency was of the highest quality. 62 per cent did not.³⁶

These are the agency leaders who control how much employees hear about service-wide values. They control what the APS Values mean in practice by interpreting them through Chief Executive Instructions and agency systems and

processes.³⁷ They control the seriousness with which the APS Values are taken by the seriousness with which they themselves are seen to take them. As the *State of the Service Report* data suggests, there is considerable agency-to-agency variation in all of these matters, and a corresponding variation in agency employees' own confidence in their capacity to apply the APS Values in their daily work for ministers and their advisers. Surveys have established a direct correlation between employees' confidence in their ability to balance being responsive, apolitical, impartial and professional, and their views on whether senior managers in their agency act in accordance with the APS Values.³⁸ In 2004–05, in 18 large agencies (from which statistically significant responses are available), between 63 and 76 per cent of employees were confident that their most senior agency managers did act in accordance with the APS Values; in one large agency fewer than 50 per cent were confident.³⁹ In 2005–06, large-agency confidence varied from a low of 61 per cent to a high of 86 per cent.⁴⁰

As was noted earlier, agency protocols to guide interactions with ministerial offices constitute another factor that is correlated with employee confidence in their ability to balance being responsive, apolitical, impartial and professional. Whether or not agency heads have sanctioned and promoted particular protocols in their agencies to support the APS Values in interactions with ministers and their advisers is also subject to considerable variation. Table 2 sets out the number of large agencies (those employing more than one thousand people) with such protocols. It also sets out, for all large agencies with a given protocol in place, the variability in the proportion of employees who were aware of such a protocol.

The Table provides scope for speculation on the impact of agency systems and culture on individual decision making. Take the data relating to the availability of a written protocol for resolving staff concerns that may arise about the nature of requests from ministerial offices. In the best-case scenario, an employee who is concerned about something they have been asked to do by a minister or a ministerial adviser would be in one of the two large agencies (call them A and B) that has a protocol to assist them. If they are in agency A, they may be one of the 8 per cent of agency employees who are aware that their agency has such a protocol. If this is also an agency in which the agency head and senior managers are known to take a robust and supportive approach to the APS Values, many of the remaining 92 per cent of employees in agency A (or 68 per cent in agency B) would be able to turn confidently to their senior managers for advice. Some of those senior leaders may be able to refer them back to the relevant agency protocols. Others may even give them the same advice as that contained in the protocol—although in a devolved environment they may still be carrying baggage from another portfolio.

Table 2. Relevant employees' awareness of protocols to guide interactions with ministerial offices – employees in large agencies that reported the protocol(s) in place, 2003–04 and 2004–05

Agency Protocol	Year	Number of large agencies with protocol in place	Employee Survey results (% range)		
			Aware of protocol (%)	Not aware of protocol (%)	Not sure (%)
Requirement for a minimum classification level for signing off ministerial briefs	2004–05	15	52–96	0–8	4–48
	2003–04	12	69–99	0–7	1–27
Requirement for a minimum classification level for phone contact with ministerial office advisers	2004–05	3	13–26	28–35	46–52
	2003–04	2	23–32	28–33	41–44
Requirement that oral briefing to Ministers or Ministers' staff on key issues is confirmed in writing (including emails or follow-up minutes)	2004–05	9	24–63	0–20	37–66
	2003–04	3	27–39	16–23	44–55
Requirement that file notes are routinely made after significant phone calls or oral discussions with Ministers and ministerial advisers	2004–05	10	30–65	6–20	28–61
	2003–04	6	31–62	9–26	25–45
Requirement that significant email communications with ministerial advisers be retained	2004–05	13	47–75	1–12	19–48
	2003–04	8	43–87	5–21	8–49
Agreed unwritten processes for resolving staff concerns that may arise about the nature of requests from ministerial offices	2004–05	9	16–29	6–24	53–71
	2003–04	10	21–33	0–20	48–78
Agreed written processes for resolving staff concerns that may arise about the nature of requests from ministerial offices	2004–05	2	8–32	6–32	61
	2003–04	0	NA	NA	NA

Note: The ranges provided are derived from agency-specific *Employee Survey* results of up to 15 large agencies in 2004–5 (and 12 large agencies in 2003–4) that reported the protocol(s) in place. They do not include the APS-wide results. Source: 2004–05 *State of Service Report*, Table 3.2.

In the worst case, agency employees who are feeling both under pressure and concerned about what they may regard as implicit and explicit political directions from the office of the minister will have no agency protocol, no reliance on agency senior leadership, and no trust in the ethical behaviour of their managers. There may be no real senior leadership to speak of, or they may experience their leadership as so focused on delivering outcomes for the government of the day that the end will always be assumed to justify the means. They may also feel that the systems of performance management in their agency and/or the culture in which they operate are weighted in favour of responsiveness and against due process (see Chapter 3). They may feel that this weighting is deliberate.

The Palmer Report into the conduct of affairs at DIMIA recommended that, in such circumstances 'where an officer or a lower level manager believes that particular arrangements or performance measures are producing bad or negative outcomes, commonsense should prevail and the matter should be raised with executive management'.⁴¹ Common sense may prevail on many occasions. The

data available suggests that in the particular subset of occasions when APS employees witness a serious breach of the Code of Conduct, around half do not report it.⁴² The main reasons for their silence are that the breach had already been reported or had been reported in the past and nothing had been done about it; concern about retribution or victimisation that would result from reporting; and concern about the negative effect reporting would have on their career.⁴³ If they do report it and executive management takes no corrective action, employees have no recourse short of resigning or bringing a code of conduct complaint against their own agency's senior leadership—a complaint turning on a question of balance in a matter subject to interpretation. And since confidence that discrimination or harassment would not result from reporting a suspected breach of the code of conduct by a manager or senior manager is correlated with overall confidence in the operation of the APS Values in the agency, the problem in poorly performing agencies could be assumed to be much more significant. An employee with ethical concerns about the behaviour of those up the line may have no recourse but to do nothing at the time and then to approach those affected 'afterwards to say that he was deeply unhappy ... and wanted to distance himself from the actions of his superiors'.⁴⁴

The cultural changes associated with devolution—the emphasis on vertical accountabilities and responsiveness, on one hand, and the loss of 'connective tissue', on the other—are accelerated by turnover. There were 10,482 separations of ongoing employees during 2004–05, an increase of 44.2 per cent on the previous year.⁴⁵ Over time, these numbers will only rise. In June 2005, APS employees in the 45 and over age group, who would be eligible for retirement in 2014–15, accounted for 40.4 per cent of ongoing employees.⁴⁶ In 1996, this group accounted for only 30.5 per cent of ongoing employees. The 'old guard' is leaving the public service and taking with them one source of informal advice and mentoring about the operation of service-wide conventions. If the staff replacing them believe that particular arrangements or performance measures are producing bad or negative outcomes, they will be increasingly dependent on going 'up the line' with their concerns—which may leave them more inclined to settle quietly into the default agency custom.

In particular, the 'new guard' may have a reduced capacity to pass on the service-wide conventions associated with the Westminster tradition. New employees may not even be aware that there are any lines to be drawn in delivering services to the agency's 'key customers'. An increasing proportion of APS vacancies are being filled from outside the APS, from 33.7 per cent in 1995–96 to 47.6 per cent in 2004–5.⁴⁷ Whatever the undoubted skills and qualifications of these employees, they are unlikely to include an understanding of the application of the caretaker convention, or cabinet confidentiality, or mandated standards for record-keeping. At the same time, as noted in Chapter

1, the numbers of ministerial advisers are growing and with them the number of public servants at the other end of the telephone. In a devolved environment, and in an output-focused ('can do') culture, these employees will find themselves increasingly isolated when it comes to taking anything but the default agency standard of responsiveness to requests from ministers and their advisers. As has been noted, the Public Service Commissioner issued broad *Guidelines on Conduct* in 2003 and more comprehensive general protocols under the heading *Supporting Ministers Upholding the Values* in 2006. But the Public Service Commissioner is also operating in a devolved environment. As one employee reported to the 2004–05 *Employee Survey*:

You can have all the protocols you want, but if the Minister's office wants something you give it to them ... In previous jobs I had been told by my SES to NOT put things on email so there was NO record of it.⁴⁸

Individual isolation is compounded by current technology and is likely to be reinforced by future technology. Email and mobile phones can be used to contact individuals at all levels of the bureaucracy, making employees accessible at all times, virtually anywhere. Technology enables ministers and their advisers to bypass layers of senior management and leave lower-level employees directly exposed to requests and directions that are personal, urgent, and possibly inappropriate. Ministers and their advisers also generally demand speed as part of overall public service responsiveness, often because the media demand it of them, but the overall effect of the demand for urgent turn-around of advice is to require public servants to choose between being responsive and meeting agency's own clearance protocols.

Devolution has also given agency heads the power to reinforce vertical lines of control and to break down collective culture in their own agencies by putting into their hands the power of settling the agency's industrial arrangements, the hiring and firing of employees and the setting of remuneration and terms and conditions of employment. The new industrial framework encourages responsiveness by encouraging competition in relation to performance ratings, access to accelerated advancement, and gaining the attention and regard of those well positioned to deliver either or both. People have always sought to behave in ways that would earn them promotion, but this is promotion compressed in time and raised in visibility. It has little to do with long-term mentoring relationships or skills development, and much to do with senior managers-as-audience. Direct supervisors may award ratings, but senior managers oversee ratings distributions and moderation. As a consequence, 'People strive for visibility. They're looking for opportunities in which they can achieve things, tangible results, quickly.'⁴⁹ The system relies on short-term incentives and—as Allan Hawke predicted and both the *State of the Service* and Audit Office survey findings confirm—is 'divisive and undermines relationships between staff'.⁵⁰

(It is worth recalling in this context that employees in large agencies were unlikely to agree that their agency performance assessment system ‘contributes to a workplace culture where individuals work together effectively’; in fact, agreement was as low as 11 per cent in 2003–04 and 9 per cent in 2004–05). It is a model that, in the absence of active and judicious agency leadership, fosters isolation but not independence and nurtures a ‘control-motivated culture’.⁵¹

In a control-motivated culture—where senior managers have sent a ‘clear message that process is paramount and should not be questioned’—devolved management can foster the fixation on rules it was meant to replace. When such an agency culture settles into place, ‘due process’ can become degraded to ‘mere process’, regardless of the formal guidance that has been put in place. In 2005–06, 62 per cent of respondents to the *State of the Service Employee Survey* agreed that their agency had procedures and systems that ensured objectivity in decision making. 12 per cent actively disagreed and 22 per cent neither agreed nor disagreed.⁵² This is a very mixed result, not least because ‘ensures objectivity’ may be difficult to interpret in this context. The level of systems documentation is not, of itself, the deciding factor. According to the Palmer Report, DIMIA was ‘process rich’ but uninterested in how its processes interacted with people.

In the case of the scrutiny conducted by the Department of Foreign Affairs and Trade (DFAT) of the Australian Wheat Board’s (AWB) contracts with Saddam Hussein’s regime, the problem was, conversely, a lack of process (‘the exporter was not required to certify to the Commonwealth the accuracy or completeness of the contractual documents said to constitute the agreement with the foreign entity’⁵³). Process issues were also identified in the Senate report on *A Certain Maritime Incident* (‘The Committee is not questioning the integrity of the individual participants on the Taskforce, but finds substantial weaknesses in its basic administrative operations, including record keeping, risk management and reporting back’⁵⁴). In fact, it has been argued in the cases of DIMIA and *A Certain Maritime Incident* that the presence or absence of particular processes is not so much the point as the intersection of agency activities with an assumption culture, with the default set to responsiveness:

The *Palmer Report* is a refreshingly blunt document that rightly highlights the legal responsibilities of public servants, and calls for leadership and careful management to ensure that the enforcement and application of policies are justified and equitable. Yet I feel it downplayed the possible impact of the culture of political responsiveness on exercising legal responsibility, and perhaps inadvertently confused the issue. Palmer says the DIMIA management approach appeared to be ‘process-rich’ and ‘outcomes poor’; maybe the problem also was that it was too ‘can-do’ and not enough ‘due process’. To my mind, that was one of the lessons from the Tampa case and subsequent intercepts with unauthorised

arrivals when the pressure was on officials and defence service personnel to avoid circumstances where their legal authority was transparent and their legal responsibility might have led to an increase in the number of arrivals of asylum seekers ... [H]ighlighting of the 'process rich and outcomes poor' line allows too much of the blame to be placed on the public service, and too little emphasis to be given to the political context and how public servants should handle that context.⁵⁵

Once the political context is used to frame the administrative failures surrounding 'Children Overboard' and Cornelia Rau (and AWB), it appears that in each case 'can-do' outweighed 'due process'. In each case 'can-do' was consistent with political if not departmental rhetoric, and in each case, we are assured, the Government did not explicitly ask for it to be done:

The government did not direct public servants to provide false information or fail to correct the record or act outside the law. Nor did it intimate that such behaviour was acceptable. Nor did Ministers put impenetrable barriers around themselves.⁵⁶

This may be true, but in a system that fosters and rewards responsiveness to ministerial expectations as well as ministerial requests, it is not a sufficient defence.

Recent adjustments to the devolved model

In his 1996 discussion paper on best practice in the Australian public service, Minister Reith had argued that, in making devolution work,

One inhibitor is the centre. It survives still. Central agencies must learn to 'let go' in practice as well as theory. Standards must be maintained, service-wide policies implemented, advice provided and best practice promoted. But the culture must be one of facilitation not regulation.⁵⁷

While departmental secretaries subsequently agreed that devolution had enabled them 'to align their staffing, administrative resources and assets to the objectives government has set them', they have also agreed that it has not always been good for the responsiveness of the system as a whole. 'There is some risk,' they have acknowledged, 'that devolution of authority to agency heads and a clear vertical accountability for agency outcomes may make collaboration across organisational boundaries more difficult.'⁵⁸ The problem at an operational level was succinctly put by a respondent to the *2004–05 State of the Service Employee Survey*, commenting on inter-agency communication:

Oral communication is just proving to be adequate but written is poor (as it appears staff do not want to be recorded as having provided information or advice to another agency). The motivation appears to be a growing concern that staff will be held accountable (i.e. punished) for

having consulted/assisted on a matter that may result in an outcome that does not accord with what could be anticipated may be their own Minister's preferred position. This means misinformation is being provided (or poorly articulated positions are being put) to Government as part of the deliberative process.⁵⁹

In terms of the implementation process, coordinated service delivery was recognised by secretaries to be an organisational boundary issue, together with Indigenous support, national security, environmental management and drug abuse issues. There was concern that public servants at all levels, motivated by what one agency celebrated as the 'will to win'⁶⁰, were acculturated to looking vertically up lines of accountability to their ministers but not horizontally across them to each other. The old central agencies in particular were *proposing*, but line agencies were not *disposing*, or at least not with sufficient gusto. 'Political control and performance issues'⁶¹ were emerging within the highly devolved framework, and the Government was becoming 'concern[ed] that political priorities were not being sufficiently reflected in policy directions, and were not being followed through in program implementation and delivery'.⁶²

Accordingly, while citing 'considerable evidence' of the positive impact of devolution on agency productivity,⁶³ secretaries identified the need to improve collaboration across organisational boundaries. They issued guidance for whole-of-government cooperation and put in place mechanisms for 'connecting government'.⁶⁴ But despite the rhetorical enthusiasm, the relevant guidance stipulated that horizontal collaboration was to occur 'while maintaining vertical accountability'.⁶⁵ The top-down drivers of bottom-up responsiveness were not to be substantially changed: '[m]arket testing, outsourcing, organisational devolution and performance management have become central parts of public service working life' and were to remain in place.⁶⁶ Instead, (re)centralisation was pursued in a way that had the effect of reinforcing rather than offsetting the vertical accountabilities put in place through devolution. One of the principal vehicles for this recentralising was the Government's response to the Uhrig Report:

The report was undertaken after extensive lobbying by the business sector and was prepared by businessman John Uhrig who, at the time of the Inquiry, was chair of the mining giant Santos Ltd. After a largely internal review process, he handed down a report containing recommendations that, according to Wettenhall, 'were in line with, and helped give form to, the Howard Government's own thinking.' That thinking was based on the notion that ministers should have complete control over the activities of public agencies unless those agencies are engaged in a commercial operation or there is some other exceptional circumstance warranting independence.⁶⁷

The structural changes undertaken following the Uhrig Report simply buttress top-down controls. Six delivery agencies were brought together and put under departmental oversight, including Centrelink and the Health Insurance Commission, whose governance boards were abolished and replaced by an executive management structure 'to establish a more direct Ministerial role in their operation'.⁶⁸ A further five agencies that were once statutorily independent—the Australian National Training Authority (ANTA), National Occupational Health and Safety Commission (NOHSC), National Oceans Office (NOO), Australian Greenhouse Office (AGO) and the Australian Government Information Management Office (AGIMO)—were moved back into departments. According to the then Secretary of the Department of the Prime Minister and Cabinet, it 'is a process designed to clarify the lines of authority, to establish responsibility for decision making and to enhance Ministerial (and Secretarial) accountability'.⁶⁹ It is also a process that reflects the Prime Minister's view, communicated to his ministers, that they should be 'conscious of the extent to which the establishment of these bodies limits the government's own sphere of control and constrains the options available to them'.⁷⁰

Statutory authorities that were not moved back into departments were required to work through portfolio secretaries rather than directly to ministers. Other changes, now subject to reversal by the Rudd Government, included the selective shortening of contracts for heads of statutory authorities from five to two or three years (not a Uhrig proposal), and the vetting of all senior appointments to public agencies directly by the Prime Minister's Office.⁷¹ Advisory boards and committees were streamlined, also with the effect of 'enhanc[ing] Ministerial (and Secretarial) accountability', most famously by the removal of the employee representative on the ABC Board and the replacement of the entire board of the Australian Research Council by an advisory committee with no decision-making power—also under the aegis of Uhrig:

Replacing the board with a chief executive who reports directly to the minister will, Dr Nelson says, expedite funding and increase certainty. So why aren't the beneficiaries cheering? Universities see the minister's words as euphemisms for one word: control.

The ARC shake-up is one of the first outcomes of a review of corporate governance of 170 statutory authorities by businessman John Uhrig. He offered another option, enabling the ARC board to finalise grants without ministerial approval, a move that would speed up the grants process. Only one option increased ministerial power.

... If there is a conflict between political and academic agendas—between, say, research into renewable energy or the fossil fuel technology favoured by Government energy policy—it's not hard to guess which is now more likely to win funding.⁷²

It would appear that the prediction that 'the devolved model is unlikely to survive faddish inclinations once active political executives become disabused of ideological fixations'⁷³ has been working itself out. Active political executives do not like giving away control, even in the interests of pursuing a market model. In the Coalition's Indigenous Coordination Centres, for example, those doing the coordinating of Indigenous health, housing and employment services remained responsible, respectively, to the heads of the health, housing, and employment agencies.

The response to the loss of connective tissue in the public service brought about by devolution has been to strengthen top-down policy controls over policy development and implementation by increasing the power of central agencies. Government 'concern that political priorities were not being sufficiently reflected in policy directions, and were not being followed through in program implementation and delivery' noted above, was addressed by new whole of government mechanisms noted above and by the creation of the Cabinet Implementation Unit in the Department of the Prime Minister and Cabinet. This body enables the Prime Minister to look over the shoulders of his portfolio ministers while they are looking over the shoulders of their agency heads while they drive agency performance. Both the new whole of government mechanisms and the Uhrig changes were part of the broader 'reinforcement of and significant extension to vertical relationships' brought to bear through a series of structural adjustments summarised by Halligan as:

1. resurrection of the central agency as a major actor and of control over departments;
2. whole-of-government as the current expression of a range of forms [of] coordination;
3. central monitoring of agency implementation and delivery; and
4. control of non-departmental bodies by departmentalisation (absorbing statutory authorities) and reclaiming control of agencies with hybrid boards to accord with corporate governance prescriptions.⁷⁴

The result is 'more political instruments for securing and sustaining control and direction ... a brace of instruments for working the system strategically and at several levels'.⁷⁵ Because of the form it has taken in the Australian political and institutional context, devolution has enabled the government to increase its control over increasingly isolated public servants in increasingly isolated agency-businesses to exact ever higher levels of responsiveness. This means that when it wants it can require agencies to work together to deliver centrally orchestrated policy making involving coordinated responses. It also means, conversely, that at all other times there may be a presumption in favour of their not interacting effectively when, as in the case of Children Overboard or DFAT's

oversight of AWB, it is necessary that ‘mandarins and their masters manage ... to miss what is going on’.⁷⁶

ENDNOTES

- ¹ Peter Shergold, ‘Regeneration: New Structures, New Leaders, New Traditions’, speech delivered at the Institute of Public Administration Australia National Conference, Canberra, 11 Nov. 2004, http://www.pmc.gov.au/speeches/shergold/regeneration_2004-11-11.cfm, viewed 26 June 2006.
- ² Neil Comrie, *Report of the Inquiry into the Circumstances of the Vivian Alvarez Matter* (Canberra, 2005), 77.
- ³ See Glyn Davis and R. A. W. Rhodes, ‘From Hierarchy to Contracts and Back Again: Reforming the Australian Public Service’, in Michael Keating, John Wanna and Patrick Weller (eds), *Institutions on the Edge? Capacity for Governance* (Allen & Unwin: Sydney, 2000), 77.
- ⁴ See John Halligan, ‘The Integrated Performance Model in the Australian Public Sector and its Consequences for Public Sector Organisations’, paper presented at Panel on Autonomy and Steering Models of Public Sector Organisations, 9th International Research Symposium on Public Management, SDA Bocconi, Milan, 6–8 Apr. 2005.
- ⁵ The 1976 Report into government administration (Coombs Commission) recommended, among other reforms, devolution of responsibility, as well as greater flexibility and diversity in organisational styles; more efficient and economical use of human resources, and a more open public service. See Royal Commission on Australian Government Administration, *Report* (AGPS: Canberra, 1976).
- ⁶ Peter Shergold, ‘The Australian Public Service in 2035: Back to the Future’, speech to CPA Annual Conference, Melbourne, 18 May 2005, at http://www.pmc.gov.au/speeches/shergold/aps_2035_back_to_the_future_2005-05-18.cfm, viewed 25 Apr. 2006.
- ⁷ Peter Reith, *Towards a Best Practice Australian Public Service: Discussion Paper issued by the Minister for Industrial Relations and the Minister Assisting the Prime Minister for the Public Service* (Canberra, 1996), 11.
- ⁸ Andrew Podger, ‘What Really Happens: Department Secretary Appointments, Contracts and Performance Pay in the Australian Public Service’, *Australian Journal of Public Administration*, 66(2) (2007), 136.
- ⁹ *Ibid.*
- ¹⁰ Reith, *Towards a Best Practice Australian Public Service*, p. v.
- ¹¹ *Ibid.* 19.
- ¹² *Ibid.* p. ix.
- ¹³ In addition to administrative implementation of some financial management reforms, the Workplace Relations Act 1996 and the Workplace Relations Regulations 1996 allowed APS employers to override prescribed provisions of the Public Service Act 1922 (principally those relating to dismissal and retirement) in agency agreements. In 1998 a number of provisions of the Public Service Bill 1997 were implemented by administrative means.
- ¹⁴ Halligan, ‘Integrated Performance Model’, 5.
- ¹⁵ Shergold, ‘Regeneration’.
- ¹⁶ See, for example, Shergold, ‘Australian Public Service in 2035’; Andrew Podger, ‘Looking Upwards and Downwards: Key Issues and Suggestions for Managing Board/Minister/Departmental Relations’, paper presented to the University of Canberra Conference on Governance, Mar. 1996, pp. 2–3.
- ¹⁷ Management Improvement Advisory Committee of the Management Advisory Board, *Achieving Cost Effective Personnel Services* (1995) and *ACEPS Stage 2: Re-engineering People Management: From Good Intentions to Good Practice*, at <http://www.apsc.gov.au/publications/archive.htm>, viewed 21 Feb. 2008.
- ¹⁸ Australian National Audit Office, *Managing People for Business Outcomes: Year Two*, ANAO Audit Report no. 50, 2002–3 (Canberra, 2003).
- ¹⁹ Department of Employment and Workplace Relations 2003, ‘APS—Workplace Relations Policy Parameters for Agreement Making in the Australian Public Service’ (Dec. 2003).
- ²⁰ MFP measures are not presented for public administration because the volume estimates of gross value added are derived using a method in which input data are used as measures of output. As a result, the measure of real gross value added effectively assumes that there has been no change in productivity. Australian Bureau of Statistics, Cat. 5216.0, *Australian National Accounts: Concepts, Sources and Methods*,

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2000, at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/66f306f503e529a5ca25697e0017661f/65a7a1b617fd3461ca2569a70003feef!OpenDocument>, viewed 21 Feb. 2008.

²¹ Public Service Commissioner, *2003–04 State of the Service Report* (Canberra, 2004), 99.

²² Peter Shergold, 'Pride in Public Service', speech to National Press Club, Canberra, 15 Feb. 2006, at http://www.pmc.gov.au/speeches/shergold/pride_in_public_service_2006-02-15.cfm, viewed 15 Mar. 2006.

²³ Ibid.

²⁴ Patrick Weller, *Don't Tell the Prime Minister* (Scribe Publications: Melbourne, 2002), 4.

²⁵ M. J. Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report* (July 2005), 169, at <http://www.minister.immi.gov.au>.

²⁶ Comrie, *Report*, 32–3.

²⁷ Tony Blunn, 'Public Service Values in the New Millennium', *Canberra Bulletin of Public Administration* no 107 (Mar. 2003), 29–30.

²⁸ Shergold, 'Regeneration'.

²⁹ Australian Public Service Commission, *State of the Service Employee Survey Results 2004–05* (Canberra, 2005), 16, question 20. The data refer to questionnaire responses for the year following the logo change, but that is the first year for which data are available.

³⁰ Halligan, 'Integrated Performance Model', 5.

³¹ Shergold, 'Regeneration'.

³² Australian Public Service Commission, *Embedding the APS Values* (Canberra, 2003), 13, at <http://www.apsc.gov.au/values/values7.htm>, viewed 26 June 2006.

³³ See Public Service Commissioner, *2004–05 State of the Service Report* (Canberra, 2005), 142.

³⁴ See *ibid.* 147.

³⁵ Podger, 'What Really Happens', 143–4.

³⁶ Australian Public Service Commission, *State of the Service Employee Survey Results 2005–06* (Canberra, 2006), 18, question 21a.

³⁷ See discussion of 'The Role of Leadership': Australian Public Service Commission, *Embedding the APS Values*, Ch. 6, at <http://www.apsc.gov.au/values/values7.htm>, viewed 26 June 2006.

³⁸ Public Service Commissioner, *2004–05 State of the Service Report*, 41; see also correlation for the previous year between employees' levels of confidence that their most senior managers act in accordance with the APS Values and their own confidence in their ability to balance being responsive, apolitical, impartial and professional in the *2003–04 State of the Service Report*, 40. The question on leading by example in ethical behaviour was not asked in 2003–4.

³⁹ Public Service Commissioner, *2004–05 State of the Service Report*, 144.

⁴⁰ Public Service Commissioner, *2005–06 State of the Service Report*, 58.

⁴¹ Palmer, *Inquiry*, 170.

⁴² Specifically, 50 % in 2004; 50 % in 2005; and 44 % in 2006. See Australian Public Service Commission, *State of the Service Employee Survey Results 2005–06*, 28, question 39b.

⁴³ See Public Service Commissioner, *2005–06 State of the Service Report*, 61. These responses were coded from an open-ended question.

⁴⁴ Ian Lowe, 'The Research Community', in Clive Hamilton and Sarah Maddison (eds), *Silencing Dissent: How the Australian government is controlling public opinion and stifling debate* (Crow's Nest: Allen and Unwin, 2007), 68.

⁴⁵ Public Service Commissioner, *2004–05 State of the Service Report*, 25.

⁴⁶ *Ibid.* 19.

⁴⁷ Of that group, over half had never worked in the APS before. See *ibid.* 24–5.

⁴⁸ *Ibid.* 40.

⁴⁹ Michael O'Donnell and John Shields, 'Performance Management and the Psychological Contract in the Australian Federal Public Sector', *Journal of Industrial Relations* 44(3) (2002), 447.

⁵⁰ Department of Defence Online media room, 'People Power', based on an address to the International Seminar of the Royal United Services Institute of Australia by Allan Hawke, Secretary of the Department of Defence, 17 Nov. 2000, at <http://www.defence.gov.au/media/SpeechTpl.cfm?CurrentId=444>, viewed 23 July 2007.

- ⁵¹ Palmer, *Inquiry*, 173.
- ⁵² Australian Public Service Commission, *State of the Service Employee Survey Results 2005–06*, 18, question 22.
- ⁵³ Terence Cole, *Report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme*, vol. 1, Nov. 2006, Recommendations, p. lxxxiii.
- ⁵⁴ Report of the Senate Select Committee on *A Certain Maritime Incident*, 23 Oct. 2002, Executive Summary, at http://www.aph.gov.au/senate/committee/maritime_incident_ctte/report/a06.htm, viewed 20 Apr. 2006.
- ⁵⁵ Podger, 'Looking Upwards and Downwards', 15.
- ⁵⁶ Shergold, 'Pride in Public Service'.
- ⁵⁷ Reith, *Towards a Best Practice Australian Public Service*, 21.
- ⁵⁸ Management Advisory Committee, *Connecting Government: Whole of Government Responses to Australia's Priority Challenges* (Canberra, 2004), 6.
- ⁵⁹ Public Service Commissioner, *2004–05 State of the Service Report*, 283.
- ⁶⁰ Department of Finance and Administration, *Annual Report 1999–2000* (Canberra, 2000), 59, at http://www.finance.gov.au/pubs/AnnualReport99-00/pdfs_word/completereport/Annualreport.pdf, viewed 29 June 2007. See also O'Donnell and Shields, 'Performance Management', 449: 'Such competition for visibility and performance ratings can also lead to a form of dysfunctional individualism where employees refuse to share valuable information. In the case of DOFA [Finance], there were concerns that some employees were hoarding their knowledge.'
- ⁶¹ Halligan, 'Integrated Performance Model', 1. See also Peter Shergold, 'Plan and Deliver: Avoiding Bureaucratic Hold-up', speech to the Australian Graduate School of Management/Harvard Club of Australia, 17 Nov. 2004, National Press Club, at http://www.dpmc.gov.au/speeches/shergold/plan_and_deliver_2004-11-17.cfm, viewed 27 June 2006.
- ⁶² Halligan, 'Integrated Performance Model', 7.
- ⁶³ Management Advisory Committee, *Connecting Government*, 6.
- ⁶⁴ See *Management Advisory Committee, Connecting Government: Good Practice Guides*, at <http://www.connected.gov.au/home>, viewed 3 Sept. 2006.
- ⁶⁵ Management Advisory Committee, *Connecting Government*, 15.
- ⁶⁶ Shergold, 'Regeneration'.
- ⁶⁷ Andrew Macintosh, 'Statutory Authorities', in Hamilton and Maddison, *Silencing Dissent*, 152.
- ⁶⁸ Public Service Commissioner, *2004–05 State of the Service Report*, 274.
- ⁶⁹ Shergold, 'Regeneration'.
- ⁷⁰ Letter from the Prime Minister dated 29 Nov. 1996, leaked to the media in early 1997, and quoted by Macintosh, 'Statutory Authorities', 154.
- ⁷¹ *Ibid.* 152.
- ⁷² Editorial, *The Age*, 20 July 2005, at <http://www.theage.com.au/news/editorial/nelson-calls-the-research-tune/2005/07/19/1121538971011.htm>, viewed 3 Sept. 2006. A detailed account of this process is set out in Stuart Macintyre, 'Universities', in Hamilton and Maddison, *Silencing Dissent*, 41–8, 56.
- ⁷³ Halligan, 'Integrated Performance Model', 3.
- ⁷⁴ *Ibid.* 7–8.
- ⁷⁵ *Ibid.* 17.
- ⁷⁶ Editorial, 'Time to Account for AWB Scandal', *Weekend Australian*, 30 Sept.–1 Oct. 2006, p. 18.