

## Chapter 6. To market, to market: outsourcing the public service

Outsourcing in Australia has a long history.<sup>1</sup> While governments long had a practice of supporting not-for-profit organisations delivering caring services, the outsourcing of services previously delivered directly by government also began in those areas with clear commercial analogues, as a means of simply substituting private for public provision. Initially this included such services as school bussing and school cleaning and postal and telecommunication services. Outside private health and education services, however, clear commercial analogues for activities in welfare services were not so much in evidence, and ‘by definition this rule[d] out [outsourcing of] most human services, given that there were seemingly few if any alternative suppliers in the market’.<sup>2</sup>

In fact, the large-scale outsourcing of more complex and sensitive services was not on the table until the second stage of the public sector reform process broadly associated with NPM. In the late 1980s, the Hawke Government called for an increased focus on regulation and competition consistent with the broader micro-economic reform agenda. This was followed by the mandating of market testing for support functions through the Defence Commercial Support Program, and then the commercialisation of the Department of Administrative Services. In 1995, the agenda was extended to the market provision of services and choice for citizens with the National Competition Policy, although initially the focus there was on state-based services. The preference for competitive contracting for the delivery of Commonwealth services became official policy in the first term of the Howard Government.<sup>3</sup> During its first year, the Minister Assisting the Prime Minister for the Public Service made it clear that, in the Government’s view:

It is no longer appropriate for the APS to have a monopoly. It must prove that it can deliver government services as well as the private or non-profit sectors.<sup>4</sup>

Since the mid-1990s, NPM has taken contracting organisations into areas of government activity characterised by increasing risk, sensitivity and complexity. Where necessary, it has created ‘a new, competitive market’,<sup>5</sup> such as the Jobs Network, in order to do so. In the process it has turned a significant number of public servants—already on formal performance agreements themselves and increasingly being moved on to individual employment contracts—into contract managers. Thus, while public sector providers were being exhorted to behave more like those in the private and community sectors, the latter were being drawn into market relationships with each other as well as with the government.

Throughout the same period, the public has been learning to base its relations with the government sector on market models—to enter into implicit and explicit contracts, and to become clients and consumers of government services. According to the *2004–05 State of the Service* report, the Australian Customs Service has *clients* (p. 64), as does the Department of Veterans Affairs (p. 60); on the other hand, Centrelink has *customers* (p. 63)—6.5 million of them in 2003–4—as does AusIndustry (p. 60). Employees of these and other agencies undertake ‘client-focused’ training to assist them in meeting their ‘client service responsibilities’ (p. 65). Many agencies undertake client surveys and collect customer feedback. Customers and clients of the agencies enter into relations with their service providers that are modelled on contracts for services. Some have actual contracts setting out their mutual obligations. The contract model is becoming an organising principle for public life:

The central motif of the contract has extended beyond organising and managing the public sector to embrace the link between government and citizens (Yeatman 1995, 1996a). What was once a political association now takes on an implied contractual form. Electors become clients, their rights and expectations encapsulated in a ‘Citizens Charter’ or, in some Australian states, a ‘guarantee of service’. This contract binds the state to produce certain levels of services, and specifies penalties for failure to comply. The principal and agent model, in which mutual obligations are spelled out in writing, becomes an organising principle for public life.<sup>6</sup>

The material that follows examines how the transactional contract as an organising principle has been extended beyond public sector employees, blurring the distinction between the public, for-profit and not-for-profit sectors and between citizens and consumers of government services. The intention is to shed further light on how the institutional and cultural boundaries of the APS have been being dismantled, together with what was distinctive about the public service ethos. At same time, the analysis points to the emergence overseas of new models for relations between the public and its servants that could reshape the transactional contract.

## Outsourcing in theory

Within the month of its election in 1996, the Coalition Government established a National Commission of Audit to examine aspects of what the Commonwealth government did, how it did it, and the implications of these for its financial position.<sup>7</sup> That Commission reported very quickly—within two months—recommending a more limited role for government, a greater emphasis on effectiveness and efficiency, and the separation of policy formation from program delivery. These recommendations were underpinned by the ‘common

view,' as the Auditor-General put it, that 'public services would be provided more efficiently and effectively, with greater client satisfaction, in a more market-oriented environment which provided greater flexibility for management decision-making and the discipline of competition.'<sup>8</sup> The 'common view' prevailed (if not many of the Commission of Audit's specific proposals), and two years later, in 1998, the Commonwealth Employment Service (CES) was replaced as a provider of employment services by 'a new, competitive market'<sup>9</sup> to be known as the Jobs Network.<sup>10</sup>

The Jobs Network had even more 'strings to its bow' than the superior efficiency and effectiveness that comes with market competition. The Prime Minister saw the new service delivery model as one of those initiatives 'that go to the values and culture of our society';<sup>11</sup> the then Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service said (wearing both hats) that the model was founded on:

... the conviction that community-based agencies are better equipped than bureaucracies to deliver 'pastoral care', avoid treating unemployed people as faces in a queue or numbers in a file, and foster the web of personal engagements which unemployed people have often lost ... The constant lesson of the welfare state is that government agencies can never substitute for the complex human relationships which sustain a social fabric of individuals-in-community.<sup>12</sup>

The initial carve-up of CES services was evenly balanced, with about a third of the market going to each of the government, community and private sectors. Not surprisingly, given the Minister's *a priori* view that '[g]overnment agencies are much better at delivering identical services to whole populations than meeting the needs of individual people,' the government provider was rapidly phased out, and with it one of the most heavily unionised sectors of the APS. By March 2000 the public sector's market share of employment services had fallen from 33 per cent to 8 per cent.<sup>13</sup> By 2003 the figure was 3 per cent.<sup>14</sup>

The outsourcing of service delivery in employment services pursued a purchaser/provider model, with DEWR purchasing employment services from a competitive marketplace while welfare services were purchased from Centrelink by (initially) the Department of Family and Community Services and then DEWR. The efficiency argument underpinning the purchaser/provider model was that that the contractual arrangement itself would force the purchaser to take responsibility for policy implementation by defining the outputs being sought, enabling the provider to focus on responsiveness to the public and value for money more generally.<sup>15</sup> Responsiveness to the public would also be enhanced by competition between providers for jobseeking 'customers', as they came to be called.

## Outsourcing in practice

The appeal of the purchaser/provider model was not just the enhancement of service quality that was anticipated,<sup>16</sup> it was also the retention of policy control by the public sector purchaser. The Government had no intention of hiving off its policy decision-making role. In practice, however, the contracts that were meant to settle the distinction between policy direction and service delivery were often unable to do that work reliably, and in some cases had the effect of distorting the services to be delivered—often in much the same way that similar accountability mechanisms had distorted services delivered by the CES. In Jobs Network there were early problems with ‘creaming’ of easily placed jobseekers (the practice of selectively admitting clients with the best prospects of positive outcomes and avoiding more ‘difficult’ clients) and recycling of others through short-term placements. Contractual performance indicators favoured measurable outputs (after considerable revision, outcomes measurement for Jobs Network service providers is now based on numbers of jobseekers employed rated against 16 factors including labour market conditions) or measurable inputs (such as the maximum number of minutes per caller that should be spent responding to public phone queries) rather than the service user’s experience (for example, how long they had to wait in the queue, whether complex queries were actually resolved or referred on, and the extent to which the service provided actually corresponded to the needs of the person being serviced). In the case of the Jobs Network, contract provisions required providers to build good working relations with their customers while at the same time reporting on them if they failed set activity tests. ‘Often there is no scope for agencies to develop their own unique service approach, because the contract is so specific,’ complained the founding CEO of The Salvation Army Employment Plus.<sup>17</sup> Organisations began to find that, contrary to the minister’s expectations, it was the accountability requirements governing the conduct of government business that led to people being treated as ‘as faces in a queue or numbers in a file,’ not just some perverse bureaucratic *zeitgeist*:

Agencies are increasingly asked to deliver a range of pre-determined government services with ‘program evaluation’ increasingly focussed on issues of contract compliance rather than the effectiveness of programs for those people that they target. Agencies increasingly compete against other agencies for funding, often ‘corporatised’ agencies with no local connection to the community ... social services run the risk of being treated as commodities. In this context the ‘product’ becomes more important than the ‘people’ for whom it was intended.<sup>18</sup>

Problems of a similar nature emerged even more famously with services outsourced by DIMIA. According to Palmer, the detention services contract

with GSL read ‘purchaser/provider’ literally as a ‘‘master–slave’ relationship, not a partnership’,<sup>19</sup> with the result that it:

... create[d] a culture where the specified performance measures become, by default, entrenched as maximum standards because the service provider’s focus is on ensuring compliance so as to avoid financial sanction. The nature of the activity is created by the contract.<sup>20</sup>

Palmer took the view, already reached by the ANAO<sup>21</sup> and other analysts,<sup>22</sup> that purchaser/provider arrangements for the delivery of complex social services were doomed to fail if they were policed too rigorously, and that there should be increased scope for feedback and innovation between the contracting parties along the lines of a ‘cooperative partnership’.

Consistent with this view, second-generation contracting tended to downplay the purchaser/provider dichotomy by placing greater emphasis on instruments and rhetoric along the lines of ‘relational contracts’, ‘cooperative partnerships’, ‘collaborative partnerships’, ‘integrated service delivery’ or ‘integrated governance’. Such terms imply a greater degree of reciprocity between the purchasing agency and the service provider than would be characteristic of the more purely ‘procurement’ function of purchaser/provider contracts. The rhetoric of cooperative partnerships—as the specimen titles above indicate—is classic *bureaucratese*; all varieties and combinations of sharing are capable of being included under almost as broad a range of headings. A review of the research and practice literature focusing on partnerships in the welfare sector shows a blossoming of guidance material on the design of such partnership arrangements after 1997, with much of the early work examining the practice in Canada and the UK.<sup>23</sup> Despite their various forms, all of these new arrangements were intended to specify, contractually, a kind of interactive space between the parties which could be filled by some or all of: information sharing; the sharing of financial or other support; the sharing of the actual work being undertaken; or the sharing of decision making. Without fully examining individual contractual arrangements (which is not straightforward as they are largely commercial in confidence<sup>24</sup>) it is difficult to know just how much is to be shared by whom, with whom and how often. The Management Advisory Committee advised public servants that the ‘nature of the partnership can range from the more traditional purchase of service approaches through to arrangements based on complementary or shared goals’<sup>25</sup>—which covers just about everything.

Thus, while the more intellectually tidy purchaser/provider distinction did not go away, it became subject to the rhetoric of partnership:

All government contracts may be said to aim at responsiveness to government in the sense that all such contracts are intended to achieve government-determined objectives. In the great majority of cases, this

aim is achieved through careful stipulation of goods and services which the contractor is obliged to deliver rather than through explicit resort to the value of responsiveness as such. However, the value of responsiveness is implicit in contractual terms that require regular consultation between the contractor and government officials and allow for the contractor to take note of changing government priorities. Such clauses, for instance are standard in contracts for information technology and for human resources. All partnership or relational contracts may be said to imply some reliance on the contractor's general willingness to accommodate as yet unstated wishes of the government. However, no contracts appear to explicitly require contractors to exercise the same sensitivity to government directions that are expected of public servants.<sup>26</sup>

While their levels of sensitivity might differ, public servants and service deliverers were intended, in the interests of partnership, to 'share the same goals and vision'<sup>27</sup> and to do so before the work began, because 'pre-existing shared values or initiatives that effectively promote common values are ... important for joint working arrangements, particularly given the difficulties of articulating all the values and behavioural standards expected of partners in formal accountability arrangement[s]'.<sup>28</sup> In plain English this means that to become useful partners, non-government providers should ideally share the government's policies as well as its contracts.<sup>29</sup> At the very least they should be able to share its agenda—a word nicely poised between values and policy implementation—and wear the badge of partnership while they do the government's work. Former Prime Minister John Howard certainly advised the Centre for Independent Studies that he saw no distinction between service delivery parameters and the reinforcement of desirable 'social norms and values':

There are times when governments need to look seriously at policies which might appear paternalistic in the libertarian lecture hall, but which help to reinforce social norms and values that are under assault in various ways.

... These [social policy changes, i.e. the tough on drugs strategy, entrenchment of 'mutual obligation', promotion of 'traditional' approaches to education, the replacement of the Commonwealth Employment Service with a private Jobs Network, a social coalition to tackle youth homelessness, a 'sea change' in Indigenous affairs policy, and the use of the tax system to 'support families with children'] are issues that go to the values and culture of our society, the institutions that support strong values and fundamental questions about the relationship between government and citizens when it comes to individual and civic responsibility.<sup>30</sup>

Can community organisations with views on 'fundamental questions about the relationship between government and citizens' that do not coincide with those of the government deliver its services for it? Can, for example, the Brotherhood of St Laurence implement a system that removes recipients' discretion over how their welfare payments are spent when 'the frontline experience of the Brotherhood of St Laurence points to a number of practical problems with the minister's proposal'?<sup>31</sup> Or can an agency that is delivering employment services for the government provide its own financial support to a client that it has been required to report to Centrelink for failing to meet activity tests? Can these groups make values choices without having made political choices as well? Experience suggests not, as the following story posted on the ABC's website suggests:

The federal Minister for Human Services, Joe Hockey, has accused the Catholic Church of a political stunt by pulling out of the government's welfare-to-work management program.

Catholic Social Services Australia no longer wants to be part of the program and says it is a harsh system that does not protect the vulnerable.

Mr Hockey says the organisation is walking away from society's most vulnerable.

'Catholic Social Services Australia are choosing to use those people most vulnerable in order to score some political points in partnership with the Labor Party,' he said.

'We engage Catholic Social Services to help those people most vulnerable in the community.

'It is bizarre and quite contradictory behaviour to walk away from helping people who are vulnerable and it's very disappointing.'

But the chief executive of the St Vincent de Paul Society, Dr John Falzon, says the welfare-to-work program demonises those in need.

He says members of the organisation took a firm stand against the scheme right from the beginning.

'There is a desperate loss of hope that these people face,' he said.

'This program, instead of offering dignity, it would actually take away hope.

'We would dearly like to see the welfare reform as an opportunity for the Government to embrace the politics of hope rather than one of demonisation and punitive measures.'<sup>32</sup>

Clearly the terms of the debate have moved beyond purchaser/provider issues and into the area of values. If you are not with us you do not wish 'to help those

people most vulnerable in the community'. This line of argument illustrates why it is important to government from a political perspective to have the community sector involved in delivering its welfare reforms. From inside the tent they are less likely to embarrass the Government by criticising its welfare delivery policies or, at least, they are more likely to choose their battles with considerable care. Among them might be those whom John Howard identified as, 'powerful vested interests with scant regard for the national interest [because they sit] outside the one mainstream'<sup>33</sup> but the public puts more faith in their commentary than it does in that of government.<sup>34</sup> Further, once community organisations that may have been critical of aspects of government policy have publicly become partners, they can be seen by their constituency to be actually delivering the service model they formerly questioned. At this point, community organisations are providing government with a further political benefit in addition to skilled service delivery. The government is able to use more than their familiarity with the community—it is also able to use their familiarity to the community. The medium becomes the message. The churches are supporting mutual obligation. The churches are adhering to the 'breaching' guidelines.

This means that community organisations (such as Hillsong Church<sup>35</sup>) which find their way into 'the one mainstream' are more likely to seek and to be found eligible to receive government service delivery contracts than those who do not. One analysis has noted, for example, that 'some emerging partnerships between government and community organisations may be the precursor of a new neo-corporatism that favours a selected few of what governments as contractors consider to be the more successful and reliable community organisations'.<sup>36</sup> They are likely to be joined as government partners by the private sector—which, in addition to being efficient, is largely exempt from values conflicts of this nature—and other service deliverers who also have claims on the government's service delivery money, such as an appropriate regional presence and well-placed referees. (Private sector companies that benefited from the initial carve-up of CES services 'were located at the rate of about four to one in Coalition-held regional electorates'<sup>37</sup>). None of these criteria for partnership was unique to the Howard Government. Nor was it the first to use social engineering to 'reinforce social norms and values that are under assault'. What is unique is the very significant quantitative and qualitative enhancement of direct public sector control over community sector activities represented by the extent of contracting for the delivery of social welfare programs, and its association with a growing emphasis on the rhetoric of partnership and a shared agenda—to the extent that, as one CEO complained, 'there is a risk in this outsourced world that the church simply becomes the government service'.<sup>38</sup>

In fact, some second-stage service delivery contracts—call them cooperative partnerships—ask more of service deliverers than simply sharing the

government's agenda. Partners are required to actively think themselves into the policies they propose to deliver. This process is more complex than the straightforward withholding of resources from universities or service delivery organisations until they can see their way to implementing the government's preferred industrial relations arrangements.<sup>39</sup> These cooperative partnerships mean looking at the community through the government's values system and extrapolating along its policy lines to create new ways of implementing its views on 'fundamental questions about the relationship between government and citizens when it comes to individual and civic responsibility'. The very process of engaging in a cooperative partnership requires these community organisations to stop thinking critically about government policy and to start thinking of creative ways to implement it. Or, as one department's discussion paper on funding peak bodies has it, 'in return for funding, organisations are expected to contribute to government policies that support families and communities and to carry information between the community and the Government on important social issues'.<sup>40</sup> These cooperative partners are to stop thinking as outsiders and to start thinking as insiders: to become, in short, responsive at the level of policy as well as implementation.

While service deliverers are expected to implement the government's values agenda with the services they provide, the government, for its part, is not required to respond to values-based issues raised by providers. Or it may choose to respond, as the then federal Minister for Human Services, Joe Hockey, did, by claiming that the NGOs concerned were making political and not values-based points. There are any number of contradictions embedded in the rhetoric of partnerships between a monopoly purchaser such as government and a contracted provider, and beneath them all is the fundamental reality of who holds the purse strings. Chapter 3 referred to the use of contracts to control the advocacy activities of service providers through contract clauses that directly restrict or inhibit advocacy-related activities, the possible encouragement of inhibitions on 'biting the hand that feeds you', and the use of competitive grants to drive wedges between community organisations.<sup>41</sup> These constraints can be brought to bear through purchaser-provider arrangements as well as through grants—and under all the talk of partnerships, purchase/provider arrangements retain the mechanism of enforcement. It is a contradiction that is not lost on community organisations themselves:

Associated with this is a form of managerialism, which involves out-sourcing the responsibility for specific issues away from the centre of government without, however, giving away the control. In other words, the contract holds the provider responsible for the achievement of the outcomes required by the purchaser but without giving the

provider the scope to develop and implement services that are consistent with the agency's philosophy or mission.<sup>42</sup>

That is one view. The view articulated by the former Secretary of the Department of the Prime Minister and Cabinet was more benign:

My impression is that many of the non-government organisations that represent community interests are becoming more effective. Indeed an increasing number contract to deliver programmes on behalf of government. Critics highlight the risk that this will allow them to be co-opted by the State. My experience, by contrast, is that by becoming partners with government a mutual dependence grows and with it the influence of the advocate-provider. Dependence is increasingly mutual.<sup>43</sup>

What we have here may be a specimen of 'the contest for ideas' that the Management Advisory Committee advised public servants to expect as 'routinely associated with whole of government work'.<sup>44</sup> It is true that community organisations have some leverage with governments, and that 'network architects' are advised by experts to 'bear in mind that the benefits a well-known nonprofit brings to a government-run network can also prove an impediment if the network manager needs to change policy or impose consequences on such a high-profile participant'.<sup>45</sup> But it is also important to note that government does not fund 'advocate-providers'; it only funds outcomes; where outcomes are not delivered funding ceases to flow; and the amounts of funding involved are often considerable. The fact that providers can briefly embarrass government just makes it that much more important for public servants to make partnerships work and to make them look like partnerships, by becoming 'an effective intermediary between Ministers and advocacy groups'.<sup>46</sup>

Acting as an effective intermediary between ministers and advocacy groups delivering publicly funded programs is far from straightforward. On paper, at least, power-sharing 'is commonly seen as a defining feature of partnerships',<sup>47</sup> yet public servants are required to help 'stakeholders understand that the government remains the final decision maker.'<sup>48</sup> NGOs are not alone in finding the situation sometimes fraught: according to the *2005–06 State of the Service Report*, 35 per cent of employees who had dealt directly with stakeholders or with people from other levels of government over the preceding 12 months had faced a challenge in balancing the need to be fair and effective, impartial and courteous in delivering services to the Australian public, and responsive to the Government (as per the APS Values).<sup>49</sup> A Government that turned increasingly to 'a strong political executive with more political instruments for securing and sustaining control and direction' was not likely to let go of those instruments in the case of NGOs, especially a Government that wanted to increase its control

over program implementation in particular<sup>50</sup> and the country's values in general.<sup>51</sup>

No wonder the Management Advisory Committee saw a need for public service skills to 'facilitate cooperation and partnerships, build commitment to a shared agenda, manage and share information, manage change, engage stakeholders, and resolve conflict'.<sup>52</sup> Public servants are expected to operate in the grey area in partnerships where professional equality meets decision-making inequality. In particular, they have to manage any perceived conflict between responsiveness to government and responsiveness to recipients of welfare services. Where these conflicts do not lie outside the government's agenda, they are not always resolved by the straightforward application of the legal requirements of the Social Security Act 1996 and administrative law. Public servants may respond by refocusing policy conflict as differences relating to practical decision making at a lower level, making it look procedural or technical and not ideological. They may argue for reporting requirements or performance indicators that constitute de facto compromises in terms of action (as occurred at Centrelink and at DIMIA) while at the same time vigorously maintaining the service deliverer's prerogative to tailor decision making to local client circumstances. Alternatively, they may begin by simply assuming (for example) that mutual obligation means work for the dole and comprehensive activity tests, so alternative values or higher level policies are organised out of the partnership agenda. It should be no matter for surprise that 'relationship management' is seen as an increasingly vital public service capability.<sup>53</sup> Public servants have to make cooperative partnerships work for the government in as seamless a way as can be managed, although the best place to start remains '[a] relentless attention to choosing participants with shared values'.<sup>54</sup>

As this background suggests, one interesting feature of the increase in market share of contracting for the delivery of social welfare programs is that there is something like a genuine convergence of the situations in which the partners are being placed.<sup>55</sup> Public servants have been learning, thanks to AWAs and performance assessment and pay systems, all about what it means to be on the receiving end of a transactional contractual relationship, and contractors are learning all about what it means to be responsive to the government agenda as part of their terms of engagement. Agencies are even advised by the Australian Public Service Commission to consider how the APS Values and *Code of Conduct* apply to their contractors, with especial attention to the APS Values relating to service delivery and to responsiveness to government in implementing its policies and programs.<sup>56</sup> Accordingly:

... private contractors, such as the members of the Jobs Network, can expect themselves to be dragged further and further into the government embrace. Outsourcing may weaken some aspects of public accountability,

especially over inputs and processes. But government accountability for results brings increased control over private organisations who contract to provide public services.<sup>57</sup>

The need for accountability persists, even although service deliverers change. But the form in which it persists has meant that both the public service and providers are being progressively repositioned as part of the 'new'—but still fundamentally managerialist—'governance network' that is anticipated to continue to replace traditional public administration. For the public service, this has meant increasing exposure to a contractual model of employment relations through individual performance 'agreements' often underpinned by individual employment contracts, with the same contractual model being reinforced and mirrored through relationships within and between agencies. Like community organisations whose activities have been marketised and who are 'encouraged ... to take advantage of the other party'<sup>58</sup> in order to survive, the public service has been devolved and the individuals isolated and encouraged to compete.

Contestability has imposed a change of identity on both public servants and the organisations with whom they are competing for the patronage of government. The sectors, as Mulgan among others points out, are converging:

A little more than a decade of extensive outsourcing public services has already seen considerable evolution, as classic contracts have given way to relational contracts and the importance of shared values between the contracting parties has been given greater weight. The line between public and private is likely to become even more blurred and the distinctiveness of public sector values even less clear-cut.<sup>59</sup>

Increasingly, community organisations that have entered into partnerships will be circumstanced very like public sector agencies, and the employees of both are likely to be drawn closer to the private sector model. It remains an open question as to whether their performance overall will improve as much as NPM theorists led governments to hope. Some academics have argued that the consequence of such convergence will be the loss of distinctive mechanisms of accountability particular to each sector (cooperative networking, hierarchy and competition, respectively), resulting in a net loss to the 'democratic accountability of social institutions as a whole'.<sup>60</sup> In *The Performing State: Reflections on an Idea whose Time Has Come but whose Implementation Has Not*, the Public Governance Committee of the OECD considered the same problem from a different angle:

A public service ethic is the bedrock of governmental performance which depends at least as much on people as on machinery and process. This view clashes sharply with the principal-agent model popularised by new institutional economics (NIE) and imported into the public sector by

New Public Management. NIE and some versions of NPM teach that public employees are self interested, opportunistic agents, slackers who feather their own nest at the expense of the public interest. In this view, public agents can be made to perform only if they are actively monitored, given clear instructions as to what is expected of them, and strong incentives to do the job right. The notion that agents might do more than is formally expected of them because they have internalised public service values may be alien to NIE/NPM, but it is familiar to generations of students who overcame education handicaps because of teachers who stayed after class to help them, the police officer who coached the community sports team and never asked for pay, the visiting nurse who dropped by shut-ins after her daily rounds were done, and in countless other ways. Of course, this was never the whole story of public employment, or even the larger part, but it was the stuff out of which governments performed, earned the trust of their peoples and communities and states were built.<sup>61</sup>

While the argument sets alternatives at extremes, it retains a lesson for the APS. In the words of the Palmer Report (and as the churches have found), 'the nature of the activity is created by the contract'.<sup>62</sup> If the high-performing public servant requires private sector performance impedimenta to improve efficiency and effectiveness, then it should not be surprising if the efficient and effective public servant sheds some of the public service ethic along the way. Transactional contracts, after all, focus on short-term and monetised exchange, where rewards are explicitly tied to individual performance and low membership commitment by the employee. Under a psychological contract shaped by transactional relations, the APS Values are not about internalising an ethic, but about exhibiting certain behaviours, and the behaviours themselves include and privilege 'people with new skills who think more like businesspeople and ... think in a whole new way about what it means to be a government employee'.<sup>63</sup> The 'whole new way' of thinking more like businesspeople flows through the contractual model:

When public service is just a job, no special value is attached to having the work performed by government employees. With tasks specified in contracts, it would seem to make little difference whether the work is performed by people on the government's payroll or by firms which get the contract through competitive tenders. As long as the work process or output can be specified, public service and private employment are interchangeable.<sup>64</sup>

No wonder 'in most developed countries, the ethic of public service still exists, but not as robustly as in the past'.<sup>65</sup> At the same time, the OECD paper speculates, without reaching a settled conclusion, as to why, 'despite their

positive ratings, most developed countries have been beset in recent decades by a decline of trust and confidence in government and political leaders'.<sup>66</sup> It posits the possibility that output measures make for ever shifting goal posts and ever higher expectations. But it is equally worth speculating on the loss to government of its particular relation to the governed as expressed through the belief in a public service ethos—even though this was 'rejected as simply a cover for inefficiency and empire building by bureaucrats'<sup>67</sup> by those at the more doctrinaire end of the NPM debate. It may be that people do not want to be governed by an entity that increasingly presents itself as a large corporate structure—or at least that their relationship to such an entity does not entail belief or gratitude or commitment.<sup>68</sup> It may be that while taxpayers like efficiency, they do not like people making profits out of delivering their services. It may be that citizens do not want to think of themselves as customers, or to have their communication with government take the form of 'formal market research to understand stakeholders' views or ... a structured campaign involving advertising, public relations or similar'.<sup>69</sup> Alternatively, it may be that while citizens do not have any problems with such an approach to being serviced, it comes at the expense of feeling governed. They may not find it as simple to swap their client hats and their citizen hats when confronting different functions of government as theorists may posit. In any event, if citizens are to have an enduring relationship with their government, for most of them it will have to be through the medium of those who work for that government. The terms of their engagement will determine the terms of that relationship:

Contracts narrow accountability to matters expressly agreed to, in contrast to a normative sense of responsibility for serving the public. When contracts are used to formalise responsibilities and relationships, the specified items often become a checklist that informs the performing party of what it must do to fulfil its obligations. But just as a party to a private agreement is not bound to perform tasks not specified in the agreement, a party to an internal government contract cannot be called to account for failing to provide unspecified services. Managing by contract thus leads to managing by checklist, as managers take care to assure that itemised tasks are completed.<sup>70</sup>

## **Public value management**

There is a school of thought which argues that in order to rebalance internal and external performance standards, internal and external commitment to the work of public service, NPM models need to evolve into a new practice. Public Value Management has taken root in the crevices opened by NPM—between government and governed, between purchaser and provider, between performance indicators and public services:<sup>71</sup>

... the practice of the new public management often emphasised narrow concepts of cost-efficiency over other considerations (i.e. the focus was on technical rather than allocative efficiency). Those things that were easy to measure tended to become objectives and those that couldn't were downplayed or ignored. Hence within some public services 'efficiency' measures represented the average cost of processing a given output (e.g. Finished Consultant Episodes in hospitals), regardless of what mattered to the public. In these circumstances it was possible for measures of efficiency to improve without there being a concomitant improvement in the service experienced by the user (as occurred under the internal market when measured outputs increased substantially but service quality did not). Improvements in efficiency in this narrow sense were not synonymous with increases in public value.<sup>72</sup>

Public Value Management is premised on a view of public value that is 'a broader measure than is conventionally used within the new public management literature, covering outcomes, the means used to deliver them as well as trust and legitimacy'.<sup>73</sup> This means equity, ethos and accountability are effectively part of the service delivered by government.<sup>74</sup> Insofar as it calls for the negotiation of community service priorities 'on the ground', Public Value Management is continuous with calls for local autonomy in configuring whole of government service delivery. The Management Advisory Committee did not hesitate, for example, to argue that 'from an implementation point of view it will also be critical, once the right people are in the right jobs, to give them the necessary flexibility and authority to deliver integration, particularly for whole of government service delivery'.<sup>75</sup> However, many theorists also see Public Value Management principles as applying at a higher level, where the authority to deliver service integration has become the authority to design policy within the limits set by a particular 'authorising environment'.<sup>76</sup> These proposals raise issues for Westminster systems in general<sup>77</sup> and for Australian arrangements in particular, because they assume a system in which the processes of devolution and outsourcing release rather than reconfigure power.

In Australia, however, as was argued in chapter 4, the government may have devolved managerial power but it retained and even recentralised policy control:

The Australian case provides a distinct change of direction from classic NPM features towards a multi-dimensional integrated model. The comprehensive change program covers the resurrection of the central agency as a major actor; enhancement of control over departments; central monitoring of delivery at agency level; implementation of a whole-of-government approach; and departmentalisation through absorbing statutory authorities and reclaiming control over independent agencies ... Underlying the redirection are political control and

performance issues – the government that drove a neo-liberal variant of NPM has had to confront the impact of its own reforms ...<sup>78</sup>

The Australian government has tightened rather than relaxed its controls over its public services—not just as a consequence of changed systems of management but also through the act of outsourcing itself used as a means of political agenda-setting. Australia may be no more than an outlier in the latter respect—other countries may be using whole-of-government issues as an opportunity for some recentralising—but the point is that despite the rhetoric around collaboration and negotiation with communities, the model continues to be surrounded by ‘political control and performance issues’.

These issues are not easily resolved or reconciled. Public Value Management has considerable implications for the APS Values as a management tool, for responsiveness as a management driver, and for the ethos of public service. In particular, it suggests a means of rebalancing responsiveness as a value, returning to it a strong flavour of community orientation that was evident in the 1976 report of the RCAGA. However, it appears to do this by introducing a concept of public interest that is not determined by the government of the day, but by public servants in consultation with communities and providers. It has been argued that Public Value Management approaches give public service managers a capacity to shape policy and ‘a degree of autonomy and entrepreneurialism that is not typical of public servants in Westminster systems’,<sup>79</sup> and does not sit comfortably in those systems. While this is true, its emphases on values such as equity, ethics, public trust and legitimacy do sit comfortably in a Westminster system, as does its insistence that these are also part of the public’s interest in public service decision making. That aspect of the public interest is the subject of the final chapter.

## ENDNOTES

<sup>1</sup> See Kylie McIntosh, Jason Shauness, and Roger Wettenhall, *Contracting Out in Australia: An Indicative History*, Centre for Research in Public Sector Management, University of Canberra (Canberra, 1997), chapters 1 and 2.

<sup>2</sup> Jim Chalmers and Glyn Davis, ‘Rediscovering Implementation: Public Sector Contracting and Human Services’, *Australian Journal of Public Administration* 6(2) (June 2001), 77.

<sup>3</sup> 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 and Unwin: Sydney, 2000), 83–4.

<sup>4</sup> Peter Reith, *Towards a Best Practice Australian Public Service*, Discussion paper, Nov. 1996, Canberra, AGPS, p. x.

<sup>5</sup> David Kemp, Minister for Education, Training and Youth Affairs, media release, 26 Feb. 1998: announcement that employment services will be contracted out to a range of organisations (to be known as the Jobs Network), at [http://www.detya.gov.au/ministers/kemp/K10\\_260298.htm](http://www.detya.gov.au/ministers/kemp/K10_260298.htm).

<sup>6</sup> Davis and Rhodes, ‘From Hierarchy to Contracts’, 92.

<sup>7</sup> June 1996 National Commission of Audit (established Mar. 1996), Report to the Commonwealth Government, Canberra, AGPS, 1996, Executive Summary, at <http://www.finance.gov.au/pubs/ncoa/execsum.htm#11>.

- <sup>8</sup> Pat Barrett, 'Auditing in a Changing Government Environment', paper based on a lecture presented in the Department of the Senate Occasional Lecture Series, 21 June 2002, p. 8, at <http://www.aph.gov.au/Senate/pubs/pops/pop39/c05.pdf>, viewed 4 July 2007.
- <sup>9</sup> See Peter Shergold, 'Two Cheers for the Bureaucracy: Public Service, Political Advice and Network Governance', Australian Public Service Commission Lunchtime Seminar, 13 June 2003: 'The CES, which enjoyed 50 years as a public service monopoly, is gone. It has been replaced by market competition', at <http://www.pmc.gov.au/speeches/index.cfm>.
- <sup>10</sup> To some extent this development had been foreshadowed four years earlier, when *Working Nation* (May 1994) suggested the introduction of competitive delivery of the CES case management function through the use of both private and community-based case managers.
- <sup>11</sup> See Michelle Grattan, 'Paternal Policies Protect Values under Threat: PM', reporting on a speech to the Centre for Independent Studies, *The Age*, 5 May 2006, p. 6, at <http://www.theage.com.au/news/national/paternal-policies-protect-values-under-threat-pm/2006/05/04/1146335868659.html?page=fullpage>.
- <sup>12</sup> Tony Abbott, 'Against the Prodigal State', Centre for Independent Studies, *Policy* (Spring 2001), 38.
- <sup>13</sup> David Abello and Helen MacDonald, 'Jobs Network: Changing Community Sector Values', *The Drawing Board: An Australian Review of Public Affairs* 3(1) (July 2002), 59.
- <sup>14</sup> Julian Teicher, Quamrul Alam and Bernadine Van Gramberg, 'Managing Trust and Relationships in PPPs: Some Australian Experiences', *International Review of Administrative Sciences* 72(1) (Mar. 2006), 90.
- <sup>15</sup> See Richard Mulgan, 'Public Accountability of Provider Agencies: The Case of the Australian "Centrelink"', *International Review of Administrative Sciences* 68(1) (2002), 48.
- <sup>16</sup> See Abbott, 'Against the Prodigal State', 38.
- <sup>17</sup> Wilma Gallet, 'What Sets Us Apart?', BriefCACE, no 32 (July 2006), 2.
- <sup>18</sup> Catholic Welfare Australia, *Reading the Signs of the Times: Challenges to the Future of Social Services in Australia*, Jan. 2006 (draft made available to Background Briefing, 1 Oct. 2006), at <http://www.abc.net.au/rn/backgroundbriefing/stories/2006/1748895.htm>, viewed 5 July 2007. See also Teicher et al., 'Managing Trust and Relationships in PPPs', 90; Karen Legge, *Human Resource Management: Rhetorics and Realities* (Macmillan: London, 1995), 234–40.
- <sup>19</sup> M. J. Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau: Report* (July 2005), 176, at <http://www.minister.immi.gov.au>, viewed 13 Feb. 2006.
- <sup>20</sup> Ibid. 176, 177–8.
- <sup>21</sup> Ibid. 178. These comments were based on the ANAO's audit of the previous DIMIA contract with Australasian Correctional Management. The Inquiry was unable to access that part of the ANAO's report that dealt with the current contract, which was under embargo at the time of the Inquiry.
- <sup>22</sup> See M. and P. Henderson, 'Partnerships for Service Delivery: Review of the Research and Practice Literature', Report to the Queensland Department of Communities (2004), 6–8, at [http://www.getinvolved.qld.gov.au/share\\_your\\_knowledge/resources/documents/pdf/partnershipreview.pdf](http://www.getinvolved.qld.gov.au/share_your_knowledge/resources/documents/pdf/partnershipreview.pdf).
- <sup>23</sup> See *ibid.* 13–29; and Jake Chapman, *System Failure* (Demos, 2002), at [www.demos.co.uk](http://www.demos.co.uk), viewed 27 Sept. 2006.
- <sup>24</sup> See Richard Mulgan, 'Government Accountability for Outsourced Services', *Australian Journal of Public Administration* 65(2) (2006), 50–51: '... once a service is outsourced, many aspects of the outsourcing arrangement are treated as commercially confidential and beyond the range of public inquiry. The actual details of the contracts themselves between government and provider may be protected from public scrutiny. Agencies are required to report to Parliament about all contracts over \$100,000 but the information sought is restricted to a few key aspects of the contract, such as the name of the contractor, the general subject matter of the contract, the term and price of the contract, and whether the contract contains any specific confidentiality clauses. Such information, while significant, falls well short of full disclosure. Individual Jobs Network contracts, for instance, are not available to parliamentary committees or the public.'
- <sup>25</sup> Management Advisory Committee, *Connecting Government: Whole of Government Responses to Australia's Priority Challenges* (Canberra, 2004), 100.
- <sup>26</sup> Richard Mulgan, 'Outsourcing and Public Service Values: The Australian Experience', *International Review of Administrative Sciences* 71(1) (2005), 63.
- <sup>27</sup> Henderson, 'Partnerships for Service Delivery', 6.
- <sup>28</sup> Ibid.

<sup>29</sup> See also Stephen Goldsmith and William D. Eggers, *Governing by Network: The New Shape of the Public Sector* (Brookings Institution Press: Washington, DC, 2004), 40 ('Goal Congruence') and 65 ('Cultural Compatibility').

<sup>30</sup> Grattan, 'Paternal Policies Protect Values under Threat', 6.

<sup>31</sup> Tony Nicholson [Executive Director of the Brotherhood of St Laurence], 'Poverty Is Not an Item in a Press Release', *The Age*, 8 May 2006, p. 15.

<sup>32</sup> ABC News, 'Church's Welfare-to-work Pullout a Stunt: Hockey,' 18 Aug. 2006, at <http://www.abc.net.au/news/stories/2006/08/18/1718019.htm>, viewed 18 Aug. 2006.

<sup>33</sup> John Howard, 'The Role of Government: A Modern Liberal Approach', Menzies Research Centre 1995 National Lecture Series, p. 4, at <http://www.ozpolitics.info/election2004/1995-rolegovt.htm>, cited in Ch. 2.

<sup>34</sup> See results of a Globescan survey reported by World Economic Forum, 'Update: Public Trust Is Recovering', press release, Geneva, 31 Mar. 2004. Full results of the survey (data and tables) are at <http://www.weforum.org/trustsurvey2004>.

<sup>35</sup> Adele Horin, 'Hillsong Thinks Again on Welfare', 24 Aug. 2006, at <http://www.smh.com.au/articles/2006/08/23/1156012614378.html>, viewed 30 Aug. 2006. 'Hillsong Emerge, the only church charity in NSW to participate in a controversial welfare-to-work program ...' and see also 'The church is known not just for its style of Christian worship, but for its links to the burgeoning political influence of the 'religious right' through politicians associated with it ... Prime Minister John Howard opened Hillsong's Baulkham Hills convention centre in October 2002 and Treasurer Peter Costello spoke to thousands at the SuperDome conference this year': 'Hillsong's true believers', 7 Nov. 2004, at *The Sun-Herald* <http://www.smh.com.au/articles/2004/11/06/1099547435083.html>, viewed 30 Aug. 2006.

<sup>36</sup> John Casey and Bronwen Dalton, 'Ties that Bind? The Impact of Contracting and Project-based Funding Regimes on Advocacy', paper presented to Australian Political Studies Association Conference, University of Adelaide, 2004, p.18.

<sup>37</sup> Geoffrey Barker, 'The Public Service', in Sarah Maddison, Richard Dennis and Clive Hamilton (eds), *Silencing Dissent: How the Australian government is controlling public opinion and stifling debate* (Crows Nest: Allen and Unwin, 2007), 145.

<sup>38</sup> Gallet, 'What Sets Us Apart?', 2.

<sup>39</sup> 'Governmental funding of community organisations commonly requires them to place employees onto AWAs without any alternate option being offered': National Foundation for Australian Women, 'What Women Want: Consultations on Welfare to Work and Work Choices', p. 5, para 6, at <http://www.nfaw.org/social/www/what-women-want.pdf>, viewed 27 July 2007.

<sup>40</sup> Department of Family and Community Services, *Funding Peak Bodies* (2002), quoted in Bernadine Van Gramberg and Penny Bassett, 'Neoliberalism and the Third Sector in Australia', Victoria University Working Paper Series (May 2005), pp. 8–9.

<sup>41</sup> See Casey and Dalton, 'Ties that Bind?', 12; and Van Gramberg and Bassett, 'Neoliberalism and the Third Sector', 7: 'Efficiency measures such as competitive tendering, at the same time as the implementation of collaborative policies, have simultaneously exposed nonprofits to partnership arrangements while ensuring they are also pitted against each other in competition for funding opportunities.'

<sup>42</sup> See, for example, Teicher et al., 'Managing Trust and Relationships in PPPs', 92: 'For instance, Catholic welfare Australia (CFA) (Submission DR70 cited in Productivity Commission 2002) argued that compliance burdens have increased, and that DEWR makes unilateral decisions on contract variations and emphasises processes rather than outcomes. According to CFA the Jobs Network is on track to becoming a 'totally one-way partnership'. Similarly, another submission argued that DEWR imposes changes on providers with a 'take it or leave it attitude' leaving the providers to bear the cost (Submission 20, cited in Productivity Commission, 2002: 12.9). It could be argued that competition, quality, trust and participation have become peripheral matters for PPPs in the Jobs Network.'

<sup>43</sup> Peter Shergold, 'Government and Communities in Partnership: Sharing Responsibility', speech to Government and Communities in Partnership Conference, Melbourne, 18 May 2005, at [http://www.dpmc.gov.au/speeches/shergold/sharing\\_responsibility\\_2005-05-18.cfm](http://www.dpmc.gov.au/speeches/shergold/sharing_responsibility_2005-05-18.cfm), viewed 25 Apr. 2006.

<sup>44</sup> Management Advisory Committee, *Connecting Government*, 106.

<sup>45</sup> Goldsmith and Eggers, *Governing by Network*, 139.

- <sup>46</sup> See Shergold, 'Two Cheers for the Bureaucracy'.
- <sup>47</sup> Henderson, 'Partnerships for Service Delivery', 9.
- <sup>48</sup> Management Advisory Committee, *Connecting Government*, 96.
- <sup>49</sup> Australian Public Service Commission, *State of the Service Employee Survey Results 2005–06* (Canberra, 2006), 35, question 50.
- <sup>50</sup> See discussion in Ch. 4; and John Halligan, 'The Integrated Performance Model in the Australian Public Sector and its Consequences for Public Sector Organisations', Paper for presentation 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, pp. 7ff.
- <sup>51</sup> Including in the teaching of English literature and of history, the values required of migrants and the presence of chaplains in all schools. See the then Prime Minister's 'A Sense of Balance: The Australian Achievement in 2006', Address to the National Press Club, Parliament House, at <http://www.pm.gov.au/News/Speeches/speech1754.html>, viewed 6 Mar. 2007.
- <sup>52</sup> Management Advisory Committee, *Connecting Government*, 53.
- <sup>53</sup> *Ibid.* 43–4.
- <sup>54</sup> Goldsmith and Eggers, *Governing by Network*, 130.
- <sup>55</sup> This is an issue that engages academics as well as practitioners. See for example, Mulgan, 'Outsourcing and Public Service Values', cited above; and Robert E. Goodin, 'Democratic Accountability: The Third Sector and All', Paper presented to a Seminar series on 'Institutional Analysis of Law, Politics, and Society' at the Baldy Center for Law & Social Policy State University of New York Law School, 12 Mar. 2004, at <http://www.law.buffalo.edu/baldycenter/pdfs/goodinpaper04.pdf>, viewed 16 Aug. 2007.
- <sup>56</sup> See Australian Public Service Commission, *Embedding the APS Value*, (Canberra, 2003), Sections 2 and 6, at <http://www.apsc.gov.au/values>, viewed 16 Apr. 2006. Values applying to the internal APS workplace relationships are not, however, considered relevant to contractors' own employment practices, although other Commonwealth employment legislation, such that covering occupational health and safety and anti-discrimination, is.
- <sup>57</sup> Mulgan 2006, 'Government Accountability for Outsourced Services', 57.
- <sup>58</sup> Teicher et al., 'Managing Trust and Relationships in PPPs', 88. See also Gallet, 'What Sets Us Apart?'; and Catholic Welfare Australia 2006, *Reading the Signs of the Times*, cited above.
- <sup>59</sup> Mulgan 2005, 'Outsourcing and Public Service Values', 69.
- <sup>60</sup> Goodin, 'Democratic Accountability', 48.
- <sup>61</sup> Organisation for Economic Cooperation and Development, *The Performing State: Reflection on an Idea whose Time Has Come but whose Implementation Has Not*, paper for 23<sup>rd</sup> Session of the Public Governance Committee, GOV/PGC/ (2006), 7, para 27.
- <sup>62</sup> Palmer, *Inquiry*, 177–8. See also OECD, *Performing State*, 13.
- <sup>63</sup> Deirdre Lee, acquisition director, US Department of Defence, quoted by Goldsmith and Eggers, *Governing by Network*, 157.
- <sup>64</sup> OECD, *Performing State*, 7, para 28.
- <sup>65</sup> *Ibid.*
- <sup>66</sup> *Ibid.* 4, para 14.
- <sup>67</sup> Gerry Stoker, 'Public Value Management: A New Narrative for Networked Governance?', *American Review of Public Administration* 36(1) (2006), 46.
- <sup>68</sup> See, e.g., Teicher et al., 'Managing Trust and Relationships in PPPs', 91: 'The Jobs Network offers choices but no evidence exists that choices have any impact on service outcomes. Recipients reportedly feel that government plays a minimal role and seeks to shift the accountability to service providers.'
- <sup>69</sup> Management Advisory Committee, *Connecting Government*, 106.
- <sup>70</sup> OECD, 13, para 58.
- <sup>71</sup> For a full account of openings created by NPM for PVM, see Gerry Stoker, 'Public Value Management: A New Narrative for Networked Governance?', *American Review of Public Administration* 36(1) (Mar. 2006), 41–57; Gavin Kelly, Geoff Mulgan and Stephen Muers, 'Creating Public Value: An Analytical Framework for Public Service Reform', Strategy Unit, UK Cabinet Office (2002), at [www.strategy.gov.uk](http://www.strategy.gov.uk), viewed 6 Mar. 2007; 'Citizens, Government, Democracy: A New Deal?', Saskatchewan Institute of Public Policy, University of Regina, no. 1 (2000), 6, at <http://www.uregina.ca/sipp/documents/pdf/may.pdf>, viewed 3 July 2007 (extracting material from a speech to the Institute by Jocelyn Bourgon); and sources

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in Martin Marcussen and Jacob Torfing, 'Grasping Governance Networks', Centre for Democratic Network Governance, Roskilde University Working Paper Series no 5 (2003), 4–5.

<sup>72</sup> Kelly et al., 'Creating Public Value', 9.

<sup>73</sup> Ibid. 3.

<sup>74</sup> Ibid.

<sup>75</sup> Management Advisory Committee, *Connecting Government*, 52. See also p. 101.

<sup>76</sup> R. A. W. Rhodes and John Wanna, 'The Limits to Public Value, or Rescuing Responsible Governments from the Platonic Guardians', *Australian Journal of Public Administration* 66(4) (2007), 409.

<sup>77</sup> See *ibid.* 406–21.

<sup>78</sup> Halligan, 'The Integrated Performance Model', 1. See also similar comments from Podger, 'Looking Upwards and Downwards'.

<sup>79</sup> Rhodes and Wanna, 'Limits to Public Value', 409.