Reconstructing Public Service Values

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Between 1994 and 1999 the Commonwealth government and parliament restructured the statutory basis of the Australian Public Service (APS) – the first major overhaul in 70 years. The new act transformed the public service from a rule-driven, centralized bureaucracy unified by standardized grades and pay rates, to a values-based, decentralized administration with devolved management flexibilities. Values now ostensibly provide the framework of the new public service at the Commonwealth level.

In an example of bipartisan consensus both the Labor and Coalition governments urged the adoption of a new public service act. Both also favoured the use of an ‘enabling legislative approach’ (or less prescriptive statute) where the fundamental principles and relationships are enacted in generic terms with few details of employment included in the statute. The new act has 11 parts and runs to 47 pages (many not full pages) – it is a fraction of the heavily amended 1922 act that had burgeoned out to 260 pages by the early 1990s.

The Public Service Act 1999 codified a series of values some of which while not exactly aberrant were a little ‘hit and miss’ with many players seemingly making things up as they went along. The process of finalizing public service values was like musical chairs – where a number of potential values were thrown into the ring but where periodically not enough chairs remained for the inclusion. Some of the listed ‘values’ that made it into the final act are not values at all (eg treating clients courteously) and many have queried whether the package of 15 multifaceted values provided a coherent and effective basis on which to manage the Australian Public service.

Antecedents of the Value-based Approach

Criticisms of the Public Service Act 1922 increased from the mid 1960s as government responsibilities expanded and demands for more flexible working arrangements emerged. The findings of the Coombs Inquiry (1974-76) and the later Reid review of Commonwealth Administration (1982-83) both spurred this criticism and advanced the mood for change – despite little immediate action in the old act being taken after either review by governments. Moreover, neither Coombs nor Reid advocated a values based approach to managing the public service (although Coombs advocated key values of
efficiency and representativeness, and Reid urged the principles of management flexibility and devolved decision-making).

Arguably governments responded in the short term to these management reviews by augmenting the old act and by adding additional layers of regulations (for example the addition of the Merit Protection (Australian Government Employees) Act 1984). But gradually momentum rose to review the entire Public Service Act and establish the Commonwealth service on a new legislative basis.

The immediate catalyst for change was the 1994 McLeod review group that reviewed the Public Service Act 1922 (see Nethercote 1997). The McLeod review group was established by the Keating government in 1994, following the reports of The Australian Public Service Reformed (1992) and Building a Better Public Service (MAB 1993). McLeod’s terms of reference explicitly required the review to make recommendations ‘to provide a modern and flexible management framework’ (McLeod 1994: 153). In calling for a comprehensive review of the act, the government’s terms of reference listed six key attributes the government expected of its public service. These were:

- Provides governments with responsive service and frank and comprehensive advice;
- Is efficient and effective in producing results specified by Ministers and governments;
- Has staffing principles and practices based clearly on merit, ensuring equality of opportunity with fair rewards as an incentive to high performance;
- Is based on the highest standards of probity, integrity and conduct;
- Is fully accountable; and
- Is able continuously to improve its performance and that of its members (McLeod 1994: 153).

According to McLeod the key characteristics of the traditional career public service were five-fold – it was a dedicated vocation, its ‘functions and responsibilities were essentially different from those of other occupations and require different skills’, it operated with a hierarchical structure, had uniform pay, regulations and work conditions, and ‘has a shared set of values’ (McLeod 1994:11). The notion of a ‘common set of values’ was repeatedly acknowledged, but the origin or nature of these values was not explored in the report. Some general ‘philosophical underpinnings’ were discussed which closely reflected the six key attributes listed for the review team in its terms of reference. Instead of arguing the merits of a value base to the APS, the McLeod group merely asserted a selective sample of values attached to the report in a separate appendix.

The importance of declared values was paramount because the McLeod group opted to replace the highly regulatory act of 1922 (as amended) with a far more streamlined enabling legislative approach, which as a matter of course required the articulation of some key values and codes of conduct. [But why did McLeod opt for an enabling legislative approach – that is now becoming more commonplace – eg environmental legislation, and the mooted tax law review?].
Some of the values were inspired or confirmed through the consultative process the McLeod review undertook. The review group called for submissions (and received 19 departmental submissions, 23 from other government agencies, 3 from unions, and 8 from individuals or other organizations). The group also held discussions with regional directors and with officials in other jurisdictions and with the major public sector unions. Towards the end of their consultations the review group appeared a little confused or overwhelmed by the amount and complexity of the issues/submissions and conducted a series of workshops to distill the issues and essential aspects of the public service. It appears that many of the values (and specific wording of them) declared by the McLeod team arose out of consultation with these key participants.

The McLeod review represents perhaps the first major attempt by executive government to codify public service values. In its report of December 1994 the review team included 14 recommended ‘key public service values’ clustered under the same six clusters issued in the terms of reference (responsiveness, results, merit, integrity, accountability, and continuous improvement. [see appendix 1 for the ‘Key Public Service Values’ listed by the McLeod review group). Interestingly, the McLeod review included ‘loyalty’ in its recommended values and the necessity of ‘avoiding real or apparent conflicts of interest’. It also insisted the public service should provide ‘frank, honest and comprehensive advice’, but did not mention fearless advice. New values appeared to enter almost arbitrarily; such as ‘striving for creativity and innovation’, and being ‘courteous’ to clients. Surprisingly, it did not include ‘apolitical’ in its list of values and merit was only included as a heading. Nor did it include mention of a ‘career public service’; nor did it highlight the collective service, or collegiality or the service-wide nature of serving governments. And ‘serving loyally and impartially Ministers and the Government’ was preferred to any notions of neutrality or career permanence. In short, McLeod’s list of values represents a milestone attempt to codify background philosophies, but it was certainly not definitive nor comprehensive. Some seemed arbitrary and contextual.

But McLeod’s report nudged forward what became a bipartisan desire to rewrite the Public Service Act, but the values McLeod presented were chopped and changed through the unfolding legislative process.

The Tribulations of the 1997 Public Service Bill

Labor was preparing to adopt the McLeod’s recommendations when it was swept from office. The new Coalition government moved relatively quickly to keep the momentum moving – largely due to the Industrial Relations minister Peter Reith’s interest in the issue and the campaign by the Public Service Commissioner Peter Shergold to insist that it was that values of the APS that defined its character. Two further discussion papers were released – Towards a Best Practice Australian Public Service (November 1996) and The Public Service Act 1997 – Accountability in a Devolved Management Framework (May 1997). Again extensive discussion around these documents was structured into the process largely initiated by the Public Service and Merit Protection Commission and the
Department of Industrial Relations. These discussion papers and consultations reaffirmed that the 1992 acts ‘needs to be substantially rewritten’ (PSMPC 1997 in CBPA No 85. 1997:7). The second discussion paper advocated a ‘wholly new conceptual framework’ which was based on a ‘core of statutory Values, encompassing qualities such as political impartiality, high ethical standards, workplace equity and employment decisions based on merit’ (1997:8). The paper then listed 10 proposed values that became the basis for the act, but were not identical with those presented by the government in August 1997. Specifically the values included the statement that the APS ‘exercises employment decisions without patronage, administrative favouritism or political influence’, and ‘is accountable for the manner in which administrative power is exercised’ – neither of these value statements made it into the 1997 Bill. The discussion paper also did not include a union-inspired value that ‘the APS establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace’ – that was inserted by the government becoming clause 10(i) in the 1997 Bill.

When the Minister for Industrial Relations (Peter Reith) introduced the Public Service Bill 1997 in June he indicated that the Coalition accepted many of the McLeod recommendations – but wished to push the trajectory of reform further and reduce the influence of public sector unions on the legislative framework. The Howard government approached APS reform from a cost and efficiency perspective, primarily emphasizing greater flexibilities and devolved responsibilities. Unlike McLeod or the PSMPC that had both placed great store in a values-based approach, for the Coalition the APS values were the tail that did not wag the dog.

In the minister’s second reading speech he expressed contradictory sentiments and inconsistent reasons for the changes. He voiced his intent to make management and employment in the APS identical to private sector practice. Above all, Reith proposed ‘to put employment practices in the APS on a similar footing to the private sector’ (HoR 1997, p. 6462). He argued that ‘at present the costs of managing the APS are more than double that of best practice in the private sector’ (p. 6462). On the other hand, he spoke of ‘a wish to ensure that the traditional ethos, conduct and values of public service are preserved’ (p. 6463). According to the minister, the new bill ‘protects the distinctive ethos of public administration’ (p. 6465). It also ‘reinforces the values of the public service, in a way that has never been done before’ (p. 6463). The new bill would ‘provide an effective legislative basis for public accountability’ by linking broader APS values to the personal code of conduct and then making agency heads and other employees responsible for upholding these standards. Hence, the minister informed parliament that the new act explicitly states that the Public Service Commissioner ‘will issue directions to secretaries to ensure that employment decisions are based on merit and fairness. Agency heads and APS employees will be required to comply with these directions, as well as with the APS values and code of conduct’ (p. 6464).

Significantly, the government introduced 11 listed values – ‘to which [the APS] should aspire’ (p. 6466). In describing what the government wanted from the public service, Reith argued that the Prime Minister John Howard had made it clear that ‘our
government wants to provide a workplace in which public servants offer advice in a frank, fearless and honest manner’ (pp. 6463-6464). But each of the values listed was intentionally minimalist in expression and the prime Minister’s sentiments would not translate into the Bill.

The 11 values enumerated by the government in its 1997 bill drew on the McLeod recommendations and the May 1997 discussion paper, but Reith edited out the words the government considered contentious or misplaced. Reith’s version of the values omitted any mention of loyalty, and cut out the phrase ‘providing frank, honest and comprehensive advice’ in favour of a clause reading ‘the APS is responsive to the Government in providing timely advice and implementing the Government’s policies and programs’. The Coalition did not seek to incorporate the term ‘career public service’ nor mention of ‘workplace or community diversity’. Nor did the Coalition include the word efficiency in the stated values. With some important variations, these 11 values became the basis of the first 11 values passed in the 1999 Act.

The reception to the Coalition’s 1997 Bill was generally sympathetic and constructive – Lennox Hewitt was an extreme critic describing it a ‘the end of civilization as we know it’ and signing a copy of the draft bill with this phrase included for the minister (see Hewitt in CBPA no 85, August 1997). The Bill was referred to both the JCPA and the Senate Finance and Public Administration Legislation Committee both of which were generally in agreement with the Bill but simultaneously proffered extensive amendments. In particular the JCPA urged a strengthening of the APS values ‘particularly in relation to the provision of frank and honest advice’ and in relation to ‘merit as a fundamental principle’ and of ‘workplace diversity programs’. In the Senate the Democrats Lyn Allison agreed writing a dissenting report arguing that the APS values were ‘agency-based’ and focused on a ‘private sector style of management’ that ‘may have the effect of undermining important public service values’. She argued ‘we do not believe the APS Values reflect the wider role of the APS in implementing legislation passed by the parliament and serving both the public and the public interest’.

However, the significance of the values statements did not always figure prominently in the attention given to the new Bill. John Nethercote in a background paper to the Public Service Bill 1997 talked about the new bill being a ‘general embodiment of current thinking about public service management’. He included under the heading of current thinking: direct ministerial control especially prime ministerial control, agency based management, a focus on outcomes, significant efficiency gain, revival and re-establishment of management prerogative, a reduction in union influence, and minimal distinction between the public service workforce and private sector employment (1997:3). The introduction of codified values or the specific scope/wording of them did not warrant attention.

Reith’s Bill lapsed after a tortuous process of amendment by the JCPA and Senate. In December 1997 Reith indicated in Parliament that the Government rejected the amendments and would reintroduce the Bill – and if rejected would thereby enable the
Bill to be considered at a joint sitting if a double dissolution were called. The Bill was again rejected and laid aside in April 1998.

The Reintroduced 1999 Public Service Bill

David Kemp, Minister for Education, Training and Youth Affairs – and Minister Assisting the prime Minister for the Public Service (the first time these two ministerial responsibilities had been so linked) reintroduced the legislation on 30th March 1999. The Bill was identical to the 1997 Bill. Again the same amendments were forthcoming from the Opposition and Democrats. Initially the government again rejected these amendments. At Reith’s urging, Kemp began negotiations with the Opposition and accepted around 50 amendments from the 102 made by the non-government parties. The government’s tactic appeared to be to accept relatively innocuous amendments that did not strike at the heart of the legislation (that did not undermine the government’s intent in providing workplace flexibilities and managerial discretion). He employed a ‘no disadvantage rule’ to the government in considering the amendments – accepting those that did not impact on flexible workplace relations and rejecting those that did or were likely to reintroduce impediments. Hence a number of amendments to the values were accepted by Kemp. In all, the wording on 5 of the 11 listed values were agreed and four new values were added and accepted.

The main changes Kemp agreed to were

- The APS ‘recognizes and utilizes the diversity of the Australian community it serves’;
- The APS is ‘openly’ accountable for its actions ‘within the framework of Ministerial responsibility’;
- The APS is responsive to the Government in providing ‘frank, honest, comprehensive, accurate and timely advice…’;
- The APS delivers services ‘fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public’;
- The APS establishes workplace relations hat value communication, consultation, cooperation and input from employees on matters that affect their workplace.

Four new values were inserted some of which are either implied or covered in the earlier list of 11 but were made explicit. The last is arguably not a value but is a procedural expectation or entitlement.

- The APS promotes equity in employment;
- The APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
- The APS is a career-based service to enhance the effectiveness and cohesiveness of Australia’s democratic system of government;
- The APS provides a fair system of review of decisions taken in respect of APS employment.
An additional sub-section was made to section 10 providing four criteria for the definition and application of engagement or promotion on merit, including the ambiguous statement 10.2(d) ‘the assessment is the primary consideration in making the decision’. The definition of merit was changed from ‘best person for the job’ to ‘relative suitability of the candidates for the duties’ (10.2 (a).

The Impact of a Values-based Public Service after 1999

The 1999 act combines both the executive’s vision for the public service in the years ahead melded with the input of an active legislature. In terms of deliberative democracy the passage of the Bill appeared to be democracy at work with wide community and cross-party involvement in writing the clauses of the new act. However, in management terms the values may not make the task of management easier or more consistent.

The values are not individually aberrant nor perplexing; most of the sentiment have been traditionally associated with the public service or have been augmented as our societal values have changed over the past 20-30 years. But the particular combination seems a little hit and miss. The inclusion or exclusion of certain value statements was a process of musical chairs – with some missing out in the final round while others finding a place at the table. Certainly in the both the executive review process and the later legislative process there was an element of making it up as we go along to the whole exercise.

Some argue that the values are now too many. At 15 the number is far too any to remember. Many senior managers cannot remember all of the values or have a hazy recollection of what is included. The APSC has already produced a clustering of the values – in a similar way to the clustering the McLeod review group produced in 1994.

Others argue that the values are internally inconsistent and occasionally duplicated and overlapping. Nuances can creep in when interpreting what similar-sounding values can mean. It is argued that some of the values are redundant. There are tensions (or an overlay) in the values between the values that require the achieving of results and management performance, highest quality leadership, effectively delivery of services, and commitments to promote the highest ethical standards, fairness, courteousness, consultation and cooperation in the workplace. There is also the familiar clash/combination of values promoting results and performance on the one hand and diversity, equity and fair review of employment decisions on the other.

There is overlap between the aspirational values in section 10 and the code of conduct contained in section 13 – with statements about courteousness to the public appearing in both. Courteous service could be a component of the first value of performing functions in a professional manner.

Other items were written into the values which make interpretation more difficult; for example the value that makes the APS openly accountable for its actions then includes ‘within the framework of Ministerial responsibility’.
There have already been remarks made publicly about the need for a review of the act – after only five years under the new regime. Some have advocated adding more values – we missed some important values in the review process and should now add them in. The values of loyalty (ie no-leaking) and commitment or collegiality have been mentioned as possible values for subsequent inclusion.

This raises some important philosophical questions about values – are they meant to be important, enduing almost timeless moral determinations to which we have chosen to subscribe – or are they amenable to change, able to be replaced and supplemented at short notice.

Three final matters of clarification. First the 1999 act embraced a career public service – it does not use the term ‘public interest’ nor enshrine contractual based employment. Public employees are no longer employed to uphold the ‘public interest’ in the way many officials felt they were appointed in previous years. Tenure no longer applies and terminations can occur, but the act does not include contractual employment as a principle.

Second, the move to a values-based service has not seen a plethora of complaints about the values not being abided by – or whistleblowing about values being breeched. Complaints involving alleged non-compliance with the values laid out in the act are very rare and usually relate to something else more tangible.

The Commonwealth’s 1999 act has not (yet?) proved to be a model for other jurisdictions in their own legislative review. The states have not copied the Commonwealth’s approach, nor has the UK, Canada, New Zealand.