Chapter Three

The Australian Public Service: Statutory, Doctrinal and Institutional Arrangements for its Governance

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The sixty years since the Second World War have seen a marked transformation of the Australian Public Service ('APS'). Major changes have included a very substantial expansion of functions as the role of the Commonwealth within the federation has grown, particularly the emergence of a comprehensive welfare state; consolidation of Commonwealth administration, especially as a consequence of relocating it from Melbourne to Canberra; increasing educational standards such that what had been a largely (veteran) clerical workforce is now very much a graduate workforce; computerisation of administration; and a more diverse demographic composition in which women as well as many people from non-English speaking backgrounds are now employed at all levels of Commonwealth administration. This period also witnessed, in the first instance, increased centralisation of administration followed in the past two and a half decades with a new departmentalism in which the old goal of a unified service derived from the Northcote-Trevelyan report is mainly now manifested at senior executive levels.

This transformation of the APS is clearly manifest in statutory, doctrinal and institutional arrangements for its governance. This observation applies to both the basic legislation, invariably entitled the Public Service Act, and to the central institutions with responsibilities for APS policy and management. It is the purpose of this chapter to provide an account of the main features of these governance arrangements identifiable in the various statutes, doctrines and structures upon which the management and organisation of the APS are based. This account will centre on an analysis of contemporary arrangements as contained largely but not exclusively in the latest *Public Service Act 1999* (Cth) ('PSA 1999'). It is, however, an important goal of this chapter to place the 1999 settlement in context. Showing the similarities and differences between the 1999 regime and its predecessors assists both to illustrate the transformation of the APS and to provide important insights into the character of the changes.

In exploring the governance fabric of the APS, it is enlightening to observe both similarities and differences with the public service of other countries where government is based on traditions and practices which have evolved in Westminster and Whitehall. Australia, at both national and state level, has generally had a distinctive approach to questions of public service management. New Zealand, not unexpectedly, is the only other country with an essentially similar approach historically, but in recent decades the similarities have been less pronounced.¹ In a doctrinal sense, there are inevitably close affinities with the United Kingdom Home Civil Service. There are, however, marked differences as well, some of which will be highlighted in this chapter. Likewise, the national public service of Canada has important similarities with the APS, sharing many doctrines about the role and responsibilities of the public service in government which reflect in some measure their common derivation from, as well as deferral to, Whitehall. Again there are also conspicuous and overt differences.

In the century and more of its existence, it is possible to discern various features or properties which have characterised public service administration in Australian national government. To some extent, these might even be described as foundational 'principles', though this is misleading if it is taken to suggest some rule which is either immutable or a means of discerning a correct or preferred method of addressing a particular issue. A number of features of Australian public service development are creatures of a particular stage of growth in the history of the service, or of the nation. Their expression and even validity is essentially contingent upon the circumstances of a particular time. For the purposes of this chapter, the following features or properties have been identified as providing a framework for understanding the structure, development and contemporary mould of the APS:

- Ministerial (government) control of administration, including organisation and financing. In contemporary institutional terms, this places great power in the hands of the Secretary to the Department of the Prime Minister and Cabinet. It also means that the Department of Finance (since 1997, Department of Finance and Administration) is a pervasive presence in many matters of public service policy.
- The basic rules for managing the APS are embodied in Acts of Parliament.
- Within the framework of responsible government, management and control of the public service is vested in officials with statutory powers, namely, a commissioner (previously a board of commissioners), and the heads of departments. Historically, the commissioner/board of commissioners had comprehensive responsibilities and powers. Under the PSA 1999, central responsibilities are ostensibly limited as are the powers. Ministerial control has grown in the field of workplace relations; formerly an indirect, even latent influence, it is now direct and active.

- The ministerial department and other similar organisations such as the Australian Taxation Office, the Australian Bureau of Statistics and the Australian Customs Service are the basic units of administration and many powers and responsibilities are vested in their chief executive officers (department secretaries) — or, in the instances referred to above, the Commissioner for Taxation, the Australian Statistician and the Comptroller-General of Customs.
- A major objective of public service legislation has been insulation of individual personnel decisions from ministerial direction and influence. These decisions include appointments, promotions, transfers, terminations and, in some measure, classification of posts.
- Upon this foundation, the APS is a ‘career-based service’ in which ‘employment decisions are based on merit’.²
- Since 1984, control and management of the size and cost of public service employment has been handled within the conventional financial and budgetary system. For a major part of its history, the major method of allocating and controlling personnel resources of the APS was establishment management, through creation, salary classification and abolition of ‘offices’, conventionally known as positions.
- Public service workplace relations are regarded principally as a field of industrial relations, not a matter of public budgeting. Thus, when the comprehensive central personnel agency — the Public Service Board — was abolished in 1987, central responsibilities for pay and conditions of employment were assigned to the new Department of Industrial Relations (now the Department of Employment and Workplace Relations), not to the Department of Finance.
- Values and standards of conduct are statutorily codified and prescribed.
- For almost its entire history, the APS has recognised the right of employee association. Workplace relations procedures have included an acknowledged role for unions, for long known as staff associations. Recognition of the right of employee association has not, however, extended to recognition of the right to strike, which has never been accepted and is invariably challenged.
- A corollary of the recognised right of association has been provision (at least until 2006) for third-party arbitration of disputes, either by the national arbitration tribunal or in a specialist public sector arbitration jurisdiction.
- From its earliest years, the APS has accorded rights of appeal and grievance to its staff.
- In defining the responsibilities, duties and obligations of staff, the APS has increasingly acknowledged their rights of citizenship.

It is not the aim of this chapter to deal comprehensively with all these essential features of the Australian approach to public service management. The focus here is the statutory, doctrinal and institutional framework of the APS, and each

of the foregoing features is of major relevance in providing the framework for an exploration of the disposition of authority over and within the APS.

Ministerial Control over Government Administration

In Australia, one of the least trammelled prerogatives of executive government — in this instance, the Prime Minister — is the creation and abolition of departments³ and the allocation of functions to and between them. Although there are statutory limits on the number of ministers,⁴ there are no limits on the number of departments nor any prohibition on the number of departments an individual minister may administer. The relevant information is contained in the Administrative Arrangements Order issued periodically by the Governor-General, often following general elections and the swearing in of a reshuffled or new ministry. It lists the legislation for which portfolio ministers are responsible, and the principal matters with which their departments deal. (It is rare for the principal minister in a portfolio to have responsibility for more than one department. The only occasion in recent times was when Laurie Brereton was Minister for Transport and Minister for Industrial Relations in the Keating Government, 1993–96.)

The greatest political significance attaches to the prerogative of deciding the functions of each department. The views of Prime Minister R G (later Sir Robert) Menzies in November 1957 have as much force today as they did half a century ago:

It is only the Government, acting under the control of Parliament, which can decide what functions are to be performed by the various departments. The decision is a peculiarly political one, and is, of course, affected by the views which any Government may hold or the electorate may demand ... Since only the Government can determine these matters, no Government can escape its responsibility for reviewing these functions to determine whether any of them are unnecessary or performed to an undue extent, or badly placed in the general departmental organization ... I do not think it would be seriously said that such problems as these should be off-loaded by the Government on to some entirely non-political authority.⁵

Departments have been staffed almost exclusively by the APS since the inception of the Commonwealth. The APS is, in this sense, a general purpose workforce for government departments and kindred agencies (see below), although there have been several cases, mainly in the Defence field, where departments have had separate employing authority — for example, the Department of the Navy under the *Naval Defence Act 1910* (Cth) or the Department of Supply under the *Supply and Development Act 1939* (Cth). The various trade departments (currently

the Department of Foreign Affairs and Trade) have also had separate employing authority under the *Trade Commissioners Act 1933* (Cth).

Successive Public Service Acts have always assumed that government agencies other than departments of State will be staffed by the APS, for example, the Audit Office (now known as the Australian National Audit Office) or the Australian Taxation Office. In these two cases (and several others), the *Public Service Act 1922* (Cth) included a provision vesting the chief executive, respectively the Auditor-General and the Commissioner for Taxation, with the powers of a permanent head (subsequently designated departmental secretary). In other cases, legislation establishing a statutory authority staffed by public servants would include a provision vesting the chief executive officer (however designated) with secretary powers. For example, when the Australian Bureau of Statistics, previously the Statistician's Branch of the Treasury, was established as a statutory authority in 1974, the legislation stated that the Australian Statistician had the powers of a permanent head under the *Public Service Act 1922* (Cth). During the mid- and late 1970s, and for much of the 1980s, there were more than 50 statutory officials with department head powers.

The PSA 1999 specifically includes provision for a secondary agency, namely Executive Agencies, which like departments themselves are established by the Governor-General (s 65).

A final component in a government's control of the machinery of government, though one requiring parliamentary approval, is its prerogative to establish organisations in varying degrees outside the departmental/public service system. These have long been a feature of Australian Government. Some examples are the Commonwealth Bank, established in 1911 and privatised progressively by the Hawke-Keating Labor governments in the late 1980s and early 1990s; the Reserve Bank (1959); Trans-Australia Airlines (later Australian Airlines); and the Australian Law Reform Commission (1974). Conditions of employment in many bodies, such as the CSIRO and administrative posts at the Australian Broadcasting Commission ('ABC'), have at various times been subject to the approval of an APS employment authority, usually the Public Service Board.

Such bodies may move in or out of the departmental system. The Repatriation Commission, for instance, was created as a statutory body in 1921. In 1947, it was brought within the departmental system, though it was not until 1974 that the position of the chief executive (the President of the Repatriation Commission) was fully regularised. Conversely, the Postmaster-General's Department, long known as the Post Office, was one of the founding departments of the Commonwealth. Commencing 1 July 1975, it was separated entirely from the APS and replaced by the Australian Telecommunications and Postal commissions. Telecom, now known as Telstra, has since been semi-privatised by the Howard Government.

Responsibility for the machinery of government is one of a Prime Minister's most crucial strategic roles, and one with a huge bearing on the place of the APS in government. As a consequence, it means that in such matters, the Department of the Prime Minister and Cabinet is a major part of the institutional structure. Historically this has been exemplified, for instance, in its secretary's membership of the Permanent Heads Committee, together with the head of the Treasury and the Chairman of the Public Service Board. Its task was to advise the Higher Salaries Committee of the Cabinet on top salaries and related matters.⁶ These tasks have been handled by the Remuneration Tribunal since 1974.

The Prime Minister's power over the APS is now underwritten by the PSA 1999. It authorises the Prime Minister to 'issue general directions in writing to Agency Heads relating to the management and leadership of APS employees'.⁷ It requires the Secretary of the Department of the Prime Minister and Cabinet to report to the Prime Minister before any appointment to a secretary vacancy is made.⁸

This responsibility of the Secretary of the Department of the Prime Minister and Cabinet is of recent origin; it dates from amendments in 1987 to the *Public Service Act 1922* (Cth) following abolition of the Public Service Board. Previously, from 1976 until 1987, the statutory duty of reporting to the Prime Minister on secretary appointments was in the hands of the Chairman of the Board, assisted by a committee from 1976 until 1984. In earlier times, the Chairman of the Board had often but by no means invariably performed the role of advising on top appointments by administrative arrangement. Until at least the mid-1960s such appointments usually involved the departmental minister more than the Prime Minister; it is unclear when the Prime Minister became the lead figure, but it had certainly become the case by the time the Whitlam Government took office on 5 December 1972.

The current arrangement at both ministerial and official levels reflects declared practice in Whitehall since 1983 (effectively 1981) and Ottawa since the mid-1960s. It is nevertheless contentious. It concentrates the advisory role in a single individual, one who is more actively involved with ministers than officials. There has been a good deal of criticism, much of it focussed on the high probability that appointees would be drawn from the deputy secretary ranks of the Department of the Prime Minister and Cabinet. Given that the Secretary of the Department would in any case be involved, it would be preferable for responsibility for advice to rest with the Public Service Commissioner, particularly having regard to the Commissioner's role in all appointments to and within the Senior Executive Service.

Statutory Regulation of the Australian Public Service

The earliest appointments to the APS, apart from those State public servants transferred to the national government under the *Australian Constitution* when

the Commonwealth was formed on 1 January 1901, were made under s 67 of the *Australian Constitution*:

Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by the law of the Commonwealth to some other authority.

Section 67 is still occasionally used, but it was not very long before the inaugural government of the Commonwealth introduced a Public Service Bill which was adopted in 1902. It was overtaken by another Act in 1922. As already noted, Australia's third and latest *Public Service Act* dates from 1999; like the 1902 Act, it had a long journey through Parliament. Like the 1922 Act, there was a long hiatus between the time when it became apparent that new legislation was highly desirable and its eventual realisation. First mooted during the early 1990s, a bill was finally introduced in June 1997. It was subject to detailed inquiry by the Joint Committee of Public Accounts, most of whose recommendations for amendment were incorporated. A revised bill was reintroduced following the 1998 elections and eventually passed the Senate after much debate, which included provisions relating to staff appeal rights and procedures.

The PSA 1999 is the statutory basis for Australia's now highly departmentalised public service in which centralisation is minimised but hardly eliminated; in which ministerial control in most fields is reasserted except in individual personnel decisions⁹ and in which public service workplace relations are largely re-integrated with the national system.¹⁰ Articulation of APS Values¹¹ and the APS Code of Conduct¹² give effect to the current approach to public service identity based on values rather than, as has been claimed, a unified pay and grading system. According to s 3, the objects of the Act are:

- a. to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public; and
- b. to provide a legal framework for the effective and fair employment, management and leadership of APS employees; and
- c. to define the powers, functions and responsibilities of Agency Heads, the Public Service Commissioner and the Merit Protection Commissioner; and
- d. to establish rights and obligations of APS employees.

This statement is a reflection of legislative drafting practice in the past decade and a half. There is no comparable statement in either of the predecessor Acts as it was not then the fashion to include declarations of this character. The 1902 Act was designed for a Commissioner-managed public service. The first purpose was to bring some order (commonality) to the disparate assortment of organisations — the Post Office, Defence, Trade and Customs — inherited from

the colonies on or shortly after establishment of the Commonwealth. It also entailed fostering some commonality of practice in the four, very small departments the Commonwealth created for itself: External Affairs; Attorney-General's; Home Affairs; and the Treasury. General management power was comprehensively vested in the commissioner, appointed for a seven-year term, though 'Chief Officers' had authority for a range of day-to-day decision-making.

Although not explicitly stated, chief officers were conceptually the heads of State branches of departments; this level of management may also have been recognised as a form of delegation within departments themselves. In cases of departments inherited from the States, it was a means of assuaging injury to pride of former department heads now subordinate to the head of the department at the new Commonwealth level of government. There was a certain irony in the largely successful attempt to bring the whole public service, wherever people were actually employed, within a single system in that it remained in terms of career paths a basically departmentalised and, indeed, State-based, service. There was practically no inter-departmental mobility.

Following election of a Labor Government led by Andrew Fisher in 1910 — the first government in the history of the Commonwealth to have majorities in both Houses of the Parliament — the first circumscription of the Commissioner's powers was effected. By separate legislation, public service unions won access to the Commonwealth Court of Conciliation and Arbitration for settlement of disputes about pay and employment conditions.¹³

The wide-ranging statutory powers of the Commissioner can be explained in a number of ways. The most obvious was simply emulation of recent State public service legislation designed to promote efficiency, economy and competence, and to eliminate corruption, in New South Wales and Victoria (72 of its 80 sections had counterparts in the legislation of those States).

The major weakness of the 1902 Act was its completely inadequate treatment of the departmental side of public administration. Illustrative of this deficiency was its failure to provide a clear procedure for appointment of department heads. Nor did it clearly set out their powers, or the procedures by which the system was to work.

The 1922 Act replaced a commissioner-centred public service with one supervised by the Public Service Board but with a high level of definition of the department head role in establishments and, after 1925 amendments, promotions and transfers. The move towards the departmentalised service embodied in the PSA 1999 was under way. One explanation for these particular characteristics of the new public service regime is that its major architect was a department head, Sir Robert Garran, Secretary to the Attorney-General's Department, Solicitor-General and parliamentary draftsman. The Board's exclusive role in recruitment and

appointment remained. The wide-ranging central powers of determination of pay and employment conditions were now subject to a Public Service Arbitrator, created in 1920 also by separate legislation.¹⁴

The 1922 Act, amended substantially from time to time — notably in 1935 (graduate recruitment), 1946 (promotions appeals) and 1960 (general recruitment) — remained viable until the early 1970s. Thereafter, it became increasingly unwieldy and prone to additions of a most detailed kind, partly a consequence of union demands that changes be incorporated in legislation and partly in an effort to cope with the unstable departmental structure of the period from 1972 to 1987. Important statutory changes such as winding back the traditional tenure of public servants were sensibly addressed in separate legislation;¹⁵ such legislation (like that removing the prohibition on permanent employment of married women in 1966¹⁶) had application to other areas of public sector employment, not simply the APS alone.

The law covering public service employment is thus found in many other Acts as well as the Public Service Act for the time being.¹⁷ Public Service legislation also includes rule-making authority for the major agents. The 1922 Act empowered the Board to make regulations and determinations;¹⁸ for administrative convenience, it also issued General Orders, which had the effect of law. The Public Service Arbitrator made determinations; these became awards when the jurisdiction was merged with that of the Conciliation and Arbitration Commission in 1984.

The PSA 1999 is buttressed by Commissioner's Directions issued under ss 11, 15 and 36 (see also s 42). In length these already rival the Act itself. The Act also authorises the Prime Minister to issue general directions to Agency Heads. Similarly, the Act authorises the 'Public Service Minister ... by notice in the Gazette, [to] make rules about classifications of APS employees'.¹⁹

In an abstract sense, management of a public service in Australia by means of legislation is a matter of choice: indeed, the 1994 Review of the Public Service Act was advised by the Attorney-General's Department that the decision to have a new Act was 'a policy decision not a legal requirement'.²⁰

That great source of wisdom on public service management, the 1853 report on *The Organisation of the Permanent Civil Service* by Sir Stafford Northcote and Sir Charles Trevelyan, concluded with a strong recommendation in favour of legislation:

It remains for us to express our conviction that if any change of the importance of those which we have recommended is to be carried into effect, it can only be successfully done through the medium of an Act of Parliament. The existing system is supported by long usage and powerful interests; and were any Government to introduce material

alterations into it, in consequence of their own convictions, without taking the precaution to give those alterations the force of law, it is almost certain that they would be imperceptibly, or perhaps avowedly, abandoned by their successors, if they were not even allowed to fall into disuse by the very Government which had originated them. A few clauses would accomplish all that is proposed in this paper, and it is our firm belief that a candid statement of the grounds of the measure would insure its success and popularity in the country, and would remove many misconceptions which are now prejudicial to the public service.²¹

Legislation was promised by the Queen in a Speech from the Throne in 1855 but, in the event, the mid-nineteenth century reformers had to make do with an Order-in-Council. The Home Civil Service, in the subsequent century and a half, has occasionally been touched by legislation but there has never been anything approaching antipodean public service legislation.²²

The Canadian public service has had a different experience with legislation. In its first four decades, there were several ineffectual pieces of legislation designed to bring a measure of direction to the development of the infant public service, mainly elimination of patronage in recruitment. Early in the twentieth century (1908) there was a concerted effort to improve efficiency through central recruitment. This early effort was followed a decade later at the end of the Great War with a comprehensive *Civil Service Act 1918* similar to the 1902 Australian Act rather than the later 1922 legislation. Being Commission-centred, it was deficient (like the 1902 Australian Act) in omitting to define the respective roles and powers of the central agency and department heads (deputy ministers). In 1967, a package of three laws was enacted, providing detailed regulation of the staffing (merit) system and the newly-introduced public service collective bargaining regime, but with only minimal coverage of the preponderant administrative power located in the Treasury Board, a statutory committee of the Cabinet, and its Secretariat.²³ Once again, the legislation failed (and did not overtly seek) to capture the dynamics of the relationship between the central agencies on one hand and the departments on the other.

The 1994 Review Group in Canberra concluded that there were 'sound policy and practical reasons for having a Public Service Act' and stated that 'it is essential that there continue to be an Act'.²⁴ Its reasons for this recommendation included various distinctions between public sector and private sector employment practice, including requirements of loyal and impartial service to ministers and of 'merit-based selection of staff for appointment and advancement which excludes nepotism, favouritism and unfair discrimination,' and of "'best employer" practice in the application of equal employment opportunity and social justice policies and practices laid down by the [then Labor] Government'.²⁵ According to the Review Group:

The Public Service Act creates the structure of the APS as an entity, as distinct from an aggregation of separate employing bodies which would be the case if the common law was the only basis of employment. It provides a legal basis for the Parliament to express the important values and culture it wants in the Public Service.²⁶

Another important advantage of legislation, the Review Group continued, was that it established 'the roles and powers of secretaries and their relationship with ministers in a clear, unambiguous and public way (an aspect of public accountability)'. Furthermore, '[i]f there were no Act, there would be no Public Service Commissioner (or equivalent office) and the underlying APS policy framework would be an amalgam of decisions of Executive Government, of the industrial relations system and of the courts'.²⁷

The Central Public Service Management Agency

A major rationale for a Public Service Act is the constitution of a central non-ministerial public service management agency. The PSA 1999 states that one of its objects is 'to define the powers, functions and responsibilities of ... the Public Service Commissioner and the Merit Protection Commissioner'.²⁸ Two of Australia's Acts have created an office of Public Service Commissioner; in the 1902 Act, a mighty figure with comprehensive powers over recruitment, promotion, classification, discipline, dismissal, pay and employment conditions; the Commissioner in the PSA 1999 has a range of operational responsibilities for management of the Senior Executive Service but is otherwise charged with fostering the professional and ethical character of the APS, particularly by enhancing observance of the merit principle and by upholding and promoting the APS Values.²⁹

The Commissioner under the 1902 Act was only appointed for a prescribed period (seven years) — it was the only post in government at the time for which there was a statutory term of office. By contrast, under the original *Audit Act 1901* (Cth), the Auditor-General, like a judge, was appointed without any limit, even that of retirement at age 65 (a provision of this sort was later inserted after the first Auditor-General remained in office until death at age 76). This early distinction between the Commonwealth's first two statutory officers is readily explained. The Public Service Commissioner, though vested with an array of powers under statute and with an obligation to report annually to the Parliament, is unequivocally an officer of the Executive Government. The Auditor-General is a public officer, plainly not part of the Executive Government, with statutory reporting duties to the Parliament on the performance of Executive Government in the management of public finances.

In Britain, the executive (though not necessarily ministerial) character of all powers relating to the working of the Home Civil Service is never questioned;

powers thought inappropriate for ministers, mainly initial selection and appointment, are in the hands of the Civil Service Commission appointed by the Crown. In Canada, by contrast, the Public Service Commission is often seen as an agency of the Parliament; this role is not explicitly stated in the legislation. This conception is erroneous; it fails to distinguish between a body derivative of parliamentary functions (which do not include appointments or other staffing actions) and one which performs executive functions under statute; a responsibility to report to parliament does not, of itself, take an organisation beyond the pale of the Executive branch.

The founding Commonwealth Public Service Commissioner served two terms of seven years. The post was then filled on a temporary basis for a further seven years until the three-commissioner Public Service Board took office on 1 July 1923. The board created by the 1922 Act inherited the Public Service Commissioner's comprehensive responsibilities but in a supervisory rather than operational mode, thus explicitly incorporating department heads in the management system. The new Act also included a charter for the Board to review administrative activity with a view to achieving efficiencies and economies.³⁰ The new charter gave a greater sense of purpose to the Board's regular duties as much as acting as a basis for discrete reviews and investigations which it carried out from time to time.

It was not long before the three-member board fell victim to economies brought on by the Depression of the early 1930s. Apart from the chairman, commissioners were not replaced on retirement. There were nevertheless a few important developments during the 1930s of which the quest for recruitment of graduates for general administration is the most well known. It was only as the Second World War was drawing to a close that the composition of the Board was reappraised in the context of preparing the APS for the post-war world. The Chifley Government decided to reconstitute the three-member board from 1 January 1947. Pressure for a step of this kind came, *inter alia*, from the unions; one of their purposes, briefly accomplished, was to secure appointment of a commissioner with a staff association background.

Until its abolition in July 1987, apart from the inaugural chairman, chairmen were either drawn from the ranks of department secretaries or departmental officers effectively of deputy secretary rank. Those in the first category were W E (later Sir William) Dunk (External Affairs); A S (later Sir Alan) Cooley (Supply); R W (later Sir William) Cole (Finance); and Dr P S Wilenski (Labor and Immigration, later Education and Youth Affairs). Those of deputy secretary rank were F H (later Sir Frederick) Wheeler (formerly Treasury, returning to the APS after eight years as Treasurer of the International Labour Organisation); and K C O (later Sir Keith) Shann (Department of Foreign Affairs, upon return to Australia after several years as Australian Ambassador to Japan).

Of the seven chairmen, all but Cole were reappointed if available. Three retired from the post — Thorpe (1947); Dunk (1960); and Shann (1978). Four subsequently took department secretary posts — Wheeler, the Treasury, 1971; Cooley, Productivity, 1977; Cole, Defence, 1984; and Wilenski, Transport and Communications, 1987–88 and later, Foreign Affairs and Trade, 1992–93 (after a posting as Australian Representative at the United Nations in New York). Commissioners were mainly drawn from the ranks of department heads (1948–68), senior departmental officers (1974–86) and senior Public Service Board staff (1947–81). Two commissioners were drawn from the staff associations, one for a short period in 1947, and another from 1973 until 1977. Until 1975, all commissioners available for reappointment were, with one exception, reappointed; the exception moved to a post in a government company. With that exception, all indeed retired from the APS upon ceasing to be commissioners although one undertook a review of Australia House before actually leaving. After 1977, only one commissioner retired; the remainder were appointed to various senior government posts including departmental headships and one as Auditor-General; another became Auditor-General after an interval, first as a department head and then as consul-general in New York.

Abolition of the Public Service Board in 1987 saw revival of the post of Public Service Commissioner. The new post was not in any sense a recreation of the earlier office with the same designation. The new commissioner's responsibilities were mainly staffing in character; in an operational sense, concerning mainly the Senior Executive Service, which had been created in 1984.

Since 1987, there have been six commissioners, only one of whom has served a full term. Three were department secretaries prior to appointment — John Enfield, Helen Williams and Andrew Podger. Lynelle Briggs, Commissioner since 2004, was a deputy secretary prior to appointment. One was subsequently appointed as a department head — Peter Shergold — and another was so reappointed — Helen Williams. Three have effectively retired from the post — Enfield, Denis Ives, and Podger.

The office of Public Service Commissioner as created under the PSA 1999 is unusual. It is located within the Prime Minister's portfolio and in a number of respects is a subordinate agency of the Department of the Prime Minister and Cabinet. The Commissioner's performance is not, however, subject to review for performance pay purposes. On the other hand, the independence of the post has, in the case of the last two appointments, been qualified by terms of office of three years; in the first case, the three-year appointment dated from the period immediately following the 2001 general elections; his successor was likewise appointed for a three-year term immediately following the general election of October 2004.

An important justification in the past for a statutory officer/board structure lay in divorcing the Government collectively and ministers individually from decisions relating to pay and conditions of appointment. This justification was supported by a view that it was beneficial to separate the Government's national roles in industrial relations from its role as employer (indeed, one of the largest employers in the country). A similar division of role had occurred in various Australian states and in New Zealand, for similar reasons. From 1917 until 1967, there was a comparable division in the Canadian civil service, but for partially different and complex reasons concerning the perceived impossibility of negotiating with the Crown over remuneration.

In Britain, civil service pay has always fallen directly under the responsibility of ministers and for most of the time, the Treasury. Likewise, since 1967, public service pay in Canada, under a collective bargaining structure, is a Treasury Board (that is, ministerial) responsibility.

When the Australian Public Service Board was dismembered in 1987, the pay and conditions role was vested in the new Department of Industrial Relations and not the Department of Finance. The role has changed in the subsequent two decades, as departments and agencies have been vested with greater autonomy in remuneration matters but general policy has remained with the various successor departments of Industrial Relations, currently Employment and Workplace Relations. Notwithstanding the historical rationale, actual settlement of pay matters does not appear to have become a major preoccupation of ministers.

Departments and Agencies as the Basic Unit of Management

The basic unit of management in the APS is the department, or a comparable body such as an executive agency or statutory authority staffed with APS employees.³¹ The essential manifestation of this principle is s 57 of the PSA 1999, which addresses the 'Responsibilities of Secretaries'. It states, inter alia, that '[t]he Secretary of a department, under the Agency Minister, is responsible for managing the Department and must advise the Agency Minister in matters relating to the Department'. This provision is a successor to s 25(2) of the 1922 Act, which stated that 'The Secretary of a Department shall, *under the Minister*, be responsible for its general working, and for all the business thereof, and shall advise the Minister in all matters relating to the Department'. The words in italics were added by the *Public Service Reform Act 1984* (Cth).

In the 1922 Act, department heads were expressly vested with powers regarding establishments and classification, and promotions and temporary transfer (after 1925). Curiously, under the earlier *Public Service Arbitration Act 1920* (Cth), it was ministers rather than department heads who were respondents to

determinations, though they rarely played any role, most matters being handled by the Board. Under the 1999 legislation, the Secretary is the principal actor subject to the provisions of legislation itself.

Individual Personnel Decisions

It was a cardinal principle of the Northcote-Trevelyan report that ministers should not be involved in initial appointments to the civil service. This was the core procedure designed to rid the civil service of the evils of patronage. Otherwise, in the British civil service, all questions of personnel management remained, so far as these matters were clear at law, ministerial powers. In fact, from a relatively early stage they were exercised by permanent secretaries.

One effect of Australia's approach of embodying the system of public service management in statutory form has been to locate most personnel powers clearly in the hands of relevant authorities. Under the 1902 regime, all such powers resided in the Public Service Commissioner. The powers would normally be exercised on the basis of departmental head recommendations, but there was no formal requirement to that effect.

Under the 1922 Act, the Public Service Board retained powers of appointment after a probationary period, and of dismissal. Apart from recruitment, these powers were invariably exercised on the basis of departmental recommendation. From the 1970s, the Board would only be involved if an appointment were to be annulled. In the case of disciplinary matters, including dismissal, any action by the Board followed a hearing by a tripartite disciplinary appeal board.

From 1925, powers of promotion and transfer of staff were vested in department heads, with a right of appeal to the Public Service Board. After 1946, appeals were heard by tripartite committees composed of an independent chair, a departmental nominee and a staff association nominee. In the case of middle-ranking and senior posts, the Board acted on the basis of recommendations from the committee; in other cases, the committee made the decision.

The only individual personnel decisions actively involving ministers were those concerning the department heads and the small number of others, practically always former department heads, in the first division. Appointments and dismissals were matters for the Governor-General, acting on the advice of ministers. In the case of appointments, it was usually the case that the Board would be involved in the recommendation; in other matters, especially disciplinary in character, there would be recommendations from an adjudicatory body.

The principle that ministers do not become involved in individual personnel decisions is clearly stated in s 19 of the PSA 1999. Certain procedures are contained in subordinate documentation reinforcing this prohibition. In recent

years, however, there have been a number of public claims of ministerial interventions in the personnel process, mainly at Senior Executive level.

A Career Service

The PSA 1999 states that ‘the APS is a career-based service’ in which ‘employment decisions are based on merit’.³² The APS has always described itself as a career service although this has never previously been articulated in legislation; the provision in the PSA 1999 is essentially a statement rather than an articulation. It has been taken to mean competitive appointment, promotion largely on merit, and security of tenure in the sense that termination may occur only for cause. In practice, it took the form of young people joining at junior levels of the hierarchy and working their way up until retirement between ages of 60 and 65. This conventional picture fitted very few staff and was, historically, heavily qualified by veterans’ preference³³ and the various prohibitions on women.³⁴

The APS still has a career framework but entry is possible at any stage in the hierarchy; employment on a fixed-term contract basis is increasingly used, often in association with individualised Australian Workplace Agreements; and there are now well established procedures for redundancy on a voluntary and involuntary basis.

An important purpose of the career service was development of an impartial workforce able to serve any government irrespective of which side of politics it was drawn from, and equipped to give impartial advice frankly and fearlessly to ministers. This aspect of the career service has been hotly debated for many years and the outcome is a provision in the APS Values that ‘the APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government’s policies and programs’.³⁵

Establishment-Based Rather than Financial Control of Staffing: A Major Change in Culture

Until 1984, the central mechanism for staff control was control of establishments — the authority over the creation, salary classification and abolition of ‘offices’ (positions) in which staff were employed. ‘Offices’ were central to the definition and allocation of work, assignment of duties, location in an organisation, and pay. This establishment work was governed by s 29 of the *Public Service Act 1922* (Cth). Formal action, except reclassification, was in the hands of the Governor-General, thus providing ministers with a role which likewise was largely formal though potentially burdensome in terms of paperwork. They acted on the basis of approvals by the Public Service Board of reports submitted by department heads.

Control of establishments was the principal method whereby, within the frameworks of the first two Acts, it was possible to develop a relatively cohesive APS-wide grading system. By the early 1970s, the system was increasingly controversial and increasingly ineffective as the numbers of authorised positions greatly exceeded the number of staff and the funds available for paying staff. From the early 1970s, the Public Service Board developed a series of systems under which classification decisions were effectively delegated to departments and agencies. By the mid-1970s, with the numerical size of the public service, a recurrent topic of contention politically and with the unions, establishment control had essentially collapsed and been taken over by direct staffing controls under various names, the most usual being 'staff ceilings'.

Establishment and classification control was itself perhaps the clearest manifestation of the scientific management methods which underlay the first two Public Service Acts. It was explicitly used in all antipodean public services and, until 1967, in the Canadian public service. In the British civil service, staff costs were always regulated by conventional Treasury control of public expenditure. However, internally in departments, and in reviews of staff costs, similar classification techniques were employed, partly because of the connection to pay.

Canada abandoned this method of staff control in 1967 and integrated management of staff costs into the program budgeting system adopted in that year. Again, because of the connection with the pay system, monitoring of gradings was fairly active, but not especially effective. Throughout the 1970s, several of the Australian states abandoned central classification systems and absorbed staffing costs in the general financial management system.

The 1984 reforms of the APS tried to preserve a central classification system but ended the separate system of staff control. Henceforth, staff costs were controlled by the Department of Finance and formed part of the general expenditure system. The framework for maintenance of a central classification system has been maintained but little has been done to activate it.

The demise of establishment-based staff controls at the end of the 1970s and early 1980s is perhaps the most substantial change in the management practices of the APS in its century-long history. It brought a significant reduction in central interventions in the way departments and agencies organised themselves and operated, and thereby increased departmental autonomy in management.

Workplace Relations

This matter is addressed in Chapters 4 and 5 in this volume. Historically, industrial relations have been separated from expenditure management and seen as part of personnel management. In 1987, with the abolition of the Public Service Board, this feature was retained, the function being vested in the (then)

Department of Industrial Relations. It was not assigned to the Department of Finance as it would have been had the ruling philosophy been one of fully integrating or consolidating staff management. This has largely been the pattern in Australian States. In Britain and Canada, key industrial relations matters such as pay and employment conditions have been dealt with respectively by the Treasury (except for the Civil Service Department interregnum, 1968-81) and the Treasury Board since its establishment as the general manager of government in 1967.

Conduct and Ethics

The PSA 1999 has, as centrepieces, a statement of Values and a Code of Conduct. Hitherto, statutory codification of ethics and conduct matters has usually been avoided, although these subjects have continuously been addressed on an ad hoc basis, including in the context of discipline.³⁶ The original legislation dealt with certain values of the nineteenth and early twentieth century, such as prohibitions on employment of bankrupts. The inaugural Public Service Commissioner used his annual reports to expound his extensive views about how officials should conduct themselves, not least his hostility to political and union activity. Even in this era, any statements emanating from Britain were given very close attention, the currency case of the 1920s being a leading example. British expositions, among them major addresses by Sir Edward (later Lord) Bridges, Head of the Home Civil Service from 1945 until 1956, concerning behaviour, conduct and ethics, from the mid-1940s to the 1960s were studied very closely, and frequently repeated. Bridges' influence was also considerable in Canada where, after retirement, he was invited to deliver the prestigious Clifford Clark lectures for the Institute of Public Administration of Canada. Statements by ministers where relevant were also seen as major sources of guidance on conduct and ethics. The leading instance of this type of contribution is Sir Paul Hasluck's Sir Robert Garran Memorial Oration in 1968, 'The Public Servant and Politics'.

Australian views about ethical practice were always distinctive and did not necessarily follow the British path. For instance, from the 1930s, rules relating to engagement in political activity were liberalised; in 1945 arrangements were made to allow staff who resigned to contest an election to be reappointed if they were not successful.³⁷ The prohibition on public comment was also relaxed to allow staff to comment on local matters after an embarrassing case where a temporary employee of the Department of Post-war Reconstruction had criticised the Department of the Interior concerning facilities in Canberra.³⁸ The guiding principle was usually that any conduct should not be related to the duties of staff, should not be based on or use information obtained in the course of employment, nor should it affect the confidence which ministers, from either side of politics, had in the public service.

In the 1970s, the Public Service Board increasingly adopted a more direct approach to conduct and ethical matters. This approach was reinforced by the Report of the Royal Commission on Australian Government Administration. In general, it preferred an advisory to a prescriptive approach.³⁹ When the prohibition on public comment was repealed in 1974,⁴⁰ it was replaced by guidelines in the then General Orders. In addition, a booklet on the subject was published. A broadly similar approach was adopted in addressing acceptance of business appointments on resignation or retirement. This more systematic approach culminated with publication of *Guidelines on Official Conduct of Commonwealth Public Servants* in 1979. Several new editions were published by the Public Service Board in succeeding years, and, in dramatically shortened form, by the Public Service Commissioner subsequently.⁴¹

Right of Employee Association

For most of its history, staff of the APS have been permitted to join unions, usually referred to as staff associations. The unions, moreover, have been part of the statutory structure for deciding pay and other conditions of employment. Indeed, access to various arbitral tribunals, in particular the Public Service Arbitrator, until abolished in 1984, was virtually only possible via a union or staff association registered under the legislation. An individual case over, say, a classification, could only be arbitrated if the union supported the officer's case.

One of the initiatives of the Chifley Government was establishment of a Joint Council chaired by the Public Service Board with representatives of departments and staff associations. Although apparently modelled on the National Whitley Council established in Britain following the Great War, it was different in major respects. In the first instance, it did not become involved in pay matters; more generally, it became the forum for dealing with matters upon which there was broad agreement between management and the unions. During the 1970s, it became a useful vehicle for handling important revisions and innovations such as overhaul of the disciplinary system, arrangements for officers who resigned to contest elections, and facilitating increased employment of women. Reassertion of management prerogative during the 1980s and 1990s saw the Council decline in significance and disappear. Another major difference with the Whitley system was that it convened. Unlike the Whitley system, the Joint Council never had formal departmental or agency counterparts.

Unionism however, has never been compulsory. There were periodically attempts when Labor governments have been in office to confine certain benefits negotiated by unions to members of unions, especially when arbitration was involved.⁴² The last significant attempt to apply union preference came during the early days of the Whitlam Government. On that occasion, the aim was to restrict extension of annual recreation leave entitlement from three weeks to

four weeks, accomplished by determination of the Arbitrator, to paid-up members of unions. The determination, however, was disallowed in the Senate on the basis that the Government, in its election platform, had not given any warning that the extended entitlement would be confined to unionists. The matter was settled by amendment of the *Public Service Act 1922* (Cth) extending the benefit to all staff irrespective of whether they were members of a union.

In recent decades, by contrast, there have been sustained endeavours by non-Labor governments to reduce the role of unions and to foster direct links between management and individual employees.⁴³ A major means for achieving these goals has been by use of Australian Workplace Agreements negotiated under the *Workplace Relations Act 1996* (Cth).⁴⁴

Acquiescence in, even sympathy for, unionism has never extended to recognising a right to strike. The *Public Service Act 1922* (Cth) expressly forbade strikes on pain of automatic dismissal.⁴⁵ During the late 1960s and early 1970s — the last years of the near quarter century long Liberal-Country Party Coalition Government — there were strikes of various kinds, mostly in the Postmaster-General's Department. The draconian provision of the Act was never invoked, the industrial action itself being deemed to be 'stoppages' rather than 'strikes'. There were more stoppages from the mid-1970s to the mid-1980s as well, for example, by air traffic controllers, but tactics generally switched to various forms of 'work to regulation', for example, among staff of employment offices, and also customs staff. New legislation was passed to cover such industrial action.⁴⁶ The common law rule of 'no work as directed, no pay' was also activated.⁴⁷

These measures marked an important change in the balance of power between management and unions. The progressive expansion of the union role which had been evident since the end of the Second World War with very little interruption had been challenged. The immediate reaction was to challenge revival of management power in the tribunals. This counter-attack met with some success, but it was only brief as the Hawke Labor Government repealed the legislation.⁴⁸

In the contemporary public service, the basic policy is that as much as possible workplace relations in the public service should be on the same footing as those in the wider workforce and that except for clearly specified reasons public service employees should not have any rights different from those of the workforce in general. Many distinctive features of the public service workplace derive from application of the merit principle and other, often related matters, addressed in the *Public Service Act*. The role of unions is examined in more depth in Chapter 5 this volume.

Third Party Arbitration

A corollary of the right of association has been the long-standing existence of third-party arbitration especially for the settlement of disputes (though, unlike the private sector jurisdiction, the absence of a dispute did not rule out invoking an arbitration). The role of third-party arbitration was sharply reduced under the new legislative structure, as it has been within the workforce in general, and virtually eliminated by the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth). But from 1911, when public servants first won access to the then Court of Conciliation and Arbitration, until adoption of the *Workplace Relations Act 1996* (Cth) in 1997, arbitration was a major feature of public service workplace relations. From 1920 until 1984, the public service even had its own discrete arbitral jurisdiction under the *Public Service Arbitration Act 1920* (Cth). From the early 1950s, there have been several changes to the legislation designed to integrate public service workplace relations with that of the workforce in general.⁴⁹

Historically, the Australian practice of having a specialised industrial relations system for the public services has been in accord with arrangements in comparable public services in the Australian States and in the UK (the Whitley system) and Canada (the collective bargaining regime established in 1967). Australian practice developed ahead of most other jurisdictions, largely as a consequence of early election of Labor governments, which usually took the lead in providing a statutory basis for union activities. As already observed, the Home Civil Service did not recognise the union role in the sense of instituting formal procedures for handling management-staff relations until 1919; Canada did not move until the mid-1960s.

Rights of Review

A long-standing feature of the APS personnel system has been a general right of review of decisions. The PSA 1999 lists among the APS Values that 'the APS provides a fair system of review of decisions taken in respect of APS employees'.⁵⁰

This is a successor provision to a line of regulations and legislation dating back to the 1920s. For most of that time, appeals or other applications by staff concerning their employment were usually but not invariably decided by the Public Service Board. In 1979, the Board itself created within its own establishment an autonomous body to handle grievances and appeals. This task was separated from the Board in 1984 and vested in the newly created Merit Protection and Review Agency.⁵¹

In 1987, after the Board had been abolished, and following creation of the post of Public Service Commissioner, the MPRA was progressively integrated with the Commissioner's operations in what eventually became a body administratively

known as the Public Service and Merit Protection Commission. Under the PSA 1999, the role is now vested in the Merit Protection Commissioner who is administratively part of the Australian Public Service Commission.

Apart from the general avenue of appeal, there have also been specialist review bodies, both ad hoc and permanent. The longest standing ad hoc bodies have been in the disciplinary field. From inception of the promotions appeal system there have always been a range of promotions appeal committees. Both are tripartite in composition — an independent chair (with the qualifications of a stipendiary or police magistrate in the case of a discipline board) together with a nominee from the department or agency, and a nominee from the union with majority coverage of the staff concerned.

With the decline of union power in the personnel system, the promotions appeal system has also been wound back. At its inception after the Second World War, all officers except the small number in the First Division, where appointments were made by the Governor-General, had a right of appeal. The case would almost invariably be heard by a promotions appeal committee; those concerning posts in the higher levels of the Third Division, and in the Second Division, were referred to the Board for decision. But since 1986,⁵² promotion appeal rights have been progressively wound back and do not now exist beyond the middle ranks of what was formerly the Third Division,⁵³ and review committees no longer involve union representatives.

In the meantime, the growth of avenues for redundancy has seen emergence of some new but limited rights of appeal under the jurisdiction of the Merit Protection Commissioner.

Citizen Rights

As has already been observed in connection with matters of conduct and ethics, the APS has long recognised the citizen and political rights of its employees. There have never been any statutory or regulatory barriers to political participation. The principal inhibitions basically felt by employees at higher levels — chief executives and senior executives — have been the conventions about impartiality and the need for governments from both sides of politics to have confidence in the APS. The Chifley Government amended the *Public Service Act 1922* (Cth) to allow officers who resigned to contest elections (as required in the case of national elections by the *Australian Constitution*, s 44) to be reappointed at the level they held prior to resignation if they were unsuccessful at the polls. This practice is now covered by s 32 of the PSA 1999, which states, inter alia, that a person who resigns to contest an election, but is unsuccessful, 'is entitled to be again engaged as an APS employee ...'⁵⁴

Also, in contrast to counterparts in many other public services, APS employees since 1973 have been permitted to comment publicly on policy subject to various

restrictions such as not using information obtained in an official capacity which is not otherwise publicly available.⁵⁵

And although there have been guidelines and provision for counsel about employment upon retirement or resignation from the APS, there has never been either a prohibition or provision for a quarantine period. Procedures adopted in the early 1980s following the inquiry into Public Duty and Private Interest⁵⁶ are dealt with on the basis that neither the staff member nor the new employer should gain an advantage from the former's previous employment.⁵⁷

Conclusion

The evolution of the APS throughout its history since 1901 is an important case study in administrative change and it is very unfortunate that alone among the four national Westminster/Whitehall public services, it has not been the subject of a commissioned history. The occasion of its centenary on 1 January 2001 was merely marked by a celebratory, albeit informative, publication.

What preliminary study suggests is the extent to which so much change depends on external circumstances. The increased educational standards of APS staff in the post-war era depended significantly on rising educational standards in the community, themselves a consequence of expansion of the universities from the late 1950s. The increasing role of women was also heavily influenced by broader community development. But no factor in recent administrative change has been so significant as information technology, both in making desirable change possible and in otherwise forcing change. This, however, is rarely mentioned in studies of change in the APS.

Internal considerations are often portrayed as central to administrative change. This is probably erroneous, the product of narrowly focussed analysis, and, to a degree, the partially autobiographical character of many accounts emanating from individuals and institutions involved. Notwithstanding, such considerations do have their importance, though perhaps more in shaping the timing and extent of change than its actual occurrence. Key figures in a history of change are very significant in mediating application of ideas current in a general environment within the public service itself.

This chapter is partly based on a view that any major transformation experience is as interesting for the continuities with the past as for actual innovations and new directions. Particularly in the past generation, much change has been less important for its own inherent quality than for what may be called counter-inertia tactics, the fight against complacency and stagnation. Transformation is thus a diverse phenomenon (or, rather, a mixture of diverse phenomena), and much of interest would emerge from a deep, systematic and comprehensive study of the matters touched upon in this chapter.

ENDNOTES

- ¹ See ch 9 this volume, Bryson and Anderson, 'Reconstructing State Employment in New Zealand'.
- ² PSA 1999 s 10(1)(n) and (b).
- ³ *Australian Constitution* s 64.
- ⁴ *Australian Constitution* s 65; *Ministers of State Act 1952* (Cth).
- ⁵ Gerald Caiden 'The Commonwealth Public Service Board' in Henry Mayer (ed), *Australian Politics: A Second Reader* (1969) 589, 593–4.
- ⁶ Gerald Caiden, *The Commonwealth Bureaucracy* (1967) 172.
- ⁷ PSA 1999 s 21. These must be published in the *Gazette* within fourteen days. The Prime Minister may also make rules about classifications of APS employees (s 23(1)).
- ⁸ PSA 1999 s 58(3). This role is fulfilled by the Public Service Commissioner when there is a vacancy in the post of Secretary of the Department of Prime Minister and Cabinet (s 58(2)).
- ⁹ Section 19 of the Act states that an Agency Head is not subject to direction by any Minister in relation to the exercise by the Agency Head of powers under the Act in relation to employment of particular individuals.
- ¹⁰ PSA 1999 s 8(1) stipulates that the PSA 1999 has effect subject to the *Workplace Relations Act 1996* (Cth). See ch 4 in this volume by Mark Molloy.
- ¹¹ PSA 1999 s 10. See also the elaboration in the *Public Service Commissioner's Directions 1999* (as amended) ch 2.
- ¹² PSA 1999 s 13.
- ¹³ *Arbitration (Public Service) Act 1911* (Cth).
- ¹⁴ *Public Service Arbitration Act 1920* (Cth).
- ¹⁵ See, eg, *Commonwealth Employees (Redeployment and Retirement) Act 1979* (Cth).
- ¹⁶ *Public Service Act (No 2) 1966* (Cth).
- ¹⁷ See ch 4 in this volume [Molloy].
- ¹⁸ PSA 1999 ss 97, 82D.
- ¹⁹ PSA 1999 s 23(1).
- ²⁰ Public Service Act Review Group, *Report* (December 1994) (known as the McLeod Report), para 2.7.
- ²¹ Sir Stafford Northcote and Sir Charles Trevelyan, 'The Northcote-Trevelyan Report' (1854, reprinted) (1954) 32 *Public Administration* 1, 16.
- ²² See ch 10 [Ewing] on proposals for a Civil Service Act.
- ²³ *Public Service Employment Act*, SC 1966–67, c 71; *Public Service Staff Relations Act*, SC 1966–67, c 72; *Financial Administration Act, an Act to Amend*, SC 1966–67, c 74.
- ²⁴ McLeod Report, above n 20, para 2.14.
- ²⁵ *Ibid* para 2.9.
- ²⁶ *Ibid* para 2.10.
- ²⁷ *Ibid* paras 2.11–2.12.
- ²⁸ PSA 1999 s 3.
- ²⁹ The Commissioner's functions are set out in s 41 of the Act.
- ³⁰ PSA 1999 s 17.
- ³¹ PSA 1999 s 9 and definitions in s 7.
- ³² PSA 1999 s 10(1)(n) and (b).
- ³³ First implemented by amendment of the 1902 Act in 1915.
- ³⁴ Notably differential pay rates (until the *Equal Pay* cases beginning in 1968) and, until 1966, the marriage bar, according to which married women could not be permanent officers of the APS, and were thus unable to compete for promotion and did not have access to superannuation.
- ³⁵ PSA 1999 s 10(1)(f).
- ³⁶ See, eg, *Public Service Act 1922* (Cth) s 55(1), which specified disciplinary offences, including wilful disobedience, negligence or carelessness in the discharge of duties, use of intoxicating liquor or drugs to excess, disgraceful or improper conduct.
- ³⁷ Caiden, above n 6, 397. See also *Public Service Act 1922* ss 47C, 82B.

³⁸ *Public Service Regulations 1935* (Cth) reg 34 prohibited the use of information gained by or conveyed through an officer's connection with the Service other than for the discharge of official duties and prevented public comment about 'any administrative action or upon the administration of any Department', except for residents of Commonwealth Territories, who were permitted to comment on Territory civic affairs (an exception applying from 1947).

³⁹ Commonwealth of Australia, Royal Commission on Australian Government Administration, *Report* (1976) [2.4.16].

⁴⁰ *Commonwealth Statutory Rules 1974* No 98.

⁴¹ *Guidelines on Official Conduct of Commonwealth Public Servants — A Summary* (1996). The current version is Australian Public Service Commission, *APS Values and Code of Conduct in Practice. A Guide to Official Conduct for APS Employees and Agency Heads* (revised ed, 2005).

⁴² Phillipa Weeks, *Trade Union Security Law* (1995) 37–40.

⁴³ *Ibid* 40 for efforts of the Fraser government; see ch 4 [Molloy] on the Howard Government. See also Phillipa Weeks, 'Reconstituting the Employment Relationship in the Australian Public Service' in Stephen Deery and Richard Mitchell (eds), *Employment Relations — Individualisation and Union Exclusion* (1999) 69, 75–6 on the early years of the Howard government.

⁴⁴ See chs 4 and 5 in this volume [Molloy; and O'Brien and O'Donnell].

⁴⁵ *Public Service Act 1922* (Cth) s 66.

⁴⁶ The *Commonwealth Employees (Employment Provisions) Act 1977* (Cth) (not proclaimed until July 1979) gave Commonwealth employing authorities the power of unilateral suspension and stand-down, ie independently of arbitration. Arbitral powers of suspension and stand-down were confirmed by the *Public Service Arbitration Amendment Act 1978* (Cth).

⁴⁷ *Eg Briers v Australian Telecommunications Commission* (1979) 36 FLR 375. In response to the decision of Rogers J in *Bennett v Commonwealth* [1980] 1 NSWLR that suspension without pay of Commonwealth public servants could be carried out only in accordance with the *Public Service Act 1922* (Cth), the Commonwealth government procured passage of the *Public Service and Statutory Authorities Amendment Act 1980* (Cth), which added s 32A to the *Public Service Act 1922* (Cth) to give the Commonwealth as employer the common law power to withhold pay when employees refused to work as directed.

⁴⁸ The *Public Service and Statutory Authorities Amendment Act 1983* (Cth) (repealed s 32A of the *Public Service Act*) and the *Commonwealth Employees (Employment Provisions) Repeal Act 1983* (Cth).

⁴⁹ Caiden, above n 6, 233, 236.

⁵⁰ PSA 1999 s 10(1)(o).

⁵¹ *Merit Protection (Australian Government Employees) Act 1984* (Cth).

⁵² *Public Service Legislation (Streamlining) Act 1986* (Cth).

⁵³ *Public Service Regulations 1999* (Cth) reg 5.6.

⁵⁴ See also *Public Service Regulations 1999* (Cth) div 3.2 (time limits etc).

⁵⁵ Australian Public Service Commission, above n 41, ch 3.

⁵⁶ Committee of Inquiry Concerning Public Duty and Private Interests, *Report* (1979).

⁵⁷ *Ibid* ch 16.