Chapter Eight

‘The Politics of Partnership’: The Evolution of Public Sector Industrial Relations in Victoria

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Introduction

The Australian Labor Party (‘ALP’) unexpectedly won the Victorian State election in October 1999. The election win followed an extended period of conservative government in which the Victorian public service — and the public sector more generally — had undergone a dramatic transformation and restructure.¹ In many areas of government, the outcome of the process of reform, informed by the ideas associated with ‘new public management’, had challenged both the rationale for public ownership of certain assets and the delivery of services by public sector employees. Like many governments across the globe, Victoria had discovered ‘privatisation’, ‘corporatisation’, and ‘public-private partnerships’.

Consistent with these developments, public sector industrial relations in Victoria also shifted significantly during the 1990s. These changes were to occur at both the peak level between central agencies and unions, as well as the workplace level, involving union representatives’ dealings with management. At the peak level of government, unions found it increasingly difficult to engage central agencies in policy and workforce issues, and wage setting was decentralised to the Department/agency level. At the workplace level, unions were excluded from workplace change processes and management was encouraged to introduce individualised employment agreements as a substitute for collective agreements and awards. In the wider public sector, the Kennett government also sought to direct public sector organisations to introduce individual agreements and, following the passage of the federal *Workplace Relations Act 1996* (Cth), Australian Workplace Agreements (‘AWAs’). Unions, not surprisingly, took on a more adversarial approach to dealing with both government and Department or agency-level management, using industrial muscle where it could be exercised. Inevitably these changes were associated with increasingly differentiated outcomes between Departments/agencies, both in terms of wages, approaches to industrial relations and human resource/employment practices. By the end

of the 1990s, the relationship between public sector unions in Victoria and government was hostile and non-cooperative.

On gaining office, the Bracks Labor government stated its commitment to overturning the approach taken by the previous Kennett government. It immediately convened a summit ('Growing Victoria Together') which was intended to indicate, as many of its pre-election policy documents had done, the ways in which it would seek to distinguish itself from its conservative predecessors. The government remained committed to a strong focus on financial management and the maintenance of budget surpluses, but sought to differentiate itself in terms of its key policy priorities and initiatives designed to create an invigorated capacity for government to deliver value to citizens. This involved a commitment to creating a new public sector organisation and management.

As was the case for the Kennett government, the priorities were focussed on growth through improving the regulatory environment for business and investment attraction, but in contrast, the process of developing and implementing policy would be consultative, although not necessary consensual. This has led to an ongoing insistence that any policy proposals must not only go through a process of assessment for its economic impact, an 'Economic Impact Statement', but should also involve a period of 'community consultation' before the presentation of any actual proposals as bills before Parliament.

This 'consultative but not consensual approach' was also intended to be a hallmark of public sector industrial relations under a Labor government. Its purpose was to embark on a 'partnership' with unions to improve the delivery of services and, at the same time, build a strong relationship with public sector unions and employees through cooperation and consultation. The government moved quickly to reinstate a collectivist approach to industrial relations, directing Departments/agencies to discontinue the practice of engaging employees on individual agreements (AWAs). Proceedings before the Australian Industrial Relations Commission ('AIRC') were terminated and the government sought to negotiate a Partnership Agreement with the Victorian Branch of the Community and Public Sector Union (the 'CPSU'). This agreement, which was negotiated in a relatively short period of time, articulated an approach which sought to bring unions back into the process of reshaping public sector employment practices.

For all intents and purposes, the election of the Bracks government appeared to represent a counter-revolution against the 'new public management' and the general direction of industrial relations reform in Australia. Within the first 12 to 18 months, however, the government was required to negotiate a number of agreements on wages and conditions for significant groups of public sector employees. This process proved to be challenging for both government and unions and posed problems for any commitment to the 'partnership approach' of its own rhetoric. For government, it immediately brought into focus the

tension between its fiscal objectives and public sector wages policy. For unions, it required a significant adjustment of their high expectations of a new Labor government following a long period of State government hostility towards unions.

The purpose of this chapter is to review the nature of this counter-revolution of public sector industrial relations in Victoria and assess the extent to which it generated a transformation of public sector industrial relations and workplace practices. This analysis will take account of a number of significant shifts in the context in which this new approach to public sector industrial relations has been implemented which have influenced the implementation of policy. These include:

- on-going wages pressures following a period of suppression and creation of inter-occupational anomalies;
- significant shocks in both the labour supply for key public sector occupational groups and the demand for public sector services;
- unexpected shifts in the budgetary pressures; and
- changed political circumstances.

The chapter provides a brief outline of the concept of 'new public management', which has informed key changes in public sector organisation and management practice over the last decade. Then there is an overview of the political and industrial context faced by the incoming Bracks government following its shock election win in 1999. The next section of the chapter outlines the key reforms in unions and wages policy that had occurred prior to 1999. The section 'Instituting a Partnership Approach' summarises the key elements of the Bracks government's public sector industrial relations policy that was introduced after the October 1999 election, most notably the idea of developing a partnership with public sector unions. The section 'Challenges to Partnership' considers challenges for the partnership approach posed by subsequent industrial relations outcomes and dynamics. 'Reforming the System' outlines the state of public sector industrial relations in Victoria generally in the period 2002-2006, while the concluding section provides an assessment of changes since 1999.

The overall assessment is that whereas the shifts in approach were significant, they represented an *evolutionary* development rather than a fundamental counter-revolution against the more radical ideas associated with new public management. While seeking to take a cooperative approach to wage negotiations, the government's policy framework provided for agreements to be negotiated within the same funding parameters applied by the previous government. The initial changes can also be judged to have met with mixed success, both industrially and in terms of creating a workforce to deliver government service priorities. The incrementalist approach reflected both the terms on which the government was elected and the subsequent challenges it has faced. By 2003, this (partial) transformation had emerged as a coherent alternative to the more

extreme model to meet the emerging challenges in public sector industrial relations and workforce planning.

The Concept of 'New Public Management'

The last two decades to 2006 have been associated with a fundamental shift in the principles of public sector management in all industrialised countries.² This had, in turn, been a product of a general reinvention of the role of government, its agencies, the means by which services are delivered, and employment practices within public sector organisations.³ At its core, this has been associated with a move away from a traditional model of public administration towards variants of the 'new public sector management' model.⁴

The traditional model of public administration, based on the doctrine of the separation of powers, was associated with the delegation of a specific set of functions to public administrators in the implementation of policy and the expenditure of public funds.⁵ A central principle associated with this model was the idea that public service employees were independent from the political process.⁶ Their role was encapsulated by the maxim of providing advice 'without fear or favour'. This capacity for independent advice was assured through the idea of a career in the public service and explicit norms of behaviour and professional conduct.⁷ It has also been presumed that public service employees were less likely to be motivated by extrinsic rewards, more likely to identify with value of service to the public and the provision of public goods, and have a strong commitment to principles of justice, fairness and equity in discharging their duties.⁸

This traditional model of public administration was associated with an expansive view of the role of government, which prevailed throughout much of the twentieth century. This view produced a significant role for government in regulating economic and social relations, owning productive assets and producing goods and services, in a range of areas in the period until the mid to late 1970s. From that time, the role of government and public sector organisations came under sustained scrutiny, with the result that governments privatised production of many goods and services previously seen as the natural domain of government, such as essential services; withdrew from the direct control of production of goods and services funded by the public purse through corporatisation and outsourcing; and encouraged the contestability of markets in which the government had previously been a monopoly producer.

This general reorientation of the role of government has been associated with changes to internal organisational attributes and management practices within public sector organisations. This 'new public management' has shifted the focus from public service to service delivery. The principles associated with new public management have been informed by the idea that public service needs

to be more responsive to both the preferences of beneficiaries, citizens who pay for service provision through tax, and politicians who represent the collective will and make policy choices.⁹ From this perspective, ministers are seen as analogous to customers,¹⁰ and citizens to consumers.¹¹ New public management has been informed by economic doctrines that have advocated privatisation, contestability in the delivery of public goods and services and, where possible, the provision of these goods and services through the private sector.¹² For the core public service, this has also been associated with significant reforms to public employment systems and the norms of what constitutes professional public service.¹³

For Australian public service employees, this shift has involved the displacement of core legislative protections associated with independence by 'value statements' and 'codes of ethical conduct', along with protective legislation for whistleblowers.¹⁴ More generally, this shift has occurred within the context of a decentralisation of managerial responsibilities for workforce planning and human resource management to individual departments and agencies. For middle managers, this has meant a significant increase in responsibility for both ensuring probity in managerial practice and dealing with the ethical issues and conflicts that arise in dealing with ministers and stakeholders, the responsible expenditure of public money and the fair and just delivery of services to the community.¹⁵

The Political and Industrial Environment

In Victoria, the prescriptions associated with new public management were influential throughout the 1990s.¹⁶ In September 1992, following an extended period of Labor government, a Liberal-National Party coalition government, led by Jeff Kennett, was elected in a landslide. In the period immediately prior to the change of government, Victoria experienced declining economic fortunes. In 1991-2, the state debt stood at 31.5 per cent of Gross State Product and the state's operating deficit was slightly more than \$A 2 billion. In addition, the state faced significant unfunded superannuation liabilities and debts which resulted from a failed experiment in seeding industry development through the Tricontinental Bank.¹⁷ The subsequent collapse of Pyramid Building Society based in Victoria's largest regional centre, Geelong, further depressed the state's economy and fuelled declining confidence in the government.

The incoming Kennett Government's agenda, which was outlined in its election manifesto,¹⁸ involved a radical departure from the traditional public administration model that characterised the Victorian public service. In its place, an approach consistent with a strand of 'new public management' that Peters has labelled the 'deregulated state' was quickly implemented.¹⁹ Broadly, these reforms can be summarised as follows:

- the separation of traditional policy development and regulatory functions from service delivery roles of government;
- a shift towards output based funding for Departments and Agencies;
- the introduction of contestability in the delivery of public services where possible to ensure consumers were provided with choice and agencies were responsive.

Consistent with these developments, the Kennett government, where possible, sought to contract out the delivery of services or to privatise.

To enable this new public management approach to government, the Kennett government also introduced significant changes in the structure and responsibilities of individual Departments. In particular, three reforms defined the changing character of public sector management and industrial relations in Victoria.

The first of these reforms involved the consolidation of the number of public service Departments. Departments moved from stand-alone portfolio administrative units to larger organisations clustered around groups of related portfolios. The number of Departments was reduced from 22 in 1992 to just eight in 1996.²⁰ At the same time, however, this consolidation was countered by a deliberate policy of horizontal disintegration aimed at creating smaller, more focused agencies, often with statutory roles.

Second, the streamlined Departmental structure enabled the introduction of new governance arrangements which defined the relationship between the executive branch of government and the senior bureaucracy. The new approach dismantled traditional governance arrangements and responsibilities, and introduced changes which resembled a standard private sector model associated with publicly listed corporations. The role of government was, under these arrangements, defined as analogous to a company's board of directors. The role of senior bureaucracy was viewed as paralleling that of a company's Chief Executive Officer and senior management team authorised to implement government's 'business strategy'. This relationship was facilitated through the introduction of the State Coordination and Management Committee ('SC&MC') in October 1992, which was comprised of Departmental Secretaries, the Chief Commissioner of Police and the Public Services Commissioner. This body, while not vested with any substantive decision-making power, reinforced the central role of the Secretary of the Department of Premier and Cabinet as the titular head of the public service. Its creation was intended to maximise the coordination of functions and decision-making between departments so as to give proper effect to government's policy decisions.

The third and final significant reform consisted of the diminution of central agencies' role in defining and determining public sector management practices

and industrial relations outcomes. This was principally achieved through a concomitant devolution of responsibility to Departments and Agencies for employee recruitment and development, pay systems and performance management and the management of industrial relations. Key to these reforms was the *Public Sector Management Act 1992* (Vic). This legislation devolved responsibility for human resource management to Departmental Secretaries, including the powers to make employment decisions, determine the work value of jobs and promotion, manage disciplinary procedures, redeployment and redundancies. It also introduced fixed term employment contracts for executive officers and allowed for more widespread introduction of non-standard employment arrangements. Implicit within these reforms was that prime responsibility for workforce planning and development lay with Departmental Secretaries.

The Act also defined a limited role for the Office of Public Employment as central agency. Its primary responsibility was in the form of establishing guidelines relating to the discharge of statutory functions under the Act and monitoring adherence to them. The *Public Sector Management and Employment Act 1998* (Vic), which replaced the *Public Sector Management Act 1992* (Vic) and the *Public Authorities (EEO) Act 1990* (Vic), further diminished the role of the Office of Public Employment in prescribing employment and human resource management practices at the Departmental level. This legislation instead outlined key principles of public sector employment, and provided the Commissioner with the capacity to establish a Code of Conduct for Public Sector Employees.

These broad discretionary powers were further augmented in 1994 with the introduction of a broad-banded classification structure and salary scale for non-executive officers. This classification structure consisted of five classifications with no fixed salary points within them, compared with a structure consisting of around 120 separate pay and grading classifications.²¹ Officers were appointed at a single point within a scale, and movement within the value ranges that defined a classification was based on performance assessments rather than annual increments or work value assessments. The additional costs associated with basing wage increments on performance were to be funded by Departments and Agencies rather than supplementation.

The extended discretion provided to Departments and Agencies was, however, proscribed by other developments. Most significant was the repeal of the *Industrial Relations Act 1979* (Vic) and its replacement by the *Employee Relations Act 1992* (Vic) (the 'ER Act'). For the first time, this Act placed public sector employees under the same arrangements as private sector employees. The ER Act restricted access to compulsory arbitration of industrial disputes and provided for the introduction of individual employment agreements, which took precedence over collective agreements. While not prescribed, Departments and

agencies were strongly encouraged to adopt individual employment agreements.²² A second stage of reform in 1994 involved the abolition of some 240 state Awards and their replacement with 19 industry sectors.²³ On application from either employees or employers, the State Employee Relations Commissioner was vested with the power to determine minimum wages for occupational groups covered by these industry sectors. On 10 November 1996, however, the Victorian Government repealed the ER Act and referred its industrial powers to the Commonwealth.²⁴ To counter the expected effects of the ER Act, the CPSU sought and gained an interim federal award in December 1996. Following the referral of powers in 1996, state public service employees continued to be covered by a federal award.

The Transformation of Public Sector Unions and Wage Bargaining

The previous section described the institutional changes introduced after 1992 and before 1999. These developments represented a fundamental shift in the conduct of public sector industrial relations and wage-setting, the management of people and use of human resource practices, as well as and the institutional arrangements which governed them. By the time it was elected in late 1999, the Bracks government faced a highly decentralised industrial relations approach in the public sector, characterised by high (although varying) levels of individualisation of wage bargaining and conditions of employment, and significant differentiation in outcomes between Departments.

In addition to these institutional developments, other features of public sector industrial relations require consideration, notably the role of public sector unionism. Coverage in the public sector fell to a relatively large number of unions (see Table 1), although within the public service the main union remained the Victorian branch of the CPSU.

Following the September 1992 election, the Kennett government adopted a hostile approach to dealing with public sector unions. It refused to consult over public employment policy issues and encouraged Departments and Agencies to take the same approach in relation to workplace change issues. As noted above, individual Departments and Agencies were encouraged to utilise individual employment agreements — and later AWAs — as widely as possible. Automatic payroll deduction of union dues was prohibited for public service Departments and resulted in a significant decline in union membership. As part of the process of consolidation, and in response to the public debt crisis faced by the government, large scale workforce reductions were instituted over a relatively short period of time, further diminishing the capacity of the CPSU and other public sector unions to use industrial muscle to resolve disputes with government. (This was substantially less evident for some specific occupational groups, such as nurses).

Table 1 Unions with coverage in the Victorian Public Sector, 1999

Association of Professional Engineers, Scientists and Managers Australia (APESMA)
Australian Education Union (AEU)
Australian Liquor, Hospitality and Miscellaneous Workers Union (ALHMWU)
- Ambulance Employees Association of Victoria
Australian Medical Association (AMA)
Australian Services Union (ASU)
- Local Authorities Division
- Victorian Services and Supply Division
Australian Workers' Union (AWU)
Community and Public Sector Union (CPSU)
Media, Entertainment and Arts Alliance (MEAA)
Health Services Union of Australia, No.1 Branch (HSUA No. 1)
HSUA No.2 (Health and Community Services Union)
HSUA No.3 (Australian Health Professionals Association)
HSUA No. 4 (Association of Hospital Pharmacists)
HSUA No 5 (Health and Community Services Association)
National Tertiary Education Union (NTEU)
The Police Association (TPA)
United Firefighters Union (UFU)

Along with a hostile approach to unions, the Kennett government's response to Victoria's fiscal crisis involved vigorous attempts to maintain wage increases at low levels and to break traditional relativities. This remained its approach for the entire period of its administration. The inevitable outcome was that some groups, particularly those with limited industrial capacity, had experienced a substantial decline in wage outcomes relative to other states and traditional comparators.

By the end of 1998, however, this policy had resulted in a number of emergent issues, which, arguably, would have required a significant change to the government's industrial approach had the Kennett government been re-elected. First, Victorian public sector unions had sought and gained federal award coverage for their members. This naturally created a greater tendency for outcomes which took account of interstate comparisons. Second, in a number of key occupational groups, most notably nurses and teachers, labour supply had become increasingly difficult to secure. In the case of nurses, the relatively inferior interstate wage was reinforced by an emerging global nursing shortage. Again this inevitably created wage pressure by the time the Bracks government had won office.²⁵ Third, and finally, the initial negative impact on public sector union membership had turned around, giving rise to a growing capacity to mobilise a willing membership and use industrial pressure in the process of wage negotiations. This was particularly true of nurses, teachers, police and other emergency services. Significantly, these groups make up the vast majority of the State Government workforce and wages costs.

By 1999, then, a vastly different public sector had been created. It reflected the core characteristics associated with the model of 'new public management' and 'marketisation' that had emerged in the United States and the United Kingdom during the 1980s;²⁶ its overall size had been substantially reduced by workforce reductions, outsourcing and privatisation; wage bargaining had become highly decentralised or individualised;²⁷ and the institutions governing employment practices had largely been recast to support a system intended to converge with private sector practice.

Not surprisingly, public sector unions held high expectations of the incoming Labor government's reform agenda. These expectations were not restricted to institutional issues such as reform of wage outcomes to restore interstate relativities, although these clearly had central importance. The unions also expected the government to take a more open and consultative approach to dealing with them over industrial issues, workforce development and planning and service delivery requirements which inevitably impacted on both of these. In the next section, I consider the new government's attempt to respond in this climate.

Instituting a Partnership Approach

The unexpected election result of October 1999 did not provide the incoming Bracks government with a workable mandate capable of supporting the ambitious reforms that were demanded by unions. The government's majority in the Legislative Assembly was dependent on the support of three independents, while in the Legislative Council, it fell well short of a majority by 16 seats.²⁸ Its minority status severely restricted its capacity to give effect to its election agenda. In relation to private sector industrial relations, the government's initial intentions were to request the federal government to amend Schedule 1A provisions of the *Workplace Relations Act 1996* (Cth), which covered Victorian employees not otherwise covered by federal awards, in order to bring general conditions into line with that in other States.²⁹ However, following a refusal by the federal government to do so on terms acceptable to it, the Victorian government sought to withdraw its referral of power to the Commonwealth and re-establish a State tribunal system. The Fair Employment Bill 2001 (Vic), however, foundered in the Legislative Council and no State system was able to be re-established.

In contrast to its stalled attempt to bring reform to arrangements covering private sector employees in Victoria, the Bracks government took immediate steps to reshape public sector industrial relations. Its capacity to do so reflected constitutional limits on the capacity of the Federal Government to directly regulate the employment conditions of state public sector employees,³⁰ and the

general discretion of government to make significant changes within existing statutory provisions governing public employment in Victoria.

The Bracks government took two key decisions, which signalled public sector industrial relations reform was to be a key policy objective for government. First, it announced that all individual work agreements with public service employees would not be renewed and a collective agreement would be negotiated to cover the public service (see below). Second, it also established an Industrial Relations Subcommittee of Cabinet immediately following its election. This subcommittee was delegated the responsibility for the development and implementation of government's industrial relations policy framework, subject to full Cabinet approval. These decisions were also billed by government as the beginning of a new approach to managing industrial relations and workplace issues, based on partnership with unions. In broad terms, the intention was to bring unions into decision-making processes, to provide them with both adequate information about the parameters within which government needed to work and an opportunity to have input into the large policy issues affecting public sector employees as well as workplace change matters.

The Partnership Agreement: An Example of the Government's Approach

This policy of partnership was given effect in a number of ways. To begin, the government withdrew from proceedings before the Australian Industrial Relations Commission (initiated by the Kennett government) that had followed a breakdown in negotiations between the government and the CPSU over the establishment of an enterprise agreement covering public servants. Following this, it quickly reached a Partnership Agreement with the CPSU.³¹ The agreement was seen as a landmark development in that it attempted to give effect to three outcomes critical to re-establishing the government's relationship with public sector unions.

First, it recognised the CPSU as the major representative body of public service employees and required Departments and agencies to negotiate with the CPSU in setting wages and conditions. Clause 8 of the Partnership Agreement (the 'Agreement') stated that:

The purpose of this [Agreement] is to create the framework enabling the implementation of Partnerships for High Performance. It creates the foundation and establishes the principles for subsequent... agreements... The purpose of this [Agreement] is to establish a partnership between the Victorian Government, its employees and the CPSU.³²

The Agreement also sought to gain a union commitment to assist the government in resolving tensions which it faced in ensuring that public services were delivered on an on-going basis and in a fiscally responsible and sustainable manner. Clause 8 stated:

The parties acknowledge that:

- government policy is to be implemented;
- quality services are to be delivered; and
- fiscal responsibility is a high priority as is maintaining the integrity of Agency budgets.³³

The parties committed themselves to responding to these challenges by working together to effect workplace change. Clause 18 of the Agreement required that the CPSU and employees were to be advised ‘as soon as practicable’ of any proposal to introduce workplace change, the rationale for the changes and the intended benefits.³⁴ It also required that, prior to implementing any major restructure or change to work practices, management would provide the CPSU with an opportunity to submit any alternative proposals. If the alternative were not accepted, the Agency was required to give just cause. Should a dispute ensue about the reasons given for this rejection, the Agreement sets a dispute settlement procedure to determine which proposal should proceed. In all, this clause provided the CPSU with an opportunity to participate in the decisions creating change.

The second major achievement of the Partnership Agreement concerned the relationship it established between Departments or agencies and central government. As was noted earlier, the *Public Sector Management and Employment Act 1998* (Vic), which was operating at the time, designated Departmental Secretaries as the ‘employers’ of public service employees and responsible for the determination of wages and conditions for departmental staff. This decentralised approach meant that each department or agency held primary responsibility for enterprise agreements. This in turn meant that, over time, wage movements for specific classifications varied from agency to agency. This formal responsibility was not altered by legislative amendment, but by agreement. The Partnership Agreement, which was reached with the unanimous agreement of (and formally signed by) all Department Secretaries, effectively introduced more centralised, or at least co-ordinated, wage bargaining between departments and agencies. Thus, while central agencies assumed some responsibility for concluding wage agreements, Departments and agencies were left to deal with implementing aspects of such agreements, negotiating productivity based wage increased within predetermined limits, and dealing with industrial matters specific to the agency.

This ‘tight-loose’ arrangement established by the bargaining framework was reflected in arrangements governing the management of industrial relations at the agency/workplace level. The framework continued to delegate responsibility for managing industrial issues within a Department to the Department Head. However, it also appointed Industrial Liaison Officers within Departments whose

responsibility it was to ensure the core policy principles were reflected in Departmental practice.

The final change which the Partnership Agreement sought to give effect to was a reversal of the changes to the career structure instituted during the Kennett years. Given the potential budgetary implications, this issue was not directly addressed in this agreement. Instead, both parties agreed to establish a Career Structure and Work Organisation Review.³⁵ This review was to be completed during the life of the Partnership Agreement. The broad intention was to reintroduce elements of a independent career public service, which had been eroded over the previous decade. External consultants were commissioned to review the existing career structure, and a final report (the Wright Report) was provided to government in 2001.³⁶ A new agreed pay and classification structure, based on the recommendations of the Wright Report, was not implemented until 2003. This structure remains in place under the existing Victoria Public Service Enterprise Agreement (2006).³⁷

Challenges to Partnership

The achievements of the 2000 interim Partnership Agreement were, in retrospect, substantial. However, the arrangement left unresolved a number of important issues which, over the remainder of the first term of the Labor government, proved to present major challenges to the original intentions of the government's policy framework. These issues emerged quickly as the government faced the renegotiation of a number of major agreements in health, education, police and emergency services.

Most important among these issues were:

- unmet union expectations;
- an unsustainable demographic profile of public sector employment, and emerging labour supply shortages for key occupational groups, specifically nurses and teachers; and
- an adversarial approach to change at the workplace level.

Union Wage Expectations

While the government sought to maintain a fiscally responsible position — which had been a hallmark of the previous administration — unions expected and sought to achieve a significant funding boost in their respective areas of coverage in the public sector, both in terms of employment levels and wage outcomes. It was also noted above that during the period of the Kennett Government, significant wage anomalies and pressures had emerged. These represented legacy issues which unions expected to be rectified. What subsequently emerged was a wage negotiation dynamic in which individual unions vigorously pursued their own wages and conditions in isolation. While

most agreements were reached without extended industrial action, the government was forced to implement its wage policy principles inconsistently. Moreover, these agreements were not adequately integrated into a coherent approach that supported the government's public sector reform agenda or service delivery objectives.³⁸

The Demographic Profile of Public Sector Employment

The Victorian Public Service ('VPS') is made up of 20 organisations with around 28,000 staff, while the larger public sector comprises 240 organisations and employs around 185,000 persons. Of these, the health and education sectors account for around 80 per cent of the Government's total wages bill. Around two-thirds of all employees are female, reflecting the high proportion of women within the nursing and teaching professions.³⁹

It was noted above that a key reform introduced during the Kennett government involved the creation of a broad-banded classification structure for public servants and other public sector occupations. The operation of this structure, in the absence of annual or work value-based increments, inevitably resulted in declining pay relativities. This, in turn, resulted in a number of predictable outcomes. As the VPS became increasingly unattractive as an employment option, agencies found it increasingly difficult to hire and retain staff.⁴⁰ This was, in turn associated with a break down of career paths and the traditionally strong internal labour market structures. Currently, approximately two-thirds of all public service appointments are made from external candidates. A direct implication is that the VPS now spends significantly more resources on training and recruitment.

A further consequence is reflected in the age structure of the VPS, which is now heavily skewed to older workers: about 30 per cent of the Victorian public sector is older than 50 years; and the median age for males and females stands at 39 and 45 years, respectively.⁴¹ Around 20 per cent of the female VPS employees are under 30 years of age, with a similar figure aged more than 50 years. In the case of men, 11.5 per cent of VPS employees are aged under 30, while around one-third of male VPS employees are now aged over 50 years.⁴² This is reflected in developments in the broader public sector. In 2005, the average age of the employees in the Victorian public sector was 42 years; this compared with an average of 41.2 and 39.5 years in 2000 and 1998 respectively.⁴³

These demographic issues create future labour supply issues for government and a potential wage blowout to attract large numbers to the public sector. In the broader public sector, labour supply shortages arose even earlier in significant ways in key sectors such as education and health. During the 1990s, a worldwide shortage of nurses had emerged and many Australian nurses were attracted to the United Kingdom in particular by the prospect of higher relative pay. The

aging demographic profile of teachers, along with a declining capacity to attract young teachers into the system (particularly young men) had similarly posed an ongoing problem. In these areas, the government faced the prospect of either responding through agreement or having unions use the AIRC to prosecute their claims, as had occurred in other States.

Adversarial Culture of Public Sector Industrial Relations

Relations between state governments and public sector unions have traditionally operated on a comparatively adversarial basis. As noted above, this dynamic was intensified during the Kennett period in which the CPSU and other unions were viewed as external parties. This has perhaps created a longer lasting effect on the way in which unions deal with agencies. Similarly, some Departments and agencies that for the first time in seven years have had to deal with unions found it difficult to adjust. The ongoing non-consultative approach deployed in some high profile instances has generated a low trust dynamic. Some agencies sought to continue the approach instituted by the previous government including the use of AWAs, common law contracts or non-union enterprise agreements made under the *Workplace Relations Act 1996* (Cth). This undermined the general principles of the government's policy direction. It also exposed the inherent tension in retaining a decentralised delegation of management responsibility, whilst seeking to impose centrally determined wages policy and industrial relations policy direction. Needless to say, it also created a source of ongoing tension between unions and government.⁴⁴

Reforming the System

2002-2004

The issues outlined above were emerging prior to the change of government in 1999, but were also reinforced during the first term of the Bracks government. This in part reflected the general fiscal conservatism inherited by the Bracks government and an overriding concern to avoid the problems associated with the Cain-Kirner years of Labor government. The Bracks administration was, understandably, guided by the overall aim of achieving improved service delivery outcomes in a fiscally responsible and sustainable manner. This concern has driven subsequent developments within the industrial relations policy framework. In order to achieve this, the original policy framework has evolved in a number of ways. This section focuses on describing the key elements which together constitute a revised policy framework implemented in the second term of the Bracks Government.

The core challenge for government was the need to take the partnership route, maximise its capacity to be an 'employer of choice' and, at the same time,

realistically meet service delivery objectives within funding constraints. The policy and strategic planning hierarchy for meeting these objectives was:

1. the identification of the government's long-term policy priorities;
2. the determination of longer-term service delivery objectives;
3. the definition of consequent workforce requirements to achieve these objectives; and
4. the development and implementation of industrial relations strategy which facilitate the deployment of this workforce.

During the first year of the second term of the Bracks government (ie 2002-3), some key arrangements were established — they sought to align wages policy, workforce planning and development policy, and industrial relations policy in a way that reflected this policy hierarchy. Specifically, these arrangements included:

1. a Public Sector Industrial Relations Framework which linked enterprise agreement outcomes to service delivery and budgetary objectives, facilitated through high level communications between unions and government and, which sought to ensure that Departments and agencies have the capability to manage industrial relations change at the workplace level;
2. a strategic approach to workforce planning at the Department level, supported by a corporate workforce planning capability;
3. a Governance Framework for overseeing, planning and negotiating key enterprise agreements, including the establishment of a Subcommittee of the Expenditure Review Committee of Cabinet, to ensure central agencies and portfolio Departments work collaboratively to develop strategies in each sector that are conducive to the achievement of policy objectives; and
4. a wages policy which sets parameters within which portfolio Departments and agencies plan service delivery, workforce development and the management of workplace change and industrial relations to meet these objectives.

Public Sector Industrial Relations Framework

In early 2002, the government endorsed the development and implementation of a revised public sector wages policy and industrial relations framework. This framework consisted of the following elements:

- a process for government and public sector unions to establish a working relationship within which industrial relations and workforce issues can be discussed on an on-going basis;
- a planned and differentiated approach to wage negotiations which links wage outcomes to service delivery objectives;
- a consultative approach to managing workplace change; and

- a review of current budget processes, to ensure that consideration of wage and workforce considerations and the annual review of Departmental budgets are complementary to each other.

The process for establishing a working relationship between unions and government at the peak level has been developed through the negotiation of a Public Sector Framework Agreement with public sector unions and, as part of that Agreement, the establishment of a Public Sector Industrial Relations Committee consisting of government and union representatives.

Workforce Planning

In 2002, the Office of Workforce Development (‘OWD’) was established within the Department of Premier and Cabinet. The primary function of the OWD was to provide government with a corporate capability to identify key workforce challenges for the Victorian Public Sector and to assist Departments plan and develop workforce profiles required to achieve longer-term service delivery objectives. A key component of the OWD’s activities centred on the development, negotiation and implementation of a revised VPS classification structure.

Governance Framework for Negotiations in Key Sectors

In early 2003, the government endorsed a governance model for managing the planning and negotiation of Enterprise Agreements for key occupational groups (Public Service, Health and Education sectors). This model comprised the following:

1. The establishment of a Public Sector Industrial Relations Subcommittee of the Expenditure Review Committee of Cabinet to:
 - monitor and oversee the implementation of government’s industrial relations and wages policy framework;
 - ensure structural arrangements and Departmental roles and responsibilities which maximise the government’s capacity to plan strategically and manage industrial negotiations; and
 - ensure portfolio Departments strategically plan and manage negotiations in a manner that meets the government’s expectations, addresses workforce development and service delivery objectives and wages policy objectives.
2. The establishment of Leadership Groups, chaired by the relevant Department Secretary and consisting of representatives from the relevant central agencies (ie the Department of Treasury and Finance, the Department of Premier and Cabinet and Industrial Relations Victoria) and relevant portfolio Departments, to oversee the Departmental level planning process and development of a negotiation strategy; and

3. The formation of negotiation teams, led by the relevant Department, to carry out negotiations in a manner consistent with government policy and the approved negotiation strategy.

Wages Policy Parameters

The 2003/4 Budget foreshadowed the introduction of a new funding model based on agreed output prices determined as part of the budget process introduced in 2004/5. As part of the 2003/4 budget process, the government also approved a transitional policy to apply to 2003/4. In outline, this transitional policy had three elements:

- maintenance of real wages by providing supplementation at the projected rate of inflation (2.25%);
- additional supplementation of up to 0.75% for tangible service delivery agreed to by government; and
- further increases funded by Departmental productivity offsets/savings that are real and sustainable.

Outcomes of the Revised Policy Framework

The revised policy framework was subject to the challenge of implementation during the process of negotiating major agreements in 2002/3. Three key agreements — covering public service employees, teachers, and nurses — have been renegotiated with only limited industrial action and recourse to arbitration. Nonetheless, it is not clear that the agreements have been reached without some compromise to wages policy principles outlined by government prior to negotiations. It is difficult to determine the extent to which all elements have been effectively implemented and, specifically, whether government has been able to successfully implement its stringent wages policy parameters. It will be some time before the effectiveness of these agreements can be fully assessed.

Formalising the Reforms, 2004-2006

Despite this, a litmus test of the early success of the model, and the government's commitment to it, is evident in its willingness to formalise these reforms through legislative amendment. Following a review of the *Public Sector Management and Employment Act 1998* (Vic), this Act was repealed in December 2004. Its replacement, the *Public Administration Act 2004* (Vic), in effect refined and formalised many of the more evolutionary developments described so far.

Most importantly, it created the machinery to facilitate what was earlier described as a 'tight-loose' model of workforce planning and industrial relations. The most important reform has been the establishment of the State Services Authority ('SSA'), which subsumes the functions the Office of Public Employment and the

Office of Workforce Development (both of which were located within the Department of Premier and Cabinet). The SSA is charged with five related roles:

1. service integration and development;
2. standards and equity;
3. workforce development and planning;
4. establishing and overseeing standards for governance of public agencies;
5. maintaining an electronic register of the use of any instruments provided under the Act.⁴⁵

In effect, the new arrangements provide a formal governance mechanism for organising and overseeing the machinery of government, including the responsibilities of workforce planning and management functions. It should however be noted that this does not imply a re-centralisation of public sector industrial relations and management functions. These responsibilities still remain with individual departments and agencies. These new arrangements, however, allow the government to conduct system reviews of organisational and workforce issues with Departments with a view to co-ordinating change across key areas of service delivery.⁴⁶ The arrangements also allow the SSA, at the request of the government, to review Departments or agencies and their activities, and if required, assume responsibility for them, and initiate reform before re-delegating responsibility back to the agency.⁴⁷ The Public Sector Standards Commissioner independently performs the function of promoting in the public sector high standards of integrity and conduct, with overseeing by the SSA.

Conclusions

The aim of this chapter is to outline the implementation of an ambitious reform of the Victorian industrial relations and workforce planning framework covering public sector employees. The context in which these reforms were devised and implemented was an unexpected election win for the Bracks Labor Government in 1999. The previous government, led by Jeff Kennett, had introduced sweeping changes to public sector organisations, many of which challenged traditional principles of public sector administration.

These reforms were heavily influenced by a more radical version of new public sector management which, in turn, had been based on a free market ideology and an almost axiomatic belief that private sector organisation was a preferred model to carry out most public sector functions. Central to these reforms were changes in workplace organisation, management styles and industrial relations, including delegation of managerial responsibilities to the agency level, decentralisation of wage bargaining, and the wholesale individualisation of employment arrangements. These changes were associated with significant restructure in the organisation of public sector functions, as well as privatisation

and outsourcing of service delivery previously undertaken by public sector employees.

While these changes have been associated with a number of positive outcomes, the manner in which the Kennett government pursued reform also created unsustainable pressures on employment arrangements, the capacity of public organisations to recruit and retain capable employees, and wage anomalies which did not reflect market conditions. This was particularly evident in relation to a number of key occupational groups where labour shortages had emerged due to demographic shifts in the workforce and worldwide shortages.

On gaining office, the Bracks government sought to re-orient industrial relations and wages policy significantly. In particular, it sought to implement what it termed a 'partnership approach'. In practice, this new approach involved a mix of both the Kennett reforms and a return to elements of the collective industrial relations deployed by previous state Labor governments.

This mix was evident in two key respects. First, while the new enterprise agreement (or Partnership Agreement) with unions covering public service employees reintroduced union recognition and institutionalised avenues for union involvement in wage bargaining and workplace change, it also sought to commit unions to recognise the inevitable tension faced by governments in balancing fiscal responsibility with its social objectives of providing appropriate employment conditions. Fiscal responsibilities and service delivery were to take precedence over those industrial obligations which unions felt a Labor government might have to their natural constituents. Second, the Bracks government retained the practice of delegating managerial responsibility to the agency level. This inevitably created tensions with a more centralised process of wage bargaining and dealing with industrial matters introduced after 1999.

The success of this process is, at this stage, difficult to fully appreciate or determine. This is so for a number of reasons. First, a number of legacy issues from the Kennett era remain points of contention between public sector unions and government. While many are still being 'worked through', some are unlikely to be resolved due to differences in views as to the appropriate way to proceed. Second, there remains a range of key issues which are in some respects difficult for state government to control or significantly influence, such as demographic changes in the general labour force, and shortages in key occupational groups, notably nurses and teachers. Improved wages and conditions alone are unlikely to deal with these problems.

Inevitably, all of this has meant that the partnership approach, which in its infancy seemed to be clearly articulated in key documents, such as the Partnership Agreement, has been subject to political forces and change. On the one hand, the prospect of a fiscal blowout remains a key concern and driver of government decision-making. This resulted in far more stringent wages policy

parameters, which were implemented in 2002-3. On the other hand, however, it is not yet clear how effectively these parameters have been implemented, but it does appear that despite public rhetoric, the government has been willing to make concessions to avoid industrial unrest and in order to address anomalies. This pragmatism is hardly surprising. Nonetheless, the Victorian government's willingness to formalise the 'tight-loose' it has evolved to management of industrial relations and workforce management is perhaps an early indication of its success.

Unions have also found the new environment a challenging one. After a period of hostile government, it has not proved easy to work collaboratively with government at a central level, intent on avoiding the stereotyped view that Labor governments cannot manage budgets responsibly. Nor has it been easy for unions at the workplace level, dealing with managers who had previously been responsible for implementing government's policy of union exclusion and individualisation. The political response has been an attempt to bring unions into the fold through the development of a Memorandum of Understanding between government and public sector unions and the creation of a joint committee to work through issues of contention between government and unions. The most recent Agreement, which extends the 2004 VPS Agreement, again indicates that unions (and government) have proved capable of overcoming the inevitable political realities of the day and establishes a new partnership approach that enables the ever present tensions between fiscal responsibility and meeting union wage demands a manageable one.⁴⁸

ENDNOTES

¹ The 'public service' is defined as those public sector organisations directly involved in the production of policy advice and implementation of policy for the government of the day. The public service includes government departments as well as a substantial number of statutory agencies with specific responsibilities. These departments and agencies were covered at that time by the *Public Sector Management and Employment Act 1998* (Vic). The public sector, in contrast, is defined as the broader group of public owned or funded organisations involved in the delivery of goods or services. See now *Public Administration Act 2004* (Vic).

² See generally OECD, *Issues and Developments in Public Management: Survey 1997* (1997); Donald F Kettl, 'Public Administration at the Millennium: The State of the Field' (2000) 10 *Journal of Public Administration Research and Theory* 7.

³ Michael Barzelay, *The New Public Management: Improving Research and Policy Dialogue*.

⁴ Andrew Stark, 'What is the New Public Management?' (2002) 12 *Journal of Public Administration Research and Theory* 137.

⁵ Kenneth Kernaghan and John W Langford, *The Responsible Public Servant* (1990).

⁶ Christopher Hood, 'A Public Management for All Seasons?' (1991) 69 *Public Administration* 3, 8.

⁷ Noel Preston, 'Public Sector Ethics in Australia: A Review' (1995) 54 *Australian Journal of Public Administration* 462.

⁸ John Stewart and Kieron Walsh, 'Change in the Management of Public Services' (1992) 70 *Public Administration* 499; Brian Young, Stephen Worchel and David Woehr, 'Organizational Commitment Among Public Service Employees' (1998) 27 *Public Personnel Management* 339; Carole Jurkiewicz, 'Generation X and the Public Employee' (2000) 29 *Public Personnel Management* 55.

⁹ John Alford, 'The Implications of "Publicness" in Strategic Management Theory' in Gerry Johnson and Kevan Scholes (eds), *Exploring Public Sector Strategy* (2001) 1; Paul du Gay, 'How Responsible is "Responsive Government?"' (2002) 31 *Economy and Society* 461; John Rohr, *Public Service, Ethics and Constitutional Practice* (1998).

¹⁰ John Alford, 'Defining the Client in the Public Sector: A Social Exchange Perspective' (2002) 62 *Public Administration Review* 337.

¹¹ Kieron Walsh, 'Citizens and Consumers: Marketing and Public Sector Management' (1991) 11 *Public Money and Management* 9.

¹² Barzelay, above n 3.

¹³ Andrew Dunsire, 'Then and Now: Public Administration, 1953-1999' (1999) 47 *Political Studies* 360; Rohr, above n 9.

¹⁴ Preston, above n 7.

¹⁵ Senate Finance and Public Administration Committee, Parliament of Australia, *Recruitment and Training in the Australian Public Service* (2003).

¹⁶ John Alford and Deirdre O'Neill (eds), *The Contract State: Public Management and the Kennett Government* (1994); Mark Considine and Martin Painter (eds), *Managerialism: The Great Debate* (1997).

¹⁷ Alford and O'Neill, above n 16.

¹⁸ Liberal Party of Australia, Victorian Branch, *The Liberal — National Coalition Approach to Debt and Public Management* (1992).

¹⁹ Guy Peters, *The Future of Governing: Four Emerging Models* (1996).

²⁰ Ciaran O'Faircheallaigh, John Wanna and Patrick Weller, *Public Sector Management in Australia* (1999).

²¹ In addition to the VPS structure, a number of Department-specific classification arrangements were retained, but were also based on the same broad-banding arrangements.

²² The Act also contained a number of statutory minima, including four weeks' paid annual leave, one week paid sick leave, 12 months unpaid maternity/paternity/adoption leave, long service leave, minimum periods for dismissal, and grievance and dispute settlement procedures. See Marilyn Pittard, 'Fundamental Transformation of Employee Relations in Victoria' (1993) 21 *Australian Business Law Review* 220; and Carol Fox, WA Howard and M Pittard, *Industrial Relations in Australia: Development, Law and Operation* (Longman, 1995) ch 12.

²³ *Employee Relations (Amendment) Act 1994* (Vic).

²⁴ This referral involved complementary legislation at both the State and Commonwealth level: the *Commonwealth Powers (Industrial Relations Act) 1996* (Vic) and the *Workplace Relations and other Legislation Amendment Act (No 2) 1996* (Cth). See Marilyn Pittard, 'The Labour Relations Power in the Constitution and Public Sector Employees', chapter in HP Lee and G Winterton (eds) *Australian Constitutional Landmarks* (Cambridge University Press, 2003) 355.

²⁵ Expansion of supply remains largely out of State Governments' control as the Federal Government is responsible for determining the number of places available in nursing programs at universities.

²⁶ Considine and Painter, above n 16.

²⁷ Peter Salway, 'Reform of Human Resource Management in a Public Service: The Victorian Experience' in Colin Clarke and David Corbett (eds), *Reforming the Public Sector: Problems and Solutions* (1999) 12.

²⁸ In the Legislative Assembly, the distribution of seats was as follows: ALP 44; Independent 3; Liberal/National Party 41. The distribution of seats in the Legislative Council was as follows: ALP 14; Liberal Party 24; National Party 6.

²⁹ Schedule 1A was enacted following a referral of industrial powers to the Commonwealth by the Kennett Government after the election of the Howard Government in 1996: see Marilyn Pittard, 'Victorian Industrial Relations: From Deregulation to Devolution' in Dennis Nolan, *The Australasian Labour Law Reforms: Australia and New Zealand at the End of the Twentieth Century* 172.

³⁰ See George Williams, *Labour Law and the Constitution* (1998).

³¹ The 2000 Partnership Agreement was negotiated in a period of around six weeks, involved no industrial action, no recourse to the tribunal, and minimal legal cost.

³² *Victorian Public Sector (Non-Executive Staff) Agreement 2001* clause 7.1-7.4.

³³ *Victorian Public Sector (Non-Executive Staff) Agreement 2001* clause 8.1.

³⁴ *Victorian Public Sector (Non-Executive Staff) Agreement 2001* clause 18.

³⁵ *Victorian Public Sector (Non-Executive Staff) Agreement 2001* clause 11.

³⁶ M Wright, *Classification and Pay Review — Non Executive Classifications Victorian Public Service* (2001).

³⁷ For details of the new classificatory system, see the current Victorian Public Service Enterprise Agreement 2006. This Agreement took effect from 1 March 2006 and replaces the 2004 agreement, which was not due to expire until 2007. Under the terms of the Agreement, the CPSU sought and obtained agreement to extend the existing agreement. There were a number of reasons for both parties to extend the agreement, not least of which has been the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) and the November 2006 state election. The terms of this Agreement are available at *Victorian Public Service Agreement 2006* (2006) BusinessVictoria <http://www.business.vic.gov.au/BUSVIC/STANDARD//PC_61258.html> [July 2007].

³⁸ A useful 'counterfactual' concerns the likely outcomes of these negotiations had no change of government occurred. Realistically, it could be argued that these wage pressures would have been present irrespective of the government in power.

³⁹ Wright (2001), above n 36. This remains the general level — see State Services Authority Fact Sheet No. 5 in Publications, December 2006 <www.ssa.vic.gov.au> [July 2007].

⁴⁰ The State Services Authority reports that turnover has increased steadily since the 1990s to around 7.5 per cent in 2005: <www.ssa.vic.gov.au/ResearchPublications>.

⁴¹ State Services Authority <www.ssa.vic.gov.au/ResearchPublications>, [June 2006]; and State Services Authority Fact Sheet December 2006, above n 39.

⁴² State Services Authority website <www.ssa.vic.gov.au/ResearchPublications>, [June 2006].

⁴³ Wright, above n 36. (for 2000 and 1998) and States Services Authority website <www.ssa.vic.gov.au/ResearchPublications>, [June 2006].

⁴⁴ This tension appears to have subsided over time, but in some areas remains a source of contention between Government and public sector unions.

⁴⁵ State Services Authority, *About the State Services Authority* (2006) State Services Authority <[http://www.ssa.vic.gov.au/CA2571410025903D/ WebObj/Factsheet01/\\$File/Factsheet01.pdf](http://www.ssa.vic.gov.au/CA2571410025903D/ WebObj/Factsheet01/$File/Factsheet01.pdf)> [June 2006]. See also State Services Authority Annual Report 2005-2006, <www.ssa.vic.gov.au> [July 2007].

⁴⁶ Peter Harmsworth, 'State Services Authority Launch' (Speech delivered at the State Services Authority Launch, 18 May 2005).

⁴⁷ See *Public Administration Act 2004* (Vic), particularly pt 4. See also Harmsworth, above n 46.

⁴⁸ The Victorian state government's responses to federal changes under the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) are addressed in chapter 11 in this volume.