

**DISMISSING A DEPARTMENTAL SECRETARY: AN OVERT
EXERCISE OF POWER IN PUBLIC EMPLOYMENT**

Len Pullin and Ali Haidar

*Working Paper 32/04
May 2004*

**DEPARTMENT OF MANAGEMENT
WORKING PAPER SERIES
ISSN 1327-5216**



Abstract

This paper explores changes in the nature of public employment at the Commonwealth level in Australia following the election of the Hawke Labour government. It argues that these changes significantly altered the senior public servant employment relationship by discarding a 130-year-old tradition of separating public employment from political control. These changes effectively give ministers the power to dismiss public servants under their control without fault or incapacity on their part. The dismissal of the Secretary, Department of Defence, Paul Barratt in 1999 is examined to exemplify the extent and nature of this power.

This paper is a work in progress. Material in the paper cannot be used without permission of the author.

DISMISSING A DEPARTMENTAL SECRETARY: AN OVERT EXERCISE OF POWER IN PUBLIC EMPLOYMENT

INTRODUCTION

The accumulated experience of democratic government in western industrialised nations has demonstrated that governmental stability in a society is developed through a combination of popular support and administrative competence. A government which places total reliance on competence is unlikely to continue in power for very long because it is improbable that an electorate will be attracted to policies designed by public servants, even though they may be the best ones for them. The electorate is more likely to accept policies they are comfortable with. However, popular support in isolation from administrative competence is also an insufficient power base to maintain government longevity. What is needed is a productive combination of popular support and administrative competence. While politicians are most likely to know what people want, they also need to know the implications and consequences of their policy proposals and they also need their policies implemented. It has been argued that these advisory and implementation functions are best provided by neutrally competent public servants (Wright 1977; Armstrong 1989).

Under representative democracy, the twin requirements of popular support and administrative competence are satisfied through the appointment of two types of officials, one elected and the other appointed. The elected officials represent their electorate and are expected to determine broad policies and strategies while the latter provide advice to elected officials and implement their policy decisions. This relationship, in the Westminster system of government, is guided by the convention of ministerial responsibility (Dawkins 1985) which for the purposes of this study places individual responsibility and accountability for departmental administration with the minister and conveys mutual obligations in the relationship between the minister and appointed officials (Marshall 1989; Emy and Hughes 1991, 336-376).

In the Westminster system of government politicians are temporary in their offices. They face periodic elections and if they are not popular they lose office. This does not happen to public servants, as they are not subject to the vagaries of the electorate and do not lose their positions based on election results (Wright 1977). Since the introduction of the Northcote Trevelyan reforms in England in the mid-1800s (Northcote and Trevelyan 1954), which most commonwealth countries followed, it can be generally stated that public employment enjoyed protected status with many public servants having jobs for life. They were recruited at an early age, at a base grade level and could continue on and be promoted to the highest positions in the public service. They were recruited not by politicians but by a constitutionally established public service board, which was beyond the control of their political masters (Spann 1973). Public servants were recruited for their expertise, competence, and skills based on a merit system (Caiden 1965). It was argued that such a system of appointment by a constitutionally established board ensured that public servants were politically neutral and had the independence to provide advice without fear or favour (Williams 1985).

Under the doctrines of new public management NPM (Emy and Hughes 1991, 415) the nature of public management employment at the senior level has undergone significant and fundamental reform. The independent employment of public servants by a public service board or outside agency has been replaced by a system of direct human resource control by politicians over senior public servants (McInnes 1990). This control has been gained through a set of measures, including the appointment of senior level public servants by the politicians themselves, rather than by statutory independent boards. The abolition of such boards 'increased the government's capacity to impose functional and strategic direction on government activity' (McInnes 1990: 111). Under this arrangement, public servants are appointed on a fixed term basis and their continuation in employment depends on the achievement of specific performance targets. When public servants are appointed on fixed term performance based contracts, politicians can continuously evaluate their performances. Termination is a lot easier as politicians can quite easily decide not to renew a public servant's contract or, as in the case of Paul Barratt a former Secretary of the

Department of Defence, they can simply dismiss them without the need to find 'fault or incapacity' (McGregor, Australian, 20 August 1999).

This paper does not seek to examine whether or not it is morally right or wrong for politicians to control the right to hire and fire senior public servants; that is for someone else to consider. In this paper we are concerned with exploring the legislative process of changing the senior public servant employment relationship (ER), with developing an understanding of the rationale and aims behind such change and the associated outcomes emanating from the legislative change. To achieve these objectives the paper considers the manner in which power is structured in the ER, the nature of the Westminster model of public servant employment and the progressive legislative changes to the Commonwealth public servant ER in Australia commencing with the Hawke Labor government (1983-1996). The paper then explores the case of Paul Barratt, a former Secretary of the Department of Defence who was dismissed ostensibly because he and the minister had different views on how Defence should be run (Age, 21 August 1999). In examining the Barratt case we conclude that there is little doubt that legislative change has given politicians power over senior public servant employment. However, we are concerned that in doing so politicians have gone too far and provide senior public servants with little, if any, employment security or redress for wrongful dismissal.

ORGANISATIONAL POWER AND OBEDIENCE

When the issue of power in an organisational situation is contemplated, it can be considered a relationship of domination where the superordinate (the minister) has the right to issues commands and the subordinate (the public servant) a duty to obey those commands (Weber 1978). This command situation is termed 'task' power and is the area of power in western industrialised society with which we are most familiar and comfortable. However, it is not the only area of power in organisational relationships. For example, Emerson (1970) develops a dependency view of power where:

A depends upon B if [s]he aspires to goals or gratifications whose achievement is facilitated by appropriate actions on B's part ... Thus it would appear the power to control or influence the other [A] resides in control over the things [s]he [A] values, which may range all the way from oil resources to ego support, depending upon the relation in question. In short, *power resides implicitly in the other's dependency*. (Emerson 1970, 46)

In taking Emerson's (1970) argument into the context of organisational relationships, task power is not the only kind of power a superordinate or hierarchal superior may have over the subordinate. For example, power arises from being in control of human resource functions such as selection and termination, and opportunities for promotion, training and salary progression. There is also power over the right to appeal over human resource decisions as the need may arise and over the appeal process itself. In some relationships a superordinate may have considerable human resource decision making autonomy and a subordinate may be entirely dependent on his/her superordinate for human resource outcomes. Thus, Emerson's notion of dependency creates the possibility of a further variable in the power relationship between the subordinate and the superordinate, a variable engendered by organisational design.

French and Raven (1962) identify five important sources where individual power and authority are derived in organisational settings. These are legitimate, reward, coercive, referent and expert power (French and Raven 1962). Legitimate power is associated with a person's formal position within an organisation and corresponds closely with their formal authority. Reward power is based on a person's ability to reward, and coercive power the ability to punish. In contrast to expert and referent power, these three power bases can be considered position based and the ability to exert influence is a function of organisational structure rather than personal attributes.

French and Raven's legitimate, reward and coercive bases of power (1962) and Emerson's (1970) notion of dependency power can be considered together in an organisational context. For

example, a person with legitimate power in an organisational setting, usually a hierarchical superior, will have the potential to exert power over their subordinates. Whether they can exercise actual power over their subordinates is dependent upon their ability to exercise reward and coercive power (French and Raven 1962). The subordinates will be dependant upon the superordinate for things they value or wish to avoid (Emerson 1970). If they are dependent then the superordinate is in a position of dependency power over them. If they are not dependent then the superordinate has legitimate power derived from their organisational position but limited capacity to exercise it. Therefore, to determine the distribution of power in an organisation one must examine the nature of the organisational structure and the power relationships within it.

In the context of Commonwealth public management in Australia up until the mid-1980s, there was a separation between task and organisational power that lasted over 130 years (Northcote 1954). In this separated organisational structure, ministers had position power in government and responsibility for their portfolio but their actual power over public servants was effectively restricted to the task domain. The majority of meaningful human resource decisions related to public services were the domain of an independent public service board, over which ministers had little control or influence. We have termed this separated ER the Westminster model of public employment.

THE WESTMINSTER MODEL OF PUBLIC EMPLOYMENT

Even though significant change has occurred in public employment over the past two decades, it is important to establish that there has never been a 'generic' public servant employment relationship (Spann 1973). There have always been differences in terms of organisation, pay, benefits and conditions for public servants (Spann 1973). These differences are more apparent between different countries, and between different levels of government rather than within them. If anything, the public sector reform agenda is likely to have accentuated these differences. For example, in reviewing the advent of various forms of new public management (NPM), Hood (1991) identifies seven 'doctrines' which have implications for the nature of public employment but were unlikely to be equally present or fully consistent in all cases. He argues that the application of NPM differed even in countries within the 'Westminster model' tradition (Hood 1991, 6).

Given Hood's (1991) emphasis on the 'Westminster model', it is an appropriate place to begin an examination of the nature of senior officer/civil servant employment in public service. The 'Westminster model' of public service employment had its genesis in the Northcote-Trevelyan Report of 1854. This report recommended specific processes and procedures for the recruitment, selection and promotion (by merit) of civil servants to the British Civil Service, coupled with an independent board of control (Northcote and Trevelyan 1954). This type of independent employment structure, where a 'board' controls personnel processes and procedures independent of the 'task' manager, has been termed the 'Northcote-Trevelyan Type Employment Relationship' (NTER) in this research.

The need for the NTER arose due to problems afflicting the British civil service at that time. These included an inability to attract the ablest of men¹, public service patronage appointments, promotion by seniority, competition between public departments for their services when competent persons became available, the fragmentary nature of the service, and a lack of unity in form, structure and conditions of work (Northcote and Trevelyan 1954). The report observed that the public service required the:

aid of an efficient body of permanent officers, occupying a position duly subordinate to that of Ministers who are directly responsible to the Crown and to Parliament, yet possessing sufficient independence, character, ability, and experience to be able to advise, assist, and to some extent influence, those who are from time to time set over them. (Northcote and Trevelyan 1954, 1)

¹ The public service was a male preserve in those days.

The report recommended that public managers should be recruited from younger people who would join at the lower ranks based on a competitive examination conducted by a central Board. 'Such board should be composed of men holding independent position, and capable of commanding general confidence; it should have at its head an officer of the rank of Privy Councillor' (Northcote and Trevelyan 1954, 7). In May 1855, by Order in Council, the British Government established a Board of three Civil Service Commissioners to conduct qualifying examinations (Spann 1973).

The report also recommended that examinations should be periodical, not be for specific appointments and be open to all (Northcote and Trevelyan 1954, 8-9). However, the 'open to all' had a caveat. It was subject to the provision of 'satisfactory references [from] persons able to speak to their moral conduct and character, and of the producing of medical certificates to the effect that they have no bodily infirmity likely to incapacitate them for public service' (Northcote and Trevelyan 1954, 9). In reality, when taken in conjunction with the examination these requirements limited entry to the 'service' to those applicants from the 'educated elite'.

On successful appointment, applicants were subject to annual reviews of attendance and discharge of duties which had to be satisfactory prior to receiving their annual salary increase (Northcote and Trevelyan 1954). They were also subject to probation and promotion based on merit. Although attached to a department, they could apply for promotion and be appointed to other departments in the service where they had the requisite skills (Northcote and Trevelyan 1954).

Similar problems to those experienced in the U.K. beset public service employment in Australia which, until the close of the nineteenth century, was plagued with political patronage in recruitment, arbitrary management of personnel matters and departmentalism (Caiden 1965, 36-41; Spann 1973, 363-365). These problems materialised in the change to 'responsible government' in Australia. Under the Governor and Colonial Office Regulations there was some semblance of process and procedure in administration. However, when responsibility was passed over 'departmental control was chaotic, a jumble of diverse practises depending upon the opinions, character and habits of the Ministers and permanent heads' (Caiden 1964, 135). While some departments maintained strict control, the majority were lax 'a few being notorious for their inefficiency, corruption, dishonesty and slowness' (Caiden 1964, 135).

It is safe to state that Australian public service employment up until the 1970's, both Commonwealth and State, was the product of a series of reforms (Caiden 1965; Spann 1973). These included a Board of Inquiry report in 1856, which made a group of recommendations based on the NTER. The proposals included 'an independent central board to conduct examinations, the conduct of a system of open competitive examinations and the classification of the service' (Spann 1973, 365). As a result of these recommendations and those of other inquiries and commissions, an independent Board of Commissioners was introduced in NSW to conduct not 'only examinations but with "entire control" over the public service' (Spann 1973)367). However, this was not to actually materialise in practise until the introduction of the 1895 Public Service Act (NSW), almost 40 years after it was first proposed.

The 1895 Public Service Act (NSW) set the standard for civil service employment in Australia for over 80 years. It 'provided for a full-time Board of three Commissioners, appointed for seven-year terms to control recruitment, promotion, grading and classification, salaries, major disciplinary matters and the employment of temporary staff' (Spann 1973, 367). It also had an important oversight or inspection role in terms of the activities, efficiency, economy and standard of work performed by officers and departments. Other states were also processing public service legislation around the same time and the Commonwealth benefited from their collective experience in passing the 1902 Commonwealth Public Services Act (Spann 1973, 369).² Caiden states that

² Caiden (1964) provides an excellent critical analysis of the role of the independent central personnel agency at the Commonwealth level in Australia. While Caiden proposes a much-reduced role for a

the Act was hardly original, it was 'largely a scissors and paste affair with pieces cut from one State statute and fitted with pieces from others' (Caiden 1964; Caiden 1965, 63).

The compelling reason for bringing public service employment under the control of law was to rectify the public service of its ills (Caiden 1965). In doing so, the 1902 Act created seven Commonwealth departments which came under the jurisdiction of the Commonwealth Public Service Commissioner (CPSC), who was supported by up to six public service inspectors (Caiden 1965). These inspectors carried out an important oversight role in developing common personnel standards and procedures and rectifying many of the problems and inequities the service previously experienced.

A fundamental aspect of the NTER is that public officer employment is managed by an independent central personnel agency.³ The CPSC in conjunction with the public inspectors provided that function in Australia. Their work:

related to permanent appointments, temporary employment, appeals, examinations and annual increments (for which the Commissioner's decisions were to be final) and the classification, establishment, discipline, promotion and remuneration (where his recommendations were to be subject to the approval of the Governor-General, i.e. Government of the day; in the event of disagreement Parliament was to decide the matter. (Caiden 1965, 63-64)⁴

More generally, this centralised personnel function, or the Public Service Board (PSB) as it eventually became known, impartially defended the merit system against politicians and patronage, and protected the legitimate interests of the public service (Spann 1973, 386). However, while this may have resolved some problems it created others, certainly from a management perspective. For example, under the NTER departmental heads had little control over manpower, methods of work and finance (Spann 1973). They were also dependent on other specialised common service agencies. For example, a Department of Works may be their constructing authority (Spann 1973). All this made it harder for an individual department to 'design itself' for its specific tasks (Spann 1973, 360).

From an individual civil servant's perspective there were many benefits of the NTER. It broadened the career prospects of managers, facilitated the turn-around of staff, reaped economies of scale, and brought uniformity in recruitment, promotion, pay and employment conditions. It was also more equitable and helped avoid competitive bidding for officers from different departments (Spann 1973, 386).

The value of the NTER is summed up by Spann who states that 'it was a pattern not without interesting variations, and which never extended itself to all positions. But it came to be the norm, departures from which, however numerous, have been felt to need special justification' (Spann 1973, 309). Perhaps with a portent of things to come Spann prophetically stated that 'it has even been said that Public Service Boards have succeeded so well in establishing the merit system, that they have worked themselves out of a job' (Spann 1973, 386).

REGAINING POLITICAL CONTROL OF PUBLIC SERVANT EMPLOYMENT

The Public Service Board derived its authority from parliament and represented the moral and ethical centre of the public service. It exerted a powerful influence over public management to

centralised personnel agency, little consideration is given to the potential effect of a change of this nature on public sector values. His main concern is 'patronage, nepotism, excessive departmentalism and diversification' which were the main concerns of Northcote-Trevelyan (Caiden 1964, 157).

³ The term 'independent central personnel agency' is a generic term embracing and including the Public Service Boards and Commissioners that operated before the 1980s' reforms (Caiden 1964).

⁴ See Spann (1973, 375-376) for a list of the powers and duties of Public Service Boards and Commissioners.

ensure uniform and fair employment practices in the public sector. Views on the performance of the Board were divided. Some public servants 'found the Board intrusive and restrictive of their management prerogatives' while politicians found that it presented 'a powerful, independent challenge to a government increasingly preoccupied with cutting staff and streamlining the processes the Board was charged to uphold' (McInnes 1990: 118). So much so that in August/September 1986, the Hawke government introduced 'mechanisms whereby public servants could, relatively easily, be dismissed on the grounds of redundancy or inefficiency' (Thompson 1991: 131).

The Public Service Act was amended in November/December 1986 by the introduction of the Public Service Legislation (Streamlining) Act and the repeal of the Commonwealth Employees (Redeployment and Retirement) Act 1979. Departmental Secretaries were given increased power to remove inefficient staff, and to switch monies between wages and other administrative expenses. In addition, for all but junior staff, the right of appeal over promotions was abolished (Thompson 1991: 131). In July 1987, the Hawke government abolished the Public Service Board and created the Public Service Commission (PSC) and the Australian Public Service Management Advisory Board' (MAB) (McInnes 1990: 118-119). Politicians saw the Board standing in the way of the government imposing functional and strategic direction on government activity as part of economic reform.

The PSC was set up as a substitute organisation to the Public Service Board but its role was extremely narrow in comparison. Most of its powers were 'delegated to departmental heads or various other central agencies with quite distinct cost-efficiency responsibilities' (McInnes 1990: 119-120). In addition, many of the functions of the PSB were distributed to a large number of government agencies. The Department of Finance was given responsibility for deciding staff numbers, the responsibility for certain senior appointments was given to the Department of Prime Minister and Cabinet, adjudication of grievances to the Merit Protection and Review Agency, and arbitration, pay and conditions to the Department of Industrial Relations (Alford 1993: 2). With the PSC retaining:

only an advisory role in personnel, promotion and deployment matters and ... none of the Board's status as an independent employer with legislative powers to ensure fair treatment, service wide personnel standards and accountability ... It can now be fairly argued that the Secretary of the Department of Prime Minister and Cabinet heads the public service. (McInnes 1990: 119-120)

In 1995, the Public Service Commission was further restructured and combined with the Merit Protection and Review Agency to form the Public Service and Merit protection Commission' (Fairbrother and Macdonald 1999: 347).

Prior to 1984, the Heads of Departments were permanently appointed to particular positions and could only be moved with their consent (Weller and Wanna 1997). In such a situation, 'the only way that the government could force a person out of the nominated position was by abolishing the department from under the permanent head, either reconstituting it under a different name or spreading its functions to other agencies' (Weller and Wanna 1997: 14). Under the new arrangements, departmental heads are now appointed by the Governor General on recommendation by the Prime minister. There is no tenure, as they are appointed on fixed term contracts. A departmental head can be terminated by the Governor General on the Prime Ministers recommendation and 'no longer can any commonwealth public servant say he or she has a job for life' (Ives 1995: 590).

The desire to regain power over senior public employment by ministers did not end with the demise of the PSB. In 1994, the McLeod Review advocated the redraft of the Public Service Act and proposed that agencies should have more autonomy over personnel practices, with the power to employ non-SES staff in their own right. It recommended that the concept of 'office' be eliminated and that agency secretaries have the capacity to offer different employment arrangements (fixed

term and casual employment). Where possible individual grievances should be resolved within the agency (Anderson, Griffin and Teicher 2002: 18).

When the Liberal-National government came to power in 1996, the National Commission of Audit (NCA) was asked to review the public service. In its findings the NCA recommended a public service based on fixed term engagement at all levels, with public service operational activities subject to contestability arrangements and contracting out (Anderson, Griffin and Teicher 2002). Following this recommendation, the Public Service Bill 1997 invested the heads of departments with employment powers and the primary employment relationship between the employer and the employee at the agency level. Under this system, only general concepts of engagement, promotion and transfer are retained within the APS employment framework and the duties of employees and their work location are determined by heads of departments.

Still further changes in public service employment were passed in the Public Service Act (1999) that put 'greater focus on outcomes rather than processes' (Anderson, Teicher and Griffin 2002: 18). This was characterised by 'differential remuneration between agencies linked to performance and productivity initiatives, more flexible working time arrangements and simplified classification structures with salary advancement tied to performance assessment' (Fairbrother and Macdonald 1999: 352). The 1999 Act removed the notion of office and diminished the notion of a career service. Under this Act, the agency head engages and terminates employees, including the SES. The agency head has the power to employ officers on an ongoing, fixed term or casual basis and all the rights, duties and powers of an employer. The Act removed previously prescribed procedures and gives flexibility to managers for appointment, promotion, redeployment and discipline matters.

An important aspect of the 1999 Act is that it limits the types of decisions made by agency heads that can be subject to external review. The Act excludes the review of decisions regarding policy, strategy, resources, decisions which are in accordance with a direction by a minister or the Public Service Commissioner and decisions regarding the engagement, duties and termination of employees. Reviews that are allowed, except in the case of promotion, are not binding on the agency head. In addition, the Act contains a Code of Conduct specifying the obligations of employees. These include upholding the values and good reputation of the APS. The focus of these changes is on 'establishing required behaviours of public servants within a set of values, enforced through the threat of sanctions, rather than enforcing the application of values through prescriptive procedures that protect employees' (Anderson, Griffin, and Teicher 2002: 19).

As we have seen, there was a clearly definable legislative strategy to reassert ministerial power over senior public servants during the period of the Hawke and Keating Labor governments and continuing on to the current Howard Liberal/National coalition government. As part of this strategy, senior public servants gained greater autonomy in the implementation of government policies at the expense of greater accountability for their actions. As one official has observed, the return for greater autonomy is at the price of less employment security:

the exact way in which managers are in the future to be held accountable for their performance is not entirely clear, although such concepts as program budgeting, requiring program performance to be measured in some sort of way, clearly goes in this direction. In theory, the power of removal for non-performance now exists. (Dixon et al. 1996: 27)

The power of removal of senior public servants for non-performance is more than a theory as evidenced by the replacing of six departmental secretaries by the incoming Howard government in March 1996 (Henderson, Australian, 29 July 1999). However, it is one issue for a government to replace public servants when they gain office but quite another issue to publicly and openly dismiss a public servant well into the government's term as happened to Paul Barratt, a former secretary of the Department of Defence.

The Paul Barratt Case

In March 2000, the dismissal of Paul Barratt from his position as Secretary of the Department of Defence was finally upheld after an eight-month legal fight to retain his post. Following the rejection of his appeal in the Federal Court, he conceded defeat by stating that it 'was the end of the road as far as his litigation was concerned' (Weekend Australian, 11 March 2000). While the issues surrounding this case are contentious to some observers and groundbreaking to others, in our view they are associated with the reassertion of ministerial responsibility by the Minister for Defence, John Moore. This minister had essentially lost trust and confidence in his most senior public servant and felt that he could no longer work with him (Garran, Australian, 2 September 1999). The dismissal was supported by the Prime Minister and the Head of the Department of Prime Minister and Government, Mr Max Moore-Wilton, who subsequently stated that the breakdown in the relationship between the two was 'prejudicial to the effective and efficient administration of the Department of Defence' (Age, 21 August 1999).

What was more important than the rationale for Paul Barratt's dismissal, was that the termination of employment even occurred. One might expect in a case of a senior public servant such as this, that a contract might not be renewed or the incumbent take a sideways move or the department be reorganised in a way that the incumbent was no longer needed (Weller and Wanna 1997). What was even more unusual was the reaction to the dismissal by Paul Barratt himself, who refused to accept the decision and took legal action in doing so. Mr Barratt successfully secured an unprecedented injunction that prevented his removal from office. This injunction restrained John Howard and Max Moore-Wilton from advising the Governor General to terminate Mr Barratt's employment (McGregor, Australian, 28 July 1999).

Despite Barratt's subsequent plea, Justice Peter Hely of the Federal Court ruled that Prime Minister Howard:

has complete power to fire senior public servants whenever he likes -- but he must tell them why as he pushes them out the door ... while Mr Howard has to give reasons, he doesn't have to find 'some fault or incapacity of a fundamental nature' in the work of a secretary. This is because the termination might have nothing to do with performance, but merely be triggered by a change in government or the availability of a person the prime minister wants to put in the job. (McGregor, Australian, 20 August 1999)

The importance of this decision should not be underestimated as it essentially indicates that senior public servants have few if any legal rights of address for wrongful dismissal. 'The Federal Court has now made the position crystal clear: the power to dismiss is not contestable, only the way it is done', it needs to be procedurally fair (Australian, 2 September, 1999). All that a minister has to do to dismiss a senior public servant is to provide a reason, virtually any reason will do: there is no obligation to prove inadequacy on the public servant's part.

CONCLUSION

Senior public servants, who were once afforded the protection of a rare and exotic species, now enjoy a precarious level of employment security more commonly associated with fruit pickers and other itinerant workers. This volte face relationship is associated with the efforts of ministers to reimpose ministerial responsibility and in doing so, to reassert ministerial power over public servant behaviour. However, ministers now have so much power that as 'the Commonwealth barrister, Tom Hughes QC' has indicated "the rules of natural justice [do] not apply" to the removal of a departmental head' (McGregor, Weekend Australian, 31 July 1999).

As well as identifying the fragility of the senior public servant ER, the Barratt case raises the concern of whether or not ministers have gone too far in their quest to impose power over the senior public servant ER. In other words, should these employees be entitled to a minimum level of protection that is more than procedurally fair? The Barratt case identified that under the Public

Service Act 1999, Part 7, Section 59 the employment of departmental secretaries may be terminated by notice in writing by the prime minister at any time. They are not alone in this regard as the employment of Agency Heads is similarly precarious, they can also be dismissed by the agency minister by notice in writing, also at any time.

These top level public servant employment conditions are quite different from the rights of APS Division 1 employees who under Part 4, Section 29 (1) of the Act are associated with the termination rules and entitlements of the Workplace Relations Act 1996 (WRA 1996). In the case of these public servants, their employment can still be terminated but not if it is judged to be 'harsh, unreasonable or unfair' (WRA 1996, Section 170CG (3)). In a similar vein, the employment of Senior Executive Service (SES) personnel also has a measure of protection. They can only be dismissed on specified grounds following the issue of a certificate from the Public Service Commissioner indicating that all the requirements of the Commissioner's Directions have been met in respect of the termination and that the termination is in the public interest (Public Service Act 1999).

While we support the imperative that ministerial responsibility be reasserted at the Commonwealth level, we find that not only do the termination provisions of more senior staff appear to breach the norms of natural justice, they also breach the Australian Public Service value framework that these same senior managers are charged with implementing in their departments and agencies (Values in the Australian Public Service, 2000). This double standard may be the result of overkill in terms of reimposing ministerial responsibility or it could be a lack of desire on the part of ministers to manage their senior staff in accordance with the APS value framework. In particular Direction 2.2 which specifically deals with processes 'for achieving results and managing performance' (Values in the Australian Public Service, 2000). Alternatively, the double standard may simply be being justified on the basis that top-level public servants are paid danger money for their precarious employment. During the Barratt case the Solicitor-General, Mr David Barnett argued that 'the departmental secretary was paid a 20 per cent loading on top of his salary to compensate him for the possibility that his employment might be terminated' (Age, 10 August, 1999). We are unlikely ever to establish the reason that these senior public servants have been denied natural justice but we suspect there is more than one.

REFERENCES

- Armstrong, R. (1989). The Duties and Responsibilities of Civil Servants in Relation To Ministers. In *Ministerial Responsibility*. G. Marshall. UK, Oxford University Press: 140-144.
- 'Barratt retreats' (11 March 2000), *Weekend Australian*. [On-line], Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;THEAUS>
- Caiden, G. E. (1964). "The Independent Central Personnel Agency: The Experience of the Commonwealth Public Service." *Public Administration* **42**: 133-161.
- Caiden, G. E. (1965). *Career Service: An Introduction to the History of Personnel Administration in the Commonwealth Public Service of Australia 1901-1961*. Melbourne, Melbourne University Press.
- Dawkins, J. S. (1985). "Reforms in the Canberra System of Public Administration." *Australian Journal of Public Administration* **XLIV** (1): 59-72.
- 'Defence Chief Wants \$1m To Go'. (21 August 1999), *Age* (Melbourne), [Online] Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;AGEMLB>
- Emerson, R. M. (1970). Power-Dependence Relations. *Power in Societies*. M. E. Olsen. New York, Macmillan: 44-53.
- Emy, H. V. and O. E. Hughes (1991). *Australian Politics: Realities in Conflict*. South Melbourne, Macmillan.
- French, J. R. P. J. and B. Raven (1962). The Bases of Social Power. *Group Dynamics*. D. Cartwright and A. Zander. Evanston, Illinois, Row, Peterson and Company.
- Garran, R. (2 September 1999), "Barratt's parting shot: who will want my job?", *Australian*, [Online], Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;THEAUS>
- Garran, R. (28 February 2001), 'Brass told: polish up on boss', *Australian*. [On-line], Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;THEAUS>
- Henderson, I. (29 July 1999), "Let's not privatise the bureaucracy" [Online] Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;THEAUS>
- Hood, C. (1991). "A public management for all seasons." *Public Administration* **69** (1): 3-19.
- "Job Offer To Barratt A 'bolt From The Blue", *Age* (10 August 1999), [Online] Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;AGEMLB>
- Marshall, G. (1989). *Ministerial Responsibility*. Oxford, Oxford University Press.
- McGregor, R. (28 July 1999), 'Defence Chief hits back with injunction', *Australian*, [On-line], Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;THEAUS>
- McGregor, R. (31 July 1999), 'Coalition reinforces hardline Barratt must go', *Weekend Australian*. [On-line], Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;THEAUS>
- McGregor, R. (20 August 1999), 'Ruling ratifies PM's power to hire and fire', *Australian*, [On-line], Available: <http://www.lexisnexis.com.au/cui/uni-login/default.htm?login.asp?uni=monash1&source=AUST;THEAUS>
- McInnes, M. (1990). "Public Sector Reform Under the Hawke Government: Reconstruction or Deconstruction?" *Australian Quarterly* **62** (2): 108-24.

- Northcote, S. H. and C. E. Trevelyan (1954). "The Northcote-Trevelyan Report." *Public Administration (London)* **32** (Spring): 1-16.
- Public Service Act 1999, No. 147, [On-line], Available <http://www.apsc.gov.au/publications01/ses2.html>
- Spann, R. N. (1973). *Public Administration in Australia*. 3rd Edition, Sydney, Government Printer.
- Values in the Australian Public Service, 2000, Australian Public Service Commission, <http://www.apsc.gov.au/publications00/values1.html>
- Weber, M. (1978). *Economy and Society: An Outline of Interpretive Sociology*. Edited by G. Roth and C. Wittich. Berkeley: University of California Press.
- Williams, C. (1985). "The Concept of Bureaucratic Neutrality." *Australian Journal of Public Administration* **44** (1): 46-58.
- Wright, M. (1977). "Ministers and Civil Servants: Relations and Responsibilities." *Parliamentary Affairs* **30** (3): 293-313.