

# **Portfolios, Departments and Agencies: Tinkering with the Machinery-of-Government Map**

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## **ABSTRACT**

In Australian machinery-of-government terminology, a fairly well settled view of the role of portfolios, departments, ministers and agencies and their inter-relationships has long existed, based on Westminster-system foundations. There have, however, been some challenges to that view in recent years arising from the practice of some government leaders in establishing their new governments, and, in one particular case, a Commission of Audit report.

This article looks particularly at how the traditional machinery-of-government understandings have been affected by such new government formations and Commission of Audit reporting. It finds that there has been some innovative 'tinkering' taking place. There is room for speculation as to how much this terminological experimentation will affect actual practice.

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## **INTRODUCTION**

This article reviews some recent interesting innovations in Australia in the way the machinery of government is conceived, arising both from the actual process of forming new governments and from understandings from bodies such as Commissions of Audit. While the focus in the main part of the article is on instruments establishing portfolios and departments and the relationship between these types of structures, this discussion inevitably touches on the role of agencies. This leads on to the second, smaller section of the article, which considers how agencies are treated in these instruments, and asks whether there is much that is new in this treatment.

The focus here is on conceptions of the various types of structures involved and their inter-relationships. Another article would be required to explore related accountability issues and consider how all the variations noted affect observance of the traditional Westminster principle of ministerial responsibility.

## PROLOGUE: MAJOR MACHINERY-OF-GOVERNMENT TERMS

A difficulty in arriving at clear understandings about machinery-of-government issues comes from the terminological slipperiness often encountered, so that a beginning attempt to explain how the main terms have generally been used in the practice and the study of the machinery of government is needed. My explanations relate to the Australian situation, but they will be found to apply fairly generally throughout the world of Westminster-style administrative systems.

The term ‘machinery of government’ relates to a broad structure that embraces the whole apparatus of governing, with the machine analogy – ‘government as machine’ – suggesting order, stability, predictability and the like. Contemporary discussion generally accepts that the change process is a long and drawn-out one, but that it can be disruptive for public servants and for those to whom they relate (Bridgman 2015a: 1–3). I have chosen the word ‘tinkering’ for this article because it suggests a sort of middle-way understanding – so much of the machine survives the political ‘disruptions’ it experiences with changes of government and the like, but it also embraces significant change in parts of its working that are affected by those disruptions and need to be accommodated by the whole.

Portfolios and departments<sup>1</sup> are the main organizing features of any government of the type we are used to, and are identified and delineated in the Australian jurisdictions in an Administrative Arrangements Order (AAO) or equivalent promulgated by incoming heads of government.<sup>2</sup> They will have chosen the supporters to whom they wish to attach responsibility for some part of the operations of the government they are forming, and after formal appointment they become ministers. Those parts furnish the ministerial titles (e.g. Treasurer, Minister for Agriculture), and become known as portfolios (or sometimes as ministries).

The incoming head of government will also need to coordinate this exercise with attention to the related public service organisation and, as the usually detailed statement which does this, the AAO lists the relevant ministers, portfolios, and public service departments — and shows their formal inter-relationships. A portfolio (or ministry) may contain just one such department, or it may contain a main department and one or more other departments. In this scheme, the portfolio-ministry is the first-order structure closely associated with the minister’s primary function; as the second-order structure, the department is that part of the public service charged with assisting the particular minister in the performance of his functions.

In cases where ministers command more than one portfolio, or department, there have been experiments in providing them with coordinating secretariats spanning the whole ministerial jurisdiction, sometimes themselves referred to as ‘ministries’ (Wettenhall 1986: esp. chs 1, 8). The other qualification needed is to recognise that, while the chief executive officer of the department (traditionally known as the departmental secretary) functions as the minister’s principal servant and adviser, most ministers

now also have private offices to do the more obviously political work: they stand apart from the departmental organisation.

In virtually all governments today, the apparatus of portfolios and departments is supplemented by a considerable number of miscellaneous bodies also standing outside the departments, going by a variety of class-names such as board, commission, statutory authority, public entity, NDPB (non-departmental public body), government-owned company (or government-business enterprise), quango (from quasi-autonomous non-government organisation), and most recently arm's length body, with the cover-all title 'agency' — hence the word 'agencification' — widely used in the relevant literature. Most portfolios have such agencies: the group has grown rapidly over the years notwithstanding not-so-infrequent attempts to reduce its size, and taken together its members sometimes employ more staff than the departmental cores themselves. As is well known, a major branch of machinery-of-government studies now focuses on mapping its membership and exploring its relationship with the departmental cores and the reasons for its popularity.<sup>3</sup>

The minister is, of course, titular head of the whole portfolio: he has direct control of the department and arm's length relationships with the agencies as defined by their creating legislation. This legislation too can be seen as part of the portfolio: thus a guide published by the Victorian Public Sector Commission in 2010 extended this idea of the portfolio to include the statutes as well as 'the department and public entities' that the minister administers (VPSC 2010).

So to recent developments which affect the portfolio/department relationships as envisaged in these understandings.

## RETHINKING PORTFOLIOS

The situations of newly established Premiers and of reporting bodies like Commissions of Audits are, of course, very different. The Commissions of Audit are appointed by governments already in office and, however immature those governments may be, the commission reports are public documents and accessible as such.<sup>4</sup> What Premiers do themselves in constituting their governments is murkier territory: sometimes opposition groups hopeful of winning office might equip themselves with a well-resourced planning and reporting apparatus, but in any case resulting reports would be private documents. When governments come to office unexpectedly – as happened in the most recent cases of Victoria and Queensland – there may be very little in the way of serious documentation about plans of the parties and leaders involved; such planning may, indeed, be virtually non-existent.

The NSW Commission of Audit, appointed in late 2011 by the O'Farrell Liberal-National Coalition Government, a government already in office and hoping to continue in office after the next election, comprised people acceptable to the government and regarded by it as having expertise in relevant fields. Its reports were readily available.<sup>5</sup>

In Victoria, however, the new Australian Labor Party (ALP) government, headed by Daniel Andrews and sworn in in December 2014, found itself thrust into office without serious pre-election planning for the sorts of administrative arrangements it would need in the event that it did achieve office. As a result, explanatory documents about the arrangements it did make were virtually non-existent. The situation of the Palaszczuk Labor Government coming to office in Queensland in February 2015 was similar.

It could not be said that the Abbott Liberal-National Coalition Government, formed at the Commonwealth level in September 2013, was as roughly hewn as its Victorian and Queensland counterparts; nonetheless there were features about it that are relevant to this discussion, and I begin by drawing attention to those features.

### *The Commonwealth: a variety of portfolio arrangements*

A review of the AAO formally constituting the Abbott Government, issued on 18 September 2013, showed a variety of portfolio designs. The document (Abbott 2013) was arranged in boxes, each box said to represent a portfolio. All of them – 16 – listed principal portfolio ministers and assistants such as assistant ministers, ministers assisting and/or parliamentary secretaries. For seven, however, there was a second first-order minister, and it is here that complexity arises. In some cases, a separate public service structure was provided for that minister, in others not so. It is not possible to assert that these seven constituted a set, because there was little or no regularity.

In two cases (Attorney-General and The Arts, and Health and Sport), two separate ministerial positions were shown, but they were occupied by a single minister and accompanied by only a single (apparently quite small) section in a quite large multi-section department – but more on The Arts below. In two cases (Small Business and Trade & Investment), there were second ministers in the Departments of Treasury and Foreign Affairs, with the public service presence as part of an integrated department — in the latter case reinforced by the government's decision to bring the former arm's length AusAID into the Department. In another case with two ministers, and attracting high policy space (Indigenous Affairs), a special 'Group' was established within the Department of Prime Minister & Cabinet. And in two other cases with two ministers (Social Services and Defence), there were separate dedicated departments, Human Services and Veterans' Affairs respectively.

The case of The Arts claims further distinctiveness. While the separate position of Minister for The Arts was very clear in the AAO in a portfolio shared with the position of Attorney-General (though the same minister occupied both positions), there was no Department of the Arts in the public service lists to match the Attorney-General's Department. What had happened here? A quick check shows that a distinctively named 'Ministry for the Arts' was one of several branches of the Attorney-General's Department, alongside half-a-dozen other branches or divisions none of which was labelled a ministry. This 'ministry' was part of a portfolio and a branch of a department, neither a portfolio nor a department in its own right (AGD 2013a, 2013b). When the Turnbull Government replaced the Abbott Government in September 2015,

the ‘Ministry for the Arts’ continued as part of the new ‘Department of Communications and the Arts’, with one minister holding appointments to two separate portfolios: Communications, and The Arts.<sup>6</sup>

Arrangements such as these are at the discretion of the incoming Prime Minister, based on his personal and political/policy preferences. Sometimes, however, the changing circumstances of the area being administered may explain the appearance or disappearance of portfolios. One such case was revealed recently by a study of Australia’s external territories,<sup>7</sup> which showed that the inhabitants of the Indian Ocean territories of Christmas Island and the Cocos (Keeling) Islands were experiencing much difficulty in their dealings with officials of related Commonwealth departments and long delays in getting responses to reports, correspondence and so on. As reported by a parliamentary committee, there was a ‘high level of frustration with the current system of governance, which has many layers of bureaucracy and unclear delineations of responsibility’ (Brown 2015). One can have sympathy here with residents of the island territories, but one can also have sympathy with the officials they were dealing with, who had been subjected to a series of quick movements from one department to another as a progression of governments adjusted their portfolio lists and required a multitude of consequential changes from the officials of various parts of those departments. There was once, when territories like Papua New Guinea and Nauru occupied much policy space, a single, easily identifiable Minister and Department of Territories (or External Territories) – a portfolio in the traditional sense. In the period of the late Howard, Rudd, Gillard and Abbott Governments, however, less policy space was required and the territories function was truncated. It came to be treated as a part of a series of mostly short-lived multi-functional departments as indicated in the following list, and the title Minister for Territories disappeared along with the named portfolio and department (Commonwealth Government 2013). Thus the much-reduced function has come to be performed by a small and apparently badly digested part of one or other of several large multi-functional departments, whose titles (as shown in the table) have included the word ‘regional’.

## **DEPARTMENT EMBRACING TERRITORIES FUNCTION**

Date established	Department name
21.10.1998	Transport and Regional Services
3.12.2007	Infrastructure, Transport, Regional Development and Local Government (part of the Prime Minister & Cabinet portfolio)
14.9.2010	Regional Australia, Regional Development, and Local Government
9.2.2012	Regional Australia, Local Government, Arts and Sport
18.9.2013	Infrastructure and Regional Development

The Commonwealth had long adhered to a one-minister one-department principle (with occasional exceptions), but that organisational order was challenged when the Hawke Labor Government introduced a general two-tier ministerial structure in 1987, with most departments gaining cabinet representation through a senior (or portfolio) minister, assisted by one or more junior ministers with supervisory functions limited to parts of the department's jurisdiction. There was a multi-portfolio implication, with the term 'mega-department' emerging as a descriptor for some of the newly-established larger multi-functional departments; this went with an assumption that, in future, the government-forming exercise would be easier and less disruptive because, with them now in existence, there was much more room for Prime Ministers to accommodate ministerial and functional change without resorting to frequent major revision of the AAO for the purpose of departmental formation and change. By the time of the Rudd and Gillard Labor Governments, however, whatever advantage there had been here was lost. The department and portfolio forming process had gone far to establishing first-order structures that recognised contemporary policy issues and associations and were likely to change frequently as those issues changed, as in so-called 'mickey mouse departments' such as the short-lived Departments of Broadband, Communications & the Digital Economy and Climate Change & Energy Efficiency. Wonderful acronyms now applied to many departmental titles: each change was accompanied by large administrative costs and, as indicated by the case of the old territories portfolio noted above, much effort would be required by the public servants caught up in these changes to sort themselves out before they could begin to operate smoothly again (for general discussion, see Nethercote 2012; Waterford 2013; Wettenhall 2014: 82–85).

Since Commissions of Audit occupy some space in this discussion, it is reasonable to ask whether the Commission set up by the Abbott Coalition Government after its election in October 2013 and chaired by Tony Shepherd, President of the Business Council of Australia, offered any words of wisdom on the matters canvassed in this article. A reading of its voluminous and ill-edited report issued in May 2014 (Shepherd 2014) suggests that its dominant concern was in locating functions and organisations that might be abandoned in accordance with the government's much publicized small government policies.

The report was released concurrently with a 'ministerial statement' by Finance Minister Mathias Cormann (2014), and these instruments together formed the basis for the 'Smaller Government Initiative' announced by Treasurer Hockey in his 2014–2015 Budget presentation (Hockey 2014). Taken together, they amounted to an outright attack on the traditional Australian public administration system, and they were seen as such by many of the leading political commentators of the day. Privatization, outsourcing and devolution to the states were major themes, with little consideration given, for example, to the likelihood of efficient management of devolved functions by the states. Much press comment highlighted what were widely seen to be other insufficiently considered propositions such as rolling the Public Service Commission

into the Employment Department or selling off the Mint (e.g. Thompson 2014; Taylor 2014; Maiden 2014).

Retrenchment was clearly the primary message: what the press highlighted as one of the principal budget features was that the ‘axe falls on 70 federal agencies’, this followed with lists of those to be sold, abolished, folded into departments, merged and so on (Crowe 2014). The related ministerial statement, borrowing from the Commission of Audit report, highlighted proposals for, again, abolitions, mergers, absorptions into departments, privatizations and the like (Cormann 2014 & appendices). A strong liking was expressed for ‘shared services’, the combining of the ‘back office functions’ of several agencies, or departments and agencies, into a single office as a way of cutting back the administrative work of individual bodies. Cormann advised that action was already under way to give effect to some of these changes (Shepherd 2014: phase one; Cormann 2014: 4–6, 15–16; see also Reid & Wettenhall 2015 for discussion of shared services).

In machinery-of-government matters, the Commission generally assumed a two-way distinction between ‘portfolio departments’ and ‘agencies’, with the departments doing the policy work and agencies delivering programs and services; and, wherever possible, it wanted agencies that could not be disposed of absorbed in departments (Shepherd 2014: phase one p.204). Portfolios in the old-fashioned sense were sacrosanct: the Audit Commission was a creature of the government in office, and it was not asked, nor was it likely, to challenge the structure of government itself. This lack of interest in the more conceptual side of the machinery-of-government question contrasted, however, with the interest shown by the Commission of Audit appointed by the O’Farrell Liberal-National Coalition Government in New South Wales (NSW) after its election in 2011. This article now turns to consider what that Commission proposed in relation to ministers, departments and portfolios. In NSW there was wide agreement that the machinery of government was in a mess, and there was no way a Commission of Audit could have avoided looking at such relationships.

### New South Wales: ‘Clusters’

A series of amendments to the NSW Public Sector Management legislation in the 1990s and early 2000s did little to establish order in the state’s machinery of government. A leading analyst saw one outcome as the creation of a ‘new Government Service of NSW’ (Di Francesco 2012: 92), but the terminological underpinnings were convoluted. Through this parade of legislative changes, the terms public service and public sector were not clearly differentiated, and what was quite radical was recognition of government service as an apparent third organisational category (though the term had surfaced earlier in Tasmania).<sup>8</sup> For example, in the definitions offered in the 2002 NSW *Public Sector Employment and Management Act*, ‘public sector agency’ referred to the whole or any part of a ‘public sector service’, which included ‘a division of the government service’ (obviously including departments but much more); ‘the Public Service comprised the Divisions of the Government Service’ specified in a schedule

to the Act; and the ‘public sector service’ meant any of Government Service, Teaching Service, NSW Police Force, NSW Health Service, Transport Service, parliamentary services, ‘any other service of the Crown (including the service of any NSW Government agency), and ‘the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation)...’(from PSEMA 2002, Part 1.1, s.3 Definitions). It was surely a confusing bag of organisational terms, making the understanding of this government machine more difficult than most, and leading to further complex descriptive and classificatory exercises to come.

The NSW Commission of Audit operated in two stages, the first chaired by Acting Treasury Secretary Michael Lambert and the second by Managing Director of Sydney Water Dr Kerry Schott; there was also an advisory council chaired by David Gonski who was contemporaneously conducting a review of school funding for the Commonwealth government. Two reports were submitted, and the ‘interim’ one offered views on several machinery issues that could be expected to have their own trajectory and practical influence separately from the expenditure-related recommendations in the final report (Schott 2012). Given the cacophony of titles and definitions in the 2002 NSW legislation, it was virtually inevitable that some of that would carry forward to influence this exercise. Thus the interim report noted that the ‘NSW Government is a very large and diverse organisation conducting a wide mix of services’<sup>9</sup> and that, to that end, it has ‘over 4,400 entities, 22 Ministers, nine Directors-General and hundreds of Chief Executives and other senior executives’. The report also expressed the need for clearer roles and responsibilities at ministerial and administrative levels, and for simplification of accountabilities and management reporting needs and the roles of central agencies.

At its core, the report addressed the development in NSW of what it described as ‘clusters’ seeking to overcome some of the adverse effects of the proliferation of entities. Although the report did not say so, the clusters it deals with have some of the attributes of the ‘portfolio’ as understood by previous generations of machinery-of-government practitioners and commentators, but they were scheduled for much tighter organisation and management than the traditional portfolios; this report described them as ‘pivotal in improving service delivery’ (Schott 2012: 11–12, 20–23, Appendix 2).

The report noted nine clusters currently existing in NSW. Each had a Coordinating Minister (who was distinguished from Portfolio Ministers within the clusters), and a Principal Department (which was a legal entity)<sup>10</sup> and a Director-General who could be responsible to a number of ministers. ‘Subsidiary entities within the cluster’ were headed by chief executives who reported in the first instance to the portfolio ministers. ‘Entity types’ were also identified, and divided into ‘tiers’. The clusters themselves varied in almost astronomical terms, containing from one to nine ministers, 400 to 96,000 staff, \$2.1bn to \$15.3bn budgets and 15 to 384 entities, and this report constituted a plea for simplification. There was, the Commission said, ‘no single source of truth’ providing up-to-date information on all this, and it complained, in what might be considered a classic understatement, that ‘(c)urrent governance arrangements in NSW

do not provide a complete, well-understood and consistent governance framework' (Schott 2012: 12–16, 20). Developing the cluster arrangement was seen as an important step towards improving this situation.

Arising from the Audit Commission report, a new Public Service Commission (PSC) was asked to review the public sector and develop structural reform proposals. The outcome of this review was the *Government Sector Employment Act 2013* (GSE Act), which replaced the 2002 legislation and was claimed to be a simplification (NSW PSC 2013a). An accompanying commentary said of it, not in my view very helpfully, that it was 'designed to reduce the complexity of the structure found in the PSEMA (*Public Sector Employment and Management Act*), ... by establishing a system with only two distinct structures, being the government sector and the public service, as opposed to the current system which consists of the government service, the public sector, the public sector services and the public service of the Crown' (Belling & Parker 2013: 2).

Some simplified thinking was needed, and the term 'cluster' is now down-played. As the PSC itself points out, the GSE Act does not refer to it even though it is 'currently used to describe the administrative arrangements by which the NSW Government Service is configured into nine groups of agencies to allow for coordination of related services ... each cluster including a Department (which may, at an administrative level, include other entities), Public Service executive agencies related to a Department and, in some cases, one or more separate Public Service agencies' (NSW PSC 2013b: 6–7).

This has been a useful and interesting addition to our collective thinking about machinery-of-government matters, but whether it will have much practical effect is doubtful. The notion of clusters gained no formal documented recognition either in any restructuring of the O'Farrell Government, which had received the Audit Commission report in 2012, or in the constituting of the Baird Coalition Governments which replaced the O'Farrell Government in April 2014 and April 2015. The strong impression is that cabinet formation and departmental alignments continue to be shaped largely by sometimes clashing policy agendas and by the usual jockeying for advantage by party factions and ministerial hopefuls; to an extent the hoped-for logic behind the cluster arrangement is in play, but it is unlikely to be the primary consideration (see e.g. Nicholls 2015).

Agencies present special issues and they are further discussed below. However it is appropriate to note here that a huge spread in the notion of agencies and their relationship with departments is apparent in the lists presented by the NSW Commission of Audit and in associated documents, with several categories of agencies and many staff groups recognised separately from their employing authorities. Thus, while the Art Gallery of New South Wales Trust is a familiar statutory body with corporate status and is so recognised, the relevant staff group is legally branded 'Art Gallery of New South Wales Trust Staff Agency' and counts as a separate executive agency.<sup>11</sup> This pattern is repeated for dozens of other statutory bodies and their related staff groups.

## *Victoria: Departments above portfolios?*

As noted above, the traditional Australian (and we might say traditional Westminster) pattern is to connect portfolios with ministers in forming the top level of administration, with departments (one or more) within a portfolio and forming a second strata of administrative organisations, and agencies effectively forming a third layer as varied as they may be. What was so unusual in the structural arrangements announced for the Victorian Labor Government formed by Premier Daniel Andrews in December 2014 was the seeming reversal of the departmental and portfolio roles. These arrangements were announced in the Victorian equivalent of the Administrative Arrangements Order<sup>12</sup> and in various reports presenting those arrangements to the Victorian public. In these descriptions of the Victorian arrangements, in organisational terms portfolios were organisationally subordinate to departments!

There had been no Commission of Audit or similar inquiry report to guide new Premier Andrews in designing his government machinery. There was a leadership team that came to office more-or-less unexpectedly, like that in Queensland a few months later, and with inadequate planning for accession to office — though former Victorian Labor Premier Steve Bracks was, among others, acknowledged as having given advice about preparing for the transition to government (Coghill 2015). This detachment from things official may help explain why the designers of the Andrews arrangements ignored the definition supplied in the 2010 Victorian Public Sector Commission guide (VPSC 2010).

Several passages all seeming to subordinate portfolios to departments illustrate this feature of the Victorian arrangements (taken from Willingham & Cowie 2014):

The Department of Premier and Cabinet ... will be taking on a lot of new work, assuming responsibility for the new portfolios of Equity and the Prevention of Family Violence, as well as providing assistance to a host of agencies... It will remain to be seen, however, whether the unprecedented number of portfolios being held by the Premier's department – ranging from community development to infrastructure planning and delivery to integrity functions – will allow it to continue its traditional responsibility of policy co-ordination and advice to the best of its abilities'. [Another listing indicates that this department will support 'the following portfolios': Premier, Deputy Premier, Special Minister of State, Aboriginal Affairs, Equality, Multicultural Affairs, Prevention of Family Violence, Veterans.]

The new Department of Economic Development, Jobs, Transport and Resources will bring together a large range of portfolios contributing to the state's economic development... The new mega-department will include portfolios as diverse as agriculture, public transport, arts, energy, ports, tourism and roads as well as small business.

The new Department of Education and Training will ... support the following portfolios: (includes Education, Training and Skills, Families and Children) ...

The new Department of Environment, Land, Water and Planning will ... support the following portfolios: (includes Environment, Climate Change and Water, Local Government, Planning) ...

The new Department of Health and Human Services will ... support the following portfolios: (includes Health, Ambulance Services, Families and Children, Housing, Disability and Aged, Mental Health, Sport (except for major sporting events), Youth Affairs...)

The new Department of Justice and Regulation will ... support the following portfolios: (includes Attorney-General, Consumer Affairs, Gaming and Liquor Regulation, Corrections, Emergency Services, Police, Racing).

To repeat: this appeared to be the new Victorian approach, and it represented a striking reversal in what we have long understood about machinery-of-government arrangements. Whether it will much influence how we think about the ways governments are structured is for the future to decide. It may be that it will prove to be a semantic shift that does not much affect the way those working in the administration go about their dealings with each other. Dr Ken Coghill, Director of Monash University's Governance Research Unit (who, as a former ALP State member and Speaker, is very well informed about such matters in Victoria) confirms that there has been 'a deadly silence' about this aspect of the governmental change (Coghill 2015), and observers need to be patient before forming judgments about its effects.

Certainly other features of the arrangements made by the Victorian government established in December 2014 received much more public notice. The portfolios-within-departments aspect was matched closely with, and seemingly placed in a supporting position to, the determination to establish 'mega-departments' or 'super-departments', so realigning 'departmental structures and reporting lines to better reflect ministerial responsibilities' and reducing the number of departments, now pared back from nine to seven. This 'dramatic shake-up', the new Premier announced, was intended to 'revitalise' the public service, with Coghill advising that this was 'a way of co-ordinating the direction of overall policy objectives such as economic development'. Coghill noted that the creation of super-departments was a trend being followed by governments around the world, with Australia prominent in the development of this model (quotations from Willingham & Cowie 2014: 1–2; also Donaldson 2014).

The Andrews Government was also hailed for its elevation of nine women into the cabinet of 22, claimed to be the biggest proportion of women in any Australian government.<sup>13</sup> And there were some significant policy developments already planned before the accession to government, such as bringing 'community portfolios' together in the Department of Premier and Cabinet, establishing new portfolios to be headed by Ministers for Equity and for the Prevention of Family Violence (an Australian first in this area), creation of new bodies to plan major capital projects and to undertake anti-corruption activity, and sale of the Port of Melbourne (drawn from Willingham & Cowie 2014: 1–2). All these features of the new

government and its machinery arrangements received much more notice than the portfolios-within-departments aspect.

### *Queensland: In this matter, an unconscious return to tradition*

The recent Queensland experience offers interesting points of contrast. First, there was a Commission of Audit appointed by the then-established Newman Liberal-National Coalition Government in 2012. And second, with the fall of that government, a new government – the Palaszczuk Labor Government – emerged in February 2015 as a generally unexpected election winner.

The Commission of Audit, chaired by Peter Costello who had been Treasurer in the Howard Commonwealth Coalition Government, was tasked with reviewing the Queensland government's financial position. It presented an Interim Report in June 2012 and a Final Report in February 2013, at which time a formal response from the government it was reporting to was also released. While the role of the state in service delivery was certainly addressed, the whole tenor of the reports and the response to them was retrenchment: the essential message was that the state had to advance by disposing of public enterprises and reducing debt, and there was little interest in machinery-of-government issues such as those considered in this article.<sup>14</sup>

Of the Palaszczuk Labor Government, it can be said that few governments have been elected to office with less preparation, and the circumstances of its arrival provide a remarkable case study of a group unprepared for government having to create a government virtually overnight. In the days after the initial swearing in on 14 February 2015, observers (Scott 2015a, b; Killoran & Wardill 2015; Warhurst 2015; King 2015) spoke of its 'totally unexpected elevation to government', 'a leadership team somewhat surprised at the rapidity of its success', 'elation among ministers tempered by awareness of their limitations', the 'naivety of the new cabinet', and its 'modest aspirations'. The Commission of Audit report was for the previous government, not this one. Initially there were only three ministers, while those three cast around for others to appoint (of course, this soon followed). The new Premier promised to keep changes to a minimum, but there had been a pre-election commitment to reduce the number of ministers and within a few days Queensland saw a reduction from 19 to 14 and a sweeping realignment of portfolios, with incoming directors-general facing 'a challenging amalgam of functions' and some 'apparently incongruous pairings' like Training & Skills with Attorney-General. There was a demand for loyalty from all directors-general, and they were under notice that the reasons for their original selection (by the previous government) would be examined in the context of 'merit selection'. What is relevant here, however, is that, while this strategy was largely unplanned in a Westminster sense and hardly a ticket for a smooth transition in the classic Westminster tradition, it treated portfolios and departments in the traditional way.<sup>15</sup>

### *Digesting developments in using portfolios, ministries and departments*

As with the clusters in the NSW context, the new readiness illustrated in the Victorian case to view departments as hierarchically superior to portfolios across the whole government system deserves notice as a significant addition to our thinking about machinery-of-government matters. It has the potential to attract much more attention in the future. In the Commonwealth, this reversal of the traditional style emerges very occasionally (notably in The Arts Ministry case), but that points to a somewhat undisciplined mix, as ‘portfolio’, ‘ministry’, ‘department’, ‘branch’ and ‘division’ vie for recognition in the organisational statements. What this might suggest is that, as with Queensland, the Commonwealth system is generally predisposed to remain with portfolios and departments in the traditional way. We should also be aware that this organisational slipperiness has consequences for the way we now approach accountability issues. Full application of the Westminster principle of ministerial responsibility requires clear lines of reporting and accounting from departments to ministers, and those clear lines are now increasingly threatened. Thus it is not far-fetched today to ask whether departments are still ministerial.<sup>16</sup>

## **THE AGENCY DIMENSION: BIGGER OR SMALLER?**

In one way or another, agencies have surfaced in all the commission reports and ministerial pronouncements noted above. A feature of modern public administration in many countries has been the growth in the number of agencies alongside pressures to reduce their number: the growth usually takes place in piecemeal fashion, with new agencies appearing individually or in small groups as new projects or enterprises are advocated and the disadvantages of close ministerial control urged; the demands for reduction in their number come collectively as retrenchment campaigns are orchestrated by conservative governments. The Commissions of Audit discussed above, all appointed by conservative governments, have all sought to reduce the number of agencies, and they share this approach with other inquiry-and-report instruments of conservative governments such as those of Bland and Uhrig in the Victorian and Commonwealth jurisdictions (on which see Wettenhall 2005, Wettenhall & Gourley 2009). The NSW Commission was unusual because, although it did this, it did more in its conceptualizing of clusters.

In traditional machinery-of-government practice, agencies have generally been given staffing autonomy and excluded from the coverage of *Public Service Acts*, which have been designed to provide a general employment framework for departments. In keeping with this construct, departments and agencies have been seen as together constituting the public sector, whereas a public service is made up of the departments only. With the growth of agencies, however, this distinction has been difficult to maintain, so that increasingly many agencies have come under coverage of the *Public Service Acts*. Machinery-of-government designers and analysts have been challenged to find working

systems and explanatory systems that account for the varying practices. Recognition of this problem is evident in many of the developments reported above.

The Australian experience mirrors that of comparable countries such as Britain, where the use of arm's length bodies has been marked by 'an ebb and flow of centralising and decentralising initiatives ... since the seventeenth and eighteenth centuries' (Dommett et al 2015: 3; see also esp. Hood 1980). Leading British machinery-of-government researcher Matthew Flinders and his colleagues have, over several decades, recorded the ups and downs of popularity of non-departmental bodies in British public administration, and in recent works (e.g. Dommett et al 2015) they have demonstrated that, while non-Labour governments have been pursuing policies loosely described as 'quangocide' and actually eliminating some such bodies, they have usually been fringe bodies and not ones of major policy or budget significance.

For the latter, rather they have been engaged in different strategies of reform such as changing methods of control of on-going bodies, making some efforts to overcome cronyism in appointment to their boards, and shuffling bodies between departments or to new statuses such as executive agencies or government companies or even third-sector 'mutuals' (hence bureau-shuffling'). Such reforms, these analysts report, 'are unlikely to deliver significant benefits in terms of "shrinking the state" in relation either to spending or personnel'. It would seem that Prime Minister David Cameron, unlike his conservative predecessors, is addressing the relevant reform by accepting the usefulness of much of the quango sector and its relevance to 'the Big Society', and then simply checking on its efficiency and accountability (Dommett et al 2015: 7, 9).

Flinders and his associates (Dommett et al 2015: 4–7) accept that this is now the dominant position: as the 'default organisational form for functions placed beyond ministerial departments', arm's- length bodies – or 'delegated governance' – are here to stay. They are an important and virtually inevitable part of the structure of the state, and the suggestion is that 'a governance-focused', rather than an 'abolition-focused', approach to them is gaining fairly wide acceptance. This somewhat softer approach is associated with a theoretical development which proposes that the use of agencies does not generate a democratic deficit and that it takes us rather towards a polycentric or pluralist form of democracy in which the agency boards (if properly constituted) are themselves accountable to their particular constituencies and thus part of the broader democratic society (Durose et al 2015: 141ff).

Though theoretical development has been slow, such views had earlier expression in Australia. As already noted, the centralizing/decentralizing 'ebb and flow' has been marked by the creation of a multitude of arm's length bodies in the Commonwealth and the states, and numerous public inquiries mostly recommending – but not very successfully – a return to ministerial government. Though not always stated very clearly, the notion of a more direct democracy being served by the agencies was often present in critiques of the inquiry reports. Thus, in response to Sir Henry Bland's 1970s attack on the Victorian liking for statutory authorities, Jean Holmes of the University of Melbourne argued strongly that the boards of the various authorities, being

representative of the interests most directly involved in the running of those authorities and as such 'direct agencies of government', were instruments of democracy in a much more direct sense than is offered in departments by the line of accountability through ministers to the legislature (Holmes 1975, 1978; Wettenhall 1986: 110–116).

So what is revealed in the Australian sources used as the basis for this article? As noted above, the Commissions of Audit, reporting to conservative governments, show an inclination to stress the large number of arm's length bodies in their jurisdictions and to make autonomy-curtailing recommendations, with a number of possible strategies available to them: for example mergers into departments, subjection to shared-service arrangements, increased ministerial controls and outright privatization. They provide us with lists of these bodies that are so long that they will generally surprise, and their classifying efforts focus on these disempowering strategies. The statute book is usually messy in these areas, and some cleaning up will be an advantage. Given the retrenchment bias, however, there will be plenty of criticisms of various, towards-cutting-back, reports. The governments they report to usually begin implementation of the recommendations, and some changes occur in the agency map. However there is little or no evidence of any thinking, either in the reports of the Commissions of Audit or the accepting dialogue those reports attract, along the lines of that now developing in Britain and noted above; and without it we can say that these reporting bodies and the governments they report to operate in a pre-modern world as they face the issue of 'delegated governance'.

Agencies also feature in the arrangements made to structure new governments, but the two that form case studies in this article are Labor governments and they are not characterized by the retrenchment commitments of the Commissions of Audit and their receivers. Some new agencies appear (such as a new Anti-Corruption Commission in Victoria), others move between portfolios, some even disappear -- but this is in accordance with long-standing practice in the development of the machinery of government and is determined mostly by judgments about efficiency, cost effectiveness and ministerial comfort.

In a technical organisational sense rather than a sense that is concerned with democratic implications, it is likely that one of the most significant changes now occurring in this field is that which is witnessing mergers of arm's length bodies with their associated departments. We are seeing this process at work in the Commonwealth jurisdiction, with its implications still to be fully assessed, as the now-giant Department of Human Services is absorbing CentreLink, Medicare and some smaller bodies, as the Department of Foreign Affairs is absorbing AusAid, and – in a reversal determined by the size of the structures concerned – the Customs and Border Control agency is absorbing the department that now carries the same name.

## FINAL WORD

This article has looked at developments in machinery-of-government thinking and practice in the past few years in Australia as seen particularly in a set of Commission of Audit reports, in what Premiers have done in setting up new governments, and in some related literature. As Weller (2014: 56) and Bridgman (2015a: 1–2) have pointed out, the word ‘mogging’ has emerged in this period to describe such attention to the machinery of government. So just how significant has the mogging effect been during the period under review?

There have been interesting developments in terminology relating to portfolios and departments, but little evidence so far to suggest that they will significantly affect the way we go about building these main elements of government formation. As Bridgman notes, ‘Governments result from political processes, and politics takes place in the context of stakeholders’ (Bridgman 2015a: 14). The expectation is that these ‘stakeholders’ will always have top priority when government structures are determined, whatever underlying rationales may exist.

It may well be that the agency arena is where most of the real action takes place. Privatization, where it occurs, will certainly remove some of the agencies from the public sector. But it depends on swings of the political pendulum, and its effects – both ways – can be exaggerated. In ‘mogging’ terms, one of the most robust long-term effects may be the joining of public and private effort in joint ventures and public-private partnerships (PPPs), and it is timely that our research effort should look very seriously at world experience to date with these forms of mixed-ownership administration and the possibilities demonstrated by that experience.

## NOTES:

- 1 See Wettenhall 1970 and 1986 for a detailed exploration. For a very recent Australian (Queensland) document that supports my explanations, see Bridgman 2015a. Portfolios are sometimes described as ‘ministries’, as in Ministry of Health – but in this sense they are still portfolios. ‘Ministry’ has another and more common use as a descriptor for the total group of ministers constituting a particular government, e.g. Whitlam Ministry, Abbott Ministry as alternatives for Whitlam Government, Abbott Government.
- 2 Procedures surrounding the preparation and implementation of *Administrative Arrangements Orders* received serious study by several groups in the lead-up to the formation of the Gillard Government in 2011: see Wettenhall 2014: 82–85.
- 3 For a recent international treatment, see Verhoest et al 2012, which contains a chapter on the Australian experience (Aulich & Wettenhall 2012). Sometimes it will be found that departments are also included in lists of agencies, but understanding of the machinery of government is helped by keeping this agency group conceptually separate: more recently the new class-name *arm's length* body has emerged in another effort to comprehend the difference between departments and non-departmental bodies.
- 4 On the Australian Commissions of Audit generally, see Jones & Prasser 2013, Weight 2014.

- 5 Likewise the Commonwealth's Commission of Audit appointed by the Abbott Government after its election in 2013 was charged with examining and reporting on policy options to guide that government as it moved into its period of office. There was planning machinery aplenty, and the Commission then produced public and, eventually, easily accessible even if badly edited and difficult-to-deal-with documents. However they had little to do with the portfolio/department tinkering development to be noted shortly.
- 6 There is another irregularity: some of these ministers are cabinet ministers, others are not.
- 7 Jon Stanhope, Roger Wettenhall & Thaneswar Bhusal, 'Governance Challenge: Australia's Indian Ocean Island Territories', 2016.
- 8 See below for discussion of the general problem of fitting agencies into the machinery of government as a whole. New Zealand pioneered in the Antipodean world in 1962 in formally establishing a state services system to ensure that public personnel policies were reasonably coordinated overall; in Tasmania in 1981 an inquiry report, with legislation to follow, used the terms *crown service* and *government service* with a similar purpose. For exploration, see Wettenhall 1997.
- 9 A commentary issued in June 2013 asserts that the Government of the State of New South Wales and its agencies together constitute 'Australia's largest employer': Belling & Parker 2013: 1.
- 10 'Departments' are currently provided for under Part 4 of the *Government Sector Employment Act 2013*, though the term 'principal department' is not used there.
- 11 The statutory corporation is created by *Art Gallery of New South Wales Act 1980*, s.5, with the Staff Agency gaining most recent statutory recognition in Schedule 2, Part 2 of the *Administrative Arrangements Order 2014*.
- 12 In this case Victoria's *General Order Dated 4 December 2014* assigned ministerial responsibilities, with an associated *Administrative Arrangements Order* detailing the legislation falling within each 'portfolio'.
- 13 An Australian 'government' now generally includes assistant ministers as well as the ministers proper; they may or may not be regarded as part of the cabinet. A ministry may thus be said to include 22 ministers but have only seven full ministers.
- 14 Documents available on Queensland Commission of Audit website.
- 15 Scott 2015a, 2015b, 2015c; Bridgman 2005b. I am grateful to Professor Roger Scott, chair of the TJ Ryan Foundation, for making available relevant commentary.
- 16 See discussion in Wettenhall 2014: 85–87.

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