

Victoria: Rolling Back — or Reinventing — the Kennett Revolution?

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The election of the Kennett government in 1992 heralded an era of unprecedented change in public sector employment and industrial relations in Victoria. The Employee Relations Act 1992 and the Public Sector Management Act 1992 redefined the public sector in Victoria and the relationship, both collective and individual, of public sector employees with government. In October 1999 the Kennett government unexpectedly lost office. But despite its pre-election rhetoric promising a return to more conventional arrangements, there is little indication that the Bracks government intends to significantly dismantle the Kennett legacy in public sector employment and industrial relations.

With the election of the Kennett government in 1992 the certainties that had characterised government–public sector relations in Victoria for decades were irrevocably altered. A raft of legislation designed to redefine both the industrial relations landscape and the relationship between the government and its employees descended almost immediately upon the Victorian parliament. The effect was to create the most radical industrial relations and public sector reform agendas yet seen in Australia and to make Victoria an unlikely pacesetter in these areas.

In the seven years of the Kennett 'revolution' (Costar and Economou 1999), the Victorian public sector was reduced by over 25 percent or 70,000 staff (OPE 1998). This was achieved by a combination of privatisation, outsourcing and downsizing strategies in which the government's commitment to market ideology was pre-eminent. In the process, the traditional model of public management in Victoria — with its emphasis on permanency, strong central control and a formal role for the public sector unions — was dismantled. Its replacement was a market-based model in which individual contracts and performance pay featured prominently and employee organisations were effectively marginalised.

When an election was called in August 1999, the Opposition Labor Party promised to restore a more 'independent' public service with a more traditional role for the public sector unions. When it was unexpectedly elected, in large part due to a rural backlash, the incoming Bracks government appeared to offer public servants a welcome antidote to the harsh prescriptions of the Kennett era. However, the early signals suggest that Labor is unlikely to roll back all the changes instituted by the Coalition government. Indeed, the current indications are that much of the distinctive model of public sector employment associated with the Kennett 'revolution' will be retained.

The Victorian Public Service Prior to Kennett

Like the rest of Australia, public service human resource management and industrial relations in Victoria had traditionally been highly centralised in the operations of the Public Service Board (PSB). What set Victoria apart, however, were several key characteristics: what Halligan and Power term 'an exceptionally weak political executive' (1992:34) and provisions

dating from the 1940s for elected employee representation upon a PSB that was also uniquely vested with wage-fixing powers (Halligan and Power 1992). The effect was to ensure that the Victorian Public Service Association (VPSA) and the Hospital Employees Federation, No. 2 Branch (HEF) occupied a central role within the Victorian Public Service (VPS).

The singular role of employee organisations within the VPS was also shaped by the ALP split of the mid-1950s, when the VPSA, the main public service union in Victoria, left the organised labour movement. From this point until 1983, the VPSA was ostensibly politically unaligned. In reality, however, it enjoyed an unusual accommodation with successive Liberal governments in which the VPSA tacitly supported the Liberals in return for the retention of the status quo. This arrangement was of particular value to the state government when the health, education and public transport sectors were frequently beset by industrial unrest.

But the reaffiliation of the VPSA with the Trades Hall Council in 1983 did not lead to any immediate change in the role of the unions within the VPS. Despite a general devolution of functions away from the PSB by the Cain and Kirner governments, the VPSA and HEF remained upon the board with an effective power of veto. A review commissioned by the Kirner government recommended far-reaching changes to the personnel management function across the VPS, including the abolition of the PSB (Alford et al. 1990). However, in the turbulent political climate at the time, the proposed reforms were not possible.

The Kennett 'Revolution'

Although it denied during the 1992 election that it planned to make any major changes to the VPS, the Coalition entered government with two key objectives for public employment and industrial relations practices which were immediately implemented (O'Neill and Alford 1994). The first was to marginalise the public sector unions it believed had been permitted to exercise excessive power under preceding governments. The second was to introduce as far as possible private sector management practices into the public sector. Initially, these twin agendas were primarily pursued through

the Employee Relations Act 1992 (ERA) and the Public Sector Management Act 1992 (PSMA).

Employee Relations Act 1992

In summary, the ERA endeavoured to deregulate the labour market in Victoria and to facilitate the implementation of a unitary approach to employee relations. The Act abolished state awards, encouraged individual employment contracts, removed requirements that employers deal with unions in the resolution of disputes, abolished compulsory arbitration and conciliation and reduced the powers and scope of the central industrial umpire (Fox and Teicher 1994; Mitchell and Naughton 1994; Barrett and Backwell 1998). The guiding principle underpinning these changes was that labour should be 'tradeable', or market-based, 'like any other commodity in a competitive environment' (Teicher and van Gramberg 1999).

Victoria's non-executive public servants were placed under the ERA by the Public Sector Management Act 1992. The immediate effect was that these public servants lost their 17.5 percent annual leave loading and two public holidays. When state awards were abolished under the ERA in March 1993, more dramatic implications suddenly loomed as the non-executive public servants moved to 'deemed individual employment agreements'. For a workforce accustomed to a centralised collective bargaining process, these new arrangements engendered considerable uncertainty and concern. But for the public service unions, the problems were even more immediate. Stripped of their formal role in public service human resource management by the abolition of the PSB, they were financially crippled by legislation prohibiting the collection of union fees by government departments.

The Keating government in Canberra offered Victoria's non-executive public servants an opportunity to exit the new industrial regime when it introduced amendments to the Industrial Relations Act 1988 (Cwlth) in late 1992. These amendments facilitated the transfer of workers from the Victorian system to the federal jurisdiction and an exodus of approximately 200,000 workers subsequently followed. While this move offered Victorian public servants the protection of a federal award, it did not preclude the implementation of other components of the Kennett agenda. However, the Commonwealth

government's intervention did succeed in severely undermining the objectives of the Victorian legislation and paved the way for the historic referral by the Victorian government of most of its industrial relations powers to the Commonwealth government in 1996.

Public Sector Management Act 1992

The Kennett government's public employment agenda was only partly addressed by the provisions of the ERA. With the PSMA, much more was revealed. Under the Act:

- the PSB was abolished and replaced by a Public Service Commissioner (PSC) employed on contract and with much reduced powers;
- all senior public servants were employed on short-term, performance-based contracts requiring four weeks' notice on either side;
- the Premier became the employer of the department heads;
- the department heads became employers of departmental staff;
- any barriers to the appointment of 'outsiders' to all levels of the public service were removed;
- private sector standards for redundancy and termination were adopted;
- appeals and grievance mechanisms were watered down; and
- 13 'mega-departments' were created from the 22 inherited from the outgoing Labor administration (O'Neill and Alford 1994).

The PSMA swept away the conventions of the traditional model of public employment — or career service — that had prevailed in Victoria for the better part of a century. Public service employment and industrial relations would no longer be largely managed centrally by an independent tribunal and the public service would no longer guarantee a job for life in return for a lifetime of faithful service (O'Neill and Hughes 1998). As such, the unique arrangements instituted in Victoria in relation to the public service unions were abruptly terminated.

Perhaps even more dramatic than the fate of the unions was the newly defined role of the department heads and their relationship with the Premier. Under the PSMA and the subsequent Public Sector Management and Employment Act 1998, department heads were vested with powers similar to those exercised by chief executives in the private sector. Under Kennett, many of the responsibilities of the former PSB

— including the power to appoint, determine the work value of jobs, assign, promote, discipline, transfer, demote, retrench and terminate employment — devolved to the department heads (Salway 1999). These powers were subject to broad operating guidelines issued by the PSC and the Public Sector Employee Relations Branch of the Department of Treasury and Finance (PSERB). But in reality departmental managers operated with a degree of managerial discretion unthinkable under previous administrations.

The main source of effective control over departmental managers, in terms of establishing the parameters for the exercise of their new powers, came from the regular meetings between the department heads and their employer, the Premier. These meetings of the State Coordination and Management Council (SCAM), which were also attended by the Police Commissioner and the Public Service Commissioner, were seen to rival those of the cabinet in terms of their significance. Indeed, it was not long before SCAM became known throughout the public sector as the 'Black Cabinet' (O'Neill 1999).

While the vesting of additional powers in department heads was generally consistent with the overall philosophy of managerial reform in the public sector, the accountability arrangements were not. Under the first Kennett ministry, 13 department heads reported to 22 ministers, with some department heads reporting to three or four ministers. Yet another dimension to these multiple lines of accountability was added by the employment relationship between the department heads and the Premier. In these and other changes the Premier, as employer of the department heads, played a pivotal role.

Impact of the Kennett Reforms

The Kennett initiatives in public sector employment and industrial relations can be assessed from at least two perspectives — that of departmental management and that of the non-executive employees and their representatives. These perspectives provide sharply contrasting views.

Impact Upon Departmental Managers

For departmental managers, the Kennett reforms appeared to overcome one of the classic dilemmas of the New Public Management,

namely the tension between devolution of responsibility ('letting the managers manage'), and centralisation of key aspects of control within the system. To the Premier, the government of Victoria was 'a \$17 billion enterprise' (Victoria 1993) in which each department should be managed 'as if it were a business' (Kennett 1992). In formal terms, this management latitude was subject only to guidelines from the PSC and PSERB. However, in practice neither of these agencies constrained line managers as central agencies had in the past. Instead, the major form of central control in the Kennett government was exercised by the Premier through the meetings of SCAM.

Impact Upon Non-Executive Public Servants and Public Sector Unions

The experience of non-executive public servants and their unions was very different from that of senior departmental managers. During this period public sector unions were fighting for their very survival while at the same time attempting to resist what they regarded as the more egregious aspects of the Kennett agenda. With the initial impact of the Public Sector Union Fees Act 1993, the cuts to public expenditure and the increasing use of contract and short-term labour, union density in the VPS slumped in the early 1990s and took a number of years to regain normal levels. The loss of members and attendant financial troubles coincided with a protracted series of legal battles. These centred upon the move to the federal jurisdiction, the declining position of the Victorian public sector relative to other workers and the application of first, the Employee Relations Act 1992 (Vic) and subsequently the Workplace Relations Act 1996 (Cwlth) to public sector workers.

A major grievance for Victorian public servants at this time was the discrepancy between the market-based rhetoric of the government and the reality delivered to its workforce. For all its claims that public and private sector terms and conditions of employment should be as similar as possible, the years of Coalition government in Victoria saw a steady decline in the relative pay of Victoria's public sector employees. Public sector pay in Victoria had traditionally been pegged at the 25th percentile of the market for work of comparable value to account for security of

tenure, career path opportunities and superannuation entitlements. However, during the Kennett years public sector pay relativity slipped below the 20th percentile (CPSU 1997). This occurred despite government assurances that public sector wages policy should 'ensure provision of quality, value for money government services by attracting, retaining and motivating quality employees' (DTF 1998). Consequently, much of the unions' energies during this period were directed at restoring public sector pay relativities.

A further sticking point between the government and its employees was the proposition that pay increases be subject to the signing of employment agreements. This practice, the unions argued, did not fit with notions of the employee's right to freely negotiate the terms and conditions of his or her employment. Similar concerns were raised by the government's insistence that performance pay be funded from departmental savings. In these and related matters the public sector unions experienced fluctuating fortunes in the courts.

The Kennett government thus enjoyed only partial success in terms of its dual objectives of marginalising unions and making public management in Victoria as much like private management as possible. The Keating government's lifeline to the Victorian public sector unions thwarted the objective of eliminating the influence of public service unions, while political and financial realities militated against the development of a private sector model of employment.

The Bracks Agenda

Labor went to the 1999 election highly critical of the market-based prescriptions of the Kennett government and the leadership style of the Premier. In summary, Labor's public sector employment and industrial relations (IR) policies promised to return a more traditional model of public management to the VPS and to restore the relationships with the public sector unions the Coalition government had sought assiduously to exclude.

Industrial Relations

For those in the public sector, Labor's chief IR commitment was the pledge to reintroduce collective bargaining and, with it, to 'establish

a process of consultation over issues of major change' (ALP 1999a). With this promise two key objectives would be realised. Individual employment agreements for non-executive public servants would be largely abolished and the public service unions would resume an integral and acknowledged role within public sector employee relations.

A further plank in Labor's IR policy was a commitment to support public sector employment opportunities. Describing the public sector as 'a substantial provider of public services' (ALP 1999a), Labor's policy emphasised 'the legitimacy of public employment as a means of delivering quality services to Victorians' (ALP 1999a). In contrast, the commitment of the Kennett government to competitive tendering and contracting for government services was criticised by Labor as a practice that had 'undermined the quality of service provision ... [and] put at risk the viability of important areas of employment in both the public and private sectors' (ALP 1999a). Labor thus promised that contracting out would only occur after proper consultation and would be subject to stringent employment impact and social and economic benefit tests.

Labor's commitment to public employment was also evident in its promise to review the increasing casualisation of the Victorian workplace, which it claimed was the highest in the OECD with the exception of Spain. The aim of this review would be to establish what links, if any, existed between casualisation and the policies of small government, contracting out and privatisation (ALP 1999a).

Public Sector Employment

According to Labor, the 'frank and fearless advice' associated with an independent public service had been 'a serious casualty of the Kennett years' (ALP 1999b). In the process, Labor argued, good government and the credibility of the public service had suffered. Labor thus promised to 're-establish an independent public service free from political interference and able to govern without fear or favour' (ALP 1999b). To achieve this, Labor pledged to repeal the Public Sector Management and Employment Act 1998 and replace it with legislation that ensured:

- the independence of the public service;
- secure employment arrangements for public

servants enabling them to advise without fear or favour;

- promotion and appointment on the basis of merit;
- proper internal appeals processes; and
- compliance with equal opportunity principles (ALP 1999b).

Labor also promised to reform processes surrounding the appointment and promotion of senior public servants. Arguing that the Kennett government's practices in this area had 'all too often' been politically based, Labor promised:

- to ensure all senior executive appointments and promotions were made on merit;
- to make all senior executive salary packages transparent in aggregate with performance bonus criteria publicly disclosed;
- to encourage women to apply for senior positions; and
- to contain overall increases in senior executive numbers (ALP 1999b).

Labor also vowed to roll back the increasing use of highly paid private sector consultants in the public sector — a practice that had escalated during the Kennett years. Privatisation, corporatisation, contracting out, competition policy and the declining resources of a shrinking public sector had all contributed to an increasing reliance upon, and a bonanza for, private consultants. Under Labor, the government's heavy reliance upon the major consultancy firms — 'the major winners of the Kennett reforms' (Teicher and van Gramberg 1998) — would cease (ALP 1999b).

Finally, Labor promised to repeal prohibitions upon public servants commenting upon government policy. These provisions, entrenched in the Victorian Constitution and reinforced in the Code of Conduct for the Victorian Public Sector promulgated by the Public Service Commissioner had been widely resented.

Labor in Government

The Bracks government lost little time in implementing some of its key promises to public sector employees. In early November 1999 public sector employment relations managers were advised that the use of individual contracts for non-executive public servants should cease and that arrangements for the reintroduction of collective bargaining were to be set in place

(PSERB 1999). This decision affected between 10,000 and 14,000 non-executive public servants (Robinson 1999). In a related move, the government engaged a new team of legal advisers for the enterprise bargaining process that had commenced under the previous government. This process concluded in March 2000 when the Australian Industrial Relations Commission awarded a 2 percent pay rise to all Victoria's public servants, with a further 7.5 percent rise going to the 3,000 or so public servants who had not signed Australian Workplace Agreements or participated in non-union collective agreements. With these decisions, some of the pay disparities arising from the Kennett government's policies were addressed and progress was made in restoring the traditional pay relativities of Victoria's public sector employees after the lean years of Coalition government.

The second major decision of the Bracks government in relation to the public service was to require each of the eight departments to remove between 12 and 15 senior executives from their ranks as part of a strategy to save \$36 million each year (Johnston 1999). As with most perceived assaults upon 'fat cats', there was little adverse fallout from this decision despite its arbitrary nature. The 'golden handshakes' offered to the retrenched senior executives included up to four months' pay and \$10,000 in job search services. This was considerably more than was strictly warranted by the terms of their contracts — namely four weeks' notice or pay in lieu — and attracted some adverse comment. The severance packages offered to the senior executives were also more generous than those that had applied to the 70,000 staff removed from the public sector by the Kennett government and those being offered to non-executive public servants facing redundancy at the State Revenue Office (Johnston 1999).

Apart from the abolition of individual contracts and the removal of the senior bureaucrats, the Bracks government has proceeded quietly in administration of public sector employment and industrial relations. Many of the initiatives of the former government remain, including the controversial performance pay system now earmarked for review by the PSC (Johnston 2000). Within the public service, the 'super ministries' whose heads' along with Kennett, exercised such tight control over the

public service also remain unchanged, although more than half the department heads inherited from the Kennett administration have gone. Even so, there has been no wholesale 'clean-out' of the senior ranks of the bureaucracy. Two new department heads named in March 2000 were promoted from within the ranks of the VPS while the new head of the Premier's Department, Terry Moran, recruited from Queensland, has extensive experience in the VPS, as has the incoming head of the Human Services Department, Patricia Faulkner.

Conclusion

The Bracks government has acted promptly to deliver on at least some of its election promises to Victoria's public servants. Collective bargaining and a more consultative and inclusive approach to employee relations in Victoria — the key demands of the labour movement — have been restored.

However, a number of Labor's commitments have not as yet been realised. Among these is the promised legislation repealing the Public Sector Management and Employment Act 1999 which Labor promised would be the vehicle for ensuring *inter alia* the independence of the public service and the restoration of appeal and grievance mechanisms. But even in the event that such legislation is introduced, it is unlikely that the VPS will revert to a more traditional career service model or that the special relationship between the public sector unions and the government that was so peculiar to Victoria will be restored. The unions representing the VPS have changed considerably from those so closely associated with successive Liberal governments in the postwar era and there is little pressure from these unions to dismantle many elements of the Kennett 'revolution'. There is thus no real agitation from the public service unions for the state's employees to be brought back under a state-based industrial relations system, or to see a revived PSB with elected members, or for the state government to again collect union fees on their behalf. There is also no audible demand from these unions for the return of a protected labour market, traditionally a principal preoccupation, or for the fiat on individual employment contracts promulgated in November 1999 to extend to senior executives and department heads.

The tacit acceptance of aspects of the Kennett government's public sector employment and industrial relations policies by the public sector unions appears to be shared by the new government. The record of the Bracks government suggests that it is generally comfortable with its predecessor's model of public employment in which a more flexible public sector workforce reported to line managers exercising an unprecedented range of powers, while strategic control was exercised centrally directly by the Premier himself. Under the 'measured and overtly incremental approach' (Economou 2000) of the Bracks government, the market-based philosophy of the former government has not been rolled back, as Labor's pre-election rhetoric suggested, but has been maintained with only minor modifications at this stage.

Note

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