

Public Policy in Australia and the Politicisation of the Employment Relationship? A Framework for Analysis

Keri Spooner
University of Technology Sydney

Ali Haidar
Monash University

INTRODUCTION

The issue of politicisation of the public service has been of considerable interest in a number of countries over recent years as governments have sought to exercise greater direct control over the executive wing in order to insure effective and rapid implementation of their policy changes (ABC, 2002; Colley, 2001; Pullin & Haidar, 2003; Spry, 2001). Although such concerns can be readily evidenced in writings going back more than a century (Lord Morley, 1889), in Australia there has been an increased academic and societal interest in the matter over the past twenty years in response both to government appointments and replacements of senior public servants, as well as a number of high profile crises in which an independent public service voice appeared absent (Emy & Hughes, 1988; Hawkes, 1999: 80; Henderson, 1986:33; Mulgan, 1998a: 3; Nethercote, 2003; Parker & Nethercote, 1996; Podger, 2004:9-10; Weller, 1989: 369).

However, despite this growing interest, 'politicisation' remains a very imprecise term (Parker, 1989b:384-5). Public servants have been regarded as politicised because they themselves are politically aligned or their actions are seen to be political. Such observations do not assist in developing a useful understanding of whether a public service is or is not politicised (Weller, 1989). Public servants can be no more immune from 'being political' than any other person who holds views and votes. Similarly, public servants in implementing the policies of a government must also be seen to inevitably act politically. Often it is the appointment of persons to senior public service positions on the alleged basis of their political views or affiliations, or their removal, which is seen to be the source of a politicisation. This view is also problematic in terms of developing a definition of politicisation that might be tested empirically. Politicians should be able to expect that their senior public servants will act diligently to implement government policies and it is not useful to regard them as politicised because they do so. Nor is it thought constructive to regard the appointment of an individual with particular political views as necessarily constituting a politicised appointment, as the decision may have been based upon other criteria.

The issue of public service politicisation has been a focus of attention because it is seen to impact upon the quality of government and democracy in those countries that have adopted a Westminster style of government. Even in the United States of America (USA), which has not, such concerns are apparent (Peters, 1995:91). Yet, a precise definition of a politicised (*Vis a Vis* non-politicised) public service remains elusive. The purpose of this paper is to present a model that may assist in advancing the inquiry. When Northcote and Trevelyan issued their *Report on the Organisation of the Permanent Civil Service* in 1854, they placed the employment relationship of public servants at the core of their model, known as the Westminster system (1854). Indeed, what public servants do, whether they act for party purposes, can be seen within the Northcote-Trevelyan model to be secondary to the nature of their employment relationship. The Northcote-Trevelyan specifications for an independent civil service provide the basis for a model of a non-politicised public service.

A theoretical framework for analysing the relationship between public policy in Australia and politicisation of the employment relationship (ERp) is first presented, based upon relevant literature. The ERp is seen to be a control relationship in which such control is exercised through human resource management (HRM) functions, all of which were essentially addressed in the Northcote and Trevelyan Report (1854). Weberian style 'ideal types' (Weber, 1968:20-1) are developed which contrast the 'rational, independent, non-politicised' with the 'irrational politicised' forms of the ERp. Each of these 'ideal types' consists of exhaustive and mutually exclusive dimensions (Kitay & Marchington, 1996:1265,78,87). They are not meant to mirror reality but rather to provide analytical tools (Weber, 1968:21). Their usefulness is explored through two case studies: the appointment of one Department Secretary and the termination of another.

Politicisation of the Employment Relationship

In order to develop an understanding of a 'politicised' ERp, consideration will be first given to defining the relationship itself and then to the meaning of 'politicisation' of that relationship within the context of public sector employment.

Defining the Employment Relationship

The origins of the law defining the ERp in Australia are to be found in English law which was itself influenced by the Roman (Macken, O'Grady, Sappideen, & Warburton, 2002:1-2). For workers, the transition from a feudal to an industrial society was evolutionary and "it was logical that the courts would apply the rules of contract law to the relationship" (Macken et al., 2002:6). The courts determined that the degree of control exercised in the relationship by the person employing, the amount, nature and direction of that control distinguished the employment contract from other relationships (Macken et al., 2002:7) Thus the 'control test' came to determine the existence (or not) of an ERp and, in legal terms, its existence was seen to be dependent upon whether or not a contract of service existed. In recognition of the difficulties associated with determining the existence of an ERp, the courts have developed an extended control test to assess 'whether on balance, the range of features or indicia of the working relationship are more in the nature of an employer/employee relationship or otherwise' (Clayton & Mitchel, 1999:22). The 'control test' 'has to be applied to the reality and the totality of the relationship between the two persons- and not to the work itself' (Macken et al., 2002:8).

Control of the ERp is also a common focus of industrial relations (IR), human resource management (HRM) and employment relations (ER) approaches. Fastenau and Pullin (1998) argue that the IR perspective focuses upon workers' efforts to control the ERp and the employer response, while HRM focuses on management's efforts to direct and control the relationship. Keenoy and Kelly (1998) view the nature of work and its power relations as the fundamental focus of their study of the ERp and argue that industrial relations institutions and changes can be best understood in terms of three great struggles for the control of the workplace: the distribution of rewards, the limits of managerial autonomy, and the difficulties in securing employee commitment (Keenoy & Kelly, 1998).

The sources of power and authority in the ERp are many but may be classified according to the dimensions of the relationship identified in the literature, namely, the economic, legal, social, psychological and political (Spooner & Haidar, 2005a). Control is exercised through a range of practices and behaviours including formal and informal rules and regulations, strategies and sanctions. Fells (1989:480-1) cautions that control can be achieved by actions that do not necessarily have the appearance of controlling activities such as through the introduction of particular practices including even those of a participative nature. Whilst control in the ERp may be contested, legally and economically, the balance of power rests with the employer.

While it is apparent that control is exercised and resisted within all aspects of the ERp, a distinction must be made between the relationship itself and its intended outcomes or the

work performed. Behrend (1957:505) argues that within every ERp there are two main elements, an agreement on wages and an agreement on the work to be done. This domain of activity in which an 'agreement' is reached may be viewed as the HR domain. Beyond and somewhat separate to this area of activity, however, lays the domain of work itself. Haidar and Pullin (2001:645) offer the notion of there being two areas in which power is exercised in the ERp, which they term the task and HR domains. The task domain includes the actual performance of the job in which the worker is seen to be under the command of a superior (Haidar & Pullin, 2001:644-6). The HR domain includes 'the span of control over HR functions' such as recruitment, compensation, development, promotion and dismissal (Haidar & Pullin, 2001:645-6)..

Control by the employer is exercised over the relationship primarily through the HRM function. Although control over the performance of specific tasks and job functions may be exercised, control over the relationship is ultimately actioned within the HR domain. While effective organisations may well demonstrate a strong inter-relationship between their control of both task and HR domains, these remain conceptually and in many cases, practically quite separate. A worker who fails in the assigned tasks may still be promoted, while one who exceeds the job requirements can nevertheless face retrenchment. The power to control job performance (or task elements) derives from the power to control the HRM elements of the ERp.

A study of the exercise of control by an employer over an employee must be focussed upon the HRM domain of that relationship and the way control is actioned through the various HRM practices. Taxonomies of HRM functions are widely available within the literature and recited in almost every contemporary HR text as well as numerous journal articles (De Cieri & Kramar, 2003; Dessler, Griffiths, & Lloyd-Walker, 2004; Devanna, Fombrun, & Tichy, 1981; Gardner, 1993; Pynes, 1998). Bobko and Russell (1991) analyse the use of taxonomies in HRM and identify that they are attempts at classification but note that as there is no overarching definition of HRM, those taxonomies that have been developed reflect the purpose for which they were proposed. Bobko and Russell (1991) identify and examine the categories of job analysis, selection as well as training and development. A great deal of contemporary HRM literature focuses upon the strategic planning function and/or HR information systems as important HRM functions (Pynes, 1998). These examples highlight the need to distinguish between HRM functions which are essentially managerial (such as planning and information processing) and those that directly impact upon the ERp itself. From a review of the literature it can be seen that the key functions impacting upon the ERp are the acquisition (recruitment and selection), reward and motivation (compensation), development (training and development), maintenance (performance management) and separation (termination and retirement) activities of HRM (De Cieri & Kramar, 2003; Nankervis, Compton, & Baird, 2002; Stone, 2005:10).

The HRM functions directly impacting upon the ERp are the mechanisms of employer control over the relationship and provide the basis for an analysis of whether this is politicised. To re-encapsulate the argument advanced so far: the ERp is a control relationship in which the employer exercises superior power to control; although the relationship witnesses the exercise of control through both task and HRM domains, it is within the latter that ultimate control is actioned; and, it is through the performance of specific HRM functions that control is executed.

Politicisation of the Public Sector Employment Relationship

Since the introduction of the modern public service in the mid nineteenth century, concerted effort has been made to keep politicians out of public management and legal provisions have been introduced to prevent interference of politicians in the employment aspects of public managers and also from the detailed implementation of public policies (Spooner & Haidar, 2005b). One purpose of the introduction of this arrangement was to get rid of the problems associated with the patronage system, which many claimed lead to inefficiency and

ineffective use of public money (Farnham & Horton, 1996:50-1; Spooner & Haidar, 2005c:44; Spry, 2000:5). A politicisation of public employment restricts the opportunity for citizens to work in government by limiting such access to those who are liked by politicians and, this in turn, may deprive the nation of the use of technical expertise existing within a country (Stahl, 1971:29).

Politicisation means different things to different people. Politicisation in the context of the public service tends to have a variety of meanings and there is a tendency to regard all political activities of public servants as part of a politicisation process (Curnow, 1989: 17-21; Haidar & Pullin, 2004: 1-3; Mulgan, 1998a:3; Parker, 1989a:384-5; Weller, 1989:369-70). Weller argues that politicisation is to be seen as the opposite of political neutrality and identifies politicisation with two tendencies which can be said to contradict two aspects of neutrality: the use of the public service for party purposes and the appointment, promotion and tenure of public servants through party political influence (Weller, 1989). Indeed, Weller asserts that partisan appointments are at the core of charges of politicisation (1989:374). He argues that politicisation of the public service does not occur when public servants express their opinion or even when they take political action as part of their trade union activity nor is politicisation simply the reverse of neutrality (1989:370-1). It is argued that public servants have the right to be politically active as long as their personal preferences do not overrule government policy or jeopardise the impartiality of the public service (1989:371). Politicisation, according to Weller, becomes possible when the public service is used for party purposes and where there is party political influence in the appointment and promotion of public servants (Weller, 1989:371). Thus, the two major forms of politicisation are seen to be, first, what public servants do and, secondly, the nature of their employment relationship.

The Northcote-Trevelyan Report of 1854 also placed the employment relationship of public servants at the core of their model, known as the Westminster system (1854). The Report is generally recognised to mark the origins of the meritocratic Civil Service (Farnham & Horton, 1996:47). Within the Northcote-Trevelyan model, what public servants do (task domain) can be seen to be secondary to the nature of their employment relationship (HRM domain). If the employment relationship is politicised and party faithfuls are appointed, or incumbents are rewarded for acting for the party, then what they do can be seen to flow from their employment relationship. Key aspects of the HRM of public servants lies at the heart of whether a public service is politicized or independent. Ministerial responsibility forms a vital component of the principles underpinning the Westminster style of government adopted in the United Kingdom, Australia and elsewhere (Lord Morley, 1889; Marshall, 1989). Critical elements of the Westminster principles are that public servants should be politically neutral (Audit Office Of NSW, 1998:s.6). The Westminster style of representative democracy requires that ministers are responsible because they are conferred with executive power. The power that public servants exercise emanates from this power conferred on ministers. Under the Westminster principles, public servants are expected to provide frank and fearless advice but to be politically neutral servants of their ministers and to implement the policies laid down. A major recommendation of the Northcote-Trevelyan Report (1854) was to create an arrangement whereby politicians will gain frank and fearless advice from public servants whose employment relationship is not controlled by them but rather by an independent public service agency (Haidar & Pullin, 2004:12). Appointment on merit, security of tenure and a career service are complementary principles seen to support the neutrality of public servants and which epitomised the public service ERp in Australia and elsewhere for more than 150 years.

In drafting the Australian Constitution, attention was directed as to how persons should be appointed to the Commonwealth Public Service and as to 'how best to guard against Their improper dismissal' (Spry, 2000:2). The Constitution (1901:s.67) provides for the appointment of public servants and requires that the power to appoint and remove 'shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority'. Spry

(Spry, 2000) provides an informative account of the development of legislation governing the ERp of public servants and argues that 'an overriding concern of those who contributed to the debate over the (first) Public Service Bill was to ensure that political patronage played no part in appointments to, or promotions within, the Commonwealth Public Service'. The first relevant legislation was the *Public Service Act 1902* (Cwlth) which provided for entry to the Service by 'open, competitive, and written examinations', appointments at a junior level with more senior positions closed to outside entrants' (*Report of the Committee of Inquiry into Public Service Recruitment, [Boyer Report], 1959; Spry, 2000:8*). Since that time, there have been many amendments to the laws governing the terms of employment pertaining to public servants and to Departmental Heads (previously Permanent Heads) in particular. However, the nature of these changes may not have altered the basic principles underpinning the system until the 1970's.

It appears that growing dissatisfaction with the public service, partly related to perceived barriers to ministerial control, was not fully evident in Australia until the 1970's (Spooner & Haidar, 2005c:47-9). A rapid expansion in government functions and a consequent growth in the Australian public service after World War II had resulted in a loss of ministerial control over the expanded range of administrative and policy matters, with power shifting to senior public servants or 'mandarins' (ABC, 2002; Pullin & Haidar, 2003; Weller & Smith, 1977:6; Wilenski, 1986:17). The election in 1972 of the first Australian Labour Party (ALP) government in twenty-three years, and one that was committed to a broad reform agenda, resulted in growing concern over issues of ministerial control and the political neutrality of public servants (Weller and Smith 1977:7). In 1974, the Prime Minister announced the establishment of a Royal Commission to examine government administration (RCAGA, 1976; Spooner & Haidar, 2005c). Since that time, there has been considerable change in the nature of public sector employment, including significant reforms to some aspects of the HRM of senior public servants. A comprehensive analysis of these changes is beyond the scope of this paper although the various legislative amendments have been outlined by Spry (2000) and others. The detail of these reforms is very lengthy but include the introduction of: a greater political role in the appointment and removal of departmental secretaries - no longer 'Permanent Heads' (1984); provision of fixed term appointments for Departmental Secretaries (1993); provision for the Prime Minister to appoint (and terminate) a person to be the Secretary of a Department for a period of up to 5 years (1996); provision for the Prime Minister to appoint, terminate and determine remuneration of Secretaries of Departments (*Public Service Act 1999*:S.56-61).

By 2006, it would appear that the Northcote-Trevelyan model of an independent public service is dead in terms of the ERp of very senior public servants in Australia, now known as 'Secretary of a Department'. It appears that appointment on merit, as assessed through some form of independent assessment of qualifications, the notion of belonging to a 'career service' and tenure are no longer applicable in the ERp of Departmental Secretaries. The current legislative provisions appear to provide for the Prime Minister to employ and terminate these leading, key personnel in the Australian public service virtually at will (Spry, 2000:11; *Public Service Act 1999*: s.58). This is suggestive of a politicisation of the public service ERp but this notion has not been properly examined.

As previously discussed in this paper, although the issue of public service politicisation has attracted a good deal of attention, the associated analysis has been somewhat lacking in terms of both definitions and serious scrutiny. The focus of this paper is upon a particular aspect of the debate and, as argued previously, the most core and important aspect, that of the employment relationship itself. Utilising the insights gleaned from our examination of the nature of the employment relationship and that of 'politicisation', Weberian ideal types will be constructed to facilitate our further analysis.

A Framework for Analysis

In developing our analytical framework, we are guided by Weber (1968), Kitay and Marchington (1996), Northcote and Trevelyan (1854) and by the very many writers who have provided taxonomies of the HRM functions.

The focus of our study is upon identifying whether the employment relationship of senior public servants is politicised. Such an enquiry virtually begs the use of Weber's 'ideal types', as a 'politicised' relationship only has meaning when compared to a 'non-politicised' form. The nature of public sector employment, and the changes that have occurred within it, form an integral part of public sector organization and "to discuss organizations in any intellectual terms other than the most mundane necessarily is to draw strength from the well of Max Weber's intellectual legacy" (Clegg, 1990:3). The development of 'ideal types' requires the identification of the exclusive and exhaustive features of each (Kitay & Marchington, 1996).

The exclusive features of the 'rational' (Weber, 1968:22), non-politicised, independent or 'open competitive' type can be deduced from the work of Northcote and Trevelyan (1854) with the assistance of HRM taxonomies. Northcote and Trevelyan proposed a public administrative system based upon an independent agency exercising the HR function, appointment on merit as assessed by a proper system of examination conducted by a politically independent and constitutionally appointed Board, promotion based on merit and reports of superiors, 'a proper system of transfers' between departments' and annual increments of salary conditional upon satisfactory work (1854). These elements of an independent agency exercising control over the employment relationship, appointment on merit, access to promotion and tenure subject to satisfactory performance comprise the key elements of the traditional career public service in Australia (RCAGA, 1976; Spooner and Haidar, 2005b). Implicit within these elements is the establishment by the independent agency of a formal and impartial mechanism for assessment and review. Also, superannuation or a pension entitlement also contributed to the removal of patronage as well as 'underpinning a permanent career structure' (Farnham & Horton, 1996:47)

In direct and extreme contrast, the exclusive features of the 'irrational' (Weber, 1968:22), dependent or politicised type can be deduced from a direct comparison with the characteristics of the first type: exercise of the HR function by politicians, absence of formal measures to assess candidates for the job, individually based remuneration (rather than a formalised salary scale), appointment to a position (rather than a 'service' and hence lack of guaranteed access to a career structure) and termination at the discretion of the politician.

The elements of the Northcote- Trevelyan (1854) model of an independent public service provide the basis for developing ideal types that are 'exclusive', while HRM taxonomies assist in ensuring that the characteristics identified under each type are 'exhaustive'. The two 'ideal types' developed for analytical purposes are set out in Table 1. These two types have been constructed as extreme end points on a continuum. At one end we have the open-competitive type and, at the other, we have the politicised type. It is likely that actual cases of HRM practices would fall somewhere between these two extremes, in many combinations of the key elements. For example, although politicians may have exercised the final authority to employ a person for a position, they may have advertised the position nationally and based their selection on job related criteria.

Table 1: Public Sector Employment Relationship Ideal Types

HRM Functions	Open-competitive	Politicised
Source of Authority	Independent Agency	Vested in politicians
Recruitment:	Position advertised nationally	No public advertisement
Attraction		

<i>Opportunity to Apply</i>	All interested citizens have a chance to apply and receive consideration	Citizens known to politicians have a chance to apply and receive consideration
<i>Scope of consideration</i>	Everyone meeting job standards are considered	'Unwanted' persons excluded from the process
<i>Position Criteria</i>	Job standards formalised and made public beforehand	Job standards hidden and improvised during recruitment process
Selection Method	Interview panel	No formal interview process
<i>Relevant Standards</i>	Job related standards determine selection	Standards unrelated to job determine selection
<i>Matching applicant to job</i>	Assessed through objective tests; i.e. qualifications, work experience	Assessed through subjective criteria; i.e. applicant's opinions, views, affiliations
Selectors	A board whose members are independent of politicians	Politicians or a board comprised of members controlled by politicians
Transparency	Process is transparent and subject to legal challenge	Process is 'behind closed doors' and not subject to legal challenge
Compensation Rewards	Salary and conditions according to formalised scale	Salary and conditions determined individually - no formalised scale
Motivation	Rewards linked to formal requirements for promotion	Motivational rewards not linked to formal career structure
Training and Development	Formally approved training programs linked with criteria for promotion	No formal linkage between position and training and development or career progression
Performance Management Conduct	Conducted by an independent agency with formalised procedures	Conducted by politicians as they see fit
Standards	Formalised standards apply	Standards <i>ad hoc</i> or unknown
Separation Termination	Subject to formal performance requirements and review by an independent agency; life long or tenured employment	Subject to politician's decision and discretion; fixed term employment
<i>Retirement</i>	Formal rules apply; public funded pension entitlements specific to public servants	At discretion of politicians; no entitlement to public funded, public sector pension

The ideal types set out above demonstrate characteristics that are exclusive in that there is a clear and measurable difference between each of those identified for each type and they are also exhaustive in terms of the taxonomies identified in the HRM literature. These types will be employed to assist an analysis of two particular cases of public sector ERps: the appointment of one Department Secretary, Max Moore-Wilton, and the termination of another, Paul Barrett.

Case Studies

The appointment of Mr. Max Moore-Wilton to Head the Department of Prime Minister and Cabinet in 1996 and the dismissal of Mr. Paul Barratt from the position of Secretary of Defence have each been the focus of allegations of political interference in the employment processes (Palmer, 2006). These case studies are only explorative in terms of the model we have developed. It is recognized that considerably more in-depth research must be undertaken in order to adequately test our ideal types. However, this case study analysis will, it is believed, advance knowledge in this field because, as far as we are aware, a systematic

analysis of the HRM elements pertaining to the appointment of senior public servants has rarely been undertaken.

Max Moore-Wilton

Mr Max Moore-Wilton was appointed Secretary to the Department of Prime Minister and Cabinet from May 1996 (Mulgan, 1998b). Prior to his appointment, Mr Moore-Wilton enjoyed a 'distinguished career in both the private and public sectors' and immediately prior to appointment as Secretary to the Department, he was National Director, Policy Co-ordination and Priorities Review, Australia Stock Exchange (1995-96) (Charlton Event Solutions, 2006). Although he was not openly connected with the Coalition parties and had in fact been appointed Chief Executive of the Australian National Line by an ALP government, his appointment was seen as 'political' because he came immediately from 'outside' the public service and because 'his reputation for tough restructuring and down-sizing was clearly instrumental in his appointment and indicated that he had been chosen as the Coalition Government's person to spearhead retrenchment of the public service'(Mulgan, 1998b; Schroder, 1997).

Mr. Moore-Wilton was employed under the provisions of the *Public Service Act 1922* (Cwth) (as amended and consolidated at 6 February 1996). Under the provisions of the then *Act*, the Governor-General may appoint a person to 'an office of Secretary' on the recommendation of the Prime Minister. (s.36). The *Act* provided that the Prime Minister must not recommend an appointment to the Governor General unless, in the case of appointment of Secretary of Department Prime Minister and Cabinet, a report had been obtained from the Public Service Commissioner and, in the case of other Departmental Secretaries, a report was obtained from the Secretary to the Department of the Prime Minister and Cabinet (s.36). The *Act* made it clear that the Governor-General must act in accordance with a recommendation made by the Prime Minister (s.37(11)). The *Act* also provided that an appointment shall not exceed five years (s.37) and that the Governor-General may terminate the appointment on a specified day and if, after that day the person does not hold another office of Secretary, he or she is retired from the Public Service (s.37(5)).

Under the then *Act*, all Department Secretary's pay was set by the independent Remuneration Tribunal (*Remuneration Tribunals Act 1973*). However, Mr Moore-Wilton allegedly approved for himself an additional tax-free accommodation allowance of \$17,000 'because he was still technically a resident of Sydney' (Sydney Morning Herald, 1 November 1997). The \$330 per week allowance has been estimated to be three times the level recommended by the public service guidelines. Mr Moore-Wilton's salary was 'just over \$150,000' but with allowances and perks, this rose to a total package of about \$210,000. Therefore, in terms of the key factors constituting our 'ideal types' as set out in Table 1, it can be seen that the facts of the appointment as far as they are known, point towards a 'politicised' type, although there are some factors evident which do not neatly fit this type.

All facts of this case are not known and, indeed, only secondary data has been identified and used in this paper. However, on the basis of the information available, it is possible to provide some tentative analysis of this case, as presented for discussion in Table 2. As can be seen, the information available concerning each of the key HRM functions suggests a tendency towards politicisation. None of the facts associated with the exercise of HRM functions in the Moore-Wilton case were seen to fit the 'open-competitive' type. However, it can also be seen that whilst the exercise of some functions was thought to be consistent with a 'politicised' type, many were seen to demonstrate elements of both types and thus conform to neither; for example, under the *Act* at the time of the appointment of Mr Max Moore-Wilton, it was the Governor-General who had the power to appoint with advice from the Prime Minister, who was in turn required to receive a report on the candidate from either the Public Service Commissioner, in the case of an appointment to Department Secretary of Prime Minister and Cabinet (PM&C) or, in the case of other Department Secretary appointments, from the Department Secretary of PM&C. In effect, this of course means that the Prime

Minister had the power to make an appointment but that it was subject to certain requirements.

Paul Barratt

Mr Paul Barratt was appointed to the office of Secretary to the Department of Defence in late 1997 for a fixed-term of five (5) years commencing February 1998 (Spry, 1999). At the time of his appointment (and latter dismissal), the provisions of the *Public Service Act 1922* governed the appointment and the removal from office of Secretaries of Departments, as set out above in the previous case study. At the time of his appointment, Mr Barratt held office as Secretary to the Department of Primary Industries and Energy and he had a long history of senior appointments in the Australian Public Service, although interrupted by a term as the Executive Director of the Business Council of Australia, from 1992 to 1996. Following the election of October 1998, in which the Government was returned, all Secretaries of Departments were left in place although there was a Cabinet reshuffle and the Hon John Moore MP was appointed Minister for Defence (*Barratt v Howard & Ors [2000] FCA 190 (10 March 2000)*).

Table 2: Appointment of Mr Max Moore-Wilton

HRM Functions	Open-competitive	Other	Politicised
Source of Authority		Governor General-advice from PM-advice from Commissioner or Dept Sec PM&C	
Recruitment: Attraction			No public advertisement
Opportunity to Apply			Citizens known to politicians considered
Scope of consideration			'Unwanted' persons excluded
Position Criteria		Dev by politician but subject to input from senior officer	
Selection Method			No formal interview process
Relevant Standards		Capacity to downsize considered relevant	
Matching applicant to job		Mixture: politicians' criteria plus report by senior officers	
Selectors			Politicians
Transparency		Limited Review	
Compensation Rewards		Mixture of formal determination & individual discretion	
Motivation			Not linked to formal career structure
Training and Development		Not Known but thought not to be formally provided	
Performance		Not Known but	

Management		understood to be at politicians discretion	
Conduct			
Standards		Not known	
Separation			Subject to politician's decision; fixed term
Termination			
<i>Retirement</i>			Fixed term contract

On 22 July 1999, Mr Barratt was advised by Mr Moore-Wilton, Secretary to the Department of Prime Minister and Cabinet, 'that his appointment would be terminated by the Governor-General on the advice of the Prime Minister in early August' (Australian Financial Review, 30 July 1999:4; Spry, 1999). On 27 July 1999, Mr Barratt obtained an interim injunction from the Federal Court restraining the Prime Minister, Mr Howard, 'from advising the Governor-General to terminate Mr Barratt's employment' (The Australian, 28 July 1999:1).

In a series of court cases between July and August 1999, Mr Paul Barratt took action in the Federal Court against the Prime Minister, the Secretary and the Commonwealth to prevent the termination of his appointment (*Barratt v Howard & Ors [2000] FCA 190 (10 March 2000)*, ; *Barratt v Howard [1999] FCA 1132*, ; *Barratt v Howard [1999] FCA 1183*). In March 2000, the Full Bench of the Federal Court upheld the previous decision of Justice Hely who had found that there was no legislative intent in the Act to exclude natural justice and that Mr Barratt was entitled to be told the grounds upon which a recommendation that he be dismissed was proposed, and to be heard. His Honour accepted that policy or political considerations could be factors in the decision to terminate and that, therefore, it was not necessary that there be a cause such as a fundamental fault on the part of the Secretary. The Court found that a Minister's loss of trust and confidence in a Secretary was sufficient to justify termination if that lack of trust and confidence was prejudicial to the effective and efficient administration of the department and it rejected arguments that a Secretary is entitled to be given reasons for the Minister's loss of trust and confidence in him or her (Commonwealth of Australia, 2000).

Although the Prime Minister may decide to recommend the dismissal of a Secretary for a wide range of reasons, the recommendation has 'a direct and immediate effect on the applicant's interests' and for this reason the obligation to provide procedural fairness arises (para 53). Justice Hely said that procedural fairness requires the applicant "be told the grounds upon which a recommendation is proposed to be made to the Governor-General that his appointment be terminated, and he is entitled to be heard in relation to those grounds or reasons" (para 68). However, the applicant need not be given an oral hearing and is only entitled to put his case to the Secretary of Prime Minister and Cabinet. Accordingly, Justice Hely argued, where the Prime Minister acts on the reasons given by his departmental Secretary, the Prime Minister need not also hear the applicant before making the recommendation to the Governor-General. However, should the Prime Minister make the recommendation to the Governor-General on grounds other than those contained in the Secretary's report, the applicant may be entitled to a further hearing (Spry, 1999).

Justice Hely held that Mr Barratt, the applicant, was entitled to procedural fairness because he is the holder of a 'public office', that is, the 'office of Secretary', and his appointment is regulated by the Public Service Act (para 12). His Honour stated that "At common law, and apart from statute, Crown servants hold office at the pleasure of the Crown, and may be dismissed at any time without notice, and for any reason, or for no reason. There is no right to be heard before dismissal" (para 7). However, as the Public Service Act now governs the appointment of the applicant, the common law position no longer holds, and the applicant cannot be dismissed at pleasure (Spry, 1999). He may only be dismissed in accordance with the terms of the Act, and any exercise of a power under the Act is 'subject to general public

law principles which govern the exercise of administrative discretions' (para 12). The position of the applicant would be otherwise if his relationship with the Government were one of mere employee/employer. In that case, he would only be entitled to be heard before dismissal if the statutory contract of employment conferred such a right (para 11).

To consider the issues and the judgement of the Paul Barratt case in the context of our 'ideal types', we need to focus upon the proposed features of the HRM function: Separation-Termination as shown in Table 3.

Table 3: Public Sector Employment Relationship Ideal Types- Separation

	Open-competitive	Politicised
Separation Termination	Subject to formal performance requirements and review by an independent agency; life long or tenured employment	Subject to politician's decision and discretion; fixed term employment

It would seem that the facts of the Barratt case quite clearly do not conform to the 'open-competitive' type. However, while the facts of the case more closely resemble those of the 'politicised' type, there are some qualifications or differences. Paul Barrett was appointed under a fixed term employment contract and the judgements in the Barrett case confirmed the right of the Prime Minister to terminate the Department Secretary's employment without there necessarily being a fault on the part of the employee. These facts are consistent with a 'politicised' type. However, the Barrett judgement also found that the employee, as a holder of a public office, has a right to procedural fairness which requires that the person is entitled to be told the grounds upon which a recommendation for termination is made and is entitled to be heard in relation to those grounds or reasons, by the Secretary of Prime Minister and Cabinet. These rights may be seen to limit the politician's discretion identified under the politicised type.

CONCLUSION

The focus of this paper has been upon developing an improved understanding of the implications of public policy for the employment relationship of senior public servants. It has been argued that despite the interest and importance attached to the notion of an 'independent' *vis a vis* 'politicised' public service, the meaning of politicization has remained imprecise. We have attempted to address this area of need by drawing on Weber's ideal types and HRM taxonomies to develop a theoretical approach for assessing whether the employment relationship is politicised. The two case studies presented in the paper are based upon secondary data only and it is recognized that more in-depth research of the issues is needed in order to effectively test the 'ideal types' and the research approach outlined. However, by providing details of two exclusive and exhaustive types of HRM public sector functions, we would argue that we have advanced the cause of actually assessing whether or not particular public policies have resulted in a more politicised public service. Although our analysis primarily addresses the situation of public sector employment, it has significant implications for understanding how public policy as well as HR practices impact upon independence and control in the employment relationship more generally.

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