Lessons to be Learned from Failure in a Department of State: 
the Immigration Department in Australia

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Abstract

It is rare for departments of state to fail. Yet the Australian Department of Immigration and Multicultural Affairs was found in the mid-2000s to have experienced an internal breakdown of basic operating procedures, culture and leadership. The department had acquired a high profile because of the government focus on keeping illegal immigrants out and locating and deporting those already in Australia. The failure of governance in the department was revealed through a succession of public inquiries into the handling of the detention of citizens. The head of the public service described these cases as the worst that had happened recently and attributed them to a failure of public administration and executive leadership. A major reform agenda was launched to address the extensive deficiencies. The case has broader implications for other departments and for public administration in general. In order to account for the layers of complexity, the paper develops an interpretative framework based on four perspectives – corporate governance, rule of law, new public management and political management.
Departments of states are the foundation stones of the machinery of government. They are the core instruments for the political executive as a source of policy advice and the means for ensuring implementation. Yet the Australian Department of Immigration and Multicultural Affairs failed in the mid-2000s. It was publicly exposed through several public inquiries to have undergone a breakdown of internal operating procedures, culture and governance. The case was officially represented as a systemic failure of leadership and public administration.

Policy failure is depicted as ubiquitous (Bovens and ‘t Hart 1996) with a range of programs, projects and public works. There is also the odd ‘systemic failure’ evident in government departments (Gregory 1998), but more usually of a specialised nature.

The research questions are first to explain how a department of state experienced failure. An organisational trauma of this magnitude is not simply accounted for. In order to work through the layers of complexity, an interpretative framework is developed based on four sets of ideas that have both academic reference points and operational relevance and meaning. Each encompasses principles that simultaneously shape or provide endorsed ‘better practice’: corporate governance, new public management, political management and the rule of law.

The second is to consider how the explanatory factors interacted to reinforce the degree of failure. The greater fluidity of operating principles under comprehensive and continuing reform has meant that the potential for conflict is pronounced. The case for attending to organisation design has been made by Aucoin (1990), in order to make the necessary accommodations between contradictory tendencies, but this is a rather more complicated process where a broader range of principles and practice are involved.

**Interpretative framework**

The department of state is embedded in a set of highly elaborated rules and practice that prevail across the public service system. The maintenance of the system is based around relationships that provide for accountability and oversight involving central agencies and parliament.

In addition, there are the factors that pertain to the responsibilities of the department, and which dictate in large part how it functions: the character of its tasks, how it is organised to fulfil its mandate, and the local traditions and conventions covering how
it interprets and handles its responsibilities, how it is led including the political distance from the minister. As departments in the Australian system have had major responsibilities devolved to them, for which the departmental secretary is responsible, this level assumes particular importance.

Under traditional public administration, the relationships were more defined, boundaries clear and procedures, rules and hierarchy well-understood. With the reformed public service, this was not necessarily the case. The interface between the department and the centre, political executive and with its agents and customers, provide scope for fault-lines to develop and relationship breakdowns to occur. Performance based relationships are a characteristic source of such issues (Bouckaert and Halligan 2008).

A number of frameworks for interpreting are available. A transformative perspective seeks to account for the range of internal and external factors that shape change through an approach that emphasises the complexities and dynamics of how they interplay (Christensen and Laagered 2007). An ‘interpretative approach’ is favoured for analysis of fiascos with a historical-institutional analysis offers advantages for the necessary understanding of context. Four interrelated layers of meaning have been distinguished as forming the basis of judgements about policy fiascos, described as a type of event distinguished by ‘intense public and political arousal’ (Bovens and ‘t Hart 1996: 148). The first, the assessment of the ‘event’, was uncontested having being exhaustively and publically investigated (although the responsible portfolio minister was somewhat muted in her response), and was without doubt highly negative and damaging to the reputation of the department. The second is also clear up to a point – whose most senior management paid the price by being removed – but is otherwise more ambiguous at the political level. The other layers – explaining and evaluating behaviour – are useful for analytical purposes and point to the complex mix of factors that underlay the case.

In this case, several sets of ideas have influenced the organisation and operation of government departments. Two fundamental factors across the public service have been new public management (NPM) and political management. New public management had been implemented for more than a decade, and included the elements of devolution, outsourcing, risk management, outcomes and principal/agent. Political management has centred on the dynamic relationship and interactions between politicians and public servants, and has crystallised around the more persuasively and dominant role of the political executive and how it has exercised control.
There were also two other perspectives of significance. A rule of law conception was of particular relevance because of the nature of much of the casework of the department, which required rule application. Finally there was the set of ideas of the corporate governance perspective, which emerged to address the conditions created by NPM, but was also a logical extension of NPM. The accumulation of these different ideas poses tensions because contradictions are apparent and require conscious and careful attention and variations in the interplay of the different factors can produce different outcomes (Aucoin 1990; Christensen and Laagered 2007). An institutional perspective can focus on how disconnects have arisen and the expected check and balances have failed to operate.

With a rule of law conception a public organisation constituted under or operating in accordance with legislation should fulfil the requirements as specified there. The tasks should be clear under the law and the agency is expected to employ appropriate staff under conditions conducive to executing responsibilities. Under traditional bureaucracy the application of the law was part of a well-ordered framework of rules, procedures and hierarchy. Immigration in the early 2000s was not however operating within a public service system in which administrative law prevails as in Europe, but one dominated by cross-cutting managerialist and political agendas and moreover where there was a second source of law, namely that issuing from the international community. The application of law in a contested environment where entrepreneurship, managerial autonomy and performance and results are emphasised makes for an interesting mix.

New public management was in the ascendancy in the 1990s. The first phase of Australian reform (from the early 1980s) displayed incipient NPM in several respects, but the dominant theme was management improvement. The high commitment to neo-liberal reforms, following the advent of a conservative Coalition government in 1996, led to the public service becoming highly decentralised, marketised, contractualised and privatised. The new agenda centred on competition and contestability of service delivery, contracting out, client focus, the application of the purchaser/provider principle, and greater use of the private sector, and a new financial management framework placed a greater emphasis on outputs and outcomes, and extending agency devolution. Important themes were principal/agent agency theory and being risk takers within an environment that favoured entrepreneurship. The devolution of responsibilities from central agencies to line departments and agencies was also significant with a diminished role for central agencies.
being one consequence. The Department of Finance was so heavily purged that there was
debate about whether it would survive organisationally.

*Political management* centres on the relationship between the political executive and
the public service and the departmental minister and secretary. The demands of responsible
government and the continuing exaltation of traditional principles had provided a dynamic
that has ensured evolution and stretching of the Australia variant of the Westminster
model. Reform programs were driven by the concern with increasing political control as a
means to achieve more effective implementation of policy. Governments embraced
managerialist approaches to enforce and maintain control with managerial change
becoming mainstream, and complementary to political agendas. This produced a long-term
debate about the consequences of greater political influence on the public service through
the increasingly use of political (or ministerial) advisers and the handling of appointment
processes for departmental secretaries (Halligan 2001; Podger 2007).

Even though the quest for responsiveness eroded traditional boundaries, this was
partly countered by the strengthening of a commitment to public interest and statutory
values that affirm the identity of the public service. However, questions remained about
how politicians were operating in practice because of the indications of exploitation of the
concept of a neutral and professional public service. This took the form of covert pressures
on public servants – which may be identified more with specific ministers – and are
therefore hard to pinpoint conclusively. The ambiguities and issues in relations between
politicians and public servants provided fertile ground for public issues to arise.

Even though overt political appointments were not much used in Australia, practice
suggests that the government’s desire for greater control was realised. The combination of
strong political direction and changes to the employment basis and insularity of the senior
public service redistributed power between ministers and public servants and produced
greater responsiveness. Careers were no longer guaranteed. The promotion of a climate of
insecurity for senior officials during the Howard Government’s first two terms moved
beyond ‘new government’ behaviour to consolidation of an unclear approach. One
diagnosis was of ‘personalisation’ based on a narrow conception of politicisation – one
linking appointments and use of the public service for party ends (Weller & Young 2001:
172–73). In a broader sense that includes other dimensions of politicisation, the system
was pronounced as politicised (Mulgan 1998).
As for corporate governance, the experience of the private sector was absorbed following international governance failures in the 1990s when private companies were exposed as having poor governance practice. At a time, when the influence of private sector ideas on the public sector reached new heights under a neo-liberal government, the language of corporate governance was transferred to the public sector for that reason and because of the need to revisit how to provide a corporate basis to rapidly changing and managerialised organisations regardless of whether they were broad based.

The Australian National Audit Office defined corporate governance as ‘the process by which agencies are directed, controlled and held to account. It is generally understood to encompass authority, accountability, stewardship, leadership, direction and control’. Good governance outcomes are depicted as a product of commitment to a standard line-up of good governance practice (through leadership, ethics and performance culture), stakeholder relationships, risk management, internal and external conformance and accountability, planning and performance monitoring, and review and evaluation of governance arrangements (ANAO 2003).

Each sets of ideas had a bearing on the operation of the department and for each, there were several options available as to how they could be handled, if the department tended to dysfunctional choices, the cumulative effect would of course be disastrous.

Case and context of governance failure

The Department of Immigration and Multicultural Affairs (DIMA) was found during 2005 and 2006 to have experienced an internal breakdown of basic operating procedures, culture and leadership⁴. The department had acquired a high profile because of the government focus on keeping illegal immigrants out and locating and deporting those already in Australia. The failure of governance in the Department of Immigration and Multicultural Affairs was revealed through a succession of inquiries into the handling of the detention of citizens. The head of the public service, Dr Shergold, is reported as describing ‘the cases as the worse thing that has happened in the public service in recent years’, and blaming the failures on public service deficiencies. He observed that it represented failures in IT systems, record keeping and public administration (ABC Online 2006).

The first investigation was the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau (Palmer 2005), which arose out of the illegal detention of a permanent resident (see Appendix for details). The second involved the unlawful detention
and removal from Australia of a citizen, Vivian Alvarez (Commonwealth Ombudsman 2005).

Palmer reported an astounding range of weaknesses, flaws, and disconnects within an overall managerial approach that was ‘process rich’, ‘outcome poor’ and operating within an ‘assumption culture’ that did not question matters based on flawed assumptions (2005: x, 164-8).

In the light of the Rau and Alvarez affairs, a further 247 cases of improper, and possibly unlawful, activity by DIMA staff were referred to the Commonwealth Ombudsman in 2005-06 for investigation. In a number of reports the Ombudsman examined how and where the department made mistakes, and in a synoptic statement (2007) reviewed ten lessons of public administration, including adequate controls on the exercise of coercive powers, managing complexity in decision making, checking for warning signs of bigger problems and control of administrative drift.5

The immigration case led to a process of reflection and scrutiny across the public service over three years because the case had broader implications for other departments. It produced a centrally-driven program for highlighting the challenges of governance (see the responses from the Australian Public Service Commission 2006, 2007a, 2007b).

For the Immigration Department, the scrutiny produced a major reform agenda to correct the deficiencies, including substantial staffing changes, in particular the replacement of the entire top executive of the department (secretary and deputy secretaries) and nearly half of the senior executive service. Under new leadership, the department was argued to be back on track (Metcalfe 2007; Tucker 2008).

*Immigration in Australian public policy*

Immigration is inherently contentious. This results from Australian community attitudes, where there have been vocal supporters and detractors of most immigration policies for decades. In fact immigration law has been ‘a highly contested area of public policy, ever since federation in 1901’ (Metcalfe 2007: 4).

Into this problematic policy area, the Department of Immigration was established in 1945 with the role of protecting Australia’s borders through tight entry controls, and of facilitating entry to populate the country through migration. The border control role was aimed initially at excluding Asians and ‘coloureds’ and later as the control of ‘aliens’,
while the facilitation role aimed to increase Australia’s population by encouraging and attracting migrants from selected European countries, mainly Britain.

These opposing roles of keeping unwanted people out of the country while encouraging others to enter have maintained a tension within the department. The divisive nature of migration policy continued also in the community, with sections opposing further settlement of people, and others advocating open borders to allow ready entry to the country. The result has been constant and significant public debate and critique of the department for both increasing and decreasing programs.

The questions of asylum-seekers and border protection became issues during the 2001 elections as a result of series of incidents involving boat people. The Howard government’s election victory was attributed in part to its stance on boat people seeking asylum. The government policy from 2001 was to use detention camps outside Australian territorial waters for asylum seekers (known as the Pacific Solution). Events overseas also had a strong effect on the Australia. Apart from the longer-term reverberations from 11 September 2001, these were the terrorist attack in Bali (2002) and the commitment of Australian forces to the war in Iraq. External issues of security and terrorism dominated both the domestic and international landscape with the key strategic and political challenges being in areas of domestic security, border protection and counter-terrorism.

DIMA operating environment

It is especially important in the consideration of an organisation such as DIMA to examine the environment in which it exists because this environment created vulnerabilities in the department. Apart from the elements of the DIMA environment that were bound up in the evolution of the department since 1945, there were three significant contributors to departmental culture that were not present, or at least not to the same extent, as in other agencies.

The first was the social and political atmosphere in which DIMA operated, which created a frequently hostile atmosphere, and encouraged the department to be introspective and to reject criticism. Secondly, there was an obvious problem with purchasing coercive services. This related to the payment of a fee for detaining people, and consequent need for encouragement of behaviours and controls to ensure that vulnerable persons whose freedom was removed, were treated appropriately. This last point is further exacerbated, in detention matters, by the involvement of a private firm in delivering the detention service.
on DIMA’s behalf. Thirdly, DIMA staff were making decisions that in other contexts could be argued to be contrary to Australian law.

**Interpretations**

**Application of the law**

As a matter of course DIMA officers were expected to make decisions that might be considered in other contexts contrary to Australian law. For instance there were migration and refugee programs that discriminated on gender, religion, race, and disability. Unless care was taken in distinguishing between immigration law and other law this could encourage staff in the organisation to engage in organisational behaviour that treated the law less strictly than other organisations may have. A related factor was the expectation that 'quite junior officers' interpret law with inadequate training and inadequate executive leadership.

Some decisions made by DIMA staff provide insights into the attitudes to law within the department. Some DIMA decisions are publicly lauded by media and others, even where a similar decision might be considered contrary to Australian law in a different context. For instance, matters that are contrary to Australian discrimination laws are routinely taken into account in making migration decisions. Examples were those suffering disabilities TB or HIV/AIDS will have a more difficult path to acquire a visa. DIAC established a refugee assistance category exclusively for Coptic Christians, and a 'Women at Risk' Program at the request of the UN, both of which are arguably based on discriminatory practice. This is not illegal, but it does require training to distinguish the context and legality of these issues. Without such training poorly trained decision-makers may think that Migration Act decisions are not subject to the same legal standards as decisions made in Australia (and especially where there is little available recourse to a review process).

There has been a concentration of the department on ‘lawful’ decision-making. This may reflect the need to distinguish between internal domestic law, and immigration law operating outside Australia’s borders. If the UN, government and public opinion thought this activity commendable, which is arguably discriminatory, it is not surprising that employees' attitudes to lawful decision-making led to a culture of more liberal interpretation of the law than in other agencies. That is, if an activity that could be considered unlawful in most circumstances is commendable in certain situations, then it is
reasonable for staff to believe that unlawful acts may be justifiable if the outcomes are for the benefit of the Australian (or world) community.

Clear and strong leadership was required therefore to address the tension created by this ambiguous legal mandate. However, as Comrie (2005) and Palmer (2005) both noted, the interpretation of what was in the public interest was rarely communicated to lower level staff who were tasked with administering this and making decisions, and this was repeatedly characterised in their reports as staff exercising powers without adequate leadership or training.

It is worthwhile examining this lawfulness issue in more detail. DIMA conducted a staff survey in 2005 through an independent research survey firm, the first for ten years. In relation to ethics, the survey found that only 58 per cent of respondents thought DIMA’s values were clear; 44 per cent did not agree that the department maintained high ethical standards; and 50 per cent did not agree that management decisions were consistent with APS core values. Significantly 26 per cent of the respondents did not fully support the values for which the department stood and 32 per cent did not believe strongly in the goals and objectives of the department (DIMA 2005: 15). While the timing of the survey was within months of very adverse public criticism of the department, the results are nevertheless of concern from the perspective of corporate governance behaviour. When combined with requirements that encouraged over-achievement of outcomes in an ethically ambiguous environment, it is perhaps surprising that only 247 cases of potentially wrongful action were referred to the Ombudsman.

**New public management**

One consequence of NPM was that the department became more independent. This enabled, and perhaps encouraged, re-establishment of an insular culture in DIMA of not listening to outside views. This culture had been consciously and systematically corrected during a decade of departmental reform that started in 1985. Devolution and risk management encouraged departments to explore ways of operating independently, primarily aimed at improving efficiency.

A second consequence was that central coordinating agencies took a more hands-off approach. In DIMA’s case, the Department of Finance and Administration (DoFA) attempted to adopt purchaser-provider arrangements where DoFA – as purchaser of government services – offered financial incentives to DIMA to, amongst other matters,
detain and remove people, thus creating incentives to maximise revenues, with few financial incentives for 'correct' decision-making. So as DoFA applied the screws to ratchet down costs, those elements that could be 'counted' in producing revenue – such as granting a visa, or removing a person from Australia – remained prominent, while those that did not count – such as training, and consideration of human rights – suffered.

An irony of the introduction of broader NPM reforms into the APS was that the devolution of control, and tailoring of management and operations to the needs of individual agencies, allowed the re-emergence of older, self-contained cultures, rather than encouraging more open ones. Despite attempts at reform, the environment in DIMA returned to one where strong views were held by key policy makers, frequently without reference to independent advice outside the organisation, marking a return to an insular culture. Ironically, considering the focus on reform, the introduction of managerialism in the 1980s and of market-driven practices associated with NPM in the 1990s, increased opportunities for influential elites to form silos within the department and hold strong policy views about immigration. When the hostile external environment, and reluctance to listen to external criticism, is factored in, it is unsurprising that despite the effects of a systematic legislative reform program, an introspective culture re-emerged in the department in the late 1990s.

This evidence of structural changes having little effect on culture should have created some warning to departmental executives of the need for subsequent structural reforms in the department, but in 2005 the Palmer Report noted DIMA had redeveloped: ‘a culture that was overly self-protective and defensive, a culture largely unwilling to challenge organisational norms or to engage in genuine self-criticism or analysis’ (Palmer 2005: 9).

The introduction of the concept of managing risk is the second significant element. The move to a risk-managed approach to enhance outcomes had as its primary motivation the improvement of effectiveness and efficiency. However, management of risk introduces an acceptance of risk, and consequentially an implicit acknowledgement that things can go wrong. The reduced outlays in maintaining traditional control systems come at the cost of increasing the likelihood of wrong decisions (cf Howard 2006).

One consequence of a risk-managed approach is the evolution of mechanisms to drive efficiency through the development of entrepreneurial behaviours by public servants. One significant strategy was the system driven by the Department of Finance (DoFA), as the central financing arm of government, in which departments were rewarded with funds
according to their production of government outputs. This was modelled on a purchaser (DoFA on behalf of government) and provider (individual departments delivering services) arrangement. For instance, in DIMA, a payment was made for each visa granted, each unlawful non-citizen detained and removed, and so on. A concern with such an approach was that the public sector dealt with matters, such as the deprivation of liberty, which were not amenable to management by market forces. Such matters required a higher standard of public servants because of the significance of these decisions and the nature of the power available to enforce them (Keating 1997: 126).

These purchaser-provider arrangements were reflected in a third element, a purchasing agreement with Finance, a product of the NPM era. During the 1990s, DoFA established purchaser-provider arrangements with a number of government agencies, including core government departments such as DIMA. These enabled DoFA to purchase services from those agencies on behalf of government at a set cost. This cost was annually reviewable. Until 2003-04, DIMA had such an arrangement with DoFA to provide a substantial proportion of its services. This in effect meant that DoFA was purchasing visa and detention decisions from DIMA on a per-decision basis. In other words, for some years prior to the Rau and Alvarez incidents, DIMA used a funding model based on a purchasing agreement that was focused on ‘bottom line’ accounting, much like the private sector.

DIMA used the payments made under this agreement to independently fund its contractual payments to its detention centre provider, Group 4 Falck Global Solutions Pty Ltd (Group4). The involvement of Group4 as a third party imposed a further layer of complexity on the detention arrangements administered by DIMA. Not only were there quasi-contractual arrangements between DIMA and DoFA, but there were independent contractual arrangements between DIMA and Group4. There is no evidence that corporate governance arrangements in Group4 contributed to DIMA’s failures, but the duty of the commercial enterprise was to provide a profit to its owners, and was expected to focus on this. DIMA on the other hand was focused on a government objective of lawful and reasonable detention and treatment of unlawful non-citizens.

DIMA staff indicated that the contract did not require the contractor to determine the legality of detention (Tucker 2008), but to detain any person nominated by DIMA. There were therefore no financial incentives for Group4 to identify wrongfully detained individuals. In fact it could be argued that the incentives provided would encourage
Group4 to continue detention in order to maximise payments being made to them, rather than identify persons for release, because release incurred a reduction in payments under the contract. If the contract had been constructed to provide incentives for wrongful detention, this would have provided a check in the system, through the use of contractual remedies to identify wrongful detention, but this had not occurred.

Purchaser-provider models, such as those used between DoFA and DIMA, can be an extremely restrictive approach to service delivery and, while effective in simple relationships, are difficult where relationships are complex and interdependent, and especially where, as in the case of DIMA, political considerations are involved (Richards and Smith 2006: 185). The contract-like arrangements to locate and remove people from Australia, on their own, can omit implicit legal and moral implications. This is exacerbated where public servants are asked to act entrepreneurially in depriving people of their liberty. ‘The funding arrangements … between the government and DIMIA created an incentive for managers to put in place … targets which were all about getting more deportations and more people put into detention centres’ (McGrath 2005: 1).

The subsequent parliamentary review highlighted the Comrie Report’s observation that ‘the culture of DIMA was so motivated by imperatives associated with the removal of unlawful non-citizens that officers failed to take into account the basic human rights obligations that characterise a democratic society’ (SLCLC 2005: 72).

The purchasing agreement rewarded DIMA with funding for units of work completed. For instance, the more unlawful non-citizens that DIMA could remove, the more funds DoFA would provide, and this then allowed departmental management to do even more. This pursuit of targets that produced funding was devolved down to fairly low levels. For example, State and Territory Directors in DIMA were asked to manage resources according to funds generated from the agreement, and individual managers and staff at lower levels were aware of the pressing need to meet those targets. While quality and fairness issues were factored into the targets they were poorly defined, typically setting a requirement to review a small sample of the decisions made. Implementation difficulties could also be expected unless there was concerted effort devoted to training, particularly in more remote areas where training costs were high. The lack of such commitment to training was highlighted in the Palmer and Comrie reports: ‘from about 1995 until 2003 DIMIA offered little formal training to its compliance and investigations officers’ (Comrie
2005: 35). Similar criticisms were scattered through both Reports relating to management, database and other training.

It would generally be expected that some care would be taken to ensure that the initial funding levels were correct and accurately reflected the effort required to achieve the tasks set. While there is no overt evidence of this, it would be surprising – as both DoFA and DIMA were relatively new to this process – if all activities in DIMA were correctly assessed and funded by these arrangements. However, even if these initial levels were set correctly, DoFA, as government purchaser, was driven to reduce costs each year, and this drive for reductions in expenditure invariably put pressure on the less easily measured, and therefore easier to ignore, elements of the agreement such as quality. So where funds were not adequate, or where activities were not demand-driven through the purchasing agreement, other mechanisms were required to cover costs. By the 2001-02 financial year this pressure to reduce costs was impacting negatively on departmental funding and a new purchasing agreement was negotiated with DoFA.

So as financial pressure increased the pressure also mounted on managers to concentrate on the measurable, quantifiable components that attracted funding and, notwithstanding that departmental instructions mandated quality controls and checks, pay less attention to those components that were indirectly funded, such as reviewing decision-making for lawfulness or correctness, or the welfare of clients. An illustration of this conduct can be found in the area responsible for removing unlawful non-citizens from Australia (see SLCLC 2005: 70).

As well as the pressure to ignore human rights, the purchasing agreement inevitably established a second pressure for managers to concentrate on those elements and activities of the agreement that provided maximum surpluses. This meant that as well as funding the activities that were linked to the agreement, any surplus revenue generated could be redirected towards those activities that were not sufficiently funded, or allow the potential for managers to individually interpret how government policy should be executed. While there are protections in the system to prevent improper financial management, agency theory suggests that in these circumstance managers might be tempted to indulge their own particular self-interest (Eisenhardt 1989: 5) or at least their own interpretation of government policy.

By 2002 there was recognition of the problems the agreement was causing when the department moved to end these arrangements with the DoFA. The Purchasing Agreement
was simply acknowledged as no longer providing ‘an appropriate basis for determining resource requirements’ (DIMIA 2003: 13).

Public adverse criticism may also have helped this reconsideration. However, while the agreement itself was abandoned, the Palmer and Comrie Reports both highlighted that little effort was devoted to addressing the cultural issues associated with several years of focusing on financial performance, and lawfulness in favour of correctness.

**Political management**

The breaking up of the APS into separate departments, each with their own distinct conditions of service and pay rates; the move of the heads of APS departments from the status of ‘permanent head’ to ‘department secretary’; and the decline in central agency control, resulted in a level of independence much closer to that in the private sector. While this process was started in the mid 1980s by the Hawke government (Halligan and Power 1992: 102), it was taken to a new level by the Howard government as part of its philosophy of making the public sector more like the private sector to encourage economy and efficiency. The changes inevitably produced an increased level of responsiveness from secretaries of departments to ministers and government. As such it showed an implicit adoption of agency theory, with government filling the role of owners, and secretaries of managers. It also came with a requirement for secretaries to manage their own organisations with fewer external rules and controls. Each secretary was to work under a performance contract with his or her minister, with dismissal of a secretary, at least in theory, as the ultimate sanction for non-performance. This change tightened the control exerted on secretaries by ministers.

Questions about political-bureaucratic relationships followed on from earlier debates about the role of ministerial advisers, particularly in the aftermath of the children overboard affair (Weller 2002). The Senate Finance and Public Administration References Committee (2003) inquired into the conduct, management and accountability of ministerial staff. The committee heard evidence about difficulties in relationships between advisers and public servants, the need to clarify roles and responsibilities and the dangers of politicisation. The Senate Legal and Constitutional Committee (SLCRC 2006: 11) found that the role of minister’s office and ministerial advisers to be important in ministerial responsibility. Ministerial staff were playing a significant ‘role in many respects of the department’s day-to-day administration’. It also reported that serious problems derived
from the ‘upper echelon of DIMIA’s compliance and detention management area – that is senior officials that on occasions would be in daily contact with the Minister and his or her advisers’ (SLCRC 2006: 12-3).

The covert pressures on public servants mentioned earlier could produce perverse results, as expressed by one senior immigration official, ‘we have critical accountability to government and minister who we serve … not the public at large, but to servicing the public. If the government want us to go out and shoot the public then we will. But we do have a requirement for openness in dealing with stakeholders'.

The head of the public service, who was quoted earlier for observing that ‘it was a failure of public administration’, also stated that ‘it was failure in some ways of executive leadership’ (Shergold on ABC Online 2006).

The impact on officials came through the cultural framework. The cultural problem was attributed by the Palmer report as a being in part a consequence of the ‘framework within which DIMIA has been required to operate’ (Palmer 2005: ix). This was regarded as demonstrating the government’s immigration detention policy. The “defensive and self-protective” culture that has developed in the department has been a direct result of the government’s tougher immigration policy, led and implemented by Ministers Ruddock and Vanstone. The committee believes that senior officials within the department have been captured by the government’s own culture’ (SLCRC 2006: 11). Similarly a media observer (Barker 2005: 54) was more pointed: ‘The ministers set the tone, the parameters and the mindset. The officials senior and otherwise, were merely mechanics trying to read and respond to what ministers want’.

As for ministerial responsibility: ‘Responsibility for a departmental culture of harshness must lie, in part, with the minister herself … who backed a hard-line asylum and refugee policy (Mulgan 2005). The role of the minister and her staff were outside the terms of reference for the Comrie inquiry (SLCRC 2006). A Senate Select Committee (SLCMDMM 2004 xiii) observed that ‘the lack of transparency and accountability of the minister’s decision making process is a serious deficiency’.

**Corporate governance**

One explanation for how inappropriate behaviour was allowed to develop in an organisation can be sought in its attitude towards and neglect of aspects of corporate
governance. Achieving outcomes can be a problem in organisations with coercive powers, especially where adequate checks are lacking.

The nature of the organisation managing administering opposing outcomes also provided difficulties in administration and corporate governance. DIMA’s dual roles of simultaneously encouraging and discouraging the entry of people to Australia attracted quite diverse staff to work in the organisation. The gatekeeper role, especially in compliance areas, appealed to law enforcement professionals who frequently held strong views about protecting Australia. Staff with these views needed leadership that carefully balanced the gatekeeper role with the actual views of government which were, at least in their public utterances, relatively moderate. This required corporate governance arrangements that engaged the organisation’s owners (ie, the minister) to ensure that the correct outcomes were pursued. It was the corporate governance leadership arrangements that set the tone for this.

When issues such as the politically charged debate of August 2001 regarding the Motor Vessel Tampa arose, political rhetoric fostered extreme views in departmental staff that needed the tempering influence of strong leadership and careful control to address this culture and prevent excesses. In the case of the Tampa incident, departmental staff prosecuted the government agenda with great, and arguably excessive, zeal. While the government in a political sense was no doubt grateful for the electoral windfall this produced, in the greater scheme of government administration it laid the foundations for the cultural failures that were to follow.

Corporate governance arrangements were introduced to safeguard organisations from failure. Such arrangements generally fell into two categories – formal (or structural) elements and informal (or behavioural) elements. Corporate governance arrangements had the potential to protect DIMA from failure, but its lack of focus on the informal elements of procedure and lawfulness created limitations on its capacity to respond. This operating paradigm was criticised by the Palmer review as process-rich and outcome-poor. In interviews it became apparent that perceptions of corporate governance in DIMA reflected the mechanistic, process-driven nature of its operations. Those interviewed, confirmed a view that corporate governance focussed on structural elements, such as compliance with law, and legal decision-making, rather than the behavioural issues of ‘correct’ decision-making (Tucker 2008). This encouraged a culture that made decisions that were lawful, but
not necessarily fair, and the definition of lawfulness was largely left in the hands of staff who lacked training and supervision:

DIMA officers are authorised to exercise exceptional, even extraordinary, powers. That they should be permitted and expected to do so without adequate training, without proper management and oversight, with poor information systems, and with no genuine quality assurance and restraint on the exercise of these powers is of concern. The fact that the situation has been allowed to continue unchecked and unreviewed for several years is difficult to understand (Palmer 2005: ix).

DIMA’s review of corporate governance in 2003 provides some insight into the organisation’s understanding of the corporate governance concept. Interviews with key personnel in the department indicated that the review of corporate governance arrangements was actually a review of committee structures and addressed only a narrow range of corporate governance elements of a structural nature. While not explicitly acknowledged, behavioural elements had in fact been wound back.

For instance, the department’s internal investigations function, which had for several decades responded to every allegation of impropriety levelled at any DIMA staff member in Australia and overseas, had been reduced in size and function (Tucker 2008). This internal investigations area was responsible not only for investigation of complaints, but also training staff in lawfulness and ethical conduct at a personal level (other areas dealt separately with training in lawful decision-making regarding visas and the like), and promoting personal accountability. This was potentially a key behavioural resource for the department to ensure proper conduct and redress any negative cultures, as allegations could be made to this unit anonymously and would be investigated.

Reporting a restructuring of committees as a review of corporate governance suggested that the department had a narrow understanding of the concept, and this was born out at interview. This concentration on process elements contrasted markedly with views of other departmental secretaries interviewed, who stressed the primacy of behavioural elements for successful corporate governance in departments of state. This was consistent with the views expressed in the private sector by observers (eg Longstaff 2003: 1), of the importance of behavioural elements of corporate governance.

Senior executives reflected DIMA ambivalence towards corporate governance. One viewed corporate governance as a process control, reinforcing the traditional public service structures and largely unchanged from what existed prior to NPM: ‘The rhetoric is new but
... we spend a lot more time talking about it than getting on and doing it’. Another, the most junior person interviewed, expressed a more rounded understanding of corporate governance, but thought the arrangements needed improvement because it ‘[wasn’t] visible enough...Why aren’t issues on corporate governance being distributed to staff? There is no buy-in’. Departmental attitudes suggested that corporate governance was considered a passing fad from which DIMA would take what it needed, and leave the rest. A senior respondent observed that he was ‘not interested in public administration. [I’m] interested in results for government, results for clients, improving the way we do our work. We are a bread and butter department. I’m not too fussed about APSC and ANAO models. They are useful to some if they have the time…We use it when appropriate’ (quotations from Tucker 2008). This respondent lost his job with the spill.

**Conclusion**

This is a case of a department of state that actively resisted central scrutiny, failed to mediate the pressures when at the forefront of political attention, and was unable to reconcile the different internal agendas. Both line staff and senior management were found to be culpable and operating under a dysfunctional culture.

One paradox was that immigration was one of the most scrutinised areas of government, yet this activity failed to expose deep-set problems. The high level of parliamentary and public scrutiny can also be regarded as part of the explanation for departmental defensiveness and insularity and the ‘assumption’ culture that concentrated on ‘black letter’ law rather than the objectives or reasons for the law in the first place.

This complex case has required several layers of explanation in order to interpret the outcomes from an institutional perspective. The initial cases were found, as with other examples of policy failure, to be ‘embedded in a bigger pathology of cultural change (Bovens and ‘t Hart 1996: 113). The combination of new public management and political management produced a highly vulnerable department of state when placed under pressure. Under these circumstances the application of law was faulty and the situation was compounded by the inability to make use of basis governance principles.

Failures arise when ‘institutional checks and balances and organizational safeguards that are to prevent … going astray’ are inoperative (Bovens and ‘t Hart 1996: 112). The conclusion of the Ombudsman (2007: 6-7) was that inadequate checks and balances were in place in DIMA. The case points to the careful attention required to the basics of public
administration and the balance between the components of the public service system: the relations between the political executive and public servants, the role of central oversight and devolution to departments, and internal leadership and governance.

Appendix: Summary of Main Cases

Cornelia Rau

Ms Rau was apprehended by police in Queensland in March 2004. At that time she identified herself as a German tourist and gave a number of names which were variants of Anna Sue Broetmeyer and Anna Sue Schmidt. She also gave conflicting accounts of her date of birth, her origins in Germany and her activities in Australia. In an effort to establish her identity Queensland State police contacted DIMA, who found no record of her, and instructed the police to hold her in custody as a suspected unlawful non-citizen. The Inquiry found this action to be reasonable, subject to the qualification that her status needed to be established quickly, implying hours, or at most days, would be a reasonable period for such enquiries.

In April 2004 Ms Rau was transferred to Brisbane where, because there was no detention centre, she was accommodated in the general population in a women’s prison. There she remained for six months. Between April and October sporadic enquiries were made by DIMA to identify her, including attempts to secure her a German passport. In August she was psychiatrically assessed as not being mentally ill. On 11 August (while still in immigration detention in a Brisbane prison) she was reported missing by her family, which started independent police enquiries.

In October 2004 Ms Rau was transferred to an immigration detention centre (called Baxter) near Adelaide, presumably to allow for her administrative detention outside the prison system. She was again diagnosed as not having a mental illness, but rather centre staff assessed her as having a personality disorder and exhibiting ‘attention seeking’ behaviour. In November 2004 attempts were made to have Ms Rau further assessed in a psychiatric unit but an administrative mix-up incorrectly removed her from the waiting list. On 24 November, some eight months after her initial detention, a case-manager in Baxter Immigration Detention Centre raised the view that Ms Rau might be an Australian citizen.

In January 2005, the German Consulate notified DIMA that despite intense efforts, they could not identify Ms Rau as a German citizen. After speaking with her, the German Consul advised DIMA that Ms Rau’s grasp of German was ‘childlike’. The same month newspapers published a story about Ms Rau titled ‘mystery woman held at Baxter could be ill’. On 3 February 2005 Ms Rau’s family became aware of the story and contacted NSW police who contacted DIMA. Ms Rau was released from detention on 4 February and transferred to a mental hospital.

The Palmer inquiry found that while DIMA had acted reasonably in initially detaining Ms Rau, it was improper to continue her detention for 10 months. Palmer severely criticised DIMA management of this case, but his most scathing comments were aimed at the failure of corporate governance in the department. He found that DIMA failed one of the most vulnerable in the Australian community, and placed the blame squarely on the tone and culture set by executive leadership of the department: ‘a strong government policy calls for strong executive leadership ... [the problems in DIMA] stem from a failure of executive leadership’ which had allowed deep-seated cultural and attitudinal problems to develop in the department. He criticised DIMA leadership for allowing a culture to develop that was self-protective and defensive, and for encouraging a management approach with a ‘predominant, and often sole, emphasis on the achievement of quantitative yardsticks rather than qualitative performance’.

The Palmer Report into the detention of Cornelia Rau exposed a number of problems with the department that, had they been isolated, may not have been disastrous to DIMA administration. While there were some damning findings that DIMA officers were exercising extraordinary powers
without adequate training or supervision, much of the problem may have been left to internal correction of what could have been characterised as poor care and diligence. Distressing as this may sound to some, departmental management might have attempted to redress the failures surrounding the Rau case through cultural change and training programs. However a second case exposed a culture that not only demonstrated the same inexcusable maladministration that caused harm to Ms Rau, but explicitly condoned such action as an example of effective administration.

Vivian Alvarez

In March 2001, Ms Alvarez was found after falling into a deep drain in country New South Wales and taken to hospital where she was subsequently admitted as an involuntary psychiatric patient. She had also sustained spinal injuries that limited movement in her arms and legs. The matter was reported to DIMA by a social worker who thought Ms Alvarez might be an illegal immigrant. DIMA interviewed Ms Alvarez in May and, without further investigation, presumed her not to be lawfully in Australia (what DIMA call an unlawful non-citizen).

In July 2001, DIMA officers took Ms Alvarez from Lismore hospital to Southport, near Brisbane, for formal interview. During interview she said she was an Australian citizen, but initial enquiries by DIMA officers did not confirm this. On two further occasions Ms Alvarez gave sufficient details for her positive identification but, for reasons Comrie could not determine, DIMA failed to act on this information. The lack of diligence and attention in these investigations, involving as they do a person with serious physical and mental health problems has been soundly criticised: ‘the management of Vivian’s case was poor, lacking rigour and accountability’. As a result of this lack of diligence, DIMA remove Ms Alvarez to the Philippines on 20 July, notwithstanding last minute concerns raised by the Philippines Consulate.

Until this point the Alvarez case shows the same administrative incompetence as the Rau matter. However, the situation then moved from being a series of administrative blunders to something far more serious, an appalling disregard for the rights of Australian citizens. No argument of safeguarding Australia’s borders could justify such illegal activity.

Two years after her removal, in July 2003, Queensland police enquiries caused two DIMA staff to search the DIMA databases and establish that Ms Alvarez had been wrongfully removed from Australia. They both informed a senior officer who took no action. In August 2003 a television program Without a Trace showed a photograph of Ms Alvarez, and another DIMA officer again identified to the same supervisor that Ms Alvarez had been wrongfully removed. Again that supervisor took no action. Independently, a different officer who had seen the television program identified Ms Alvarez as being wrongly removed, and reported this to a second supervisor. This second supervisor took no action. Comrie noted that Ms Alvarez’s wrongful removal was subject to ‘considerable discussion’ in DIMA’s Compliance and Investigations Office in Brisbane in 2004, but still no action was taken.

Ms Alvarez’s unlawful removal was eventually acknowledged in 2005, but only after her husband in Australia brought the matter to the attention of the office of the Minister for Immigration. The Comrie Report notes that, but for this, Ms Alvarez’s situation may have remained unknown to the Australian community.

The Vivian Alvarez case was a much more significant failure than the Rau case. Officers not only unlawfully removed an Australian citizen, but failed to remedy the situation when it was discovered. In the investigation and reporting of the matter Comrie observed that the DIMA culture appeared to condone this action. As well as possibly being illegal, such an attitude demonstrated a fundamental failure of behavioural corporate governance within DIMA – a failure in leadership to act, and a failure of that leadership to ensure the exercise of proper ethical standards, Comrie found that this leadership encouraged a culture that was so motivated by the need to remove people that ‘officers failed to take into account the basic human rights obligations that characterise a democratic society’.
References


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1 This a revised version of the paper presented to the EGPA Conference ‘Innovation in the Public Sector’ on 3-6 September 2008, at the University of Rotterdam.

2 The department’s name has changed several times over the last decade from Department of Immigration and Multicultural Affairs (DIMA) to Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), back to Department of Immigration and Multicultural Affairs (DIMA), and currently Department of Immigration and Citizenship (DIAC). At the time of the major public inquiries into its operations it was known as DIMA, and this is the acronym used in this paper.

3 But also contested by Gregory if impersonal questions of control systems are the focus. See Joint Committee of Public Accounts (1992) for a failure of Customs in Australia.

4 For a full treatment of the corporate governance dimensions, see Tucker 2008.

5 Other basic points were maintaining quality records, active management of difficult cases and removing obstacles to inter-agency exchange of information.

6 In 2001 the motor vessel Tampa arrived at Christmas Island with 430 asylum seekers, which the crew had rescued, from the Indian Ocean. The government responded with the ‘Pacific solution’ which began a policy of incarcerating asylum seekers, who had not set foot on Australian soil, in camps on Nauru and Manus Island. This was electorally beneficial but polarised Australia, attracting condemnation in many circles, but no censure from a majority of voters.

7 DIMA was the only organisation to use the term ‘lawful’ in interviews when discussing corporate governance. Even staff interviewed in the Attorney-General’s Department did not use the term (Tucker 2008).

8 The current DIMA Secretary (2007) has quoted this comment in several public addresses in explaining the need for major change in the department.