

# TRANSCRIPT OF EVENT

## SECRETARY SERIES: MICHAEL PEZZULLO AO

**Michael Pezzullo (Keynote speaker)**

Secretary

Department of Home Affairs

**Clare Walsh (Host)**

Deputy Secretary and Chief Operating Officer

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CLARE WALSH:

Well, good morning everybody and welcome to today's Secretary Series event with Mike Pezzullo. But before we get started, can I join in acknowledging the Ngunnawal people, the traditional custodians of the land on which we meet today and pay my respects to elders past, present, and emerging, and also extend that respect to any First Nations people that are joining us today.

Can I welcome our speaker, Mike Pezzullo, AO, Secretary of the Department of Home Affairs. Mike doesn't really need too much introduction, but I also want to acknowledge the several distinguished colleagues that we have joining us today. Many of you on the front row here, senior executives, guests, members and partners.

So as Caroline said, the Secretary Series is a cornerstone of the IPAA events calendar, providing an occasion for colleagues to speak about their portfolio and areas of interest, including challenges and opportunities and I don't need to really say that there is no shortage of challenges and opportunities that we as the public service are faced with and are engaging with constructively.

So, in terms of the format for today's event, I'm going to ask soon Mike to come up and give his keynote event, keynote speech rather. And then I would like to ensure that those of you here are able to ask some questions. It's a fantastic opportunity. You don't often get the opportunity to ask questions of a Secretary like this, and so please start, as Mike's speaking, thinking about the kinds of questions you'd like to ask because I would like it to be as dynamic and interactive as we can make it. And really, if you've been to an IPAA event before and never had the opportunity to ask a question, I'd really encourage you to do that.

And then after we've concluded the questions time, I will wrap up the event but there is an opportunity for some networking afterwards, so I encourage you to stay around for a bit longer.

And with that, can I now introduce Mike Pezzullo? Mike was appointed the Secretary of the Department of Home Affairs on December 20th, 2017, and prior to that he was the Secretary of the Department of Immigration and Border Protection. From February, 2013, Mr. Pezzullo was Chief Executive Officer of the Australian Customs and Border Protection Service, having joined the service as its Chief Operating Officer in July, 2009.

Before joining Customs and Border Protection, Mr. Pezzullo was Deputy Secretary: Strategy in the Department of Defence, having been appointed to that position in January, 2006, Mr. Pezzullo joined the Department of Defence as a graduate in 1987. He worked in Defence until 1992 in a variety of strategic policy and intelligence positions. Please join me in welcoming Mike to the stage.

MICHAEL PEZZULLO:

Good morning colleagues. I'm really honoured by your giving up

your time and attending this morning. I also add my acknowledgement of country and particularly the specifically the Ngunnawal people, the traditional custodians of this land.

My address today is entitled Structure and Responsibility in Government. Chapter two of the Australian Constitution is entitled The Executive Government. Its austere 10 sections set out a system of responsible government without ever once using the term or describing it. Responsible government had emerged in Britain and there became institutionalised over two centuries from the 1660s. By the 1890s, when the framers of the Australian Constitution were at work, the notion that ministers would be appointed to act in the name of the Crown while in actuality being responsible to the parliament was the prevailing and deeply entrenched conception of government across Britain and its settler colonies and dominions. To the framers, it hardly needed to be named or explained.

Under the Constitution the building blocks of the executive government would be ministerial departments or departments of state as they're called as established by the Governor General and Council. These would be administered by ministers of state who would be appointed by the Governor General under Section 64. Ministers of state would have to be members of parliament or they would have to become so within three months, again section 64, and they would hold such offices as the Parliament prescribed or in the absence of such provision as the Governor General directed them to hold under Section 65.

Ministers of state would be drawn from a federal executive council which would be established to advise the Governor General in, quote, "the government of the Commonwealth." Section 62. At the apex of this structure would be the Crown in which Section 61 would vest the executive power of the Commonwealth to be exercised by the Governor General as his or her representative. John Quick and Robert Garran wrote in their authoritative commentary of 1901 that the vesting of executive power in the Crown, stereotyped, to use the phrase that they used the theory that the Crown was the foundation of all executive authority.

Of course, Australia's not governed by a Sovereign who wields executive power as a prerogative. The framers intended but did not explicitly prescribe that government would be carried out by ministers who enjoyed the confidence of the people. Samuel Griffith, writing in his essay notes on Australian Federation, its nature and probable effects rather, 1896, observed that whilst it is an elementary principle that the person at his volition and act is done is the proper person to be held responsible for that act under responsible government, the Sovereign does not act, saving the rare use of reserve powers.

The reason for this. Well, the Crown is under no superior who could bring it to account and as such, Griffith said, the only remedy against its intolerable acts would be revolution. To someone writing in 1896, the American and French revolutions of a century earlier and the later revolutionary violence in Europe such as occurred in 1848 were in recent enough memory. So, under responsible government it was ministers upon whom responsibility should properly fall, Griffith wrote, with government being conducted by officers who enjoyed the confidence of the people.

Similarly, Robert Garran, well-known to this audience, commented in his publication *The Coming Commonwealth: An Australian Handbook of the Federal Government*, 1897. He said that responsible government with its cabinet system had by that time become the common heritage of the British people. Ministers appointed by the Crown to head the great executive departments would govern the country held to account by the Parliament. Prophetically writing only four years later in their commentary *Quick and Garran* ventured that responsible government would tend, quote, "in the direction of the nationalisation of the people of the Commonwealth," to use their phrase, and will promote the concentration of executive control in the House of Representatives. Page 107 of the 1901 edition.

The framers did not inscribe the mechanics of responsibility into the text of the Constitution and a mission that was quite deliberate. They concerned themselves instead with how best to reconcile the notion of responsible government within a federation which would see the establishment of a co-equal senate. Nonetheless, the institution; and I'm using that phrase advisedly and in underlying terms in my address of responsible government; is a structural feature of the Constitution.

As mentioned, ministers have to be or have to become within three months. Members of parliament. There are other Constitutional indicators of responsible government. The houses of Parliament are directly chosen by the people, section seven and 24, and they have to hold sessions at least annually. Section six. Parliament has entrenched powers, privileges, and immunities to hold the executive to account. Section 49. All monies raised or received by the executive government forms a single consolidated revenue fund to be appropriated by the parliament for the purposes of the Commonwealth. Section 81. And no money is able to be drawn from the Treasury, safe under appropriation law. Section 83.

As an added and arguably co-equal protection against unchecked executive action, the High Court was given original jurisdiction in relation to Writ of Mandamus prohibition or other injunctions which

might be sought against, quote, "an officer of the Commonwealth." Section 75, subsection five.

I have deliberately here used the term the institution in responsible government. Conventions arise organically from practise and through usage. They set expectations. They remain subject to change in the light of circumstances. Institutions, however, are more durable and to the extent that they are the subject of change, it has to be deliberately arrived at and purposefully affected. The requirements of institutions can be rendered enforceable.

So how did this institution emerge and gradually become the preferred form of government, at least in our tradition? Well, the delegates to the Constitutional conventions in the 1890s knew well their history and they could easily give this account. They knew that from the mid-17th century, Crown and Parliament had contested supremacy in the governance of the kingdom, first of England and then of course of the United Kingdom of Great Britain, Northern Ireland. In January, 1649, the first King Charles was executed in the struggle having quarrelled with parliament after his succession, 1625, about its attempts to curb his use of prerogative powers.

The second King Charles was restored to the throne in 1660 after the interregnum of 1649-60 on the understanding that he would rule not by right and in cooperation with parliament. Thereafter, the Crown was effectively seat of the state while the parliament won the government. The personal involvement of the Sovereign in managing the affairs of state declined inexorably and especially so from the early 18th century. Parliamentary government and the cabinet system emerged and increasingly became institutionalised. By 1870 ... 1867, pardon, William Bagot was able to write in his publication, the English Constitution, that while the queen represented the dignified part of the Constitution, it was a system of cabinet government that acted at its efficient part where the real power of government resided. The framers valorised this conception of government.

Now colleagues, all concepts, ideas and practises have a history or a genealogy and an uncertain path of emergence and therefore future revolution. There are never any pure possibilities or immobile forms. Historical developments such as the rise of a Constitutional Monarchy and responsible government come about as a result of dispersed events which are marked by their own context, possibility and contingency. The prizes of long forgotten quarrels, intrigues, acts of violence and wars are often an invisible inheritance.

Supervised and accountable Responsible government was

bequeathed to us in the Constitution not by hands bloodied in English fields but by reasonable minds working to inscribe the legacy of that contest onto an unstained parchment. Now whether a society is governed by a Monarch personally, by a war lord or another type of chieftom, by a political party that cannot be removed from power or under the authority of an elected parliament, governments involve some form of bureaucratic organisation. A notion regarding the rule of law being put around administration and the holding of rulers to account according to law are in fact ancient ideas.

Responsible government, however, went further than ancient concepts of restraining the ruler. By making ministers of state servants of the Crown appointed at the latter's pleasure but responsible to the people through parliament, the institution of responsible government was the first attempt in history to create a structural buckle between a longstanding administrative form, which is to say departments headed by ministers conducting the king's business, with democratic self-government. This was a new structure of politics which for the first time in history created the space and the means for the popular control of executive power.

Now, one of the elements of the mechanics of responsibility, which was in fact debated at some length in those conventions is worth recalling. In the 1891 draught of the Constitution, the section which became section 64 was worded such that ministers would have to be capable of being chosen and of sitting as members of either house. They didn't have to be members of parliament. This was not changed until the Adelaide session in 1897 when the aforementioned provision was introduced, namely that after the first election no minister could hold office for more than three months without a seat in the parliament.

Now, from time to time, suggestions arise as to the merit of perhaps appointing ministers without them having to become members of parliament. The honourable Bob Hawke AC proposed this in his Boyer Lectures of 1979, arguing that there would always be a range of relevant and proven talents amongst those who would not wish to be involved in the electoral process. He argued that responsible government would still be affected if, for instance, a quarter of the ministry were to be appointed from outside of the parliament with the government still having to maintain confidence and supply. As Garran counselled, responsible government must be moulded to fit the ideas of successive generations.

It is in this spirit that I refer to Mr. Hawke's proposal from his Boyer Lectures of 43 years ago. The relevant passage about moulding from Garran's book, *The Coming Commonwealth*, which he published in 1897, is worth quoting in length. "We must not, however, attempt to fix the present pattern of responsible

government as a thing to be clung for, for all time. We must allow scope for its development, for its being moulded to fit the political ideas of each successive generation. Responsible government as we know it is a new thing and a changing thing. It depends largely upon unwritten rules which are constantly varying, growing, developing, and the precise direction of whose development it is impossible to forecast. To try to crystallise this fluid system into a hard and fast code of written law would spoil its chief merit. We must be careful to lay down only the essential principles of popular government leaving the details as elastic as possible."

Garran contended in this book that the great mass of, quote, "merely accidental and not essential characteristics of government should be left to evolve over time." So indeed, our Constitution affords flexibility in the further evolution of the institution of responsible government. However, the core requirement of responsibility cannot be raised by any such development and adaptation. Parliament secures the accountability of government including by way of the ultimate recourse of confidence and supply. While the mechanics of responsibility will continue to develop, the institution of responsible government which permeates the Constitution cannot be extinguished without an unravelling of our Constitutional order.

The framers did not dwell much on the future civil service of the Commonwealth. To repeat, they simply adapted what they knew best and valued most: a British model. By the mid to late Victorian period, responsible government had, as I've said, becoming entrenched in the British mind. Ministerial departments were becoming the preferred instrument of state as non-departmental bodies and boards were swept away in waves of reforms in public administration in Britain. At the same time, the British Civil Service was undergoing significant reforms in the wake of the North [inaudible 00:16:50] report of 1854, which laid for the first time the foundation for a merit-based and apolitical professional service, shorn of the corruption and patronage of earlier times. And in keeping with their drafting preferences, the framers chose an austere path.

The section which deals with the appointment of civil servants, section 67, is also sparse. It simply says until the parliament otherwise provided, the appointment and removal of, quote, "all other offices of the executive government of the Commonwealth will be vested in the Governor General in council until such appointments were delegated by the Governor General in council or by a law of the Commonwealth to some other authority."

To digress momentarily at this point, responsible government requires the executive to be a hierarchically integrated structure so that ministers can be properly held to account by the

parliament. However, responsibility also means that the head of the executive government, who is the king as represented by the Governor General, and all unelected government officers must remain aloof from political involvement. That is because it is for ministers individually and as a government collectively to win and maintain confidence at the ballot box and in the parliament. Excuse me. And this is an inherently political activity in so far as confidence as a function not just of perceived administrative competence but of public satisfaction with policy.

This necessarily entails the making of normative cases and as such it is for ministers to make their case to the electors at the ballot box and to parliament for confidence, unaided directly by the professional officers of the executive government who have to be able to serve different governments as the electors choose. Parliament has of course prescribed this requirement for public servants to act apolitically; but not others, I have to say; by way of section 10 of the Public Service Act 1999.

Now insofar as administrative structures of the executive government were concerned, the delegates to the conventions of the 1890s had equally little to say. Of the 4,849 pages of the official records of the 1891 and 1897 and 1898 conventions, few than 24 pages were devoted to departments. I can assure you I didn't count them myself. There's some historical research from an article in 1957 that I dug out that assisted me with that. So, 4,849 pages of the transcripts of those conventions. Departments were mentioned on 24 pages.

The decision to transfer relevant departments from the states or what would become the states to the Commonwealth was agreed upon it at an early stage in proceedings and little further discussion ensued. The framers simply assumed that ministerial departments would be the principal instrument of the executive. Now why was that so?

We are indebted to the late Roger Wettenhall, a wonderful public administration scholar, for his scholarship on public administration in colonial and modern Australia. His work itself is worth a lecture on its own. For my purposes here, I simply say that Wettenhall demonstrated that by the 1880s; that is just before the Constitution was being framed; there was a decisive movement across the colonies towards consolidating administrative functions into ministerial departments and away from boards and other non-departmental bodies.

Now, the exception to this trend was the establishment of public business corporations in the colonies. Initially this was to build and maintain railways where it was considered preferable to embark on major public enterprises in the face of limited capital, labour



and skills shortages, and the challenges to commercial success posed by vast distances and a small, dispersed population. Other public utilities thereafter followed the pattern.

Indeed, the Australian colonies were innovators in terms of government being in business and this continued well into the 20th century. Otherwise, by the 1890s ministerial departments were preferred. And to quote Wettenhall, "The few boards that survive represented the small byways of administration only." This did not prevent the re-emergence in the 20th century of a great host of non-departmental bodies when the pendulum swung away from the ministerial departments; something to which I will return.

Now, we can trace the idea of a ministerial department in our Anglo Australian tradition as I'll call it, to the restoration period. In 1660 under Charles II, the practise of appointing Secretaries of State was resumed from an earlier time. There would be two principal Secretaries of State and each would be supported by a new type of body, the Department of State.

So were established the Southern Department and the Northern Department, the former so called because it was responsible for interalia relations with southern European countries, typically Catholic countries, whilst the northern department engaged in relationships with Protestant countries. In 1782, the Southern Department was reorganised as the home office which we today recognise as the modern UK equivalent of my department, the Department of Home Affairs. The northern department became the foreign office.

So there you are, Claire, you're the Northern Department, we're the Southern Department. The Home Office was made responsible for, amongst other things, Secret Services, Public Safety and Colonial Affairs. And indeed, one of the first significant undertakings by the Home Office was the decision taken in 1786 to establish a penal colony at Botany Bay. Given the unprecedented distance from home support and the practical exigencies involved in establishing and governing the new colony, Captain Arthur Phillip was given plenary and virtually autocratic authority to govern.

He and his immediate successors ruled by way of regulations and proclamations. In 1823 however, the Imperial Parliament saw fit to establish the Legislative Council of New South Wales; the first body of represent of responsible government in Australia, which celebrates its bicentenary next year. Between 1855 and 1890, the six colonies gained individually self-government or responsible government and started to seriously contemplate federation within the British Empire. As mentioned, as they did so, the institution of responsible government was being fixed into place in the United

Kingdom itself after a steady expansion of the franchise starting in 1832 and in decades of dominance of the political scene by its succession of renowned prime ministers and their governments: Palmerston, Gladstone, Disraeli and Salisbury, which left little doubt that the Sovereign reigned but did not rule.

The Constitution that was subsequently drafted and enacted provided that on a date or dates which would be proclaimed by the Governor General, the following departments of the public service in each state would be transferred to the Commonwealth; Section 69: Posts, telegraphs and telephones, naval and military defence, lighthouses, light ships, beacons and boyes, and quarantine. Due however, to the vital importance of revenue to the new Commonwealth, the departments of customs and excise in each state would be transferred to the Commonwealth on its establishment, section 69.

In addition to these departments, it was anticipated that other departments would come under the control of the Commonwealth at whatever point the federal parliament might choose to authorise their transfer pursuant to the exercise of the Commonwealth legislative power. And as mentioned already, there are a number of smaller non-departmental bodies which you can read about with interest in my written address which will be posted on the website after this address.

On the 1st of January 1901, the first executive act of the Governor General was to appoint the Federal Executive Council under section 62. The first thing done by the Governor General upon the establishment of the Commonwealth. And one of its first acts, the council's first acts, was to establish seven Departments of State. And that's what they were called. Departments of State under Section 64. Then the Governor General appointed from that executive council officers to be known as the Queens' Ministers of State for the Commonwealth to administer the following departments:

And here is the batting order of the seven foundational departments: The Department of External Affairs. Claire, you're representing. The Attorney General's Department, the Department of Home Affairs, a foundational department of the Commonwealth, the Treasury, Defence, Trade and Customs and the Postmaster General's department. Seven departments of state. The executive government of the Commonwealth was thereby established. Of course, there were no acts to administer as there was no parliament. Garran drafted the first issue of the Commonwealth Gazette announcing the establishment of the Commonwealth and the appointment of the first government. When later that day the Prime Minister Barton, Garran and others boarded a train to Melbourne, they literally carried in their satchels the first files of

the new Commonwealth of Australia.

The process whereby the Commonwealth assumed the full scope of its powers and functions was indeed a gradual one. For example, the Commonwealth assumed responsibility for quarantine in 1908 with the passage of the Quarantine Act, 1908, after agreement was reached; wait for it; with the states regarding the transfer of quarantine functions. The function was assigned to the Department of Trade and Customs. The Commonwealth assumed responsibility for lighthouses and other maritime lights in 1915 after the passage of the Lighthouses Act 1911, and the Commonwealth Lighthouse service was established within the Department of Trade and Customs.

Steadily national government emerged with new governments, with new functions rather, typically being at first vested in the departments as that occurred with quarantine and lighthouses. The Department of Home Affairs was the all-rounder department in the early days and typically picked up functions that did not readily fit in with the other six departments such as electoral matters, meteorology and statistics.

The scheme of government as contemplated by the framers as mentioned already was vertically integrated by design. It was presumed that all business would be conducted by and within departments which would undertake separable and discreet activities. Now, in the 121 years since government has of course changed rather dramatically as has the society that it serves, as was detailed in the Thodey report known as the Independent Review of the Australian Public Service issued three years ago now. Changing citizen expectations, advances in technology, societal shifts and geopolitical realignments are forces which are transforming the context in which the government works, how it does its work and what is expected of it.

Now, while the machinery of government in its essential form continues to be organised in ways that would be recognised to a time traveller from late Colonial Australia, it now has to be geared towards areas of policy focus which do not easily reduce to the vertically integrated activities that are contemplated in the Constitution. I refer to complex areas of policy focus such as climate change and the energy transition, technology in the digital economy, public health and wellbeing, social disadvantage and poverty alleviation, First Nation's reconciliation and more besides.

In contrast to what I will describe in this address as the vertical form of government, the functioning of government has become more horizontal, for instance in how it delivers outcomes with departments and agencies working alongside for instance market-based and not-for-profit service delivery partners. This has been

driven in part by the privatisation in recent years of much critical infrastructure and many essential services and in part by the emergence of a vibrant not-for-profit social services sector.

Federalism is itself an exercise in horizontal government, especially in those areas where co-delivery by the Commonwealth and a state or territory government to the same citizens who are often sliced across networks of government agencies at the Commonwealth level and then for good measures sliced across similar networks of government agencies within their state or territory for the purposes of health, education, employment, housing and so on, is the structural consequence of the Federation Covenant. Preparing for and responding to societal hazards such as pandemics, floods, fires and cyber-attacks is also an exercise in horizontal government.

The Commonwealth role here is often that of convener and coordinator working across networks of states and territories and municipal governments as well as crucial sectors such as transport, freight, logistics, fuel energy, water banking and financial services, telecommunications, health and medical services and so on. The establishment of the national coordination mechanism during the COVID-19 pandemic was reflective of this role and trend and it has since been expanded in utility and application, including in relation to the recent Medibank cyber-attack.

Now, the establishment over a century of a plethora of statutory agencies, commissions, authorities, boards, executive agencies, government, business enterprises and other bodies in some cases resurrecting and building on forms that have been pioneered in Colonial Australia has also changed the shape of the original departmentally organised executive government. As mentioned, this was not the case in the first decades of Federation when the original seven departments controlled and undertook virtually all executive functions.

Today by contrast while there are 16 departments as at one July this year, there are according to the Australian government organisations register; we need an Australian government organisations register; 1,299 bodies which constitute the machinery of the Australian government. Now, following Wettenhall; I've already referenced Professor Wettenhall before in this address; we should probably view executive government therefore as consisting of a constitutional core of ministers and their departments and a surrounding penumbra of these other bodies.

His core periphery thesis reflects the reality of the machinery of government and the underlying organising Constitutional principle.

Ministers are appointed to administer Departments of State in order to affect the government of the Commonwealth. Departments of State do not exist for mere convenience such that instruments of ministerial appointment can be drawn up bearing their titles. Ministers being appointed to administer Departments of State is the formation; that is to say the Constitution of government. As was the case in the 1st of January, 1901, if nothing else were to be done, there would still be a government.

It is intrinsic to responsible government that ministers should in their assigned areas of responsibility, be able to exert control over consequential questions of policy, resources, legislation and so on. They might be prohibited by law of course from directing statutory officers and non-departmental bodies in the independent performance of their duties. Noting of course that there are provisions in many Acts for the minister to be able to issue directions in relation to the otherwise independent exercise of powers within safeguards that are set by parliament.

Now, while the precise relationship between a minister and an office holder or other non-departmental body will vary depending on the terms of the relevant legislation, it is ministers who have to bear responsibility. If they do not, it cannot be said that executive government is under popular control. The central role of the department as supported by the secretary whose duties are spelt out in the Public Service Act 1999 in supporting the minister in the discharge of their Constitutional duties becomes apparent on this reading.

The department is the minister's indispensable instrument either by way of the direct delivery of advice services or programmes or in relation to assisting the minister to oversee or direct as the case requires within legislation, the non-departmental bodies and offices which fall within the minister's areas of responsibility. Departments, for instance, assist the minister in the creation and abolition of new agencies and other bodies. The appointment and termination of the agency heads and other relevant officeholders in those bodies and in many cases the setting of strategic priorities and objectives for relevant agencies and bodies and so on.

Now, cabinet's long served as a clearing house for dealing with the challenge, as I have called it, of horizontal government. Its function is to ensure that government policies are integrated and that gaps and inconsistencies are escalated and resolved. Similarly, interdepartmental committees, which we all love, have for years been the work horses of horizontal coordination. In recent years, joint agency task forces such as the Operation Sovereign Borders, [inaudible 00:33:28], and coordination centres such as the Counter-Terrorism Coordination Centre in my

department have been increasingly used. The aforementioned National Coordination Mechanism or NCM, presently perhaps the ultimate expression of non-hierarchical horizontal government is a new innovation which is explicitly designed to overcome the pitfalls of vertical lines and siloed actions.

There is indeed an anthropological aspect to this, I would contend. Collaboration, which of course is an intrinsically horizontal force, is a cultural phenomenon. When we say that working flexibly across organisational boundaries or working horizontally is the unavoidable and indispensable technique for the modern public servant, we're not really describing a technique. We're actually valuing a cultural norm and a standard of expectation. To paraphrase my colleague, the Secretary of the Department of Prime Minister and Cabinet, Professor Davis, collaboration and coordination are cultural values which involve constant conversation and a reliance on routine such as cabinet and its committees, interdepartmental committees and so on, which act to structure and engender that collaboration and coordination.

Positional authority and defined roles and responsibilities count in these routines of course, but the higher cultural value which is at work here is the normative expectation that effort is being directed by all towards a common goal and that authorities' roles and responsibilities are ends ... are not ends rather but means. When gaps and overlaps occur in the work of government, intended or otherwise, these are matters of genuine concern and criticism and indeed potentially a loss of confidence as understood under the doctrine of responsible government.

Now, in addition to routines, structures and culture, good governance also requires a clear delineation of functions. It is not my place here to canvas the role of the Administrative Arrangements Order or AAO in relation to responsible government. The Solicitor General in his opinion number 12 of 2022 relevantly outlined the key issues involved. And I certainly have no intention of straying anywhere near the inquiry that is being conducted or has been conducted now by the Honourable Virginia Bell AC into the appointment of the former Prime Minister to administer multiple departments, whose scheduled date of reporting, I can assure you, was not known to me when I agreed to give this address on this day.

Now, as an administrator and avoiding entirely the issue of ministerial appointments, I would say that clarity and precision in the delineation of the fields of activity of departments of state is crucially important to our supporting the proper function of responsible government. Public officials have to be clear as to where matters; to use the term from the AAO; and related legislation have been allocated for executive action.

Now, a list of administrative arrangements was created in 1901 just for this purpose. This document had to be transcribed from Barton's personal papers, which can be found in the National Archives. The AAO as we know it today was first gazetted on the 15th of December 1906 as instrument by which the Governor General sets out the division of government functions. That executive functions need to be divided within government is indeed presumed in the Constitution. This can be inferred from the references to Departments of State in the plural, section 64.

The matters, to use the AAO, term that are dealt with by each Department of State as set out in the AAO, effectively extend the definition of each department's function beyond that, that might be derived from its title. In other words, the AAO indicates that if anything is to be done about issue X, it should be done by department A rather than department B.

Now, while the Constitution presumes that the functions of executive government would fall discreetly and separately within the remit of different Departments of State, government typically does not work like this even if it continues to look like this. It works in the horizontal while being structured in the vertical. Now, perhaps as an aid to greater clarity and transparency in support of responsible government, more detail might be provided by departments and agencies in their corporate documents, information resources, and explanatory materials as to the matters; and I'm using that term from the AAO; for which they are responsible as assigned by the Governor General on advice from the Prime Minister in the AAO and especially so where such matters have a material connection to related matters which have been assigned to another Department of State.

As a complimentary measure, I would like to suggest that we should introduce an accessible programme of internal civics awareness for the Australian Public Service so the historical origins and Constitutional significance of issues regarding structure and responsibility in government were better understood and appreciated by officials. I suppose after today all we have to do is circulate this speech.

Vertical responsibility still matters. Government still has to be able to ascertain which minister is hierarchically responsible in overall terms for each department and agency and other body. For instance, in relation to resourcing, leadership, management, workforce performance and so on. Indeed, I'm not at all inclined against the vertical silos of government which modern management thinking would have us bust. Departmental silos exist not simply so that administration can be formally delineated. Over time, they become the repositories of deep expertise that comes with specialisation. They allow for clear lines of

accountability to be traced. That is why I've spoken of the vertical and the horizontal. We need both and we certainly need the expertise and accountability features of the vertical while always working against their pitfalls.

The challenge of governance complexity is not unique to public administration. There are other models from which we can learn. To do with complexity, most large businesses at least employ a form of matrix management. Some activities are arranged vertically, business units which generate outputs for instance, while others sit horizontally across companies enabling its functioning. In the military, a unit might be answerable to a vertically superior headquarters for capability and readiness while being forced assigned, to use the military term, to another headquarters in a different vertical line for specified operational purposes.

While we have been experimenting to a degree; and I've mentioned some examples already; we should continue to trial other models from the business, military not-for-profit and other worlds on the active assumption that the classical bureaucratic hierarchical model of section, branch, division and group is not the final word in structure and function. More speculatively and adapting a concept from French post-structural thought, horizontal government has the character of rhizome, spreading as the case requires towards the available or necessary spaces, working in interstices involving evolutionary action that is in contact with the reality of its environment rather than seeking to have the latter conform to its hierarchical rules of action.

Responsible government, however, also has an arborescent hierarchical or tree-like character rooted in the soil of our history. I would suggest that governing requires both the rhizome and the tree. Now, the presumption by the framers of the British idea of responsible government was a beneficial inheritance. There are crucially important reasons as to why government is structured the way that it is, the historical origins of which should be frankly better understood. We benefit from the long struggle to win popular control over government even if those sacrifices are unknown to ahistorical minds. However, while the hard-won institution of responsible government is entrenched as an inheritance, it should not be ossified.

As Garran counselled, crucial as it is to our democracy, responsible government is also malleable enough to flex and to be adapted in response to developments. The shape and functioning of government today would be unrecognisable to a time when lighthouses were important to mention in the Constitution. When they were important enough to mention in the Constitution. Complexity will continue to challenge how we align structure and



responsibility in government. New concepts, practises and tools will continue to have to be fashioned, for this free-thinking, open conversation and a willingness to innovate will be required.

And in that spirit, I've addressed you today. Thank you very much.

CLARE WALSH: Thank you so much for what was a really fascinating address. A great history lesson. And actually I agree with you that it would be very useful if every public servant was fully understanding of our history, of our democracy and our institutions. I suspect we are not so maybe we will try and get to the APS Academy perhaps and make sure that your address is well-circulated

MICHAEL PEZZULLO: I'll come and lecture.

CLARE WALSH: I'm hoping that people here have a lot of questions to ask because I think that you provided us a lot to think about and while people are formulating their questions, I wonder if I could ... I had three things that came out of that for me. One was about institutions, one was about people and one was about citizens' expectations. And if I can go to the first question about institutions. You made the point about the durability of institutions being deliberately arrived at. You gave us a history lesson that includes revolutions and wars and colonisation and other events. But there is a really strong argument that our world is changing so much more rapidly in so many different ways than history would ever have imagined. And I wonder whether you think that we need to, and if the answer is yes, can we reform our institutions to match our dynamic circumstances? Because many would argue that our ability to thrive in this world comes down to the strength of our institutions.

MICHAEL PEZZULLO: Thank you. I think the most material change that might be required; and I'm not advocating it; would be to change the key Constitutional anchor that requires ministers to be members of parliament. That's why I referenced Hawke. Hawke gave a very considered lecture. There were four Boyer Lectures. I went back and reread them. And I've had the benefit of being able to discuss his thinking with Troy Bramston, of course his most recent biographer.

Of the four, he gave one specifically just on this. So, 1979, so not now, but he used phrase like a rapidly dynamically changing environment, geopolitical changes, changes in the nature of work. So, this is Bob Hawke in 1979. Now it is the case that upon becoming Prime Minister in 1983, and that of course there was a major Constitutional commission that was undertaken through the '80s and reported 1988, it was not recommended that his Boyer suggestion be taken up. And I think by that stage probably Bob had moved on, shall we say.

So, the point I make; and I draw on professor Wettenhall idea of a Constitutional core; I think we've got a highly adaptable institution, which is really picking up Garran's reflections in both his memoirs in 1958 ... Because he wrote his memoirs looking back, but also in his perspective analysis of how the Commonwealth would likely evolve when he wrote his book in 1897. So as long as the core is in place, the parliament chosen by the people, supervising the executive, which is both the collective government and individual ministers who are responsible at parliament and in departments as the instrument of ministers, that's four elements. So the Hawke suggestion would've changed one of those. You don't have to be in parliament. But even Hawke said ministers, even if they were in the non-elected part of the ministry, he recommended 25% would still have to present to Parliament. They just couldn't vote on legislation and essentially vote. Because he even argued in his lecture that they would present legislation as unelected officials like a US cabinet secretary.

But if those four core elements are in place, my thesis is ... I mean, we have an Australian government's register that has 1,299 bodies registered. I mean just the fact that we have to have a register is itself telling. I think we can make government as flexible and as malleable and as adaptive and adaptable as it needs to be to face whatever challenge.

So who's to say that everything has to be in those vertical silos? In fact, if anything, you could make an argument that the traceability of people to parliament, to minister to department is really the mandatory but sole requirement for responsible government. Everything else can be through legislation and through administrative arrangements directed by the Prime Minister or through regulation or just through practise changed.

So I think the beauty of the institution; I do call it an institution because it can only be varied with that Constitutional change if you follow the Hawke prescription of ministers not having to be in parliament; is adaptable beyond that core principle. So I think we've got a more flexible tool and I think it's the silos of our mind frankly that inhibit our full utilisation of that tool rather than the silos that we decry otherwise.

CLARE WALSH: So it's practise that you think are our barriers?

MICHAEL PEZZULLO: Practise, but also courage, imagination and initiative. Yes.

CLARE WALSH: I will ask people to put their hand up for a question and while I'm waiting for those hands to go up, can I ... Oh there's one there at the back.

RUSSEL AYRES: Russell Ayres, University of Canberra. Thanks Mike. As

somebody who studied under Professor Wettenhall, I'm really grateful for you remembering him. The arc of history never stops. We're now in a moment where there's calls for voice to parliament and also [inaudible 00:48:03] and particularly Treaty. I think they'll have a big impact on our Constitutional structures and including responsible government. I just wonder if you want to talk a little bit about that aspect of this moment of history.

MICHAEL PEZZULLO:

I'm sorely attempted to as someone's got strong views in the area, but I'll refer ... If you're interested, there's a couple of my Australia Day addresses which are on our website that have laid fellow without too much commentary, which is terrific because sometimes other things that I say achieve a degree of notoriety otherwise. I don't think we're fully extended in Constitutional but also cultural and societal terms the breakthrough in thinking off the back of Mabo. I think Mabo quite properly led to a reconfiguration of how land management and legal control of land was effected. But if you really look through that decision, it really says, hang on, there was a culture here. Yes, there was no Sovereign with which the colonisers could engage. There was no ... Not like in New Zealand where there was thought to be hierarchical or authoritative political structures, but there was a vibrant ... I think we've come to recognise as a vibrant civilization, the culture that had kinship arrangements, had laws, that had ways of managing land.

And so the gap in the discussion; and I don't want to speak to the specifics. The government's got a policy of driving through on voice and then the Prime Minister says they've got a sequence set of considerations to attend to after that, which include the other elements of [inaudible 00:49:42]. And I'm not the responsible ... well, I'm I am unelected official, point one, and B, it's not particularly in the lane of my department just to very briefly hide behind vertical lines.

But I think once you've gotten to the point that you've dealt with the land management under the native title regime, there's got to be something else about Sovereignty. So all of the arrangements actually that were presumed by the framers were built on the assumption that the political structure set up when Arthur Phillip landed and started to rule by decree proclamation and regulation was, if you like, the start of Australian law.

Now, it certainly is in terms of the arrival of the English common law and then gradually that was harnessed into responsible government with the establishment of the Legislative Council in New South Wales in 1823. The establishment of the Supreme Court, I think from memory, 1828. Might just need to be fact-checked on that. And then over time as a colony started to mimic the template of responsible government, that was fine as far as

the settler arrangements were concerned. But there still is that issue about, well hang on, if there was land, if was management and control of land, there must have been other things that were not seated.

And so voice is a step in that direction and then there has to be some other consideration given to what comes logically out of Mabo, which of course just demolished the fiction that the land was in effect empty. I mean it had humans on it, but the legal doctrine was it was settled and it wasn't subject of conquest. I think no sensible Constitutional expert would take that view today.

CLARE WALSH: Thanks Mike. While I'm waiting for other questions, can I ask you about people and systems? So what we required of our public servants and non-elected officials when our Constitution was formulated is radically different to what we need, expect the complexity that we work in.

MICHAEL PEZZULLO: I think it'd be cool to be the Secretary of the Department of Lighthouses, just to say. I like lighthouses. So it was very activities-based, shall we say but lighthouses are cool. I was very disappointed when I was doing my AAO research. I thought that lighthouse might have been under the Department of Home Affairs. We had railways but no lighthouse were vested with the Department of Trade and Customs.

CLARE WALSH: Imagine if I ... What was I? I was north, was I?

MICHAEL PEZZULLO: You were the Northern Department.

CLARE WALSH: And you're south.

MICHAEL PEZZULLO: and-

CLARE WALSH: Imagine if I was just called the Department of North.

MICHAEL PEZZULLO: The Northern Department.

CLARE WALSH: Yes. that'd be interesting. Anyway, but capability of our people, the systems that we need to be able to operate in this world. And that's the world we know now, let alone the world that we can use a bit of foresight to imagine. So what's your thought on that in terms of the health of our democracy or the health of our institutions and our ability to actually respond?

MICHAEL PEZZULLO: I think I'll divide it into two quick components. I think the people element can be addressed more readily. Whenever there's a crisis. I find whether it's ... I mean, certainly my department, and your department and elsewhere, we feel like we've been on deployment for the best part of three years. Certainly very few in

my department have had much of a break since the massive fires that started frankly in tropical parts of Queensland three years and a bit ago, which shouldn't be burning in a way at that time. And then of course went into the pandemic and supply chain issues and Ukraine and you name it.

I think a crisis mobilises people and it's been really heartening to see you stand up on NCM on this, that or the other and people just pour in. My good friend David Fredericks is here in the audience and thank you David and indeed Rachel for attending. And if I could be allowed, just one indulgence. My son, Sam, is here too, but it's a bit awkward for him because not only is he here with his dad giving a speech, he's sitting next to his boss. And Stephanie Foster the wonderful addition to our department as the Associate Secretary. Great to see you, Steph.

So David, you will recall when you rang me and said, "Look, we've got this particular issue about a supply chain issue around diesel fuel additives. We got the policy experts, we got people who really know a lot about that area, but they don't have the networks, the platforms, the convening authority to pull stakeholders together. Could you activate the NCM?" Yes. I think David, you and I agreed that within about a minute, and we turned on the NCM. It's a platform. David deployed his deeply specialised experts in the fuels and lubricants part of what was his department. And it was that connection between the vertical specialisation and the horizontal collaborative function that helped us work through that issue. And I can give you lots of other examples.

We're using the NCM now to take a lot of the burden off ASD, which is in the fight in terms of the Medibank issue. They're in the trenches with the AFP pushing back on the actor and certain things have been able to be said by the police on that. So to support ASD and AFP to take the burden off them in terms of consequence management, victims support. People are highly traumatised about very intimate personal health details, sexual history, infections and all the rest of it being there on the dark web. We've stood up the NCM to work with states, territories and others to provide victim support. So instead of saying, "Well, it's a cyber matter, so therefore ASD and the cyber command in AFP, you deal with everything including all these other things."

You bolt in a capability from the side using a horizontal function to say, "No, no, you keep focusing on what you're really expert at. You keep doing what you need to do and we'll support you and take that pressure off." The people part of that is actually, in my view, easier to fix because people just mobilise. I've said this to Glen and I've said it to Gordon and others, why don't we structure for that? Now, I know we've had some frankly modest steps in the direction of surge cut, but it's always at the margin. Whereas I use

the comparison from the military. Whereas it's at the margin for us, it's the core of military business. If you're under the authority and the discipline of the Chief of the army, you're a battalion commander. Your battalion has to be trained to a certain standard ready to go. You actually know as part of your training, you will not deploy on the authority of the Chief of the army because the chief of the army provides the capability but does not fight the war. You'll be assigned.

So the notion of assigning in the case of a battalion group, 800 to a 1,000 soldiers to go off and do a mission, they actually know they won't be working for the person who's their vertical boss. We in the public service are terrified because, oh, I've got to go on a joint task force or I've got to go ... Oh, but then I'm leaving the place I'm familiar with. I know where the coffee is, I'm part of the social club. All those things are important, but I wonder if we've over-invested in the vertical and made those horizontal deployments too much of the exception.

Systems I could go on about a lot, but I won't. But final word on people. I think we have to be actively encouraging and we need to design for this. We should be saying, "Yep, on certain issues that team of a 100 is on a six month deployment to that department to solve this problem." And it's not, "Oh, I don't really want to go. But I got a car park here." Sorry, we've got to be flexible-

CLARE WALSH: [inaudible 00:57:28].

MICHAEL PEZZULLO: ... because our citizens expect. So if we've got that model in business, we've got that model in the military, we've got that model somewhere else, why are we so ossified and so rigidly enamoured of our vertical lines? Now, you need the vertical lines for all the reasons I spilt out. Systems, look, I think we could crack through that even more easily if there was will. You've seen me in full flight at the Secretary's Board and occasion I've terrorised the coup committee on this. I'm sorry, we are prisoners of the PGPA vertical conceit that says accountable authorities have to generate everything. That's a fiction. I'm an accountable authority. I can tell you, Claire, I do not generate my own electricity. I purchase it. I don't have my own power station. And yet we're obsessed by the notion of no, no, I've got a CIO, I've got a sizer and they told me because I don't really understand computers, this is what my architecture is and this is what I've got. Sorry.

And we know from the reporting from the Australian Cyber Security Centre and the Australian Signals Directorate, the fragmentations, those gaps and seams that we create in our IT architecture, that's how the hackers get in. Desirably; and you know Claire that I'm the revolutionary in the Secretary's Board. I'm probably at the extreme. I'd have one system for payroll, I'd have

one system ... And you just simply dock in. Why we have such [inaudible 00:58:46]. And this of course emerged in retrospect, but some might have thought you could anticipate this: disastrous decisions made around IT fragmentation in the mid '90s. Disastrous. And the only people who have benefited from that are the vendors.

CLARE WALSH: Well, that's a whole different lecture in itself, I bet.

MICHAEL PEZZULLO: I could give that without a script.

CLARE WALSH: If you want to hang around and ask, I can just probe. We'll get lots of great thoughts. I think that was the last question. I'm not allowed to ask another one, am I?

MICHAEL PEZZULLO: I'm happy to take one more.

CLARE WALSH: One more, I'm allowed to ask. Is there a hand that wants to go up? I've got it, but otherwise I'm ... Yes. Okay.

CHRIS HEWITT: Chris Hewitt. You recognise that it's purpose that enables collaboration horizontally. So how do you put into words purpose for the public service and how can APS leaders keep their people fixed, well, focused on purpose rather than fixated on the vertical car parks, as you mentioned?

MICHAEL PEZZULLO: Which are not unimportant. I recognise I got the benefit of having a car park, but those things are important, but they shouldn't be the be all and end all of why we go to work. Look, I think the work done in recent years around common values ... well, they're enshrined in law, which helps. But then the adapted work and most recently ... And I again should recognise David and the work that he did with some colleagues recently on the Secretary's Board to introduce the drive and to drive the drive values. And the leadership behaviours is part of that journey. I think what we do, as secretaries and agency heads, also is important about connecting everything we do back to purpose.

So in our case, I'll just speak about the Department of Home Affairs. We were given five months by Mr. Turnbull, who made a decision in July of 2017 to reestablish the Department of Home Affairs. One of foundational departments. I always yield to the Department of Foreign Affairs as number one and then Attorney Generals' as number two and we're number three. So as I say to Jan and Catherine, in a batting order, you put your best batsman in number three. Is that okay, [inaudible 01:00:54]?

CLARE WALSH: I don't know the first thing about cricket, so whatever.

MICHAEL PEZZULLO: If you know cricket, they're the openers. So within our department-

CLARE WALSH:

We get out early, do we?

MICHAEL PEZZULLO:

No, no. No, sometimes openers come back through the day, but your first drop also has to come in on the first ball if you're out. If the opener gets out. Don't worry, if you don't don't know cricket, you need to Google all of that. We did a couple of things. One, we re-instilled the history piece. So people in the Department of Immigration, Border Protection, Attorney Generals, Transport some other departments. We said, look, Home Affairs used to exist 1901. Existed in various forms until the 1930s. Was briefly resuscitated in 1940s and then again briefly by Mr. Fraser in the '80s. But there's also been ministers.

So we go to the history and say its purpose has changed. Like I said, we used to have railways. We didn't get lighthouses unfortunately in 1901, so saddened to discover that. But in turn, in today's world, let's think about how we connect everything we do. So the deeply vertically integrated immigration function where you do value and respect that deep expertise and in those other areas of deep expertise that were coming in around cyber, transport, security, what are the common purposes?

We put it out to the staff. We engaged. It was a two, maybe three months consultation process and what came back to us is the mission and values that we still promote five years on in all of our documents and our website. Our purpose is to support Australia's prosperity, not ... Security is not the first one. PSU. Prosperity, security, and unity. Everything we do has to have some linkage. So prosperity for instance, there's the economic and benefit of immigration. There's the economic benefit of having sea cargo put containers across our waters. That's a prosperity function.

Obviously, we've got a lot of security responsibilities. In some cases we've got the predominant security role. In other cases we support other colleagues such as in the Department of Defence. And unity. Our multicultural programmes, the settlement of migrants. The other work that we do around social cohesion. So prosperity, security, unity. And we say to our staff and certainly say to our senior leaders. And we've got ways of not scoring it too mathematically. It's more done intuitively.

Everything that you do has to connect to at least two of those, if not three. Please don't work just on one. Don't think you are just working on prosperity, you're working on security and you're working on unity. Think about how, in combination, you're doing at least, say, prosperity with security or security with unity. And the bingo, the cracker point that you get is if a proposal comes forward or a change comes forward or something comes forward that hits all three, prosperity, security, and unity.



So when you think about that, it's pretty easy to get to purpose and result with staff. They say, "Okay, so the thing I'm doing; a new visa system or a new way of doing transport security or a new way of streamlining the passage of cargo across wharves actually supports for my community it's prosperity and/or its security and/or its unity." It's very powerful because it links work to purpose. Not the dry term of outcomes and outputs. I know we've got to do that and I've got my Head of Governance here. We acquit all of our annual reports and all our reporting into KPIs.

But those dry terms of outcomes and outputs, which the citizen and frankly the smarter citizens can't work out what we mean and our APS Force, I don't really know what that means either. But I know what I'm doing to either support the wealth of my community, its security, the prevention of fragmentation, the protection against malicious forces that might seek to fragment us. Make it tangible in those terms. It's about the nation, not about the public service delivering against dry terms.

CLARE WALSH:

Thanks for the question, Chris. I think that we are definitely out of time now, but can I thank you, Secretary, for coming along today and sharing your thoughts and wisdom with the audience? And can I encourage all of you here to keep an eye on the IPAA website for when we have our next secretary series and come along as well. It's great to hear from our leaders whenever we can, but can you all join me in thanking the Secretary of Home Affairs?