SHIFTING MODELS OF ACCOUNTABILITY: THE CONSEQUENCES FOR ADMINISTRATIVE LAW IN THE RISE OF CONTRACTUALISM IN SOCIAL SECURITY

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1 Introduction

Contractualism is changing the way governments organise what has come to be seen as the business of government. The use of contracts to organise the business of government is providing a different model of accountability to that provided by administrative law. In the area of social security, the administration of benefits, the provision of unemployment services, and the qualification for benefits are all characterised by a contractual relationship. Each of these shifts to a contractual model of accountability has the potential to undermine important functions of administrative law and challenges the underlying compact between citizen and state which Australian administrative law embodies.

That this shift is occurring in the area of social security is of particular concern. Social security is an important site of administrative law because of its size and the nature of its constituency. Social security is one of the largest areas of administrative law at the Commonwealth level. The Social Security Appeals Tribunal (SSAT) receives around 10,000 applications for review each year.[1] The provision of social security benefits is generally crucial to the lives of those people who receive them. Recipients of income support are among the most vulnerable in society. Administrative law's role in redressing power imbalances between the citizen and the state and its normative effect on administration is particularly significant in this area as "the presence of mechanisms to promote the principles of administrative law are essential for those consumers who are unable to seek positive outcomes of their own initiative".[2]

2 Mutual Benefit Mutual Obligation

"An adequate understanding of the nature and purpose of administrative law requires us to probe further into the way in which our society is ordered. At the most basic level it requires us to articulate more specifically the type of democratic society in which we live and to have some vision of the political theory which that society espouses.'[3]

There is no immutable or neutral concept of what administrative law should be. Administrative law, more than any other area of law, is a product of political theory. To talk of undermining the principles of administrative law is more accurately described as undermining the principles of a particular view of what administrative law should be.

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1 Social Security Appeals Tribunal, *Annual Report 1998/99* (1999) 16 (10,130 were lodged in 98/99).

2 Anita Tang, "The Changing Role of Government in Community Services: Issues of Access and Equity to Administrative Review" (1997) 56 (2) *Australian Jo of Pub Admin* 95, 96.

3 Paul Craig, *Administrative Law* (3rd ed, 1994) 3.

Paul Craig argues that administrative law theories are based on differing concepts of democracy[4]. He identifies two theories of administrative law that illustrate this point: Dicey's model of administrative law as simply a means of ensuring the will of parliament is carried out and the rule of law maintained based on a unitary model of democracy in which parliament is supreme.[5] In contrast the rights based approach of writers such as Dworkin,[6] in which administrative law takes on the role of a protector of fundamental rights against governmental or legislative interference, is based on the idea that those rights underlie democracy. It is useful to look at the development of administrative law in Australia and discern what it has come to represent about our democracy.

Modern administrative law at the federal level in Australia is based on the "New Administrative Law" package developed through the 1970s and early eighties with the enactment of the *Administrative Appeals Tribunal Act 1975* (Cth)*, Ombudsman Act 1976* (Cth) *Administrative Decisions Judicial Review Act 1977* (Cth) and the *Freedom of Information Act 1982* (Cth). These pieces of legislation represent both a concern that the will of parliament be carried out by the executive, and individual citizens have access to government decision making. Accountability is not limited to the narrow conception of preventing *ultra vires* acts. It encompasses notions of fair process, openness through the provision of reasons for decisions, and a general right of access to information.

This demonstrates that the new administrative law was brought about in contemplation of mutual benefits being derived by both citizen and state. The citizen gained access to a means of review of government decisions that affected them and also to information, while the government and legislature gained a means of improving decision-making and greater accountability for a burgeoning public service. It was a form of compact with the public allowing the expansion of administrative power, by providing for greater accountability in the exercise of that power. Thus there was a form of mutual obligation inherent in the package - obligation on the part of government to provide public accountability, and obligation on the part of the public to accept an expanding role for administrative action.

The idea of mutual benefit and mutual obligation provides a useful paradigm for examining these recent shifts from the administrative law model of accountability to contractual accountability.

3 Changes to Social Security Administration and Entitlement

In 1997 the Commonwealth Services Delivery Agency, Centrelink, was established.[7] Centrelink is a statutory authority established on a corporate model. It contracts with various government departments to provide administrative services,[8] serving as a "one stop" interface between government and the public in the area of community services. Centrelink has a contract with the Department of Family and Community Services to assess the eligibility of applicants for social security benefits under the *Social Security Act 1991 (Cth)* and to administer the payment of those benefits.

In 1998 the federal government dismantled the Commonwealth Employment Service and undertook a massive tendering process to contract out employment services for those on unemployment benefits. The successful tenders for these contracts became Job Network

4 Ibid, p 3.

5 Ibid, p 4.

6 Ibid, p 19.

7 *Commonwealth Services Delivery Agency Act 1997* (Cth) s 6.

8 *Commonwealth Services Delivery Agency Act 1997* (Cth) s 7.

Providers. At the same time Employment National was incorporated and established as a government owned Job Network Provider.

As a criteria for continuing eligibility for Newstart allowance (unemployment payments for those over 25) and Youth Allowance (unemployment payments for those under 25) after a certain period recipients must enter into activity agreements and fulfil their obligations under them.[9] This has been implemented as a part of the current federal government policy of "mutual obligation".

In addition to the basic function of assisting Newstart and Youth Allowance recipients to find employment, Job Network Providers also negotiate Activity Agreements with some unemployed people which are then approved by Centrelink. The remainder are negotiated with Centrelink directly.

4 Shifting Models of Accountability

The introduction of Centrelink, the Job Network and activity agreements have altered aspects of administrative law to varying degrees. While these changes are concerning, of greater interest are the indications of a directional shift away from the mutual benefit/mutual obligation model of administrative law brought about by the rise of contractual models of accountability.

(a) Centrelink

The introduction of Centrelink has left the formal application of administrative law largely unchanged. Centrelink officers simply make decisions as delegates of the person authorised to take the decision under the relevant enactment. Decisions thus remain subject to judicial and merits review to the same extent as with departmental secretaries, usually the proper party to a review application.[10] This is in line with the opinion of the Administrative Review Council that where a "service provider is given power to exercise legislative decision making... it is appropriate for those decisions to be reviewable on their merits as with legislative decisions made by government departments".[11]

Centrelink falls within the definition of a prescribed authority under s 4(1) of the *Freedom of Information Act* 1982 (Cth) and s 5(1) of the *Ombudsman Act* 1976 (Cth) as a statutory authority established for a public purpose. Centrelink staff are employed under the *Public Service Act 1922* (Cth).[12]

In the second reading speech relating to Centrelink's enacting legislation, the Minister emphasised the government's policy of continuing administrative law mechanisms, but pointed to an economic motivation rather than a rights based justification.

> The government considers that these scrutiny and accountability arrangements are central to the management structures for the agency given that it will be responsible for the day-to-day administration of large sums of public moneys[13]

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9 *Social Security Act 1991* (Cth) s 544 (Youth Allowance) s 604 (Newstart Allowance).

10 *Dudzinski and Department of Family and Community Services* [1999] AATA 860 (Unreported, 17 November 1999) 42.

11 Administrative Review Council, *Administrative Review and Funding Programs (A Case Study of Community Service Programs)* Report No. 37 (1994) 67.

12 *Commonwealth Services Delivery Agency Act 1997* (Cth) s 35.

13 Commonwealth, *Parliamentary Debates*, House of Representatives, 4 December 1996, 7624 (Phillip Ruddock, Minister for Immigration and Multicultural Affairs).

The shift which has occurred through the introduction of Centrelink has been a cultural rather than a legal one. However, given that a prime function of administrative law is to engender a certain culture in administration, the significance of cultural shifts should not be underestimated.

Outwardly the change in language from social security administration to corporate service delivery has been one of the first indications of this cultural shift. In a speech to the National Press Club, Centrelink CEO Sue Vardon referred to Centrelink as being "in the top one hundred of Australian companies in terms of size and turnover".[14] She described Centrelink's function as follows: "Centrelink provides services to government departments who purchase them from us."[15]

The introduction of a contractual relationship between government departments and Centrelink is more than just a change in terminology. It is a deliberate attempt to foster a managerialist culture. This is part of a wider shift in the public sector towards managerialism.

Public sector managerialism seeks to import aspects of private sector management that are seen to encourage the virtues of efficiency and responsiveness. The establishment of a corporate entity with a contractual basis for its functions is an attempt to mimic a private sector structure in the hope that it will embody these virtues. The contractual basis for the performance of government functions is seen to allow greater specification not only of tasks to be performed, but outcomes to be achieved. The contract also provides an incentive for efficiency, as "doing more with less" means increasing profits. As Vardon boasts "in six years Centelink will deliver a one billion dollar efficiency dividend".[16]

Yateman describes the rise of managerialism in the Australian public sector as a "cultural revolution"[17] because it alters how public servants understand their tasks and identities.

In terms of public servants performing their tasks, there is a shift from a process focus to an outcome focus. Whereas previously "public servants place(d) more emphasis on avoiding mistakes than on improving productivity",[18] managerialism engenders a culture of "risk management" whereby eliminating the potential for mistakes is a goal only in so far as mistakes cost money. "Risk management" dictates that if it is not cost effective to reduce mistakes then no action is taken. At its core, managerialism refocuses administration on meeting the tasks set by government and away from wider public considerations.

Tang argues that there is:

> an inherent conflict between the principles of administrative review and those of managerialism. Under a managerialist regime, accountability focuses on program outcomes and the efficiency and cost effectiveness of meeting stated objectives. This is in sharp contrast to the principles of administrative review which focus on redress for individuals and on ensuring that decision making processes are fair, open and accountable.[19]

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14 Sue Vardon, "We're From the Government and We're Here to Help- Centrelink's Story" (2000) 59 (2) *Aust Jo of Pub Admin* 3, 3.

15 Ibid, p 4.

16 Vardon, above n 14, p 4.

17 Anna Yeatman, *Bureaucrats, Technocrats, Femocrats: Essays on the Contemporary Australian State*, (1990) 13.

18 Richard Mulgan, "Contracting Out and Accountability" (1997) 56 (4) *Aust Jo of Pub Admin* 106, 110.

19 Tang, above n 2, pp 97-8.

Centrelink embodies these conflicting principles: an agency characterised by a managerialist culture yet subject to administrative law. In the absence of empirical research, the rhetoric would seem to suggest that managerialism is in ascendancy.

In terms of identity, public servants' relationship to government and to the citizens they deal with are redefined by managerialism. In this cultural shift, "citizens are redefined as consumers, customers, or clients in relation to publicly provided goods and services".[20] This is seen to encourage greater responsiveness to consumer needs in line with the private enterprise model.

While this rhetoric is consistently used by Centrelink, it is the departments Centrelink contracts with who are their true "customers". "People receiving services could not be considered to be consumers in the commercial sense"[21] because they are not purchasing anything. It is only because Centrelink's actual customers have ordained that Centrelink adopt customer service charters in relation to the public, that a customer service culture exists.

Where it does exist, customer responsiveness is often perceived as an adequate substitute for accountability. However, they are qualitatively different concepts.[22] Responsiveness is valuable in that it means the organisation adapts to customers' needs as a group. However, accountability is about individual accounting for mistakes as well as a normative effect of encouraging fair procedure without the need for specific consumer demands. It is the relationship between the administrator and the public which fundamentally differentiates the two.

> Services provided to members of the public viewed simply as customers do not involve obligations of public accountability because the public are not cast in the role of principals or owners of the services concerned. It is only when members of the public are seen as citizens and the service providers as their agents that the concept of accountability has any purchase.[23]

While the discipline of administrative law still applies to Centrelink, there is a discernible shift towards a model of customer responsiveness as accountability.

The creation of a contractual relationship between departments and the practical administration seeks to effectuate a managerialist ideal, reinforcing the administration's accountability to government while subtly changing the culture of public accountability. This is tempered in the case of Centrelink by the continued application of administrative law, highlighting its importance.

(b) Job Network

Job Network providers are not mentioned in a single piece of legislation. Their functions, obligations, rewards and review are purely matters of contract. There is no provision in law for decisions made by private Job Network providers or Employment National to be subject to merits review. As incorporated companies, Job Network providers are not subject to the

20 Yeatman, above n 17, p 2.

21 Tang, above n 2, p 98.

22 Mulgan, above n 18, p 115.

23 Ibid, p 107.

Freedom of Information Act [24] and it is doubtful whether the Ombudsman's jurisdiction could extend to them.[25]

Technically, Job Network providers do not take decisions under any enactment. While they are obliged under contract to pass on information to Centrelink which may effect or indeed determine an individual's eligibility for benefits, any operative decision is legally made by a Centrelink officer as a delegate of the Secretary. The Job Network provider's actions are preliminary to any decision and therefore not subject to judicial review under the ADJR Act. The Administrative Review Council has taken the view that there is no need for recommendations to ultimate decision-makers to be open to merits review because "an individual's interests may only be affected when the recommendation is acted upon".[26] Ultimately the operative decision regarding entitlement remains open to review, and in practice the assessments made by job network providers come under scrutiny in the context of those reviews.[27] Accordingly, it may well be unnecessary to provide direct merits review. However, concern remains for other decisions taken by Job Network providers and the environment in which they are taken.

(i) The previous regime

The exclusion of Job Network providers from administrative law's operation is in contrast to the previous regime for case managers under the *Employment Services Act 1994* (Cth). Under this system established by the Keating Labor Government a mixture of public and privately run case managers performed similar tasks to those currently performed by Job Network providers. However, the case management system was designed "to ensure that the accountability of service providers and individual rights are not lessened by the contracting out of services".[28] Case manager's functions were defined in legislation, a regulatory body was formed to oversee their operation (the Employment Services Regulatory Authority[29]) and legislative amendments were made to ensure that they were subject to the full range of administrative law mechanisms.[30]

The employment services arrangements came to be viewed as a prime example of how administrative law had been successfully extended to private contractors[31] breaking down the public/private divide. Although the *Employment Services Act* is now defunct, the fact that such a system was once implemented "illustrates that contracting out and competition do not necessarily represent the triumph of economic over social objectives if these are explicitly considered in the policy design".[32] It demonstrates that the exclusion of administrative law in relation to those contracted to perform functions for government is a policy choice, not a necessary consequence.

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24 *Freedom of Information Act 1982* (Cth) s 4(1).

25 Phil McAloon, 'When the Business of Business is Government: The Role of the Commonwealth Ombudsman and Administrative Law in a Corporatised and Privatised Environment' (1999) 3 *AIAL Forum* 37-8

26 Administrative Review Council, *What Decisions Should be Subject to Merits Review?* (1999) 21.

27 For example see *Long and Department of Family and Community Services* [2000] AATA 33 (Unreported, 11 January 2000)

28 Andrew Stuart and Kerran Thorsen, "Quality and Client Rights in Market Based Reforms: The Case of Employment Services", John Tomlinson, Wendy Patton, Peter Creed and Richad Hicks (eds), *Unemployment Policy and Practice* (1997) 351, 358

29 *Employment Services Act 1994* (Cth) s 68.

30 *Freedom of Information Act 1982* (Cth) s4 (the definition of agency was amended to include 'eligible case managers').

31 Patricia Ranald, *The Contracting Commonwealth: Serving Citizens or Customers?*, (1997), 23.

32 Stuart and Thorsen, above n 28, p 359.

(ii) Reasserting the public/private divide

Traditional administrative law's jurisdiction has been limited to the control of government actions. Now that traditional governmental functions are being performed by private companies, the public/private distinction has become blurred. Whether a government service is provided by a government agency or a private contractor, the public is affected by it in the same way and requires the same level of accountability from whomever provides it. However, the example of the Job Network demonstrates that the distinction remains.

There are a number of justifications made for not extending the ambit of administrative law to private contractors such as Job Network providers. Chief among them is the argument that the market provides comparable accountability mechanisms. People receiving unemployment benefits are obliged to register with at least one Job Network provider, but are more or less free to select which provider to register with and may register with several. Part of the remuneration Job Network providers receive under their contracts is dependent on results, with some upfront payments for assisting those deemed most difficult to place in employment.[33] It is a market of sorts, in that there is an incentive for providers to attract business. This market system, the government would argue, performs the dual roles of ensuring providers are responsive to consumer needs and allows the consumer the choice to shop elsewhere if they are dissatisfied, thereby eliminating the need for administrative law accountability.

There are two basic flaws in this argument. Firstly, it is questionable whether this particular market lives up to expectations. Result based payments provide an incentive to attract those *easiest* to place in employment, because they require the least outlay in terms of assistance. Private Job Network providers have been reluctant to even tender for the contracts to provide services to those most disadvantaged in the job market despite up front payment incentives. Problems such as this lead to the restructuring of payments. There is a serious concern that poorly designed market incentives may adversely affect the decision making process once clients register with a provider, possibly leading to incorrect advice being forwarded to Centrelink.[34]

The unemployed as "consumers" of employment services are likely to operate in an environment of limited information to enable them to compare providers. Consumer choice of Job Network providers is limited by location. In rural and remote areas choice may be highly circumscribed producing a monopoly effect. The Administrative Review Council has questioned the effectiveness of "consumer choice as a remedy for service recipients where there is only one or a limited number of providers of a particular contracted out service".[35]

Secondly, responsiveness and the ability to shop elsewhere are inadequate public accountability measures. Responsiveness is a concept of generalised service not individual transactions. Agencies will only respond to what is expressed. The ability of a

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33 For a more detailed explanation of the pricing system see *The Staff Development and Training Centre and Secretary, Employment, Workplace Relations and Small Business* [2000] AATA 78 (Unreported, 8 February 2000) 51.

34 Terry Carney and Gaby Ramia, "From Citizenship to Contractualism: The Transition from Unemployment Benefits to Employment Services in Australia", (1999) 6 *Australian Journal of Administrative Law* 117, 133
> if the contracted price to remunerate agencies for placement is too low, providers may be enticed to forward breach information to Centrelink even though the client has co-operated fully and actively in the attempt to find work. Conversely, if the price is too high, some "less deserving", or inactive, jobseekers will land work which removes their risk of breach for lack of effort. Market signals may drown out the prospect of equitable assessment of the extent to which the client has sought to keep their side of the "mutual obligation" bargain.

35 Administrative Review Council, *The Contracting Out of Government Services: Issues Paper* (1997), 34

disenfranchised group to advocate for fairer procedure in an organisation they may know little about is doubtful.

The consumer choice theory does not address situations which have already occurred" "the equation of accountability for service providers, with the customer's ability to 'shop elsewhere'...does nothing to address the problems the individual has already experienced".[36]

(iii) Contract substitution

The policy decision not to extend the operation of administrative law to private job network providers was not the dismissal of the value of administrative law as an accountability mechanism it would appear to be. The conditions of the contracts between the Commonwealth and Job Network providers reveal that the efficacy of administrative law mechanisms in providing accountability are valued by government.

Internal review, external review, reasons for decisions, freedom of information and ombudsman-like investigation are all provided for in the contract through a binding code of conduct.[37] While Job Network providers are obliged to make their clients aware of the code, there is no independent enforcement mechanism. Complaints may be made to the Department of Workplace Relations and Small Business Customer Service Line.[38] The Department may take action under the contract at its discretion. Complaints can only be made to the Commonwealth Ombudsman about the department's handling of the complaint.

What has been left out of the equation are the facets of administrative law that allow the citizen to directly instigate and benefit from these mechanisms. This power has shifted from the citizen back into the hands of government. Government has created a system whereby it derives the benefits of an administrative law structure without conveying the mutual benefits to citizens. It has always been in government's interests to make those performing governmental functions accountable. When services are contracted out and government loses the day to day control of activity, its interest in accountability is even greater. What the current government has achieved in designing the Job Network, is to separate accountability from *public* accountability. Government receives feed back from the public about Job Network providers allowing it to monitor their performance and correct it where they wish, thereby achieving its qualitative goals on the macro scale without necessarily having to deal with remedying the situations of individuals. The administrative benefits for government are no longer tied to a process which delivers redress mechanisms for individuals.

Individual citizens may still have their concerns addressed and may even receive some form of redress from government action to enforce the mechanisms it has established to bring its contractors to account. However, the discretion to do so rests with government as a party to a contract and therefore its discretion is not open to review.

(c) Activity Agreements

One of the motivating factors for the introduction of the new administrative law package in the 1970s was to ensure the proper exercise of wide discretionary powers. The reduction of discretion afforded individual decision makers has been a direct outcome of administrative

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36 Rick Snell and Emily Langston, "Who Needs FOI when Markets Mechanisms will Deliver Accountability on Demand? A Critical Evaluation of the Relationship Between Freedom of Information and Government Business Enterprises" (1999) 3 *Fed L Rev* 215, 230

37 *Job Network Code of Conduct* (2000) available at http://www.jobnetwork.gov.au/general/iproducts/jncc/codeofc.htm

38 *Job Network Code of Conduct* (2000), 12

review. Like many other areas of government, social security legislation has become more codified. Government was forced to articulate and enact policy in order for it to be enforced.

The introduction of the undertaking and performance of obligations under individualised activity agreements as a condition of entitlement means that "central determination of claims based on satisfaction of pre-ordained eligibility criteria is being replaced by the theory of individual reciprocal bargaining".[39] Discretion has been reintroduced into decision making in a new form and "the scope for arbitrary decision-making is an unavoidable concomitant of the new arrangements".[40] Koller argues that under the activity agreement system:

> some qualification conditions have been better than others and some have been wholly inappropriate. It is, therefore, important that the terms of an agreement be readily reviewable at any time... because they form discretionary qualification provisions.[41]

However, the exercise of this discretion has been excluded from determinative merits review. The SSAT's general power to "exercise all powers and discretions that are conferred by the social security law on the Secretary"[42] does not extend to remaking the terms of Activity Agreements.[43]. Upon review, its power is limited to affirming the agreement or setting it aside and remitting it to the decision maker with recommendations.[44]

Individualised contracts between government and citizen have come to replace the broader concept of public accountability through administrative law. The legitimacy of government action in negotiating the terms of these agreements is no longer based on the existence of an avenue of independent review, but on the individual's consent to the agreement.

The recipient's consent to the agreement is seen to override the need for avenues for review. The flaw in this view is that "concepts of contractualism assume individual choices and consent to legal obligations, options which will rarely be open to consumers of community services",[45] and which are certainly constrained in the case of those on unemployment benefits. The basic contractual premises are undermined in the case of activity agreements. Entering into an activity agreement is a condition of receiving benefits- there is no option but to form a contract of some sort. Certain conditions of the agreement are non-negotiable such as the obligation to accept employment if offered.[46] The unemployed as a group by definition are in a position of disadvantage. They are likely to be at a disadvantage in terms of asserting their preferences in negotiations with Centrelink officers or Job Network providers, with the withdrawal of income support an ever present possibility.

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39 Terry Carney, "Welfare Appeals and the ARC Report: To SSAT or not to SSAT: Is that the Question?" (1996) 4 *Aust Jo of Admin Law* 25, 26.

40 Ibid, p 25.

41 Sandra Koller "The Holes but not the Cheese: An Overview of Trends in Income Support Law" R Creyke & M Sassella (eds), *Targeting Accountability and Review: Current Issues in Income Support Law* (1998) 59, 64.

42 *Social Security Administration Act 1999* (Cth) s 151(1).

43 *Social Security Administration Act 1999* (Cth) s 151(4).

44 *Social Security Administration Act 1999* (Cth) s 150.

45 Jonathon Sprott, "Privatisation, Corporatisation and Outsourcing: Critical Analysis from the Consumer Perspective" (1995) 5 *Aust Jo of Admin Law* 223, 233.

46 *Long and Department of Family and Community Services* [2000] AATA 33 (Unreported, 11 January 2000)

5 Conclusion

Public acceptance of Government and the roles of officials depends upon trust and confidence founded upon the administration being held accountable for its actions. The expectation that Government should be accountable is a product of the electorate's grant of power to the Government.[47]

There has been a great deal written about trends towards privatisation, corporatisation, contracting out and managerialism in Australian government and its effect on administrative law. There are serious concerns being raised about the reduction in avenues for gaining access to information and review of decisions in areas where this has occurred. The fact that administrative law is being diminished by this move towards entrepreneurial government is sometimes seen as a motivating factor for these moves. A general dissatisfaction with and even hostility towards administrative law has been in evidence in government circles for some years. The response has often been to reiterate the benefits which government derives from administrative law's operation by way of greater accountability, improved decision making, a more open public service culture and greater legitimacy for government actions. The theme of mutual benefit has been reiterated to oppose every attempt to limit or wind back the jurisdiction of administrative law, in a bid to influence debate by appealing to government's self interest when rights based arguments are received with little sympathy.

The changes to social security administration and entitlement discussed above indicate that the government has now developed a preference for contractual accountability and managerialism over administrative law and a culture of open, fair and publicly accountable administration. The contractual model supplies government with the ability to control those who administer policy and services (departmental or contractual) and hold them to account at its discretion and on its own terms. Once this model is established administrative law has little to offer government, its benefits are no longer necessarily mutual. The continued existence of administrative law rests on the political obstacle of public outcry. It has become necessary to reassert the importance of public accountability and individual redress as rights. To place them on the same level as the democratic process of election, as a means through which government legitimacy is established.

Accountability has many interpretations and can be provided in a myriad of ways. The fundamental rationale for administrative *law* as an accountability mechanism is the need for the presence of an independent third party enforcement to provide effective accountability. If we believed that government was the proper body to regulate itself and its functions as performed by others, there would be no administrative law.

Administrative review recognises that people have rights of redress against abuses of discretion and a vested interest in government accountability. If the Australian government is to give such rights a meaningful place in people's relationship with government, it is necessary to identify a body of matters unable to be placed outside a system of administrative review.[48]

47 Administrative Review Council, above n 35, p 10

48 Helen Murphy, "Administrative Review Rights and Changes to Commonwealth Government Service Provision" (1998) 2 *Flinders Journal of Law Reform* 235, 250