

# MINISTERIAL ADVISERS AND THE SEARCH FOR ACCOUNTABILITY

*Professor Meredith Edwards\**

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## **Introduction**

I am here as a practitioner who not so long ago was a senior public servant. Although I have been a ministerial consultant, that was more a policy than a political position. I therefore will speak from the perspective of a public servant. I also have an interest in proper processes around how decision-making occurs given that, as the Director of the National Institute for Governance at the University of Canberra, I study and attempt to promote good public sector governance practices.

While there has been much recent attention to the Certain Maritime Incident<sup>1</sup>, I will not go over any details of that case but, rather, make some observations about what we could learn from that incident.

Today I will not only cover the issue of the accountability of ministerial advisers, but will also address the related roles and responsibilities of senior public servants whose jobs necessarily involve them in close liaison, if not, at times, partnerships with staffers in ministers' offices. How do we both ensure adequate accountability of ministerial advisers and protect the political neutrality of our public servants?

I will argue, using one or two accounts from my own experience, that, ultimately, all good governance arrangements and the achievement of desired outcomes depend on the establishment of good relationships between all players in the decision-making process. This, in turn, requires clear expectations about the respective roles and responsibilities of the various players and about the appropriate structures and processes required to achieve this.

In my remaining time, I will provide some background on where we have come from and where we appear to be now, attempt to disentangle some of the current confusions in roles and responsibilities, and make some suggestions for change.

## **Past and present**

### ***What has gone before?***

Ian Holland<sup>2</sup> and Maria Maley<sup>3</sup> are two authors who have documented well the evolving role of ministerial advisers and of the public service with which they deal. We can distinguish four main periods:

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\* *Director, National Institute for Governance, University of Canberra.*

- 1950s and into the 1960s, when the mandarins appeared to rule supreme, and ministers, with small office staffs, were heavily reliant on them.
- 1970s, when ministers were concerned about the lack of responsiveness of the public service to the needs of the government and so set up the Royal Commission on Australian Government Administration<sup>4</sup>. Public servants, previously not required to attend Parliamentary committees, started to appear at them. This was the time when partisan outsiders became ministerial advisers and started to have an influence on the policy process, even if their influence was usually somewhat limited. In light of recent events, it is interesting that Whitlam justified the increased numbers that his government employed as a way of ensuring a de-politicised public service.
- 1980s and into the 1990s, when substantial public service reforms occurred alongside an increase in the range of functions undertaken by ministerial advisers, including much heavier involvement in policy processes. By this stage the attitude of some senior bureaucrats that “ministers come and go but we remain” was being replaced, as the balance of power switched from the bureaucracy to the political executive. (This was the period that I witnessed and in which I was involved.)
- Toward the end of the 1990s until now, when we have much more responsive public servants : the Public Service Commissioner<sup>5</sup> recently reminded us that the Prime Minister, on coming into office in 1996, applauded the increased responsiveness of public servants compared to his earlier period as Treasurer. In this period, we have witnessed ministerial advisers sitting on Interdepartmental Committees and some blurring of ministerial advisory and public servant roles.

### ***Where are we now?***

There has been at least a doubling in the numbers of ministerial advisers over the last 30 years – it is hard to say how many now exist<sup>6</sup>; under the narrowest interpretation the number is around 150 but under the broadest interpretation (including Departmental Liaison Officers and electorate staff), the figure is around 350.

Much more significant is the extensive span of roles now adopted by ministerial advisers. Maley<sup>7</sup> categorises five of those roles:

- (1) involvement in setting policy agendas inside government and also with community/business groups;
- (2) linking ideas, interests, and opportunities;
- (3) mobilising – driving proposals and building political support for them;
- (4) bargaining on behalf of ministers;
- (5) delivering on policy outcomes, eg, a national strategy<sup>8</sup>.

### **Current confusions**

The activities of ministerial advisers can now significantly overlap with those of both ministers and public servants, leading to confusion as to who should be responsible for what. The main factor leading to confusion appears to be the assumption by ministerial advisers of executive authority. The increase in the roles and power of ministerial advisers can be argued to have contributed to a breakdown in governing processes.<sup>9</sup>

Recent events have sharpened the focus on ambiguities in the relationship of advisers to their Ministers and in their relationship to Parliament, so that we can no longer say, as we once could, that ministerial staffers were accountable to their minister and that the minister, in turn, was accountable to the Parliament and through it to the electorate.

Some of the issues here include :

- If a ministerial staffer decides not to tell or show a minister something, then is the staffer accountable for that decision?
- What if the staffer considers the minister does not want to know and acts independently of the minister? Is the staffer or minister ultimately accountable? If it is the staffer, should Parliament be able to call the staffer to account for information?
- What if the Minister had said he did not want to know anything about a certain incident? Does he effectively delegate responsibility to the adviser, and is the Minister still accountable?
- More broadly, have we now reached a position where an adviser can be accountable for a Minister's actions (or inactions) rather than the traditional approach of the Minister assuming accountability, including for the activities of the adviser?

Whatever the answers to the above, there is general agreement that there is an accountability vacuum.

What does all of this mean for public servants? John Uhr has observed that there is a systemic fault in current arrangements because :

many people within government do not know what their roles are ... Worse, many of those who are certain of their role cannot convince others. Many of the conflicting stories before the senate inquiry can be traced back to conflicting expectations of role.<sup>10</sup>

The Public Service Commissioner's view of the relationship between a public servant and a ministerial adviser is that ministerial staff do not have the power to direct public servants since public servants are the responsibility of the head of agency.<sup>11</sup> But who is really in charge here *in practice* when the department is a creature of the Minister? What if an adviser :

- Asks a public servant for information that may take much time to collect; or
- Asks for a paper as background which the staffer claims is needed by the minister; or
- Gives instruction – directs – on work (eg, a policy proposal) to be done and claims to speak for the minister in wanting that work done?

Obviously, building up relationships is important, not least between the head of the agency and the Minister about the broad ways in which the department and office will work together.

Some other areas requiring further clarification include:<sup>12</sup>

- Are public servants expected, whatever their private views, to work within the ideological position of an elected government? Or are they now expected to go beyond that and show some commitment, if not enthusiasm, for the relevant government policy or program?
- How far should public servants get involved in the provision of information around government programs : where does explanation about a program to the public end and marketing of that program begin?
- What is the role of public relations units in departments compared with that of the media advisers in a minister's office?
- What responsibilities do public servants have when it comes to their attention that the public has received incorrect information? Is it enough to ensure that the ministerial office has the correct facts; or should attempts be made to ensure the Minister directly gets those facts? Is it the

responsibility of public servants to simply ensure that the public is not misled; or should they be active in ensuring that the public has accurate information?

- More broadly, how “responsive” should public servants be when there is conflict with other values as stated in the *Public Service Act 1999*?

A further issue, little discussed in the relevant literature, is how ministerial advisers manage their relationships with each other. Maley indicated a situation in which ministerial advisers, distrustful of officials around an interdepartmental committee (IDC) table, got together and agreed to inform an IDC of what the ministerial advisers thought should be the policy – with quite an effect.<sup>13</sup>

Related to this issue is an experience I once had, when a line agency disagreed with our position in PM&C : a senior official there took the matter through the ministerial route from their minister’s office to the office of the Prime Minister. In this way the relationship of the two departments was put under stress, even if only temporarily. More importantly, so was the relationship between the Prime Minister’s Office (PMO) and his department. Though the PMO might have appeared to not be interested in the issues that PM&C was dealing with at the time, once the issue was brought to the attention of the PMO, they were not pleased at not knowing what the two departments had been in dispute about. The lesson here, of course, is of “no-surprises” : ensure the Minister’s office knows what you are doing and the outcomes you expect. Similar experiences are not uncommon : this is another example of the complexity in the web of relationships in which ministerial advisers and public servants can find themselves.

Another experience from which I learnt a lot arose from the publication of an article in the *Australian Financial Review* in 1996, where the journalist claimed that senior officials in PM&C regarded the advisers in the PMO as rather “amateurish”. This claim sparked fury, as would be entirely expected, from within the PMO, from the Prime Minister himself. The article came some months after the election of the Howard government, and after an intensive effort on the part of senior PM&C officials to build up good relationships with the PMO. This included encouraging the PMO to have weekly meetings with senior PM&C officers so as to break down any barriers that appeared to have been there as a result of the new government inheriting a team that had served the past government well. A setback, such as that article, can take you back to the beginning, if not further.

More recently, without ministerial advisers being called to parliamentary committees, public servants have been placed “in the front line”, which must breed in them increased fear for their futures. As John Nethercote has observed,<sup>14</sup> we have moved a long way from the position where ministers answered for the actions of officials (as well as advisers), to the position today where public servants are in the front line defending ministers and their staff. This, he says, leads to concern for the current vulnerability of the public service.

### **Next steps?**

Any next steps obviously need to achieve clarification of the roles and responsibilities of players – just as we now expect of directors of boards and their CEOs, for example. There is a need to both address the “accountability free zone” around ministerial advisers and examine ways of protecting the objectivity of public servants.

The UK is worth examining for what it has done and for what it is likely to come up with in the future.<sup>15</sup> The UK has a code of conduct for ministerial advisers as well as a complaints structure. The Committee on Standards in Public Life (chaired by Sir Nigel Wicks) is currently reviewing the role of ministerial advisers and considering how the existing code should be revised. One part of this code includes the obligation of ministerial staff to respect the integrity of the political neutrality and professionalism of civil servants.

It is time for new institutional arrangements to match current circumstances. We have a new *Public Service Act 1999*, but the *Members of Parliament (Staff) Act 1984* needs updating.

Two main approaches need to be taken : there is a need to set boundaries around what ministerial advisers do and on their behaviour (as public servants have had done for them in the Public Service Act), and also a need to clarify for public servants what is expected of them in their relationship with ministerial offices, so they can give frank, honest, comprehensive, accurate, and timely advice.

A code of conduct for ministerial advisers could be similar to the one that applies to public servants through the Public Service Act, even if framed differently. Richard Wilson, Cabinet Secretary in the UK has made the interesting suggestion that what should be stated in a code is not what ministerial advisers can do but what they cannot do.<sup>16</sup> I like this approach because it gives maximum flexibility for the Minister to use the adviser as he or she wishes, as well as permitting a statement about which accountabilities matter. A critical issue here would be the limits that are placed on advisers in their “power to direct” public servants, but other issues will emerge, such as whether all briefs from a department should be sent directly to ministers without being screened by their advisers.

Importantly, the code of conduct would need to cover the relationship that Ministerial Advisers have with Ministers, who frequently want advisers to act for them and to make decisions on their behalf. And, of course, it should cover how Parliament calls advisers to account for any executive authority they exercise. There are some tricky issues to be resolved here in the relationship with departments : for instance, whether or not the law should state that advisers cannot direct public servants

In the light of recent events, the “operationalisation” of the APS code of conduct and values is urgent. Hopefully more guidance will be provided, not just on how public servants relate to ministerial offices, but also on appropriate record keeping practices and on when and how to be involved with the media.

The use of codes of conduct, while helpful in setting the right tone, is not enough – Ministers and their heads of agencies need, as a matter of course, to agree on how the relationship between the department and office is going to work and to regularly review that relationship. I found helpful the involvement of ministerial staffers, if not ministers themselves, in the strategic planning process around what were to be the priority policy areas of work over the next year, always acknowledging, of course, that priority areas may need to be revisited shortly afterwards.

## **Conclusion**

My own experience is that the building-up and maintaining of good relationships with ministerial advisers and the gaining of on-going trust can be extremely time consuming and hard, but that it is essential for good results. Sometimes public servants have to deal with stupid advisers and sometimes with bright ones. In both cases, some weird ideas can emerge and take hold, and this can be frightening for public servants to contemplate. Similarly, ministerial advisers sometimes have to deal with rigid, if not arrogant, public servants, who have their pet agendas that they try to make relevant to the minister’s agenda. Without a trusting relationship, both the frank and fearless advice that public servants should be giving, and the confidential explanations from ministerial advisers as to their reasons for accepting or rejecting that advice, may not be forthcoming.

Our contemplation of the impact that the lack of accountability of ministerial staffers can have and the consequent potential danger of a more political public service (as highlighted by the recent Certain Maritime Incident), will hopefully lead on to some corrective action in the near future. All organisational relationships need clarity on expectations of roles and responsibilities if successful performance or desired outcomes are to be achieved. Governments today are making moves to ensure that private sector decision-making bodies are more accountable to their shareholders and stakeholders than they once were. Similar moves are also required to ensure that those exercising executive authority within government are called to account.

Endnotes

- <sup>1</sup> The inquiry by a Senate Committee into the children overboard affair.
- <sup>2</sup> *Accountability of Ministerial Staff?* Parliamentary Library, Research paper no 19, 2001-2.
- <sup>3</sup> “Conceptualising Advisers Policy Work : the distinctive policy roles of ministerial advisers in the Keating Government, 1991-96” in (2000) 35 *Australian Journal of Political Science* 449.
- <sup>4</sup> Royal Commission on Australian Government Administration 1976 (the Coombes Report).
- <sup>5</sup> Denis Ives, "Special Advisers for Ministers in the UK: an update" (2002) 104 CBPA 63.
- <sup>6</sup> Holland, above n 2.
- <sup>7</sup> Maley, above n 3.
- <sup>8</sup> The following extracts are pertinent:  
 “There is an inner circle of advisers who are very powerful. ... You had a small group of advisers, who tended to be the coordinating departments of PM&C, Finance and Treasury, and they were close to each other and it was hard to get things past them if they didn’t agree.”  
 (A Minister, on mobilising, p461)
- “It’s an important part of an adviser’s role – ‘driving the bureaucracy’ . ... To be able to drive the department you have to be very clear as to what you want and where you can push it. So I would make a list of people in the department and I would ensure I rang them regularly and asked them where are you up to, how’s it going, when will it be ready and so on. ... If I want to force the pace I might say we will meet with the minister on X date to review where we are up to. There’s nothing like a meeting with the minister to get bureaucrats working.”  
 (A Ministerial Adviser, on mobilising, p462)
- “A lot of things can be resolved ... between advisers in ministers’ offices. I mean if departments can reach agreement, and advisers can reach agreement, it is frequently not necessary to actually engage the ministers, except in ratification of the final outcome.”  
 (A Public Servant, on bargaining on behalf of ministers, p463)
- “It’s usually not a visionary or a vital package that comes out of an IDC. So by setting up this group of advisers that would run parallel to the IDC, I wanted to try ... to get the ministerial advisers’ discussions to influence the IDC so that stronger positions would then be taken in the package. So on the things that we got agreement on in our meetings then messages were sent back to the departments that this is what the advisers wanted in the package. And ... the things we didn’t get agreement on, well, nothing was done about those.”  
 (A Ministerial Adviser, on bargaining on behalf of ministers, p464).
- <sup>9</sup> Holland, above n 2.
- <sup>10</sup> *Public Sector Informant*, Canberra Times, June 2002 : 14
- <sup>11</sup> Statement made 18 April 2002 to inquiry of Senate Committee into a Certain Maritime Incident.
- <sup>12</sup> See also Uhr, above n 10.
- <sup>13</sup> Maley, above n 3.
- <sup>14</sup> *Sydney Morning Herald* : 27 June, 2002.
- <sup>15</sup> See further Ives, above n 5.
- <sup>16</sup> “Portrait of a profession revisited, 26 March 2002: 9 (<http://www.cabinet-office.gov.uk/2002/senior/speech.htm>)