

# **Public Service Independence and Responsiveness: Striking a Balance**

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## **Public Service Independence and Responsiveness: Striking a Balance**

***Jenny Stewart***

**T**he issue of Public Service responsiveness to Ministers has been described as a 'hardy perennial' of public service ethics. Too much responsiveness implies a public service that has become compliant to the point of subordinating its professional integrity to the political needs of Ministers. Too little, implies a public service that ignores its duty to serve Ministers in favour of pursuing its own interests.

It is a dilemma that is endemic to all representative democracies, as they grapple with the problems of grafting legitimate democratic control onto rule-based administrative agencies.<sup>1</sup> But the dimensions of the dilemma have grown steadily more complex, as new principles of public management have been defined and asserted, the media have become more powerful and pervasive, and public expectations of the political process have become more exacting, even as trust in politicians has continued to decline.

As the professional body of Australian public servants (both state and federal), the Institute of Public Administration of Australia (IPAA) has taken the lead in discussing these matters. A Roundtable in March 2008, organised by IPAA with the Academy of the Social Sciences in Australia, brought together academics, public servants (both senior and up-and-coming), ministerial advisers and former politicians to share insights and identify issues in an environment that was both supportive and challenging. The Roundtable was sponsored by Minter Ellison, Ernst and Young, the Academy of the Social Sciences in Australia and the Australia and New Zealand School of Government.

While the aim of the Roundtable was not to produce formal recommendations for change, discussion groups produced a range of suggestions for reform in specific areas. These are reported under the 'Recommendations' section of this report. The initial sessions of 13-14 March proved so fruitful, that a follow-up was held on 14 May 2008. This report embodies the outcomes of both sessions.

### **Organisation of this report**

This report was commissioned by the Policy and Advocacy Committee of the Academy of the Social Sciences, in order to focus and promote continuing debate among social scientists and governance specialists on the policy implications of the Roundtable's work. My brief from the Committee was threefold:

- to contextualise the proceedings of the Roundtable within the broader public policy debate;
- to record the outcomes of the event and their significance for public policy; and
- to offer commentary where it was deemed necessary.

In meeting this brief, (and in keeping with the structure of the Roundtable itself) I have focused on three key dimensions of the responsiveness-independence debate:

- the relationship between Ministers and public servants
- the role and influence of the media; and
- the role and accountability of ministerial advisers.

Within each key theme, I set the discussion in context. then report (from notes taken at the time) on the main themes of the discussion, before distilling the main policy-related messages. A concluding section summarises the policy recommendations of the Roundtable.

It is assumed that readers are familiar with the broad 'story' of public service change, but have included a summary of the Australian experience, as it is important to appreciate the sequencing of change, and the contested nature of many features.

The problem of balancing values in public service governance will never be definitively resolved. The best we can hope for is that, in clarifying the terms of the problem, the nature of the trade-offs between values, and the implications of one course of action over another may be better understood.

### **Roundtable discussions: who participated?**

Participants included public servants (both past and present), academics, journalists and politicians, with representation from federal, state and territory jurisdictions. This account does not identify participants by name, except in the case of keynote speakers.

Participants were selected by the organisers (the Institute of Public Administration Australia) for their knowledge of and/or experience with the modern Australian public service. Some effort was made to secure a breadth of opinion on each topic, so that the discussion might be as representative as possible of different streams and tendencies in the debate. The discussion was free-flowing and many different perspectives were presented.

While the Roundtable put forward recommendations for government action, it should also be regarded as part of a continuing and significant discussion about governance, both within and without government itself, one in which the participants themselves have played a key role. It is one of the strengths of the public culture in Australia that, despite (or perhaps because of) its somewhat adversarial nature, disagreements can be defined and discussed in this way. As Professor Paul Thomas of the University of Manitoba noted in his keynote address, this willingness to engage with difference, and to see it as part of the evolution of policy itself, is a strength of the Australian approach.

### **Background to the discussion: public sector change**

Australian public services have changed dramatically in the past twenty years. While the literature tends to concentrate on the Federal government, it was the States and Territories that were initially the main innovators, bringing in a range of reforms from the late 1980s designed to encourage more efficient and effective governance. At the same time, there were profound changes in the nature of the relationship between public servants and Ministers – changes that (although predicated on a general shift towards contractual employment) have proved, by their nature, much more difficult to document.

The emphasis in the States and Territories during the mid 1980s to the mid 1990s was on efficiency and improved service delivery, to be achieved in large measure by introducing competition into these functions, through outsourcing, contracting and privatisation. The Liberal governments of Nick Greiner (Premier and Treasurer of New South Wales 1988-1992) and Jeff Kennett (Victorian Premier from 1992-1999) were particularly significant in this regard.<sup>2</sup> Public service boards were abolished, and new regimes in both public employment and public finance established. The Commonwealth introduced major reforms from the early 1980s, when the Hawke government came to power, but the pace of change was slower, and the trajectory more incremental than in the most enthusiastic states.<sup>3</sup>

Comprehensive appraisal of the impact of these reforms has proved a difficult task. Wide-ranging cost reductions have occurred, but there have been many instances where benefits have either not been clearcut, or have not been delivered. Moreover, in the period since the 1990s, while the reforms have not been reversed, there has been some reassessment and readjustment, particularly in relation to modes of reporting. Budgeting and reporting on the basis of outputs, for example, required a lengthy period of experimentation in order to establish outputs that operated at the most appropriate level of generality.<sup>4</sup>

Public service employment, in every jurisdiction, was tied much more closely than in the past to performance: senior executives were required to 'deliver' outputs (specific programs and services) and even outcomes (beneficial results), against agreed targets. The most senior public servants also lost their traditional security of tenure, and in many jurisdictions, their employment contracts were directly with the Premier, rather than with the relevant Minister.

The consensus from the literature is that the effect of these changes was to centralise and entrench political power relative to the public service.<sup>5</sup> Indeed when changes in the nature and role of the media are taken into account, one could argue there has been a palpable shift in the culture of political power in Australia, since the mid 1980s, with the role of politics and of politicians highlighted as never before.

Accompanying these changes, there has been considerable concern that public services have become politicised. The word 'politicisation' is, of course, a slippery one. In its extreme form (preferment within the public service depends upon political affiliation) it is unknown. But partisanship confers reward (for example in the appointment of political advisers to key public service positions). The running of the cabinet office is increasingly a political, not a public service, appointment. More than the changes themselves, as Prasser has noted, it is the signals that are sent that are important.<sup>6</sup> It takes only a few decisions to change the climate of opinion and practice.

In the academic literature, the key issue has been the relationship between a contract-based public service, and the traditional Westminster values. How, it was asked, could public servants give advice freely when their employment was on the line? The debate surrounding the re-casting of the Commonwealth Public Service Act (begun during the Keating era) crystallised how far change had come.<sup>7</sup> Some doubted whether a specific public service act was even required. In the event, the new act acknowledged the passing of the old, implicit culture by articulating the public service values, and giving the Public Service Commissioner a role in upholding them.

Despite these safeguards, there was concern that public servants, in serving the political interests of Ministers, were neglecting values such as professional impartiality, and the need, on occasion, to oppose Ministers where their requirements were ethically dubious. While the end of permanency for departmental secretaries dated, in practice, from the early 1980s it

was during the Howard era that the issue of undue responsiveness came to a head. In 2007, former Public Service Commissioner Andrew Podger, and former head of the Department of Prime Minister and Cabinet (PM&C), Peter Shergold, expressed views on this question.

Podger put the view that the balance had swung too far, particularly in relation to processes for appointing secretaries. He argued for a stronger role for the Public Service Commissioner in the process, expressing a concern that in the current situation (where the opinion of the Head of the Prime Minister's department dominated), there was a risk that 'merit may play a minor role rather than the dominant one'.<sup>8</sup> The Head of the Commission should be regarded as the professional head of the Public Service, while the Secretary of the PM&C was the operational head.

Then head of PM&C, Peter Shergold, responded that the involvement of the Public Service Commissioner would not be appropriate, because many Commissioners went on to become secretaries, and would therefore be 'hopelessly conflicted' in the provision of advice. As for the specific concerns Podger had expressed, Shergold's view was that the system as it stood had performed well: there was no need for change.<sup>9</sup>

### **The international context: keynote addresses at the Roundtable**

The Roundtable began by placing the Australian debates within a broader, international context. Public service change is a bewilderingly diverse set of phenomena, which has defied all efforts at comprehensive categorisation or even characterisation. It is true that there has been a broad trend to make public services more efficient and effective, but the means employed have differed from country to country, and have changed within countries over time.

Learning from other countries, even those sharing Westminster systems of government, requires ways of seeing through circumstances, to the deeper realities beneath. Two keynote addresses: the first by Michael Wintringham, former New Zealand State Services Commissioner, the second by Paul Thomas, Duff Roblin Professor of Government at the University of Manitoba, provided ways of building these bridges.

#### *New Zealand*

Before describing Wintringham's presentation, it will be useful to summarise the New Zealand experience. NZ is usually seen as the most 'managerial' version of the New Public Management.<sup>10</sup> Its reform model, first implemented from the mid 1980s, was based on a thoroughgoing contractualism aimed at securing better performance, and a more transparent relationship between purchasers (Ministers) and providers (public servants).

Unlike the Australian States, New Zealand retained, and in some ways enhanced, the position of its State Services Commissioner. The State Sector Act of 1988 expressly identified the central role of the State Services Commissioner in maintaining and developing the professionalism of the Public Service. Most importantly, and unlike Australia, the Commissioner was responsible for appointing senior executives, and managing appraisal of their performance.<sup>11</sup>

Wintringham's address highlighted the importance of the way in which public management institutionalises responsiveness, particularly in relation to the objective evaluation of government programs. It was emphasised that the contractual underpinnings of

independence (and even the adverse publicity when things went wrong) were less important than the ways in which decisions were made, day by day and week by week, in the borderland between the political and bureaucratic executives. He spoke of the perverse impact of the contractual environment on the provision of information. On one occasion, a Minister had declined to 'purchase' an evaluation of a program because he knew it would be negative. The Official Information Act, as interpreted in practice, made it very unlikely that a New Zealand official would refuse to compromise on the release of information that might be embarrassing to the government. As the Commissioner put it:

In my view, the public management changes in New Zealand not only weakened an already weak convention of ministerial responsibility – a topic in its own right – but institutionalised responsiveness in a way which can make independence (aka political neutrality), if not more difficult to achieve, certainly something that requires pretty sophisticated management by public servants.

Wintringham further emphasised the importance of information, in relation to the situation popularly known as 'Corngate'. In 2002, 17 days before a general election, a book was published purporting to prove that genetically modified sweetcorn had been inadvertently planted in New Zealand, and the Government, industry and the public service had concealed the fact. The Prime Minister requested that the Public Service give full briefings about the matter to whoever asked for them, to prove that there was nothing to hide. The decision was made (by the State Services Commissioner) to authorise the briefings, with four specified conditions of access. The decision had been high-risk, but had proved successful, precisely because it had both drawn upon, and reinforced, the reputation of the public service for probity.<sup>12</sup>

It was acknowledged that key relationships were not just those between public servants and Ministers. The boundary between the public service and the political world also involved the management of stakeholder relations. Much depended upon ambient political conditions. When conditions were stable, there were fewer possibilities for stakeholder salience. On the other hand, political turbulence could give stakeholders the opportunity to exert pressure on both politicians and public servants. In these situations, with boundless opportunities for miscommunication, public servants could often be left exposed.

### *Canada*

Paul Thomas observed that, unlike Canadians, who were too polite to engage in public debate about public administration, Australians were, at least, talking about the issues. But in charting new directions, he advised us to beware 'best practice'. He favoured smart practice, tailored to the specific circumstances of governance, and to knowledge of what worked. Lesson-drawing should, however, be done with circumspection. Canadian public administration was not Australian public administration 'with snow on top'.

As in Australia, there was a lack of attention given to the experience of provincial and local level governments, despite the fact that in Canada the majority of public services are developed and delivered at these levels. The provinces in Canada had neglected the study of Canadian public administration, to their detriment. There were pressures on governments that were making their tasks more difficult. Governance required a sharing of authority, yet at the same time there was mounting distrust of government and politicians. Good government

was construed as error-free government, which understandably, made public servants ever more risk-averse.

In charting pathways of reform, it was tempting to prescribe a re-writing or at least a clarification of the rules that are implicit in Westminster conventions about politico-bureaucratic relations. This was the view of a number of leading Canadian scholars, and also that of the Gomery judicial inquiry into the so-called sponsorship scandal, a scandal involving political interference and kickbacks in the awarding of government advertising contracts.<sup>13</sup> A number of 'rogue' public servants had facilitated these transactions.

Gomery took the view that Deputy Ministers (the equivalent of Departmental Secretaries in Australian Commonwealth administration) were too beholden to the Prime Minister. An outside committee should vet appointments (as in Alberta). Gomery had also recommended that the Federal Accountability Act should be amended so that Departmental Directors could appear before the Public Accounts Committee.

Thomas considered that 'rules don't matter as much as shared politico-administrative culture'. This culture need not stress public value, a phrase that tended to detract from the political dimension of public life. Rather, public value should stress the techniques and practices needed to help Ministers to do their jobs better. In defining the values that constitute this shared culture, it was important to think through the way in which the value should be applied. For example, responsiveness could apply to citizens as much as to politicians. Did responsiveness mean public servants should be responsive in all directions – upwards, outwards and downwards?

Thomas reiterated the theme of Wintringham – that concepts such as responsiveness, loyalty and independence take on real meaning through concrete action, and the resolution of concrete disagreements. Above all, dialogue between politicians and public servants was needed, particularly in relation to 'defining moments' – decision points that highlighted the value conflict in useful ways.

### **Theorising the problem**

There are a number of ways of theorising the relationship between politicians and public servants. From a functional perspective, as Donald Kettl<sup>14</sup> puts it, the fundamental problem is giving public servants enough autonomy to get the job done, while maintaining accountability. In his background paper, Richard Mulgan proposed that in general, one would want a public service to be responsive. While acknowledging the importance of responsiveness (and its basis in democratic legitimacy), the background paper identified two key factors that would tend to limit it:

- constrained partisanship (professional neutrality); and
- public integrity.

The reality that public servants were expected to serve with equal loyalty governments of quite different political persuasions implied that there were limits to the degree of support that public servants could be expected to show the government of the day. While obviously political activities were best left to ministerial staff to perform, there were grey areas. The paper identified a number of instances during the Howard years where, at the federal level, the professional neutrality of public servants had been challenged: instances where public servants had been required to do party-political work, for example, preparing lists of grants

given to individual electorates. In others, governments arguably had used the perception of public servants as being apolitical to further their own purposes, as when the head of the Work Choices Authority had appeared in advertisements leading up to the 2007 election.

The principle of public integrity went to the heart of a functioning democracy. Whereas politicians were necessarily engaged in a ruthless contest for power, '[A]n honest bureaucracy, defending legality and due process, is clearly essential to democracy and therefore in the public interest'. In practice, this principle required public servants to uphold certain administrative values, even where (or especially where) this duty conflicted with the political imperatives of government. Responsiveness in matters of policy (that is, helping governments to achieve their policy objectives) must be accompanied by adherence to public service ethics in matters of legality and due process. Improperly responsive procedural action (such as altering departmental recommendations relating to the awarding of grants to give a veneer of respectability to the Minister's preferences) violated the principle of public integrity.

Another promising line of analysis is to see public servants and politicians as entering an implied bargain, with different types of bargain being possible. Professor Paul t'Hart, drawing from Hood,<sup>15</sup> suggested that ideals of independence and responsiveness suggested bargains based on trust in the first case, and agency in the second. The relationship between Ministers and public servants in the Westminster tradition was couched in terms of both autonomy and of trust. A public service that possessed substantial power independent of politicians must be trusted by those same politicians not to exceed its power.

The contractualism of new public management, on the other hand, substituted a form of control for trust. It implied that politicians (as owners) had more ability to control public servants (as agents) if public service performance were the subject of explicit contract-making. 'Responsiveness' derived from compulsion – but at the same time, public servants were expected to adhere to their traditional duty to give unpalatable advice, when it was necessary.

#### *Using the theories*

While the Roundtable did not explicitly consider the implications of theory, the Mulgan and t'Hart perspectives were interwoven with the day's discussion, because each of them implies a different practical remedy. The Mulgan model of constrained responsiveness implies a pragmatic balancing of the two imperatives, one in which culture and learning play a more important part than rules. The t'Hart model suggests that, to the extent that contractualism reigns, the operation of trust is constrained, and *vice versa*. While different mixes of trust and responsiveness are possible, a judgement that responsiveness had become excessive would imply some return to the independence implied by trust.

If (as implied by Mulgan) rebalancing is a matter of reflective emphasis (rather than of structure), working guidelines and rules should be sufficient to tell public servants when their usual responsiveness should be qualified. But if the nature of the implied bargain is one of externally-imposed constraint, public servants could not choose when to be or not to be 'responsive'. A return to choice implies a different kind of bargain, one based on mutual trust.

This tension formed a counterpoint to discussion throughout the Roundtable. While not definitively resolved, the weight of opinion tended to favour a 'restructuring' model – in other words, a restoration of trust based on enhanced public service autonomy.

*Views across the table*

It is said, in the folklore surrounding the *Yes Minister* TV program, that when a senior political figure and her Head of Department watched the program, they each found it to be hilarious. The curious thing was that they laughed at different points in the story. To some degree, the Roundtable paralleled this contrast. While there was substantial agreement that politicians and public servants wanted the same thing (good outcomes for Australian citizens), differences in perspective meant that, at times, the two groups appeared to be talking about two different realities.

Politicians who were present at the Roundtable were strongly of the view that politicians want to be warned, and they want to be challenged. Without these attributes, government becomes an echo chamber. They particularly do not like passive non-responsiveness, where public servants, afraid to air their true opinions, put needed discussion on the never-never. There is a need to bring the strategic dimension of policy to bear on this problem, by integrating public servants more closely with Cabinet decision-making processes.

Public servants saw Ministers quite differently. Ministers, they feel, want change now, often with little understanding of administrative realities. It is not too difficult for public servants to be fearless in relation to policy matters. It is more likely to be in relation to public integrity that frank and fearless advice is difficult to give. In any case, as the emphasis has switched to management expertise, policy advice has not retained its former importance. The status of the Senior Executive Service (SES) as a professional group has declined. The fact that senior public servants can be removed for presiding over a single regulatory failure, or for no reason at all, means that performance is equated with the avoidance of mistakes, rather than with overall achievement.

***Issues: public service culture/s and changing roles***

It was argued that a good politico-administrative culture is extremely important in shaping effective behaviours and, just as importantly, in passing them on. There was a strong view that mutual trust is the cornerstone of an effective working partnership between Ministers and their departmental public servants. If rules (and roles) were less clearly demarcated than in the past, culture becomes even more critical as the medium in which trust has to be generated.

Nevertheless, a favourable culture is contingent on many factors, and present arrangements that reduce autonomy expose senior public servants to levels of risk that potentially lower performance.

**Politicians, public servants and the media**

There was broad agreement that the omnipresence of the media has changed the workings of government in ways that has profound consequences for the role of public servants. In particular, the need for politicians to be responsive to the media impacts heavily on public servants.

*Context from the literature*

There is much at stake for the political executive in securing favourable media attention. Agenda studies highlight the importance in modern politics of controlling not only what is talked about, but how it is discussed. At the same time, the demands of the news cycle (that is, news is reported continuously throughout the day and night, and most issues are replaced within 24 hours), and the influence of 'infotainment', push the agenda in sensationalist directions. This means, increasingly, that 'issues management' comes to dominate the attention of the political executive. This is evident not only in relation to the presentation of policy, but to an increasing extent, in relation to the framing of policy: that is, what is included in the picture and, just as importantly, what is omitted.

With this broadening of the political arena, the Parliamentary Press Gallery, once all-important in mediating political news, has declined in importance, and its members are less likely than in the past to build careers within its ambit. Moreover, the modern Press Gallery is more concerned with commentary, interpretation and opinion than with the breaking of news as such. At the same time, political communication is more professionalised, pervasive and powerful than ever before. While Australia has yet to assume the contours of the 'PR State', in which media considerations are paramount in the selling and even the construction of policy, governments of all persuasions seek to use and where possible to control the way they are represented.<sup>16</sup>

Politicians and the media play an elaborate game; each needs the other, but each is suspicious of the other. Politicians would like the media to present policy stories in ways that suit them, and some are quick to contact journalists personally to express their personal displeasure about a story they believe does not do them justice.<sup>17</sup> Public service departments and public agencies are equipped with public relations experts whose role is to impart information to the media about policy developments and to ensure favourable coverage of policy initiatives. Ministers have media advisers who occupy a key position between Ministers, government departments and the media.<sup>18</sup> Advisers sift through the mountains of material entering Ministers' offices, searching for opportunities to portray the government and its actions in the most favourable possible light.<sup>19</sup>

For their part, political journalists need access to Ministers, and (in the absence of robust Freedom of Information (FoI) laws) the ability to obtain information through contacts and networks, where necessary ignoring attempts by government to distract rather than inform, and (during the Howard era in particular) braving the government's adamant will to prosecute public service leaking.<sup>20</sup>

*The political view*

Politicians at the Roundtable gave frank insights into their own experience. The media, with its 24-hour news cycle, places immense pressure on politicians to respond quickly to events. At 11:30 pm the ABC starts running the headlines that will dominate the following day. This means being briefed at 5:45 am, either by a media adviser or by public servants.

Should public servants do this type of work: that is, does it involve public servants in activity that is purely political? It appeared that many public servants, particularly at State and Territory level, were called upon to enter a 'grey area' which was not quite political, but neither was it purveying information solely for the purpose of informing the public. Ambiguous roles, not clearly designated ones, described their working lives.

*The public service view*

The public servants who were present had a generally jaundiced view of the media. Journalists' tendency to personalise news means that Ministers are represented as being personally responsible for everything that happens in their departments. Ministers are 'crucified' if someone dies, for example, in a hospital casualty department. Newspapers and TV networks are guilty of 'beating up' stories, and on occasion of pursuing vendettas against particular Ministers and agencies. Retractions and corrections are never displayed with sufficient prominence.

Policy debate and diversity are often curtailed because controversy-seeking journalists portray any difference of opinion between politicians as being evidence of disharmony in party or government ranks. Frankness (as in 'I don't know the answer to that question') is mercilessly punished, as is any sign of admitting fault in public.

Complex areas of policy and delicate relationships (for example, with not-for-profit providers of services) can be endangered by a weak or unprepared Minister being 'doorstopped' with an unexpected question. The media has no interest in stabilising policy commentary, and the tenor of much writing is strongly adversarial. In at least some jurisdictions policy evaluation is how much positive news coverage (in centimetres) politicians receive, not the performance of the programs that are the nuts and bolts of policy.

But not all the commentary from public servants was negative. Good relationships with journalists are possible, and many are keen to be fully-briefed on policy. While there is some sensation-seeking, experienced journalists are interested in specific events only if they open a window onto systemic failures. 'One-off' incidents that have little resonance are unlikely to be run.

Because politicians are so deeply distrusted by the public, public servants have a role to play in informing the public (for example about regulatory policy). Moreover, politicians damage their own reputations when they become too obsessed with control over what public servants say.

It is important to find ways of distinguishing political policy information from more technical forms of communication. Good communication with clients and consumers is critical to successful program management, but there are instances where public servants performing these tasks have been reprimanded by political officers. What has been sound administrative timing has proved politically inconvenient.

*The journalists' view*

Not all journalism operates on a 24-hour news cycle: there is much that is reflective and deals with longer-term issues. Nor is the media the sole source of pressure on politicians. Ministers themselves contribute to the problem by assuming that their administration must be seen to be error-free. They do not have to assume personal responsibility for 'every flushing toilet in Australia'.

Over-reaction is more likely because corporate memory, in both the public service and in the media, is wearing thin. Outsourcing and a greater contestability of policy advice means that knowledge is no longer concentrated in government ranks. Often stakeholders have more knowledge than those in government.

Public servants often misunderstand the competitive nature of the media. There is not one view on a policy, but many. When public servants put out a press release, they cannot assume that it will command media attention. News is dynamic, not static – a press release that states particular facts has to be worked into a viable narrative or argument before it can be used by the media. There will always be a need to go beyond the official ‘spin’. News is what people don’t want you to know.

### ***Issues: towards a communication strategy?***

There are many ways in which modern departments communicate with stakeholders, clients and with the public. Much of this information is uncontroversial, in that it explains developments in policy or regulation that need to be understood in order to be implemented effectively. At the other end of the spectrum is policy-related advertising that is more political in character, where governments use the media, not just to explain programs, but to promote them. The further communication migrates towards this political end of the spectrum, the more wary public servants should be. As the Australian Public Service Commission (APSC) put it, in guidance issued in 2007,

public servants, including agency heads, should avoid involvement in Government policy publicity campaigns unless there is a demonstrated public interest.<sup>21</sup>

But there are a number of grey areas, where the demarcation between information that is technical, and information that is ‘political’, is unclear. A campaign that raises few eyebrows outside an election context could become controversial in the lead-up to an election. More generally, agencies need ways of conceptualising and managing policy and information-relevant communication. There is a need to separate the political from the technical side of policy communication, although there is a tendency for the former to drive out the latter.

### **Ministerial advisers**

Ministerial advisers include political appointees working in Ministers’ offices, ministerial liaison officers (who are seconded public servants) and electorate staff. The first two categories are employed under the Members of Parliament (Staff) Act 1984. In State jurisdictions, there is no separate employment act for advisers.

Advisers who are political appointees have been the subject of continuing controversy since the Whitlam government (1972-1975) dramatically increased their numbers. Although advisers are generally considered to be a necessary part of the political system, the fact that they are clearly (and intentionally) politicised is held to offer a clear demarcation between their role, and that of public servants.

Concern about the lack of accountability of ministerial advisers, and a lack of clarity regarding their role, has been a recurring theme in the literature.<sup>22</sup> The role of advisers came to a head in relation to the Children Overboard affair, when advisers were used to muddy lines of communication between Ministers and public servants, so that Ministers could claim that they had not been formally advised of certain facts – the tactic of ‘plausible deniability’. In 2003, the Senate Finance and Public Administration Committee, in the wake of the Children Overboard affair, tabled its report on the Members of Parliament (Staff) Act (the MOPS Act), with recommendations (not supported by government members of the committee) calling for wide-ranging reform. The Committee supported a code of conduct for advisers, a clear

distinction within the MOPS Act between advisers and other employees (such as electoral staff), and annual reporting of the numbers and identities of advisers.<sup>23</sup>

The Cole Royal Commission into the Australian Wheat Board again brought up the question of plausible deniability. While Ministers (including the Prime Minister) appeared before the inquiry, no advisers did so. The Prime Minister acknowledged that key cables, detailing at least suspicions of kickbacks, were received by his office, but denied that he had ever seen them.<sup>24</sup>

Plausible deniability had its attractions for politicians, but left public servants potentially exposed or compromised. In guidance to public servants published in 2006, the APSC Commissioner drew attention to the need for documented procedures for public servants to follow when dealing with Ministers' offices, and for a communication plan to ensure the information was transmitted.<sup>25</sup>

Politicians have been less willing to acknowledge a problem. Oppositions tend to call for greater accountability, but hold a different view when they attain government. Labor Minister Bob McMullan is credited with the so-called McMullan principle – that advisers are accountable to Ministers who are, in turn, accountable to Parliament, and therefore there is no need for advisers to appear before parliamentary committees.<sup>26</sup>

The validity of this argument rests upon the closeness of the identification of staffers with their employers. Ministers cannot have it both ways – they cannot claim that they were not informed of certain developments when their advisers were so informed, while at the same time insisting that the accountability of advisers is subsumed within their own. As Holland puts it, 'if ministerial staffers are more than merely their bosses' ciphers – and the general view is that they are – then their actions must be more transparent than is currently the case'.

### *Views*

The Roundtable heard of a number of instances (in State jurisdictions) where advisers (employed under Public Service Acts) had exercised (and were continuing to exercise) ministerial power: for example, in making certain decisions on behalf of the Minister. Whether this was desirable or even legal, it was happening.

Policy reform should recognise the reality that advisers and public servants occupy different worlds. Advisers are often younger and less experienced than their bureaucratic counterparts, but frequently possess considerable power. The jobs of ministerial advisers depend on their ability to protect and defend the interests of their Ministers, rather than on the quality of their advice.

Advisers are there to 'get things done': public service departments can often be difficult to direct. At the same time, ministerial advisers often have little understanding of the limits to responsiveness of public servants. Departments need to set limits in their dealings with advisers, which requires strong leadership (and clear guidelines) from the departmental secretary.

The politicians present stressed that there should be a joint purpose between Ministers and their advisers (both personal and public service). They see the need for a 'common mind' between ministerial offices and public servants, with each playing a different role. The most effective advisers are those who know this.

It was clear that there was a variety of views among senior public servants at the Roundtable as to the most appropriate style of relationship between the public service and Ministers. There was agreement that being on first-name terms was not appropriate, but whether public servants should see themselves as one source of advice among many competing for the Minister's ear, or as occupying a more central role, was not clear. One former secretary expressed the view that departmental secretaries should clearly delineate departmental from other sources of advice. Advice should be withdrawn if advisers in the Minister's office were trying to direct what public servants should say. Departmental secretaries clearly need both pragmatism and flexibility if the lines of communication are to remain open, while still operating in a structured way.

There is scope for diverse variations on these themes in State and Territory governments. Habits become institutionalised, and ways of proceeding entrenched, particularly where one party has been long in office. Different Premiers have different ways of running their offices – some are quite separate from the public service, others more integrated. The need to control the media agenda looms large. One senior State government public servant spoke of routinely reviewing the events of the day in the Premier's office, while assessing likely future developments.

However, little empirical work has been done on the behaviour of advisers, particularly at the State and Territory level. Even the basic data is hard to come by, as little attention has been given to the numbers, role and accountability of ministerial advisers working in the offices of State Ministers. The numbers appear to be exceptionally high in Western Australia and in Queensland. There is considerable variation in the mode of employment and the work pursued.

### ***Issues: how to generate trust?***

Despite the difficulties canvassed at the Roundtable, the desirable outcome – a more productive working relationship between Ministers, advisers and public servants – is not difficult to imagine. As the Australian Public Service Commission has noted, both advisers and public servants have a common commitment to serve the Minister. This commitment, however, should be based on the articulation and understanding of difference, rather than a merging of roles. As the APSC put it, commitment

is best formed when the working arrangements between advisers and APS employees are articulated clearly by agreement between the Minister and Agency Head; advisers need to appreciate the legal responsibilities of APS employees to the APS Values and Code of Conduct; they also need to appreciate the formal lines of authority from the Minister to the Secretary, and from the Secretary to Agency staff; public servants similarly need to understand that close and ongoing communication with advisers is essential, but that advisers do not have the power to direct; all public servants need to understand that confidentiality is critical to a relationship of trust between the Agency and its Minister.<sup>27</sup>

From the Roundtable perspective, however, the main problem is that this communicative trust, and the knowledge and clarity underpinning it, is often lacking in practice. This has adverse consequences for the advisers themselves, and public servants.

The Roundtable went somewhat further than the APSC had done in its paper, emphasising the importance of a clear enunciation of principles and practice. In particular, a clear

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employment framework is a necessary step towards improvement. None of the States and Territories as yet has this framework, and the Commonwealth's MOPS act gives little guidance.

In addition to this, attention needs to be given to the induction and professional development of advisers, so that they understand more about the nature of public service work, and what public servants could and could not do.

### **Recommendations: promoting responsiveness and independence**

Is it possible to promote both responsiveness and independence? Can there be a better trade-off between these two values? The conclusion of the Roundtable discussion was that this was, indeed, possible. However, there is a need to rebalance the relative power of Ministers and Secretaries, so as to ensure more productive partnerships in the future.

The following specific recommendations were made:

#### *Relations between Secretaries and Ministers*

- Appointment of Secretaries to be on the basis of a joint recommendation to the Prime Minister from both the Head of the Department of Prime Minister and Cabinet, and the Public Service Commissioner;
- There should be a presumption of ongoing employment, with a 5 year contract, and an expectation of renewal;
- Strict protocols about communication between Departments and Ministers. All communications should be marked to the Minister. Ministers should see all the documents, as should the Chief Executive;
- It was necessary to foster a culture of collective accountability. In other words, there should be less stress on being able to pinpoint blame: accountability should acknowledge the fundamental partnership between Ministers and public service; and
- Fixed political terms for all governments;

#### *The role of ministerial advisers*

- The roles of ministerial advisers should be clearly specified in legislation; it should be clearly understood that advisers assisted the Minister politically: they should not exercise executive authority;
- Legislation should clearly define the nature of the employment relationship, and who the employer is;
- Advisers should undergo a compulsory period of training, so that they understood their relationship with the public service;
- At both State and Federal levels, there should be a statement of the role and accountabilities of advisers;
- A code of conduct for ministerial advisers was desirable; and
- Ministers should permit advisers to appear before Parliamentary committees.

### *Training of politicians*

- It was agreed that both politicians and their advisers needed a firmer understanding of what the public service can and can't do; and
- A training program for ministerial advisers and for beginning politicians had been proposed, but rejected by the Rudd government on the grounds that it was presumptuous for others to attempt to play this role. There was, nevertheless, a need to develop the dialogue on this issue.

### *Communication*

- Guidelines were needed on identifying the boundary between party-political advertising and official communication;
- Where there was doubt, the Minister should be the departmental spokesperson: this was the best way to avoid compromising public servants;
- Whole-of-department communication strategies were needed to ensure that a coherent policy view was formulated and delivered; and
- Performance information should be presented in ways that helped stakeholders form a clear overview as to what had been achieved.

### *The role of the Public Service Commissioner*

- The Commissioner should, pre-eminently, be the ethical guardian of the public service, while the Secretary of the PM&C should be acknowledged as playing a more political role; and
- Given the Roundtable's view that the Public Service Commissioner should jointly recommend the appointment of Departmental Secretaries, it was unrealistic to expect that a mid-career Commissioner would be able to perform this role independently. The Commissioner's job should, therefore, be a culminating, rather than a mid-career position.

## **Conclusion**

The Roundtable was concerned with working relationships at the topmost levels of the Public Service. Its agenda was that of public service responsiveness to Ministers, rather than public service responsiveness to stakeholders, clients, citizens or consumers.

Within this ambit, the discussion highlighted legitimate concerns about this relationship, particularly the effects upon it of the news media, and the tendency for policy issues to be simplified, personalised and made adversarial.

The concept of productive partnership – between advisers and public servants, and between public servants and Ministers – was repeatedly emphasised. There was agreement that, while culture was crucial, clarification of roles, and some redressing of the power imbalance between the political and bureaucratic executives, is needed.

The policy recommendations made by the Roundtable are not new. They have, in various guises, been made repeatedly in the past. The problem is that once in power, governments

(with only a few exceptions) become more enamoured of the status quo than prepared to pursue change. Thus, public service policy falls victim to a vicious circle. The more power politicians have, the less likely it is (unless there is true statesmanship from the political side) that they will allow public servants themselves to play a role in designing the future of the public service. Yet the need to find non-political ways for public servants (particularly those working for State and Territory governments) to contribute to this redefinition has never been more pressing. While there are variations between Commonwealth, State and Territory jurisdictions, all Australian public services must somehow reconcile their managerial identities with the political imperatives of modern governance.

The importance of the task is such that other groups should become involved in the debate. The nature of public service professionalism is an issue, not only for those engaged in the profession, but for policy communities and citizens as well.

Meanwhile, the daily dramas and decisions that constitute the lived reality of high-level policy-making continue. Prime Minister Rudd, as a Labor moderniser, wants the clearest commitment from his public service, as well as from his Ministers. The extent to which it is a commitment based on partnership, or one based on control, remains to be seen.



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