

Democracy in Australia – Responsibilities of ministerial advisers

Ministerial advisers are employed by ministers to assist them with political issues associated with their portfolios and with their roles in the parliament. While Ministers are elected and responsible to the Parliament, their advisers are not. Some ministerial advisers are seconded from the public service while others are appointed from other backgrounds. On both these grounds their accountability has been somewhat unclear.

In the Commonwealth Government, ministerial staff who are seconded from the public service are governed by the Australian Public Service Code of Conduct, and are employed by the Australian Public Service Commissioner. The Government's new code for ministerial staff now provides more specific directions both for these ministerial staff and for others appointed from outside the public service.

An “Accountability Gap”

Political Scientist Marian Sawer and other commentators are concerned about an “accountability gap” between ministers and their staff that can be used by ministers to avoid accountability for their actions. This issue came into prominence during what has come to be known as the “Children Overboard Affair”. Prime Minister Howard and several of his Ministers claimed there was evidence that asylum seekers on a sinking vessel in Australian waters had thrown their children into the water to force Australian sailors to take the asylum seekers on board the HMAS Adelaide, where they could then claim asylum. There were allegations that Ministers and their advisers had been at various stages informed that this was not the case but that ministers had failed to make that publicly known. These were especially contentious claims because the event took place leading into an election.

Senate Inquiry

In 2002, the Senate established a select committee to enquire into aspects of the “Children Overboard affair”, including the information that was provided to the Government on the issue. The Committee found that the practices of ministers and ministerial staff were “inimical to the transparency, accuracy and timeliness requirements that are vital for proper accountability”. It also found that there were no adequate mechanisms to hold ministerial staff publicly accountable for their actions.

The inquiry sought evidence from ministerial advisers. The Committee was particularly concerned that when ministerial staff were called to give evidence to the Inquiry, they were prevented from doing so by their ministers.

Code of Conduct for Special Advisers- UK

Dr John Uhr reported on the accountability of ministerial staff to this Senate “Inquiry into a certain maritime incident”. He compared the situation in Australia to the model used in the United Kingdom. He recommended three actions for Australian jurisdictions, based on the UK model, to improve the monitoring and accountability of ministerial staff. These recommendations were:

There should be a public code linked to the Australian Public Service Code documenting the responsibilities of ministerial staff to make clear to the public, the public service and ministers and the advisers themselves what is expected from ministerial staff;

Ministerial advisers should be employed by the Cabinet Secretary rather than by individual ministers to make clear that their responsibilities are to the overall ministry rather than to the Minister her-or-himself; and

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There should be a supervisory agency for ministerial advisers to provide a right of address for public servants or others with grievances and for the ministerial staff themselves.

The public code should make it clear that ministerial advisers are required to appear before parliamentary committees and inquiries when requested to do so and that ministers do not have the right to direct their staff not to attend. Such an obligation is not intended to place accountability responsibility on ministerial staff unless they have acted beyond their designated roles or without the knowledge of the Minister. It is rather a means of ensuring that ministers are fully accountable to the parliament and the electorate.

For Ministers to be fully responsible to parliament for their actions, their personal and departmental staff must be available to provide evidence to parliamentary inquiries if called. The Community and Public Sector Union points out that ministerial staff and public servants have no option but to refuse to give evidence at parliamentary inquiries if so directed. Ministers must be barred from making this direction.

The Rudd Government's new code for ministerial advisers

The Rudd Government has introduced a new code to govern the actions of ministerial staff. This code requires that ministerial staff make declarations of their private interests and of the receipt of gifts. It asks them to facilitate prompt and clear communication between ministers and their department. It asks for recognition that executive decisions are the sole prerogative of ministers and public servants. It also makes clear that ministerial advisers cannot in their own right give directions to public servants.

The code does not require advisers to appear before parliament if called. The Government's response to the "2020 Summit" recommendation that ministerial advisers should appear before parliament when requested was:

"Ministerial advisers should have to appear before parliamentary committees when they are taking executive decisions."

Following the release of the code, the government has expressed the view that, since the new code prevents advisers from making executive decisions, it removes the need for them to appear before parliamentary committees.

A higher level of accountability

As Sawyer notes, an unavoidable focus of a Minister is to limit reputational and political risk. Clear and enforceable codes of conduct are required to ensure that ministers and their staff operate in an open and democratic manner. Reforms which include the three recommendations made by Dr John Uhr and impose requirements on public servants to attend parliamentary inquiries would close the accountability gap which emerged so strikingly in the inquiry into the "Children Overboard" incident.

Furthermore, the office of the Prime Minister, with advice from the Government Staffing Committee, is responsible for the implementation of the code and any sanctions imposed. If the code remains as a guideline only with no sanctions specified, its enforcement, or even continued existence, becomes a political matter. This is especially risky as one of the times when advisers are most likely to break the code is when acting in politically delicate matters. The code should be incorporated into legislation to ensure its consistent and non-partisan enforcement.

See also

Accountability of Ministers for actions taken under their direct and indirect authority Parliamentary Codes of Conduct And Ethics

<http://www.australiancollaboration.com.au/democracy/index.html>

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