

**MINISTERIAL ADVISERS: GUARDIANS  
OR URSURPERS OF  
RESPONSIBLE GOVERNMENT?**

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## MINISTERIAL ADVISERS: GUARDIANS OR URSURPERS OF RESPONSIBLE GOVERNMENT?

### ABSTRACT

The 'Children Overboard' affair is one of several recent incidents that has brought the role and power of ministerial advisers to greater prominence in Australia. These events have highlighted the lack of accountability these public officials enjoy relative to that of public servants and have thus raised concerns that advisers may have more power than both public servants and ministers. The power of ministerial advisers and their corresponding lack of accountability could be contributing to the politicisation of the public service. Based on our research we concur with the recommendations offered by Senate Reference Committee on Finance and Public Administration (2003) in its review of the *Members of Parliament (Staff) Act 1984*. These recommendations include: greater attention to record-keeping; guidelines for ministerial staff appearing as witnesses before parliamentary committees; enacting a code of conduct and values statement; employing an Ethics Adviser; clarifying the roles of, and relationships between, staff, ministers and public servants; increasing the security for heads of departments of state; greater attention to Departmental Liaison Officers; and more education and training of both ministerial staff and public servants. Implementing these measures is essential. Yet, to ensure that the accountability of ministerial advisers is increased and politicisation of the public service is reversed, it is suggested that there be a full rather than partial

restoration of tenure for the heads of government departments; greater attention be given to resourcing for education and training and for the Ethics Adviser; and issues of organisational culture be addressed.

## **Introduction**

Events such as the 'Children Overboard' affair have increased allegations of public service politicisation and raised questions about the power of ministerial advisers both independently and as a factor contributing to this malaise. Despite the public rhetoric about ministerial responsibility expressed in statements such as refusing to allow advisers to be questioned by Senate committees because ministers have immunity, Australian government ministers are arguing that they are not responsible because their staff did not tell them. This situation implies that not only has the balance of power between ministers and public servants shifted in favour of ministers and their staff but that the power of ministerial advisers relative to that of ministers may be shifting in favour of the advisers as well. It is possible that these trends heightening politicisation of the public service. The 'Children Overboard' affair has brought into view the changing power relations between public servants and ministerial advisers. It has also 'sharpened the focus on ambiguities in the relationship of advisers to their ministers and in their relationship to Parliament ... [and] to the electorate' (Edwards 2002:17).

This article concentrates on the power of ministerial advisers. It is acknowledged that the existence of partisan advisers in ministers' offices may be of greater import to government in the early twenty-first century than it was in previous decades. Yet when these advisers are used to contribute to the politicisation of the public service, and when the potential exists for them to dominate ministers and public servants, then responsible government could be threatened. As the Children Overboard affair illustrates, this situation might be developing at Commonwealth level in Australia.

Thus, as much as the accountability of public servants has been increased, a corresponding rise in the accountability of ministerial advisers to Parliament is required. It is likely that this expansion includes clarifying and limiting ministerial advisers' relationship with ministers and with public servants. Additional measures to restore the balance of power between ministers and their advisers are necessary so that good governance is enhanced. These reforms, as well as re-instating tenure for the heads of departments, could assist in reversing the politicisation of the Commonwealth Public Service (CPS). To develop this position the recommendations of the Senate Committee on Finance and Public Administration (2003) are reviewed. A brief outline of the ideological and economic underpinnings of the managerial changes to the public sector is then provided. The section on ministerial advisers begins with a short overview of the Children Overboard affair. It provides an introduction to how the growth in the number

and power of ministerial advisers is adding to the politicisation of the public service at Commonwealth level in Australia. Finally, we canvass suggestions to enhance the accountability of ministerial advisers.

### **The SRCF&PA's recommendations**

In October 2003 the Senate Reference Committee on Finance and Public Administration (SRCF&PA) released the findings from its review of the *Members of Parliament (Staff) Act 1984*. This inquiry flowed from the Senate inquiry into *A Certain Maritime Incident*. The SRCF&PA's twenty-one recommendations focus on increasing the accountability of ministerial staff. Briefly, its recommendations include:

- paying greater attention to record-keeping;
- devising and using guidelines for ministerial staff appearing as witnesses before parliamentary committees;
- enacting a code of conduct and values statement (previously recommended by the inquiry into *A Certain Maritime Incident* but never implemented);
- employing an ethics adviser;
- clarifying the roles of, and relationships between, staff, ministers and public servants;
- increasing employment security for heads of departments of state;
- greater attention to departmental liaison officers; and

- more education and training for ministerial staff and for public servants.

Early in their report committee members differentiate between the responsibility ministers' hold for the actions of their staff and the accountability – or account-giving – function of these staff. Based on this distinction, they identify circumstances in which ministerial staff can be called before parliamentary committee inquiries (SRCF&PA 2003:1-3). This position was reached after taking advice from academics, the Clerk of the Senate and the Clerk of the House of Representatives. It was obvious that, although current members of one house had immunity from being called before inquiries held by the other, this exemption did not extend to their staff. While this understanding may accommodate for the increased responsibilities of ministerial advisers, it is unclear whether it will enhance the accountability of ministers as well.

The majority of the SRCF&PA's (2003) members believe that the accountability of ministerial staff can be increased through defining the different categories of MOPS more clearly (p. 4), preparing annual reports (p. 5) and ensuring proper record-keeping (pp. 7-8). Like the members of the Certain Maritime Incident inquiry, the SRCF&PA members call for a code of conduct for these staff to be enacted. Rather than being embedded in the *Members of Parliament (Staff) Act 1984*, they recommend separate legislation dealing with similar issues to those dealt with for public servants and, like public servants, there be a State of Values for ministerial advisers. In keeping with its

responsibility/accountability division, the SRCF&PA urges the Prime Minister to develop and enact the code and statement. The code ought to specify the roles that staff can and cannot perform, and how they relate to the public service and to party organisations (pp. 9-13, 15-17).

Adding to these recommendations, the SRCF&PA (2003:14) contends that a position of Ethics Adviser be established. It advocates greater education and training about the roles and responsibility of staff and of public servants, and about the code of conduct. Committee members assert that the Prime Minister must take a leadership role in these endeavours (pp. 13, 20-21). In assisting the restoration of the balance of power between public servants and advisers, SRCF&PA (pp. 18-9) members advocate partial restoration of tenure for department heads and paying greater attention to the role of departmental liaison officers. It could be suggested that many of these recommendations have become necessary in view of the changes that have occurred in public administration in Australia over the past thirty years.

### **Public service reform: managerialism and responsible government**

Since the early the 1980s Australian governments, like those in many other Organisation for Economic Cooperation and Development countries, have been implementing policies based on neo-classical economic thinking. This thinking is premised on individualism and a preference for the private sector. It has culminated in governments

introducing private sector practices into their public sectors as a response to the end of post-World War Two economic boom and to globalisation. The introduction of these practices has become widely known as managerialism. From the managerial perspective, as much public sector activity as possible needs to be given over to the private sector. Where this is not feasible, it is argued, the public sector has to be made as similar to the private sector as possible (Kimber 2001, 2000).

Focusing on the CPS, it must be noted that some of the reforms such as those to increase the responsiveness of public servants to ministers, and measures to improve access to public service employment and equity within it were instigated by the social democratic Whitlam Labor Government. Nonetheless, the loss of tenure for heads of departments, an over-emphasis on public service responsiveness to ministers, and the expanding influence of ministerial advisers have contributed to accusations that the public service has been politicised. In a politicised public service, officers' ability to provide 'frank and fearless' advice to the government of day is compromised. When public servants fear the consequences of providing ministers with certain types of advice it is possible that adherence to the principle of responsible government might come to depend upon the integrity of individual public servants to a far greater extent as an ethical culture within public service organisations might be weakened.

Integrity could be considered to be a central value attributed to a public service established within a representative and responsible parliamentary government such as Australia's (eg. Preston & Samford 2002; Cranston, Ehrich & Kimber 2002). Very simply, responsible government entails individual ministerial responsible and collective cabinet responsibility. The former requires ministers to be responsible to Parliament (and Parliament to the people) for the actions of those in their departments and of staff in their offices as well for their own actions. Collective cabinet responsibility enables ministers to debate policy within cabinet but once a decision is made requires them to publicly defend government policy. If they cannot do so then they must resign. It could be suggested that an ethical culture might have been promoted within agencies in such a public service (eg. Taylor 1996, Preston & Samford 2002, James 2002, Kimber & Maddox 2003). It appears, however, that a public service in which managerialist-thinking dominates these values are weakened in response to the imperatives imposed by a politicised public service. Academics, former ministerial advisers, public servants and some Members of Parliament contest that the use of partisan advisers in ministers' offices has contributed to this situation considerably. The roles and power of these advisers, and their lack of accountability to Parliament, are highlighted by the Children Overboard affair.

### **Ministerial advisers and public service politicisation**

*Truth Overboard?*

On 5 October 2001, in a climate of fear over 'illegal immigrants' within sections of the Australian community, Prime Minister, John Howard, announced a general election for 11 November. Less than two days into the election campaign the Navy's HMAS 'Adelaide' intercepted a boat of asylum seekers attempting to enter Australian waters. In line with federal government policy, sailors boarded the vessel when it refused to return to Indonesia. They saw a man about to throw a child into the water but he did not throw the child (Jackson 2002 <http://www.abc.net.au/4corners/stories/s496427.htm>).

During a meeting of the Prime Minister's People Smuggling Task Force later that day the Minister for Immigration, Phillip Ruddock, received a telephone call from the secretary of his department informing him of the situation. Ruddock told Australians that "'A number of a number of children have been thrown overboard'" (quoted in Jackson 2002 <http://www.abc.net.au/4corners/stories/s496427.htm>). Despite the Department of Defence's advice that it could find no documentary evidence of this incident, the Task Force issued a paper that included the phrase, 'passengers throwing their children into the sea'. This paper was faxed to Defence Minister, Peter Reith, that evening.

On the following day an asylum seekers' boat was sabotaged, with most people ending up in the sea. Navy personnel onboard HMAS 'Adelaide' took photographs and e-

mailed them to the Department of Defence. These photographs were clearly labelled '8 October 2001' (Jackson <http://www.abc.net.au/4corners/stories/s496427.htm>). It now appears that 'these photographs were of the SEIV4 incident' (Weller 2002:74). By 10 October Howard's department had provided him with a chronology of the events of 7 October. The chronology contained a footnote. It read that the head of the department, Max Moore-Wilton, had dismissed a note within the documents that the Navy and Defence had forwarded due to the existence of the photographs (Jackson <http://www.abc.net.au/4corners/stories/s496427.htm>).

Reith released these photographs after journalists questioned the Prime Minister as to whether he had evidence supporting the Government's claims that asylum seekers had thrown their children overboard. On 10 October, Reith's senior adviser (defence), Mike Scrafton – who was on secondment for the department – was told by Defence public affairs 'that the photographs were of the wrong event, and by [Rear Admiral Chris] Ritchie that there were doubts about whether any children had been thrown overboard' (Weller 2002:75). On realising 'that the published photographs were of the wrong' event the secretary of the Department of Defence, Allan Hawke, 'instructed that the minister be informed in writing' (p. 75). These instructions were ignored. The departmental officer obeyed the ministerial adviser instead, merely e-mailing the photographs again (pp. 75-6). Most of the discussions surrounding the event were either conducted via telephone calls, e-mails and scribbled notes for the note-taker rather than the public

record (p. 89). Despite further advice from Admiral Barrie that the photographs were not of the situation that occurred on 7 October, Reith stated that he believed that the Navy had the incident on film. Reith was then advised by Brigadier Silverston that, 'The video did not show a child being thrown in the water'. Thus, contrary to advice from the Navy and from the Department of Defence that neither a child nor children had been thrown into the ocean, the Government maintained that asylum seekers had thrown a child or children into the water.

As media and public suspicion of the Government's claims intensified, sections of the media, the Navy and the Department of Defence found that inquiries were being directed through the minister's and the Prime Minister's offices – Reith's media adviser, Ross Hampton, in particular (eg. Weller 2002:73-101) – rather than through the Defence Department. Yet these developments did not prevent information contradictory to the Government's statements from reaching the media. According to some media reports, sailors from the 'Adelaide' told Christmas Island residents that the asylum seekers had not thrown a child or children into the water. Christmas Island residents alerted the media to the sailors' reports. Several days prior to the election *The Australian* newspaper ran a front-page story on the incident, increasing doubts about the authenticity of the photographs as a result. In fact, such doubts had been mounting among public servants within the Department of Prime Minister and Cabinet. To quell these suspicions, and in spite of the Navy's advice, the Government released the video.

However, at a National Press Club speech, journalists asked the Prime Minister why the Department of Defence was reportedly saying that the photographs were not of the 7 October incident. At this time journalists also questioned the Chief of the Navy, who declared that the Navy had advised the Government that 'there were people being threatened to be thrown in the water'. This statement was shown on the news that evening. He retracted his comments after being telephoned by the Minister. In the weeks following the election the Prime Minister and the Navy both commissioned inquiries into the 'affair'. These inquiries raised more questions than they did answers. In the first sitting on the new Parliament, the Senate instigated an inquiry into the incident (SCCMI 2002

[http://www.aph.gov.au/senate/committee/maritime\\_incident\\_ctte/index.htm](http://www.aph.gov.au/senate/committee/maritime_incident_ctte/index.htm), Jackson 2002 <http://www.abc.net.au/4corners/stories/s496427.htm>, Weller 2002).

These events, the evidence presented to the Senate's inquiry and the inability of committee members to call ministerial advisers before it resulted in a further Senate inquiry into ministerial staff (SCCMI 2002, SRCF&PA 2003). The majority of members on both inquiries recommended that parliamentary committees be given the power to

call ministerial staff to give evidence and that a code of conduct for ministerial staff be devised and enacted (SRCF&PA 2003, <http://www.abc.net.au/news/>).<sup>1</sup>

### *Ministerial advisers*

The Children Overboard affair is one of several recent incidents that draw attention to the expanding number and power of ministerial advisers at federal level in Australia. This growth has been most noticeable in the Prime Minister's Office. It is a trend that could threaten the principle of responsible government, in part because it could contribute to the politicisation of the public service. This appears to occur through power shifting into the hands of advisers and the instilling fear into public servants thereby reducing their capacity to provide advice in a 'frank and fearless' manner. As such, the expanding influence of ministerial advisers might erode accountability and reduce ministerial responsibility.

The increasing influence of ministerial advisers can be traced back to the Whitlam Government. It is exacerbating the politicisation of the public service by heightening the power of ministers and their advisers over public servants, and possibly tipping the balance of power in favour of the advisers (Edwards 2002; Maley 2001, 2000a, 2000b; Halligan & Power 1992; Holland 2002; Kimber & Maddox 2003; Russell 2002; Weller

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<sup>1</sup> For an extensive account of the Children Overboard affair, the relationship between public servants, ministerial advisers and ministers in particular see Weller (2002).

2002). A former economic adviser to Labor Prime Minister Paul Keating, Don Russell (2002:11), suggests that not only has 'suspicion of ... public servants hardened' but so too has the power of ministerial advisers and the concerns about their lack of accountability, especially in relation to that of public servants. These trends are of growing concern to Parliament, within the literature and for the media.

Russell (2002) places this movement within the context of the managerial reforms to the public sector and their contribution to what he sees as heightening politicisation of the public service. It might also be attributed to the growing complexity of government activity and the consequent increased demands on ministers' time (eg. RCAGA 1976, Keating 2003). The number of ministerial staff doubled between 1972 and 2001. The number of ministerial advisers rose from slightly less than 100 in 1982 to just over 150 in 2001. Significantly, the number of staff in the Prime Minister's office expanded from twenty-one under Whitlam to thirty-seven under Howard (Holland 2002:6-8, 10, 28; Russell 2002:15-6; Edwards 2002:17; Halligan, Mackintosh & Watson 1996:3, 4).

Former senior public servant and ministerial consultant, Meredith Edwards (2002:16-7), identifies 'four main periods' relating to the number, roles and power of ministerial advisers and their relationship with public servants (see Table 1 below).

**Table 1: Relations between public servants and ministerial advisers in Australia**

<b>DATE</b>	<b>PUBLIC SERVANT/MINISTERIAL ADVISER RELATIONS</b>
<b>1950s-1960s</b>	The 'mandarins appeared to rule supreme'.
<b>1970s</b>	'[M]inisters were concerned about the lack of responsiveness of the public service'. <ul style="list-style-type: none"> <li>- Royal Commission on Australian Government Administration.</li> <li>- Public servants start to be required to appear before Parliamentary committees.</li> <li>- Partisan outsiders become ministerial advisers and start influencing the policy process.</li> <li>- Whitlam justifies the increase in number of ministerial staff as a measure to ensure the public service remains apolitical.</li> </ul>
<b>1980s-1990s</b>	'Substantial public service reforms'. Growth 'in the range of functions ministerial advisers, including much heavier involvement in policy processes'. Switch in balance of power from the bureaucracy to the political executive.
<b>End 1990s-</b>	Greater public service responsiveness to ministers applauded by the political executive. Ministerial advisers sit on interdepartmental committees and there is some blurring of the roles of ministerial advisers and of public servants.

From this chronology it could be inferred that, since at least 1972, Australian governments have used ministerial staff to enhance the power of the political executive (Halligan & Power 1992:81). For example, they have used ministerial advisers 'to influence the partisan element within the executive' and to 'contribute to a redistribution of power between political and administrative systems; in performing

tasks that otherwise would be done by bureaucrats; advisers reduce the potential influence of public servants' (Halligan & Power 1992:81; Kimber 2000:174-6).

This influence implies that not only has reality departed from the myth significantly (Weller 2002) but that the increasing the power of the political executive over public servants might be interpreted as a move towards patronage as well (Mulgan 1998). This movement seriously questions the ability of the governmental system to ensure the accountability of public officials. It includes expansion of governments' and ministers' ability to replace department heads and to use partisan advisers in ministerial offices (Mulgan 1998:7; Parker & Nethercote 1996:101, Weller 2002). It stands in contrast to the fact that the principles on which the CPS was established were designed to eliminate patronage and political advice (Mulgan 1998:8-9, 10-3; Kimber 2000:174-6). Some of the differences between a politicised public service and a public service operating on representative and responsible parliamentary government principles are presented in table two below.

**Table 2: Differences between a politicised public service and one operating on principles of representative and responsible parliamentary government**

Political appointments	Merit, independent, apolitical
Give advice minister wants	'Frank and fearless', impartial and apolitical advice
Insecurity	Tenure
Recruit and promote like-minded	Independent, merit
Political	Expertise
Political control	Independent

Increased use of ministerial offices and outsiders	Departments as sole source of advice
Performance agreements and monitoring	Honesty, integrity, etc

**Source: Kimber, M. 2000. *The Australian Public Service Under the Keating Government: Managerialism Versus Democracy*, University of New England, Armidale, Unpublished PhD thesis, p. 176.**

Maley (2001:4, Edwards 2002:17) observes that ministerial advisers now have an extensive role span ranging from linking ideas through involvement ‘in setting policy agendas’, driving and building political support for proposals, bargaining on ministers’ behalf to delivering ‘policy outcomes’. These roles indicate a blurring between what has been considered to be the role of a partisan adviser and the roles of an apolitical public servant. Consequently, it appears that greater attention to the accountability of ministerial advisers is required. Despite the Public Service Commissioner (Edwards 2002:17) asserting that ‘ministerial staff do not have the power to direct public servants since public servants are the responsibility of the head of an agency’, this issue is a subject of discussion for an increasing number of commentators.

For instance, Holland (2002:13-20) and Edwards (2002) note the Senate’s inability to compel ministerial staff to appear as witnesses before committees. They see ‘the conduct of ministerial staff [as] mostly unregulated’ (Holland 2002:18). From this perspective, ‘if ministerial staffers are more than their master’s ciphers – and the general view is that they are – then their actions must be more transparent than is currently the case’

(Holland 2002:28). Similarly, members of the SRCF&PA (2003:15) believe that ministerial advisers might be becoming 'more than extensions to ministers' or gate-keepers to the ministers. As Edwards (2002:17) puts it, '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'. In this respect the Senate's call for committees to be granted power to call ministerial staff to provide evidence is critical. Indeed, Russell (2002:18) argues that, 'If [ministerial] staff continue to lead an existence separate from their Ministers then Staff should appear before Parliamentary Committees'. As the Clerk of the Senate, Harry Evans (2002:131-9), concludes, there is no legal or practical reason for the immunity enjoyed by members of one house of parliament from inquiries conducted by the other to be extended to ministerial advisers.

If action to ensure the accountability of ministerial staff is not taken by either ministers or Parliament then a variety of issues might remain unanswered. The first set centres on minister/ministerial advisers relations. It includes whether the minister or the adviser is accountable if:

- that adviser 'decides not to tell or show a minister something' (Edwards 2002:17);
- that adviser decides that 'the minister does not want to know and acts independently' (Edwards 2002:17); or

- the minister states that s/he does not want to know about a certain matter (Edwards 2002:17).

The last of these points was asserted by ministers in relation to the Children Overboard affair.

A second set of issues encompasses the relationship between advisers and public servants. It includes situations such as 'what if an adviser' (Edwards 2002:17) asks a public servant for: 'information that may take time to collect' (p. 17); 'a paper as background which the staffer claims is needed by the minister' (p. 17); or to undertake certain work (p. 18)? These potential situations imply 'that the distinctive roles of public servants and ministerial advisers need to be more clearly defined. Responsibility needs to be clearly allocated to ensure that ministerial staff are aware of their roles, and of what they can and cannot do' (SRCF&PA 2003:15)

The relationship between public servants and ministerial advisers is one of two issues emerging from the Children Overboard affair that the former secretary of the Department of Prime Minister and Cabinet, Michael Keating (2003), addresses. He notes that relationships between ministers and their advisers, and relevant senior officers have substantially increased, partly as a consequence of the complexity and amount of, or rather lack of, time ministers have. For Keating, advisers must adhere to the

requirements of maintaining an independent public service. He is adamant that departmental secretaries have a key role in ensuring that public servants consider whether a request is justified before they accede to it.<sup>2</sup>

Keating (2003:94-5) believes some guidance is provided here by the former Management Advisory Board's 1996 publication, *Ethical Standards and Values in the Australian Public Service*. Importantly, Keating (2003:94) believes integrity cannot be legislated for:

as legislation is more suited to defining prohibition than what should do. Leadership is often a better way of promoting ethical conduct, but in a highly charged political context that is not always forthcoming. Accordingly we need to look at strengthening other possible checks and balances on the power exercised by ministerial advisers.

Similarly, Ehrich (2000; Cranston, Ehrich & Kimber 2002, 2003; Kimber, Ehrich, & Cranston 2003) has argued that legislation is insufficient to developing ethical conduct within educational institutions and within the public service. She stresses the importance of leaders in modelling ethical behaviour and engendering an ethical culture within organisations.

One of the checks and balances referred to above is the role of departmental secretaries in protecting due process. Interestingly, Keating dismisses allegations of public service politicisation. Rather, he believes that 'the capacity of at least some secretaries to do their

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<sup>2</sup> Given the lack of hard-form written documentation that was made during the Children Overboard affair, Keating's suggestion that it would be helpful for public servants to make notes for file also needs to be considered here.

jobs' has been adversely affected by the dismissal of some secretaries appearing 'capricious' and by 'the threat of dismissal with little or no explanation' (Keating 2003:95). While this may be true in some cases, it could be argued that this capriciousness could be a sign of politicisation. It might indicate that senior public service positions may be dependent on the favour of ministers rather than on performance and that the actions of successive governments have generated a climate of fear in some parts of the public service.

The potential that these feelings exist is evident in Weller's (2002) conclusions that the Senate Committee into a Certain Maritime Incident found the existence of an attitude within the public service that resulted in evidence contrary to the Government's position may have been glossed over. Moore-Wilton's dismissal of a note regarding the photographs could be an example here. Thus, "as public service careers begin to rely more and more on the good favours of ministers, departmental secretaries can become too responsive, too concerned to show that they are on board, too concerned with political protection" (Keating 2003:95) that they became 'political inept in an advisory sense – that they were too keen to serve, and not sufficiently sceptical and alert to warn' (Weller 2002:70). Weller (2002:76) also notes that there appeared 'to be a lack of trust between the' Department of Defence and the minister's office. These issues indicate that the Children Overboard affair has culminated in ministerial staff being viewed as

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‘leading an existence separate from that of their Minister’ (Russell 2002:16). As Edwards (2002:17) puts it in her question of whether Australia has ‘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’. Weller (2002:71) describes this traditional approach as a ‘constitutional myth’ that leads to an understanding that ministerial staff are merely extensions ‘of their ministers. They are appointed by the minister, they have no security of tenure, and they are in a job that only as long as the ministers remain in office’.<sup>3</sup>

Based on analyses such as these Holland (2002), Russell (2002), Edwards (2002) and Keating (2003) recommend ways to increase the accountability of ministerial staff, and to restore a balance in the power relationship between ministerial staff and public servants. Holland (2002:21) advocates adopting a code of conduct for ministerial advisers like the United Kingdom’s *Code of Conduct for Special Advisers* and/or Canada’s *Conflict of Interest and Post-Employment Code for Public Office Holders*. It has been noted that both the Children Overboard (2002) and SRCF&PA (2003) recommended that a code of conduct similar to that which applies to public servants be devised and enacted

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<sup>3</sup> This position has resulted in two assumptions.

First, because they acted in the minister’s name, these officials believed that when they asked for information or advice, it was, in effect the minister who was asking. Second, informing an advisor was regarded the same as informing the minister ... Forty or more people, including a spread of adviser, now speak – or are spoken to – in the prime minister’s name (Weller 2002:71).

for ministerial staff (also see Edwards 2003:18). While a code of conduct is helpful, it is insufficient as ministers and their department heads will need to agree on, and regularly review, how the relationship between the department and the office will operate (Edwards 2002:19. Also see Ehrich 2000). This process of building and sustaining good relationships and trust between advisers and public servants is time consuming and difficult but 'essential for good results' (Edwards 2002:19. Also see Preston & Samford 2002).

Therefore, in order to enhance accountability and possibly to reduce politicisation of the public service, clarifying the roles and responsibilities of ministers and their staff as well as of public servants is essential. This clarification involves the relationships between advisers and public servants as well as the relations between advisers and ministers. It entails new institutional arrangements, including updating the *Members of Parliament (Staff) Act 1984* (Edwards 2002:18-9, SRCF&PA 2003, Tiernan & Weller 2003).

Here, it is necessary to decide on and enact the limits to be 'placed on advisers in their "power to direct" public servants' (Edwards 2002:18). In a similar vein, the members of the SRCF&PA (2003:15) argue 'that the distinctive roles of public servants and ministerial advisers need to be more clearly defined. Responsibility needs to be clearly allocated to ensure that ministerial staff are aware of their roles, and of what they can and cannot do'. Boundaries around what ministers can do and how they behave need to

be set. Clarification of what is expected of public servants 'in their relationship with ministerial offices [is required] so they can give frank, honest, comprehensive, accurate, and timely advice' (Edwards 2002:18).

In addition to this clarification, further changes need to be made to redress the balance between advisers and public servants. A key point concerns the appointment of departmental heads. It has been seen that the SRCF&PA (2003) recommends a partial restoration of tenure. While Keating (2003:95-6) proposes four 'modifications' to the way in which departmental secretaries are appointed<sup>4</sup> that may go some way to bolstering the power of departmental secretaries, they may not fully assist in reversing the politicisation of the public service. Thus it is quite likely that a full restoration of tenure for heads of departments could be necessary. In conjunction with this restoration, it is essential that the expertise and standing of the public service be rebuilt. Parliament's role in scrutinising and evaluating programs where the capacity of the public service to perform this task has deteriorated needs to be acknowledged (Russell 2002:18-21).

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<sup>4</sup> First, is making all appointments and reappointments for five years, with a review occurring at the end of the period. Second, is replacing the system whereby the secretary of the Department of Prime Minister and Cabinet advises the Prime Minister on appointments and terminations with a committee comprised of secretaries and several outsiders who have extensive management and government experience. Third, is a presumption that secretaries will be rotated on completion of their five-year contract, and that performance is the only basis upon which termination would occur. Finally, ministers should not be able to request early termination of a secretary's contract without their concerns being discussed with the secretary and the appointment committee.

Edwards' (2002:18) recounting of several incidents that occurred during her time as a senior public servant within the Department of Prime Minister and Cabinet as well as the Senate Inquiry into a Certain Maritime Incident might illustrate this erosion. They could highlight how it coincides with and compounds the growing power of ministerial advisers. Her first example is interdepartmental committees. When another department was in dispute with the Department of Prime Minister and Cabinet a senior officer in this other department took the matter through the minister's office to the Prime Minister's Office. These actions strained the relationship between the Prime Minister's Office and the Department of Prime Minister and Cabinet as well between the two departments. Edwards believes that the lesson for public servants from this case is to ensure that the 'minister's office knows what you are doing and the outcomes you expect'. Yet, as the Children Overboard incident suggests, this may be difficult if trust between departmental officers and ministerial staff has not been developed. Nonetheless, if the roles and relationships between public servants and advisers are clear, then it may be easy to build trust.

Her second example concerns the pitfalls of leaking information to the media. A journalist published an article in a major daily newspaper claiming that senior staff in the Prime Minister's Department regarded advisers in his Office as amateurs.

Unsurprisingly, the report infuriated the Prime Minister and his staff. The lesson for public servants is not to leak information as it could jeopardise your career. However, as

the Children Overboard affair indicates, when the public interest appears to have been compromised then releasing the information to the media may be the only way to ensure accountability, despite the implications for one's career.

Finally, the Children Overboard affair has highlighted that public servants can be placed “in the front line” as a result of ministerial advisers not being called to account by parliamentary committees. Therefore, without parliamentary committees having the power to call ministerial advisers as witnesses, the politicisation of the public service could intensify in part because public servants could experience ‘increased fear for their futures’ (Edwards 2002:18).<sup>5</sup>

Edwards' concern is reflected in the comments offered by several current and former senior public servants. These statements arose from investigations examining either the impact of managerial reforms on the Australian Public Service or the ethical dilemmas experienced by senior public service leaders (Kimber & Maddox 2003; Halligan, Mackintosh & Watson 1995; Cranston, et al. 2003; Kimber, et al. 2003). Many of the interviewees in these studies believed that politicisation of the public service – Commonwealth and State – was intensifying or was in danger of doing so.

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<sup>5</sup> This situation could place public servants in an ethical dilemma (Cranston, et al. 2003; Kimber, et al. 2003).

This expansion or its potential was attributed to factors including: the loss of tenure for the heads of public service departments; the over-emphasis on public service responsiveness to ministers; and the expanding numbers, roles and influence of ministerial advisers. All these factors could have contributed to the Children Overboard affair. The first two studies highlighted reflections and comments offered by the heads and former heads of most CPS departments during the periods of the Hawke and Keating Labor governments (Halligan, et al. 1996; Kimber & Maddox 2003). The expanding power of ministerial advisers was foregrounded by several of the participants (six recently separated senior public servants who had served at head or deputy head level) interviewed for the latter investigation. Concentrating on the ethical dilemmas that they had faced, several of these interviewees drew attention to the way in which ministerial advisers appeared to be 'directing' public servants. This directing sometimes occurred in a manner that might have instilled fear into these public servants and their colleagues (Cranston, et al. 2003; Kimber, et al. 2003). If ministerial advisers act in this manner then public servants could be placed in situations where their professional ethics and personal integrity are questioned, and they may be tempted to provide ministers with the advice that ministers want rather than ought to hear.

These studies indicate that there is a growing belief among senior public servants that politicisation of the public service in Australia has intensified. As the number and power of ministerial advisers has expanded they appear to be instilling fear into the

hearts and actions of some public servants, potentially placing them in a position where they might be unable to offer ministers advice that is expert and impartial. The result is greater politicisation of the public service. Good government in the twenty-first century could require more ministerial advisers than in the past. Yet without these advisers being held more accountable for their actions there is a danger that responsible government will be further eroded.

As Edward's (2002:19) surmises:

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 is highlighted by the recent Certain Incident), will hopefully lead 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 that they once were. Similar moves are also required to ensure that those exercising executive authority within government are called to account.

## **Conclusion**

Within the current context, responsible government requires healthy relationships between ministers, public servants, ministerial advisers, Parliament and the public. These relations necessitate there being as much clarity as possible. This requires building trust, especially between the political and administrative arms of government. Developing such relationships requires time and hard work. It might entail actions such as the restoration of tenure for department heads, the implementation of measures to

ensure greater accountability on the part of ministerial advisers, and the building and sustaining of an ethical culture within public institutions. These measures will assist in reversing the trend towards politicisation of the public service thereby strengthening responsible government in Australia.

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