

Accountability of Ministerial Staff

AUSTRALIAN DEMOCRATS ACTION PLAN ACCOUNTABILITY OF MINISTERIAL STAFF ACCOUNTABILITY

All Members of Parliament need personal staff to help fulfil their duties, but many ministers need additional personal advisers to help fulfil their extensive public, political, policy, parliamentary, portfolio and administrative tasks and duties. The danger is if partisan advisers exercise executive functions without having commensurate safeguards of accountability under the Public Service Act and to Parliament. A transparent framework of accountability is needed so that ministerial staffers are subject to proper ethical and behavioural standards.

Our Action Plan

“What has become apparent ... is [the] ability of [ministerial staff] to intervene in departmental processes; ... to drive, sieve and skew advice; and to insist upon what the minister wants as opposed to the public interest or the integrity of the policy process.”

Professor James Walter
Monash University

Campaign for implementation of the recommendations of the 2003 Senate inquiry into parliamentary staffers (see below) - especially the adoption of a code of conduct for ministerial staff.

Issue one: Senate inquiry

Parliamentary staffers, including ministerial advisers, are employed under the Members of Parliament (Staff) Act 1984 (MoPS). There have been cases where, evidently as a result of political pressure to deliver what a minister or ministers want, ministerial staffers have acted in ways considered contrary to the requirement for public service officials ‘to act with skill, discretion and integrity’.

In the aftermath of the 2001 ‘children overboard’ affair, highlighted by the ‘A Certain Maritime Incident’ inquiry, there was heightened criticism of the lack of accountability of ministerial advisers, particularly when acting on behalf of the Executive. In 2003 the Senate Finance and Public Administration Committee inquired into aspects of staffing for parliamentarians, with a particular focus on issues of governance and accountability for ministerial staff. This covered the role of ministerial advisers, their accountability to the government, parliament and the public, and the interface between ministerial offices and government departments.

The Democrats supported the Committee recommendations, including these:

- That there should be a detailed annual report on staffing under the MoPS Act;
- The MoPS Act be restructured to make a clear distinction between government (particularly ministerial) staff; non-government staff, and electorate staff;
- Amend the MoPS Act to require the PM to promulgate a code of conduct for ministerial staff, leaving policing of the code for employing ministers;

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- When requested and under defined circumstances, ministerial staffers to appear before committees, including Senate Estimates (as for public servants);
- That a more effective relationship between ministers' offices and the public service be forged to ensure that there are open and accountable channels of communication. These channels should be clearly and properly documented.

Over four years later, the Coalition Government still maintains its opposition to implementing a regime by which ministerial advisers may be held accountable to parliament in ways that correspond to public servants.

There were weaknesses in the Senate recommendations:

- The code of conduct should be statutory, not left to the Prime Minister;
- No enforcement mechanism was proposed; and
- The circumstances in which ministerial staff should give evidence before parliamentary committees were unduly limiting.

Issue two: ministerial staff must be accountable

Without question ministerial staffers have a vital and necessary role to perform in supporting the important and demanding work of the Executive.

Realistically, as personal and political appointments, ministerial advisers are unlikely to do the job of traditional bureaucrats, which is to give independent 'frank and fearless' advice to ministers. Being beholden to the Minister's patronage, some ministerial staff may not contribute to the contestability that leads to robust policy, particularly if a minister encourages a culture of unhealthy compliance based on partisan political views.

Ministerial advisers must therefore not substitute for senior departmental advisers.

The jobs of ministerial advisers are often dependent on an ability to protect and advance the interests of their minister rather than conveying impartial policy advice. They are one of the elements distorting the system towards increasing and insufficiently transparent executive control.

Difficulties arise when ministerial staffers seek to, or do give instructions to agencies or departments on behalf of their ministers, so assuming a delegated executive role. Responsibility and accountability boundaries become blurred

Good government suffers when there is insufficient accountability, allowing experienced independent public officials to be pushed aside by ministerial advisers not subject to the public sector ethic, and who may be ambitious partisan political activists whose conduct is dictated by political ties to the ministers they serve.

To sustain ethical government and to safeguard against any further controversies such as the 'children overboard' or 'weapons for wheat' scandals, parliament should be able to hold ministerial staffers to account. They wield considerable power and should not be beyond accountability to our Parliament.