Ministerial Advisers: How Ministers Shape Their Conduct

A Study of Ministers and Advisers in the Rudd Government

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Contents

Chapter 1 – Introduction ........................................................................................................... 3

Chapter 2 - Literature review and methodology ................................................................. 6
  1. Literature Review ............................................................................................................. 6
     (a) Advisers’ roles and impact on the public sector ...................................................... 6
     (b) Why advisers became part of the Westminster system ........................................ 10
     (c) The legitimacy debate ............................................................................................. 11
     (d) Accountability ......................................................................................................... 11
     (e) Conclusion ............................................................................................................... 13
  2. Research question and hypothesis .................................................................................. 14
  3. Methodology .................................................................................................................. 15

Chapter 3 – How ministers influence advisers’ behaviour .................................................. 20
  1. Introduction ..................................................................................................................... 20
  2. The nature of the relationship between minister and adviser ....................................... 21
  3. The influence of ministers on advisers’ behaviour ....................................................... 24
     (a) Setting standards ....................................................................................................... 24
     (b) Creating an office culture ......................................................................................... 26
     (c) Ministers’ preferences and approach ....................................................................... 27
  4. Ministers’ delegation of authority .................................................................................. 28
     (a) How much authority was delegated and how delegation varied ......................... 29
     (b) How advisers knew the scope of their delegation ................................................. 31
     (c) Two decision-making processes ............................................................................. 33
     (d) Variations in decisions advisers made ................................................................... 37
  5. Conclusion ....................................................................................................................... 39

Chapter 4 – Other forces shaping advisers’ behaviour ......................................................... 41
  1. Introduction ..................................................................................................................... 41
  2. Advisers’ relationship with the public service ............................................................... 42
  3. Personal motivations and conceptions ......................................................................... 46
  4. Code of Conduct ............................................................................................................ 46
  5. Informal accountability ................................................................................................. 48
  6. Conclusion ....................................................................................................................... 48

Chapter 5 – Conclusion .......................................................................................................... 50

Appendix 1 .............................................................................................................................. 55
Appendix 2 .............................................................................................................................. 59
Appendix 3 .............................................................................................................................. 61
Appendix 4 .............................................................................................................................. 63
References ............................................................................................................................... 64
Chapter 1 – Introduction

Ministerial advisers are now an accepted part of the advisory arrangements of the executive in Australia, helping ministers discharge their political, policy and media functions. Yet this important role has received less attention than those of ministers and the bureaucracy. By looking at the way policy advisers behaved in the Rudd government, this paper seeks to add to knowledge about a group of people who work at the heart of political and policy processes in modern government.

Although a Code of Conduct for Ministerial Staff was introduced in July 2008, advisers still work with few guidelines on their roles and responsibilities. Their work is conducted behind the scenes, with their contributions usually not evident in documentary records.¹ The hidden nature of their work, combined with their location in the core executive, able to exert influence over ministers, creates suspicion about the way they discharge their duties. The involvement of advisers in political controversies has added to concern about their roles, power and accountability.

The research behind this paper attempted to discover how advisers behave when undertaking policy work. Some scholarship on accountability suggests advisers are out of control,² acting as they please, often to advance highly political agendas. At the most extreme end, reacting to the findings of the 2001 children overboard affair, Weller famously said ‘some advisers have become “the junk-yard attack dogs” of the political system: the hard men and the hit men’.³ While controversies involving advisers raise legitimate questions about accountability, this paper argues that focussing on those extreme events obscures the day-to-day work of advisers, creating an unbalanced and inaccurate picture.

Part of the inaccuracy arises from the near absence of ministers in some of those accounts, their influence rendered virtually non-existent. Given Maley found ministers exerted a ‘defining power’ over their advisers’ policy roles in her study of the Keating government, this is a serious deficiency. In framing the question for this research, it seemed reasonable to assume ministers’ power could extend to influencing their advisers’ behaviour. It also seemed reasonable to assume that ministers, wanting to avoid unnecessary and time-consuming controversies, would seek to control that behaviour, set standards and make sure advisers understand the limits to their delegated authority.

Those assumptions were investigated through interviews with former Rudd government ministers and their advisers, testing a hypothesis that advisers’ behaviour is largely determined by their minister. The research examined how ministers exerted influence and how advisers reacted. The paper considers whether advisers continue to act as agents of their minister – the traditional view – or whether they act more independently, as the Senate inquiry into the children overboard affair found. To determine the effect of other factors that might play a part, advisers’ personal conceptions, the effect of their interactions with the public service, and the influence of the Code of Conduct were also investigated.

The investigations found that ministers do exert a dominant, defining influence over the behaviour of their advisers. They do this by establishing standards and an office culture, and through the parameters of their delegation to advisers. Ministers also exert an indirect influence as advisers react to their preferences, values and ways of working. It was clear that advisers continue to act as agents of their ministers, subordinating their preferences and views to those of their minister. Unrelated to ministers, advisers’ personal conceptions of professionalism and integrity, and their interactions with the public service, also played a part. Most advisers said the 2008

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The Code of Conduct had no influence as they were already meeting its standards, but most also supported its introduction. The findings showed a system of checks and balances on adviser behaviour. Most chiefs of staff supervised advisers, helping to enforce ministerial standards and expectations. Advisers knew poor behaviour could not be hidden from chiefs of staff, ministers and the prime minister's office. The judgements they made while acting as the agent of their minister were also constantly tested when they reported back to their ministers, through public service briefing, and as ministers made decisions that could affirm or reject those judgements. The precarious nature of advisers' employment was another check. The data also revealed the overwhelming presence of a 'professional adviser' type. That type was one of the four identified by Maley in her study, but then they were in the minority.\(^6\)

This study seeks present a fuller, more nuanced picture of adviser behaviour and to illuminate the constraints that shape that behaviour as advisers carry out policy work. While the paper does not argue those constraints mean demands for greater accountability of advisers have necessarily been satisfied, its findings support Maley's argument that reasserting the agency relationship between advisers and ministers is the best path toward stronger accountability.\(^7\) A more detailed examination of adviser behaviour is important to properly inform the accountability debate. The findings should also add to the general understanding of a relatively new role, particularly as one of the first studies of the Rudd government.

\(^6\) Maley, (2002b), op cit, pp 296-300.
Chapter 2 - Literature review and methodology

1. Literature Review

Scholarly work on ministerial advisers in Westminster governments broadly covers one theme: how an ‘institutional innovation’ fits within the Westminster system. Early research considered whether a new role was emerging and becoming institutionalised. Work continues on the roles and relationships created by the rise of advisers, the influence they have, and their impact on the bureaucracy. Some studies look at the forces that have fuelled ministers’ increasing reliance on advisers, and there is considerable agreement in their findings. However, there is ongoing debate about whether advisers can legitimately operate within a Westminster-style executive, with its exclusive relationship, in theory at least, between ministers and bureaucrats. With advisers occupying an influential position, a strand of the literature considers how they are held to account. There is debate about whether they are independent actors or agents of their minister and therefore accountable through them. Data come mostly from surveys and interviews, although evidence generated by Australian Senate inquiries and other reports about controversies involving advisers, particularly the children overboard affair, informs the accountability debate. However, those sources, with their focus on improper conduct, have skewed understanding of how advisers behave in their daily work – something this study seeks to help remedy.

(a) Advisers’ roles and impact on the public sector

Advisers in Australia began to undertake policy work under the Whitlam government. Since the mid-1980s, research has considered whether this role has

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become permanent. Walter’s comprehensive comparative study of the Whitlam, Fraser and Hawke governments found ‘manifestations of institutionalization’ beginning under Hawke, with advisers’ roles expanding and consolidating under Hawke and Keating. Advisers are now considered an inevitable part of Westminster governments around the world, influential within the executive.

With advisers becoming ‘more central ... within the policy process’, studies have examined their roles, with considerable commonality evident across different parties and governments. In those studies, advisers from the Hawke government onward nominated policy work as their most important role, followed by liaison with the bureaucracy. Roles expanded over time, with oversight of implementation and policy negotiation becoming more important.

ministerial advisers in the form they operate in today, that is, being involved in policy-making as well as liaising with the bureaucracy and undertaking administrative tasks. Before this, ministers usually had a press secretary and a small number of public servants facilitating the flow of paper from their departments; ibid, p 292.


Anderson, op cit, p174; also Eichbaum and Shaw (2006), op cit, p 11.


In the literature, advisers are traditionally considered agents of their ministers.\(^{18}\) However, they can sometimes wield considerable policy influence themselves,\(^{19}\) and this leads to the debate over whether their roles complement or conflict with those of the bureaucracy. Many studies conclude that advisers have different responsibilities from bureaucrats.\(^{20}\) However, advisers are also said to intrude on the ‘bilateral monopoly’ between ministers and the public service,\(^{21}\) with confusion and tension over roles and responsibilities.\(^{22}\) Tiernan says the policy influence of advisers comes at the expense of the bureaucracy,\(^{23}\) but Maley disputes this.\(^{24}\) Echoing earlier work,\(^{25}\) Maley found advisers’ influence and roles highly contingent, shaped by their minister’s power, seniority and portfolio, the extent of ministerial delegation, and advisers’ skills, experience and personal conceptions of their role.\(^{26}\) She also found ministers thought the robust engagement between advisers and public servants produced stronger policy advice.\(^{27}\)


\(^{21}\) Smith, op cit, p 303; Eichbaum and Shaw (2007a), op cit, p 615; Fawcett and Gay, op cit, p 37-38.

\(^{22}\) Tiernan (2004), op cit, p 25.

\(^{23}\) Tiernan (2004), op cit, p 72.

\(^{24}\) Maley (2002b), op cit, p 275.

\(^{25}\) Walter (1986), op cit, pp 141, 142, 143 and 154; Dunn (1995), op cit, p 512; see also Connaughton, op cit, p 351; Ryan, op cit, p 147.

\(^{26}\) Maley (2002b), op cit, p 99; see also Eichbaum and Shaw (2006), op cit, p 15.

\(^{27}\) Maley (2002b), op cit, pp 274-275.
Another debate concerns whether advisers protect the bureaucracy from politicisation when they undertake overtly political tasks, or politicise public servants by encouraging them to move from neutral independence to greater responsiveness. Tiernan says advisers under the Howard government were increasingly aggressive in their attempts to increase bureaucratic responsiveness. However, Eichbaum and Shaw’s survey of senior public servants in New Zealand finds little fear of politicisation, and participants acknowledged they had responsibility to protect themselves. The majority of respondents in a recent Australian Public Service survey also reported no difficulty balancing responsiveness with the need to be apolitical.

Although advisers help ministers exercise control over the bureaucracy, many studies find the relationship between advisers and bureaucrats works reasonably well. Some studies show senior public servants mostly think advisers contribute positively to policy processes. Others show bureaucrats using advisers’ knowledge and skills, testing policy ideas on them and relying on their political and media expertise. An opposing argument says advisers and bureaucrats compete, with advisers reducing public service capacity. Maley sees the adviser-bureaucrat

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29 Tiernan (2004), op cit, pp 25 and 33-34; Eichbaum and Shaw (2010), op cit, p 5; Maley (2010), op cit, p 106.

30 Tiernan (2004), op cit, pp 25 and 33-34.

31 Eichbaum and Shaw (2006), op cit, p 17; Eichbaum and Shaw (2007a), op cit, p 635.

32 The latest State of the Service report from the Australian Public Service Commissioner found 65 per cent of respondents who had direct contact with ministers and/or advisers during the previous year reported they did not find it difficult to balance the need to be apolitical, impartial and professional with that of being responsive to the government. This was similar to the 2009-10 result; Australian Public Service Commission (2011), ’Chapter 3 – Values, Performance and Conduct’, State of the Service 2010-2011, http://www.apsc.gov.au/about-the-apsc/parliamentary/state-of-the-service/state-of-the-service-2010/chapter-3-values,-performance-and-conduct.


37 Hawke advisers were the first to attend cabinet committee meetings; Fitzgerald (1996), op cit, p 123; Tiernan (2004), op cit, p 69. Rudd describes joint working groups of advisers and
relationship as inherently contested, arguing it is often seen as co-operative only because each party has an interest in managing the ‘competition and tension’. 38 Others see the potential for relationships that vary from collegiate to adversarial. 39

(b) Why advisers became part of the Westminster system

The question of why advisers have rapidly become part of the ‘status quo’ 40 has received detailed attention. The complexity of modern government is considered a major cause, 41 linking this area to work on governance and policy networks. With the change from hierarchical to networked governance, advisers assist ‘their principals [to] negotiate the mosaic of policy stakeholders, networks and communities that characterize contemporary governance environments’. 42 Maley describes advisers crossing the organisational boundaries that constrain bureaucrats as they negotiate policy with other ministers’ offices and stakeholders, 43 an ability valued by ministers. 44 Advisers can also operate in other arenas closed to public servants, including ‘the party, academia, the media and politically active parts of the community’. 45 The modern 24-hour media cycle is another factor, 46 as is the need for governments to exercise ‘meaningful control of the institutions of government’. 47 Whitlam illustrated that point when, distrustful after his party’s long period in opposition, he used

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38 Maley (2002b), op cit, p 142-143.
39 Walter said it was only in extreme cases when departments seemed incompetent did advisers become ‘antagonistic and interventionist’; Walter, (1986), op cit, pp 149-150. Ryan developed a typology of four different relationships varying from collegiate to adversarial according to the competence of the minister, the amount of external contest in a policy area, or differing values between the government and the bureaucracy; Ryan, op cit, p 153.
40 Anderson, op cit, p 181.
42 Eichbaum and Shaw (2010), op cit, p 213.
45 Walter cited in Anderson, op cit, p 183; Walter (1986), op cit, p 130.
47 Smith, p cit, p 307 who described the need to exercise control as an ‘acute problem’ of modern government.
advisers to exert control over the bureaucracy.\textsuperscript{48} The public sector management reforms of the 1980s sought control in a more systemic way, and are credited with significantly enhancing ‘the scope, power and influence of ministerial staff’.\textsuperscript{49}

\textbf{(c) The legitimacy debate}

Debate continues about the legitimacy of advisers. For Walter, advisers are an anomaly if the traditional distinction between the political executive and a public service giving impartial policy advice is accepted,\textsuperscript{50} and Smith agrees.\textsuperscript{51} Tiernan believes ministerial advisers disrupt ‘close, cooperative relationships between Ministers and their public service advisers’, which she says is one of the key tenants of Westminster governance.\textsuperscript{52} Others argue that tenant is actually an ‘ideal’,\textsuperscript{53} that in practice the rules are more pragmatic,\textsuperscript{54} and the executive has long been open to advice from other sources.\textsuperscript{55}

\textbf{(d) Accountability}

The traditional view of advisers as agents saw them as accountable to ministers who were, in turn, accountable to parliament and electors.\textsuperscript{56} However, that formulation has been questioned following controversies in the UK and Australia, where advisers exercised independent executive power.\textsuperscript{57} Earlier studies had found most advisers, as ‘creatures of their minister’, knew they could not act independently,\textsuperscript{58} and were

\begin{itemize}
\item[48] Ibid, pp 292, 293 and 307; Walter (1986), op cit, p 52; Ryan, op cit, p 142; Anderson, op cit, p 170. This was also said to be a factor in Tony Blair’s increased use of advisers: Fawcett and Gay, op cit, p 41.
\item[50] Walter (2006), op cit, p 22.
\item[51] Smith, op cit, p 303.
\item[52] Tiernan (2007), op cit, p 234.
\item[53] Eichbaum and Shaw (2007a), op cit, p 615, quoting Peter Shergold, former Secretary of the Department of Prime Minister and Cabinet.
\item[54] Smith, op cit, p 303.
\item[55] Eichbaum and Shaw (2007a), op cit, p 615. They cite former Prime Minister and Cabinet Secretary Peter Shergold’s argument that policy advice from other sources is more democratic as well.
\item[56] Maley (2002b), op cit, pp 64; Tiernan (2004), op cit, pp 38 and 213; Tiernan (2005), op cit, p 4; Maley (2011), op cit, p 1486.
\item[57] Tiernan (2004), op cit, pp 236 and 241; Anderson, op cit, p 168; Fawcett and Gay, op cit, pp 47-48; Maley (2010), op cit, pp 107-108.
\item[58] Walter, 1986, op cit, p 157.
\end{itemize}
careful how they portrayed their authority and role.\textsuperscript{59} Even so, Ryan thought their accountability wanting given advisers were ‘formidable actors’ in policy process.\textsuperscript{60}

It is now widely agreed that advisers are not sufficiently accountable, but there is no agreement on appropriate accountability mechanisms. It is generally accepted that, in the children overboard affair, ministers used the inability of parliamentary committees to compel advisers to give evidence to hide from scrutiny themselves.\textsuperscript{61} While this is said to have revealed a ‘serious accountability vacuum’,\textsuperscript{62} there is ongoing debate over whether advisers should be compelled to appear before committees.\textsuperscript{63} Mulgan argues it could have ‘harmful consequences’ as it would provide advisers with a public platform, creating ‘greater personal authority and independence’, and potentially compromising loyalty to their ministers. He says their accountability remains ‘grounded in ministerial responsibility’.\textsuperscript{64} Similarly, Maley suggests it would be ‘dangerous’ as it ‘may destroy the confidential relationship between ministers and their staff’ and recommends reasserting the agency relationship to improve accountability.\textsuperscript{65} However, Tiernan and Weller call the agency relationship a ‘constitutional myth’ and support chiefs of staff appearing.\textsuperscript{66} There is greater agreement on codes of conduct,\textsuperscript{67} and a \textit{Code of Conduct for Ministerial Advisers} was introduced in 2008.\textsuperscript{68}

\textsuperscript{59} Dunn, 1995, op cit, p 516.
\textsuperscript{60} Ryan, op cit, p 156.
\textsuperscript{64} Ibid.
\textsuperscript{65} Maley (2003), op cit, p 2.
\textsuperscript{66} Tiernan and Weller (2003), op cit, pp 9 and 10.
\textsuperscript{68} For details about the Code of Conduct and the circumstances which lead to its introduction, see appendix 3.
The deficiencies in the accountability framework for advisers are considered out of step with trends in the public sector, and with society at large. For Walter, it means a potential asymmetry of power between advisers and public servants, creating a gap in institutional checks and balances.

(e) Conclusion

While much of the literature on ministerial advisers is descriptive, seeking to understand a new role, debates have emerged. It is accepted that advisers are here to stay, but some question their legitimacy and fit within the traditional Westminster framework. Others say the Westminster system is capable of adaptation, and in practice public servants have never had a monopoly on policy advice. Another debate concerns the impact of advisers on the public service. Some say the roles of advisers and public servants are complementary; others that they conflict, with considerable scope for confusion, and a reduction in public sector capacity. A related question is whether advisers protect the public service from politicisation by undertaking political work, or whether they politicise the bureaucracy by seeking greater responsiveness. The accountability of advisers has emerged as a concern, with a major debate over whether they remain agents of their ministers and whether they should be called before parliamentary committees. Many of the studies concerning accountability rely on data from inquiries into scandals, but the extreme nature of those events deflects attention from the uncontentious, properly conducted day-to-day policy work of advisers. Some generalisations made may also be skewed because of the controversial nature of those events. The research outlined in the next section aims to provide a fuller picture of how policy advisers behave to determine whether they still act as agents of their minister, and consider how ministers influence their behaviour.

69 Walter (2006), op cit, p 22. The introduction of the Code of Conduct, with its ban on advisers issuing executive directions, along with the publication of an annual report from 2008 providing detailed statistics about advisers and other staff employed by members of parliament, has arguably gone some way to overcoming those deficiencies.

70 Fawcett and Gay, op cit, p 28.


72 Eichbaum and Shaw (2011), op cit, p 584.
2. Research question and hypothesis

The research question investigated in this study asked, ‘What influence do ministers have in shaping and constraining the behaviour of their policy advisers?’ A hypothesis that ministers exert a dominant influence over the behaviour of their advisers was tested. If the hypothesis is correct, the findings would counter Tiernan’s conclusion that advisers operate independently of their ministers and make executive decisions. They would also support the argument that the controversies Tiernan and others have based their findings on represent extremes of adviser behaviour rather than the norm, and add weight to the view that ministerial responsibility provides the best mechanism for advisers’ accountability.

The hypothesis was drawn from Maley’s study of Keating government advisers where she found ministers were the main determinant of their advisers’ roles and levels of policy activity. Although other factors played a part, she concluded the ‘approach of the adviser had everything to do with how the minister operated and what his or her objectives were’. In constructing this hypothesis, it seemed logical to assume that ministerial influence would extend to behaviour itself. Until the introduction of the Code of Conduct in 2008, there were few formal guidelines for advisers. This research investigated whether conventions of behaviour existed, and whether the Code affected behaviour. Behaviour in this context means the way advisers conducted themselves in their policy role, including how they provided policy advice, negotiated outcomes, and oversaw policy implementation. The research looked at how advisers interacted with their minister, colleagues and the bureaucracy. It looked at how advisers analysed public service advice and how they

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73 In this paper, the term ‘advisers’ refers to both policy advisers and chiefs of staff but excludes media advisers and other staff such as researchers, office managers and other administrative staff. Throughout this paper, where it is necessary to distinguish chiefs of staff, that title is used.
74 Tiernan (2004), op cit, p 241; see also Senate Select Committee on a Certain Maritime Incident, (2002), op cit, p xxxvii and 173.
75 Maley (2002b), op cit, p 102.
76 For details about the Code of Conduct and the circumstances which lead to its introduction, see appendix 3.
77 Some limited guidance was provided under the Howard Government’s A Guide on Key Elements of Ministerial Responsibility, which stated that ministers and parliamentary secretaries were responsible for the conduct of their staff, and made it clear advisers acted on behalf of their minister. The rest of its provisions concerning ministerial staff covered conflicts of interest, outside employment, private interests, and acceptance of gifts and hospitality; Prime Minister (1998), A Guide on Key Elements of Ministerial Responsibility, Canberra, p 27.
mediated access to the minister and distilled information. Those roles, functions and relationships were drawn from evidence to the inquiries arising from the children overboard affair\textsuperscript{78} and from Maley’s conceptualisation of advisers and their policy roles.\textsuperscript{79}

The research was conducted into the Rudd government.\textsuperscript{80} Researching advisers working in a government of the same political persuasion as in Maley’s study removed one potential intervening variable. That the Rudd ministry governed over a decade later also provided the opportunity to see if advisers’ roles had developed.

The findings provide an insight into the way policy advisers carry out their day-to-day work, giving a more detailed picture on which to base the accountability debate. The findings should add to general understanding of a relatively new role, particularly as they arise from one of the first studies of the Rudd government.

3. Methodology

Empirical data on the forces which shape policy advisers’ behaviour came from semi-structured interviews conducted with four former ministers in the Rudd government, their chiefs of staff, and a policy adviser from each ministerial office. In one case, a senior adviser who later became chief of staff was also interviewed.

\textsuperscript{78} That advisers determine what information reaches ministers, control access to ministers, make decisions on their behalf and give directions to departments and agencies; Evans, H, (2003), Submission to the Finance and Public Administration References Committee’s inquiry into Staff employed under the \textit{Members of Parliament (Staff) Act 1984}, \url{http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_cte/completed_inquiries/2002-04/mops/submissions/sublist.htm}, p. 2.

\textsuperscript{79} Maley characterised advisers as either ‘passive/reactive’, ‘active’ or ‘very active’. Those ‘active’ and ‘very active’ advisers worked closely with senior bureaucrats and also had substantial policy roles outside that relationship, helping ministers set the policy agenda, negotiating with other ministers’ offices and stakeholders, and developing coalitions of support within and outside government. ‘Very active’ advisers had a drive to achieve major policy agendas, were highly directive and deeply involved in the department’s work. They developed new policy ideas and saw policy implementation as shared with the department. They were active in setting policy agendas, developing and mobilising coalitions of policy interests, negotiating and delivering policy outcomes. ‘Active’ advisers might do some or all of those things, but not consistently. They rarely had a major policy agenda. ‘Passive/reactive’ advisers performed a limited version of those roles for ‘a variety of reasons’, including time spent performing non-policy roles; Maley (2000), op cit, pp 454-468; Maley (2002b), op cit, pp 101-102 and 166-202.

\textsuperscript{80} The Rudd government was sworn in 3 December 2007 and ended on 24 June 2010, when Kevin Rudd was removed as Prime Minister; Australian Labor Party, \textit{Kevin Rudd, Member for Griffith}, \url{http://www.alp.org.au/federal-government/labor-people/kevin-rudd/}; National Archives of Australia, \textit{Australia’s Prime Ministers: Kevin Rudd}, \url{http://primeministers.naa.gov.au/primeministers/rudd/}. 
This sample represented 13 per cent of the total population of Rudd government ministers\(^81\) and 3.9 per cent of advisers.\(^82\)

A realist approach was adopted. Accounts from ministers and their staff provided observable evidence. The effects of underlying social factors on adviser behaviour, such as their ministers’ standing, experience and portfolio and desire to avoid unnecessary controversy, were also considered.

Semi-structured interviews, thought preferable for elite interviews, were used rather than structured interviews or surveys.\(^83\) They also allowed engagement with participants and probing to better understand answers, helping to capture variation and nuance and increase data validity.\(^84\) Given Maley’s findings about the highly contingent nature of ministerial influence,\(^85\) it was important to capture subtle variations.

The interviews lasted from 50 to 80 minutes each, and took place between 15 August and 11 October 2012, in Sydney, Melbourne and Canberra. Telephone interviews were conducted with two participants; the remainder were in person (see appendix 3). Some data on former ministers, such as their portfolios and backgrounds, were obtained from public sources.

Participants are not identified in this paper – a device to encourage candour and increase data reliability.\(^86\) Each minister is identified by a colour – Blue, Red, Green and Orange – with advisers identified by their position and the same colour as their

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\(^{82}\) As at 30 June 2010, just after the end of the Rudd government, there were 233 advisers (including chiefs of staff as per footnote 73). That figure does not include media advisers and administrative staff who were not the subject of this study, but does include advisers from the prime minister’s office. Department of Finance and Deregulation, (2010), Members of Parliament (Staff) Act 1984 Annual Report 2009-2010, Commonwealth of Australia, Canberra, http://www.finance.gov.au/publications/mops_annual_reports/2009-2010/content/10_personal_employee_positions.html, Table 22: Portfolio Government Personal Positions at 30 June 2010.

\(^{83}\) Halperin and Heath (2012), Political Research: Methods and Practical Skills, Oxford University Press, New York, pp 273-274.

\(^{84}\) Ibid, pp 253-254, 258 and 259.

\(^{85}\) Maley (2002b), op cit, p 99.

\(^{86}\) Halperin and Heath, op cit, p 179-180.
minister. Care has been taken in writing the findings not to inadvertently identify participants. Where necessary, references to policy initiatives and portfolios are omitted from quotes.

To determine the effect of the independent variable of ministers’ influence, information was obtained from ministers about whether they sought directly or indirectly to shape or control the behaviour of their staff and, if so, how. Information on advisers’ reactions to their minister’s approach was sought, along with views on the importance of the minister in shaping behaviour against other potential factors. Advisers were asked about the effect of indirect factors such as their minister’s style and personality and whether they felt their behaviour reflected on their minister. To determine whether the relationship between ministers and advisers was one of principal and agent, all participants were asked about decision-making, the degree of authority that was delegated to advisers, and how delegated authority was exercised.

The research also assessed the impact of two potential intervening variables: advisers’ need to maintain a functional relationship with bureaucrats, and the influence of the Code of Conduct. Advisers were asked about the nature of the relationship they cultivated with public servants, how they worked with them in different situations, and whether they argued for or against them to their ministers. Participants were also asked whether the Code of Conduct had affected adviser behaviour.

Participant responses revealed three other possible intervening variables. One was advisers’ personal view of acceptable behaviour, echoing Maley’s finding that advisers’ personal conceptions of their policy role helped determine their level of activity. Another was the moderating influence of the public service. In a couple of cases, the precarious nature of advisers’ employment was also raised.

The Senior Adviser who later became a Chief of Staff is referred to as Senior Adviser Green to distinguish him from Minister Green’s first Chief of Staff.

Halperin and Heath, op cit, p 180.
Seeking similar information from ministers, chiefs of staff and policy advisers from each ministerial office provided triangulation of the data, enabling corroboration of responses and increasing the credibility of the findings. While, ideally, interview responses would be tested against data such as documentary evidence, this was not possible for behavioural responses. In any case, advisers' activities are usually not reflected in records. However, strikingly similar responses were received from all participants, providing an indication that the data were sound.

Ministers were not randomly selected; those with different backgrounds and personalities were approached to more robustly test the hypothesis and attempt to falsify it. It seemed possible that ministers' approaches might vary depending on factors like the length of their ministerial experience or whether they were more politically or policy driven, and that those differences could produce data disproving the hypothesis. Conversely, if they did not, then claims about the accuracy of the hypothesis would be strengthened. Adding to this effect, each minister also had a variety of other characteristics. They had different factional alignments and came from three different states. Some were former Senators; others had served in the House of Representatives. Their portfolios represented a mix of social and economic policy. All were male (one female former minister was approached but declined to participate, however, out of the nine advisers interviewed four were female, providing some gender balance). Minister Blue held a junior portfolio and had many years of parliamentary and ministerial experience. Minister Red was a senior minister with considerable parliamentary experience and a strong interest in policy. Minister Green held a junior portfolio, had long parliamentary experience, and expertise in a particular policy area. Minister Orange, a junior minister, had the shortest time in parliament and the least policy experience.

Of the nine advisers interviewed, four were chiefs of staff, four were policy advisers, and one, Senior Adviser Green, had worked both as a senior adviser and chief of staff. Seven nominated an interest in policy as the primary reason for becoming an adviser. The other two both came from policy areas in the public service, and policy

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90 Halperin and Heath, op cit, pp 177-178.
91 Halperin and Heath, op cit, pp 177-178.
92 Maley (2010), op cit, pp 105 and 107.
93 Popper's falsification argument from Halperin and Heath, op cit, p 33.
was clearly their interest. Five had prior policy experience, having worked in the public service. Of the others, two were lawyers, one had a science background and one came from an electorate office. Three advisers had worked in opposition, two for their ministers. A fourth, the only subject specialist, had worked on policy with his minister in opposition as part of lobbying activity. Eight had been, or were members of the Australian Labor Party, and the other described himself as ‘very aligned’. Four had also worked for state government ministers. The greatest length of service\textsuperscript{94} was ten years; the shortest two and a half (although that adviser had spent the same period working for a shadow minister in opposition). The average length of service was five and a half years. More detail is provided in appendix 1.

The approach of targeting ministers along with their advisers is novel. It is the first time research has been conducted in a structured way on individual ministerial offices rather than on a government as a whole, providing an opportunity to investigate whether differences emerged between ministers’ offices. Former ministers in the Rudd government were chosen as the potential sample population for several reasons. Currently there are no published studies on that government and its advisers, so the research covered new ground, enabling comparison with previous studies. The Rudd government also introduced the Code of Conduct and the study provided an opportunity to investigate its impact. A practical reason was that, former ministers might have time to participate. Also the author, as a former chief of staff to a Rudd and Gillard government minister, could rely on past relationships to contact participants.

While the hypothesis was informed by experience gained and observations made while occupying that and other positions as a ministerial adviser, every effort was made to remove bias from the interview questions and analysis. To avoid bias and encourage candour, the author chose not to interview the minister she had worked for, or policy advisers she had supervised.

\textsuperscript{94} Service includes service to state government ministers but excludes service as an opposition adviser.
Chapter 3 – How ministers influence advisers’ behaviour

1. Introduction

The influence of ministers on the behaviour of their advisers was clearly demonstrated. This chapter examines the strength of that influence, how it was exerted, and how advisers reacted. Advisers in the Rudd government saw themselves as agents, operating as extensions of their minister, explaining why ministers were able to wield such influence. This contrasts with the conclusions of the Senate inquiry into the children overboard affair that advisers were exercising autonomous executive authority,95 supporting the argument that those circumstances were exceptional rather than the norm.

The nature of the relationship between ministers and advisers was a defining influence on advisers’ behaviour. Ministers as principals assumed they had the right to control their advisers’ behaviour, either directly or through their chiefs of staff. Advisers as agents complied. Ministers established standards and created an office culture, providing a behavioural framework. Some would chide advisers for misbehaviour, and others mentioned their right to sack advisers for major transgressions. Ministers also exerted an indirect influence as advisers modified their behaviour to suit ministers’ personalities, styles and preferences. Ministers’ recruitment decisions may also have played a part in the close alignment that was evident. Advisers saw themselves as representing their minister and had a strong sense that their behaviour reflected on them. This was another constraint, as was the need to maintain their minister’s trust. These findings support Maley’s observations that ‘[t]he styles and objectives of ministers determined how their advisers behaved’,96 and the ‘approach of the adviser had everything to do with how the minister operated and what his or her objectives were’.97

Striking commonality emerged from the different ministers and their offices about the limits on advisers’ delegated authority. Strong norms were evident among all

95 Senate Select Committee on a Certain Maritime Incident (2002), op cit, p 173.
96 Maley (2003), op cit, p 2.
97 Maley (2002b), op cit, p 102.
advisers concerning the exercise of that authority. Ministers delegated considerable authority to advisers, but all participants recognised that ministers, as elected representatives, were the final decision-makers. This was a powerful constraint on adviser behaviour. Common situations were investigated – the way advisers conducted policy negotiations, passed on information, and made decisions about people seeking to meet ministers – to determine how advisers behaved. The minor variations in adviser behaviour that emerged are attributed to differing seniority, service as an opposition adviser, and higher levels of activity in policy processes. Some advisers were more active than others in policy processes, as Maley’s study found.98 Some of the more active advisers, particularly those who had worked in opposition, tended to act the most autonomously.

2. The nature of the relationship between minister and adviser

This section presents the views of ministers and advisers about the nature of their relationship. All participants saw it as one between principal and agent. This reflects the traditional view that advisers operate as an extension of ministers, who are the sole source of their authority,99 and accountable for their conduct and decisions.100 All ministers said they were the decision-makers. Their advisers readily accepted this, acknowledging ministers’ status as elected representatives. Some advisers explicitly described the relationship as one of principal and agent. For others, that understanding was implicit through their descriptions of the limits to their authority.

Ministers clearly viewed their advisers as their agents. Minister Orange said, ‘as far as I was concerned, if [Chief of Staff Orange] spoke, then I spoke’. Minister Red thought, ‘in effect the minister knows everything that is going on, and is a hidden hand behind all staff behaviour’. If his advisers were ‘being stonewalled by a staffer in this office, or somebody’s not cooperating there’, he would remind them that ‘you

98 Maley (2002b), op cit, pp 100-102.
99 Smith, op cit, p 301; Walter (1986), op cit, p 1; Ryan, op cit, p 155; Maley (2000), op cit, p 469; Maley (2002b), op cit, p 64; Maley (2003), op cit, p 2; Tiernan (2004), op cit, p 38; Tiernan (2005), op cit, pp 4 and 38; Fawcett and Gay (2010), op cit, p 30; Eichbaum and Shaw (2011), op cit, p 595.
100 Tiernan (2004), op cit, pp 38 and 213; Tiernan (2005), op cit, p 4; Mulgan (2012), op cit.
are dealing with somebody who is, in effect, an extension of the minister, and if
they’re behaving in that way the odds are very, very high that that is because that is
how the minister wants them to behave. And if you’re upset with them rather than
the minister, then that’s probably how the minister would prefer it as well. Ministers
also said they would take responsibility for their adviser’s actions, unless they were
obviously acting completely outside the terms of their delegation. Minister Red for
example said he would always accept responsibility for the actions of this staff
unless ‘somebody acts in a way that is so patently outside the way they are
instructed to and expected to fulfil their responsibilities that it should be obvious to
anybody’.

Likewise, all advisers saw themselves as agents, with some explicitly describing the
relationship in such terms. Chief of Staff Green said, ‘we’re an extension of him’
adding, ‘the reality always was that we were agents, active agents, of our minister’.
Adviser Red said, ‘if there had ever been anything like advisers ... trying to kind of
usurp the decision-making power of the minister as the principal, then that would
have been, in effect, the end of your working relationship’. Others described an
agency relationship when explaining how they acted in policy negotiations. Chief of
Staff Blue told advisers, ‘We are not the minister. Now any decisions that we make
have to be on the basis that we have an understanding ... that it totally reflects what
the minister would or wouldn’t do’. Reflecting his status as an agent, he was careful
not to appear to commit his minister, saying ‘you’d make it clear you were having the
meeting ... to form a view that you can brief the minister on’. Chief of Staff Orange
said, ‘if you’re trying to draw that line ... that tightrope you’re walking along about
what you’re allowed to do and what you’re not allowed to do ... you know you’re off it
if your boss doesn’t agree with it. And that’s just difficult all over’.

Principals make the final decisions in an agency relationship, and all ministers said
they did so. When Minister Red was asked whether he was comfortable with
advisers making decisions in policy negotiations he responded, ‘an actual, concrete,
substantive decision? That’s ultimately what I’ve got to do’, adding that he thought
advisers were engaged in ‘the process of ... manufacturing the content of decisions
and you then have the minister ... executing’. Even so, ministers encouraged
advisers to disagree with them, as in Dunn’s study.\textsuperscript{101} Minister Green talked about occasional ‘hot policy debates’ with his advisers, for example. But all ministers said advisers ultimately had to accept their decisions. Minister Blue jokingly mentioned ‘conspiracies’ by his staff which ‘were sometimes about trying to persuade me to follow a different course of action’. However, in a clear indication of the nature of relationship, he said if advisers’ conspiracies contained ‘any malice there, then one would sack them’. Minister Red said he wanted advisers to ‘argue the point and to stand up to me up to the point where I hit a decision-making mode’. Similarly, Minister Orange said, ‘if they disagree with it, then they raise it with you, and if they can’t get you to change your mind then they had to live with it’.

All advisers were clear that ministers made substantive and final decisions because they were elected representatives. Typical responses included Chief of Staff Blue, who said, ‘I have that view that I’m not the elected official. They’re the one who’s going to be accountable’. Similarly, Chief of Staff Orange said, ‘I am not an elected official. My name does not go on a ballot paper. It is not my job to actually make decisions’. Dunn found the same, with advisers aware ‘we are not the democratically elected representatives’.\textsuperscript{102}

Many advisers made a distinction between process decisions, which they could make if they knew their minister’s objectives, and final policy decisions. Adviser Blue said, ‘the kinds of decisions that I might make were mostly process things anyway’. For other decisions she ‘would give advice, but without the imprimatur of [her chief of staff or minister], I wouldn’t be saying, “Go a different way”’. Adviser Green made a distinction between substantive policy decisions and implementation decisions. ‘If it was a decision about whether we do it this way or this way’, he said, ‘then that’s different. But when you basically have no room to move, and the decision is basically about how you get there, then the best outcome is to sort it out yourself’.

Ministers as the principals determined how much authority would be delegated to their advisers and the terms on which that authority would be exercised. Minister

\textsuperscript{101} Dunn (1997), op cit, p 102. Dunn’s research covered the Hawke-Keating governments and the first six months of the Howard government.

\textsuperscript{102} Dunn (1997), op cit, p 103.
Red talked about giving advisers ‘riding orders’, Minister Blue about establishing ‘frameworks’ through continual discussion. The latter also spoke about how advisers determined the point at which they, ‘stopped and said “I can’t agree to that without the minister’s approval”’. The question of ministerial delegation is explored fully section three below.

3. The influence of ministers on advisers’ behaviour

This section examines how ministers exerted influence over their advisers’ behaviour, and how advisers reacted. Ministers exerted influence by explicitly conveying their expectations about behaviour and standards. They also deliberately created an office culture that established a framework for adviser behaviour. The force of their personalities, styles and preferences also played a part. Advisers felt bound to meet standards set by their ministers, and modified their own work preferences and approaches to suit those of their ministers. They strongly felt their behaviour reflected on their minister. This was a constraint, even outside work.

(a) Setting standards

All ministers deliberately tried to influence advisers’ behaviour by establishing expectations and setting standards. Advisers, as agents, reacted to those messages. Minister Blue wanted to ‘try to ensure that there is a spirit of collaboration among the staff and that they accept that their role is, as far as reasonably possible, to collaborate with the bureaucracy’. This approach was clear to his chief of staff and adviser, both talking about the need for collaborative working relationships. Minister Red said he would ‘both explicitly and implicitly give people thoughts about what was desired and not desired’. He wanted advisers to deal with the content of issues, maintain good relationships with other ministers’ offices, and deal courteously with the public. Regarding the public service, motivated partly by self-interest, Minister Red would send a “‘We need them more than they need us” message’, which meant ‘a strong imperative on treating the department with respect’. He wanted his advisers to understand, without a good relationship, that ‘people in the department can do all sorts of ugly things to me that could conceivably end up
being fatal, and I would prefer to avoid that’. Those messages were heard by his
advisers. His chief of staff ‘tried to cultivate a very good relationship with the
department. We would be very open with them’. Adviser Red used nearly the same
words to describe her relationship with the department.

Minister Green wanted his staff to be courteous and to have ‘a good, strong working
relationship with people in the public sector and also outside in the private sector,
[and] with your political colleagues’. He raised those expectations during interviews
of new staff and on their appointment. With his new chief of staff he ‘had a couple of
very long conversations about my expectations, my style, my approach’. Chief of
Staff Green confirmed a ‘long discussion early on about ... our expectations of
professionalism, of ethics, of meeting and exceeding standards set on politicians’.
However, Chief of Staff Green was the only chief of staff who thought his minister did
not actively set standards, partly because his minister had accepted his ideas about
office systems without question. Both he and his minister saw enforcement of
standards primarily as the chief of staff’s responsibility, and he was active in that
regard. While not stated by either participant, this may also have contributed to his
view.

Minister Orange wanted his staff ‘to be extremely professional. Because when an
adviser’s speaking, most people view it as the minister speaking’. He sought
advisers with ‘a good level of judgement [and] ... maturity who could deal with
bureaucrats, could deal with politicos but at the same time could manage
stakeholders’. He emphasised he wanted toughness in a chief of staff. This was the
only instance where this attribute was not reflected directly in his advisers’
responses. However, his chief of staff’s persistence and determination in dealing
with a difficult, underperforming senior public servant through time-consuming
weekly meetings probably demonstrates this characteristic.

Minister Orange’s comments point to recruitment decisions also having an effect,
with ministers hiring advisers who reflected qualities they valued. Minister Blue said
that a minister ‘should work strenuously to acquire a chief of staff with whom they
have a high level of sympathy’, while his chief of staff talked about recruiting advisers
who were ‘sympathetic to [Minister Blue’s] way of thinking’. Chief of Staff Red said
his minister ‘didn’t want a bunch of political flacks’, so he looked for advisers ‘who had an eye to politics but weren’t political’. He also said he and Minister Red ‘were quite careful in the selection process for advisers, thinking about how they would fit, what the organics and the chemistry of the office would be’.

Minister Orange was the only minister to directly rebuke advisers if they transgressed his standards. Chief of Staff Orange said that while that didn’t happen often, ‘if somebody had behaved in what he thought … rudely or something, then he would absolutely at that point say, “You’re representing me”’. Other ministers were not as direct. If an adviser made a mistake, Minister Red’s reaction was mostly a ‘raise of the eyebrows’ because, ‘Almost invariably that process [working through the problem] in itself would, if there was any doubt at all, clarify in the person’s mind that they’d made a bungle and you could see that they were kind of pretty chastised’.

Ministers sought to control their advisers’ behaviour because, as Minister Orange said, advisers represented them and their behaviour could reflect badly on ministers or cause them problems. Minister Red said that ‘one of the scary things about being a minister is that you are kind of a captive of staff behaviour’. He said if a staff member dealt rudely with a member of the public then ‘the next thing you know, that’ll be being raised in parliament and the individual staff member’s not the head on the block. It’s me!’. As discussed above, for similar reasons he also wanted his advisers to have a good relationship with the public service. It was also clear that ministers as the principals sought to impart their values to their advisers when they asked them to act courteously treat others with respect or work in a collegiate manner.

(b) Creating an office culture

All ministers tried to set an office culture which created a framework for advisers’ behaviour. A good example was Minister Blue’s desire for a collaborative approach between advisers and the bureaucracy. He said, ‘I always assumed that a job of a sensible minister is to consciously create a milieu in which the number of advisers and officials could work together and agree about the most important things’. His
Chief of Staff reflected this, describing the office as ‘a collaborative and “talk through issues” kind of place’. Minister Blue’s adviser thought her minister created a culture through his personality, saying, ‘I suppose [Minister Blue] was just [himself] and that was the culture anyway’. That might be because, as Minister Red said, ‘what happens, in any small organisation of that kind, the leading figure on a perpetual basis sends out signals of what is approved and what not approved, what is desired, what is not desired, and people working there absorb these subconsciously, just continuously, and behave accordingly’.

(c) Ministers’ preferences and approach

Advisers talked about modifying their behaviour to fit their ministers’ preferences and personality. This provided a strong indication of an agency relationship, and demonstrated that advisers reacted to their ministers’ influence. Chief of Staff Blue observed, ‘you should be able to gauge ... what makes them tick and work to that’. He sometimes acted less robustly than he preferred, saying ‘I know how he wants to work. Whereas some people might make me bad tempered and I’d tell them to piss off, well, I wouldn’t because it’s not how he’d behave’. He also adopted different work methods, saying ‘there were ways that [Minister Blue] wanted to do stuff that I personally, quite deeply, didn’t really care about, but I knew that was his approach, and so I would follow that approach’. Other advisers also used their minister as a reference point. Chief of Staff Orange said, ‘you watch them and you take your guide from them. And if they’re an open, friendly kind of a person, then that’s the way you are. Whereas if you know that they’re not, then it would be kind of odd for you to be’.

All advisers except one thought their behaviour reflected on their minister, including behaviour outside work, and this was a strong constraint. ‘I was very conscious, and I think advisers need to be, that whatever you say, you are speaking for your boss’, Chief of Staff Red said, adding this extended to behaviour outside work. Chief of Staff Green said, ‘everything that we do, and I was pretty militant about this both at a personal level and a professional level, so out of work and at work, is directly a reflection of the minister that you work for’. Chief of Staff Orange agreed, saying ‘I
constantly thought, and said overtly to advisers, “What you do reflects on him”. And he said that too’. The only exception was Adviser Red, who said while she ‘had an obligation to act with integrity and to serve [Minister Red’s] interest’, she didn’t think her actions reflected on him ‘because he was such a strong personality in his own right and people knew what he stood for’.

4. Ministers’ delegation of authority

This section reports on how much authority ministers delegated, why delegation varied, and how advisers knew the scope of their authority. It considers how advisers acted during policy negotiations to see how they exercised their delegated authority, and to determine the impact of variations in delegation. Policy negotiations were investigated because this is a major role which enables advisers to wield considerable influence. Two other important activities that can affect ministerial policy decisions were also investigated: how advisers present information to ministers, and how they deal with people seeking access to ministers. Those areas were chosen partly to obtain more detail on how advisers exercised their delegated authority, and partly to investigate claims they behave illegitimately when making such decisions. To complete the picture, differences in advisers’ behaviour when exercising their delegated authority are also examined. Advisers’ need to maintain their minister’s trust was a constant theme in all the findings and emerged as another constraint. Chief of Staff Orange thought trust was ‘completely what [the relationship is] based on’, adding ‘if they don’t trust you, you can’t do [the job]. And you may as well not bother either’.

Ministers said they delegated considerable authority to advisers. This was also their advisers’ perception, although contingent factors affected the degree of delegation. Advisers said ministers had to get to know them first and trust their capacity and judgement. Advisers then exercised their authority reasonably independently, but only once they were confident they understood their minister’s approach and policy goals. This reflects Dunn’s findings.103 The more senior advisers were delegated more authority, and were more confident exercising it. However, in policy areas

103 Dunn (1997), op cit, p 104.
where ministers were more interested, advisers had less delegation. Advisers often made process decisions during policy negotiations, but those who worked for ministers who wanted to make process decisions themselves had less scope for independent action. Contrary to Maley’s findings that advisers often reported directly to ministers, chiefs of staff closely supervised less experienced advisers, helping to ensure delegated authority was properly exercised and behaviour met expected standards. This appears to be an institutional development since the Keating government. The evidence found in this study raised considerable doubt about claims that advisers prevent information from reaching ministers and block people who seek access.

(a) How much authority was delegated and how delegation varied

Broad delegation was made to most advisers once trust was established, particularly to chiefs of staff and more experienced policy advisers. However, all advisers clearly understood the limits to their authority. ‘I had a pretty broad discretion’, Chief of Staff Blue said, ‘[Minister Blue] had a high level of trust of me’. However, he had daily conversations, including on weekends, to ensure his minister was kept ‘in the loop’ and confirm his judgements were correct. ‘I would always tell [Minister Blue] after the fact, in case I had to ring up and say, “Oops, no. The minister didn’t say that actually after all”. But I never actually had to do that’.

Minister Red gave his advisers ‘a lot of authority in dealing with the department’. He would tell them, ‘You’re in charge of this matter so when I need to be brought into the picture, please do. But you don’t need to be tugging my sleeve every five minutes’. When advisers were dealing with other ministerial offices, he said their authority ‘would depend a bit on the issue’. Chief of Staff Red agreed that his minister delegated considerable authority, saying ‘He was happy for me and happy for advisers to go and negotiate on his behalf and use his name’, although if he had a particular view, ‘he’d give you some riding instructions ... not riding really, but some loose guidance’. Chief of Staff Red thought the clear policy objectives in his

minister’s portfolio provided ‘your pointer’, making it easier to properly exercise delegated authority.

Chief of Staff Green had ‘Pretty wide authority, very wide actually’ on gaining his minister’s trust. He also attributed this to having similar values to Minister Green and to recognising the limits to his authority. He said the authority delegated by Minister Green to other advisers varied. He and his minister had ‘set down some red lines about when something was elevated into, I guess, a strategic level. You know, does this policy kind of move the big tectonic plates that sit under [that policy area]... . That’s when it had to involve me or the minister, before it was progressed too far. Anything that was controversial that could be of political or political internal risk. That was straight to me’.

Minister Orange said he delegated considerable authority to his chief of staff, and she confirmed this. However, he wanted her to ‘keep a close eye’ on some of his other advisers who were inexperienced. He thought, ‘The staff’s job is to free the minister up. ... If the minister has to keep making decisions every minute of the day, then how do you do your job?’.

The degree of delegation could vary with different policy areas. One variation came from ministers’ differing levels of interest. Chief of Staff Blue said, ‘the stuff he was most interested in, I had the least delegation on, because he was interested ... [and] much more intimately involved, and I would defer to him a lot more’. Chief of Staff Green said that in less important portfolio areas, the minister usually ‘just wants his staff to deal with it’.

Variations in delegation also occurred when a policy area was being reformed or the area was controversial. Minister Green wanted to be kept closely informed about policy implementation in reform areas saying, ‘I think you’ve got to be, as a minister, across those details’. Minister Orange said delegation varied ‘issue by issue’ but he, ‘would be quite involved in it, if you’re working on a problem or some sort of policy’. The perceived degree of political risk also had an effect. Minister Blue said that because of time pressure he ‘would try to understand what was going on ... but only pay serious attention to those issues that I thought were either going to give me
serious political trouble or which I thought were important in an intellectual and policy sense’.

A minister’s personality and approach could also alter the degree of delegation. Chief of Staff Orange, who had worked with several ministers in different jurisdictions, provided the clearest example, finding she had less delegation with a minister who had a less open personality. This made it harder to anticipate his decisions. She said, ‘when I worked with [Minister X], he had his own views, and if I didn’t know, I couldn’t guess ... . So that was harder because I would always have to keep going back to check’. That minister was prescriptive about process, limiting her discretion, ‘Because ... I’ve got to keep going back to you each time so that you can renavigate the next step’. Minister Orange, on the other hand, simply told her the outcome he wanted, which was empowering, ‘I felt that [Minister Orange] trusted me, so that gave me more confidence to do it’.

Chief of Staff Red thought ‘the personality of your boss and the way they’re perceived internally has a significant effect on the way you carry out your job’, but he also thought advisers had to sometimes ignore those factors to carry on the business of government. ‘I think that the role of a staffer is somewhat timeless’, he explained, ‘and actually has to move or set aside the personality and how the minister is perceived by their colleagues. You have to make a lot of effort just to ignore how perceptions of individual politicians play with other politicians and just get on at the staffer level and transact stuff, basically’. This observation is similar to Maley’s finding that advisers in the Keating government worked hard to keep their relationships functioning, even when those between their ministers were hostile.\textsuperscript{105}

\textbf{(b)} \hspace{1em} \textit{How advisers knew the scope of their delegation}

In trying to describe the limits to their delegation, advisers found it somewhat difficult to articulate precisely how they determined which decisions they could make in policy negotiations and which they would refer to their minister. In part, this difficulty in making generalisations arose because the contingent factors associated with

\textsuperscript{105} \hspace{1em} Maley (2011), op cit, p 1480; also see Smith, op cit, p 300.
different policy areas, which have been discussed above, changed advisers’ delegated authority. It was also because there were few explicit conversations about delegation. However, advisers made a clear distinction between process decisions which they could make, and final or substantive decisions which were for their ministers. This has been explored above in the discussion about the nature of the relationship between minister and adviser.

Advisers were also clearly operating within a decision-making framework which helped them make competent judgements and remain within the terms of their delegated authority. That framework was developed through ongoing policy discussions with their minister, and the many meetings they attended between ministers, the department and stakeholders. In that way, advisers came to know the content of policy areas and understand what decisions should be made by the minister. As Minister Blue said, ‘there’s continuous discussion .... There’s meetings of the staff, there’s meetings of the staff and me, there’s meetings of the bureaucracy and me with an adviser, and these things all constantly intersect’. His Chief of Staff said, ‘I had pretty constant and candid conversations with [Minister Blue] about, “This is what’s happening, what do you think, and I’m kinda doing this”’. Similarly, Adviser Blue said ‘because it was such a small office, we talked about everything anyway’. Those discussions forged a deep understanding of a minister’s goals and preferences. Minister Red thought his advisers were ‘implicitly’ operating within a framework. He said, ‘after a fairly short period of time, again if you run that office informally, people get to know basically how the place runs, what’s expected of them, and what degree of licence they have’. This reflects Dunn’s findings that the constant interaction between ministers and their advisers exposed advisers to in-depth, detailed expositions of the minister’s attitudes, allowing them to accurately anticipate ministers’ likely views and reactions.106

Advisers’ deep understanding of their minister’s goals and preferences meant they could anticipate ministerial decisions and act competently as agents. Adviser Blue said, ‘I’d say I did have a fair bit [of delegation], but I guess because I knew him so well, I had kind of understood what his priorities were and what he wanted to see out

106 Dunn (1997), op cit, p 87.
of things’. Most advisers talked about exercising more discretion in policy negotiations once they came to know their minister. ‘I mean, in the beginning I had no clue’, Chief of Staff Orange said, ‘I could do what I think ... what I thought was right. But not knowing him, I didn’t really know what he would think. So, you know, it took a while’. But once she knew what his view would be, then she felt she had ‘a lot’ of delegated authority and ‘you also know what steps along the way he would agree with. And that just comes from knowing them’.

(c) **Two decision-making processes**

This section examines two areas in which advisers commonly make decisions and exercise judgement that can affect ministerial policy decisions: handling information intended for the minister, and dealing with requests to meet the minister. This provides an insight into two common daily activities, as well as an opportunity to examine claims that advisers often exercise their authority improperly by blocking information and access, thereby hindering policy processes.107 This section finds claims that this is a common occurrence to be exaggerated.

Ministers said they wanted advisers to distil and prioritise information. Minister Blue, reflecting the comments of other ministers, said ‘outsiders never really understand how busy ministerial offices ... are. There’s all sorts of issues running all the time and somebody has to be sorting them enough to ensure that the minister can deal with them, or to deal with the most urgent issues as they arise’. Advisers said they summarised information but, with a couple of exceptions discussed below, did not withhold information altogether.

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107 For example, Harry Evans, a former Clerk of the Senate, said advisers ‘determine the information which reaches ministers’, ‘control contact between ministers and ... departments’, and ‘other ministers [and] other members of the Parliament... . Each of these functions ... has an extreme and illegitimate content’; Evans, H, (2003), op cit, p 2. Walter has said advisers have a ‘funnelling effect’ which limits rather than enhances contestability of advice; Walter (2006), op cit, p 22; see also Eichbaum and Shaw (2006), op cit, p 21; Eichbaum and Shaw (2007a), op cit, p 621-622.
All advisers put their written advice on top of departmental briefs, reflecting practices found in earlier studies.\textsuperscript{108} That advice commonly included a summary of the brief, the adviser’s own views and advice, and recommendations for action. While this process can be seen as one way advisers filter information, Minister Red found it useful and would think carefully about cases where his advisers and department disagreed. He would not use his adviser’s advice ‘as a substitute for reading the brief and thinking about it as well, [but] it was a very good reference point for me’. Chief of Staff Blue made the point that his minister was always able to read the departmental brief, even though his note was on the front.

Some advisers commented that they had a broader range of considerations than public servants. As Chief of Staff Green put it, ‘political advisers are political advisers. You do take a policy and you put some lens of politics over it. And you might be aware of a whole range of political pressures that the department should not be aware of, and it’s not wrong that they’re not aware of them’. That account also supports the arguments of Smith, Dunn and others that advisers protect the bureaucracy from politicisation.\textsuperscript{109}

Advisers did not stop departmental briefs going to the minister. Adviser Orange said, ‘the briefs are not for you. They’re for them. And while sometimes I would disagree strongly with the content, I would make sure that I’d got my views down’. Although advisers returned briefs to the department for more work if they judged them inadequate, most junior advisers did that in consultation with their chief of staff. No one requested recommendations be changed. All advisers, like Chief of Staff Red, would ‘work with the department to try to get something that was a bit better, in a bit better shape. But it wasn’t blocking because I disagreed with their advice. It was more because I thought their advice was incompetent’.

However, discussions between advisers and bureaucrats could result in changes being made. Chief of Staff Green said he and other advisers would debate concerns


\textsuperscript{109} Smith, op cit, pp 293 and 304; Dunn (1995), op cit, pp 513 and 517; Eichbaum and Shaw (2007b), op cit, p 459; Maley (2010), op cit, p 101.
with the department but, ‘It wasn’t like, “You’re wrong, change it”. It was, you know, “What does that mean? If you think about it from this perspective, how does that work? That doesn’t work with that”. … Sometimes from those discussions there were changes, sometimes there were not’. Chief of Staff Orange said, ‘Sometimes them explaining would convince you, no, actually they were right’.

Three advisers, all senior, talked about occasional decisions they made, for a variety of reasons, to keep briefs from their minister. Chief of Staff Red talked about a couple of occasions when he considered a brief from the department to be so deficient it could not be repaired, and it would cause his minister damage to sign it. He said, ‘another thing the bureaucracy don’t get, ministers are in the gun for every piece of advice … . They own it once they sign it’. Sometimes he signed inadequate briefs, saying ‘So if they [ministers] don’t sign it, then I own it and I can be shot. I can be fired. But sometimes it was so bad I wouldn’t sign it. I would put it in the bottom drawer’.

In another example, both Senior Adviser Green and Chief of Staff Orange said they did not put some departmental briefs to their ministers that were so inconsequential as to be judged a waste of the minister’s time. In the third example, where a series of departmental briefs for information were received, Senior Adviser Green would consolidate them and present them at the time he considered best. He said, ‘I had this quaint view that you don’t waste a minister’s time getting him across stuff until he needs to know it. And so there were many briefs that were about a situation in progress where he didn’t need to know that just now. So I wouldn’t fill his headspace with it. … you need a complete picture and you need to give a minister things at the right time’. It is worth noting that these actions could only happen with briefs that were relatively unimportant, such as information briefs, because departments have systems to track them and, as several advisers pointed out, public servants can raise unsigned briefs with ministers during departmental meetings. Adviser Orange also said she ‘wouldn’t want to get in trouble’ which might happen if the department told the minister she had repeatedly rejected a brief.

Contradicting claims that advisers block access to ministers, advisers rarely had sufficient control to do that. All ministers made decisions themselves about who they
would meet. At first, Minister Orange had his chief of staff make some decisions, but later adopted the same practice as other ministers, seeing all requests himself. Minister Red said, ‘I’m very strongly of the view that if a staff member is blocking somebody from seeing a minister, that’s because the minister wants them blocked’. Other parliamentarians were never refused time with a minister, nor were public servants, and all ministers had regular meetings with their departments anyway. Advisers would, however, make recommendations about requests for meetings, providing an opportunity to influence ministers’ decisions. Chief of Staff Green, like other advisers, commented that ‘there were times when we were surprised and he would want to meet someone and it was completely left field’. Advisers would commonly take meetings their minister’s didn’t agree to. For instance, Chief of Staff Blue would say, ‘Okay. Here’s the people who want to see you ... . Which ones do you want me to see and you not to see?’.

With one minor exception, no adviser prevented people from seeing their minister. Chief of Staff Blue said ‘I would never like hide anyone from him so he wouldn’t know that they were trying to see him. And I would never make a decision myself. It was up to him’. Senior Adviser Green noted there were some groups he thought would waste his minister’s time ‘But you have to hear them, just for completeness so you could never be blindsided’. Chief of Staff Orange said that was not her place to block access, and ‘that would be stupid on the adviser’s part because, again, the minister will always find out, particularly if it’s an MP’. She added, ‘I might actually block if the person was nuts’ but, ‘More likely though, I would tell him that they are really wanting to meet him, and I was trying to stop it happening, in case they cornered him somewhere. So he would ... be prepared’. In one instance, Chief of Staff Red deviated from that practice because he judged further meetings with an interest group would cause his minister ‘damage’. After Minister Red twice met the group on a non-portfolio issue, he and the minister’s diary secretary would, ‘just throw their invitations in the bin. Because they were completely inappropriate for a Labor person to be meeting’.

Advisers would never block public servants, but would sometimes meet with them first. Chief of Staff Red explained, ‘Sometimes departmental people would want to meet the minister about certain things and I would say, “Well I don’t think it’s ready. 
Let’s just have a staff meeting. And then we’ll sort of work that out. And then we’ll have a chat [with the minister]”. He did this because ministers ‘don’t like poorly formed, irritating hour-long meetings. They like a degree of precision. ... And they want outcomes at the end’. He felt bureaucrats were comfortable with longer, more discursive meetings, and that advisers bridged the gap between the preferences of the bureaucracy and the minister.

(d) Variations in decisions advisers made

Within the framework of the minister as the final decision-maker, three advisers gave examples of undertaking relatively autonomous decision-making. Chief of Staff Red said that sometimes his minister ‘locked in on a particular bias’, and ‘if you wanted to undo it, you had to be careful to take your time’. Undoing it meant getting contrary evidence, as his minister was ‘an evidence-based person’. While this is not unquestioning acceptance of a principle’s preference, it accords with Minister Red’s desire that advisers should disagree with him, and also with Adviser Red’s comment that he ‘was quite comfortable having the argument again and again, so long as you had new arguments’. It also fits with accounts related in other sections of this paper of advisers and ministers debating policy decisions, and with Ministers Blue, Red and Green saying sometimes their advisers advocated a better course and they changed their position.

In another example, Adviser Green talked about decisions he made on information he would provide his minister, saying ‘you never wanted to give bad advice. You’re never going to try to get the minister to make a decision which you think is not the right decision ... so you might sort of tailor it to making that decision easier ... you probably present it in a way which leaves out stuff which is going to be complicating the decision-making process ... unnecessarily’. This approach complied with his minister’s request to, ‘Tell me what I need to know to make the decision I have to make’. It also accords with Chief of Staff Green’s view that if he gave irrelevant information to his minister, ‘I know his response would have been, “Why are you sending me all this stuff?”’. On another occasion, Adviser Green talked of putting his policy ideas into a speech he drafted for the minister. He said, ‘So I wrote a speech
for him where I just dumped all my sort of philosophical ideas into it, some policy
drivers into it. And he read the [draft] speech and just went, “That's a really good
idea”. While Adviser Green appeared to work independently on policy development,
all his advice went to the minister through the chief of staff, who said he was
comfortable with Adviser Green working that way because he and the minister
‘broadly agreed with where he was going and he wasn’t binding us to anything.’

Senior Adviser Green was the only adviser to say he had issued instructions to
departments ‘without ... formal sign-off from the minister’. However, he had been a
long-term, senior public servant, and ‘I knew where I could go and I knew where I’d
need to be more formal about it’. He also felt able to do this because he and his
minister ‘were so aligned ... that I felt my freedom was not total, but large’. He also
described a situation where he ‘made some political calls without any reference to
[Minister Green]’ at a meeting he organised and chaired between private and public
sector representatives. They held opposing views of factual matters, and his
minister had told him to ‘Sort it’. While he made those political calls, it is important to
note he did not make the final decision. He ‘asked [the public servants] to produce a
brief within 24 hours that went the way forward that I’d sort of given them’, which his
minister then agreed to and signed off. It was also ‘an issue that we’d dabbled in for
probably six months beforehand .... . So we’d met with all the stakeholders and with
[the department] and, you know, briefings that were two inches thick’. In other
words, he was operating within a clear framework and knowledge of his minister’s
views.

The behavioural variations discussed above can also be explained by the advisers’
seniority, experience, background, and level of activity in policy processes. Senior
Adviser Green was one of the most experienced advisers, having worked for many
years in public and private sector positions, and had a deep technical knowledge of
his policy area. This, combined with his close relationship with his minister and their
common policy goals, may explain his confidence in making the calls he talked
about. However, he said that did not happen ‘very often’.
Chief of Staff Red and Adviser Green had both worked in opposition, where advisers often have more freedom and influence.\footnote{Walter (1986), op cit, p 141.} Senior Adviser Green, while not an opposition staffer, came to know his minister in opposition and had assisted him in their shared area of policy expertise. While scant attention has been paid to opposition staff and how they make the transition into government, Walter has said that in opposition ‘the partisan adviser is in a privileged position as primary source of, or conduit to, relevant knowledges [sic]’.\footnote{Walter (1986), op cit, pp 140-141.} It is possible that time spent as an opposition adviser, in a closer relationship with a shadow minister, and able to wield more influence, may have played a part in the confidence these three advisers displayed in exercising their delegated authority. Senior Adviser Green and Adviser Green were also both ‘very active’ policy advisers according to Maley’s criteria and Chief of Staff Red ‘active’.\footnote{As expected for chiefs of staff who have a number of non-policy responsibilities.} Maley has said that very active advisers ‘can pose challenges’ in policy processes by encouraging bureaucrats to be overly responsive,\footnote{Maley (2010), op cit, p 110.} although in the examples considered that did not occur.

5. Conclusion

This chapter demonstrates ministers exerted a strong influence which largely defined the way advisers behaved. They set standards and established an office culture, creating frameworks for their advisers’ actions. They also exerted influence though the force of their personalities, with advisers modifying their behaviour to suit ministers’ preferences and style. The ways they wanted advisers to behave partly reflected ministers’ values. However, they were also motivated by self-preservation, aware that advisers represented them and seeking to avoid needless controversy.

The findings demonstrate that advisers continued to work as their ministers’ agents. The clearest evidence of the agency relationship was the consistent understanding among advisers of the limits to their decision-making and their acceptance that ministers, as elected representatives, made substantive decisions. That was a strong and constant constraint on their behaviour. The evidence of an agency relationship, and the constraints it exerted on behaviour, contrasts with conclusions
drawn from controversies like the children overboard affair. The evidence supports the argument that those events present extremes of adviser behaviour, not the norm.

The chapter also explored the delegation of authority from ministers to advisers and how varying delegations affected behaviour. While ministers generally delegated broad authority, delegation could vary. More authority was delegated to senior, more experienced advisers, and most ministers expected their chief of staff to supervise the activities of other advisers – a clear departure from Maley’s findings where advisers usually reported direct to their ministers.114 Strong norms of behaviour were apparent about how advisers exercised their delegated authority, and the limits to that authority. Those norms are explored further in the next chapter which considers other influences on adviser behaviour.

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Chapter 4 – Other forces shaping advisers’ behaviour

1. Introduction

Ministers exert the dominant influence over advisers’ behaviour, but not the only one. Other forces which shape and constrain advisers’ behaviour are examined in this chapter: advisers’ relationships with the public service, their personal conceptions and preferences, and the effect of the Code of Conduct for Ministerial Advisers introduced in July 2008. Reflecting Dunn’s findings, several participants referred to informal accountability mechanisms, and these are also examined. As in the previous chapter, strong norms of behaviour were evident.

The need to maintain a productive working relationship with the public service clearly influenced adviser behaviour. In some respects, this relates to ministers’ influence and their desire for that relationship to be a positive one. However, advisers also reported their own preference for sound relationships. On top of this, the public service acted as a check on adviser behaviour in its own right, particularly with junior advisers. Public servants questioned advisers’ authority and sometimes reported excesses to chiefs of staff or ministers. Advisers are said to use their power to bully public servants, but participants provided examples of public servants pushing back, sometimes robustly, reflecting Maley’s findings.

Advisers’ personal conceptions also had an effect. Values of professionalism and integrity underpinned their behaviour, as did the need to maintain a positive reputation among colleagues to be able to work effectively. The Code of Conduct was the final factor investigated. Most advisers believed it did not have a large impact because they were already meeting its standards. Still, many thought its existence important, and it may have added to the culture of restraint apparent from these interviews.

115 Dunn (1997), op cit, p 103.
117 Maley (2002b), op cit, p 275
2. **Advisers’ relationship with the public service**

One of an adviser’s principal relationships is with the bureaucracy. Examining that relationship demonstrates its influence and provides insights into the way advisers behave. While all advisers worked closely with their minister’s departments, the interviews confirmed Maley’s findings that the relationship is a contested one, with advisers working hard to make it function well.\footnote{Maley (2002), op cit, pp 142-143.} Chief of Staff Red's comment that ‘We tried to cultivate a very good relationship with the department. We would be very open with them’, was typical of most. Adviser Red also wanted a ‘good working relationship with the department’ which she achieved through acknowledging ‘you need to be respectful a bit, understand what the public servant’s role in it is, and be respectful of what you can and can’t ask them to do’.

Giving a hint of the contest in the relationship, Chief of Staff Green said that as ‘active agents of our minister ... we may differ and we may take different approaches to things’. Minister Orange was clearer when he recalled, ‘I encouraged all my staff to stand their ground if they thought that the bureaucrats were trying to stifle our direction or our aims without good reason’. However, he also thought, ‘You can’t be fighting with the department day and night’, and that the ‘most junior staff..., some of them don’t have the experience to make that call’. He expected those advisers to talk to the chief of staff first.

Advisers sought collaborative, productive relationships with public servants because otherwise their jobs were more difficult and results less likely. Adviser Green said he worked ‘constructively’ with the public service. He ‘wanted to listen to them ... and establish a sort of mutually respectful and robust sort of space to operate in’. He knew he couldn’t burn bridges, ‘otherwise you won’t get the end result’ and, ‘you were going to need them at some other stage’. Chief of Staff Orange confirmed that a good relationship improved outcomes saying, ‘you need to have a good working relationship ... because it makes work better. It would be dreadful if everyday you’re just fighting with everybody. And I do believe you get a better result if you ... try to do it together’. Similarly Adviser Orange said she ‘had some very good people ...
who gave me very good advice’. Some public servants gave her ‘inside information’, pointing to ‘blockages’ she needed sort out. Other advisers sought competent bureaucrats to work closely with. Chief of Staff Blue said ‘we would bring people close to us, in a professional and respectful manner, who we thought were good’. Likewise, Senior Adviser Green said ‘you’d pick and choose who you’d [talk to]. So when you found a good person you’d really go for it’.

Although it is said advisers are in a strong position to influence ministers against the bureaucracy, advisers themselves said they would sometimes argue on behalf of departments to ministers. All advisers would speak in favour of public servants, to put problems in perspective and ensure the relationship between the minister and the department remained healthy. Adviser Blue said she would do this ‘quite a lot, really’. She was ‘not making excuses, but trying to explain what the context was’. Chief of Staff Orange, describing advisers as ‘the meat in the middle’, said she would advocate for the department ‘all the time’ if her minister’s expectations were unrealistic. She did so ‘because it was the truth’ but also because ‘I don’t want him to think that they’re hopeless if they’re not … because it will affect the working relationship he has with the department. And it’s in everybody’s interest that it’s good’. Similarly Adviser Red saw ‘part of my role as making sure both sides understood what the other was doing’.

On the other hand, advisers would criticise the behaviour or competence of departments when they had to explain why deadlines were missed, or work was not of acceptable standard. Chief of Staff Orange represented a typical approach, saying she would do this, ‘all the time, when it was justified’. However, she would not initiate the discussion without cause. ‘I wouldn’t just go in … and whinge about it’, she said, ‘It was because [Minister Orange] would be frustrated because they hadn’t done something. Or because they had done something the wrong way’. Restraint was exercised to maintain a good relationship between the minister and the department, but also because ministers were busy. Chief of Staff Red said, ‘you don’t bother ministers unless you have to bother ministers. I didn’t want to tell him

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119 Eichbaum and Shaw (2007a), op cit, pp 624-627, especially p 625-626 where some public servant survey participants suggest ‘that an adviser’s personal assessment of the calibre of officials can, if communicated to the minister sotto voce, significantly influence the latter’s perception of the quality of advice’; also Eichbaum and Shaw (2006), op cit, p 12.
about transactions with individuals. But sometimes, where they are individuals who are repeat offenders, you do have to tell him what’s going on so that he can actually, at a strategic point, just lob in a grenade to get the relationship back in the right place. But you don’t want to do a blow by blow. There’s not enough time to do that’.

Advisers would contest policy advice from the public service. Chief of Staff Green would sometimes say, “This may not be the best thing to do right now”, through to, “Interesting contribution, but it’s suicidal”. He said differences arose because public servants ‘don’t have the same series of lenses that we were asked to apply’. Senior Adviser Green would also challenge the department’s advice as it ‘would take sort of an academic view rather than a street-smart view. And so you’d sort of say, “Well, yeah, that’s really good advice but it’s a shame we live in the real world”’.

Chief of Staff Blue sometimes thought his minister needed to understand the character of a particular public servant. This usually related to whether he thought the public servant could be trusted to act competently or keep confidences. He said, ‘there were issues of trust in a couple of matters and I said to [Minister Blue], “This person, I don’t trust and ... it’s been proven by the fact they have done this, this, and this”’. This comment was made in the context of concern over getting correct information from an agency, an important consideration if the minister was not to inadvertently mislead parliament or make incorrect public statements. Chief of Staff Blue would caution his minister, saying, ‘I’m not sure we are getting the right information and we really need to be careful with this’. He added that he and his minister ‘would have very frank conversations about our views about different people. Some people were very good and very trustworthy. Some we thought were very slippery and some were just incompetent’. This approach seems to be a corollary to the comments reported earlier that advisers sought out competent public servants.

The public service could directly constrain advisers’ behaviour. Two examples were reported: where public servants refused to accept an adviser’s authority, and when they reported transgressions to chiefs of staff or ministers. Adviser Orange found some public servants ‘quite dismissive of advisers’, and had her role ‘questioned on a couple of occasions’. In one of the examples she gave, she had requested
additional feedback be sought from stakeholders, but a public servant refused until her minister sent an email confirming the request. She found that conflict ‘draining’ and ‘uncomfortable’. Chief of Staff Green found that agencies with less interaction with advisers and ministers, lacked confidence advisers were speaking on behalf of the minister and were less likely to accept their authority. He said that several times, ‘a senior person from [agency X] would have said ... “No, that’s not your call. I want to speak to the minister about it”’. He thought there ‘was just a difference in confidence level between someone from [agency X] and someone from [the main portfolio department] that there was internal communication in our office’. While other advisers did not report such direct conflicts, public service attitudes could still constrain their behaviour. As Adviser Blue said, ‘The other thing is, with public servants, it’s not that they don’t respect you, but they know that the minister is their boss, not you. And so unless you say, “Well, look, this is what the minister wants”, ... they’re not going to do it on your say so’.

Some participants reported instances where public servants talked to the minister or the chief of staff where they thought an adviser had transgressed acceptable standards. Minister Blue said that bureaucrats occasionally raised concerns with him in ‘a corner conversation’ if ‘they thought a staff member was going too far on some particular issue’. That usually involved ‘excessive impoliteness, or it would involve demands for changes of policy that hadn’t been agreed, hadn’t been part of the [negotiating] framework’. However, he added that while ‘there were moments when bureaucrats thought, “These people are going a bit too far”. ... I’m sure there were fewer moments when they were in fact doing so’. Chief of Staff Green had similar experiences saying, ‘I might get a phone call from the department saying, you know, “Just had a conversation with X adviser. Kind of think it went a little bad”’. During staff meetings he would remind advisers of the standards expected, but ‘not immediately after so that person felt called out, but sometime thereafter we’d do a refresh on, you know, just those behavioural expectations and respect and all of those kind of things’.
3. Personal motivations and conceptions

Adviser behaviour was also influenced by strong, pre-existing personal motivations and ideals unrelated to a minister’s influence. One motivation was the need to protect their own reputation. Chief of Staff Orange thought reputation important because advisers, to successfully do their job, had to be perceived by colleagues as reliable and worth talking to. She said it, ‘comes down to personal reputation ... if you’ve dealt with someone before and they’ve [overstepped their authority] with you, you’re going to be much more wary about doing it again’. She thought being able to fulfil commitments was important, saying ‘if you do have a discussion with another office where you commit your portfolio and your office ... and they [ministers] don’t like it, well you look like an idiot because you have to go back to the people to say, “No. Sorry. Even though I said we can do it, well we can’t”. So, maybe that’s what constrains you’. Similarly, Minister Blue observed there was ‘a lot of peer pressure’. This reflects Maley’s finding that trust between advisers was important, and that created informal rules of behaviour, one of which was ‘doing what you agreed to do’.

Pointing to an ideal that influenced behaviour, Chief of Staff Orange also thought not being able to fulfil commitments was ‘unprofessional’, going on to emphasise ‘I guess part of it is being professional, like full stop professional’. Chief of Staff Blue said an influence on his behaviour was ‘just being aware of your own integrity’. Adviser Red thought she ‘had an obligation to act with integrity and to serve [Minister Red’s] interest’. But she also thought ‘the driving factor ... would more have been my own desire to operate that way’.

4. Code of Conduct

The Code of Conduct for Ministerial Staff implemented recommendations of Senate committee inquiries arising out of the children overboard affair, filling one of the gaps in the accountability framework that has been identified. All advisers except one

120 Maley (2011), op cit, pp 1479 and 1481.
121 Recommendation 11 of the Senate Select Committee Into A Certain Maritime Incident October 2002 Report, and recommendation 9 of the Senate Finance and Public
were aware of the Code. The lone adviser was a public servant who thought this was probably because its obligations would have been similar to those applied to public servants. None of the other advisers thought the Code had changed their behaviour, largely because they already applied its standards, although most supported its introduction. A typical comment came from Chief of Staff Orange, who thought ‘there was nothing in there that was different to what I thought was the way to behave’. Chief of Staff Red did not think it ‘strengthened the defences against corrupt or inappropriate behaviour’, something that depended on having ‘good people with good common sense [who] understand where the ethical boundaries are’. However, he thought it was ‘a useful thing to read and just to refresh people about the way they should approach their dealings with others’. Adviser Orange had the highest awareness among the junior advisers. She had read the Code and kept it on her desk, but said ‘all the principles were fairly common standards to me’.

Chief of Staff Green said the Code had not ‘changed anything for us’ because he had already ‘laid down a code of conduct in the office that went to behaviours, that went to probity, that went to most of the things that are laid down in that Code of Conduct’. However, when the Code was introduced, he wrote to each member of staff and ‘had them sign a document saying they’d received it, that they acknowledged the terms of it ... I don’t even know about the legal veracity of this, but that it was effectively part of their terms and conditions to work in [Minister Green’s] environment’. He strongly supported a code, saying if it ‘adds the reality or even the impression or the implication of the growing numbers of political staff behaving in a way that’s appropriate, then good’. Two ministers were aware of the Code, and another also supported it when made aware of it. However, Minister Red’s view was ‘relatively cynical’. He thought ‘basically, the code of conduct is how your minister behaves’.

Administration References Committee’s October 2003 report on its Inquiry into Staff Employed under the Members of Parliament (Staff) Act 1984.
5. **Informal accountability**

Some participants noted that there were checks and balances on behaviour, which were strengthened by the ease with which advisers could lose their jobs. They suggested this was a system of informal accountability. Chief of Staff Orange thought lack of job security played a part in constraining behaviour, saying ‘part of that is ... immediate termination, the precarious nature of your actual employment’. Chief of Staff Blue said ‘there are too many checks and balances for ministerial staff to be totally out of control’, giving the example of sacking an adviser. He said, ‘for example, that guy that I got rid of, I got rid of because I decided he was bad. But if, say, I was really out of control in some way, the prime ministers’ office would have told the minister to get rid of me. Or there would be a media outcry about something I had done and I would be dumped because of that’. Chief of Staff Orange said ‘I guess you behave as if you are completely accountable for everything you do anyway’, because ‘you can get called on everything, all the time. So, you’re constantly accountable. But just unofficially’. She thought the maintenance of personal reputation discussed in the previous section was part of the informal accountability because ‘if the prime minister’s office thinks that you’re a dick and you can’t do anything, then you won’t be able to get anything done’. Maintaining the minister’s trust was part of it too, but she said, ‘It’s not just if your minister doesn’t trust you. ... If nobody wants to work with you, then you’re stuffed. So you’re accountable all the time to everybody’. Those comments reflect Dunn’s conclusion that adviser ‘discretion’ was tempered by internal and external controls.  

6. **Conclusion**

This chapter has presented evidence about the forces that operate alongside ministerial influence to shape advisers’ behaviour. Advisers’ need to maintain a productive working relationship with the public service was one factor, as was their preference for a harmonious relationship. The public service also constrained behaviour by questioning advisers’ authority and reporting transgressions to chiefs of staff or ministers. Advisers had strong, personal ideals about professionalism and

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122 Dunn (1997), op cit, p 103.
integrity which, along with the need to maintain the respect and confidence of their colleagues, also shaped their behaviour. While most advisers were aware of the Code of Conduct, they reported it had not changed their behaviour, but most also supported its introduction. Participants also commented that a system of informal accountability operated, reinforced by the ease with which advisers can lose both their credibility and their job.

As in the preceding chapter, strong norms of behaviour emerged. Those norms make claims that advisers are operating in a ‘black hole of accountability’\textsuperscript{123} seem exaggerated. In fact it was striking, even disappointing, that very few variations in behaviour were evident, both between individual advisers and advisers working in the different minister’s offices. The strong norms lend weight to the idea, explored in the conclusion, that after 40 years of advisers operating within Australian governments, a professional ministerial adviser has emerged as the dominant type, at the expense of others identified by Maley.\textsuperscript{124}

\begin{footnotesize}
\textsuperscript{123} Tiernan (2004), op cit, p 241. The term has been repeated many time since, including as recently as 15 November 2012 in an interview with Terry Moran, National President of the Institute of Public Administration Australia and former Secretary of Prime Minister and Cabinet, interviewed on Radio National about the resignation of the Queensland Minister for Housing and Public Works, Dr Bruce Flegg; Radio National (2012), \textit{Liberal National Party Loses Another Minister}, broadcast 15 November 2012.

\textsuperscript{124} Along with the ‘long term or professional’ adviser, Maley identified ‘political warriors’, ‘partisan public servants’ and ‘policy experts’; Maley (2002b), op cit, pp 296-300.
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Chapter 5 – Conclusion

A hypothesis that ministers exert a dominant influence over the behaviour of their advisers prompted this study and was supported by its findings. Advisers continued to operate as agents of their ministers, and ministers said they would take responsibility for advisers’ actions unless they acted comprehensively outside their delegated authority. Because ministers accepted that responsibility, they established standards and set expectations about advisers’ behaviour. This was partly for self-interest, as they sought to avoid controversy or bolster themselves against damaging actions of public servants in a dysfunctional relationship with advisers. Chiefs of staff assisted ministers to control adviser behaviour. They supervised other advisers, paying particular attention to those with less experience, and issued reminders about the standards advisers were expected to meet. This differed from Maley’s study, where advisers typically reported direct to ministers,¹²⁵ and suggests a recent institutional change.

There was also evidence of ministers indirectly affecting the behaviour of advisers. Advisers moderated their own behaviour, even outside work, conscious their actions reflected on the reputation of their minister, and striving to avoid controversy. Some advisers worked in ways they did not personally prefer, adapting themselves to the preferences of their minister. It was clear that, within the small organisation that is a minister’s office, minister’s preferences and values were readily absorbed by advisers and reflected in how they conducted themselves.

While the minister’s influence was dominant, there were other influences as well. Advisers’ relationships with the public service operated as a major constraint on behaviour. Advisers relied on public servants to fulfil their responsibilities, so had to maintain productive relationships with them. Public servants also, on occasion, challenged the authority of advisers and reported excessive behaviour, and the mere possibility of that occurring also exerted a constraining influence. Advisers’ pre-existing, personal ideals of professionalism and integrity influenced behaviour, as did the need to protect personal reputation by being able to fulfil commitments. Advisers

¹²⁵ Maley (2002b), op cit, p 20.
said the Code of Conduct had not changed their behaviour as they were already meeting its standards. However, many would refer to it from time to time, and thought its existence important.

It was striking that strong norms of behaviour emerged, despite ministers being chosen for this study for their diverse characteristics. This differs to some extent from Maley’s findings of significant variations in advisers’ levels of policy activity, caused partly by their minister’s characteristics and partly by their own policy skills and role conception. However, Maley was focussing on advisers’ roles and functions. This study focussed on behaviour itself, and found norms of behaviour that transcend functions and roles. Indeed, Maley did find some ‘unwritten rules of appropriate behaviour’ among advisers about how they dealt with each other. In her study, Keating government advisers thought it important to maintain amicable relationships with other advisers, keep relationships between advisers functioning, especially when ministers were in conflict, be ‘straight’ in policy negotiations, and take a whole of government perspective. Dunn found similar conventions, along with others that reflect those found in this study related to ministers’ decision-making responsibilities, the exercise of discretion by advisers, and the work that can be appropriately requested of departments. The findings of this study support a conclusion that advisers have a consistent understanding of expected norms of behaviour, unaffected by different portfolios or the dynamics of different policy processes.

It was also clear that advisers worked within a system of checks and balances, reflecting Dunn’s findings. Advisers frequently mentioned the ease with which wrongdoing, bad judgement and inefficiency could come to the attention of other advisers, chiefs of staff, ministers, or the prime minister’s office. Bad judgement could damage an advisers’ reputation among other advisers, and erode ministers’ trust. Minister Orange articulated a common view when he described trust as ‘at the heart of the minister – staffer relationship’. If advisers’ actions damaged that trust, it

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126 Those with less skill and a more restricted concept of their role were less active in policy processes; Maley (2002b), op cit, pp 96 and 216; Maley (2011), op cit, pp 1479 and 1481.
127 Maley (2002b), op cit, pp 14 and 41.
129 Dunn (1997), op cit, pp 103-106.
130 Dunn (1997), op cit, p 103.
was difficult for them to continue in their role. The ease with which they could be dismissed was a further discipline. Judging from the responses about the impact of the Code of Conduct, it seems those informal elements had a stronger effect than the Code and its procedures for breaches.

Several differences from the findings of earlier studies are apparent. One change was the emergence of a management structure within ministers’ offices, with three of the chiefs of staff checking advisers’ work before it was provided to the minister, providing guidance and advice, and reminding advisers about standards of behaviour. This contrasts with Maley’s findings that most advisers reported direct to ministers.

The second difference was the finding that advisers acted as agents of their ministers. While this reflected earlier studies, it differed from Tiernan’s conclusions that advisers were ‘out of control’ and acting independently. The Code of Conduct’s explicit ban on advisers directing public servants and making executive decisions may have encouraged the return to an agency relationship which appeared to have fallen down during the children overboard affair. This departure from Tiernan’s findings supports the argument that the circumstances surrounding the children overboard affair were exceptional rather than the norm.

The backgrounds of the advisers revealed one of the most striking changes from those in Maley’s study – the dominance of the long-term, professional adviser. Most had served a number of ministers in a variety of portfolios, sometimes in different jurisdictions, working as advisers for a number of years. All were partisan, unlike previous studies. Maley identified four adviser types. Twenty-two per cent were

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131 Chief of Staff Red was the only one not to sign off on advisers’ work, although he did act as a ‘sounding board’, helping advisers sort out problems. Additionally, in accordance with the preferences of the minister he was working for when the interview was conducted, he had taken on that direct supervisory role.


133 Smith, op cit, p 301; Walter (1986), op cit, p 1; Ryan, op cit, p 155; Maley (2000), op cit, p 469; Maley (2002b), op cit, p 64; Tiernan (2004), op cit, p 38; Tiernan (2005), op cit, pp 4 and 38; Fawcett and Gay op cit, p 30; Eichbaum and Shaw (2011), op cit, p 595.


135 Party membership being a good indicator of partisanship. In Maley’s study 25 advisers or 61 per cent were members of the Australian Labor Party, with 16 or 39 per cent non-members. In Walter’s study, 47 per cent of Whitlam government advisers were party members, among
‘political warriors’ with responsibility for party political work. ‘Partisan public servants’, 32.5 per cent, were also party members. ‘Policy experts’ had been recruited for their expertise, with 51 per cent specialists. 137 Her ‘long term or professional’ adviser, 37 per cent of her sample, had worked for ministers for four or more years. If that definition is applied to the advisers in this study, then seven advisers (78 per cent) were professional advisers. If time spent in opposition is added, that figure rises to eight advisers (88 per cent). Those long-term professional advisers had generalist policy skills rather than specialist knowledge, and an understanding of government and the bureaucracy. The emergence of the ‘long-term professional adviser’ as the dominant type may have also contributed to the strength of the norms of behaviour revealed in this study. This finding stands in sharp contrast with claims frequently made in non-scholarly debate that most advisers are young and inexperienced. 138

The work and behaviour of advisers remains an under-researched area. Further research on adviser behaviour is warranted, including with public servants and those working for stakeholder organisations and interest groups. There is very little research on advisers’ roles in opposition, how they make the transition into government, and how they act once they are there. This is worth pursuing given the findings that those advisers who worked in opposition tended to be the most active and independent in government. Finally, it is striking that most major controversies involving advisers in Australia have occurred in the lead up to elections or toward the end of a government’s term – perhaps as ministers and advisers become more reckless or determined to remain in government. 139 There is little research on the

with 13 per cent of Fraser government staffers, and 72 per cent of advisers in the Hawke government (which included present and past members); Walter (1986), op cit, p 121. Her categories were not distinct, rather they could overlap with advisers placed in more than one; Maley (2002b), op cit, pp 296-300.

Policy specialists were defined as those who had worked in a similar policy area to the one they were advising their ministers on; ibid, p 299.


The ‘sports rorts’ controversy occurred in the fourth term of the Hawke-Keating Government. It concerned the way grants were administered in the lead up to the federal election in March 1993, the fifth for that government, with grant assessment and selection processes being handled by the relevant minister and her staff, not the department; Tiernan (2004), op cit, p 87. Deficient processes in the tender for pay television took place during the same period, with the minister signing inadequate documents in January 1993 when a federal election was
differences between advisers in governments at the start of their term and at the end. Although some inferences can be made from studies conducted at different stages of different governments, this would be interesting to pursue, particularly given the anecdotal observations of participants in this study about the tendency of some late-term governments to resort to less experienced advisers.

The findings support the argument that controversies represent the extremes of adviser behaviour and should not be the sole data considered in the accountability debate. They do not support the frequent claims that advisers operate in an accountability ‘black hole’. Strong norms of behaviour were apparent, with advisers clearly acting as ministers’ agents, and there were many checks and balances operating to constrain their behaviour. The findings provide an insight into the way policy advisers carry out their day-to-day work, giving a more detailed picture on which to base the accountability debate. Maley has argued that the best way to boost accountability is to strengthen the agency relationship between ministers and their advisers.140 This study shows that has happened, at least in the Rudd government.

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expected to be called ‘any day’, although it was timing pressure rather than a quest for electoral advantage that contributed to the failings: Tieman (2004), op cit, p 81. The ‘travel rorts’ controversy arose partly from ministers having claimed travel allowances during the 1996 election campaign, breaking a convention; ibid, p188. The events associated with the children overboard controversy occurred during the 2001 election campaign: Senate Select Committee on a Certain Maritime Incident, (2002), op cit, p xxi. Maley (2003), op cit, p 2.
### Appendix 1

#### Background of advisers

<table>
<thead>
<tr>
<th>Category</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party members(^b)</td>
<td>8</td>
</tr>
<tr>
<td>Public service experience(^c)</td>
<td>5</td>
</tr>
<tr>
<td>Private sector experience</td>
<td>7</td>
</tr>
<tr>
<td>Worked in opposition</td>
<td>3</td>
</tr>
<tr>
<td>Worked in more than one jurisdiction</td>
<td>4</td>
</tr>
<tr>
<td>Worked for more than one minister(^d)</td>
<td>7</td>
</tr>
<tr>
<td>Worked for more than two ministers(^e)</td>
<td>3</td>
</tr>
<tr>
<td>Worked in more than one portfolio(^f)</td>
<td>7</td>
</tr>
<tr>
<td>Adviser for longer than four years(^g)</td>
<td>7</td>
</tr>
<tr>
<td>Law degree</td>
<td>7</td>
</tr>
<tr>
<td>Economics degree</td>
<td>3</td>
</tr>
<tr>
<td>Postgraduate degree</td>
<td>3</td>
</tr>
<tr>
<td>Female</td>
<td>4</td>
</tr>
<tr>
<td>Male</td>
<td>5</td>
</tr>
</tbody>
</table>

\(^a\) n=9  
\(^b\) defined as those who had been a member at any stage before, during or after their employment as an adviser  
\(^c\) defined as anyone who had ever worked in the public service, not just those who had a right of return to a public service position  
\(^d\) includes work for state ministers and, in one case, for the prime minister  
\(^e\) includes work for state ministers  
\(^f\) not including shadow portfolios  
\(^g\) Maley’s ‘long-term professional adviser’ had worked as an adviser in government for more than four years. This figure does not include time spent working for opposition shadow ministers.

Nine advisers were interviewed. Four were chiefs of staff, one to a cabinet minister and three to junior ministers. Four more were policy advisers. The ninth, Senior Adviser Green, had worked as a senior adviser and then as a chief of staff. The two youngest were in their late twenties and the oldest just over 60. Four were in their forties and two in their thirties. Five were male and four female. Three of the chiefs of staff were male and one female.
Seven advisers nominated policy interest as the primary reason they became advisers. The other two were both public service policy officers looking for a career change and, in one case, career advancement, and both had a strong interest in policy development. Out of the other seven, one also nominated an interest in politics, and another had political ambitions and saw being an adviser as an apprenticeship. Some saw adviser positions as providing more scope to influence policy than public sector positions. Five advisers were ‘active’ in policy processes using Maley’s typology, and four were ‘very active’.141 None were classified ‘passive/reactive’. With some responsibilities not related to policy, all chiefs of staff were classified as active. The nature of one policy area, which required some reactive work, made one adviser ‘active’ rather than ‘very active’.

Five advisers (55 per cent) had prior policy experience, all having worked in the public service. This was similar to the Whitlam, Fraser and Hawke administrations where around half had public sector experience, but lower than the Keating government (70 per cent).142 Three who had worked in the public service had also worked for consultancy firms. Another had worked in other private sector organisations.

Of the four who had not worked in the public service, two were lawyers, one had a science background, and one came from an electorate office. One of the lawyers had also worked in a non-government organisation. Three advisers had worked in opposition, two for their ministers. Another, the only adviser with specialist subject-area expertise, had worked with his minister on policy when Labor was in opposition but that was part of his lobbying work as a consultant. All others had general policy skills, some on commencement, and others through experience on-the-job. This contrasts with the Whitlam government, where only around 30 advisers out of a total of 161 had policy-type skills.143

141 Maley (2000), op cit, pp 454-468; Maley (2002b), op cit, pp 101-102 and 166-202. Senior Adviser Green has been included in this category. As a subject expert in a senior adviser role he was very active. When he held the chief of staff role he said he was active.
142 Walter (1986), op cit, p120; Maley (2002b), op cit, p 291-292.
143 Forward reported that in November 1974, a total of 227 staff were employed in the 27 ministers offices in the Whitlam Government. Of those, 161 were private secretaries,
All had worked in a number of different portfolios.

Eight advisers were still, or had been, members of the Australian Labor Party. The other described himself as ‘very aligned’. One of the advisers from the public service was not a member but had ‘some affinity with that side of politics’, and joined afterwards.

Six of the nine advisers had law degrees, and another had a graduate diploma in public law along with a bachelor degree in business studies. One had a science degree and one, Senior Adviser Green, had no tertiary qualifications. He was the oldest of the group, and also the only subject-area expert. Three held master degrees in law, and one of those three also had a master degree in international relations.

A distinct change on this study from previous studies was in the advisory careers of the adviser-participants. Generally, they had worked for more ministers, in more portfolios, and for a greater length of time than advisers in earlier Australian governments. Four of the advisers had worked for state government ministers as well as federal. Seven (77.7 per cent) had worked for more than one minister, if state government service is counted. Two chiefs of staff had worked for five ministers each and another for three. This contrasts with Maley’s study were the majority (58.5 per cent) had worked for only one minister, only five per cent had worked for four ministers (two advisers) and no one had worked for more than four. In this study, the longest length of service was ten years, followed by nine. The shortest was two and a half years, although that adviser had served the same amount of time in opposition. The average length of government service was five and a half years. The three advisers who had worked in opposition had served from two and a half to four years. In Maley’s study, 51 per cent had worked as an adviser for two years or less, whereas in this study there were none.

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144 Assistant private secretaries, press secretaries and similar; Forward (1977), op cit, p 160. Smith says around 30 had policy skills; Smith, op cit, pp 299-300.
145 As well as a philosophical alignment, he handed out how-to-vote cards for the Australian Labor Party.
146 Maley (2002b), op cit, p 291. Maley (2002b), op cit, p 291. Although in Maley’s study, two advisers out of 41 had worked for 10 years as advisers.
**Time spent working as an adviser**

<table>
<thead>
<tr>
<th>Description</th>
<th>Duration (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average not including opposition</td>
<td>5.5</td>
</tr>
<tr>
<td>Average including opposition</td>
<td>6.6</td>
</tr>
<tr>
<td>Longest</td>
<td>10</td>
</tr>
<tr>
<td>Shortest(^b)</td>
<td>2.5</td>
</tr>
</tbody>
</table>

\(^a\) (n=9)

\(^b\) not including time spent as an opposition adviser
The Children Overboard Affair

In the children overboard affair as it is commonly known, it was alleged that on 7 October 2001 a number of children were thrown into the sea after a boat carrying asylum seekers had been intercepted by the Australian Defence Force the evening before. Also on 7 October, the then Minister for Immigration held a media conference condemning the action. The next day the story received wide media coverage and a federal election was called.

While it became apparent during the following few days that this account was wrong, the record was not corrected until after the election on 10 November. In fact, the story was repeated by senior government ministers and the prime minister during a campaign in which border control and security featured heavily. They claimed their advisers had not told them of the inaccuracy. The ministers involved refused to testify before the Senate Select Committee on a Certain Maritime Incident established to inquire into the events, and refused to allow their advisers to appear. Later, one of those advisers testified to a special Senate inquiry that he had in fact briefed ministers about the errors. Those events helped confirm suspicions that ministers had lied, and were hiding behind the inability of Senate committees to compel their advisers to appear.

The Committee found a number of factors contributed to the inaccurate report, including 'genuine miscommunication or misunderstanding, inattention, avoidance of responsibility, a public service culture of responsiveness and perhaps over-responsiveness to the political needs of ministers, and deliberate deception motivated by political expedience'. Among many the findings on the conduct and shortcomings of ministers, the public service and ministerial advisers, the Committee noted 'the tendency of ministerial staff to act as quasi-ministers in their own right,

147 Senate Select Committee on a Certain Maritime Incident, (2002), op cit, pp xxi-xl.
149 Senate Select Committee on a Certain Maritime Incident, (2002), op cit, pp xxi-xl.
150 Maley (2010), op cit, p 108.
and the lack of adequate mechanisms to render them publicly accountable for their actions’. The Committee went on to say there was ‘a serious accountability vacuum at the level of ministers’ offices’ which ‘appears to be a function partly of the increased size of ministers’ staff, but more significantly of the evolution of the role of advisers to a point where they appear to enjoy a level of autonomous executive authority separable from that to which they have been customarily entitled as the immediate agents of the minister’. The Committee added, ‘It is no longer the case that advisers’ accountabilities are adequately rendered via ministers’ accountability to parliament because it can no longer be assumed that advisers act at the express direction of ministers and/or with their knowledge and consent. Increasingly, advisers are wielding executive power in their own right’.  

151 Senate Select Committee on a Certain Maritime Incident, (2002), op cit, pp xxi-xl.
Appendix 3

The Code of Conduct for Ministerial Staff

The Code of Conduct for Ministerial Staff, introduced in July 2008 by the Rudd government, implemented recommendation 9 of a Senate committee inquiry into ‘Staff Employed Under the Members of Parliament (Staff) Act 1984’. That inquiry was established following a recommendation of the Senate Select Committee on a Certain Maritime Incident.

Among the Code’s 21 clauses are requirements that staff acknowledge they do not have the power to direct public servants, and that executive decisions are for ministers and public servants to make, not ministerial staff acting in their own right. Sanctions for breaches can be imposed by the Prime Minister’s Chief of Staff, after consulting with the relevant minister, and acting on advice from the Government Staffing Committee which consists of the Deputy Prime Minister, the Special Minister of State, and that same Chief of Staff.

The Senate committee that recommended the Code also supported Maley’s suggestion given in evidence that the agency relationship between ministers and their advisers be reasserted, saying the Code’s ‘central aim’ should be to ensure ‘ministers take responsibility for the actions of their staff’. It also recommended ministerial staff should appear before parliamentary committees in limited circumstances, including where a minister does not accept responsibility for their actions or refuses to answer questions about their conduct. Maley says the Rudd Government agreed its advisers would appear before parliamentary committees if their minister refused to take responsibility for their conduct, but no primary sources

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153 Ibid, p xi.
156 Senate Finance and Public Administration Committee, 2003 op cit, p 61.
157 Ibid, p xix.
confirming this have been found.\textsuperscript{158} However, after the Code was introduced, the then Special Minister of State said the Code made it clear advisers could not issue executive directions because they could not be called before committees, unlike ministers or public servants.\textsuperscript{159}

\textsuperscript{158} Maley (2010), op cit, p 109.
\textsuperscript{159} Faulkner (2008), Ministerial Statement – Restoring Integrity to Government, Senate, 4 December 2008.
Interviews

Minister Blue, interviewed 15 August 2012
Chief of Staff Blue, interviewed by phone, 18 August 2012
Adviser Blue, interviewed 1 September 2012
Minister Red, interviewed 13 September 2012
Chief of Staff Red, interviewed 21 September 2012
Adviser Red, interviewed 14 September 2012
Minister Green, interviewed 11 October 2012
Chief of Staff Green, interviewed 18 September 2012
Senior Adviser Green, interviewed 20 September 2012
Adviser Green, interviewed 9 September 2012
Minister Orange, interviewed by phone, 17 September 2012
Chief of Staff Orange, interviewed 24 August 2012
Adviser Orange, interviewed 23 August 2012
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Howard, J, (1998), A Guide on Key Elements of Ministerial Responsibility, Department of Prime Minister and Cabinet, Canberra.


Other documents, radio interviews and web sites


