



**PASSION
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Dear Paul

Thank you for contacting the Institute, seeking a formal submission to the CMC on the matter of "Public Servant and Ministerial Office Interaction".

As you know, the Institute is the peak professional body for the public sector across Australia. The Queensland Division is a highly active chapter of the Institute and has existed continuously for almost 60 years.

The Institute is apolitical in its activities and as a member-based organisation, represents the views and aspirations of a broad cross-section of those working in or studying the public service. Our charter is to enable those with an interest in the practice and/or study of public administration to exchange ideas and trends to help develop excellence in the profession of public service.

One of the key strategies for achieving our goal of excellence has been the development of well researched Principles of Good Practice (POGP), which aim to identify best practice from around the world and to synthesise that data into guidelines that support individuals as they undertake the sometimes challenging aspects of their day-to-day public sector careers.

Three POGPs have been released and a fourth, on the topic of Advising Ministers, is currently in the late stages of development. It is the collective information from these POGPs, as well as the further input from some of our professional and academic members that has formed the basis for our attached formal submission.

The Institute is pleased to formally submit the attached paper and trusts that the CMC will find it relevant to your deliberations. Should clarification, or further detail be required, please do not hesitate to contact me.

Yours sincerely

Peter Rumph
Chief Executive Officer

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**INSTITUTE OF PUBLIC ADMINISTRATION AUSTRALIA (IPAA)
(Queensland)**

**SUBMISSION TO
THE CRIME & MISCONDUCT COMMISSION
REGARDING
MINISTERIAL OFFICE/PUBLIC SERVANT INTERACTION**

Until the 1970s the upper-levels of the executive branch of government were comprised of ministers of state and the permanent heads of those departments of state. Ministers were responsible for the administration of their departments, for which they were accountable to parliament (“ministerial responsibility”) and to the electorate. Ministers were assisted and advised by the professional, apolitical public service, led by permanent heads who offered frank and fearless advice to their ministers.

Since the 1970s two major trends have fundamentally altered the dynamics and architecture of this administrative-political interface, particularly the relationship between ministers and their public servants. First, the emergence of a politicized senior public service, particularly with the appointments of chief executives and, in some cases, senior executives and a resulting decline of the impartiality of the public service offering frank and fearless advice. The second significant trend has been the growth of ministerial offices staffed by ministerial advisors who offer political advice, and who serve as intermediaries between ministers and their departments. Ministerial advisors have been a prominent feature of executive government since the early 1990s. However, the growth in the power and influence of ministerial advisors has evolved without an accompanying careful delineation of their roles and responsibilities.

The anecdotal experience of many IPAA members is that ministerial advisors do *in fact* exercise a form of executive delegation by (usually tacitly) invoking the authority of their ministers as the basis for directing public servants. This places public servants in the invidious position of assessing whether or not ministerial advisors’ suggestions or indications constitute lawful directions from their ministers. Frequently these interactions between ministerial advisors and public servants are conversations—often by telephone—that leave no written or permanent record of what was said by each party. Inevitably recollections of the details of such conversations may differ, particularly with the passage of time.

Ministerial advisors exercise this power without any formal delegated authority and, furthermore, do so with very little scrutiny.

An example of these issues is reported in the transcript of the CMC's *Public Investigative Hearing regarding Minister Office/Public Servant Interaction*. The interactions were between Mr Simon Tutt, then a ministerial advisor, and Ms Dianne Farmer, who was then a public servant, in relation to the Queensland Rugby Union contract. Ms Farmer's testimony is that Mr Tutt gave an instruction to her to vary the standard contractual agreement to provide an up-front payment to the QRU (Transcript, p. 219-220)¹. Mr Tutt's account is that "It was never my intention to give her [Ms Farmer] an instruction" (Transcript, p. 406)². These interactions took the form of telephone and face-to-face conversations of which there is no permanent or written documentation. Consequently, the files provide no definitive statement of who has responsibility for the decision to vary the QRU contract.

IPAA members routinely report that ministerial advisors offer comments to public servants in the form of expressions such as 'the minister would like' and 'the minister suggests'. These and similar forms may well be offered as *bona fide* suggestions, yet be interpreted by diligent and conscientious public servants as being ministerial directions or instructions. Public servants must, by necessity, assess whether the suggestions or indications by ministerial advisors represent lawful directions of the minister.

Recommendations

The administrative-political interface has always been a point of friction. The perspectives and values based on apolitical, professional expertise may often conflict with the political direction of democratically-elected government ministers. There is nothing improper in such tensions as long as there is a clear and transparent line of responsibility and accountability. Traditionally, public servants have a duty to offer frank and fearless advice to ministers and also to faithfully implement ministers' lawful directions.

The evolution and growth in the numbers of ministerial advisors adds additional complexities to the administrative-political interface that has resulted in a marked loss of transparency, responsibility and hence accountability.

¹ MR PEARCE: In terms of the conversation you had with Mr TUTT, to what level would you ascribe perhaps the demand or the instruction or the request of you? How would you describe it?

THE WITNESS: Very strong.

MR PEARCE: Was it a request?

THE WITNESS: No.

MR PEARCE: How would you describe?

THE WITNESS: It was an instruction.

MR PEARCE: You endeavoured to put your point of view?

THE WITNESS: Yes.

MR PEARCE: How was that met?

THE WITNESS: It was not -- my, my opinion was not accepted and I was told to just do it, or words to that effect.

² MR PEARCE: The effect of Ms FARMER's evidence is that you were giving her an instruction; do you accept that that's what she said, that's the way she perceives it?

THE WITNESS: I accept that's what she said.

MR PEARCE: But you deny that that's what you were intending to convey?

THE WITNESS: It was never my intent to give her an instruction.

The recommendations we submit are underpinned by the three values of transparency responsibility and accountability.

Recommendation 1 - Code of conduct for ministerial advisors

We recommend a code of conduct for ministerial advisers that clarifies their roles and responsibilities including, specifically, that they are not authorized to give directions to public servants. The current code of conduct does not adequately address this issue. Good models for a code of conduct are the UK *Code of Conduct for Special Advisers* and the Canadian Code, which provide guidelines for ministerial advisors' relations with the permanent civil service.

Recommendation 2 - Education and training program

We endorse compulsory induction programs and an on-going professional development program for all ministerial advisers. Attendance and participation in the program should be a required. The content should include the role and responsibilities of ministers, ministerial advisers, and public servants. At a minimum, the program should be offered at least once in each parliamentary term.

Recommendation 3 - Contact Between Advisers and Public Servants .

As a general principle ministerial advisers should only have direct contact with the most senior public servants; that is, public servants at the levels of Directors-General, Deputy and/or Associate Directors-General. Thus ministerial advisers' requests for specific information should be channelled to other public servants through the offices of senior officers. In our view, this senior level is the appropriate area for the administrative-political interface.

This recommendation is illuminated by the CMC's public hearings. It is common ground in the evidence that Mr S. Tutt approached the Executive Director, Ms Dianne Farmer, regarding the grant to the Queensland Rugby Union.³ Under our recommendation, Mr Tutt would not be permitted to approach public servants at Executive Director level; however he could approach the Deputy and Associate Directors-General. Ideally such interactions should be in a written form, such as email, or confirmed in writing.

This procedure to confine direct contact by ministerial advisers to the most senior public servants has several advantages:

³ **MR DEVLIN:** Do you see how -- well, I'll put it to you this way. You heard Mr KINNANE yesterday talk about you interfering in the department at the lower levels of the department and not going through the Director-General.

THE WITNESS: Well, it was accepted practice that ministerial advisers, and I think Mr KINNANE mentioned that as well, could deal with the Director-General, the Deputy Director-General and the two job share Executive Directors. I certainly did that. I think, once again to contextualise it, the Director-General and even the acting Deputy Director-General were responsible for two government departments, Local Government and Sport and Recreation. The first, Sport and Recreation specific public servant, was the Executive Director's position. So, I, I don't necessarily believe that I was interfering in lower levels of the department but it was accepted practice, that Mr KINNANE approved of as well, to deal with the Director-General the acting Deputy Director-General and the executive directors. And I know the minister would have done that as well on occasion. In fact, she would have attended meetings with external organisations that included one of those three levels of the public service of that department.

- i. it restrains ministerial advisors from direct involvement in operational matters, and away from the day-to-day administration of the public service;
- ii. it confines direct contact to senior public servants who bring knowledge, experience and understanding to the interaction, including a knowledge of their ministers; and
- iii. it ensures that lower-level officers, who are more vulnerable to the overtures of ministerial advisors, are not intimidated by those ministerial advisors.

We recognise that strict adherence to limiting the point of contact, when adherence to this requirement is infeasible, may give rise to significant inefficiencies or unnecessary delay. In such circumstances, direct contact should be authorised in writing (such as email) by the most senior public servants (that is, Directors-General, Deputy and/or Associate Directors-General) for a specific purpose.

We recognise that senior public servants at the level of Directors-General, Deputy and/or Associate Directors-General, may succumb to improper pressure from ministerial advisors. However, such officers have greater experience and knowledge, particularly an understanding of the ministers' wishes, and consequently, they are better able to discern requests that originate with the minister and requests that originate from the ministerial advisor.

Recommendation 4 – Public Servants Code of Conduct

The proposed single code of conduct for public servants to be drafted by the Public Service Commission should, like that for ministerial advisors, reinforce that public servants should not have direct contact with ministerial advisors other than through the protocol outlined above.

Moreover, public servants should report in writing to senior officers all significant interactions that occur outside of the protocol, including “cold calls” from ministerial advisors. The Director-General must maintain a register of all such reports.

Conclusion

We offer these recommendations fully recognising that they will not eliminate all the problems that occur in administrative-political interactions. Our proposals are designed to limit the scope or arena of these friction points to the most senior levels of the public service, and to ensure that the values of transparency, responsibility and accountability guide any reforms.