

Towards Greater Transparency in Policy-making

*Departments have a great deal of power in their relationship with consultants, but often not much knowledge. This is a dangerous combination, argues **Richard Curtain***.*

People are becoming more demanding, whether as consumers of goods and services in the market place, as citizens or as businesses affected by the policies and services which government provides. To meet these demands, government must be willing constantly to re-evaluate what it is doing so as to produce policies that really deal with problems;... that are flexible and innovative rather than closed and bureaucratic...; To meet people's rising expectations, policy making must also be a process of continuous learning and improvement. (UK Government 1999 22)

A paradox lies at the heart of the public policy process in Australia. On the one hand, the OECD is urging governments to identify 'fundamentally new, imaginative approaches' to policy-making (Michalski 1999). On the other hand, the capacity of Australian governments to deliver such approaches to public policy has been seriously undermined by recent changes. These include the loss of persons with substantial policy experience and the dearth of alternative, non government-funded sources of policy advice in the form of public policy think tanks.

One effect of the public service's increasing reliance on outside consultants has been to heighten its tendency to resort to 'risk averse' responses, resulting in many cases in attempts to 'over control' the results of commissioned reports. The end result is a lack of transparency and a secrecy that is antithetical to democratic values and serves to further reinforce the mistrust between those governing and the governed (Stiglitz 1999).

The purpose of this article is to highlight some of the difficulties that are emerging in the relationship between governments (federal and State) and consultants. This article draws on my experiences as a former internal researcher and policy-maker turned external consultant specialising in public policy for over a seven-year period. In particular, I want to draw attention to the increasing lack of transparency and fairness which often exists in the way public servants commission and respond to research-based policy advice.

Context

The nature of public policy-making in Australia has changed markedly over the last five years. First, governments have divested themselves of major service functions (for example the closure of the CES and the setting up of the Job Network) and have had to develop new policy skills to set and up and monitor new outsourced services. Second, the need to move away from a narrow program focus to adopt a more strategic and integrated approach to policy-making is now acknowledged (for example The Youth Pathways Action Taskforce, the National Strategy on Ageing Australia, and the Reference Group on Welfare Reform). At the same time, there has been a significant increase in the capacity of non government organisations

to scrutinise and criticise public policy and to develop alternative options.

However, with this changing context has gone a decreased internal capacity on the part of governments in Australia to design, develop and implement new policy. Large numbers of experienced personnel have left federal and state public service due to government pressures to reduce numbers and because of alternative opportunities in the wider economy. One way Governments have responded to these changes is to buy in expertise from outside through the increased use of consultants. However, this greater reliance on outside consultants has produced its own problems. There is often a defensiveness on the part of public servants that causes them to 'over control' the design and results of the outside consultancy.

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Increased role for consultants

The increased use of consultants by the Commonwealth Government was noted by Michael Howard in two articles in the *Canberra Bulletin of Public Administration* in 1996 (Howard 1996a & 1996b). Howard, using data from annual reports for the period 1974-1994, showed that, there had been a 'consistent and pervasive long term upward trend in the reported number and aggregate cost of consultancies' (Howard 1996: 73). However, to understand openness of policy-making institutions to outside expertise, it is first necessary to distinguish between different types of consultancies.

Consultants are hired for their expertise. The adoption by the public service of business management processes has required turning to consultants with expertise that is often

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not available internally and is not easily replaceable on the external market. This has often meant turning to the big five accounting firms to seek their advice on bureaucratic reforms such as new forms of accountability and contractual arrangements. These areas of expertise also are much less likely to be 'political' in nature and hence are not subject to parliamentary or ministerial scrutiny.

The big accounting firms have a considerable organisational advantage in gaining this work because they have long had access to the largest and most successful enterprises operating in the private sector and knowledge of the techniques that they use (Saint-Martin 1998: 329–330). Where this expertise is sought, the consultant has the capacity to negotiate reasonable terms and conditions of engagement with the public service purchaser because there are few alternative sources of expertise.

This narrow focus of governments is further accentuated by the new emphasis on program output reporting and the narrow focus of performance agreements between departmental heads and ministers, as in Victoria. The result is often a piecemeal and short-term policy focus.

However, where the expertise hired in is also available in-house and is easily replaceable on the external market, the consultant's capacity to negotiate on a level playing field is much more limited. This applies particularly to applied policy analysis, which has been defined as focused on specific problems or issues; the research undertaken is client-determined and is aimed at seeking improvements within the client's values reference frame and is usually short in duration (Pal 1992: 24). Of its nature, applied policy analysis is much more likely to be 'political' in the sense that a short-term reaction from ministers or the Opposition could be expected.

It is in this area of applied policy analysis that the use of outside consultants often causes the most problems. Research-based policy development is, of its nature, a complex product. It is an intellectual activity that often cannot be rigidly prescribed as the product of certain inputs. It requires that the client have confidence in the expertise of the consultant to deliver the desired outcome. However, at the same time, the bargaining power of the consultant is often low. The consultant is aware that his or her only choice is to forego the work, as the commissioning department through its tendering process clearly has an alternative, the tenderer rated second.

In these circumstances, the client, may be tempted to 'over control' the final product by insisting on a highly prescriptive and unnecessarily detailed methodology, seeking to add additional requirements during the course of the study and shaping the final product to fit what is perceived by those on the steering committee as acceptable outcomes. The result from the perspective of both parties is often unsatisfactory.

From the department's perspective, this may lead to a tendency to offer work to consultants who may have less research or policy expertise but who are regarded as more pliant. Those with relevant expertise turn to other fields to find work and the accumulated expertise is lost. The overall result is a greatly diminished capacity to provide in-depth, research-based policy advice.

One solution to these problems is a code of practice that addresses the way research/policy contracts are decided, conducted and concluded. The proposed code of practice below is intended to help establish a more equal relationship based on greater trust between the parties. The intention is to create the conditions to deliver a better product to the satisfaction of both parties.

Criticisms of the policy-making process

Substantial criticisms of governments' capacity to make good public policy have been made recently. The British Labour Government's 1999 White Paper on *Modernising Government* was damning in its criticisms of the deficiencies of the policy-making process in a Westminster parliamentary democracy.

The UK Government White Paper contends that the Westminster system of ministerial accountability to Parliament is itself a key contributing factor to policy fragmentation. The White Paper notes that ministers and their departments are only accountable for the programs that they devise and fund. This narrow programmatic focus is said to inhibit collaboration with other departments because only individual ministerial and departmental performance is scrutinised by parliament.

Needless to say, in a federal system of sovereign governments, this fragmentation is compounded. The narrow programmatic focus of ministers and their departments operating at both federal and State levels further intensifies the barriers to be overcome to achieve a longer-term and more coherent strategic policy focus as well as integrated service delivery.

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Policies too often take the form of incremental change to existing systems, rather than new ideas that take the long-term view and cut across organisational boundaries to get to the root of a problem. The cultures of Parliament, Ministers and the civil service create a situation in which the rewards for success are limited and penalties for failure can be severe. The system is too often risk-averse. (UK Government 1999: 16)

The UK White Paper also notes that as institutions tend to look after their own interests, public services can be organised too much around the structure of the providers rather than the users (UK Government 1999: 11). This leads to a defensiveness that often results in protecting existing programs and policy directions despite strong evidence that they are not working.

The need for change

There are some reported instances of commissioned reports not being released by departments or ministers' offices. However, in most cases the non-release of reports does not become public knowledge. Consultants have to accept this if they want further work with the same department or indeed with the bureaucracy at large. The unequal nature of the relationship is all too evident. As consultants with expertise in public policy have few alternative clients, they are, in most cases, unwilling to challenge and are forced to accept the decision not to release their report.

However, a recent newspaper report (30 August 1999) illustrates some of the issues that bedevil the relationship between the public service and outside consultants. The news release noted that some six policy papers were commissioned in the lead up to the writing of the Government's discussion paper on research and research training titled *New Knowledge, New Opportunities*.

According to the press release, available on the Australian Science and Technology Online web site, DETYA staff claimed that the six reports, which related to issues such as the funding of infrastructure for research and the evaluation of research outputs, were 'delayed for technical reasons or waiting approval'.* According to the press release, the papers were carried out by well-respected analysts in their fields, who have recommended more acceptable options than those broadly outlined in the Government's Discussion Paper.

The Australian Vice Chancellors obtained two of the key reports under Freedom of Information. However, in meeting the AVCC request from FOI for one paper, which had been written by a former first assistant secretary in the Division that commissioned the research, the actual recommendations were withheld. The reason given by DETYA staffers to the AVCC for withholding the recommendations was that the paper by the former senior policy adviser was 'never meant to be made public, but was for "internal deliberation".'

The press release notes that, according to former staffers, DETYA is now more reliant on outside consultants because it no longer has the capacity to carry out high-level analysis of a kind required for a major reform package as proposed in the Discussion Paper on research funding. The press release notes that key senior analysts in DETYA have moved on and even newcomers have been leaving at a rapid rate.

A policy monopsony

Whether public policy is comprehensive and strategic in focus depends on the political environment in which policy-makers operate. Because policy-makers work within a hierarchical structure, the market for new policy ideas is a monopsony (Hamel 1999).† It requires only a

single rejection from one person at the top of the hierarchy for the fate of the policy idea to be sealed.

Senior managers in hierarchical organisations, whether they are public bureaucracies or operating in the market, have already 'made it', with all this infers about attitudes to past practice. This means that they are likely to be the most conservative about new ideas because they have the most emotional capital tied up in defending past policy actions. The general absence of pilot or demonstration projects in public policy in Australia reflects this lack of a risk-taking environment in policy formulation and implementation.

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A by-product of the tight control exercised by senior managers in the bureaucracy is the risk-averse nature of those staff members operating further down the ladder. Severe penalties apply to those who get something wrong but there are few, if any, rewards for public servants to act entrepreneurially to find out the best way of meeting an agreed objective.

This lack of contestability for ideas also applies to commissioned policy-oriented research. The power imbalance between those with the money to commission applied research and research bodies offering their services severely limits the capacity of the service provider to step outside a narrow circle of 'acceptable' policy advice. The risk-averse nature of the public servant often results in subtle and sometimes heavy-handed attempts to 'control' project outcomes.

Proposed code of practice for research/public policy consultancies

The purpose of the following proposed code of practice for research/public policy consultancies is to bring more into balance the relationship between government departments as clients and the consultant.

1. Tender process

1. An indication of broad funding level available be given to enable project methodology to be designed to achieve best quality outcomes.
2. Selection criteria and relative weighting should be stated.

* The other studies were a review of university and industry linkages; reviews of the Large Grants Scheme and the Small Grants Scheme; a review of biological sciences research and an associated bibliometric study of research citations.

† Hamel makes this and the following point about the shortcomings of senior management in relation to new sources of entrepreneurial ideas from established, mainstream companies compared with the highly contestable marketplace for ideas in Silicon Valley.

3. Acceptance and rejection letters to state grounds for awarding the contract and to whom.
4. Steering committee should include expertise in the methodology proposed. If the client is unable to provide this expertise using in-house resources, outside expertise should be used.
5. There should be provision in the contract for the appointment of an independent mediator with expertise in research methodology and policy.
6. Stipulated time lines for start of the project to be adhered to with the same penalties for non-adherence as those applying to the tenderer. Consultants should be entitled to compensation for business lost due to late start-up.

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2. Conduct of the consultancy

1. Regular meetings to review progress should be held.
2. The project manager should be involved in finalising the methodology and expected outcomes and therefore to accept joint responsibility for the agreed steps and outcome.
3. Face-to-face meetings should be held to resolve any points of detail with the project manager, who should have the authority to agree to the changes negotiated.
4. Any outstanding matters should be resolved if necessary with the aid of the independent mediator.
5. The consultant should not be held responsible for delays caused by the non-cooperation or delayed response of third parties.
6. The payment structure should reflect the amount of work required for each stage of the contract.
7. Payments during the course of the contract to be made according to an agreed real time schedule which is to be specified in the contract.
8. Where delays in payment are due to the client, interest should be payable on the delayed payment.

3. Conclusion of contract

1. Response of the department, stating their assessment of the final product, should be made available within an agreed time of the completion of the project.
2. A set time should be specified in the contract for making the final payment after receipt of the final report. If necessary a small proportion of the total fee (for example 5 per cent) could be specified for payment on the final acceptance of the report.
3. The client should make a commitment in the contract to publish the report or specify the circumstances under which the report might not be released.
4. If a decision is taken not to publish, the client should show cause within an agreed set time of the completion of the project.
5. If the client decides not to publish the report under its own imprimatur, consultants should be entitled to publish the report at their own expense with explicit acknowledgement that the report reflects the views of the consultant alone. If necessary and requested to do so, the client's reservations about the report's findings should also be noted in the publication.
6. Any publication resulting from the consultant should give full and prominent attribution to the actual authors of the report.

Conclusion

Joseph Stiglitz, the former Chief Economist at the World Bank and Chairman of the US Council of Economic Advisers, has highlighted the adverse effects of secrecy in government policy-making (Stiglitz 1999). He points out that to maintain secrecy, often the circle of those involved in decision-making in government is greatly circumscribed. This means that those who are able to provide valuable insights are often cut out of the discussion. The quality of decision-making in relation to public policy is thereby weakened, thus creating a vicious circle.

With more mistakes, public officials become more defensive; to protect themselves, they seek even more secrecy, narrowing in the circle still further, eroding still further the quality of decision-making. (Stiglitz 1999: 14)

Where there is a lack of transparency in policy-making, public programs may be designed not on the basis of the impact that they have, but on government officials' perceptions of those impacts. Those perceptions will be affected by the information that is publicly available. Without transparency, there is a strong danger that program design may be as sensitive to those perceptions (and the extent to which they can be controlled) as to their real impact. ❖

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