

---

## **Public Servants and the Public Interest\***

*Richard Mulgan*

The topic I have chosen for today concerns the public service and the values which should guide its professional practice. It is a question of some interest as public servants seek to come to terms with a new employment environment. The public service as a profession has taken a severe buffeting in the last decade and a half. The number of public servants has been severely reduced. Their conditions of employment have been diminished, for instance by the loss of certain appeal rights and, at the senior levels, by the loss of security of tenure. The distinctive values of the public service have been systematically called into question by a managerialist critique which locates best practice in the private sector. Simplistically measured by the standards of private sector management, the public service can easily be made to look grossly inefficient, obsessed with process, and resistant to change. Such criticisms provided the background to reforms of the Public Service Act, with its new emphasis on flexibility of employment and devolution of responsibility. At the same time, cavalier replacement of department heads has indicated open disrespect for the basic principle of public service professionalism; namely that senior public servants are capable of giving loyal and effective service to both sides of politics.

In reaction, many defenders of the traditional public service have hit back. They have cited the constitutional importance of an independent public service, not subject to government control. Governments, they claim, need frank and fearless advisers, not partisan toadies. Governments and politicians come and go but the public service continues as the permanent repository of experience and guardian of the nation's welfare.

---

\* The paper was presented as a lecture in the Department of the Senate Occasion Lecture Series at Parliament House on 11 August 2000.

---

The debate has been fierce and often uncompromising. As often in such arguments, extreme positions become entrenched and the complexity of the issues becomes obscured. The reformers have often underestimated the distinctiveness of the public sector and have exaggerated its inefficiencies. The traditionalists, in turn, have sometimes tended to overstate the independent authority of an unelected bureaucracy. Such exaggerated defences, while understandable, have the potential to do more harm than good. They damage the case for a professional public service in today's political environment. Advocates of a politically neutral, professional public service run the risk of underselling their product by misrepresenting its virtues.

I wish to explore this point further by examining one set of arguments used in favour of an independent public service, namely those arguments that depend on linking the public service with the pursuit of the public interest. Adherence to the public interest is often taken to be a defining characteristic of a public service. Indeed, it has been recognised as such by the current minister, Dr Kemp, who has referred on more than one occasion to the public service as providing 'public interest' advice. As such, the public service may be contrasted with lobbyists who are peddling a sectional interest, or with policy consultants whose first priority is to make a profit and secure continued employment. It is then an easy, and often tempting, step to say that the public service is the true champion or guardian of the public's interest. Public servants need to stand firm, not only against self-interested pressure groups and consultants, but also against politicians and their advisers who are concerned more with their short-term electoral interests than with the public interest. Commitment to the public interest is thus harnessed as a defence of the public service's independence in the face of other claimants to represent the community.

But how conclusive are such claims? Do public servants really have a right to insist that they are the true champions of the public interest? Should they not yield to the views of others who more directly represent the opinions of members of the public? More fundamentally, does the term 'public interest' have any meaning at all? Is it simply a rhetorical device for cloaking political preferences in high-sounding, moralistic language? To answer these questions, we need to begin with a clearer understanding of what the term 'public interest' entails. So I hope you will forgive a few minutes of conceptual analysis.

First, we may notice that 'the public interest' is one of a number of similar terms all of which are more or less identical in meaning, for instance 'the national advantage', 'the common good', 'the collective benefit'. They combine two terms: one, a noun, signifying positive value, such as 'good', 'interest', 'benefit' or 'advantage'; the other, a qualifying adjective, referring to the community as a whole, such as 'common', 'public', 'national' or 'collective'. Each of these terms is open to a variety of interpretations and reasonable disagreement. At the same time, they do at least set limits to the type of consideration that may be advanced in political debate. In the first place, a term such as 'interest' requires reference to something of positive value, some benefit or good which will accrue to the people in question. We may not all agree on what is to count as valuable. Indeed, a certain degree of disagreement over values is endemic in a pluralist society such as ours. It is this disagreement that helps to make the concept of the public interest inherently contestable. None the less, if we do refer to the 'public *interest*', we must at least be prepared to state our values for consideration. We cannot rely simply on personal preference or whim.

---

Secondly, the term ‘public’ in the ‘public interest’ also carries certain clear implications. It is an inclusive term requiring reference to all members of a particular community. Such a community is normally defined in political terms by shared citizenship under a common government. The public interest in Australia is the interest of those living in this country. Disputes may sometimes arise over boundaries of the public, particularly where more than one level of government is concerned—the public interest for the Commonwealth government is more extensive than that for the ACT or NSW government. For the most part, however, the extent of the political community and the public is uncontroversial.

Reference to the public interest therefore requires us to consider the interests of all members of the community. Some of these interests we all share in common, for instance law and order, roads, and clean air. Other interests we hold as individuals or members of particular groups. In a modern, pluralist society, most people belong not only to the community as whole but also to a range of smaller groups—local, occupational, religious, gender, ethnic and so on—each with its own identifiable interests. We expect our governments to balance all these interests, common, sectional and individual, when arriving at the public interest.

Some analyses of the public interest restrict its scope to those interests we all share in common. Sectional or personal interests are therefore excluded from the public interest and may even be seen as contrary to it. This narrower view of the public interest is particularly popular among economists (mistakenly influenced by the quite different concept of public goods). For example, in discussion of economic policy, the public interest is sometimes identified with the interests of consumers or taxpayers (assuming that everyone consumes and pays taxes). By contrast, the interests of producers or retailers are described as sectional interests. Assuming that governments should legislate for the public interest, it can be argued that the government should concern itself only with the interests of consumers and taxpayers (in, say, cheap prices and low taxes). Policies that favour sectional interests (such as subsidies and protection) are then to be avoided as contrary to the public interest.

However, the claims of individual and group interests should not be excluded altogether from the public interest. As citizens, we all expect our governments to act in the interests of sectional groups, whether they are women, farmers, Aborigines or small business people. If the public interest is to cover all interests with which governments should be concerned, then it needs to be understood inclusively, to cover all interests held by members of the community, as individuals and as members of sectional groups, as well as those interests held in common with all other members of the political community.

Assessments of the public interest are thus complex and contestable. They require us to take account of all relevant interests. This in turn involves contestable judgments about what is good for a range of separate groups and about how these competing interests are to be weighed against each other. In a democratic society, the assessment of the public interest is an intensely political process, involving debate and negotiation between conflicting standpoints.

Returning to our original question, what part does the public service play in this process of assessing the public interest? A key role for the public service is to help to

---

sustain an appropriate structure for decision-making, by ensuring that the various voices are heard, that no relevant interests are omitted, and that politically acceptable conclusions are formulated. Public servants should also help to inform the assessment of policy options, by providing a reservoir of reliable information and experience. In these respects, the public service does have an institutional connection with the public interest that helps to distinguish it from other sectional stakeholders. Other interest groups have their own sectional interests to promote. Though they will try to couch their arguments in terms of the public interest, they are always subject to the overriding imperative to pursue the interests of their members. At bottom, the Australian Medical Association is obliged to look after the interests of doctors rather than the public and the role of the National Farmers Federation is to protect farmers rather than consumers. For the public service, on the other hand, representing the public interest is its genuine *raison d'être*. In this respect, Dr Kemp was undoubtedly correct in identifying pursuit of the public interest as a defining characteristic of the public service.

However, before we allow public servants to be consumed with self-importance, we need to enter two significant qualifications. The first is that public servants, in practice, also have their own sectional interests. They, too, are human and share the human propensities for self-interest and self-delusion. Though their official institutional mandate may be to pursue the public interest, they are no less prone than other people to furthering their own material advantage under the guise of serving their clients. They often tend to favour policy options that increase their budgets or their power. Indeed, some influential critics of bureaucracy have analysed all public servants' actions as motivated overwhelmingly by self-interest. Such analyses, no doubt, are simplistic and overstated. Public servants, like anyone else, are capable of self-serving behaviour but, for the most part, their actions are directed towards the stated goals of their organisation, including the pursuit of the public interest. At the same time, their assessments of the public interest should never be taken wholly on trust. Like all such assessments, they should be open to criticism and correction.

This brings us to the second and more important qualification and to the main theme of this lecture—the relation between public servants and elected governments. Though public servants can justly claim a greater affinity with the public interest than can sectional interests or lobby groups, the public service does not have the field to itself. It is not the only institution officially dedicated to the public interest. The task of representing the public and of formulating the public interest is shared with government ministers and even with those despised creatures, ministerial advisers. In other words, pursuit of the public interest is a government function, not just a public service function. Moreover, public servants are part of a democratic system of government and are required to follow the lead given by the elected government of the day. If there is conflict between the elected government's view of the public interest and the public servants', public servants are expected to defer to their ministers.

For the most part, such conflicts do not arise. Elected governments and public servants generally operate within shared assumptions of what the public interest requires. The great bulk of government business, we should remember, is carried on within an agreed non-partisan consensus about the objectives of policy and the procedures for implementing policy. A change of political direction, for instance,

---

associated with a change of government, affects only a small proportion of government activity. But at those points where elected governments do wish to change direction, then the duty of public servants is clear: they must faithfully and efficiently implement such changes.

It is therefore a mistake to draw a sharp contrast between the public interest and the interests of the government of the day and to imply that public servants pursue the public interest while elected governments pursue their own interests. Such a contrast wrongly overlooks the leading role played by politicians in defining the public interest. It may also carry the mistaken implication that public servants ought to be somehow above politics and divorced from the electoral considerations that drive ministers. That public servants are engaged in politics is not a new thought, though it always bears repeating. As we have seen, the concept of the public interest itself is inherently political, because it requires negotiation between conflicting community values. In so far as public servants are themselves involved in this negotiating process and in the imposition of value choices on society, they too are involved in politics. Ministers, because they have the final word, are usually required to take public responsibility. But this does not affect the point that the public servants who assist them are involved in political choices.

Moreover, public servants are involved in politics not just in this general sense of helping to make value choices. They are also involved in partisan, party politics. Many government decisions are taken with at least one eye on public opinion and in the hope of pleasing the voters. In so far as public servants assist in developing politically popular policies, they too are assisting the government's electoral chances. Again, such partisanship is hard for many public servants to admit. Party politics, they like to think, is for the ministers and their personal advisers but not for the politically neutral or 'apolitical' public servants. After all, public servants serve the interest of the public, not that of the government of the day.

Again, such attempts to disengage from partisan politics are disingenuous. They imply a mistaken view of how the public interest is to be decided in a system of representative government. The desire of politicians to win elections is a fundamental premise of representative democracy. It is, indeed, a noble and praiseworthy desire. Without the electoral motive permeating government activity, there can be no guarantee that governments will attend to the preferences of the public. It follows also that public servants should have no compunction about suggesting and implementing policies that will assist the government's re-election plans. Indeed, such assistance for the government is part of the compact that the public service makes with the government. The only caveats to partisan activity derive from the fact that public servants are required to be impartially partisan and to offer equally devoted service to the re-election plans of whichever party forms the government.

This is the effective meaning of those misleading terms 'apolitical' and 'politically neutral' often used to characterise a professional public service. Public servants are not required to abstain from politics or even from partisan politics, only to serve all sides of politics with equal loyalty and enthusiasm. For this reason, a number of sensible conventions preclude public servants from engaging too closely in the affairs of the governing party in ways that would compromise their capacity to serve the party's opponents at a later date. We also insist that during the period of an election

---

campaign, the public service remains strictly neutral, pending the outcome of the forthcoming election. But the ineffectiveness of the caretaker period and its air of suspended political reality confirms the party bias of normal government business. The public service always wears the colours of the government of the day. It is the prize won by the elected government which takes over a professional, bureaucratic machine and directs it towards the party's preferred destinations. The attempt to associate the public service with the public interest in contrast to the interests of the government of the day is therefore fundamentally misconceived.

Admittedly, there are some occasions where public servants are expected to stand firm and to oppose instructions, not just from ministers but also from their bureaucratic superiors who may or may not be acting in the name of ministers. When their superiors are acting in an illegal or improper manner, public servants have the right, and also the duty, to resist and to expose such actions within their organisations. These are the rights and duties associated with the 'whistle-blower' and frequently justified in terms of the public interest, as for instance in the common term 'public interest disclosure'.

These whistle-blowing rights apply primarily to matters of legality and due process where ministers or officials contravene stated laws and regulations. Individual public servants who are privy to the actions of their superiors are often in the best position to draw attention to such abuses of power. In this respect, as defenders of constitutional propriety, public servants *can* see themselves as guardians of the public interest. The public has an interest in seeing its constitutional processes safeguarded and public servants are well placed to act on the public's behalf. But these defences of constitutional propriety are closely circumscribed. They should be clearly distinguished from any supposed right to contest the substance of government policy on public interest grounds against the government of the day.

Defence of constitutional propriety in the public interest is not confined to public servants employed in standard government departments. There are other public institutions whose *raison d'être* is much more directly aimed at this objective, for instance parliament itself, the courts and other tribunals, as well as review agencies such as the Audit Office and the Ombudsman. As watchdogs of government in the public interest, these institutions naturally and regularly find themselves in conflict with the executive. By the same token, the public servants employed in these institutions will also have more cause to see themselves as guardians of the public interest.

At the same time, however, under our constitutional system, their guardianship too, like that of departmental public servants, is typically restricted to matters of democratic process rather than the substance of policy. The courts, for instance, when interpreting the public interest, generally defer to the right of elected ministers to determine what the public interest demands in any situation. Auditors-general, when confronting ministers, usually confine themselves to issues of probity and process rather than policy. The Ombudsman has the power of recommendation only, leaving final decision to ministers. Parliament of course, is a forum for challenging the government and its interpretation of the public interest. The Senate has a proud record of impeding the policy initiatives of government. But, its legitimacy as an independent player in public policy derives from its elected representatives. Its public

---

servants typically confine their protests to defending the integrity of parliamentary procedures.

In general, then, we may conclude that public servants do have a role as guardians of the public interest in protecting constitutional processes. On the substance of government policy, however, departmental public servants have no licence to act as superior arbiters of the public interest against the views of their ministers. Public servants may undoubtedly have superior knowledge and experience, which they place at the disposal of ministers. They have a duty to inform and where necessary warn. But they have no right to impede or challenge a government decision.

I have stressed what may seem a rather obvious point about public servants and the public interest because it relates to a dangerous misstatement of the role and value of a professional public service. As mentioned in the introduction to this lecture, the concept of a professional, politically impartial, public service is under attack. The most senior rank of the Australian Public Service has been partly politicised, a trend that has had a demoralising effect throughout the ranks of the service. The morale of the service has been further weakened by a constant barrage of adverse comparison with the private sector. In response, defenders of the service have tended to stress its constitutional independence, its capacity for frank and fearless advice, and its general distance from the government of the day. An implicit contrast is drawn between politicians and their political advisers, on the one hand, who pursue a partisan, party agenda, and professional public servants, on the other hand, who counter-pose a non-partisan agenda, backed by objective, politically unpalatable argument. The notion of 'an independent public service' offering 'frank and fearless advice' has become the unquestioned mantra of those defending public service professionalism.

However, the association of 'frank and fearless' advice with professional public servants is misplaced, or at least overstated. To begin with, it does a disservice to the quality of advice offered by other advisers who are not part of the professional service. For instance, we would expect the ministers' personal minders, if they are worth their salt, to be equally frank and fearless. They must give advice on what to say, how to look, what to wear, all of which may require considerable frankness and fearlessness! Indeed, it may take more courage to advise a minister to change a hairstyle than to change a policy. The notion that only professional public servants can tell ministers things they may not like to hear is absurd. In fact, in any type of organisation, whether in government or the private sector, frank and fearless advice is part of the service which all capable subordinates owe their superiors. By the same token, the capacity to accept and act on such advice is one of the hallmarks of successful leaders in all walks of life.

Moreover, stressing the importance of frank and fearless advice sells short the qualities of a professional public service in a seriously misleading way. It gives the impression that professional public servants are primarily gainsayers, advisers from whom ministers can expect to hear disagreeable, contrary opinions. It casts the public service in almost an adversarial role to the government, as a form of *quasi*-opposition. Such a characterisation, or rather caricature, plays right into the hands of those who want to politicise the public service. It suggests that the only way for governments to get advisers who will be sympathetic and constructive is to appoint their own people from outside. Public servants, it is implied, can only be relied on to point out obstacles

---

and generally slow things down. If you want to get things done, bring in your own team.

This is a travesty, and a dangerous one. In fact, professional public servants have an excellent record of adjusting quickly to new governments and new policies. Indeed, radical policy change is more effectively implemented by seasoned and experienced professionals. Public sector management is a specialised business, calling for particular skills and virtues, which are best acquired through on-the-job experience. Moreover, the fact that most ministers come to office with so little management and administrative experience places an additional premium on having an effective management team in place, ready to help turn the minister's general ideas into workable policies. There is an important contrast here with the private sector. When a company changes direction and appoints a new board, the new directors will usually have considerable management experience themselves and will not have the same need to rely on in-house advice. Given that the private sector provides the model for management best practice, ministers and their advisers naturally tend to think that bringing in their own people is the only way to guarantee responsive management. It is this private sector assumption that should be vigorously contested. Defenders of the public service need to assert the capacity of a professional service to deliver efficient and responsive service to the public's elected government.

In this important and pressing task, it is a distraction to keep harping on frank and fearless advice. If we want to stress the qualities that a professional public service can offer, why not emphasise other qualities such as flexible, informed, experienced, politically savvy, honest, hard-working and so on? Frank and fearless is part of the mix but it is not the main element and certainly not the defining element. The great strength of a professional public service is not its capacity to stand up to government but rather its capacity to give effect to government policy.

True, there have been cases of recalcitrant mandarins and we all laugh knowingly at *Yes Minister*. But they were exceptions even then. And they are even less likely now, with the more transparent emphasis on government objectives and the end to permanent tenure. Permanent tenure, it should be noted, is no more essential to the profession of a politically neutral, professional public service than it is to any other profession (including academics). It is mainly a cheap way of recruiting and retaining able people on comparatively low salaries. The key point is that appointment, renewal and dismissal should be on professionally relevant grounds, such as demonstrated competence and merit, including the capacity to adapt to changing political directions. Professional competence and merit, particularly at the most senior levels, certainly includes loyalty to the government of the day and its policies. Lack of such loyalty therefore provides adequate grounds for removal. But loyalty to the previous regime is not evidence of lack of loyalty to a new regime. Quite the contrary.

Whether the Prime Minister or other individual ministers should be the sole judges of loyalty and competence is a vexed question that we have not time to pursue today. My own preference would be for an arms-length process of appointment and dismissal, mediated through a clearly independent public officer, such as the Public Service Commissioner. A non-politicised public service needs to have appointment processes that are independent of government, to avoid perceptions of patronage and political favouritism. But the rationale for such independence is to protect the long-term



---

impartiality of the public service and its capacity to offer effective loyal service to alternative governments as well as to the public. The rationale is not that public servants can be free to object to government policy.

To return, in conclusion, to our theme of the public interest. Public servants do have a special relationship to the public interest which sets them apart from other sectors in society. The notion of the public interest serves as part of their corporate mission, in the same way as employees in a private firm may be exhorted to pursue the firm's interests. As members of the public, we expect public servants to put our interest ahead of their own when exercising their often considerable powers. But the public interest is a contestable concept which public servants do not have the sole right to determine. Sometimes it may be laid down in legislation, at others it may flow unambiguously from a clear community consensus. On yet other occasions, the elected government will decide on a course that it will be the duty of public servants to follow.

Our system of government gives elected ministers the right to determine the public interest, subject always to parliamentary and electoral accountability. In these cases, public servants are required to accept the government's interpretation of the public interest. Their professional dedication to the public interest does not license them to pose as an independently authoritative source of what the public interest requires, at least on the substance of policy. The public service cannot claim a unique guardianship of the public interest in opposition to the government of the day. The particular value of a professional public service lies in its capacity to serve both the public and the government of the day efficiently and effectively, not in any supposed role as an independent source of authority.



**Question** — How does the sort of public servant you depicted for us discharge the accountability relationship with the parliament and with being hauled before a Senate estimates committee, and being asked to explain, say—just to choose a totally hypothetical example—their part in fabricating a highly controversial advertising campaign appealing to subliminal racial feelings? How does your type of public servant discharge that part of their function?

**Richard Mulgan** — That question is not easily answered in general terms. When you used the word 'fabricating' I thought we might be going down a clear line where they'd been asked to do something dishonest, and of course there are clear rules of professional ethics where you would not have to do something that was contrary to any actual law. But dishonesty is something that is in the eye of the beholder and politics is often about putting the evidence in the most favourable light, and not mentioning things that are unfavourable, and my view is that public servants are engaged in that sort of activity. That's their job.

Of course, at the parliamentary committee level there's a rough distinction between policy and administration and it's quite proper for public servants to say, 'well, that was a matter of ministerial policy' and by implication say that it wasn't necessarily

---

their decision but was the decision of their political masters. But they should not do that in any way which suggests disloyalty to the ministers. I think that we should see public servants more in the light of advocates of government policy. After all, we accept this particularly in the legal profession—we expect an excellent QC to be able to master a brief on one side and then be employed by the other side on another day or argue the opposite case. We don't see that that's a compromise of professional integrity. We could do with a little bit of similar thinking in relation to public servants. We know that public servants, particularly at the most senior level, are required to defend their ministers. We know that this may mean that they have to defend things that they disapprove of themselves. We know that at a later date they will have to defend a minister who's doing very different things. But that seems to be part of the job and not necessarily something that should cause any problems.

**Question** — To expand on my example: say there has been—again, totally hypothetically—a government advertising campaign that has rather nasty undertones, and the parliamentary committee is trying to find out where the rather nasty undertones came from. The public servants are mixed up with minders from ministers' offices in the task of producing this thing. Do the public servants have an obligation to explain exactly where these elements came from, including if they came from the public service itself?

**Richard Mulgan** — I don't have any problem with that. I'm not really trying to defend public servants as necessarily protectors of government confidentiality, which is one of the instances where these things come out, but there doesn't seem any particular harm at the parliamentary committee level in identifying which office these things came from. I think we should be prepared to accept that.

**Question** — I recently attended an Institute of Public Administration seminar on outsourcing of corporate activities within departments, which came after the government mandating that outsourcing of corporate services would occur as it delivers better outcomes for the taxpayers. When questioned about whether they undertake research to assess the cost benefits of the outsourcing, the spokesperson for the Office of Asset Sales and Outsourcing said, 'there's no need to, it's government policy.' Obviously this Nuremburg response is not in the interests of the public, as any decision on outsourcing must be based on efficiency, equity and effectiveness. So do you see a public interest role for bureaucrats to question outsourcing activities and even undertake independent research on the cost benefits of individual outsourcing activities to determine if it really is in the best interests of the taxpayer?

**Richard Mulgan** — The short answer is yes. You asked me if I see a role for public servants—I see a role for governments in doing this sort of research. And I see a role for public servants in carrying out this government research about the effects of contracting out or of any aspects of government policy. Where there can be difficulties, of course, is an area where you have a government that is committed to outsourcing almost regardless of the evidence—again, speaking hypothetically—and then it's a question of whether public servants should be conducting research which might be seen to be going against the instructions of their political masters. And I think that's much more dangerous territory, if they know that's what they're doing.

---

On the whole, if we want independent research on areas of public policy, which we do, then the proper response seems to be to establish independent research bodies. We can have things like the Productivity Commission or other bodies who have a mandate to conduct research on areas which they consider to be important and where there may be problems that governments should hear about. I'm not sure whether public servants should somehow see themselves in such an independent role in relation to the policy of their own department, which has been put forward for them by their minister. I guess that's where I might differ from the implication of what you're saying.

**Question** — I think that question raises another problem of the real policy and the publicly available policy. The publicly available policy might be to do something for economic benefit. The real policy might be to do it regardless of the economic benefit. What is the duty of the public servant when asked to state the real policy, for example, in Senate estimates?

**Richard Mulgan** — My view is that public servants are the servants of the government and I don't see a problem in their defending the government's view.

**Question** — The government has a real policy and a publicly stated policy. The public servant knows what the real policy is. Questioning in Senate estimates is designed to flush out the real policy. Where does the public servant stand in that situation?

**Richard Mulgan** — The public servant is in a difficult position. Public servants have ways of indicating what they think without actually saying it—as politicians do, and at which they're adept. And we are using the parliamentary committee system as a follow up on question time. If we can get the minister to answer these questions, well and good; if we can't we'll see if we can get the embarrassing truth out of this public servant. I think public servants have to be careful about embracing a role in which it is seen as their job, in the public interest, to dish the dirt on their political masters. I think that's a mistaken idea, and I think we ought to accept that they are part of the government. Things are more relaxed in the committee system than on the floor of the house, and a certain degree of relaxation is expected even from ministers.

**Question** — We've obviously tended to see what you've said in terms of the federal level of public servants and ministers and so on. We have replicas of that at state level and at the territory level, although in a more limited structure. Do you see the same principles being recognised at these various levels, and do you see the mechanisms for the sort of things that our chairman was trying to draw out, as working effectively at state level also?

**Richard Mulgan** — Parliamentary committees, as far as I can tell, have been generally a good thing everywhere. I'm not an expert on what goes on at the state and territory level. My impression is that they're not as active, they don't sit as often, and they don't get as much publicity—though at the ACT level, if what one reads is accurate, they're pretty active.

What is concerning me in this general area is the feeling that relates to the prevalence of the minister's minders—that somehow, where we used to have ministers as public servants, we now have minister's minders as public servants. So there's perhaps an

---

institutionalising of the idea that the minders have their job and the public servants have a different job, and if we drive too big a wedge into this, my argument would be that we are selling short the role of the professional public servants who are, in a sense, just as capable of doing the minders' jobs as the minders are themselves, in most respects. One shouldn't see that what the minders do is necessarily somehow alien to the job of professional public servants. So if one started from the premise that a minder's job is a public service job and that a public servant can do a minder's job as well as a minder, then I think we might start to reclaim the ground that we are surrendering, and the public service is surrendering, by saying that we can't get into that partisan business—we stand somewhere in the middle between the government and the Opposition. That seems to be the wrong ground to occupy.

**Question** — The difficulty I see is that the political arm of government—the ministers and minders—often don't want the public to know what they're really up to. The public servants know what they're really up to. Members of parliament are trying to find out what they're really up to, and use public servants as the way to get that information. It seems to me that that situation creates great difficulties.

**Richard Mulgan** — If the public servant becomes known as the way to get information that the ministers and the minders won't give you, the public servant then becomes distanced from the policy debate within the government, insofar as that debate may contain things which the Opposition may not want to hear—which any good discussion will contain. So it seems that putting the public service in that 'hands-off' relationship with the government may be good in some respects, but it may be dangerous in others.

**Question** — You said that the public servant is the servant of the government. Isn't it also true that the public servant is supposed to be the servant of the people? There may easily be a distinction between the government's point of view and the people's point of view. It seems to me that there has been a development whereby public servants are now unwilling or unable to speak out and give fearless advice. When I first went to work in the Prime Minister's Department, in the time of Sir Robert Menzies, I said to Menzies 'I'm a socialist, I want you to know that.' Menzies said, 'That's good—I want differing points of view.' I wonder how that scenario would stand up nowadays? It seems that there has been a complete loss of independence. It now seems that a lot of people who have views of their own do not want to give those views, because they know that if they do, and they don't please the minister, they're out. How much has the public service deteriorated since that point of view seems to have come forward?

**Richard Mulgan** — That's a good question, and there are other people here more qualified than I to answer it. Certainly it's reported that senior public servants are less willing to give certain views—that might be seen as contrary to the minister's—than they once were. There does seem to be reported evidence of increased fearfulness. We don't know how far that's gone. From the ministers' point of view this is often seen as people who are fighting old battles: 'I keep hearing that from that quarter, but this government is going in this direction and I don't want to hear that again.' So the ministers have the perception that this is somehow repeated difficult argument. I think ministers who are worth their salt ought to be able to take contrary advice, now as much as before.

---

I don't necessarily see that we've had a deterioration in the quality of our ministers. This is a difficult question—I don't necessarily know the answer. What I'm really trying to point out is the hazard of overstating this virtue at a time when governments are saying that they want loyal advisers, sympathetic to their objectives. If we say that the public service is sympathetic to the people and not necessarily to the government, and has a broader view, I think we have to be a bit careful with that, because the politicians do after all represent the public, as they've won the election. A lot of the time it doesn't arise and on some key issues, as I tried to say in my lecture, the public servants do represent the people against the government on procedural matters, such as abuse of power and abuse of constitutional propriety or matters of that sort. I'm really just talking about policy directions and there, obviously, good advisers will point out difficulties and alternatives. I suppose I'm running the argument that Michael Keating and others have raised—that all good advisers have always done that, and all good ministers have always sought that.

**Question** — I'd like you to elaborate on the dependence of policy on good process. In many policies nowadays, one can observe some ministers who cannot quite see the connections between their portfolio and other portfolios. So regardless of what Cabinet arrangements might be in place, the public servant nowadays has a heavier responsibility to design policies between elections which cope with some circumstances which may not have been apparent when the mandate was given at the previous election. These complexities run across different sectors of policies, different departments, where the public interest has a locus which runs through a number of complex planes. Process becomes very important here. You mentioned legislation, but there would seem to be a pressing need for other forms of process, whereby public servants can divine options for government between elections.

**Richard Mulgan** — I certainly didn't want to rule out public service initiatives on public policy. Often people in a number of different departments may say: 'well, there's a hiatus here, nobody is thinking about this issue so we'd better get together and think about it.' If that's across departmental lines it may be even more likely that it's not being thought about and there be even more need for it to be thought about. This is standard and perfectly acceptable and, indeed, is to be encouraged. There's no problem with public servants doing things that governments don't know anything about, in the sense that ministers may not know or may not be interested. The only problem that can arise—and, again, we're talking about exceptional cases—is when the government has set its face in one way and the public servants continue to think about an alternative policy, perhaps hoping for a change of government. That is appropriate to the extent that public servants are required to take a long view, and if there's going to be a potential change of government and change of policy direction, they need to start thinking about that. I don't have a problem with that, either. I don't want to overstate the extent to which I think public servants should be, as it were, just mouthpieces of the politicians or think only in the way that politicians think.

**Question** — What do you see as the role of the academy in protecting the public interest *vis-à-vis* the public service and the government, and can you say more about accountability in your vision of what public servants should be doing?

---

**Richard Mulgan** — The role of the universities is obviously to comment on matters that academics think are of public interest. There are parts of the universities, particularly in this town, which are closely interested in matters of public policy. From where we sit, the problem is not with our taking an interest in it, but with actually getting other people to listen to us and not listen to the people who are not in the academy, but are paid much more in private sector accounting firms—which is where the true academy seems to have gone.

That's how we see things to a certain extent, though in other areas academics are involved in public policy debate and are regularly brought in—it differs from sector to sector. Clearly, universities and academics would see themselves as having an important part to play and we would hope that that role was recognised by policy makers—it sometimes is, and sometimes isn't.

On the question of accountability, that's another big issue. We discussed this in relation to parliamentary committees. The duty of the public servant is to assist the public in finding out about things that are going on, so when someone rings up for information, the answer is: 'yes, that should be in the public realm, unless there is a good reason for it not to be.' I am a believer in freedom of information and giving access wherever possible.

Again, we have the question of ministerial responsibility and the extent to which public servants and ministers' departments should avoid embarrassing ministers. That's one of our strong conventions, and goes to the heart of our convention of ministerial responsibility, which sometimes is used to cover things up, without doubt—when public servants have something that they'd like to get out, but they feel bound by the conventions of ministerial responsibility not to let it get out. On the other hand, we have to accept that ministerial responsibility, as it works with us, is a very powerful convention for accountability in that ministers are forced to give information through parliament. If caught lying, the consequences can be quite severe. I don't have any difficulty with saying that a public servant who knows that a minister is actually lying should find some way of letting the public know that this is the case. I don't think you should defend the indefensible, but on the other hand the convention that ministers take responsibility and then clear up the mess, depends on a certain degree of anonymity on the part of the public servant. So there are conflicting pros and cons on that issue, I'm afraid.

**Question** — Your lecture has given a series of opinions on accountability and ethics. What are the actual formal guidelines relating to this? Are these just in the Public Service Act, or are there any other guidelines in the Constitution or through other formal processes?

**Richard Mulgan** — Some of it is in the ministerial guidelines and the instructions and recommendations that the Prime Minister and his department issue for ministers and public servants. That's the main source. Some of the general principles of the public service values are in the Public Service Act. But most of these things are not written down, or at least not all written down in the same place.