

## APS Review submission

I write in my capacity as a 2017 recipient of the Sir Roland Wilson scholarship, which is facilitated through the Australian Public Service (APS) and the Australian National University (ANU). Scholarship candidates are selected based on the merit of proposals that will have direct and enduring relevance to the APS. As such, my research, which is ongoing, examines the language of APS policy advice and asks how it comes to be rebuffed by its ministerial audiences. I draw on a variety of Australian and international case studies, in which I treat language as a symptom of institutional constraints and requirements, such as the *Public Service Act* and Freedom of Information (FOI) legislation, as well as the broader edifice of objectivity. In this vein, I would like to discuss the quality of written policy advice, calls for changing FOI legislation, and international comparisons.

Recent reviews of the APS, such as Terry Moran's *Ahead of the Game* (2010) and Peter Shergold's *Learning from Failure* (2015), were at pains to emphasise the importance of high-quality policy advice and, with it, the ability to mount effective, candid arguments. Although the 2010 review does not make specific recommendations related to this, by 2015, there is a suggestion that the *FOI Act* be amended in order to prevent feeble presentation of written advice.

One of my case studies is the language of Australian intelligence assessments in the lead-up to the Iraq war in 2003. Two agencies, the Office of National Assessments and the Defence Intelligence Organisation, are examined. Neither agency is bound by FOI legislation. Indeed, each can feel reasonably secure in only very rarely having to present their advice publicly. Although intelligence and policy advice are not the same, the formulation of intelligence advice adheres to similar expectations around being independent, forthright and robust. So what kind of language do we see from agencies that do not need to worry about being FOI'd? On the one hand, DIO maintained its position on the inconclusive nature of intelligence about Iraq's WMD right up until the beginning of the war in March 2003. On the other, ONA slowly moved from sharing a similar view around the lack of clear evidence to becoming quite certain that Iraq had WMD, which aligned it more closely with the government's direction. Nonetheless, both were largely ignored by the then Prime Minister, who preferred to source most of his public references to intelligence from Australia's allies. Contrasting the two agencies – ONA with a keenly responsive eye to the policy environment, DIO maintaining a more objective distance from it – with the knowledge that neither is bound by FOI legislation, suggests that arguments about its constraining effects are not persuasive. That is, neither the unambiguous language of ONA nor the more nuanced nature of DIO's advice had much of an impact on how the government made its case for war with Iraq.

Arguments for amending FOI legislation suggest that, were it not for impediments like FOI, public servants' appetite for risk and their ability to argue frankly and fearlessly would be substantially enhanced. In other words, the APS is already good at written advice but is constrained by forces beyond its control. Yet we can see from the Iraq example that neither ONA's increasingly robust language nor DIO's more impartial counterpart were effective. This leads one to wonder whether objections to FOI are a way to rationalise the often nebulous nature of advice. Earlier in this submission, I referred to the edifice of objectivity, and the frequent references made to it via legislation, the APS Code of Conduct and various reviews. I argue that this requirement for objectivity, although noble and well-intentioned, has created an ethos that exerts an inhibiting influence on how policy advisers articulate and argue, resulting in a language that may well be too weak to compete with louder voices, particularly amid a sea of 'authenticity' and opinion. The requirement to be apolitical and objective seems to prevent advisers from realising that their language does not have to be drained of life to be impartial. Facts do not speak for themselves; they

require context and argument. Yet, according to public policy academic Giandomenico Majone, “as a firm believer in the virtues of the scientific method”, the policy adviser generally has “a distaste for advocacy and persuasion”<sup>1</sup>. This is a mistake, in Majone’s estimation, because ignoring rhetoric and advocacy (that is, unambiguously arguing for appropriate policy options) is likely to lead to failure:

[i]n policy analysis, as in science and in everyday reasoning, few arguments are purely rational or purely persuasive. A careful blend of reason and persuasion is usually more effective than exclusive reliance on one or the other<sup>2</sup>.

The perhaps self-imposed constraints created by focussing so resolutely on rationality, evidence and objectivity have been observed not only in scholarship on public policy. Even those who might be assumed to carry a more positivist mantle – scholars from disciplines like the sciences, statistics, and economics, for example – have argued that what we have come to regard as objectivity is, perhaps paradoxically, incompatible with reasoning that wants to persuade. Deirdre McCloskey, for instance, has asked

[i]f some good economists espouse positivism the question arises how economics would be different without it. That remains to be seen, though one thing is clear: economics without positivism would be more, not less, rigorous and scientific, because it would have to face up to more arguments<sup>3</sup>.

With its objective coating, the language of policy advice seems to pose as a window to a neutral, clear-cut reality. Yet, as McCloskey insinuates, becoming more critically aware of how language is constructed – such as its tendency to offer information as facts rather than educated interpretations – could lead to stronger, more robust policy advice. Further, a language of objectivity can suggest evidence where there is none or very little. For example, when objectivity is brandished by way of evidence gathered through engagement with experts, this language may mask the fact that the experts with whom one has consulted are not necessarily always the best, most knowledgeable authority. At best, the result is incomplete or even faulty information camouflaged as objective fact; at worst, policy is implemented based on information that is shallow and even unassessed by peers.

I can offer no easy fixes here and am not advocating for removing the requirement for objective advice. For producers and users of knowledge, objectivity is an ideal that signals trust and legitimacy. Without it, to quote Wildavsky, there is no “agreement on a starting place”<sup>4</sup>. I do, however, suggest that it has become imperative for the APS to dig more deeply into what is preventing policy advice from being more persuasive, and to understand that amending the FOI Act, for example, or sending advisers to training that teaches them to use plain English, are not enough. As Greenhalgh and Russell observe, the way to deal with the “inherent and irreducible messiness” of policy-making is

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<sup>1</sup> Majone, Giandomenico, *Evidence, Argument, and Persuasion in the Policy Process*, Yale University Press, 1989, Michigan, p. 36.

<sup>2</sup> Ibid, p. 37.

<sup>3</sup> McCloskey, Deirdre, *Knowledge and persuasion in economics*, Cambridge University Press, 1994, Cambridge, p. 23.

<sup>4</sup> Wildavsky, Aaron, *Speaking Truth to Power: The Art and Craft of Policy Analysis*, Little, Brown and Company, 1979, USA, p. 7.

not to produce more rigorous, more relevant, less ambiguous, more timely or more appealingly presented evidence but for policy makers to develop a better awareness of their own behaviour as players in the argumentation game.<sup>5</sup>

One possible solution to building such awareness, they propose, is for policy players to “acknowledge and take account of their respective points of departure” and to make explicit “the values and premises on which each side has built its case”. Another is to promote “the training of policy making teams in the art of rhetoric”<sup>6</sup>. While this is usually anathema to civil servants who assume rhetoric to be the opposite of objectivity, it simply means becoming more proficient at logical argumentation. I suggest there is ample room for APS policy advice to get better at this key ingredient in persuasive written advice.

Regarding the review’s proposed examination of international practice, I expect the panel will compare Australia with other Westminster jurisdictions, which will undoubtedly yield some useful insights. The UK Institute for Government and Behavioural Insights Team’s recently-published report ‘[Behavioural Government](#)’, for example, is an important exploration of officials’ predispositions when shaping government policies and services. Further, New Zealand’s Policy Project, which places policy advice at its core, and New Zealand’s Institute of Economic Research, which ranks policy advice and makes recommendations for improvement, are both evidence of a government that understands the fundamental connection between transparency and trust. We could do a lot worse than to try similar approaches. However, while references to other Westminster jurisdictions will likely be unavoidable, I suggest casting the net wider. For example, why not examine jurisdictions that have managed to implement major reform of a kind unlikely to be passed here? In 2005, for instance, the Netherlands moved away from incarceration due to prison overcrowding. Instead, the country began to focus on rehabilitation and decarceration. You will no doubt have read that it began renting out prison cells to inmates from neighbouring countries. How was this possible? What kind of expert advice, collaboration and citizen engagement were required to achieve this? Similarly, Estonia is now almost entirely digital. If its government had to move into exile, it could continue to govern online. What did this small, former Soviet nation do to achieve such an intensely ambitious reform? Surely Australia, as a developed, middle power, has the wherewithal to achieve innovation of similar scope. It seems unlikely while we maintain the passivity of Westminster advisers.

This final point leads me to reflect on the APS of the future. Ironically, it relates to FOI, which I earlier insinuated was not a barrier to good policy advice. I stand by this suggestion, but acknowledge that it poses an interesting dilemma, which relates to APS reputation and, with it, public trust. Much scholarship here in Australia has considered the two-fold effects of greater transparency in terms of the APS’ longer-term credibility. The ANU’s Richard Mulgan, for instance, suggests that transparency

increases the likelihood that government deceptions will be uncovered and thus acts as a spur to government honesty. On the other hand, the fact that more public service advice may end up in the public arena places officials under greater pressure to compromise with the truth in the interests of not undermining the credibility of their political masters.<sup>7</sup>

The former is a democratic mainstay. Yet, over time, he notes, the latter will undermine APS expertise and reputation, citing institutional independence as way to protect these crucial qualities.

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<sup>5</sup> Greenhalgh, Trish and Jill Russell, ‘Reframing Evidence Synthesis As Rhetorical Action in the Policy Making Drama’, *Healthcare Policy*, Vol. 1 No. 2, 2006, p. 40.

<sup>6</sup> *Ibid*, p. 41.

<sup>7</sup> Mulgan, Richard, ‘Truth in Government and the Politicization of Public Service Advice’, *Public Administration*, Vol. 85, No. 3, 2007, p. 585.

He mentions the Australian Institute of Health and Welfare, the Australian Institute of Criminology and the Australian Bureau of Agricultural and Resource Economics as examples of statutorily independent government offices (we might add the Parliamentary Budget Office, the Productivity Commission and the Commonwealth Grants Commission). My own research echoes these sentiments, and I urge the panel to consider ways in which to invigorate and operationalise greater commitment to APS independence. Without it, its reputation for integrity and accuracy – as well as the public trust it may inspire – is vulnerable to corrosion.

Many thanks for the opportunity to contribute and I would be very happy to elaborate on any of the points made here or in my research.

With best wishes,

Dr Christiane Gerblinger