Appointed public officials and public relations practice: issues of accountability, ethics and professionalism in the ‘children overboard’ affair.

Abstract

This paper examines the performance of the Australian Defence Department’s Public Affairs and Corporate Communications Division (PACCD) in relation to public statements by Ministers of the Crown that children were thrown overboard from a ‘Suspected Illegal Entry Vessel’, off the Australian territory of Christmas Island on October 7, 2001. It concludes that public affairs officials in the Department of Defence failed to act in the public interest, however construed, and did not act in accordance with the Values Statement of the Australian Public Service, nor the Code of Ethics of the Public Relations Institute of Australia.

Introduction

Ever since the fall of Vietnam, governments and the military in liberal democratic countries have been mindful of the need to have strong community support for actions undertaken by their armed forces even when these activities are designated as “peace-keeping”. The consequence has been the creation of large public affairs units in the military staffed by both military and civilian officials, and an imperative on the part of military commanders and their civilian masters to manage the news in times of conflict, as happened in the Falklands (Knightly, 1982; Morrison and Tumber, 1988), the 1991 conflict against Iraq known as the Gulf War (Kellner, 1992; Nohrsteadt, 1992; MacArthur, 1992; Schiller, 1992; Flanders, 1991) and more recently in Afghanistan (Taylor, 2002, 2001; Etzioni, 2001; Kiefer, 2001; Gordon, 2001; Jurkowitz, 2001). Louw (2001, pp. 171-188) has termed this “PR-izing war”.

Even so, such appointed public officials - public servants - in public relations roles have a number of obligations. Their first obligation is that of all public officials, which is to serve “the public interest”, while recognising that defining what constitutes “the public interest” is problematic. Secondly, appointed public officials also have a set of obligations to the profession and practice of public relations, obligations which are best set out in the various codes of conduct, codes of professional practice or codes of conduct promulgated by professional associations of public relations practitioners.

This paper examines the manner in which both these obligations were discharged by public officials in the Australian Defence Department’s Public Affairs and Corporate Communications Division in relation to what has become known as “the children overboard” affair, or as the Australian Senate termed it, “a certain maritime incident”. The “children overboard” affair has become a symbol of many diverse issues of concern to Australians such as compassion for displaced people, institutional trust, political truth telling, bureaucratic accountability, and border protection. This paper does not attempt to
canvass these issues although it does touch tangentially on some. It simply aims to
measure what happened against promulgated organisational and professional standards.

Children overboard affair

In September 2001, the Department of Defence assumed responsibility for border
protection from the Department of Customs. This engagement was named Operation
Relux. What happened, and more particularly what didn’t happen, in the seas around the
Australian territory around Christmas Island on October 7 when the Australian Navy
encountered a vessel containing 223 people seeking asylum in Australia, has been widely
canvased in the Australian Parliament, through two departmental reports tabled by the
Prime Minister (Bryant, 2002; Powell, 2001), and by Senate Committees (SEC
Transcripts, 2002; SSC Report, 2002), in the mass media, and by political scientists
(Weller, 2002). In essence, a mistake was made in the initial reporting through the
Defence Department chain of command that children on the vessel were thrown
overboard. Within hours, this information was made public by government ministers
embarking on an election campaign, in which issues of border protection and national
security were to dominate. The erroneous information was never publicly corrected and
there is extensive evidence to suggest that prior to the election on November 10, public
officials, ministerial staff and the outgoing Minister for Defence, acted in a way that
shielded the Prime Minister from formal, written advice that the event never took place.

The second issue which arose out of the initial incorrect information was the release on
November 10 – in response to media demands for evidence - of photographs purporting
to show children thrown overboard on October 7. The photographs released were
uncaptioned, and were in fact of the rescue of the passengers on the vessel when it sank
the following day, October 8.

At the core of the issues of accountability and the public interest, is the fact that at no
point did three key officials involved in this affair make themselves available to the
Senate Select Committee – the former Defence Minister Peter Reith and his advisers
Scrafton and Hampton. This is despite requests from the Committee to appear. Nor did
the Committee exercise, to the fullest extent, its powers to call them.

Media management of defence information

The Public Affairs and Corporate Communications Division (PACCD) of the Department
of Defence consisted of some 148 permanent public service positions and an additional
68 contact positions (Courier-Mail Oct 3 2002, p.2) Within the civilian-military diarchy,
of the Department of Defence - Secretary Hawke’s purist view of which the Senate Select
Committee strongly criticised (SSC Report, p. xxix) - the PACCD was essentially
civilian.

In the period under review – October and November 2001 - Defence personnel were
subject to two sets of instructions in relation to dealing with the media. The first, Defence
Instructions (General) were issued on 8 August 2001 and represented a significant change
of practice from that prevailing in the Department up to that date. Indeed, this set of instructions was reviewed by the incoming Minister of Defence after the election, and quite astonishingly, the new set of instructions described by Secretary Hawke as “a much more flexible approach”, was signed off by Hawke and Chief of the Defence Force, Admiral Barrie the very day the Senate hearings commenced (SSC Transcripts, p. 27). Subsequently the Select Committee was to recommend that Defence develop, “a statement of Preferred Public Affairs Protocols to serve as guidelines by which future ministerial directives concerning public communications might be formulated”, designed to “optimise the autonomy of the ADF and the Department of Defence in deciding the level and nature of operational information communicated direct to the press and the public” (SSC Report, p. xxxiv).

The approach of the 8 August DI(G) was described by the head of PACCD, Jennifer McKenry (SSC Transcripts, p. 1119) as “more prescriptive” and “more disciplined” and “a process which would ensure that messages that went to the public were co-ordinated in a particular way”. The policy had several key elements which served to manage the information flow:

- Service chiefs (of Army, Navy and Air Force), who curiously to the lay observer, were not part of the operational chain of command, were provided with a “strategic communications advisor”. The intention, no doubt, was to prevent precisely the type of faux pas committed by Navy Chief, Vice Admiral David Shackleton in a doorstop at HMAS Stirling in Perth on November 8, which contradicted the government line on children thrown overboard.
- All media releases were to be signed off by a Canberra based officer of one-star rank or above. This, naturally, simply served to increase the frustration of service personnel on the ground and journalists.
- Only those who had completed PACCD training programs in media relations were permitted to speak to the media, and were required to consult PACCD about “talking points”.

The August 8 DI(G) represented what McKenry called “a change of culture” at the grassroots of the organisation. McKenry acknowledged that “people may have felt a bit of…disempowerment” (SSC Transcripts, p.1119). It also represented an enormous lack of trust in the organisation by its senior managers.

McKenry defended the August 8 DI(G) changes saying, “There were opportunities …for people at the grassroots level to do what they had always done. It was just a matter of informing up the chain” (SSC Transcripts, p.1119). Aware of discontent within the ranks, PACCD subsequently took the document “around the country…and asked people whether there were changes that we should or should not make” (SSC Transcripts, p. 1119). That information, according to McKenry, was reflected in the revised document issued in March 2002, a document which Hawke characterised as being a reflection of Hill’s approach as Minister (SSC Transcripts, p.27). Unless the more prescriptive, disciplined and co-ordinated process represented by the August 8 DI(G) was part of an explicitly political attempt by Reith to control defence information flows, then
professional public relations practice would suggest that stakeholder consultation should precede promulgation of the document, rather than follow it. Moreover, such a policy appears contrary to Hawke’s philosophical position, expressed in 1997:

Rational secretaries are more likely today to focus their energies on improving the capacity of their organisations to produce good advice in the first place, than on trying to control tightly everything conveyed by their organisations to the minister or the public (Hawke, 1997, p.152).

In addition to general instructions, there were a specific set of instructions on dealing with the media in relation to Operation Relux. The essence of this instruction was that all information released to the media in relation to Operation Relux came from the office of the Defence Minister. The strategy behind this directive was administered by PACCD, a strategy of which Secretary Hawke had this to say: “I knew there was one, but I am not aware of the details” (SSC Transcripts, p.35).

The place of ministerial advisors in the Australian variant of the Westminster system has been widely canvassed in the literature (Maley, 2000a, 2000b; Fitzgerald, 1996; Hollway, 1996; Ryan, 1995; Rudd, 1992; McMahon, 1991; Walter, 1986.) and it is not proposed to address those issues here except to report Weller’s evocative description of ministerial advisers as “junk-yard attack dogs” (p.72) and to observe that that function of ministerial media advisors is self-evidently a public relations function, and is deserving of more attention from communication scholars, scholars of applied ethics as well political scientists. Significantly, the Senate Select Committee recommended development of a Code of Conduct for ministerial staff, “commensurate with Conduct and Values provisions that apply within the Australian Public Service” (SSC Report, p. xxxv).

It is also worth noting that Operation Relux, unlike the deployment of troops to Afghanistan – a deployment which occurred at the same time as Operation Relux - was not an engagement in war. It was a border protection operation, a police action, performed in the absence of an effective coastal protection force by the armed forces. Its target was not Islamic terrorists, but displaced people. So a police action performed by the Australian Navy was subject to more stringent media management practices than the war against terror.

These directives not only generated the disagreement and dissent within the Australian Defence Force discussed above, but derision from journalists. In evidence before the Senate Select Committee, representatives of the Parliamentary Press Gallery were highly critical of both the directives and of the culture of the PACCD. Graeme Dobell of ABC Radio called the August 8 Defence Instruction (General) “a media policy which is anti-media. It is a communications policy which is about not communicating” (SSC Transcripts, p.1309). The Australian Financial Review’s Geoffrey Barker said, “The whole history of PACC since it was set up was one of minimal disclosure about everything and not disclosing anything if they could possibly get away with it,” (SSC Transcripts, p.1307). News Ltd Defence correspondent Ian McPhedran told the Senate Select Committee:
... I did not write much about the Defence Instructions (General) because, frankly, I do not understand it. I would defy anybody to read it and give me an explanation as to what it means. I do not really think it is coherent; I think it is incoherent and unreasonable (SSC Transcripts, p.1301).

The Gallery’s submission to the Senate Select Committee wrote that “the high level of deliberate deception... could not have been perpetrated without the involvement of senior and junior public servants’ and of the “blatant political manipulation of the bureaucracy” (PPG, 2002, p. 1). The journalists continued:

Senior officials such as the Secretary of Defence, Dr Allan Hawke, and defence chief Admiral Chris Barrie went along with a direction to refer all media questioning of the untrue ‘children overboard’ claims back to Mr. Reith’s office (PPG, p.1).

The Gallery was in no doubt that, “Secrecy was not used for operational reasons but to control information for maximum political effect” (PPG, p.2), and concluded, that “The phrase ‘operational secrecy’ is in danger of becoming a joke along the lines of ‘airline food’ and ‘reality television’” (PPG, p.3). This then is the context in which the failure by appointed public officials to act in the public interest occurs.

**Failure by public officials to act in the public interest**

Between October 7 and November 10 – election day – outside the office of the Minister of Defence, there were three failures of duty:

- McKenry failed to follow Hawke’s instructions in relation to advising Scrafton about the photographs (SSC Transcripts, p.14, p.38),
- Brigadier Gary Bornholt (Military Advisor to PACCD) failed to follow up with Hampton on October 11 (SSC Transcripts, p. 4),
- Secretary Hawke failed to ensure Reith was provided with a formal written brief (SSC Transcripts, p.4).

In only one instance, Hawke’s failure to advise Reith, was there any sense of accountability expressed. At time of his annual performance review, Hawke offered his resignation to Reith’s replacement Senator Robert Hill (SSC Transcripts, p.49). In September 2002, at the conclusion of his three year contract, Hawke’s appointment was not renewed (Walters, 2002, p. 6). Such has been the re-elected government’s pleasure with the performance of PACCD that the division has been reduced from 148 to 112 positions with a further 68 contract positions under review (Courier-Mail Oct 3 2002, p 2).

McHenry defended her failure to pursue the issue of a correction in the following exchange with Senator John Faulkner before the Senate Select Committee (SSC Transcripts, p.1104):

...
Senator FAULKNER --You know, Ms McKenry, that there is a misrepresentation on these photographs right through for a month in the period of a federal election campaign, don't you? You know that is the case and you know it is not corrected. You had expected it to be corrected early in October and that is why you took certain administrative action. You expected the minister to correct the public record but he did not?

Ms McKenry --That is correct. I took action to make sure that the minister's office was aware of the information.

--And what did you do when no correction was made?

Ms McKenry --I continued my work within the organisation as a public servant. I did not see it as appropriate, as I explained earlier in the estimates process, to enter the debate at all. I believed that what I had done and what some of my colleagues had done had been appropriate. We had informed the minister's office of the date on which the photographs were taken. We had informed them that the photographs as they were did not represent what they were purported to represent. I had informed certainly my head of department of that information and I did not believe, having done all of that, that it was appropriate for me to enter the debate in any other way.

Pressed later by Faulkner, McKenry enlarged on her particular understanding of the role of an appointed public official (SSC Transcripts, p.1108):

Senator FAULKNER --...You say that you gave the minister and his office an opportunity to correct the public record. What happens when they do not do it? You have said yourself that it should have been done sometime after noon on 11 October and that your actions gave the minister's office an opportunity to do that, but it did not happen. Does that mean you just absolve yourself of all responsibility?

Ms McKenry --I do not take on the responsibility. As I said, I believe that I acted the way I should have acted as a public servant. We were in the middle of an election campaign, as has been noted. I did not believe that it was my role or the role of anyone else to enter the public debate on the matter, the information having been provided to the minister's office. Brigadier Bornholt and I were left in no doubt, as I conveyed also to the secretary to the department, that the senior adviser understood quite clearly what those photographs represented.

McKenry’s use of the term “public debate” is most instructive. First, while there may have been a debate in Defence about whether children went overboard, there was no debate about the photographs. It was known to all appointed officials that the photographs were not of children being thrown overboard on October 7. Nor was there
public debate about these matters because there was no public knowledge of them. The public at this point – from October 11 until the first week in November - were completely in the dark and continued to be so until the final week of the election campaign principally because of decisions made in Reith’s office not to tell the truth.

Compare this reluctance to pursue a correction of the public record with the alacrity with which the PACCD, the Defence Minister’s office, the Secretary of the Department of Prime Minister and Cabinet, and the Secretary, Department of Immigration and Ethnic Affairs all acted on November 8 when Navy chief Vice Admiral Shackleton was reported as saying “Our advice was that there were people being threatened to be thrown in the water, and I don’t know what happened to the message after that,” (SSC Transcripts, p.57). It was McKenry who negotiated the draft of Shackleton’s clarification, careful only to acknowledge that the government had been advised by Defence that children were thrown overboard, omitting any suggestion that Defence had concerns about the integrity of that original advice. McKenry, closely pressed on this question in the Select Committee, refused to acknowledge that such an omission was improper.

**Performance measurement by ethical standards**

The Defence Department, particularly the Office of the Inspector-General has expended considerable energy over the past decade in ethics education and training, and fraud prevention, particularly in relation to procurement. The Department’s program has been held to be exemplary by its officials at a number of conferences on public sector ethics.

In addition to the general notion of the public interest, there are three standards by which the behaviour of appointed public officials in public relations roles can be measured. The Australian Public Service (APS) Values Statement, APS Code of Conduct and the Public Relations Institute Code of Ethics.

**The Australian Public Service Values Statement**

The pertinent clauses of the APS Values Statement are as follows:

**The Australian Public Service:**
- is apolitical, performing its functions in an impartial and professional manner;
- has the highest ethical standards;
- is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public;
- is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
- delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- has leadership of the highest quality (APS, 2002a).
**APS Code of Conduct**

From this Statement flows a Code of Conduct for all federal employees. The Code of Conduct requires that an employee must:

- behave honestly and with integrity in the course of APS employment;
- act with care and diligence in the course of APS employment;
- when acting in the course of APS employment, treat everyone with respect and courtesy, and without harassment;
- comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction;
- at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS (APS, 2002b).

**Public Relations Institute Code of Ethics**

The standards of professional conduct required are set down in the Code of Ethics of the Public Relations Institute of Australia (PRIA, 2001). The relevant clauses of the Australian Code are that:

1. Members shall deal fairly and honestly with their employers, clients and prospective clients, with their fellow workers including superiors and subordinates, with public officials, the communications media, the general public and with fellow members of PRIA.

2. Members shall avoid conduct or practices likely to bring discredit upon themselves, the Institute, their employers or clients.

3. Members shall not knowingly disseminate false or misleading information and shall take care to avoid doing so inadvertently.

While this code - updated in November 2001 - is highly prescriptive, it nonetheless makes quite clear the obligations of public relations practitioners to deal fairly and honestly, to avoid action which will discredit the profession, and most particularly to avoid the dissemination of false or misleading information – even if inadvertent. Knowing that false and misleading information was in the public domain, McKenry had an ethical obligation under this code to pursue the matter, in the first instance with Secretary Hawke. Her argument about not wishing to enter what she termed “the public debate” (SSC Transcripts, p.1104) is not sustainable. To take up the matter with Hawke, her superior, is not to enter the public debate. Given Hawke’s subsequent views about the incident (SSC Transcripts, p. 4), it is highly likely that Hawke would have been persuaded to pursue the matter formally with Reith.

**The public interest**

The final test of the actions of the officials is: were they in the public interest? Defining what constitutes “the public interest” in a Westminster-derived system, such as has develop in Australia, is the subject of an extensive literature (Yates, 2001; Mulgan 2000a,
One of the most useful conceptualisations is that of Nicholas Lovrich (1981) who set out four different ways in which appointed public officials perceive “the public interest”. The first perception – which Lovrich suggested back in 1981 was the most pervasive view – is that of “the duty of neutral service”. That appointed public officials owe their principal duty to serve the government of the day. That having provided frank and fearless advice to government, appointed public officials are there to execute the policies of the government of the day. The second perception is that the agency or program self interest is the most appropriate way to reflect what is in “the public interest”, and when all agency and program interests are worked through, that a consensus or conclusion that is in the public interest will emerge. The third perception, which Lovrich suggests arises out of the “new public management” approach is that the public interest is conflated with the promotion of social equity. The fourth perspective is that public preferences should determine how the public official understands and acts in the public interest. This approach derives from public choice advocates, an ideology of public administration which originated in the nineteen seventies.

Lovrich makes the argument that the complexity of modern government enlarges the scope of the individual official to determine what is in the public interest, and certainly, in Australia, the development of mechanisms such as administrative appeals tribunals, judicial review and ombudsmen represent an institutional response to this. Two other extra-institutional developments which also serve to restrict the ability of appointed public officials to determine the public interest are significant here also. The expansion of ministerial staff over the past thirty years, and the emergence of “tribunes of the people” in the form of powerful, nationally-networked talk-back radio hosts, or “entertainers” as some prefer to be called.

While McKenry argues for a position akin to Lovrish’s “duty of neutral service”, her acts of omission - a “duty of no service” - render her position a partisan one. It was clearly in the public interest that the errors in the public domain be corrected, and the public interest, as distinct from the partisan political interest of the caretaker government, demanded correction, especially in the context of an election campaign. Reflection on the great Kantian principles of duty - universalisability and reciprocity - might have helped clarify what constituted the public interest, and one’s duty to it.

Conclusion

McKenry made a decision that the public interest lay in accepting Scrafton’s instructions over and against the specific instructions of her departmental head, Dr Allen Hawke. This is, of course, unacceptable, and a measure of its unacceptability can be found in the fact that Hawke offered his resignation to the Minister of Defence when the material fact of McKenry’s action came to light. McKenry also should have resigned, and her resignation should have been accepted. Moreover, McKenry should also have been the subject of action under the APS Code of Conduct. Brigadier Bornholt should also have fallen on his sword for his failure to follow up ministerial media advisor Hampton. Finally, were McKenry a member of the PRIA, she should also be subject to action under the PRIA
Code of Ethics for breaches of clauses 1, 2 and 3 of that Code. PACCD officials may have convinced themselves they were acting in the public interest by not pursuing the issue of a correction with the office of the Minister. Their self-justifications before the Senate Committee, while illuminating, were not convincing, and not only damage the professional reputations of the individuals, but perpetuate the widespread community perception that the practice of public relations is inherently unethical.

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