PRESENTATION

“Independent Advisory Committees: Whose advice is it anyway?”

Beyond Fragmented Government: Governance in the Public Sector
15 August, 2005
Victoria University City Campus,
12th Floor, 300 Flinders St, Melbourne, Australia

Introduction

I would like to thank the organizers of this meeting for the opportunity to discuss with you my fifteen years experience and observations in working with advisory committees, both in the private and public sector. In doing so, I must also acknowledge and thank the members of those committees with whom I have worked. My only qualification is that the comments I make today represent an amalgamation of my experiences with those Committees and any assumption that I am singling out any one Committee or any one individual is erroneous. And I would again stress that my talk today is from a practitioner’s viewpoint and my theories of advisory committee governance based on that perspective.

Advisory Committees are established for a variety of reasons. While their basis may lay in legislation and therefore there exists a mandated set of Terms of Reference for their activities, many are established to further a policy aim. Advisory Committees may be established to provide an organization with a set of skills or expertise not found within. The committee may also have the purpose of providing a venue where stakeholders and other interested parties may be brought together in a controlled environment where this would otherwise not be the case. The lifetime for a committee is equally varied with it having an ongoing function or is specifically time limited to provide its advice for a limited period, such as during the life of a project.

The role of an advisory committee is traditionally described as providing an independent source of advice for Government in its formulation and
implementation of policy. The governance of committee activities is dependent, in part, on how the term “governance” is defined.

The OECD definition of corporate governance, that is governance applied to business corporations, is “the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this it also provides that structure through which the company objectives are set, and the means of obtaining those objectives and monitoring performance”.¹

This definition, makes one recognize that governance has structure and inter relatedness with organizational processes and strategy.

Another definition comes from Justice Neville Owen QC, who as a HIH Royal Commissioner stated, “The key to good corporate governance lies in substance, not form”.²

In line with Justice Neville Owen, I define “governance” as “a way of doing”. By this I mean the evidence that governance is alive and well is measured in the actions of the committee and not limited to the expansiveness of its written procedures or minutes of its meetings.

Having said that, I would like to move to the next section of my presentation that examines more the two main parties in the advisory committee environment. Those two parties being the advisory committee and its Secretariat.

**Secretariat**

The typical practice in advisory committee operations is that its work is supported by a Secretariat located within the hosting Department that receives the committee’s advice. The role and responsibilities of the

---

¹ OECD 1999.
² AFR117-21/04/03
Secretariat in assisting the advisory committee to formulate its advice to Government and support the governance practice of the committee has not been as clearly articulated as that of the committee it serves.

Yet, the quality of support given by a Secretariat and the awareness by Secretariat members of the governance responsibilities of the Chair and individual members is, I believe, one of the most significant success factors for the committee in meeting its obligations and fulfilling its advisory purpose.

In my view, the primary role of the Secretariat is to optimize the relevance of the advice proffered by the committee to the organisation and the relevance to the committee members in formulating such advice. While “optimising relevance” sounds like an obscure role for a operational function, nonetheless, I believe, in its absence, an advisory committee potentially becomes a negative rather than a positive input into policy development; a burden, both in true costs and time, that both the organisation and the individual committee members wear.

The concept of optimising relevance is different than the role that many Secretariat officers may see for their work. The operational role of assembling agendas, distributing information to aide the committee’s deliberations and taking minutes and initiating follow-up actions arising from committee decisions is all encompassing and a significant body of work in its own right.

For a committee that has frequent meetings or a volume of work that is predetermined by the nature of the committee itself, you can understand why many Secretariats see their role as task facilitators.

However, that the Secretariat may indeed be the only interface between the advisory committee and the Department cannot be ignored. Coupled with the trend to have advisory committee membership reserved for those outside of the Department to assure that advice generated is truly seen as “independent”, the Secretariat becomes the one of the few avenues by
which the Department can influence the way in which a committee considers and delivers its advisory role.

Perhaps a simpler way of expressing this is the adage “that the quality of the product will depend on the quality of the ingredients used to make that product”. The product of an advisory committee is its advice to Government. In deriving this product, the committee relies on the collective expertise held by its members and the nature of the questions put to it, so that advice can be formulated.

The “questions put to it” arise from several sources; typically questions are raised when problems occur in the formulation of policy or in its implementation. When there is an “unknown”, such as what is an appropriate direction for policy to take or during the manifestation of that policy into programs and/or the delivery of services.

Describing the scope and nature of a problem is fundamental to its solution. Providing appropriate reference material as background information to begin the journey of problem solving means the research capacity and analytical capacity of the Secretariat in sorting out the meaningful information from the fluff is critical.

Information is often described as a tool in decision-making and the control of background information, through its comprehensiveness and its scope, lies primarily within the hands of the Secretariat. The Secretariat must ensure adequate material is presented to a committee that allows its deliberations to consider a range of options relative to the stated problem. One useful approach I have adopted in my Secretariat work is benchmarking existing solutions to similar problems. This means there must be a significant level of investigative and analytical skills in finding such points of reference.

The expertise of the advisory committee is then optimally captured through acting as the filter of practical experience in the local or Victorian context through which a solution may be constructed rather than a
problem solved. This, too, is a shift in approach for most Secretariats- the role of facilitator to construct solutions rather than solve problems. Again, with the Secretariat perhaps being the sole Departmental input into the advisory process, this is an important means by which the independence, and ultimate relevance, of a committee’s advice is shaped.

Unfortunately, in my experience, I do not see a great deal of evidence that these principles of optimising relevance and facilitating or constructing solutions, are main drivers. Perhaps it’s a resourcing issue, where more junior officers whose span of work is divided between many tasks often staff Secretariats and their contribution to advisory committee function is task orientated rather than strategic. However, given the purpose of advisory committees being the fulfilment of strategic policy aims, it appears to be an anomaly in our structural approach.

Moving to aspects of the advisory Committee itself, I would like to make some opening observations about the elephant in the advisory committee room. It is likely that every member of an advisory committee believes that for all their good work and their intended contribution towards policy and implementation strategies, the very fact that they act as an independent entity means that when their advice is heard, their activities remain relevant to the Government seeking their views and when their advice is not visibly enacted, their relevance suddenly becomes questionable and their competency may be questioned.

This situation arises when an advisory committee takes too seriously its role as the ultimate decision maker. Advice formulated by the committee is seen as the end in itself and not a means to the end of policy decision making that lay outside of itself- in Departments or through Government processes.

On the other hand, I also recognize that it may be that a committee, because of its specific role and relationship with its hosting Department, may be purposely given the role of decision making body and its advice unchallenged by a further scrutiny. This approach raises immediate
questions about where ultimate accountabilities lie and what Departmental risk management approaches are in place to deal with unintended consequences from wholesale adoption of such advice. This paper will not explore these matters further, nor do I intend to suggest that the implementation of committee advice provides any higher risk than the implementation of advice generated within a Department.

It is, however, a truth that, advice given is not advice enacted. The Secretariat, in supporting the Committee viewing its work as relevant, has an obligation to ensure that there is an opportunity for the Committee to clearly understand what purpose was served by its advice being given. Where advice has not been enacted this may be the result of a fuller consideration of other factors proving it is not to be feasible for a variety of reasons. In process, there should be a mechanism for review of the outcome of advice being given. I will offer further substantive comment on this at the end of my talk.

My last comment on the role of the Secretariat is to acknowledge its role in managing the financial resources allocated to the Committee. This management should be in accordance with Departmental process, with the principle of transparency and in keeping with the Code of Conduct for the Victorian Public Sector.

Committee
The term “advisory committee” has evolved to have an implied meaning that such a committee is largely “independent” of the organization receiving its advice. It is important to understand that this “independence” refers largely to the mode of its deliberations. Processes in establishing the advisory committee, in setting its Terms of Reference, in remunerating its members if they are not voluntary and in conveying its advice to the ultimate decision makers, statements of roles and responsibilities of advisory committee members are all predetermined by Government. The Public Administration Act 2004 does this in very explicit ways; within Departments and programs there may also be written guidance and practices that “set the stage”.
I have been challenged in the past with the notion of committee independence being compromised by these very processes. The argument focuses on the level of perceived interference in committee matters of the Secretariat. There is an additional claim that such interference derails the committee’s autonomy. Given that the Third Edition of the Oxford Concise Australian Dictionary defines “autonomy” as “1. the right to self government and 2. acting independently or having the freedom to do so”, I am afraid that my response is “yes, the processes that control advisory committee operation do limit the autonomy of the committee, but not the autonomy of its deliberations.”

A key point to remember is that the advisory committee is in a “relationship” with its hosting Department, and through it, Government. That relationship is best described as a partnership, but not of equal partners. It is a relationship that should seek to construct solutions and enhance policy decision-making but not share accountability for the outcome of those decisions.

Perhaps I can better illustrate this concept by constructing a “what’s mine”, “what’s yours” and “what’s ours” diagram.

<table>
<thead>
<tr>
<th>GOVERNMENT- What’s mine”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recruitment and appointment</td>
</tr>
<tr>
<td>Terms of Reference</td>
</tr>
<tr>
<td>Resource support and financial accountability</td>
</tr>
<tr>
<td>Induction of committee members</td>
</tr>
<tr>
<td>Enactment of advice (decision making)</td>
</tr>
<tr>
<td>Feedback on committee effectiveness</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMMITTEE- “What’s yours”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autonomous Deliberation</td>
</tr>
<tr>
<td>Implementing Standard Operating Procedures</td>
</tr>
<tr>
<td>Management of conflicts of interest</td>
</tr>
<tr>
<td>Formulation of advice</td>
</tr>
<tr>
<td>Reporting on activities against performance indicators</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GOVERNMENT + COMMITTEE- “What’s ours”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Operating Procedures</td>
</tr>
<tr>
<td>Setting of performance indicators of effectiveness</td>
</tr>
<tr>
<td>Annual Workplan</td>
</tr>
<tr>
<td>Periodic Review of committee effectiveness</td>
</tr>
<tr>
<td>Consultation/engagement with other stakeholders</td>
</tr>
</tbody>
</table>
Through the following examples, I will endeavor to highlight areas where I recommend change for improvements in practice- again remembering that governance is in the “doing” not the “declaring”.

Most Departments have procedural guidelines for establishing and managing the operation of advisory committees. Recruitment of advisory committee members may require public advertisement at the time when a vacancy occurs and there may be a limit to the number of terms of service for an individual member. The composition of the advisory committee may be determined under the committee’s Terms of Reference or it may be determined locally.

While understanding there are circumstances where the nature of a given committee may be quite technical and there are clear needs for specific and specified expertise, I advocate for all advisory committees to have lay representation from the community or communities impacted by the enactment of the committee’s policy advice. This is particularly important where Government relies solely on an advisory committee for policy advice.

There is another area of expertise that I advocate be included on all advisory committees. That is the expert in the areas of public ethics, governance and Government processes. A senior Departmental officer would ideally provide such comment to set the contextual framework for the formulation of policy advice. I would suggest the Government officer come from a different Department to the hosting Department to mitigate claims of interference. While this recommendation is in contrast to current Government policy, too often I have seen the lack of knowledgeable Government input lead to advice that appears to ignore the public environment. By having formal representation on the committee, the Secretariat may be relieved of this de facto role.

The Terms of Reference and the Standard Operating Procedures enable advisory committees to undertake appropriate governance practices. My observation is these documents are often left to one side once a
committee develops a “style of operation”. It is arguable, however, that the Terms of Reference and the Standard Operating Procedures should be frequently referenced in the committee’s operations: during the setting of the agenda, in the provision of advice by outlining, in part, the justification for that advice and in the running of the meeting itself. Members could be called on to provide a periodic declaration of their familiarity with both.

In order to retain relevance and usefulness, the Terms of Reference, and to a lesser extent, the Standard Operating Procedures require periodic review and re-affirmation by both the advisory committee and Government. Such review provides the means of retaining committee connectedness to the strategic objectives of the organization.

As a further means of ensuring what I have earlier called committee relevance, the advisory committee and the Department should agree a set of performance indicators of committee effectiveness. Again, a periodic review of performance against committee effectiveness indicators could lead to a better alignment of committee activities in the context of policy development and implementation strategies.

Even better in ensuring transparency and consistency in practice would be the central development of overarching effectiveness indicators for all advisory committees.

Lastly, I would like to comment briefly on the importance of ongoing and genuine dialogue between an advisory committee and the Government that established it. I have observed many committees, once established, left entirely to their own devices. Agendas and workplans, if created, appear to have little relevance to current issues and may institutionalize an advisory culture of reactiveness rather than responsiveness. Through initiatives such as the introduction of committee effectiveness indicators, agreed forward workplans and periodic review of procedures and outcomes, the partnership of advisory committee and Government will be enhanced. In addition, transparency in the practice of recruitment and
vacancy management, combined with appropriate and adequate resourcing of the committee Secretariat and access to expertise, in both the lay and Government perspective, that allows the committee to formulate a more informed position will better position all interested parties to achieve good governance.

There is another type of advisory committee that should be mentioned. This is the internal interdepartmental government committee that formulates a whole of Government position. I believe such Committees should operate under the same rigorous framework I have described for independent advisory committees including periodic review of processes and performance.

**Things to consider and alternative ways of capturing independent views**

Independent advisory committees, of course, are not the only means by which Government seeks advice on policy development and implementation. In addition, the distribution of issues/discussion papers and calls for submissions on policy options from either the general public or targeted stakeholders are equally important avenues.

Perhaps the outcomes of such alternative ways of capturing independent views should be made available to advisory committees, not, as perhaps could be inferred, to seek further advice on advice but as a benchmarking exercise by which the committee can measure the scope and focus of how it perceives a particular policy issue.

In my talk I have emphasized the importance of constructing a solution rather than solving a problem. Below I have summarized some key initiatives in the overall governance of independent advisory committee practice that may lead to better understanding and practice. The list is inclusive but not exhaustive and I am sure independent advice could be sought on its value!
Some initiatives moving towards constructing the solution:

- Secretariat officers should receive training in the principles of good governance.
- A common (whole of Government) set of standards should be developed for Secretariat operations.
- An annual Departmental review and feedback on the outcome of advice given by should take place.
- Appointment of advisory committee members should occur at the highest level or through transparent delegation to an authorized officer.
- All advisory committee places should be declared vacant at the end of a term of office.
- All advisory committee should operate under an agreed annual workplan that is in alignment with its Terms of Reference.
- Membership of an advisory committee should include Departmental representation as a means of informing advice formulation, but not necessarily representation from the host Department. Conflict of interests in this approach would need to be managed appropriately.
- Membership of an advisory committee should include “lay” representation from the community/communities impacted by the outcome of the advice.

Summary

My personal involvement with advisory committees has been rich and rewarding. However, from time to time, I have found myself lying awake at three in the morning facing another advisory committee meeting in the coming day, and understanding what it must be like for people who wake up and find themselves in a strange city without any recollection of how they got there or how they are going to get home to a safe place. It’s during these times that I have reflected on various approaches that can make the advisory committee experience more fruitful and meaningful for all involved.

I hope my presentation today has saved you from those early mornings and provided you with some ideas for the safe journey home. Thankyou.