

## Second Opinion Advice – Making it count

Second opinion advice is when you are informing your Minister/s on another agency's policy advice to their Minister, because it has implications for your agency or your statutory role and therefore for your Minister's portfolio responsibilities.

### Its basis is set out in the Cabinet Office Manual

The Cabinet Office Manual<sup>1</sup> sets out the rules and processes for formal consultation with other departments on Cabinet papers. This underpins the process and framework for second opinion advice. Of course, it also applies to other papers going to Ministerial working groups, Ministers' meetings and to individual Ministers as well, not just Cabinet papers.

### Many agencies provide second opinion advice

All agencies provide some second opinion advice, but some provide more than others. The main types are:

- **Central agencies** – Treasury and SSC in particular. DPMC may be consulted, but provides its formal advice directly to the Prime Minister.
- **Treaty implications** – Te Puni Kōkiri and Te Arawhiti.
- **Population agencies** – which provide advice on the particular implications for the population they represent.
- **Agencies with specific statutory roles** – a number of agencies have specific statutory roles and have a responsibility to provide advice on matters related to these roles, e.g. LINZ in regard to Crown Land; Archives NZ (part of the Department of Internal Affairs).

- **Operational agencies** – typically those who will be responsible for implementing particular policies, regulations or legislation.
- **Sector leaders** – in regard to matters being taken forward by other agencies in their sector, e.g. the Ministry of Justice on a Police proposal.
- **Special interest/expertise** – agencies with specific interests or responsibilities, e.g. the Ministry for the Environment; or the Ministry of Foreign Affairs and Trade.

A small number of agencies provide their Minister/s with advice on all or most papers being considered by any Cabinet Committee they are on and for all Cabinet papers, e.g. DPMC provides short briefings for the Prime Minister on all Cabinet papers; Treasury provides their Minister a report on all papers to be considered at key Cabinet Committees, where their Minister is a member; MSD traditionally provides a short report for their Minister on all Cabinet papers on which they had been consulted.

### It's usually done after a process of engagement with the other agency

It's not just about the final part of the process involving papers going to Ministers. Ideally, for significant issues there should have been interagency engagement well before the final policy or legislative proposals are developed and put up to Ministers.

This should enable any implications for your agency to be ironed out, and incorporated in the paper, well before proposals get to Ministers.

While this should be 'standard operating procedure', it won't always be the case. At times, agencies just get a draft Cabinet paper at the very end of the process.

<sup>1</sup> <https://dpmc.govt.nz/publications/cabinet-paper-consultation-departments>

Even if you do have the opportunity to contribute, your Minister<sup>2</sup> may still require advice on the issue, that is, second opinion advice.

### Even at last minute, it's worth a discussion with the agency responsible for the advice

Most agencies will give you a heads-up that something might be coming late in the process. Obviously, it's better if they involve you earlier, but these matters are not necessarily always in their hands!

Even if the paper is sprung on you, talk to the agency responsible to clarify any points you don't understand, and the strategic fit and importance of the advice.

Once you've done your analysis of the advice – if you have issues – it is well worth a discussion with the agency responsible for the advice. They may be able to do last minute modifications to the advice to address your concerns or at least discuss any issues with their Minister.

This is easier if you have established working relationships, and can understand the pressures you are both under.

### Your Minister may well not know much about the issues

Second opinion advice is not the same as the regular policy advice you give to your Minister on their portfolio responsibilities. It's often on a topic that your Minister doesn't know much about.

So, this means you will have to carefully explain the advice and its objectives, as well as the implications for your Minister's responsibilities.

Explain how advice fits within wider government objectives and work plans. This will give your Minister a sense of priority and importance. You can usually get this from the Cabinet paper itself, or by talking to the agency responsible for the advice.

Remember, your advice has to help your Minister explain the implications of the proposal to other Ministers – who also might have limited knowledge of the issue or have only considered it from their own perspective.

The challenge is explaining a complex issue in simple, but not simplistic, terms. Plain English is

vital. Your arguments (that your Minister will make) have to sell themselves to other Ministers on a single hearing.

While Ministers are confident and articulate (they are politicians after all), they may be apprehensive about questioning another Minister's proposal. The Minister leading the work is highly likely to know more about the issue than your Minister (thus questions rather than a direct challenge might be a less confrontational way of making the point). This may be further compounded if that Minister is senior, and/or in a different party. So, the quality of your advice needs to be absolutely on the nail in order to properly support your Minister.

### Make your advice authoritative

You and your Minister are often on the back foot, with second opinion advice, especially if you are not fully supportive of the proposal. The responsible Minister, and their agency are likely to know far more about the issue. However, they may not have thought about it from your perspective.

Your advice will be more authoritative if underpinned by:

- Legislative provisions.
- Clarity about Ministerial responsibilities, i.e. explaining why your Minister has a stake in this issue.
- Data on the implications, e.g. for a particular population group, a sector, or on the implementation required.
- Relevant and striking examples – these can help further explain the issue.

That can be hard to do at last minute, on a topic you know little about. But you can make a good fist of it, even under time pressure, by drawing on your own portfolio expertise, other relevant experts, ready to access data sources,<sup>3</sup> and a quick internet search.

### Avoid weak plays

There are two points we often see raised in second opinion advice.

<sup>2</sup> Some Ministers like to have advice on every paper the agency has been consulted on and listed in the consultation section of

a Cabinet papers – just in case he/she gets any questions about the implications for the agency.

<sup>3</sup> See our Masterclass on Access to Knowledge no 33, 2020.

These are:

- **There is no evidence to support the proposal** – there are many situations where there is little or no evidence for a proposal, or no New Zealand evidence. This could be because it's a new situation or an innovative policy. It doesn't necessarily mean it shouldn't be done.
- **We weren't consulted** – it may be true, but it's not that important to Ministers, especially Ministers who want to get things done. However, it is worth mentioning how much time you've had to respond to the issue – there will be some latitude given for things that have a very quick turnaround.

When these are raised, they are often done badly. At best they can come off as whinging, and aren't at all helpful to your Minister, or other Ministers in resolving the issue.

This isn't the place for bureaucratic squabbling. In a similar vein to the comments above, it rarely goes down well with Ministers – and is perceived as a weakness of your agency and the public service as a whole. Focus on the issues and possible solutions, not any history of process failures.

### Be practical

Offer solutions, not just problems.

It's not that helpful to just outline the issues with a proposal.

Suggest some modifications to the proposal which could address the issues you have, if possible. Or at least a quick process to enable major issues to be sorted out, e.g. a report-back to joint Ministers on implementation issues.

### Avoid adjectives and emotional language

As with tricky joint papers, if you strongly disagree with the proposal it's easy to slip into the trap of using strong language or excessive adjectives to try and make your points have more impact.

This moves your policy advice away from that usual professional evidence-based approach to something more like advocacy. It tends to backfire as it undermines the credibility of your advice – especially if you can't back it up with data and

evidence. It doesn't improve the quality of your advice.

Our best advice is to avoid this temptation. If you need qualifiers – then use data, examples, or reference expert opinion.

### Be clear about your advice and what you recommend your Minister does

Not only should you set out any issues with the proposal, and be very clear about your agency's view of the matter. Make sure you are clear as to what action you are recommending to the Minister, e.g. raise some questions, offer some alternatives, speak to the responsible Minister ahead of the upcoming meeting, or just support the paper. Suggest a course of action appropriate to the importance of the issue.

Ministers can struggle for speaking time at a Cabinet Committee with a lot of papers on the agenda and a lot of other colleagues all wanting a say. Make it count.

There is more on the range of possible responses in the table on the next page.

You may need to suggest a Plan B – in case your Minister's arguments aren't accepted first time around. Our earlier Masterclass on tactical advice<sup>4</sup> covers this ground.

Provide ready to use talking points for your Minister.<sup>5</sup>

### No surprises

Brief your Minister on any major areas of disagreement (or strong support) as early as practical. Their colleagues may discuss issues with them informally, before the actual advice lands at a Ministerial meeting or Cabinet Committee. And there might be things that your Minister can do to influence the process early in the piece.

Your Minister won't thank you for only finding out at the actual meeting – either from colleagues, other officials, or your comments in the paper. Ministers like to be prepared.

Raising major issues with another Minister's proposals can be a challenge – especially for new Ministers, or less senior ones. You'll need to give them time to think about the issue, and plan their approach.

<sup>4</sup> [https://nzier.org.nz/static/media/filer\\_public/f4/e6/f4e66b18-53ee-430b-a61d-b55efc7d592f/brief\\_22\\_tactical\\_advice\\_2.pdf](https://nzier.org.nz/static/media/filer_public/f4/e6/f4e66b18-53ee-430b-a61d-b55efc7d592f/brief_22_tactical_advice_2.pdf)

<sup>5</sup> [https://www.nzier.org.nz/hubfs/Masterclasses/Central%20Government/brief\\_no\\_4\\_masterclass\\_talking\\_points.pdf](https://www.nzier.org.nz/hubfs/Masterclasses/Central%20Government/brief_no_4_masterclass_talking_points.pdf)

This can be done in weekly reports, meeting briefs, or aides-mémoire/reports.

Many agencies do simple one-page briefings on Cabinet Committee papers which they have been involved in to support their Minister. These are typically highly structured, and written in a way that makes them especially easy to read at pace and use in the meeting. The sorts of things they cover are:

- A very short summary of the proposal – including references to key aspects of the substantive paper concerned, e.g. by paragraph number.
- Clear identification of any issues (positive or negative) that relate to your Minister's responsibilities.
- Recommendations for action by the Minister.
- If needed, recommendations for the resolution of issues.
- A very quick recap of the process you've already undertaken to sort it out


### In summary – the second opinion advice continuum

There are different types of second opinion advice. It can be strongly supportive of the policy proposal on the table. In this case it might point out the benefits of the proposal, and how it helps your Minister to meet their own priorities.

On the other hand, it may raise serious issues about the proposal, which haven't been addressed. We think of it in terms of a continuum. Deciding where you are on the spectrum helps you to frame the advice you are giving.

The table below sets out this continuum of views, and what you therefore need to think about and include in your briefing.

**Table 1 Second opinion advice continuum**



Pitch	Things to include
Strong support	Clearly identify the benefits (and strategic fit) for your Minister’s portfolio (use data and examples). Recommend your Minister speaks in support of the proposal. Provide talking points (from your Minister’s portfolio perspective – not just repeating the thrust of the arguments in the paper).
Moderate support	Identify benefits for your Minister’s portfolio. Consider whether or not to recommend your Minister speaks to the paper (if so, provide relevant talking points as above).
Neutral	Provide assurance that there are little or no implications. Recommendation to just support the paper.
Some concerns	Clearly explain the issues. Provide talking points for your Minister which explain those concerns. Consider doing this in the form of questions for your Minister to raise. It is a useful less confrontational and constructive approach. Make sure your advice includes solutions to the points raised.
Major concerns	Clearly outline those concerns – provide solid evidence and examples. Include alternative recommendations which modify the proposals to make sure they address the issues raised. Consider suggesting that your Minister contacts the Minister responsible for the paper ahead of the meeting to explain his/her concerns. As a last resort, suggest that the proposal is withdrawn and re-worked. Include clear talking points covering both concerns and suggested solutions.

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