

Parliamentary principles and performances

Ministerial responsibility: reality or myth?

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Introduction

The role of individual ministerial responsibility in relation to departmental errors in current Parliaments is a vexed question. Does ministerial responsibility still exist, or indeed, has it ever existed, or has it been just a parliamentary tactic for the media and opposition parties? Indeed, do current parliaments operate in a totally different manner to when the concept of ministerial responsibility was first conceived?

This paper briefly explores the use of ministerial responsibility over the years. It also explores whether executive governments and a strong party system, as well as the establishment of outside scrutiny agents and bodies (including the recently announced reforms in Victoria), means that individual ministerial responsibility is a thing of the past and no longer accepted as a responsible convention in modern parliaments. The rise of the influence of ministerial advisors in decision-making as another rung of authority is briefly considered.

Origin of ministerial responsibility

The origin of ministerial responsibility, in relation to the expectation that ministers should resign for departmental errors, is unclear, but it appears to be one of those parliamentary conventions that has developed over the years and since has been confirmed over a number of years, as part of the Westminster system of government. Any historical analysis of its origins is hard to find. In Australia, according to the House of Representatives Practice (1989), ‘... the concept of ministerial responsibility ...[is] for all practical purposes the subject of constitutional convention.’

A number of generally accepted forms of ministerial responsibility do exist:

either ‘collective cabinet responsibility’ or ‘individual ministerial responsibility’.

This paper, however, addresses individual ministerial responsibility, particularly the ‘convention’ that ministers should resign their portfolio, if their department or their offices make serious errors in the execution of their duties. (op. cit.)

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Fortunately, a great deal has been written on the subject of individual ministerial responsibility, however, the theory of it seems to be better understood than the reality. The call for resignation for departmental faults is a catch-cry, generally of the media and opposition parties, when trying to claim a political victim. There seem to be significant assumptions made in some of the literature and media that in some 'unspecified olden days' ministers resigned from their positions when public servants made mistakes. However, there is very little evidence that, in the parliaments of Britain and Australia, this ever occurred.

One famous case often quoted is that of the resignation of Sir Thomas Dugdale in the Crichton Down affair in the UK in 1954.¹ On closer examination, however, this case shows there were other factors at work.

Indeed, uncharacteristically, some media recognise this fact. As *The Australian*² reported:

No Australian minister has ever stepped down in accordance with the traditional doctrine of ministerial responsibility, whereby a minister should resign over public service failures within their department.

Come to think of it, no minister anywhere in the Westminster world has resigned on such terms. The closest example was in 1954 in Britain, when Thomas Dugdale resigned over the Crichton Down Affair — a case about requisitioned land not being returned to its original owners. Archive materials released years after the event suggested the minister may have personally been involved in covering up the problem- the real reason he stepped down.

Further, as Marshall (1989) outlines speaking of the House of Commons:

... an examination of ministerial resignations in the twentieth century indicated no succession of clear cases on which to found a convention about individual answerability of ministers to the Commons in the resigning sense.

Whilst there is a history of ministerial resignations, it is difficult to substantiate an argument that it was common practice for ministers to resign over departmental faults. There are obviously some cases when ministers must resign, such as involvement in criminal activities, conflict of interest, conflicting business deals, indiscretions, and the like. In fact, resignations of ministers, for other than personal breaches, are rare and generally only occur when the political party to which the minister belongs decides that s/he should go. In these cases, ministerial responsibility is more of a convenient tool, than a matter of conscience.

Having said that, the belief that Ministers resigned in the past is widely held and, by looking at statements made in earlier times about ministerial responsibility, this is

¹ The Crichton Down Inquiry was held into the operations of the Ministry of Agriculture and the Crown Lands Commission in 1954. In this case the general view was that the Prime Minister and his colleagues were unwilling to support him.

² Peter van Onselen, Contributing Editor, *The Australian*, 24/2/2010.

understandable. As Lowell³ said in 1919 ‘The Minister is alone responsible for everything done in his department ...’ or Lord Morrison⁴ said in 1964 ‘... the Minister is responsible for every stamp stuck on an envelope’.

These comments can be misinterpreted. Whilst they indicate that the minister is responsible for the department, there is no suggestion that the minister should resign for every mistake made by staff. More recent commentators such as Sir John Hunt,⁵ in 1977, expressed a different view — ‘The concept that because somebody whom the Minister has never heard of has made a mistake that the Minister should resign is out of date and rightly so’.

As Callinan (2008) more recently has explained:

One frequently reads assertions that a minister having failed to answer accurately, albeit not dishonestly, a question which he or she has been asked in parliament, or his or her attention having been drawn to a failure within his or her department should resign. Perhaps there was a time when that was a consequence that should follow. But imposing that requirement upon a minister, such as, for example, a Treasurer, or a minister presiding over the Department of Social Security, and necessarily many thousands of public servants of different degrees of seniority, efficiency and ability, is an altogether different thing from imposing it on the minister in charge of the British Colonial Office in mid-nineteenth century England, when the total staff did not exceed thirty-three.

The current nature of parliaments and departments

Regardless of historical perspectives, however, parliaments are very different in the 21st century to that at the time of their establishment. So are departments. Indeed, not only are they different, the whole nature of the interaction between ministers and departmental staff has changed, extending the gap between the levels of control and accountability. Public servants (with perhaps the exception of the permanent head and senior officers) do not report regularly to ministers. We have created a new level of administration — the ministerial adviser — a growth sector in most parliaments. For example, looking at Victoria, in the current Premier’s office we have 10 policy advisors, five strategy advisors, two communication advisors and two community engagement advisors

This is apart from the Chief-of-Staff, a personal assistant and so on. There are now significant ‘filters’ both in the ministerial office and departmental structures, relating to the functioning of departments. These officers in the past have also been

³ Lowell, A.S., *The Government of England*, rev. edn, 1919, p 73 quoted in Marshall, *op. cit.* p 7

⁴ Lord Morrison. *Government and Parliament* 3rd edn, 1964, p 329 quoted in Marshall *op. cit.*, p 7

⁵ Eleventh Report from the Expenditure Committee (The Civil Service) HC 535(1977) quotes in Marshall, *op. cit.* p 11

protected by a convention that their advice to the minister is confidential. The often-used defence of this convention is that, if the advisers to the minister can be publically assessed, they will not give full and frank advice. However, the role of ministerial advisors has been questioned in recent times suggesting that they are more active than just giving advice, and in some cases have a decision-making role.

In Australia, it is claimed by Walter⁶ and others that there is clear evidence of ministerial advisers being used to make decisions, and direct staff, thus allowing governments to impose a barrier to scrutiny by the parliament.

Abjorsensen (2007), speaking of the British Parliament, says:

The formal delegation of ministerial authority is easily justified in terms of managerial efficiency and streamlined administration. But such a defence ignores the affront to principles of ministerial accountability and the Westminster system that such empowerment of unelected, and unaccountable, individuals inevitably entails. It represents a corruption of the executive, the parliament, and the civil service.

Whilst there are some codes of conduct for ministerial advisers federally, there is no such code in Victoria.

Recently in Victoria the Proust Review⁷ gave authority for a new officer — the Parliamentary Integrity Commissioner — to investigate breaches of standards not only by MPs but to the publically paid employees of members, including ministerial officers:

Contributors to the Review supported the extension of accountability arrangements to ministerial officers, noting that such officers are paid with public money and are highly influential. They may determine the flow of information reaching ministers, and represent ministers to the public via the media. These officers perform functions as a direct extension of ministers and should be subject to investigations from the same integrity body investigating ministers.

The roles of ministerial advisers creates a further barrier between the minister and departmental actions. Departmental actions are, of course, undertaken by many people — there are thousands of staff in some departments such as Justice and Health — so to suggest that the minister is responsible for all of their actions is nonsensical.

Relevance of ministerial accountability

So what responsibility do ministers have in our current parliament and is the concept of individual responsibility no longer relevant?

⁶ Walter, James. Discussion paper 13/06 quoted in Discussion paper 12/07, Democratic Audit of Australia, ANU, Canberra, 2007.

⁷ Review of Victoria's integrity and anti-corruption system, 2010, p 26.

The House of Representatives Practice (1989) outlines the situation in Australia:

During this century there has been a change in the perceptions of both Ministers and informed commentators as to what is required by the convention of individual ministerial responsibility. The real practical limitations on strict adherence to the convention as it was traditionally conceived are now openly acknowledged.

In relation to Westminster systems, Woodhouse (1994) explains:

...the decline of parliamentary power was directly linked to the increasing importance of the electorate, as the prime source of government power, and the development of party politics. After the passing of the 1867 Reform Act, the role of the House of Commons began to change. Its main purpose became to support the elected government and to pass its legislation. Acting as a check on the executive became a function of the Opposition, and thus of limited effectiveness, as the party machine, operated by the Whip's Office, imposed ever tighter party discipline. The priorities of the House therefore changed. It acted first as a legislative machine and only second as a check upon the executive.

It can also be argued that the development of strong party discipline has also diminished responsibility into a broader executive responsibility, in which individual ministerial resignation does not fit. Woodhouse⁸ continues quoting the Royal Commission on Australian Government Administration:

It is through ministers that the whole of the administration — departments, statutory bodies and agencies of one kind and another — is responsible to the Parliament and thus, ultimately, to the people. Ministerial responsibility to the Parliament is a matter of constitutional convention rather than law. It is not tied to any authoritative text, or amenable to judicial interpretation or resolution. Because of its conventional character, the principles and values on which it rests may undergo change and their very status as conventions be placed in doubt. In recent times the vitality of some of the traditional conceptions of a ministerial responsibility has been called into question, and there is little evidence that a minister's responsibility is now seen as requiring him to bear the blame for all the faults and shortcomings of his public service subordinates, regardless of his own involvement, or to tender his resignation in every case where fault is found. The evidence tends to suggest rather than while ministers continue to be held accountable to Parliament in the sense of being obliged to answer to it when Parliament so demands, and to indicate corrective action if that is called for, they themselves are not held culpable — and in consequence bound to resign or suffer dismissal- unless the action which stands condemned was theirs, or taken on their direction, or was action with which they ought obviously to have been concerned.

Raffin (2008) accepts that individual ministerial responsibility is not a part of current political reality in Australia. He reflects on the Howard Years, particularly the Howard Government's *A Guide on Key Elements of Ministerial Responsibility*.

⁸ Australian Government Administration Report of Royal Commission, pp. 185 59–60 as quoted in *House of Representatives Practice op. cit.*, p 87–8.

He outlines the ministers that resigned during the Howard years, and the reason for their resignations:

- Jim Short, Assistant Treasurer — conflict of interest (ANZ bank shares)
- Brian Gibson, Parliamentary Secretary to the Treasurer — conflict of interest (Boral Shares)
- Peter McGauren (and others) — misuse of travel budget
- Geoff Prosser — failure to disclose ownership of shopping centres
- Ian Campbell — meeting with Brian Bourke
- Santo Santoro — failure to disclose personal shareholding transactions.

In Victoria, the previous Minister for Transport, Lynne Kosky, was called on by the opposition to resign because trains were late; Justin Madden, the Minister for Planning, because of a leak to the media from an adviser; Bob Cameron, Minister for Police, for a number of operational matters relating to the police, and Lisa Neville, Minister for Community Services, regarding failures in the child protection system.

None resigned and nor did ministers in the former Liberal Government for departmental faults.

The next question is then, does it matter? What changes if a minister resigns? It is difficult to find any evidence that the resignation of a minister has changed anything.

A strong case can be made that it does not as, in the current political system, there are many avenues for ministers and public servants to be examined and kept accountable. There is continual scrutiny of the way in which departments operate and members of parliament operate through such bodies as Corruption Commissions, Ombudsman Offices, Privileges Committees, Auditor General's Offices, and Parliamentary committees such as Public Accounts and Estimates Committees. In reality, therefore, ministerial responsibility for departmental faults is a myth.

While there is now general acceptance that it does not exist, there is scant evidence to suggest it existed in the first place, except in the flowery speeches of our forefathers, none of whom ever resigned from a ministerial position. As Uhr (2005) outlines: 'Parliamentary advocates of stricter standards of ministerial responsibility tend to come from opposition ranks, and they tend sometimes to lead but, more often, to follow lines of attack initiated by the press'.

As stated earlier, in modern Parliaments, there are many accountability mechanisms that are more effective and more controlled than calls for ministerial resignation for departmental performance. As Uhr (2005) continues: 'Conventional approaches

treat ministerial responsibility as though it referred to one standard: a lofty ideal, usually far removed from the everyday realities of political reality’.

Ministers, however, do need to be responsible to the executive, the parliament and the community but through a number of other mechanisms. With the creation of additional external bodies which have authority above that of parliament, we have essentially changed the nature of political accountability of the executive and the government.

The recent Proust report in Victoria identifies the current bodies that are in place with the power to scrutinise the actions of the government and the public service in Australia:

- New South Wales — the Independent Commission Against Corruption
- Western Australia — Corruption and Crime Commission
- Queensland — Crime and Misconduct Commission
- Tasmania — Integrity Commission

The Victorian model is a little different to that of other States. The Victorian Integrity and Anti-Corruption Commission will have the power to investigate allegations of serious misconduct and corruption in the public sector and local government, including whistleblower complaints. It will comprise three independent officers of the Victorian Parliament, the Public Service Integrity Commissioner, Director, Police Integrity, and the Chief Municipal Inspector.

However, another body will be established — the Parliamentary Integrity Commissioner (PIC) — to receive and investigate complaints about the conduct of members of parliament and their publically-funded employees. This will be overseen by the Privileges Committees of the two houses of the Victorian parliament. The PIC investigation of breaches of standards will extend to publically paid officials.

It is interesting that the Proust report acknowledges the power and responsibility of ministerial advisers. The right of the community to examine the role of ministerial advisers is one that may become more topical in the future. Currently, in the Victorian parliament, an opposition dominated upper house committee has sought to interview a media adviser to the Minister for Planning regarding a leaked email. The Attorney General has recommended the adviser not attend on the basis that this has been the ‘convention’ in the past. At date of writing, this matter is yet to be resolved but has been referred to the Ombudsman committee.

Resignation is not the only form of individual ministerial responsibility — ministers still need to be responsible for informing both the parliament and the people about the policies they are enacting. They are also responsible for ensuring that departmental failures or mistakes are rectified. As stated previously, in modern parliaments there are many checks and balances on ministers that are more effective

in procuring good government than the resignation of a minister. With rigid party systems, the current forms of parliament in Australia, ministerial resignation for departmental faults would be an ineffective tool to achieve the goal of an open and accountable government.

Modern parliament and departments make the notion that ministers should resign for departmental errors untenable. Modern-day parliaments have wide scrutiny mechanisms in place to examine the executive and the government, however, the role of ministerial advisers and the appropriateness of scrutiny of their actions is perhaps a topic suitable for further examination. ▲

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