



**AUSTRALASIAN STUDY OF PARLIAMENT GROUP
CONFERENCE 2010**

**THE GOOD, THE BAD AND THE UGLY
Perceptions of Parliament**

**Session 4 – Parliamentary principles and
performance**

Ministerial responsibility: reality or myth?

Judy Maddigan, MP

Parliament of Victoria



Ministerial Responsibility: Reality or Myth?

Abstract.

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 Parliaments this century 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.

Individual Ministerial Responsibility: Reality or Myth?

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.

The origins of the concept are obscure, and any historical analysis of its origins is hard to find.

In Australia, according to the House of Representatives Practice:¹ *...the concept of ministerial responsibility ...[is] for all practical purposes the subject of constitutional convention.*

There are a number of generally accepted forms of ministerial responsibility: - either 'collective cabinet responsibility' or 'individual ministerial responsibility', however this paper will address 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.

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 rolled out

¹ House of Representatives Practice. Second edition. Ed. Browning A.R. AGPS. Canberra 1989. P.85

generally by 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 Crichel Down affair in the UK in 1954.² However a closer examination of this case shows that there were other factors at work.

Indeed, even some media recognise this fact. As the Australian³ 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 Crichel Down Affair – a case about requisitioned land not being returned to its original owners. Archive materials

² The Crichel 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.

³ Peter van Onselen, Contributing Editor The Australian. 24/2/2010.

released years after the event suggested the minister may have personally been involved in covering up the problem- the real reason he stepped down.

Indeed, as Marshall⁴ 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, etc

In fact, resignations of Ministers, for other than personal breaches, are rare and normally only occur when the political party to which the Minister belongs decides that the Minister should go. In these cases, ministerial responsibility is more of a convenient tool, than a matter of conscience.

However, the belief that Ministers resigned in the past is widely held. If you look at some of the statements made in earlier times about ministerial responsibility this is understandable. As Lowell⁵ says in 1919, *--The Minister*

⁴ Ministerial Responsibility ed. Marshall,G. Oxford University Press. Oxford. 1989.P.5

⁵ Lowell,A.S. The Government of England.Rev.ed.1919,p73 quoted in Marshall.op.cit P 7

is alone responsible for everything done in his department or Lord Morrison⁶
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 Hunt⁷, in 1977, have 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 Callinan⁸ (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

⁶ Lord Morrison. *Government and Parliament* 3rd.ed. 1964 P329 quoted in Marshall.op.cit.P7

⁷ Eleventh Report from the Expenditure Committee (The Civil Service) HC 535(1977) quotes in Marshall op.cit. P 11

⁸ Callinan,I.D.F. *Responsible Government in Dilution*. Quadrant. April 2008

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.

Regardless of historical perspectives, however, Parliaments are very different in the 21st century to that at the time of their establishment. In reality, 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 Advisor, a growth sector in most Parliaments. For example, looking at Victoria, in the Premier's office we have:

10 : policy advisors

5 : strategy advisors

2 : communication advisors

3 : community engagement advisors

This is apart from 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 protected by a convention that their advice to Minister is confidential. The often used defence of this convention is that if the advisors

to the Minister can be publicly assessed they will not give full and frank advice
However, the role of ministerial advisors has been questioned in recent times.
It has been suggested that they more active than just giving advice, and in
some cases have a decision making role.

In Australia, it is claimed by Walter⁹ and others that there is clear evidence of
ministerial advisors being used to make decisions, and direct staff, thus
allowing governments to impose a barrier to scrutiny by the parliament.

Abjorsensen¹⁰ speaking of the British Parliament, said:-

*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 , individual inevitably entails. It represents a corruption of the
executive, the parliament, and the civil service.*

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

In Victoria the Proust Review¹¹ gives authority for a new officer- the
Parliamentary Integrity Commissioner to investigate breaches of standards

⁹ Walter, James. Discussion paper 13/06 quoted in Discussion paper 12/07, democratic Audit of
Australia. ANU. canberra. 2007.

¹⁰ Aborensen, Norman. Defining the role of ministerial advisors . Discussion paper 12/07 (July 2007)
Democratic Audit of Australia. ANU. Canberra.

not only to Members of Parliament but also to publicly 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 advisors 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 like Justice and Health, so to suggest that the Minister is responsible for all of their actions is nonsensical.

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

The House of Representatives Practice¹² 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

¹¹ Review of Victoria's integrity and anti-corruption system. 2010 p26.

¹² House of Representatives Practice 2nd.ed.Browning,A.R. Australian Government Publishing Service. Canberra. 1989. P. 87.

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, Woodhouse¹³ 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.

Woodhouse¹⁴ continues quoting the Royal Commission on Australian Government Administration:

¹³ Woodhouse, ,Diana. Ministers and Parliament: Accountability in Theory and Practice. Clarendon Press Oxford. 1994.P15

¹⁴ Australian Government Administration Report of Royal Commission PP185 59-60 as quoted in House of Representatives Practice op.cit. P.87-88

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.

An article by Raffin¹⁵ 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*.

¹⁵ Raffin, Luke *Individual Ministerial Responsibility During the Howard years 1996-2007* Australian Journal of Politics and History Volume 54 Number 2, pp.225-247.

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

1. Jim Short, Assistant Treasurer: conflict of interest (ANZ bank shares)
2. Brian Gibson, Parliamentary Secretary to the Treasurer: Conflict of interest (Boral Shares)
3. Peter Mc Gauren and others: misuse of travel budget
4. Geoff Prosser: failure to disclose ownership of shopping centres
5. Ian Campbell: Meeting with Brian Bourke
6. Santo Santoro: Failure to disclose personal shareholding transactions.

In Victoria, the previous Transport Minister, 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 a Ministerial Advisor; 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 no Ministers in the former Liberal Government resigned for departmental faults either.

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 doesn't because 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 I.C.A.C.s, Ombudsman Offices, Privileges Committees, Auditor General's Offices, and

Parliamentary committees such as Public Accounts and Estimates Committees and so on. In reality, therefore, ministerial responsibility for departmental faults is a myth.

Whilst there is general acceptance that it does not exist, there is very little evidence to suggest that it ever existed, except in the flowery speeches of our forefathers, none of whom ever resigned from a Ministerial position. It has always been a convention favoured by the Opposition and media, but it is very difficult to find record of Ministers who have resigned for departmental failures.

As Uhr¹⁶ 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.

In modern Parliaments there are many accountability mechanisms for the Executive Government, more suited to our 21st century Parliaments that are more effective and more controlled than calls for ministerial resignation for departmental performance.

Uhr¹⁷ continues

¹⁶ Uhr, John *Ministerial Responsibility in Australia : 2005*. 2005 Constitutional Law Conference. UNSW Sydney 18/2/2005 p.1

¹⁷ Uhr. *ibid.* p1

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 for their actions.

They are responsible to the Executive, the Parliament, and the community but through a number of other mechanisms.

In addition, with the creation of 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 be comprised of 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 (P.I.C.) – to receive and investigate complaints about the conduct of Members of Parliament and their publicly-funded employees. This will be overseen by the Privileges Committees of the two Houses of the Victorian Parliament.

The P.I.C. investigation of breaches of standards will extend to publicly paid officials.

It is interesting that the Proust report acknowledges the power and responsibility of ministerial advisors. The rights of the community to examine the role of Ministerial advisors are 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 Advisor of the Minister for Planning regarding a leaked email. The Attorney General has advised the Advisor not to attend on the basis that this has been the ‘convention’ in the past. This matter is yet to be resolved, but currently has been referred to the Ombudsman by the Upper House 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 mentioned 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 ought to resign for departmental errors untenable. In conclusion, modern day parliaments have wide scrutiny mechanisms in place to examine the executive and the Government.

However, the role of Ministerial Advisors and the appropriateness of scrutiny of their actions is perhaps a topic suitable for further examination.

Bibliography

- Abjorensen, Norman. *Defining the role of ministerial advisors*. Discussion Paper 12/07 (July 2007) Democratic Audit of Australia. ANU. Canberra. 2007.
- Callinan ,I. D. F. *Responsible Government in Dilution*. Quadrant. April 2008.
- Coghill, K. et. al. *Why Accountability Must be Renewed*. Melbourne. 2006.
- House of Representatives Practice*. 2nd.ed. .Browning. A. R. ed. Australian Government Publishing Service. Canberra 1989.
- Marshall, Geoffrey. Ed. *Ministerial Responsibility*. Oxford University Press.1989.
- Mulgan, Richard. *On Ministerial Resignations (and the Lack Thereof)*. Australian Journal of Public Administration. 61(1) Australia 2002.Blackwell Publishing Limited.
- Raffin, Luke. *Individual Ministerial responsibility During the Howard Years:1996-2007*. Australian Journal of politics and History. Volume 54, Number 2, 2008.
- Tiernan, Anne. *Power without Responsibility* University of New South Wales Press.Sydney.2007
- Uhr, John *Ministerial Responsibility in Australia: 2005*. 2005 Constitutional Law Conference UNSW Sydney 18th February 2005
- Van Onselen, Peter. The Australian 24th February 2010.
- Waltes,R.H. & Rogers, Robert *How Parliament Works* 5th.ed. Great Britain.Dorsset Press.1987
- Wiseman, H. V. *Parliament and the Executive: an analysis with readings*. Routledge and Kegan Paul. London 1966.
- Woodhouse, David. *Ministers and Parliament: Accountability in Theory and Practice*. Oxford University Press. Oxford.1994.