

Independent Parliamentarians and Accountable Government[#]

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Readers should not be misled by the title of this article since not all Independent members of parliament privilege accountability over representation. Of the 21 currently¹ serving Independents only six referred to accountability in their inaugural addresses to parliament. More typical was a New South Wales Independent who stated he ran for parliament ‘to remove the threat of open-cut mining in the Lake Macquarie electorate’.² Some seek to combine the two functions often depending on whether they are in a lower or upper chamber. Holding governments to account is not exclusively an ‘Independents’ burden’; unfashionable as it may now be to say so, all non-executive members of parliament share the responsibility. Also, we should resist the temptation to sanctify or demonise big parties, small parties or Independents since none has a monopoly on political virtue.

Independents have been a feature of the Australian political landscape for a very long time and that there are today 21 of them in the nine lower houses.³ Their existence has spawned a modest literature⁴ and they provoke strong opinions. Independent MP Clover Moore has stated that the current ‘independent movement’ is based on a ‘a set of ideals and principles’, but Ken Baxter, then a Victorian public sector mandarin, believed in 1994 that Independents should be scorned because:

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¹ At the time of writing in 2007

² Greg Piper, *New South Wales Parliamentary Debates (Assembly)*, 9 May 2007, p 96.

³ For a list of current and former Independent MPs see <http://www.sisr.net/apo/independents.pdf>

⁴ Peter Andren, *The Andren Report: An Independent Way in Australian Politics*, Scribe, Melbourne, 2003; Phil Cleary, *Cleary:Independent*, Harper Collins, Melbourne, 1998; Brian Costar and Jennifer Curtin, *Rebels with a Cause: Independents in Australian Politics*, UNSW Press, Sydney, 2004; Ian Moles, *A Majority of One: Tom Aickens and Independent Politics in Queensland*, UQP, Brisbane, 1979; Rodney Smith, *Against the Machines: Minor Parties and Independents in New South Wales 1910–2006*, Federation Press, Sydney, 2006.

The leader must have the authority to exercise must have the authority to exercise his or her role and should have a clear majority in both houses of Parliament. I am doubtful if Australia can afford the indulgence of independents at such a critical time in its evolution.⁵

Of greater relevance to this paper is political scientist and philosopher, Graham Maddox's concern that:

A small group of independents striking agreements in conclave and certainly beyond the public gaze, are now in a position to propose, and demand action upon policies which have never been presented in a coherent way to the ... electorate⁶ (is potentially corrosive of democracy).

The remainder of this article investigates whether the parliamentary and other 'accountability' reforms negotiated by Independents in a number of Australian jurisdictions between 1989 and 2002 by way of *Charters of Good Governance* have proved durable or have been laid aside by subsequent majority governments. The overall conclusion is that the record is patchy with the 1989 *Tasmanian Parliamentary Accord* being the least effective and the *Independents Charter Victoria 1999* being the most effective — but, as will be illustrated, with still a long way to go.

Some commentators have argued that Independents exert little impact on policy or standards of governance save when they hold the 'balance of power' in hung parliaments.⁷ While this contention is contestable,⁸ it is true that the six accountability *Charters* discussed here were negotiated in the context of neither of the major parties having a majority in the lower house and requiring the support of Independents to form government. The ACT is now the only jurisdiction with a minority government, but over the previous decade and a half the states of New South Wales, Victoria, Queensland, Tasmania and South Australia all experienced the phenomenon.

The 'charters' considered in this paper are: *The Tasmanian Parliamentary Accord* (1989) between the ALP and Green Independents — later renegotiated with the Liberal Party; *The Memorandum of Understanding* (1991) between three NSW Independents and the Coalition; *The Agreement* (1996) between a Queensland Independent and the Coalition; *The Agreement (1998)* between a different Queensland Independent and the ALP; *The Independents' Charter Victoria 1999* with the ALP; and the *Compact of Good Government* (2002) between a South Australian Independent and the ALP. While there was a degree of cross-fertilisation among the Charters, they were not identical and had variable immediate and long term impacts.

⁵ Both quoted in Costar and Curtin, *op cit*, pp 83–4 (five years later Baxter's 'leader', Jeff Kennett, was removed from office by three Independents).

⁶ Graham Maddox, 'Political Stability, Independents and the Two Party System', *Current Affairs Bulletin*, 69(1), p 24

⁷ Antony Green, 'Untitled paper delivered to Independents' Conference', Canberra, 2001.

⁸ See, for example, Peter Browne in Costar and Curtin, *op cit*, pp 57–71.

Ironically, the trail blazing Tasmanian Accord actually reduced the opportunity for the parliament to hold the executive to account. The document was very prescriptive in the area of environmental policy but only one of its 17 clauses addressed parliamentary reform. The Accord collapsed in acrimony in 1991 and again with the Liberal Party as partner in 1994. The two major parties then combined to reduce the size of the House of Assembly from 35 to 25 with the clear intention of making it more difficult for minor parties and Independents to secure election. This was one example of the cartelization of the Australian party system.

The 1991 NSW Memorandum, in contrast with Tasmania's, said little about policy and a great deal about accountability. The 50th Parliament of NSW certainly operated differently to most of its predecessors, but in reviewing its longer term impact in 2003 Independent Clover Moore complained that once majority government returned in 1995 'some of the parliamentary reforms we achieved have been watered down or effectively set aside'.⁹ However, the Independents did achieve the constitutional reforms (by way of referendum and without much enthusiasm from the big parties) of entrenching the independence of the judiciary and fixed date elections. Given the 'winner take all' culture of the NSW parliament, it came as something of a surprise when ALP premier Morris Iemma made Independent MP Richard Torbay Speaker in 2007.

The compact struck between Queensland Independent Liz Cunningham and the National and Liberal parties in 1996 hardly qualifies as a Charter at all. It was completely devoid of detail and made no accountability demands on the in-coming minority government. Cunningham's decision was influenced by her approval of the conservative social policies of the coalition. The Borbidge government was controversial and cavalier in regard to standards of accountability. When the tsunami of One Nation swept away its majority in 1998, a different Independent, Peter Wellington, negotiated an agreement with the ALP confirmed in a six page letter from in-coming premier Peter Beattie. Beattie committed to a range of relatively minor parliamentary reforms, to maintain a budget surplus and to better regulate ministerial expense accounts. He refused, however, to agree to the implementation of Citizen Initiated Referendums (CIR).¹⁰

CIR and parliamentary reform were central to the agreement reached between South Australian Independent Peter Lewis and the ALP after the February 2002 election produced a House of Assembly of 23 Labor members, 20 Liberals and four Independents. As a former Liberal MP, Lewis' decision to install an ALP government was highly controversial, and was later challenged unsuccessfully by the Liberal party in the Supreme Court.¹¹ The novelty of the South Australian Charter was the insistence of Lewis, who became the Speaker, that the government 'facilitate Constitutional and Parliamentary reform by establishing a South

⁹ *NSWPD A*, 25 June 2003, p 61.

¹⁰ Costar and Curtin, *op cit*, p 34.

¹¹ *Ibid*, pp 35-7.

Australian Constitutional Commission to conduct a review of the Constitution and Parliament and to report to parliament by 30th June 2003 ...' Lewis specified CIR, cutting the number of politicians, reforming the Legislative Council and ensuring the independence of certain public officials as particular issues.¹²

The conference was held from 8 to 10 August 2003 when 330 randomly selected South Australians gathered at Parliament House to debate a range of constitutional issues by way of a deliberative poll.¹³ The conference supported CIR, upper house reform including a reduction to a four year term, and the adoption of optional preferential voting. In October 2004 Independent Kris Hanna introduced seven bills to give effect to the convention's recommendations, but a month later Lewis had to concede that none of his agenda had come to fruition.¹⁴ In fact, while the Labor government of Mike Rann included an Independent in cabinet, it has determined to abolish the Legislative Council, though whether this happens remains to be seen.¹⁵

The rest of this article consists of an 'accountability audit' of the *Independents' Charter Victoria 1999*. How much of the Charter did successive Labor governments implement between 1999 and 2007? The story of how the Charter came into being is well known and won't be re-told here.¹⁶ The Charter had two discrete sections: the longest sought to 'provide for stable, open and accountable government'; and the second sought to establish 'clear plans, strategies and targets to address the urgent needs of Rural Victoria' (all three Independents held regional constituencies). The general consensus is the Bracks' government delivered on its commitment to regional Victoria. It was in its electoral interests to do so since it was that part of the state that turned out the Kennett coalition government¹⁷. Yet the promise to re-open the Vineland rail service to north western Victoria was not honoured and the allocation of water between city and country was a contentious issue at the 2006 state election.¹⁸

Of course auditing public policy promises over an eight year period is more difficult than checking on whether specific parliamentary reforms were fulfilled. The following is a list of those sections of the Charter that were honoured by the government.

1. The Auditor-General's powers were restored.
2. Fixed date four year terms for both houses of parliament were introduced.

¹² Peter Lewis' *Compact for Good Government*, 8 July 2002, pp 2–3.

¹³ Clement Macintyre, 'Deliberating the Constitution' *Australian Policy Online*, 25 August 2003.

¹⁴ *SAPDA*, 13 October 2004; and *ABC TV Stateline*, 12 November 2004.

¹⁵ *Independent Weekly*, 24–30 March 2007.

¹⁶ See Costar and Curtin, *op cit*, 37–42.

¹⁷ See Dennis Woodward & Brian Costar, 'The Victorian Election of 18 September 1999: Another Case of Electoral Volatility?', *APSR*, 35(1), 2000, pp 125–33

¹⁸ C Macdonald, G Gardiner & B Costar, 'The 2006 Victorian State Election', *Research Paper*, Parliament of Victoria, February 2007.

3. The upper house was reformed and a new STV PR electoral system was introduced.
4. A Constitutional Commission was established in 2002, but its brief was to recommend on reformed bicameralism rather than 'conduct a thorough review of the Constitution and Parliament'.
5. No further privatisations of public sector utilities have occurred, but only two have been reversed. Also some claim that the government's Public Private Partnerships (PPPs) are a form of privatisation.
6. While it was not mentioned explicitly in the Independents' Charter, the government gave effect to its spirit by way of the *Charter of Human Rights and Responsibilities Act 2006*.

The following areas contentious: that the Charter's requirement that the FOI legislation be reformed has not yet happened is evident in newly-appointed Premier John Brumby's 2007 promise to draft 'new legislation to reform the FOI Act';¹⁹ Parliamentary Standing Orders were reformed but remain vulnerable to been over ridden by Sessional Orders eg by introducing a guillotine in the Legislative Council, and t here is little visible evidence that the culture of Question Time in either chamber has altered for the better.

Two years after its adoption Independent MP Susan Davies summarized progress on the implementation of the Charter:

There have been many achievements. Some of them are on the go, and some of them are still to come. The fact that some of them are on the go rather than actually being in place has in itself become a bit of an issue that needs addressing. There have been some disappointments.²⁰

Six years later a former President of Liberty Victoria wrote on the retirement of Steve Bracks as premier that: 'There is no doubt that after eight years of Steve Bracks' Premiership, Victoria's democratic institutions are in much better shape than when he came into office.'²¹

There also can't be any doubt that there is unfinished Victorian business. While the Legislative Council has been reformed, its committee system remains undeveloped — at least from an accountability perspective. While a Council-only Legislation Committee has been created, there is confusion over its role and, save for a three month trial in 2006, no legislation has been referred to it. The Council has currently underway two inquiries by way of Select Committees on which government supporters are in a minority. The Select Committee on Gaming Licensing has been denounced by the government as 'a witch hunt' and the Attorney-General has asserted a broad interpretation of 'executive privilege' to restrain public servants

¹⁹ Media Release, 'Brumby Vows to Strengthen Accountability in Victoria', 7 August 2007.

²⁰ Susan Davies, *VPD A*, 10 October 2001, p 894.

²¹ Joseph O'Reilly, 'Bracks and Democracy', *New Matilda*, 1 August 2007.

answering questions.²² In reaction the Legislative Council voted in November 2007 to establish a standing committee on Finance and Public Administration Committee. Government members spoke and voted against the initiative, again confirming Meg Russell's observation that even committed democrats when in government resist close scrutiny.²³ ▲

²² Parliament of Victoria, Select Committee of the Legislative Council on Gaming Licensing, *First Interim Report*, July 2007.

²³ Meg Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press, 2000, p 339.