

Access to Published or Publishable Information from Departments of State: The Convention in ‘Washminster’-Style Parliaments*

June Verrier**

Abstract

This paper examines the link between access to information and the quality of democracy as the background to examining one convention underpinning the role played by parliamentary libraries and research services is assisting legislatures to hold executives to account. In ‘Washminster’ style parliaments, in particular in the UK, the US, Canada, Australia and New Zealand, it is generally accepted that parliamentary libraries and research services have access to information from departments of state for published or publishable information to assist them provide advice to Senators and Members. This paper looks at the evolution of more sophisticated research and analysis services in these countries and illustrates some aspects of the convention in practice. This convention is occasionally challenged in areas of policy sensitivity and the more there is executive dominance of the parliament.

Introduction

Part of the machinery of the legislature in a robust ‘Washminster’¹ style democracy is the existence of independent parliamentary library and research services which provide information, analysis and advice to assist elected representatives, the Parliament, hold the Executive, the Government, to account. To do their job

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** June Verrier is Assistant Secretary and Head of Parliamentary Information and Research Service.

¹ The expression Washminster was first coined by Elaine Thompson, ‘The Washminster Mutation’, in D. Jaensch and P. Weller (eds) *Responsible Government in Australia*, Drummond, 1980.

effectively parliamentary libraries and research services must have highly qualified specialist staff, a capacity to produce independent, confidential, quality, timely and impartial advice, and have the background, the networks and the framework in order to do so. Part of that framework in Westminster-style parliaments (for the purposes of this discussion Australia, the United Kingdom, Canada, New Zealand and the US) is the convention of access to published or publishable information from departments of state.

But this is just a convention, and typically conventions do not enjoy — or are not limited by — rules and regulations but are governed by evolving practice.

This article sets out as much foundation as exists for the convention of access by parliamentary libraries and research services to departments and government agencies for published or publishable information. It begins by canvassing the link between democracy and access to information,² and the parallel link between a parliament's ability to hold the executive to account and the development of parliamentary libraries and research services. It goes on to draw out the paradox that will continue to confound the relationship between parliamentary libraries and research services and departments of state and make the development of those relationships something for careful and continuing management. That is, that just as ministers cannot direct staff of parliamentary libraries and research services to channel requests for information from their departments to be made through their office, nor can staff of parliamentary libraries and research services require staff of departments of state to provide the information they need to respond to requests from Senators or Members.

In practice, this calls for a good understanding among the staff both of parliamentary libraries and research services and of departments of state about the conventions of parliamentary democracy and the limits that may from time to time apply in the ebb and flow of the relationship, noting the efficiencies of informal staff-to-staff access to departments of state for published or publishable information.

Background

As parliaments move across the democratic spectrum from what Robinson and Miko have described as the rubber-stamp parliament to the informed legislature, so they develop access to increasingly sophisticated and specialist expertise

² This link is the subject of more discussion by parliamentarians in the context of debate about increasing executive dominance. See for example reference to the need for 'a strong and competent research service to support Parliamentarians' in 'Parliament and the executive: Building a more effective partnership', 49th Commonwealth Parliamentary Conference Dhaka, Bangladesh, 4–12 October 2003. *The Parliamentarian* 2004/Issue One, p. 12.

capable of producing high quality, timely analysis and advice, projections and policy options.³

The second half of the twentieth century was characterised by the spread of democracy in many parts of the world and a corresponding development in many parliaments of information and research services. This trend continues — witness the struggle to achieve parliamentary democracy in countries as wide ranging as Indonesia, Hong Kong, Kenya,⁴ the national units of the former Soviet Union⁵ and even Saudi Arabia — a struggle which is reflected in the business of the Parliamentary Libraries and Research Services Section of the International Federation of Libraries Association (IFLA). Here, representatives of Parliamentary Libraries and (often embryonic) Research Services come together annually to share experiences in developing and delivering information and research services in the broad range of parliaments which they represent.

The basic principles of democracy are those of political equality and popular control of government. Between elections the popular control of government is largely exercised by parliament, on behalf of the people. It requires parliamentarians not only to have the formal power to hold governments to account but also access to the information and analysis that will enable them to perform this role effectively. The increased complexity and pace of government has meant that 'traditional' parliamentary libraries have had to evolve to keep up with the needs of parliamentarians performing the function of executive scrutiny and oversight. Correspondingly, parliamentary research and information services are a crucial link in the chain of democratic accountability.

³ W H Robinson and F. Miko, 'Parliamentary Development Assistance in Central Europe and the Former Soviet Union: Some Lessons from Experience' L D Longley (ed.) *Working Papers on Comparative Legislative Studies*, Appleton, Wisconsin: Research Committee of Legislative Specialists of the IPSA. 1994 p. 413.

⁴ On a recent visit to Australia, Kenyan MPs indicated that there was a struggle in the newly democratic Kenya to fund a parliamentary library in a political culture which had been totalitarian and which sought to prevent access by MPs to information. Among their interests were mechanisms to protect such resources as are provided for the provision of information and research services from diversion by governments to other purposes.

⁵ There has been a huge effort to fast track the development of democratic institutions in the countries of Eastern Europe following the break up of the former Soviet Union, including significant assistance from the United States to assist them develop the kinds of information and research support that is now taken for granted in western democracies. In his introduction to *Parliamentary Libraries and Research Services in Central and Eastern Europe: Building More Effective Legislatures*, edited by William H. Robinson and Raymond Gastelum, KG Saur, Munchen, 1988, Bill Robinson introduces the 1990–96 efforts of the Special Task Force on the Development of Parliamentary Institutions, created in the House of Representatives in 1990 following the fall of the Berlin Wall, which had the CRS spend \$US28m to help 12 legislatures in Central and Eastern Europe 'build stronger libraries, research capacities, and information capabilities (p. ix) He concludes p. viii 'Knowledge IS power. For too long and in too many places, knowledge has been the monopoly of authoritarian structures and the handmaiden of autarky.'

The relationship between the emergence of robust democracy and the development out of 'traditional' libraries of research and analysis services is well established.⁶ Access to information is seen to be essential if legislatures are to be able to hold the executive to account.⁷ Richard Mulgan observes in his examination of the concept: 'Accountability depends on the free flow of appropriate information and on effective forums for discussion and cross-examination ...'.⁸ Access to information may also have a constitutional dimension:

...comments in *Lange* seem consistent with at least a minimal protection for the supply of information to the public, either directly or through Parliament. ... In addition the implied freedom may prevent the denial of information by the executive to Parliament. For example, individual members of Parliament might have rights of access to information held by the executive, even if citizens do not. This becomes more important where Parliament is controlled by the executive and opposition members are unable to obtain information through parliamentary processes. The constitutional protection of the supply of information to Parliament may be a legitimate implication arising from responsible government (*Lange* (1997) 189 CLR 520 at 561; *British Steel Corp v Granada Television Ltd* (1981) AC 1096 at 1168). This would also be consistent with the comments of the High Court in *Egan v Willis* relating to the necessity for parliamentary scrutiny of the executive (1998 195 CLR 424 at 451–2 per Gaudron, Gummow and Hayne JJ, at 475–476 per McHugh J, at 501–503 per Kirby J).⁹

Thus one manifestation of the quality of democratic accountability is the provision of resources by governments to parliament. Perhaps the strongest statement in favour of this proposition has been made by William H Robinson, a longstanding senior member of the staff of the Congressional Research Service:

For a variety of reasons, the executive apparatus of most nations has a tendency to acquire virtual monopoly power. That tendency is exacerbated by our increasing reliance on experts and technology, globalization of the economy coupled with the

⁶ For information about the kinds of services that have emerged in other countries, see *Parliamentary Library, Research and Information Services of Western Europe*, J. Tanfield (ed.), European Centre for Parliamentary Research and Documentation, Brussels, 2000, and *Parliamentary Libraries and Research Services in Central and Eastern Europe: building more effective legislatures*, W.H. Robinson and R. Gastelum (eds), KG Saur, Munchen, Germany, 1998 (IFLA Publications 87).

⁷ For example, in Bruce Stone's 'Keeping the Government Honest: Executive Accountability', chapter 7 of *Power and Freedom in Modern Politics*, J. Moon and B. Stone (eds), UWA Press 2002, Bruce Stone examines the WA Inc issue as a problem of ministerial accountability. He notes the Westminster system's exclusive focus on ministerial accountability and its recent weakening. The Western Australian Commissions which examined the WA Inc issue 'saw accountability as depending ultimately on the free flow of information from government to citizens and their representatives. Information is the key to accountability was the catchcry of the Royal Commission ...', p. 109. Stone also records that the Commission noted that the increasing trend to outsource more government contracts led to a corresponding increase in the use of commercial-in-confidence as an obstacle to the release of information.

⁸ Mulgan R, 'Accountability: An Ever Expanding Concept?' *Public Administration*, 2000, 78(3): 567.

⁹ See Jolly R, The implied freedom of political communication and disclosure of government information, *Federal Law Review* 2000, 28(1): 56.

central position of the executive in foreign affairs... Armed with the power that knowledge brings, the legislature can be a partial check on these monopolizing powers ... a strong legislature, with the capacity to gather its own information independently of the executive is also in a position to counter any incipient tendencies to authoritarian action (or even preventing the state of mind that would lead to such an outcome).¹⁰

Presenting a paper at a meeting of the European Centre for Parliamentary Research and Documentation (ECPRD,) Kiev, Ukraine, 25 May 2000, Robinson put forward eight propositions about the role research can play in legislative decision making. These included a contribution to institutional dynamics, perceived legitimacy and quality decision making and that research for the legislature can position it to play a more active role in the policy process of the nation. He also suggests that it contributes to a more pluralistic political process and to democracy itself by giving more people an effective voice in making decision about their own governance.

Whether a parliament will be effective in holding a government to account is likely to be the result of a number of factors including the personalities in play, party distribution and strength and the kinds of issues that come before it. In Australia, chamber balance is also a factor. Since 1949 the Government has had the majority in the Senate only from 1975 — 1981 and from July 2005. In these circumstances access for all across the political spectrum to independent, confidential, impartial, timely, accurate, quality information and research services able to draw on adequate and appropriate sources of information to assist them is a significant characteristic of the democratic dynamic.

The western democratic experience

Because of its historical links and constitutional genesis, Australia looks to the UK, the US, Canada and New Zealand for models and parallels in its parliamentary practice. This examination of the origins of one common practice or convention, that of access by parliamentary libraries and research services to departments of state for published or publishable information, is therefore confined to these countries.

All began with the provision of traditional library services — although until professional librarians took control of them, mostly following WWII, these were more gentlemen's reading and writing rooms than the active services they became. They developed to focus on the collection of parliamentary materials and the provision of specific services, including eventually electronic services, to assist, in Australia's case, Senators and Members in their parliamentary and representational roles.

¹⁰ William H. Robinson 2001, *Legislative Research: Essential Roles and Standards of Excellence*.

As the pressure on parliamentarians grew along with the sophistication of their requirements for assistance,¹¹ there came the need for assistance of a different kind — analysis, assessment and advice, comparisons and extrapolations, and policy options to assist the increasingly demanding and complex requirements of a peoples' elected representatives.

The loss of the leisurely pace of parliamentary life was lamented by Gordon Scholes, the member for Corio and Speaker of the House of Representatives from February to November 1975 when he said in 1991 that 'whereas once this House could, and did, devote a whole month to a Bill — as in April 1947, to the Conciliation and Arbitration Bill — today it is lucky to devote an hour'.¹²

A Legislative Reference Service was formed in the Library of Congress in 1914 to provide the US Congress with its library needs. In a history of this institution, Goodrum and Dalrymple point out that 'when Congress faced the demands of a post-war world and felt it needed not only the books and documents that carried the information it required, but also specialists skilled in understanding, interpreting and applying the knowledge to legislative solutions,' the Legislative Reorganisation Act of 1946 added subject specialists.¹³ Instead of helping inquirers to do the research themselves, these 'handled the query completely and presented the inquirer with the finished product — searched, compared, projected and packaged'.¹⁴ In the 1960s, when there was what these same authors conclude was a growing frustration in Congress with the 'imperial presidencies of Kennedy, Johnson and Nixon':

They wanted to free themselves from the one-sided information provided by the executive agencies, which always seemed to add up to the single solution advanced by the White House, so they trebled the size of the Legislative Reference Service
...¹⁵

¹¹ Parliamentarians' requests over time have grown in complexity and depth along with the complexity of issues before them — and their own capacity to deal with them. There is, generally, a correlation between MPs' educational background and their place on the information-research continuum:

Number of Parliamentarians with University Education — with % of Party in brackets

Year	Liberal Party	National Party	Labor Party	Other	Total	Total No. of Members and Senators	% of Total with University education
1945	3 (12)	2 (14)	9 (13)	0	14	111	13%
1956	32 (39)	1 (4)	12 (15)	0	45	184	24%
1966	30 (40)	3 (12)	15 (19)	2	50	184	27%
1972	29 (49)	3 (12)	27 (29)	4	63	185	34%
1983	33 (58)	3 (14)	52 (50)	3	91	188	48%
1993	51 (65)	8 (38)	68 (62)	10	137	223	61%
2003	82 (82)	9 (53)	72 (77)	11	174	226	77%

Source: Information from the *Parliamentary Handbooks* for the 17th, 22nd, 25th, 28th, 33rd, 37th and 40th Parliaments, compiled by Martin Lumb.

¹² He is quoted in Dr David Lovell, *The Sausage Makers? Parliamentarians as Legislators*, Department of the Parliamentary Library, Political Studies Fellow Monograph No.1, Australian Government Publishing Service, Canberra 1994, p. 3.

¹³ Charles A. Goodrum and Helen W. Dalrymple, *The Library of Congress*, Westview Press Inc., USA, 1982 p.129.

¹⁴ Ibid.

¹⁵ Ibid p. 130.

That service became the Congressional Research Service (CRS) with a staff of 700.

The Legislative Reorganisation Act makes the US unique in that it provides the statutory basis for access to information from departments and agencies of state when such information is required by a Congressional Committee. The Act states that the CRS's first Duty of Service is to be of assistance to committees. It is in this context that it mandates access for the CRS to departments and agencies of state:

and in the performance of this duty the Service shall have the authority, when so authorized by a committee and acting as the agent of that committee, to request of any department or agency of the United States the production of such books, records, correspondence, memoranda, papers, and documents as the Service considers necessary, and such department or agency of the United States shall comply...¹⁶

The legislation is silent on access on behalf of Members of Congress for non-committee requests. However, the contacts and networks established in the course of the former could be expected to facilitate the latter. Notable and unique also are the budgetary provisions for the CRS whereby it receives funding from the legislature as an institution. 'The executive does not intrude on the legislature's decision about the resources it deems essential for its operations.'¹⁷

The role of assistance to committees listed as the CRS's first duty in the Legislative Reorganisation Act is given different emphasis elsewhere. The research services of the UK were established in 1946 as part of the Parliamentary Library and today have a strength of 80. The charter of the Parliamentary Library of the House of Commons is broader and, for example, includes drafting responses to constituents' letters. In Canada the Research Branch was established in 1965 with 6 staff, added 10 researchers in 1972 to provide the research function for committees and now stands at 77 researchers; about 60% of professional staff time is spent on committee work. Canada has recently followed the Australian example of 1997 in amalgamating its library and research service.

In New Zealand a research function was added to the Parliamentary Library in the mid 1970s with the appointment of a statistician, a first economist in 1989 and a lawyer in 1993. Today it stands at twelve. In Australia, in the mid-sixties, there was a push to create what began as the Legislative Research Service in 1966 and became the Parliamentary Research Service in 1990 to bring in house access to analytical expertise that, until then, those members who wanted it were seeking in ad hoc ways from the Australian National or other universities. Before it was amalgamated with the Parliamentary Library Information Service in 1997, the Parliamentary Research Service had a staff of up to 60 highly qualified research specialists (analysts). Today it stands at approximately 55 who are organised in mixed professional subject teams with approximately 40 librarians (information specialists).

¹⁶ 2 USC166.

¹⁷ William H. Robinson 2001, op cit. p. 569.

Access to departments and agencies of state

A central issue for all of them is access to information — and independent access to information. Departments of State are a key link in the information chain. On the occasion of what became known as the Albanese issue which arose in Australia in 2000,¹⁸ help and advice was sought from the UK, US and Canada on parallels in their parliaments and whether there was a western democratic norm in respect of assumptions about direct access to departments and agencies of state for published or publishable information. Mr Albanese, the member for Grayndler, had asked a question about ‘the proper functioning of the Parliamentary Library’ and raised concerns that a minister had directed it to send requests for information to his department through his office. Mr Albanese asked that the issue be investigated to ‘ensure that the independence and integrity of the library are maintained’.¹⁹

From the subsequent consultation with like-minded counterparts, three things became abundantly clear: there is an understanding that parliaments/legislatures have a right to access to non-classified or non-sensitive information as part of the normal accountability of the executive to the parliament;²⁰ parliamentary libraries and research services use this access heavily and regularly and could not do their job without it;²¹ and informal, staff-to-staff contact is the most efficient and cost-effective way to get the relevant information.²²

In all cases there is recognition that departments have a right to refuse that information, or refer the request to the Minister, if the request involves a sensitive

¹⁸ An account can be found at pp. 147–50 of Dr JR Verrier, *Managing the Political Environment: Issues Arising in the Provision of Information and Research Services to Members of Parliament*, chapter 12 of *The Theory and the Practice of Developing Parliamentary Information and Research Services*, Subject Collection 2004, Department of Parliamentary Services, Commonwealth of Australia.

¹⁹ Ibid p. 148.

²⁰ Pointing out that the House of Commons Library is guided by unwritten rules and conventions in this area, the House of Commons Librarian responded to an Australian inquiry in 2000 ‘the principle that providing information to Parliament is a normal part of government accountability to Parliament is generally accepted’. Priscilla Baines, Parliamentary Librarian, the House of Commons, in correspondence with Carol Kempner, Director Social Policy Group, 30 August 2000.

²¹ ‘We draw on information from executive branch agencies on a daily basis. Most analysts have professional contacts with their counterparts in the executive branch and, indeed, cultivating those relationships is an expected part of performance. Infrequently, an agency will tell staff that they will not provide us with the information requested. In that case our Director writes a letter to the agency citing our statutory authority to obtain the information. ...’ Correspondence Scheeder (CRS) -Kempner 1 September 2000. In Australia’s case, the evidence suggests that this became a burden on department and agencies with the introduction of the outputs:outcomes reporting framework in 1999-2000 when much less information was made available in the budget papers. This made for far more work for Senate Estimates committees — and for the Parliamentary Library — to dig the information out. In the context of the Albanese issue, as it became known, a survey across the different subject specialist teams of requests made to departments of state in a typical sitting week resulted in a figure of approximately a hundred.

²² There are ‘no formal procedures required either by the Library or by government departments for obtaining information in this way’. Baines-Kempner, loc.cit.

issue²³. When the occasional break down on account of a sensitive issue occurs²⁴ the MP is advised and the logical alternative is suggested, that is to seek the information by a question on notice — despite its being recognised that this alternative route is usually more cumbersome and time costly.²⁵

The consensus was that without the informal staff-to-staff access to government departments and agencies to assist parliamentarians with their inquiries, parliamentary libraries and research services cannot do their job.

Senators and Members of the Australian Parliament's own Library Committee, at a special additional meeting on 6 October 2000 following their request to Mr Speaker to look into the matter that had been raised by Mr Albanese:

were unanimous in their agreement that Parliament should not be restricted in its access to factual information that is publicly available or can be made publicly available by government departments and agencies.²⁶

The paradox

A challenge to effective parliamentary libraries and research services is to develop strategies to get access to the best possible (most accurate and up to date) information to assist MPs in their parliamentary, legislative and representational roles. These include the development of a broad range of networks to call on when the information or the expertise required cannot be found in-house — and they naturally include departments of state. As New Zealand puts it in the context of its own examination of access by the Parliamentary Library to departments of state:

The majority of information requests received by the Library appear to relate to Parliament's role of scrutinising government and approving taxation and public expenditure, therefore much of the information sought by the Library is produced by government departments and crown entities.

²³ '...it is always open to civil servants to refer specific and particularly sensitive requests for information upwards ... but as far as we know that rarely happens...'. *ibid.*

²⁴ After consulting his Research Divisions on their experiences, Hugh Finsten, Director, Research Branch, Parliamentary Library, Canada, concluded: 'In most cases our staff have direct contact with officials in Departments. Some staff frequently get information through Parliamentary Relations/Liaison offices in Departments. ... One Division indicated only a few agencies are creating an issue when we require information ... Another Division indicated that they often encounter a situation of discussing a request with an official, and expecting information to be sent within a short timeframe, then receiving a call back (or having to call them ourselves after a delay) to find that the information could not be sent without going "through the Minister's office", which I am told means the Minister's political staff. This always creates delays, and sometimes we do not get the material at all... The situation arises particularly when there has been recent political sensitivities about an issue ...'. Correspondence Hugh Finsten — JR Verrier 8 September 2000.

²⁵ Baines-Kempner, loc.cit.

²⁶ Parliament of Australia: The Parliamentary Library, Minutes of the Library Committee meeting held on Friday 6 October 2000.

Library staff have particular expertise in understanding the information needs of MPs. Library staff also have expertise in determining the most appropriate methods to source and analyse information because they understand how government departments organise and collect information. These skills enable us to provide clients with reliable, accurate and impartial information in a prompt and confidential manner.²⁷

In responding to Mr Albanese's representations on the matter in the Australian Parliament in 2000, the Speaker said:

While the minister's decision to direct requests through his office adds an additional step to the process of obtaining information, ministers are responsible to the parliament for the administration of their departments and agencies and it is open to the ministers to give that direction.²⁸

Herein the paradox: ministers have a right to direct their departments as they wish, including to refuse access, or qualify it, by setting down priorities for departmental attention. But limiting or otherwise controlling direct access to published or publishable information runs against the democratic norm or what can be argued to have become a convention. Yet it has happened in all the countries under consideration and in areas of policy sensitivity and/or where a government may be open to criticism. It tends to happen, too, as tensions rise in the run-up to a general election. And it appears that the longer a government is in office, the more likely it is to become increasingly protective of its own record.

In seeking the assistance of departments of state to provide published or publishable information, it was never the intention that this be access to classified or confidential information. In the culture of the five systems drawn on for the purpose of this discussion, there has always been a firm policy of working only with publicly available information. In seeking the assistance of departments of state to provide published or publishable information to assist respond to requests from Senators, Members or Legislators, it was never the intention that this be access to classified or confidential information. In the culture of the five systems drawn on for the purpose of this discussion, there has always been a firm policy of working only with publicly available information.

In Australia, 'publishable' means no more and no less than that the information is not classified or confidential and is therefore 'publishable'. In New Zealand 'publicly available information is generally defined as information that may or may not be published, but is available on request'.²⁹ It does not mean because something has not been published it cannot be made publicly available. There is obviously a huge amount of information which has not been published — but which could be. A

²⁷ Jill McNab and David Williams, 'The supply of published information and publicly available information from government agencies to the Parliamentary Library, Parliamentary Library of New Zealand', draft working paper, July 2004 p2.

²⁸ Hansard, 17 August 2000, Australia, House of Representatives 2000, Debates, p. 19289.

²⁹ Jill McNab and David Williams, op. cit.

former Director of Australia's Foreign Affairs and Defence Group who spent more than 30 years in the Research Service recalls its origins this way:

I think it might have first developed in the Defence Group 20 years ago to cover information that the Department was quite happy for us to have but which they would never publish in the normal course of events. Most of this was oral advice on the status of things; e.g. was the Bloggs report going to be published next month, was the figure on page 7 of the budget indeed a typo, was it correct to read the Minister's statement as implying that the air force was intending to study flying elephants without committing itself to a purchase at this stage, etc. etc. As such the Department was quite happy to help us because it saved them a lot of unnecessary angst.³⁰

This account illustrates the best kind of relationship that can be developed between staff of parliamentary libraries and research services and departments of state. It illustrates well how the phrase 'published or publishable' evolved from practice and from the practical expedient of being able to get information into the public domain quickly and easily without having to wait for annual or other reports and without having to go through the formal, more time consuming and inevitably more onerous (for departments and agencies) process of MPs seeking the information by means of placing questions on notice.

The House of Commons Library pointed out, 'we hope we have established a position of considerable trust with government departments' and 'our role and position are generally well understood by the executive'. Importantly, '... we do not normally ask questions about the sort of sensitive policy issues which they would not be able to answer'.³¹ What is clear, however, is that the strengthening of parliamentarians' access to information, analysis and advice through the development of more extensive and sophisticated information and research services at no time included access to classified material — and this in every relevant country's case. It is equally clear that there is an intention in the democratic tradition of at least the US, UK, Canada, New Zealand and Australia that if the information can be made publicly available, it should be made publicly available:

Open government is the principle that what happens in government should be open to public scrutiny and criticism on the basis of a free flow of information from public bodies to representative institutions, the mass media and the general public. As it is universally accepted that some information should be kept secret (on the grounds of national security, privacy and so on), open government is normally understood to imply a bias in favour of the public's 'right to know'.³²

³⁰ Correspondence Derek Woolner — June Verrier, 3 August 2004.

³¹ Baines-Kempner, *op.cit.*

³² Andrew Heywood, *Politics*, Macmillan 1997, chapter 19 Policy Process and System Performance, p. 392.

This principle was endorsed in correspondence on this matter with the Secretary of the Department of the Prime Minister and Cabinet, Dr Peter Shergold, (the most senior bureaucrat in the Australian system) which expressed concern about the growing trend to require requests from the Parliamentary Library to be channelled through the offices of Ministers of State. In his response he said:

I wholeheartedly endorse the free exchange of publicly available information between departments and the library and appreciate the flexibility provided by these exchanges operating at officer level.³³

Staff of parliamentary libraries and research services are, for members of parliaments, the brokers or intermediaries and in this role protect the anonymity of the MP concerned and thus the confidentiality of the original request. They are funded to be a professional extension of the services provided to support the democratically elected representatives of the Australian people. In them resides the expertise, the intellectual capital, the political memory — the understanding of the how, why, when and in what form Senators and Members want and need such support — and the technical abilities to do this more efficiently and effectively than the generalist staff most Members of Parliament are likely to employ.

Conclusion

Parliamentary libraries and research services are significantly different from 'traditional libraries', especially in those (fewer) cases where they are uniquely a parliamentary library providing responses for tailored information, analysis and advice to parliamentarians and are not a national or a public library.

The creation, expansion and strengthening of parliamentary libraries and research services is one illustration of the determination to strengthen democratic institutions. More broadly, the issue of access to 'public domain information' is being taken up and put in the 'quality of democracy' category. The most recent example of this is perhaps the October 2004 St Petersburg internet conference 'Information as Public Domain: Access through Libraries'. It concluded that:

... the participants of the Conference hereby confirm their view that enabling access to public domain information produced by public authorities should become fundamental to the national information policies of all nations striving for democracy and freedom of human development... The national information policy and its legislative and regulatory support should be based on the presumption of openness of government information.³⁴

Perhaps the first example of this can be found in the Wisconsin State Assembly which established a legislative research service, in this case out of the need to overcome the Tammany Hall tactics that were threatening US democracy at the turn

³³ Correspondence Dr Peter Shergold to Acting Secretary, Mr M Bolton, 24 December 2003.

³⁴ <http://www.ifla.org/faife/news/faife-declaration1004.htm>

of the twentieth century.³⁵ Subsequently, strengthening parliamentary libraries and adding to them research services able to provide analysis and advice, became a response by parliaments to secure the resources to help it hold governments to account. In the inevitably constant struggle between the executive and the legislature which characterises healthy democracies, parliamentary libraries and research services are consequently in the crossfire — or can be without the development of the most careful of protocols. Parliamentary libraries and research services thus hold a central, sensitive and privileged position which requires them both to support the legislature in its competition for power with the Executive — and to act as a broker between them.

Given the dearth of literature in this field, the origins of some of the practices, expectations and conventions that inform the resulting relationship are clear only in the context of that spirit of democracy which sees access to information as its oxygen. The strength of parliamentarians' commitment to continued access to independent, quality information and research services in contemporary parliaments, and the corresponding determination to protect the independence of parliamentary libraries and research services, can be seen to reflect an appreciation of the role they play in the accountability chain. The importance of this independence has been illustrated, most recently in Australia in the conflict over the status of the Parliamentary Library in the new combined Department of Parliamentary Services.³⁶

The issue of access by an Australian Parliamentary Library to departments of state was first raised in the New South Wales Parliament on 28 October 1986 by Mr Yeomans (Hurstville):

On a matter of privilege, I claim I have been interfered with in the performance of my duties because of a response by an officer of the Department of Youth and Community Services to a request by the Parliamentary Library seeking non-confidential information on my behalf ...

He moved:

That this House reaffirms the rights and privileges of all honourable members to have made available to them non-confidential information from government departments through the services of the Parliamentary Library.

³⁵ The Progressive governor of Wisconsin, Robert M. Follette, 'discovered the potential power of the legislative branch' to overcome the influence of corporate America over federal and state legislatures. See R Hofstadter, *The Age of Reform: from Bryan to F.D.R.*, NY: Alfred A. Knopf, 1955, p. 230.

³⁶ *International Federation of Library Associations Circular Newsletter*, Section on Library and Research Services for Parliaments, 23(6–7), June 2004, Dr J R Verrier, *Change in Australia*, p. 20–23, <http://www.ifla.org/VII/s3/news/200406-newsletter.pdf>

The motion was agreed to. The second and last (public)³⁷ occasion was in the Federal Parliament in 2000. This reflected the then increasing trend towards considerably greater obstruction from department of state to requests for published or publishable information, a trend which has continued as the incumbent government has increased in longevity and in power. The conclusion is that Australia, like its constitutional progenitors, in general accepts this principle/convention of access by parliamentary libraries and research services to departments of state for published or publishable information, but that care and common sense — and an appreciation of the prerogatives of Ministers of State — need to be taken into account in managing it.

The nature of politics and the adversarial features of Washminster-style parliamentary democracy suggest that management of relations between parliamentary libraries and research services and departments of state will continue sporadically to pose some difficulties. Nevertheless, noting the assumptions about access to information in robust democracies and the efficiencies that flow from informal, staff-to-staff access to published or publishable information, strategies need to be developed to ensure that the staff of both parliamentary libraries and research services and the staff of departments of state are familiar with issues surrounding the parliament and its relationship with the executive, including issues of privilege and accountability and the conventions that have evolved to guide this relationship. This could well be the subject of further academic study. It should certainly be a set of issues at the centre of public service training courses on parliamentary awareness. ▲

³⁷ At the end of 2003 and into 2004, the issue was again raised as a matter of concern in the Joint Library Committee (made up of the President of the Senate, the Speaker of the House of Representatives, 12 other MPs — 6 from each major party and each Chamber and the Executive of the Parliamentary Library) as there appeared, once more to be an increasing reluctance on the part of departments of state to permit the officer-to-officer arrangements to continue.

