

Executive Accountability to Parliament — Reality or Rhetoric?*

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Shortly before the recent Federal election two former Prime Ministers made a joint call for ministerial accountability to be an election issue. During the campaign they issued an open letter arguing that ‘... the constitutional principle that ministers should be held accountable for the failings of their policies or administration has been seriously undermined.’¹ Veteran Federal politics reporter, Michelle Grattan, subsequently wrote an article covering their call, which appeared in the *Melbourne Age*. While saying that ‘Accountability, at all sorts of levels, has clearly declined over the Howard years.’² She went on to state: ‘The pursuit of greater accountability is a boutique issue.’³ Yet in that election, as in all elections, State or Federal conducted in Australia in recent decades, both major political parties felt the need to pledge to the nation that they would be honest, open and accountable governments. So, is Michelle Grattan right, that while in her opinion accountability is in decline, this is a ‘boutique issue’ interesting only to former Prime Ministers and a few academics?

There are a number of major enemies of executive accountability in the modern context. These are:

- i. Party dominance of Parliament and strict party discipline which often result in the real debates on proposed government policies and legislation taking place in the Party room, and a consequent loss of transparency.
- ii. Executive dominance of the Parliament and the Party room which in recent years has been exacerbated by the advent of Parliamentary Secretaries, generally with no direct accountability to Parliament, but increasing the percentage of Members in both the parliament and the party room being committed to, and serving the interests of, the executive.

* This article has been fully refereed.

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¹ ‘The buck stops on their desks, say Whitlam, Fraser’, *Herald Sun* (Melbourne) 12 November 2007

² ‘Secrecy, spin and the right to know’, *The Age* (Melbourne) 7 November 2007.

³ Ibid.

- iii. The increased parliamentary time devoted to Government Business and the consequent loss or limitation of opposition and private Members' time.
- iv. The modern tendency of Oppositions to be obsessed with scandal, trivia and the story of the day.
- v. Media that are more focussed on opinion than analysis and that with few exceptions consider themselves to be players in politics rather than independent observers. This actually makes it easier for governments to control the media through rewarding and punishing journalists through the leaking of 'exclusives'.
- vi. A lack of respect for the institution of Parliament, its history, practices and procedures which are increasingly becoming secondary to the self interest of either Government or Opposition.
- vii. Parliamentary practices and procedures that have not kept pace with the breadth and complexity of government activity, and
- viii. A lack of understanding by Members of Parliament and the media generally of the difference between accountability and responsibility. If there is to be a strong demand for good accountability throughout the community it must be led by these people. If they fail to understand the concepts then it is likely that the community perception will also be confused.

While each of these could be the subject of analysis and consideration in its own right, this article is confined to looking at those concerning the understandings of the role of parliament, and the adequacy of its practices and procedures.

Executive accountability is at the heart of our system of government. The Westminster model is built on a foundation of three massive planks. These are the separation of powers, Parliamentary scrutiny of executive actions, and ministerial responsibility. When termites begin nibbling at any one of these planks the entire structure is in danger. The two former Prime Ministers and Michelle Grattan base their view that accountability has declined on the lack of ministerial resignations in recent years, despite the fact that the nine ministerial and Parliamentary resignations for impropriety during the term of the Howard Government were the equal greatest of any federal government in Australian history.⁴ In doing so they are confusing two of the key planks of our system and morphing them into one. Parliamentary scrutiny of executive actions is *accountability*; ministers resigning is *responsibility*, ~~and while both are important to our system they are not the same thing and it~~

⁴ The nine Ministerial and Parliamentary Secretary resignations between 1996 and 2007 were:

Senator Hon James Short, Assistant Treasurer, 14 Oct 1996

Senator Hon Brian Gibson, Parliamentary Secretary to the Treasurer, 15 Oct 1996

Senator Bob Woods, Parliamentary Secretary to the Minister for Health and Family Services, 3 Feb 1997

Geoff Prosser, Minister for Small Business and Consumer Affairs, 11 July, 1997

Hon David Jull, Minister for Administrative Services, 24 Sep 1997

John Sharp, Minister for Transport and Regional Development, 24 Sep 1997

Peter McGauran, Minister for Science and Technology, 26 Sep 1997

Senator Hon Ian Campbell, Minister for Human Services, 3 Mar 2007

Senator Santo Santoro, Minister for Ageing, 16 Mar 2007

while both are important to our system they are not the same thing and it actually hurts our system of government to confuse them.

Citizen's Circle for Accountability, a North American 'think tank' on public accountability issues has created short definitions which are useful in a consideration of what public accountability should be. Under these definitions,

1. Public accountability means the obligation of authorities to explain publicly, fully and fairly, before and after the fact how they are carrying out responsibilities that affect the public in important ways.
2. Holding to account means obtaining from authorities the public explanations we need at the time we need them, validating the reporting for its fairness and completeness and doing something sensible and fair with explanations given in good faith.⁵

These definitions are applied in the analysis in this article.

In clarifying the difference between responsibility and accountability, Citizens' Circle for Accountability says 'Responsibility is the obligation to act, which is obviously related to accountability, but it is conceptually different from accountability, the obligation to answer.'⁶ The confusion of these two concepts and the consequent reliance on the sole performance measure of ministerial resignation to judge executive accountability, is commented upon in other places. A Canadian paper, '*Clarifying the Doctrine of Ministerial Responsibility As it Applies to the Government and Parliament of Canada*' refers to Kenneth Kernaghan's 'Ministerial Responsibility: Interpretations, Implications and Information Access' report of August 2001 and says

Noteworthy is Ken Kernaghan's conclusion: emphasising the need to resign even though it seldom happens 'explains in large part the view that the doctrine of ministerial responsibility is dead or at least severely weakened.' Kernaghan argues that the resignation quest deflects attention from where it should be directed — on the securing of information. He calls it the 'answerability component' — Parliament's need to know what went wrong and how to avoid it happening again.⁷

This clarifying concept of answerability is also picked up in the report of Canada's Gomery Commission of Inquiry into the Sponsorship Program and Advertising Activities,⁸ in which answerability is defined as '... a duty to inform and explain.'⁹

⁵ 'The Issue of Public Accountability: a Summary for Citizens', Circle for accountability, <http://www.accountabilitycircle.org/>

⁶ Ibid

⁷ 'Clarifying the Doctrine of Ministerial Responsibility as it Applies to the Government and Parliament of Canada', David E Smith, p. 107

⁸ *Report of the Commission of Inquiry into the Sponsorship Program and Advertising*, Justice John Gomery, Canadian Government Publishing, November 2005,

⁹ '*Restoring Accountability— Recommendations Part One — What Has Been done?*' Report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities p. 19.

Answerability is the fundamental principle behind scrutiny of executive action and the decline in the understanding of this is at the heart of the regular criticisms of government accountability. Accountability has become inseparable from responsibility which itself is defined almost entirely in terms of allocating blame and has, as its sole performance measure, ministerial resignation. Consequently, it seems there is now a commonly held view, implicit in the comments of the two former Prime Ministers, that governments that have no resignations are held to be unaccountable and Oppositions that have not claimed scalps are held to be ineffective. The real measure of accountability, that is, the provision of quality information about government activity to the Parliament, has become secondary. The second aspect of answerability, that of fair use of information provided, is either misunderstood or ignored entirely in today's political environment. The focus on ministerial resignation as the measure of executive accountability has the perverse outcomes of encouraging governments to be secretive, and Oppositions (and the media) to focus on trivia and scandal. So if we are to judge whether or not executive accountability is in serious decline, let us do so according to a sophisticated understanding of what it means, including the understanding that both sides of the parliament must play their part if we are to have a strong and rigorous accountability regime.

Most governments, while they accept scrutiny, do not welcome it. If they are allowed to get away with not providing information to the parliament then it is unlikely that they will volunteer to do so. So how is the Parliament and through it the public to access the information that it requires to make informed judgements about government performance? There are a range of structural mechanisms provided for the accessing of this information. In broad they are,

- a) Parliamentary question time (questions without notice)
- b) Questions on notice
- c) Reports to Parliament — such as the Auditor General and Ombudsman
- d) Departmental annual reports and other publications
- e) Reports of statutory entities required to be tabled
- f) Budget papers
- g) Parliamentary Committees and their reports, particularly those of Public Accounts and Estimates Committees
- h) Parliamentary procedures such as Committee of the Whole
- i) Freedom of Information processes

While each of these is subject to some valid criticisms, there can still be no doubt that well used they are the source of valuable information on the activities of government. The issue that confronts most modern parliaments however is whether these mechanisms are adequate to examine the breadth of activity of government today. The rise of 'managerialism' with the public being defined as customers of services provided by government rather than as citizens; the outsourcing of many

public service activities; and the blurring of the traditional public and private sectors through the use of public-private partnerships to provide public infrastructure and services, could not have been foreseen when most of these mechanisms were put in place. Their rise may not have been accompanied by full disclosure to the Parliament, but that does not invalidate the mechanisms used for scrutiny. Rather it means that the traditional boundaries to scrutiny applied to those mechanisms needs to be expanded. This point was made by the Federal Ombudsman in a 2006 address to an IPAA Conference, in which he said,

... overall I think that the practice of open government is alive and flourishing in Australia; the days of uncontrollable discretionary secrecy of the kind that predated the FOI Act are largely gone ... but it is equally important to note the boundary has shifted substantially over the past twenty years, moved by a host of different pressures and developments.¹⁰

Ensuring that appropriate boundaries are set for the provision of information to the parliament and the public is one of the key modern challenges to ensuring executive accountability. We have seen the boundaries extended in relation to personal information held by government departments so that there is now a right of citizens to access their own records, but to date there has been little movement on the provision of information related to commercial activities of government where the private sector is also involved. In most cases this activity is 'off budget' and so not revealed in government financial documents. The documents that show the information are more often than not held to be 'commercial-in-confidence' and so exempted from public scrutiny at least until the conclusion of the contract. The 2000 report of the Victorian Public Accounts and Estimates Committee, *Commercial in Confidence Material and the Public Interest*, found that the impetus for this was largely from the public sector not the private sector.¹¹ The Victorian Government responded to the report by making some information related to contracts available on a public website, but recommendations related to contract scrutiny and the powers of the Auditor-General have not been taken up. No Australian Parliament has yet come to grips with this issue in a way that ensures that the Parliament has access to timely, appropriate and relevant information on which to make judgements about the use of public money.¹² For this reason, in recent years, every Public Accounts Committee in Australia has conducted an inquiry into Public Private Partnerships. To date none has provided an effective mechanism for parliamentary scrutiny.

¹⁰ 'Open Government — Reality or Rhetoric?' Prof. John McMillan, Commonwealth Ombudsman Address to IPAA Seminar, 15 June 2006, Canberra.

¹¹ 'Commercial in Confidence Material and the Public Interest' Public Accounts and Estimates Committee Report to the Victorian Parliament, March 2000

¹² On 10 June 2008 'The Right to Information — Reviewing Queensland's Information Act' chaired by Dr David Solomon AM, was tabled in the Queensland State Parliament. This report has a chapter specifically dealing with the extension of Freedom of Information to cover Government Owned Corporations, Government Business Enterprises and Privately contracted Government Services, and makes a number of recommendations for greater access. It did not however consider the issue of the availability of information on the activities of these entities directly to Parliament and Parliamentary scrutiny committees.

The increasing complexity of budgets is another area of challenge to parliaments. The move from cash-based budgeting to accrual budgeting while providing more information has greatly increased complexity. At the same time there has been little or no change to parliamentary scrutiny of budgets. There is of course the Estimates process, which in Victoria was expanded in 2000 to ensure the annual appearance of every Minister; however such a requirement does not occur in every Australian parliament and none requires the Estimates report to be tabled prior to the lower house vote. It is also rare for the Appropriation Bill to be taken into Committee as a Whole consideration where allocations and targets, which are now generally available against specific expenditure areas as a result of the adoption of accrual accounting, can be specifically questioned. Consequently, while the budget information presented is more comprehensive, parliaments are still faced with the question 'Is it all there?' The Canadian parliament attempted to meet this challenge in April 2006, when it provided Members of Parliament with support to scrutinise the Estimates by creating a Parliamentary Budget Office designed to

Ensure truth in budgeting with a Parliamentary Budget Authority by creating the position of *Parliamentary Budget Officer* to provide objective analysis to Members of Parliament and parliamentary committees concerning the state of the nation's finances, trends in the national economy, and the financial cost of proposals under consideration by either House.¹³

It is still early days for the Canadian model with the Budget presented under this system for the first time in 2008 but it will be watched with interest by other Parliaments.

A number of other parliamentary mechanisms could also be modernised to ensure their effectiveness in today's context. In particular question time and consideration of the reports of Independent Officers of Parliament and parliamentary committees could be improved.

The daily question time process while the best known, most media attractive and arguably most entertaining parliamentary process has seen its value in terms of holding the executive to account diminished over time. While it is still capable of being an effective accountability mechanism, and was used as a tool to force ministerial resignations during the Howard government, question time often does not serve its primary purpose. The search for information which, according to Speakers' rulings throughout Westminster parliaments, is **the** purpose of question time is regularly relegated to a lowly priority replaced by the aims of embarrassment and humiliation of the enemy. It has become a game with its own scoring mechanisms. A look at some recent questions in the Victorian Parliament illustrates this. (The Victorian Parliament is not being singled out, any Australian

¹³ 'The Accountability Act and the Parliamentary Budget Officer', Prepared by: Guy A. Beaumier
Economics Division Parliamentary Information and Research Service, Library of Parliament,
Canada. 29 June 2006

Parliament would provide similar examples.) The following exchange between a Minister and Shadow Minister clearly reveals the government attitude to the game:

QUESTION 'I refer to page 32 of the Auditor-General's report entitled Planning for Water Infrastructure in Victoria, which says there is a 'higher probability figure' known to the government for the proposed desalination plant, and I ask: what is the figure?'

RESPONSE 'I understand this question was asked of the Auditor-General yesterday, and he indicated that for quite appropriate reasons he is unwilling to disclose what that figure is. So if it is good enough for the Auditor-General to respect the fact that in this particular case the government does not believe that this figure should be disclosed, then we take the view that that ought to be good enough for the opposition.'¹⁴

Typical of the Opposition approach are questions which focus on trivia or scandal, and (contrary to accepted procedures) incorporate their own view or answer, such as:

My question without notice is to the Premier, and I ask: will the Premier confirm that his former adviser and the former Labor member for Narracan, Ian Maxfield, is set to be appointed to a \$120 000 a year position as a conciliation officer at the Accident Compensation Conciliation Service, and say whether this is the same Ian Maxfield whose conduct as a member of this Parliament caused the Speaker to direct him to seek anger management counselling?¹⁵

Conversely questions by Government party members are often formulaic and invite broad rather than specific responses, and often are little more than a vehicle to attack the Opposition.¹⁶ This approach to question time which is common to all Australian Parliaments undermines the purpose of question time as a process for seeking information and holding the executive to account.

Some figures produced by the Victorian Parliament's Public Accounts and Estimates Committee (PAEC) throw further light on the control of question time by the executive. The Legislative Assembly Standing Orders require ten questions to be asked, and Speakers' Rulings have put a four minute indicative limit on answers in an effort to stop the filibustering on government questions that had been a feature of previous parliaments. Overall this limit is being observed but the PAEC report shows that the average time taken to answer questions from government members

¹⁴ *Hansard*, Parliament of Victoria, April 10, 2008. P1113

¹⁵ *Hansard*, Parliament of Victoria, April 10, 2008. P1118

¹⁶ An example of this is the following question asked by a Government backbencher 'My question is to the Minister for Health. I refer to the government's commitment to make Victoria the best place to live, work and raise a family, and I ask: can the minister outline to the house how the Brumby government is working to improve ambulance services throughout Victoria?' *Hansard*, Parliament of Victoria, 10 April 2008. P1112

of 5.3 minutes, is almost triple the average time taken to answer questions from opposition members (2.0 minutes).¹⁷

Question time in Australian Parliaments requires major surgery if it is to meet its stated goal of being a primary mechanism in the search for information. I had thought that I was adopting a radical view in proposing the dropping of government questions but I note from the PAEC report that this was the original practice of the Victorian and other Australian Parliaments. Government questions are a more recent occurrence, possibly reflecting the view that questions were a right of Members, rather than governments, oppositions or parties, and anticipating that Members would act as individuals more in line with the Westminster practice. However Australian Parliaments almost from the outset, but certainly from the start of the Australian Parliament, have had a greater degree of Party domination than most Westminster Parliaments and to revert to questions being an individual Member's right would require massive cultural change.

The PAEC Report also notes that in the early years on average, eighteen to twenty questions were asked in the thirty minutes allowed.¹⁸ If the removal of government questions was coupled with allowing supplementary questions at the discretion of the Speaker, and tighter controls on the content of both questions and answers, the overall effectiveness of question time as a scrutiny mechanism would improve. The New Zealand Parliament essentially operates this way with the added provision that questions (but not supplementaries) must be provided to the responsible Minister around three hours in advance of Question Time,¹⁹ and regularly achieves more than thirty questions and answers in the hour allowed.

Consideration of Auditor General, Ombudsman and Parliamentary Committee reports is also *ad hoc* in Australian Parliaments. Generally no specific time is given for formal debate of the reports, their recommendations and government responses. This represents a major gap in the mechanisms available for parliamentary scrutiny of the executive, both financial and administrative. The Victorian Legislative Assembly has introduced a mechanism on Opposition Business Day where a half hour is given for Members to comment on recently tabled committee reports but there is no current mechanism for Auditor-General and Ombudsman reports to be automatically considered. While the Victorian practice allows some comment on reports, it is limited to five minutes per speaker, does not focus on one report and does not give rise to motions on the reports. If as is often asserted, these reports are essential to informing the Parliament in its role of holding executive to account, then processes that allow those reports to be fully considered are also required.

¹⁷ *Report on Strengthening Government accountability in Victoria*, Public Accounts and Estimates Committee, Parliament of Victoria, April 2008, p. 28

¹⁸ *Ibid.*, p. 26

¹⁹ *Standing Order 372 — Lodging of Questions 1(b)* provides that proposed questions must be delivered to the Clerk between 10 am and 10.30 am on the day the question is to be asked. *Standing Orders — House of Representatives*, Parliament of New Zealand, August 2005

In most modern parliaments the agenda has become increasingly dominated by government business, while opposition and private members' business is sent to a back seat. Good parliamentary practice in the consideration of reports would see specific time devoted to debate of the reports of the Auditor General, the Ombudsman and Parliamentary Committees, particularly those of the public Accounts Committee. It would allow this to be done through the debate of a specific motion relevant to the report which would be put at the conclusion of the debate.

Conclusion

Introduction of these types of improved scrutiny mechanisms would place a significant obligation on both sides of parliament, not simply the government. The 'Holding to account' definition provided by Citizens' Circle for accountability means obtaining from authorities the public explanations we need at the time we need them, validating the reporting for its fairness and completeness and doing something sensible and fair with explanations given in good faith, there is a significant burden of responsibility placed on oppositions. If our governments are to be persuaded to give up elements of their control of Parliament, and place themselves under greater scrutiny, then oppositions will also need to alter their approach. They need in the first instance to understand and accept the difference between accountability and responsibility, and temper their desire to allocate political blame and their obsession with trivia and scandal. That is not to say that they should not act politically, that is both unrealistic and possibly counter-productive to accountability, but there is a line to be walked. The WA Inc Royal Commission discussed this and said that there existed a '... legitimate and natural desire to use the Parliament to embarrass opponents and to obtain electoral advantage.' However it also goes on to state 'Parliamentary conduct cannot be allowed to subvert Parliament's proper role in the securing of full, fair and accurate information from the Government and from the officers and agencies of government.'²⁰

I do not share the now common view that Executive accountability has shown serious decline in recent years, and I do not accept the number of ministerial resignations as a meaningful performance measure of this. As the Commonwealth Ombudsman has said, the advent of Freedom of Information Legislation, Ombudsmen and other scrutiny mechanisms generally within the last thirty years has considerably increased scrutiny. That these mechanisms are not always effectively or well used by oppositions and the media is a reflection on them, not the government. The real question that needs to be posed is 'Do the accountability mechanisms that are currently in place lead to a **fully** informed parliament?' To this question I would answer 'No', and I have attempted in this article to show where I think they are lacking, and how they may be improved. ▲

²⁰ *Report of the WA Inc Royal Commission*, pp. 2–3