

## EXECUTIVE ACCOUNTABILITY TO PARLIAMENT – REALITY OR RHETORIC?

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Shortly before the 2007 Australian Federal election two former Prime Ministers called for ministerial accountability to be an election issue. They argued that ‘... the constitutional principle that ministers should be held accountable for the failings of their policies or administration has been seriously undermined.’<sup>1</sup> Veteran politics reporter, Michelle Grattan, also wrote ‘Accountability, at all sorts of levels, has clearly declined over the Howard years. [but added]... The pursuit of greater accountability is a boutique issue.’<sup>2</sup> Yet in that election, as in all Australian elections, State or Federal, of recent decades, both major political parties pledged that they would be honest, open and accountable governments. Is Michelle Grattan right, that while accountability is in decline, it is a ‘boutique issue’ of interest only to former Prime Ministers and a few academics?

Executive accountability is at the heart of our system of government. The Westminster model is built on a foundation of three massive planks: the separation of powers, Parliamentary scrutiny of executive actions, and ministerial responsibility. Basing the view that accountability has declined because of the lack of ministerial resignations in recent years, confuses two key planks of our system and morphs them into one. Parliamentary scrutiny of executive actions is *accountability*; ministers resigning is *responsibility*. While both are important it actually hurts our system of government to confuse them.

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

<sup>2</sup> ‘Secrecy, spin and the right to know’ The Age (Melbourne) November 7, 2007

In what follows, I employ the definitions of accountability of Citizen's Circle for Accountability, a North American 'think tank' on public accountability issues. These are:

- 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.<sup>3</sup>

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.'<sup>4</sup>

The confusion of the two concepts, has also received attention in Canada. Kenneth Kernaghan's 2001 report to Government concluded that 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.'<sup>5</sup> He argued that the resignation quest deflects attention from where it should be directed – on the securing of information. He called this the 'answerability component' – Parliament's need to know what went wrong and how to avoid it happening again.<sup>6</sup> Similarly, Canada's Gomery Commission of Inquiry<sup>7</sup>, defines answerability as '... a duty to inform and explain.'<sup>8</sup>

Accountability has become inseparably confused with responsibility which is defined almost entirely in terms of allocating blame with ministerial resignations being used as its sole

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<sup>3</sup> 'The Issue of Public Accountability: a Summary for Citizens' Citizens' Circle for accountability, <http://www.accountabilitycircle.org/>

<sup>4</sup> Ibid

<sup>5</sup> 'Ministerial Responsibility: Interpretations, Implications and Information Access' Ken Kernaghan, Government of Canada, August 2001

<sup>6</sup> Ibid

<sup>7</sup> 'Report of the Commission of Inquiry into the Sponsorship Program and Advertising' Justice John Gomery, Canadian Government Publishing, November 2005,

<sup>8</sup> 'Restoring Accountability– Recommendations Part One – What Has Been done?' Report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities p.19.

performance measure. Now governments that have had no resignations are commonly viewed as unaccountable and Oppositions that have not claimed scalps as ineffective. The real measure of accountability, the provision of quality information about government activity to the Parliament, has become secondary. The second aspect of answerability, fair use of information provided, is now either misunderstood or ignored entirely.

The focus on ministerial resignation has the perverse consequences of encouraging governments to be secretive, and Oppositions (and the media) to focus on trivia and scandal. If we are to judge whether executive accountability is in serious decline, we should have a proper understanding of what it means, including understanding that both sides of parliament must play their part to achieve a strong and rigorous accountability regime.

Most governments, while they accept scrutiny, do not welcome it. They will certainly try to avoid providing information to the parliament if they can. So how is the Parliament, and through it the public, to access the information that it requires? The structural mechanisms available include:

- 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

Each of these is subject to some valid criticisms, but if well used they can still be sources of valuable information on the activities of government. The issue confronting most modern parliaments 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 government services 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, 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 the traditional boundaries to scrutiny applied to those mechanisms need to be expanded. The Australian Ombudsman made this point in a 2006 address 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.<sup>9</sup>

Ensuring that appropriate boundaries are set for the provision of information to the parliament and the public is one of the key challenges to ensuring executive accountability. Boundaries have been extended to allow citizen access to personal information held by government departments but to date there has been little movement with respect to the provision of information relating to commercial activities of government involving the private sector. Usually this activity is 'off budget', claimed to be 'commercial-in-confidence', and so not revealed in government financial documents. In recent years, every Public Accounts Committee in Australia has conducted an inquiry into Public Private Partnerships.

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<sup>9</sup> 'Open Government – Reality or Rhetoric?' Prof. John McMillan, Commonwealth Ombudsman Address to IPAA Seminar, June 15, 2006, Canberra.

To date none has provided an effective mechanism for parliamentary scrutiny, and no Australian Parliament has yet come to grips with this issue in a way that ensures that the Parliament has access to the timely, appropriate and relevant information on which to make judgements about the use of public money.<sup>10</sup>

The increasing complexity of budgets is another area of challenge to parliaments. The move from cash-based budgeting to accrual budgeting has provided more information and also increased complexity but there has been little or no change to parliamentary scrutiny of budgets. There is of course the Estimates process. In Victoria this 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 expenditures, can be questioned. However, even though the budget information presented is more comprehensive, parliaments are still faced with the question 'Is it all there?' The Canadian parliament has attempted to address this challenge by creating a Parliamentary Budget Office designed 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<sup>11</sup>.

It is still early days for the Canadian model as the 2008 Budget was the first presented under this system.

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<sup>10</sup> On June 10, 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.

<sup>11</sup> *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

Some other parliamentary mechanisms could also be modernised to ensure their effectiveness, in particular question time and consideration of the reports of Independent Officers of Parliament and parliamentary committees.

The daily question time, while the best known, most media attractive and arguably most entertaining parliamentary process has been devalued over time as a means of holding the executive to account. It is still capable of being an effective mechanism but it 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 and replaced by the aims of embarrassing and humiliating the enemy. It has become a game with its own scoring mechanisms.

Question time in Australian Parliaments requires major surgery to meet its stated goal of being a primary mechanism in the search for information. I thought I was adopting a radical view when I proposed dropping government questions but discovered from the Victorian 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 are a right of Members, rather than governments, oppositions or parties, and the hope that Members would act as individuals more in line with the Westminster practice. However Australian Parliaments almost from the outset, and certainly from the start of the Australian Parliament, have been subject to a greater degree of Party domination than most other Westminster Parliaments. To revert to questions being an individual Member's right would require massive cultural change.

Consideration of Auditor-General, Ombudsman and Parliamentary Committee reports is *ad hoc* in Australian Parliaments. Generally no specific time is given for formal debate of the reports and their recommendations and government responses. This is a major gap in the mechanisms available for the financial and administrative parliamentary scrutiny of the

executive. The Victorian Legislative Assembly allows a half hour on Opposition Business Day for Members to comment on recently tabled committee reports but there is no mechanism for Auditor-General and Ombudsman reports to be automatically considered. Comment on reports 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 them to be fully considered are also required. Good parliamentary practice in the consideration of reports would devote specific time to debate the reports of the Auditor-General, the Ombudsman and Parliamentary Committees, especially those of the Public Accounts Committee. It would allow this to be done through the debate of a specific motion relevant to the report put at the conclusion of the debate.

### *Conclusion*

Introduction of improved scrutiny mechanisms would place a significant obligation on both sides of parliament. If 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. In the first instance they must 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 went 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.<sup>12</sup>

I do not believe that Executive accountability has seriously declined in recent years, and I do not accept the number of ministerial resignations to be a meaningful performance measure of this. The advent of Freedom of Information Legislation, Ombudsmen and other scrutiny mechanisms generally over 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 government. The real question is 'Do the accountability mechanisms that are currently in place lead to a **fully** informed parliament?' To this question I would answer 'No'. I have attempted in my remarks to show where I think they are lacking, and how they may be improved.

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<sup>12</sup> *Report of the WA Inc Royal Commission* pp. 2-3