

1 MAY 2007

The Secretary  
Public Accounts & Estimates Committee  
Parliament House  
Spring Street  
MELBOURNE 3000.



Submission by:

Hon A.J. Hunt A.M.

Public Accounts and Estimates Committee

Submission No.  $\Sigma$

to

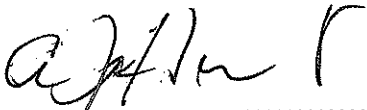
Ministerial Accountability Enquiry.

1. I am a member of the Australasian Study of Parliament Working Group, where studies led to preparation of the document "Renewing Accountable Government", which is available to the Committee.
2. I support that document and its reasoning and underlying assumptions.
3. I enclose (under the title "Ministerial Accountability") copy of the speech which I made at the Launch of that document, and adopt that speech as part of my submission and as summarising my views on the issues before your Committee.
4. I believe there is widespread cynicism throughout Australia about Parliaments, politics and politicians which needs urgently to be addressed.
5. Your Committee can take a lead in addressing perceived problems of Ministerial and Government accountability in the interests of public faith in democracy and its institutions, and the public's right to know.
6. I also believe Victoria can give a valuable lead to all Australian governments and Parliaments, and that such a lead would be welcomed by, and in the interests of the community.
7. A new set of principles binding Victorian (and other Australian) ministers is obviously necessary to meet the needs of the 21<sup>st</sup> century community and to replace the now obsolete principles which served the needs of 19<sup>th</sup> century Great Britain.
8. Those principles need, however, to be universally observed and enforced if they are to have lasting value and maximum effect for the benefit of the community. That is why we suggest the establishment of a Parliamentary Standards Commissioner, along the lines of the British model, to act as a watchdog on behalf of the public and to report on infringements of the new code.
9. Whilst we suggest that the Code contained in "Renewing Accountable Government" is a valuable starting point, it would be expected that the Committee could improve upon it in the light of evidence and its own deliberations and the experience of its members in the world of practical modern day politics. I would suggest, however, that all additions, subtractions and amendments be addressed to strengthening the Code in the public interest rather than weakening it in the perceived interests of the Government of the day.

A.J.H.

10. I am available to give oral evidence to the Committee if so desired.

DATED the 27<sup>th</sup> day of April, 2007.



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A.J. HUNT.  
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## MINISTERIAL ACCOUNTABILITY.

Alan Hunt.

The 19th century British formulation of the doctrine of ministerial responsibility was simple. A minister was responsible and accountable to parliament for everything which occurred in his department, whilst Cabinet was collectively responsible to parliament (and hence to the public) for the overall conduct of the Government and its administration.

Academic analysts have differed as to the extent and degree to which the doctrine applied to Australian parliaments, but any differences were resolved by the most authoritative reference of all, which is the 1976 Report of the Royal Commission on Australian Government Administration and in particular Chapter 4. The members of the Commission were Herbert (Nugget) Coombs (former head of the Australian Public Service), Peter Bailey (a prestigious second generation top public servant), Enid Campbell (a distinguished law professor) and the Honourables Joseph Isaac (an eminent industrial jurist) and Paul Munro (former chair of the Australian Industrial Relations Commission).

The Commission heard extensive evidence, utilised its own judgement and knowledge and commissioned many authoritative reports, the most relevant of which is by Prof. Hugh Emy.

My summary of the Commission's ten major principles regarding Ministerial Responsibility (using its own words so far as practicable) is as follows:

1. Ministerial Responsibility is to parliament, and thus ultimately to the people.
2. It is a matter of constitutional convention rather than law.
3. Because of its conventional character, the principles and values on which it rests may change.
4. The convention was developed in late 19th Century Great Britain when the activities of government were far narrower and less sophisticated than in Australia today.
5. The concept no longer entails the absolute responsibility of ministers for their departments.
6. Changing political reality has qualified the concept as a comprehensive principle of accountability.
7. Ministers no longer accept culpability for anything other than the most serious personal errors, and there is little evidence that a minister must now bear the blame (and hence resign) for all the faults and shortcomings of his public service subordinates.
8. He is not held personally culpable unless the action which stands condemned was his, or taken on his direction, or was action with which he ought obviously to have been concerned.

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9. This fact recognises that ministers no longer have the degree of control of the administration that they had early last century, and that primary responsibility for that control should lie with departmental head.
10. It is essential that the minister should have full control over, and responsibility for, all members of his personal staff.

These principles are broadly consistent with the reasoning of the paper by Hugh Emy, who went further and described the doctrine as it applied to Australia as “defunct” as a system for ensuring the accountability of both the executive and administrative areas of government.

They are also consistent with the thesis by John Uhr in Chapters 7 and 8 of “Deliberative Democracy in Australia” (1998) which is amongst the most authoritative modern texts on the issues we are considering. I had previously read this valuable work with a focus on the changing role of parliament (rather than ministers) and had not properly appreciated the extent to which it challenged my simplistic (and out dated) view that a minister was “Responsible” for everything that happened in his department.

That simplistic view was based on my own studies of ministerial responsibility in Britain and on the instructions of the Premier Sir Henry Bolte to a new minister. “Tell it like it is” he said. “Stick to the facts. If you fudge, you’ll be found out and embarrass yourself and the government, and probably won’t stay there. If you make a boo boo, and you will, say so and say sorry. If you feel you must give a reason, do it in one short sentence. No self justifications”.

The fact that Bolte practised what he preached and ensured that his ministers did the same had two simple results. Firstly, it made ministers more careful, knowing they would be held to account for any failure. Secondly, he was trusted by the electorate – his ministers too – as shown by the fact that he retired unbeaten after a record premiership of 17 years.

The 1998 Howard Guidelines on Ministerial Responsibility for which the Prime Minister is entitled to considerable credit, are consistent with the Coombs Commission Report except, perhaps for the way in which the 10th principle above has been interpreted by ministers.

The McMullin principle (accepted by both parties when in office) is that ministerial staff are accountable only to the Minister, and the Minister to Parliament. This means that when things go wrong the Minister can say “This was a decision not by me, but made in good faith by my ministerial staff”. Both then escape censure under an evasion which should not be possible under the Westminster system or its Australian development. This evasion perverts the system and is an affront to the public.

There is however, another pressing problem with the doctrine of ministerial responsibility, even in its currently confined form. People generally – and that includes ministers Federal and State, and of all parties – tend to associate responsibility with



blame, and therefore ministers are tempted to avoid it. "I am not responsible" can be said as if it were the end of the matter, when the real question is one of accountability – the liability to give an account of and answer for the discharge of duties or conduct of the minister and his or her subordinates.

The Macquarie Dictionary defines accountability as "The expectation that public servants answer for their performance to ministers who are themselves responsible to parliament so that ultimately all answer to the people".

This is, and should be seen to be, an elementary requirement of all ministers at every level in this country. We therefore propose that the Code of Ministerial Responsibility be replaced by one of Ministerial Accountability and believe that this course would be better understood and more readily and effectively implemented. Furthermore a minister who fully and honestly explained the facts relating to a decision, action or inaction would enable Parliament and the public to understand those facts and to form its own view on the conduct of all those involved.

It would also recognise and give effect to the following principles:

1. Ministers and public servants are essentially trustees for the public, and particularly stakeholders within it.
2. The public and those stakeholders have a right to know what has been done in their purported interests and how and why it was done.
3. The requirement of public accountability should occasion greater care in the decision making process.
4. It should also occasion rigid attention to obtaining value for money.
5. It should also result in increased consultation with all interests affected, more inclusive decision making and more satisfactory progress.
6. It is likely to enhance mutual co-operation and to avoid, or at least reduce, conflict regarding programs and policies.

We have also, wherever practicable, used the term "ministerial responsibilities" (plural) to replace the term "ministerial responsibility" both to remove association of the concept with the blame game and to re-inforce understanding of the fact that ministers have many duties, not just one.

Many academics, lawyers, students of politics and past MPs – Federal and State across party lines - have contributed ideas to and comments upon the new draft code which is launched tonight.

It is a draft only, for the thoughtful consideration of governments throughout the country, and the public.

The Hon. Dr. Ken Coghill accepted the onerous task of draftsman for the Code, and the thanks of all concerned go to him for a job well done. We trust it will be accepted as a genuine, non partisan attempt to advance the public interest.

