

Strengthening Government and Parliamentary Accountability in Victoria

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I thank you very much for the opportunity to submit a paper to your inquiry. As a practicing parliamentarian for nearly fourteen years with more than a passing interest in parliamentary procedure I hope my contribution may in some small way add to the success of your inquiry by raising questions not otherwise considered and offering a different perspective on the issues at hand.

I compliment those bold enough to strike out on a large initiative such as broad based parliamentary reform. Democratic renewal is not an easy task. There is virtual unanimity that the system is unresponsive to the will of the electorate and needs change, yet finding the political will to start a process of examination and being able to follow it through to a consensus on perceived improvements is usually beyond the capacity of the most dedicated practitioners. I say perceived improvements since you acknowledge that the exercise in 1996 needed revision in 1998 and is now being subject to another wide ranging review. Piecemeal change at a snail's pace is normally accepted as progress.

As a Canadian parliamentarian, I claim no intimate knowledge of the Westminster style of government that has evolved in Australia at the

national and state levels. We in Canada, also a federal state, started with the Westminster model of representative and responsible government, and have developed our own unique responses to needs as we have perceived them. Occasionally we have found the political will to effect change. My comments are therefore to be seen from a Canadian perspective and need not be directly applicable to Australian national and state parliaments.

A few years ago I developed a simple model to conceptualise the accountability of a democratic government which I call the 'Hour Glass Model'. The essence of the model is that society is organized in a way similar to an hour glass like structure, with a Service Triangle constituting the bottom of the Hour Glass and an inverted triangle, the Governance Triangle, constituting the top of the hour glass. I have attached a copy of the model to this paper (attachment 1).

The service triangle is the one that most people understand best, since it is the one with which the people interact on a daily basis. Unfortunately, most people cannot differentiate between government (the executive) and parliament or explain their differing roles. This clearly demonstrates a failure of our educational system to teach the basic concepts of our democratic system of representative and responsible government. Since the final repository of accountability is vested in the people, it behoves us to teach the important principles of democratic government to all within our society. How can society protect and defend such fragile concepts and pass them on from one generation to the next if the population does not understand why they exist, and the pre-eminent role they play in maintaining good governance, peace and prosperity.

At the bottom of the service triangle are the people (society) who are served by the government. I say ‘served’ rather than ‘ruled’ since the democratic model demands service and accountability from a government. You will note that the people are also at the top of the governance triangle. In essence, they are the customers of government at the bottom of the service triangle and held accountable by government, but also at the top of the triangle with the capacity to hold the government accountable.

I define accountability as a force beyond one’s control which causes one to think and act in a certain way.

A functioning society works by virtue of a matrix of accountabilities which are too numerous to enumerate. There are no shortages of relevant examples. We obey the rules of the road if we want to avoid accidents, traffic tickets and more serious charges. Our employers expect performance in return for paying wages and salaries. The financial markets are based on regulation and investor expectations. Professions are regulated and governments issue myriad regulations all focused on ensuring consumer safety and the management of society. There is the police and an army of inspectors from health inspectors to building inspectors to aircraft maintenance inspectors and land management rules. The list goes on and we should not forget that the vast majority of people pay their taxes voluntarily and on time to fulfil their legal obligation thereby avoiding penalties. It is no wonder that people complain about our regulated society; but it is our regulations that make our society work.

At all times it is the force beyond one's control that causes people to behave in an organised manner. This gives them room to live in a peaceful and prosperous way and also allows room for everyone else to do the same.

Next on the hierarchy of the service triangle is the bureaucracy. This is the apolitical permanent service organisation which takes direction from government to provide the complex diversity of services demanded by society from their government. Each department is headed by a deputy minister (permanent secretary) who administers the department and interfaces with the Minister.

All government departments are headed by a Minister which is the transition from administrative to the political arena. Each Minister is appointed by the Prime Minister (Premier) and is directly accountable to him, not to Parliament. The transition from administrative to political is not without its problems. Sometimes Deputy Ministers (Permanent Secretaries) seem to represent the political side to the bureaucracy rather than vice versa, thereby blurring the distinction between the apolitical administration and their political masters. It is also difficult for parliamentarians to navigate this nexus between administration and politics.

We recently held an inquiry at the Public Accounts Committee of the House of Commons in Canada which captured national attention and became known as the Sponsorship Investigation. The Deputy Minister claimed that he could not be held responsible for the failures in administration since he was 'not in the loop'. The Minister also denied

culpability since he claimed he was only responsible for policy. Therefore, who was to be held accountable?

In the end only a minor bureaucrat and a couple of businessmen went to jail but I digress from the topic at hand.

To close this gap in accountability where both the minister and the deputy minister denied responsibility, the Public Accounts Committee adopted its 10th report of the 38th parliament (attachment 2), calling for Deputy Ministers to be designated as Accounting Officers and that they be accountable in their own right before parliament (in committee). This concept was brought from the UK where the concept of Accounting Officers has been in place since 1866.

The *Financial Administration Act* (FAA), as amended by the *Federal Accountability Act* in Canada delegates directly to Deputy Ministers in their own right, responsibility for:

- (a) The measures taken to organize the resources of the department to deliver departmental programs in compliance with government policies and procedures;
- (b) The measures taken to maintain effective systems of internal control in the department;
- (c) The signing of the accounts that are required to be kept for the preparation of the Public Accounts pursuant to section 64; and

(d) The performance of other specific duties assigned to him or her by or under this or any other Act in relation to the administration of the department.

Therefore, while Deputy Ministers are accountable to their Minister for the administration of their department as generally understood and demonstrated in the Hourglass Model, they are now as accounting officers, also accountable before Parliament to answer for any failures in the discharge of the responsibilities specifically delegated to them by legislation.

In the current 39th Parliament, the Public Accounts Committee adopted a protocol to define its understanding of the Accounting Officer designation and reported the same to the House. The House subsequently concurred in the report, therefore is now an addendum to our Standing Orders with similar capacity. The Report recommended that Accounting Officers be accountable before the Public Accounts Committee, within the framework of ministerial responsibility, for the responsibilities delegated to them under the *Financial Administration Act* (attachment 3).

Ministers, as we see in the Hourglass Model are accountable to the Prime Minister (Premier). They are appointed by the Prime Minister (Premier) and serve at his pleasure. The Prime Minister (Premier) and his Ministers form the Executive Council are the Government. It is disappointing to many, especially parliamentarians, that they have so little power over Ministers, but like the deputy ministers who are accounting officers, Ministers are only accountable before parliament to answer for their departments.

The House may decry a Minister's performance and call for his resignation but only the Prime Minister (Premier) has the power to remove him. The House does not have the authority to resolve to dismiss a minister. The House can only call on public opinion to support its desire to remove a minister and if sufficiently successful, the Prime Minister/Premier will act. The House, again gauging the public mood, can only decide on confidence or lack thereof in the government as a whole, and dismiss the government as a whole if it is so inclined.

Executive power and the power to govern are vested in one person – the Prime Minister. He chairs the cabinet, controls its agenda, appoints Ministers to sit at his pleasure, and controls all levers of government. His ministers assist him, speak for him in the House, answer questions as appropriate in the House and manage their departments upon his direction. The Prime Minister, and by extension his ministers, are accountable collectively to the House and may govern as long as they enjoy the confidence of the House.

That is the service triangle; a government serving its citizens and at the same time, being held accountable by the representatives of society for the quality of their governance and the resonance of their policies with the electorate.

Now to the governance triangle which is poorly understood at best and often maligned or ignored at worst since it appears to many (even some parliamentarians) to be an expensive adjunct to government. Nothing could

be further from the truth. It is the very existence of the governance triangle and its capacity to hold government accountable that differentiates between dictatorship and democratic government.

The first line of democratic accountability of a government is to its parliament. Unfortunately in the Westminster style of government there is a serious conflict of interest by having government in parliament. It blurs the distinction between the executive and legislative branches of government. The compensating feature is that the government is accountable every day through the need to maintain confidence as opposed the presidential style where the executive enjoys a fixed term of government and can only be removed for the most egregious cause.

Government has the authority to govern, subject to the approval of Parliament. Parliamentarians have four collective responsibilities to discharge as representatives of their constituents:

- 1) To approve legislation requested by government (for the effective management of the country or state).
- 2) To approve the budget requested by government (the taxation policies to raise funds for government and the running of the country or state).
- 3) To approve the appropriations (line by line spending authority given to government by parliament).
- 4) To ensure that government reports to and is held accountable by Parliament.

When parliament exercises these four collective responsibilities, effectively there is democratic accountability of the government at the first level. Unfortunately party discipline and modern process management has led government to believe that obtaining parliamentary approval is just another obligatory public relations step on the way from conceptualization of policy to implementation.

The emergence of political parties was the first assault on parliament and its capacity to represent the disparate local opinions within a nation or state. Parliament should be the institution that grants the collective political approval of society to government initiatives through authority delegated to them and their opinions collectively expressed. When society moved from the agrarian to the urban and needs became more regimented, representatives realized the benefits of coalition building to achieve policy objectives, hence the development of political parties. Literacy and communications also improved, allowing political parties to communicate their ideas to the electorate, hoping to receive in return, endorsement of their policies through the ballot box.

Today, with advertising, opinion polling, focus groups, strategic leaks of contemplated policies and management of the media, the government has leaped over the top of parliament and taken their policy debate directly to the people. Where is the value of parliament when government has already massaged public opinion into accepting their next initiative, all the while ensuring that party discipline will deliver the required votes in parliament to implement the same?

It all starts to have the appearance of a sham. And what is next? Electronic voting, first in the chamber, then from the constituency since the representative says he needs to be close to the people where he can be more effective (at what?). In the meantime, the younger generation will refine the virtual debate in a virtual chamber where everyone (?) is engaged. But in truth, it is only the motivated and politically aware who are engaged since they have mastered the science of political manipulation through mass communication and the Orwellian world will have arrived.

By then we will have come the full circle: from autocratic government, to the evolution of democratic government to the perception that we still have democratic government, to benevolent authoritarian government that pays lip service to democratic principles and back to authoritarian government.

When parliament loses, or gives up its effective constraint on the executive, the people will have lost their capacity for democratic oversight and their ability to hold the government accountable.

I think of the concept of a see-saw to illustrate the delicate balance of democratic governance. On one side is the Prime Minister/Premier with Parliament at the other, while society acts as the fulcrum. There is the power of one person to govern being roughly matched by the collective power of parliamentarians to hold him accountable. It is a difficult balance and when that balance tilts in favour of the government, democracy is threatened.

The balance is difficult because all power to govern is vested in the Prime Minister/Premier, while Parliamentarians collectively only have responsive power to hold him accountable for the way he governs on the first three responsibilities (see above) and they often fail to fully engage on the fourth. The Prime Minister/Premier has the power to decide and act while a parliamentarian only has the power of persuasion; no power unless he can build a coalition of his colleagues large enough to demand real accountability from government.

In reading the brief which you sent to me, I see your struggle against this trend and your frustration as the government continues to march down the road of diminishing accountability to parliament; while claiming legitimacy from the people. Ministers see their role as one of being vaguely answerable in parliament but not accountable to parliament. There is no need to adequately answer questions in parliament, or be accountable to parliament; it is the thrust and parry of what now barely qualifies as intelligent debate that wins, with the ten (now six) second sound bites for television being the score.

Sometimes lost in the debate about the role of parliament is the requirement that parliament conduct the nation's (state's) business in public. How else would the public know what their representatives and government are doing? Parliament is therefore not restricted by the Access to Information legislation when it wants to know what government is doing. Remember, government reports to parliament, and if parliament asks for information from government, parliament should get the information. Parliament is not some obnoxious self appointed special interest group that

seems to have an annoying habit of asking awkward questions at inopportune times; it is the legitimate and constitutionally authorized voice of the people elected to know and watch what the government is doing. Of course it is also incumbent upon parliament to act with prudence in exercising its considerable powers and unlimited access to information.

So where is the problem? Ministers are vague in answering questions. Staff will not appear before committees. Demands by parliament are deflected. The government seems to be able to treat parliament with disdain with little or no repercussions. Why? Because the executive have surrounded themselves with sufficient support in parliament to provide a loyalty base through party discipline that is strong enough to thwart attacks by an opposition with fewer votes. There can be, and are other motivators at play but party discipline is the most obvious.

As the highest institution in the land, no issue or citizen is beyond the reach of parliament. To those who lament that lack of capacity to hold government accountable I say: know thy powers and exercise them before they atrophy from lack of use or are supplanted by a new convention that allows government to reverse the roles of who is accountable to whom.

Moving up the governance triangle we come to Access to Information, independence of the media and civil society. This is a two way flow of information. Much more voluble than parliament and less orchestrated but is vital to a functioning democracy.

The first part is Access to Information on what the government is doing. Government, as the servant of society should only be able to maintain confidentiality over information that is proprietary to them or in the national/state interest. Defining the line between public and confidential information is always problematic with two opposing views but in general terms, one should err on the side of transparency provided prudence is also in play.

Given access to this information, an independent media now has the opportunity to analyze and disseminate it to society at large. They inform the public, educate the public and reflect the public's opinion in a collective yet uncoordinated way back to parliament and the government. There is no way that the general public can coalesce around ideas and opinions without the debate in an independent media. How can they assess the performance of their government and parliament without it being discussed in the media? An independent media is the dialogue of the people.

The third segment of this section of the governance triangle is the civil society, a very important part of a functioning democracy. People are able to create and build organisations within society which reflects their aspirations and desire to participate in an organised manner. From large business corporations that provide our goods and services to local parent groups that demonstrate a parent's desire to be involved in their children's education, the diversity of civil society is immense. People are able to choose their friends and their causes too. Business groups, labour groups, churches, charities, special interest groups, the list goes on but each provides an

opportunity for a person to have a larger voice by combining it with others of a similar mind.

These larger voices play a vital role in communicating clear, reasoned policies for public debate and are heard by government and parliament for inclusion in public policy debate.

And finally at the top of the democracy triangle we find the people. They are the ultimate guardians of democratic oversight of their government. There is the adage that you can fool some of the people all the time and all the people some of the time, but you cannot fool all the people all the time. How true it is.

The entire hour glass concept is about accountability which is the glue that holds a society together and ensures results from everyone who is either tasked to perform or has a responsibility to behave in a certain way.

Moving up the hour glass there is accountability for everyone; first, society as a whole; then the bureaucracy, who must perform to the people's satisfaction. On up the line, ministers will feel the pressure from above to run their departments well. The Prime Minister/Premier in turn holds ministers accountable because he feels the force which should be beyond his control (note the subtle change in wording) demanding accountability from him.

Parliament should in turn demand accountability from government because they feel pressure from the people who are organised and informed of their performance, or lack thereof, through the independent media.

Many people thrive on responsibility and some get to answer for the failure of others, such as Ministers in the House, but who can say they enjoy the experience of being held accountable, which is the combination of responsibility and answerability.

When one knows that it is their shortcomings and failure to perform or behave properly that will be questioned with judgement being passed, they are more likely to meet the acceptable standard. Accountability is the motivator that promotes better performance and adherence to rules.

It all works so wonderfully well until a Prime Minister/Premier, who chafes under this accountability, starts looking for ways to shift the burden – and is allowed to do so by a parliament that bends to expediency through not exercising its authority. The majority of members can be sympathetic to the government and may see little reason to hold government accountable for failures that do not resonate large with the public.

In addition, Prime Ministers/Premiers have found ways to mitigate the pressure from parliament. The number of parliamentarians is not large; they know each one by name. Therefore, why not co-opt them (or at least a majority) into the government's agenda. The opportunities for the Prime Minister/Premier to influence their thinking abounds.

Loss of confidence will cause an election and who needs to be blamed for bringing down the government? There is some exotic travel that needs a traveler and the Prime Minister/Premier picks the volunteers. Cabinet positions are of course only for the Prime Minister's/Premier's

supporters. Most of all there is the peer pressure of caucus solidarity. Who wants to be ejected from caucus, ostracized by their peers and have to explain to their voters why they chose to abandon the party platform and swim alone with the sharks. Comfortable obscurity can seem better than public attacks from people considered friends till one breaks ranks, peer pressure – accountability; a force beyond one's control, that causes one to think and act in a certain way (except the bravest) and accountability manifests itself in so many ways.

And so it is within this framework or matrix of accountabilities that encompasses all of society that I look at your Inquiry into Strengthening Government and Parliamentary Accountability. While I have gone on at some length, I think it is important to have an understanding of the functioning of a democratic society and the central role played by parliament within it. Because parliament does not act in isolation, it represents the varied opinions of society and should bring these opinions into focus as a force beyond the control (we hope) of government that causes it to work within the parameters acceptable by society at large. And in doing so, parliament itself is also held accountable by the people. However, as I stated above, in this modern world, government is now reaching over parliament and going directly to the people, which should cause parliament some concern, since the perception of the relevance of parliament is being threatened, and that is not good. Therefore in responding to your inquiry, I have taken the position that some changes may need to lie in parliament itself rather than expecting that a new or revised protocol documenting the relationship between parliament and the executive will suffice.

In closing I also want to introduce you to the Global Organisation of Parliamentarians against Corruption (GOPAC), a relatively new organisation which was started in Canada in 2002 to enhance to effectiveness of parliaments around the world. I am enclosing a short background on GOPAC which continues to gain credence and gather momentum around the world (attachment 6). We now have in the region of eight hundred members and are represented in approximately eighty countries.

I would hope that it has some appeal to parliamentarians at state and national levels in Australia since good governance and fighting corruption is a global problem.

I thank you again for the opportunity to participate through a submission to your Inquiry into Strengthening Government and Parliamentary Accountability in Victoria, and wish you every success in the implementation of the same.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'John G. Williams', is written over a light grey rectangular background.

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