Parliamentary Checks on the Executive

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Functions of the Parliament

As with any entity with people at its basis, Parliament in the Westminster tradition is a complex institution. It performs a number of functions, many of which are intermingled. Among its principal functions are to provide the source of the Executive: the Australian Constitution provides that federal Ministers must be members of one of our two Houses, or become a member within three months of being sworn as a Minister. The House also provides a forum of discussions of major national, sometimes local, interest.

However, the majority of its time is devoted to processing legislation. The business of the House is dominated by Government Business - the legislative program of the governing majority, there are other defined opportunities for private Members to bring forward issues for debate. These are provided for at adjournment and grievance debates, during debates on matters of public importance, Members' statements and through the introduction of private Members' Bills. (All federal Bills in Australia are public Bills; private Members' Bills are those sponsored by non-Executive Members). Every private Member who wishes to present a Bill to the House of Representatives is guaranteed the right to do so, provided it is within constitutional power. At present, most of the time available during each sitting Monday is allotted to non-government business.
One major function performed by the House is that of accountability. At times, this is exercised in the legislative and other functions. When a specific item of legislation is referred to a parliamentary committee, the accountability extends to the members of the civil service responsible for developing the concepts of the proposed legislation. It is in this sort of inquiry and other forms of committee activity, and in the daily procedure of question time, that accountability of the government to the people by means of their elected representatives is exercised.

**Question Time**

One of the most important functions of parliament in our democracy is to make sure that the Executive remains accountable for its actions. Parliament has evolved various forums in which both Ministers and public servants are made directly accountable for the discharge of the functions of government, that is, for the general and specific implementation of policy.

The debates in the House of Representatives and the Senate are generally concerned with specific legislation. Such debates are the subject of lengthy preparation with the government and opposition parties having well rehearsed positions on all aspects of the policy issues under review in Bills. It is not unknown for parliamentary consideration to effect a change in proposed legislation. However the forum of Question Time which occurs almost every sitting day at 2pm is an opportunity for Members to ask questions directly of Ministers about the administration of their portfolios.

As their title indicates questions without notice are an opportunity for some direct and spontaneous accountability to take place in parliament. The forum of question time places Ministers in the spotlight of public attention and scrutiny with a reduced opportunity for their performance to be completely stage-managed. The period has been criticised from time to time. However, the period is one of direct accountability. Certainly, it is not taken lightly by the Ministry or the Shadow Ministry. Ministers and would-be Ministers are judged by their Leaders, their parliamentary peers, the media and the public according to their performance in question time.

Questions can be put to a Minister on any matter for which he or she is officially responsible. In practice however Minister's Departments prepares answers to a whole
series of anticipated questions and it is only occasionally that a Minister is caught completely unawares by a question.

Question time is structured around the Speaker inviting questions from the opposition and government sides of the Chamber in turn. All Ministers are present or if not, their absence is explicitly explained to the House. A question can be directed to any Minister, in his or her own capacity or in the capacity of representing a Senate Minister. Government-side questions are usually formulated to elicit pronouncements in support of current ministerial initiatives or to provide ministers with an opportunity to criticise the opposition.

There are approximately twenty questions most sitting days (accepted by the Government as an unofficial target without being a requirement of the standing orders). It is a measure of the continuing importance of the session that unlike most of the routine debates of the House, it attracts a consistently high degree of media attention.

Most questions are focussed on issues generated by the administration of executive departments and concern policy issues, perceived abuses or grievances. Question time can be an opportunity for the opposition to pursue certain issues repeatedly in consecutive sessions in order to exert maximum political pressure through media scrutiny on a Minister whose performance is seen as deficient or who is politically vulnerable.

The role of committees in the scrutiny of the Executive

The discipline imposed by the two party system and the dominance of the House of Representatives by the party of government has not inhibited the scrutiny of executive government. Governments have rarely enjoyed a majority in the Senate and the Senate Estimates Committees have become a prime focus for executive accountability. In addition to Estimates Committees, both the Senate and the House of Representatives have built up a comprehensive system of standing committees to review legislation and to investigate portfolio related issues. The committee systems in the Senate and the House of Representatives have now become the primary vehicle of government
accountability and I will provide some background details about the formation and present function of the parliamentary committee system.

**Early Committees**

Committees of the Parliament have always existed to carry out detailed investigations which cannot easily be undertaken by the whole membership of either of the Houses. The first Committees were domestic committees such as the Library, Privileges, Publications and House Committees, and the Joint committee of Public Accounts, and the Joint Standing Committee on Public Works, established by statute in 1913.

The power of both Houses to appoint committees is derived from s.49 of the Constitution in which the appointment of committees was one of the 'powers' or 'privileges' of the House of Commons as at 1901 within the meaning of that section.

Since Federation the Standing Orders of both Houses have provided for the appointment of committees.

A legislative scrutiny committee, the Standing Committee on Regulations and Ordinances was established by the Senate in 1932 to examine delegated legislation, or in other words, regulations. Established under Senate standing order 23, the Committee is charged with considering and, if necessary, reporting on, all regulations, ordinances and other instruments made under the authority of Acts of the Parliament, which are subject to disallowance or disapproval by the Senate and which are of a legislative character.

A Senate Standing Committee for the Scrutiny of Bills was established in 1981 under standing order 24 and provides for the scrutiny of legislation for potential infringements of civil liberties.

**The Development of General Purpose Standing Committees in the House of Representatives**

The House of Representatives committee activity was first focussed, as was that of the Senate, on the early joint statutory committees such as the Joint Committees of Public Accounts and Public Works, and on the House domestic committees of Publications, Privileges, Procedure, Selection and Members' Interests. The House of Representatives' modern comprehensive system of general purpose standing committees was set up on 24 September 1987. The general purpose standing committees, together with the Joint Committee of Foreign Affairs, Defence and Trade, provide the House with the capacity to monitor the operations of executive
government across the whole range of Commonwealth government departments and instrumentalities.

These general purpose standing committees are so called because they are established (or stand) for the life of the Parliament and have the power to inquire into and report on any matter referred to them by the House or a Minister. Matters referred may include any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter report or paper. In addition, annual reports of government departments and authorities tabled in the House, along with reports of the Auditor-General, stand referred to particular committees in accordance with a schedule tabled by the Speaker recording the areas of responsibility of each committee.

In 1994 the Senate amended the Standing Order relating to the committees. These changes combined estimates committees with legislative and general purpose standing committees and divided the combined functions between pairs of committees in each of eight subject areas. Within each subject area, references committees inquire into matters referred to them by the Senate, and legislative committees inquire into bills, estimates, annual reports and performance of agencies. The government party has chairs and majorities on legislation committees, and non-government parties have chairs and majorities on references committees.

The diversification of the Senate committee system is one reflection of greatly increased activity of Senate committees since 1970. In that year the total number of committees on which Senators served was 27, while by 1994, the year the system was restructured, the number was 44. While it was hoped that the 1994 reforms would bring about a decline in the number of select committees established this has not occurred, and these often highly politically charged single issue committees continue to attract public attention. By contrast many House committee reports provide objective in depth analysis of current policy issues or legislation with few dissenting reports. Governments continue to improve average response rates to these reports.

The House general purpose standing committees
There are at present nine general purpose standing committees in the House of Representatives. They cover the following areas of executive government:
- Aboriginal and Torres Strait Islander Affairs;
- Communications, Transport and Microeconomic Reform;
- Employment Education and Training;
- Environment, Recreation and the Arts;
- Family and Community Affairs;
- Financial Institutions and Public Administration;
- Industry Science and Technology;
- Legal and Constitutional affairs;
- Primary Industries, Resources and Rural and Regional affairs.

Together with the Joint Committee on Foreign Affairs, Defence and Trade and the Joint Committees on Migration, External Territories, Corporations and securities, Native Title and Treaties, this list represents a comprehensive coverage of executive policy subject areas.

Through an amendment to standing orders in the 38th Parliament, the annual reports of 272 government agencies have been made liable to scrutiny by general purpose standing committees. As mentioned above, reference of matters to the general purpose standing committees is normally through a Minister. However annual reports of government departments and authorities are also able to be used as a source of inquiries, and it is possible for Committees to seek terms of reference for inquiries by lobbying the relevant Minister. A Committee might also be required to complete an advisory report on a bill before the House.

**The powers of committees to conduct inquiries**

The powers of committees are delegated to them by the House and include the power to send for persons and papers in pursuit of relevant inquiries. The proceedings of Parliamentary committees are covered by privilege. The procedures governing the operations of committees are, generally speaking, those prevailing in the House at the time of their appointment, and are set out in resolutions of appointment, in the standing orders of the House, or if they are statutory committees, in the relevant Act. The resolution of appointment of a particular committee contains the committee's terms of reference and powers and may also contain particular directions which the House wishes to give, for example in relation to procedures. To determine the extent of the authority delegated to any committee therefore one needs to look at the current or 'sessional' standing orders, the committee's resolution of appointment and any later amendments, and any other orders agreed to by the House subsequent to the committee's appointment.
The membership of House committees

Service with House committees is an important duty of a private Member. Members have the opportunity to make worthwhile contributions to public debate on policy issues across a range of subject matter, as well as to the scrutiny of legislation, by actively participating in the work of committees. Because of their function of providing a form of scrutiny of executive government, it is generally considered inappropriate for Ministers or Parliamentary Secretaries to serve on committees. The Speaker and Deputy Speaker do not normally serve on committees.

The standing orders or a committee's resolution of appointment specify the number of Members to serve on the general purpose standing committees and select committees of the House. Each party's representation on a committee is equated as nearly as possible to its numerical strength in the House.

Members to be nominated are normally selected by their respective party and nominated to the Speaker by the party Whips. Committee members are considered to have been nominated once the Speaker has been advised. In the case of joint committees, independent Members have sometimes been able to make nominations from a number of places allocated for the Opposition, and nominations of Senators to joint committees have been made by the Leader of the Government and the Leader of the Opposition in the Senate, with reference also to nominations by minority groups or independent Senators. In this (the 38th) Parliament, Standing Order (28D) was amended to provide for the appointment of one independent Member to the Selection Committee, which as discussed earlier is the Committee which decides the order of private Members' business.

Committee Chairs

The first task of every committee, before the commencement of business, is to elect a chair. In the House of Representatives, Standing Orders, or resolutions of appointment generally stipulate that the chair be a government member.

The powers of the chair of a committee are normally set out in the standing orders or in the committee's resolution of appointment. A chair's procedural authority is similar to that of the Speaker in the House, however, unlike the Speaker, a committee chair takes part in the normal
deliberative processes of the committee and participates in public hearings. In committee divisions, the chair exercises a casting vote only.

Subject to the ultimate authority of the Speaker in matters relating to the administration of the Department of the House of Representatives, committee chairs have responsibilities relating to the administrative support provided to their committees. Matters include the administration of committee budgets, staff and work programs. In practice these matters are attended to by committee secretaries and their staff in consultation with chairs. During the 38th Parliament an informal liaison committee of chairs was established, with the Deputy Speaker as chairman, to act as a forum for chairs on matters of common interest such as staffing, budgets, and the duplication of references to committees.

**The work of committees**

One of the primary functions of parliamentary committees is to support the scrutiny and accountability role of the parliament. The current standing and joint committee systems provide an 'umbrella of scrutiny' covering every aspect of public sector activity. Committees provide Members with the flexibility to conduct inquiries of either a wide ranging or of a detailed and narrowly focussed nature on every aspect of executive government activity.

In conducting their inquiries, committees collect evidence. After advertising an inquiry as widely as possible (usually through advertisements in the national press or by inviting the participation of interested individuals or groups), committees conduct public hearings either at Parliament House or at locations all over Australia, from the State capitals to any number of rural or remote locations where it is important to gather local input.

This ability to conduct hearings anywhere is a vital feature of the work of committees. Parliament is thereby brought directly into the community. The public can participate directly as witnesses, by making written submissions or by attending hearings as an audience. All witnesses at the public hearings of committees are accorded the protection of Parliamentary privilege (which is immunity from prosecution) for their evidence, as well as protection from intimidation or coercion in any form.

As part of their inquiries, Parliamentary committees may collect evidence from officials of government departments, they may even invite Ministers to appear before them to give
evidence. However Ministers or officers of executive government may refuse to provide certain information or papers on the grounds of public interest immunity (previously known as Crown Privilege or executive immunity), where the Government of the day decides information should be withheld in the National interest. There is also a tendency, in an increasingly entrepreneurial environment, for claims of commercial-in-confidence claims to be made.

After a committee has completed its inquiry by conducting a series of public hearings, private briefings, seminars or ‘round table’ meetings of experts or interested parties, and collected submissions from the public, the evidence is analysed and collected together in the committee's report. The report is essentially a carefully reasoned and structured account of all the available evidence, with a series of recommendations for action by government based upon it. In practice, drafts of the report are prepared by the committee's secretariat and submitted firstly to the chair and after the chair's approval, to the remainder of the committee members for their consideration. The chairman's draft is formally deliberated upon and approved at a private meeting of the committee after which it is presented to the House. Debate in the House usually follows the presentation of a report. By convention a government has three months to reply to a committee report although in practice this has often taken much longer.

Committee reports can generally be said to fulfil the function of considering certain issues of public policy in detail and placing them on the political agenda. Although a government might not want to implement all, or even any, of the recommendations in a particular report, the issues dealt with in the course of the inquiry will have become part of an ongoing public debate.

The advent of broad-based committee systems in both the Senate and House of Representatives, has led to scrutiny being extended generally from Ministers to public servants. Scrutiny can be better exercised by committee members directing questions requiring in depth or detailed answers to public servants who may be more familiar with such details than Ministers.

The Main Committee
One final comment I would make in the direct examination of parliamentary consideration and accountability relates to a body which is called a committee, but is not really a committee at
all. This is the House of Representatives Main Committee. A recent report from the House Procedure Committee recommended that this body be called the Second Chamber. In effect, this creates a stream of parliamentary consideration parallel to the main Chamber. The Main Committee cannot be a forum for the initiation of business or for final decision, but it can do everything in between. It has its own function-designed meeting place, and is smaller and more intimate than the vast house of Representatives Chamber. The proposed expenditures for the Executive and the Parliament are considered there. Non-controversial legislation is considered there. Members' statements and adjournment speeches are made there. Of special importance is that it provides a venue for the further consideration of committee reports and the responses of the government to committee reports.

**Parliament and public administration**

I want to turn now to some current issues with regard to parliamentary accountability and the changing nature of public administration, in specific terms to address the issue of accountability in a devolved environment.

In the Commonwealth a devolved financial management framework has been in place from 1 January 1998. The Financial Management and Accountability Act (FMA Act), and the Auditor-General Act which replaced the Audit Act 1901, underpin the devolution of responsibility across the public sector. In the Commonwealth, central agency financial control has been replaced by financial management by individual departmental secretaries and CEOs.

In specific terms, section 44 of the Financial Management and Accountability Act under the heading of 'Promoting efficient, effective and ethical use of Commonwealth resources, states:

A Chief Executive must manage the affairs of the Agency in a way that promotes proper use of the Commonwealth resources for which the Chief Executive is responsible.

The devolved management framework, together with a trend towards the outsourcing of goods and services across the whole of government, has provided opportunities for agency heads to engage in risk management on an unprecedented scale. Agency heads are now also directly accountable to their Ministers and to parliament for their management of Commonwealth resources.
Within this devolved financial management framework the relationship between Ministers and
the contractors or external service providers that deliver government services on behalf of their
departments, becomes more complex and distant. In this context the role of the Auditor-
General as an independent officer of the parliament becomes a vital link in the chain of
accountability.

Parliament’s accountability role was strengthened in the *Auditor-General Act* through the
enhancement of the role of the Joint Committee of Public Accounts and Audit as the Audit
Committee of the Parliament. The Auditor-General’s independence and role was also enhanced
by the Act. I want to discuss the practical implications of this development.

The *Auditor-General Act*, and consequential amendments to the *Public Accounts
Committee Act, 1951*, including a name change to the Joint Committee of Public Accounts and Audit, came into effect on 1 January 1998.

With the proclamation of these Acts, the Executive has transferred power to the Parliament (to
be exercised on Parliament’s behalf by the Joint Committee of Public Accounts and Audit),
with respect to independent audit oversight of Government and the Public Service. In addition
the *Auditor-General Act, 1997* enhances the independence of the Auditor-General and the
Australian National Audit Office and gives particular oversight of the audit operation to the
Parliament.

*The Auditor-General Act, 1997* contains provisions designed to secure the Auditor-General’s
independence. By virtue of its power to approve the appointment of Auditors-General and
Independent Auditors, as well as to review the budget estimates of ANAO and its forward
audit programs, the Audit Committee effectively stands between the Auditor-General and the
Executive. The Committee helps to maintain at arms-length the relationship between the
Auditor-General and the responsible Minister who administers the appropriation for the Audit
Office.

While the Auditor-General remains dependent on the Executive for funds, (subject now to the
independent scrutiny of the JCPAA, the Parliament is dependent on the Audit Office to
provide expert independent advice to enable it to fulfil its obligation to scrutinise Executive
agencies. The Auditor-General, by conducting financial and performance audits of
Commonwealth agencies provides the technical expertise and detailed scrutiny necessary for the effective evaluation of public service performance. Parliament depends on the Auditor-General’s reports as a basis for further public inquiries.

By strengthening the independence of the Auditor-General and his office from the Executive and enhancing the role of Parliament in relation to the Auditor-General as both guardian and client, Parliament has gained some crucial extra weighting in the ever changing dynamic of checks and balances that pervade Australian democracy.

**Conclusion**

Comment is made from time to time that, if parliamentary accountability is still functions in the Australian federal environment, it is very much a poor relative in the Australian House of Representatives. It has also been said that the House is nothing more than a rubber stamp of the Executive. It will be apparent from the sentiments expressed in this paper that I believe that such expressions are simplistic slogans. The House of Representatives is, by definition, one in which the government of the day commands the support of the majority. There is mutual advantage in the government and its supporters being of one mind. However, it is obvious to any one who cares to delve beneath the superficialities that accountability of the Executive to the Parliament does occur in the Australian environment, I feel to the benefit of both. If the House has ever been treated as a rubber stamp, it has been one with thorns in the handle for the unwary.