

Accountability, the Parliament and the Executive

Bill Blick

I want to say a couple of things before I launch into this paper. I want to thank the Senate for inviting me here today. Standing here, with stage fright rapidly descending upon me and seeing the assembled throng, I am not sure that gratitude is necessarily the emotion I should be expressing.

To some extent, I have you here on false pretences. A flier went around describing what was going to be in this paper. That arose because Ann Millar, who invited me to give the speech, rang me up several weeks ago and said, 'We need to say something about what is going to be in your paper'. I sat down, not having done any drafting on the paper, and proceeded to think about what might be in it. All I can say in relation to that is — I am sure Icarus must have said this as he sat on the ground — that it seemed like a good idea at the time.

In fact, the paper has ended up being a description from the point of view of the public service, of the sorts of services the Public Service provides to ministers in fulfilling their parliamentary accountability obligations. I have attempted to go through a range of ministerial accountability obligations and the way in which they are fulfilled, and I describe the way in which we try to give support to ministers. In that sense, it is not a paper about the Parliament. In any discussion of accountability I think it is necessary to have a clear perception of what the Parliament is and does. It is also not the purpose of the paper to attempt an exhaustive discussion of what is meant by the executive.

Standing here today, I am very conscious that very much more intelligent and knowledgeable people than I have written very long tomes on this subject. I cannot seriously expect to stand here, in the three quarters of an hour of the lunch break, and knock it off.

What then is the function of the Parliament? Perhaps the most useful recent description was given by the distinguished authors of the British reference work entitled *Parliament — Functions, Practice and Procedures*. The three authors should know what they are talking about: two of them have held senior positions as officials of the British Parliament and the third is Emeritus Professor of Public Law at London University. In their view the Houses of Parliament:

. . . cannot properly be described as governing bodies, nor correctly analysed as being institutions with initiating or law making functions within the constitution. They are better presented as forums within which the contending powers . . . publicly debate the issues of the day and matters of their choosing, and through which the government may secure the authority it needs for the implementation of its policies and the exercise of its powers. If these forums can be said to have a principal function, it is that of exercising constant scrutiny over those who have the powers of government and of debating all matters brought before them whatever source, and, through the operation of the government's majority in the

Commons, of enabling the members of the government to fulfil their constitutional role.¹

They say it is therefore as a debating forum and not as a governing body that Parliament should be assessed. These authors quote from Leo Amery's work entitled *Thoughts on the Constitution*, in which he says: 'The main task of Parliament is still what it was when it was first summoned, not to legislate or govern, but to secure full discussion of all matters.' It goes to the very heart of the accountability issue by saying: 'It is in this sense, by ensuring that ministers are always liable to be required to explain and publicly justify their policies and their actions, that Parliament may be said to be the custodian of the liberties of the people'.

Defining the executive and its role does not lend itself to such ready generalisation. First, a wide range of activity is carried out under prerogative powers for which parliamentary approval is not specifically required. The conduct of foreign affairs is an example, as is the creation of a new government department or the abolition of an existing one. Secondly, there are activities which may have required parliamentary involvement at some time in the past, but then go on year after year without the need for further conscious deliberation by the Parliament except in so far as it may approve the annual appropriations. There are those matters for which it is essential to obtain formal parliamentary approval at the time, such as setting up a new statutory body, revising social welfare schemes or varying rates of taxation. However, what can be said with safety, particularly in modern Australia, is that, whatever the formal position, there is no area of government activity that is beyond at least the potential purview of Parliament.

In many cases this derives, sometimes tenuously, from the power of Parliament to approve the annual appropriations. But there are many occasions, other than during consideration of the appropriations, when the Parliament debates matters for which its formal approval is not needed. Such debates are not confined to the Senate, where the government does not have control, but occur regularly in the House of Representatives where it is in a position, if it wants, to have its way on all matters.

What this means is that governments, whatever their parliamentary strength or weakness in terms of numbers, recognise and embrace the need to be accountable to the Parliament. That need arises ultimately from political imperatives involving the fact that electoral success and the future of governments depend upon public perceptions. Those perceptions are affected, directly or indirectly, by the government's conduct of its relationship with the Parliament.

In case that sounds a bit cynical, let me say that accountability also arises from recognition by government of fundamental human desires to be governed fairly and openly. In Australia, as in other countries with parliaments, the contest between the Parliament and the executive goes on. But in Australia the ground rules are accepted without question by both sides. In recent years governments have increasingly promoted and furthered concepts of public accountability.

It is fair to say that at the federal level we have some special parliamentary traditions and institutions which sharpen the sensitivity of governments to their accountability obligations. For example, question time in the House of Representatives, whatever else you may say about it, would be one of the most testing occasions in the parliamentary

1. *Parliament: Functions, Practice and Procedures* by J.A.G. Griffith and Michael Ryle, with M.A.J. Wheeler-Booth, London, 1989, p.6.

world. In modern times, governments have not been able to command a majority in the Senate, which unlike many of its overseas counterparts has almost equal powers to those of the lower House.

There have been at least two direct and important results of the latter phenomenon. First, governments have constantly needed to explain and compromise in order to gain approval for their legislative proposals. Secondly, there has been the development of a committee system — including estimates committees — which enables the Senate to define and promote its needs and demands for explanation and justification of the actions of the executive.

Having said something of what the executive does and that government is a part of it, let me also state the obvious and mention another component of the executive — the public service. It is apposite to bring in the public service at this point because the interface between the Parliament and the executive involves public servants most directly and obviously within the parliamentary committee system.

The public service is the instrument of the government of the day and is accountable to it. Ministers, as we have seen, accept and try to fulfil a range of accountability responsibilities to the Parliament. Public servants, as instruments of the executive, are duty-bound to assist ministers in carrying out those responsibilities. It is important to emphasise that the obligations of public servants in this regard are established and defined by ministers, not by the Parliament. There are, of course, differing views about this. Some would hold that there are cases in which there is a different or higher obligation for the public servant.

There is no doubt that the public service can present ethical dilemmas — in some cases very serious ethical dilemmas. The classic case in recent times was that of Clive Ponting in the United Kingdom. Ponting was a senior official who believed it his duty to leak to a parliamentary committee material which indicated that the government was attempting to mislead the committee about certain events in the Falklands War. The Thatcher Government prosecuted him under the Official Secrets Act, but he was acquitted by a jury despite clear directions to the contrary by the judge.

While having great sympathy for the position in which he found himself, I believe that in this case Ponting should not have done what he did. As a public servant his clear duty was to advise his minister and perhaps, ultimately, his Prime Minister in the most persuasive manner he could of his views about any action calculated to mislead the Parliament. If having done that he found that his conscience could not accommodate collaborating with the minister in the deception, there were other courses open to him, including ultimately offering his resignation. Taking the action he did violated one of the fundamental principles of Westminster government, namely, that ministers, not public servants, take responsibility for the relationship between the executive and the Parliament. Fortunately most of us are unlikely to ever encounter such an unpleasant dilemma. But we do need to keep in mind at all times that our relationship with the Parliament is conditioned and shaped by our duty to serve and to be accountable to the government of the day.

There is, incidentally, an important element of trust here. Let us suppose that a public servant perceives it as his or her duty to provide members of the Parliament with information without the knowledge of the minister, and in circumstances in which the minister would disapprove. Realistically, we are talking about leaking information to the opposition. It is highly unlikely that, in the event of a change of government, the incoming minister could accord that person the trust that is essential between ministers and their public service advisers.

So how do public servants assist ministers to carry out their accountability obligations? First, and often overlooked, is ministerial correspondence. A high proportion of letters to ministers come from members of the Parliament who are making representations on behalf of constituents. A large proportion of the rest are likely to go to the local member or senator if they do not get satisfaction. Nearly every reply signed by, or on behalf of, a minister has been drafted by a public servant. I have not done a complete survey, but a quick inquiry reveals that, for example, the Social Security portfolio deals with some 10,500 letters to its minister in a year; Employment, Education and Training deals with roughly 16,000; while Health, Housing and Community Services handles a massive 50,000. The Prime Minister, for the record, gets about 150,000 letters a year.

Across the service this is a huge task and the implications for our accountability are substantial. Most of the correspondents are seeking something from government. In the nature of things, the best that most of them can hope for is clear, prompt acknowledgment that their situation is understood, together with a sympathetic explanation of the reasons for it. It cannot be in the interests of ministers if replies are slow in preparation, negative in tone, or difficult to understand. Sometimes it has to be conceded that the replies are all three, but overall — and given the immensity of the task — my sense is that the performance of the service in this important area is good and improving.

A second, largely unheralded, but again vital area of support for ministers is in relation to the preparation of legislation and other parliamentary material. In recent times governments have come into office with ambitious plans and programs for change. To fulfil their promises and intentions they require legislation, which the public service has to prepare and implement. It is also, in many cases, responsible for explaining the impact and implications of policies and programs and, of course, it drafts many of the speeches that ministers make — both in and out of the Parliament.

In 1990-91, in two parliamentary sittings, the government introduced 217 pieces of legislation, there were 23 government statements by ministers and 581 government papers were presented to the Parliament. Many of the bills would have required second reading speeches, and in most cases ministers would have been assisted by public servants in explaining the various measures to members of the Parliament and committees — again, a massive task and one in which there is a clear requirement for the public service to appreciate the accountability needs of ministers from a variety of perspectives.

A minister's reputation could well depend upon the successful carriage through the Parliament of a vital bill. Major policies of a government might be at risk if, for example, technical explanations provided by public servants to a committee fail to satisfy senators. Failure to translate the government's wishes via drafting instructions into a piece of legislation that works in practice, and achieves the desired objectives could lead to the embarrassment of unwanted amendments or worse.

From my own perspective in PM&C, two observations can be made about the performance of the public service in relation to legislation. First, we are too ready to promote a legislative solution to a policy problem. Often the problem is more imagined than real, and natural bureaucratic tidiness rather than genuine need is the impulse. We do not necessarily do government or the Parliament a service by promoting more rather than less legislation. Secondly, however, the overall quality and performance of the legislation areas of departments and of the Office of Parliamentary Counsel is quite outstanding.

Another important area in which the public service provides extensive support to ministers in fulfilling their accountability obligations to the Parliament is that of parliamentary questions — both upon and without notice. In the last 20 years, between 2,000 and 3,000 questions without notice per year have been addressed to ministers in both Houses of the Parliament. Ministers do not turn up for question time unprepared; they take with them comprehensive briefing on the issues of the day as they affect their portfolios, for they can expect at any time to receive a question on a matter for which they have ministerial responsibility. This is where the public service comes in. Every department prepares for its minister or ministers a question time brief which attempts to anticipate the range of possible questions that might be asked and suggests the lines upon which they might be answered. This involves, as one would expect, having systems in place to monitor current events and to create and update the minister's briefing, often in the very restricted time between the issue being reported in the morning newspapers or on the radio, and question time, which starts at 2.00 p.m.

Being responsible for a minister's question time needs can involve, in addition to a lot of hard work, some degree of creativity. I well remember in the early 1970s working in a department where the minister, who was on the verge of retirement, was extremely and incorrigibly short-sighted — in the physical sense, of course. We developed a system involving a typewriter with extremely large print and triple space capitals. In addition, the brief was colour coded according to subject matter. Whenever the minister received a question, the private secretary, who sat in the advisers' box, would hold up a coloured card to indicate the portion of the brief to which the minister needed to refer. We all felt that the quality of the answers improved markedly as a result.

Preparing question time briefs also requires, obviously, a feel for the politics of an issue. I think it was Sir Paul Hasluck who once said that a public servant can no more avoid politics than a fish can avoid the water. However, it should go without saying that the fact that public servants can and do make judgments about the political impact of current events in no way implies that the traditional political neutrality of the public service is under any kind of threat.

Departments, and in my experience ministers' officers, are always conscious of the need for public servants to avoid crossing that rather ill-defined line between providing support for the government of the day which it needs as a government, and that which it might desire as a political party. For the latter purpose, ministers have advisers in their private offices. These advisers will provide any necessary briefing to assist the minister with answering questions about party political matters, including the more juicy hyperbole often directed at their political opponents. In any good system, for the preparation of a question time brief there will be extensive consultation between the minister's private office and the department so that the brief that is produced is properly tailored to the minister's needs. In case that gives the impression that ministers are mere tools of their advisers, let me hasten to emphasise that ministers can and frequently do depart from the terms of their briefs however carefully written — sometimes, it must be admitted, to the dismay of officials. That is their prerogative and it must always be so, because in our system the ministers have to take responsibility for governmental actions.

From the public service perspective the present question time system is not conducive to efficient and sensible use of resources. Throughout the public service people are employed in preparing briefing, much of which — in the nature of things — will not be used for its ostensible purpose. When one considers that the majority of questions

in the House of Representatives are to the Prime Minister and the Treasurer, and that some ministers very rarely receive a question, it is evident that a great deal of effort is being put into preparing for events which occur only haphazardly, if at all. Even when ministers are asked questions, it is certain that their folders will contain possible answers to a large number that they will not be asked.

This is not to say that there are no advantages under the current system. It ensures that departments are always conscious of the issues which may be of concern to their ministers. It also guarantees that during sitting periods there will be up-to-date, succinct briefing on a range of live topics readily available in each minister's office — much of which would desirably have been prepared anyway. From the Parliament's point of view, the system provides a realistic expectation that ministers will at all times be in a position to fulfil their accountability obligations.

By way of contrast, the system of question time that has evolved in the House of Commons at Westminster exhibits some interesting features. There, ministers are rostered to appear for question time at regular intervals. The roster is decided by the government in consultation with the opposition. A minister's turn is always on the same weekday, although not every minister appears every week. Members wishing to ask questions give notice by placing the question in writing. There is a lottery to decide the order in which questions are asked. Usually these questions are very short and seek basic information.

I will give you a couple of examples from questions given on Wednesday 12 June 1991. The first question on the list is to be asked by Mr Robert Hicks, South East Cornwall. He is to ask the Secretary of State for Foreign and Commonwealth Affairs about the latest position concerning the establishment of a Middle East conference and whether he will make a statement. The next is Mr Gerald Howarth, Cannock and Burntwood, who is to ask the Secretary of State for Foreign and Commonwealth Affairs what priority the Commonwealth attaches to the promotion of good government amongst its members. After the minister has read out the answer the Speaker will allow a number of supplementary questions on related topics, often from several members, before the minister passes to the next question on the list.

The Prime Minister's question time operates according to the same basic rules, although the Prime Minister appears twice a week. The initial question to the Prime Minister from each member on the list is purely formal. It is usually a question about the Prime Minister's engagements for the day. Following that, supplementary questions are allowed, with some preference given to the Leader of the Opposition. Then there is open slather in much the same manner as with our question time.

Finally, in recognition of the fact that there is some interval between ministers' appearances and important issues emerging at any time, there is provision for questions on urgent matters. Notice must be given by noon on the relevant sitting day and, if allowed by the Speaker, the question will be asked of the minister at the end of normal question time. A number of supplementary questions will again be allowed.

The advantages of such a system from the public service point of view will be readily apparent. While ministers still have to be briefed, there is neither the haste nor the waste associated with our system. When it is a minister's turn to attend it will be apparent, at least in general terms, what the interests of members are. If an urgent issue arises that is likely to require a minister to respond, the department will know in time to prepare the necessary brief. I have to concede that this system would not have much to offer my department: briefing for four days a fortnight would not be greatly different from seven.

From the point of view of the accountability needs of the Parliament, the main advantages of such a system would appear to be the potential that it offers for more detailed examination of their stewardship by ministers in portfolios which now, because of the inevitable concentration in question time on the major players, receive comparatively little attention. On the other hand, some might not want to risk losing the daily theatre, which is undoubtedly the main attraction of question time in the House of Representatives.

In Australia, questions upon notice, for which ministers provide written answers, provide a means whereby members of the Parliament can seek more detailed information than ministers can realistically be asked in question time. In the last Parliament, over 2,200 questions were placed on the *Notice Paper* in the House of Representatives and nearly 1,400 were placed upon notice in the Senate. In this Parliament, the comparable figures so far are 1,640 and 2,042 respectively.

Nearly all questions upon notice are answered; although it is not unknown for ministers to decline to answer on the grounds that the resources required would be too great. Virtually all questions upon notice are about matters for which the preparation of replies by the public service is essential. In other words, only a tiny minority of questions upon notice are about purely party political matters. It is impossible without doing a survey to provide a realistic estimate of the resources that the public service puts into answering questions upon notice; as far as I know, no such survey has been done for the Commonwealth in recent times. However, anyone who has worked on answers to questions knows that the effort is considerable — and this is evident from many of the answers. Someone once said that the criteria for the perfect answer to a parliamentary question were that it should be short, truthful and not provide any information that the questioner did not already have. Two of these three criteria have been well and truly ignored by the drafters of answers to most questions upon notice that I have seen.

A couple of observations can be made about the current system. First, many questions seek information that is already available from public sources. For example, it is not uncommon for a question to seek statistical information that appears in departmental annual reports — sometimes over a number of years. There is ample precedent for ministers to point to such sources in their answers and it should not be regarded as any avoidance of the ministers' accountability obligations if the answerer declines to reproduce such material.

Secondly, officials take very seriously their obligations to ministers in preparation of replies. Misleading the Parliament is one of the most serious allegations that can be levelled against a minister. In signing answers, ministers, more often than not, have to take on trust the reliability of the information in them. That there are so few cases where ministers have to correct answers, or are accused of having provided misleading information in them, is, I would suggest, testimony to the care with which their replies are prepared.

The remainder of this paper is devoted to considering executive accountability in relation to parliamentary committees, with special emphasis on the Senate, and with special reference to estimates committees. That emphasis is not to deny the importance and relevance of other types of committees. But the fact is that estimates committees have a special place in our system — a matter I will explore at greater length in a moment.

The Australian Parliament — especially considering its comparatively small size —

has a remarkably well-developed committee system by world standards. Some of that is attributable, as I have said, to the fact that governments find it hard to obtain control in the Senate. We also have a large number of House of Representatives committees as well as, of course, various kinds of joint committees.

With the exception of the committees that concern themselves solely with the internal affairs of the Parliament, all committees impact upon the public service to some degree. During any parliamentary sitting, public servants may need to prepare submissions for a committee inquiring into a particular matter of public interest; appear to give evidence before such a committee; give evidence to a committee considering a bill referred to it by the Senate; prepare material for inclusion in a departmental program performance statement for a Senate estimates committee; or prepare material for inclusion in an annual report, the guidelines for which are subject to agreement by the Public Accounts Committee.

In 1991-92, the standing committees of the Senate — each of which concerns itself with a particular area of government activity — received, or were already working on, some 40 references, held 86 public meetings and tabled 34 reports. If one also considers select committees, the figures go up to 48 references, 128 public meetings and 43 reports. In addition, some 42 bills were referred to committees which held 29 public meetings and tabled 24 reports as a result of their deliberations.

Senate estimates committees, as I have said, have a special place in our system. The need for the executive to gain support for spending proposals was, of course, the main reason for the rise of the power of Parliament in the first place. Thus, the scrutiny of the estimates which these committees carry out can be seen as an important symbolic expression of the role of the Parliament in holding the executive accountable.

Leaving aside for the moment the question of whether there is a better way of doing things, the need for the public service to support ministers' accountability obligations is at its most apparent and public before these committees. During last year's budget estimates hearings, the estimates committees sat for 158 hours and 38 minutes. During consideration of this year's additional estimates — which, of course, involve much less money than the budget estimates hearings — the total sitting time was 109 hours and 30 minutes.

The longest time spent by any committee — Estimates Committee B — was 33 hours and 40 minutes on the departments of Defence; Foreign Affairs and Trade; Treasury, and Finance. More than half of that was on Treasury, which I suppose is understandable in the year in which *One Nation*, and *Fightback!* were produced. The committee sitting for the least time was Estimates Committee D, which spent 8 hours and 23 minutes on Administrative Services; Immigration, Local Government and Ethnic Affairs; and Arts, Sport, the Environment and Territories.

To enable some appreciation of the number of officials attending, let me take a random example. On 5 September 1991, Estimates Committee F met to consider the estimates of the portfolios of Industrial Relations and Primary Industries and Energy. Sixty-two officials are listed as attending, including four from the Department of Finance, which has the invidious task of sending officers to all estimates committee hearings.

Before the officials got there, they would have participated in the herculean task of preparing annual reports and program performance statements. In this year's additional estimates, the program performance statements totalled 924 pages. At budget time, the statements run to in excess of 10,000 pages. Annual reports, which

agencies try to have available at least in draft for the main estimates process, are of comparable size.

In addition to this preparation, most agencies will receive questions on notice from senators before the hearings. No department these days should contemplate attending a hearing without giving careful consideration to the issues that senators might want to raise and to the answers that might be given if they do.

Preparation for the hearings may include asking the committee secretariat to identify matters that may be raised; studying the *Hansards* of the previous estimates hearings; noting matters that senators have asked questions about in Parliament, made public statements about, or raised in other parliamentary forums such as the Public Accounts Committee; being alive to topical issues that may be of interest to the Parliament generally; and, importantly, being aware of the contents of the government guidelines for official witnesses before parliamentary committees. In PM&C we also have at least one meeting of those who are to attend in order to ensure, so far as possible, that likely — and in some cases unlikely — topics have been identified and covered.

One question that might be asked — and indeed has often been asked — is whether all this effort is worth it. After all, notwithstanding the lack of a Senate majority, governments do have some choice when it comes to acceding to the information requirements of the Parliament. Estimates committees do not have the power to require the attendance of witnesses or to take evidence on oath or in camera. The question of who should attend and what information should be provided is at the discretion of ministers.

The fact is that what has suited the Parliament has also suited the executive. For some years now, government has been concerned that the public sector become more efficient and more accountable. The process of increasing public sector accountability, particularly in relation to financial management, has included such reforms as greater devolution to portfolios of financial management responsibilities; publication of the forward estimates; using the forward estimates as the starting point for budget estimates, thus removing the need for annual budget bids by agencies; program management and budgeting; and an increased emphasis on achieving identifiable results.

While the Parliament, through estimates committees, has been attempting to obtain a better and more useful view of what the executive is doing — and in the process has been pushing for more meaningful information and documentation — the executive has itself been reforming its own operations so that it can better discern and control the direction of public expenditure, and be more accountable in the process. One result of this is the program performance statements. In recent years they have become, on the whole, models of clarity and are improved every time they are produced.

The question of whether it is worth it from the Parliament's point of view is not for me to answer. It is worth noting, however, that the Senate is almost continuously reviewing the process — I suspect largely because there is, understandably, lack of unanimity about its primary role. On the one hand, there are senators who would, I am sure, see it as a means of causing maximum political difficulty for the government, either directly, or as a result of the use to which they can put the information they obtain. In this context, I note the comment of the Standing Committee on Finance and Public Administration in its 1991 report. It states that 'on occasions the proceedings have little to do with financial accountability and much

more to do with political advantage, irrespective of which party is in government'.²

Other senators have a somewhat different approach. They see the estimates committee process as an aid to the Parliament's scrutiny function and as a means of improving the conduct of public administration. The same report, to which I have just referred, quotes Senator McMullan at a seminar in 1989 as saying: 'I think all Senators have seen the benefits that have flowed from the scrutiny process, challenging people to lift their standards'. As one of those people I have to say that I agree.

This is not to say that the process, like most processes, cannot be improved; there must be scope for the massive amount of documentation to be reduced and rationalised. Much of what is in annual reports, which are a statutory requirement, is also in program performance statements, which are not. Recently there have been improvements in scheduling committee hearings, but one would like to think that there could be more. In spite of reforms in recent years, the committee of the whole has expanded into full-scale reconsideration of departmental expenditures and activities, thus effectively doubling the process of preparation.

The question of who should and should not attend committee hearings, at least additional estimates hearings, could do with some sensible reconsideration. At this year's additional estimates hearings a number of agencies were asked to attend and were asked questions when they did not have any additional estimates bids. However, in the case of the Prime Minister and Cabinet portfolio, and one or two others, the only officers who attended were those responsible for programs for which additional estimates were being sought. Even the President of the Senate registered a mild protest when members of Estimates Committee A asked questions about matters not the subject of estimates bids for the parliamentary departments.

The latest proposal for change from the Senate Procedures Committee would enable estimates committees to conduct supplementary hearings to explore matters now raised in the committee of the whole. That will be debated early in the budget sittings. If the change is made, it will be interesting to see whether it offers a significant advance over the present system.

Finally, since this paper is about accountability, let me make some remarks about the concept itself. The Australian public service Management Advisory Board has put out a discussion document entitled, *Accountability in the Commonwealth Public Sector — An Exposure Draft*, which states that accountability exists: 'where there is a direct authority relationship within which one party accounts to a person or body for the performance of tasks or functions conferred, or able to be conferred, by that person or body'.

Utilising this definition — which I hasten to emphasise is a perfectly respectable and orthodox description of an accountability relationship as between public servants and ministers, ministers and the Parliament, and public servants and other more senior public servants — the paper asserts, inter alia, that public servants are not, shock horror, directly accountable to the Parliament, but are accountable to and through ministers. I do not expect that proposition to be challenged in this place, but I do wish to emphasise that asserting it is not an attempt to evade responsibility, merely to define it.

2. Senate Standing Committee on Finance and Public Administration, Report, April 1991, *Estimates Committee Documentation and Procedures*, paragraph 2.46.

Today, more than ever, it is vital that public servants understand to whom they are accountable, what they are accountable for and why. Before going to what we are accountable for, let me pose the question: what is accountability for? In my view, the aim of accountability is good governance. It has its ancient origins, in fact, in the desire for good governance. It seems to me no coincidence that, both today and in the past, those societies with systems of government that we would regard as lacking in accountability, have by and large been unable to deliver to their citizens the kinds of rights, freedoms and benefits enjoyed by people living in more open societies.

In my view, the answer to the question, 'What is accountability for?', is by no strange coincidence the same as the answer to the question, 'What are public servants accountable for?' Public servants are ultimately accountable for good governance. In that sense at least, the Parliament and the executive are, thankfully, both on the same side.

Mr Evans — On behalf of this assembled gathering, I thank our distinguished speaker for that thoughtful contribution. During the next two weeks, when the government will be trying to get an extraordinary amount of legislation through the Senate, I will quote that bit of your speech about there being too much legislation.

I am going to do what I very seldom do, and that is take the chairman's privilege of asking the first question. What if a character in Ponting's situation is before a parliamentary committee and he is directly asked questions the answers to which would reveal his knowledge of the government misleading the Parliament? Does he decline to answer the questions, which is a contempt? Does he lie, which is also a contempt? Or does he tell the truth, which puts the government right in it?

Mr Blick — There is a fourth possibility, as there always is in these situations. Under our government guidelines for evidence before parliamentary committees, I think the person being questioned would be entitled to ask either that the question be directed to the minister, or that he be able to consult the minister before providing an answer. That would certainly be the way I would approach it.

Mr Evans — But I covered that by saying, 'What if he is being asked about his own knowledge of the matter?'.

Mr Blick — Of course, as you know, there are different types of parliamentary committees. We would have to be fairly careful about defining which committee we are talking about. But there are precedents in our system. Not all that long ago, as I recall it, the head of a government department told a committee that he was unable to answer a question about the whereabouts of Coronation Hill because the minister had instructed him not to answer any questions at all on the subject.

Questioner — You talked about the minister being responsible, but do you think that, overall, the minister really knows enough? I know it is not possible to dot all the "i's" and cross all the "t's" and know everything that goes on in every department, but it seems to me, from my own experience, that sometimes the information that goes to the minister is selective. Do you have any thoughts on that?

Mr Blick — I am not going to stand here and say that the information that goes to the minister is not selective, because that is exactly what ministers need. I made a point somewhere in the paper about the exercise of judgment. That applies to judgment about not only matters of politics but also information the minister needs in order to conduct our activities. Inevitably, in exercising a process of judgment about what the minister needs to see, a number of considerations will come into play.

In the first place, even with the comparatively large number of ministers that we have in our system at the moment, we have to remember that ministers see vast amounts of information every day. Running their departments is not the only activity that ministers are engaged in. It is therefore essential for public servants, when providing information to ministers, to engage in a fairly careful process of contemplating the amount that the minister will be able to digest. It seems to me inevitable that, in that process, there will be occasions, particularly when ministers find themselves in difficulty, when people will be able to say more information should have been provided in the first place. But it is very much an exercise in judgment and, by and large, I think that people tend to get it right.

Another point that I made in the paper was that ministers have their own private staffs. There are quite substantial resources available to minister's private offices these days and a lot of what they do involves casting their eyes across material that comes from departments and deciding whether, in fact, the minister has sufficient information in that material. It is quite open to them — and indeed they do on many occasions — to go back to the department and ask for additional information if they think that what is there is insufficient.

To summarise, certainly there are occasions when the minister does not have enough information, but there are many occasions when the minister has far too much. Unfortunately, the cases which cause difficulty are likely to be those where, after the event, it could be said that more information should have been provided.

Questioner — You referred to the significant workload contributed by most public servants appearing before senate estimates committees. I know that a lot of departments in fact make the effort to contact committees and talk to members of the committees to assist them in preparing their information. You also alluded to the fact that some of these committees are sometimes used as a political forum — and I will leave it at that. From your experience, what do you suggest to those public servants seeking protection from some vexatious senators who may be pursuing their own platform and, therefore, personalising the approaches that are sometimes pursued through these committees? I do not want you to say that you always have the minister there to protect you in these committees, because it is not always the case. I was wondering — we are talking about accountability and various forums — whether some sort of ethic is to be pursued in regard to members of Parliament: how they use these forums and how they treat public servants.

Mr Blick — The first point to make in relation to that is that fundamentally this is an issue for the Parliament. Indeed, if Mr Evans has any observations to make on that subject, I will breath a sigh of relief and let him do so. Committees are chaired and the chair of the committee has the basic responsibility for ensuring that the proceedings of the committee are conducted in a way in which they should be conducted.

I am sorry you said you did not want me to tell you the minister was there because that was one of the things I was going to tell you. Ultimately, if the minister is not there, the responsibility falls back to the Chair of the committee. We as public servants have to remember that, notwithstanding any feeling we may have about the justice or injustice of the proceedings, it is our duty to conduct ourselves with decorum and politeness and to provide the maximum assistance we possibly can within the constraints of, as I have said, the rules of ministerial accountability.

Mr Evans — One of the pieces of advice I give to public servants at seminars on these sorts of subjects is, first, do not let your minister delegate responsibility downwards. I

tell public servants that they sometimes have to be firm with senators. If they are asked questions that they cannot properly answer, they just have to be a bit firm with them. There are times when public servants have to be firm with ministers and, if necessary, say in the presence of the minister that that is a question for the minister. There is a certain tendency, I think, for ministers to allow the public servants to take a pasting, thereby avoiding it themselves. One of the difficult tasks of public servants is occasionally to say, 'You're the minister, and that's what you're there for'. Firmness is required, sometimes with senators and sometimes also with the ministers.

Questioner — Could Mr Blick describe what he sees as the role of the Auditor-General in the set of accountability relationships. Does he believe there is any need to change whatever he sees as the role of the Auditor-General?

Mr Blick — Let me get out of the question in a sense by saying that the role of the Auditor-General is defined in the statute — the Audit Act. The Auditor-General has a role, it seems to me, of assisting — as the parliamentary committee set out in the excellent report on the role of the Auditor-General — both the Parliament and the executive in examining the actions of the executive and exposing, where he believes it necessary, the capacity for reform.

I assume that the second part of the question refers to the possibility of the Auditor-General becoming an officer of the Parliament. First, this government, at any rate, has contemplated that possibility and decided against it. Secondly, I am not sure that it would make any difference to the role of the Auditor-General. There is a very clear independence for the Auditor-General. So far as I am aware, that has never been challenged in any serious sense. If the Auditor-General were to be made an officer of the Parliament — in effect shifting the appropriations of the Auditor-General in with the appropriations for the parliamentary departments — nothing much would change; ultimately the parliamentary departments are as dependent as any other publicly funded body on the decisions of the government for the total size of what they get.

Questioner — I will ask you a question from a slightly different perspective. You have said much more about the input of bureaucrats to committees. I would like to ask you a question from the other direction. First, how well do you think estimates committees handle the information that you give them, because you say that you give them an awful lot of information? Secondly, what do you see as the value of their output?

Mr Blick — That was one of the things that I said at the beginning: I changed my mind about talking about it in this paper. I think to some extent I can hardly do better than refer you to the various reports that have been produced on this over the years by the committees that have reviewed the operations of estimates committees. From a purely personal perspective, I think it is fairly patchy. Some estimates committees both obtain and use excellent information and seem to have a very focused and constructive approach to the material before them. When you see their reports to the Senate — in other words, the end product of their deliberations — it is apparent that it has been a constructive exercise.

Other committees sometimes lose their way a bit. This is not necessarily because they have not asked penetrating questions but, in many cases, because they are not always able to focus on issues which, I guess from our public service point of view, we regard as being important or material. Do not get me wrong; that is not a criticism of the way estimates committees conduct themselves. As I said at one point in the paper, it has been widely agreed that many senators in estimates committees regard this as a mainly political exercise. If that is their attitude towards it, they are entitled to it.

Fundamentally, one could argue that any scrutiny by the Parliament of what the executive does is ultimately a political exercise. If I have to be pushed to a conclusion, it is that on the whole, and increasingly, estimates committees are engaging in reasonably positive activity, but it is not difficult to point to areas where they are not.

One more point I should make is that — particularly in the last year or so with the improvement that we have been making in program performance statements and particularly in relation to reporting on the way in which our activity has related to results — the estimates committees have been able to focus far more on matters that we regard as important, such as the results of spending the money we are seeking to appropriate, as distinct from what was widely recognised as a deficiency in the past: that of either looking for mistakes in the documentation or focusing on very narrow issues of spending which really had no great importance in the wider scheme of things.

Questioner — We have seen a number of government departments hived off into government business enterprises. Do you see that as a dilution of ministerial responsibility? What is the role of an employee in those sorts of areas?

Mr Blick — That is a very interesting question. When it comes down to it, ministerial responsibility has never been exclusively defined in terms of a relationship between a minister and a department of state. However, that is the relationship by which the traditional Westminster notions of ministerial responsibility and accountability are at their most easily defined. Once you start getting away from that relationship you get a range of arrangements — probably all of which have been defined one way or another by the Parliament — where either the Parliament or the executive, or both, have decided to distance themselves from decision making, and thus have in effect given up some accountability requirements that would apply, for example, in departments of state.

The Auditor-General is not a government business enterprise, but I guess it is one end of the spectrum. No-one would seriously want the government — or for that matter the Parliament — to interfere with what the Auditor-General does. Therefore, the Parliament has enacted a piece of legislation which, so far as possible, protects the Auditor-General from interference by either of those entities.

In setting up government business enterprises — which is a comparable activity, although I accept it is in a different area — governments and the Parliament deliberately and consciously decide to waive certain rights in relation to those particular entities. In relation to government business enterprises, the government has also taken back some of those rights; it has redefined them; it has said that it will set corporate goals for these entities and that it will contract with those entities to get certain results, but that it will not care too much about what goes on in those entities so far as their management is concerned. That is the size of it, as far as I am concerned. There has been a deliberate decision. It does not necessarily mean — and indeed the Parliament would strongly resist the view that it means this — that the Parliament is not entitled to inquire into the operation of those entities. The government is distancing itself from responsibility for their management on a day to day basis.

Questioner — Could I revisit the convention concerning accountability between ministers and the Parliament, and public servants and their ministers. I note that recently there has been a significant change or diminution in the concept of ministerial responsibility. That convention seems to undergo change every decade.

I wonder whether there is some dysfunction between the new emphasis on accountability and the very adversarial nature of our politics. I think that has been highlighted in a couple of questions today. I for one would be much happier if accountability rather than the adversarial nature of politics won out. I wonder whether you have any comments, particularly in the light of the first question on Ponting, which highlights the adversarial nature and the accountability requirements quite pointedly.

Mr Blick — I want to take issue, to some extent, with some of the thoughts that I think were underlying that question. First, let us assume that you are saying that things are changing and getting worse and that ministerial responsibility is not what it was. Let me suggest to you that if the Clive Ponting case had happened in the 1930s or 1920s the poor guy may have found himself being executed. That is the difference in the total situation. As I mentioned, in that case a jury of twelve good people and true decided that what was being put to them by the government and the judge was all nonsense and they duly acquitted him.

As I said to you in the address, I happen to think what Ponting did was not what he should have done. I think that there are some very clear and simple rules for public servants in these cases. I have to emphasise that this does not mean that public servants are not entitled to a conscience. It does not mean that public servants are not entitled to put to ministers the very real fears that they may have if ministers are, as they perceive it, engaged in doing things that are not in accordance with the system. But as long as it is not a crime to mislead a parliamentary committee then my view is that ministers, if they are ultimately silly enough to want to do it, have the right to do it. It is on their heads and not the heads of the public servants if that is what they do. What is on the heads of the public servants, if they are aware that it is likely to happen, is to point out to them in the strongest possible terms the consequences that might flow from it.

In our system of government, as I mentioned in the paper, misleading the Parliament is one of the sins that ministers have been most sensitive to. Certainly, in my experience, if there is ever any suggestion within the executive that a minister has misled the Parliament — usually the suggestion is that it has been done inadvertently — every effort is made, at the earliest opportunity, to put it right. I could go on but I hesitate to do so.

Mr Evans — We all express our appreciation to the speaker.