

Corporatised Bodies Old and New: Is Parliament Missing Out?

Roger Wettenhall

I have two main purposes in this paper. First, I want to offer some thoughts, by way of a comparison across time, about the earlier corporate bodies created by Australian governments to operate public enterprises and related non-departmental activities and about our more recent exercises in 'corporatisation'. And second, I want to consider particularly how parliament has related to these corporate bodies old and new. At the outset, however, I offer a comment on the current debates about the process of accountability: this comment will take me into the main argument.

The Several Faces of Accountability

Accountability is a subject that has been much before our attention in recent times. As Elizabeth Harman of Murdoch University observed to the 1992 Australasian Political Studies Association (APSA) Conference:

- 'concerns about accountability have been at the centre of fallout from dubious government-business dealings, especially within some States', and these concerns 'have been the subject of Royal Commissions and other inquiries';
- a 'decade of managerialism has rendered accountability frameworks in government both complex and opaque'; and
- the leading Canadian public administration academics Kernaghan and Langford have diagnosed 'a confusion about accountability relationships' as one of the causes of 'a collapse in the ethical basis of behaviour by public officials'.¹

Drawing attention to a larger study of government accountability under way at Murdoch University, Dr Harman sought to identify ten causes of confusion about accountability in this country. Her ten causes are:

1. A straightforward definition of accountability has not been agreed and given wide circulation by Australian governments.
2. There is agreement by many that we can no longer rely on the conventions of Westminster, but there is also a reluctance by some to accept this.
3. A new accountability regime is emerging, but is comprised of several different systems, with the result that there are multiple reporting lines, or paths of accountability, now in operation.
4. Accountability regimes for government are now being represented not just as a vertical chain, but as a matrix of relationships.
5. There are inconsistencies between the several accountability systems which make the system, as a whole, opaque.
6. Some of the most important relationships are being redefined, most notably that between minister and public servant.

1. Harman, Elizabeth, 'Public Sector Reform and Challenges for Accountability', paper for 1992 Australasian Political Studies Association Conference, Canberra, 1; reporting Kernaghan, K & Langford, J.W., *The Responsible Public Servant*, Institute of Public Administration of Canada, Halifax, 1990.

7. Another major relationship which is being redefined is that between the public agency and citizens as clients.
8. Politicians, and some courts and commissions, may lag behind senior public servants in understanding the implications of the changes which are occurring.
9. The legal and institutional machinery for defining and monitoring government accountability has grown substantially in recent years, but is not evenly developed, nor well tested, nor necessarily effective.
10. The ethical basis of public behaviour has collapsed and with it our understanding of reasonable standards of behaviour.²

This sort of discussion can be linked to some other significant debates which reveal the existence of contrasting views about the nature of accountability. On the one hand, it is argued that accountability is only meaningful when structured into vertical, hierarchical arrangements. On the other, it is argued that accountability has to be conceived as a much more open and multidimensional process, with sideways and downwards as well as upwards components.

That accountability has several faces became very apparent in the debates that followed the release of the report of the Commonwealth's Management Advisory Board and its Management Improvement Advisory Committee a couple of years ago. The report presented a very traditional hierarchical view of accountability as something 'existing 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.'³ In other words, it requires an 'effective management hierarchy', in which public servants 'are responsible to the next formal superior up, who is responsible to the next up, and so on, on to the secretary, who is responsible to the minister, who is responsible to parliament'.⁴ On this view, as some influential critics noted, public servants were not to think of themselves as being accountable to clients, to the public at large, to the law, to external agencies such as the ombudsman or the auditor-general or, in any direct sense, to parliament itself. Those of this important list which were noted in the MAB-MIAC report were regarded simply as 'adjuncts to accountability'. Some of the 'adjuncts', of course, did not appreciate being written down so lightly. As The Canberra Times's Jack Waterford observed of the MAB-MIAC prescription: 'If only it were all so simple'.⁵

At least in academic circles, this recent Australian controversy has rekindled interest in the famous Friedrich-Finer debate of the early 1940s. Coming from the German and American governmental traditions, Carl Friedrich was always sceptical of claims from Britain that the system of ministerial and parliamentary responsibility 'effectively insures responsible conduct of public affairs by officials, high and low'.⁶

- First, that 'responsibility in a democracy will remain fragmentary because of the indistinct voice of the principal whose agents the officials are supposed to be — the vast heterogeneous masses composing the people'.
- Second, that the 'ways ... by which a measure of genuine responsibility can be secured under modern conditions appear to be manifold, and they must all be utilised for achieving the best effect'.
- And third, that much reliance needs to be placed upon the sense of responsibility of individual officers which is 'largely unsanctioned, except by deference or loyalty to professional [or 'objective', 'functional' or 'technical'] standards'.⁷

2. Harman, Elizabeth, 'Public Sector Reform and Challenges for Accountability', paper for 1992 Australasian Political Studies Association Conference, Canberra, 3-6.

3. Management Advisory Board-Management Improvement Advisory Committee, *Accountability in the Commonwealth Public Sector: An Exposure Draft*, AGPS, Canberra, 1991, 1.

4. Waterford, Jack, 'A Bottom Line on Public Service Accountability', (1991) *Australian Journal of Public Administration* 50 (3), 414.

5. *Ibid.*

6. Friedrich, Carl J., 'The Nature of Administrative Responsibility', *Public Policy*, Yearbook of Harvard Graduate School of Public Policy, Cambridge, Mass., 1940, 221. Reprinted in Peter Woll (ed.), *Public Administration and Policy: Selected Essays*, Harper Torchbooks, New York, 1966.

7. *Ibid.*, 224,245,256.

British Professor Herman Finer's response was to endorse the accountability values built into the Westminster system. For him, responsibility (or accountability) was a matter of instituting arrangements to ensure 'political control of public officials through exercise of the sovereign authority of the public': these arrangements would provide for 'correction and punishment even up to dismissal both of politicians and officials'. For such a system to operate, ministerial and parliamentary responsibility, representing a clear hierarchy of accountability, were vital forces; and Friedrich's 'professional standards, duty to the public and pursuit of technological efficiency' were mere ancillary 'ingredients' themselves requiring clear political control and direction.⁸

It is certain that we will go on arguing about all this. I want here to offer another observation about accountability, one that received some attention when Dr Harman presented her paper to the APSA Conference.

This is that there is an ambivalence in the current Australian discussions about whether there is necessarily a single approach to accountability to be discovered and applied throughout the public sector, or whether different parts of the public sector require different treatments appropriate to their purposes. If the latter represents the 'better path', then all attempts to apply a single general approach — however uncertain that approach might be — are likely to be inimical to the quest for improved functioning over the whole apparatus of government. Indeed, sorting out what are the appropriate forms of accountability for particular parts of the public sector, and then applying those forms clearly and consistently within those matched parts, might lead to better performance not only of the parts but of the whole.

Dr Harman's causes 3 and 5, which recognise that the 'new accountability regime' which is emerging contains 'several different systems', or 'multiple reporting paths', go some way to acknowledging this. But I submit that we are very far from reaching either clarity or agreement here.

Consider the case of the police. The issue of police accountability got serious attention in a conference in May 1993 organised by the Royal Institute of Public Administration Australia and the New South Wales Ombudsman's Office. The Queensland Public Sector Management Commission had just reported:

1. that 'the Police Service is a Government department, a part of the executive arm of Government and as such, the police are answerable and accountable to the Minister'; and
2. that 'the Minister is responsible for the Police Service in the same way other Ministers are responsible for other areas of public administration'.

But then it immediately asserted:

3. that 'there are legal and constitutional constraints on ministerial authority over the Police Service';
4. that 'there is an area of the [Police] Commissioner's responsibilities, the duty to enforce the law, which, by convention and at common law, is not subject to Ministerial direction'; and
5. that 'The Police Commissioner has significantly wider powers than other CEOs in a number of areas related to Human Resource Management'.⁹

Is the police service, then, an ordinary department of government subject to the normal accountability arrangements understood to operate in the departmental public service? Or is it not?

Dr Rudolf Plehwe and I argued in our paper to the conference that it was not possible to have it both ways, that there were significant elements in the Anglo-Saxon police tradition which required that police should *not* be regarded as just another government department, and that the need for special processes of accountability should be recognised. These elements included the common law responsibility of the individual police officer, the kin police tradition within which the police organisation is seen as being responsible to the law rather than to the government-of-the-day, and the long acceptance of devolution in the management of police operations. We argued further that current problems of policing might be better 'treated' if those tackling them were prepared to bring some of the

8. Finer, Herman, 'Administrative Responsibility in Democratic Government', (1941) *Public Administration Review*, 1(4), 248, 275. Reprinted in Peter Woll (ed.), *Public Administration and Policy: Selected Essays*, Harper Torchbooks, New York, 1966.

9. Public Sector Management Commission, Queensland, *Review of the Queensland Police Service*, Government Printer, Brisbane, 1993, 37-41.

precepts now applying widely to the statutory authority group of public authorities to bear on questions of police-government relations.¹⁰ But our efforts were blunted by two law academics who argued that old distinguishing features had vanished, that today the 'same legal and administrative means of accountability' applied to all public sector employees.¹¹

If everything else is standard, why should the police expect to be treated differently? But is everything else standard?

The differential aspect was made abundantly clear in the February lecture in this series by Ian Temby, Commissioner of the New South Wales Independent Commission Against Corruption (ICAC) and a former Commonwealth Director of Public Prosecutions (DPP). He spoke of the creation of public bodies 'independent from government but accountable to parliament' — bodies like ICAC, DPPs, auditors-general and ombudsmen, administrative appeals tribunals, broadcasting tribunals and courts, which are non-partisan (because they are not headed by ministers), which report directly to the parliament which created them, and which 'do not in any sense work through the government of the day'.¹² To a considerable degree, his descriptions apply also to the corporate bodies running, for example, the public broadcasting services and public universities: to some degree, they apply to the corporate bodies running the so-called government business (Canberra) or trading (Sydney) enterprises.

The non-differential aspect is apparent when old distinctions are blurred (as they are particularly in some Australian states today):

- distinctions between secretaries of departments and general managers of statutory corporations, who are now all chief executives;
- distinctions between the Public Service staffed under a Public Service Board or Commission, and non-departmental bodies within the public sector — now we have some undifferentiated Public Sector Management Commissions;
- distinctions between departments and statutory authorities/corporations — the generic, indiscriminating term 'agency' becomes increasingly popular.

My proposition here is that there is, in our machinery of government today, a great deal of ambivalence as to whether we have (or should have) a single overriding system of accountability, with only minor variations within; or whether there are major sub-sectors within the public sector requiring, for their efficient performance, distinctive accountability regimes. So often we seem to want to have it both ways, and I suspect few of us who make up the profession of public administration — either the many practitioner politicians and administrators, or the smaller band of teachers, researchers and reporters — are blameless.

When we talk about the imperatives of accountability, we use broad-sweep language, invoking a force of general application which harms the cause of devising appropriate treatments for particular cases. But then we — and particularly the drafters and passers of legislation — invoke older traditions and take care to be discriminating in the detail we write into our statutes. These statutes are very often clear: they vest functions in ministers and their departments, or they create non-departmental organisations operating in specified relationships with ministers. The intention that there is to be a difference is quite explicit. But then we come back to the broad-sweep (and usually non-statutory) propositions about accountability, and they influence behaviour away from the statutory intent.

And, of course, if governments opt for the form of the state-owned company, as they now do ever more frequently, we can virtually write parliament out of the equation. Again, however, choosing the company form, rather than that of a department or a statutory corporation, surely asserts an intention that behaviours in and around it should be different, and accountability will again be one of the central issues at stake.

Corporate Bodies in the Public Sector: Phase 1

10. Plehwe, Rudolf & Wettenhall, Roger, 'Policing in Australia: An Historical Perspective', paper to Conference on Keeping the Peace: Police Accountability and Oversight, Sydney, May 1993.

11. Goldring, John & Blazey, Patricia, 'Constitutional and Legal Mechanisms of Police Accountability in Australia', paper to Conference on Keeping the Peace: Police Accountability and Oversight, Sydney, May 1993.

12. Temby, Ian, 'Safeguarding Integrity in Government', (1993) 21 *Papers on Parliament* 1.

A little administrative history helps to locate the place of corporate bodies in the public sector. Small statutory authorities were commonplace in British (and British colonial) public administration in the eighteenth and early nineteenth centuries. Mostly, in the middle and later nineteenth century, they gave way to the ministerial department, that great organisational invention of the British, Canadian and Australian Westminster reformers.¹³ The vertical accountability chain — through the ranks of the now merit-recruited departmental hierarchy to the permanent secretary, minister, cabinet and parliament to the electorate-at-large — was now the guiding principle of public administration within a system of responsible parliamentary government. These Westminster reforms are widely regarded as having constituted an administrative revolution.

Then, in the Australian states, came the great challenge of state railway management. Ministerial and public service management of the rapidly expanding rail networks was found to be wanting, a finding which soon extended to the management of other public enterprises here and abroad. The ensuing counter-revolution (counter to the Westminster revolution), which began with the reform of the Victorian railway management system in 1883, produced the organisational form of the modern statutory corporation: this was a revival of the older, more primitive form of statutory authority, which at the same time imported into public administration some features of the joint-stock company form now increasingly familiar in private enterprise.¹⁴

The designers of this new form sought to provide opportunities for entrepreneurial public managers to operate expanding commercial and technologically complex enterprises within the framework of organisations which were both legally incorporated and clearly separated from the central state apparatus. Anyone doubting that this was the objective should read Eggleston's classic text, *State Socialism in Victoria*.¹⁵ Of course, the designers were also very clear that the statutory corporations they were creating remained part of the public sector, and therefore needed to be held accountable to their ultimate owners, the public. Accordingly, they made strenuous efforts to devise new methods of accountability different from those applying to the central departments and suited to government business enterprises.

In trying to find reasonable balances between control and autonomy, the Victorian and New South Wales legislators, in 1883 and 1888 respectively, produced rival models of statutory corporation accountability. In Victoria, the railways

were, as it was called, removed from political influence and placed under the control of a board of three commissioners, who were rendered independent of the Government of the day, and responsible only to Parliament.¹⁶

The essence of this model is the assumed direct responsibility to parliament through annual reports and the like.

When Sir Henry Parkes designed the New South Wales railway corporation, he rejected this Victorian model, which he regarded as incompatible with the 'genius' of responsible government. After a visit to Victoria, he claimed to have found a great deal of muddled thinking underlying the Victorian statute. His conclusions were these:

- Once the railways were operational, their management should be kept 'distinctly separate from the policy of the government' and free from political pressures. It should be conducted according to 'principles of commercial probity and intelligence'.

13. For my argument, partly based on some very respectable Canadian administrative history, that the Westminster system evolved spontaneously in Canada, Britain and Australia, and is not therefore just a British imposition, see Wettenhall, Roger, *Organising Government: The Uses of Ministries and Departments*, Croon Helm, Sydney, 1986, 26-8.

14. See, for example, Wettenhall, Roger, *Railway Management and Politics in Victoria 1856-1906*, RIPA (ACT Division) Canberra, 1961; Wettenhall, Roger, *Public Enterprise and National Development: Selected Essays*, RAIPA (ACT Division), Canberra, 1987; Wettenhall, Roger, 'Australia's Daring Experiment with Public Enterprise', in Alexander Kouzmin & Nicholas Scott (eds), *Dynamics in Australian Public Management: Selected Essays*, Macmillan, Melbourne, 1990.

15. Eggleston, F.W., *State Socialism in Victoria*, King, London, 1932.

16. Reid, J., 'State Railways', *Sydney Quarterly Magazine*, June 1887, 138-44. The argument in the next few paragraphs follows that in Wettenhall, Roger, 'Quangos, Quagos and the Problems of Non-Ministerial Organisation', in G.R.Curnow & C.A. Saunders (eds), *Quangos: The Australian Experience*, Hale and Iremonger, Sydney, 1983.

- The creating statute would lay down the broad principles which the commissioners would follow. The government would have the responsibility of ensuring that the commissioners carried out the provisions of the statute and, if parliament were not satisfied with the conduct of the administration, it could turn out the government or alter the underlying principles by amendment of the statute. But that was all it could do.
- For so long as the commissioners complied with the statute, their autonomy must be defended.

Parkes saw the government's role as holding a watching brief to be exercised in a 'continuous, constant and searching manner', but it was a 'dormant authority' in contradistinction to any active authority — simply enabling the government to intervene in any emergency or the last resort'.

For a while, succeeding New South Wales governments endorsed Parkes's approach. The operating autonomy of the enterprise was to be defended against political pressures seeking to bend it away from its commercial objectives. The New South Wales railways were, at the time, regarded as achieving high standards in efficiency and service. By contrast, the Victorian railways, which had never achieved effective protection from the clamorous interest groups, staggered from crisis to crisis. Amendments to the statute were passed in 1891 and 1896. The 1891 changes significantly increased ministerial control. Those of 1896 recognised that the earlier changes had gone too far, and introduced the 'recoup' system which supposedly obliged the commissioners to receive compensation for the cost of things done for political or social rather than commercial reasons — for which we now use the term 'community service obligations'.¹⁷

Most other traditional formulations of the relationship of statutory corporations to parliament and the executive appear to build on one or other of these two models: that of New South Wales, emphasising remoteness of control, and that of Victoria, emphasising direct answerability to (and, therefore, control by) parliament. Reporting in 1937, the Royal Commission on the Monetary and Banking Systems (RCMBS) came close to the New South Wales model in considering the desirable relationship between the Commonwealth government and the Commonwealth Bank in the aftermath of the Bank's refusal to follow the monetary policies of the Scullin government a few years earlier. RCMBS found that the bank was an entity independent of the government; its powers were delegated by parliament, and it was fully entitled to determine how they could be exercised in what it took to be the national interest, even though its view differed from that of the government. RCMBS suggested that serious differences should be raised in 'full and frank discussion'. If the differences remained unresolved, the government (as 'the executive of parliament') should give the bank

an assurance that it accepts full responsibility for the proposed policy, and is in a position to take, and will take, any action necessary to implement it. It is then the duty of the Bank to accept this assurance and to carry out the policy of the Government.¹⁸

In 1945, the Chifley government wrote this formulation into the Banking Act. This was an important milestone in the evolution of the statutory corporation in Australia. A subsequent Menzies government insisted that all such directions, together with the bank's views, should be reported to parliament, thus ensuring that, in theory, the legislature should make the final judgment on the facts.

During the 1930s, the two pioneering scholars of public enterprise in Australia also emphasised the theoretical separateness of statutory corporations from the general state apparatus, and their corporateness and commerciality. Sir Frederic Eggleston, like Parkes, found that,

if a business service be undertaken by the State, it must be isolated from the State system; definite functions must be allotted to it and responsible managers should be left to carry them out as they think proper; policy should be determined on general lines by the State, and embodied in legislation, but its detailed interpretation and execution should be left to the managers. ¹⁹

17. Full citations and further detail may be found in Wettenhall, Roger 'Early Railway Management Legislation in New South Wales', (1960) *Tasmanian University Law Review* 1(3); Wettenhall, Roger, *Railway Management and Politics in Victoria 1856-1906*, RIPA (ACT Division), Canberra, 1961. The Australian state railways drifted far over the succeeding decades from their intended position as autonomous statutory corporations and by the mid 1900s were often mistakenly regarded as (and therefore treated as if they were) departments: see discussion in Wettenhall, Roger, 'Organisations with Two Faces', (1967) *Australian Transport* 12(1). This misuse of them so confused Sir Richard Boyer as ABC Chairman that he suggested that the solution to the problems of the railways lay in their conversion to the statutory corporation form: Boyer, Sir Richard, 'The Statutory Corporation as a Democratic Device', (1957) *Public Administration* (Sydney), 36.

18. Royal Commission on the Monetary and Banking Systems, *Report*, Government Printer, Canberra, 1937, 206.

19. Eggleston, F.W., *State Socialism in Victoria*, King, London, 1932, vii, 45.

As Minister for Railways in Victoria in the 1920s, Eggleston has seen his main role as defending the railways from the 'interests', though he recognised that he had been only partly successful in this and believed that his approach had contributed to his defeat at the 1927 elections. Professor F.A. Bland so despaired of achieving the necessary restraints in political supervision of statutory corporations that he proposed the creation of a Supreme Administrative Council, an administrative tribunal to determine questions about their performance within the terms of guiding legislation, about fees charged by them, and so on.²⁰

As Chairman of the Australian Broadcasting Corporation, Sir Richard Boyer made a significant reformulation in suggesting that the basic principle governing the operation of statutory corporations was that they were responsible, not *to* their ministers like departments, but *through* their ministers to parliament. 'In other words, Parliament requires of a Statutory Corporation the same degree of accountability as it requires of its Ministers.'²¹ W.J. Campbell, then New South Wales Auditor-General, put forward a similar view a few years earlier when he wrote of corporations as paralleling ministers in the executive branch of government, working through them only for 'liaison' purposes:

just as is the Ministerial executive, so also is the corporation answerable to Parliament, which having created the corporation can restrict or enlarge its powers or terminate it at will.²²

Many observers seek to draw a distinction between policy matters for which governments and ministers should retain control and therefore be responsible, and matters of day-to-day administration for which the boards should remain autonomous operators. But policy is notoriously difficult to define, and there is also insistence that statutory corporations must be allowed to exercise important policy discretions.²³

In 1959, the High Court ruled, in *City of Launceston v. The Hydro-Electric Commission*,²⁴ that this Tasmanian corporation was independent of the state apparatus, in the sense of not being a 'servant of the Crown', and that the few statutory powers given to the minister were merely 'a limitation upon what is otherwise a completely independent discretion'. As late as 1959, then, the High Court was emphasising the separateness and independence of these corporations, thus associating itself with a tradition which had held sway in Australia since the 1880s — tradition which, on the world front, had produced the British Broadcasting Corporation in 1926 to serve (in the grand phrase of the Crawford Committee) as 'a trustee for the national interest', the Tennessee Valley Authority in 1933 (in President Roosevelt's words) as 'a corporation clothed with the power of government but possessed of the flexibility and initiative of a private enterprise', numerous 'crown corporations' to manage a variety of Canadian public commercial and developmental enterprises and, after 1945, the 'public corporations' set up by the Attlee government to manage Britain's nationalised industries. A massive literature was generated, reporting and analysing the achievements and problems of these public sector corporations.

Corporate Bodies in the Public Sector: Phase 2

That remarkable management clairvoyant, Peter Drucker, predicted in 1969 that the Western world was about to enter an 'age of discontinuity'.²⁵ For several generations, major currents of political and economic thought had shared a confidence in the ability of government to tackle social problems meaningfully, to lead towards more affluent and more equitable societies. When the era of decolonisation began, this confidence spread to the new nations of the Third World. But, said Drucker in 1969, all that was about to change. And so we saw, developing slowly through the 1970s and much more rapidly in the eighties, a loss of confidence in governments along with a deepening sense of economic and social crisis.

20. Bland, F.A. 'Some Implications of the Statutory Corporation', (1937) *Australian Quarterly*, 9(2), 37-49; Bland, F.A. *Planning the Modern State*, 2nd edn, Angus & Robertson, Sydney, 1945.

21. Boyer, Sir Richard, 'The Statutory Corporation as a Democratic Device', (1957) *Public Administration* (Sydney) 16(1), 31.

22. Campbell, W.J., *Australia State Public Finance*, Law Book Co., Sydney, 1954, 186-7.

23. For example, Dimock, M.E., 'Government Corporation: A Focus of Policy and Administration', (1949) *American Political Science Review*, 43(5&6).

24. (1959) 100 CLR 654.

25. Drucker, Peter, *The Age of Discontinuity*, Heinmann, London, 1969.

Ignoring all the evidence that civilised man has always made much use of public enterprise and that the public/private frontiers have existed and been shifting throughout recorded history, a new ideology spread the word that government had no business in business. It found allies in many of the more pragmatically inclined, who simply feared that government had grown too big to be manageable and so looked for a slimming down in the activities of the state. It is not appropriate to go into the details of the 'small government' movement here. What is relevant is to note that it has produced *not only* a demand to 'privatise' many of the activities of the state *but also* a quest for greater efficiency, better performance, in those functions which remain in the public sector.

For the last ten years or so, we have been hearing insistent demands that government business enterprises should adopt commercial methods of operation and be organised, following the model of the private company, as corporations. Thousands of reforming minds have applied themselves to the task of achieving these reforms, and many of the pronouncements they make suggest a belief that they are blazing a new trail. Those terms 'commercialisation' and 'corporatisation' are invoked — along with 'privatisation' — with an almost religious fervour to indicate the newness of what is going on.

From what I have already said, you will appreciate that I don't believe it is all so new, or so original. I believe that the annals of our administrative history show that previous generations of administrative reformers — men like Service and Gillies, who created that first Victorian railway corporation; Parkes, who followed suit in New South Wales; Eggleston and Bland, who studied, analysed and recommended improvements; the countless others involved over the last one hundred years in the design of corporate bodies to run our public electricity, transport, communications, marketing, banking and development enterprises; and great public sector corporate leader-managers like Sir John Monash and Sir William Hudson — have had many of the same objectives in view. Did not their creations also represent 'commercialising' and 'corporatising' activity?

As I have suggested elsewhere, they:

sought to establish organisational conditions that would facilitate entrepreneurial business management within the context of public ownership. The contrast was with the system of *political* management that necessarily operated in departments close to the centres of government. Thus 'managerialism' was brought to an important part of the public sector generations ago, and far more than a few state-owned corporations have been exemplars of sound entrepreneurial management, sometimes in competition with private firms. Successive waves of political action have seen these organisational conditions weakened, strengthened, weakened, strengthened ... Of course, the waves have come at different times in different jurisdictions, and there is room for considerable argument about how many really novel reforms are contained in each new wave.²⁶

Through the 1980s, it often seemed that we had overlooked our own rich history in this field, forgotten that there were previous waves of relevant reformative action. To an extent, I believe, we were misled by Lange and Douglas in New Zealand. Their changes appeared to have revolutionary force, and many Australian 'moderns' believed they furnished the model we should follow. They *were* revolutionary for New Zealand, for New Zealand was still mostly operating its public enterprises as government departments.²⁷ Now New Zealand saw the light and, in moving to adopt the corporate form of organisation, *it was following us!* For a while, we just seemed to forget we had been there before.

There were certainly Australian continuities. Thus, the Coombs Royal Commission of the mid-seventies reviewed Australia's past experience with statutory corporations and other forms of non-departmental organisation and, on the basis of this review, recommended strongly that the Commonwealth should prepare guidelines to regulate the future use of such devices. The important work of the Senate Standing Committee on Finance and Public Administration (originally Finance and Government Operations) has carried on directly from the Coombs prescriptions. And this work has led in turn to the equally important series of late eighties policy papers from the Finance, Primary Industry and Transport and Communication portfolios.²⁸ Most of the current reforms can be traced to this pedigree.

26. Wettenhall, Roger, 'Public Enterprise in an Age of Privatisation', (1993) *Current Affairs Bulletin*, 69(9), 7.

27. See, for example, Mascarenhas, R.C., *Public Enterprise in New Zealand*, NZ Institute of Public Administration, Wellington, 1982; Duncan, Ian & Bollard, Alan, *Corporatization and Privatization: Lessons from New Zealand*, Oxford University Press, Auckland, 1992.

28. Walsh, Senator Peter, (Minister for Finance), *Policy Guidelines for Commonwealth Statutory Authorities and Government Business Enterprises*, AGPS, Canberra, 1987; Kerin, John (Minister for Primary Industry) *Reform of Commonwealth Primary Industry Statutory Marketing Authorities*, AGPS, Canberra, 1986; Evans, Senator Gareth (Minister for Transport and Communications), *Reshaping the Transport and Communications Government Business Enterprises*, AGPS, Canberra, 1988.

I am reminded of Professor W.J.M. Mackenzie's quip about the newness of cost-benefit analysis, when economists were claiming this as a great intellectual breakthrough a generation ago. The basic framework was all there in the ideas of the Utilitarians one hundred years before, he asserted. What the 'moderns' had contributed — certainly a highly important contribution — was the refinement of measuring techniques. Perhaps, then, it is thus also with the new wave of advances in the organisation and management of government business enterprises.

All the waves have contained calls for ministers to concentrate on strategic (or broad policy) issues, and avoid trivial interventions — so that is not new. But the focus on negotiated corporate plans as the preferred means of ensuring that strategic relationship is new and, once that was accepted, we had a mechanism within which we could develop in a systematic way other needed refinements as in the setting of performance targets and performance indicators, the better identification and treatment of those community service obligations, and so on. I am not seeking to devalue these contributions, which I believe are of major importance: my point is rather that we should not ignore the continuities.

In organisational terms, we continue to make much of the device of the statutory corporation — fairly recent Commonwealth additions to this group are the Defence Housing Authority, the Maritime Safety Authority, the Fisheries Management Authority, the Civil Aviation Authority and the Federal Airports Corporation. These creations have been said by some to represent instalments of 'corporatisation'. But there has also been a noticeable trend towards greater use of the alternative form of corporate organisation within the public sector, the government-owned company, and others seem to insist that this style-change is necessary for 'corporatisation' to occur. Studying world trends in this area of public administration from the University of Hong Kong, my former colleague Ian Thynne suggests that our understanding might be helped if we regarded statutory corporations as representing 'stage 1 corporatisation' and the government-owned companies as representing 'stage 2 corporatisation'.²⁹

From the time the Chifley government acquired the shares previously owned by private interests and the British government, Qantas has been a public enterprise in this form. So too was the Menzies government's Commonwealth Hostels Ltd, and a few others — notably between the 1920s and the 1950s in Australia, mixed public-private corporations in which government held a majority shareholding: Commonwealth Oil Refineries and Amalgamated Wireless.³⁰ But it was a deviant, not the dominant form. In the recent period, however, the Commonwealth has converted several major statutory corporations to this form; for example, the old Australian Airlines and OTC, the Commonwealth Bank, the new Telecom, the Snowy-Mountains Engineering Corporation and the Serum Laboratories Commission. Such conversion is now set to play a leading part also in the reform of the New South Wales public enterprise system. It is claimed that the converted corporations are more readily able to respond to market imperatives and so behave in a fully commercial manner.

More controversially, because little or no legislative action was required, the Commonwealth has also excised large sections of the Defence Department and registered them directly as companies under government ownership: Australian Defence Industries Pty Ltd and Aerospace Technologies of Australia Pty Ltd. This brings me to the final section of my paper, for it provokes a number of questions about the role of parliament in the design of the public enterprise system and about the accountability to parliament of the component parts of that system.

The Role of Parliament

As we have seen, the great Australian railway reformers of the 1880s produced two quite different conceptions of the relationship of parliament to corporations within the public sector. In the first conception, the statutory corporation was to be independent of government and responsible only to parliament. In the second, the influence to be avoided was that of parliament itself; the executive government was given a watching brief and generally expected to defend corporate autonomy, and was itself responsible to parliament for how that brief was exercised. Notwithstanding this difference, however, the very exercise of creating these corporate, non-departmental bodies produced a new geometry of government. Orthodox Westminster principle had produced a linear (two-way) relationship between the parliament and the government of the day, which was made up of ministers unambiguously heading departments. Now the new statutory corporation sector furnished a triangular (three-way) relationship between parliament, government and corporations. This was what was so

29. Thynne, Ian, 'Public Enterprise Transformation: Changing Patterns of Ownership, Accountability and Control', in C.Y. Ng & N. Wagner (eds.), *Marketisation in ASEAN*, Institute of Southeast Asian Studies, Singapore, 1990.

30. These followed, of course, the great British example of this form of organisation, Anglo-Persian which became Anglo-Iranian which became British Petroleum (BP).

clear in those formulations of New South Wales Auditor-General Campbell and Australian Broadcasting Corporation Chairman Boyer: statutory corporations were not responsible to their ministers as departments were; rather they were responsible *through* their ministers to parliament. It was equally clear when the Royal Commission on the Monetary and Banking Systems in the 1930s asserted a corporation's right to have its own independent view of how it might best serve the public interest and, from this position of independence, to negotiate with government if policy conflicts emerged, with reports to parliament on both positions.

I have already indicated that the movement to Thynne's Stage 1 corporations produced a massive literature. The parliamentary connection is a major strand running through this literature, and it earned some specialised treatments. For the purposes of this paper, I picked from my own bookshelf Hanson's *Parliament and Public Ownership*,³¹ Ramanadham and Ghai's *Parliament and Public Enterprise*,³² Coombes's book-length study of the British Parliament's Select Committee on the Nationalised Industries,³³ and the *Report of Proceedings* of the 1959 Conference of the Commonwealth Parliamentary Association held in the Old Parliament House here in Canberra, which contained a substantial discussion on 'Parliamentary Control of Statutory Bodies'.³⁴

In introducing the discussion at the Parliamentary Association Conference, the Deputy Chairman of the Upper House of the Indian Parliament endorsed the dictum of a leading British authority of the middle 1900s, Ernest Davies, that parliament was 'the final arbiter between the public corporation, the Minister, and the community'. Through its democratically elected representatives, this dictum continued, 'the community reserves final control over the public corporation'. The collective role of parliament was, however, to defend the arm's length management relationship — there must be ultimate control 'over broad matters of general policy', along with protection of the corporations against 'close treasury control, bureaucratic management' and the detailed interference of individual Members of Parliament.³⁵ Ramanadham and Ghai similarly saw parliament as 'the custodian of society's expectations from public enterprises', observing also that the 'central concern of parliament ... relates to the ensuring of aggregate accountability of public enterprise to society or the public', but also defending the managerial autonomy of the corporations.³⁶

Of course, no one has suggested that the operationalising of these prescriptions is easy. I focus here on a few themes given further development in these works.

One emphasises the importance of the creating statute, which:

- serves as the operating charter for the corporation,
- makes parliament's intentions clear,
- has force of sanction, in that major changes in the environment of the corporation will require the full force of legislative amendment.

Here some observations of the Indian-New Zealand scholar Mascarenhas are pertinent. He asserts with great persuasiveness that there are two relevant efficiencies: policy efficiency (establishing the legal and contextual framework within which public enterprises must operate) and operational efficiency (sound management within that framework); that politicians and their advisers are fully responsible for policy efficiency; and that it is unfair to blame enterprise managements — though it happens too often for shortfalls in performance which result from failures in policy efficiency.³⁷ Getting the statutory provisions right is, of course, a major consideration in the ensuring of policy efficiency.

31. Hanson, A.H., *Parliament and Public Ownership*, Cassell for the Hansard Society, London, 1961.

32. Ramanadham, V.V. & Ghai, Yash, *Parliament and Public Enterprise*, International Centre for Public Enterprises in Developing Countries, Ljubljana, 1981.

33. Coombes, David, *The Member of Parliament and the Administration: The Case of the Select Committee on Nationalised Industries*, Allen & Unwin, London, 1966.

34. Commonwealth Parliamentary Association, *Report of Proceedings*, Conference, Canberra, November 1959.

35. *Ibid*, 163.

36. Ramanadham, V.V. & Ghai, Yash, *Parliament and Public Enterprise*, International Centre for Public Enterprises in Developing Countries, Ljubljana, 1981, 9,52.

37. For example, Mascarenhas, R.C., *Public Enterprise in New Zealand*, NZ Institute of Public Administration, Wellington, 1982.

A second theme derives from the always complex relationship between parliament and government. In Westminster systems, parliament always looks to the ministerial executive as its governing agent, and so ministers act for parliament in exercising their statutory responsibilities. Equally, however, since statutory corporations are not themselves represented in parliament, they use ministers as *their agents* in the legislature. Yet ministers will, if not checked, seek to exert extra-statutory powers over corporations through informal interventions, and so enhance the degree of executive power beyond that which parliament has intended: ideally, parliament will seek to hold ministers responsible for *all* their interventions in the affairs of corporations.³⁸ It is for this reason that so many inquiry bodies, and so many statutes today, require transparency in ministerial-corporate relations, with all ministerial directions to be in writing and reported back to the parliament. This could never happen in ministerial-departmental relations.

An extension of the last, a third theme relates to reporting about corporate operations.³⁹ There are now elaborate guidelines governing what should be included in these reports, but there is uncertainty as to whether the corporation is reporting primarily to the minister, or primarily to parliament. If the former, it will be very aware of ministerial sensitivities and report in the manner of a captive department rather than a self-respecting corporation. If the latter, it will report fearlessly on the nature of its relations with the minister, including problems in those relations, as the theory of the autonomous corporation clearly requires, and without which parliament cannot properly discharge its intended role. Statutory corporations are entitled to expect that parliament will rebuke ministers who have exceeded their powers or otherwise behaved improperly towards them. As a rider to this comment, there is room for concern today about the negotiating processes which produce the corporate plans. How transparent are they? Is parliament adequately informed about them?

Other themes seek to make explicit the techniques through which parliament involves itself in the statutory corporation sector. Importantly, they testify to the value of specialised parliamentary committees which develop expert knowledge and wisdom to be applied to issues of corporate accountability. Notable cases, where excellent reputations for this sort of service have been established, are Britain's Select Committee on Nationalised Industries (SCNI)⁴⁰ and India's Committee on Public Undertakings. Amongst other things, these committees have helped make more transparent the nature of minister-corporation relations. Though not quite as specialised, our own Senate Standing Committee on Finance and Public Administration has earned similar respect for its major concentration on the public corporate sector. Notoriously, Mrs Thatcher collapsed Britain's SCNI soon after assuming the prime ministership.

They emphasise also the vital role of the Auditor-General in reporting to parliament on the financial operations of the corporate sector. We have been uncertain about this recently in Australia, and John Taylor as Auditor-General has been outspoken in urging the need for parliament to retain this direct reporting service:⁴¹ the alternative is, of course, that the corporations engage *their own* corporate (private) auditors in which case the independence of the audit is in some doubt. Ghai reports that the Indian parliament 'force(d) the government to accept [the] important ... principle that the Auditor-General should have jurisdiction over the auditing of the accounts of government corporations and companies'.⁴²

More generally, this literature explores other ways in which the legislature can be encouraged to develop a broad and sympathetic awareness of the needs of corporate public sector managers serving

38. Ramanadham, V.V. & Ghai, Yash, *Parliament and Public Enterprise*, International Centre for Public Enterprises in Developing Countries, Ljubljana, 1981, 14-15, 29, 53 etc.

39. It is worth remembering that annual reporting was developed as part of the *different* (special) accountability regime for corporate and other non-departmental bodies in the public sector. The presence of departmental heads (ministers) in parliament, and the consequent ability of MPs to question them constantly on the work of their departments, was long seen as a centrepiece of the orthodox accountability system. Annual reporting by ministerial departments has come much more recently. See discussion in Wettenhall, Roger, 'Spotlight on Annual Reports', (1986) *The House Magazine* 5 (18&19).

40. Hanson, A.H., *Parliament and Public Ownership*, Cassell for the Hansard Society, London, Chap.6; Coombes, David, *The Member of Parliament and the Administration: The Case of the Select Committee on Nationalised Industries*, Allen & Unwin, London, 1966.

41. For example, Taylor, J.C. (Auditor General), *Accountability off the Rails: National Rail Corporation Limited - Erosion of Accountability to the Parliament*, AGPS, Canberra, 1991.

42. Ramanadham, V.V. & Ghai, Yash, *Parliament and Public Enterprise*, International Centre for Public Enterprises in Developing Countries, Ljubljana, 1981, 25.

the public interest, at the same time respecting those 'ordinances of self-denial' that require abstinence in matters of operational detail.

The issue of parliamentary questions has always been controversial. For Hanson, indeed, reporting on the situation in the British parliament in the 1960s, this was *the* most controversial issue: should Members of Parliament have the same right to question ministers about the affairs of the corporate bodies within their portfolios as they enjoyed in relation to the departments headed by the ministers?⁴³ Mostly, it would seem, we distance ourselves somewhat from the corporations, but manage to get the information we want except where it involves information about business dealings which would be useful to the competitors of our commercial undertakings. Occasionally, however, Members of Parliament do not get the information they believe they are entitled to and vigorous complaints follow — as in a series of interactions over the years between Senate Estimates Committees and secretive corporations such as the Australian Broadcasting Corporation.⁴⁴

I have, of course, been reflecting here on parliamentary interactions with the statutory (or stage 1) corporations. I now come to a final question: what about the stage 2 corporations, the government-owned companies?

As long ago as 1981, Ghai noted that parliament was unlikely to get as much information about the companies as about the statutory corporations, since they were bound by the provisions of the relevant companies legislation rather than being created by and governed by special parliamentary enactments.⁴⁵ Though he was drawing mainly on Indian evidence, the message seems to have wide application. In noting the recent New Zealand movement to the government-owned company form, Mascarenhas speculates on who are the winners and who the losers. He has no doubt that 'the role of parliament has been down-graded and its place has been taken over by the executive — in this case the shareholding ministers'.⁴⁶

For the Australian Commonwealth, the issue is nicely digested in the Senate Standing Committee on Finance and Public Administration 1989 report on *Government Companies and their Reporting Requirements*.⁴⁷ Much of the report is taken up with tracking the growth of these Commonwealth companies: though the Committee was by no means certain it had located them all, it was able to identify at mid-1989:

- 208 government controlled companies,
- 55 associated companies,
- Commonwealth involvement in 58 companies limited by guarantee, and
- 67 incorporated associations.

One major recommendation sought the establishment of a central register of these companies; others related to a specification of the kinds of activities for which the company structure is appropriate, and to reporting and audit requirements. Of particular importance here, the report traversed the procedures creating these companies, noting that an earlier provision for the minister to notify parliament was replaced in one major portfolio in 1988 and ignored in other portfolios.⁴⁸ It noted further that, while legislative action was required in those cases where previously existing statutory corporations were converted, in cases such as Australian Defence Industries (ADI) 'major enterprises were taken out of the sphere of direct parliamentary scrutiny without any reference to Parliament'.

43. Hanson, A.H., *Parliament and Public Ownership*, Cassell for the Hansard Society, London, 1961, p.216 etc.

44. See discussion and references in Wettenhall, Roger, 'Statutory Authorities', in J.R. Nethercote, Alexander Kouzimin & Roger Wettenhall (eds), *Australian Commonwealth Administration 1984: Essays in Review*, Canberra College of Advanced Education, Canberra, 1986, 109.

45. Ramanadham, V.V. & Ghai, Yash, *Parliament and Public Enterprise*, International Centre for Public Enterprises in Developing Countries, Ljubljana, 1981, 38.

46. Mascarenhas, R.C., 'New Zealand', in Roger Wettenhall & Colm O Nuallain (eds.), *Public Enterprise Performance Evaluation: Seven Country Studies*, International Institute of Administrative Sciences, Brussels, 1991, 142.

47. Senate Standing Committee on Finance and Public Administration, *Government Companies and their Reporting Requirements*, AGPS, Canberra, 1989.

48. *Ibid*, 15.

Moreover, for exempt propriety companies such as ADI, 'formal reporting requirements under the Companies Code are negligible'; and, 'unless specifically included by regulation', such companies 'are exempt from the provisions of the Freedom of Information Act'. The Standing Committee noted also that the Department of Employment, Education and Training had established thirty-seven companies limited by guarantee and sixty-seven incorporated associations 'without specific parliamentary approval'; 'the reporting of these companies to Parliament has been derisory', it said, 'and there is no way to be sure that the reporting by the Department to the Government is any better'. One involved minister had agreed to ask the companies in his portfolio to produce full annual reports which he would table in parliament. But that was by ministerial grace and favour, not legal requirement — which, not surprisingly, the Standing Committee did not regard as satisfactory.⁴⁹

The Standing Committee's answer to all this was to propose a Government Companies Act to contain general provisions for the formation, reporting, audit and disposal of such companies and so establish a degree of order in what has become a very unruly area of public administration.⁵⁰ It would be pointless to lament the rapid increase in the use of these bodies, for they are obviously proving, like the statutory authorities and corporations before them, a very useful aid to the delivery of public policies. But it is proper to investigate how they are operating, and to provide — again, as for the statutory corporations — for ultimate parliamentary oversight.

As the Senate Committee report has digested the experience of stage 2 corporatisation in the Australian Commonwealth, a recent study by Thynne, whom I have already quoted, digests the scholarly attention such corporatisation around the world in now receiving.⁵¹ This small but growing body of literature is replete with terms such as 'government by moonlight' and 'the hybrid parts of the state'.⁵² It is argued that these parts are more 'private' than private enterprise, that their activities largely go unchecked and unaccounted for through the established mechanisms of review within government.⁵³ Thynne concludes:

- 'From being of marginal interest by reason of their location on the periphery of government, companies are now assuming importance along with, and sometimes in place of, those organisations which traditionally have featured on centre stage within government'.
- 'Those changes, whether novel or otherwise, are yet to be comprehended and so ought to be the subject of considerable attention'.⁵⁴

This finding, at the cutting edge of modern administrative scholarship, directs attention also to a sliding together of the concepts of corporatisation and privatisation, in a way presumably not intended by those whose purpose was to create conditions under which public bodies could behave more commercially, be more market-sensitive, or simply be better performers. There is already some Australian evidence that the government companies are seeking to deny their publicness. I am told that Australian Defence Industries is encouraging its staff to think of themselves as belonging to the private sector, notwithstanding the public ownership. And an Australian Council of Professions report notes that the Industry Training Bodies within the Department of Employment, Education and Training portfolio are insisting that they are 'not "government" companies' but 'private companies', leaving major questions about accountability unresolved.⁵⁵

49. *Ibid.*, 16.

50. *Ibid.*, 18-19.

51. Thynne, Ian, 'The Incorporated Company as an Instrument of Government: Fundamentals in Comparative Perspective', unpublished paper, University of Hong Kong, 1992.

52. Birkinshaw, Patrick, Harden, Ian & Lewis, Norman, *Government by Moonlight: The Hybrid Parts of the State*, Unwin Hyman, London, 1990.

53. Sin, Boon Ann, 'Statutory Board Privatisation: Some Issues in Accountability and Control', *Malayan Law Journal*, June & July 1990; Taggart, Michael, *Corporatisation, Privatisation and Public Law*, Inaugural Lecture, University of Auckland, 1990; Taggart, Michael, 'The Impact of Corporatisation and Privatisation on Administrative Law', (1992) *Australian Journal of Public Administration* 51(3). In the works digested by Thynne, these verdicts were related to another about privatised or part-privatised enterprises: that the retention by governments in some such cases of 'golden shares' or 'kiwi shares' represents policy-making 'by stealth', for the exercise of the powers inherent in those shares is, it seems, beyond the power of either judicial or parliamentary review (Graham, C. & Prosser, T. 'Golden Shares: Industrial Policy by Stealth', *Public Law*, Autumn 1988).

54. Thynne, Ian, 'The Incorporated Company as an Instrument of Government: Fundamentals in Comparative Perspective', unpublished paper, University of Hong Kong, 1992, 18.

55. Australian Council of Professions, *Re: Administrative Arrangements of the ITABS [Industry Training Bodies]: The Impact on the*

Another sort of hybridisation arises when part-public, part-private companies are formed. Mrs Thatcher claimed much credit for privatising British Telecom, but at the time she had sold off only about half the shares. In the general belief that privatisation had in fact taken place, who worried much about public accountability in respect of the retained state investment? The classic illustration of this problem was provided by the exemplar of this sort of public-private mix, British Petroleum. How was it held accountable when, at a time when the British state held a lucrative majority shareholding, it succeeded in 'running' the Royal Navy blockade of East African ports to get oil to the illegal Smith regime in Rhodesia?⁵⁶

It was, of course, pursuing its commercial mission. But is it sufficient to argue that we should now focus single-mindedly on the test of commercial success; that all else is secondary? That answer leaves me, as a political and administrative scientist, feeling extremely uncomfortable.

Summary and Conclusion

And so I come to a pretty inadequate summary. I make a confession here: I am unable to offer a firm blueprint indicating how parliament might act to improve *both* the performance *and* the accountability of publicly owned corporations that would have any hope of gaining general acceptance. It is, ultimately, a matter of balances and I believe that only evolving wisdom can achieve such balances. That requires vigilance and the courage to be outspoken in defence of principle, qualities which I don't believe can be set in any rule-book.

What I have argued is that, while all parts of the public sector, departmental and non-departmental, must be accountable, we should be careful to ensure that *appropriate* accountability regimes are created, and to acknowledge that the regimes suited to non-departmental corporate bodies will be different from those suited to other parts of the public sector. Through an excursion into administrative history, I have described some of the attributes of the corporate bodies widely used in Australian public administration before the wave of late twentieth century reforms, and have suggested that the managerialist imperative was alive and well in the early creations. My brief comparison with the corporate bodies of the modern 'corporatising' period has suggested that there is a strong continuity in our corporate experience, and that what the modern period has contributed most is a development of techniques needed to ensure high levels of performance and so give renewed force to the intentions of the founders.

The parliamentary role in relation to public sector corporations has been briefly traced by dipping into the ideas of the pioneers and an extensive literature generated by the statutory corporation movement. The vitally important analytical and tracking work of some specialist parliamentary committees has been acknowledged: reports from committees such as the Senate Standing Committee on Finance and Public Administration have become required reading for numerous cohorts of public administration students today.

The comparison between the old and the new phases has, however, noted an increasing tendency to use the device of the government-owned company as an alternative to the statutory corporation form, and shown that this has had significant implications for the parliamentary relationship. This challenge has been identified both by the Senate Standing Committee and by the new literature digested by Thynne. I think that our parliaments have been less than vigilant in too easily allowing it to emerge, and I want to conclude by stressing the need for a parliament to be well-informed about such developments in the machinery of government.

It is, I believe, vital that parliamentary monitoring should continue in relation to the statutory corporations, always informed by an awareness of the needed arm's-length relationship between politicians and corporations. In relation to the state-owned companies, I do not think parliament should let itself be frozen out of the equation, and I urge that it should seek to develop a better understanding of this newly significant phenomenon in government. That, of course, is a challenge for academic public administrationists as well: we need to work together!

I believe, to this end, that there is an investigative and educational role of vital importance to be played by specialist cross-functional committees such as the Senate Standing Committee on Finance and Public Administration. Functional committees are, of course, important too, but they are more susceptible to

Professions, Report, 22 March, 1993, 2.

56. Bailey, Martin, *Oilgate: The Sanctions Scandal*, Coronet Books, London, 1979.

being influenced by portfolio ministers. The cross-functional committee has greater detachment: it needs all the cherishing support the main body of parliament is able to give it, for it should remain one of our major sources of information about public organisations, and thereby also one of the major focal points of our accountability system.

Questioner — At one point you made comparisons between historical reforms to government statutory corporations and the things that have happened in the last twenty years, and you said that many things perhaps had historical antecedents. The private sector sometimes claims that government bodies, in being free to do more commercial things, are not subject to the same commercial disciplines to which the private sector is subjected. To what extent do you think that is an important factor in questions such as accountability? To what extent do you think government organisations will become increasingly state-owned companies? Are they subject to commercial practice?

Professor Wettenhall — The emphasis that we place today on the level playing field is relevant to your question. Clearly, there is an attempt to make sure that, where public and private bodies are in competition, the conditions for competition are level. There are all sorts of arguments about whether that is really possible and whether it happens between two private companies. To the extent that it is possible we are quite strenuously trying to achieve those conditions.

In regard to the earlier period, I would like to say that it worked both ways. I can quote many occasions when public enterprises were restrained in their competition against private enterprises. A very good example of this is found in the early history of Trans-Australia Airlines (TAA). The Menzies Government, which was so embarrassed that a public enterprise was performing so well in competition against a private enterprise, set about — first of all, it tried to sell TAA, but public opinion would not allow that to happen — putting barriers in the way of TAA's continuing successful competition. It survived, but it was restrained. Of course, people could give me examples the other way. That issue did work both ways. The modern attempt to establish a level playing field is a very useful thing to do.

Questioner — This is a very difficult subject, because I see it in a very big sphere in which we are losing even the incentive to try to be accountable. In a way your talk very often seems to be directed as though all the accountability has to be between people behind closed doors up on the top of the sphere. It is nine years now since Queen Elizabeth reminded us, as we were going into 1984, that we are lacking human communication. We are getting bad at communicating and we need to pay more attention to it.

Professor Wettenhall — I will make two comments that probably will not cover your question adequately. In relation to accountability, the one side — the side that thinks it is all vertical — argues that it is a process that just works up line through the levels of an organisation, to a Minister, to parliament, to the electorate, with Cabinet somewhere in the middle. That is a very closed view of it. The other view — the much more open one — is quite prepared to consider the accountability of public organisations, particularly the corporations that I am talking about, to their clients. In the case of the police, they are accountable to the law rather than to an in-group of politicians and senior administrators. There is an interest in fashioning ways in which public organisations can be seen to be accountable in various directions.

Within the Commonwealth Government — I certainly did not mention this in my remarks — some remarkable reforms have taken place in the primary industries portfolio, where accountability is now seen as a dual process. Not only is accountability up to the government; it is up to the producers of the commodities that have been marketed and so on. So there is real interest in opening up accountability and expanding it like that.

Questioner — I think one area of parliamentary concern about governments moving to the states with regard to corporate bodies, as you have described — that is, bodies incorporated under state corporations law — is the whole question of limited liability and the position that the government and the parliament may be placed in if an organisation was financially unsuccessful. Many years ago I had some experience of a statutory corporation — the Australian Industry Development Corporation. In a number of those sorts of bodies, great reliance was placed upon the fact that the body was owned by the government. If one moves to a corporation, where does the parliament stand if the body should become financially unsuccessful and the creditors look to the government as the shareholder to make up the difference?

Professor Wettenhall — I think that is a very good question, but I do not have a ready answer to it. Again, I insist that it is not new. In cases such as Qantas, this practice goes back a long time, but the great volume of activity today introduces an element of newness in the use of this company form. I still

think of it in that way because I need to distinguish it terminologically from the statutory corporations. This company form proposes great challenges, and the one you mentioned is one of them.

You will find people on the one hand saying that accountability is taken care of because they are subject to what is now called the general Corporations Law, which affects private companies. It would seem that they are still in some ways subject to accountability requirements within government, although not so much to those that lead to parliament. The question of an excess of accountability requirements on these bodies because they are aimed in two directions is open. However, the Senate standing committee, in speaking about Australian defence industries, did not believe that the private accountability requirements were anywhere near as stringent as the old public accountability requirements.

These questions are very much in need of research today. I do not have easy answers to them. I would like to think that the Senate standing committee would undertake further inquiry into this matter to try to provide answers. You have pointed to a very important research question today for which I do not know the answer.

Questioner — Assuming that you can actually put in place all the accountability you are talking about — I assume you mean reporting to parliament — how does parliament then deal with all the information that comes to it? What is parliament's role or the role of the committee in actually monitoring it, particularly if you are talking about companies that might have a more direct link straight back to the parliament? At the moment, the Department of Finance is doing a whole range of things, and there is some internal monitoring. So you might have a statutory corporation, but it is backed up by a policy section within a department that is actually closely monitoring it. There might still be an element of that but, assuming you are throwing much more responsibility onto parliament, is parliament's role simply to take the information as it is made public, thereby implying that it will have done its job, or do the parliament and its committees have a bigger role than the one they might have at the moment?

Professor Wettenhall — I am fairly despairing of parliament as a collectivity, but I am not despairing of the committees, particularly cross-sectional committees, such as the Senate Standing Committee on Finance and Public Administration. Not only the members of the committee but also the staff who support it have developed an ability to do useful investigative work, and that is very important. There is an expertise there that is very useful. Reports such as this one are very useful documents; they provide information. I believe that the very provision of information is an important part of the accountability process. It means that people such as me or journalists as well as other members of parliament can get information. We can teach from this. Accountability processes are enhanced by the work of parliamentary committees in all sorts of ways. I simply hope that other members of parliament also take this information seriously so that parliament itself becomes a significant voice in the accountability process.

Its dependence on the power relationship between the executive government and the parliament is an important part of the equation. I thank God for being in a system that has a Senate, which is a house of review, possessing some independence. Accountability is much healthier because we have a Senate and because the Senate has a well-developed committee system. My faith goes in that direction. I am afraid that I would not have much faith if there were just the general body of parliament. But there are elements within it which give us much reason for hope, if not satisfaction, at the moment.

You mentioned accountability. Government departments have sections which monitor the work of corporate bodies. But to the extent that that goes on in a closed-shop atmosphere it means that it is a very limited sort of accountability. You then have to ask yourself to what extent departments themselves report to the Parliament on what is going on. It is very important that parliament has independent means of vetting what is going on.