

Keeping Government Honest: Preconditions of Parliamentary Effectiveness*

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In this paper, I identify a list of preconditions of parliamentary effectiveness as that relates to issues prominent in the agenda of the Commission on Government (COG) of Western Australia which last year completed its series of inquiries into reform of the whole process of governance in that state. My list of preconditions of parliamentary effectiveness is not confined to the situation in that one state but is relevant to the general situation of Australian parliamentary government. I used the opportunity presented by the COG inquiry to tease out the implications of what I take to be the ‘core business’ of a Parliament, which is the legislative function of considering, reviewing, amending and passing laws—as taught to me long ago by the late Western Australian Governor, Gordon Reid, who at an earlier time was professor of political science at the Australian National University where I now work.

One of Gordon Reid’s great themes was that the effectiveness of Australian parliaments in scrutinising government and public sector issues really depends on their commitment to their core function of legislating. The more responsible is their legislating, then the more effective will be their supplementary scrutiny of government activities. Legislative review might at times be a slow grind, but it is the only solid basis for a system of public sector review. As Reid came to convince me, parliaments which avoid the low road of legislation, and strive for the high road of policy warfare against the government of the day, usually come to grief. The policy becomes posturing; and the law-making becomes muck-raking.

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My aim here is to throw light on ways in which an active legislature can also become an effective reviewer of government and the public sector, which was a topic which loomed large in the agenda of reform facing the COG. But let me warn you that my list of preconditions side-steps the conventional list of reforms. I will not call for an independent Speaker; nor for the abolition of political parties (in fact I want more rather than fewer parties); nor for the intrusion of public television into the House and its committees; nor for any fancy code of conduct for ministers to make them compliant and responsible; nor will I demand budgetary independence for parliaments. All these reforms are probably good things, but whether they really work as intended depends on the existence of more basic conditions, and it is these basic preconditions of productivity that I want to focus on.

At the outset, let me give you a practical example of what I take to be parliamentary effectiveness. The example is drawn from the Commonwealth Parliament, but it illustrates a type of involvement that could arise in any Australian Parliament, given the right conditions.

During 1994, a Senate committee completed an inquiry into sexual harassment in the Australian Defence Force.¹ You might remember the allegations about misconduct on HMAS *Swan*, which triggered the inquiry. The government response to the committee's report was among the most comprehensive that I have seen, supporting all but two of the sixty-six recommendations. To my mind, that inquiry and report with the positive government response illustrates the path which an active Parliament can take when pursuing its charter of public accountability.

Three features stand out.

The first is the area of government performance under scrutiny, which was compliance by public organisations with core public sector employment legislation, and the search for means through which both law and compliance could be improved. This involved the committee in a review of policy implementation, but not the development or initiation of public policy from scratch. Committees tend to do better on matters of administrative review than on matters of policy initiation.² Happily, the focus was on government administration rather than public policy as such—and primarily on the role of administrators, not ministers.

The second feature concerns the body which did the work, which was a normal Senate committee with responsibility for 'oversight' and scrutiny of an identifiable but limited span of public sector activities. The committee was neither a novice in the policy area nor such an expert that it was tempted to micro-manage that area. It saw its job in terms of facilitation and brokerage, using its comparative advantage in open and public inquiry to bring together the key stakeholders: especially representatives of senior management and professional associations. Once again, the focus was not on ministers but those administrators who put into practical effect the general strategy which ministers and Parliament had formally authorised.

¹ Senate Foreign Affairs, Defence and Trade Committee, *Sexual Harassment in the Australian Defence Force*, Canberra, 1994.

² John Uhr, 'Parliamentary Measures: Evaluating Parliament's Policy Role' in Ian Marsh (ed.), *Governing in the Nineties*, Longman Cheshire, Melbourne, 1993, pp. 346–375.

The third feature goes to the real secret behind the longer-term impact of the inquiry process. It is that committee members on this special inquiry regularly participate in estimates hearings on the appropriation (or budget) bills. This leverage over the government's budget proposals is usually modest; it is a reviewing as distinct from an initiating activity.³ But low-level as it might be, it allows these parliamentarians an opportunity to return directly to the agencies and to ventilate any unresolved concerns. The officials who manage agencies certainly appreciate the risks associated with even routine budgetary review, because it is they, and not their ministers, who have to front up and explain their performance.

This inquiry into sexual harassment illustrates important lessons about what makes for an effective Parliament. I can now try to generalise. One threshold generalisation is that effective parliamentary action really requires active committees, which can act as bridges linking Parliament and the community in their shared interest in improving law and government. Parliamentary effectiveness requires that the institutions of parliamentary investigation and debate comply with three general rules:

1. Focus tightly on government practices that are within its orbit of influence. Parliamentary committees can alter the pattern of public sector conduct; yet it is very rare for committees to establish the pattern of public policy. My recommendation to committees is to aim at the instruments of public administration, which in any event is really where policy success is made or unmade.
2. Delegate investigations to committees, so long as they perform more like auditors than inquisitors. In regard to review of the public sector, committee strategy should strive to focus on government compliance with appropriate standards, and to sample and test agency reports of performance against actual results. Committees add most to the process of government when they throw the light of publicity on performance, comparing official reports and claims about results with the realities of organisational conduct. Even the most routine of government documents, such as annual reports, provide Parliament with opportunity to test claim against substance.
3. Retain continuing oversight of problem areas through the annual budget process. The beginning and end of the story of effective parliamentary performance is legislation and legislative scrutiny.⁴ The government's budget establishes the framework of expenditure priorities for the public sector, and the requirement for Parliament's consent to that most basic of laws opens the door to significant parliamentary scrutiny of government organisations. Some legislation sets the standards for public organisations; some authorises the standard-setters; still other legislation frames the budget, and this last type of legislation provides a key with which to unlock and enter almost any area of bureaucratic activity.

³ John Uhr, 'Introductory Remarks' and 'The Debatable Role of Senate Estimates Committees' in *Senate Estimates Scrutiny of Government Finance and Expenditure, Papers on Parliament*, no. 6, 1990, pp. 4–9, 79–107, and 'Senate Estimates Committees' in *Senate Committees and Responsible Government, Papers on Parliament* no. 12, 1991, pp. 70–75; J.A. Pettifer (ed.), *House of Representatives Practice*, AGPS, Canberra, 1981, pp. 355–363.

⁴ J.A. Pettifer, op. cit., p. 307; H. Evans (ed.), *Odgers' Australian Senate Practice*, 7th edition, AGPS, Canberra, 1995, pp. 249–250.

But what is Parliamentary Government?

The term ‘parliamentary government’ reminds us that government is the basic function, and ‘parliamentary government’ is a modified form of government. Government is essential, and can not really be avoided. But parliamentary government is different: unless government is forced to take note of Parliament, Parliament and not government will be the loser. Government has, as it were, the whip hand.⁵ Government as such can get along quite nicely without the modifications imposed by a Parliament.

Not to beat about the bush, we might as well admit that the idea of a truly ‘parliamentary government’ runs against the grain of government. All the arsenal of parliamentary devices such as reforms to make more effective such devices as Question Time, legislative committees, and reporting requirements for bureaucratic bodies, only complicate government. So let’s be frank: these parliamentary reforms are an inconvenience to those who really do govern, such as ministers and top bureaucrats who regulate public affairs. Parliament and government overlap, but they serve different functions within the political system.

Imagine if our task was not how to blend the two functions but how to choose between them, as an ‘either/or’ choice. Then if you had to choose between the two, you would be rash not to choose government. Government is the basic function, and it is not accidental that those who govern tend to downplay the value of the legislative functions—except those, like the electoral law and budget laws, which authorise their access to power and public money.

Many societies manage to get by without a Parliament or any open and accountable legislative institution. Every society requires rulers, but not every society requires a system of rules to hedge in the rulers, as in our ideal of the rule of law, with due legislative procedures and impartial arbitration through a judiciary. Of the three basic powers of government, the executive power is the oldest and most basic: with the other two powers, the judicial and the legislative, being understandable refinements, but later additions none the less. And we welcome them, because their existence in effect defines the essence of modern constitutionalism. But in terms of the brute efficiencies of government, Parliament—in the sense of an active and effective institution—is something of an ‘add on’ or an optional extra.

Of course, I am here today because I am a very keen supporter of Parliament. I happen to believe, on the basis of what I have seen through my own experience of working in the Commonwealth Parliament, that parliaments have the capacity, if they want to use it, to improve government. But, to repeat, parliamentary government runs against the grain of government convenience. The improvements which parliaments are capable of making to government are not really ‘efficiencies’. They do not streamline the operations of government, or simplify the work of ministers or top bureaucrats. Quite the opposite really: the more effective the Parliament, the less is the freedom open to governments to act as they see fit. The speed and efficiency of government decision-making is likely to be one of those qualities modified under parliamentary government. In standing up for parliamentary government, we are siding against speed and efficiency and championing such alternative qualities as open decision-making and community consultation.

⁵ John Uhr, ‘Prime Ministers and Parliament: Patterns of Control’, in Patrick Weller (ed.), *Menzies to Keating: The Development of the Australian Prime Ministership*, Melbourne University Press, Melbourne, 1992, pp. 81–108.

So why do we persist in our efforts to reform our parliaments? Why do we try to make them more effective when that has the tendency to disrupt the very efficiency of government? The answer is that, as a community, we have a right to expect that the political process will respect principles other than simply that of managerial efficiency in decision-making. The norm of responsible government holds that governments should exercise power responsibly.⁶ The core idea is that rulers will tend to act and rule responsibly when they appreciate that they do not 'own' the system, and that they must instead 'own up' to the community and account for their use of community resources, such as revenue through taxation and expenditures on public services. Groups and parties in power must balance their internal organisational efficiency against overriding external principles, like open government and democratic accountability.

What then are some preconditions of an effective Parliament that has the capacity to keep government aware of its responsibilities to the community? Let me give you seven or so preconditions and illustrate each with examples of parliamentary devices which work in other parliaments. Whether they will work here in Western Australia 'all depends': especially on the political will of three groups with a central role in the political process—the government of the day, which might have bigger fish to fry; the political parties represented in Parliament, which like any established powers might feel threatened by too much change; and the community, which might feel that the victory is not worth the fatigue and frustration of battle.

But take heart. Parliamentary reform can come about, and it need not require wholesale constitutional re-engineering. Take as an example my home state of Queensland. Although not all the promise of the Fitzgerald reforms has been delivered, the business of government has been changed fundamentally—so much so, that as the recent Queensland election illustrated, the community now demands that government be conducted in the open through greater consultation, and is willing to take governments to the wire in pursuing that public demand for open and accountable processes. Parliament is the only representative forum that fits the bill, even though the progressive reform of the Queensland Parliament has to be painfully extracted from the government by brute community force. Be thankful for elections, when parties have no choice but to listen to community groups.

Let me now list seven preconditions of parliamentary effectiveness.

1. Rules of Representation

My first precondition for an effective Parliament concerns the rules of representation governing who gets in. There can be no Parliament unless there is some mechanism for popular election of parliamentarians. The great lesson emerging in the Westminster world is that our Westminster tradition is really a formula for party rather than parliamentary government. The original Westminster Parliament in the United Kingdom is facing increasing community pressure for a break with the time-honoured tradition of single-member seats with members elected on the basis of a popularity contest indicated by a bare plurality of votes

⁶ J.A. Pettifer, *op. cit.*, pp. 81–82; John Uhr, 'Parliament' in A. Parkin, J. Summers and D. Woodward (eds), *Government, Politics and Power in Australia*, Longman Cheshire, Melbourne, 1994, pp. 26–43.

cast. At least Australian elections insist that preferences also be counted, in order to force a plurality into a true majority.⁷ But as the Queensland election again shows, those majorities can be very tiny, with only a handful of votes separating the successful party from the losers.

Is there not some way in which substantial minorities can also be represented according to the proportion of their voting support in the community? Of course there is: through a system of proportional representation, practiced in the Senate for nearly fifty years, and modelled on Tasmania's pioneering Hare-Clark system.⁸ One day the British Parliament will catch up with Australian electoral practice, just as New Zealand has with its recent adoption of a system of proportional representation designed to reserve seats at the table of government for all significant political parties, as an alternative to past practice which gave little presence and visibility to minority groups with significant following.⁹

My point is not to debate the merits of proportional representation, but to draw attention to its effects on parliamentary practice.¹⁰ Take the Senate as an example, because it suggests that one can combine two houses in one Parliament, with the 'lower' one (not my term) sticking with traditional patterns of big party representation, the other or 'upper' one spreading the representation around to include the smaller parties. You can imagine the difference that it makes to a house of Parliament when neither the governing party nor the official opposition can get their own way. Both have to begin to negotiate and compromise, and over time the minor parties learn to change the rules to entrench processes of openness and accountability.

2. The Size of Parliaments

Precondition two is related to this, and concerns the optimal size of the Parliament. Both New Zealand and Queensland are single-chamber parliaments, and it is interesting to note that both are facing pressure either to enlarge the lower house, as in New Zealand, or to restore the upper house, as in Queensland. Interest in the optimal size is also alive in Canada.¹¹ The details are less important than the trend, which is to increase rather than reduce the number of elected parliamentarians. For a moment, put aside your natural resistance to forking out more money for more politicians.

Let us do a quick mental experiment. Imagine that everyone in this lecture hall has been elected to the Western Australian Parliament. A cabinet has to be formed, and we are all equally ambitious, and want to see out talents recognised. Let us say the cabinet requires twenty places, and that there is only a small government majority, with almost an even split between support for government and non-government parties.

⁷ J.A. Pettifer, *op. cit.*, pp. 117–131.

⁸ H. Evans, *op. cit.*, pp. 8–11, 15–16, 117–129; John Uhr, 'Proportional Representation in the Australian Senate: Recovering the Rationale' *Australian Journal of Political Science*, vol. 30, January 1995, pp. 127–141.

⁹ P. Temple, 'Changing the Rules in New Zealand' *The Political Quarterly*, vol. 66, no. 2, April-June 1995, pp. 234–238.

¹⁰ John Uhr, 1995, *op. cit.*

¹¹ 'The Size of Legislatures', *Canadian Parliamentary Review*, vol. 8, no. 1, Spring 1995, pp. 2–11.

If the hall were small, with only say one hundred members, with a few more than fifty to government and a few less than fifty to the non-government parties, we have a government backbench not all that much larger than the size of the cabinet—a kind of ‘reserve bench’ cabinet. So too on the opposition side, with just as good a chance that most of those elected will have their turn on the front bench. This ‘small is beautiful’ formula makes for lots of party intrigue over place and preferment, with very little spare time or energy for the traditional parliamentary activities of public scrutiny and review of government performance. Especially on the government side, which is the largest side, all the incentives point to playing it safe and awaiting your turn to get to the front bench. Not much room there for robust parliamentary independence!

Now consider the effects of a larger pool of elected members. Imagine that the hall now contains around two hundred members, still with a small government majority overall. The party in government still selects twenty members for the cabinet, but that leaves around four times as many on the backbench. So too in the opposition parties. One important effect of the increase in size, probable but not inevitable, is to divert the attention of many of the government and opposition backbenchers into alternative activities. Even against their original inclinations, many of these backbenchers will come to see that ministerial life is out of reach, so that one might as well seek whatever professional satisfaction one can extract from being a good backbencher: for example, by ‘participating in’ and not just ‘sitting on’ committees, and getting a public profile and a network of supporters by acting as a bridge between government and community.

The effect of increased size is by no means inevitable. But it certainly is the case that, in the absence of a large pool of non-front-bench talent, few members can be expected to bother with parliamentary duties which might not advance their ministerial chances. And for government members, this means avoiding open conflict between government and Parliament; while for opposition members it means using every parliamentary opportunity to ‘dump on’ the government. Neither posture is consistent with the sort of effective scrutiny activity that we want to build into Parliament.

3. Time for Deliberation

The third precondition is time. Australian parliaments are notoriously mean with their time, and sit far less frequently than do most comparable parliaments. Perhaps this only goes to show how efficient our parliaments really are, wasting so little time to produce so much law, regulation and policy. Each house of the Western Australian Parliament sits, on average, for about fifty-five days, which is about par for most state parliaments. The Commonwealth houses stretch it out, to around sixty-five days for the House of Representatives and around seventy-five days for the Senate.

It is interesting to note that both sets of figures are considerably lower than comparable Canadian figures, where their provincial (or state) parliaments often sit around 40–50% longer, and the national Parliament sits around twice as long as Canberra—while the British Parliament sits considerably longer again. The conclusion is that Australian parliaments do not give themselves enough time to do all the work that the community might reasonably expect them to perform.

But returning to the Australian situation, the real difference between typical state performance and that of the Commonwealth is that federal members spend considerably more time on parliamentary committees, the work of which often flows into and enhances the primary work of the chambers. The House of Representatives legislative committee (or Main Committee as it is called) now gives members almost an additional two weeks of time to devote solely to debating bills. Figures for committee time in the Senate show that senators now spend around twice as much time in committee hearings as they do in chamber business.

But time of course can be used well or wasted, and figures alone do not tell the full story. Let me use Commonwealth examples to make a point about different ways in which time can be managed. During the late 1980s, the Senate began the practice of not considering bills which came from the House after a certain date near the end of the sittings.¹² One effect was to force the government to alter its use of House procedures to stagger its consideration of bills, which are now introduced in one period of sittings with the expectation that they will not pass the House until the next period of sittings. That is one example of how even finite legislative time is elastic, and can bend under the pressure of institutional will.

4. Core Business: Legislation

The fourth precondition is a back-to-basics commitment to what the core business of Parliament is all about. My Commonwealth example of the search for greater parliamentary time was historically triggered by non-government interest in expanding opportunities for examining proposed laws. The battle over parliamentary time is most fundamentally about the time available for consideration of legislation. Parliaments are, after all, legislatures. Law-making is their core business, and that should rightly occupy most of the institution's time.

There are two chief distractions which get in the way of the focus on legislative scrutiny. One—which distracts ‘wannabe ministers’—is the low-minded pursuit of ministerial scalps, for which Question Time is almost tailor-made. The other—which distracts ‘wannabe policy-makers’—is the high-minded pursuit of policy development, for which parliamentary committees are ill-suited. The hard stuff of legislative scrutiny is really the heart of productive parliamentary work.

And what are the devices best suited to effective legislative scrutiny? The essential precondition has already been mentioned, and that is time for due consideration of bills. But time, even expanded time, can be wasted. Here are some devices which illustrate how whatever available time can best be used.

A complete menu of legislative scrutiny contains three courses, and each course (or parliamentary device) is essential to the nourishment of an effective Parliament.

The first course in the menu is a basic division of labour associated with a commitment to refer bills as appropriate to parliamentary committees for detailed review and report. The idea is that the houses of Parliament may then enhance their deliberations over the passage of bills by using the preliminary reviews and reports of such committees. The advantages of such legislative committees are two-fold: first, they allow for a degree of detailed examination of

¹² H. Evans, *op. cit.*, pp. 254–255.

the specifics of bills; and second, they can allow, if time is made available, for community input into that review process. A working example of such a system of legislative committees is that in use in both houses of the federal Parliament, where a significant number of bills are now processed through short but well-focused public inquiries, and where public servants compete with community interests, or at least with Canberra-based community interests, for the committee's attention.

The second course involves a legislative device such as a specialist 'legislative scrutiny committee', supplementary to the above mentioned committees, which can examine the legal form as distinct from the policy substance of all bills. Legislative scrutiny committees produce a kind of 'civil liberties impact statement', detailing how the implementation provisions of a bill might impact on the rights and liberties of ordinary individuals. Such committees are in the style of the Senate Scrutiny of Bills Committee which reports weekly, striving to avoid comment on the merits of the policy in question, but instead examining the form of implementation authorised by the bill.¹³ The reason we have parliaments is that we desire good laws; and one threshold quality of good laws is that they do not unduly, or without good reason, trespass on the rights and liberties of ordinary citizens. A scrutiny of bills committee can test the bureaucratic 'good ideas' against credible criteria for sound legal form and due administrative process.

Here we have a good example of the link between legislative responsibilities and scrutiny of government. I know from experience that a specialist committee which examines legal form, preferably without reference to disputes over policy merits, can go some considerable way to keeping the eye of government officials on their responsibility to observe appropriate legislative standards. After all, it is the officials who have to prepare the wordy replies that ministers duly table when responding to such a committee's weekly 'please explain' reports. The fact that the committee will rarely go to the limit in holding up questionable legal form does little to reduce the inconvenience felt within the bureaucracy. The Senate example shows that over time a partnership may well build up between the committee and government law officers, who tend to reinforce one another's muscle in disciplining lax departments.

The third course includes such devices as a companion legislative scrutiny committee for regulations and other forms of delegated legislation. The same concept applies: the committee ought to try to avoid rehashing the policy disputes over the merits of the regulations. The focus is on whatever vulnerable interests are being adversely affected through the choice of legal forms, as distinct from the policy substance, of the scheme in question.

If any Senate legislative committee deserves high praise, then it is the delegated legislation committee.¹⁴ Not by accident, it is the oldest of the Senate committees, reflecting an early interest in the scrutiny of big government and rule-by regulation. It is also probably the most effective of Senate committees, judging by its positive impact and the culture of compliance by government agencies. Such a behind-the-scenes committee has three valuable spin-off effects: in educating parliamentarians on their basic **parliamentary responsibilities**; in

¹³ John Uhr, 'Future directions: Scrutiny of Bills in the 90s and Beyond' in *Ten Years of Scrutiny*, The Senate, Canberra, 1992, pp. 75–86.

¹⁴ G. Reid, 'Parliament and Delegated Legislation' in J.R. Nethercote (ed.), *Parliament and Bureaucracy*, Hale and Iremonger, Sydney, 1982, pp. 149–168; H. Evans, op. cit., pp. 354–356.

teaching them about the focus of their more specific **legislative responsibilities** for protecting valued practices of due process and legal form; and in instructing the bureaucracy in their **administrative responsibilities** to observe appropriate public standards of law-making and bureaucratic rule.

5. Money Matters

The fifth precondition is money: but it is not so much access to money as attention to money. Of all legislation, budget legislation is the most basic for our purposes.¹⁵ It establishes the framework of public expenditure, even when it does not directly fund all public sector agencies. No government can govern without money, even if it is only to pay the salaries of public servants. Whatever the desires of executive governments, it is ultimately up to parliaments to determine what is included in or excluded from a budget. The very term ‘appropriation laws’ suggests that it is up to Parliament as the lawful authorising body to determine what are or are not ‘appropriate’ uses to which government may direct public money.¹⁶

The passage of budgets can become very political exercises, arousing the worst excesses of partisanship. One device for disciplining some of that partisan heat is through a system of estimates or budget hearings, in which government officials from budget agencies appear as witnesses to provide basic financial information on past performance and future plans. The striking thing about estimates hearings is that they tend to work best when officials rather than ministers carry the main burden of explaining agency performance. That is, estimates hearings are legislative activities which essentially supplement the wider policy debate over ministerial explanations of the budget strategy. Estimates hearings are opportunities to draw in essential financial information directly from those responsible for managing government agencies which implement policy.

It tells us a lot about the realities of government when we realise that the committee examinations of budget bills focus more on **bureaucratic** than **ministerial** justifications of government performance. Australian public services have developed quite elaborate codes and guidelines to structure these budget encounters between officials and parliamentarians.¹⁷ Parliaments need to be involved in the preparation of such government guidelines for official witnesses before committees. The hope is that officials will not be asked about the merits of ministerial policy, but confine their contributions to information about the administration of policy. Both sides seem to appreciate the need for some such ‘legal fiction’, and parliaments come to depend on estimates hearings for generating a valuable public record of information on best and worst practice in government administration.

6. Focus on Accountability

¹⁵ J.A. Pettifer, op. cit., pp. 355–363.

¹⁶ John Uhr, *Papers on Parliament*, no.6, op. cit., pp. 79–107.

¹⁷ J.A. Pettifer, op. cit., pp. 609–614; H. Evans, op. cit., pp. 448, 490.

The sixth precondition is attention to accountability. Parliament does not govern, even though it gives approval to the legal form of government. Think of Parliament as comprising an arena of public accountability, in which ministers and other public officials in government account or 'own up' for their part in government.¹⁸ The trend in all Westminster-derived parliaments is to expand the opportunities for parliamentary scrutiny of officials relative to the time devoted to ministers. Question Time is still important, because ministers will never be unimportant. But the trend is illustrated by such scrutiny activities as estimates hearings, which is only one of a number of legislative hearings over government bills in which most of the evidence is produced directly by officials responding to questions from backbench parliamentarians.

Government agencies are accountable in many ways, not least through the political control exercised over the bureaucracy by ministers, as well as the managerial control exercised by agency executives. Parliamentary accountability is but one of many forms of accountability. The essential contribution that Parliament can make to the discipline of accountability is to approach the task as an instrument of public accountability, as distinct from ministerial, managerial or for that matter legal accountability.¹⁹ Parliament is not an employer as a minister or bureaucratic head might claim to be, nor is it an arbitrator, as is a court. Parliament's role in the accountability process is as the elected representative of the public from whom the bulk of taxation revenue is compulsorily derived: Parliament acts as a forum or arena of public accountability staging a public explanation and justification of the uses to which that money has been put by government.

The precondition of effective parliamentary accountability is remarkably simple: parliaments must recognise that their part in holding governments accountable stems from their distinctive responsibility for 'the public account', which is where government lodges its revenue, usually under the name of consolidated revenue fund.²⁰ Under our constitutional arrangements, governments can only access the public account through authority provided by parliaments. Parliament has a responsibility to ensure that government activities funded through the public account are appropriate, in both financial and policy terms. Hence a 'public accounts' committee, with power to examine the state of financial management across government, is an essential element in that accountability strategy, even if it is only the hub of a larger circle of scrutiny activities.²¹

If I have emphasised the budget as an important trigger for parliamentary scrutiny, one might reasonably fear that off-budget agencies within the public sector are left off-limits to parliamentary scrutiny. Not so. That battle has been fought and won in other jurisdictions, so you do not have to reinvent this wheel of the accountability wagon. Many years ago, Liberal senator Peter Rae won the right of the Senate to examine the financial management of statutory authorities, many of which, especially those now called 'government business

¹⁸ M.L. Barker, 'Accountability to the Public: Travelling Beyond the Myth' in P.D. Finn (ed.), *Essays on Law and Government: vol. 1. Principles and Values*, Law Book Company, Sydney, 1995, pp. 228–266.

¹⁹ M.L. Barker, op. cit.; John Uhr, 'Redesigning Accountability: From Muddles to Maps', *Australian Quarterly*, vol. 65, no. 2, 1993, pp. 1–16.

²⁰ J.A. Pettifer, op. cit., p. 347; John Uhr, *Australian Quarterly*, 1993, op. cit.

²¹ J.A. Pettifer, op. cit., pp. 599–602.

enterprises', claimed that they were exempt not only from ministerial direction but also from parliamentary scrutiny.²²

That claim was again tested in June 1993 when the Commonwealth Bank unsuccessfully tried to elude the scrutiny of the Senate's Finance and Public Administration Committee.²³ The committee included the Commonwealth Bank in its regular review of annual reports of public bodies, in part because of public interest in the Bank's extensive restructuring and branch 'rationalisations'. The committee explained that it simply sought a 'public airing' of the issues, and was content to facilitate an on-the-record meeting of the main stakeholders, especially top management and union representatives. The ground of the committee's victory was the now-traditional one that statutory authorities, in common with all other public bodies, had an accountability obligation to Parliament to explain and justify their use of public funds.

Annual reports are useful as a trigger for a parliamentary inquiry into agency performance. The more the annual reports focus on performance, the more they lend themselves to an inquiry in which agency executives appear to explain and justify performance as stated and as achieved. Accountability is more about explanation than simply the provision of information. Reports can of course be rated on their own merits as information sources, as many Senate committees now do. Better still, annual reports can provide a platform for personal appearances for agency executives who can respond to committee uncertainties about performance, even to the extent of reassuring committees about the merits of their performance.

I suspect that in the future, many more Commonwealth committees will adopt the practice of inviting agency executives to provide regular 'updates' supplementing the information in annual reports. The personal appearance of agency executives which once so dominated the federal estimates process might well be about to move across to the less developed area of annual reporting. In both cases, much of the value of the exchanges between officials and parliamentarians is related to the fact that ministers are either absent or marginal to this facet of accountability. This is not to deny the secondary benefit associated with the opportunity that ministers themselves have to gain valuable information from the process. But the primary benefit comes from the direct 'give-and-take' between officials and committee members over agency performance.

7. Intelligence

The seventh and, last precondition is intelligence: by which I mean to refer to instruments of scrutiny and advice which form the intelligence network of a Parliament. They fall into two main types: investigators and advisers.

Investigators range from the traditional so-called 'parliamentary offices', of which the auditor-general is typical, to research staff associated with the parliamentary bureaucracy, including committee staff. The existence of an independent auditor-general is essential to the

²² H. Evans, *op. cit.*, pp. 496–497, 511–512; J.A. Pettifer, *op. cit.*, pp. 490–491.

²³ Senate Finance and Public Administration Committee, *Official Hansard Report*, 9 June 1993; and *Report on Annual Reports*, September, 1993.

effectiveness of Parliament.²⁴ The independence of the office refers to at least three basic qualities. It refers primarily to the fact that the auditor holds a high statutory office from which he or she can not be removed by the executive government, but only through an address for removal by Parliament itself. Independence here also refers to the power of the auditor to get independent access to government financial information upon which to determine audits, including audits of agency performance as well as plain efficiency. Finally, independence refers to the fact that the auditor reports on an independent professional basis, and is not a hired gun, even for Parliament. Although the auditor might be faced with an 'order' to prepare information by a house of Parliament, the auditor would not be expected to deviate from the path of professional independence in preparing the substance of the response to such requests for assistance.

So much for formal independence: of course, operational independence depends as much on an adequate budget and professional staff, and Australian parliaments are only now beginning to reach out and become more involved in protecting the office of auditor-general from resource dependency. It is becoming clear that 'results-oriented' public services are increasingly resistant to the concept of an external audit which might involve a predominant focus on procedural accountability and due process in decision-making. The challenge for auditors today is to identify areas within public sector operations which allow them to intervene to 'add value' to the process of government. It is noteworthy that the Western Australian legislation has for a decade or so identified one important responsibility as testing the credibility of performance reporting by government agencies. I suspect that in that particular regard the state auditor leads Australian practice.

Advisers are also vital to the pursuit of parliamentary effectiveness. My experience is that scrutiny committees can not operate very effectively without specialist advisers. I know from my experience as secretary to a number of Senate scrutiny committees that expert advisers, usually academic experts in law or government, provide committees with invaluable input. This is so even when committees, as they often-enough do, decline to follow expert advice. The advice still disciplines the scrutiny process and gives the committee an external sounding board against which to measure government information.

Of course, the adviser of advisers is really the Clerk of each house, who is the principal adviser to the presiding officer and must accept responsibility for the advisory regime established for members and their committees. This is not the occasion to elaborate on the importance of the office of the Clerk.²⁵ But unlike heads of most public bodies, a Clerk is equally the adviser of all the elected members of the house. I think that the ready availability of the Clerk and other officers to all members on both sides of the house is as important a precondition of an effective Parliament as any other that I have identified today.

Conclusion.

My aim has been to put before you a list of more basic preconditions which might set the right framework for 'best practice' in scrutiny of legislation and government operations. Each

²⁴ H. Evans, *op. cit.*, pp. 388–390.

²⁵ J.A. Pettifer, *op. cit.*, pp. 237–241; H. Evans, *op. cit.*, pp. 146–148.

Parliament has its own set of limitations, some of which are internal and some external. There is no one model of a good or effective Parliament. In the end, parliaments are representative institutions, and as such can only be as good and as effective as the community is prepared to allow, or as poor and ineffectual as the community is prepared to tolerate. Our task when participating with review bodies like the COG is to assist the community to appreciate what it might reasonably expect of a Parliament.