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A paper by Andrew Murray¹ delivered to the Australasian Council of Public Accounts Committees (ACPAC)² Eleventh Biennial Conference in Perth 27 - 29 April 2011

Session One: Parliamentarians and Politicians

Intended Learning Outcome:

Recognising the impact of partisanship on the accountability function of Committees.

PARLIAMENTARIANS POLITICIANS AND ACCOUNTABILITY

Co-chairs the Hon John Kobelke and the Hon Giz Watson, distinguished former and current parliamentarians, distinguished delegates and guests; thank you for inviting me to address the Australasian Council of Public Accounts Committees 2011 Conference.

In this *Session One: Parliamentarians and Politicians* I have been asked to ruminate on *Parliamentarians Politicians and Accountability*.

Politics is partisan

My speaker's brief suggested I focus on the impact of partisanship on the accountability function of scrutiny and review committees.³

Translated, this brief suggests that at worst, the impact of partisanship means that politicians triumph over parliamentarians; that partisanship interferes with accountability; and, but for partisanship, accountability would be stronger.

The meaning of partisan is to take one side, to be biased. People are in politics to argue for their viewpoint and their side.

Politics *is* partisan; accountability has to co-exist with it. While it is easier to improve accountability than to reduce partisanship, there are ways to improve both.

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² ACPAC is the umbrella organisation that represents the Public Accounts Committees of all the Parliaments of Australia, New Zealand, Papua New Guinea, and Solomon Islands. The delegates are drawn from MPs and their secretariats from the ACPAC membership, and MPs and secretariats from other invited jurisdictions such as Canada South Africa Maldives Indonesia Malaysia and the United Kingdom.

³ For some views on scrutiny committee attributes see Andrew Murray's Submission to the Senate Standing Committee for the Scrutiny of Bills *Inquiry into the future direction and role of the Scrutiny of Bills Committee* March 2010: http://www.aph.gov.au/Senate/committee/scrutiny/future_direction_2011/index.htm

Scrutiny means critical and close examination. It is the result that counts. Partisan political scrutiny, tainted by self or group interest, often does a great accountability job. So does non-partisan parliamentary scrutiny, untainted by self or group interest.

How can partisan scrutiny work when by definition everyone in public life takes sides?

One answer is when there is common cause, when everyone is on the same side. That can be because everyone agrees on the matter at hand, but it can also be because of the culture.

In my nearly twelve years on the Australian Parliament's Joint Committee of Public Accounts and Audit, inquiry and debate might often have been partisan and political, but the outcomes were parliamentary. Getting productive agreement was the committee culture. In twelve years I only saw one minority position insisted on in a report.

A similar culture prevails on the Senate Scrutiny of Bills Committee.

Plus, on many matters most agree. In a democracy like Australia's, there is much common ground on ideals, rights, safeguards, and moral principles.

A partisan approach is of benefit when the self-interest and competition that is intrinsic to partisanship is used to discomfit the other side, and in the process accountability is served.⁴

Partisanship and power

Holding to a partisan position is not an accountability issue unless corruption is being supported, or an abuse of power, or poor accountability.

Power without restraint is dangerous. That is why liberal democracy stresses the rights of the people, the importance of the separation of powers, the rule of law, representation, and having to account to the people.

That is why liberal democracies stress the importance of parliaments as a necessary safeguard, separate from and at times opposed to governments.

Those who serve on scrutiny committees need to have a good sense of history.

History tells us that the one arm of government most feared for its actions has been the executive – whether tribal, monarchic, theocratic, dictatorial, or parliamentary.

Beware a system or a parliament that raises the executive above all else, and diminishes the checks and balances explicit in the separation of powers doctrine.

Accountability is weak where parliaments are weak, and where parliamentarians are weak.

When are you a parliamentarian? When are you a politician?

⁴ The famous Adam Smith in *The Theory of Moral Sentiments* (1759) and other works had a similar view on individual and group economic and social self-interest still leading to beneficial market outcomes.

Member of Parliament is the formal descriptor for the profession, but politician is the commonly used and (in the eyes of the public) less savoury term.

It is not either/or; people are often both politician and parliamentarian, depending on the time place and issue, but there are differences in perception between the two.

A parliamentarian supports parliament, its institutions, its power, its purpose. A politician is more concerned with government.

Politicians are thought to be partisan, parliamentarians not, but being one or the other is a matter of judgement behaviour and attitude, not of belief or party.

An interesting subtext is that popularly, politicians are thought to be pettier and more self-interested than parliamentarians; to care about winning, about politics and the media cycle, while parliamentarians are thought to care about policy, delivering outcomes and the practical advancement of genuine issues of concern.

Those who govern are the executive. If you are a member of the executive, you are concerned to stay in government, obliging you to be less a parliamentarian and more a politician. Similarly for those not in government that want to be.

Yet power can only be challenged by countervailing power. For those who do not govern, parliament is their ally.

Sooner or later every party has a lengthy spell not governing. It is in the interests of partisan politicians who loathe strong parliaments when in government nevertheless to support strong parliaments, because in a democracy those in power regularly lose office.

It is in the self-interest of oppositions to make parliament strong.

Every new opposition should start its term out of power with a stock take of how to strengthen parliament.

There is much more at stake than tactical offence and defence. This is a battle.

Since the beginnings of government, citizens have learnt to fear their rulers, and have created democracies to institute checks and restraints on their rulers. There are always question of imbalance between the people and their rulers, the issues of rights, liberties, obligations, protections, representation and accountability.

The ancient struggle between people and the crown meant representatives were needed by the people to act for them. Cunningly, the Westminster system and its variants countered by making a majority of those parliamentary representatives the government, so moving the struggle between the people and government, between their parliament and the crown, to a struggle within parliament between the executive and the non-executive.

Those who govern or wish to govern strive for money and power. Without money and power they cannot govern; they cannot deliver their policies and realise their ambitions.

So motive matters. Those who do govern and those who wish to govern are politicians by nature.

Those who wish to restrain and hold accountable those who govern are parliamentarians.

There is also a question of function.

We all know that negotiation, compromise, thoughtful consideration of hard issues, and getting a good or better outcome is the essence of good parliamentary work.

I was once asked by the head of the Chinese school of government how the Australian Senate worked. I answered 'on culture and numbers'. Because Australian governments generally do not have the numbers, a different mindset is in play, but the Senate's institutional culture as a house of review is strong anyway.

In the Senate chamber most Senators are politicians, but in the Senate committees most Senators are parliamentarians, partisan opponents in one, co-operative colleagues in the other.

Lending a hand

Parliament is inferior to the executive in its resources. If power is best challenged by countervailing power, what more can be done to lend parliamentarians a hand?

I have a few propositions for you

- Parliament should be in control of its own budget
- Parliament should be better serviced
- Parliamentarians' standards and training need to be lifted

Parliament should be in control of its own budget

That parliament should be in control of its own budget helps advance the separation of powers.

Democracies are wary of a concentration of power and the abuse of power. Democracies try to promote accountability and protect citizens from the might of the state.

Democracies try to keep separate the parliament's power to make laws and to tax from the executive's power to propose laws and to spend the revenue, from the bureaucracy's power to administer laws and programs, and from the judiciary's power to determine disputes according to law.

Each of these is meant to act as a check and balance on the other, but if the executive holds the financial and resources whip hand, (and the appointments and tenure whip hand, but leave that for another day...), then there is an imbalance in power.

Parliament's duty is to decide on the executive's proposed spending and policies. It does not set the budget because it is separate from the executive. The executive does not extend that same principle to the parliament's budget.

Supporters of a genuine separation of powers argue that a strong, well resourced, properly funded, independently-minded and fully effective parliament needs financial independence.

A financially hamstrung or subservient parliament cannot adequately scrutinise or hold accountable the executive. The executive can withhold or limit the funds available for an effective independent committee system, for adequate independent research, and for parliamentary office facilities that foster productivity and efficiency.

In the federal Australian parliament there have been beneficial reforms, including making the parliamentary service separate from the public service, a rationalisation of parliamentary departments, the introduction of accrual accounting, and improved governance systems.

The Australian parliament has its own appropriations bill, but the executive retains a tight hold over content and insists on maintaining financial control, a power it occasionally uses unilaterally.

Other parliaments balance parliamentary financial independence with sound responsible budgeting, including the United Kingdom, New Zealand, Canada and Sweden. Some retain executive approval for parliamentary budgets; others such as Denmark, France, Sweden and Switzerland do not.

In 2006, then House of Representatives Speaker Hawker said *...greater financial autonomy, together with enhanced management and scrutiny, is a desirable reform for Australia's parliamentary administration; there is no more important power for a parliament than control over its resources.*⁵

Four keys to parliamentary financial independence are:

- an independent body setting parliamentarians remuneration and entitlements
- independent budget formulation by a parliamentary body
- the executive's right to criticise parliament's budget, and
- annual independent financial and performance audits of parliament's expenditure.

Parliament should be better serviced

Parliament's power to tax and spend is arguably its most important power of all. Most important is understanding money; how money is raised, how it is spent and by whom; how it is accounted for; how justified; how reported.

There are four ways in which parliament can be better served on money matters on a non-partisan basis - by

- Insisting on clear consistent budget and financial reporting
- Providing the authority and resources to the parliamentary library and/or parliamentary committees, to provide independent quality real-time fiscal briefs

⁵ *Funding arrangements for Parliament of Australia – a view to the future*; 37th Presiding Officers and Clerks Conference Perth July 2006; Hon David Hawker MP, Speaker of the House of Representative, Parliament of Australia.

- Introducing a parliamentary budget office to provide independent quality research analysis and advice to parliament on fiscal matters
- Making the auditor-general an independent officer of the parliament

It is parliamentarians who are required to assess the myriad financial information with which they are presented. Since most are financial laymen, financial statements and reports need to be as clear and easy to use and understand as possible. Parliaments must take a stand on this front.⁶

Too much of the analysis or reaction to budgets and their related or consequent documents has been left to the individual initiative or vigilance of parliamentary members, or to set-piece sessions such as Estimates. More real-time reaction is required.⁷

One way to improve matters is to give parliamentary libraries, or the specialist parliamentary fiscal committees, the resources and authority to analyse and react in real-time to relevant government financial reporting, by providing committee members with pertinent briefs. These non-partisan secretariat briefs would be objective and not politically designed.

Members of those secretariats should include persons with accounting or finance skills.

Many financial documents are tabled. Some of these deserve a standing instruction to parliamentary libraries or committee secretariats to produce a real-time brief highlighting by exception items of interest from an accountability perspective.

Another vital accountability mechanism is a parliamentary budget office, responsible to and funded by the parliament. A body is needed that provides independent quality research analysis and advice to parliament on fiscal matters.

A recent Australian inquiry described key values in a parliamentary budget office as transparency of process, equality of access to its services, and observing the separation of the parliament from the executive.⁸

The inquiry recommended that the mandate of the PBO be to inform the Parliament by providing independent non-partisan and policy neutral analysis on the full budget cycle, fiscal policy and the financial implications of proposals.

The idea that the auditor-general should be an independent officer of the parliament with secure tenure is quite widely accepted. That the auditor-general's budgets should be the responsibility of the parliament and not the executive is not.

Under-resourcing of auditors-general by the executive is a risk that should be avoided.

⁶ There is extensive commentary on this topic in the Report to the Australian Government: *Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra.

⁷ These observations were also made in the Report to the Australian Government: *Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra.

⁸ Joint Select Committee on the Parliamentary Budget Office; Report of the *Inquiry into the proposed Parliamentary Budget Office* March 2011 Canberra; page vii.

Bearing in mind how vital it is for parliament to ‘follow the dollar’, and bearing in mind how vital the auditor-general is as an aid to this task, scrutiny committees should be alert to weaknesses in the powers of an auditor-general. A recent Australian review⁹ recommended

- allowing full auditor-general audit access to all entities controlled by government, and authority to ‘follow the dollar’ where non-government bodies are in receipt of funding to deliver agreed outcomes
- that claims of legal professional privilege should not override the auditor-general’s information gathering powers
- that funding agreements to third parties should automatically include standard clauses permitting auditor-general access to information and records, and a capacity to inspect work

Parliamentarians’ standards need to be lifted

Parliamentarians’ standards need to be lifted.

The quality of parliamentarians presently in office is what it is, as delivered by the parties and the electorate. Nothing can be done about that, but something can be done about those who serve those parliamentarians.

If those elected have weaknesses in life and work experience, ability and skills, the political leadership need to ensure they are serviced by staff that have those missing qualities.

Staff chosen on experience, merit, and suitability will result in better overall performance.

How do you get better quality parliamentarians in future?

In the liberal democratic system an election is meant to be a fair honest open affordable contest engaging as many eligible voters as possible and giving them an informed choice on the best candidates to represent them, either independents or sourced from well-run political parties.

Voters are meant to have ready access to understandable but carefully-considered and (preferably) costed policies offered to advance the interests of their people.

Candidate quality is meant to be ensured by high pre-selection standards, with able candidates on offer because they are attracted by the honour of public service, the vital role of parliamentarians in a liberal democracy, and the very nature of the political profession.

Are elections like that?

If they are not, how can democracy be strengthened?

In my writings elsewhere¹⁰ I have proposed a focus on three areas:

- Addressing issues that affect the supply of candidates – remuneration and governance

⁹ Joint Committee of Public Accounts and Audit: Report 419 Inquiry into the *Auditor General Act 1997* December 2010 Canberra.

¹⁰ Submission No 3 by Andrew Murray January 2011 to the Joint Standing Committee on Electoral Matters’ Inquiry into the Conduct of the 2010 Federal Election.

- Addressing reputational and affordability issues - funding and expenditure
- Strengthening Australia's democracy

In this paper I will just deal with issues that affect the supply of candidates, such as remuneration and governance.

Political remuneration

The proposition is simple – attracting more quality candidates for elections will be assisted by making politics a more attractive occupation.

In part, that requires attending to the salary package and entitlements of parliamentarians.¹¹

Salaries and working conditions must be attractive enough to help encourage quality candidates to take up public office.

In Australia the Prime Minister's salary is far too low for the responsibilities of the office. The consequence is a knock-on effect of compressing the salaries of those holding executive office, of those holding parliamentary office, and parliamentarians generally.

Salaries must account for insecure tenure. They must account for work after politics. Some parliamentarians find securing reasonable employment hard after leaving parliament, because of employer concerns about political baggage.

Salaries must account for the travel and work-related demands on parliamentarians that mean some spouses or partners must forgo work opportunities of their own to look after the family.

Salaries and working conditions must encourage parliamentary careers, and not just reward executive careers.

Political governance

Political governance is very poor.

The political sector is part of what is known as the Third Sector.¹²

The Senate examined the Third Sector,¹³ and cited evidence that not-for-profit organisations in general exhibit a lack of transparency in the way in which public or donated funds are

¹¹ In that context the recent Belcher review of parliamentary entitlements is worth reading: Report on the *Review of Australian Entitlements*, Australian Government, Department of Finance and Deregulation, Canberra, April 2010. Page 8: “*The Committee’s recommendations aim to ensure that senators and members are given relevant and adequate resources to do their jobs within a simplified, transparent and accountable framework that has regard to contemporary community standards.*”

¹² The Australian Bureau of Statistics uses the International Classification of Non-Profit Organisation (ICNPO) in its classification of 'types' of not-for-profit organisation. Law, Advocacy and Politics are one of 12 groups under the ICNPO.

¹³ Senate Economics Standing Committee *Disclosure regimes for charities and not-for-profit organisations* report, Canberra, December 2008

spent, a lack of accountability, and poor reporting to donors and the public, exacerbated by no uniform accounting or reporting standards.¹⁴

Those faults are also characteristic of political parties.

There are two significant difficulties. As illustrated in a Green Paper,¹⁵ the first is that reporting standards, forms, and detail across all nine Australian jurisdictions are inconsistent, inadequate, confusing, incomplete and partial – be it for political parties, associated entities, third parties, donors in cash and kind, financiers, or candidates.

The second difficulty is that there is no base-line uniform standard for the Third Sector (that politics is a subset of) for the political sector to fall back on. Third Sector law regulation and reporting is a mess.¹⁶

What distinguishes this time in political life is the astonishing acceleration of technology; the burden of excessive unsorted and sometimes indigestible information; the stress of the 24-hour media and political cycle, and the immediacy in effect of national and global events.

Much more seems demanded of governments and parliaments. The push for higher standards and better performance is strong, but political reform lags far behind.

Low standards in political governance puts off many potential candidates, and is an issue at a time when much more is expected of parliamentarians.

In Australia, in the midst of social economic and environmental reform, the political sector has been left largely untouched, as if only the political class do not need to be more able, a higher calibre, more productive, more competitive, professionally more suited for the future.

In an article entitled *Can better political governance give Australia an improved political class?*¹⁷ I made these points:

- Australians are demanding higher standards and better performance from their governments and politicians. Better political governance will help.
- Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and conflicts of interest, its ethical culture and its level of transparency and accountability.
- Governance through law, regulation and process makes power subject to performance and accountability and leads to better outcomes and conduct; which is why so much effort was put into better governance in the bureaucratic union and corporate sectors, with great improvements resulting.

¹⁴ See also the public submission by Andrew Murray February 2009 in response to the Australian Government's December 2008 Electoral Reform Green Paper DONATIONS FUNDING AND EXPENDITURE.

¹⁵ The Australian Government Electoral Reform Green Paper DONATIONS FUNDING AND EXPENDITURE, Canberra, December 2008.

¹⁶ See for instance ONE REGULATOR ONE SYSTEM ONE LAW, The Case for Introducing a New Regulatory System for the Not for Profit Sector, Senator Andrew Murray, Canberra, July 2006, available from the Parliamentary Library Canberra.

¹⁷ The Australian National University's Faculty of Economics and Commerce publishes *Agenda: A Journal of Policy Analysis and Reform*. Andrew Murray's article in Volume 16 Issue 3 (2009) was *Can Better Political Governance Give Australia an Improved Political Class?*

- The laws for corporations and unions provide models for organisational regulation. The *Commonwealth Electoral Act* should be amended to require standard items be set out in a political party's constitution to gain registration.
- Better regulation offers political parties protection from internal malpractice and corruption, and the public better protection from its consequences.

Improved political governance will over time lift the overall calibre of the political class by requiring greater professionalism, better pre-selection recruitment and training, a sustainable career path for professional parliamentarians as well as those that aspire to an executive ministerial career, and by reducing the opportunity for patronage, sinecures and dynastic factionalism.

Australia is fortunate in having many able politicians, but the overall quality and ability of politicians parliamentarians and ministers – local, state, territory, and federal – needs lifting.

Training

A trained professional experienced political class that is subject to the rigours of regulation, due process, and organisational integrity will always perform better than one that is not.

Most work environments or the trades are focussed on productivity and performance delivered through training. In contrast formal training is curiously neglected in politics, and training is best characterised as 'on the job'. The training our elected representatives get before resuming full duties is perfunctory haphazard and limited.

It is true that some politicians are already trained in politics policy and government as former advisers or former public servants. Most are not. Many have no experience in managing an office a budget and staff. Like all workforces, elected representatives would benefit from better training on entering their new profession.¹⁸

One of the reasons parliamentarians struggle to make headway is the lack of professional development. The lack of professional training to assist parliamentarians and politicians is astonishing.

At the heart of all the issues of government, money lies very large.

Many parliamentarians do not attend to finance. Most do not make the effort to train in finance. Not enough parliamentarians on public accounts committees can read financial statements and balance sheets, not enough have a working knowledge of government accounting principles and systems.

Most people in this room are concerned with issues of budget transparency and financial accountability. It is difficult to get across the detail and to understand theory application and technical matters, especially given the multiple and often-changing ways in which financial

¹⁸ Intensive residential courses could be devised. As an example formal courses might include essential legal principles and legislation design; political parliamentary electoral and constitutional law and systems; government and the bureaucracy in all its complexity; foreign affairs, treaties and diplomacy; accountability laws systems and practices; procurement and tendering; budgets finance and revenue, including cost-benefit analysis; managing a parliamentary office and staff; and so on.

information is reported. To be on top of that game requires long hours of hard work and study.

Being a parliamentarian requires professional scrutiny of matters that many people struggle to understand. If parliamentarians are poorly trained, poorly staffed, poorly serviced and not aided by independent researchers and advice in the form of libraries or budget offices, their ability to understand complex financial matters is severely constrained.

In these circumstances, it's easier to simply be a politician.

Value for money

To conclude.

In Australia, most of the big financial systems changes have been bedded down. Governments now have frameworks of inputs outputs and outcomes, performance measures, and advanced reporting requirements. Accrual budgeting and accounting is in place.

On the analysis and reporting side, if there is a weakness I would highlight today, it is very poor tax expenditure analysis¹⁹ and reporting in Australian state jurisdictions.²⁰ Many billions of sometimes over-generous concessions²¹ apply under state and local governments.

Indirect budget outlays or tax expenditures have a long way to go before they catch up to the accounting and reporting standards that apply to direct outlays. This is particularly so with respect to the need for a settled nationally applicable and comprehensive reporting framework for tax expenditures, a set of benchmarks, and accounting standards.

The big issue now is performance. There has always been a focus on quantum, on cost. More important is value for money, and timely service delivery of a high standard.

It is essential that parliaments and auditors-general focus on what results governments get for the money that is spent.²²

People want their governments proactive, responsive, professional, far-seeing, productive, and performance driven. The push for higher standards and better performance is strong. Governments have said they will respond. Expectations have been created.

The gap between expectation and performance has to be addressed.²³

¹⁹ The Australian Government Tax Expenditures Statement 2010 Canberra January 2011 lists 349 tax expenditures projected at \$117 billion for 2010-11, constituting 8.3% of GDP.

²⁰ See also pages 43-48 Report to the Australian Government: *Review of Operation Sunlight: Overhauling Budgetary Transparency* Senator Andrew Murray June 2008, Canberra.

²¹ Tax expenditures include tax exemptions, tax deductions, tax offsets, a concessional tax rate that is a benefit or incentive, and a deferral of a tax liability. A tax expenditure provides a benefit to a specified activity or class of taxpayer, and is concessional compared to the normal tax rate that would otherwise apply.

²² See also *Public Sector Accountability* Ian McPhee Auditor General for Australia CPA Australia International Public Sector Convention Melbourne 11 March 2011.

²³ See also Andrew Murray's 17 February 2009 public lecture given in Brisbane for the Australia & New Zealand School of Government: *Essential Linkages – Situating Political Governance Transparency and Accountability in the Broader Reform Agenda*.