

WATCHING BRIEF 20-3: GOVERNMENT ACCOUNTABILITY

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

February 2020

There has been increasing concern that government decisions are neither sufficiently transparent nor open to effective review. The accountability of government is put under question by the secrecy of many decision-making processes, and the unwillingness to admit mistakes or even illegal actions by ministers. This is compounded by the influence of vested interests. This Brief looks at the current situation federally, the avenues for accountability and transparency, and what might be done to restore confidence in democracy.

Overview

Over the years in Australia, structures have been put in place to ensure that there is integrity in public life. These have included:

- Clearly defined roles for the legislature, executive government, the public service, and the courts.
- An independent Auditor-General to review government performance.
- Parliamentary Committees to investigate the competence and integrity of government departments.
- Codes of conduct for ministers and public servants.
- Freedom of Information machinery to allow citizens access to knowledge about government decisions.
- Specific agencies such as anti-corruption bodies, human rights commissions, ombudsmen, and law reform entities.
- An alert media with resources to investigate outcomes of government policies and procedures.
- Academic experts with relevant analytical skills and capacity to highlight achievements and shortcomings of government.
- An active civil society with a range of agencies committed to monitor government activities and participate in public debate about shortcomings and proposed changes.

Obstacles to Effective and Democratic Government

In recent years, there have been numerous occasions when government integrity has been put at risk:

- A sense of impunity among government ministers when faced with questions about decisions, leading to refusal to explain how decisions have been made and to acknowledge mistakes or illegalities (e.g. sports grants, drought relief, robo-debt, letting of contracts).
- The increasing size of the ministerial staff who provide alternative advice to government from that of the public service and are usually prevented from appearing before any watchdog body (e.g. Parliamentary committees).
- The significant impact of large donations to political parties (details of which are often not available until well after they are given, if at all).
- The extent of overlap between lobbyists and political party officers and staffers.
- The unwillingness of the Australian Federal Police (AFP) to initiate thorough examination of complaints of inappropriate government action.
- The absence of a federal anti-corruption body with teeth to undertake proper and public investigations.
- Heavy restrictions on the rights of whistleblowers to be heard and protected against dismissal or sanction.
- Inadequate resourcing of auditing bodies (e.g. Auditor-General), and an unprecedented decision by the Attorney-General to forbid publication of part of an Auditor-General's report on a deference contract.

Major Oversight Bodies

Here is a brief description of the role of specific bodies charged with ensuring accountability and transparency:

1. Anti-Corruption Bodies. Most States and Territories have such agencies, with varying powers. Some (notably NSW) have wide powers to investigate bureaucrats and politicians, hold public hearings, and make referrals to the director of public prosecutions. Others (e.g. Qld, SA, WA, Tas, Vic, ACT) have public hearings when it is judged to be in the public interest. The NT can hold hearings but has not done so yet.
2. The Australian National Audit Office. The Auditor-General is an independent statutory officer of the Parliament under appropriate legislation, with responsibility for auditing Commonwealth agencies and reporting to Parliament. The office conducts performance audits, and is not subject to direction on whether or how to conduct audits. The ANAO has been subject to financial strictures because of the Government's efficiency dividend policy, and has reported an operating loss in 2018-19 of \$4.7m. Despite a recommendation from the Joint Parliamentary Committee of Public Accounts and Audit, no partial exemption from the policy has been given to ANAO, so its resources are stretched. There is now a move by some MPs and Senators to review the Auditor-General Act following Christian Porter MP (Attorney-General) preventing full disclosure of an audit report on the contract for new armoured vehicles.
3. Parliamentary Committees. There is a range of such committees, with the capacity to enquire into and report on any matters referred by Parliament. The Senate has the majority of committees, although there are also some joint committees. The committees have power to take evidence under oath, require attendance and call witnesses, seek documents, hold public or private hearings, and appoint sub-committees. The Parliament can choose to adopt or reject recommendations, so there is a partisan element to reports, sometimes reflecting the balance of membership.

4. Ombudsman. The Commonwealth Ombudsman is an independent investigator able to follow up complaints from citizens about government services (including the police). It has over 500,000 cases a year. Its aim is in advancing the public interest for the common good of the people to ensure safeguards for the community in dealing with Commonwealth agencies, to help resolve problems, and to influence government processes.
5. Freedom of Information. The legislation (passed in 1982) provides a legally enforceable right of access to government documents. It applies to ministers and most agencies. It allows individuals to see what information government holds about them and seek correction where needed. It ensures the community is better informed and can participate more fully in democratic processes. The effectiveness of this work is a matter of some controversy, because of the way government ministers and agencies use 'exemption' clauses in the legislation to redact information. Intelligence agencies are exempted from the FOI Act.
6. Australian Human Rights Commission. This is an independent statutory body that protects and promotes human rights in line with international law and covenants. It deals with complaints about discrimination owing to sex, race, disability, age, or political opinion. It makes submissions to parliament and government, and conducts research. Over the years it has had its resources trimmed by different governments, and has clashed with government on such issues as treatment of refugees.

Ministerial Rules

The Statement of Ministerial Standards that appears on the website of the Department of Prime Minister and Cabinet includes the following principles:

- The people of Australia are entitled to expect that Ministers act with due regards for integrity, fairness, accountability, responsibility, and the public interest.
- Ministers must exercise authority and use resources according to their responsibilities.
- Ministers must act honestly and reasonably, taking account of the merits of the matter and the rights and interests of those involved.
- Ministers must accept accountability and ensure that their conduct is open to public scrutiny and explanation.
- Ministers must act in fact and appearance in accordance with these standards, and lead by example and integrity in public and private.
- Ministers must act to advance the public interest and the common good of the people of Australia.

Recent events suggest that this set of standards is not being enforced in a way that creates confidence that Ministers are taking them seriously enough.

Plans for Integrity Body at Federal Level

Australia is one of 186 countries that are party to the International Convention Against Corruption, which came into force in 2005. It covers preventive measures, criminalization/law enforcement, international cooperation, asset recovery and technical assistance. Transparency International has a Corruptions Perception Index that ranks countries by their level of public sector corruption, according to experts and business people. The 2019 index shows that corruption is more pervasive in countries where big money can flow freely into electoral campaigns and governments listen to the voices of well-connected individuals. Australia has declined in the ranking in recent years to 12th with a score of 77 out of 100.

Nine months after the 2018 federal election, the Electoral Commission has released data on political donations. Kate Griffiths and Danielle Wood of the Grattan Institute have reported (*The Conversation*, 4 February 2020) that “the data reveal that big money matters in Australia elections more than ever, and donations are highly concentrated among a small number of powerful individuals, businesses and unions”. They say that the last five elections have shown that the party with the biggest war chest tends to form government, and they call for reforms to prevent wealthy interests from exercising too much influence. They propose lowering the disclosure threshold for donations from \$14,000 to \$5,000, and quick release of details of donations made. They also seek a cap on donations during campaigns. (This would prevent the excessive amount donated by Clive Palmer in the 2018 campaign).

Many other calls are being made for an independent watchdog at federal level, as a means of increasing public confidence in public administration. The recent Thodey report into the public service (commissioned by Malcolm Turnbull when PM) is seen by some observers such as Paddy Gourlay (*The Canberra Times*, 5 February) to be weak in its analysis, and the government has already rejected its recommendations concerning the tenure of Secretaries, the reform of pay and conditions, a code of conduct for ministerial staff, and having the periodic Intergenerational report prepared by the Parliamentary Budget office. Maria Maley (*The Canberra Times*, 5 February) has reinforced this criticism by pointing out that the current standards expected of ministerial staff are poorly supervised by the Department of Prime Minister & Cabinet, leading to “increased dominance of political actors in the considerations of government”. She advocates returning the names of advisers to the Commonwealth Directory to increase transparency. The Public Service Commissioner Peter Woolcott has called for ministerial advisers “to be given clearer instruction on their role and how they relate to the public service” (*The Canberra Times*, 18 February 2020).

The Federal Government’s promised legislation is for a Commonwealth Integrity Commission (CIC) that would operate outside public view, make no public findings, hold no public hearings, and refer specific items to prosecutors for action. The Greens Party recently persuaded the Senate to pass its own stronger version –supported by Labor, Centre Alliance and Jackie Lambie (with One Nation abstaining). Stephen Charles (*The Canberra Times*, 7 February) – a former judge – referred to the recent sports grants affairs and said “The Coalition’s failure to show any contrition means this will be a stain on the government’s reputation. Governments of both persuasions have shown willingness to use their control of money for political advantage. There is no adequate control of political donations, lobbying, and the revolving door of ministers, and totally inadequate freedom of information”. He calls for a national integrity commission that will restrain and check government.

Media, Academics and Whistleblowers

Investigative journalism has been very important to maintaining public awareness of government decisions, both positive and negative. It is concerning that the resources devoted to this work are under threat through reduced funds invested by media organisations in investigative journalism. In addition, the pressures on journalists have increased owing to the proliferation of anti-terrorism legislation, greater secrecy in government, harassment of journalists by the police on the initiative of government. This pressure extends to whistleblowers, who are finding it harder to speak out without significant personal and financial cost. Even academics, operating in the ‘independent’

environment of scholarship, find it more difficult to tackle controversial topics that may bring unwanted attention to their institution and themselves.

Quaker Perspectives

Quakers try to live according to the deepest truth we know, and we connect most deeply to this in the stillness of worship. This means speaking the truth at all times, including to people in positions of power. As we are guided by integrity, so we expect to see it in public life.

We are enjoined to participate in the public life of our communities, to use money with discretion and responsibility, to be wary of activity that is potentially corrupting, and to resist pressure to lower our standards of integrity. In the words of our founder George Fox (1656): *“be patterns, be examples in all countries, places, islands, nations, wherever you come, that your carriage and life may preach among all sorts of people, and to them; then you will come to walk cheerfully over the world, answering that of God in every one”*.

As citizens we are part of the setting in which our political representatives operate. We can seek opportunities to work individually and with others to draw attention to the importance of government accountability and transparency. This can include:

- Raising questions with our political parties and representatives about strengthening the standards of behaviour by those in public office.
- Identifying ways in which codes of conduct for politicians can be enhanced and monitored.
- Supporting investigative journalists and whistleblowers who are harassed for their truth-telling.
- Supporting (when in contact with MPs and Senators) a review of the role of the Auditor-General by the Parliamentary Joint Committee of Public Accounts and Audit.
- Taking part in public events that draw attention to failures in public administration, and giving evidence to enquiries into accountability and transparency.
- Advocating alternative processes for community participation in government decision-making such as citizens’ assemblies/juries.

Canberra, February 2020

References

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UN website re Convention against Corruption www.unodc.org

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Commonwealth Ombudsman website www.ombudsman.gov.au

Australian Parliament website www.aph.gov.au

Freedom of Information website www.oaic.gov.au

Australia National Audit Office website www.anao.gov.au

Public Service Commission website www.apse.gov.au