

Democracy in Australia – Accountability of Ministers for actions taken under their direct and indirect authority

The Principle of Ministerial Responsibility

Australian Governments operate on the Westminster principle. This principle is a constitutional convention, under which ministers are the link between Parliament and every action of a Government. Public servants carry out the activities of Government through their work in departments and agencies, and the Government directs them by making Ministers responsible for their activities.

The public service under this system has two responsibilities; to advise the Minister on matters in his or her portfolio, and to manage programs in that portfolio on his or her behalf. The power of the department to act;

“derives entirely from the Minister by his delegation and he remains responsible to his Cabinet colleagues and to Parliament for decisions made and actions performed under that delegation”.
(Coombs, from the Royal Commission on Australian Government Administration)

Westminster principles, particularly the principle of ministerial responsibility, are necessary to ensure that a member of Parliament is answerable to the electors for every single government decision.

John Uhr and others point out that the understanding and expectation of government accountability has been changing. Administrative law now provides the public with actionable rights in some areas of public administration. The sense that power is vested only in elected officials has been replaced with ideas of diffuse and institutional power. Ministers are no longer thought to have control of the complex programs and communications in the same way they did. It is therefore an important moment to review the principle and practice of ministerial responsibility and confirm the most appropriate set of contemporary standards.

Ministerial responsibility in other Westminster parliamentary governments

Westminster principles are common to several parliamentary democracies. David Smith has observed that Britain, Canada, Australia and New Zealand ‘stand apart in sharing – virtually replicating – a common constitutional, legal and linguistic inheritance.’ This is despite some important differences, Canada and Australia having federal and the United Kingdom and New Zealand having unitary systems of governance (and Canada having a Franco-phone as well as an Anglophone society). One of the key characteristics of these four parliamentary democracies is that they operate largely by convention. These conventions are powerful but they can be manipulated by an incumbent government, not least in the area of ministerial responsibility. This is significant at a time when the powers of the executive (government) have increased dramatically at the expense of the legislature (parliament).

The United Kingdom

British researcher Diana Woodhouse argues that Ministers have both causal, and role responsibility; by this she means that they have responsibility for actions or deficiencies they cause, but also head up a Ministry and so have a more general responsibility. Because Ministers are responsible for both policy and its operation, they are accountable for failure even when they might not be directly responsible in a more general sense.

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The British Parliament is, however, unique in that it recognizes the complex nature of responsibility and accountability for financial matters. It delegates some responsibility for those matters directly to an Accounting Officer who is then accountable to the Minister or to Parliament. This officer has:

a personal responsibility: for the propriety and regularity of the public finances for which he or she is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the available resources. (D E Smith)

The Accounting Officer is personally responsible, where other public servants hold responsibility delegated from the Minister, in areas for which the Minister remains responsible.

However, as Smith points out, it is still accepted that the elected minister controls the bureaucracy. Separating certain responsibilities from the Minister may be partial only since Accounting Officers do not budget and manage as they see fit.

Canada

In Canada, senior public servants, who are the heads of government ministries or departments, are given the title of Deputy Ministers. They still, however, receive their authority through elected Ministers who are appointed by the Prime Minister with authority from the Governor General. Indeed, some Canadian researchers suggest that Canadian Ministers take a more hands on role in managing their ministries than in other comparable democracies. On the other hand they point out that the broader the task is of governing, the less it can be truly said that Ministers are personally accountable for each task they are responsible for.

While traditionally senior public servants are seen as carrying out acts in the name of the Minister, they also have responsibilities under administrative law. Deputy Ministers are not therefore accountable to Ministers in all matters, as Smith points out. They may receive their own power and responsibility through the Canadian Financial Administration Act.

The Canadian parliament in the 1970's considered recommendations to transfer control and responsibility for departmental budget matters from Ministers to senior public servants. It was thought that this would take the political element from financial accountability and also make accountability more easily managed. The arguments against this move were just that; decisions must be political if the voting public are to have any control over public management. It was also considered that if holding that public servant to account was given to a parliamentary committee, non-political enforcement of the responsibility was unlikely. The recommendations were not implemented.

New Zealand

New Zealand researcher Robert Gregory argues that Ministers in that Government practice "vindictive political responsibility". By this he means that in the face of serious misdemeanour or failure they accept the need for vindication of that failure. This is evident in the resignation of Ministers whose departments are called to account for terrible errors - for example, when 14 people were killed in the collapse of a structure built by the Department of Conservation. The Ministers resigned in an acknowledgement not that they personally had been responsible for the deaths but that the Government had failed and that individuals were hurt. This is seen by Gregory as an important symbolic gesture by Government.

Accountability and confidence

Uhr and Mulgan point out that a governance system in which responsibility is delegated relies on the continual confidence of all parties. This means that accountability and the consequences of failures must be set out for all parties, including Ministers, where there is delegated responsibility.

Current Accountability in Australia

Prime Minister Howard published and revised a guide to Ministerial responsibility. This guide restricted the kinds of failures to which a Minister should be responsible. Prime Minister Howard was reported as saying that

If you're directly responsible for a wrongdoing, or if there has been a total systemic failure in your administration, then you have to accept responsibility for that.

That is, a Minister should only resign if he or she was active in wrongdoing or so negligent in monitoring his or her department that there was a total failure. This idea of Ministerial responsibility removes the duty of a Minister to monitor the tasks delegated to him or her by parliament and erases the longstanding principle that elected representatives are ultimately responsible for the duties they have delegated.

Prime Minister Rudd in 2008 revised chapter 5 of the *Guide on Key Elements of Ministerial Responsibility*. The new standards introduced obligations in dealing with lobbyists, investment disclosures, a bar on some lobbying activity for a period of time after serving as a Minister, and a ban on fundraising at the Lodge and Kirribili House.

It did not, however, introduce any changes to the types of failure that Ministers should be accountable for.

John Uhr points out that currently the system relies on commentators to interpret and remedy failures of responsibility. The media has become a stronger enforcer of perceived standards than Parliament itself, he argues, which encourages Members of Parliament to enlist the power of the media for political purposes. Even the Senate argues that enforcement of accountability by Prime Ministers is a political matter.

Critics of individual Ministers tend to ignore the complexities which the Canadian parliament has considered and the British system of Accounting Officers acknowledges. When critics make political calls for resignation of Ministers whose Departments have failed on very fine details of policy implementation, it is easy for Ministers to resist.

Improved Ministerial responsibility in Australia

Australia requires four things; a bipartisan approach, clearer consideration and definition of Ministerial responsibility, and a statutory code of practice for Ministers and parliamentarians.

A bipartisan approach

A bi-partisan approach is crucial.

The first principle should therefore be an agreed code and form of enforcement. Once this is agreed, all political parties can work towards a model that they know they and their political opponents will be equally bound by.

Clearer definition of Ministerial responsibility

The second requirement is a review of the principle of Ministerial responsibility in a contemporary context. As discussed above, Ministerial responsibility has become a great deal more complex than when most parliamentary democracies were established. Reconsideration of Ministerial responsibility is therefore necessary.

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The Australian parliament may consider a partial devolution of responsibility to an Accounting Officer or similar role, in consideration of the increased complexity of Ministers' roles. Relieving Ministers of some of the burden of responsibility for matters of detail may lead to an acceptance of increased responsibility for the remainder of the Ministry.

A Code for Conduct for Ministers

An effective Code of Conduct is necessary for Ministers. An agreed set of principles would serve to guide the activities of Ministers, and provide a set of agreed benchmarks to which the public could hold Ministers. The principles should be set out in a public document and then incorporated into legislation.

The Code might declare that

- Ministers are answerable for all acts and omissions of persons and organisations acting under prerogative, legislative or contractual authority assigned to them. This means that Ministers are personally responsible for their own acts and omissions, and those of their staff and department heads.
- Ignorance of a matter does not excuse the Minister, and Ministers should have systems in place to ensure they are kept informed.
- Ministers must respond to questions about their responsibilities in Parliament, and to use freedom of information law in a way that does not hinder appropriate public disclosure. This includes facilitating the attendance of their personal or departmental staff at parliamentary committees when requested.

The Code should be enforced by or subject to the review of an independent commissioner.

Improved Accountability

In addition to non-political enforcement of a code of conduct, there are other elements of Ministerial responsibility for the Parliament to consider. Parliamentary confidence in Ministers is a key part of the conventions of the Australian system. John Uhr suggests that question time be re-balanced to give non Government members a better chance to question Ministers. This has been significantly achieved through the pressure exerted on both parties by the Independents and Greens following the 2010 federal election and its hung parliament, with the ALP making commitments to the Greens to set fixed time limits for questions and answers, and to allocating a proportion of question time to questions from independents and minor party members, and to debating their bills.

See also

Ministerial and Parliamentary Codes of Conduct

<http://www.australiancollaboration.com.au/democracy/index.html>

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