

Parliament and the Auditor-General

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Introduction

The title of this lecture, 'Parliament and the Auditor-General', reminded me of a quotation which goes back a very long way in my own career and which applies to the relationship of the Auditor-General with the Parliament and the Auditor-General's very close relationship with the executive. The quotation reads:

Oh wearisome condition of humanity!
Born under one law, to another bound:
Vainly begot, and yet forbidden vanity
Created sick, commanded to be sound.

If the analogy is not clear, I suppose I was thinking about the Joint Committee of Public Accounts, which is a bipartisan and/or multi-partisan committee. It has a majority of Labor members commanding us to be sound and suggesting ways that we could recover our health. But we continued to remain sick because the doctor would not give us the medicine.

I have divided my presentation into nine parts. The first one deals with the tensions underlying the external audit of the executive government and its bureaucracy. By the way, I say 'its bureaucracy' because it no longer is our bureaucracy. The bureaucracy used to be at the source of what I call institutional dissent. In other words, they would say, 'No, Minister; that would not be a good idea' or 'Minister, that would be a very brave thing to do.' I think those days have gone. There are undoubtedly people with greater skill in interpersonal relations than I have who are still able to give the right advice in a way that does not upset people. But to me the day Tony Cole left was the signal that even insiders were not able to say what they really should say, particularly to a parliamentary committee. This is very sad. For the second part I look at the principles underlying external review. If I had the time, I

would look at some of the relevance of those principles to the way an audit office should be operating. For the third part I set out what I believe executive governments should stand for — what we should expect from them. For the fourth part I cover the roles of Parliament — the lower and upper houses — and the government. The fifth part of my talk is a criticism of external audit review and I go into some detail there.

The thing that really is very difficult to get across on television, or indeed in print, but is much easier on radio is that it really is not black and white. It is not hate them or love them. It is a very complex relationship between the Parliament, the Auditor-General, the executive and the bureaucracy. The nuances are subtle and we all rely upon each other. Indeed, I know that some of the people I criticise — and criticise strongly — love their dogs, treat their families well, are intelligent and are quite nice and charming people to be with. I just happen to disagree with their view of the accountability system. But it is not a matter of personality — at least as far as I am concerned.

I think the criticism of external audit is something that should be looked into and dealt with in an effective way. One of the overall criticisms I make of the way the government has dealt with external audit and with the audit office — long before I got near it — is that there really has not been a coherent, intellectually sound analysis of the pros and cons of actions. It seems to me — I have seen some of the cabinet submissions — that it is, ‘This is what we want to do. Full stop. No further correspondence will be entered into.’

Being rather older and like some of the people now involved in advising, I came through a school where we would have actually involved the audit office in the preparation of the cabinet submission. There may well have been differences of view, but these would have been given to ministers to make a judgment about rather than submitting one recommendation with other people’s views in the back, which suffer as much as you would suffer from a television cut. That seemed to me very sad and it was a fairly early indication that the old idea of checks and balances was falling down or being weakened within the bureaucracy as well as elsewhere.

The sixth part of my lecture looks at the control of information as a tool of autocratic power, and the seventh part deals with the Joint Statutory Committee of Public Accounts (JCPA) report itself.

1: Tensions underlie external audit of the executive government and its bureaucracy¹

Tension between executive government and *effective* external reviewers not answerable to it appears inevitable. This is so regardless of country, system of government, period of history, or form of reviewer. In Australia as one nation it began for the external public audit with our first Auditor-General, Mr J. W. Israel, ISO (1901-1926) who before Federation was Auditor-General for Tasmania. More recently the underlying tension was intensified and became

¹ This paper is based in part on sections of a presentation made to a public seminar of the Commission on Government, Western Australia, dated 29th March 1995.

more out in the open as a result of two decisions by the executive affecting the work mandate of the Auditor-General.

The first of these decisions was to give the Auditor-General the right to undertake efficiency audits. This was a bone of contention from the first, mainly because neither the executive nor the bureaucracy were comfortable with the resultant pressure which necessarily resulted for them after the more comfortable *status quo ante*. And partly because this might better have been integrated into a wider ranging and interlocking set of accountability changes which would have flowed from the Royal Commission on Australian Government Administration 1976 (chaired by Dr. H. C. Coombs) had its approach been followed. While RCAGA emphasised ‘...new delegatory methods by which the Treasury and the Public Service Board in particular should in future help to co-ordinate the activity of departments..’ it crucially sought also to balance these changes through improvements to other bodies, including the Auditor-General. In its words, ‘we should re-emphasise how necessary also is a renewed vitality for some ancient instruments of restraint, of which the most important is the office of the Auditor-General’.²

It therefore recommended a more inclusive approach to accountability:

...with the Auditor-General establishing under his own chairmanship a committee comprising representatives of the heads of Treasury, Public Service Board, Prime Minister and Cabinet and Administrative Services, to assist him in the development of his role in the audit of efficiency.³

As well as seeking successfully the empowerment of the Auditor-General to conduct efficiency audits throughout the Commonwealth government administration (such power now being wound back), RCAGA sought to give him greater freedom, resources and a closer relationship with the parliament.⁴ The long-term result of the ‘gift’ of efficiency auditing was a perceived threat to the reputation of ministers and senior bureaucrats before the Parliament, the media and thus the electorate. Self-interest apparently dictated responses which included rather than a more open approach, criticism of his individual reports, denial of the existence of his resource difficulties and continued restraint by the executive on his operations.

Quoting without disparagement RCAGA’s use of the words ‘restraint’ and ‘co-ordinate’ in connection with the activity of central agencies invites criticism from current administrative reformers who do not accept that devolution and ‘letting the managers, manage’ in the circumstances of the public sector, are more likely to work if there is a complementary acceptance of the reality of an element of shared responsibility for outcomes between the centre and the ‘front lines’. And that thereby service-wide as well as individual agency effectiveness etc. will be enhanced rather than the reverse by a more balanced, realistic approach to personal accountability.

² *Royal Commission on Australian Government Administration*, Australian Government Publishing Service, Canberra, 1976, s.375, para. 11.4.1.

³ RCAGA 1976, p.379, para. 11.4.13.

⁴ RCAGA 1976, p.371, para. 11.3.17; p.374, para. 11.3.21 (j) & O(ii); p.375-379, paras. 11.4.1-11.4.13.

Responsibility forced down the administrative system and out to the so-called ‘coal face’ requires complementary action in the centre, for example, to act rather than stand back from actions (even potential actions) before they go awry or to help avoid bad rather than good practice being the exemplar. As a result, there have been practical difficulties as well as costs which could and should have been avoided.

The second decision causing an inevitable heightening of tension was the introduction of individual financial statements for departments and other entities which, up to that time, had formed part of the audited statements of the Minister for Finance. The change was a sensible discipline on departmental management, but the Department of Finance (DoF) took the view that this could be done without any extra work by the Auditor-General. However, each new set of financial statements required a judgement on the facts whether they presented a ‘true and fair’ picture, and some factors only became significant or ‘material’ when considered as part of a single department’s statements alone. This required more work than in the past and in some departments and entities it was found that uncertainties hitherto not significant made it irresponsible to give a clear audit opinion.

In the light of the apparent lack of knowledge by DoF of the audit and resource implications of the new requirements, it was not surprising that heads of department were confused about their new personal responsibilities for financial management reporting and about the related legal responsibilities of the Auditor-General for the audit opinion. In the past, major responsibility for financial reporting had been shared, in practice, between DoF and an entity’s accounts staff. Some departmental heads, used to private resolution of conflict, felt under unfair pressure when faced with the possibility of a public qualification of their financial statements especially when, in their opinion, nothing had actually changed (even though they were now, legally, in much the same position as those in the private sector always had been). The relationship between some of them and the Auditor-General became even more troubled when a number found that they were unable to satisfactorily convince the Auditor-General that their accounts should not be qualified.

The upshot of these two decisions — taken within or causing a changing environment wherein on the one hand the Auditor-General sought a closer focus on what Parliament wanted and, on the other, ministerial support for the office waned — was that resistance to and challenge of the auditors became more prevalent and from a higher level; and unhelpfulness generally seemed the rule in some non-audit areas of need.⁵ The conclusion that can be readily reached from events is that the relationship between an effective Auditor-General and executive government inevitably will be difficult and in the light of the necessary inequality in power between them, dangerous for the determined Auditor-General. Support from Parliament and the media for the Auditor-General is necessary for retained or regained viability. While good relations are to be preferred, an Auditor-General who is seen under the current regime as getting along well with the executive and its bureaucracy is suspect. Grudging respect is the most one should expect, because publicly reported audit is a particular threat in the ‘bear pit’ of politics.

⁵ Thankfully, at the working level where departmental and other staff generally welcomed the opportunity an audit review often gave to improve the way things ran, co-operation continued usually to be good; as it did with a number of heads of entities, including many with experience of the private sector, who welcomed the chance thereby provided to competent management. But others seemed more affected by the possibility of public criticism and tried hard to deflect or otherwise stymie reviews.

Commonwealth attitude to public external audit as seen by some public auditors

J. W. Israel, ISO, the first Auditor-General for Australia

At Federation, the Auditor-General was paid above heads of departments but by 1918 was the only senior official not to have had a pay rise.⁶ⁱ The intentions of the founding fathers with respect to the role and status of the Office were not to last long. It is disappointing that parliament did nothing to stop the downgrading, implicit in this treatment of *its* servant, of its own ability to command information and therefore, perhaps unwittingly, to have acquiesced in its own downgrading vis à vis the executive. Similarly with changes to the Audit Act, Mr Israel complained at one point that he had been waiting sixteen years for changes he believed desirable to the Act.⁷ This puts the current wait of six years into a perspective of general carelessness about the function by governments and bureaucrats. Only public pressure and committed politicians can change this treatment for the better. One could go on about Mr Israel's difficulties. Instead we will look briefly at the views of my two most immediate predecessors about their treatment by the executive and the bureaucracy.

K. F. Brigden, AO, the tenth Auditor-General for Australia

The well known JCPA Report 296⁸ stemmed from warnings expressed by these predecessors. Mr Brigden, formerly Taxation Commissioner, wrote in a report tabled in the Parliament in 1984 that

Audit independence and audit effectiveness can amount to much the same thing. If an auditor does not enjoy independence from the bodies subject to audit it will be only a matter of time before some measure of control by auditees becomes apparent. When that happens, the effectiveness of the audit process will inevitably suffer. In practical terms, impairment of the auditor's independence is synonymous with impairment of audit effectiveness.

It is timely to question whether the independence of the Auditor-General and the Australian Audit Office from the executive arm of government is not more apparent than real.⁹

⁶ An unintended compliment.

⁷ Note that our later wait could be eighteen years if we count from RCAGA 1976: but in fairness one can distinguish between the force of recommendations from the JCPA and those from RCAGA, which though compelling in logic and analysis, were ahead of their time and seen as somewhat of a risk (despite the example of the GAO). By the time JCPA Report 296 was published there were more examples to reassure the executive of the practicality of the proposals with respect to the ANAO. In about 1976 Elmer Staats, Comptroller-General and head of the GAO, visited Australia to talk to relevant officials and groups; around 1988 Ken Dye, the Canadian Auditor-General performed the same service. Sir John Bourne of the UK National Audit Office visited the JCPA in the last eighteen months or so. All have the freedom from the executive sought for the ANAO by the JCPA.

⁸ Report 296, Joint Committee of Public Accounts, *The Auditor-General: Ally of the People and Parliament Reform of the Australian Audit Office*, Australian Government Publishing Service, March 1989.

⁹ Contained in The Auditor-General Audit Report No. 43 1993-94, *Parliament's Right to Know: Legislation to replace the Audit Act 1901*, p. 43. It was originally part of a *Report of the Auditor-General upon the Financial Statements prepared by the Minister for Finance for the year ended 30 June 1984* at para. 5.2.

J. V. Monaghan, AO, the eleventh Auditor-General for Australia

Mr Brigden's successor was formerly a Treasury officer and later Commissioner of the Public Service Board, who in 1987 when Auditor-General wrote to Parliament as follows -

...Not to put too fine a point on it, the future of the AAO's performance auditing function is clouded by the question mark that hangs over the adequacy of its resource provision.

...One cloud on the horizon is the thrust of continuing erosion of the AAO's audit mandate through modification of the statutory requirement that public enterprises be audited by the Auditor-General.

...Continuation of some recent trends could well see the AAO in for a turbulent time. I hope that this will not prove to be the case.

...Ultimately, of course, it is for the community to determine whether the Commonwealth is to continue to have a robust, effective and independent external audit institution; or, perhaps, to make do with some docile client of the Department of Finance. If it is to be the former, the pre-requisites are a strong and clear audit mandate, and resourcing arrangements that do not prejudice the institution's independence.¹⁰

Resource constraints imposed by the executive can slowly and insidiously poison independence. They may do this in a way that makes it difficult to prove cause and effect and which may also causes problems which can harm the reputation auditors-general strive so hard to preserve; the professional standing of their offices. This danger has been clear to many expert, disinterested witnesses from outside the public sector. One of these, Mr Fergus Ryan, found in a report on the Auditor-General of Victoria that

The involvement of the Executive in the process of approval of the Offices' budget is again, in my view, inconsistent with the concept of the Auditor-General's role in the accountability of the Executive to the Parliament. There is a clear risk in theory that the effectiveness of the Auditor-General could be constrained by an Executive which chose to do so through a denial of adequate funding.

He recommended therefore that

In order to ensure that the Auditor-General is able to meet effectively the needs and expectations of Parliament, I consider that Parliament should be responsible for approving the budget of the Office, and should fund it directly by way of specific appropriation.¹¹

¹⁰ Report No. 43, pp.27-42 inc. Originally in *Annual Report of the Australian Audit Office 1986-87*.

¹¹ Fergus Ryan, 1992, *Report on Performance Audit of the Auditor-General of Victoria pursuant to Section 48B of the Audit Act 1958*, L.V.North, Government Printer, Melbourne, October 1992, p.15.

It is not only auditors-general who have difficulties with the Commonwealth. The *Sydney Morning Herald* of Saturday May 6, 1995 reported the 'mild-mannered, former academic and Brisbane silk, and chairman of Queensland's Red Cross' and the latest chairman of the Criminal Justice Commission in that State, Mr Rob O'Regan, as saying of the Commonwealth:

I am amazed at the ferocity of the Federal Government's attacks...Something must be making them very uncomfortable...

(Bodies like ICAC and the CJC) were fashionable after the exposure of quite a lot of corruption and maladministration during the '80s but I think many politicians and senior bureaucrats now find it irksome to have a permanent commission keeping an eye on them.

2: The principles underlying external review

Do we need an independent external public audit official?

A look at the past would help decide. Long before the failures of the 1980s, Pliny the younger revealed the mistaken activities of public officials in his writings so many centuries ago, and at the time through audits. Much later a more recent letter questioned:

...You say that people in authority are not to be snubbed or sneezed at from our position of conscious rectitude...

I really don't know whether you exempt them because of their rank, or their success and power...I cannot accept your canon that we are to judge Pope and King unlike other men, with a favourable presumption that they did no wrong. If there is any presumption it is the other way, against the holders of power, increasing as the power increases...Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority, still more when you superadd the tendency or the certainty of corruption by authority. There is no worse heresy than that the office sanctifies the holder of it.¹²

Thus thought Lord Acton, moralist, politician and historian of whom Matthew Arnold said 'Gladstone influenced all around him but Acton; it is Acton who influences Gladstone'¹³ The force of Acton's view is unaltered even if we believe that 'our' side when in power would not act in an unprincipled way. Even if this were to be so, is it reasonable then to assume that principled behaviour would continue with long 'rule' or with new (i.e. 'different' from 'our') 'rulers'? Acton reviewed the behaviour of past Popes and Kings and concluded not. What does commonsense in the light of recent Australian political history in some of our states tell us? Surely it tells us that an informed parliament, one that is not kept from relevant

¹² *Historical Essays & Studies*, John Emmerich Edward Dalberg Acton, Macmillan and Co. Limited, 1907, Appendix.

¹³ *Encyclopædia Britannica*, 15th Edition, vol.I, p.76.

information, is one way to keep good government. Acton's analysis of history suggests a practical way of avoiding a blight being brought down upon an unsuspecting people.

May I ask (rhetorically) any doubters to explain why there was a Royal Commission into WA(Inc) and now a Commission on Government in that State; why the State Bank of Victoria had to be sold to the Commonwealth Bank; why the State Bank of South Australia contributed to the political demise of a Premier; and why there was the Fitzgerald enquiry in Queensland.

To believe that no powerful politician ever would act unfairly or against the public interest, if it were known to them that exposure would be avoided, is to put politicians and bureaucrats in a class of their own. In the above quotation Acton told his correspondent and now, a century later, tells us that if autocracy in our governments is to be avoided or reduced there must be effective checks and balances on political and administrative behaviour; and that the longer such curbs are weak or absent, the harder blight is to contain or avoid.

Yet autocratic behaviour is sometimes confused with 'appropriate' leadership; and in some societies appears to be welcomed.¹⁴ Even in free societies one hears that leaders have to be *strong* and to *lead* as if citizens are children or, worse, sheep or horses to be led by the nose or driven to the sale yard or maybe the knackery; that voters *cannot be trusted* in sensitive areas to take the *right* decisions (these are better left to the experts) — views of the community that are inappropriate, surely, in a free and strong democratic land?

It is clear from the experience of the tenth, eleventh and twelfth auditors-general for the Commonwealth of Australia that there is strong opposition to the very concept of apolitical, independent, expert analysis and public reporting by the Auditor-General on the use of public power and resources. This reluctance applies also to the implementation of anything which would help or encourage our National Parliament to have an effective role in the protection and nurturing of the Auditor-General unless the executive is forced into it. Such reforms as have been introduced domestically and overseas in public external audit and reporting have been because of a powerful political patron or because a scandal or public calamity so great as to force action on the unwilling. (Even in such circumstances a tactic can be to hold reform off until the furore dies; people do forget; and governments do not always consider the long term good of the community when self-interest is involved. When the bureaucracy shares that self-interest it is a difficult alliance for an Auditor-General to have to face.) It is not unknown for political and bureaucratic forces to join in an unlikely alliance, re-grouping to weaken the forces of reform — no doubt, in their view, for the best of motives. I would not be so tactless as to mention any of the States in this regard but it is certainly true of the Commonwealth across its history: immediate post-Federation; post-RCAGA; and post-JCPA Report 296.

Mandate

One working definition of full mandate is that the Auditor-General should be able to report to the Parliament on the use of all public power and public resources by the executive whatever their legal form otherwise evasion of public audit will occur. The definition has to be sufficiently broad to catch all uses of public power and/or resources and the onus must be on

¹⁴ Which may be why one English cleric, Dean Inge, thought that votes should be weighed, not counted.

the executive to have the audit opportunity made available, with sanctions, effective legal sanctions, on Ministers for non-compliance.

Components defining mandate include:

1. Type of coverage — ‘efficiency’¹⁵ and/or financial statement audits.
2. Extent of coverage e.g. Government Business Enterprises (GBEs), departments, committees, commissions, trusts, superannuation funds, companies, subsidiaries, panels, partially privatised bodies, statutory authorities etc.
3. Ability to report/and to whom.

Audit Report No. 43 sets out well the Commonwealth situation in principle at the time of writing — and it is principle which should determine the detailed application most suited to the particular circumstances found in Western Australia¹⁶

Review of GBEs

The area which the government is keenest to remove from oversight of Parliament through the Auditor-General is that of government activity in the commercial/market sphere, particularly GBEs.

Why should the Auditor-General’s mandate be extended to cover GBEs, companies and other ‘commercial’ type government activities?

Is it common sense to have the Auditor-General review GBEs or such other bodies as claim to be ‘commercial’ yet which continue to benefit from either or both public power (e.g. the protection of special legislation) or public resources. The fact that the closer an organisation is to the market, the less need there might be for such review (i.e. beyond financial audit), compared with, say, departments of state, does not mean that at no time would such a review be necessary. Being in the market does not mean a body is efficient, it merely means it can ‘go broke’.

But on top of that, politicians and bureaucrats do not use their own money, they use taxpayers’ and will spend money on so called ‘commercial’ projects long after private, free to act shareholders would have called it quits.

Neither ministers nor bureaucrats are the real shareholders when the public has majority or even minority shareholdings — they act in trust for the real, dragooned shareholders, whose interests the Parliament represents and therefore has a right to be informed, and it is the Auditor-General, not anyone else, who should do this.

As Report No. 43 put it:

while different considerations exist for individual GBEs, they are not in the same position as private sector bodies because of

¹⁵ Including performance indicators.

¹⁶ Auditor-General No. 43, pp. 6-9, paras. 2.1-2.21.

- the limited nature of the marketplace for most GBEs
- the inefficiencies which can exist within any profit oriented private-sector business (the bottom line does not guarantee efficiency, even in the private sector)
- the conflict which can arise between private and public sector objectives
- the absence (where there is no stock exchange listing) of the competitive pressure experienced in the private sector based on stock exchange listing and borrowing requirements
- preferential funding as a result of explicit or implicit government backing
- absence of choice by the public-sector shareholders — the taxpayers — to withdraw their funds, and
- the Parliament's right and role in a democratic society.¹⁷

While some public-sector agencies have tried to introduce meaningful analogues of competitive pressure to the public sector, a government body, however commercially oriented, cannot be subject to exactly the same competitive pressures as apply to the private sector. Such bodies are protected from hostile takeovers and do not, as a matter of course, have their performance reviewed by market analysts or institutional investors.

Even more importantly, as mentioned above, the public sector's ultimate shareholders (the citizens) have no choice — they must trust management and governments to act in their best interests without the flexibility of the private investor to invest or not, or to withdraw their money at any time.

Government bodies should therefore not be treated as if all private-sector checks and balances apply. Ministers, accountable as they are to the Parliament and the electorate, also require assurance that all goes well in their portfolio responsibilities. It follows that accountability in the public sector must be different from, but not less than, that in the private sector if the taxpayers/shareholders are to be protected.

While it is true, of course, that publicly owned commercial bodies are accountable usually to ministers, those ministers to the executive, and the executive ultimately to the Parliament, this is insufficient, particularly as any good private-sector manager will agree, that tensions often arise between the objectives of achieving appropriate 'bottom-line' results and being a good corporate citizen. The ANAO only has supported the approach of 'letting the managers manage' so long as accountability is not eroded and information is still available therefore to the public and the Parliament.

No matter how commercial these bodies may be, they owe their existence to the Parliament and have even stronger obligations than their private-sector counterparts to be good corporate citizens and this will be no different at the 'commercial' end of the public sector. Under the proposed provisions of the Auditor-General Bill, the Parliament will have diminished access to information about their operations and activities, particularly in relation to their public interest responsibilities. A threshold question is: will GBEs be subject to the full range of necessary accountability requirements in the future? I believe not.

¹⁷ *ibid.*, p.7, para. 2.10.

It is true that in general there is a cost to the operations of an enterprise in observing public accountability requirements, including being subject to performance audits by the Auditor-General. However, the direct audit costs would be only a fraction of total costs and are far outweighed by the benefits of added public accountability.

At page 8 of Audit Report No. 43 it is recalled that:

In Queensland, the Electoral and Administrative Review Commission, after considering the Commonwealth Government's response to Report 296 [ie rejection], in 1991 indicated:

The Commission firmly believes that the Auditor-General's role is most unlikely to affect the competitiveness of a GBE and considers these claims to be overstated. The competitive strength of an organisation is determined by the quality and price of its product, marketing strategies, and competent management and staff, not by the identity and effectiveness of its external auditor...The Commission considers, therefore, that the Auditor-General should have the authority to undertake a performance audit into the activities of any GBE which may be established by the Parliament.¹⁸

In Western Australia itself, the Report of the Royal Commission into Commercial Activities of Government and Other Matters in 1992 commented that the Auditor-General was:

...the public's first check and best window on the conduct of government¹⁹

The Royal Commission recommended:

All public sector bodies, programmes and activities involving any use of public resources, be the subject of audit by the Auditor-General.²⁰

3: What executive governments might stand for

Among the values, principles and actions which might reasonably be expected of government are integrity in their decisions and in the way these are portrayed; honesty, fairness and respect in the way they treat citizens; equity in the treatment of need or, in the case of taxation, means; support for the rule of law, for the independence of the judiciary and for independent officers with statutory duties; respect for the role of the 'loyal opposition'; government in the interests of the nation as a whole, not special interests, 'mates' or, in the

¹⁸ Queensland, Electoral and Administrative Review Commission, *Report on Review of Public Sector Auditing in Queensland*, Brisbane, September 1991, p.91.

¹⁹ Western Australia, *Report of the Royal Commission into Commercial Activities of Government and Other Matters*, Perth, 12 November 1992, para.3.16.

²⁰ WA Royal Commission, para.3.17.

words of Patrick Cook, ‘just a bloke I owe a favour whose name for the moment escapes me’²¹ but ever mindful of the needs of the individual; and fair and apolitical administration of efficient, economical and effective programmes.

4: Roles of parliament, the lower, and upper houses, and the government.

The two party system with its strict discipline on parliamentarians’ voting behaviour acts against the viability of a parliamentary democracy in which individual parliamentarians make up their minds on issues on a number of criteria apart from what the whips say is to happen. Nevertheless, such behaviour is not unknown (as we shall see) particularly when matters of conscience are concerned but remain rare; it is examples of individual members or senators who have to support a vote against their judgement which abound.

It is against such a background that we have to consider the practicality of making recommendations which assume that a lower house (e.g. the House of Representatives) is able to act as a parliament in the above sense. We have no choice, I believe, if we accept that an informed group of parliamentarians is better for us than the reverse i.e. if we want informed back-benchers and, indeed, ministers more effective in their supervision and support or otherwise of government action; if we want to support the members and senators of all persuasions who care about what they do; and if we care about our democratic way of life. But there is also the Senate where, to get their way when they disagree with each other, the two main parties have to rely on support from combinations of Democrats, Senator Harradine and/or the WA ‘Greens’.

If the government were to support increased support systems for, say, the Parliament’s committee structure, a new and interesting day for democracy would dawn — but not by any means as radical as is likely to happen in New Zealand under its electoral changes. Suffice to say that the current Australian government is not interested in such reform and will do nothing if not forced. Whether the Parliament can take greater effective review responsibility in the absence of executive support remains to be seen.

Criticism of the role of the Senate comes from powerful sources. The most vocal and significant proponent of the desirability of a more formally and symbolically independent Australia, the Prime Minister, is at the same time the official most denigrating of and threatening to the Senate. This is quite disturbing in itself, and a strange inconsistency for the Senate is an institution which is particularly Australian in its development and role. As J. R. Nethercote has written, ‘The Senate has to be seen purely in an Australian context, as a distinct creation of Australia’s Constitution-makers’. It is also a body in which we find the most democratic representation of voters’ intentions at the polling booths and the most independence and resolve when it comes to attempting to protect the people from executive

²¹ See the *Bulletin*, 7 July 1992, ‘Not the News’ by Patrick Cook, in which he summed up the disillusionment of many in his page of additions and amendments to a fictitious Act for the prevention of corruption and abuse of their Office by elected representatives, by their families and friends and ‘the bloke’ referred to in the body of this text.

excesses.²² Far from being ‘unrepresentative swill’, the minorities hold the balance of power only when the majority of members, bound by party loyalty, cannot agree to agree.

It is unfortunately that underlying too much of political debate in public life from some quarters is a disregard for fact, history, logic and practicality. Much of it seems to be based on expediency and naked self-interest. This appears to be a tendency to attack or sneer at those, including independent reviewers and review agencies (but also business organisations), not yet cowed or which have resisted control by the executive government and its bureaucracy. The reason for the unpopularity of the Senate with the executive and sections of its bureaucracy is plain — the Senate is independent, not a rubber stamp nor rotten borough, and when it wants to be, very effective.

Is there a case for the Auditor-General to be allowed a monopoly by Parliament?

In a democratic society, the rationale for an official such as the Auditor-General having wide and secure mandate derives from the need for the Parliament, in itself lacking in resources and information as compared with executive government, to be in a position to call the executive to account for its actions or inactions

Could Parliament do this through private auditors?

The answer is theoretically ‘yes’ but in practice ‘no’. If the Parliament wants to keep an effective interest in what is being done with power or resources provided by it to the government in the interests of the community as a whole,²³ it must have a clear and formally independent and accountable channel through which it is advised regularly, consistently across programmes, by an official who is independent and apolitical and who can report ‘without fear or favour’; who has a clear, unambiguous, legal requirement to look across the public sector as a whole; who has power to allocate available resources according to assessment of risk; who has command of appropriate resources which are independent of the executive, with wide powers of access; and who has the power to report to the Parliament and others relevant as necessary/appropriate. This position or official cannot, in practice and by definition, be privatized; the accounting profession takes a similar view as have the independent auditors of the ANAO.²⁴

It should be recognised note that this does not and, I believe, must not, rule out an appropriate working relationship, even form of partnership, with the private sector, provided there is no ambiguity about the ultimate responsibility of the Auditor-General for the audits.

²² The *Sydney Morning Herald*, March 14, 1994, p.13, ‘Senate is a people’s house, too’. J.R. Nethercote’s adaption of his parliamentary research paper.

²³ A principle which is a foundation of our democracy and which gives some protection for us from arrogant governments; as do a free, professional and enquiring press, independent judiciary and apolitical, professional public service.

²⁴ Evidence to JCPA; statement on Australian Rail Corporation Bill; Report to Minister for Finance of the Independent Auditor; personal communications.

5: Criticism of external audit review

A recent example of the public attitude of some in Canberra appeared in a well written, succinct and seductive article in *The Canberra Times*²⁵ which set out the alleged disincentive effects on risk taking and therefore on innovation and improvement in the public sector caused by criticism allegedly arising from ‘parliamentary tactics’ and ‘popular prejudices’ (e.g. in the way Senate Estimates Committees operate).

I would leave the Senate committees to speak for themselves but the article then repeated criticisms, used elsewhere by senior bureaucrats, of the way auditors-general also have annoyed them — by ‘bean counting’ (Barings also may have taken this view to their cost!); focussing on failures rather than successes; and, heaven preserve us, seeing ‘facts as secondary to a good story’. (I would add I know from personal experience that some bureaucrats also are very unhappy about easily understood audit reports and press releases too.)

As the Auditor-General — when the particular audit examples mentioned in the article were published, (viz. reports suggesting some lack of either knowledge of, or control over, the use of some government credit cards and of shambles and aggressive game-playing at some bureaucratic levels over performance pay) — I have to agree with the suggestion in the article that facts sometimes are seen as secondary to a good story. But I disagree that the reports of the Auditor-General were examples of this. In my opinion this ‘myth making’ approach to criticism was clearly the prerogative of the government and bureaucracy as their response to what had been found in these audits showed.

Parliament represents the shareholders

The article suggested that better government would result from attitudinal change to risk and failure, implying that there was an attitude supported by both parliamentary committees and auditors-general that failure must be avoided at all costs. This is, of course, simplistic as will be apparent to those who have lived through WA (Inc). (Has Canberra forgotten already Tricontinental, the State Bank of South Australia and WA (Inc)?) The truth is that if the public sector could act in matters of risk like the private sector, it (or that particular part of it) probably should be privatised. Failing that, those working in the public sector have to accept, whether they like it or not, a different, sometimes more intrusive and public form of external review, for they are using public power and public resources usually taken from, rather than volunteered by, the taxpayers (unlike the private sector). One cannot as a citizen move one’s public investment out of the public departments, commissions, boards, organisations, panels, companies and so on, or even out of partially privatised bodies, as one could if these were totally private operations. Nor do market rules of value apply, with their effective, if ruthless and sometimes too narrow disciplines on suspect management. But, of course mistakes occur and public servants and politicians will get blamed. What is important is to know that mistakes have occurred and that they have a positive effect on future behaviour. Those involved — including bureaucrats — just have to live with the political spotlight.

Power, like taxes, comes from the people

²⁵ Ross Claire, *The Canberra Times*, 2 March 1995, p.13, *The roles of success and failure in the public sector*.

Although this may be news to some in Canberra, the divine right of kings no longer applies either. The executive government, even under the realities of party discipline, still ultimately governs a free people only because those people are prepared to delegate that power. It follows that, whether bureaucrats like the questions asked of them by a Senate Committee or not, it is the closest thing to a shareholders' meeting they are ever likely to get near and they have to put up with the rough as well as the smooth or find another occupation where there are no external forces affecting their cosy world. But where is that? It certainly is not in the private sector.

Of course, external review, including by the Senate, should be careful, if it can, not to stunt innovation or sensible risk taking. But in looking at actual cases, I have seen no evidence that the ANAO, whose activities are quite puny compared with the size and importance of the public sector activity it tries to review, has had such an effect even in the areas actually reviewed. Quite the reverse. (The same would be true of the Senate.)

Identification and acceptance of failure is essential for learning and improvement

It was also suggested in the article that there was a pre-occupation with failure. No Auditor-General known to me believes that failure can always be avoided, even by them. Failure, we regret, is part and parcel of our striving as human beings. But it is Jesuitical to argue that this should lead one to conclude that failure should be ignored by an external reviewer. The vast majority of us learn by recognising, not ignoring, mistakes. How mistakes are treated by others is another matter again, (and not a matter to concern an Auditor-General any more than a policeman should 'second guess' the judiciary) but my experience suggests that there are powerful bureaucrats (but, thank God, not all) who would be satisfied with nothing less than praise, and praise only — forget criticism. But should taxpayers and other citizens, who provide the wherewithal, be happy with this as part of a 'new accountability' with emphasis on internal review and evaluation?

Nor, of course, should we waste scarce resources having audit offices take seriously another complaint that they should concentrate more on spreading the news of good practice (which in practice already is done within resource constraints).²⁶ Others are more than happy to do that, surely? It is a misunderstanding of the role of external audit to see it as some sort of consultant to government and the bureaucracy to be used on demand to help them. Because it fits the aims of a good auditor help is given, but it is not a *raison d'être* — that is to report the significant facts publicly of the use of public power and public resources in order to encourage improvement.

The abovementioned article is dealt with in some detail because it is an example a superficially reasonable litany of complaints about the role of the Parliament and the Auditor-General which can appear to provide some vestige of the intellectual justification (usually lacking) for giving even more freedom for the executive and its bureaucracy to act with less intrusion from the Parliament and its ally, the Auditor-General. Upon closer examination it is less than convincing.

The question is not whether auditors-general are imperfect

²⁶ For example, The Auditor-General Audit Report No. 33 1992-93 Efficiency Audit, *The Sale of Aussat and best practice for the sale of Commonwealth Assets*, AGPS, Canberra. 1993.

More stark and less clever are the often less overt criticisms directed against the work of auditors-general, and about their personal motivation, some of which are set out below. Before looking further at these I must make it clear that I do not believe audit offices are without fault. For example, the JCPA review leading to Report 296, just as with RCAGA 1976, found a need to improve the ANAO and it would be unreasonable (especially in view of monopoly effects) to argue that everything should fall to the executive and the Parliament to correct or that every blemish of an audit was their fault. But, like ministers and other public officials, auditors-general have to face up to their imperfections and try to minimize their impact on the body politic.

Objective evaluation is essential of criticism made of auditors-general

All allegations of inadequacy in public external audit require careful evaluation. From recent experience, allegations will range from irrelevant to important and from valid through merely incorrect perceptions or misunderstandings to the plainly maliciously untrue. Charges of audit nit-picking are a hardy perennial, appearing to come from people whose last brush with a public sector auditor was in a corridor in 1980, and with a private sector auditor at a tennis club dance. Other critical phrases which spring to mind include weak and irresolute; too powerful; prone to obfuscation in report writing; uncommunicative; headline hunting, publicity-seeking, press release producers; tardy; trivial; unprofessional and unbusiness-like, uncommercial in experience; expensive; impractical; lacking credibility; naive; irresponsible; head-strong; pushy, too big for boots; unrealistic; not actually requiring special help; political; in the pocket of Parliament, JCPA, the Senate, Mrs Bishop, the Democrats, or the Liberals; against the government; wrecking the reforms by criticising too soon (sic) i.e. after a decade!; and inhibiting risk management by revealing inadequacies in its implementation (such inadequacies existing usually through a lack of proper risk assessment).

These items usually can be sorted into one of two broad categories represented by:

- 1) publicity seeking / issuing press releases / briefing press and parliamentarians
'political'
too powerful
- 2) nitpickers
lacking detailed knowledge
unprofessional
unhelpful
lacking in 'commerciality'

The essence of the categories might be described as follows:

- 1) Information is revealed — an act of which the complainer disapproves whether because of the target audience, the content of the revelation and/or its style.

This is the key complaint - lack of control over information (or over the Auditor-General).

- 2) Leading from the first, (or which is said to cause the allegedly incorrect presentation of information) is alleged lack of professional skills and/or behaviour.

In reflecting on these criticisms, one must remember that the main complaint from the executive and its bureaucracy is about *the disclosure of information about their performance*, the basic job of an Auditor-General, which suggests that the motivation of the criticism might be questioned. While control of information is power, dissemination of that information does not alter the executive's ability to take or not take decisions required for any change to the *status quo*. The audit information complained of is contained in a publicly, formally tabled report which has been prepared, usually, from information provided by those being audited, seen in draft form by and discussed with those affected, and with their comments or rebuttals usually also included. A report is advisory only, and may have to pass the gauntlet of parliamentary committee review at which any critics can (and often do) press their cases. It is clearly against the interests of the Auditor-General to do anything to allow legitimate criticism of his work as unprofessional.

The second category of criticisms falls completely when one realizes how the executive has refused, on the advice of the bureaucracy, to assist the Auditor-General in improving the capacity of his Office as recommended by the various reviewers. If they really thought that there was a need for change, they would help achieve it. The real motivation is self preservation.

Audit vulnerability to politically motivated attack requires expensive review/consultative methods (unlike private sector unpublished reports)

Much time which would not have to be spent in preparing a normal private report on the same subject, is spent because reports of the Auditor-General's reports are so publicly contestable. Because his reports are so vulnerable to criticism aimed at clouding the real issues (usually coming from ministers or bureaucrats defending their personas), excessive care has to be spent on disputed areas and, particularly with a hostile executive and resource constraints, the Auditor-General has to watch carefully that reports do not lean too far towards areas of agreement or that the contentious issues are 'toned down'. The importance of the support one may get from a 'multi-partisan' parliamentary committee's approach to reports cannot be overstated.

6: Control of information as a tool of autocratic power

Control of information; Executive versus Parliament

The tension between the Auditor-General and the executive mirrors that between the executive and the Parliament. In each case party discipline exerted by the governing party acts to diminish the power of the Parliament to intervene to protect effectively its rights over those of the political parties. Some powerful politicians infer that under our system of 'representative government' Parliament has no rights other than those granted to it by the ruling party, and these only on loan.

There are not many examples of party discipline being flouted to assert the Parliament's ultimate sovereignty, but the introduction of freedom of information legislation by the Fraser government provides some insight into the power of principle on some senators and the power of party discipline or possible preferment upon others. It suggests that it is easier in politics to subscribe to 'the people's rights' when one lacks the power to do anything about

them. Yet it is apparent that those who defied party discipline in this case, so as to improve the rights of the people at large, were able — because of the issue — to influence effectively their own reluctant governing party. But, regretfully, pragmatism once in power in now *de rigueur*. This does not auger well for the implementation of the most central reforms of the role of the Auditor-General and his Office.

Freedom of Information (FOI) Legislation

Politics currently (maybe always?) involves more ruthless pragmatism than benevolent idealism or concern for the greater or wider public good. This sometimes seems to be rationalised on the ground that party and national interest coincide. However the introduction in the Commonwealth of FOI legislation showed how there can be a productive interplay between political pragmatism (here arguing in a self-interested way for less revelation) and political principle (as in the wider case that the public had a right to know more).²⁷

In 1978 during the Fraser Government, Liberal Senator Alan Missen chaired the Senate Standing Committee on Constitutional and Legal Affairs to which was referred in June the first draft of a freedom of information bill; a bill which owed its existence to Missen. The referral itself resulted from criticism of the bill by Missen published by the *Age*, which supported him with an editorial which included the following words:

This newspaper's worry — which Senator Missen appears to share is that the traditional reluctance of the bureaucracy to divulge information, coupled with the natural tendency of politicians to conceal what could be embarrassing, will override the principle that the public has a right to know what Governments are doing. A Freedom of Information Bill should mean what its title says. This one does not.²⁸

Like the later JCPA Report 296 on the reform of the external audit function, which also affected the provision of information to the public, Missen's Committee came up with a unanimous report recommending improvements (in this case) to the proposed legislation. Missen said:

...if our democratic system of government is to be properly responsive to the views of those whom we have been elected to serve, the Government's legislation must be strengthened. It must be broadened to ensure that the public's right to know, formally acknowledged for the first time in legislation, is indeed a reality.²⁹

One of the Opposition members of the Missen Committee was Senator Gareth Evans. He criticised the rejection or deferral by the Fraser Government of two-thirds of the Committee's recommendations saying:

²⁷ Anton Hermann, *Alan Missen: Liberal Pilgrim, A Political Biography*, The Poplar Press, Canberra, 1993, p.125.

²⁸ *ibid.*, p.125.

²⁹ *ibid.*, p.126.

Every recommendation of major significance and importance, designed to produce freedom of information legislation which would not be a feeble exercise in cosmetics but which would work a genuine improvement in the quality of our democracy has been rejected.³⁰

It is easy to understand how he must have felt, for everything he then said could apply equally to the government responses to the recommendations of JCPA Report 296 and to the most recent Bill when Senator Evans played a key role in damping down Senate unhappiness about the government's treatment of Report 296 and about difficulties found by those not in government in obtaining information at the time of the enquiries into sports grants as well as more generally.

Principle over party: Missen and others cross the floor

In February 1981, because the Government did not propose to pick up the recommendations of the Missen Committee, he foreshadowed that he and a number of his Liberal colleagues would cross the floor to provide the Opposition with the numbers to amend the legislation in the Senate. Senator Evans, for his part, announced that the Labor Party would introduce all the Committee's recommendations after July (when a new Senate would be controlled by Labor, Democrat and Independent senators) if, as he then put it, the Government '*runs for cover*'.³¹

In April the Government introduced an FOI Bill stimulating Missen to issue a statement criticising it under the title, '*The Seven Deadly Sins of Omission*'. Missen and five Liberal Senate colleagues duly crossed the floor in May leading to a defeat for the Government. After negotiation, the Government was able to pass a stronger Bill before it lost control of the Senate (if one ignores its loss of control over FOI!) in July. Another current Minister, Senator Tate, took over the chairmanship of the committee from Missen with these changes.

Attitude of current executive to control of information through external audit

For over a decade the Government has resolutely turned its back on principles it espoused in Opposition which, to quote Senator Evans in referring to FOI, '*...would work a genuine improvement in the quality of our democracy...*' By this I do not refer to the changes by the Government to FOI but to its attitude to the more important strengthening of the Parliament's ability to hold government to account for its use of public funds and power which a properly reformed external audit function would support. As with the Missen Committee, the JCPA was chaired by a member of the governing party and reported unanimously. The juxtaposition of the treatment of and attitude to the FOI legislation when in opposition and to external audit by important reformers in the senior ranks of government is disappointing; but this just has to be accepted as part of the human condition (particularly in the rough and tumble of political life). The obduracy and arrogance of government in its attitude to the obvious need for stronger checks and balances reflects a breathtaking insouciance — the executive may as well have been on the planet Mars for all the warning effect on it of the mismanagement, to be tactful, which occurred in the 80s in governing circles in Melbourne, Brisbane, Adelaide and

³⁰ *ibid.*, p.127.

³¹ *ibid.*, p.127.

Perth. The existence of Commonwealth Ministers and their offices in some of those cities, with (in)judiciously placed liaison staff said to have been in at least one Premier's Office, together with, at least in the southern and western states, presumably shared political ideals, apparently did not help communication (as far as an outsider can tell) about what was going so quietly but very badly wrong.

Some suggest that these events were not relevant to the Commonwealth. It certainly cannot be argued with any conviction that the Commonwealth is insulated from arrogance and autocracy in public office. It may be true that the Commonwealth has had in the past the benefit of a public service of independence and quality as well as a different, less personally tempting area in which to operate but in the end Acton will out. The long term effects of this contemptuous attitude to checks and balances generally (in this case, to those provided by Parliament) will reduce future benefits to the Australian community as a whole. It is both telling and a matter for concern that the Commonwealth has been able to resist for so long reforms aimed at improving the workings of Parliament, the more so because it has done so in the face of well based, bipartisan committee reports at a time when the States have found it necessary to change their audit offices for the better in many ways.

Looking at the immediate future, if there is to be effective improvement in the Commonwealth it will be because of the power of the Senate and of public opinion using as a lever affairs such as the so called sports rorts or whiteboard affair.³² And then only if deals are not done to negate the effectiveness of changes. Even in the absence of political deals, the bureaucracy can white-ant parliamentary engendered reforms not supported by the executive, for example by using resource or other restraints (accommodation, travel, staffing); or the Parliament itself can lose interest (for it is a difficult area which would put more responsibility on members and senators).

Vested interests against improved information flows

Despite the pressures for improvement produced by a variety of Royal Commissions, the passage of time dims memories and allows those who prefer to control the flow of information to the Parliament, the media and therefore to the people, aided by those in the bureaucracy who prefer a more quiet life, to moderate what might have once been thought inevitable. The Commonwealth example shows how effectively it is possible, through a co-operative approach by the executive and the bureaucracy, to stymie the strengthening of a strong review role for the Parliament.

The easiest way to impede excellent parliamentary invigilation and therefore its ability to expose faulty or corrupt administration is by minimizing the independence and powers of the Auditor-General. It is not a matter which will be resolved only, if at all, by reason and logic. As the Commonwealth has shown so well, self-interest of the executive and the bureaucracy are stronger. The realities of party politics or bureaucratic self-interest cannot be allowed to diminish this protection for our liberty offered by a strong, effective Parliament, able to call a government to account when needed.

³² The Auditor-General Audit Report No 9 1993-94 Efficiency Audit, *Community Cultural, Recreational and Sporting Program*, AGPS, Canberra, November 1993.

This is not to infer the executive shouldn't be allowed to govern — that is its role but it must not be unreviewed. Equally neither the Parliament nor the Auditor-General can govern. Parliament provides power and resources to the executive to use for particular purposes and has the right and obligation to review their use. The only power of the Auditor-General is to report in a nonpolitical, objective manner the facts to the Parliament on the way such power and resource is actually used by the executive and the bureaucracy.³³

7: JCPA Report 296 of March 1989

*The JCPA's findings*³⁴

After the inquiry into the audit office which followed the warnings given by Mr Brigden and Mr Monaghan, the JCPA found that at a minimum the ANAO had major problems: at worst it was in a state of crisis. Its problems included:

- a bare adequacy of resources for audits of financial statements and insufficient resources for performance audits
- discrepancies between performance audit legislation and resources
- one of the most important auditees of the ANAO was at the same time the Government's principal adviser on the resources of the ANAO, appearing to compromise the independence of the Auditor-General
- loss of major auditees
- loss of experienced staff, and
- an image problem with the accounting profession.

The JCPA noted that the reasons for these problems were out of the control of the ANAO and resulted from:

- parliamentary complacency leading to a dulling of its capacity to perceive that the ANAO had difficulties
- the ambiguous relationship between the Auditor-General and executive government which had led to both parliamentary and government neglect
- the lack of mechanisms in place to permit the Parliament to assume responsibility for the ANAO
- the ANAO giving a higher priority to the economy of its operations than to re-appraising its contribution to government
- a lack of public awareness of the importance of auditing in government

The JCPA recommendations

In recognition of the above points the JCPA recommended to the executive that a wide ranging set of reforms be made to improve accountability and the role of the Auditor-General and his relationship with the Parliament. The committee recommended in particular:

³³ But even this ability is seen as too much by governments determined to manage their public image and therefore wishing to control the public availability of pertinent data and its analysis.

³⁴ Joint Committee, pp.243-245.

- a. reaffirmation of the necessity for the Auditor-General to be free of political control
- b. a new Audit Act so as:
 - i) to clarify the relationship between the Auditor-General and the Parliament and to affirm the service role of the ANAO to Parliament.
 - ii) to establish the ANAO as a statutory authority
 - iii) to give the Auditor-General the authority to determine the terms and conditions of employment of staff, and
 - iv) to indicate which Commonwealth agencies the Auditor-General was to be external auditor
- c. the Auditor-General to continue to have responsibility for performance audits
- d. establishment of an Audit Committee of the Parliament to permit better parliamentary influence over the ANAO's estimates and to pursue a general oversight role of the ANAO on Parliament's behalf.

In making these recommendations in 1989 the JCPA indicated that the new legislation and formation of the Audit Committee were immediate necessities.³⁵ The legislation has yet to be passed, while the Audit Committee does not exist. It is now 1995 not 1989.

Executive reaction to JCPA Report 296 and later Senate pressure

The Government's reaction was not even *'the feeble exercise in cosmetics'* that Senator Evans labelled the Fraser Government's approach to FOI. There was an injection in funds to allow a resumption of efficiency auditing but the quid pro quo was a Minister for Finance agreed review which cost the office sixty staff. A desultory review of the yet still to be implemented new legislation began with a rejection of a request to treat the separate Auditor-General Bill without waiting for final decisions on the more complex two other parts of the legislative package. I came to the conclusion that the recommendations which caused the ANAO difficulty would be implemented with alacrity and zeal and everything else dragged out until forgotten unless merely rejected immediately.

After some five years the Government appeared to respond to Senate pressure over the sport rorts/whiteboard affair, which threatened a wider Senate enquiry into that sorry matter, by agreeing to what seemed a realistic accountability package. Senator Evans told senators that there were 'specific commitments' to 'consider' measures recommended by the JCPA in Report 296 'in order to put beyond any doubt the Government's willingness to act in all the ways I have stated to improve the quality of administration and accountability in this country'.³⁶ Although I do not suggest that Mr Evans had any hidden agenda, the word 'consider' in this parliamentary context should not mean 'we will think about the matter and then reject the crucial parts' just as 'consultation' with the Parliament over the appointment of an Auditor-General should not mean 'we will tell you whom we intend to appoint, "hear" what you say and then do what we like'.³⁷ I can only conclude that others overruled a more

³⁵ The Auditor-General No. 43, pp. 1-2.

³⁶ *ibid.*, pp.23-24.

³⁷ There was, I understand, no consultation at all over the most recent appointment of Auditor-General.

principled approach to the serious, considered and multi-partisan approach taken in the JCPA by government and non-government representatives alike.

The Bills as drafted did not meet the spirit of the package in any material way, particularly the prospect that the expected outcome of the legislation would be ‘a model for increased independence for the Auditor-General’. The Government in fact rejected all eighteen amendments passed in the Senate. This was a callous and arrogant rebuff to the rights of our Parliament and to our right as citizens of Australia to have the use of our power and our resources by the Government reviewed. It was a response appropriate to a junta careless of the views and needs of the Auditor-General but also of its own members, of the Senate, of the Parliament itself and of the right of citizens to be well-informed in an apolitical and objective way. If it did nothing else, the sports rorts/whiteboard affair showed how well parliamentarians can work in our defence if they have the facts. Therein, of course, lies the rub for the executive.

8: Conclusion

The treatment of Commonwealth auditors-general by the executive and its bureaucracy parallels (and perhaps reflects) the Parliament’s unwillingness or inability to exercise its potential and actual power as compared with that of the executive. One result of party discipline has been that for many decades the Parliament, with few exceptions, has acquiesced in being tied to the executive’s chariot wheels.³⁸ It seems impossible for some party members to distinguish between areas which are properly ‘parliamentary’ in character and which therefore are inappropriately dealt with as matters party discipline. A change of attitude, while a necessary pre-requisite, is not enough to improve the balance of advantage between the Parliament and the executive to a point more fair to the Parliament and the people represented by it. For example, more infrastructure support for the Parliament is required if it is to perform better its review role. Criticism by bureaucrats of the way Senate estimates committees act rings hollow when committees cannot not be given the infrastructure support they deserve, even from the Auditor-General who, I believe, while independent of the Parliament, has a duty to support and supplement the resources available to the Parliament. (Auditors-general and parliamentary committees working separately yet with a common focus have been very effective).

For over a decade the Commonwealth has avoided its own members’ requests to improve the way accountability is put into practice because of a reluctance to reform the ANAO. If the executive and its bureaucracy genuinely believed their own complaints about the office they would have supported, not stymied, its reform. Less selective perusal and adaptation of some of the innovative suggestions about improving accountability structures made by the Coombs Royal Commission on Australian Government Administration, for example, would have been time better spent than that wasted on blocking genuine widespread improvement in this area of governance.

Good government is fostered by an appropriate balance of forces. Leaving aside the role of the judiciary, the media’s interplay with executive government and with parliamentarians is

³⁸ One Minister for Finance said that as far as he was concerned the Senate could create as many committees as it wished; it just wouldn’t get any more staff for them (personal communication).

at times not without influence. The current deliberate and possibly tax-payer funded political manipulation of sections of the media should be resisted; and requires at the very least a balancing by the opening up of better access by the Parliament to basic information (as well as analysis). There should be concern that the current official accountability dogma ignores, nay abhors, the principle of such balance in its narrow view of the administrative world.

Central (economic) bureaucrats (and indeed Ministers) will find eventually (no doubt at our rather than their cost) that independent, expert evaluation and reporting of bureaucratic performance (especially failings) is essential. In its absence, existing pressures in and on the public sector are unlikely in themselves to result in continuous improvement in (or even maintenance of) present levels of efficiency, effectiveness or economy. But it will be hard for even the victims to prove this in the absence of effective, independent, apolitical, external review. Is this an unstated 'corporate goal'?

Questioner — In the traditional Western democracy we have the legislature, the executive and the judiciary. Do you think we should have another form of government — that is, the auditor or the equivalent — which is recognised in some sort of constitutional way?

Mr Taylor — I am not sure I am capable of answering that question. I think observation would suggest that Australia does not have the same Westminster system as do other countries. I believe that, with the cutting out of some of the institutional dissent that I spoke about before, including the abolition of the Public Service Board, and with the concentration of power more and more in the executive's hands — much more than it ever was in the past — there will inevitably have to be a rebalancing of power. It will occur somehow; I do not know how. The longer you hold it back, the more powerful it will be when it comes through.

I forecast in 1989 that we would move to a more American system of congressional committees and what have you. I fought very hard while I was Auditor-General to encourage every parliamentary committee with which I had dealings to act in a bipartisan way. By and large, including sports grants, they did. I am very proud of them, if I can be paternalistic. When you get them away in quiet rooms; when it is on the basis of a factual report — I used to have a little lecture, which I do not think they ever listened to, which was that it is very important to approach this on a bipartisan basis — they really do come through.

It is quite clear from what I am saying that I do not believe the Auditor-General or anybody else should be created. I do not know that I would back any government support for it. Rather, I believe we have to face reality. I think the whips have to be taken off on some of the things that involve Parliament and I believe backbenchers ought to insist upon it. They really ought to do a Missen. But doing a Missen makes you very unpopular, just as being an outspoken Auditor-General makes you very unpopular. But you have got to do it sometimes if you want to get results.

I think we have to increase the power of the Senate and, I would hope, have the House of Representatives do more committee work. You cannot stop a government from governing. That is what we elect them for. I am not suggesting in any way that I should be sitting on their shoulder. Our involvement in the vast array of what was going on in government was minuscule. We were a fleabite on a giant herd of elephants. The fact that we were there improved things. There is no doubt about that. Even if we had done nothing, even if we had never reported, for a long while it still would have had an effect. It is only when an informed

Parliament can hold an executive to account for its actions that you have got a system that is going well.

I would be very wary of tinkering too much. I believe in a very strong judiciary. I hope that the conventions of appointing the very best continue to be followed, but I worry because we do not want a situation as exists in America where you stack the Supreme Court with your own political kind. That would be a debauching of the system. Thank God we have got a Senate. Government should be supporting it. It should also be supporting an Auditor-General, because we really do keep them out of trouble rather than put them in it. I have been rather bemused about it all.

Questioner — In 1993-94 you reported that security of commercially sensitive data at the Australian Bureau of Statistics was held under insecure conditions. I had reported that to them about a year before. I would just like to thank you for your report confirming what I found. I reported it to the Prime Minister, the Treasurer and people like that who should have been concerned. I got intensified efforts to have me declared insane, so your report was absolutely terrific.

Mr Taylor — Thank you very much. I do remember your particular case. What worries the hell out of me is that individuals can find themselves in situations of such powerlessness. It used to get me down and I was, when I was a statutory official, a very powerful official with a very good office behind me. Now I have to hunt to find a pin to put in a folder of papers.

Almost the second day that I had in office I was rung by a young lady who said, ‘I have just read in the paper that you apparently have integrity. I have tried this and this and this and I have a real problem and I want to talk to you about it.’ We did what we could for the lady, and I hope the particular investigation is being progressed as I speak. I do not know now.

It is sad. The number of individuals who have come to us as an office over the years has not been large, but the carelessness about the official reaction to genuine complaints was quite appalling. It really disappointed me to actually have somebody — after six years of me thumping around the country, kicking doors down — say that she did not really understand that all Auditors-General have integrity. If they do not, their officers soon give it to them.

Questioner — What do you consider are the reasons for the enormous difference in power that is given to the tax commissioner for the raising of revenue (he has punitive powers under the Income Tax Assessment Act), for the way in which governments use so much force and power behind the collection of revenue and for the fact that the Auditor-General does not have similar powers for the monitoring and control of the expenditure of that revenue? I have two other pertinent questions. What needs to be done in order to persuade the Parliament that legislation needs to be passed to give the Auditor-General the most powers? What is impeding the Auditor-General’s office from reporting directly to the Parliament?

Mr Taylor — I can answer the last question more easily than the other two. There is nothing to stop the Auditor-General from reporting to Parliament. Indeed, I exercised that with a great deal of happiness. Before I took up office, we reported every six months, except for very few efficiency audits. I got the office to agree to bring in individual reports. One time we upset the Treasury so much over something in a draft — it did not get anywhere near publication

— that it got a legal opinion which said we did not even have the power to produce those individual reports. This may answer your second question.

I then said ‘Thank goodness. I’ve got another opportunity to put the pressure on to change the legislation’. I continued to put in those reports and hoped that the presiding officers would knock me back. That would bring it to the boil. It is a bit like Western Australia Incorporated and Tricontinental. You need to have a powerful patron — this is what happens overseas — a minister for finance or the head of a committee who says, ‘I believe’.

To a certain extent, leadership sets the environment. If those at the very top are not giving you support, it allows the smaller players to kick the hell out of you every time they pass you by. Parliamentarians have a lot of other things to do and quite reasonably expect me to be running the office. Until we are found to have totally mucked up the audit of Qantas, Telecom, the Commonwealth Bank or what have you, they are not going to take any notice.

I am not prepared — neither was my successor — to go to that extent, but I have tried everything else I can. I have gradually been upping the public pressure all the time to get an informed debate actually out into the open, but they do not answer. They do not have to. They do nothing; nothing happens. I cannot force it. I have just gone around the country whenever I have had an opportunity and tried to put a reasoned case. It is your money; they are your resources; it is your power. You have a right to know. What is the problem? I cannot understand it. I am just confused. It all seems so clear to me.

In answer to the first question, let me tell you a story. When I came back from New York, the first thing I did was to see my friend, as I believed he was, the Treasurer. His first words to me were not, ‘Welcome back, John. How are you? What a great thing I’ve got for you,’ and I am sure he was very influential in Mr Hawke making me the Auditor-General. He said, ‘Get your fellas off Trevor’s back.’ Does that help answer your question?

What did I do? I must admit, I do not remember another word that occurred in that whole interview — and it was quite a friendly interview. I went back to the office and said, ‘What in the hell are you doing with the tax commissioner?’ I was satisfied that what they were doing was quite proper and I never had the opportunity to go back and explain in detail what we did, and I do not think it mattered.

He was really showing his great loyalty, which he has always had, to people in his portfolio. That is a trait that I would not want to take away from anybody. He tried to muscle me in a pretty up-front way — he certainly got my attention — but I had been appointed as a statutory officer under the act. I had certain duties which were put into the fourth act of the first Parliament, precisely to make it possible for politicians to say what they like to me — that is fair enough; I am not complaining about that — and for me to actually take no notice of what they say. That is what it is all about. I would never disregard such notice without checking first because they might be right.

Where does that leave us? I am not giving them money. I am giving them problems. It does not matter that there is money saved down the track. Forget about that. Nobody was ever sacked in the bureaucracy for having too many staff. Nobody was ever sacked for having a program that gave too much money away. But, if you do not get that money in to pay the bills, you are in diabolical trouble. I think that is the answer, is it not? By the way, it is

Parliament that has to accept the responsibility for the Audit Office — not the executive. That is what the joint committee said. That is what a majority of Labor people said. Do not ask me how to get it to happen; if I could do it, I would have done it.

Questioner — I originally came here in 1951 to work on the horror budget under your predecessor, Duncan Craik. At that time — the Menzies government had just got in — there were quite substantial interferences with the top level of the Public Service. I do not have to talk about Burton, Trevor Swan, Fin Crisp and others who were removed from office. I can assure you that, although I was a junior officer, I participated in quite high-level discussions about transferring to the American system so that when a new government gets in, you get a new lot of leading advisers who will be compatible with them — do what they want — and they can have their way.

My answer to that was that I saw too much corruption, inefficiency and stupidity from political friends in the war, when our lives were consistently at risk. So I came out against it. But with these new developments about the contractualisation of the public servants and the senior advisers no longer being independent because they have tenure of office, it is becoming the new way to go. It is a prescription for disaster, as happened with the auditors in private industry during the mid-1980s. They had always had their problems, but they were on the surface then and massive amounts of money were lost.

Our whole economy could go that way if we have a docile group of friends supporting the executive government. Cannot some start be made to change that point? You have been stating your point of view. Other individual voices are joining you. Maybe the time has come to form some sort of organisation aimed at this. Otherwise, I can prescribe only disaster.

Mr Taylor — We have elected parliamentarians to represent us. It would be a terrible criticism of them if this sort of thing were allowed to go on. Of course, one suspects that the opposition would be delirious with joy at the opportunity of freeing up the senior bureaucracy. I have lived through a number of changes of government and I have usually been on the hit list because I regarded myself as a mercenary. I worked for whoever paid me and I worked as hard and as loyally as I possibly could. I could go on for another twenty minutes about what happened when Whitlam came in; what happened when Fraser came in; and what happened when Hawke came in.

I have never had a problem with ministerial officers personally. Indeed, I have found them to be a great help over the years. If you could get a relationship of trust with a ministerial officer, a lot could be done on both sides. But it is appalling, as we have said in our report, that Parliament has no access to ministerial officers. It cannot grill ministerial officers. These are very important people working in very influential ways.

I had very close connections with the then Treasurer's office when I was in New York. It was marvellous. I never dealt with the Treasurer. I preferred dealing with his office. They both have to exist somehow, but there has to be a change in the way we approach the public service. The public service should not be the property of the government of the day, but it is today — lock, stock and barrel. That means it is going to be subject to enormous stress and strain when there is a change of government.

I have given up on trying to change this government. Maybe we should be trying to change any successive government and get commitments from it that it will set up an independent, apolitical, genuine public service. You have to have a public service board of some stature. It is a community treasure. I sound as though I am criticising its bureaucracy. The majority of public servants are wonderful people. They are great people who should be protected more than they are, but some ought to be sacked. You know what happened in the audit office. I wanted to hire and fire. So I am not against sacking public servants, but it must be for due cause — not for political reasons.

It is just crazy. When Gough Whitlam came to office, he did not realise that a lot of the illustrious knights had voted for him. He did not use all those talented people for a long while, which is very sad. They were disagreeing with him, of course — so what? I would rather have them disagree with me to my face. You go back to the Fin Crisps. That was another disaster where we lost talent. I am getting old. I am starting to see cycles coming back for the third time.

Questioner — As well as about ten very senior, absolutely essential people who were removed from office when Menzies started, I understand that the appointment of the next Auditor-General was on Chifley's desk when he departed. When Menzies saw the file, he saw the name Brophy and he said, 'Oh, he'll make a good copper.' I think that is what you have been doing.

Mr Taylor — There is a constant subterranean murmuring of complaints that I was getting involved in policy. One of my predecessors used to complain about social security benefits being paid to people. He complained publicly and in his reports about midweek race meetings because it took people away from the office. He complained about too many motor cars being allowed to be built. I thought I was pretty restrained. What people do not understand is that Australia has always been a very robust democracy. I hope we never lose it.

Some people would realise that I have been somewhat critical of the Department of Finance. Certainly, one of the recommendations of the JCPA was that an auditor-general should not be a client of the Department of Finance. I am certainly on the record as saying that I thought the appointment of an Auditor-General from the Department of Finance was not a good signal, but it is a pretty clear signal of what the government says. It is rejecting the whole idea of Parliament being involved. I do not think it even discussed the appointment, as I think it should have, with the JCPA.

That being said, the particular person who has been appointed is somebody whom I have known for decades and who is of great integrity and great character. I think he will make a marvellous Auditor-General. When I came in, I did not understand what was going on, but I am sure he will understand a lot more. It took me two years before I really decided that I had to get in and kick heads. I just hope he does not have to wait that long.

One thing that I am not going to do from now on is talk about the audit office. I have a great many friends there. Whenever we meet we do not talk about the audit office, and that is way it is going to be.