



***AUSTRALASIAN STUDY OF  
PARLIAMENT GROUP  
(Queensland Chapter)***

**PARLIAMENTARY ACCOUNTABILITY AND  
MINISTERIAL RESPONSIBILITY: WHAT'S  
WORKING AND WHAT'S NOT**

**TRANSCRIPT OF PROCEEDINGS**

**SATURDAY, 21 APRIL 2007**

**Brisbane**

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**Ms MALONE:** The honourable the Speaker, Mike Reynolds, members of the Queensland parliament, distinguished guests, members of other parliaments, ladies and gentlemen: on behalf of the Queensland Chapter of the Australasian Study of Parliament Group, I welcome you all to today's conference on 'Parliamentary accountability and ministerial responsibility: what's working and what's not'. Before we commence, I would like to acknowledge the traditional owners of the land on which we meet.

The objectives of the Australasian Study of Parliament Group are the encouragement and stimulation of research, writing and teaching about parliamentary institutions in Australasia and the South Pacific in order to generate a better understanding of these institutions. The proceedings today are intended to contribute to that understanding.

The topic under discussion today covers some of the great and persistent tensions in our democratic system. Questions currently abound. To what extent should we just let governments govern? Does our system lead to successive electoral dictatorships? Has modern government become more complex and so in need of more sophisticated mechanisms of accountability than those traditionally understood? Do the mechanisms that have evolved meet the expectations and needs of an increasingly educated and informed public? Is the public sufficiently informed to make good electoral decisions? And the questions go on.

Our speakers today bring a tremendous range and depth of expertise to assist us to address these issues. The proceedings today will take the form of an introductory session which will examine what the terms 'accountability' and 'responsibility' mean and will provide an overview of the topic from the perspective of practitioners, observers and theoreticians. The two further sessions then will provide a more in-depth look at some of the arrangements to protect the public interest: parliamentary standards, ethics, freedom of information; and the key players who serve the public interest. There will then be a panel of current and former parliamentarians to offer individual perspectives and some debate. The conference will conclude with comments from the government and the opposition.

At this point, I would like to draw your attention to the kind invitation of the Speaker, the Hon. Mike Reynolds, and his wife, Ms Janice Mayes, requesting that all of you join them at the conclusion of the conference for a wine and cheese function in the Strangers Bar, the Belle Vue Room, from 4.30 pm to 5.30 pm.

Throughout today's proceedings there will be opportunities to question speakers in each session, but I would ask you to appreciate that the richness of the program demands that we unrelentingly stick to allocated times. There will be time warnings for speakers, and members of the Queensland chapter executive and the conference organising committee will be encouraging people to move in from breaks to ensure that we do remain on time. We will be breaking for lunch after the first session and then there will be two further refreshment breaks during the afternoon.

I would like to announce a couple of program changes. I am sorry to say that Gerard Carney and Bill Lane have both been overtaken at the last moment by major life events and send their most sincere apologies. They have our best wishes. We will fill those spots on the program and we will still try to meet the intent of the program. Bill Lane has very kindly provided some written information, and one way or another we will present some of that information on freedom of information.

It is fitting that the first speaker of this conference is the Speaker of the Queensland parliament, the officer charged with upholding the integrity of this parliament. The Hon. Mike Reynolds is the member for Townsville and has been Speaker of the Legislative Assembly since 10 October last year. His former roles have included minister for child safety and minister for emergency services and minister assisting the Premier in North Queensland. He has been a member, a deputy mayor and mayor of the Townsville City Council between 1973 and 1989. He was the mayor for nine years.

He graduated with a Bachelor of Social Work from James Cook University in 1978. Prior to his election to parliament Mike had been the Director of the Northern Australia Social Research Institute and the Director of the Centre for Social Welfare Research. He was a professor of local government studies at the University of Canberra in the early 1990s and a visiting professor from 1995 to 1998. During this pre-parliamentary period he held numerous other roles. He was awarded membership of the Order of Australia in 1985 for services to local government and the community.

On the day of his appointment as Speaker, new Speaker Reynolds told the press that he would study the rules of parliament to see whether question time could be improved. He also promised to examine the standing orders and the parliaments of other states to see whether ministers should make their answers relevant to the question and look at aspects that may require change but not hurry just for change's sake. He has now had a few months to consider those aspects of parliament that may require change and has recently participated in the 56th Westminster Seminar on Parliamentary Practice and Procedure. He will now present to us his ideas to enhance the Westminster system of accountability in a federal system. Ladies and gentlemen, the Speaker, the Hon. Mike Reynolds.

## **Ideas to Enhance the Westminster System of Accountability in a Federal System**

**Mr SPEAKER:** Thank you very much, Nonie. Can I first of all recognise the traditional owners of the land on which we are meeting today. Can I recognise the Hon. Kevin Rozzoli, the President of the Australasian Study of Parliament Group and former Speaker of the Legislative Assembly of New South Wales, and Ken Coghill, the former Speaker from the Victorian Legislative Assembly. Distinguished guests, ladies and gentlemen, I have a great deal of pleasure in delivering my first address to the Queensland Chapter of the Australasian Study of Parliament Group today in my capacity as Speaker and as your patron.

As an active member of public life over three decades and having held numerous positions, which Nonie elaborated on, I have developed over my career a deep and abiding interest in the matters that will be raised at the symposium today. Taking on the role of presiding officer of the Legislative Assembly last October has perhaps brought those interests—and can I also say concerns—into very sharp focus for me personally and professionally.

As everyone present today understands, the role of a Westminster parliament is essentially twofold. It provides the forum required for representatives of the community to make laws and supply the personnel of both the government of the day and Her Majesty's opposition. But it also, importantly, establishes an accountability regime to which the executive must report. These two particular features of governance are central tenets of the Westminster system.

The hallmark of the Westminster system is ministerial responsibility. Ministers being drawn from the ranks of members of the parliament must be accountable to the body that establishes their legitimacy and are always envisaged to be individually responsible as well as collectively responsible. The effectiveness of the Westminster parliamentary system therefore depends largely on the robustness of parliamentary scrutiny in holding ministers to account. It is fair to say, however, that government has also grown much more complex since the conventions of individual ministerial responsibility were first formulated. This has required ministers to increasingly delegate to others—making it, I think, unrealistic to hold ministers personally liable for everything done within their department, although they can be expected to publicly provide answers to issues raised with them about their portfolio responsibilities. That is the practice we see in Australia today.

In a modern Westminster parliament there must be, therefore, a distinction between ministerial responsibility and ministerial accountability. Part of the changing dynamic that accountability mechanisms must be adapted to address include the changing structures for delivering government services. No longer is all administrative power, for example, centralised in the hands of the Sir Humphrey Applebys of government, operating under ministerial policy parameters.

Service delivery is no longer limited to a government department structure. Government owned corporations and corporatised entities responsible for essential services, such as electricity and water, are modern realities as are joint ventures between governments and the private sector, generally referred to as PPPs or public-private partnerships—in other words, project funding split between more than one department or even split between federal and state and even local governments. These are the features of the service delivery model that I believe are probably here to stay.

These features should not be able to be used to avoid accountability but, nonetheless, must be accepted by those seeking a return to the days of ministers resigning for a mistake made by the department. A minister's role is to carry out departmental business in parliament, introduce departmental bills, respond to criticisms of the department, fight for departmental needs in cabinet and be publicly answerable for the service delivery of their department. I suppose when you look at the ministers, they traditionally resign in one of three situations: when they are unable to support cabinet decisions, when they make a personal error or either a private indiscretion or political misjudgement, or when they make policy errors linked directly to the minister that tend to occur when the minister withholds information from or misinforms parliament.

Distinct from the examples of individual responsibility that I have just categorised which ministers must continue to accept, the notion of collective responsibility remains, I believe, central to the Westminster parliamentary process that has always applied in Queensland and other jurisdictions. While it could be argued that the notion of individual ministerial responsibility has been weakening for reasons of sheer practicality given the enormity and complexity of departmental service delivery, collective responsibility remains an integral part of the government process. Collective responsibility, the process where each minister accepts responsibility for the decisions of the cabinet, is interestingly the only form of ministerial responsibility referred to in the Constitution of Queensland. The Constitution states that there must be a cabinet comprising a Premier and ministers. The Constitution also states that the cabinet is collectively responsible to parliament.

There is no clause in the Queensland Constitution that requires individual ministerial responsibility to the parliament. It is on this very point that a former Queensland Attorney-General relied when he was the subject of a successful vote of censure passed with the vote of an Independent who held the balance of power in the Legislative Assembly at that time. The then Attorney-General, Denver Beanland, declined to resign because the decision for which he was censured was a decision of cabinet and a vote of censure of the government of the day had not been passed. In many ways a starker contrast between individual and collective responsibility is really hard to recall, but it is something that I am sure could be very much open to debate today.

I submit to the symposium that the confusion over responsibility and accountability has been further emphasised by the continual growth of collective decision making and therefore the increase in emphasis on collective responsibility. Inherent in the idea of collective responsibility is the idea that government is unanimous and responsible to parliament and ultimately responsible to the electorate. While ministers may disagree with a course of action within cabinet, they are not expected to publicly disagree with the course of action decided upon. Indeed, it is a rarely seen feature of Australian politics for a cabinet minister to publicly disagree with cabinet decisions and resign on principle providing a statement of their reasons.

As well as the changed dynamic of government in the 21st century compared with that of the 19th century, which impacts upon the application of accountability of ministers, there are also entrenched systemic issues in the parliamentary process as it operates across Australia that impede the accountability mechanisms established by constitutions and parliamentary standing orders. In my view, confusion over the responsibilities of federal and state governments can be and is manipulated by executives at both levels to avoid accepting responsibility for an issue that is perhaps considered politically dangerous at both of the levels.

Alternatively, the deliberate engagement by one level of government into the areas of responsibility of another level usually to apply pressure to another jurisdiction for political or power seeking purposes was not the intention of the founding fathers of the Federation. Federal powers are contained in sections 51 and 52 of the Commonwealth Constitution. Those sections set out the powers the federal parliament is able to exercise and the remaining areas are left to the states.

However, the boundary between Commonwealth and state powers is dynamic and depends on a number of factors including the provision of federal grants and the centralistic tendencies of federal governments. The massive structural change to the funding base used by governments to deliver services over the past 65 years since income taxation powers were taken over federally has really reached a point of critical concern.

How can ministerial accountability operate properly when there is not a clear delineation of responsibilities between jurisdictions? With states and territories today very dependent on the Commonwealth for funding and the Commonwealth increasingly providing that funding in the form of GST and specific purpose payments, the interwoven and potentially conflicting policy positions of governments mean accountability for decisions can be very unclear or at least can be seen to be unclear.

The extraordinary adversarial nature of politics in Australia at both levels also has a major impact on the ability of parliaments to monitor the operations of executives and hold ministers and cabinets accountable. With the adversarial approach we take to political debate in this country has come strict party discipline—discipline unseen in many parts of the Westminster world although, I should say, also seen in many parts of the Westminster world.

As some of you may be aware, and as Nonie mentioned, I attended the 56th Westminster Seminar on Parliamentary Practice and Procedure as a guest of the United Kingdom branch of the Commonwealth Parliamentary Association. One of the key learnings from this seminar for me as Speaker was that the Westminster parliament in London demonstrates a strong unity of purpose with regard to parliament's role in keeping executive government accountable. This was a consistent message enunciated by Labour and conservative parliamentarians and also Liberal democrats through the two weeks I participated in the seminar. I was absolutely amazed at how strongly they were joined at the hip in that regard.

With our adversarial system of politics you really wonder where we are. This is in stark contrast to the adversarial system of our Australian parliaments. Perhaps there is much to learn from the mother of Westminster parliaments in this regard. What mechanisms exist now to ensure accountability and what mechanisms are needed to retain it and increase it in our uniquely Australian political system?

There are both internal parliamentary processes that exist and could be enhanced, such as committees and standing orders, as well as external instruments such as independent institutions like ombudsmen, corruption watch dogs and, of course, the media. Internally there are a number of significant and essential accountability mechanisms, some of which work better than others in different parliaments. The law-making process itself which includes time for legislation to lay on the table for scrutiny and the provision of explanatory notes for debates that occur surrounding the passage of legislation is a mechanism used to make the government answerable to the parliament.

The most widely recognised internal process is out of questions to ministers both on notice and without notice. After watching the Westminster parliament in action I can only say that we need to query the structure of question time operated by the executive and by the opposition in our federal system because both the executive and opposition really leave question time to the formal executive and formal opposition. In terms of backbenchers from both sides asking questions that they really want to ask, it is a laugh. I think that is something that we really need to take into account.

Probably the most potentially effective and powerful accountability mechanism in any view is the role of all-party parliamentary committees, including budget estimate committees. The power of committees to receive explanations and further information from government as well as review performance can enhance the strength of parliament to act as an effective legislature and to properly perform its role in keeping the government accountable to the institution from which it is drawn.

It must be acknowledged that there is a difference between establishing parliamentary committees with general or particular roles and providing these committees with a capacity to exercise their key functions effectively. Whether there are deficiencies in the current Queensland committee system is a matter that I think should be explored. It is undoubtedly an issue that should be the subject of a conference like this in its own right.

A feature of Queensland's committee system that does not go unnoticed is the absence of portfolio based committees. The current committees of the Queensland parliament are: LCARC, the Legal, Constitutional and Administrative Review Committee, the Members' Ethics and Parliamentary Privileges Committee, the Parliamentary CMC, the Public Accounts Committee, the Public Works Committee, the Scrutiny of Legislation Committee, the Standing Orders Committee and the Travelsafe Committee.

Possibly the nearest we have to a portfolio committee is the Travelsafe Committee which examines all aspects of road safety and public transport which are matters completely within the portfolio of Transport and Main Roads. Travelsafe has the responsibility to monitor, investigate and report on issues affecting road safety, including the causes of road crashes and measures aimed at reducing deaths, injuries and economic costs to the community. It looks at the safety of passengers, transport costs, services, measures aimed at reducing the incidence of related deaths and injury, measures for the enhancement of public transport in Queensland and reducing dependence on private motor vehicles as the predominant mode of transport.

The terms of reference of Queensland's other parliamentary committees are not exclusively focused on matters within any one portfolio. Even the Public Works Committee, which can inquire into public works undertaken by any public entity, is the constructing authority for the work the committee wishes to consider.

Essentially our committees are not connected with portfolios or areas of most concern to members and possibly the public. Objective measurement of portfolio committee influence over government policy and accountability is impossible. However, the opportunity to consider the impact portfolio committees could have over government is there for us very much to consider. For example, the mere conduct of an inquiry by a portfolio committee designed to specifically provide parliamentary oversight of a ministerial portfolio may well lead to a change in government policy before the committee reports or may result in government policy changes months or years after an election.

There is also value in examining governments' actions and expenditures and requiring them to justify their actions in a similar way to the annual estimates committee process. Additionally, while the non-legislative roles of committees are important in their own right, they also develop a member's subject area expertise which enables that member to more effectively scrutinise legislation.

There are various parliamentary committee models across the Westminster system. Let me today focus on two—the United Kingdom and New Zealand. In the UK select committees have been involved in the work of the House of Commons for centuries. For instance, in 1571 there was a committee for uniformity of religion, a very important issue in Elizabethan England. Until well into the 20th century most committees were set up for short periods to examine ad hoc issues. In the late 1960s and 1970s a number of subject select committees were created.

I have met with a number of committee members and chairmen and I can say to you that, in terms of a healthy democracy, you can see it. Sometimes the chairs in the British parliament were conservative; sometimes they were Labour. But, I tell you what, they all had a unity of purpose. Indeed, when a new conservative government was elected in the UK in 1979, the new Leader of the House quickly introduced a suggestion that a system of select committees be created to shadow each government department. It has been cynically suggested by some that if the Leader of the House had not moved quickly, the then Prime Minister, Margaret Thatcher, may well have realised the inconvenience of these committees to the government and not introduced them. Of course, that would not happen in our systems here in Australia.

Departmental select committees in the United Kingdom are able to examine the expenditure, administration and policy of specific government departments and associated public bodies. In a March 2000 report titled *Shifting the balance: select committees and the executive*, the Liaison Committee said that the system of departmental select committees had been a great success. It stated—

At a bargain price, it has provided independent scrutiny of government.

Let me move to New Zealand, which has a unicameral parliament as we do here in Queensland. A feature of the country's political system prior to the introduction of the mixed member proportional system in 1996 was very high levels of party discipline and very few instances of MPs voting against their party. This was generally seen to lead to the New Zealand parliament having a limited role and rubber-stamping government policy. The move to a new voting system in 1996, which virtually ensures that no party will ever achieve majority government again, was accompanied by changes to the set-up of committees. On most committees the representation between government and opposition MPs became more equal and the chair's casting vote was abolished. Committees have jurisdiction over all spheres of government activity.

Although New Zealand has a number of other committees that are not portfolio based, such as the privileges committee, it is the select committees that are most important in ensuring that the House is able to play an effective legislative role. New Zealand's portfolio committees, or parliamentary subject committees, scrutinise and amend legislation, consider and report on petitions, conduct inquiries and scrutinise public agencies. Government and private members' bills generally go before an all-party committee for consideration. After the committee decides what changes need to be made to the bill, the bill is redrafted to incorporate these changes. Any changes adopted unanimously by the committee are automatically incorporated into the bill and the government needs to amend the bill in the House to incorporate these changes. Any changes agreed by a majority of committee members needs to be formally adopted by the House. The system of New Zealand parliamentary committees has led researchers, including groups such as our Study of Parliament Group, to suggest that the New Zealand parliament once again plays a strong and important role in government oversight and accountability.

I think we have had only one select committee in the nine years that I have been a parliamentarian in Queensland. That was the Palm Island Parliamentary Select Committee in my electorate. I think that parliamentary select committee did a wonderful job as an all-party committee.

Externally to parliament, accountability mechanisms exist in the form of independent parliamentary institutions which all have a considerable role to play. Extra-parliamentary accountability institutions are all institutions designed to enhance accountability of government, which operate outside parliament and the political process expressed through parliament. Some of them, of course, are adjuncts to parliament—for example, Auditors-General report to parliament—while others operate independently, such as the CMC in Queensland.

While the numbers of those institutions have increased across Australia over the last decade or so, one of the things we see is that, although we have the CMC in Queensland and ICAC in New South Wales, nothing exists at the federal level of Australia. As a state Speaker, where those accountability mechanisms away from the parliament exist, quite often the attention is on the states—and quite rightly so—but the attention in terms of accountability and responsibility should also be at that federal level. I see that as being a very important change in the future. Extra-parliamentary institutions take ethics seriously in a sustained fashion, not just periodically for political advantage.

Most media outlets take their role of public champion very seriously and bring to the debate an awareness and understanding of government and parliament that, when applied to individual situations, helps to crystallise public consumption of an awareness of politics. But some elements of the media—usually a few individual journalists who, I think, are simply untrained in parliamentary procedure, yet report on it to the public—often portray parliamentarians as unethical, lazy, incompetent, greedy people whose sole existence is to benefit themselves and not the public whom they serve. Of course, at times these charges can be true of a small number of individual parliamentarians, but to apply this benchmark in a stereotypical manner and allege basic corruption or ineptitude across-the-board is in itself damaging to accountability.

What is the end point of the constant mocking of the political process likely to be? I suggest that it is likely to be a complete undermining of parliamentarians generally, a disincentive for the people we need to have based in our parliaments to even nominate for election, and the death by a thousand cuts of whatever respect remains in the community for parliament.

I conclude by saying that, as the new Queensland Speaker, I have detached myself from government activity in which I once played a very front-line role. I strive to conduct myself as impartial and fair in carrying out the duties of my position. When I am gone from this position—whenever that may be—I intend to leave history no other option but to judge my performance as exactly that: fair, impartial, even-handed and a firm champion of the supremacy of parliament and the accountability that it must ensure from the government. Thank you very much.

**Ms MALONE:** Thank you, Mr Speaker, for such a comprehensive perspective on the topic today and your views on the limitations of individual and collective responsibility that arise from our federal structure, the strengths and weaknesses of parliamentary scrutiny and how they might be strengthened in Queensland at question time, how the committee structure in Queensland might be strengthened and also the committee system in other Westminster parliaments, with very fine examples from New Zealand and Westminster.

The genesis of today's seminar was a discussion paper put out by the Australasian Study of Parliament Group more broadly on these themes titled *Why accountability must be renewed*. The Queensland chapter decided that we would like to see some of the propositions put forward in the paper examined fairly thoroughly and so we arranged today's program.

We would very much like to present to you the Australasian President of the Australasian Study of Parliament Group, the Hon. Kevin Rozzoli, who is a former Speaker of the Legislative Assembly of New South Wales, an institution of which he was a member for more than 30 years. Kevin is a barrister and author of *Gavel to Gavel*, his memoirs of parliament and his ideas about the possibilities for parliament, which was published in 2006. Kevin will speak to us for about 10 minutes on his expectations of the Australasian Study of Parliament Group's parliamentary accountability project.

## Expectation of the ASPG's Parliamentary Accountability Project

**Mr ROZZOLI:** Thank you, Nonie. It is wonderful to be up here in Brisbane speaking to such a distinguished gathering. Firstly, I thank the Queensland chapter for putting on today's seminar, because this is absolutely germane to what our expectations are of the paper which was produced by a group of people under the imprimatur of the Australasian Study of Parliament Group. To Nonie and her resolute group of people, thank you very much indeed. I hope today's seminar will be very productive.

Our expectations is an interesting thing to talk about, because really our expectation is simply that we want to bring this matter to the forefront of consideration by all the players and stakeholders in the field of governance beyond the parliamentary field—to all of those facets which make up the parameters of what we call governance. Some time ago I spoke at a seminar at the Institute of Public Affairs in Sydney, which was attended principally by public servants. The things that I discussed with them struck strong chords of sympathetic reaction, because in many cases public servants feel the brunt, and a frustrating brunt, of what is perceived by the community as a lack of accountability by governments.

We regard this—and I hope I am speaking fairly on behalf of my great colleague Ken Coghill whom I work with—as a relatively modest proposal for renewing government accountability. Is that correct, Ken? He is nodding, which is good. It is not intended to be a wide, far-reaching raft of things that bear upon government accountability. Speaker Reynolds in his introductory address actually took us to a number of things that are not in our paper but nonetheless are extremely germane to government accountability. We did not go what I might call the full gamut initially because we found in practice that what we put on to paper was sufficiently frightening to governments and that if we had gone much further I am sure we would have stalled at the starting barrier. That was interesting.

I would also just briefly acknowledge that you have been very successful in attracting some interstate participation. We have Cheryl Samuels from New South Wales, Wayne Tunnecliffe from Victoria and maybe other people I do not know. That is quite an achievement in itself and shows the level of interest that is in this area.

When talking to Wayne earlier, he told me of the interesting times they are having in the Legislative Council in Victoria at the moment. The government there decided it would set up a fairer system and it was very successful. It was so successful that it celebrated recently the loss of the first piece of government legislation under this fairer system. All of a sudden the government thought, 'Hell, did we really know what we were doing? This isn't the outcome we expected.' So governments are very jealous of their capacity to inflict their will on the people and on the parliament. In a sense if a government is elected to fulfil a mandate, you might say superficially that is correct, but in a democracy there have got to be other influences at work. The tendency of the strong form of executive power that we have in Australia is that it brings with it an indifference to what the parliament thinks or what the people think. It is that concern from the public that has driven us into looking at this particular area.

We do not really care whether you like what we put up—I mean we do care whether or not you like what we put up in one sense—but we are tolerant of whatever view you wish to express here today on what is in our paper. We do not think there is anything sacred in it. We had to start somewhere, and the group of people who put it together who represent a broad spectrum of political views have put it together in good faith. We will take your comments and criticisms in good faith, and that is our expectation of this seminar today, because we believe that good solutions can only come from very wide, comprehensive and informed discussion. There may be things that are raised today that we have not even thought of, and that is what comes from being able to discuss ideas on a broader basis. It has got to come from somewhere. It has got to have a catalyst, and that catalyst is only that.

I used to have a philosophy when I was in parliament—and I managed to survive in there for a long time—that the sooner you got your views out to the community or the sooner you realised perhaps that you were going down somewhat the wrong path and needed to adjust your direction, the easier it was to handle the problem that you had created. The longer that you in fact closet what you are doing within the minister's department or the Public Service or keep the wraps on it and the later you bring it out into the public arena, the greater will be the furore if there is something flawed in it and the more difficulty there will be to resolve it.

So accountability is not only being accountable at the end of the day for the decisions you make, but it is being accountable as you go through the decision-making process. It is my strong belief that we need to involve the community much more in our democracy than we are in Australia today and indeed in many parts of the world. We need to reinvent a more participatory democracy than we currently have. To some extent, that is the underlying driver of our paper. We looked at Prime Minister Howard's ministerial handbook. It has some good parts in it, although some of the good parts are not necessarily always followed as well as they might be, but that is neither here nor there; we were just looking at the document. But we also found in it a number of glaring omissions, and we have endeavoured to put up suggestions as to how they might be handled. We would ask you during today to consider those and give us your views.

The questions of how accountable a government should be and what are the mechanisms for accountability are essential to the discussion. It is principally about the executive accountability, but it does embrace the collateral accountability which comes from particularly the senior Public Service who, as Speaker Reynolds pointed out, today have responsibility for many things that occur in government. We do not believe in the defence of, 'My staff didn't tell me. Therefore I have no responsibility in this area.' We are

attempting to say that the Public Service should advise their minister, and the Public Service that does not should be held to account for not advising their minister. If their minister has set up a mechanism to prevent him or her from being advised, then of course the minister is responsible for putting up those barriers in an attempt to protect themselves from the bad news. Certainly, there is no shortage of ministers wanting to take the benefit of the good news, but it has got to go both ways. So it is the broader aspect of collective responsibility, more than that pure collective responsibility of the cabinet collectively making decisions and being collectively responsible.

There are a lot of very interesting aspects to it. We see this as merely a start point. We are endeavouring to encourage both governments and oppositions, federally and in the states, to embrace and commit themselves at least to looking at the issue in some depth. We would like to think that out of today we might be able to get the powers that be in Queensland to consider it at an official level in some depth. If they disagree at the end of the day, they disagree at the end of the day, but we would like them to consider it.

I have to say that this is a new venture for the ASPG which has attracted some criticism, and in the spirit of accountability I have to admit to that. I embraced it fairly enthusiastically because I believe the ASPG's role is to bring issues out into the open; it is not merely to look at them academically but to in fact try to raise the quality of our parliaments by our activities. I often joke with people that the ASPG is the only body in Australia dedicated to raising the standard of parliaments. We do not do that by just talking theoretically and never acting upon it, so I defend what we have done in being a little bit more proactive in this area. It has forced me, however, to reconsider the way in which we do it and I am in the process of doing that. I will present to my executive some suggested ways of going about it differently, because I think we jumped in a bit too readily without giving broader consideration to it from an organisational point of view. Nonetheless, I think it is a very worthwhile exercise, and certainly if it has the outcome of renewing a measure of accountability then we feel we would have been immensely successful.

I would like to thank you all for coming along today or for participating fully and being absolutely frank. As two of the authors present here today, Ken and I want to hear your views and we are very much looking forward to the rest of the day. Thank you very much.

**Ms MALONE:** Thank you very much to Kevin Rozzoli for presenting his views and thank you also to Kevin Rozzoli and to Ken Coghill for providing the stimulus for what is going to be a very far-reaching debate that will extend far beyond today. To examine the issues a little further, we will have David Solomon come to address us. Dr David Solomon is an adjunct professor of politics at UQ, a barrister, a journalist and an author with a doctorate of letters awarded after examination of six of his books on Australian government, politics and constitutional law. His most recent political book is *Coming of Age: Charter for a New Australia*. David has recently retired following a journalistic career of more than 40 years including terms as Canberra political correspondent for the *Australian* and the *Canberra Times*, as High Court correspondent for several papers and 13 years as contributing editor of the *Courier-Mail*. He was president of the federal parliamentary press gallery in the late 1960s and the early 1970s.

In his retirement I believe he has still managed to cover the opening of the 1976 archives for the *Australian*. He is especially well known in this state as chair in 1992 and 1993 of the Queensland Electoral and Administrative Review Commission formed as a result of the Fitzgerald inquiry. For several years in the early 1990s David was Australasian president of the Australasian Study of Parliament Group, the role that Kevin now holds. He now serves as a valued member of the executive of the Queensland chapter. He will now present 'An overview: accountability versus responsibility'. Dr David Solomon.

### **An Overview: Accountability vs Responsibility**

**Dr SOLOMON:** Thank you, Nonie, and good morning everyone. In fact, the overview has very much been presented by the Speaker. I am going to concentrate, wearing my political scientist hat, on views about ministerial responsibility and the way in which people consider that these have developed in the last half century or so and whether they are satisfactory. I do not intend to present any sort of partisan view. I am very much going to have a textbook approach—well, I am going to try.

In 1972 when I was political correspondent for the *Canberra Times* I wrote a major feature for the paper on ministerial responsibility. I argued then that the concept was dated and not of much value in Australia anymore and that it did not help people understand how our system of government really worked. I was taken to task by leading scholar Dr David Butler, who was a visiting fellow at the ANU at the time and he was exploring the inner workings of Australian government during a 12-month visiting fellowship. He wrote an article which the *Canberra Times* published. I then wrote another article responding to him and he wrote another one replying to me. He later returned to the subject and mentioned these exchanges in a chapter of a book he published the following year titled *The Canberra Model: Essays on Australian Government*—a very fine book it was.

Dr Butler said it had become fashionable both in Australia and in Britain to disparage the reality of two key constitutional principles—individual ministerial responsibility and collective ministerial responsibility. However, it was his belief that the principles, though a bit tattered about the edges, still played a central role in the day-to-day operations of Australian and British government. I will shortly quote several paragraphs from the chapter and I will refer also to the most recent exposition on the same subject by Professor Patrick Weller of Griffith University in his important new book *Cabinet Government in* Brisbane

*Australia 1901-2006.* But I want to make the point first that it is not uncommon for informed commentators and/or practitioners to express concern about whether the principles of ministerial responsibility are being properly observed by government and by the parliament.

There have been more than half a dozen occasions since I began covering national politics more than four decades ago when events in federal or state spheres have prompted such a debate. Mostly it is because a minister has failed to resign despite the fact that something for which he is supposed to have been responsible has gone wrong. Sometimes the minister has offered to resign but his Prime Minister or the Premier has decided not to accept the resignation. Sometimes the debate arises because a minister has been sacked even though the doctrine of ministerial responsibility would not appear to cover his particular sins of commission or omission. Let me give some examples.

In 1971 when John Gorton famously lost a vote of confidence in the Liberal Party room and stepped down from being Prime Minister, he became the deputy leader and took over the defence portfolio. Extraordinarily, he began writing a column in the *Sunday Australian* but he provoked prime ministerial wrath when he wrote this—

One of the problems of cabinet in recent years has been the difficulty of keeping anything under wraps. From time to time cabinet ministers have shown themselves so uncertain of their own opinions that they have chosen to canvass the value of impending legislation far beyond the cabinet room—indeed, beyond the confines of parliament altogether. Others are reflected with a compulsion to try out ideas on their wives.

Now, you might ask what is wrong with that. What Gorton wrote was absolutely true. What hurt was that one of the worst offenders over a long period of time had been Billy McMahon, who had nearly been sacked for breaching cabinet secrecy on several occasions. But by suggesting in effect that the doctrine of collective ministerial responsibility was being breached by some of his colleagues, Gorton himself was said to have breached the rule. McMahon dismissed him.

I will now give an example from Queensland that goes the other way that was referred to by the Speaker, and that was when the parliament passed a motion of no confidence in then Attorney-General, Denver Beanland. He did not resign and the Premier resisted Opposition demands that he should sack him. But if parliament cannot sack a minister, what does ministerial responsibility mean? There have been many other controversies, and I will mention just two others at the moment. In 1967 Peter Howson, the Minister for Air, misled parliament when he denied the existence of records that the opposition was demanding about the use of VIP aircraft. His sin was exposed by a fellow minister, John Gorton, who tabled the records in the Senate. Howson offered his resignation but it was rejected not by the Prime Minister but by the cabinet. Harold Holt referred it to cabinet because he thought he was partly to blame as well or involved in some way.

A final example is that John Howard in his early years as Prime Minister was ruthless in disposing of ministers who had breached rules he had laid down about the way they should exercise their responsibilities. He sacked one minister, David Jull, who was responsible for travel matters, who arguably should not have been held accountable for what had gone wrong for the sins of other ministers. Now, let me return to what David Butler wrote about ministerial responsibility, and particularly individual ministerial responsibility. He said—

Its central doctrine is that for every public act of a public servant for a ministerial department a minister has to answer to parliament. To answer does not mean to take the blame in a personal way. Still less does it mean to resign. It requires only a minister to say, 'I have ministerial responsibility for this. I am sorry that a mistake has been made. I have taken steps to see that it does not happen again.'

He said—

Every minister makes mistakes and presides over public servants who make mistakes. For those mistakes the minister pays a price in political reputation. Admitting to error—being made a fool of—is a very real sanction.

Butler said—

Question time illustrated the continuing relevance and importance of the principle of individual ministerial responsibility. It forced ministers in preparing for question time to dig down into their departments.

He said—

It was a pity there were so many shades of meaning of the word 'responsible'. There might be less confusion if instead of individual ministerial responsibility we spoke of individual ministerial answerability.

Butler wrote that it could be argued that the phrase 'ministerial responsibility' was so ambiguous it should be eliminated, but he said that it always had been ambiguous.

Quite apart from covering two distinct sets of ideas—the individual and collective responsibility—it involved a word, 'responsible', that had several distinct popular usages. Butler said that the real issue was whether there had been changes in current practice which required a fundamental redefinition of the concept. He said—

In some discussions one encounters the fallacy of the golden age. Once upon a time ministers resigned over the errors of their civil servants. Once upon a time ministers never said, 'I was misadvised.' Once upon a time ministers were always loyal to their colleagues, even when speaking off the record to journalists. But these are fairy stories. In Britain, as in Australia, it never happened. Ministers have never been in the habit of relinquishing office over the sins of their subordinates. Ministers have always been tempted to wriggle out of blame and cabinets have always leaked. There are no iron laws of political behaviour. There are only general rules of practice which are observed sometimes more, sometimes less faithfully depending on the mood of the time and the sanctions currently used against deviators. Most of the current disagreement turns on degree. The deviations, actual or alleged, from ministerial responsibility that have occurred or have been alleged to occur tend to get a bad press. A party's image can be hurt by the public teasing of a minister for his refusal to carry the can. The system of ministerial responsibility has its ups and downs, but because of its own in-built sanctions it has a momentum which has preserved it as a central principle regulating Australian and British government.

Now let us move forward 3½ decades to Pat Weller's examination of cabinet. He begins a section on ministerial responsibility by reminding us that ministers are members of parliament who are appointed 'to administer departments of state' according to section 64 of the Commonwealth Constitution. He says—

By implication, they are responsible to parliament for the activities of their departments. In practice, this convention means that they answer questions about their department and where inadequacies are uncovered seek to ensure they are fixed. It does not mean and never had meant that ministers should resign if their departments fail in some respect or other. Nor has that happened in Britain or any other Westminster system. Demands for rhetoric are easy but no more.

Weller points out that in December 1998 John Howard issued *A Guide on Key Elements of Ministerial Responsibility* covering relations between ministers and the Public Service and also a *Cabinet Handbook*, which has been mentioned earlier, spelling out what ministerial responsibility means and requires, and I will come back to that in a moment. Weller says that both spell out the way the system works and always has worked. He points out that it allows ministers to blame public servants if anything goes wrong. He says that that is not entirely new either, even if it has become more explicit. He points out that when the Department of Immigration was severely criticised for the failure of its system and the detention or deportation of Australian citizens in 2005 both the current and former ministers denied any responsibility. Both argued they did not know so how could they be responsible? The report blamed officials. That was enough in their view to absolve ministers, even if the culture of the department, for which ministers could be held responsible, was also under fire.

Weller deals with a recent problem of information coming into ministerial offices but never appearing to reach ministers. He says that, unless it can be proved that ministers have been explicitly informed, they can shuffle off responsibilities, arguing that they should have been informed but were not. He concludes that ministers resign only when they have been somehow personally involved. After quoting cases involving Senator Reg Withers, Ros Kelly and John Sharp, Weller says—

In these cases ministers are responsible not really to the parliament but rather to the Prime Minister and potentially to the party. Prime ministers have to make a political decision, not a constitutional one, about the damage a scandal or a resignation will cause. Ministers are responsible to the Prime Minister and only thereafter will they explain to the parliament the reasons for their decisions.

He points out that, while ministers must answer to parliament, even in ambiguous terms, party room accountability is far more real. The party room can undermine ministers' reputations, and it also chooses the Prime Minister and can remove him. Not much I think has changed over those 3½ decades. I made similar points in a textbook I first published in 1973. But there have been some developments. As Weller points out, Prime Minister Howard has now put on the public record some of the principles of what ministerial responsibility actually means. The *Cabinet Handbook* says that ministerial responsibility—

... does not mean that ministers bear individual liability for all actions of their departments where they neither knew nor should have known about departmental administration which comes under scrutiny. It is not unreasonable to expect the Secretary or some other senior officer will take the responsibility. Ministers do, however, have responsibility for the administration of their portfolios and for carriage in the parliament of their accountability obligations arising from that responsibility. They would properly be held to account for matters for which they were personally responsible or where they were aware of problems but had not acted to rectify them.

The *Cabinet Handbook* in Queensland is somewhat less explicit. It says—

Ultimate responsibility for departmental management rests with ministers who are legally and politically accountable to the parliament for the administration of their department. It is the policy of the government to enhance ministerial responsibility and accountability consistent with its collective commitments.

It also says—

Cabinet collectively and ministers individually are responsible and accountable to the Crown, the parliament and ultimately the electorate.

What is notable about both of those cabinet handbooks is the use of the word 'accountable' as though it were a synonym for 'responsible', which of course it is but it tends to convey something less. Not everyone is happy with the way things are going, even if they are not changing very much. Harry Evans, the Clerk of the Senate, says that responsible government has disappeared or at least developed into something different. Government, it is said now, should be accountable to parliament—that is, obliged to give account of their actions to parliament and through parliament to the public. But he says that the system of government in Australia has moved on even beyond this notion, and this seems to be his main concern. He says—

Governments now expend a large part of their time and energy suppressing parliamentary accountability—seeking to ensure that they are not held accountable by parliament, that the old accountability mechanisms do not work and that new ones are not introduced. Just as the party system developed to ensure that governments formed by the majority party are never overthrown by parliament, the system has developed to ensure that governments are not held accountable by parliament so they are less likely to be overthrown by the electorate at the next election.

Earlier I quoted Pat Weller's conclusion that ministers are responsible not so much to the parliament as they are to the Prime Minister and the party room. This has probably always been the case in Australia. In Australia the supremacy of the Prime Minister over his cabinets is made bluntly clear in Mr Howard's official guide on key elements of ministerial responsibility. It states, for example, that the Prime Minister sets out his priorities and strategic direction for each portfolio in a letter he sends to ministers after he appoints them. It says that cabinet and its committees meet as and when required 'consistent with the Prime Minister's wishes' and decisions on whether an item should be considered in cabinet and what business should be considered at a particular meeting are taken by the Prime Minister.

Just how powerful the Prime Minister is in relation to his ministers was demonstrated again last month when Mr Howard disposed of Senator Ian Campbell because that senator had a meeting with a disgraced former Premier of Western Australia, but really because the fact the meeting occurred derailed the government's attack on Kevin Rudd. Then Mr Howard was prepared to forgive Santo Santoro for a breach of some of the rules—the ministerial and senatorial guidelines—but not for a wholesale evasion of his responsibilities when that was revealed.

I would like to conclude by referring to those two dismissals with what David Butler said about Peter Howson's removal. What emerges from this case is surely that resignation must almost always be regarded as primarily a political matter. In cases where there has been a gross breach of convention, a minister must go, because the political price of letting him stay would be prohibitive. But there are no absolute constitutional rules. In cases where the breach is trivial or even nonexistent, the decision as to whether a minister should go or stay must depend upon political judgements. To which I would add the political judgements are those of the Prime Minister almost alone.

**Ms MALONE:** Thank you very much, David, for giving us such an in-depth look at the constitutional and political dimensions of ministerial responsibility, how it relates to accountability and also an illustration with those fine examples across Australian political history.

David has laid a very fine foundation now for our next topic to be addressed by Mr John Pyke, who is a lecturer at the QUT law school. John researches in constitutional law and theory, legal reasoning and electoral law. He previously taught at the University of New South Wales and Macquarie University before coming to Queensland in 1983.

John is the co-author with Alastair MacAdam of a book titled *Legal Reasoning, Judicial Reasoning and the Doctrine of Precedent in Australia*, in which his part deals with the kinds of reasons that judges use in creating new precedents and the extra-legal factors that influence their reasoning. Interestingly, he is now writing an e-text on constitutional principles for intelligent laypersons and politicians called *Government under a book of rules*, which he is placing, a chapter at a time, on the World Wide Web. John has contributed chapters to books on the republic and he has certainly contributed to the debate about a republic for Australia.

John has been a consultant to the now-defunct Electoral and Administrative Review Commission and to the Independent member for Nicklin, Mr Peter Wellington, on constitutional matters. John has also made several submissions to parliamentary committees over time. John is also a valued member of the executive of the Queensland Chapter of the Australasian Study of Parliament Group and a former member of the Constitutional Centenary Foundation. John will now address us on the topic 'From responsibility to accountability—are we there yet?'

### From Responsibility to Accountability—Are We There Yet?

**Mr PYKE:** Thank you, Nonie, and thank you, ladies and gentlemen. I am always a bit reluctant to use all of those formal words of welcome to the audience—'Mr Speaker', 'distinguished guests' et cetera, 'ladies and gentlemen'. Are not the Speaker and distinguished guests indeed true gentlemen and ladies? Are all of the ladies and gentlemen not distinguished guests? So good morning, ladies and gentlemen. I am in my third day of a cold. I have overdosed myself with a vicious cough suppressor. So I hope this is not going to be interrupted by coughing. I will try to pull away from the microphone if I feel one coming on.

Responsibility to accountability—are we there yet? As I came after David Solomon, I wondered what was going to be left to say, because David has something of a reputation in political science and law, but I was very pleased to receive an email from him giving the same introduction that he has just given now—that he was going to speak wearing his hats as a journalist and a political scientist, and steering pretty much clear of the law. So I will speak more as a constitutional lawyer. Here I am wearing a lawyer's suit. Of course, that is not totally separate from politics. As the critical legal theorists used to remind us: all law is politics and even for those who do not believe that, constitutional law is very much politics. One is the other and the other is the one. There is pure law at one end perhaps but, by golly, there is a big overlapping area.

Since I am speaking as a lawyer, let us do the lawyer's thing and define terms first. As David and, I think, Kevin Rozzoli all pointed out, the dictionary definitions of 'responsible' and 'accountable' tend to cross-refer to each other. If you look up 'accountable' in the COD, 'responsible' is the second word and if you look up 'responsible' in the same dictionary indeed 'accountable' is the first word. I was interested to hear David say that 'accountability' conveys less because, in fact, I think it conveys rather more. That just shows how vague the terms are, does it not?

The discussion paper—and, with respect, Dr Coghill, it is an assertions paper; and this is not unique to you as I took the Prime Minister's committee on a review of section 57 to task for exactly the same sin as it produced what it called a discussion paper and it was an unsupported assertions paper—has given some definitions. In a sense, these are stipulatory definitions but they are not totally out of line with usage. They seem to regard 'responsibility' as the weakest word. They simply say that it is the sphere or extent of the duty which has been entrusted to somebody. Then they say that both 'accountability' and 'answerability' are being obliged to answer for one's action or omission to an authority and 'culpability' as being blameworthy. I would have thought that 'culpability' is perhaps a bit more than that. 'Culpability' is being liable to some form of sanction or punishment.

'Responsible' can mean accountable and even subject to answering to somebody and being punished. It can mean no more than simply that you are the one who is expected to do the task—you are responsible for bringing the pies to the picnic. If you fail to do that, the only thing that happens is that everyone does without the pies. They may look down their noses at you, but there is no sanction.

'Responsible' has another shade. 'I am sure you will act responsibly' suggests that of course you will do the job well and no sanction will be needed anyway. It is assuming that the person is a responsible Kantian who tries to do their best because that is what they expect of everybody else. Mark Lauchs will be saying something about that assumption of our politicians and public servants this afternoon.

Looking at the way those words have been used in constitutional and political debate, 'responsible' has traditionally been used to describe aspects of our political system—'responsible government' or 'ministerial responsibility'—with an emphasis on responsibility to parliament. 'Accountable' is a word which we started to hear more of in the 1970s at the same time as we started to hear about the new administrative law. The new administrative law makes the executive more accountable not just to the parliament but directly to the people—the victims of maladministration, the people who are aggrieved by a decision and who might take a judicial review action.

Bearing in mind all the vagueness and loopholes about 'responsibility' that David has described so well and the other David—David Butler—described well in the first place, it seems to me that 'accountability' is a stronger concept than 'responsibility', hence the title of my paper implies that moving from one to the other is, in fact, an improvement. In the discussion paper there are certainly calls for reforms that would make the executive more accountable to both parliament and the citizens. So we are talking about improving the traditional responsibility and more legal accountability.

I want to spend a bit of time to show that, when we use the old 'R' word—'responsibility'—when talking about the historic institutions that we inherited from the British parliament, and inherited in the sense that in the 19th century they kept on developing it in the British parliament and we assumed that, as a colony, we were riding along on their coat-tails in the development of those institutions, I want to look at three ways in which responsibility is used. I want to suggest that only one of them has legal force, one of them is a noble aspiration and the third one is an aspiration of leaders that I personally have some doubts about. So what follows for a while is a constitutional lawyer's take on responsible government.

Firstly, I will talk about the real meaning of collective responsibility. 'Responsible government' is actually a term that was invented by the Canadians. We all accept that the institution was invented by the English, but as the Canadians faced their struggle out of colonialism to independence, some of them wanted, and indeed they had, a couple of armed rebellions in the 1830s. Some wanted to declare a republic, some wanted to join the US, some wanted to be their own republic, but the more moderate reformers began to argue and petition for what they called 'responsible government'. The English replied to them in terms pretty much along the lines of, 'What exactly do you mean?' The Canadians said, 'You know, like what you've got.' You can read some quotes from the exact correspondence without my paraphrase in Anthony Birch's book *Representative and Responsible Government*. Even before I had found that, I discovered there is a good deal of discussion about this on a couple of Canadian web sites.

Anthony Birch said that the Canadians were premature in asking for responsible government because the real principle of responsible government—which I will come back to at the end of this bit of history—is that the ministry should immediately resign if it loses the confidence of the lower house. Birch says that that did not develop until 1870, but it seems to me that the Canadians had worked out the reality of what had been happening in England since 1688 and had summed it up rather better than the English. It is a bit like Montesquieu discovering the principle of the separation of powers and the English saying, 'Oh, really? Is that how we do it? By Jove!' I should say that, in quoting people like Anthony Birch, I will make sure the *Hansard* transcript is doctored to put in references to the full bibliographic details and page numbers so that anybody who wants to follow through on some of this can do so.

It is worth looking at a bit of English history for a point that I will come to at the end of the English history. Between 1688 and 1837, there were on my count seven occasions when the King tried to form a cabinet without the confidence of the majority. I have written about this in the web text which Nonie kindly referred to. It is indeed being passed at one chapter at a time—very, very slowly. It has been discovered by somebody at the Civil Service College at Sunningdale who tells me he is using it to teach his civil servants, so I think I must have got something right.

The first date is 1696. King Billy kept the Whig ministry in power for a while despite its inability to control the Commons. Even as early as that, an outside observer—the Dutch resident of not quite ambassadorial status—expressed surprise in his report back home to Holland, because he had observed that it was a sufficiently common practice that the dominant party should be in charge. I am a bit surprised that somebody is saying this is the common practice as early as 1696, but there is someone actually saying it.

In 1701, King William IV tried to keep some balance in the cabinet, which was not a bad idea, by including some Whig ministers among the Tories. Sir Humphrey Mackworth published *A Vindication of the Rights of the Commons of England* in which he insisted that ministers were not responsible for the King but the parliament. That is the first time that we actually find in print—and it is 1701, a long time ago—an insistence that the ministry is responsible to the parliament. So it seems to me with respect to Anthony Birch that the Canadians may have read that and may have known what was really going on in England better than the English themselves.

Twice in George II's reign and twice in William IV's reign—for George II it was 1746 and 1757; for William IV it was 1832 during the debate on the reform bill and then in 1834 over the PM's plans for the reform of the Church of England—the King tried to form a cabinet which did not have the support of the lower house. I think the longest that one of these cabinets lasted was about nine weeks, and that was the 1757 one.

By the time Queen Victoria came to the throne—and she was more or less schooled in this by Lord Melbourne who, as well as giving her respectful advice as the Prime Minister, became her tutor in responsible government—it was very clear that the rule had been established, and I will not say it was a convention, that though government may be carried on in the name of the King or Queen the real parties who administer the government must be people with the support of the majority in the lower house.

Is that mere convention? The answer is no. When I pick up all of the constitutional law texts that we use to teach undergraduates, I am rather amazed to find that there is one chapter about parliamentary control of finance and another chapter some chapters away about the executive government in which they mention responsible government and none of the big, thick textbooks for undergraduate law students make a connection between them. Of course there is a connection. The very reason why the kings could not set up governments of their own choice through the 18th century and early 19th century is that government without money is impossible, and the Bill of Rights Article IV provided that you cannot raise money or spend it without appropriation.

In theory, a government without confidence could govern until the money ran out. There was some speculation about that when Mr Goss lost the Mundingburra by-election. There was some speculation that he might forget to call parliament for a while and stay in government for a while, and of course he did not. He just waited until the by-election result was absolutely clear and then he resigned. That much I guess is convention.

When Birch says that the convention as understood since the 1870s is that a government that loses the confidence of the House will immediately resign, the 'immediately' part I guess is convention but it is backed up by good solid law—the Bill of Rights, section 83 of the Commonwealth Constitution and section 64, 65 or thereabouts of the Queensland Constitution—which provides that a government cannot spend money without the approval of parliament and, after all, you really cannot govern without the control of money.

I must pay tribute to the couple of constitutional writers who actually mention this. A.V. Dicey, the famous old Constitutional writer of the 19th century, has quite a big section of his first chapter in which he says that many of the things we call conventions depend on the law. Cheryl Saunders in her text *It's Your Constitution*—which is not for tertiary students but for kids about to exercise their right to vote for the first time—also emphasises that the notion of responsible government is not just a mere convention; it is law.

Contrast that with individual ministerial responsibility and collective ministerial responsibility in that other sense which the Speaker has already referred to—the sense of solidarity between ministers. Individual ministerial responsibility is a consequence of responsible government and the legal power of the parliament over the executive, and it is clearly an important principle of political morality, but in the end it is not law. David has shown that in the end it is a matter of what the Premier or Prime Minister thinks he can get away with. One of the notable articles on the topic is by Elaine Thompson and somebody else and it is called *The Smoking Gun View of Ministerial Responsibility*. In the end, individual responsibility would only be enforced if the House were prepared to express no confidence in any government that included Mr Beanland. That would have forced Mr Beanland's resignation.

Sorry, David, this is another point on which I slightly disagree with you. The fact that Mr Beanland did not resign does not show that ministers are not, in the end, responsible to government. It was due to the fact that Mrs Cunningham, who was with us today, was prepared to vote once on a motion of no confidence but did not want to destroy the government. If a majority of the Legislative Assembly had wanted to destroy the government and if Denver Beanland would not quit—poor innocent Denver, all he did was give in to pressure as to the nomination; he did not want to nominate a particular member of the inquiry himself anyway—and the House had been prepared to push it to that level, then either the opposition would have had to form government or Mr Borbidge would have been forced to form a new government without Denver Beanland in it.

Maybe to a degree there was a golden age of responsibility in the 1860s to 1880s but that would have been in the strong sense of collective responsibility that I talked about earlier. Parties were not as rigid as they became later. There was a long period in which no government lasted from one election to the next. We went through that long history of the alternate Whig and Tory governments of Disraeli and Gladstone. Invariably in between elections there is some split and shift in allegiances and the office of Prime Minister of England changes. Isn't it interesting that we always talk about the history of England when we look at this? We do not even worry about the colonies because the colonies at that stage were but pale reflections of the Westminster system anyway.

If David Butler says it is true I absolutely believe it. Ministers were not resigning because of every mistake of their departments. Maybe individual responsibility was more realistic in the 19th century. Departments were small. I found on the web a history of the English home office. The entire home office in the 1930s, I think from memory, comprised 37 people. The head of department would know everyone and

the minister would clearly know, if not directly and personally, about every one of them through discussions with the head of department. If mistakes were occurring there would be no excuse for a minister not to know about them.

These days departments are huge. Many of their functions, as the Speaker said, have been given to GOCs, government owned corporations. It is extraordinary terminology. The statutes just say a GOC and you have to look up the Acts Interpretation Act to find out what a GOC is. This is all part of the general retreat from governing that governments have been engaged in over the last 30 years. I know the motivation is supposed to be providing leaner, more competitive, more efficient organisations which respond to competitive forces but I wonder whether, when senior officers of former departmental agencies which generate electricity and so on accept with alacrity the notion that they might be privatised and corporatised, part of the motivation is, 'Goody we will escape responsibility to parliament and the reach of administrative law.' If we are talking about reforms, I am going to be bold enough—the Speaker suggested that all of this is inevitable and there is no turning back—to suggest that maybe some of that can be turned back to a degree.

The third meaning of responsibility is this aspect of collective responsibility. In my view, as a lawyer—and when I say I have a view as a lawyer I am somebody who did not take up the study of law until 34 so I had a lot of my political instincts already formed before I studied law—and a strict analytical logical thinking kind of chap, the real meaning of collective responsibility is the first thing I talked about, the thing that the Canadians discovered. Government must be run by ministers who are sitting in the parliament and who are supported by a majority.

At about the same time as all that was developing, however, the other meaning of collective responsibility and the sense of solidarity was being developed. That was solemnly treated as constitutional by the leading English writers like Jennings and Geoffrey Marshall. I should say that Geoffrey Marshall is very high on the list of my heroes, but on this issue I have to disagree with him.

There is a marvellous parliamentary research paper by a Ms Gaye and a Mr Powell on the House of Commons web site talking about this sense of collective ministerial responsibility. Every parliament has all these researchers who produce brilliant stuff. Until now they have given it to the member who commissioned it or they have done it as a general background paper and they have distributed it among all members and it has sat in the Parliamentary Library and the rest of us have not known about it. That is one of the lovely things about the web. Now all of sudden we can read it.

Maybe collective ministerial responsibility was constitutional, historically. It was the device by which the ministers found that, if they ganged up and gave the same advice to the king, the king would have to accede to their advice. But really these days, with great respect to all of those who refer to it as a serious important principle, it is a principle but it is a pragmatic principle of administration—a House divided cannot rule. To inflate it as a constitutional principle is to give it, in my view, altogether too much importance.

What is so wrong with Billy McMahon's alleged behaviour in canvassing legislation outside of cabinet. Maybe they would have got a wider range of feedback as to the desirability of legislation. One of the things that the discussion paper is talking about is extended public consultation during the scrutiny of legislation phase. Billy was just doing that in an informal way.

I am not alone in this. Rodney Brazier, of all the authors in constitutional and admin law, is the strongest critic of the notion of collective ministerial responsibility. Of course the government must speak with one voice on matters of external affairs and defence. If your enemy knows that you have divided councils you will be weakened. So a principle that avoids weakening in the face of the enemy may be constitutional. Budget decisions must be kept secret, if not until budget time at least they must be released in a very public way so that the whole financial community hears about them at once. Otherwise the main reason for solidarity is to prevent the government from falling. In England, as the Speaker told us, everything is a bit freer and looser.

There is a history of formal agreements to differ among the cabinet in 1932 on tariff policy—75 and 77 over European common market issues; Alan Clark's outburst about the purchase of planes from the United States, which was reproduced in the *Alan Clark Diaries* on TV a year or so ago, and he was not sacked for it. Differences can be tolerated. It is a tactical matter for the ministers and their leader to work out how much difference can be tolerated, but it is not a high constitutional principle. I am not just on one of my favourite soapboxes here; this has consequences for the discussion paper. This is one area where I think the reforms in the discussion paper may not go far enough. I think the whole cabinet documents exemption could be totally rethought in light of how much cabinet confidentiality is really based on high political principles and how much is just based on the convenience of the ruling party.

Nonie is giving me the wind-up. My excuse is that Gerard Carney was going to do an overview of this session and a good deal of what I am going to say from now on is going to fill the place of that overview. So can I have a little longer? I will not say anything about accountability in the legal sense except to say that what we have seen since the 1970s is that, because of the weakness of trying to keep a huge Public Service accountable through a few ministers, it was realised in England and in Australia that we may need to give better direct remedies to the people against executive decisions which displeased them, which is why we have freedom of information, judicial review legislation, ombudsmen and the Administrative Appeals Tribunal in the Commonwealth sphere and similar things below.

How do we improve it? There are several suggestions in the discussion paper. Let me add a couple of extras: institutional design of the parliament. Elect at least one of your houses of parliament by proportional representation. If you have a unicameral parliament, the ACT and New Zealand provide responsible and accountable government. At the moment the Northern Territory and Queensland do not. I am not picking on Mr Beattie, because he is only replicating what Mr Bjelke-Petersen did some time before. Bigger parliament houses: the reason party discipline is not so strong in the House of Commons is that there are 630-something members. Indeed, there can be a split in the Labour Party and Tony Blair can still get his legislation through, but by golly there is a lot more public debate about the merits and demerits of the legislation.

Subject select committees have already been mentioned. The discussion paper mentions a Parliamentary Commissioner for Standards. I think that will remedy a lot of other defects. I am not sure that that is particularly germane to the lack of accountability problem. Turn the clock back on the Public Service to a degree. We know the emphasis on a permanent head who gives impartial advice. By all means, when a new government comes in, make the permanent head go down on his knees and swear that he or she will have no objection to implementing the new government's policy, because there have been allegedly impartial permanent heads who clearly sabotage an incoming government's policy. Have some ministerial staff but fewer ministerial staff and try as far as it is possible by statute to impose upon them a duty to advise the minister of anything that is going wrong.

There should be a greater independence and status of the statutory officers like the Auditor-General, the Electoral Office, or the Ombudsman. The South African Constitution gives them a status almost equivalent to that of Supreme Court judges. They should be made real officers of the parliament reporting to the Speaker. The Ombudsman is described as an officer of parliament in the Ombudsman Act, but does he report to you, Mr Speaker? Do you oversee his budget? No, it is part of a department.

All of those things that I have been suggesting and the things in the discussion paper are worth considering. I note that Nonie said that we will do the issues in more depth this afternoon. I trust that has been a sufficiently broad, if shallow, introduction to the topic.

**Ms MALONE:** I would have to comment that it was far from shallow. It was wonderful to have the benefit of your knowledge of the history of the evolution of the concept and its constitutionality. Thank you very much for that, John.

We now have a little time. Before we move into questions, I wondered if you would all like to stand and move around for a minute or two. I am sorry to interrupt all the lively conversations. We will have a proper break in about 15 minutes time.

If you would kindly resume your seats. We will have 15 minutes of questioning. I ask the speakers who are being addressed in each question if they would please come to this microphone. We have a roving microphone to take the question. Would people asking their question state who they are and any affiliation they may have before they ask the question so that Hansard has the opportunity to record it. The floor is open. Could I have a question? Professor Roger Scott.

**Prof. SCOTT:** This is a question that I initially was going to ask of the many speakers here—the Speaker of the Queensland parliament—but it was also picked up by Mr Pyke. It is the success which is palpable in terms of backbench roles in Britain and the reasons for that. One of them may be scale—that there are many more backbenchers who do not see that they are ever going to be ministers because they have to get over too many bodies while they are still alive in order to acquire positions. Is it just that or is there some other cultural factor which would explain the way in which MPs in Britain see their role as holding a government accountable rather than desperately wanting to join that government?

**Ms MALONE:** Mr Speaker, Mike Reynolds, will answer first and John Pyke will answer second.

**Mr SPEAKER:** Thanks, Roger. That is a good question, because in the two weeks that I was there and from what I had read previously, I can really understand the very large parliament. Cabinet positions and other positions only go so far in regard to picking up people in the governing party. I should say that the chair of those committees gets paid. Some chairs refuse to take the pay, which is unusual, but they also pretty much see it as their role during a particular term of the parliament—being a member of that parliamentary select committee or portfolio committee.

I think the numbers have a role to play in that. Certainly, some of those members who I met with did aspire to be ministers. Sometimes you saw ministers back after a number of years in that role as well. I did not perceive any particular emphasis one way or the other, but I think I would have to say that, given that there are over 600 members of the House of Commons, you do not have jobs to go around.

But the thing that I found really tremendous to see was the unity of purpose that I talked about before. That unity of purpose across politics is something that is extraordinarily difficult to achieve in an adversarial system which is bound, if you like, by also extraordinarily difficult party discipline. So there are cultural factors. I think the numbers have something in that regard as well. I think you would have to comment on whether it is feasible to ask for more politicians for a start.

**Mr PYKE:** That would be a brave decision, Minister, but I think it should be done. I do not think Neil Laurie has come here today. I am acting as his deputy, because this is an argument that he pushes at every possible opportunity. But I act as his deputy willingly because I believe in it. I am sure the difference could not happen without the numbers. Once you have the numbers, the culture can develop. I guess the

other different thing about the Commons is that they meet 200-plus days a year. Members get to know each other better. Here in the Queensland parliament we have 89 members, some of whom come from way outside of Brisbane. They come here when they really have to and then they get back to the electorate as quick as they darn well can. I know that there are cross-the-floor friendships, but I wonder if there is the same opportunity as there is in the UK for them to really get to know each other so well that they can forge that sense of common purpose.

There are cultural factors, but I suspect if you took somebody out of the UK parliament and elected them to a seat in the Queensland parliament the sheer need to keep the majority up and the prospect that you could get into cabinet fairly quickly—because cabinet is, after all, nearly half of the party—would quickly cancel all of the acculturated factors that they learned in the UK.

**Mr ROZZOLI:** There is one major cultural difference in the Commons; it also applies in the American parliament and in a number of the other very big parliaments. That is, when decisions are made on government policy and legislation, they are not made by the entire party; they are made by the executive, which in the UK in the lower house is about 78 people. Therefore, the rank and file members are not bound by the decision because they have not been party to the decision.

In England you have the one-line, two-line and three-line whips. The one-line whip is where you can vote how you like; they could not care less. The two-line whip is where they really want you to vote with the party but if you have a major objection to it as a backbencher you do not have to. It is only the three-line whip—which is used very rarely and which is where they drag them out of the loo or bring them in from the hospital with the drip and so forth—where they absolutely need every number to get something through. You cannot have that in a small parliament because in small parliaments the whole of the government party is bound by the party room decision so there is that sense of being bound. That is really the flexibility that could be given to you in a big parliament. I could not agree more with you, John, that in fact we could look in many cases to bigger parliaments. While the public would be horrified by that because they think, 'Oh, God, we're paying more of the buggers to freeloader off the community,' it is a small price to pay for a better democratic system.

**Dr PRESTON:** I really want to extend that discussion not so much to the size of the parliaments and its relationship to the responsiveness of ministers and governments but to the composition and indeed the electoral system that produces the parliaments. I found it interesting this morning that there was a continual allusion to the unicameral state of Queensland and so on, and Mike made the reference to the New Zealand parliament. I am wondering whether any of the speakers have anything to offer us on how high in the priority of our reforming agenda should be attempts to rejig the way our parliaments are elected—the proportional representation question, the New Zealand model of a unicameral House et cetera.

**Mr SPEAKER:** I think this is a very interesting question, but I just want to say one other thing about Roger's previous question. The issue of numbers is extraordinarily important. I think that is right, but I think it is also culture, and in Queensland possibly more so than in other states—I am going to make that sort of gulp. Joh actually changed the rules in the members' dining room so you had to sit in different parts of the room. You had the opposition over here and you were not able to dine with the government members. That still exists today, and it is something that as Speaker I intend to change. I think that is part of the culture as well, so that you do actually have the opportunity. In the Queensland parliament, I think we can really try to work much more together.

Going back to the question that was asked by Noel about the different forms of voting, I have always been one who would like to see minority groups have a much greater say on the floor of the parliament. As Speaker, one of the things that I started a few months ago—and I actually mentioned this to Noel earlier today—is with respect to this question: how does the parliament engage with Indigenous people, people with a disability or regional Queenslanders who very rarely come to parliament and who do not have an understanding of parliament? If you live in Brisbane or the surrounds, it is very easy to understand parliament because you can come in every now and again.

I hosted a dinner on 20 February which was attended by 13 Indigenous Queenslanders and 13 non-Indigenous Queenslanders, and it included members of the government, the opposition and the Independents, Peter Wellington and so on. If we are thinking about changing the voting system to try to have a raft of different opinions and expressions out there included on the floor of parliament, we have not done much to try to include people in the engagement with parliament. I think we are years behind in terms of trying to get that opinion importantly on the floor of the parliament.

As an independent Speaker but someone who has been a member of the Labor Party for a long time, I have some empathy and support for PR in terms of getting the support in. I am not too sure that the party I have been a member of for a long time does, and I do not think the opposition parties would have either. But I just make the point that we have not been very good at engaging with those people who should be on the floor of the parliament, let alone having an electoral system which would allow them to be elected to parliament.

**Dr SOLOMON:** I am not sure that increasing the size is going to work under the Australian system. Prime ministerial government has developed to the point where in Canberra, for example, we do not just have cabinet ministers and ministers who are not in cabinet, but we also have assistant ministers and parliamentary secretaries and all of them are now members of the Executive Council so that they can be paid—ah, they are being paid!

I think there are about 60 of them altogether at the moment who are bound into what the Prime Minister wants to do basically. There are all those jobs for the other half of the party who are not there. There is not much attraction for backbenchers to aspire to be independent members of parliament. The future is all in one direction. Even those who get kicked out of ministries do not see much of a future in contributing to the parliamentary life in the way that they do in Westminster.

So I am pretty pessimistic about the sort of changes that are being canvassed. I would like to see them happen, but I think we have to be realistic. The culture here is a culture of government, not of parliament. You then have to raise the question, in the unicameral systems, whether you should start thinking again about restoring an upper house. I am not sure that that is an answer, and I am encouraged in that by what is happening in New Zealand—the fact that they can actually run a decent parliamentary system in a unicameral system; with PR, true. But the culture in Australia is a culture of strong government. Government has to be able to govern. We have not yet come up with a system which says that governments can govern but legislation can be changed against the government's wishes. That is going to take a long time to do.

**Ms MALONE:** Ladies and gentlemen, I can see that this discussion could continue for a very long time and perhaps it can continue over the break. I did announce earlier that there would be lunch at this break, but we have had a change of plans. There is a substantial late morning tea and lunch will follow after the next session. So please enjoy and we will reconvene at 12.30.

***Proceedings suspended.***

**Ms NOLAN:** Ladies and gentlemen—friends all—if you are ready, I am. We will get into the next session, which is about parliamentary standards, ethics and freedom of information. For those of you who do not know, I am Rachel Nolan. I am the state member for Ipswich and I am an executive member of the ASPG in Queensland.

I think we have done tremendously well with this session. I think these are interesting and ever-topical matters. The speakers we have have enormous expertise in the field. I need to begin by passing on Bill Lane's apologies. Unfortunately, Professor Bill Lane, who is the Clayton Utz Professor of Public Law at QUT, has had a family emergency. So we are down from three speakers to two. The way I hope to structure it, though, is to allow our two speakers, Mark Lauchs and Noel Preston, to have their 10 or 15 minutes each and then rather than stretching them out, we will use the additional time to facilitate more discussion from the floor, which I am happy to manage.

Mark is going first. For those of you who do not know him, I will give you his bio and then I will hand over to him. Mark Lauchs joined the School of Justice Studies as an associate lecturer in 2004. He has previously worked in policy, research and projects in the Queensland government. He worked in the Departments of Premier and Cabinet and Justice and Attorney-General, including—and I think this is the most relevant bit of experience—working for 18 months as head of the Ethics and Integrity Unit of the Office of Public Service Merit and Equity. Mark was a part-time tutor in business ethics in the business faculty for eight years prior to joining the school as a full-time academic. He is completing a PhD on the history of public sector ethics and accountability in Queensland—a remarkable topic I am sure on which he will find great fruit. Currently, Mark is teaching at QUT a subject called Policy, Governance and Justice and a second subject called Just War Theory. Mark's research interests are public sector ethics and accountability, the history of public administration in Queensland and—this is a beauty—just war theory and the Iraq war. With that, I introduce Mark Lauchs to you.

**Accountability in Queensland—Known Unknowns and Unknown Unknowns**

**Mr LAUCHS:** Thank you very much. I would like to say that I am going to talk about accountability and not just war theory today. I would like to thank the group for inviting me. I have reciprocated by rejoining. I think 1992 was the last year that I was a member.

I would also like to acknowledge the traditional owners of the land we are on. This particular land was owned by the Turrbul people who, for those do not know, were from the northern side of Brisbane all the way out to about Strathpine and west to Brookfield.

I have written a paper which I will make available. I am exceedingly bad at reading straight from a paper, so I am going to talk. So it will be a bit freewheeling. I will be watching the timers. I am going to depart slightly from what we have been talking about thus far insofar as I am going to be much broader than simply talk about parliament and FOI. The key area I am going to talk about is coming from my PhD, which I have completed. I went through all the legislation since 1859 that was designed to be accountable and improve accountability in Queensland. The thesis I had for that was that most of that legislation presented itself as being quite accountable but did not do very much in practice.

What I did not discuss in that thesis for the purposes of length was that I believe the key part of accountability is not so much the processes but the fact that the voters get information. If the voters do not have information, they cannot examine how the government is going. If they cannot examine what the government is doing, they cannot make an informed vote. Obviously, most people vote in elections. They are bound to vote. They do not really care about the detail or the information. But that does not take away the responsibility of the government to provide information.

Not all information should be handed out, though. Some things the government should not pass on for reasons of public interest. I was trying to think about the best way to delineate those pieces of information and I have relied on Donald Rumsfeld. Donald Rumsfeld was ridiculed for the following statement—and I cannot do the accent, John; I will not try—

Reports that say that something hasn't happened are always interesting to me, because as we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don't know we don't know.

That sounds like gobbledegook but it is actually quite relevant here because the public in Queensland knows certain things about the government. They are the known knowns. You get an annual report and there is information in there. We know it exists and we know what it says. Then there are other things that are known unknowns. We know, for example, that Queensland Health deals with patients. There is a known known part there. We can find out how many patients went to Queensland hospitals. We ought not know what happened to individual people when they went to hospital. That is a known unknown. We know they went, but we do not know what happened. In some cases, we ought not even know they went. Then we have the unknown unknowns. This is the area of conspiracy theories. These are the things that we do not know ever occurred. Some people speculate about them and other times, because we do not know about them, we do not even know that we do not know. Does that make any sense?

Corruption is an unknown unknown. People suspected corruption in the 1980s. Until the Fitzgerald inquiry, we did not know that Russ Hinze, for example, had made deals with certain developers. So it was unknown. We did not know anything about it to even look into it. If you, for example, knew that someone was doing something, you could seek, say, the CMC to investigate it. But when you do not even know it is occurring, you can do nothing about it. So I am going to deal with those three categories, but in so doing I am going to be talking mainly about the idea of moving information to the public. I will cover the two areas of parliament and FOI in the process.

Firstly, the known knowns. I propose that there are three key pieces of information that we all should know about the government: the key performance indicators of government activity and the material necessary to assess whether they have been met, including the operational and financial data. A lot of that comes out in annual reports. The estimates committees look at a lot of that information as well. But I think we as voters should all have access to that information.

We should also know the policies used to direct the administration of government. We should know what the government intends, what it was always going to do and what it has told the agencies to do in relation to the activities of the administration of government. Lastly, we should know information that will allow the voters to ensure that they are governed fairly and objectively—that is, we should know about conflicts of interest. We should know whether or not the government is in a position or individual members are in a position to act with integrity and act objectively. So all of that should be known knowns. That information should always pass to us.

In the past—as I said, I studied from 1859 to today, so when I say the past I am talking approximately 150 or 160 years—there was largely an attitude of, 'You don't need to know that. We know it. You can trust us. We've checked it. It's fine.' If you looked at government accounts from, say, the 1870s, there were very few mechanisms to pass that information on to the public. That has improved a lot over time, but I would say today we are still in a position where you could not get all of that information. It is not routinely passed on. You have to ask for it in some cases and in other cases, as I will talk about, we do not get information that we ought to get even though mechanisms have been set up to pass it on.

I think from October 2006 to today over 300 reports were tabled in the Queensland parliament. This creates another problem. This is the other extreme. Sometimes we do not get information. Three hundred reports or possibly 400 is information overload. What do we do with that information? No individual could read all of that and analyse it and weigh it up to make a decision about how the government is operating, so we have to rely on certain people to intervene for the public to analyse the information for them. We have the opposition to do that. We have various independent bodies, non-government organisations and I think, although a lot of my colleagues at university do not feel this, academics have a responsibility to do that. I can see a few academics here who do do that, but a lot of academics feel that that is really not their responsibility at all.

Academics are public servants. Queensland academics are all working for a unit of public administration in the Queensland government, whether they are aware of it or not. As public servants we do need to return something back to the public we are serving, and I suspect that that analysis—using our expertise to analyse government data—is one of the roles we should be performing. When that information is coming out, there is often a lot more information than people can be aware of and there is one place we can get an indication of what we do not know, and that is during question time and during the estimates committees. I am not talking about what is said during the debates.

Has anyone worked for a government department other than myself? The people who have worked for government departments would know the mayhem and the panic in the lead-up to an estimates committee hearing. I think the average minister goes in with three folders about that thick each. If you are watching an estimates committee hearing, they may read five or six pages. It often amazed me. When I was in the justice department we would be watching the estimates committee and we would go, 'How could they not have known about X? Why didn't somebody ask this question?' We were very happy they did not, but we were still going, 'Everyone must have been aware.' So even things that we had published just were not picked up.

The opposition's role is to find these things out. The big question is: does the opposition have enough resources to do that? I can see Rob Messenger is laughing. We have to remember the history of oppositions in Queensland. Joh was not exactly the most generous Premier to the opposition. I was in Premier's Department at the time. I was working in the branch of the Premier's Department that dealt with parliament and we were organising things for the opposition. The word came down that when they were talking about funding the new opposition—being the National and Liberal parties—Tom Burns had said, 'Bugger 'em. They can have nothin'.'

His views did not actually carry through, but let us just say they were equally reticent to provide as much resources as would make the opposition fully capable of dealing with this huge wad of information. So this is the key role of parliament. Parliament is the original oversight body in all democracies, but is parliament capable of dealing with everything and being able to analyse the information to then pass on to the public sufficient analysis that they can judge whether the government is doing a good or a bad job?

On the other side of things—from the government side—governments do a couple of things when they are actually talking about providing accountability, and this is what I focused on in my PhD. One of them is to produce, as I said, apparently accountable processes. If you go on to the Premier's Department web site, the current government has documents talking about how much money is spent on the accountability regime and things that say, 'Here are our accountability successes.' A great deal of those things are very excellent pieces of legislation, but they are not actually about accountability. For example, both the code of conduct and the act that it comes out of, the Public Sector Ethics Act, are excellent documents. We absolutely need them, but they do not make government accountable. Part 3 of the Public Service Act provides all sorts of principles for management in the Public Service. Some of those would make government more accountable, but all the act does is list them. There are no mechanisms within the act or anything to follow them up that would make public servants follow them or even find out whether public servants have.

Next we have just the human frailty of public administration. Sometimes when the best intentions are there to create a form of accountability, it just is not followed through. So a report is required to be made. Sometimes it is just not made. Sometimes it is conducted and reported in a very cursory manner. I am not talking about governments here; I am talking about public servants. I have been a public servant, and personally of course I worked extremely hard every day I was there. But there were some who did not follow my example. When asked to do a task, they ticked all of the boxes but you could not honestly say they provided the information that was necessary to provide a substantial success—a substantial output—in the task they were asked to perform. So a lot of the reports that are produced are definitely reports, but they do not really report on anything.

Finally, there are the reports that are done conscientiously and are done far too well. Many politicians around Australia will be heard to say, 'I have a report on that—an excellent report. I'm going to look into it and in the fullness of time when we've considered the implications of that report I'll release the report and my future actions to the public.' 'In the fullness of time' is a very inexact period of time. When you are waiting, if you want to set a deadline for the fullness of time to expire, you can wait for a very, very long time.

One of my bete noires, as some of you may know, is the Whistleblowers Protection Act. The Premier is required to report each year on the administration of the act, and in 13 years that has not happened. It could be that nothing has been done to administer the act. I do not know. This is one of the problems of not providing information—you actually leave people to speculate on the reasons why. Have the reports been made? At the moment it just says, 'We have responsibility to administer the act,' and that is the full extent of the report. It is one-sentence long and it has been cut and pasted for every annual report for six years. That is not the way to provide information to the public. In fact, we are getting back to the paternalism there of, 'We're administering the act. Everything's fine. As soon as we see a problem, we'll pass it on.' That is not accountability.

It is also interesting to note—I think it is section 203; I did not check before I came—that if a public servant in Queensland fails to follow up on a requirement of a piece of legislation, it is a criminal offence with two years jail. Most public servants do not know that. There are lots of requirements that have no penalties within their own act. Public servants are just told, 'You will provide a report on this.' The reason there is no requirement in the act and no penalty for not doing it is because there is an overarching requirement that if you do not you will have committed a criminal offence. I checked on Carter's Criminal Law. No-one has ever been charged with that section that I can find.

Next we have the known unknowns, so these are the things that we know occur but we ought not know about. This is the FOI area. FOI provides us with a very full list of exemptions. The original second reading speech by Minister Dean Wells at the time basically stated that FOI is a turning point in Queensland history where the presumption now is that the government must provide information and it is only in very rare circumstances that the government will withhold it in the public interest. That sounded wonderful. Those of us who try to get things through FOI often wonder whether anyone else other than the minister read that speech. It is very, very difficult to get information out of departments.

The key area, obviously, under that act is the cabinet and Executive Council exemption, which has been expanded and by 1995 was so expansive that I am not saying governments do intentionally try to hide information but certainly if they wanted to they could. There is nothing you could do to get information out of the government should the government wish to take a matter to the cabinet room—not consider it, but take it to the cabinet room—and then rely on that section.

In case anyone thinks that I am going to be talking too much about the ALP, that was purely because over the past 15 years they have been in power more often than not. On this particular example, when that provision was being debated in this parliament Russell Cooper stood up and said, 'This is an abhorrent piece of legislation. How dare anyone bring this in. We got legal advice on this. When we saw the QC he asked, "Do you want political advice as well?"' I asked that QC for that political advice and he said, "Russell, when your party is in government, keep this section. It is excellent. You will never want to get rid of it." Cooper then rails on for another few paragraphs of 'That is how bad this is. It is terrible, it is terrible.' One year later they were in government. Was the section repealed? No. In fact, if you go through all of the debates on accountability legislation, whoever is in opposition at the time will rail against the legislation—'It is terrible. It does not go far enough'—and you will not find a single instance, when the government changes, that the new government then corrects all the things that it said was wrong with those pieces of legislation.

So we have that situation where the cabinet Executive Council exemption is just too broad. We also have another one where the public servants again actually take their role too seriously. In the Justice School, we have been trying to get information for our criminologists. Our criminologists have to go interstate for criminological data. You cannot get it from Queensland at all. One of the reasons is section 44 of the FOI Act, which states that personal data will not be released. It then gives examples of things like anything relating to identifying the individual, their private life, blah, blah, blah. It goes on. It is very worthwhile when you are talking about the Health Department and Education and so forth.

When you are talking about a person who has been tried for murder, that information comes out in the courtroom. It has to, just in the process of identifying the person. That is personal information. If you want the transcript of the case, you can get it. In order to get the transcript you need the names of the defendants. But you cannot have the names of the defendants because that is personal information. The Justice Department has told us on many occasions that that is not public information, even though it happened in court. In fact, it is public on the day it is presented to the court and then it immediately becomes private as soon as that sitting is over. So if you do not attend on the court day, you do not get the information and they will not pass it on. That is not a government decision; that is, as I say, public servants taking their role far, far too seriously.

We have an Information Commissioner, so we have a form of oversight over FOI. I think my time is fast running out, so I will quickly move on to the unknown unknowns. The unknown unknowns, as I said, are the things that we do not know anything about. A lot of these things are quite valid. They are the things like the 30-year rule and the 50-year rule. The FOI Act allows a government, though, to place things under the 30-year rule without any scrutiny. Technically, we could take these things to court and have the court look at the matter and see whether it was a valid decision to place it there. Unfortunately, we do not know they happened. You cannot take something to court if you do not know it occurred. So we are sort of caught out there.

The other side is corrupt matters. How are we ever going to find out about corrupt activity? No-one knew what Russ Hinze was doing. No-one found out about it until somebody blew the whistle on him. My only suggestion of what we could do in this regard is run it like you run random drug tests on athletes where the CMC shows up and takes all of this information data off the politicians and their family members and examines it. That is very, very tough legislation. I do not know that you would get public support and I really do not think that any parliamentarians are going to pass a bill that allows them to come in and do that to them. But it is another area where basically the public are excluded from the accountability process. I will wrap it up there and pass on to Rachel.

**Ms NOLAN:** Thank you very much. I should also mention that Bill Lane has provided with us a written paper, a number of copies of which are on the table near the door. His paper talks specifically about FOI and the recent case of McKinnon—the *Australian's* FOI editor—versus the Commonwealth of Australia and specifically the instance in which he attempted to extract information from the federal government about bracket creep. The federal government issued a conclusive certificate, which we do not have in Queensland, that determined effectively unilaterally that that information was not in the public interest and there were subsequently court cases around that. It is a very interesting matter and Bill's paper is well worth reading. So do grab it if you have an opportunity.

I will now introduce to you Dr Noel Preston AM, who is a well-known ethicist, theologian and social commentator. Noel is currently serving as the Adjunct Professor in the Key Centre for Ethics, Law, Justice and Governance at Griffith University but he has essentially for many years now had parallel careers. He retired in November 2004 as the founding director of the Uniting Care Centre for Social Justice. From 1987 to 2001, he held senior academic positions at QUT and Griffith University in applied and professional ethics. From 1995 to 1997 he was the president of the Australian Association for Professional and Applied Ethics. You would have all seen Noel as a regular social commentator on ethical issues. He has published widely in the area, including something of a standard text titled *Understanding Ethics*, the second edition of which came out in 2004.

As a theologian and social justice commentator, Noel has been active since the 1970s, holding roles including the convenor of the Uniting Church's commission on social responsibility. He has also established community action groups in these areas. Noel established a group called Concerned Citizens between 1976 and 1979. He was a cofounder of People for Nuclear Disarmament from 1983 to 1986—something which is very much back on the agenda—and he established a group called Citizens Against Corruption and was involved in that between 1988 and 1990. So Noel has spent really a lifetime of dedication to these issues around public ethics and, I guess, social responsibility. I am sure Noel will have something very interesting to say. Please welcome Noel.

### **Integrity Lessons from the Queensland Story**

**Dr PRESTON:** Good afternoon colleagues and thank you, chair Rachel, for that introduction—a very fulsome introduction and embarrassing because it makes me realise how old I am and, being retired, how out of date I might be becoming. Nonetheless, it is good to be here.

The topic that I have chosen in collaboration with Nonie is an impossible topic for our purposes this afternoon—integrity lessons from the Queensland experience. How long have you got? I intend, though, to burrow down in a rather micro way around the issues of the priority in any regime of public sector ethics of advice giving. That is where I intend to go. But I just want to back up on Mark's presentation and say that if I were to name one lesson out of the Queensland experience since the Fitzgerald days it would be, as Mark's presentation was implying, that the overall experience reinforces the importance and the absolute imperative of disclosure and transparency. That is why FOI—good FOI legislation—is so important. That is why scrutiny of the pecuniary interests register—again, providing it has the right provisions and there is some finetuning and tweaking that could be done here in Queensland—is so important.

I want to focus, particularly with elected officials in mind, around preventive measures—the encouragement of virtue rather than the targeting of vice, although you do need both. These are aspects that I think can be sold, and should be sold, to elected officials as helpful, supportive measures. They are not designed to entrap you. I am talking about measures like education and training in accountability requirements—how to do it is another question—cultivating an ethos; the importance of leadership and example; and the importance of the culture and ethos of political parties—and it must be noted that the culture of political parties is central, but we never can quite go there in this discussion—and yet in practice these subtle ethos factors so often undo the good work that theoretically should come out of these integrity measures.

In particular I want to focus on the availability of prior advice on matters of ethics and integrity as a key preventive area in which we can nominate some lessons to be learnt. General points that one ought to bear in mind when talking about what I call prior advice are: a good prior advice measure will normally separate the advisory function from the investigative function. We need the investigative functions but perhaps they should be located elsewhere.

Obviously where codes are in place, and they are almost universally in place now, one needs advice in interpreting them. If you institute a code, be it a parliamentary code or a code in some arm of the bureaucracy, what goes with the territory is that you need to put in place the advisory mechanisms to make it work. Under this heading I include strategies of recording the collective memory of the institution—that is, the collection of case studies. We do not do that as well as we should to keep the stories alive, the goodies and the baddies.

The advice is likely to be of assistance in auditing potential conflict or competing interest problems. In fact, that is usually a focus of any advice giving function that is established. One might say, just to bolster the argument for this, that the value of such advice is to nullify or at least deflect later criticism of actions taken in accordance with that advice. That is why they are protective measures.

Where do you go to find good examples of best practice in this? Overseas, in North America, you will find hybrid versions that generally combine the advice and investigative function. They are called ethics counsellors and various other things. Of course, for a decade or so now in Britain there has been the Parliamentary Commissioner for Standards, whose example is cited in Ken and Kevin's paper and is put up as a possible model. The commissioner's responsibilities are things like overseeing the maintenance and monitoring the operation of the Register of Members' Interests, providing advice on a confidential basis about the code et cetera, preparing guidance, providing training for members and so on, monitoring the operation of the code of conduct and guides to the rules and proposing possible modifications, and receiving and investigating complaints about members who are allegedly in breach of the code of conduct and guide to the rules. In Britain, there is the Parliamentary Commissioner for Standards is an officer of alongside the parliament.

In Australia, this prior advice giving function is not well developed in an institutional sense. In New South Wales—and I am not quite up to date on how it is working, Kevin—there is an ethics counsellor who sits alongside the ethics committee and the practice of the code in the parliament. In Western Australia there is a Public Service Standards Commissioner, who is more focused towards the public sector generally. Beyond that, I do not think that you find clear examples—certainly nothing at the Commonwealth level where, if his ministers are in trouble, the best fallback seems to be that the Prime Minister calls on the head of his department in an ad hoc way to be the adviser. I do not think that is good enough by a long shot. However, in Queensland we have, on the books anyway, some worthwhile examples that are

probably as good as you get in Australia. I am referring to the Office of the Integrity Commissioner and also, for members of parliament, mechanisms and processes that have developed around the Members' Ethics and Parliamentary Privileges Committee.

I am not sure how much you all know about the Office of the Integrity Commissioner, but it is fairly quiet and behind-the-scenes office. The Commissioner is at the end of the telephone. He reacts occasionally. He is not proactive. It is a part-time role. It was established in 1999 with an amendment to the Public Sector Ethics Act. When Peter Beattie brought the idea to the parliament, he explained it in these terms, focusing on conflicts of interest—

It can be overwhelming to work through these situations alone. My Government believes that a source of voluntary, confidential and expert advice on ethical dilemmas can be a real benefit in resolving potential conflicts before they happen.

There have been two incumbents of this office, both drawn from legal backgrounds. They are former Supreme Court Judge Alan Demack and Mr Gary Crooke QC, the current incumbent. The functions of the Integrity Commissioner are threefold: firstly, to give advice to designated persons about conflict of interest issues as provided; secondly, to give advice to the Premier, if the Premier asks, on issues concerning ethics and integrity, including standard setting for issues concerning ethics and integrity; and, thirdly, to contribute to public understanding of public integrity standards by contributing to public discussion of policy and practice relevant to the Integrity Commissioner's functions.

The advice is available to persons who are called 'designated persons' in the legislation, that is, chiefly ministers of the crown, senior bureaucrats at SES level at least, and members of parliament and parliamentary secretaries—and I am reading now from Gary Crooke's last annual report, and he puts it this way—'but also including members of other parties or independent members who are themselves members of a parliamentary committee on the nomination of a government member'. It is directed to members of parliament and the cabinet in particular, but it goes way beyond that. In fact, the statutory office holders who are caught up in the legislation probably number about 5,000 designated persons in Queensland for this part-time official to provide advice on conflicts of interest matters.

The commissioner makes an annual report which is tabled in parliament by the good grace of the Premier. This office is a creation of the Premier. This office will only function well with the Premier's blessing, endorsement and use. Its independence, beyond that, is extremely limited. It is an appointee of the government.

It is confidential advice and the argument is made that it needs to be such to induce, persuade, cajole people to make use of it. I will read a paragraph of something I wrote previously about the secrecy provisions—

The secrecy and protection provisions surrounding the advice are intended as means to encourage people to make use of the Commissioner. The downside of those provisions is that they may undermine public confidence in the role. The Integrity Commissioner has no capacity to comment on any particular case or to assure the public that they are intervening in a particular case.

In his annual reports, he finds a convoluted way of talking about the cases he has been involved in. It is so convoluted that you do not really get it, but that is the nearest he can go to revealing cases.

Continuing—

The Premier may refuse to act on a particular matter drawn to his attention under the terms of the Act, and the Commissioner has no capacity to raise this directly in the public domain.

There is a provision for the failure to act on advice of the commissioner. Given seven days notice, that advice and that fact can be put to the Premier. So potentially there is some sort of coercion behind the scenes in the role. It continues—

Further, the Commissioner's advice itself, if disclosed by the recipient—

because that can be done—

could itself be debatable, even controversial, and embroil the Commissioner in a political brawl.

The number of items of advice that the Integrity Commissioner has tended to be giving vary from a total of 14 in its first of year of office, 2001, to 30 in 2005-06. Ministers and parliamentary secretaries sought eight of those pieces of advice in 2005-06 and the Premier four. Very few of these inquiries to the Integrity Commissioner would be MPs asking about MP matters or even a minister. So there is not a very high rate of usage—though maybe, given the territory, a sufficient rate to justify this part-time office.

I have some lessons or observations. Clearly, there is a challenge in how to get MPs to use the office. It has been put to me—and I think I accept this reasoning—that the office is too remote even perhaps from ministers to make regular use of and too remote from the 5,000 designated persons. The IC attempts to break down these barriers by making a courtesy visit to all ministers, new ministers and parliamentary secretaries, if they agree to it. I am sure overwhelming they agree to it.

In light of the recent case that has not yet been named in this place which is currently before the courts there is a strong argument for the Premier to require at least a six-monthly review between the Integrity Commissioner and his ministers and parliamentary secretaries about their pecuniary interests and beyond to matters of ethics integrity. This is the norm for most of the North American positions.

There are issues sitting in the background of all this that need much greater attention here in Queensland and elsewhere of course. On paper we look as good a jurisdiction as you get in Australia. I think that is probably roughly the case. But at issue is the way a ministerial code of ethics is kept under review and used and known about in the public arena. Last time I looked at the Queensland Ministerial Code

it was silent on matters of the post-employment of ministers. It does not say anything also about conflicts, party political matters and the exercise of ministerial office. I know that the ongoing issue of how to handle gifts is a matter that sits on the slippery slope. But as I say, this position is only as strong as the Premier allows it to be at the moment. Rachel, I could say some things about the parliament but I am running out of time.

**Ms NOLAN:** You are so you have to say them very quickly.

**Dr PRESTON:** What do we have essentially? We have a code of ethical standards, we have a register of pecuniary interests and we have a Clerk who is the registrar. We are fortunate in Queensland because of the Clerk we have. I would be saying this even if he were not here in his weekend garb. We are very fortunate because he has schooled himself and he has been part of the process of developing this regime in parliament for some years now. But to rely only on him because he is the person in the office may not be good enough for this parliament down the track.

Then we have the Members' Ethics and Parliamentary Privileges Committee. How do they give advice? As I understand it—and I cannot know for sure—the Clerk regularly gives advice, especially on register of interest matters but not on matters which might end up before the Members' Ethics and Parliamentary Privileges Committee. Sometimes that advice would be in writing.

The members' committee is placed in a slightly different position in terms of giving advice. It will be more indirect. It may get requests for rulings from the Clerk or the Speaker and will reply to them in writing; it will table through a speech by the chair in the House; and, in instances where appropriate, a personal letter may be sent to individual members explaining the ruling. That is roughly the picture. There is plenty of scope, it seems to me, in principle for a Parliamentary Commissioner of Standards like position or at least someone alongside the Clerk.

But is it justifiable in a parliament of only 89 MPs at taxpayers' expense? I leave that as an open question. I certainly think it is justified in the federal parliament. I think there is scope for more enhanced education measures. There may even be scope in Queensland and elsewhere for the ethics committee to have a closer look, through a proper inquiry, at this advice-giving function and how it is working or not working.

Finally, the important postscript or lesson in all this is simply this: the impact of advice giving depends on the official, elected or unelected, wanting the advice, seeking the advice and being prepared to follow the advice. That is why we need a stick as well as a carrot. That is why there is no silver bullet in this business of accountability and integrity. We need a range of measures. Thank you.

**Ms NOLAN:** Noel, thank you very much. We have the Integrity Commissioner, a commissioner on standards perhaps, codes of conduct, is it the culture of the party, FOI, Mark's comments about corruption that you can smell but cannot see. I think there is plenty of food for discussion. We have 10 to 15 minutes before lunch so I will hand over to you.

**Ms SHARPLES:** I am an apolitical person. I would like to ask Mark a question about the latest whistleblowers legislation that went through a couple of weeks ago. How do you see it affecting the accountability and responsibility of the parliament? Do you see it as being restrictive at all?

**Mr LAUCHS:** Is everyone aware of the whistleblowers legislation? It has basically expanded the scope of who you can go to. I think it is good. It will not make it more likely that most people will blow the whistle. But it was certainly an oversight in the original legislation. The reason given by Tom Barton as to why you could not go to either members of parliament or the media in the original legislation was—even though that is how the Fitzgerald inquiry had come around—'This government is not corrupt so you do not need to report on us to anyone. We do not need to give you that power.' Yes, I think it is a major improvement. Why people blow the whistle is far more complex. Whilst that will be a better protection for people I do not know that it is necessarily going to increase remarkably the number of people who blow the whistle.

**Ms SHARPLES:** I agree.

**FORUM DELEGATE:** My question is to Noel. Noel, earlier in your comments you spoke about the desirability of education and training in this area. I wonder whether you have any advice as to what forms that might take, what method might be applied, particularly given that this is a profession where you cannot compel them to undertake training or to be educated?

**Dr PRESTON:** I guess I was inviting that question by not saying anything about it. Partly I said nothing about it because I cannot claim to be up to date on what is going on around other jurisdictions in this regard. It is difficult. I heard over morning tea—I hope you do not mind me being your deputy again, Neil—the Clerk or someone like the Clerk say that if you can get 10 per cent of members to a forum or something you are doing really well. Notwithstanding that, there have to be attempts more regularly at forums and occasions when there can be face-to-face dialogue about matters. One should not dismiss—although I accept that the average member of parliament is probably not going to find it user friendly—the development of a manual. The Queensland code in itself is a good education tool which explains all the obligations et cetera.

There will be nothing like a good old scandal or stir to be a point of education and consciousness raising. So that is where the stick comes in as a precursor to that. Those of us who are public intellectuals, if we deign to give ourselves that title—and I am a retired one—should not underestimate the importance of our work in the public arena and through the media and so on in trying to raise consciousness. But I do

Brisbane

not have any really whiz-bang how-to-do-it ideas, Ken. In fact there are probably people in this audience who might have something better to offer. I do not know whether we should ask them if they want to add an answer to your question.

**Mr LAURIE:** I think what you said, Noel, about having information available and in a format that is easily able to be understood is important. I think that the *Code of Ethical Standards* booklet is one way you can do that, but you need to have a whole range of initiatives. We have concentrated very much on induction for new members. We put a lot of effort into the induction of new members in relation to these conflict issues, the whole code of ethics regime, and inviting the Integrity Commissioner to participate. All of that has been very important.

I am very conscious of the fact that during those processes we are really just getting the new members, if you understand what I mean, although I think we have been very good at induction for at least the last three parliaments. They have been very comprehensive in my opinion. Other members may have different views on that. So if you took a snapshot of the current parliament I think that well in excess of 70 per cent of members would have been through that process. I think there is a lot more general awareness now of these things than there was 10 years ago. That comes about through the code. It comes about through the induction processes. We have had ad hoc education as well, but that does not work as well because members are very busy creatures and it is very hard to get them to come along to those things. That is why I think induction is important. You can capture them for a point in time but once they get into the swim of being a member it is very difficult then to grab them again.

All of those things are important. At the end of the day the scandal that happens every so often is probably one of the biggest educators as well because all of a sudden the register of interests really is important. It brings it to the fore. I certainly notice that the busyness in my office in terms of the register of interests, for example, does increase after there is a bit of scandal.

**Mr SPEAKER:** I think the introduction of the Integrity Commissioner has been really good. I have been to the Integrity Commissioner twice over different years. That is being proactive in terms of what you may feel is a conflict of interest. Some of us really do not know how to work it through ourselves. You need to get someone else's advice. Mark or Noel made the point that if you get that advice it is not a bad thing to have that on your file because you are actually trying to do the right thing.

The second thing is that the induction sessions have increased from two to three days over the years. I think it was two when I first became a member about nine years ago. It is three days now. I think education and training is extraordinarily important for new members. I think professional development for other members who have been here for some time is also extraordinarily important. Neil has hit the nail on the head in terms of getting people to attend those sessions. Sometimes the most recalcitrant people are the ones who should be there. It is a bit like today. You get people who are very interested in this topic and therefore want to enhance what we are doing.

The other thing I would add is in relation to codes of ethics or codes of conduct—I know this has been debated before, and I remember a long time ago being on the same stage as Noel when we were talking about codes of ethics and codes of conduct—whether in fact you can have sanctions, how do you have the sanctions and whether that is a good way to go. I am not at liberty to say what I am doing at the moment, but there is a certain area of ethical conduct and behaviour of parliamentarians that I think you can sanction. I am on the precipice there in saying that.

One of the things you do learn in this system is that, if you are talking about members' handbooks, ministerial guidelines, these all come from executive government. The role the Speaker has to play is to influence, to get executive government to agree that this is the way we should be going. But there is one area at the moment that the Clerk and I have talked about and we have advanced where there is a possibility of a sanction in that regard.

**Ms NOLAN:** A couple of points are relevant. Noel talked a lot about the Integrity Commissioner. I think it should be understood that the Integrity Commissioner applies a higher bar than do the pre-existing standards like the Register of Members' Interests. We have recently had an insight into that because for once—in my view most unfortunately—some advice from the Integrity Commissioner was leaked. So we have all seen it. It applied to a matter involving the current Attorney-General and his ownership, when he was the minister for natural resources, of a water licence. The previous standard would have been that that licence had been declared, and that is what you needed to do. The Integrity Commissioner however advised that, as Minister for Natural Resources and Water, the minister should have divested himself of that water licence, which is a different standard. So I think it does need to be understood that the Integrity Commissioner's advice does tend to be of a higher standard.

The question of how do you make members of parliament do this stuff is really quite a hard one. In my view it comes down to the question of what is the role of a member of parliament. As a member of parliament there are enormous pressures. You see yourself as having a role to ensure accountability on the part of executive government, but if you are on the government side you also have a role to stay in government and you are often told that your role is to get re-elected—go out there and campaign and open shade cloth. Then there is a role simply as a junior social worker in representing your constituents. To some extent, a member of parliament must keep that discretion about what is their role. That is a matter for every member of parliament, and the people get to judge that decision every three years. So there are fundamental ethical questions about what is the appropriate role in accountability of government for a member of parliament which I do not think you ever really get to the bottom of.

**Mr CAMPBELL:** I was the inaugural chair of the Members' Ethics and Parliamentary Privileges Committee. A way to take the onus off a member is to make something mandatory—in other words, they must do it. I would suggest that it should be mandatory to have an Integrity Commissioner and twice a year it be mandatory for every member of parliament to go and have a talk to him to review their pecuniary interests and other things. It just takes the onus off. It is not a problem anymore.

The other thing is that you can take away conflicts of interest or just take them out altogether. A good example of this was the electorate car. I could guarantee that when we were given an electorate car every year or second year there was a scandal or some complaint that the car was being used improperly—either the member's wife was using it or the kids or they had taken it to the dump. As soon as they got an electorate allowance, that problem just disappeared, because everybody appreciated that to do your job members need a car. If we gave them \$6,000, people understood that. It took it out of the public area. I can say now that ministerial cars are still a problem, because sometimes a minister's son or daughter does something. That would be a concern or problem. So I just say there are things that can be done that can reduce a lot of these conflicts. I just think that we should try to simplify all of these areas for members of parliament. One thing that I learnt when I was a member of parliament is that there were people from Rhodes scholars to illiterate members of parliament and it is very difficult to make rules for all of them.

**Ms NOLAN:** Kevin, I have masterfully ensured you got the last word.

**Mr ROZZOLI:** Thank you. Just a quick comment on Integrity Commissioners. In New South Wales the Independent Commission Against Corruption has a very major role in furthering education in integrity standards. It is a significant role and I think has done a lot to raise the standard of understanding within the Public Service, particularly on matters of integrity. The other thing is that in the review of the ICAC only a few years ago the suggestion was put up—and Rachel referred to this—that the bar that the Integrity Commissioner is put on is a very high one and there is a whole area of things particularly involving members of parliament that are not significant enough to go to, in our case, ICAC but really need someone to go in and investigate them at that lower level. Because once you have a reference to ICAC, it is in all of the papers and it is scandal and even if you are cleared in the long run it is a problem. So perhaps there is a need for a lower level of investigation into parliament for parliamentarians that has not been—

**FORUM DELEGATE:** Is that how you see the Parliamentary Commissioner for Standards?

**Mr ROZZOLI:** No, I think this is a slightly different thing because this person would actually have an investigatory role whereas I do not think the Parliamentary Commissioner for Standards quite has that in that same sense. I really wanted to ask a question of Mark. This may show my abysmal ignorance, but my reading of the situation is that there is not a lot of research into ethical problems in the parliamentary sphere. Even when I was studying law, most of the ethics was about fiddling the trust fund and was based on particular court cases rather than analytical discussions of ethical issues that may have arisen. Is that a true observation? If it is, is there a need to look more at ethical situations that may have been 50 years ago but actual examples from which people can draw lessons?

**Mr LAUCHS:** If you exclude Noel and maybe three other people in Australia, very few people do analytical work on ethics for parliamentarians and the public sector. There are a lot of journal articles and 95 per cent of those articles say, 'Gee, ethics. It's good. We should all do something about it.' So you are absolutely right; the work is not being done.

**Ms NOLAN:** I know there is further interest, but it is also lunchtime. For those who do have further questions, please approach these guys individually over a cup of tea. I think that has been a terrific session and I very sincerely thank our speakers and those of you who have subsequently participated in the discussion. I think there is some great stuff there, so thank you very much and enjoy your lunch.

#### ***Proceedings suspended.***

**Mr CRIPPS:** Good afternoon everybody, Nonie Malone, our president, and my parliamentary colleagues Rob Messenger and Liz Cunningham. There are a couple of distinguished academics here today, including David Solomon and Professor Roger Scott, who I spent a lot of time reading when I was a wide-eyed undergraduate and who I certainly still refer to from time to time. There is a former tutor of mine, too, here—Dr Paul Williams. I spent some time under his instruction as well when I was a wide-eyed undergraduate.

I should introduce myself. My name is Andrew Cripps. I am the brand-new, shiny member for Hinchinbrook in north Queensland. The speaker said earlier that he has spent over 30 years in public life, both at a local government level and here in the state parliament. I have only six months under my belt. So the situation is quite stark and in contrast. But I think it bodes well for the ASPG that we are a broad church here today. We both have an abiding interest in these particular issues, because we are in the same chamber.

My association with the ASPG, however, is several years old. When I graduated from the University of Queensland I reflected on it for a moment and I thought, 'Is that it? Is that all the information that I am ever going to get? How on earth can I continue to stay in touch with the dialogue in our profession as it continues without being in academia itself?' My mentor, Dr Paul Reynolds from the University of Queensland, who suffered my continual enrolment in his subjects for many years, told me that I ought to join the ASPG—and I did so. From time to time I have not been able to engage in all the activities of the association, because I have been living in north Queensland. But since I have been in this new role I have had more opportunities to keep abreast with the issues that have been moving forward. It was a pleasure to get an invitation to chair a session today from Nonie and the ASPG.

It is my duty today to introduce the three contributors to this session. As I understand it, the first contributor will be Mr Alex Scott, who is the representative from the Queensland Public Sector Union. Mr Scott, who is the general secretary, is currently serving his second term in that capacity. He has been a career unionist, previously working as a union organiser. The title of his presentation will be from a union perspective. So I ask you to welcome Mr Alex Scott.

### **A Union Perspective**

**Mr SCOTT:** Thank you for that introduction. What I want to talk about today are issues in relation to the Westminster model and particularly in relation to the role of ministerial staff. I think you have some material provided to you from our national office. I am not going to repeat that information but I will give a Queensland perspective in relation to how parliament and government is operating within Queensland. While I will be making a number of critical comments in relation to ministers, ministerial staff and the senior Public Service, I indicate that those comments I will be making are at the extreme level of where we see the problems within the public sector at the moment. Also, more broadly, they will be indicative of what is happening, we believe, in other states—although my personal experience in relation to the Commonwealth Public Service is less clear in that area.

In terms of Queensland, what we believe now is happening in terms of the role of ministerial staff in particular is that they are the key abusers of the Westminster system but they are also significantly abused by the problems within the system itself. In that particular vein, we see strong linkages between what is happening to the role of ministerial staff in Queensland and the politicisation of the senior Public Service. That has occurred over a period of time both in this state and in other states when there have been significant periods of one party being in government. I think that is particularly true, partly because there is a strong movement between ministerial staff and the senior Public Service but also from a philosophical point of view we think that there are some underpinning problems in relation to both ministerial staff and the senior public servants. From our point of view, that goes back to the way the ministerial staff are selected and dismissed and also a lack of transparency about the decisions that they make and their interaction with the rest of the Public Service.

In terms of the underlying problems of the Westminster model and certainly from the permanent Public Service point of view, good government is based on a long-term perspective of the issues facing the community. It is also based on the fact that they are there to provide frank and fearless advice to the government of the day and in particular the ministers. The fact that the ministerial staff and also the senior Public Service now have their tenure to a large extent based on the whim of the government and also the tenure of the government, we believe that shifts the focus of the objectives of this group of people who by and large are very committed to providing good government. Overriding that commitment is also making sure that the government of the day is re-elected.

So the movement of ministerial staff is subject to the life of the government. Also, CEOs are now subject to the life of the government. The contracts now introduced within Queensland are based on the tenure of the government rather than being a permanent Public Service. We have also seen over the past 20 years under both parties a movement away from tenure at the senior Public Service level to shorter and shorter contracts for the Senior Executive Service. So we have a group of people who have their employment based on the success of the government in a political sense rather than the success of the government in a good policy sense.

At a theoretical level, we are hopeful that good governments are elected or re-elected on the basis of good outcomes for the community. But certainly I think that would be a naive approach. At the moment, the definitions of where government is at and the quality of government is less of a factor in whether governments get re-elected. Certainly, in terms of the broad analysis of the last New South Wales election, that was about saying that the government did not lose the election; the opposition failed to win it. Despite the criticisms of service within New South Wales, there was the failure of the opposition to win.

In terms of where both the ministerial staff and the senior Public Service are at—in terms of the ministerial staff, they are not selected on merit. They are excluded from the general merit principles that apply to the Public Service. As a result, there has been a shift over a number of years away from the tradition that existed many generations ago in that ministerial staff were seconded public servants who went there and back to the department and who were employed on the basis of high levels of knowledge about the portfolio to being now political appointments who are there based on their commitment to the minister or to the party of the day rather than to the government generally.

The SES and CEOs are also theoretically appointed on the basis of merit, like the permanent public servants, but compared to the ministerial staff the key problem with that process is that that is now excluded from any external mechanism for review. Our experience has been that the longer a government is in power, the more chances there will be questions raised about how some senior SES officers are appointed and whether they actually got there on merit, particularly when there are people moving across from ministerial staff into senior Public Service positions. There has certainly been a long period of comment by the opposition in particular but also by people generally within the Public Service about whether some of those positions are based on real merit. Because there is no capacity for unsuccessful applicants to appeal those jobs, that question remains. Certainly, from our point of view we think there would certainly be a strong argument to say that there has been a politicisation of the Public Service, because those senior positions are now outside the process of questioning by independent tribunals.

At the other end of their career path, clearly, there is the question in relation to the dismissal processes for directors-general. That is based on the re-election of the government. Their tenure ceases at that point in time. That was a policy brought in by the coalition in the late 1990s and it was adopted by the incoming Beattie government. In terms of ministerial staff, the ability for those people to be dismissed is very much based on the confidence of the Premier or the minister. At the SES level, certainly that is also becoming more the case in that while they have contracts there is the ability to terminate those contracts. There is no tenure for them. Also for the majority of the SES now, they are subject to having their contracts renewed on a shorter and shorter length of time. So that is a problem for those people involved in that process in terms of a shifting of their objectives away from good government to one of the re-election of the government of the day.

But the real problem for our members who are outside of that area in the broader Public Service is the lack of transparency in their involvement in relation to the decisions made by governments of the day. The traditional Westminster model was quite clear in terms of the role of the minister in decision making and the role of the Public Service in decision making. There is a real problem now in relation to the interventionist approach of some ministerial officers in terms of interfering in the governance of the day to fit political objectives. That being said, it is quite clear that the role of government is to make policy decisions in relation to ensuring that the Public Service is responsive to the community. But there is always going to be a tension in relation to the experience and capacity of ministerial decisions compared to the much longer-term views in relation to the Public Service about particular portfolio areas.

Over the past 20 years we have seen a strong emphasis on providing a much greater transparency in relation to the way the Public Service operates with notionally freedom of information applying and judicial review. There is an expectation that the permanent Public Service will undertake its significant powers and decision-making processes in a way that should be transparent to the community. Clearly, that does not apply in relation to the operations of cabinet, but also it is now becoming less and less transparent in the operation of ministerial staff. The problem then is when informal pressure is applied to the Public Service by ministerial officers to influence the otherwise normal decision-making process of government departments. That can be influenced in a range of ways, most of which will never show up in relation to freedom of information processes or, if there is direct intervention by ministerial officers in relation to the normal activities of the operation of government departments, the standard practice now in most jurisdictions is for those matters to be taken to cabinet and all of those things then excluded from public discussion by very large amounts of documentation going through the cabinet process and, therefore, being excluded from the freedom of information processes.

From that point of view, that is where the excessive power of ministerial officers has a real impact in terms of how they operate with the Public Service. Normally the interactions are not in a formal sense. There are no written directions provided to the public servants but there are issues in relation to phone calls made to people who have less and less tenure and people whose career paths are very much linked to the favour of the government of the day. So the extent to which abuse occurs of the Westminster system—it is the effective bullying of the Public Service by ministerial activities that are outside the formal processes of decision making. Clearly, they want to influence those recommendations that they get in front of them.

So that is where inappropriate behaviour occurs in terms of the Westminster model rather than allowing the normal systems of government to operate going through the director-general with information provided to the minister for decision. There are attempts by ministerial staff to influence information to get the Public Service to make the decision that they want made rather than directing them to make that decision. So there is informal pressure, which is then excluded from the normal processes of FOI and judicial review. It is that use of that power where there are real problems involved. It is also that power relationship which causes the inappropriate relationship between those ministerial staff and the public servants they interact with.

To some extent that is also reflected in the politicisation of the Public Service where you have senior public servants who have short-term contracts that are based on the life of the government or who have their promotional systems and tenure based on the favour of the government of the day. Those people are then more likely to not provide frank and fearless advice. Therefore, our real concern at the moment in relation to the way that the short-term contracts are being used within government and the length of the contracts, both for the SES and directors-general, is the possible inability of the permanent Public Service to provide the sort of advice that the government needs in relation to long-term questions about portfolio decision making. At that point in time, the government starts to get the answers it wants to hear rather than the information that it needs to have.

While government is quite appropriately the decision-maker in these processes, there is the need for cabinet to consider all the options in relation to processes and make appropriate judgements based on that information. The tension there comes about where the Public Service is looking at long-term questions of the portfolio and the government clearly has shorter-term parameters. The extent to which you think that is a problem is the extent to which you think governments of the day are willing to sacrifice good policy on the basis of having to get re-elected.

Certainly if you look at some of the crises that have occurred within the Public Service delivery of services in Queensland over the last few electoral cycles such as questions around child safety, Queensland Health or the provision of water to the south-east corner, I think it is fair to say that the Public

Service as a whole was aware of those issues for a long period and was providing advice, certainly up to certain levels of government. Whether they then got through to the ministers of the day is questionable, but certainly the experts in the field were aware of those issues. The crises were more defined according to how the *Courier-Mail* reported them and whether they were seen as electoral issues, rather than the actual facts of the case.

In terms of the child safety issue, that was a long-term issue that had been growing. In terms of the situation in Bundaberg, that was a one-off particular problem but the endemic issues that were identified within Queensland Health came as no surprise to people who understood the way services were being delivered in the longer term. In terms of the current water issues, it is clear that the problems of long-term water infrastructure, while exacerbated by the current drought, were no surprise to anybody who had been watching the nature of infrastructure within Queensland.

Our concerns around that process relate to the failure to have a transparent process in terms of an expansion of the role of ministerial staff and in terms of those people not necessarily being portfolio experts but being committed to the government of the day. Their intervention within normal processes of the Public Service is a problem. That is then complemented by the potential for the politicisation of the Public Service by the shorter and shorter term contracts for the SES.

In terms of solutions to that process, a couple of decades ago now the Fitzgerald inquiry clearly identified the need for some transparency in terms of the interaction between the Police Minister's office and the Police Service itself and, if there is a problem in relation to that, any formal direction given to the commissioner may have to be documented and then tabled in parliament. That sort of clear transparency does not exist in any other portfolio area. From that point of view, there is the capacity for very excessive power being wielded in an informal sense against the Public Service in terms of that process.

At the very beginning I said that both the SES and ministerial staff can also be the abused because that excessive power, in terms of the capacity to hire or fire and interfere in the operations of the decision making, is an extension of the power of the minister and the power of the minister also applies to those individuals as well. In terms of public discussions in relation to ministerial bullying both directed towards ministerial staff and also—and from our point of view, more importantly—directed towards permanent public servants, there is a lack of guidelines in relation to how that power relationship is exercised and the fact that the ministers, and therefore the ministerial staff and the politicised SES, where appropriate, are capable of exercising significant power against permanent public servants in a way that is not transparent. The Public Service then has to explain decisions that they did not make themselves but are unable to articulate the fact that it was not a permanent Public Service position in relation to policy questions but one that was caused by a lack of transparent influence by ministers, ministerial staff and a politicised SES.

In terms of that, the failure to have guidelines in relation to recruitment selection and termination for these individuals is part of the key problem, but also the fact that in terms of the current operation of the Public Service across Australia, the inability to have a transparent application of influence by politicians and their staff and those committed to the government of the day rather than good policy will continue to undermine the transparent processes of the Public Service and will continue to undermine the Westminster system. To define it from a QPSU point of view, you need to find ways of making sure that the government of the day continues to exercise appropriate power but, unless there are transparent processes both for the way that they deal with staff and the way they deal with that exercising of power, there will continue to be the current tensions which cause the problems.

Governments of the day are elected to make good decisions, not bad decisions. The problem at the moment is that the process that they use to make those decisions is not transparent, and it is not transparent to either the Public Service, which causes tensions, or the broader community.

**Mr CRIPPS:** Thank you, Alex. Thank you for providing that perspective from the QPSU and your colleagues in the Public Service. We shall hold questions until the end of all three speakers and then have a panel discussion.

Our next speaker is Mr Kevin Martin. He is presenting in his own capacity today, although his current role is as chief of staff to the Leader of the Queensland Opposition. He holds a Master of Laws, a Bachelor of Arts and a Bachelor of Commerce from the University of Queensland, and a Diploma in Company Secretarial Practice from the Institute of Company Secretaries. He was admitted as a barrister in 1969 and his career has included acting as the Crown Prosecutor, the Director of Legislation Policy at the Department of Justice, and Deputy Under Secretary and Director-General of the Department of Justice. He has acted as a parliamentary counsel for the parliament of Queensland and for the Public Trustee of Queensland. I would like you to welcome Mr Kevin Martin.

### **Observations on the Role of the Leader and Ministerial Responsibility**

**Mr MARTIN:** Thank you, Andrew. Mr Speaker, ladies and gentlemen, my comments today are some observations on the role of 'the Leader' and ministerial responsibility. I wish to make it clear from the outset that I am making these comments in a purely personal capacity. They are in no way attributable to any employer of mine, either in the past or currently. My comments are based upon observations of the interactions of various governments and ministers in a Public Service career that has now extended over Brisbane

40 years. I have been around the ridges and I have seen a lot. I know where a lot of the bodies have been buried in the past 40 years, too. As such, this is not an academic treatise but rather some reflections on actual experiences, primarily in the Queensland system of government.

I want to state at the outset that I still remain a fundamental supporter of parliamentary democracy. For whatever its drawbacks, and there are very many drawbacks to parliamentary democracy, it is still an infinitely better system than any alternative yet devised for enabling the needs and wants of a significant number of community members and interest groups to gain some recognition in a system that possesses flexibility, however impersonally and imperfectly, and to adjust to changing social, economic and political circumstances.

The evolution of parliamentary democracy has never been easy. One can now, however, legitimately ask whether a mechanism that evolved into its idealised form in the late 19th, early 20th century remains the best mechanism for dealing with the problems of the 21st century. It is now clearly arguable, in my submission, that the traditional role of parliament and the concept of parliamentary accountability and ministerial responsibility is no longer working in anything like the idealist way that it was supposed to work. This is due to many factors.

What is clear, however, is that the principle of ministerial responsibility evolved and became accepted at a time when the operations of parliament and government were far simpler than they are today and when the capacity of ministers to be personally involved in aspects of public administration was far more possible. Smaller, more personal departments of state meant that the minister actually could know what was going on, knew who the public servants were and could exercise control. Therefore, it was justifiable to attempt to hold the minister responsible through the parliament.

What is ministerial responsibility? Under the idealised view that is taught to all the bright-eyed and bushy-tailed first-year law students at QUT, ministerial responsibility involves the concept of ministers being individually responsible to cabinet and parliament for their own acts and for those of their departments. Public servants are supposed to implement departmental policy for and on behalf of their minister. Ministers collectively are supposedly responsible to parliament and if defeated on a vote of confidence should resign. Publicly all ministers must support the collective decisions of cabinet.

Realistically any observers of the Australian political scene would now concede that this ideal has probably never been fully applied in practice in Australia. One of the problems is that the inevitable structural changes that occur as society grows and becomes ever more complex and interdependent and particularly the increase in international economic interdependence that we are now seeing in the 21st century are undermining both the independence of our parliaments and their capacity to make decisions and determine policies for our jurisdiction. This is undermining the very fundamental principle of ministerial responsibility. This raises fundamental questions about the nature and role of the parliament, about the governments that are formed from the parliament and about the role of those governments as part of a system of public administration.

Now Queensland's current parliamentary democracy has evolved in a manner that impacts upon how ministerial responsibility is exercised in this state. Factors which have applied in Queensland include the following: parliament in Queensland is really different. Here we have a unicameral system with a history of strong party government dominated by a succession of strong personalities as the leader. The cult of the leader has flourished in Queensland since at least the 1920s.

Control of executive government and the resources that it has means that the government in power and thus the leader has had the capacity to utilise those government resources to create a favourable political image for themselves. Queensland as a state suffers and continues to suffer from a lack of a strong intellectual tradition and a dearth of competing mass media outlets through which the prevailing government orthodoxy of the day can be challenged.

Strong party discipline in parliament aligned with long-term electoral dominance of a particular party has meant that party loyalty ensures that, short of actual criminality, the actions of the ministers are not able to be subject to other than cursory criticism in the parliament. We have seen the willingness of parliaments to ruthlessly use the numbers of government to protect their own members from the application of the general law.

We recently witnessed a special sitting of the Queensland parliament held to ensure that a former minister could not be subject to process under the Criminal Code over allegations of lying to a parliamentary committee. Now ministers enter parliament on the basis of their party endorsement. They are appointed to their position on the basis of factual or personal loyalty to the leader rather than any specific capacity or skill to carry out the duties they are supposed to perform.

Political parties in all democratic systems, including Australian, are becoming less and less mass parties with an ever smaller percentage of the community being actively involved in party affairs from which members of parliament come. These parties that do exist are being dominated increasingly by arcane battles and factional contests. To survive the foes' battles and win endorsement to parliament means that the parliamentarian must concentrate more on those battles in order to get into the parliament rather than what they do in the parliament.

It is increasingly clear that parliamentary membership of all political parties is becoming more and more the prerogative of the party apparatchik. Does being the party apparatchik—those who can survive in that small cesspool of interparty politics—give one the necessary skills and experiences to be both a good parliamentarian and potentially a good minister? I would be bold enough to say no.

I was saddened to hear that in parliament this week a member of parliament boasted that 10 members of the government had got into parliament for having been electorate secretaries. Public administration in Queensland, as Alex has demonstrated, is not carried out by an apolitical public servant in the ideal world. It is now carried out by persons who owe their positions to the current government in power. There is a mutual benefit to both the ministers and their senior advisers and administrators in obfuscating any particular problem in order to avoid adverse community and political impacts. The failures of administration in recent years in health, water infrastructure, child safety et cetera provide continuing proof of this syndrome.

I turn to the modern role of government. Government as an institution now involves itself in the regulation of more human activities than has ever been the case. At the same time government has increasingly involved itself in the act of delivery of services to the community either directly through the Public Service, which is one of the reasons it has grown so much, or through various other forms of agencies owned, controlled and regulated to varying degrees by government and otherwise also by private sector agencies by means of contract.

How can parliament manage that public administration? Now parliament as an institution in Queensland suffers, in my view, from some grave defects. Included in these defects are the following. Rigid party discipline ensures that issues are always addressed on a 'them and us' basis. There is little or no capacity for parliamentarians with different viewpoints to achieve a meeting of minds on issues of contention. The party system of endorsing candidates in winnable seats means that the primary characteristic to be elected is a capacity to survive those arcane factional and ideological battles I mentioned previously.

Use of government numbers means that parliament is unable to operate any sort of effective mechanism to review the actions of the government or any of its departments. Through the excessive use of ministerial statements and dorothea dixers in question time the majority of parliamentary time is devoted to praising and justifying the government's actions with the leader personifying the government. Standing orders and Speakers' rulings give ministers freedom to refuse to address issues of concern to the community that are raised through parliamentary proceedings. Use of government numbers on parliamentary committees means that issues of concern raised at those committees can be avoided no matter how important they might be to the community.

This then leads to a fundamental question that must be confronted. In this increasingly complex modern society how effective is this 19th century institution—because that is what parliament basically is—in supervising and holding to account the ministers who are theoretically responsible for both the policy and the administration of the many large public sector agencies that now comprise government? How effective is the Queensland parliament really in exercising responsible control over public administration given these issues?

It is of little wonder, in my view, that parliament itself is seen as increasingly irrelevant in fulfilling the role it was traditionally supposed to fulfil. Party discipline means that decisions of executive government are ruthlessly rammed through parliament by legislation. No government or minister willingly acknowledges that his or her legislation can in any way be improved. Parliamentary committees, dominated by government members, operate to ensure that no adverse public image is created in relation to the actions of government or the leader.

Parliamentary question time, which is supposedly the traditional time for ministers to be responsible to the parliament, is now, in many ways, pure theatre—and some would say theatre of the absurd. Government members ask dorothea dix questions to enable the leader and the ministers to extol the virtues of everything the government has done and denigrate all ideas or suggestions from the opposition and normally from the Independent members as well.

Opposition questions on the other hand are more directed at providing a 10-second grab for the evening TV news than in seeking comprehensive answers to intellectually justifiable questions. Quite frankly, you do not get a comprehensive answer back from the ministers. Ministerial responses to opposition questions are not subject to any specific requirements as to relevance to the issue raised and more often than not consist merely of ministerial diatribes against the opposition.

I turn to the role of ministers, public servants and advisers. The management of large-scale, private sector enterprises at both board and executive management level is now dominated by persons who have undergone extensive training, often at tertiary level, in the skills necessary to discharge the duties of the office they perform. These specialised skills are given recognition in the rewards system for those individuals. By way of comparison, ministers who are the public sector counterparts to private sector directors are not selected from a pool of people who have undergone any similar training, nor are they rewarded in any similar manner.

It is often argued today that ministers have the support and assistance of highly skilled, now amply rewarded, directors-general and other senior staff who provide the substitute for the skill and training that ministers lack. This, however, ignores the well-recognised phenomena that directors-general are no longer independent technical experts and career public servants. Rather, they are selected for their loyalty to the leader and government of the day and are as equally concerned as their ministers in meeting the political objectives of the government. This relationship is now compounded by the growth in ministerial advisers who now form a layer between ministers and the Public Service.

Ministerial advisers often purport to speak for and on behalf of the minister when issuing directions to the Public Service. They are, however, normally recruited not for their technical expertise but because of their membership of particular factions of the party in power. Indeed, many are themselves seeking to become members and ultimately ministers. They operate through networks responsible back to their counterparts in the office of the Premier. They are thus another mechanism whereby the leader maintains knowledge of and power over what happens in ministerial offices and departments.

This then raises a fundamental question: what are ministers actually supposed to be responsible for? Given my observations over the years about the skills, interests and capacities of a whole variety of ministers from both sides of politics, I have come to a conclusion—that is, that ministers should only ever be held accountable for broad policy, for that is ultimately why people are now elected to parliament: to set broad policy parameters under which our society will be governed and allowed to develop.

There is a fundamental challenge posed by the growth of the role of the leader. Electoral contests in Queensland, while theoretically contests between political parties and competing ideologies, are actually contests between the leaders as ideological differences have narrowed. This means that the leader of the party, whomever that person might be, plays an increasingly powerful and dominant role in controlling both the political and the parliamentary process and particularly in selecting persons who become ministers. Because of this leadership approach, the inevitable result is that all ministers and their activities become subject to the leader.

Ministers survive and prosper through glorification of the leader and ensuring that nothing is done by themselves or by their department that might embarrass the leader. This principle of domination by the leader has now flowed through to the way in which public administration is structured. Whereas once public administration was delivered by professional career public servants who dedicated their careers to particular departments, virtually all public sector agencies are now dominated, managed and controlled by administrators who are, in many cases, appointed directly by the leader and who are personally responsible to the leader for their continued employment.

This process, which has increasingly been adopted in Australia since the activities of Peter Wilenski, has now resulted in a senior Public Service which is fundamentally directed at supporting not just the party in power but the leader of the party in power. When the managers of all Public Service departments are appointed by and continue in their jobs only with the continued approval of the leader of the state or the nation, the capacity for open and effective relationships between such managers and the ministers they are supposed to serve is called into question. Ministers are often actively subverted by their senior public servants acting at the behest of the leader and his advisers for political and factional purposes.

Traditionally public servants with the benefit of tenured employment have a relationship with their minister where they could provide impartial advice even if it were politically embarrassing without fear of retribution and also of job. In return for giving this loyalty to the minister of the day, the public servant could expect the minister to fight for the department to obtain the necessary budget resources to complete the department's objectives and for the minister to defend the department and the public servants against public criticism.

With all senior and not so senior public servants now in a personal relationship with the leader to maintain their employment, ministers no longer can expect the same degree of loyalty from their department, and accordingly they no longer need to display a traditional supportive role in relation to the actions of their department. Ministers can legitimately refuse to accept any degree of personal responsibility for any misadventures by the department that become public knowledge perhaps through the parliamentary process. Responsibility, in my view, requires a two-way relationship. Domination by the leader in public administration has substantially now undermined that relationship between a minister and the department.

In my view the argument is now overwhelming that the delivery of services by government needs to be delivered under a new paradigm for public administration—and, that is, that it should as far as possible be delivered in a manner similar to that of public sector agencies; namely, with a board of independent directors who manage the agency through professional managers in much the same way as the United Kingdom has evolved over recent years its delivery of services. Ministers should only be responsible for broad policy that would primarily be reflected through the legislation and regulations that would govern the operations of such agencies, be they government or private sector. The legislation would need to set out the broad policy which the independent board would implement.

Naturally, new mechanisms would have to be developed to oversight the operations of such agencies and ensure that they deliver services in accordance with the policies incorporated in the legislation enacted by the parliament for which the minister would be held accountable. Perhaps through this there would be an opportunity to properly develop a committee system in the Queensland parliament

that would give members a proper role in the oversight of service delivery rather than the currently extremely limited committee system that operates in Queensland. One consequence of this approach of course would be that it would already be apparent that many of the services currently supplied directly to government can just as easily be supplied by the private sector. Governments' role could arguably then be confined to that of policy determiner, funder and regulator.

Our society has easily adjusted to the private sector now supplying services such as airlines, roads, rail and public transport, electricity, water, building supervision and approval et cetera. It could just as easily adapt to the private sector supplying services in areas such as currently supplied by government as public health, public education and similar services. That raises of course fundamental questions about why have a state level of government, but that is an argument for another day and another place. We seem to now be having an argument about why we have a local government sector in this state, but we will leave that go.

Of course the adoption of any new paradigm would require pressure for what would be regarded as revolutionary change and it is difficult to see that occurring in Queensland or Australia in the near future. So long as economic times are fair, so long as the fundamental services currently expected from government are supplied, the tendency seems to be for the benefits of incumbency to ensure the continuing return of existing governments to power. This seems to occur no matter how much concern raised by those with an interest in the matter might raise about the internal operations of government or parliaments. In all Australian governments where government has changed since World War II, it is difficult to identify any revolutionary change in parliamentary practice or procedure following such change in government. Change has always been evolutionary in Australia and it might be cynically suggested that it never results in making the tasks of the political forces forming government more difficult. Accordingly, we are still awaiting a set of circumstances where those changes will occur.

I have read with some interest the proposals advanced by the ASPG. Like all moral and ethical codes, and indeed religions, they contain many proposals that are difficult to argue against in principle. However, as religion has constantly found when applied in the real world, arguments in support of principles of morality and ethical behaviour do not hold up very long when faced with the urgency of satisfying political needs. In the case of the political process, this is particularly so when the objective of all politicians is to seek to maintain their long-term power base in government.

My experience over the years leads me to suggest that many politicians will indeed support these proposals and seek to maximise their political advantage by publicly supporting the principles. In practice in government, however, their design to maintain power which might be threatened by the application of those principles will ensure that the principles will almost always give way to the practical necessity of retaining power. This is clearly demonstrated by the way in which the objectives of freedom of information have been subverted through the use of cabinet confidentiality and commercial-in-confidence provisions.

However, I conclude by saying that, notwithstanding the cynicism with which I view the process, I am always a believer in striving for improvement. Human experience indicates that only through striving forever will we advance. And so I believe that we should keep arguing for improvements in these standards of ministerial accountability and public responsibility. We should be realistic enough to accept that it will not be a great leap forward; it will be a series of very, very small steps. Thank you.

**Mr CRIPPS:** Thank you, Kevin. That was provocative and confronting, and I think that you ought to brace yourself for a series of questions upon the completion of our next presenter's speech.

Speaking of our next presenter, I would like to introduce you to Mr Stephen Austin. Steve's career in radio began in 1984, when I was three years old, when he joined community station 4ZZZ. At the same time, Steve built his radio experience by reading newspapers on air for radio 4RPH. Steve completed a diploma at the Australian Institute of Radio and Television Production. Not long after that, he joined ABC Radio in Townsville. I do not know if you were ever treated in a particular way by Steve, Mr Speaker. No doubt he will recall. He worked in Townsville for seven years. When he returned, he obtained a position with the then *7.30 Report* in Brisbane. He then became the inaugural producer of the Queensland ABC's television *Stateline* program, before moving across to 612 ABC in Brisbane. He served as the station's program director and has presented the drive, morning and evening programs. Steve has a degree in humanities from Deakin University in Victoria. He will now give us public servants, politicians and academics alike a perspective from the media, which filters all of our messages to the people of Queensland.

### **Reality vs Theory: Where Government Meets the Media**

**Mr AUSTIN:** Thank you, Andrew—I think. If it is Kevin Martin's job to know where all the bodies are buried, it is my job to dig them up, let them rot in public and find out who was there when they were murdered. Thank you very much. It is very kind of you to invite me to speak to you today, Mr Speaker, Mike Reynolds. I also thank former and serving members of parliament and members of the public. I think there is one here and I am delighted by that.

I wanted to title my speech 'The spirit versus the letter of the law'. If anything, I make this point clear: I stand for the spirit of the law and not the letter of the law. If I have a criticism of parliament, public servants and others, it is not that they are not decent people. They are, in my experience. Once I grew up, I learnt  
Brisbane

that they were very decent people. However, I do believe that professionally sometimes we lose sight of the spirit of the law. I am going to try to make a logical, intelligent argument to prove my case and, hopefully, that will be of benefit to your further studies.

I am required to let you know that my views are not the views of the ABC. I am here only as a private citizen who has been in the media since the early '80s. I am not a member of a political party. Some journalists are. Some journalists and managers of the ABC are. It is a juggling act that I do not believe I could perform while adhering to the MEAA code of ethics. Personally, I do not see how they can do it. They are good people. I just do not think I could.

I will give you a little bit of background, for what it is worth. I have never studied politics at university, apart from basic first and second year stuff. I studied Renaissance art and journalism, and it was far more worthwhile in my opinion.

I was raised by parents who were very conservative, deeply moral and very concerned about the direction of society in the 1960s. If you think things are bad in 2007, from my reading of things it is not really that much different from the 1960s. My parents, as a result, banned us from listening to rock music and things like that. I was forced to listen to a station called 3AR in Melbourne, which simply broadcast parliament day and night. It was torture then, but I think it is of benefit now. They were well meaning and still are well meaning.

I want to give you my view or philosophy of journalism if I can. First of all, I quite like the statement once made by Simon Townsend of *Simon Townsend's Wonder World*. He said his dad had a wonderful phrase which was that it is the job of journalists to afflict the comfortable and comfort the afflicted. For me, you could sum up journalism with that whole point.

There is a more cynical view, which I am trying to avoid and it is really hard. It is set off by one of my favourite journalists, a guy called John Pilger. John is a very angry man and he has very good reason to be angry. He has been looking at human beings all his life and he has discovered something that ancient historians have discovered and known for a long time, which is that we are a flawed species. The statement I refer to is by an Irish journalist who said, 'Never believe anything until it is officially denied'. I have not yet formed a view on that statement or that view of journalism. I am trying to avoid cynicism. I believe that organisations like this can help that be avoided.

Also, my view as a journalist is a minority view. I do not represent the parliamentary press gallery or the mass body of journalists in Queensland. I do not even know what they think as a group. I bump into a whole lot of individuals and I bumped into some last night, but we disagree with each other more than we disagree with parliamentarians.

I urge you to read a speech that has become a bit of a guide for me since the early 1990s, written by a very good writer and story teller. He actually wrote the TV series *ER*. He is a journalist by anyone's account, although not a traditional newspaper journalist. He is a guy called Michael Crichton. He has a web site. In 1993 he was asked by the American Press Federation to be their annual dinner speaker. He gave a very damning critique of American journalism—which I think is quite good on the whole. He summed it up in this way, and I will pinch a line out of his speech: 'The American public cannot tell the difference between self-serving self-interested politicians and the journalists who report on them.' I think that is a strong point and it is a problem for us as journalists. I repeat that my views are my views only. I think other journalists have very different views.

I do think that journalists are unique. First of all, if you call a plumber or you employ any sort of tradesperson, teacher or academic, they are all paid to do a certain job. Journalists are paid to do a job on someone else. I will try to explain that in a better way. Someone else pays me and I come to you and say, 'I want to tell your story.' That is a very different role from most people in society. We are not telling our employer's story and we are not representing our employer. Someone pays us and I say, 'I want to tell your story.' I hope it is clear why that is.

I am going to try to give you a series of vignettes that will show how I, as a journalist, have found where the media meshes with government, with very flawed people. I will start with my own self critique. Most of my media journey has been fairly ordinary, with occasional bursts of excitement or a good story. I have never won a Walkley Award, although I wish I had. I have not yet, but who knows: one day I may win a Pulitzer. However, the bottom line is that most of the day it is daily grind, meeting deadlines or, in the case of radio, every second is your deadline and it is fraught with danger from defamation or liable, or worse still getting your facts wrong and having to say 'I'm sorry' on air. I have had to say 'I'm sorry' on air. The great thing about the ABC is that we say sorry instantly if anyone rings us up and says, 'Mate, that was wrong.' On different occasions I have refused to say sorry and it has been a very heavy affair. Hopefully, I will give an illustration of why that is.

My experience comes mainly through ministerial media advisers. I actually feel like I am auditioning for *Dancing With the Stars* when I ring up and say, 'I want to get an answer from the minister on this'. Perhaps Kevin as a lawyer will have a view on this, but it is my understanding that in law when you give a verbal commitment to something that is what is called a verbal contract. When as a journalist I ring ministerial media advisers, increasingly I am finding that that verbal contract is being broken. The verbal contract is: I ask a question and you give an answer. Today, I am not getting the answer but I am learning to foxtrot. It is not something that I want to do. I do not find the foxtrot good. I would much rather tango.

My point is that ministerial media advisers seem to have interpreted their role, and it has evolved unofficially because there are not many guidelines for ministerial media advisers. They are guided, strangely, by the MEAA code of ethics. I think the first line of that code is still respect for truth and the public's right to know, which is its overriding principle. Maybe David Solomon can jog my memory. However, you do not hear much of it because they see their employment, like our speakers have said, as linked to the minister. I am not surprised. If I was the minister, I would want them in that role. I would want them covering my back, being my defender, watching out where my media problems are—absolutely.

However, I think there is a better, more professional way of doing it, so I am going to suggest what I believe is a professional, workable option for members of parliament. First of all, I actually think that public relations people make better media advisers. First of all, they are better trained, not in the area of digging out information and telling stories but in dealing with other human beings. Many times I have been dealt with appallingly. I have done it myself. I have made the same mistake. I have been rude, aggressive, overbearing. I have dealt with journalists who represent ministerial advisers who do the same thing, except that when I come to them I find they do not answer questions and they will do everything they can to steer me away and get in the way.

I find that professional public relations people are actually smarter at dealing with people because they were taught when they did their university degree. You have to understand that media management and public relations is first of all a people business. It is a people business and journalists, I have to tell you, are not good with people. If you think I am wrong, I have good empirical solid data to present to you. Go to the Roy Morgan surveys web site and look at their latest analysis of the professions. Newspaper journalists are right down the bottom of the list—sorry, David. I actually think that is unfair of them; I do not know if you are still working that much. The newspaper journalists' reputation amongst Australians is right down there and may actually now, you will be pleased to know, have gone lower than politicians but it is right down there with used car salesmen. I actually think that is unfair. But that is because when ordinary Australians deal with journalists it is in pretty appalling circumstances and journalists are pretty clumsy at dealing with the frailties of human existence. Often you find that journalists have come out of university, have been hyped up by people like me who occasionally do guest lectures and go out there and just bulldoze their way through human existence.

That is not what people are on about. I think we are a fragile species. We are very flawed. All the evidence is we do not act rationally. We act emotively. In terms of everything from how you buy a car to choose a partner to the way you live your life, we act emotionally. It is the same way for journalists when they become media advisers. I actually think public relations people make more professional media advisers because they understand it is a people business. I actually think they understand that if you give a journalist some good useful information you actually build something—you build a relationship, and it is important to build a relationship. I do not think media advisers, at least in this current government and others, know that well enough.

The public relations code of conduct is very different from the journalists code of conduct. I actually think it is more applicable to the work-day environment in which they have to work where they represent a minister. They might say they do not. I will try to explain it this way. In 1992 post Fitzgerald you might remember that the wonderful Electoral and Administrative Review Commission, of which David was a former commissioner, once held a review of government media information services. I went along to it; came down from Townsville at my own expense because I thought at that part of my career it would be worthwhile to hear these luminaries of journalism. Anyhow, the revolution of truth, justice and the Australian way was going to burst forth.

So I heard journalists get up there and say, 'When you become a media adviser you use all the skills of journalism but you simply turn them the other way.' In my experience that is nonsense. At first I thought, 'Yes, that's true. Yes, that makes sense. Yes, you use skill, you use files, you use contacts, you use databases.' But that is not actually what a ministerial media adviser does. I think that they have become through the nature of their employment a direct mouthpiece of the minister. As you know—or I assume you know—I might want to ring up and find out what Minister Mike Reynolds says when he becomes Premier. I will speak to his adviser and his adviser will say, 'Minister such-and-such says dot dot dot dot dot.' And so that will become some sort of quote if I cannot speak to him directly on air. So they are directly the tool or the mouthpiece, if you like, of their minister and it is very difficult for them.

I often find that ministers want their media adviser to get them out of taking the fall for something, get them out of taking the heat for something. Politics and parliament are a difficult arena. They have to deal with and tackle difficult problems. I think that PR people are more professional and more skilled at dealing with the human nuances. Believe me: if you are a media adviser and you start to take me on a dancing lesson or you start to obfuscate or abuse, as I get occasionally, it really makes me angry. With maturity as a journalist I have learnt not to get angry in return. I have learnt to build a file. Beware! The ABC hates my filing cabinets. They are starting to come in handy now. It is something you only build with a period of time really. You do not get that in the early part of your journalism career. You just build it over a period of time. That file is going to come in very handy, and I will write a book.

Ultimately it is about people and all of the surveys indicate that journalists are not good with people. I should point out, by the way, that I am not sure that there is the great collapse of institutions like is commonly held. I cite Clive Bean from QUT's work in terms of the Australian social studies survey they did. He looked at who do we trust—it is easily accessible; I can gladly provide copies—and the four most

trustworthy institutions in Australia were the Army at No. 1. That is not surprising, because we have never had a coup in this country—sorry, we have actually had two and both related to rum pre Federation, one in Darwin and one in New South Wales. But there have been no Army uprisings, thank goodness, in this country. The second is the police, which is a bit of a surprise to me, but nevertheless they are the second most trusted institution. Then equally the ABC and academics come next, which I am insulted by but maybe academics think it is a bit of a problem too.

But I do think that in terms of brands or institutions there is a great deal of public respect and trust out there for our institutions, including the ABC, which sets incredibly high ethical standards. We have more ethical hoops to go through now, I believe, than all of the integrity advisers and what-have-you of parliament. We have three oversight committees. Every single state has a different manager. We have an editorial policies director. We have review committees. And all we want to do is tell a story! It is just, I have to tell you, a nightmare. But the ABC is making us do it. So you can continue to have confidence that we are being crushed.

Can I also point out that in my experience journalists like to be near power. Journalists who have worked as a journalist and have been treated pretty poorly by the chief of staff in a newspaper or what-have-you often get disillusioned and on pretty average pay—a bit below average in some cases—for pretty long, hard hours that destroy their family, like politicians. So they say, 'Blow it! I'll become a ministerial media adviser. I'll get 70 grand a year. It's a better option.' And they like it. They get to travel around. They get to do things. They get to feel like they are making a difference. I mean that quite seriously. They do get to feel like they are making a difference. Many journalists are idealistic and maintain that idealism and really believe that they want to strike a blow for justice and truth.

But I do believe that that is not the role of someone who adheres to the MEAA code of ethics and that PR people are much better at it. I do believe that we should leave political strategy to the political advisers. It will come back to bite you. I was interested to read in the *Los Angeles Times* recently the build-up of forces that are coming against Karl Rove, US President Bush's unusual adviser. You may remember that the Republicans were very critical of Bill Clinton in the Monica Lewinsky affair when he started to debate with the Oversight Committee the meaning of the word 'is'. Do you remember that? He said, 'What do you mean by "is"?' Karl Rove from the Republican side of things has been called before the Texas Senate committee and he has asked them what they mean by the word 'know'. This may seem absurd, but I am worried that this is spreading. I know that we look at other jurisdictions, because I have had those same discussions with ministerial media advisers where we are arguing about the meaning of a conjunctive word. At the end of it I say, 'For God's sake, just answer the bloody question will you. Did he or didn't he know the person?' And they try to dance around it because they have all been taught that you can steer journalists away by distracting them. That is one technique, and it is a pretty bloody clumsy technique and it usually does not work on people who have been around for a few years.

So I actually think that journalists really do need to not be ministerial media advisers but public relations people and you may find that you would be shocked at the amount of PR campaigns that end up as big positive colour stories in newspapers. If you are a politician or a former polmie here, you want to hear what I am saying. There are an awful amount of stories that we have been succoured by on the ABC where a very effective PR strategist said, 'I know how we can make this run.' They are very smart and very clever. I bag PR people all of the time because we are at opposite ends. A lot of my friends are PR people.

I have a couple more points to make. I want to give a couple of quick examples from talkback radio if I may. Talkback radio is a great opinion maker. We held a talkback a couple of weeks ago and I said, 'What do you want from your politicians—federal or state? With a federal election later on this year, what do you want?' The switchboard went nuts. It was a desperation call from my point of view. We had no story. We thought this was worth asking about. We went for an hour and the one thing that people wanted from their politician was integrity. It was the one thing they felt they were not getting. They did not feel that we were much better, but they really did want integrity. What we do about that is for others to highlight. I also come into a conjunction of using FOI laws. I have two brief examples.

Last year you might recall that Justice Bill Pincus resigned as a commissioner of the Crime and Misconduct Commission. It was a big story in radio news. I said, 'That's unusual. Bill Pincus is a smart man. He's a good guy. He's got a good reputation. He's close to the government of the day,' and I mean that in the sense that he works well with them. I am not suggesting that he is owned by them but merely that he works well with them and he resigned as a commissioner of the CMC. So I rang the Premier's office and spoke to one of their many media people and said, 'What's the go?' They said, 'Why would we know?' I said, 'You're the Premier's office. All these people are contracted to the Premier.' They said, 'We don't know.' I said, 'Come on, mate! I want to know what happened.' They said, 'Why don't you ask him?' I thought, 'Here we go!'

So I rang Bill Pincus and had a respectful chat but he said, 'Look, Steve, there are certain confidentiality agreements. I just cannot talk.' I understood that so I went back to the Premier's office. I said, 'He says he cannot talk. He says he sent the Premier a letter.' They said, 'Yes, he has.' I said, 'Okay, well thank you for not telling me that. Why did he tell you he resigned?' They said, 'I can't tell you that.' I said, 'Why can't you tell me that?' They said, 'It's a confidential letter.' I said, 'Is the letter marked "confidential"?' They said, 'No, but anything that goes to the Premier is confidential.'

This was a natural conversation so I will cut to the chase. I FOled it. I got the letter last week. It will become a story next week. It is a fairly minor story. But the bottom line is that Justice Bill Pincus, who is a good man, simply resigned because he said that he could not work with commissioner Mr Needham. What the reasons are for that and what is behind that I do not want to speculate about. It is not appropriate to either gentleman in any way. It is a relatively minor matter. It is clearly in the public interest if a commissioner of the CMC resigns, for who knows what reasons. It is not a difficult issue. But that is the level of childishness that is occurring with journalists who really want to dig and find out things.

Another issue is examples in relation to me. I found out that last year the Premier had actually complained about me when I was presenter of the morning program for biased and unethical conduct. Bias is a complaint that incumbent governments always make. The federal government makes it all the time for obvious reasons and the state government makes it for obvious reasons. Unethical conduct is a serious charge.

What I did was find out about this. I contacted the Premier's office and said, 'I would like to know what it is that I have allegedly done.' They said, 'You know what it is.' I said, 'Good, okay.' I contacted them again and said, 'I would like the transcripts or the letters that you sent to my employer alleging a serious professional charge of unethical conduct.' To cut to the chase, after toing and froing I FOled the information.

I was initially given an email to someone in the ABC that bore no relevance and did not talk about me or anything. It had to do with television. So I went to the next stage of the FOI process and said, 'Look, you have clearly had discussions based on this, this and this.' At this stage I did not tell them that I already had some of those letters. I do not know what the other ones were. They sent me a long two-page letter saying, 'If anything does exist blah, blah, blah. Basically you are going to have to go through the whole process, mate.'

I wanted to do that just to find out what was actually happening with the Premier's office. The end of the story is that they have got to absurd levels of media management because they have created a problem for themselves. I think that problem can be ameliorated simply by changing their media management. They may actually find out that the people on the outside, media people, are very similar human beings to the people on the inside. We have opposing interests and different interests but that does not necessarily mean you have to be irrational. I hope that I can answer some questions that may be of use to you in your studies in trying to make parliament better. I believe that parliament, at least in the chamber, has become better under Mike Reynolds' leadership. I think he has improved the standard inside parliament. It is the ministerial offices that I am really concerned about. Thank you.

**Mr CRIPPS:** Ladies and gentlemen, I am conscious of the time, but are there any questions?

**Mr McLINDON:** My question is to Kevin. With the Queensland parliament would you see in the near future or in the fullness of time a bicameral system reintroduced? There are elements of American politics that I like. If you believe in something whether you are a Democrat or a Republican you can cross the floor. Between that mechanism and a bicameral system you would probably have more accountability and a better outcome in terms of policy implementation in the state.

**Mr MARTIN:** Bicameralism is often seen by people who are dissatisfied with the way in which a unicameral system works as a solution to the problem. Whilst it would mean that the process of parliamentary government would be different and whilst it would introduce some inherent checks and balances on executive government due to the fact that executive government would have to deal with two different collections of parliamentarians, at the end of the day I do not think it is the magic pill to fix problems in the political system. It would change the nature of the current problems that exist in the Queensland political scene but it would not fix them.

Frankly, I believe that fundamental reform in the areas of accountability, FOI, various institutions, telephone tapping powers to the CMC—this is very useful as Western Australia has recently demonstrated—and a whole host of other accountability mechanisms could be introduced that would obviate the difficulties without going through the trauma of trying to create a second house of parliament. Frankly, I do not think the people of Queensland have any great respect for politicians to the degree that they will agree to divide them into two houses or, perish the thought, create more politicians. I do not think that is the real solution.

The great problem is, as has been mentioned by other people, with politics in Australia, like even now with litigation, that so much of our system is extremely adversarial. That has been good and also bad. It would be better I believe if we loosened the strings of party discipline that currently apply in the parliament. We should put our politicians in a situation where they do not have to show their hairy chests against the other side as they do each day on the floor of parliament, during particularly question time, and create mechanisms whereby they could really come together and have a meeting of minds.

It is often said that there are enormous friendships across the chamber. I observe them in practice. Notwithstanding the Speaker's comments this morning about you eat here and I eat there, there are enormous family and personal relationships across the political divide, oftentimes between people you think are diametrically opposed to one other. We need to create mechanisms where there are those capacities for human beings to work together to address a problem and be useful. It is going to take, however, a willingness of the political leaders on both sides of politics to let their controls loose and not feel as though they are under threat if politicians get together and evolve something that they as the leaders have not given prior approval for.

**Mr MESSENGER:** Alex, I really enjoyed your speech. You talked about the security of tenure for professional public servants. I was wondering whether you could speak about casualisation and whether you think that there is an increasing trend for casualisation of the Queensland Public Service?

**Mr SCOTT:** In terms of casualisation that normally occurs at the lower levels, all the information we have so far suggests that casualisation has been remarkably reduced over the last five years by this government but temporary employment has significantly increased. Casuals in terms of an industrial definition about loadings et cetera has reduced. Temporary employment is occurring at the lower levels. The use of contract employment for the SES, the higher level, is increasing the amount of insecure employment. It is not through casualisation but more through temporary employment which means more public servants at the lower level are concerned about offending senior people and therefore losing their jobs.

**Mr CRIPPS:** This will be the last question. Mr Speaker.

**Mr SPEAKER:** This is a question to Kevin. Can I say, Kevin, that I probably disagreed strongly with about 70 per cent of what you said and I am not too sure about the other 30 per cent. I was somewhat intrigued that you have come along in a private capacity today—and I very much respect that—but as someone who has had 40 years in the Public Service. With your comments in regard to FOI, I am just wondering that, given that FOI changed—not at the behest of public servants but it was a political commitment that was made in terms of FOI in the early 1990s—in terms of the area that you were in in government, did you work towards these changes and recommend them to politicians in the jobs that you had as a D-G? Or alternatively, have you formed these strong views only since you have been close to the parliament in action?

**Mr MARTIN:** Thanks, Mr Speaker. As a senior public servant in the pre-FOI era, I was not a great proponent of FOI, nor indeed was the rest of the Public Service. Back in those days, particularly in Queensland, having had a long-term government—and despite all the tales about the way in which people were badly treated in the Public Service by the Bjelke-Petersen government, even if you fell out with that government at least you were kept in a job and you were not thrown out as occurred when the Goss government changed—there was a high degree of esprit de corps and a feeling of loyalty to departments.

In those days in the Public Service people joined not just the Public Service; they joined particular departments as a career. This inculcated a view in the public servants that they knew best. They had been there longer than any of the ministers had been, apart from maybe the Premier. They had devised the policies and, given the nature of the politicians who formed the ministry in those days, they were very much guided by the senior public servants. Therefore, the concept of FOI, of opening up the departmental files and letting outsiders see what was going on in government, was very alien and very strongly resisted across all levels of the public sector.

In 1989 there was the Fitzgerald inquiry and the new government. It opened new doors. For a lot of the public servants of those days who survived those changes, all of a sudden we found that the preconceptions that we had about the impacts of things such as FOI, administrative review, judicial review of administrative decisions et cetera in practice did not come to pass. The world did not end. We were still able to do our jobs. So to a considerable degree those new ideas came in and were generally accepted by the Public Service. Society in Queensland also significantly changed. The way government operated also changed. I think nowadays the majority of senior public servants accept that they are now required to be accountable not only to the ministers and the government but also to the community.

I personally have now formed the view that politically government would get itself into less trouble if indeed it did the Scandinavian thing and put all the decision making up on the web. Let them see the submissions that go to cabinet. You do not make the discussion around the cabinet table public; you make the final decision public. But let the community see the advice that government gets. Let the community see the advice that the people who are exercising discretionary power within the Public Service get before they make those decisions. If they get it wrong, then you have appeal mechanisms to do it.

This system we have at the moment where you have FOI in name but because of paranoia by governments—and it is not party political because I know the Borbidge government was exactly the same as the Beattie government and the Goss government in relation to this—running things through cabinet to provide cabinet confidentiality exemptions, or declaring things to be commercial-in-confidence when the government is handing out tens of millions of dollars of taxpayers' money to aid certain vested private sector groups, is in my view just wrong. I am prepared to admit it. I have changed my views over the years from the views that I had as a senior public servant in the 1980s to today. I think we have advanced but we need to advance more. We need far more openness and, politically, I think the government that moves in that direction will have far less political trouble than we do have at the moment.

**Mr CRIPPS:** Thank you, Kevin. On that note we will have to end that session. I ask you to thank Mr Austin, Mr Scott and Mr Martin for their presentations today.

**Ms MALONE:** Ladies and gentlemen, it is taking us a couple of minutes to get it together, so if you will just bear with us we will carry straight on with the panel session. Because we are running a little over time, at the end of this session we will reduce the afternoon tea break to five minutes. Thank you.

**Prof. SCOTT:** I am Roger Scott and it is my job to chair this session. We are conscious of time getting away from us, so I was going to invite each of the five panellists to talk for five minutes. That will give us 25 minutes of things to think about and then have you ask questions of any of the panellists, and I am sure the panellists will want to come back to each other perhaps. It has been suggested by Liz, who I was offering the first opportunity, to start at the other end with Ken Coghill.

**Dr COGHILL:** I thought I would sit at the other end so I would get the call last and I would be able to hear what the others have to say. Firstly, I want to say a couple of things by way of background. The process that we have been following through with this accountability working party has been to issue the *Why accountability must be renewed* document, which you are all familiar with. Our second step then was to propose a particular set of reforms in Victoria and to ask the political parties and individual candidates to make a commitment to a charter of accountability which incorporated those proposals in Victoria in the course of the last state election.

The response of the government to that—the Labor Party—was to make a commitment to have an all-party parliamentary committee inquiry into those proposals if they were re-elected. As you know, they have been re-elected and there is now an inquiry which has been handed to the Public Accounts and Estimates Committee in Victoria to look very broadly at further improvements to government and parliamentary accountability in Victoria and to examine several particular points, some of which have been covered in our discussions here today.

Given that the parliaments in Australia all learn from each other, it seems to me that there is a great opportunity for anyone here to make a contribution to that inquiry—and the details are on the web site for the Public Accounts and Estimates Committee—for two reasons I think. Firstly, that committee is likely to get valuable advice and input from people from outside Victoria and, secondly, whatever recommendations that committee makes may well also have application to jurisdictions outside Victoria. So can I encourage anyone here with an interest in making a submission or a comment on these matters to have a look at the web site and to put a submission in. The closing date is 11 May.

My overall interest in this area really comes from a concern with good governance, and that is my primary area of teaching and research at Monash University, and what I see is a very important role for parliaments in furthering good governance. One of the reasons I see that as an issue is coping with the sorts of challenges facing the states, the whole of Australia and indeed mankind—issues like climate change and the sorts of changes that we have to make in practices both domestically and internationally just for the wellbeing of ourselves and our fellow man. That requires a very adaptive capacity on the part of government and on the part of parliaments. It strikes me that for parliaments to play their role in that adaptive capacity of our systems of government they have to be open, they have to be receptive to new ideas and governments have to be accountable both for what they are doing and for the policy innovations which are necessary to develop for mankind to make these sorts of adaptations. So that is the sort of context from which I come in approaching this.

It seems to me there are several particular things which come out of today's discussions which are important and relevant to that objective. One of the primary ones, as many speakers have said, is transparency, and that comes in various forms. It certainly comes with FOI, but in addition to FOI we must not forget that the parliament is, independently of FOI legislation, entitled to get information from ministers and from government about what government is doing and how it is doing it and how successful it is. So that extends to freely making information available in responses to questions without notice—in other words, during question time—and to questions on notice and of course information sought by parliamentary committees. All of those things are currently lacking. All of those things need to be seriously addressed in renewing accountability.

The second area I wish to comment on very briefly is the sort of induction and training which is provided to members of parliament, and I am very encouraged by the comments that I have heard today about the induction programs now provided in Queensland and particularly the emphasis there is on ethical behaviour and understanding how to resolve ethical dilemmas in one's life as a parliamentarian. So it strikes me that there are a number of very important contributions which have come out of today's conference. I thank you very much for organising it and giving us the opportunity to come from interstate to participate.

**Prof. SCOTT:** A former Speaker who responds well to time controls. Clem Campbell is the former member for Bundaberg and long-serving member involved particularly in issues of parliamentary accountability.

**Mr CAMPBELL:** Thank you very much. Good afternoon one and all. With the increasing power of the executive, I have seen an erosion in the standing of the institution of parliament and subsequently the members of parliament. It first came to me in the early eighties with the budget process, which is one of the most fundamental and important aspects of parliament. For the first couple of years I would eagerly be in that parliament waiting for the budget papers to see what was going to be done for my electorate. In the third year I was outraged that the morning before the budget everything that was going to be spent in my electorate was out there. In other words, the spin and the public perception were more important than the accountability of the executive for the parliament, and it has gone on and on.

I see it as members of parliament become members of the executive—that in some way that implies that they are not quite as accountable to the parliament now as a minister in the executive. Then there is the need to worry about the pecuniary interest register. Those things are just not as important. In my little area I see it more than anywhere else. I would expect that the standard of language of ministers would be higher than other members of parliament, but it is lower. They are the ones who usually have the lower levels of language and it then degrades down that way. I believe there is an important aspect of awareness, education and support to ensure we maintain those aspects of being a member of parliament and those aspects of leadership that Lord Nolan outlined so very importantly as characters of good leaders and as good members of parliament.

The other issue that has concerned me over time is the public perception in terms of issues such as conflict of interest. As soon as you hear that a member of parliament has a conflict of interest, people think, 'He's done something illegal. Throw him in jail.' It is just the perception now and it should not be there. I have changed it around: now I do not have a conflict of interest; I just have competing interests simply because of the way the public has seen it.

The next issue is whistleblowers. I have not seen one whistleblower who has been effectively protected for what he or she has done. It just cannot happen. You do not want to work with a whistleblower because you know there are some little things that you may do and therefore it is just not safe. I believe we should have public interest disclosures. It should be announced every day that you are allowed to make a public interest disclosure rather than being a whistleblower, and I believe that could have an important role in change. Awareness, education and support are areas to be looked at for members of parliament.

Finally, I turn to the issue of privileges of the member. What was a parliament doing taking away this aspect of criminal charges or criminal intent with regard to behaviour before a parliamentary committee or the parliament itself? I would not like to be a member of parliament where you could suffer criminal charges for the work you do as a member of parliament in parliament or on a parliamentary committee. I saw ordinary members of parliament who served on the Parliamentary Criminal Justice Committee prosecuted by their opponents simply because they served on that committee. An allegation would be made against them for disclosing confidential information. Those members then had to get legal representation to face possible charges of two years in jail. It does not help you to do your work. If they have done something that is against the action of parliament or the parliamentary committee, we should have it in here. It is more important for those members who are Independents or in the opposition. We have to protect them and their role and their behaviour as leaders and representatives of the people of their electorates and the parliament.

**Prof. SCOTT:** I think we are responding to one-minute warnings very well. I do not think this gentleman needs any introduction.

**Mr SPEAKER:** Thanks very much. I spoke before, so I will try to limit my comments to a shorter period of time if I can. Can I say that I agree with what Kevin Martin said before in that if you are open, transparent and accountable your job is made easier. I found that particularly when I was minister for child safety when I was bringing in changes to the child protection system. A couple of speakers—I think Alex and Kevin—mentioned the health crisis and the child safety crisis. When I was minister I used to commonly say—and I said it dozens and dozens of times—that governments of all political persuasions should be ashamed of themselves for the way that they have treated the staff in the Department of Child Safety office, because no government over a number of decades had an open, transparent and accountable system which could be questioned in the parliament or questioned outside.

We have had some very, very good viewpoints given today—some contrasting viewpoints. There is a commonality in the theme and that commonality in the theme is about the executive being accountable to the parliament in a much better way than it is today. But the conundrum for me, as the Speaker of the Queensland parliament—and this is a challenge that I would like to put today to the executive, to government members, to opposition members, to the Independents and to the one member of One Nation—is that the adversarial system that we have today counters against everything that we want to do and, unless there is a tripartite understanding across the parliament that we need to be open, transparent and accountable and that that is a better system of governance for all of us, we may as well pack our bags, go home and not talk about it any further because the executive is extraordinarily powerful.

Kevin said today on one occasion that the Speaker rules in the parliament. The Speaker rules in the parliament based on standing orders that are actually agreed to by the executive and the parliament. The Speaker is bound to make decisions based on the standing orders. If you want to change the standing orders, if you want to have a better system of committees and a whole range of things, we need to be able to get the executive and the opposition and other members of parliament to say, 'Enough is enough.' Let us get on with the job of making ourselves much more open, transparent and accountable. If you do not get that agreement, we are really whistling in the wind.

**Prof. SCOTT:** I would like to invite Kevin Rozzoli to join us. Kevin is one of the moving spirits behind the paper which has been at the core of this conference. He is a former Speaker of New South Wales.

**Mr ROZZOLI:** I will try to be as brief as possible because I spoke before. There are a couple of things I would like to say following on from the comments about changing the budget debate. I will just remind you that it was probably an all-time low in New South Wales when the last New South Wales budget went through all the stages in less than a day. That is great democracy for you.

I made a comment earlier that we felt the things we had in our paper were a fairly modest raft of suggestions for improving government accountability. I think today's proceedings have proven that because the debate has gone much wider than things that we had in the paper. I think it shows that it is something of considerable concern to people who think about the process and that there are many ways of approaching it.

One of the things I think we need to do is to realise that it also requires cultural change: you can change mechanisms, you can change the law, you can change requirements, but you have to get an adjustment in the way people think to get permanent change. You have to have a much more ethical approach to things. What is ethics? That is another problem in itself. What is the ethical approach? I think we all understand that doing the right thing for the right reasons is ethical. We have had ample evidence today that people are not necessarily doing the right things for the right reasons. What is the solution? I suggest there are many aspects to the solution. Pardon the advertising plug but some of these solutions are addressed in my book. In fact, it addresses a number of things that have been raised today which I find pleasing, because obviously I was not too far off the track.

I think the secret really lies, from a parliamentary perspective, in raising the sovereignty of parliament itself, in equipping parliament to debate the issues of the day more fully and in giving parliament the opportunity to determine its own agenda. Even the agenda of parliament is driven by the executive today, and that is a complete aberration of our constitutional structure in which the parliament should be supreme. Parliament should run its own agenda and therefore probably give a lot more time in parliamentary debate to debates other than on government legislation so it can initiate discussion on matters of great concern to the community. If we had that, then I think the people would think that there was a tool acting on their behalf to try to translate their aspirations, what they believe the country or the state needs, into ultimately legislative action or action by the parliament to fulfil those aspirations.

To my way of thinking, it is both a diminution of the power of the executive but also raising the sovereignty of the parliament: not only making parliamentarians more responsible for what they do but giving them the power to be responsible. They advocate the responsibility because they really do not have the power to fulfil that responsibility. So I think they are the great challenges that we have ahead of us. There are many ways of doing it. If today has been able to tease out some of those and get people of goodwill thinking along the right lines, that will have achieved a lot. Thank you very much.

**Prof. SCOTT:** Finally, we have a contribution from the other gender—I am conscious that we have had blokes up here most of the day—but also on the basis of a very distinguished career in parliament as an Independent member and the member for Gladstone, Liz Cunningham.

**Mrs CUNNINGHAM:** Thank you very much. Mr Speaker, members of parliament past and present, and distinguished guests one and all, thank you for the opportunity. I read this document *Why accountability must be renewed* and I had no problems agreeing with all of it except for one page and, Mr Rozzoli, with respect, it was the suggested appointment of the Speaker. I am only going to make one quick comment, and as an Independent it is probably not an unexpected comment. The methodology on page 7 that Mr Rozzoli puts forward would be perpetuating the dominance of the parliament by parties, because the person who would qualify under the suggested mechanism would have to be a member of the dominant party. The qualification was that they would be required to complete three full terms in the parliament and have, during such periods, served at least two years as either Chairman of Committees or Temporary Chairman of Committees. I would find that, from my perspective, flawed.

It has been well known that information is power. It is something that we have all been raised with. I believe that small statement can reflect on the need for accountability and transparency and change with our parliament in Queensland. Information that is provided in parliament is very much subject to political spin. I have been in parliament now through both sides being on the government benches, but the information that is provided in ministerial statements, the answers to questions on notice et cetera are very much subject to the spin of the day. I heard previous speakers speak of the 30-second grab on TV, and therefore it creates—not only for parliamentarians but also for others, including staffers—a fairly jaundiced view of the parliamentary process.

Information to parliamentarians directly is also, I believe, something that has to be reviewed. The way that questions without notice are answered and, as I have previously said, questions on notice are answered, at times that process is abused. I will give an example, and it is only a very recent one and it is mine. I asked a question about returns from a particular corporation that were required to be made to consolidated revenue for three years—three past years. The answer that I got back said, 'That information is available in the annual reports of that organisation and they are available on the web.' That was the end of the answer. There was no empirical data; nothing. That was the answer.

So I wrote a curt email back to the particular minister, and to his credit he came and spoke to me during the week, in this sittings of parliament, and said, 'I apologise for that answer.' He was overseas at the time. He said, 'I did not know the answer was couched in those terms.' I said, 'I tried to get the information off the web. The first annual report took me 10 minutes and it still wasn't downloaded. The second report, of the previous year, I downloaded but I could not find anything in it that was particularly relevant and when I did a word search I got all this garbage that made no sense and was not what I was chasing.' He undertook to provide the information that I asked for but other ministers would not. They would say, 'Brilliant, got her in one.'

Also, with respect to information that constituents ask us to find, the response from the minister's office is very much reflective of the minister's attitude towards other members of parliament, particularly non-party members. As I said, it works across all governments irrespective of their colour.

The third area where we see the 'information is power' idea operating is with information to the public. I think that this document *Why accountability must be renewed* covers FOI extremely well. The most recent changes to FOI priced information out of the reach of many people. We all know and anyone who has had anything to do with parliament knows that there are those people who ask questions because to not ask questions would mean that they would cease breathing. They are vexatious questioners, you could say.

However, the vast majority of people are inquisitive, they may be aggrieved, justifiably or otherwise, and they are genuinely seeking information. Recent changes made it more expensive and it made it more intense. I do not think anyone believes that the questioner should not be asked to define or refine their questions so that the information that they are seeking is clear; the issue is more about the cost. And sometimes attitudinally within the departments the FOI process is made untenable.

The second area where I believe information to the public is in jeopardy is, with respect, through the media. When the numbers were even in the parliament, I used to read the paper the day after and wonder if I was in the same building let alone in the same chamber. Some of the reproductive work of the media is some would say biased, some would say bigoted, some would say sensationalised and, at times, it is absolutely truthful. However, I believe that the media also has some responsibility to take in relation to disseminating information that is accurate, concise and relevant.

The last area where information is power in relation to the public is the ability of governments to get the facts out. We have some really important things happening at the moment. My electorate is very heavily industrialised and we have had a plethora of negotiated acquisitions as well as compulsory acquisitions. Sometimes the landowners are treated with the most incredible disregard and lack of dignity that one could ever believe. This is a political comment and I apologise if I offend anyone, but for example with the Traveston Dam residents who are going to be so deeply affected cannot find out the basis of the decision making. Their lives will be turned upside down. Some marriages will break down. Some families will implode, but they cannot get the facts. That is where the responsibility lies with all of us who are involved in government, whether it is the Premier, ministers, members of parliament, staff or anybody. We need to remember that information is power, but it is power to people who are affected by every decision we make. Transparency is essential but we must remember that we are working for people whose lives can be healed or broken by the way we treat them. Thank you.

**Prof. SCOTT:** I would like to thank all of our panellists for their contributions. I am conscious that we have a date for drinks and cheese with the Speaker shortly, so I would like to move straight into the final session. We will take five minutes to collect a cup of coffee, then come back and continue.

#### ***Proceedings suspended.***

**Ms MALONE:** Ladies and gentlemen, could you please resume your seats to commence the final session of the conference for today, which will commence with the government's position on the theme of our conference, 'Parliamentary accountability and ministerial responsibility—what's working and what's not'. To deliver the government's perspective, Ronan Lee, the member for Indooroopilly since 2001, will speak. Ronan is currently parliamentary secretary to the Minister for Communities, Minister for Disability Services Queensland, Minister for Aboriginal and Torres Strait Islander Partnerships, Minister for Seniors and Youth. He has formerly been a parliamentary secretary to the Minister for Communities, Disability Services, Seniors and Youth. He was a member of the Legal, Constitutional and Administrative Review Committee from 2001 to 2006.

Ronan has an extraordinary past and continuing involvement in a vast array of community organisations. I decided that I would not list them, because about half a page would take up the number of the organisations with which Ronan is involved, and has probably always been involved. He has a Bachelor of Arts majoring in government and political theory from the University of Queensland. Ladies and gentlemen, Ronan Lee.

### **Comments by the Government of Queensland**

**Mr LEE:** Thanks very much. Can I start by acknowledging the traditional owners of the land on which we are gathered today. Can I also acknowledge my colleague Mr Speaker. I also acknowledge Senator Claire Moore. It is great to see you, Claire. Folks, there is a list of dignitaries here as long as your arm. I am happy to roll through it, but why don't we have a vote. Do you want me to go through the list of dignitaries? Those in favour? Against? I think the ayes have it.

When you come to an event like this you get these wonderful introductions. I always worry—and I know many ministers always worry—when the introduction starts with 'The minister is currently the minister for blah, blah, blah'. The other parliamentarians all look around the audience and try to pick the mood and see exactly what is going on when the word 'currently' is said, because it can either mean that things are going really, really well or really, really badly. So keep an eye out for that one with the other members who are here.

Folks, I am representing the government today. So the views that I am going to put forward are direct from the office of the Premier. This is a delightfully tight speech. I could save you all about 15 minutes by moving for incorporation into the *Hansard* record, but I think it might defeat some of the purpose of being here. So I will read through the speech that I have been provided. This is straight from the Queensland state government. So from now on, I am not me; I am the state government logo standing right here before you.

Sir Winston Churchill said—

Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.

There is obviously a strong element of common sense in those comments. We know our system is far from perfect, but for all its faults it has served us exceptionally well over the years. That said, we all know that there is always room for improvement. That is why the work of the Australasian Study of Parliament Group is so important. I congratulate all of you on your commitment to finding ways to make our system of parliament work better. That is the Premier saying that. So that is congratulations from the boss.

Here in Queensland, the Beattie government puts a high priority on and a high level of resources into making sure that measures are in place to enhance accountability, transparency and ethical behaviours. Premier Beattie has given an undertaking to the parliament that he will continue to implement changes to accountability mechanisms whenever they are necessary.

Accountability mechanisms in Queensland have emerged in response to a range of factors. The biggest of these, of course, was the Fitzgerald inquiry. Next month is the 20th anniversary of the commissioning of that inquiry. The Fitzgerald inquiry lasted two years and two months from 1987 to 1989 and cost \$24 million. It lifted the lid on decades of deeply entrenched corruption in Queensland's political system, police and some other areas of government. But the inquiry did far more than merely put an end to endemic corruption; it set in motion a whole new era of accountable government in this state. It helped give Queensland some of the most accountable mechanisms and government systems in the world.

Two major parliamentary committees grew out of the Fitzgerald inquiry. There is the Parliamentary Committee for Electoral and Administrative Review, whose first chair was Matt Foley. One of the speakers here today, David Solomon, later served as chairman of the actual Queensland Electoral and Administrative Review Commission. The other major parliamentary committee that grew out of the Fitzgerald inquiry was the Parliamentary Criminal Justice Committee, whose first chair was, of course, today's Premier of Queensland, Peter Beattie. In his autobiography, *Making a difference*, Peter Beattie said that the opportunity to achieve reform in Queensland through one of the major bodies overseeing the Criminal Justice Commission, as it was then called, is among the highlights of his parliamentary career.

In post-Fitzgerald Queensland, bodies such as the Ombudsman, the Information Commissioner, the Crime and Misconduct Commission, the Integrity Commissioner, the Queensland Audit Office, the Service Delivery and Performance Commission and a range of tribunals and freedom of information mechanisms have increased public sector accountability, making the Public Service and the government more open to public scrutiny.

In the 2005-06 financial year, Queensland spent almost \$50 million—\$49.753 million to be exact—running these external integrity structures. In considering the accountability regime, we believe that it is preferable to set aspirations that encourage and guide exemplary behaviour, rather than try to operate in a punitive framework that encourages people to manage their responsibilities to stay just above the punishment bar.

I am sure all of you here today would agree with me when I say that we need to attract the best people into parliament and into government. We need to attract people who are capable and ethical, and also people who are creative thinkers, people with vision and people with entrepreneurial flair. Those sorts of people are not going to be attracted to a profession where they are going to be nitpicked to death. That is why it is vital that there is a balance between accountability processes and getting on with the job.

Accountability structures should provide checks and balances, but they should also provide safeguards against misuse by those who seek to use them for purposes other than that for which they were intended. Years ago, when he started the Australian Democrats, Don Chipp said, 'Let's keep the bastards honest'. He did not say, 'Let's tie the bastards up with paperwork so that they have no time to do anything'. It is important to ensure that the executive does not get bogged down with unnecessary reporting or self-preservation measures. It is hard to guide the state forward if you are forever looking back to cover your behind.

We need to see accountability measures as an integrated network of checks and balances that are not just restricted to the arrangements that government imposes on itself. This integrated network in our democracy, of course, includes the media as well as the various professional community organisations that interact with government.

Since coming to power in 1998, the Beattie government has placed a high priority on accountability. Importantly, during this same time we have also greatly increased the level of government engagement with the community. At the end of the day, accountability in a democracy is in fact to the people and a big part of being accountable is being available.

Earlier this year in Atherton in far-north Queensland Premier Beattie presided over the 100th community cabinet meeting. The Beattie government community cabinet meetings, which have been held in virtually every corner of our vast state, have set a new standard in community consultation.

Since July 1998, Queenslanders from all walks of life have been able to meet face to face with the state's top decision makers and put their case on a broad range of personal, community, state and national issues. Over a friendly cup of tea in a relaxed atmosphere, issues have been nussed out and workable solutions found to a myriad of problems. At times, voices have been raised and meetings have become heated, but in the great spirit of a robust, open democracy people have been given a strong voice in the way Queensland is run.

Because we believe in being accountable, it is also about being available. In Queensland the scandals highlighted in the Fitzgerald inquiry have led us down some different accountability paths to other jurisdictions. Transparency is an important part of accountability and we have made our major governments processes very transparent. They are published on the Internet for all to view on the Queensland government site. They include the Cabinet handbook, the Executive Council handbook, the legislation handbook, the parliamentary procedures handbook, the policy handbook and the ministerial handbook, which contains a code of ethics for ministers and the accountability principles that underpin the many guidelines contained in the document.

In Queensland ministerial staff have had a code of conduct for more than 10 years. That code is based on the five ethical principles found in the Public Sector Ethics Act. These same five ethical principles underpin Public Service codes. Of course, it is one thing to have governance processes; it is another to ensure that people know about them and how to use them. For some time the government has run compulsory training programs for its ministerial staff on important governance issues. The opposition has guides as well, and these are purposefully made the same as far as possible. We do this not only to assist in transitions to government but also because we believe accountability is universal. Rest assured that, from the top down, the Beattie government is totally committed to the highest standards of integrity and accountability both for parliamentarians and for the public sector.

American essayist Agnes Repplier said that democracy forever teases us with the contrast between its ideals and its realities, between its heroic possibilities and its sorry achievements. In fact, it is the same for accountability measures in government. The challenge is to strike a balance between realities and ideals, between practical achievements and heroic possibilities.

**Ms MALONE:** Thank you very much, Ronan, for presenting a very good overview of the Queensland government's efforts with responsibility and accountability, and also the position of balance.

I now invite Mr Rob Messenger to present on behalf of the Leader of the Opposition. In 2004 Rob was elected to the Queensland parliament as the member for Burnett. He is currently the shadow minister for police and corrective services. From 2005-06 he was shadow minister for environment and he has been shadow minister for education. He has been a member of the Members' Ethics and Parliamentary Privileges Committee. Prior to election to state parliament, he served in the RAAF and then worked as a cameraman, a writer, producer and director with WIN TV and Channel 7, and a producer/broadcaster with ABC regional radio. I understand that today Rob will present from his own perspective on behalf of the opposition.

### **Comments by the Opposition of Queensland**

**Mr MESSENGER:** Thank you, Nonie. That was a beautiful introduction.

Mr Speaker, the Hon. Kevin Rozzoli, former Speaker of the New South Wales parliament and President of the Australasian Study of Parliament Group, parliamentary colleagues, guest speakers, ladies and gentlemen, my ears pricked when Ronan started presenting his speech and mentioned royal commissions. Of course, the royal commission I am most acquainted with is the Bundaberg royal commission. I simply note that, as Ronan said, the Fitzgerald inquiry went for two years and cost \$24 million. It dealt with no deaths whatsoever, but quite a lot of people ended up in jail as a result of it. The Bundaberg royal commission cost about \$6 million, went for about three months and dealt with at least 13 deaths, yet still nobody is in jail over that particular incident. Therefore, as soon as you say 'royal commission' you have my attention.

Ladies and gentlemen, as Nonie said in her introduction, I am the member for Burnett and my parliamentary leader, Jeff Seeney, has entrusted with me with the position of shadow minister for police and corrective services. I am a relative newcomer to politics. I have been in the job for just over three years, after being elected to the Queensland Legislative Assembly in February 2004.

Before that election, as indicated in the introduction by Nonie, I walked a number of different paths and had a number of different careers in life, including the defence force, small business and media. The best job I ever had, apart from being a member of parliament, and one of my happiest was as an ABC Radio broadcaster in Bundaberg. Steve Austin's talk brought back a lot of memories for me.

I have found that being a member of state parliament can be compared with being an ABC radio broadcaster. As a broadcaster I listened to the people and found out about their concerns, their opinions and their problems and then tried to affect positive change or find solutions by helping their voice to be heard in public on the airwaves. As a parliamentarian one goes through a similar process of listening and problem solving. But instead of just helping their voices to be heard on the airwaves you have a much more powerful democratic weapon in your armoury. More importantly, you can help their voices be heard not only in public but in Queensland's Legislative Assembly where parliamentary privilege enables you to speak freely and for your constituents' voices to be heard uncensored.

I had not appreciated the strength and life that constituents' voices develop by being aired in the chamber or the amount of responsibility attached to that parliamentary privilege which enables their unrestricted message to be heard until I met an extraordinary person called Toni Hoffman. Many of you will know that Toni was the very brave nurse who found the strength and courage to blow the whistle and expose the institutional dysfunction and misconduct that existed in Queensland Health. After the recent revelations in Cairns many might say it still exists in Queensland Health.

The dysfunction and misconduct had manifested itself in the shape of an employee who was given the nickname of 'Dr Death'. For people who have not lived through this story it is very hard to put into words the amount of pain and heartache that was caused by this institutional dysfunction. I specifically use the term 'institutional dysfunction', which I have borrowed from the first commissioner, Tony Morris, because it is very easy and politically convenient to put the blame for what happened in Bundaberg solely at the feet of one person.

It is very easy to ignore the findings of the second commissioner, Geoff Davies, who said in a very succinct and polite manner at page 166 of the *Queensland Public Hospitals Commission of Inquiry* report released on 30 November 2005—

The political considerations in Brisbane seem to have taken priority over the clinical interests of patients in Bundaberg.

Toni Hoffman had come to the same conclusion some nine months earlier when at the end of our very first two-hour conference she also succinctly and politely summarised the situation by saying, 'This bastard is killing people. What are you going to do about it?' There was nowhere for me to hide. Toni did not leave me with many options regarding my course of action. During the last three years I viscerally learnt many valuable lessons regarding politics, whistleblowing and parliamentary privilege. The first lesson was obvious and simple but it deserves to be spoken.

While it does not come across like this on the 6 o'clock news, Queensland parliament is a place of life and death. If we as politicians get it right lives are saved and if we get it wrong people die. Parliamentary privilege, whistleblowing protection and freedom of information are invaluable democratic tools which help politicians get it right. I and my conservative colleagues believe that these democratic tools should be protected and also strengthened. We have serious concerns with a number of aspects of contemporary Queensland parliamentary life.

In May last year legislation was mandated—lying in parliament was passed in Queensland. With due respect, Mr Speaker, an honestly held view from my point of view is that, in terms of the operation of the sub judice rule, it prevented parliament discussing matters before the CMC yet issues were able to be discussed in detail in the media. I would ask the question: is not the floor of parliament the ultimate accountability forum?

Contrasting the operation of forums such as Senate committees where public servants appear before Commonwealth committees, the estimates committee process in Queensland is quite honestly a farce, in my opinion. Ministers refuse to allow public servants to comment. The last time a public servant commented freely he contradicted a minister, raising real questions about the minister's integrity. The estimates process, in my opinion, is now all scripted.

Of course we know that there is a failure to answer both questions on notice and without notice. We have heard evidence of that today. In terms of the freedom of information process, in the Davies inquiry Davies reported that there was a culture of concealment in Queensland Health. Section 36 of the FOI Act relating to cabinet exemption has been abused. Any remotely sensitive information is without doubt being wheeled into cabinet so as to exclude it from public access and scrutiny.

The public interest tests are rarely decided in favour of disclosure to the public. The commercial in confidence exception is also applied too loosely in favour of government. The FOI budgets of departments have been cut to such an extent that it is often taking years to finalise applications. By then the information is either so sanitised or is no longer relevant.

The person appointed to the role of Information Commissioner is well known to be closely related to the government and the Labor Party. The government has the capacity to create statutory bodies to deflect scrutiny from itself—the prime example there is the Water Commission. These bodies are being used by government to deflect scrutiny and criticism from ministers who should be held accountable. They establish bodies, task forces and inquiries as a diversion. The government ultimately does not adopt any recommendations that do not suit its political agenda. They are a massive waste of public funds and result in a loss of accountability.

There is a capacity and willingness of government to spend exorbitant amounts of money on spin and government advertising. This gilds their own image. The media has become heavily dependent on such for its economic livelihood. Because of a lack of resources the CMC has been forced to refer substantial complaints back to the department to investigate the same department. As found in the Davies inquiry, a department cannot be expected to investigate complaints in an independent or accountable manner.

On the subject of whistleblowers, a matter very close to my heart, Jeff Seeney MP introduced a whistleblowers protection bill in October 2006. The bill was voted down by the government. The bill sought to give effect to the Davies inquiry and the report of the Parliamentary Crime and Misconduct Committee's three-year review of the CMC in Queensland. The coalition bill gave the Ombudsman the responsibility to oversee the whistleblowers scheme. Disclosure could be made to an MLA if, after 30 days, the Ombudsman advises that that matter has not been resolved to the Ombudsman's satisfaction. Disclosure could then also be made to the media. If after a 30-day period the matter still has not been resolved to the satisfaction of the Ombudsman, disclosure can be made about anyone and about substantial wastes of public funds and public health and safety issues.

In my closing comments I would like to quote political reporter Sue Lappeman from the *Gold Coast Bulletin* who reported on an incident in the Queensland parliament about a month ago. After the Premier, in her words, 'Imposed new rules to gag politicians wanting to air the concerns of whistleblowers', he then used his government's majority to repeatedly hog the floor of state parliament. Further on in Sue's article she describes how an unidentified opposition MP—and I thought prophetic in the light of recent local government developments—yelled out, 'You are taking over the councils. What next? Are you going to invade Poland after lunch?' In a dictatorship there is no public accountability, no way for a citizen's voice of dissent to be peaceably heard and listened to and acted on by those who control the wealth of this state. That wealth can be used and abused as one man pleases.

In a democracy there is public accountability and a way for a citizen's voice of dissent to be peaceably heard, listened to and acted on by those who control the wealth of this state. If in a democracy we lose public accountability and a citizen's voice of dissent is gradually constricted and ignored by those who control the wealth of this state, then perhaps democracy is an inaccurate description of that state. I think the time is right now in Queensland for a dramatic strengthening of parliamentary accountability and ministerial responsibility, particularly in the light of the executive government's recent announcements that will see a serious diminishing of the people's voice as local government as we know it disappears. That can be best achieved by significant public debate regarding the merits, the benefits and pitfalls of reintroducing the upper house to the parliament of Queensland. Thank you very much for your time, consideration and attention.

**Ms MALONE:** Thank you very much, Rob, for delivering the opposition's perspective on the state of responsibility and accountability in Queensland and also for giving us a very real human dimension, the costs and the uplifting that arises from successes and failures in responsibility and accountability.

That draws our proceedings pretty much to a close. There are a few things that I would like to say. The paper *Why accountability must be renewed* has been referred to a number of times today, and not everybody will have seen it. It is accessible via the Queensland ASPG web site. Alex Scott in his presentation also indicated that many people will have seen the Queensland Public Sector Union's response to that paper. It is available through a Google search, if you put in 'QPSU' and the terms from the accountability paper it comes up fairly readily. I will try to make sure that it is also available through the Queensland ASPG web site without too much delay. I would like to thank all speakers and all session chairs for providing such a comprehensive and erudite coverage of the topics under consideration today, for giving their time, for giving their energy and for making this such a worthwhile conference for all of us.

I would like to thank the Speaker, the Hon. Mike Reynolds, and the Clerk of the Parliament, Mr Neil Laurie, for their support of the Queensland Chapter of the Australasian Study of Parliament Group and for their support of this conference. I would like to thank the conference organising committee, Mr Zachary Dadic, Ms Roylene Mills, Ms Anna Katter, Dr David Solomon, Mr Terry Sullivan, Mr John Pyke, Adjunct Professor Paul Williams, Associate Professor Paul Reynolds and Professor Roger Scott for making this what I think has been a fantastic day for everybody. I would like to add that Paul Reynolds could not be with us. He phoned late last night to offer his good wishes to everybody for the conference.

I thank you all for attending, and special thanks to those who have travelled long distances to be here. For those of you who have come from interstate, we thoroughly appreciate having you here in Queensland helping us to tease out these issues. I thank everybody for being here and I look forward to seeing you at future functions.

**Conference adjourned at 4.33 pm**