

What Are Parliament's Constitutional Accountability Functions?

- 2.001 The constitutional structure in New Zealand has been summarised, with elegant simplicity, as follows: *The Queen reigns, but the Government rules, so long as it has the support of the House of Representatives.*³ It is not superfluous to add that members of Parliament achieve their office only through the support of the voting public and can continue as members for further terms of office only if their public support continues.
- 2.002 In formal terms, “Parliament” consists of the Sovereign and the House of Representatives acting together. Its only function is to make laws. However, it has been observed⁴ that Parliament is inevitably identified with the House of Representatives, and in this report we will continue the common usage. We do so because the processes of Executive accountability are regulated both by laws enacted by Parliament and by the Standing Orders adopted by the House of Representatives.
- 2.003 Since the Government ceases to be able to rule when Parliament’s support is withdrawn, Parliament is able to exercise considerable control over the activities of the Executive. As a result, there is an ongoing accountability dialogue between the Executive and Parliament. In effect, the Executive must continuously satisfy Parliament that it should continue to enjoy Parliament’s support.
- 2.004 The constitutional structure and accountability dialogue create a number of sources of influence and control⁵, which include:

3 *On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government*, Hon Sir Kenneth Keith, *Cabinet Office Manual*, 1996, pages 4-5.

4 *Parliamentary Practice in New Zealand* (2nd Ed), David McGee, GP Publications, 1994, page 1.

5 In the context of the United Kingdom Parliament, the British constitutional commentator Bernard Crick described parliamentary control as *influence, not direct power, advice, not command, criticism, not obstruction, scrutiny, not initiation, publicity, not secrecy*. This definition is also a fair reflection of the position in New Zealand when the governing political party holds an absolute majority in the House. However, in the MMP environment, it is more likely that no one political party will have the ability to ensure that all its proposed legislation will be passed. In these circumstances, and particularly when the governing political party holds only a minority of seats, the enactment of bills, the provision of supply and the confidence of the House cannot be assumed. Parliamentary “control” then ceases to be merely influential and becomes more direct.

- The maintenance of an ongoing scrutiny of the activities of the Executive through information provided to Parliament or obtained by members of Parliament.
- A direct influence on the deliberations and decisions of the Executive through parliamentary debate and select committee activities.
- The enactment of laws that directly constrain the activities of the Executive itself.
- The enactment of laws (especially legislation that provides supply) that enable the Executive to give effect to its policies.
- An indirect (but important) influence on the deliberations and decisions of the Executive, inasmuch as those decisions are made in the knowledge that they must generally be disclosed to Parliament and will be subject to parliamentary and public scrutiny.

2.005 Parliament therefore occupies a critical intermediate position between the Government and the public. The accountability dialogue between the Government and the public is mediated and invigilated by Parliament.

Why Is It Timely To Reconsider the Current Accountability Arrangements?

2.006 In our view, there are now opportunities to improve the information that Parliament receives and enhance its systems in ways that previously were either not possible or not practicable. In some cases, they arise from new and developing technologies. In others, they represent new information structures that can now be built on the consolidated base of previous initiatives.

2.007 We also believe that a number of these influences – especially new technologies and increasing internationalisation – are causing major changes to the structure and processes of government. These in turn are directly affecting the nature of the accountability dialogue between the Executive and Parliament, and the way in which it can usefully be conducted.

- 2.008 It may be useful to elaborate on these views by placing them in an historical context. Over the last century, and particularly in the last 60 years, the range and scope of Executive activity has increased enormously. The resources now available to modern governments form a significant proportion of the total product of their national economies.
- 2.009 In New Zealand, Parliament's formal control over the activities of the Executive has been exercised through a suite of measures, many of which centred on the control of supply. However, as the scope and complexity of government activity has increased, control of supply by itself has ceased to be a sufficient instrument. Other controls have become necessary and have been introduced.
- 2.010 Among the most effective instruments of control that Parliament uses are those that require the disclosure of specific information. Parliament needs this information:
- before the event, when scrutinising the legislative and expenditure proposals of the Government;
 - concurrently, when scrutinising the governance and activities of its agencies; and
 - after the event, when scrutinising their performance.
- 2.011 In recent times, there have been important changes in the way information is generated and used in both the government and private sectors. These include:
- a general acceptance (reflected, for example, in the Public Finance Act 1989) that financial information alone is insufficient for effective management, and that non-financial information can be just as important, or more important;
 - an improved understanding of the inter-relationship between information, capability, control and risk, and the need to reflect this inter-relationship in governance and management practice;
 - significant advances in the capabilities of information systems;
 - significant decreases in the cost of processing and sharing information; and

- an emerging acceptance of the need to focus governance and management effort on the achievement of results rather than simply on the delivery of outputs.

2.012 These changes can be seen as practical manifestations of profound and rapid theoretical developments over the last 40 or 50 years, which have greatly increased our understanding of:

- measurement and information;
- the development, emergence,⁶ analysis, simulation, forecasting and control of complex systems (such as national economies, social structures and the processes of government); and
- the existence of fundamental and inescapable limits to our ability to forecast and control complex systems, and the consequences of these limits for the development of strategy, organisational capability, accountability and the management of risk.

2.013 Now that powerful and low-cost computers are generally available, these theoretical developments create practical possibilities. Taken together, they can make available to Parliament, the Executive, its agencies and the general public, tools with remarkable potentialities.

2.014 To take a simple example, most government departments and agencies now have a presence on the World Wide Web. The information that can be obtained in that way by any enquirer is limited only by what the agency chooses or is obliged to make available. If reliable financial and performance information was to be published through the Web site and updated at regular intervals, members of Parliament and other interested stakeholders could monitor agency activity in greater depth and in a more ongoing way.⁷

6 When used in relation to systems, the term "emergence" refers to the way in which, as they become more complex, they begin to manifest new phenomena that could not easily be predicted from the workings of their component parts.

7 A remarkable example of this approach has been developed in the US State of Florida. The site, known as "Florida Monitor" is a service of the Florida Legislature's Office of Program Policy Analysis and Government Accountability. The Web address is – <http://www.oppaga.state.fl.us/>.

- 2.015 However, the nature and implications of these developments is much wider. The new information technologies are establishing new information relationships that affect the way in which:
- government policies are developed and implemented;
 - public goods and services are produced by government organisations;
 - information is exchanged with stakeholders, including the general public;
 - public services are provided to the public; and
 - government organisations interact with each other, both locally and internationally.
- 2.016 It is important not to underestimate either the pace or scale of these developments. The extent of progress can usefully be illustrated with an example from computer modelling. Arguably the first major attempt to use a computer to model aspects of a national economy (that of the USA) was undertaken in 1949 by Nobel laureate economist Wassily Leontief. His model involved 42 linear equations with 42 unknowns. To solve these equations, Leontief needed to make use of Harvard University's Mark II computer, one of the largest then in existence. The task took the computer 56 hours to complete. Today, that problem would be regarded as trivial and could be solved on a hand-held computer in less than a second.
- 2.017 In New Zealand, the nature and legal structures of Crown-owned organisations has also been evolving. They are generally classified into three broad types: departments, State-owned enterprises and Crown entities. The third of these classifications is a generic term for a wide range of different organisations⁸ that include:
- *Administrative tribunals* which in general have powers to decide disputes between the State and individuals, or between individuals;

8 This typology has been suggested by the Legislation Advisory Committee. C.f. *Legislative Change: Guidelines on Process and Content*, Legislation Advisory Committee, 1991, pages 31-32.

- *Funding bodies* supporting public and charitable purposes;
- *Advisory bodies* with powers to give advice to the government and often more widely in areas of public policy and public interest;
- *Service providers* that furnish services in the public interest in a wide range of areas;
- *Trading corporations* that are usually companies but are not State-owned enterprises under the State-Owned Enterprises Act 1986; and
- *Control and supervisory bodies* other than those which are Offices of Parliament or tribunals.

2.018 The wide differences in the structures, functions, operations and governance of government organisations is mirrored by very significant differences in the nature of the information needed by Parliament and the public in order to maintain an effective accountability dialogue with the Executive.⁹ However, the information issues become even more complex when the interactions and information flows between these diverse organisations are taken into account. For example, government organisations frequently establish both formal and informal working groups¹⁰ to deal with specific issues or to pursue collective objectives. It may be that no one agency is primarily accountable and that no external reports acknowledge the existence of the objectives, the resources applied collectively to pursuing them or the group’s performance in doing so.

2.019 In summary, the structures of government organisations are becoming more diverse and complex. The information exchanges between these organisations and with their stakeholders are increasing in frequency, scope and complexity. However, potentially there are large compensating benefits – in the efficiency and effectiveness of governmental operations; in the ability to customise and target services and resources; and in the extraction of information relevant to the development and evaluation of policy.

9 For example, "control and supervisory bodies", especially those that exercise coercive powers, need to account for the use of their powers. Having no such powers, "trading corporations" do not need to account for their use. However, they do need to account for their commercial activities. Different accountability requirements are imposed variously by the Public Finance Act 1989 and by other specific legislation, especially that which establishes and regulates particular bodies.

10 Such groups are sometimes described as "virtual departments".

- 2.020 Unless these trends can be controlled, there is a risk that Parliament’s accountability dialogue with the Executive will be adversely affected by the sheer volume of the information flows. However, if Parliament is able to identify its core information needs and can devise and implement appropriate arrangements, there should be significant benefits. The beneficiaries will be both Parliament itself and the public it serves.
- 2.021 For these reasons, we believe it may be timely for Parliament to take stock of its information requirements and accountability arrangements. In doing so, it may wish to consider how it can make best use of what is already available, and position itself to adapt to, and profit from, future developments.
- 2.022 Ideally, the financial and non-financial information that Parliament receives should be integrated into a coherent whole. It should be structured so that a broad overview can easily be achieved, and the nature and relative significance of particular issues is made clear. In these respects, we consider the current arrangements to be less useful than they could be. We explore these problems and opportunities in more detail in the remaining chapters of this report.
- 2.023 Although we are advancing arguments for the provision of additional information, and occasionally for the strengthening of controls, we are not suggesting that Parliament should engage in “managing” the Executive. We do not envisage that the process of parliamentary scrutiny and control would be in any way different from what occurs now. As we stated in paragraph 2.001, the Government rules provided it has the support of the House. Parliament’s role is:
- to scrutinise the Government’s actions;
 - to highlight potential and actual problems; and
 - to review continuously whether or not the Government should have its support.
- 2.024 The suggestions made here are intended to facilitate that scrutiny.