

Institute for International Research

**11th Annual
Corporate Governance in
the Public Sector Conference**

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**ACCOUNTABILITY AND CORPORATE
GOVERNANCE IN THE NEW PARLIAMENT**

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Clerk of the Senate

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In a paper presented at the 9th Annual Conference in 2006, entitled *Corporate governance and a government Senate majority*, I set out likely effects of the government majority in the Senate, which took effect on 1 July 2005, on accountability in general, and particularly in respect of public sector governance. The paper referred to two case studies: the Regional Partnerships Program and the Senate committee inquiry into it, and the AWB Iraq wheat affair, in relation to which there was conspicuously no Senate inquiry. The treatment of two bills raising public sector governance issues was also examined. These cases also provided “before and after” pictures of the decline in accountability and in the attention given to public sector governance resulting from the government majority. The conclusion of the paper was that this would be unfortunate for the public sector, because it could well lead to a lack of attention to governance issues and more unfortunate cases like regional partnerships and AWB in the future.

A more detailed paper, prepared as part of an Australian National University study on the performance of parliament, covering the complete life of the government majority, tracked this decline in accountability, particularly in the ability of the Senate to inquire into public sector operations and scrutinise new legislation. This paper may be found at: <http://www.aph.gov.au/Senate/pubs/evans/15692/index.htm>

There is some evidence of the decline of accountability and accompanying governance problems contributing to the defeat of the government in the 2007 general election. Certainly a former minister thought that that was the case, referring to his government majority as a “poison chalice”. The two cases referred to in the earlier paper came back to haunt the political process, spectacularly so in one case. The Regional Partnerships Program was the subject of an Australian National Audit Office report released shortly before polling day, to

the great embarrassment of the outgoing government. This report supported the earlier conclusion that the program was a governance disaster, beyond the dimensions identified by the Senate committee. The AWB affair, as an editorial in *The Age* put it, “is not over yet”. Claiming that the seeds of the demise of the government can be traced to that matter, the editorial called for a further Senate inquiry “to explore to what extent the public service was compromised”. As a result of these developments, the public, the Parliament and the media are likely to be much more aware of the intersection of political issues and public sector governance, and the latter is therefore likely to receive much more attention in coming years.

As everyone in this audience would be aware, the new government will have to deal with a non-government majority in the Senate, in two stages: a Coalition majority up to 1 July 2008, followed by a majority consisting of non-government parties and independents for the remainder of the parliamentary term.

This is likely to lead to heightened scrutiny and greater parliamentary accountability, and specifically a concentration on public sector governance issues, because of a range of factors.

- The government will not be able to control the inquiries pursued by the Senate and its committees. Minor parties and independents are always anxious to pursue accountability issues, and the incoming Opposition shows every sign of doing likewise, as oppositions usually do and are expected to do. Contrary to what might be thought to be the case, this effect is likely to increase after 1 July, because minor parties, independents and oppositions always compete to pursue accountability issues.
- When a new government takes office, high-level political issues are usually few in number and are slow to emerge over the parliamentary term. This means that senators are more likely to concentrate on governance issues in their pursuit of accountability.
- In any event, a new government is not likely to avoid parliamentary scrutiny or the raising of governance issues, particularly when it so keenly pursued those issues when so recently in opposition. Indeed, incoming governments are inclined to use parliamentary scrutiny to assist themselves to gain knowledge and control of the complex government machine. There were clear signs of this in the past round of estimates hearings held recently.
- A new government also does not strongly identify with the existing public sector apparatus or with the existing governance arrangements. A new government is more inclined to let that apparatus take its chances in the parliamentary forum and see whether

it has survivability. A striking example of this is the new Minister for Defence conspicuously not defending the existing arrangements in the Defence Department.

- A new government obviously has many new projects and programs, and often new statutory and non-statutory bodies to establish, which give rise to governance issues and to scrutiny of their governance arrangements.
- This new government was elected on a platform of greater transparency and accountability in government operations, so is likely to be more sensitive to issues of public sector governance. Its announced policies on merit selection for statutory appointments and registration of lobbyists, for example, will impose expanded functions on public servants and more accountability avenues.
- This new government has a particular incentive to avoid the accountability problems of its predecessor. In the recent estimates hearings, the new Minister for Immigration and Citizenship, Senator Evans, declared that he has too much power to intervene in immigration matters. If he acts on this belief, it will throw responsibility and scrutiny back on his department.
- As with the Regional Partnerships affair, and as a result of that and other recent experiences, the Audit Office is likely to be more vigilant in scrutinising governance arrangements surrounding government expenditure. A recent report identified governance problems with payments to the Australian Rail Track Corporation. As before 2005, Senate inquiries are likely to trigger, or to follow up, Audit scrutiny.
- Similarly, the public, stirred by the press, are likely to be more conscious of accountability in the public sector as a result of recent cases. Every public servant should read the succession of articles in the *Sydney Morning Herald* exposing and attacking various operations of the New South Wales public sector, to gain an appreciation of the potential of this heightened scrutiny. Of course, all of the problems are sheeted home to the political wing of government, the responsible ministers, but the fallout still falls heavily on public servants. Another good example is the intense scrutiny of the Australian Federal Police's handling of the Habib and Haneef cases.
- Because of the previous government's majority in the Senate, and the new government's lack of such a majority, there are heightened expectations of, and pressures on, the Senate to take action in relation to various problems in the public sector. The Senate recently appointed three select committees, one of which, on state government financial

management, is expected to be closely focussed on governance issues at the state level. State public sector personnel will be extremely vulnerable to revelations emerging during this inquiry.

- Although the Senate committee structure is not likely to be changed, so that the government will retain a majority on all of the legislative and general purpose standing committees, this will not mean that the committees will be any less active. It is the numbers in the chamber that determine the level of committee activity. Those committees have a standing reference to scrutinise the performance of government departments and agencies. Under this reference they can undertake reviews of particular departments and agencies without a reference from the Senate. It is quite likely that committees will make greater use of that standing reference in the future, and that departments and agencies will find themselves under scrutiny without much notice.

The recent estimates hearings have exhibited all of these factors in play to a certain extent. There was a significant concentration on process questions, requiring public servants to explain their processes and the governance arrangements applying to particular programs. Some public servants appeared to be rather startled by the rigorous nature of the questioning and the interest in their internal departmental arrangements.

In short, the public sector will have to be more than ever diligent about its governance arrangements and its processes in the next few years. Parliamentary scrutiny is back, with emphasis.