

2. Responsible Government

When the Constitution of Victoria was adopted, the prevailing concept of democracy throughout the British Empire was that of responsible government. This doctrine meant that:

- A Government was formed which had the confidence of the Lower House.
- The Premier and his Ministers were responsible and accountable to that House and, through it to the people.
- The Government held office only for so long as it retained the confidence of that House.
- The Government was directly responsible to electors only at election time.

This also meant that the Lower House was the house of government, and led to the belief by many governments that they were responsible only to the Lower House. Australian courts have held that is not so³. Accountability is to the Parliament as a whole. The Victorian Constitution Act, prior to amendments in 1984, gave the Legislative Council significant power over the Lower House. The Legislative Council was able to enforce accountability to it directly by threatening to refuse, or refusing, supply. It refused supply and forced the Government to the polls in 1865, 1867, 1877, 1947 and 1952.

The rapid growth of modern, tightly disciplined political parties early in the 20th century effected a profound change in the realities and practices of government and the doctrine of responsible government. Nowhere in what later became the British Commonwealth was party discipline tighter and the change in practices more marked than in Australia.

The fact that government is formed by the party or coalition that can command a majority in the Lower House, combined with rigid party discipline, means that a Government is no longer responsible to the Lower House in any practical sense. Because of Party discipline, the Government in fact controls the Lower House rather than being genuinely responsible to it except to a limited degree when independents hold the balance of power.

Around Australia, governments of every political persuasion have tended to avoid real accountability to the Lower House and to minimise the impact of accountability mechanisms generally.

As party discipline has eroded effective responsibility of the Government to the Lower House, the enforcement of accountability on behalf of the people has become a more important role of the Upper House in a bicameral system. The Federal Senate and the State Upper Houses have demonstrated that the accountability function operates most effectively when it is used in the interests of the community generally, and not in a partisan way, or simply to embarrass the Government. This enhanced accountability is most effective when neither Government nor Opposition controls the Upper House.

The doctrine of “responsible government” has been transformed in the view of many critics to that of “party government”. The Lower House, because of party discipline, has largely

³ Egan V Willis & Another, 1998, High Court of Australia, discussed in Chapter 5 below.

become an “electoral college” where the majority will determine and support the Government and the minority will oppose it. The Lower House no longer provides any real check against arbitrary or hasty Government action. The Government is not held to account there, or its legislation seriously questioned, revised or improved. The vital roles of maintaining accountability now fall to the Upper House.

That fundamental change reinforces the importance of the role of Upper Houses in holding Governments to account. It also reinforces the need for an Upper House to have the authority, the mechanisms, the independence and the culture to act in the long-term interests of the community as a whole. The Upper House must be a genuine house of review, not merely a rubber stamp for the Government or its opponents.⁴ Without those attributes, the Upper House might become a superfluous and expensive historical anomaly.

The changes proposed by the Commission are designed to make the Victorian Upper House a more effective house of review in the interests of good governance.

⁴ See, for example, Dr Nic Economou, Constitution Commission Seminar 30 August 2001 - Voting Systems Towards a Genuine House of Review, <http://www.constitution.vic.gov.au/home/consultlist.htm>