AUSTRALIAN COMMONWEALTH STATUTORY AUTHORITIES:

THEIR CONTRIBUTION TO AN ACCOUNTABLE PUBLIC ADMINISTRATION

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Except as indicated in the text, this is my own original work.

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ABSTRACT

The widespread use of the statutory authority has long been seen as a major characteristic of Australian public administration. A major theme in the literature on statutory authorities in countries such as Australia whose core institutions of government are based on the Westminster model is the problem of accountability which these bodies are alleged to cause. This thesis addresses that problem in the context of Australian Commonwealth government.

The general aim of the thesis is to challenge the traditional view that the statutory authority is not a suitable administrative form upon which to build an accountable public administration. It begins by showing how the dominant conception of accountability associated with the Westminster 'syndrome' of ministerial control of administration and ministerial responsibility to parliament has shaped, and prejudiced, the understanding of accountability in Commonwealth statutory authorities. Next, it is argued that there is less difference between the accountability of Australian Commonwealth statutory authorities and that of ministerial departments than is often supposed. The thesis then questions the continuing application to statutory authorities of assumptions about accountability which have for some time been under serious
challenge in Australian public administration. It is argued that, considered in the light of an understanding of accountability informed by contemporary developments in Australia and elsewhere, Commonwealth statutory authorities demonstrate a reasonably healthy degree of accountability and, perhaps more importantly, reveal the potential to play an important role in the development of a more accountable public administration.

Central to the thesis is an attempt to develop an appropriate conceptual framework for understanding the public accountability of statutory authorities. To this end, the root idea of accountability is identified as the satisfaction of diverse expectations and concerns about the exercise of administrative discretion. It is then argued that three conceptions of, or perspectives on, accountability may be usefully distinguished. Alongside the traditional notion of 'parliamentary control', 'managerialist' and 'constituency relations' conceptions are introduced. The differences between the three may be summarized as follows: parliamentary control relies heavily on essentially bureaucratic relationships of close supervision or control of the administrative agency; the managerialist conception employs quasi-contractual relations, emphasizing strategic control and periodic evaluation; and the constituency relations conception rests on an essentially political set of relationships, emphasizing the responsiveness through various mechanisms of the agency to a range of interested constituencies.

The three conceptions are presented as complementary rather than mutually exclusive ways of viewing accountability.
All have a role to play in contemporary public administration, and indeed all three may be utilized in different mixes to engineer a desired level and form of public accountability for particular statutory authorities. Accountability regimes, it is suggested, ought to be tailored to the nature and mission of the individual administrative organization.

It is also suggested, finally, that debate over the accountability of statutory authorities may be viewed as an aspect of a wider debate over the relative merits of competing models of democracy. Statutory authorities have a role to play in a system of government based on dispersal of power and widespread responsiveness. They allow administrative tasks to be located in a wide range of purpose-built administrative agencies with a wide range of purpose-related means of responding to the concerns and expectations of many relevant constituencies regarding the use of administrative discretion.
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INTRODUCTION

The widespread use of the statutory authority has long been seen as a major characteristic of Australian public administration. In the era of responsible government Australia was slower to abandon and earlier to readopt the statutory authority as a standard form of administrative agency than was Britain (Wettenhall, 1963). Powerful, substantially autonomous statutory authorities have been identified as a key component of a distinctively Australian pattern of public policy (Emy, 1974). While the latter has arguably been breaking down over recent years, statutory authorities continue to be created in large numbers. Moreover, at both the state and federal levels statutory authorities continue to be large consumers of governmental resources, human and financial, and to have an important economic impact. These facts have recently begun to be documented in detail (PBRC, 1981; SSCSAF, 1983) and have been widely publicised.

It is not surprising then that statutory authorities have over many years attracted the attention of Australian political scientists. A good deal of the resultant literature seeks to chart, survey developments within, and assess the importance of whole statutory authority 'sectors'
in state or Commonwealth government\(^1\). Other studies explore 'the politics of' particular high profile statutory authorities, such as the Australian Broadcasting Corporation (Harding, 1979; Inglis, 1983; Davis, 1988) or the publicly-owned airlines (Corbett, 1965; Brogden, 1968); and still others examine particular statutory authorities as part of inquiries into particular policy fields, such as industry policy (for example, Warhurst, 1982) or energy policy (for example, Rosenthal and Russ, 1988).

Analytical work on statutory authorities in Australia follows two broad paths of inquiry. One is concerned generally with the policy uses to which statutory authorities are put. Several distinct forms of this activity may be identified. That most closely associated with the survey literature noted above involves attempts to classify statutory authorities in accordance with the policy functions with which they are associated, or to differentiate the rationales for the creation of statutory authorities. Self-

\(^1\) For the states, examples such work can be found in Davis (1960), Wettenhall (1968a), Townsley (1976), Holmes (1976) and Parker (1978a). Victorian statutory authorities have attracted more attention than those in other states - in addition to the literature cited above see Mauldon (1935), Davis, Halligan, Foley, Russell, Clarke and Porter (1982), Holmes (1984), Halligan and O'Grady (1985) and Wettenhall (1985). On Commonwealth statutory authorities see especially Wettenhall (1976a; 1977; 1979; 1984; 1986; 1988). Other surveys of Australian statutory authorities include Sawer (1954) and Wiltshire (1978).
consciously normative writing for or against the use of statutory authorities in general or for particular tasks (especially trading activities) is also represented in the Australian literature (Eggleston, 1932 is probably the best known example). A very small amount of attention has been devoted to various other matters, including the differing attitudes of political parties towards the creation of statutory authorities (Wettenhall, 1964 and 1976:329; Parker, 1958) and patterns of growth and change in the use of statutory authorities (Wettenhall, 1976:328-9; Halligan, 1982:15-18). Beyond issues related to the use of statutory authorities to involve government in substantive policy areas are questions about whether functions undertaken by statutory authorities, such as trading or 'business' activities, should be performed by government at all (compare Clarke and Porter, 1982 and Evatt Research Centre, 1988).

This thesis is not about matters of the above sorts. It is squarely located within a second broad path of inquiry, concerned with issues of accountability in the design of administrative institutions. In the study of statutory authorities particular emphasis has been placed on an alleged 'problem of accountability'. This is seen to arise as follows: in a democracy all public administration should arguably be authorised and guided by the democratic process, and yet statutory authorities are established because it is held that certain activities are not appropriately performed.

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2 I have compared the Australian literature in these areas with some international literature in an unpublished paper (Stone, 1985).
as an extension of the elected government.

The tension between the apparently incompatible institutional values, independence and control, has been a pervasive theme in the literature on statutory authorities. But it has excited widely differing degrees of concern depending on the legal and constitutional traditions of particular countries (see Hood, 1984). For instance, in the Scandinavian countries (especially Sweden) statutory authorities with some genuine autonomy have traditionally played a central role in government and yet comparatively little seems to have been heard of any lack of accountability among these bodies. Indeed, we are told that European public-law countries, as a group, have experienced less difficulty with statutory authorities than have common-law Anglo-Saxon countries (Johnson, 1979; Hood, 1984). Johnson (1979:393) has suggested one reason for this: the more developed state structures of the former set of countries have given them less need to make use of appointed public agencies (statutory or non-statutory). But, anticipating later argument, it may be conjectured that the more pluralistic or multi-stranded approach to administrative accountability characteristic of these countries is also part of the explanation.

Even within the other group of countries there seem to be important differences in the degree of sensitivity to the accountability question. Thus Hood (1984:7) has suggested that: 'In a Washington-type separation of powers system, public boards only present a problem insofar as they
may be seen to cut across the doctrine of the separation of powers, particularly when it comes to the exercise of regulatory powers'. This claim would seem to be overstated. Considerable attention has been paid in the United States to the 'flexibility/accountability' balance in government corporations (see, for example, National Academy of Public Administration, 1981). Moreover, since the New Deal and especially since the early 1970s the regulatory agencies have been increasingly criticised for their excessive independence from the democratic process (Breyer, 1982:351). Nevertheless, Hood's claim highlights a basic consequence of the differing American and Westminster constitutional traditions: the accountability of administrative agencies (of all types) raises less theoretical difficulties in the United States partly because the more fragmented state structure has meant that accountability itself is conceived in much less monistic terms than has been the case in the parliamentary democracies.

Where core institutions of government are based on the 'Westminster model' the independence-control problem has assumed a unique, and especially acute, form. The overriding 'problem of statutory authority accountability' in such countries has been identified as a fundamental incompatibility between quasi-autonomous public boards and the central doctrine of ministerial responsibility. In accordance with this doctrine three main principles determine that the 'normal' pattern of public administration is to be the ministerial department. The principles are, firstly,
that 'powers and duties are conferred by statute, or by
virtue of the Royal prerogative, upon Ministers' and not upon
officials or administrative agencies; secondly, that
officials, in exercising such powers or performing such
duties 'are merely exercising the powers of the Minister' and
that departments of state can be viewed as 'merely the
instruments of ministerial action'; and, thirdly, that it
is therefore 'ministers and ministers alone, who can report,
explain and defend in Parliament ... what is done in the
exercise of their powers and duties' (Parker, 1960, cited by
has claimed that these principles were 'never intended to
apply to the whole range of state institutions', there is
little doubt that in Australia, as in other countries
importantly influenced by the 'Westminster model', they have
defined the orthodox view of administrative organization and
administrative accountability.

Hence the impasse in which thinking about the
relationship between statutory authorities and responsible
government has remained in Britain, Canada and Australia
through the twentieth century. The creation of
administrative agencies outside the core structure of
ministerial departments has been justified basically on the
ground that certain sorts of governmental activity require

3 However, I agree with Parker's contention (1978b:335)
that responsible government and public accountability in
Australia have in practice meant more than ministerial
responsibility. Like Parker, I wish to argue the importance for
an understanding of contemporary public administration of
recognizing the 'other forms of accountability' in existence.
a significant measure of independence from ministers or parliament. If ministerial control is weakened, however, it surely follows that ministerial responsibility will be similarly affected, with the result that public accountability, understood as the answerability of ministers to parliament, must suffer. On the other hand, if ministerial and parliamentary control is maintained in the name of accountability, the independence of the agency (which was the reason for employing the statutory authority in the first place) is undermined.

Throughout the Australian literature one finds the 'problem of accountability' stated in essentially the same terms. F.A. Bland (1937:41) was not telling his Australian readers anything they had not heard before when he argued, against Herbert Morrison, that 'the statutory government corporation is out of harmony ... with the old theory of parliamentary government and ministerial responsibility' and that Australians had for 50 years been perversely 'trying to gain the advantages of two systems which are mutually opposed'. F.W. Eggleston (1932) had previously argued at length that the pressures for parliamentary control and ministerial interference had largely destroyed the promise which Victoria's range of 'independent' statutory corporations had originally shown. Eggleston's concern was with excessive control. A decade earlier, however, Bland (1923:128-9) had pointed to the opposite danger in the influential 'theory' of government by statutory corporation which, he suggested, threatened to 'reduce the Parliamentary
representatives to administrative impotence'. But Bland saw
the same practical dilemma as Eggleston: 'impartiality,
efficiency and continuity in administration' often required
independence from ministers and parliament, whereas democracy
seemed to entail parliamentary control and ministerial
responsibility (1923:75). Nearly 50 years later the
conceptual universe of Australian public administration had
ostensibly changed so little that a textbook on
administrative law could conclude a discussion of
contemporary practice in almost identical fashion:

the use of the statutory authority in modern
government presents something of a dilemma. If
independence of action is required this can be
achieved through the statutory authority - but at the
cost of a loss of effective central control, with the
consequent danger of lack of coordination and
planning, and diminished ministerial responsibility
and accountability to parliament. On the other hand,
if central control is to be retained, and
responsibility and accountability are to be
effective, there seems little justification in most
cases for adopting the statutory authority concept
rather than the ordinary government department
(Hotop, 1985:70).

But the intellectual environment of public
administration has changed in important respects. The ready
equation of administrative accountability with 'central
control' and 'the ordinary government department' which is
made in the above quotation has been widely questioned in the
1970s and 1980s. Traditional understandings of, and
arrangements for, accountability have come under sustained
criticism. In particular, it has been successfully argued
that ministerial responsibility and the institutional

4. For an overview see Emy and Hughes (1988:308-18)
arrangements designed to give effect to this principle are overburdened or otherwise unsatisfactory in some respects in the circumstances of contemporary government. Resulting administrative reforms, based on revised assumptions about administrative accountability, have already produced very significant changes in public administration in Australia (Emy and Hughes, 1988:337-66; Thynne and Goldring, 1987)\(^5\).

The puzzle which stimulated this thesis was that these changes seem, surprisingly, to have had very little effect on the way statutory authority administration, and in particular the matter of accountability, is discussed in Australia.

Now that the relevant background has been sketched, the aims of the thesis may be stated. The general aim is to challenge the traditional view that the statutory authority is not a suitable administrative form upon which to build an accountable public administration. To this end it advances two lines of argument. Firstly, it argues that, even on traditional assumptions about accountability, Australian Commonwealth statutory authorities are more accountable than is often supposed. Secondly, it questions the appropriateness of continuing to discuss the accountability of statutory authorities on assumptions which have for some time been under serious challenge in Australian public administration. It argues that, considered in the light of an understanding of accountability informed by contemporary

\(^5\) These matters are discussed at greater length in Chapter 9 of this thesis.
developments in Australia and elsewhere, Commonwealth statutory authorities demonstrate a reasonably healthy degree of accountability and, perhaps more importantly, reveal a potential to play an important role in the development of a more accountable public administration.

The thesis focuses fairly exclusively on the sphere of Australian Commonwealth government, as distinct from the state governments. Concentration on a single governmental jurisdiction provided a way of delimiting the study, a step which in turn was judged necessary for a reasonably detailed treatment. The Commonwealth was chosen for several reasons. One was that more intellectual interest has been shown in the statutory authorities of the Commonwealth than those of most states. Since the thesis is in part about the assumptions of previous thought and practice, the better record of these which exists for the Commonwealth made that jurisdiction more attractive. A second reason was that administrative reforms encompassing the changed views about accountability I wished to contrast with the ongoing treatment of statutory authorities have proceeded further in the Commonwealth public sector than in the states, with the possible exception of Victoria. Finally, and most decisively, Commonwealth statutory authorities have recently been the subject of a prominent reform movement which culminated in government 'discussion' and 'policy' papers in 1986 and 1987. This campaign for statutory authority reform, together with the debate engendered by the government's actions, has provided probably the best body of evidence concerning contemporary
Australian thinking about the position of statutory authorities in the framework of government.

The selection of the Commonwealth government as the main field of study may be justified, but it undoubtedly limits the value of the study. While important parts of the argument are clearly general in nature, it cannot be assumed that specific findings also apply to the state public sectors. Moreover, there can be no suggestion that the states are of lesser importance as a field for the study of statutory authorities. On the contrary, statutory authorities play a more important role in the states than they do in Commonwealth government.

The thesis has three parts. Examined first is the history of the ideas and institutional arrangements relevant to the accountability of statutory authorities. The main aim is to show the tenacious hold of assumptions about accountability derived from ministerial administration, despite various efforts at reconceptualization. These tasks occupy Chapters 1 and 2. Chapter 3 traces the influence of the historically dominant approach on the recent movement for the reform of Commonwealth statutory authorities. The conclusion reached is that this exercise was both intellectually limited and driven by particular institutional interests. Its deficiencies demonstrate the need for a reconsideration of both the problem and its solutions. Parts II and III undertake that exercise. In Part II the accountability of Commonwealth statutory authorities is examined in detail from the traditional perspective.
associated with the idea of parliamentary control. Chapters 4 to 6 treat in turn the three main aspects of the idea of parliamentary control - control of legislation, administrative scrutiny, and financial control. In Part III the analysis is broadened to encompass alternative perspectives on accountability, together with the relationship between those perspectives and trends in Commonwealth public administration generally. To this end Chapters 7 and 8 each elucidate a particular alternative perspective - 'managerialism' and 'constituency relations' - and explore in detail the application of each to Commonwealth statutory authorities. The final chapter justifies this exercise by showing that the general approach to accountability underpinning the present analysis is congruent with the pluralist approach to accountability which has become important in Commonwealth public administration at large.

A preliminary definition and discussion of the object of study is necessary. The term statutory authority is a familiar one in the language of Australian public administration. But as with that other seemingly straightforward concept, the department, conventional usage masks several definitional problems. When Australian students of public administration refer to statutory authorities they normally have in mind collegial administrative bodies (boards, commissions, councils and the like) created by statute and enjoying a significant measure of organizational separation and operational autonomy vis-a-
vis ministers and their departments. This usage is employed throughout the thesis, but it is worth observing that entities with a claim to statutory authority status may lack one or more of these characteristics. Where a body is created 'pursuant to' an Act, for instance, it is not always clear whether it should be described as a statutory or a non-statutory body (Wettenhall, 1976:376). Again, in a number of cases individual public servants, who remain in other respects ordinary members of a ministerial department, exercise powers associated with an office created by statute. Further, some Australian departments, including ministerial departments, have a statutory basis. This is more common in state government but is not unknown at the Commonwealth level (Wettenhall, 1976:314; Stone, 1986:5-6).

The class of statutory authorities is wider than that of statutory or public corporations, categories which were once more popular and are still widely used. My preference for the broader category has two justifications. Firstly, as Wettenhall (1984:105) has noted, at least since the Coombs Royal Commission of the mid-1970s scholarly recognition of and interest in what are sometimes called 'fringe' bodies has extended well beyond the 'public corporations running the Commonwealth's business enterprises' which had to that time tended to monopolise attention. Secondly, the category comes much closer to delineating a meaningful universe of phenomena. Webb (1954:101) has argued that 'to classify administrative bodies in accordance with whether or not they have corporate status is about as useful as classifying
animals in accordance with whether they have tails'. Webb's point was in part that the criterion of corporate status lacked value because it separated bodies with much in common while it grouped together very diverse entities.

But Webb (1955:162-3) also thought the 'statutory corporation' category was far too embracing and argued for the superior utility of a system of functional categories. His point is well taken: for many purposes sensible discussion requires a focus on particular functional groupings, such as trading bodies, regulatory bodies, quasi-judicial bodies and so on - if not even more narrowly defined categories. Functional categories are referred to in this work where I have judged this to be helpful. But, for a study dealing with the broad themes of administrative independence and accountability, statutory authorities at large are a suitable universe of objects (note Wettenhall, 1984:105)

There is a final point to be made about usage. It is common in referring to a statutory authority to include implicit reference to the organization which exists to serve the authority. Thus the Federal Airports Corporation is strictly only the seven member authority created by the Federal Airports Corporation Act 1986, but in practice a reference to that body may also be taken to include the large workforce employed by the Corporation. In this thesis references to statutory authorities are to be understood, according to the context, in either the broad or the narrow sense.
PART I

THE STATUTORY AUTHORITY AS ACCOUNTABILITY PROBLEM
CHAPTER 1

COMMONWEALTH STATUTORY AUTHORITIES AND THE QUESTION OF ACCOUNTABILITY IN HISTORICAL PERSPECTIVE

The problem of statutory authority accountability has taken on a certain timeless and objective quality in Australia, as in other countries with Westminster-style systems of government. In the terms in which it is identified in such countries, however, the 'problem' is better understood as due to the choice of a basic structure of government. The core institutions of Australian government embody particular assumptions about accountability which are closely linked to the idea of ministerial administration. Consequently, the modern statutory authority, while a prominent feature of Australian public administration, has lacked the virtually automatic legitimacy of the ministerial department. This, in turn, has affected the manner in which the statutory authority 'sectors' (if such unorganized collections of disparate bodies can be so dignified) of Australian governments have developed, as well as the arrangements made to secure the accountability of statutory authorities.
The pre-eminence of the ministerial department in the landscape of public administration is, however, a phenomenon of no great antiquity. In Britain the relative status of the two types of agency was settled by the major changes in central government which occurred in the period between the two Reform Acts (1832 and 1867). When the majority of Australian colonies achieved self-government towards the end of this period they tended, more or less faithfully, to follow British developments. Colonial experience, in turn, contributed to the system of government that was put in place at the national level in 1901, and to the development of that system. By showing how an administrative setting was established in Australia in which the statutory authority was assigned a definite role but a subordinate status, nineteenth century administrative history can lay bare the structural basis of the traditional accountability problem. A necessary first step in this study, therefore, is to examine this history; but as the relevant developments have been traced in some detail in the existing literature, only the most salient aspects need be touched on here.

The Administrative Inheritance of Australian Commonwealth Government

In early nineteenth century Britain much administration was conducted by boards of appointed officials, as had long been the case not only in Britain but throughout Europe. As compared with ministers, boards had traditionally been attractive to the Crown because they seemed to offer greater
predictability, continuity and efficiency in performance; they were less likely to develop into 'overmighty subjects'; and, perhaps most importantly, they increased the amount of patronage and, thereby, the representation of the Court in the House of Commons (Parris, 1969). Given their link with the Crown, it is not surprising that their demise was preceded by a broad process of institutional change over the period 1780-1830, which, inter alia, saw the departure of the Crown from politics. In particular, the growing desire and capacity of parliament to hold governments responsible for administration, together with the movement towards a professional civil service, were instrumental in discrediting the board form of administration. These developments were accelerated by the first Reform Act (Parris, 1969).

The boards did not, however, simply fade away after 1832. As Willson (1955) has shown in his careful study of administrative agencies in this period, the House of Commons was gradually converted to a preference for ministries over boards by its experience with boards over the period 1832-55. In these years there was, in fact, an upsurge in the use of boards as the old style of administration responded to new demands on government. In 1832 British central government was conducted by 12 ministries and 16 boards. During the next 23 years three new ministries were created to replace boards but 15 new boards were set up (of which two were converted into ministries in the period) (Parris, 1969:83-4). Boards established over the first half of this period operated in practice largely without parliamentary
participation, as they had traditionally done. But subsequently there was a notable change. Adverse reaction to the use of independent Commissioners to administer the Poor Law in the years 1843-47 is identified by Willson (1955:50-52) as the turning point: boards continued to be established with considerable frequency until 1855, but they now all contained an active parliamentary membership. By the early 1850s, however, a Parliament interested in control over administration, rather than merely in possessing channels of communication with administrators, had discovered that 'a board which was represented in Parliament by one of its members was not thereby made fully responsible to Parliament' (p.52). It was at this stage that the concerns of the Commons were finally translated into a clear case for ministerial administration (Willson, 1955:52; Parris, 1969:89-93).

By the 1850s the managerial considerations which had favoured the use of boards in earlier times were also disappearing. In particular, the permanent civil service was proving able to provide continuity in administration, and its reform made it the natural vehicle for the late nineteenth century expansion of government. Indeed, the year of the establishment of a Civil Service Commission, designed to de-politicize the recruitment of public servants, marks the boundary identified by Willson (1955:53) between the period of experimentation with new boards and the 'Golden Age of ministerial administration' (1855-1906).

By the time of the Second Reform Act (1867), not only
was the ministerial department triumphant in both theory and practice but a system of parliamentary control of administration had also been put in place in Britain which has dominated thinking about accountability in government, in Australia as well as Britain, down to the present day. The centre-piece of the system was the mechanism of ministerial responsibility, and its obverse the 'anonymity' of the civil servant. This brought together, in 'happy conjunction', a 'concentration of administrative power and therefore of responsibility in one person and the presence of that person in Parliament' (Willson, 1955:54). The consolidation of individual ministerial responsibility went hand in hand with the rise of the parliamentary question as the principal means of scrutinising public administration (Willson, 1955:54).

Of equal importance was the development in the years between the two Reform Acts of a comprehensive system of financial control. By the middle of the century it had become the established practice to channel all public revenue into the Consolidated Fund and to require that all public payments, statutory or annually appropriated, be made from that source (Mackenzie, 1963:152; Garrett, 1980:172). Close Treasury control over both expenditure proposals and the expenditure of parliamentary appropriations by departments, with the latter treated as 'units in an accounting system' rather than independent institutions, also dates from this period (Parris, 1969:247-57). So do other aspects of modern budgeting, such as the presentation to parliament of annual
estimates and annual accounts of departmental expenditure (Mackenzie, 1963:157-61). A permanent parliamentary Committee of Public Accounts was added in 1861. Finally, the 'circle' of financial control was completed in 1866 by the Exchequer and Audit Act, which required detailed and complete systems of estimates and accounts to be presented in comparable form, and established the office of Comptroller and Auditor General to ensure that expenditures were in accordance with parliamentary appropriation and Treasury authorization (Normanton, 1980:176).

Nineteenth century Australian administrative history displays a less clear-cut pattern. Wettenhall (1963; 1973; 1976) has shown that administrative change after the achievement of self-government by most of the colonies in the late 1850s did follow British trends, but with some delay and less zeal. Moreover, the revival of the statutory board began two decades earlier in Australia. As a result, while Britain experienced a period of half a century in which ministerial administration held virtually complete sway, there was almost no stage in late nineteenth century Australia when both types of agency were not actively supported.

Statutory boards of the familiar English kind were widely utilized for important functions in the colonies before self-government. Land boards, education boards, public works boards, trustee savings banks and professional registration boards for medical practitioners were among those established between the late 1820s and the early 1840s
Wettenhall has shown that these were not directly affected by the coming of responsible government, which brought about a thorough-going 'ministerialization' of the political executive but made considerably less impact on administrative structures (1963:242;1976). His explanation of the persistence in the colonies of administrative arrangements, including appointed statutory boards, which were aberrant from the perspective of the Westminster model of responsible government highlights three main factors. As the transition to responsible government in Australia occurred at a time when the 'British design' was not complete, there was no clear 'Westminster model' for Australian governments to follow. Secondly, the colonies possessed reasonably well-developed and effective administrative structures which, in the absence of a compelling case for change, simply continued as before. Finally, Westminster 'ideology' never became a powerful independent force in nineteenth century Australia; the ministerialization of administration which did occur was almost solely a response to political pressures and, therefore, 'more uneven' than in Britain (Wettenhall, 1973:40,43).

These arguments are not completely convincing. The authorities on the transformation of government in mid-nineteenth century England have emphasized that practical considerations, rather than philosophical argument, were the main stimuli for change in that country as well (Willson,
Further, there is no reason to believe that administrative inertia would not have been equally as strong in Britain as in Australia. A crucial difference between the two countries not discussed by Wettenhall would seem to have been the far greater institutional strength of the Westminster parliament compared with the fledgling parliaments of the Australian colonies. It was the desire of the parliament to exercise a real measure of control over administration which was the decisive factor in the ministerialization of British government. In Australia both the tradition of executive dominance in the years before responsible government and the rapid transition to democratic politics, with its tendency to define parliamentarians first and foremost as transmitters of public demands, probably inhibited the ability of parliaments to be powerful yet disinterested watchdogs over the administration.

Nevertheless, there was a clear trend towards ministerial administration; and Wettenhall's emphasis on the importance of political pressure in bringing this about is surely correct. It was specifically popular pressure, and the crude pork-barrel style of politics to which this has often led in the early phase of the life of a democratic political system, which seems to have had the greatest influence. Australian governments were more active than their British counterparts. As the Sydney Morning Herald

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1. Such argument did exist, however. As Willson (1955:49) notes, Bentham had argued forcefully for 'single-seatedness' before 1832 (see also Schaffer, 1957).
noted in 1879:

The colonies are governed after the paternal fashion; the United Kingdom is not. Here, the Government undertakes to do a hundred different things for the people which there the people are left to do for themselves. Here the Government has an enormous public estate to manage, and thousands of business transactions to carry on in connection with the leasing, sale or the improvement of it. There is nothing in England to impose a similar charge upon the government (Dickey, 1969:76).

The power which these circumstances gave to ministers, and the way in which they used this power, was recorded by Anthony Trollope in 1876:

A member of a colonial cabinet is not so great a man as a cabinet minister at home... but he holds very much more than proportionate powers, and exercises very much more than proportionate patronage. Everything is centralized.... When a member for some district becomes a cabinet minister, that district at once expects a railway. Should a Roman Catholic be Prime Minister, the Roman Catholics throughout the colony expect government places - and every porter at a railway holds a government place.... A supporter of the ministry considers himself entitled to buy good land cheap.... Tenders of contracts for the conveyance of mails are sent out in the name of the postmaster-general.... The same practice prevails through the cabinet, and produces a feeling that staunch support of the government maybe quite as influential in procuring the desired job as favourable terms (A. Trollope, Australia and New Zealand (1876), cited in Miller, J.D.B., 1959:122).

In this sort of political system there were powerful practical incentives for bringing under the direct control of ministers areas of administration which closely affected the material interests, or life-chances, of members of the public. The more significant and immediate the effect, the greater the pressure for ministerial control (Wettenhall, 1963:258-9).

In addition, Wettenhall (1963:265-6) has argued that
a desire for more rational and effective forms of administrative organization to conduct the growing business of government contributed a separate stimulus to the movement towards ministerial administration. By the mid-1880s, according to him, the ministerial department was clearly the preferred agency for the great bulk of administrative activity in the self-governing colonies: 'the few boards that survived represented the small byways of administration only' (1963:267).

However, no sooner had direct ministerial administration achieved pre-eminence than a trend back towards the statutory authority began to manifest itself. Though labour boards were created in New South Wales and Victoria in the 1870s, the most important indication of the new mood in public administration was the establishment of railway commissions in place of departments in these states in 1883 (Victoria) and 1888 (NSW). Despite the serious efforts being made at this time to create 'uniformly regulated and patronage-free public services', it was successfully argued that politically-induced inefficiency in railway administration could be prevented only by a move away from direct ministerial control (Wettenhall, 1960; 1961). The growing popularity of the quasi-autonomous statutory corporation in Australia, at a time when it was little used in Britain, would thus seem to have been a consequence of the more interventionist nature of Australian governments as well as their more democratic character. Experience had demonstrated that this mixture could be detrimental to sound
administration. In these circumstances, the value of the statutory corporation to those who did not wish to contemplate either less interventionist or less democratic government was that it appeared to offer a purely technical solution which did not require any political sacrifices. Hence its appeal to the radical democrats of Australian politics, such as the Victorian Liberals of the 1890s and the early twentieth century. It allowed them to undertake 'a programme of active government participation in national development against the opposition of the older conservative parties whose chief propaganda weapon was that such policies led to corruption' (Sawer, 1954:13). In line with this rationale, by the turn of the century the statutory corporation had been employed in the administration of various urban infrastructural services, banks and transport facilities such as railways and harbours. And the first few years of the twentieth century saw rural land development and water management added to the list (Eggleston, 1932:32-4).

Those responsible for designing and setting in operation the new Commonwealth government were thus subject to somewhat different influences from Britain and colonial Australia. In the latter case ministerial administration, while well entrenched, had stopped well short of displacing inconsistent administrative arrangements. Not only were growing numbers of statutory bodies springing to life to administer governmental trading operations and physical

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2. A range of particular advantages were claimed for the statutory corporation by turn of the century Victorian Liberal politicians (see Sawer, 1954:12-13).
infrastructure services, but departmental sectors also continued to manifest organizational features inherited from the period before responsible government. The British example was less ambiguous. By the 1890s the 'Westminster model', having achieved its final form at least two decades earlier, was at the height of its fame and constituted a strong influence in favour of a thorough-going 'ministerialization' of the new government.

Establishment of a Pattern of Statutory Authority Use

While colonial experience with statutory authorities was to contribute to the evolving shape of Commonwealth administration, the latter represented a significant break with the past. Some existing administrative machinery (for example, posts and telegraphs) was taken over at Federation; but, compared with the colonies at the time they gained responsible government, the Commonwealth was largely unencumbered by the administrative traditions of the pre-responsible government era. Consequently, it was able to begin life with a much purer Westminster-style administrative system than the colonies had been able to develop. Commonwealth government administration in 1901 was almost fully ministerialized: statutory powers exercised by departments were largely vested in ministers rather than officials, and a correspondence was established between the number and designation of ministers and the number and designation of departments. Additionally, the Public Service Act 1902 created a permanent commonwealth service with
patronage-free recruitment procedures and uniform staffing arrangements, under the control of an independent (statutory) authority. Even when Commonwealth administration grew more complex and new authorities were created alongside ministries, the original strong Westminster structure remained the dominant force in the system. When departmental officials were given statutory powers in their own right it was normally specified that these were to be exercised 'subject to any directions of the Minister'. And, as other statutory bodies of varying degrees of independence from ministers and public service departments came into existence, they too were attached, more or less loosely, to these 'core' entities to satisfy the requirements of parliamentary representation as well as establishment and policy control (Wettenhall, 1973:244-5; 1976:14-15).

The new administrative system had a firm constitutional basis. While the term 'responsible government' did not appear in the Commonwealth Constitution, Sections 62 and 64 clearly envisaged ministerial administration with ministers as members of, and hence answerable to, parliament. Moreover, the only generic form of administrative organization referred to in the document is the 'department of State' (S.64). But no explicit proscription was placed on other forms. Indeed specific statutory, non-ministerial administrative agencies are mentioned, or hinted at, in two places. The clearest instance is Section 101, which requires the establishment of an Inter-State Commission 'with such powers of
adjudication and administration as the Parliament deems necessary', subject to constitutional requirements concerning its broad functions and the terms and conditions of appointment of its members (SS.101-104). According to Quick and Garran (1976:899,895), the founding fathers intended the Commission to be 'an impartial and non-political tribunal', with 'a large measure of independence from parliamentary control'\(^3\).

The other area in which the Constitution seems to have envisaged the use of a statutory authority is conciliation and arbitration. Section 51 xxxv empowers the Commonwealth to legislate with respect to 'conciliation and arbitration for the prevention and settlement of disputes extending beyond the limits of any one state'. The exercise of this power would almost certainly have been assumed to entail the creation of a statutory tribunal (or a number of such bodies), a form of organization already in existence and the subject of much interest in Australasia at the time of Federation (see Reeves, 1969). That this is what the founding fathers had in mind is confirmed by their frequent references to 'tribunals' and 'courts' in the discussion of this sub-clause in the Conventions of 1891 and 1898 (see Quick and Garran, 1976:645-7).

It is not clear, however, what conclusions, if any,\[^3\] Quick and Garran claim that the body was 'directly suggested by' the Inter-State Commerce Commission created by an act of the United States Congress in 1887. They also note that, in its judicial powers, it bears a close resemblance to the Commission established by the English Railway and Canal Traffic Act 1888 (1976:896,898).
can be drawn from the fact that the Constitution apparently sanctions non-ministerial administration in these cases. They certainly furnish strong evidence that the ministerial department was not felt to be appropriate for all executive functions and would need to be supplemented by special purpose statutory authorities. Nonetheless, it might be argued that, because the Constitution makes no general reference to such an alternative form of administration, the intention was that the ministerial department should be employed in all but those cases where the Constitution has provided otherwise. Independently of the fact that it has had no impact on administrative history, this is a highly unconvincing interpretation. A somewhat more plausible argument is that Sections 61, 62 and 64 together place a restraint on the freedom of action of statutory authorities vis-a-vis ministers and thus on the form of their accountability. This argument is examined and rejected later in this chapter, but it too is of doubtful historical importance. While the Westminster model has undoubtedly influenced arrangements for the accountability of statutory

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4. In all of the systems of government which influenced the founding Fathers, the legislature had a constitutionally fettered power to create statutory authorities and all had made recent use of the device. In the case of the Australian colonies, as we have seen, the period in which the Commonwealth Constitution was drafted was one of considerable permutation with the device. The High Court has acknowledged the legal power of the parliament to confer statutory functions on persons or bodies other than ministers and the Governor-General (R v. Macfarlane ex parte O'Flanagan (1923) 32 CLR 518) and to create statutory authorities "enjoying some real dependence from ministerial control" (Australian National Airlines Pty. Ltd. v. the Commonwealth (1945) 71 CLR 29; Australian Coastal Shipping Commission v. O'Reilly (1962) 107 CLR) (Finn and Lindell, 1982:179).
authorities, as amply illustrated in this thesis, it has not required the assistance of a restrictive constitutional interpretation to achieve such a result.

Notwithstanding the strong influence of Westminster principles on the organization of the new government, before long the statutory authority became an important component of the administrative system. The causes of this development were similar to those in the Australian states and also included the influence of practice in the states. During the first quarter century of the Commonwealth's existence authorities were created in all of the broad functional categories into which they are typically classified today. Further, the structural forms and statutory mechanisms for accountability which were to constitute the pattern for the subsequent use of the device had almost all found practical expression.

Apart from the group of in-house, 'watchdog' authorities created during the first parliament (Auditor-General, Public Service Commissioner and Chief Electoral Officer), the earliest statutory authorities were several regulatory offices (a Commissioner of Patents (1903), a Registrar of Copyrights (1905) and a Commonwealth Practitioners' Board (1907)), the quasi-judicial Commonwealth Arbitration and Conciliation Court (1904), and a group of 'executive' offices and boards5 (separate Military and Navy

5. All statutory authorities which do not exercise purely visory functions are arguably executive authorities (but note reservations of Finn and Lindell, 1982 as to whether statutory authorities exercise 'the executive power of the mnonwealth'). But it is customary to classify such bodies
Boards (1904), a Commonwealth Statistician (1905), a Commonwealth Meteorologist (1906), a Commissioner of Pensions (1908) and a Commissioner of Land Tax (1910). In the case of most of the regulatory and executive authorities, however, there was little sense of separation from departmental structures: positions were filled by public servants and statutes made provision for close ministerial control of office-holders. In 1911 the first of the Commonwealth's statutory trading corporations, the Commonwealth Bank, came into existence, followed by the Commonwealth Railways in 1917. The first statutory advisory body was the Marine Council created by the Navigation Act 1913. As with the best known of the early bodies in this category, the Tariff Board (1921), the government was, under the Act, legally required to refer certain matters to the Marine Council for its advice. In 1914 the River Murray Commission was established to administer the River Murray Waters Agreement signed by the Prime Minister and the Premiers of South Australia, Victoria and New South Wales. This body, the first joint Commonwealth-State authority, was granted limited powers to operate water according to one scheme or another (compare Wettenhall, 1976 and SSCFGO, 1982a). Commonly utilized categories include quasi-judicial, regulatory, trading or business, primary produce marketing and granting. Authorities which cannot be readily placed in any of the common categories or whose functions cannot be easily distinguished from those performed by ministerial departments are often referred to as executive authorities. I have followed this practice on several occasions in this thesis.

A detailed account of the creation of Commonwealth statutory authorities over the years from Federation to the mid-1950s is provided by Wettenhall (1956). I have drawn upon this work for the information contained in this paragraph and, as indicated, for other detail concerning the provisions of early enabling legislation discussed in subsequent pages.
storage facilities and to fix navigation tolls, in accordance with the rather unsatisfactorily narrow objects on which the participating governments could agree. (In practice, its role was to be even more restricted, testifying to the limitations of joint administrative structures in a federation.) (see Wettenhall, 1956:308-9; Clark, 1983). By 1920, with the creation of an Institute of Science and Industry (later to become the Commonwealth Scientific and Industrial Research Organization), the Commonwealth had also utilized the statutory authority to make its first foray into promotion of the arts and sciences. Finally, in the early 1920s, coincidental with the emergence of the Country Party as a force in national politics, the first group of Commonwealth primary produce marketing and regulatory authorities were established. Like those which were to follow, the earliest of these bodies - the Dairy Produce Control Board, the Dried Fruits Control Board and the Australian Meat Council, all created in 1924 - were organically linked to grower organizations through the direct election of board members and through funding arrangements.

With the expansion of these categories of authority, after 25 years of existence Commonwealth government was being carried on by ten ministerial departments, nine major statutory corporations and some three dozen unincorporated executive, advisory, regulatory and quasi-judicial appellate statutory authorities (Wettenhall, 1956:224). Not only were statutory authorities well represented in Commonwealth administration, but a number of them were also impressively
powerful and independent. Indeed, this period witnessed the establishment of what has been seen as a distinctive and enduring pattern, or style, of public policy in which the statutory authority became the administrative vehicle for certain central values of Australian politics.

That pattern of public policy has been defined by Emy (1974:500-49) as the delegation of key aspects of national policy making to virtually closed sub-systems presided over by statutory bodies. The task of the latter was to adjust the material interests of particular interest groups and settle inter-group conflict by 'non-political' means, often involving quasi-judicial procedures or expert inquiry. As we have seen, the view emerged in colonial Australia from the early 1880s that, while extensive governmental activity was either desirable or inevitable in Australia, some activities could only be soundly administered if they were taken out of the arena of popular and parliamentary politics. The statutory authority made this outcome possible. Developing the insights of Hancock (1930), Miller (1959) and Parker (1965), Emy has argued that the use of the statutory authority by Commonwealth governments in the early decades of the twentieth century was part of a model of democratic society based on the principle of an equitable distribution of the benefits of state power between 'legitimate' groups. On Emy's account, each major producer group had come to believe it had a just claim to a 'fair share' of public funds and saw the state's role as that of providing the institutional means to enable group members to enjoy a
'secure and private existence'. Acceptance of this outlook by the political representatives of these groups provided the mechanism through which the latter were provided with discrete institutional arenas, insulated from 'politics', in which they could be closely involved in the making of decisions to protect their material well-being (see, especially, Emy 1974:339-50; 533-5).

The key administrative entities upon which Emy's argument relies are the Conciliation and Arbitration Court (later Commission) which protected the economic return to labour, the various primary produce marketing and co-operative authorities which did the same for farmers, and the Tariff Board which protected manufacturers. This machinery was largely in place by the end of the 1920s. A less important example from the same period cited by Emy is the Repatriation Commission which applied the same principle to the interests of First World War servicemen (1974:540-41). The independence which governments and parliament were prepared to allow statutory bodies in this period is dramatically illustrated by the first of these bodies which was able, quite autonomously, to redefine its function in a radical manner. Having been originally established for the sole purpose of settling inter-state industrial disputes, the Conciliation and Arbitration Court simply assumed a wage fixing role which gave it de facto responsibility for national wage policy (Emy, 1974:501-2).

While it is thus arguable that a number of early Commonwealth authorities owed their existence to a
discernible philosophy, this was less true for the contents of authority statutes. In some cases, such as the Commonwealth Railways Commissioner, legislative draughtsmen drew upon the models provided by similar state bodies. Nor did time and an accumulation of Commonwealth authorities bring the possibility of such borrowing to an end. As late as 1949, for instance, the Snowy Mountains Hydro-Electric Authority was modelled on the Tasmanian Hydro-Electric Commission (the blue-print for which, in turn, had been the statute of the Victorian State Electricity Commission) (Wettenhall, 1956:398; 1968:351). There was nevertheless a degree of experiment; necessarily so where no comparable state organization existed, as in the case of the Repatriation Commission created by the Australian Soldiers Repatriation Act 1917. Soon, however, the drafting of authority statutes was also being influenced by Commonwealth precedents. The War Service Homes Commission (established 1918), for instance, was based on the Railways legislation, as in many respects was the Institute of Science and Industry (1920) (Wettenhall, 1956:158,220).

It might be imagined that this imitative process would, over time, have produced considerable consistency in the basic provisions of statutory authority legislation. But a growing diversity among statutes was at least as evident as any shared ground. Bodies varied in their financial and personnel arrangements, in their legal status (whether incorporated or not), in their internal organization (specifically, the size and composition of the governing
entity established by statute and the institutional arrangements for handling policy and executive management), in their relationships with ministers and parliaments (for instance, the nature of ministerial controls, or the role of parliament in the dismissal of authority members) and in their reporting obligations, to mention only the most obvious areas. Moreover, in many cases the differences were largely unrelated to any differences in the functions of authorities. This heterogeneity was not necessarily due to a desire to innovate; for even if legislators had wished to conform to previous practice they were confronted quite soon with widely differing precedents. Nevertheless, at times there appears to have been an almost perverse unwillingness to employ particular statutory provisions outside their original application (see Wettenhall, 1956).

The underlying cause of the great variability in authority statutes was that governments and parliaments did not possess a strong sense that they were working with an administrative form alternative to that of the ministerial department. This has remained true, to some extent, down to the present; but it was especially so in the early decades of federation when it was not uncommon for prominent statutory authorities to be described as departments. The statutory authority offered the possibility of a limited departure from orthodox ministerial administration, for a purely practical purpose – namely, to relieve the administration of a given function of particular consequences of that orthodox form. There was no desire to view the
resulting organization as belonging to a distinct administrative 'sector'; on the contrary, each body tended to be viewed as an exception to the 'normal' arrangements, the individual solution to a unique administrative problem. In such circumstances it is not surprising that there was little concern with consistency when a new authority was created, and a complete lack of interest in the development of a set of principles for statutory authority design (or even in the idea of a periodic review of authority legislation on the statute books to bring it into conformity with changing attitudes towards such matters as accountability).

There was, nevertheless, one important development concerning the form of the authority created by statute, but related as well to its general administrative purpose, which should be noted. The earliest Commonwealth executive and trading authorities tended to be single-seated bodies rather than multi-member boards. In some cases (for example, the Commonwealth Railways) this was simply a consequence of the unreflective imitation of existing state authorities. But on other occasions this style of authority was deliberately chosen and argued for. In the debate on the Commonwealth Bank Bill, for instance, opposition speakers argued that a board was needed so that excessive power would not be placed in the hands of one man. Prime Minister Fisher replied that a board would be superfluous. The main function of private bank board members, he said, was to 'select a competent general manager and then religiously draw their fees'. In
the case of a public sector bank, he added, the positive aspect of this function would be performed by the government, and parliament was well placed to exercise whatever additional supervisory activity might be undertaken by a board (Wettenhall, 1956:148). The unicephalous model was the norm until the early 1920s, but during the incumbency of the business-minded Bruce-Page government (1923-29) the multi-member board gained the dominance it has held ever since. As far as the Labor party is concerned, the proposal of the Scullin Labor government to use a board for the Australian Broadcasting Commission (established in 1932) represented something of a watershed in the party's views on the matter, although the Labor governments of the 1940s occasionally showed a tendency to revert to the party's original preference for a statutory general manager alone.

Labor's original attitude undoubtedly reflected an ideologically determined distaste for private business practice, just as the conservative parties' identification with private enterprise produced a favourable disposition towards the board form. But differences in party positions probably also owed something to differing views about the

7. In opting for the multi-member authority, Bruce and his ministers were self-consciously drawing on the private enterprise model. Supporting his legislation of 1923 for a part-time, policy board to head the Commonwealth Shipping Line, Bruce stated that 'The Board will be like the ordinary board of directors of a company...' (Wettenhall 1956:193).

8. An example is the 1945 amendments to the Commonwealth Bank Act discussed below. The Snowy Mountains Hydro-Electric Authority Act 1949 and the Commonwealth Science and Industry Research Organization Act 1949 also created single level governing structures, albeit with multiple membership.
degree of independence vis-a-vis government which it was desirable for statutory authorities to possess. During the 1920s and very early 1930s Labor had, in fact, been totally opposed to the creation of statutory authorities. The underlying reason, one suspects, was the ability of the device to frustrate governmental control. But the party's public rationale was couched in classical Westminster terms: if government were to be truly responsible, ministers must possess complete control over all government activities (see Wettenhall, 1964:19).

Residues of this position continued to influence Labor party thinking long after it ceased to be policy, and a certain distrust of the board form may well have been part of this same syndrome. Some evidence is provided by the amendments to the Commonwealth Bank Act introduced in 1945 by the Chifley Labor government. With vivid memories of the Scullin government's unsuccessful attempt to impose its policy on the Bank board in the early 1930s, the government sought to strengthen the hand of the government against the Bank. The amendments included the removal of the board structure imposed by the Bruce-Page government. The alternative viewpoint was put in the parliamentary debate by Opposition leader Menzies, for whom the board was justified as a means of assisting authorities to resist governmental pressure (Wettenhall, 1956:356)9.

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9. Menzies' defence of the board is worth quoting: 'The great advantages of a Board are the bringing together of a diversity of experience, the added judgement produced by frank discussion by competent men, the added strength in joint responsibility and the publicity which a board of directors
Boards are better able to play such a buffer role if a distinction is made between policy and executive functions, with the former allocated to the board and the latter to a chief executive officer appointed by the board. This is the private enterprise model. It combines the benefits for policy-making and public confidence of a plurality of mostly part-time directors, with the managerial advantages of a single source of command. The model was not used during the early decades of the Commonwealth's existence; single-tiered authorities (single or multi-member) were the only structures employed. A statutory structure of board and general manager seems to have been first utilized for the Commonwealth Bank in 1924 and the Australian Broadcasting Commission in 1932 (Wettenhall, 1961:29). But by the beginning of the post-war period it had become the preferred form for trading and related authorities.

A board may also be favoured because it enables particular interests, singly or jointly, to be represented in the governing structure. This explains the extensive use made of the multi-member authority for the performance of advisory functions. The advantages of such representation, including heightened legitimacy and a better information base for decision-making, have also been sought for executive,

strongly adhering to a view can secure for that view in the event of great conflict of opinion ... one man, himself dependent for appointment on the government of the day, is not in a strong position to resist or argue about the instruction of a Treasurer or a government; but a board of directors, consisting of people who are in every other respect independent of the Government is in a far better position to object ... to argue ... and to publicise its own views'. (cited by Wettenhall, 1956:356).
trading and regulatory bodies. In the inter-war period and during the 1940s formally representative boards were reasonably common; but some notable failures due to the dissension and rigidity created by board members acting as delegates of their interest groups led post-war governments to make less use of the device, except in the case of primary product marketing authorities (Wettenhall, 1956:235,387). Informal or indirect interest representation through statutory boards, however, continued (and continues) to be extensively practised.

Evolution of Statutory Provisions for Accountability
As outlined earlier, the Westminster tradition came to define administrative accountability in terms of specific forms of parliamentary control - namely, control of annual expenditure through the Gladstonian 'circle' of financial scrutiny, and control of day-to-day administration through the agency of ministerial responsibility. In addition to parliamentary control, there were more detailed bureaucratic controls over finance, staffing levels, recruitment of personnel and terms and conditions of employment, the most important of which were concentrated in the Treasury in Britain but shared between Treasuries and powerful Public Service Boards in Australia. With the emergence (or, in the case of the states, the re-emergence) of statutory authorities in established systems of responsible government, a version of the same accountability regime was imposed on them as well.

The arrangements for statutory authorities were
distinguished from those for ministerial departments mainly in the extent to which the familiar Westminster mechanisms were applied. Parliamentary financial controls, for instance, were relaxed for some authorities, either by completely dispensing with parliamentary appropriation of funds, as was often done for trading corporations, or aggregating appropriations under a small number of general heads of expenditure. In many cases staffing controls were reduced or eliminated by exempting authorities from particular aspects of Public Service Board supervision. Most importantly, ministerial control, and hence ministerial responsibility, was circumscribed to a greater or lesser extent by enabling statutes.

There was, however, one new element in the accountability regime devised for statutory authorities. Both as a means of compensating for the diminution in parliament's capacity to exert control through the standard Westminster channels and in acknowledgement of their origin in legislation enacted by parliament, statutory authorities were generally required to submit annual reports to ministers for tabling in parliament. This practice supported the idea (discussed in Chapter 2) that statutory authorities were in some degree directly accountable to parliament.

Parliamentary authorization and scrutiny - that is, the appropriation of authority funds (mainly applicable to non-commercial authorities) and the standard parliamentary opportunities for questioning ministers and publicising issues - forms the backdrop for the specific accountability
mechanisms contained in modern authority statutes. These are of two main sorts. Firstly, certain obligations are typically imposed on authorities, the most important of which are to furnish an annual report, along with an audited statement of accounts; to keep the minister informed of operations and to supply such additional reports as the minister requests; to submit estimates of expenditure in the form desired by the minister (for approval in the case of non-commercial authorities); and to seek ministerial approval for contracts and borrowings involving more than specified amounts of money. Secondly, several important discretionary powers are assigned to ministers. In addition to the power inherent in their right to withhold approval of 'on-budget' authorities' expenditure plans, ministers appoint statutory office-holders and are frequently empowered to issue directions to authorities.

This brief description suggests the centrality of ministers to the accountability arrangements for statutory authorities, a phenomenon which reflects the influence of the Westminster notion that ministers are the key link between parliament and the administration. Some provisions conferring power on ministers have changed little over the years. For instance, statutory requirements for authorities to seek approval for such matters as the borrowing or expenditure of moneys above specified amounts, or the fixing of salaries above a specified limit, were a feature of the system of controls for nineteenth century statutory authorities. Power in these matters has always been a
monopoly of the executive, and there seems to have been no argument that parliament or other actors could usefully share it. In one notable case, however, a nineteenth century parliament was successful in having reserved to it an important power of approval. The landmark legislation of 1883 establishing the Victorian Railway Commission subjected decisions to establish new railway lines to parliamentary approval in the form of an Act of parliament (Wettenhall, 1961:24-5). The same provision was adopted for the Commonwealth Railways; but its use in that instance did not stimulate comparable reservations of power in future authority statutes.

In general, however, the role of ministers in accountability regimes has grown significantly over the period since Federation - and probably most rapidly in the decade or so from the mid-1930s to the late 1940s. This development was related to the increasing dominance of parliament by the executive. As with departmental administration, the increasing volume of government business in the parliament meant a decrease in the average amount of attention devoted to both legislation and annual estimates of expenditure. Further, the growth of government meant a diminution in parliament's capacity for administrative scrutiny through traditional mechanisms. But in the particular case of statutory authorities, parliament's position vis-a-vis ministers was also weakened by changes over time in the form of certain provisions in enabling statutes. The latter changes are worth closer examination,
in particular because they symbolise the decline in parliament's ability to claim a direct relationship with statutory authorities.

One small yet important change concerned the appointment of statutory office-holders. The statutes of early Commonwealth authorities normally accorded parliament a definite role in the appointments process, if only a limited one. A suggestion in the debate on the Railways Bill 1917 that parliament, rather than the government, should actually choose the Commissioner was met with a firm statement of the ministerial perspective on parliament: 'We have responsible government. How can Parliament appoint except by entrusting the Executive with the selection?' (Watt, House of Representatives, CPD, 2 August 1917:764; cited in Wettenhall, 1956:154). Significantly, the participants in the debate accepted the question as a rhetorical one. However, as with a number of other early authority statutes, the Railways legislation gave parliament a part to play in the removal of the statutory office holder. The Commissioner could be suspended by the minister on specified grounds - inability, inefficiency, mismanagement, misbehaviour, refusal or neglect to carry out the provisions of the Act - but such action was required to be followed by the tabling in parliament of a statement of reasons, and parliament was empowered to overturn the decision. When the appointment of the War Service Homes Commissioner was terminated in 1921, the presence of such a provision in the statute made it mandatory, as well as politically necessary,
for the minister to justify his action in detail to the parliament (Wettenhall, 1956:162-7). In a few instances, most notably the Institute of Science and Industry Act 1920, suspension itself was dependent on parliamentary initiative, in the form of a resolution of both houses praying for removal by the Governor-General. This provision was first employed at the Commonwealth level in the legislation establishing the office of Auditor-General, and was evidently still seen as a live option in 1939 when it appeared in the Bill for the abortive National Insurance Commission (Wettenhall, 1956:422). However, even the weaker form of parliamentary supervision of dismissals was being displaced by this time. It was employed for the Commonwealth Coal Commissioner as late as 1944 (Wettenhall, 1956:304), but not considered for the Australian Broadcasting Commission by a parliamentary review of that body's enabling legislation two years earlier (JPCWB, 1942). The stronger provision has not appeared in legislation for new authorities in the post-war period and the weaker provision has been employed only very rarely.

But statutory provision for parliamentary supervision of dismissals continues to be employed. Indeed, it provides a good example of the way in which legislative draftsmen may keep a provision alive through their tendency to borrow from the nearest available model. Thus legislation establishing several industry policy bodies created in recent years has followed the example of the Industries Assistance Commission in requiring ministers to table reasons for a dismissal and empowering parliament to reinstate. The provision was employed for the Tariff Board (the predecessor of the Industries Assistance Commission) in 1921 when it was in general use. But three recent instances of its use in the industry policy field seem to be virtually unique among the large number of authorities created over the past several decades. The relevant Acts are the Steel Industry Authority Act 1983 (No.124), the Automotive Industry
This development was part of what has been identified as a general movement around the time of the Second World War to reduce the amount of detail in authority statutes, leaving the executive with greater discretion concerning the precise form and extent of accountability. Such a change has been noted, too, for the financial provisions authority legislation (Wettenhall, 1956:401). It has also occurred in the case of the terms and conditions of appointment. These were once commonly laid down in some detail, but modern statutes normally specify only that they are to be communicated in writing to appointees. Moreover, in recent times discretion has often been extended to the size of statutory boards, which in Australia (though not in Britain) had hitherto, almost without exception, been fixed by statute.

Whereas the various matters just considered are perhaps best understood as more or less incidental consequences of the changing circumstances of government, a second factor seen to have increased the importance of the minister in accountability arrangements is more directly related to issues of principle in the constitution and operation of statutory authorities. This involved an implicit reassessment around the time of the Second World War of the large degree of statutory independence often conferred

Authority Act 1984 (No.106) and the Anti-Dumping Authority Act 1988 (No.72).

Wettenhall (1956:193) found only one exception - the Commonwealth Shipping Line established in 1923. For two recent instances among many, see the Wheat Marketing Act 1984 (No.141) and the Australian Sports Commission Act (No.77).
on authorities in earlier years. The trend is difficult to identify precisely because it was not transmitted through formal policy statements, nor did it involve the wholesale revision of previous statutes. Instead, it was manifested in the odd statutory amendment, in a greater preference for including a power of ministerial direction in statutes creating new authorities and, allegedly, in a greater desire on the part of ministers and governments to make use of their formal powers, especially in matters of finance, to control authorities more closely. It is a trend whose strength has also tended to be exaggerated, as is shown later in the chapter. For the present, however, the history of the statutory provision giving ministers the right to issue directives may be outlined as a guide to the evolution of official attitudes towards the nature of the balance which should be struck between authority independence and ministerial control.

The Ministerial Power of Direction

The ministerial power of direction is no recent innovation: its Australian origins have been traced at least as far back as the early years of the Victorian railway authority (Wettenhall, 1961). The original Victorian Railways Management Act contained no such provision, but confined the discretionary power of the responsible minister to 'a few narrowly defined matters' (1961:24). However, dissatisfaction with the new form of administration, and in particular with the lack of executive and parliamentary
control over the Commissioners, resulted in a major revision of the legislation in 1891. The draft Bill added a list of 13 subjects upon which it was proposed to give the minister power to initiate action which the Commissioners could ultimately be compelled to carry out. That this provision did not survive the passage of the Bill through parliament was due, according to Wettenhall (1961:51), to the opposition of Deakin who felt that it created 'a Bill of details' whereas what was required was 'a Bill of principles'. The relevant clause was thus redrafted to enable the Minister, at any time, to issue a request in writing to the Commissioners 'to propose a scheme for effecting an increase of income or a decrease of expenditure or for carrying out any matter of policy'. If the minister were dissatisfied with the scheme proposed, he could substitute one of his own which the Commissioners were required to take 'all necessary steps' to implement (1961:51).

This statutory power was introduced to Commonwealth administration in the Commonwealth Railways Act 1917 and was soon extended to a number of important authorities, including the War Service Homes Commission (1918), the Repatriation Commission (1917, 1920) and the Institute of Science and Industry (1920). It is worth noting that, in its original use, the power was not completely general, as it was ostensibly confined to matters of 'policy'. Nor was its application free of checks: the Commissioners might publicise their disagreement with a ministerial policy.
through the 'scheme' they were obliged to devise, and could possibly persist in their opposition until the matter was finally decided by the Governor-in-Council (Wettenhall, 1961:51). In contrast, the statutes of Commonwealth authorities often made no attempt to limit directions to matters of general policy, or to provide any safeguards against capricious intervention.

In the light of what has been said about the differences in attitudes towards the statutory authority form of the Labor and non-Labor parties in the inter-war period, it is not surprising that they also differed in their approaches to the ministerial power of direction. While Labor favoured a broad or unrestricted definition of the power, its opponents tended to employ a narrower definition or to eschew the power altogether. The difference was exemplified in the handling of the legislation to establish the Australian Broadcasting Commission. The Scullin Labor government's draft Bill of 1931 subjected the proposed statutory corporation to an unrestricted power of direction. But the fall of that government meant that the legislation was actually introduced into parliament by the succeeding Lyons (United Australia Party) ministry. The latter found its backbench supporters strongly opposed to the powers conferred on the minister, and, as a result, amended the offending provision to replace the general directive power with several specific powers. The minister was, nevertheless, left with substantial powers, including the right through written instruction to prohibit the
broadcasting of any matter (Wettenhall, 1956:278-80; Rydon, 1952a).

Meanwhile, the Scullin government's conflict with the Commonwealth Bank Board in the early 1930s had created a political issue of the lack of a statutory power of direction over that authority. The matter was considered by the Royal Commission into Monetary and Banking Systems 1936-37, a majority of the Commissioners finding in favour of stronger governmental control. They argued that, in the event of a conflict between a government and the Board over monetary policy, a serious attempt should be made to reach agreement by discussion. But this having failed, the view of the government should prevail. The Bank should be provided with 'an assurance that [the government] accepts full responsibility for the proposed policy'; it should then be 'the duty of the Bank to accept this assurance and carry out the policy of the Government' (RCMBS, 1937:206). The Royal Commission's emphasis on the need for governments to have the final say in matters of policy both reflected the influence of a longstanding practice in authority design, albeit one not consistently followed, and reinforced the case for following it in the future. Evidence of the Commission's impact has been identified in the United Australia Party government's National Insurance legislation of 1939, which broke with that party's previous attitude by making the incorporated Commissioners subject to ministerial control (Wettenhall, 1961:88).

A ministerial power of direction, broadly stated and
freely utilized, might virtually abolish the distinction between statutory authority and ministerial department. In acknowledgement of this fact, the Royal Commission sought to revive the practice of restricting the power to matters of policy alone. The Commonwealth Bank Act 1945 and the Act creating a Coal Commissioner passed in the previous year adopted this restriction. The notion of a practical distinction between high policy and business administration would have been especially appealing in the case of the Commonwealth Bank of the 1930s, which combined the separable functions of a central bank (responsible for such tasks as note issue) and a banking service to the public of a kind similar to its private counterparts. Drawing attention in his Second Reading speech to the mechanism for resolving disagreements between the government and the Board, the minister (Chifley) stated that: 'This procedure is to be invoked only in matters of policy affecting the interests of Australia and there can be no interference in the relationship of the Bank with its customers, or in matters of day to day administration'. However, Menzies noted in reply that the Bill did not define 'policy', which could as a result encompass 'matters great or small' (House of Representatives, CPD, 21 March 1945:753,754; cited by Wettenhall, 1956:354). This was a point Menzies had also made with some force in the earlier debate on the Coal Commissioner legislation. As he argued on that occasion, the restriction provided no safeguard against undue political influence because anything in which the government decided
to take an interest, down to the employment of particular individuals, might 'with perfect honesty' be described as a policy matter (House of Representatives, CPD, 2 and 3 March 1944:882; cited by Wettenhall, 1956:305-7).

If, as minister H.V. Evatt conceded in the Coal Commissioner debate, it were 'quite impossible to define policy' (p.881) - that is, to determine objective criteria for distinguishing policy from administration - it is not surprising that efforts were made to devise stronger means to dissuade capricious or unjustifiable ministerial interventions. Once the non-Labor parties had largely accepted the case for a directive power they naturally paid more attention to this problem. However, it was a Labor government which implemented the seminal Report of the Joint Parliamentary Committee on Wireless Broadcasting (JPCWB, 1942) which specified a rigorous set of arrangements to restrain, while preserving the effectiveness of, the power of direction. Under the Australian Broadcasting Act 1942 the minister retained the power to order or prohibit, 'in the public interest', the broadcasting of any matter. But, to ensure that this power was exercised only after due deliberation and with adequate publicity, all directions were required to be in writing; the Australian Broadcasting Commission's annual report was required to list all broadcasts made, or suppressed, under direction, together with any directions given other than in the prescribed form; the Commission was empowered to determine the conditions under which 'political' broadcasts were to be made; and a
parliamentary standing committee was interposed between the minister and the organization (Rydon, 1952b; Wettenhall, 1956:278-96). In 1951 the Menzies Coalition government experimented with a slightly different formula in amending the Commonwealth Bank Act to strengthen the constraints on the government's ability to direct that body. Any direction had now to be made in writing, it had to be tabled in parliament within a specified number of sitting days, and the Bank acquired the right to table its view on the issue (Wettenhall, 1956:353-6).

In the mid-1950s the difficulties of the minister-authority relationship were addressed afresh once more, this time by the Public Accounts Committee in its reports on maladministration in the Australian Aluminium Production Commission (JCPA, 1954;1955). The Committee's approach owed a good deal to British thinking about the 'public corporations' established to manage the industries nationalized by the Attlee government. In accordance with that body of thought, its conclusion was that statutory authorities should enjoy substantial autonomy on a day-to-day basis but should be obliged to keep the minister continually informed of operations (in order to 'preserve... the doctrine of ministerial responsibility'). Otherwise, all that was needed, in the Committee's view, were powers to 'permit the necessary exercise of a defined ministerial control' (JPAC, 1954:48). What the Committee seems to have had in mind was demonstrated in the next piece of authority legislation to be passed by parliament (the Export Payments
This combined specified prohibitions on ministerial intervention with a list of several clearly defined policy matters on which ministerial approval was required, and utilized the formula recommended by the Royal Commission of 1937 for resolving disagreements over failures of the minister to approve requests (Wettenhall, 1956:500-2).

By the early post-war period, then, a consensus of sorts was apparently emerging. It had two parts. On the one hand, it acknowledged that ministers should normally have the capacity to ensure their policies are implemented, if necessary against the wishes of an authority and its employees. This principle was clearly upheld by the Royal Commission and the two parliamentary inquiries referred to above; on the two earliest occasions (in connection with the Commonwealth Bank and the Australian Broadcasting Commission respectively) in circumstances where the introduction of a directive power was highly controversial. And the recommendations were accepted, and acted upon, by governments of both party persuasions. These developments were of considerable significance: they represented a reassertion, in the face of at least some colonial and early Commonwealth practice, of the Westminster principle that ministers, and ministers alone, should have responsibility for policy. On the other hand, genuine efforts had been made to devise means to preserve a meaningful degree of autonomy for statutory authorities. The particular Acts referred to above, considered in chronological order; incorporate successively
stronger, more soundly based safeguards against capricious or unpublicised ministerial interference.

On its face this consensus provided a solution to the problem of statutory authority accountability, in the form of clearly demarcated spheres of responsibility protected by appropriate sanctions. But there were flaws in the consensus; and the putative solution was brittle, if not illusory. One problem was the by now well established tradition of unsystematic, highly individualised authority design, which reflected a continuing reluctance to view statutory authorities generically. The lesson drawn from an inquiry into one authority, or the application to one authority of a particular statutory formula to regulate minister-authority relations, was not necessarily viewed as relevant to other cases. None of the formulae considered above became a generally accepted model. The influence of the several inquiries was narrow and short term rather than broad and enduring; and the inquiries themselves saw little need to address one another's findings and recommendations, despite differences in the latter. As a result, none of the statutory formulae considered above became a generally accepted model. Some, but by no means all, later legislation displayed a concern to balance ministerial control and authority autonomy. But very few statutes have been as rigorous in their approach to this task as those outlined above.

The other problem was that the relevant actors made little use of the particular statutory mechanisms. For all
its value as an indicator of changes in professed attitudes towards the balancing of independence and control in statutory authority administration, the power of ministerial direction is an unreliable guide to the point at which that balance has been struck in practice. Ministers have seldom if ever issued formal directions to authorities. Authorities, for their part, have also been loath to exercise their statutory rights - for instance, in the case of some trading authorities, to invoke 'recoup' provisions (Wettenhall, 1966; Shand, 1982:54-5). In some cases this aversion to formalising the key relationship in the accountability regime has probably meant that the authority has more de facto independence than might be inferred from its statute. But it can also signify that ministers find it more politically convenient to use less visible channels of influence, often based on authorities' dependence on central government agencies for resources. By mid-century a number of commentators were suggesting that formal and informal changes had tilted the balance decisively away from independence and towards ministerial control (Kewley and Rydon, 1949 and 1950; Rydon, 1952a and 1952b; Webb, 1954 and 1955; Kewley, 1957; Encel 1960).

The Second World War, which had greatly changed the circumstances of Commonwealth government, was viewed by these writers as a watershed in the history of the statutory authority, dividing an era of independence from an era of control. Such a change might also have constituted a sort of solution to the traditional 'problem' of statutory
authority accountability, albeit at the risk of destroying the primary rationale for the creation of statutory authorities. The argument is thus worthy of examination; the more so because a relatively low level of academic interest in Commonwealth authorities between the mid-1950s and the mid-1970s meant that the conventional wisdom of the earlier period has not been evaluated in the light of later experience.

A Premature Obituary for Statutory Authority Independence

A particularly clear and forceful statement of the case was made by Webb (1954). Webb resolved statutory authority autonomy into two components: 'economic' autonomy and political, or 'cultural', autonomy. Economic autonomy, he argued, had been restricted in two main ways over the preceding 20 years: firstly, freedom in staffing matters had been reduced 'by requiring conformity to public service salary scales' and, secondly, financial independence had been weakened by 'restrictions on borrowing powers, by requiring Ministerial approval of capital expenditure beyond a specified amount, and by prescribing the form of accounts and requiring the auditing of accounts by the government auditor' (1954:102-3). Moreover, in Webb's view these developments were not merely products of administrative fashion or party political preference but were manifestations of a fundamental change in the economic role of government. Under the combined stimuli of depression, war and Keynesian economic thinking, other Western countries had also both expanded and
increased central control over their public sectors. There was, Webb conceded, no strictly necessary connection between 'economic' autonomy and 'political' autonomy. But he believed that in practice it was difficult to preserve the latter without the former, if only because 'economic' issues could not be neatly separated out from issues of other sorts. In short, "the end of laissez-faire was the end of the autonomous public corporation" (p.103).

Other factors were identified by Webb and others as reinforcing this process of change. The growth in popularity of ministerial powers of direction (which were also employed in the same period in the British nationalised industry statutes) has already been discussed. A trend towards the placement of departmental representatives on authority boards was also observed. The practice received legislative recognition in the Broadcasting Act 1948, which provided for an officer from each of the Treasury and the Postmaster-General's Department to be added to the Australian Broadcasting Commission's board. But this merely formalised a policy which had been adopted, in the absence of statutory requirement, for authorities such as the Australian National Airlines Commission and the Overseas Telecommunications Commission created immediately after the war (Wettenhall, 1956:379). By 1955 Webb was able to record that over the past decade or so Treasury officials had been 'planted out in almost every sizeable statutory corporation in the Commonwealth' (Webb, 1955a:164).

Webb and his contemporaries were undoubtedly correct
about the direction of change in the early post-war years, but they tended to exaggerate the strength and permanence of the forces underlying the changes. In fact, the process of increasing control over statutory authorities owed as much to transient factors as it did to any decisive historical shift towards central economic planning. Of the former, by far the most important was the presence in office of the Labor party, whose 'majoritarian' conception of democracy (see Lijphart, 1984) had given it a traditional preference for a strongly centralised, or 'command', system of government. By the mid-1950s the Menzies Coalition government was reassessing the practice of appointing departmental commissioners (for example, it was discontinued for the Australian Broadcasting Commission in 1956 (Wettenhall, 1956:379)) and had shown itself prepared to bestow considerable autonomy upon particular corporations (as in the Australian Shipping Commission Act 1956). From the late 1950s to the early 1970s Liberal governments created a number of authorities which were as independent as most if not all pre-war bodies

The confidence with which interpretations of the

12. Among the most notable of these were the Export Payments Insurance Corporation (established 1956), the Australian Shipping Commission (1956), the National Capital Development Commission (1957), the Housing Loans Insurance Corporation (1965), the Commissioner for Restrictive Trade Practices (1965) and the Australian Industry Development Corporation (1970). The latter authority was accorded a statutory independence as complete as that of virtually any (non-judicial) body created by the Commonwealth parliament. Ministerial direction was proscribed, the Corporation was free of all staffing controls and its accounts were not required to be audited by the Auditor-General.
future direction of change were made in the 1950s owed much to the perception that the trend to tighter control was a world-wide phenomenon. Webb (1954:102) could point, for instance, to the passage in the United States and Canada respectively of the Government Corporations Control Act 1945 and the Financial Administration Act 1951. But in both of these countries the following three decades were to see a progressive emasculation of these Acts as many new bodies were exempted from their provisions (see Seidman, 1980:265-76; Langford, 1980; Wilson, 1981:353-82).

The analysis under discussion also contained an element of straightforward exaggeration of the extent of post-war departure from previous practice, based on the attribution of a somewhat mythical degree of autonomy to pre-war authorities. Some of the restrictions which Webb saw as having added significant new shackles to post-war authorities were in fact in widespread use throughout the period to 1940. For instance, it is difficult to find an example of a statutory corporation created in these years whose accounts were not required to be audited by the Auditor-General. The tightening of controls in the post-war period was a matter of degree rather than of qualitative change.

The commentators of the 1950s were particularly impressed by the contrast between the freedom in staffing matters possessed by major pre-war authorities and the strong external controls generally imposed on post-war authorities.
This change was indeed genuine and marked. But the initial burst of enthusiasm for subjecting statutory authorities to staffing regimes similar to those of government departments gave way quite soon to satisfaction with a more moderate degree of control. Governments came to look upon themselves as having a menu of available options from which they could select the one most appropriate for the particular case. By the 1970s and early 1980s three such options were in active use. At one end of the range, the statutes of trading authorities sometimes left recruitment and the fixing of terms and conditions of employment in the hands of authority boards. In other cases, amounting in total to around 50 authorities at the end of this period, statutes required Public Service Board approval for particular aspects of staffing, chiefly determination of salaries and conditions of employment. Finally, authority staff might be fully incorporated into the Commonwealth Public Service, as tended to occur with regulatory and advisory bodies (see, for instance, Public Service Board, 1983:148-50).

13. The move in the 1940s towards greater uniformity in and central control over staffing employed various statutory means. In a few cases, such as the Australian Broadcasting Commission and the Overseas Telecommunications Commission (established 1946), enabling Acts set out in considerable detail conditions similar to those employed by regular public servants. In other cases the authority was permitted to appoint its own staff on salaries and conditions determined by the authority, but only with the approval of the Public Service Board. Central control sometimes extended beyond the terms and conditions of employment. For instance, the staff of the Snowy Mountains Hydro-Electric Authority established in 1949 were also required to be selected by recruiting methods determined by the Public Service Board. The Commonwealth Science and Industry Research Organization Act 1949 went another step further and required Public Service Board approval of the size of the clerical and administrative establishment (Wettenhall, 1956:304,394-5).
Further, there is evidence of a significant, if selective, reversal of the early post-war approach to staffing control. Under the Fraser (Coalition) and Hawke (Labor) governments of the late 1970s and the early 1980s there was a tendency to give trading (and related) authorities more autonomy in this respect than had been granted those created by the Chifley and early Menzies governments. The history of the Australian Broadcasting Commission constitutes something of an index of changing governmental attitudes: its substantial freedom under its original Act of 1932 was progressively undermined by amendments in 1942 and 1946, but inquiries by the Postal and Telecommunications Department (1976) and a Committee of Review (CRABC, 1981) argued in favour of much greater autonomy and their recommendations were subsequently given statutory embodiment (see Australian Broadcasting Corporation Act 1983)\textsuperscript{14}.

The view articulated by Webb and shared by other commentators of the day, that a tightening of staffing and financial controls invariably implied a lessening of policy independence, did not go completely unchallenged. In a debate conducted in the pages of Public Administration (Sydney) in 1953, the Chairman of the Australian Broadcasting Commission (ABC), Richard Boyer, disagreed with Rydon's

\textsuperscript{14} On the other hand, it should also be noted that the late 1970s saw the imposition upon statutory authorities of important non-statutory controls, such as staff ceilings and industrial disputes settlement procedures, as well as two controversial Commonwealth employment Acts (Wettenhall, 1983:43-7).
characterisation in these terms of the ABC's recent history (Rydon 1952a, 1952b, 1953a, 1953b; Boyer, 1953a, 1953b).

Boyer (1953a:57) objected to what he saw as Rydon's 'absorption in the administrative framework as... an absolute touchstone on the issue of independence'. More important, he argued, were firstly, the statutory provisions directly concerned with the control of programming and secondly, the spirit in which the government administered the Act. He noted that legislative change had not been all in the one direction, and that in the vital area of the broadcasting of political or controversial matters statutory protection of ABC autonomy had actually been strengthened in the 1940s. He also asserted that a principal support of ABC independence had been the respect for the body's integrity demonstrated in the government's approach to appointments. Rydon (1953a, 1953b) was prepared to engage Boyer on the ground chosen by the latter, namely the demonstrated effectiveness or otherwise of programming independence, but the debate was ultimately inconclusive because the combatants differed over what independent behaviour on the part of a public broadcasting agency should entail.

It is possible to elaborate on Boyer's point that, as far as statutory authority independence is concerned, much will depend in practice on the attitudes and intentions of governments which have the task of administering the statutes. There is an obvious truth here, which those commentators in the 1950s who believed they were witnessing the passing of statutory authority independence took as much
to heart as Boyer. All accepted that, while the contents of statutes were by no means irrelevant to the independence-control issue, the informal relationships which were only partly shaped by statutory control mechanisms were crucial. It was for this reason that Webb (1955a) castigated those advocates of the statutory corporation he called 'romantics'—individuals who simply assumed that certain desired administrative attributes, such as entrepreneurial flair, capacity for rapid decision making, flexibility and the like, were inherent features of the statutory corporation. However, post-war Australian administrative 'realists' or sceptics, such as Webb and Rydon, may have fallen into a different version of the same trap. Australian commentators were justified in inferring that the strengthening and multiplication of statutory controls they observed represented a desire on the part of the government to exercise closer supervision of authorities. But they may have exaggerated the extent to which governments would seek to translate potential into actual control. Certainly little or no evidence has been produced to support the assumption that governments have in general been zealous about control.

In fact, the only systematic evidence that has been collected, through a survey conducted by the Royal Commission on Australian Government Administration, suggests that the actual level of control exerted over statutory authorities in general in the early 1970s was neither high nor perceived by the authorities as onerous. Only 20 percent of the more than 100 authorities providing usable answers to the
questionnaire reported a 'substantial' degree of ministerial control over 'policy and functions', while the figure dropped to 2 percent for control of 'day-to-day administration'. (The corresponding figures for departmental control were 6 percent and 4.2 percent.) Some two-thirds of authorities submitting usable replies stated that controls had no 'adverse effect' on their relationship with the responsible minister or department, and a similar proportion reported that this relationship was neither too close nor too distant. By contrast, 14 percent believed that controls had had an adverse effect on their relationships with ministers and departments, with 8 percent believing that his relationship was 'too close'. As to the effect of all forms of control, more than half of the 70 organizations giving usable replies found controls 'generally satisfactory', while only 10 percent regarded them as 'generally unsatisfactory'. Even allowing for some slackening of enthusiasm for the control of authorities since the 1950s, it is difficult to believe that a similar survey conducted in the earlier period would have produced the dramatically different results required to support the hypothesis of a high level of actual control.

It is not possible, therefore, to agree with the conventional academic wisdom of the early post-war period. Webb and his colleagues had not identified forces which would completely transform the circumstances of statutory authorities in Commonwealth government. On the other hand,

15. The above statistics were drawn from tables summarizing the results of the survey (see Wettenhall 1976:348-60,322-8).
neither had they completely misread the situation. While there was to be no neat historical transition from an era of independence to an era of control, some of the factors which were cited as evidence did persist. In particular, reasonably strict financial controls, ministerial powers of direction, and the appointment of departmental representatives to authority boards tended to feature more frequently in post-war accountability regimes. Moreover, it is not implausible to relate this somewhat greater concern with formal control to a more purposive approach to the disposition of resources which Keynesian demand management policy would have tended to encourage. Thus in these years the old Australian pattern of public policy, based on the powerful, autonomous statutory authority, was becoming less representative of the generality of governmental activity, though it endured in its areas of original application.

As a postscript, we might note a more recent echo of the general case we have considered. Goldring and Wettenhall (1980) and Goldring (1980) claim to have identified a trend in judicial interpretation which may deny authorities a legal basis for opposition to ministers. If correct, their argument would provide strong alternative support for the notion of a dramatic historical shift from statutory authority autonomy to a situation where there is little to distinguish between statutory authorities and ministerial departments as far as relations with ministers are concerned. The evidence comes chiefly from two High Court cases - involving Ipec Air Pty Ltd (1965) and Ansett Transport
Industries Pty Ltd (1977) - and, in particular, from the judgement of Windeyer J. in the former case and Murphy J. and Barwick C.J. in the latter\textsuperscript{16}. On both occasions the Court considered the position of the Director General of Civil Aviation in relation to the minister - specifically, the extent to which the exercise of a discretion vested in such an officer by statute should be influenced by ministerial or governmental policy. In 1965 Windeyer seems to have been alone in holding that:

\begin{quote}
The Director-General is the officer whose written permission must be produced to the Customs. But... that does not mean that he is to grant or refuse permission according to some view of his own... his duty is to obey all lawful directions of the Minister under whom he serves the Crown (Windeyer, 1965; cited by Goldring, 1980:372).
\end{quote}

Goldring has claimed, however, that by the time of the Ansett case this view had come to represent the majority position on the Court. Statements from the judgements of Murphy J., Barwick J., Gibbs J. and Aickin J. are quoted in support of this contention. Goldring's conclusion is that 'The view of the High Court today is that functions that can be characterised as administrative must be exercised in accordance with government policy' (1980:375).

The statements quoted by Goldring suggest that the justices had very much in mind the fact that the statutory officer in question was, despite his statutory status, operating within the context of a ministerial department of which he was, in another guise, an ordinary senior officer.

\textsuperscript{16} The cases were R v. Anderson; ex parte Ipec Air Pty Ltd (1965) 113 CLR 177 and Ansett Transport Industries (Operations) Pty Ltd v. The Commonwealth (1977) 139 CLR 54.
But Goldring did not see this as preventing a conclusion about statutory authorities in general:

- at least in the absence of clear words in a statute which provides that the activities of a statutory authority will be free from ministerial control, the High Court will read the statute consistently with its view of responsible government, and will find the statutory authority is required to obey and implement directions given to it by the Minister...(p.369)

Goldring went on to suggest that even an explicit statutory guarantee of autonomy might be illusory:

- some statutes do purport to exclude the right of the Minister to give directions to the authority, but... in view of... the requirement of the Constitution for responsible government, there must be some doubt about the validity of such exclusions (p.376).

There must, however, be considerable doubt about the validity of this reading of the judicial position. A major weakness of the case is its almost entirely speculative nature, there having not been a decisive test of the issue in the courts. Moreover, it rests on a dubious extrapolation from the position of statutory officers within ministerial departments to that of statutory authorities in general. Even in the case of the statutory officers, as he acknowledged, Goldring's interpretation of the particular judgements runs counter to a traditional principle in administrative law whereby a person having an independent discretionary power may not exercise it 'under dictation', or 'fetter' his/her discretion by accepting the constraint of an external rule or policy (Goldring, 1980:375).

Finally, Finn and Lindell (1982) have argued cogently against the interpretation of the Constitution which
underlies Goldring's thesis. Goldring assumes that any body charged with effecting some purpose expressed in legislation is part of the executive government and is thereby subject to Section 61. He also assumes that Section 61 imposes some positive constraints on the exercise of executive power and, in particular, that such power must be exercised in a manner consistent with the principles of responsible government which the High Court has found to be dictated by the Constitution. This reading of the Constitution, rather than the evidence from the statutory officer cases, is probably the mainstay of Goldring's conviction that ministers cannot be deprived of all power to impose policy upon independent agencies. Finn and Lindell dispute both assumptions. They argue, admittedly also without the positive support of judicial exegesis, that Section 61 neither defines nor assumes a definition of executive power; that parliament itself decides whether or not the statutory powers it creates are part of the executive power of the Commonwealth; that when parliament confers statutory functions on an independent agency it is not vesting the executive power of the Commonwealth in that agency, but is creating an 'independent responsibility'; and that parliament is, as a result, completely unconstrained as to the form of accountability it may impose on an independent agency (1982:185-93).

Thus neither of the arguments examined gives reason to think that the 'problem' of authority independence was objectively any less pressing, or indeed any different, in the 1970s and 1980s than it had been before World War Two.
Certainly observers were still stating it in identical terms. By the late 1970s, however, an additional factor was contributing to concern about statutory authority accountability and the role of the statutory authority generally in the system of government. This was the alleged abuse of the administrative form through the excessive creation of statutory bodies. To conclude our survey of the history of the 'problem' of statutory authority accountability we must now turn to the phenomenon of statutory authority growth in the post-war period.

Statutory Authorities Out of Control?
The Second World War was a pivotal event in the history of Australian government; not because it gave rise to important new political movements or changed the institutional landscape significantly (it did neither of these things), but because it ushered in a greatly expanded role for the Commonwealth government. The latter, from its high post-war expenditure plateau, grew strongly and largely without controversy until the mid-1970s (see Groenewegen, 1982). In those decades changes in the nature and scope of Commonwealth activity, as well as in its general level, provided fresh stimuli for statutory authority creation.

Table 1.1 shows the numbers of authorities created (or reconstituted by legislative enactment) across a range of functional categories in each five year period between Federation and 1984 (see also Appendix 1).
Table 1.1  Creation of Statutory Authorities, 1901-1984

<table>
<thead>
<tr>
<th>Period</th>
<th>Trading</th>
<th>Regulatory</th>
<th>Appellate</th>
<th>Executive</th>
<th>Research/Advisory</th>
<th>Total</th>
</tr>
</thead>
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<td>3</td>
<td>0</td>
<td>7</td>
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<td>10</td>
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<tr>
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<td>4</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>9</td>
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<td>0</td>
<td>6</td>
<td>0</td>
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<tr>
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<td>1</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>1920-24</td>
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<td>5</td>
<td>2</td>
<td>7</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>1925-29</td>
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<td>3</td>
<td>3</td>
<td>6</td>
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<td>14</td>
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<tr>
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<td>0</td>
<td>4</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>1935-39</td>
<td>2\textsuperscript{b}</td>
<td>6</td>
<td>0</td>
<td>3</td>
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<td>12</td>
</tr>
<tr>
<td>1940-44</td>
<td>3</td>
<td>3</td>
<td>1</td>
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<td>12</td>
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<tr>
<td>1945-49</td>
<td>9</td>
<td>8</td>
<td>2</td>
<td>16</td>
<td>4</td>
<td>43</td>
</tr>
<tr>
<td>1950-54</td>
<td>6\textsuperscript{b}</td>
<td>1</td>
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<td>2</td>
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<tr>
<td>1955-59</td>
<td>5\textsuperscript{b}</td>
<td>4</td>
<td>1</td>
<td>7</td>
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<td>1960-64</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>7</td>
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<td>5</td>
</tr>
<tr>
<td>1965-69</td>
<td>2</td>
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<td>3</td>
<td>5</td>
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<td>6</td>
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<tr>
<td>1970-74</td>
<td>12</td>
<td>6</td>
<td>6</td>
<td>10</td>
<td>6</td>
<td>58</td>
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<tr>
<td>1975-79</td>
<td>11\textsuperscript{c}</td>
<td>12</td>
<td>5</td>
<td>26</td>
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<td>20</td>
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<td>1980-84</td>
<td>6</td>
<td>11</td>
<td>2</td>
<td>16</td>
<td>2</td>
<td>18</td>
</tr>
</tbody>
</table>

\textsuperscript{a}  The functional categories are those utilized by Wettenhall.

\textsuperscript{b}  Includes one body incorporated under a Companies Act and not strictly a statutory authority.

\textsuperscript{c}  Includes two of the bodies identified above.

The table reveals that the rate of creation has been greater, on average, in all categories in the post-war years than previously, in most cases substantially so. This has allowed statutory authorities to retain their prominence in the bigger post-war Commonwealth public sector. It is also noticeable that the post-war rate of creation, in general and within particular categories, has been decidedly 'bumpy', with pronounced dips following periods of intense activity over the first two decades. However, the most recent period, from the early 1970s to the mid-1980s, was an especially active one: an initial upswing in governmental growth saw the rate of increase in the numbers rise sharply; that rate then dipped moderately while remaining high by historical standards during a time of restraint of public sector growth; and finally, in the early to mid-1980s, it turned upwards again towards its earlier peak. An important consequence of the higher rate of creation (and reconstitution) of statutory authorities over the past several decades is that the contemporary corpus of Commonwealth authorities is largely a product of the post-war years.

Looking past the numbers at the nature of the bodies created, one can detect in the changing pattern of creation, of which Table 1.1 gives but the outline, a broad shift in the character of Commonwealth activity. The changes reflect an increasingly active federal government whose major resource has been its financial strength and predominant role in economic management; which has been
constrained in its ability to engage in public enterprise; and which has lacked direct, or exclusive, access to key areas of public policy. They also reflect a shift in the form of government intervention in Australia over the course of the twentieth century. While the impact of public enterprise has waned, this development has been 'counterbalanced by the growth of allocative and regulatory intervention and by rising public expenditures on social (welfare) policies' (Butlin, Barnard and Pincus, 1982:320). Moreover, the role of the Commonwealth government since the war has been fundamental to this shift, as the growth of allocative and regulatory intervention has coincided with its centralisation (Butlin et al., 1982:108-47,331-4). In these circumstances, many post-war statutory authorities, like many ministerial departments, have functioned as agencies of regulatory or allocative influence. Bodies concerned with the allocation of funds have been especially prominent, in line with a situation in which around a half of the Commonwealth's total outlays has been accounted for annually by 'transfer payments and advances' (ACIR, 1982:50-51).

These points may be related to the contents of several of the largest categories in Table 1.1. In the executive category bodies making financial grants to private individuals and organizations became more prominent in the period under consideration. A number of these bodies are involved in industrial development, but others are concerned with such different purposes as support of the
arts and sport. Several important trading enterprises created in recent decades also have important financing and funding roles\textsuperscript{17}. The record of creation of advisory bodies, on the other hand, bears the imprint of a different mode of allocative activity on the part of the Commonwealth, namely the use of conditional grants to determine or influence the spending priorities of state governments. As this strategy developed momentum in the 1960s and 1970s, statutory bodies were employed to provide advice on expenditure priorities, to monitor spending programmes and to evaluate outcomes. Turning to the regulatory category, the Commonwealth's greater regulatory importance after 1945 was responsible for a steady, if numerically modest, flow of new authorities, including a number of important primary produce marketing bodies and, from the mid-1960s, successive bodies in the trade practices field. Moreover, as the scope of Commonwealth activity expanded, statutory bodies were created to co-ordinate national regulatory programmes in such areas of shared federal powers as companies and securities law and criminal investigation.

Mention might also be made of bodies involved in research, educational and training activities. To the entities accounted for under this heading in Table 1.1 may be added some dozen and a half primary produce 'research committees' created between 1955 and the early 1980s which

\textsuperscript{17} These include the Australian Industry Development Corporation (created in 1970), the Australian Overseas Projects Corporation (1978), the Primary Industry Bank of Australia (1978) and the Aboriginal Development Commission (1980).
have been included in the advisory category. Together these two groups constitute an important contribution to post-war changes in the pattern of statutory authority creation. However, their significance differs. The emergence of the primary produce bodies reflects the new dominance of the Commonwealth in the management of rural industry (Butlin et al., 1982:332-3). The other bodies, particularly the various 'institutes', seem to signify an effort by the Commonwealth to produce some tangible manifestation of its involvement in the research and educational field otherwise dominated by state-created entities.

So far we have attempted to explain the post-war pattern of authority creation in terms of the changed nature of the Commonwealth government's intervention in Australian society. In general terms, the argument has been that the number of statutory bodies has grown at an increased rate because the Commonwealth government has undertaken more activities of kinds for which the statutory authority has been traditionally favoured. This is undoubtedly a major part of the story. But it is also likely that growth in the size (level of activity), complexity (technical and informational requirements of

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18. These include the Australian Institute of Aboriginal Studies (created in 1964), the Australian Institute of Criminology (1971), the Australian Institute of Marine Science (1972), the Institute of Family Studies (1975), the Australian Institute of Multicultural Affairs (1979) and the Australian Institute of Sport (originally incorporated under the Australian Capital Territory Companies Ordinance, converted to a statutory authority in 1986).
activities) and scope (range of activity) of government have contributed a separate impetus to authority creation. The role of these factors may be briefly outlined.

As far as size is concerned, there is some evidence that the political and organizational factors which have more or less stabilised the number of departments of state over the post-war period have provided an incentive for the 'hiving off' of largely self-contained activities, in order to relieve pressure on the parent organization or to improve the performance of the hived off activity. This rationale played a role in the establishment of such disparate entities as the Australian Bureau of Statistics (in 1975), the business enterprises Telecom and Australia Post (in 1975), and the regulatory body the Australian Broadcasting Control Board (in 1948)\textsuperscript{19}.

An important effect of the second factor, growing complexity, has been the creation of at least two sorts of advisory body. Firstly, increasing interrelationships between policy areas and programmes have arguably produced a need for bodies to 'liaise' and 'co-ordinate'. Secondly, the informational requirements and technical content of public programs have expanded and become more sophisticated, leading governments to create bodies to tap non-governmental sources of information and expert knowledge. Both types of body are represented in the Commonwealth's collection of statutory advisory

\textsuperscript{19} This conclusion is based on an examination of the parliamentary debates on the enabling legislation for these authorities.
authorities. But statutory authorities performing the functions described are only the tip of the iceberg; they are well and truly outnumbered by non-statutory bodies (see SSCFGO, 1986).

Finally, growth in the scope, or range, of governmental activity may also have contributed to the increased rate of statutory authority creation in several functional categories. From around the early 1970s Commonwealth and state governments alike began to adopt new policy responsibilities in areas such as environmental management, arts and culture, consumer affairs and aboriginal and ethnic affairs. On the one hand, initiatives in these fields were a response to the appearance of new interest groups; on the other, they strengthened, or stimulated the formation of, interest groups. Statutory bodies were created to placate the new groups by providing tangible symbols of governmental concern, to facilitate the participation of the groups and, if possible, to win their support.

The factors discussed above also help explain the pattern of statutory authority creation after 1970, when the rate of appearance of new bodies increased markedly. But the principal cause of the higher level of creation in the mid-1970s was the Whitlam Labor administration (1972-75). Three features of that administration are of particular importance in this context. Firstly, the Whitlam government brought about a sharp rise in governmental expenditure. Whereas the ratio of
Commonwealth government outlays to Gross Domestic Product had risen by 1.4 percent from 1960 to 1965 and by the same amount from 1965 to 1970, in the three year period between June 1973 and June 1976 it rose 3.3 percent (from 15 percent to 18.3 percent) (ACIR, 1982:40-41). Thus there were more funds available for the creation of machinery of government of all kinds, and *ipso facto* for new statutory authorities. Secondly, the administration was also largely responsible for a similar rise in the level of state government outlays. Much of the increase was accounted for by 'specific purpose', or 'tied', Commonwealth grants, employed to give the Commonwealth leverage over state policy-making. And, following the example of Menzies Liberal governments of the 1950s and early 1960s, a number of statutory authorities were established to support the Commonwealth's 'new federalism' initiatives. Thirdly, the Whitlam government, independently of the strategy just outlined, significantly broadened the scope of Commonwealth government, embracing in particular new forms of public enterprise and regulation, and other new activities related to 'quality of life' or 'post-affluence' issues. Involvement in each of these areas favoured the creation of statutory authorities.

The above factors are in the nature of indirect

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20. Between 1973 and 1976 state government outlays as a proportion of GDP rose 3.2 percent, from 14.7 percent to 17.9 percent (ACIR, 1982:40-41). Specific purpose payments as a proportion of all funds received by the states from the Commonwealth rose from 12.7 percent in 1972 (16.3 percent in 1969-70) to a peak of 33.3 percent in 1975-76 (ACIR, 1982:79).
influences on statutory authority creation. But the Whitlam government also showed enthusiasm for the statutory authority device per se, as an alternative to existing ministerial departments. This was most evident in the case of a substantial group of advisory commissions established at that time. These bodies have been described by Lloyd and Reid (1974:258) as a 'Parallel Public Service' because their functions were not distinguishable from the mainstream activities of ministerial departments; they were staffed under the Public Service Act; and personnel control was similar to that of an ordinary department, with the chairmen exercising the powers of departmental permanent heads.

On a favourable view, there were two justifications for the creation of these advisory commissions (Lloyd and Reid, 1974:256-7). Firstly, and most importantly, there was the government's perception that the radical departures in policy it envisaged after 23 years of conservative government required fresh ideas, an enormous amount of new information, new analytical techniques and, most of all, a high level of commitment on the part of administrators to what was being attempted. Statutory commissions, by giving ministers the capacity to recruit expertise from outside the public service and to establish teams of committed individuals, seemed to satisfy these requirements.

Advisory commissions were created in each of the following policy areas: Australian heritage, children, cities, hospitals and health services, law reform, schools, social welfare, technical and further education.
second rationale for the commissions, in light of the government's 'new federalism' strategy, was that their differentiation from the Commonwealth's administrative core and their collegial structure (which permitted a degree of state participation) made them a more appealing vehicle for Commonwealth-state 'co-operation'.

During its three years in office, the Whitlam government created around 60 statutory authorities at a record annual rate\(^2\). A measure of the 'productivity' of the government in this respect is that, at the end of its relatively short life, between 30 and 40 percent of the total number of Commonwealth statutory authorities were an outcome of its efforts\(^3\). This statistic is perhaps even more striking when it is appreciated that the collection of authorities then in existence represented a very high proportion of the sum total of those created over the 75 years since Federation. It is not possible to say precisely what that proportion was, as comprehensive data on extinctions of statutory authorities does not exist. But Wettenhall's detailed charts of statutory authority development suggest that the bodies have had a high survival rate, aside from short periods when limited

\(^2\) This figure excludes Australian Capital Territory authorities, but includes a handful of existing authorities whose statutory powers, functions or structures were altered in a significant way. The statistic is based on the answer to a parliamentary question (see House of Representatives, CPD, 8 September 1977:998-1010).

\(^3\) RCAGA (1976:83) speaks of having identified 'more than 200' statutory authorities, but only 170 bodies are listed by Wettenhall (1976:361-4) including six bodies formed under Companies Acts without statutory backing.
assaults have been made by incoming governments on the work of their displaced rivals - as in the cases of the Scullin Labor government (1929-32) and the early post-war Menzies Coalition governments (see Wettenhall, 1977; 1979; 1984:159-66; 1986:207-8). A limited exercise of this kind occurred when the incoming Fraser Coalition government abolished or aborted some half-dozen prominent Whitlam government authorities\textsuperscript{24}.

The Whitlam government was removed from office in 1975. The present study takes account of around seven more years of Coalition government and several years of a Labor government under Prime Minister Hawke which has been quite different in style from its Labor predecessor. Neither of the two recent administrations has displayed the same fondness for the statutory authority which characterised the Whitlam government. On the contrary, both have adopted a rather critical attitude towards its use. Nevertheless, statutory authorities have continued to be created at rates well in excess of those registered for the years between 1945 and the early 1970s. The Fraser Coalition administration, at times a strident advocate of smaller government, created or reconstituted (and hence identified itself with) some 80 authorities, at a relatively high rate of around 11.5 per year (Wettenhall, 1984:111). Its Labor successor returned the rate to its earlier peak during its

\textsuperscript{24} The bodies abolished were the Children's Commission, the Cities Commission, the Social Welfare Commission, the Technical and Further Education Commission and the Road Safety and Standards Authority.
first two years in office by creating and reconstituting some 44 authorities (Wettenhall, 1986:96). However, one must be a little wary in using figures for very recent years for purposes of historical comparison, as the ratio of 'reconstitutions' to completely new authorities has risen markedly and the number of abolitions has also increased. It appears that there is in the 1980s considerably more gardening going on among the tangled statutory authority thickets than has ever been the case in the past. Moreover, a good deal of this activity reflects a concern with reform of the machinery of government in general, and statutory authorities in particular, which has gathered force since the late 1970s.

The rising numbers of Commonwealth statutory authorities in the post-war period, and especially their sharply rising numbers in the 1970s, form the essential background to current debate over the role and accountability of these bodies. There are, it is feared, too many bodies for ministers and parliament to be able to subject each to effective supervision and scrutiny. Small bodies, in particular, tend to fall from view in the mushroom-like growth of administrative entities outside departments of state. The problem is illustrated by the fact that it took a number of years in the 1970s for something approaching an exhaustive list of Commonwealth authorities to be compiled\textsuperscript{25}. The proliferation of

\textsuperscript{25} The task began with RCAGA (1973-76) and was completed by Wettenhall (1979) and the Senate Standing Committee on Finance and Government Operations (1979a; 1982a).
statutory authorities has thus contributed directly to concern about their accountability. It has also highlighted the lack of consistency in authority design which has magnified the difficulty of overseeing this part of the administration. Further, the anxiety about statutory authority numbers has been reinforced by the attitude that many such bodies are created for unjustifiable, or more particularly administratively unjustifiable, reasons. In the absence of a clear and appropriately restrictive understanding of the proper use of the statutory authority form, it is felt, bodies have been created unnecessarily - and once established have, through a demonstration effect, stimulated further abuse of the device.

**Conclusion**

This chapter sought to do several things. One was simply to indicate the nature of the administrative entities with which this thesis is concerned and to locate them within the Australian Commonwealth public sector. Another purpose was to outline the arrangements through which statutory authorities are held publicly accountable and to argue that the choice of those arrangements has been strongly influenced by Westminster assumptions about accountability and the existence of ministerial administration at the heart of the system of government. A third purpose was to show that, despite possible indications to the contrary, the tensions between administrative independence and
control which defined the classical problem of statutory authority accountability have not dissipated over the course of the twentieth century. Statutory authorities were not completely subordinated to ministers and central agencies (as early post-war writers expected), nor did there emerge a strong consensus around clearly defined, complementary roles for minister and statutory authority (towards which influential inquiries of the 1930s and 1940s seemed to point the way). Finally, the growth in statutory authority numbers in the post-war period was outlined. It was suggested that this phenomenon, particularly the rapid rate of creation in the 1970s, contributed importantly to making the accountability of statutory authorities a major issue in Commonwealth government over recent years.

These themes are taken further in the next two chapters. Chapter 2 reviews notable contributions to Australian thought about the role and accountability of statutory authorities to reveal the absence of an authoritative body of theory which might support a truly distinctive position for the statutory authority in the framework of government. Chapter 3 focuses on the recent reform movement and seeks to show how constraints inherent in traditional ways of thinking about and dealing with the question of accountability have shaped efforts at 'reform'.
CHAPTER 2

THEORY AND PRACTICE

It was suggested in Chapter 1 that both the place of the statutory authority in Australian Commonwealth government and arrangements for their accountability have been strongly influenced by the centrality of the 'Westminster model' to Commonwealth government. This Chapter looks at the matter from a slightly different perspective. Its purpose is to argue that the task of establishing adequate accountability regimes for Commonwealth statutory authorities has been impaired by the lack of an authoritative body of theory to define and support roles for the relevant actors distinct from those enjoined by 'Westminster', or responsible government, theory.

That neither the design nor the operation of formal accountability arrangements for statutory authorities has been a conspicuously theory-governed activity is implicitly accepted by most commentators. The point is also well illustrated in Chapter 1 with reference to the unplanned diversity among statutory accountability provisions and to the reluctance of those on either side of the minister-authority relationship to make use of certain statutory
provisions. Indeed, one observer has recently gone so far as to speak of 'an almost total absence of theory in relation to the modern statutory authority', a state of affairs which, he claims, has led in practice to 'confusion' concerning 'the rights, responsibilities and behaviour of the parties involved' (Forrest, 1983:88).

Given the alleged dearth of theory, it appears as something of a paradox that Australian administrative history in fact contains a number of competing theoretical guides to the place of the statutory authority in the framework of government. Various contributions to a theoretical literature have been made over the period since the 'revival' of the statutory authority in the 1880s, often by individuals with considerable relevant experience in either state or Commonwealth public sectors. Together these comprise a fairly substantial body of thought and prescription about issues central to this thesis.

The problem, then, is not a lack of theory, but rather that no single set of ideas has won authoritative status among practitioners of public administration. The present chapter elaborates this argument. There are two sections to the chapter. The first section discusses some important historical contributions to Australian statutory authority theory and identifies among them several distinctive theoretical positions. The second section examines the extent to which each of these positions has achieved institutional embodiment.
Rival Conceptions of Statutory Authority Status and Accountability

The leading historian of Australian statutory authority theory, R.L. Wettenhall (1983:17-21), has argued for a two-category typology of 'formulations' of the relationship of statutory authorities to parliament and the executive. In one category he places formulations which conceive authorities as having a direct responsibility to parliament (as distinct from ministers) and hence as being closely controlled by parliament. The other category contains those formulations which conceive authorities as 'remote' from parliamentary control, but which accord ministers an important, if latent, supervisory role. This typology is founded on two historical exemplars, or 'models', namely the Victorian Railways Commissioners established in 1882 and their New South Wales counterpart of six years later (see also Goldring and Wettenhall, 1980).

The following discussion draws on Wettenhall's work, but it departs from his approach in some significant respects. Most importantly, it breaks the close connection between schools of thought and historical exemplars. There are two main reasons why this has been done. Firstly, it has been felt necessary to reject the sharp distinction Wettenhall makes between the Victorian and the New South Wales approaches to the creation of railway authorities. An explanation is provided below; for the present it need only be observed that without the exemplars the typology is rather less compelling. Secondly, I have in any case wished to
preserve a clear distinction between ideas and practice in order not to prejudge the issue of the relationship between the two spheres. Wettenhall's talk (1983:18) of the Victorian and New South Wales railways experiments as 'models' (for subsequent practice? for subsequent thinkers?) blurs this distinction, while also implying a greater degree of self-conscious development of intellectual traditions than seems warranted.

In place of Wettenhall's typology, we begin with a simple working distinction between bodies of thought which, for reasons of accountability, place considerable emphasis on the need to reconcile the statutory authority with responsible government and bodies of thought which do not have such an emphasis. Examples of the latter category of ideas considered here are the product of thinkers who advocate a highly independent status for the statutory authority - either because they accept that a large measure of accountability must simply be foregone, perhaps in the name of efficiency, or because they envisage the satisfaction of public accountability by means other than direct or indirect responsibility to parliament. As we shall see, there is room for considerable variety within these broad categories; so much so that once they have served their modest heuristic purpose, they will be abandoned in favour of a more refined and meaningful differentiation between three substantive theoretical positions.

The 'responsible government thinkers' will be considered first, commencing with nineteenth-century
statesman and Premier of New South Wales, Henry Parkes, in the context of his attempt to emulate the Victorian achievement in removing the railways from ministerial administration\(^1\). Parkes has a strong claim to be regarded as Australia's first theorist of the statutory authority. But, as Wettenhall has shown, his staunch support of responsible government was, paradoxically, the main feature of his public pronouncements on the Railways Act 1888. He affected a very uncompromising stance on the matter:

> I am not one of those, and never have been and never shall be, who would create any board or commission or constituted body whatever to take away the duties ... of responsible ministers. Responsible government, if it means anything, means that in all the absolute executive work of the country, as well as in the administrative work of the country, there should be someone directly responsible to Parliament; and so far as I am concerned, I will never be a party to weaken, or loosen, or diffuse that responsibility, but will endeavour to keep it clear and intact as between the government of the day and the parliament of the day (N.S.W. Parliament, Debates, Vol.28, 27 October 1887: 803-4; cited Wettenhall, 1960:464)\(^2\).

The weakness of the Victorian system of railway administration established in 1883, in Parkes' view, lay in its departures from the principles of responsible government. For instance, he criticised the fact that under the Victorian Act the Commissioners could not be removed except by the action of parliament. The approach dictated by responsible government was, Parkes thought, to make the commissioners removable by the Governor in Council but to require

\(^1\) The following discussion of the New South Wales and Victorian railways authorities of the late nineteenth century draws heavily on Wettenhall (1960 and 1961).

\(^2\) See also the very similar statement by Parkes in N.S.W. Parliament, Debates, Vol.26, 9 June 1887:1993.
parliament's approval of ministers' recommendations to remove (N.S.W. Parliament, Debates, Vol.28, 27 October 1887:804). He also found the administrative structure adopted by the Victorians, which involved both a minister for railways and a body of autonomous commissioners, to be 'inconsistent with the genius of responsible government' as well as simply irrational and productive of confusion (N.S.W. Parliament, Debates, Vol.21, 5 August 1886:3853).

The New South Wales Act, in contrast, was held by its author to preserve responsible government. It purported to do this, firstly, by enshrining a strict separation between the limited responsibilities which were conferred on the new authority and those responsibilities which were to be exercised in the normal way - that is, in accordance with responsible government. The latter included a considerable range of activities. To begin with, the function of constructing new lines was distinguished from that of operating established lines and assigned to the Public Works Department. It was thus subject to full ministerial responsibility and to the supervision of a new parliamentary Public Works Committee. Further, full ministerial responsibility was maintained for the power to appoint, suspend and remove commissioners; for the exercise of certain substantive powers, such as the disposal of lands, the purchase of supplies and the making of by-laws - all of which required the government's approval; and for the

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3. This and the following two paragraphs are based on Wettenhall (1960:464-8) and the Government Railways Act 1888, 51 Vict. No.35.
management of railway finances. The latter were to be handled in identical fashion to those of a government department: expenditure would have to be in accordance with estimates approved by the government and with the corresponding parliamentary appropriation (Wettenhall, 1960:466-7).

On the other hand, the operation of established railway lines, except in the respects mentioned above, was to rest unambiguously in the hands of the statutory commissioners. Parkes' aim, like that of other railway reformers of his time, was to eliminate 'political influence' from railway administration and, with it, the twin evils of patronage and 'log rolling' widely held to have played havoc with efficient management. He saw this as requiring, first and foremost, the prevention of parliamentary interference in day-to-day railway affairs. Thus ministers could legitimately refuse to seek answers to parliamentary questions; and, where an inquiry was called for, the executive rather than parliament would carry it out. Parliament's rights in this area were restricted to the use of two blunt instruments: it could turn out the ministry if it were unsatisfied with the latter's supervision of the commissioners and it could alter the policy framework through fresh legislation.

The executive, too, was to be distanced from the business of running the railways. In Parkes' view, 'the management of the railways completed and handed over for public traffic ought to be kept distinctly separate from the
policy of the government', and guided solely by 'principles of commercial probity and intelligence' (N.S.W. Parliament, Debates, Vol.26, 9 June 1887:1992,1994). But, again, he did not believe that this necessarily implied a weakening of responsible government. Responsible government demanded that there be someone directly responsible to parliament for all administrative and executive work. Under Parkes' scheme there would be no minister for railways as such, but a minister with another portfolio would hold a watching brief over the commissioners to ensure that their performance was in conformity with the statute. But this minister's authority would be 'dormant' rather than 'active': it would be invoked only in an 'emergency' and then only in order to enforce compliance with the policy laid down in the legislation. In Wettenhall's words, the intended overall effect was as follows:

The railway undertaking was... to be subordinate to the Government, but one step further removed from the direct control which characterised the conventional ministerial departments (1960:467).

It was noted above that Wettenhall has drawn a strong distinction between the arrangements just discussed and those established by Victorian Railway Commissioners Act 1883. Because of the importance of this distinction to Wettenhall's well known characterisation of the Australian history of statutory authority theory, it is necessary to explain why the latter has not been accepted as the basis of the present discussion. Wettenhall (1960:465; 1980:136; 1983:17) has summarised the Victorian railway 'model' by quoting the
statement of a contemporary observer, J. Reid, to the effect that 'the railways were... removed from political influence and placed under the control of a board of three commissioners, who were rendered independent of the Government of the day, and responsible only to Parliament'.

However, it is clear from Wettenhall's own writings on the subject that careful distinctions need to be made between the contents of the legislation, the legislators' understanding and description of what they were doing, and the parliamentary behaviour which followed from that understanding.

Wettenhall has demonstrated that both ministers and ordinary members of parliament talked as though they were establishing the sort of system described by Reid. Nevertheless, despite Parkes' emphasis on the difference in the principles on which his legislation was based and those followed by the Victorian parliament, the two Acts were in most essential respects very similar. Certainly there is nothing in the legislation to suggest that the Victorians intended to make the Commissioners directly responsible to parliament while their counterparts in New South Wales sought virtually to extinguish parliamentary influence. In fact, the powers of parliament over the two statutory bodies were identical. Both Acts included provisions requiring parliamentary authorisation of expenditure; regular and comprehensive reporting through both annual and quarterly...

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4. The source for Reid's statement is *Sydney Quarterly Magazine*, June 1887, pp.140-1.
reports submitted to the minister for tabling in parliament; an annual audit under the Audit Act (and hence, in a sense, under parliamentary authority); and parliamentary control over the removal of the commissioners. Nor is there any hard evidence in the Acts that the executive was intended to play a more prominent role in railway management in New South Wales than in Victoria. Again the respective statutory provisions concerning the responsibilities of ministers were very similar.

Any differences between the two colonies in the relationships between the railway commissioners, minister and parliament must therefore have been a matter of behaviour rather than of law or institutional design. And on Wettenhall's account, which there is no reason to doubt, the New South Wales commissioners were accorded a significantly greater measure of independence from both parliament and ministers than was the case in Victoria (1960:467-8). In Victoria members of parliament had been encouraged to believe that the new arrangements were designed to preserve, and even to enhance, parliamentary supervision and they seem to have acted on that assumption. Moreover, the retention of a railway portfolio which was often the sole responsibility of a minister was a recipe for ministerial interference, not only as a result of the restlessness and ambition of under-employed ministers of railways but also because it created a natural focus for parliamentary pressure (Wettenhall, 1960:467-8).

5. The above claims are based on a comparison of the New South Wales Act (see footnote 3) and the Victorian Railway Commissioners Act 1883, 47 Vict.No.767.
1961:26-7). In practice, it would seem that the Victorian 'model' featured very much the same set of parliamentary control mechanisms as were employed for ministerial departments. It is not surprising, therefore, that within a decade legislation was introduced to increase ministerial control over the commissioners⁶. Thus, notwithstanding the pronouncements which accompanied the establishment of the railways authority in the early 1880s, the conclusion seems inescapable that the Victorian experience was, from the start, as much a demonstration of the grip of conventional responsible government norms on the minds of politicians as an instance of self-conscious modification of those norms. The Victorian scheme had the merit of being the first of its kind, but its intellectual basis was a rather muddled compound of the thinking behind the later New South Wales scheme and the familiar arrangements for ministerial departments.

It need not be doubted, however, that the Victorian innovation in railway administration gave currency to the idea that the statutory authority, as a creation of parliament, should be directly responsible to the parliament. Also convincing is Wettenhall's claim that this idea became a persistent strand in Australian administrative thought. It was articulated perhaps most clearly by Boyer (1957) during his time as chairman of the Australian Broadcasting Commission (ABC).

⁶. On the 1891 amendment to the Act, see Wettenhall (1961:44-51).
The title of Boyer's article - 'The Statutory Corporation as a Democratic Device' - is significant. By 'democratic' he meant fully accountable to parliament. In his view the creation of a statutory authority represented a decision by parliament to depart from minister-centred administration:

What in fact happens is that some portion of the Minister's responsibility is delegated to the Corporation and with it an equivalent degree of accountability. Indeed, it may be said that the Statutory Corporation is responsible, not to its Minister, but to Parliament through its Minister. In other words, Parliament requires of a Statutory Corporation the same degree of accountability as it requires of its Ministers(1957:31).

The intended equivalence in the status vis-a-vis parliament of statutory authority members and ministers was, Boyer thought, indicated by their similar tenures, the one group coming up for re-election and the other for re-appointment at roughly the same intervals of time. Further, he saw statutory boards and ministers as comparable in another sense. In the case of modern statutory authorities, of which the ABC was a leading example, the board was modelled on the directorate of a joint stock company. Its role was not to undertake 'functional administrative duties', but to 'supervise the permanent executive' and 'guide policy'. Thus the relationship of the board to its permanent executive was 'precisely that of a minister to his permanent departmental officers'(1957:33).

For Boyer, then, the status of a statutory authority is that of a minister, at least in its relationship to parliament. It is, therefore, to be directly accountable to
parliament. The mode of its accountability, however, is through a minister. The minister's role should be, for the most part, the essentially passive one of vehicle of communication between parliament and the authority. As a result, ministers should not refuse to answer questions about the policy or administration of a statutory authority, as had happened in Britain. Boyer, it seems, understood the responsibility of ministers regarding parliamentary questions as similar to their responsibility for the authority's annual report. In both cases they would simply present to parliament information provided by the authority.

However, Boyer's discussion of the means by which parliament is to hold statutory authorities 'directly' accountable was, unfortunately, quite brief and rather ambiguous. For instance, he failed to distinguish clearly between the government and the parliament, referring at one point to parliament's power of appointment to boards when all statutes place this power completely in the hands of the government (by making the Governor-General, the Governor-General in Council or, in some recent cases, the minister the appointing authority) (see 1957:34). The responsible government tradition tends to yoke together parliamentary and ministerial control of administration - on the assumption that the former is achieved via the latter - and Boyer's usage would seem to be a consequence of this (increasingly misleading) habit of thought. Such usage is, however, merely confusing in a discussion which is premised on the notion that the statutory authority requires weak ministerial
control and strong parliamentary accountability.

The striking omission in Boyer's discussion, paralleling a similar weakness in the parliamentary arrangements for the Victorian railway authority some 70 years before, was any developed sense that new machinery and powers might be required to give life to the special form of accountability which was envisaged. It is true that, among Boyer's list of the 'reserve powers' which elected representatives needed to hold over statutory authorities, there is mention that authorities should cooperate as required with ad hoc inquiries by parliamentary committees. But there was no suggestion that parliamentary committees should play a larger role in the scrutiny of statutory authorities, either in order to emphasize the direct nature of an authority's responsibility to parliament or to police the relationship between minister and authority to prevent undue ministerial interference. In particular, it was surprising that no reference was made to the brief experiment, little more than a decade earlier, with a Commonwealth parliamentary standing committee on broadcasting designed to fulfil both of these functions for Boyer's own institution (the ABC) (see Rydon, 1952b).

It may be concluded, then, that Boyer's abstract notion of the place of the statutory authority in the framework of government was quite distinctive, but that its translation into institutional terms was heavily influenced by the conventional arrangements of responsible government.

We now turn to examples of administrative thought
which make much less effort to relate the statutory authority to the institutions and processes of responsible government. This thinking combines a strong emphasis on the value of administrative autonomy for certain activities, with a pessimistic (or realistic) view of the capacity of political actors to follow a self-denying ordinance of non-intervention. Those who have expressed these attitudes have tended to eschew nice distinctions between parliamentary and ministerial control, and to insist that authorities should be substantially independent of both government and parliament.

Such was the position adopted by F.W. Eggleston (1932) in his classic analysis of the expansion of the state in Victoria. Eggleston claimed that he had begun his ministerial career as a firm supporter of the Victorian Liberal position of the day that the statutory corporation had reconciled public enterprise with efficient business management, thereby making 'socialism' a sound policy. In his view the statutory corporation offered, in potential, the twin advantages of insulating administration from politics and of facilitating a rudimentary form of what is now termed 'accountable management'. But the first of these

7. Eggleston claimed the statutory corporation offered the following 'extraordinary' advantages:

'... it gave executive authority free from pressure of political influences and polarisation of parties; the objects which the concern was intended to realise, and the powers which it needed, could be set out in the enabling Act; within these powers the managers could lay down their own policy, and act on it; they did not need to wait for decisions of political heads, necessarily influenced in every case by political exigency; their
attributes was, for Eggleston, the key to success or failure. The best results were achievable only where there was no continuing political input into management. Objectives should be clearly stated in the enabling Act and a 'financial scheme' devised, but thereafter the managers, adequately empowered for their tasks, should be left strictly alone to lay down policy and follow it through. Eggleston claimed that experience had demonstrated that this was the most successful approach. Where a statute had granted the administrative body complete control of an undertaking, reserving no power of direction for government or other authority, the result had 'nearly always been good' (1932:46-51,47).

Unlike Parkes, Eggleston was quite prepared to acknowledge and accept the trade-off upon which this approach was based, namely that 'efficiency in administration is purchased by a sacrifice of democratic control' (p.50). It was only if parliamentary accountability were dispensed with that responsibility could be placed firmly on the shoulders of the appointed managers: 'any attempt to control their policy from outside will impair their responsibility and the key principle of efficient administration will vanish'.

acts were not acts of State; they could sue and be sued even in tort. The system was sound because it recognized the sovereign principle of reposing responsibility in individuals under conditions where responsibility could be discharged; the managers would be blamed for their failure; their whole prestige in the community was bound up with success. This responsibility made for caution... The principle of responsibility was bound up with finance... men of character would not accept a position unless they had examined the financial scheme and found it sound' (1932:46-7)
But how was managerial responsibility to be enforced? Eggleston saw very little need for external enforcement. The threat of refusal to reappoint authority members on the expiry of their term of office was the ultimate sanction, but it was a rather blunt instrument. Eggleston placed his faith much more in the professional integrity of expert managers and their desire to preserve their social standing. For him it was virtually axiomatic that 'a small body of managers with complete responsibility will always seek to show the best financial results' (p.51). This was the main reason he was so sanguine about the risks of freeing administration from political control.

Eggleston's position was a particularly uncompromising one. On his view the statutory board's responsibility to the community was quite separate from (indeed, was parallel to) that of parliament. Furthermore, in the language of representation theory, he saw the responsibility of a statutory authority to the public as that of a 'trustee' rather than a 'delegate' (see, for instance, Pennock, 1979:321-31). It was the duty of managers to look to the permanent interest of the public in the efficient use of resources, even where this meant resisting their wishes as expressed by groups in the community ('the Interests' as Eggleston termed them) or by an organised parliamentary majority. However, because he had become convinced that politicians were increasingly unable or unwilling to sacrifice control as completely as he thought necessary, Eggleston concluded that statutory trading corporations would
inevitably produce bad results. He therefore argued for the abandonment of this administrative experiment (see especially 1932:287-303).

The final contribution to statutory authority theory to be considered here is that of F.A. Bland, once described as 'Australia's greatest student of the public corporation' (Wettenhall, 1956:112). Bland shared the view of his contemporary, Eggleston, that a clear choice needed to be made between comprehensive political control of an area of administration and complete autonomy. He also shared Eggleston's recognition that Australian politicians had been reluctant to make this choice. The reality was, he believed, that administrative independence was 'out of harmony' with responsible government. But Australians had refused to admit this and, in attempting to have the best of the two worlds of efficiency and parliamentary democracy, they had, Bland feared, frequently achieved the worst of both (Bland, 1937:41).

Unlike Eggleston, however, whose concerns in matters of administration were more narrowly focused on the field of public enterprise, Bland was as anxious about the 'dangers of official despotism' or 'bureaucracy' (in the sense in which the term was originally used in Britain) which were associated with administrative autonomy as about the adverse

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8. My understanding of the range of Bland's thought has benefited from a reading of Wettenhall (1956:90-112). The following is, however, substantially my own interpretation of his work.

consequences (in the form of inefficiency) of inappropriate political control (Bland, 1937:48; 1923:5). On the assumptions of conventional academic thinking about government in Australia, Bland should have been caught in a hopeless contradiction: public accountability and independence from political control were, and still are, widely regarded as incompatible objectives. But Bland was able to distance himself sufficiently from the responsible government tradition to conceive of the possibility of making officials responsible to the general public other than by subjecting them to the control of ministers formally responsible to parliament - or, indeed, having them answer directly to parliament, whether 'through' a minister (Boyer's notion) or otherwise. Thus he argued that:

... it is not inconsistent with the principle or the theory of representative government to remove certain functions or certain agents of government from the immediate control of Cabinet, provided responsibility can be sheeted home to the official for his acts (1934:95).

Not content merely to raise the possibility of an alternative mechanism of accountability, Bland (1945, 1935, 1937) attempted to show how such a solution might be achieved. His fundamental assumption, as Wettenhall (1956:101) has shown, was that there existed a unique administrative function which, in recognition of its distinctiveness, ought to be removed from its subservience to the political mode of accountability and accorded its own, quite separate, quasi-judicial accountability regime (see also Bland, 1935). For this purpose he suggested the
establishment of one or more suitably empowered administrative tribunals, perhaps including an 'Administrative Supreme Court'. With such a system in place he considered there need be no qualms about administrative independence:

we could easily confer the widest autonomy upon Statutory Corporations in matters of administration, for if the public interest was challenged by any of their actions, the Government, or other interested party, could bring a suit before the appropriate tribunal to remedy the alleged injury (1937:49).

From the vantage point of the 1980s Bland's idea is apt to seem a striking anticipation of Australia's recently established institutions of administrative law. To a degree this is so. But there are also major differences. The field of authority of his proposed bodies, for instance, was to be far wider than that possessed by any current administrative tribunal:

Are the members of a Statutory Corporation inefficient? Is the Corporation acting capriciously? Do circumstances no longer justify its continuance? Are fares and freights too high? Are bounties and subsidies necessary for an industry? These are matters which ought not to be left to the caprice of a political party, for the test is 'the public interest', and ought to be determined in a judicial fashion... (1937:49).

Further, his was in large measure a traditionally based proposal, which explicitly extended the 'diffusionist', or insulationist, principle of public policy (discussed in Chapter 1) underlying such distinctively Australian administrative experiments as Public Service Boards, Arbitration Courts and the Tariff Board.

The impressive feature of Bland's thought is not so
much his specific prescriptions as his pluralistic conception of administrative accountability. It is the latter which explains why he did not opt exclusively for a quasi-judicial solution to the problem of reconciling administrative independence and accountability, but displayed an interest in the development of a variety of forms of accountability. Bland saw more clearly than many students of public administration, in his time or since, that ministerial responsibility and established mechanisms of parliamentary control could not bear the strain (even in the 1920s!) which modern government had placed upon them (see, for instance, 1923:6-7, 78-83). Supplementary forms of public control of administration needed to be established, both for democratic reasons and to reduce those pressures and incentives for undue political interference in administration which made for inefficiency. Administrative tribunals were one promising avenue. But Bland's writings contain discussions of other possibilities. In the late 1920s, for instance, he argued that the 'expert' executive boards of monopoly enterprises should be replaced by representative policy boards with separate nominated chief executives. Railways, ports, posts, and water and sewerage would, he thought, be 'more appropriately conducted on a basis of representation of interests', because 'only when the authority is representative can we delegate financial autonomy with complete confidence' (Bland, 1929:13; cited by Wettenhall, 1956:96). He also supported in general, and in the particular case of public broadcasting, the creation of
advisory committees or councils, along the lines of those which have been employed in Britain's nationalised industries, as a direct channel of communication between statutory corporations and their clients or customers in the community (Wettenhall, 1956:109).

But it would be misleading to exaggerate Bland's departure from the parliamentary tradition. His pluralistic approach was able to accommodate an important role for parliament in administration, alongside the non-parliamentary innovations he advocated. Accordingly, throughout his career, Bland strongly supported the formation of parliamentary standing committees to enhance parliament's capacity to oversee public administration, particularly that conducted by statutory corporations (see Bland, 1935).10

Bland's multi-stranded approach to administrative accountability sets his treatment of statutory authorities apart from that of Eggleston. Both thinkers supported the role of the highly independent authority. But Bland's ability to understand accountability in terms of the simultaneous operation of a variety of mechanisms and, in particular, his emphasis on the potential importance of non-

10. Bland's submission to the Joint Parliamentary Select Committee appointed in 1941 to inquire into public broadcasting has been seen as a major influence behind the decision to create a standing parliamentary committee under the 1942 amendment to the broadcasting legislation (Wettenhall, 1956:109). His commitment to the work of parliamentary committees continued when, after resigning from the Chair of Public Administration at the University of Sydney in 1948, he was elected to the Commonwealth House of Representatives. He was chairman of the Joint Committee on Public Accounts during that body's inquiries into the statutory authority scandal of the mid-1950s concerning the Australian Aluminium Production Commission (Wettenhall, 1956:111).
ministerial accountability mechanisms, pointed to the possibility that statutory authority independence might be gained without the large sacrifice in accountability which Eggleston seems to have accepted as necessary.

In the present chapter nothing more will be said about this interesting set of ideas drawn from Bland's writings. The reason is that they lie, to a large extent, outside the terms in which debate has historically been conducted in Australia. We shall have cause to recall them in Part III, however, where a case is advanced for reconsidering the position of the statutory authority in the light of a pluralistic conception of accountability.

In the thought of Parkes, Boyer, Eggleston and Bland we have four separate perspectives on the statutory authority, each of which combines a positive evaluation of the device (or at least a recognition of its inevitable importance in modern Australian government) with a distinctive conception of its status and accountability. For the purposes of the remainder of this chapter, however, we shall distil from these individual perspectives three general theoretical positions corresponding to the most common answers to what has, historically, been the key question concerning the accountability of statutory authorities: What should be the relationship between the authority, on the one side, and ministers and parliament, on the other? The first position, roughly that of Parkes, may be termed the 'arm's length' position. It treats the authority, along responsible government lines, as subordinate in important respects to a
minister, who is responsible for supervising its performance and, when appropriate, representing it in parliament. But it departs from the model of the ministerial department in advocating a more attenuated, or circumscribed, relationship between minister and authority - and, hence, between parliament and authority. The second (or 'parliament-centred') position, involving a different sort of modification of responsible government, views the statutory authority in Boyer's terms as an attempt by parliament to bypass the minister. A direct relationship is seen to exist between the authority and parliament; and the status accorded the authority vis-a-vis parliament is more or less that of a minister. The final position (which will be referred to as the 'authority-centred' position) is a composite of Eggleston and Bland. It breaks more radically with responsible government. Only minimal links are retained between the authority and both minister and parliament. The authority is created by parliamentary enactment and may be altered or abolished by the same process. It may be appointed by the government. But, in general, it dwells at the very edge of the system of responsible government. Indeed, its important powers create a substantial sphere within which the authority, beholden neither to minister nor parliament, has virtually the status of parliament itself.

The Impotence of Theory
Each of the theoretical positions outlined above offers a sort of solution to the problem of statutory authority
accountability. This is so because each is premised on an unambiguous assignment of responsibilities, including duties of forbearance, to the relevant actors. Thus each clearly specifies the degree and form of accountability that should be sought. The first position promises limited accountability through the agency of ministerial responsibility, while enjoining parliamentary forbearance; the second promises full, or at least substantial, accountability to parliament, but requires the minister to play the largely passive role of 'parliamentary liaison officer' (Forrest, 1983:95); while the third holds that an appropriate level of independence for the authority is consistent only with a minimal degree of accountability through the conventional institutional channels.

The task of the remainder of the chapter is to determine the extent to which each of these positions has influenced, or organised, practice. Particular attention is paid to the institutional, as distinct from the behavioral, support which can be identified for each. There are two main reasons for this focus. Firstly, there is the practical difficulty that behavioral evidence, especially for the past, is not readily available. Secondly, and more importantly, the appropriate evidence for the impact of theory is precisely changes in institutional arrangements. For, if a coherent set of normative ideas comes to govern the behaviour of groups of actors within a governmental context, it is reasonable to assume that such ideas will ultimately be embodied in formal arrangements.
It is convenient to begin the discussion with the 'authority-centred' position because enough has already been said to show that its claim to relevance is weak. It was noted in Chapter 1, for instance, that Commonwealth authorities have always been attached upon creation to particular ministers, with the consequence that the latter have acquired certain supervisory responsibilities. Further, it was argued in Chapter 1 that the highly independent authority, although supported in the early decades of the century by what Emy (1974) has called a 'diffusionist' philosophy of public policy, underwent something of a decline in the years around the Second World War, and has lost further ground over the past decade or so.

Even in the 1920s and 1930s Bland and Eggleston were under no illusion that the sort of arrangements they advocated actually existed. Indeed, their writings were explicitly diagnostic and prescriptive rather than descriptive. In particular, they were both very conscious that politicians had not been prepared on the whole to sacrifice control to the degree they wished to see. Thus Bland claimed that 'it will be too often found that the Statutory Corporation is a veil for political control, which is all the more sinister because the people have been led to believe that the Corporation was "independent"' (1937:45; see also 1923:129). For his part, Eggleston conceded that in some cases complete autonomy was simply not feasible for the trading authorities with which he was concerned. Where, for instance, the enterprise had a 'developmental character', as
was often the case in nineteenth and early twentieth-century Australia, it was impossible to lay a sound financial basis and, as a result, some political control, with a consequent division of responsibility, was inevitable. While Eggleston thought that developmental state enterprise was decreasing in importance as the Australian (and particularly the Victorian) economy matured, he saw other factors emerging to ensure that political control would at the least grow no less. Most importantly, the popularity of 'socialistic' ideas in modern politics meant that efficiency was not regarded as an overriding value in the provision of state services. Competing social objectives, such as the transfer of resources from class to class, were equally valued by the community and its political representatives. But 'experts' were ill-suited to the task of advancing social policy: they could be relied upon to undertake a specific function efficiently, but would not 'flatter the hopes of socialists or readjust economic conditions'. The result was pressure upon governments and parliament to retain power over policy (Eggleston, 1932:48,294).

As for the most recent past, a desire to increase political control of public administration has been an important theme in debate about Commonwealth administrative reform in the 1970s and 1980s. The philosophy behind this trend has been explicitly anti-diffusionist; that is, it has encouraged a more positive view of political input into

11. More will be said about this theme in Chapter 9 of this thesis.
public policy, an enhancement of the policy-making capacities of ministers (individually and collectively), and the fixing of responsibility for policy more firmly upon elected office holders. This development, in itself, has undoubtedly undermined residual intellectual support for the use of the statutory authority to create what Emy (1974:533) described as 'quasi-legislative subsystems'\(^{12}\). But its effects have also been reinforced by the beginnings of a movement away, under the impact of national economic decline, from the socio-economic policy 'strategy' bound up with leading agencies of 'diffusion', such as the Arbitration Commission, the Industries Assistance Commission and the primary produce marketing boards (see Castles, 1988). An aspect of the latter movement has been a perceived need, on the part of the Commonwealth government, to strengthen its control of national economic policy in order to implement strategies to improve Australia's competitive strength in the world economy.

Whatever the precise combination of causes, a majority of the bodies, or groups of bodies, held by Emy (1974:500-41) to exemplify the continuing diffusionist character of Australian public policy - namely, the Industries Assistance Commission (IAC), the primary produce marketing authorities (SMAs), and the Australian Industry Development Commission (AIDC) - have subsequently had (or are projected to have) their status significantly redefined by statutory amendment.

\(^{12}\) This term describes a situation where a body 'possesses an innovative and quasi-autonomous status for the development of policy within its sphere' (Emy, 1974:533).
As a result of such changes as the tightening of statutory policy guidelines (in the case of the IAC), the introduction of new ministerial powers to guide or direct policy (AIDC, IAC, SMAs), the removal of power to initiate action (IAC) and a radical alteration in the method of appointment (SMAs), each is formally a good deal less like a quasi-legislative subsystem\textsuperscript{13}. Each is, thus, also much less readily identified with our 'authority-centred' conception of the statutory authority's status and accountability.

What of the 'parliament-centred' position? Again, some doubt has already been cast on the distinctiveness and historical importance of this position in comments above on both the intellectual foundations of the original Victorian railway authority and the ideas of Richard Boyer. The argument in favour of its past relevance must rest on either or both of two main claims: that there has existed a convention constraining or enabling ministers to play a passive, liaising role; or that special mechanisms have provided unique opportunities for direct communication, parliamentary scrutiny and genuine parliamentary influence. Examination of these claims will show that they cannot support a strong case for an effective direct linkage between parliament and statutory authorities.

The first claim would seem to have been the main

\textsuperscript{13} The changes to the IAC and the AIDC were introduced in the Industries Assistance Commission Amendment Act 1984 (No.118), the Australian Industry Development Corporation Act 1975 (No.4) and the Australian Industry Development Corporation Amendment Act 1983. The changes to the SMAs are explained in Department of Primary Industry (1986). They have been gradually introduced through amendments to individual enabling statutes.
empirical basis for Boyer's argument, in so far, that is, as the latter was intended to be interpretive and descriptive rather than prescriptive. Boyer (1957) did not, however, advance this claim explicitly. He merely pointed to, and applauded, the preparedness of Australian parliaments to allow, and Australian ministers to seek answers to, most parliamentary questions about statutory authorities, a practice which was in marked contrast to that of Westminster with regard to the nationalised industries. But neither Boyer nor anyone else has seriously attempted to show that a convention of the required sort does exist. It has been suggested that in the case of certain authorities, for instance tertiary education institutions, ministers have been prepared to act simply as conduits for information and that, for its part, parliament has refrained from pressing claims of accountability against the relevant ministers (Forrest, 1983:95). Undoubtedly ministers do very often play such a role with regard to parliamentary queries concerning a wide range of authorities. But there is good reason to doubt that an arrangement where the minister is the only, or principal, point of contact between parliament and an authority is an intrinsically stable one for the generality of authorities. Wilding (1982) has argued persuasively that ministers are unlikely to tolerate having to be publicly answerable for an administrative agency while exercising minimal, if any, control over it. It follows that the more active the interest taken by parliament in the affairs of a particular body - and, hence, the more exposed the minister to potential
embarrassment - the more likely the minister will be to eschew a 'liaison officer' role and strengthen control over the body. The 1980s have provided some good examples of this process, particularly in connection with criticism of the Australian Dairy Corporation, the Australian Bicentennial Authority and the Australian Institute of Sport\textsuperscript{14}.

The process just outlined is, nevertheless, not an inevitable one. The argument of the previous paragraph was based on the assumption that the minister has been overwhelmingly the most important channel of influence between parliament and statutory authorities. But, as we have noted, there are other possible institutional links. If sufficiently strong, these might lessen the likelihood of pressure being automatically applied to the minister when an authority comes under criticism. Consequently, they might remove the trigger for instability in the relationships between minister, parliament and authorities. Moreover, such further institutional links might function as important symbols of the difference in status between statutory authorities and ministerial departments and thereby help to encourage attitudes and practices which recognise that difference. This takes us, then, to the second of the supporting claims.

The main evidence for the claim that special mechanisms exist to facilitate the direct accountability of statutory authorities to parliament is the requirement for

\textsuperscript{14} See House of Representatives, CPD, September and October 1981 (ADC); September and October 1985 (ABA); November 1985, 17 April 1986:2560-5 and 22 May 1986:3788-92 (AIS).
Statutory authorities to submit annual reports for tabling in parliament. This matter will be dealt with at length in a later chapter. For present purposes we may note that the above requirement was until recently far from universal. Moreover, it is well known that the Commonwealth parliament has traditionally paid little attention to authority reports. These have never been debated upon their tabling in the House of Representatives and for 80 years no effort was made to ensure that they received any institutionalised form of parliamentary consideration.

It might perhaps also be held that the origin of authorities in Acts of parliament has provided a unique potential for parliamentary review of the mandates and performance of authorities. The trouble with this claim is that there is no evidence that this potential has been realized. There has traditionally been no requirement for such review and no parliamentary machinery to undertake the task. Moreover, the premise of the claim is itself dubious as parliament's active involvement in the creation of statutory authorities underwent a progressive decline over the years. This was a consequence of growth in the legislative programs of governments, without compensating increases in sitting hours or parliamentary size, and the tightening of executive control of parliament (especially the House of Representatives) bound up with this process (see Reid and Forrest, 1989:191-239). Wettenhall (1956:469-70) found that by the 1950s parliamentary debates were totally lacking in critical scrutiny of either rationales for the
creation of authorities or relationships between authorities and other institutions.

The opportunities for direct parliamentary involvement with statutory authorities discussed above would seem to be for periodic scrutiny and review of individual authorities. What of day-to-day issues? Boyer seems to have been content to rely heavily on parliamentary questions to ministers to deal with day-to-day contingencies. But it has been suggested above that additional mechanisms independent of ministers, may be required if ministers are to be persuaded to confine themselves to a liaison role.

An obvious instrument for parliamentary investigative work of this kind is the select committee. Select committees would also seem to provide convenient means for pursuing more general inquiries into the operation of one or more statutory authorities. The Commonwealth parliament has traditionally employed a variety of such committees, and from time to time in the past has used them to conduct investigations into specific matters concerning statutory authorities. The Joint Committee of Public Accounts inquiry into maladministration in the Aluminium Production Commission conducted in the mid-1950s is a well known example (JCPA, 1954 and 1955). So is the creation in 1941 of the specific-task Joint Parliamentary Committee on Wireless Broadcasting to inquire into and report on, inter alia, the performance of the Australian Broadcasting Commission (see Rydon, 1952a and 1952b). Before the 1970s, however, parliament had, with one minor exception, never seen fit to create an investigatory committee with a
standing brief to engage in regular, direct oversight of one or more statutory authorities. The presence of a committee, or committees, of this type would have added considerable weight to any claim that the 'parliament-centred' position was important in Commonwealth public administration. It is also true that their absence weakens such a claim, for they might well have been employed. Although parliamentary scrutiny of administration by select committee has been much more fashionable in Westminster-style government systems after the mid-1960s than it ever was before, there can be no suggestion that the idea was unknown in Australia earlier in the century. In fact, it had been argued by F.A. Bland as early as 1923 that a system of committees should be established for such a purpose. And Bland (1923:131-2) referred explicitly to the role they might play with respect to statutory authorities. Moreover, the Commonwealth parliament's awareness of the idea before the end of the Second World War is evidenced by the single short-lived exception to the neglect of such instruments, the Standing Committee on Broadcasting established under the Australian Broadcasting Act 1942.

The latter committee is of some interest, not only

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15. Bland argued that '... there should be constituted for each important set of governmental functions a Standing Committee of members of the House to which would be attached official representatives of the various departments, and ... these committees would be the main channel through which the House would be informed of the policy and activity of the departments. It would seem that the Chairmen of these committees might very well be the parliamentary authority to whom questions respecting these quasi-independent Commissions would be addressed, even though the responsibility for moving the House in any direction would still remain with the Ministry' (1923:131-2).
because of its uniqueness but also because its statutory function quite clearly expressed a parliamentary desire to establish a strong direct link with a particular statutory authority. The committee was designed to work on references given to it by either house of parliament or by the minister, but the minister was required to refer any matter which the ABC (or the Federation of Commercial Broadcasting Stations) nominated for the committee's attention. Thus, as well as scrutinising the ABC on behalf of the parliament, the committee was intended to play a role in supervising the relationship between the minister and the authority. The committee was an active one; but, ironically, its considerable activity seems to have been the cause of its being regarded by both ministers and parliament as an unsuccessful experiment. Its ability to involve itself in the detail of broadcasting administration was seen to have greatly complicated administration with little compensating benefit, especially as its recommendations were largely ignored by government and received little parliamentary support. The committee's statutory basis was removed by the Broadcasting Act 1948 and it was 'neither reappointed nor mourned' upon the creation under this Act of the Australian Broadcasting Control Board (Wettenhall, 1956:493)\(^\text{16}\). Its perceived failure would appear to have closed the door on the idea of special parliamentary machinery to scrutinise statutory authorities. Despite the example of the British

\(^{16}\) Wettenhall's discussion of the Committee was based on Mackay (1957).
House of Commons Select Committee on Nationalised Industries (see Coombes, 1966), which was a fixture at Westminster from its establishment in 1956 until its abolition in 1979, that door was to remain shut for 30 years.

With the creation of a range of new committees by the Senate in 1970, and in particular the commencement of inquiries in late 1977 by the Senate Select Committee on Finance and Government Operations under a reference on statutory authorities, the Commonwealth parliament's relationship with statutory authorities entered a new phase. Discussion of the situation since the mid-1970s shall, consequently, be reserved for Parts II and III of the thesis.

The conclusions to be drawn from the present analysis thus relate principally to the first seven decades of federation.

Most of the main evidence for the idea that Commonwealth statutory authorities have, in some meaningful sense, traditionally been accountable directly to the parliament has now been evaluated. There is, however, one phenomenon, largely of historical interest, which may be dealt with briefly before the discussion is drawn to a close. This is the practice, in the case of a limited number of Commonwealth statutory authorities, of appointing members of parliament to boards. In Britain before the mid-

As of 1984, the following authorities were required by their enabling statutes to contain members of parliament (other than ministers): Advisory Council on Australian Archives, Advisory Council for Inter-Government Relations, Australian Council for Union Training, Council of the Australian Institute of Aboriginal Studies, Council of the Australian National University, Council of the National Library of Australia, Parliamentary Retiring Allowances Trust. Several other authorities also contained parliamentary members: Commonwealth
nineteenth century - that is, before the consolidation of the ministerial department and individual ministerial responsibility - parliamentary (including ministerial) representation on authority boards was a leading mechanism of administrative accountability (Willson, 1955). It subsequently lost importance, but nevertheless continued to be employed in a minor way until well into the twentieth century as a means of ensuring that selected authorities were directly answerable to the House of Commons (Willson, 1953; cited by Forrest, 1983:93). In the case of the Australian Commonwealth Parliament the appointment of a member of parliament to an authority, whether in accordance with a statutory requirement or not, seems not to have carried with it any formal obligation to represent the authority in parliament, for instance by answering questions about its operations or presenting relevant legislation. This is certainly the current situation, as was confirmed by the answer to a question asked in the Senate in 1984. The questioner asked, inter alia, whether an extension of parliamentary representation on statutory boards might not be a way of improving their accountability to parliament (Senate, CPD, 12 September 1984:884). The answer provided sometime later emphasised that members were appointed to such positions solely for the contribution they might make to the

Science and Industry Research Organization Advisory Council, Australian War Memorial and the Australian Bicentennial Authority (Senate, CPD, 24 October 1984:2404-5).

18. There is no mention in the standard authorities on the Commonwealth parliament (Odgers, 1976; Pettifer, 1984) of any such obligation having been recognized.
authorities concerned. It was stated, further, that:

The question of accountability to Parliament is a separate one. Accountability is generally achieved through the requirement that authorities be answerable to Ministers who in turn are accountable to the Parliament (Senate, CPD, 24 October 1984:2405).

This revealing statement underlines the general finding of the present discussion, namely that the 'parliament-centred' position on the statutory authority has traditionally had little influence on the institutions of Commonwealth government. Moreover, the statement provides support for our argument that the development of institutionalised direct links between parliament and authorities has been deterred by the centrality of ministers to accountability arrangements for statutory authorities.

We turn, finally, to the 'arm's length' model in which the statutory authority is, like a department of state, conceived as subordinate to a minister, but is a step - or, 'an arm's length' - removed from direct ministerial control. From what has been said about the prominence of ministers in the accountability regimes of statutory authorities, it is not surprising that of the three theoretical positions we have canvassed this is the one which has found the greatest degree of institutional support. We have already acknowledged as much by choosing Parkes' railways legislation to illustrate the position. Despite the relatively favourable circumstances for its propagation, however, the 'arms's length' position has, like the others, largely failed to provide a strong framework for practice.
The two essential features of the Parkesian approach were, it seems, both realised in the system of railway administration which resulted from the Act of 1888. The first feature, to recapitulate, was a strictly circumscribed relationship between minister and statutory authority. As described earlier, Parkes wanted the management of operational railways to be 'kept distinctly separate from the policy of the government' and governed solely by commercial principles. His view of the minister-authority relationship was based on the notion of a once and for all distinction between policy and administration enshrined in the enabling statute. In accordance with that view there was no positive power of ministerial direction, and the policy responsibilities of the minister were confined to considering requests concerning those matters specifically reserved by the Act for his approval. An 'arm's length' relationship (a term apparently not used by Parkes) was, consequently, built into the legislative foundation of the authority. The second feature of the Parkesian approach, it will be recalled, was the duty it placed on ministers to protect the authority from parliamentary influence. It is often suggested that the doctrine of ministerial responsibility has over time been subtly transmuted from 'a sword in the hand of parliament' to a 'shield on the arm of the executive'. But here ministerial responsibility, in relation to statutory authorities at least, was overtly specified in the latter terms. Moreover, according to Wettenhall (1960:467-8), upon the establishment of the New South Wales railway authority,
successive ministers conformed to this view of their role and, in particular, refused to provide answers to detailed parliamentary questions about railway operations\textsuperscript{19}.

Parkes' scheme was, however not reproduced in the Commonwealth sphere. We shall consider first the strict division of responsibilities between minister and authority which characterised Parkes' approach. The statutory basis of this arrangement was weakened quite early on by the adoption of the ministerial power of direction as a common component of regimes of control and accountability for statutory authorities. Implicit in this development was a loss of support for the notion of a fixed distinction between fundamental policy (laid down by statute) and day-to-day management (the responsibility of the authority). In place of this notion there developed a belief that ministers require power to determine, in the light of changing circumstances and their political judgement, how the authority should deal with important issues. The import of the change was that for many statutory authorities the existence of an arm's length relationship came to depend largely on ministerial forbearance.

But the evidence is not all the one way. As discussed in Chapter 1, attempts were made to circumscribe the

\textsuperscript{19} It will be noted that the result of these arrangements was an authority with a degree of independence in practice very like that advocated by Eggleston and Bland. As suggested at the outset, the distinction which has been made in this chapter between Parkes and these two writers is based wholly upon Parkes' insistence on the compatibility of his proposals with responsible government and the attention he gave to the working out of such a reconciliation.
directive power, in particular to confine its use to matters of general policy. It was also noted that formal directions have been issued by ministers only very rarely and that the Coombs' Commission survey found that Commonwealth authorities, on the whole, did not believe that ministerial intervention was either great or especially burdensome. A possible interpretation of these facts is that governments have accepted something of the spirit of the Parkesian approach.

What of the other feature of Parkes' approach, the limitations placed on the ability of parliament to involve itself in the affairs of statutory authorities? Parliamentary questions are the traditional means by which Westminster-style parliaments have engaged in day-to-day scrutiny of public administration and were apparently the main focus of Parkes' efforts to restrain parliamentary influence. But in Britain, where the arms' length principle was rigorously applied to the administration of the industries nationalised by the post-war Attlee government, several of the standard channels of parliamentary scrutiny of administration have been closed or severely restricted. Alongside restrictive rulings on the admissibility of questions and ministerial reluctance to supply answers to questions (Hanson, 1951; Chester, 1970; Prosser, 1986:194-8)\(^2\), the Comptroller and Auditor-General has been denied

\(^2\) Before long, however, there was a trend away from the initial, very restrictive approach. This followed a more lenient ruling announced by the Speaker of the House of Commons in 1948. De Smith records that 'Ministers have not often refused to answer a question on the ground that it related to day-to-day management
access to the books and records of public corporations (Prosser, 1986:204-10). After 1967 the difference between accountability regimes for ministerial departments and nationalised industries became even more pronounced with the establishment of a Parliamentary Commissioner for Administration, or ombudsman, whose field of operation excluded the nationalised industries (Padfield, 1972:266-71; Prosser, 1986:190-2).

The situation is very different in Australian Commonwealth government. The practice followed by the Commonwealth parliament with regard to parliamentary questions about statutory authorities, including trading authorities has by and large always been fairly close to that for questions concerning ministerial departments. Access to statutory authorities by both the Auditor-General\(^\text{21}\) and the Ombudsman is also roughly similar to the access they have to ministerial departments. These aspects of the Commonwealth situation are explored in detail in Part II of this thesis.

On the balance of the evidence, then, we may conclude that, like the other two positions we have considered, the administration though some of the questions tabled and answered might well have been rejected on that ground' (Street and Brazier, 1981:229). As De Smith shows, however, British members of Parliament have generally resorted to the stratagem of asking whether the Minister will give particular directions to the board of a nationalised industry. Australian members of parliament have not needed such a stratagem.

\(^{21}\) It is significant that, at the very time the influence of the arm's-length doctrine was reaching its zenith in Britain, Audit Amendment Act 1948 (No.60) conferred on the Auditor-General an explicit right to 'full and free access to all accounts, books, documents and papers in the possession of ... any authority established or appointed under any law of the Commonwealth'.

arm's length position has not been a strong influence on the institutions and practices of Commonwealth public administration.

Conclusion

This chapter has elaborated the suggestion in Chapter 1 that Commonwealth statutory authorities have historically proved unable to establish a truly distinctive and well defined place for themselves within the framework of government. We have shown that, despite the existence of several coherent rationales for highly modified accountability arrangements, the conventional arrangements of responsible government have tended to predominate. Strangely, however, this has not prevented commentators (such as those referred to in Chapter 3 and Part II) from drawing, or assuming, a sharp distinction between the levels of public accountability achieved by ministerial departments and statutory authorities. One reason would seem to be that the lack of distinctive institutional arrangements has made the very existence of statutory authorities seem unjustified, leading observers to posit all sorts of ulterior motives for their creation. A second reason is that there seems to be a widespread belief (reflected in textbook wisdom such as that considered at the beginning of Part II) that the arm's length principle does apply. And that principle has just sufficient hold over practice to sustain that belief.

The argument that our three positions have not been strongly institutionalised was not intended to imply that
they have had no influence whatsoever. A measure of influence is most readily observed in the case of the arm's length position, which has provided Commonwealth governments with conveniently flexible concepts (the arm's length metaphor itself and the notion of a distinction between policy and 'day-to-day management') and such slight intellectual support as has been found necessary to suppress outbreaks of parliamentary zeal. In Australia the need for such support has been especially slight in the past. For instance, by comparison with Britain in the post-war period (see Prosser, 1986), there has been very little serious public scrutiny and criticism of the rationales of prevailing arrangements. Governments and parliament alike have, in other words, been largely content to 'muddle through' without troubling themselves about the niceties of administrative theory. Of the other two positions, the 'parliament-centred' one has been decidedly the less influential, while the influence of the 'authority-centred' one has been in decline for a long time. Nevertheless, each has at least been represented in what small amount of serious public discussion there has been. Moreover, they have contributed to the stock of intellectual ammunition, or armour, available to institutional actors seeking either to challenge existing arrangements or to defend a stake in the status quo. As debate over the need for reform grew in intensity in the late 1970s and early 1980s, the value of theoretical weapons became correspondingly greater and the salience of the several positions we have examined might have been expected
to increase. The next chapter, focusing on the recent reform movement, will allow us to see whether this has happened.
CHAPTER 3

THE STATUTORY AUTHORITY REFORM MOVEMENT

Over recent years the history of the statutory authority in Commonwealth public administration has entered a new phase characterised by an unaccustomed concern about questions of role and accountability. Of particular significance is the fact that, for the first time in Australia, politicians have shown a sustained interest in the reform of statutory authorities. The present chapter addresses this phenomenon.

Recent interest in statutory authority reform has been a product of at least three general factors. We have already identified one leading influence in the popular view of the mid-1970s that both the number and rate of creation of statutory authorities were unjustifiably high. The potential for a backlash was realized when, amidst talk of the need to 'de-commission' Australia, the Whitlam Labor government's statutory authorities became a political issue in their own right. Labor's advisory commissions, discussed in Chapter 1, were particularly controversial. Commonwealth public servants tended to view these bodies, along with certain other machinery of government changes, as evidence of Labor's lack of respect for the existing administrative structure (Lloyd and Reid, 1974:273-4; Sexton, 1979:177-99). Injected
into the political process by the conservative parties, this concern was an important cause of growing demands for formal guidelines to control the creation of statutory authorities. The case for such guidelines, reflecting the view that statutory authorities had been created indiscriminately, was to become a central component of the reform movement.

A second important stimulus to statutory authority reform was provided by the slowing of economic growth and consequent budgetary pressures which Australia shared with other Western nations in the mid-1970s. Of particular relevance to the Commonwealth government was the decline in its financial status from net creditor vis-a-vis other sectors of the Australian economy to net debtor in 1974 (Howard, 1984:357). Constraints on the resources available to government stimulated efforts to upgrade financial management, improve the monitoring of efficiency and strengthen central control over resource allocation (see Howard, 1984). In this environment the degree of financial autonomy possessed by trading authorities was apt to appear an obstacle to rational financial management. Also, attention began to be drawn to the growing number of subsidiary bodies sponsored by trading and primary produce marketing authorities over which control was often especially tenuous (see SSCFGO, 1981; Wettenhall, 1983:39-41). More generally, the absence of regular reviews of effectiveness

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1. The fiscal importance of trading authorities is underlined by the fact that in 1980 state and Commonwealth non-budget authorities accounted for some 43 percent of public sector capital outlays and just over half the public sector deficit (Mathews, 1983:49-51)
lent credence to the notion that authorities often represented a waste of resources because they tended to outlive, or stray from, the purposes for which they were created.

A third background factor is the reassertion over recent years of the value of effective political control in public administration. This theme had its origins in the exposure over at least two decades of the growth of bureaucratic power in formally democratic polities, in particular the weakening position of ministers vis-a-vis permanent officials (on Australia, see AIPS, 1972; Juddery, 1974; Wilenski, 1978 and 1979; Weller and Grattan, 1981)\(^2\). The need for a response was recognized in a number of inquiries into government administration and these, in turn, legitimized certain efforts to augment the authority and resources of the elected component of government (see Smith and Weller, 1978). For statutory authorities the consequences were pressures for greater ministerial control together with heightened parliamentary interest in their activities.

The several environmental factors identified above

\(^2\) Bureaucratic power has long played a central role in Australian society, as a succession of writers including Hancock (1930), Eggleston (1932) and Encel (1970) have recognized. As early as the 1920s, Bland (1923) expressed concern about the asymmetry of power in the relationship between officials and ministers. But two factors in particular served to heighten interest in the issue and create pressure for reform in the 1970s. One was the exposes of 'mandarin power' in Britain by Castle (1973) and Crossman (1975 and 1976), ministers in Labour governments of the 1960s. These were widely read and discussed in Australia. The other was the friction, noted above, between the Whitlam government (1972–75) and the Canberra bureaucracy.
both stimulated a desire for reform and influenced the content of the reform program. But the argument to be developed here is that the preoccupations of the reformers are best understood not so much as a response to contemporary stimuli but as strongly reflective of received ideas about the nature and administrative requirements of accountability in government. The latter, in turn, derive from the history we have examined in Chapters 1 and 2.

The matters dealt with in this chapter do not exhaust all aspects of recent statutory authority reform. We are concerned here solely with the movement for a stronger framework for statutory authority administration which culminated in the production of three official reform documents in 1986 and 1987 (Minister for Finance, 1986 and 1987; Department of Primary Industry, 1986)\(^3\). This was the most visible part of reform activity in the 1980s, but it was far from the only relevant activity. Indeed it will be suggested in Part III of the thesis that a range of less prominent ideas and institutional changes, which only partly overlap with the subject matter of the government's policy papers, have contributed considerably more to the goal of accountability for statutory authorities. The chapter is also selective in its treatment of the three official documents mentioned above. Through these documents, the government distinguished three categories of bodies - 'ordinary' statutory authorities, government business

\(^3\) The first and second of these papers will be referred to respectively as the Policy Discussion paper and the Policy Guidelines paper.
enterprises (GBEs) and statutory marketing authorities (SMAs) - for which it devised partially differentiated sets of administrative arrangements. We shall concern ourselves at present with the broad thrust of reforms for the first and second categories.

The Policy Papers in Context
As has been hinted above, the reform policy papers of 1986 and 1987 did not spring into existence fully formed from the head of the Minister for Finance. They represented the conclusion of a decade of inquiry, argument and agitation within the political parties and the institutions of government (state as well as national). It is helpful to examine the policy papers in this context because they consist largely of claims and prescriptions with little in the way of supporting argument and analysis. For the latter one needs to turn to the earlier work upon which these documents ultimately rest. The bodies mainly responsible for that earlier work were the Royal Commission on Australian Government Administration (RCAGA) and the Senate Standing Committee on Finance and Government Operations (SSCFGO). In this section we shall examine the institutional context of the reform movement, focusing in particular on the influence of these two bodies. This will lay the basis for a closer

4. The work of the Victorian Parliament's Public Bodies Review Committee (see especially PBRC, 1980 and 1981; Frazer and McAnalley, 1986) was a particularly important influence on the Federal Parliamentary Labor party. But other state parliaments were also active in this area in the early 1980s (see, in particular, NSW PAC, 1983 and WASCROA, 1983a, 1983b and 1985)
look at the content of the reform literature in the next section.

As the Policy Discussion paper of 1986 acknowledged, RCAGA (1974-1976) effectively launched the movement for reform. The Commission's terms of reference gave it a broad mandate to examine the place of statutory authorities in Commonwealth government. It thus set to work on the first ever systematic inquiry on this subject, collecting a large amount of information through a questionnaire distributed to more than 100 authorities, a day-long meeting of authority representatives and over 90 written submissions (Wettenhall, 1976:348). Further, a consultant's report by R.L. Wettenhall (1976) was commissioned to assist in interpreting the data. Despite the effort expended, however, the relevant sections of the RCAGA Report (1976) demonstrated little theoretical novelty or boldness and were justly criticised as lacking 'depth or bite' (Self, 1978:317). This was partly explained by the overtly exploratory nature of the Commission's research, but it also reflected a preoccupation with limited, highly practical issues ('achievable reforms') especially in the personnel area. The themes of the Report regarding statutory authorities were, in a sense to be explained below, highly conventional. But this did not make them unimportant as far as the cause of reform was concerned. The nature and composition of RCAGA made it an ideal vehicle to promote what is described below as the 'orthodox administrative viewpoint' on statutory authorities. Its report provided the most authoritative and influential statement of that viewpoint in
Commonwealth administrative history. Accordingly, it made the conventional a force for change. Further, by confirming the importance of the roles played by statutory authorities while highlighting deficiencies in our knowledge about statutory authority administration, RCAGA provided a stimulus for further inquiry.

Nevertheless, RCAGA's immediate consequences were not great. Its substantive recommendations were relatively few in number and generally mundane (see RCAGA, 1976:415-6). Two of the more important were implemented by statutory amendments in 1979, but others had not been addressed by the time the Fraser Coalition government left office in 1983. Such was the fate of what that government, as the recipient of the Report in 1976, took to be its main finding. This was the desirability of developing, on the basis of additional work, a set of 'broad guidelines' for the creation of statutory authorities. In his ministerial statement to Parliament on the Report, Prime Minister Fraser announced the establishment of a working party of officials to prepare a guideline document 'as soon as possible' for the Government's consideration (Fraser, 1976:3592). The working party, headed by an ex-commissioner of the Public Service Board, reported in 1978, but no governmental action ensued (Collings, 1978; Wettenhall, 1986:75). Some five years later the report of

5. These were recommendations (39 and 40 of RCAGA, 1976) that the Audit Act be amended to enable the Auditor-General to conduct efficiency audits of statutory bodies and that the right of the Public Accounts Committee to investigate the financial affairs of bodies whose accounts do not form part of the accounts of the Commonwealth should be more firmly established.
the next major administrative inquiry, the Review of Commonwealth Administration (Chairman J.B. Reid), drew attention to the fact that the promised guidelines were yet to appear (RCA, 1983:32). RCAGA may have articulated an influential case for modest reform and to a considerable extent set the terms of future inquiry, but this did not put it in a position to prompt government to adopt its reform proposals.

It has been observed that, as agents of reform, traditional administrative inquiries suffer from the defect that they disband upon the presentation of their report and recommendations (Wilenski, 1986:262). Thus there passes from the scene the leading organizational advocate of reform, with no guarantee that the cause will be taken up by a suitably single-minded and influential successor able to maintain the momentum into the implementation phase where vested interest and the 'problematics of attention' pose serious obstacles (note March and Olsen, 1983). In the case of RCAGA on statutory authorities, the danger that the reforming impulse would be frustrated was even greater than usual, given that the potentially most far-reaching recommendation (the guidelines) presupposed considerable further investigation and deliberation within government.

In these circumstances it is not difficult to appreciate the importance of the SSCFGO's preparedness to take up the cause of reform, to use its prestige and links

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6. By this time the guidelines under consideration apparently dealt with the 'operation' as well as the establishment of statutory authorities (RCA, 1983:32).
with party leaders to continue to press for action, and to undertake its own programme of research, deliberation and public inquiry to develop more detailed recommendations.

The Committee quite deliberately picked up the baton laid down by RCAGA upon the presentation of its report in July 1976. It had been established in 1970 as part of a system of seven Legislative and General Purpose Standing Committees, with a subject area encompassing 'finance for the States, statutory authorities and Local Government' (see Odgers, 1976:482). But its major programme of work on statutory authorities began only in 1977, when it received a Senate reference to investigate and report on the following matter:

The continuing oversight of the financial and administrative affairs or undertakings of Commonwealth statutory authorities, and other bodies which the Commonwealth owns wholly or substantially, and on the appropriateness and significance of their practice in accounting to the Parliament (Journals of the Senate, 1977, 288).

The work of the Committee under this reference, which included eight substantial reports in the period of its greatest activity between 1978 and 1985 (SSCFGO, 1979a, 1979b, 1980a, 1980b, 1981, 1982a, 1982b, 1985)⁷, represented the partial realization of a longstanding aspiration. The view that the Commonwealth Parliament should possess a specialist statutory authority committee had been stated sporadically since the British parliament decided to create

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⁷. To this list should be added the report of the Senate Select Committee on Statutory Authority Financing (1983), a body appointed to continue work on a matter under consideration by the SSCFGO before the 1983 election.
a Select Committee on Nationalized Industries in the mid-1950s. Even before the British Committee had come into existence the political scientist Leicester Webb had advised the Joint Committee on Public Accounts that a similar committee for the Commonwealth Parliament was 'worth considering' (Webb, 1955b:96). Later on, the idea was supported by the Clerk of the Senate in his influential report of 1969 on a standing committee system for the Senate (see Odgers, 1976:481-2); by Wettenhall's consultant's report for RCAGA and the RCAGA Report itself (Wettenhall, 1976:334; RCAGA, 1976:91); and, several years after the SSCFGO had begun work under its reference on statutory authorities, by the Fraser government's Review of Commonwealth Functions (RCF) (Fraser, 1981:1851).

Thus the specialized statutory authority committee - or, at least in the case of RCAGA, a more narrowly focused government business corporation committee - was a long available 'solution seeking an occasion' (note March and Olsen, 1983). As is often the case with such phenomena, the problems for which it was held to be the solution tended to differ somewhat with the times and the advocate. RCAGA envisaged the committee undertaking compliance and efficiency reviews, thereby complementing the work of a proposed new House of Representatives committee on administrative efficiency (1976:91,113-4). The RCF, in conformity with its

8. The Clerk's report was appended to SSOC (1970).

9. The RCF recommended the establishment of a new Joint Parliamentary Standing Committee on Statutory Authorities (Fraser, 1981:1851).
'razor gang' image, emphasized a culling function - the committee would 'review the performance, role, functions and continued need for all authorities' (Fraser, 1981:1851). For political scientists Webb (1955b:96) and Wettenhall (1976:334) the existence of such a committee promised to encourage a more informed attitude towards statutory authorities and, in particular, a better understanding of the peculiar problems and needs of trading authorities\(^{10}\).

The Committee's own attitude towards its role, however, was probably closest to that preferred by the RCF. This is hardly surprising given that the RCF and the SSCF GO were active at the same time, in an atmosphere marked by generalised hostility towards statutory authorities and particular concern with their growing numbers and alleged lack of public accountability. The influence of these attitudes was reinforced by the fact that they were strongly held by Senator Peter Rae, the Committee's chairman throughout its period of most active interest in statutory authorities (see Rae, 1982:241-2 and passim).

The SSCF GO exerted substantial influence on the Hawke government's reform program. Influence flowed through both party and executive channels. During 1982 the parliamentary Labor party had a Task Force on Government Administration working to produce recommendations on a range of administrative matters. The final discussion paper of this

\(^{10}\). Webb (1955b:96) thought that, by promoting a clearer understanding of 'the place of public corporations in the general scheme of government', such a committee would help resolve 'the problems of control and responsibility' with which the Public Accounts Committee had wrestled in the mid-1950s.
body formed the basis for *Labor and Quality of Government*, a document presented before the March 1983 election by party leader Hawke and Task Force Chairman Gareth Evans as a statement of 'the basic direction in which the Hawke Labor government will be heading' (LQG, 1983:6). The three pages devoted to 'public authorities' were heavily and openly indebted to the SSCFGO, to the extent that on several subjects (annual reports, finance and budgeting, the use of the statutory authority form) it was simply proposed that particular Committee recommendations be implemented (1983:20-1). On the executive side, an interdepartmental committee was established during the Fraser years to monitor SSCFGO reports and prepare cabinet submissions from time to time on matters raised by the Committee (Wettenhall, 1986:75). It was only after the change of government, however, that this work began to bear fruit.

Thus RCAGA and the SSCFGO laid the intellectual foundations for the policy papers of 1986 and 1987, while the SSCFGO provided the institutional pressure necessary to sustain an interest in reform. As we have suggested, one good reason for placing the policy papers in a context which includes the activity of these bodies is that it facilitates understanding of the underlying ideas. But another reason for doing so is that such a perspective helps to counteract the tendency to succumb to a reactive conception of governmental reform initiatives, in which action is always understood as a simple response to an objective problem. There is a sense in which such a conception is necessarily
true. Within resource constraints governments do indeed respond to those matters perceived as most urgently requiring remedial action (providing such action is believed to be possible). However, sophisticated accounts of agenda setting in politics recognize that the concept of a policy problem is itself highly problematic. What is perceived as a problem requiring action will be heavily dependent on the scarce resource of policy-maker attention, as well as fluctuations in the immediate political environment (see Kingdon, 1984; March and Olsen, 1983).

These factors are quite evident in the present case. The process leading to the appearance of the policy papers was governed by contingency throughout. We have noted the fortuitous role played by the SSCFGO. But policy-maker attention and fluctuations in the immediate political environment continued to be decisive once the Labor party took its vaguely formulated reform proposals into government. The eventual decision to adopt a formal, comprehensive reform policy was partly a response to a perceived need within the Labor party to redefine its view of the role and relationship of government to Commonwealth trading authorities in the light of an increasingly articulate and influential privatisation lobby within the opposition parties (see Dawkins, 1986). The reform policy was also a product of the desire to complete the process of public sector reform begun in 1983 and 1984 with white papers on public service and budgetary reform respectively (Dawkins, 1983 and 1984). This general reform process, in turn, is said to have been
highly dependent on the appointment of the reform-minded John Dawkins as Minister Assisting the Prime Minister in Public Service Matters in mid-1983. In the early months of the Hawke government interest in administrative reform had allegedly begun to wane as urgent, unforeseen problems inevitably emerged to capture the attention of the new ministry (Wilenski, 1986:270). Again, when Dawkins left the Finance portfolio after the December 1984 election there was speculation that his successor would lack the commitment to prevent the increasingly contentious subject of statutory authority reform from being forced off the political agenda (Wettenhall, 1986:76). Even after the publication of the Policy Discussion paper in 1986 the appearance of a white paper was highly uncertain (Dodson, 1986; Fewster, 1986). As we shall see, the approach to reform was significantly modified in response to intense opposition before the Policy Guidelines paper was published more than 18 months later.

Not only is the recognition of problems an uncertain process, but problems, solutions (or policies) and actions are not necessarily linked in a tight sequence. Recognition of problems does not always give rise to the search for solutions and the discovery of solutions does not always lead to action. Nor does this process always proceed logically. Solutions, for instance, may precede the definition of problems. As the argument of the next section will help confirm, the statutory authority reform proposals were not in any straightforward sense a reaction to a new problem such as a discovery about standards of accountability or
revelations about deficiencies in the performance of particular authorities. Rather they were a consequence of a 'highly contextual' combination of 'people, choice opportunities, problems and solutions' which transformed relatively longstanding 'problems and solutions' into a case for action. In March and Olsen's terminology the statutory authority reform 'opportunity' had some of the characteristics of a 'garbage can' (1983:285-7; note also Kingdon, 1984).

The Rhetoric of Statutory Authority Reform

It was suggested above that the reform movement, whose origins and progress have now been outlined, was based on 'an orthodox administrative viewpoint' on statutory authorities. I must now explain and defend that claim.

Let us begin by noting several recurrent popular criticisms of statutory authority administration. These are that rationales for creation of authorities lack clarity; that statutory provisions, especially those broadly concerned with accountability, are excessively variable; that insufficient respect is often shown for authority independence; and that there is a tendency towards a blurring of the division of responsibilities (particularly between minister and authority) typically associated with this form of administration\(^\text{11}\). These purport to be

\(^{11}\) Some of these criticisms can be found in the pre-World War Two writings of Bland (for example, 1923 and 1937). But they are better represented in the post-war literature, such as Webb (1954 and 1955a), JPAC (1954 and 1955) and the work of the other political scientists of this period discussed in Chapter 1.
empirical observations. But like, for instance, the frequent denunciations of the legalism, conservatism and weak government allegedly promoted by federalism (see Sharman, 1980), they have a highly conventional, almost ritualistic character.

This fact tells us as much (or more) about our values as about statutory authority administration. An aversion to administrative 'disorder' and 'irrationality' is deeply rooted in modern 'legal rational' (Weber, 1968) or 'rationalist' (Oakeshott, 1962) societies. It reflects the belief that rational (that is, purposive, logical, maximally efficacious) collective action is both possible and desirable and that organization is its essential instrument.

These values give rise to what March and Olsen (1983) have called an 'orthodox administrative rhetoric', a language of administrative rationality which has typified drives for administrative reorganization. This rhetoric has been widely criticised for its descriptive inadequacies. Indeed, March and Olsen present administrative reorganization in twentieth-century America as a recurring dialogue between the rhetoric of 'orthodox administrative theory' - which typifies the early phase of reorganizations - and the rhetoric of 'realpolitik', equally orthodox, which emphasizes the

Amongst these writers, interest in the administrative problems of the statutory authority appears to have been importantly influenced by the attention being given in Britain to the relationships between government and the industries nationalised by the Attlee Labour administrations (1945-51). A small but significant indication of this influence is the adoption by early post-war Australian writers of the British term 'public corporation' to identify their field of study.
explanatory salience of power, interest, competing values and group conflict — and which tends to inform post-reorganization analyses. But, despite its inadequacies, the first sort of rhetoric persists because it expresses basic cultural values.

There is in Australia, I contend, an orthodox administrative rhetoric about statutory authorities, of which the standard criticisms noted above are the negative aspect. This rhetoric has two main components. As with the orthodoxy identified by March and Olsen, it evinces a rationalistic antipathy to what it sees as 'ad hocery', inconsistency, overlap, fragmentation and other evidence of incoherence in the machinery of government. But it also incorporates an assumption about the inferiority of the statutory authority vis-a-vis the ministerial department which earlier chapters have suggested is a product of the history of our governmental institutions. The core of this rhetoric of administrative orthodoxy is expressed in the following propositions:-

(i) differences in administrative forms should be based in deliberate, rational choices about appropriate means to achieve desired ends;

(ii) the statutory authority is normally inferior to the ministerial department as an instrument of administration in a democracy;

(iii) because of (ii), the statutory authority should be used only in exceptional circumstances and then only in accordance with a limited number of strictly
defined, cogent rationales;

(iv) once established, however, a statutory authority should be permitted a genuine measure of independence; and

(v) to achieve (iv) and to avoid overlap and 'buck-passing', there should be a clear assignment of responsibilities to minister, statutory authority and any other actors involved.

This orthodoxy has been the rhetoric of reform. The case for statutory authority reform, as developed by the various bodies and individuals discussed above, consisted largely in an elaboration of these five propositions. This is not to say that the movement for reform did not involve fresh inquiry; but the understandings, hypotheses and conceptions of relevant facts which directed inquiry and helped determine its conclusions were drawn from that amalgam of Westminster presupposition and administrative rationalism identified above.

In what follows I shall trace the five themes of the orthodox administrative viewpoint on statutory authorities through the principal intellectual contributions to the reform movement as I have identified them. In dealing with RCAGA, however, I shall refer not only to the Commission's final report (RCAGA, 1976) but also to the consultant's report prepared by Wettenhall (1976). The latter set the tone for the former (though some differences are noted below) and traverses much of the same ground, but it is generally richer in argument. Interestingly, Wettenhall is also
explicit about his role as a mouthpiece for an orthodoxy. Thus he observed that his report did not challenge 'established theory', but was intended 'to reinforce the teachings' of that theory or 'to pull practice back into line where it appears to have seriously diverged from that theory' (1976:341).

Because it is the pivot on which the whole case for reform turns, we begin with the second of the above themes (Proposition (ii)). This is the assumption, rooted in the institutional history and the theory of government discussed in previous chapters, that the statutory authority is a subordinate or 'exceptional' instrument which, in Wettenhall's words, should be reserved 'for special cases that do not fit [the] normal, standard ministerial/departmental pattern' (1976:330). Before a statutory authority is created, according to successive recent reports and policy statements, the particular benefits hoped for should be weighed against the general disadvantages of that administrative form compared with the ministerial department. The two disadvantages commonly referred to are the 'inflexibility' which the statutory authority allegedly introduces into public administration and the classical problem of accountability.

Inflexibility results, according to the RCAGA report, from the fact that the legislative basis of statutory authorities 'sometimes causes them and others to regard their objectives as unchanging, and makes the adjustment of their functions to meet evolving circumstances relatively
difficult' (RCAGA, 1976:82). By comparison, in the words of the SSCFGO's Fifth Report, the ministerial department has a 'basic advantage': 'when governmental functions being performed by departments change ... the consequent structural alterations are relatively simple: the Administrative Orders can be changed and staff can be transferred' (SSCFGO, 1982a:22-3).

The other alleged disadvantage, that of accountability, has received varying degrees of emphasis in the reform literature, but has been raised in all the main contributions. Least was made of it in the RCAGA report, where there was reference to, but no opinion expressed as to the validity of, 'a classic argument ... that the more independent the body is from the responsible minister, the less accountable it is to him and ultimately to parliament' (1976:82). The failure of the commissioners to identify themselves firmly with this argument was not surprising given that elsewhere in the same report they had advocated a degree of independence from ministers for departmental managers without accepting that any diminution of public accountability must result. (On the contrary, they believed that such a change would improve accountability)\textsuperscript{12}. In this light what is surprising is that the report makes no attempt to challenge the 'classic argument'.

Wettenhall's report was less circumspect. Accountability concerns were explicitly cited as a

\textsuperscript{12}. This aspect of the RCAGA report is discussed at length in Chapter 9 of this thesis.
potentially decisive argument against the creation of statutory authorities. For instance, Wettenhall seems to have found such concerns telling against the strategy promoted by the British Fulton Committee of 'hiving off' from departments to statutory authorities activities which are largely self-contained and not closely related to day-to-day political issues:

We have no easy solutions to the problems of accountability that this course produces, and no guarantee that the work will be better done than in a department (1976:332).

The SSCFGO, in its turn, was particularly dogmatic on this issue. It explicitly identified the choice between ministerial department and statutory authority as one between 'responsibility and accountability', on the one side, and 'independence' in administration, on the other (SSCFG0, 1979a:18). Moreover, the Committee left no doubt about its preference for ministerial administration: that system had 'served Australia well' and appeared 'to provide an adequate measure of responsibility and accountability' (1979a:9). Such claims were made in the Committee's First Report on statutory authorities without supporting argument or evidence and virtually without acknowledgement that there might be imperfections in the administrative accountability achieved in practice through ministerial departments. It was noted that it has become 'fashionable to deride the anonymity of the [central] bureaucracy and its freedom to operate behind the screen provided by the system'. But the Report suggested that such concerns were exaggerated or misplaced, because 'in
fact the minister is seen to be ultimately responsible for the activities and actions of his department' (1979a:9). A very similar viewpoint was later expressed, in abbreviated form, in the Policy Discussion paper where ministerial departments are said to possess the 'decided advantage of making the relevant Minister directly [sic] responsible to the community' (Minister for Finance, 1986:4).

The other foundation of the campaign for reform has been the alleged irrationality of existing arrangements. March and Olsen have observed that the 'rhetoric of administration proclaims that explicit, comprehensive planning of structures is possible and necessary, that piecemeal change creates chaos' (1983:282). This has its counterpart in the present case. Wettenhall began his report by lamenting the 'confusing' manner in which the device has been used: '...we blur the accepted categories, create hybrids, insert statutory authorities within departments and so on'. He warned that '...we are unlikely to find solutions in this field unless we appreciate the enormity of the task, the very great extent of the confusion and inconsistency that exists in our present arrangements ...'. Too often, Wettenhall claimed, statutory authorities had been created without adequate justification (1976:314,317,341). RCAGA generally concurred with these views, though its language was milder. It noted that in 'many' cases statutory authorities overlapped in their functions with departments and that it was 'difficult to ascertain' in some of these cases why the form had been chosen. In other cases statutory authorities
had 'possibly' been created for unacknowledgeable reasons such as 'a desire to forestall criticism about the growth of the main federal bureaucracy' (RCAGA, 1976:81,86). At the beginning of its inquiries a year or so later the SSCFGO also claimed that there had been 'no generally accepted rationale for the creation of authorities' (SSCFGO, 1979a:14). The assumption underlying all of these criticisms is that articulated by Proposition (i) above. That assumption strongly informed the support of RCAGA and the SSCFGO for a rationalisation of existing arrangements.

Perceptions of the inherent inferiority and overuse of the statutory authority form led logically to a desire to restrict as well as to rationalise its use. The main means advocated to achieve this outcome was the establishment of formal guidelines for statutory authority creation (in accordance with Proposition (iii)). Consequently, attempts to specify a more precise and restrictive set of conditions for the use of the statutory authority were prominent in the main contributions to the reform movement.

In general this work proceeded via critical reviews of the various public justifications for creating statutory authorities, with the aim of identifying spurious or inadequate rationales. The main differences among the several contributions can be illustrated by comparing the RCAGA report with Wettenhall's report. Both Wettenhall and RCAGA began with the principle that a separately staffed authority should not be created unless there is a clear case for a significant degree of independence from ministerial
administration. But Wettenhall was more willing than RCAGA to identify the 'need for independence' with a specific set of functions or circumstances and, further, to treat that need, thus objectified, as a sufficient condition for the creation of a separate authority. The condition was satisfied, in Wettenhall's view, where the government wished to involve itself in trading or 'business' activities; in 'higher educational, opinion-forming or research-type' activities; and in judicial, quasi-judicial and some sorts of grant allocating activities. It was also satisfied where the government wished 'to include directly in management representatives of a range of community interests' (Wettenhall, 1976:331). RCAGA seems to have been more permissive in the range of considerations it was prepared to countenance as providing good arguments for independence. Unlike Wettenhall, it did not counsel against the use of statutory authorities to 'hive off' executive activities of a specialised, or detailed, and self-contained nature - and, indeed, apparently envisaged this as a potentially acceptable usage (RCAGA, 1976:84-5). On the other hand, RCAGA viewed the need for independence as something which could not be determined in advance of the particular case. On each occasion the onus should be placed on those proposing a new statutory authority to demonstrate that need. Moreover, RCAGA tended to regard a sound argument for administrative independence as providing only a necessary condition for the establishment of a statutory authority. It showed more concern than Wettenhall with the proliferation of separate
organizations as distinct from separate authorities. RCAGA therefore felt it important to emphasize that the need for an independent authority could often be met within the departmental framework by vesting a permanent official with the necessary statutory powers (1976:85)\textsuperscript{13}. This seems quite at variance with Wettenhall's report: it was precisely the category of 'intra-departmental authorities' which Wettenhall considered the most dubious and the most in need of severe pruning (see Wettenhall, 1976:331-2,335).

Subsequent work on guidelines to regulate statutory authority creation drew from both of these sources. The major SSCFGO contribution, in particular, has aspects in common with both the Wettenhall and RCAGA reports. But the RCAGA report ultimately proved the stronger influence. Thus the Policy Discussion paper contained an appendix outlining governmental functions 'illustrative' of those for which some independence from ministerial control is often sought. But it also stated that performance of such functions should not in itself be regarded as making the statutory authority form appropriate (Minister for Finance, 1986:40-1). Also, both the Policy Discussion and Policy Guidelines papers saw the establishment within departments of distinct organizations and the vesting of statutory powers in departmental officers as desirable alternatives, in many circumstances, to the

\textsuperscript{13} The commissioners suggested further that the case for creating separate organizations would be weakened if their proposals for permitting greater delegation of authority within departments and greater flexibility in the design of organizational structures under a revised Public Service Act were accepted (RCAGA, 1976:82, 86; also 72-3, 256-60).

If the advocates of reform have wished to see less use made of the statutory authority and a more consolidated and uniform system of administration, they have also tended to insist that where the case for a separate authority satisfies the more rigorous tests recommended the resulting body should be permitted to exercise a significant degree of independence. This is Proposition (iv) of the orthodoxy. Wettenhall and RCAGA took a very clear position on the matter, presenting independence for statutory authorities as a simple requirement of rationality in administration. Since the need for administrative independence justifies the creation of statutory authorities, independence should be manifested in their operation. Form and substance, appearance and reality should coincide (Wettenhall, 1976:332-3 and passim; RCAGA, 1976:91-2). But none of the reformers held that independence should be absolute. All accepted that governments require a greater capacity to determine authorities' activities than is conferred by their ability, with parliamentary concurrence, to achieve changes in the functions, objectives and policy guidelines laid down in enabling legislation. As a result, in much of the literature the case for independence has been subsumed under Proposition (v) of the orthodoxy - the need for a clear division of responsibilities between minister and authority.

Implicit in the idea of a strong division of responsibilities is the need for mechanisms to ensure that
boundaries are not undermined or overridden with impunity. Most importantly, if ministers are to have a general power of direction as all the reformers wished, mechanisms are needed to ensure that a respect for the independent status of the statutory authority is preserved. Wettenhall's report catalogued, and argued for the application of, the full range of mechanisms which have been devised for this purpose. These included statutory requirements that governments accept public responsibility, through the 'Commonwealth Bank formula', for the consequences of ministerial directions; that senior appointments to the service of an authority be made 'in the first instance' by the statutory board and not the government; that both short and indefinite term appointments of board members be avoided; that departmental officers appointed to authority boards be explicitly freed of their departmental obligations; and that 'recoup' provisions be universally employed for business authorities, allowing authorities to be compensated for losses incurred as a result of ministerial interventions. Such mechanisms support operational autonomy, but cannot guarantee it given the range of subtle and not so subtle pressures that ministers may bring to bear. For this reason Wettenhall also argued that ministers, members of parliament and departmental advisers should be encouraged to practice 'ordinances of self-denial' until there is evidence of 'a serious breakdown' in authority administration. As well as ministerial restraint, there should be greater recognition within parliament that the requirement for authorities to submit
annual reports was intended to provide a partial substitute for intensive questioning. Further, channels of communication between ministers and authorities should not entail the close involvement of ministers' departments in authority affairs (Wettenhall, 1976:332-40).

Wettenhall's strong case for statutory authority autonomy amounted to support for something like the arm's-length position discussed in Chapter 2. The SSCFGO articulated very much the same sort of case\textsuperscript{14}. But it is not necessary to go this far in order to satisfy Propositions (iv) and (v) of the administrative orthodoxy. RCAGA also recognized a need for autonomy and a clear division of responsibilities, but suggested that this should not be interpreted as an absence of links with other actors.

RCAGA showed at least as much concern as Wettenhall about the need to circumscribe the capacity for ministerial intervention. It emphasized that the desired degree of ministerial policy guidance should be clearly specified in the enabling legislation. It recommended uniform provisions ensuring that the use of the ministerial power of direction should be a public and responsible act: directions should be in writing, they should be listed in the authority's annual report, and they should be tabled in parliament.

\textsuperscript{14} On the points of difference between Wettenhall and RCAGA, the SSCFGO adopted the same positions as the former. For instance, the Committee followed Wettenhall in emphasizing the value of the 'recoup' principle (see SSCFGO, 1982a:93-105). Also, as a result of its examination of the arrangement for departmental representation on the Australian Dairy Corporation, the SSCFGO supported Wettenhall's opposition to the widespread use of departmental representatives (see SSCFGO, 1981:247-9; 1982a:76-7).
(This was to become a standard item in contributions to the reform literature). In order to reduce further the scope for confusion of responsibilities, RCAGA recommended the selective use of statutory guidelines – statements of objectives or purposes, considerations to be taken into account, heads of government policy to be regarded – in preference to an open-ended directive power.

But RCAGA's enthusiasm for authority autonomy was moderated by a recognition of the danger that autonomy might spell isolation. Difficulties experienced by some bodies in gaining access to ministers suggested a need for the latter to ensure that lines of communication were maintained. Consequently, RCAGA recommended regular conferences between departmental heads and heads of statutory authorities, with the occasional participation of ministers. In contrast to Wettenhall's preference for an absence of contact between departments and authorities, RCAGA argued for a 'close working relationship'. This was especially necessary, it suggested, in the case of newly established bodies, where it was desirable for the two to work together to achieve an acceptable division of functions and to avoid overlap. For these reasons RCAGA was less anxious than Wettenhall about the appointment of departmental officers to governing boards as a means of coordinating the work of departments and statutory authorities (RCAGA, 1976:86-90).

Once more, the government's policy papers tended to follow RCAGA. They specified that the relationships determining the extent of an authority's independence would
be set out clearly in enabling legislation. To ensure that the independence thus granted should be respected, the policy papers stated that the provisions described above for publicising ministerial directions would also be included in enabling legislation (Minister for Finance, 1986 and 1987:9).

But, like RCAGA, the government claimed that 'arrangements supplementary to those prescribed in legislation' or designed 'to amplify or expedite observance of its provisions' would always be necessary (p.8). A reading of the documents suggests that the principal 'arrangements' referred to here are those intended to ensure that authorities comply with government policies, especially in the areas of income, employment and industrial relations. But, as the policy papers follow RCAGA in supporting the appointment of departmental officials to statutory boards, it is likely that day-to-day liaison with government departments is also implied. The policy papers argue that such supplementary arrangements are not detrimental to 'the concept of a statutory authority', but are beneficial to efficiency and 'often essential' to accountability (1986 and 1987:8).

In showing how the key contributions to the reform movement expressed a particular received wisdom about the use of the statutory authority, we have completed the task of this section. But one further point must be made. It has been argued that the assertions and prescriptions which constitute the policy papers of 1986 and 1987 are recognizable products of this received wisdom. As we have seen, however, there was some variability among the several
contributions. When the policy papers are compared with the other documents it is noticeable that the former consistently express positions which maximize the discretion of the government and its ability to exercise control over authorities.

This is evident in the two key areas of guidelines for statutory authority creation and relationships between statutory authorities and ministers. The Policy Guidelines paper shows that the government failed to follow through with the task of developing a detailed set of restrictions on the creation of authorities begun by Wettenhall and RCAGA and continued by the SSCFGO. Ministers are left not only with absolute discretion but also with no guidance as to its use. With regard to the second area, ministers' powers over authorities are often expressed in descriptive and probabilistic terms (what the minister may do, what will usually or normally happen) whereas authorities' obligations towards ministers tend to be expressed in imperative and unqualified terms\(^5\). Further, on every aspect of this

\(^5\) The tendency in the policy papers to maximize ministerial discretion and minimize the discretion of the statutory authority goes beyond recommendations about the form of relevant statutory provisions. Two examples occur in the section of the Policy Guidelines paper on 'powers of direction'. On the issue of financial compensation for an authority adversely affected by a ministerial direction, ministers are given a double discretion. It is stated that 'consideration' will be given to including a provision for compensation 'in the context of the circumstances of individual authorities'. In anticipation, one assumes, of a continuation of the practice whereby many statutes make no reference to compensation, it is stated that 'the matter (including any necessary amendment to the statute) may be considered on a case-by-case basis' (emphasis in original). The other example is the general obligation which it is claimed authorities are under to 'take account' of relevant Government policies, 'irrespective of whether there are express powers of
relationship - appointment of the chief executive officer (by board or by minister), departmental members of governing boards, the question of financial compensation for the effect of ministerial directions, the appointing authority (minister or Governor-General), size of boards (definite or indefinite) and terms of membership (definite or indefinite) - the policy papers provide the minister with the greatest flexibility consistent with the broad consensus underpinning the reform movement.

We may reasonably conjecture that this outcome is to be explained, at least in part, by the institutional interests of ministers. But it has arguably received further support from conventional assumptions about accountability which give pride of place to ministerial control and ministerial responsibility. Light may be cast on this latter point through a closer examination of the treatment of accountability in the reform literature. It is to this task we now turn.

The Long Shadow of Ministerial Responsibility

We shall focus in this section on the SSCFGO reports on statutory authorities. These contain the most extensive treatment of accountability in the reform literature and were arguably an important source of key statements in the policy papers. For our purposes, one of their most interesting aspects was their attempt to promote (to employ the language of the previous chapter) a 'parliament-centred', as opposed
to a 'minister-centred', conception of accountability. It is instructive to trace the way in which the inclination to articulate an unconventional approach, which a parliamentary body such as the SSCFGO might have been expected to find congenial, was compromised from within by the weight of conventional thinking which places ministerial responsibility at the heart of the understanding of accountability.

There is a good deal of evidence in the relevant SSCFGO reports to suggest that the Committee was strongly drawn to the idea that statutory authorities might be made directly accountable to parliament. The First Report on statutory authorities set out the basic claim:

There is a direct link [in the form of the enabling Act] between the Parliament and a statutory authority. This link requires that authorities account to the Parliament ... The Committee is concerned that because some authorities have considerable operating independence, a belief has arisen in some areas that they are not subject to the scrutiny of Parliament. Operating independence should not be confused with freedom from ultimate responsibility to the elected governing body (1979a:62).

These comments hark back to events earlier in the 1970s. Following difficulties experienced by Senate estimates committees in gaining the cooperation of some authorities, most notably the Australian Broadcasting Commission, the Senate had passed a resolution affirming the rights of the parliament. This asserted that while statutory authorities may need to be distanced from ministerial control to achieve the necessary operating independence, they may be called to account by the parliament whenever the latter chooses (Journals of the Senate, 1971:827; see also Odgers,
The SSCFGO's First Report also argued that when the first Commonwealth authorities were created there was a clear understanding that they should be accountable 'to the whole Parliament rather than to the minister', the implication being that this was an ideal from which subsequent practice had lamentably departed (1979a:62).

The SSCFGO looked to several instruments to develop parliament's 'direct link' with statutory authorities. The main one was the annual report, described by the Committee as 'a primary method' of establishing accountability (1979a:62). Hence the emphasis (discussed in a later chapter) placed by the Committee on improving the timeliness and content of annual reports. The annual report was seen as valuable both in its own right and as a trigger for other mechanisms of accountability. Thus '[t]he presentation of a report would be an appropriate time for the Parliament to consider the general question of an authority's activities'. The Committee envisaged the organized review of reports by parliamentary committees, leading in turn to more selective, in-depth evaluations of the performance of particular authorities (1979a:82,82-4). In its First Report the Committee was also enthusiastic about the use of 'sunset' provisions requiring legislative review and reauthorisation of authorities at set intervals. It argued that sunset should be 'an integral feature' of the creation of new authorities:

the Government, when creating a new statutory authority should as a matter of course give positive consideration to including a 'sunset' provision in
the enabling Act. If the Government then decides not to include such a provision, the Parliament should be fully informed of the reasons... Parliamentary Legislation Committees could then give specific consideration to the appropriateness or otherwise of the exemption (1979a:92)\textsuperscript{16}.

Finally, the Committee argued for the strengthening of other mechanisms assisting direct parliamentary scrutiny of authorities. To assist the work of the Senate Estimates Committees, it suggested that authorities' proposed appropriations should be more detailed and that better explanatory notes should be provided (1979a:68-70)\textsuperscript{17}. Elsewhere the Committee argued that a wider range of Auditor-General audits should be available to parliament (1982a:131).

Not only did the SSCFGO promote the idea of direct accountability of statutory authorities to parliament in this positive fashion, but it also sought in various ways to undermine the centrality of ministers to arrangements for accountability. One instance was the suggestion in the Committee's report on maladministration in the Australian Dairy Corporation that some form of parliamentary oversight of the appointment of authority members was worthy of consideration (1981:319; note also 1982a:69). A more radical recommendation resulted from the Committee's support in its Fifth Report for an extension of \textit{ex post facto} performance evaluation for business authorities and a corresponding reduction of emphasis on \textit{ex ante} justification of inputs,

\textsuperscript{16} By the publication of its Fifth Report, however, the SSCFGO had reached the view that sunset provisions should only be applied 'selectively and sparingly' (1982a:49-56)

\textsuperscript{17} Compare the more grudging support for the work of the Senate Estimates Committees by RCAGA (1976:112-3).
choices and strategies (1982a:101). (This idea is discussed at length in Chapter 7). The recommendation was that the 'often extensive' requirements in authority statutes for matters to be approved by ministers should be entirely eliminated. Ministers would continue to be able to determine such matters by utilizing their power of direction. But, partly because of its proposed arrangements for publicising directions, the Committee believed that ministers would employ this device only occasionally (1982a:70-1).

Perhaps the strongest support the SSCFGO received for its apparent desire to break the dominance of the minister in accountability relationships and thereby open the way for greater importance to be placed on direct relationships with parliament was provided by academic lawyers Finn and Lindell (1982) in a paper prepared for the inquiry preceding the SSCFGO's Fifth Report on statutory authorities. (The Fifth Report was the final statement of the SSCFGO's position on a broad range of matters raised in its First Report). The paper, included as an appendix to the Report and invoked as an authority in the text, addressed the constitutional aspects of statutory authority accountability. Its salient feature was a denial that ministers possess any privileged status vis-a-vis statutory authorities. Finn and Lindell argued that ministers have no rights or obligations with regard to statutory authorities other than those imposed on them by enabling statutes (that is, by parliament).

So the Committee seemed committed to a substantial revision of accountability arrangements for statutory
authorities. In the light of the evidence of this commitment discussed above, it is surprising that Chapter 6 of the Fifth Report - entitled 'Ministers and Authorities' - went a long way towards reinstalling the minister to a central position in these arrangements. This is a very poorly argued part of the Report, but it merits attention because of the support it provided for key assertions in the government's subsequent policy papers.

At least three quite different sorts of statement about accountability can be found in this chapter. The first was essentially the Boyer position discussed in Chapter 2 of this thesis:

in the same way [sic] in which ministers are required to be responsible to Parliament for the administration of their executive power, so statutory authorities are required to be responsible to the parliament for the executive powers which have been vested in them ... [But t]he method by which the accountability ... occurs is through the minister...(1982a:59,61).

This recalls Boyer's view that the minister is simply the neutral conduit through which an authority's accountability is expressed: he/she tables the annual report and conveys answers to parliamentary questions but accepts no responsibility for what is communicated. This position might perhaps be held to narrow the range of links which parliament may establish with statutory authorities - if, that is, it is assumed that accountability must be through the minister. But it is generally consistent with the parliament-centred position which we have associated with the SSCFGO.

Similar comments might be made about the second
position on accountability articulated in the chapter. This appears to identify statutory authority accountability exclusively with two instruments: the tabling of an annual report and the issuing of ministerial directions as specified in the statute (1982a:62).

The third position is, however, a major surprise. The argument here is 'that the Constitution does entail ministerial responsibility for the activities of authorities'. RCAGA is cited, without warrant, as an authority for this claim. But there is no attempt to prove that the Finn and Lindell paper was incorrect in its reasoned dismissal of the same position. Instead, the Report proceeds to endorse a viewpoint it wrongly attributes to Finn and Lindell (one which is, in fact, specifically refuted by them) according to which ministers possess a 'residual' power under the Constitution to direct an authority to act in accordance with its statute and to draw parliament's attention to any failure to comply with an enabling Act or the law in general (1982a:61-2).

No attempt is made by the Committee to reconcile these three positions with each other or with themes found elsewhere in SSCFGO reports. Indeed, the Committee apparently saw no possibility of inconsistency. The particular ambiguities and deficiencies of the Committee's analysis are, however, not of great interest in themselves. For our purposes the salient feature of Chapter 6 of the Fifth Report is simply the impression it creates that the minister necessarily plays a fundamental role in
accountability arrangements.

It would appear that the government and its advisers found this part of the Committee's output congenial and were happy to accept it as authoritative. Although the SSCFGO is not referred to in the relevant sections of the policy papers, an implicit appeal to its authority is arguably reflected in the air of certainty with which contentious propositions are stated as facts. Thus it is simply asserted that 'authorities are accountable to the Parliament through the responsible Minister' and that 'the responsibility of a Minister for an authority derives from sections 61 and 64 of the Constitution' (Minister for Finance, 1986 and 1987:8). Moreover, as with the SSCFGO position noted above, the policy papers seem to present ministerial responsibility as conferring powers and imposing obligations which are independent of the enabling Act:

Even where independence is stipulated, the activities of an authority will normally be monitored by the Minister to ensure satisfactory observance of the requirements of the existing charter... and the general quality of performance ... In meeting these obligations, the Minister needs to be kept regularly advised of the activities of an authority. If suitable procedures do not exist for this purpose they should be established... (p.8).

An important feature of the policy papers was a demand for statutory authorities (business authorities in particular) to convey much more information to ministers than had been required hitherto. The argument that ministerial responsibility is fundamental to statutory authority accountability provided a useful justification for this
demand - a justification which purports to stem from the Constitution itself. It need hardly be added that the policy papers were only weakly influenced by those parts of the SSCFGO reports devoted to what we have termed a parliament-centred view of accountability.

Cracks in the Consensus: Rival Conceptions of Accountability?

The development of that part of the reform movement discussed so far was largely a consensual process. The differences we have noted among the various contributors were not publicly debated and were in any case probably outweighed by similarities. This is not surprising. It may well be that a reform 'opportunity' will typically be as much, or more, an occasion for the reiteration of a common stock of venerable ideas as for innovation (note March and Olsen, 1983). But the attempt to translate traditional wisdom into action may sharpen latent differences of perspective and interest. We have seen that the policy papers selectively emphasized aspects of received ideas to strengthen the position of ministers as much as possible. This was accepted without serious disagreement in the case of 'ordinary' statutory authorities. But a similar approach to the subject of government business enterprise reform produced virtually open conflict. The emergence of conflicting points of view in turn raised the possibility of alternative definitions of

18. Such influence might, however, be associated with the sections of the policy papers devoted to annual reporting and review (see Minister for Finance, 1986 and 1987:10, 19).
the problem to be addressed and alternative prescriptions for action.

The disagreement engendered during the preparation of the Policy Discussion paper is reflected in that paper's acknowledgement that 'divergent views' existed on the subject of ministerial controls. As outlined in the paper, one view was that authorities should be given 'a clear legislative charter and strict accountability requirements' but then allowed to run their enterprises free of the constraints of direct ministerial controls. The other view canvassed was based on the observation that 'management decisions in certain areas will have immediate implications for the Government's ability to achieve its policy objectives' and held that 'responsible Ministers' could not distance themselves from the day-to-day decisions of business enterprises and must therefore retain controls (Minister for Finance, 1986:25). The paper did not express a clear preference between those approaches but ostensibly leaned towards a reduction of controls:

... the Government intends that existing direct controls will be reduced. In the process of strategic planning, case-by-case assessments will be made of controls that are to be maintained over the life of a plan, perhaps in modified form, and those which the Government is willing to relax or waive in the context of implementing a specific plan. Controls to be considered in this respect could include: contract approval ceilings; purchasing and offsets; and borrowings, including the subjection of enterprises' loan raisings to Loan Council procedures (p.25).

This compromise position was consistent with the desire shown throughout the Policy Discussion paper to secure
the uniform application of some contemporary notions of good administrative practice regarding statutory authorities, while retaining significant ministerial potential for control. But it was seen by Commonwealth government business enterprises as a demonstration of the government's bad faith. The enterprises pointed out that the paper contained clearly specified proposals for the imposition of new ministerial controls (involving the Minister for Finance and the Treasurer as well as the portfolio minister) and new obligations on authorities to supply information as part of the processes of corporate planning, setting financial targets and reporting. But, against the certainty of these new constraints, the paper's proposals for a reduction of ministerial controls were, as illustrated by the above quotation, vague as to the nature, extent and timing of reductions.

Conflict within the government and its administrative agencies over government business enterprise reform extended throughout the first two terms of the Hawke Labor government. It delayed the appearance of the proposals in the Policy

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19. My understanding of attitudes within statutory authorities towards the Policy Discussion paper is based primarily on written responses submitted to the government by a number of authorities. The authorities were the Australian Telecommunications Commission, the Australian Postal Commission, the Overseas Telecommunications Commission, Aussat, the Australian National Railways Commission, the A.C.T. Health Authority, the National Capital Development Commission, the Australian Film Commission and the Australian Broadcasting Commission. These documents were supplied to me by the particular authorities and are unpublished. But note also Maltby (1986), Brack (1986), Bolitho (1986), and Smith (1986). I was also assisted by the individuals from a number of Commonwealth departments and statutory authorities whom I interviewed in February 1989.
Discussion paper for some two years and then threatened the translation of that document into an official policy paper. The Policy Guidelines paper which eventually emerged in October 1987 was explicitly distinguished by the Minister for Finance from the 'detailed White Paper' which had been planned. Moreover, the 'change of emphasis' which the government admitted its approach had undergone was acknowledged to be a response to the criticism attracted by the Policy Discussion paper (Minister for Finance, 1987:3-4).

The 'change of emphasis' amounted to the abandonment of an attempt to impose uniform requirements on government business enterprises, whether through a single omnibus legislative enactment of the Canadian sort\(^{20}\) or otherwise. The main innovations foreshadowed in the Policy Discussion paper - strategic plans, financial targets, improved annual reporting and the reduction of ministerial controls over day-to-day operations - survived in the Policy Guidelines. But it was now stated that reform would proceed on an 'enterprise-by-enterprise basis'. Moreover, the government announced its conversion to the view that 'the onus for achieving improvements in the performance of government business enterprises rests primarily with the boards of individual enterprises and their portfolio ministers' (Minister for Finance, 1987:4).

The Policy Guidelines also sought to soften the impact of the new ministerial controls to be introduced. Corporate plans would not now be subject to ministerial approval as

\(^{20}\) See Statutes of Canada 32-33 Eliz.II 1984, c.31
suggested in the earlier paper, though the minister would be able 'to suggest to the board that a preferred strategy of the corporate plan be reconsidered to better reflect relevant government policies'. The role of the minister with regard to financial targets was no longer to 'determine' the targets but to 'consider' targets 'developed and set' by the enterprise and to 'accept' or 'formally vary' them. Similarly, the determination of an annual dividend to be paid to the government was stated more firmly to be a matter for the authority, with the role of the minister again being to accept or formally alter the payment (Minister for Finance, 1987:21-2).

The literature on the policy papers has tended to explain the conflict over government business enterprise reform in terms of the workings of bureaucratic politics, or desires to expand or protect 'turf'. Wettenhall (1986:78) saw the main source of tension as the perception of 'line' departments and their ministers that the reform proposals provided the coordinating departments and their ministers, the authors of the proposals, with 'additional ways of interfering' in the work of line departments. But following the evidence of government business enterprise initiative in the attack on the Discussion paper, Wettenhall (1988) accorded a greater role to the enterprises themselves:

... they contested what they saw as the envisaged shift of significant elements of managerial power from their various corporate headquarters (not usually in Canberra) to bureaucratic offices in Canberra (p.246).

An alternative to the straightforward 'protection of turf'
explanation is the suggestion, also reported by Wettenhall (1988:247), that the controversy reflected a 'clash of administrative cultures': the engineering or technocratic culture which tends to dominate the management of the large public enterprises conflicting with the economics-oriented culture of the central agencies.

These are worthwhile observations. A 'bureaucratic politics' account of the events under discussion is not difficult to accept. To the elements of such an explanation noted above one might wish to add others, for instance a sense of the uniqueness of one's activity which is produced by the 'professional fiefdoms' which are the larger trading authorities (see Wettenhall, 1988:249). It has been observed that the 'deepest conviction' of British nationalised industries is that they are all special cases and should not be subjected to uniform treatment (Tivey, 1979:169). Such an attitude can also be found in the critical responses of Commonwealth government business enterprises to the Policy Discussion paper and undoubtedly explains the pressure they applied to have the government adopt a case-by-case approach to reform21.

But there are always a number of ways of understanding any piece of human history. We are particularly interested here in the ideas at work, that is the justifications for or rationalisations of action. At this level, the debate was influenced by the report of academic Hugh Stretton on governmental relations with trading

21 See footnote 19.
authorities, which was commissioned by Finance minister Dawkins (Stretton, 1984). Stretton's paper was to play a significant role in subsequent events. Elements were incorporated in the Policy Discussion paper, while it seems that each side in the growing conflict within the government, the bureaucracy and the Labor party sought to identify its position with that of Stretton. In Stretton's terms trading authorities could be designed in accordance with either a 'public authority model', emphasizing detailed supervision and regulation by ministers and officials, or a 'public enterprise model', giving 'undivided control and responsibility' to the board and requiring the latter to answer for its performance. Stretton's analysis was essentially a new version of the old idea that there is a trade-off between business efficiency and political control, and that the establishment of a trading authority should involve a substantial sacrifice of the latter in order to maximize the former. The combined effect of the traditional idea and Stretton's new version of it produced a tendency, especially among the authorities and their supporters, to view the reform exercise as a conflict between a desire to increase control in the name of accountability and an emphasis on 'entrepreneurial flair' and economic efficiency.

But another interpretation is possible if we take into account an element of the debate which has so far been ignored. This is the idea (developed at length in Chapter 7) that accountability for statutory authorities, especially trading authorities, consists in periodic external evaluation
against clearly specified statutory objectives, with a background of continuous internal evaluation and regular, published performance measurement. Within the reform literature we have been considering Wettenhall's report is the only place where accountability is explicitly defined in these terms (1976:333). But the idea is touched upon in Stretton's report and is an implicit theme in the government's policy papers. As we shall see in Chapter 7, what we may call a 'managerialist' conception of accountability has been a key element in the reforms actually implemented in Commonwealth trading authorities in the 1980s. When the conflict over government business enterprise reform is placed in this context it appears to reflect competing conceptions of the requirements of accountability. On one side is the strong orientation to ministerial control found throughout the policy papers and justified by reference to the responsibility of ministers for policy and administrative performance. On the other is the more structured, less detailed ministerial involvement required by the 'managerialist' view of accountability and argued for by the authorities along with Wettenhall, the SSCFGO and Stretton. If this interpretation has any validity it suggests that conflict over the reforms had begun to push debate beyond traditional terms and understandings. However, it must be stated that the evidence for the interpretation is not strong, especially since none of the participants in the debate over the policy papers seems to have perceived a clash between the two positions outlined above.
The Need for a New Approach

The main conclusion of this chapter is that the recent movement for statutory authority reform was in thrall to a rather narrow orthodoxy whose questionable presuppositions were never challenged. As a result, the movement by and large perpetuated the historical tendencies in the treatment of statutory authorities discussed in the first two chapters. Arguments for accountability arrangements to be significantly modified in accordance with something like the 'arms length' and 'parliament-centred' positions discussed in Chapter 2 were advanced by Wettenhall and the SSCFGO respectively. But these were effectively countered by claims about the centrality of ministerial responsibility to accountability for statutory authorities.

The reform movement largely failed to deliver on its central promise, the establishment of some sort of comprehensive regulatory framework for statutory authorities. Meaningful formal guidelines for the creation of statutory authorities, such as were clearly envisaged by the SSCFGO for instance, were never promulgated. The guidelines for 'structure, management and review' which formed the bulk of the Policy Guidelines paper were simply a summary of current practice. Consequently, they allowed considerable room for continued variation from one case to another. Finally, the government conceded to the government business enterprises the right to negotiate the implementation of reforms on a case-by-case basis.

Perhaps the greatest failing of the reform movement
was that it produced no clear conception of the positive contribution that the statutory authority might make to government, while reinforcing the negative attitudes towards statutory authorities which had developed from the mid-1970s. The change in attitudes over the decade in which the reform movement developed was remarkable. Examination of a set of parliamentary debates on the enabling legislation of authorities created in the mid-1980s revealed a dramatic increase in antagonism towards statutory authorities among members of parliament, compared with a sample of debates from the mid-1970s. Some of the change could be explained by the growth of a general disaffection with 'big government' and the associated resurgence of economic liberalism in Australian politics (see, for example, Sawer, 1982). But some was a product of growing disapproval of the statutory authority as an administrative form. At the beginning of the 1980s ministers were acknowledging the presence among members of parliament of 'certain views about statutory authorities' (R. Ellicott, House of Representatives, CPD, 21 August 1980, 631). But by the mid-1980s Hansard was regularly recording

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22. The parliamentary debates examined concerned six statutory authorities established between late 1984 and early 1986. The bodies selected included a trading authority (the Federal Airports Authority), two executive authorities (the Australian Trade Commission and the Australian Institute of Sport), two authorities combining advisory and executive functions (the Australian Sports Commission and the Automotive Industry Authority) and an advisory authority (the National Occupational Health and Safety Commission). Debates during the same period on amendments to the statutes of several existing authorities - the Housing Loans Insurance Corporation, the Snowy Mountains Engineering Corporation and the National Capital Development Commission - were also examined. The debates from the mid-1970s against which these were compared are detailed in Part II of the thesis.
sweeping denunciations of the entities. For instance, the Australian Trade Commission was condemned as 'just another directionless quango, soaking up taxpayers' money without providing any substantial benefits', while the Federal Airports Corporation was dismissed as 'another unnecessary statutory authority' (P. Durack, CPD, Senate, 5 December 1985, 3083; C. Puplick, CPD, Senate, 13 February 1986, 238). A critic of the proposed Australian Sports Commission quoted approvingly the view of a voluntary sporting body 'that statutory authorities are cumbersome, unwieldy, costly, difficult to change and virtually impossible to dismantle' (P. Fisher, House of Representatives, CPD, 16 May 1985, 2575). Perusal of almost any recent debate concerning the establishment of a statutory authority would reveal any number of similar comments. Speakers rarely cite any source to justify their adherence to such views, but occasional references to the SSCFGO are sufficient to suggest a major role for such campaigners for reform in stimulating hostility (see, for example, A. Cadman, House of Representatives, CPD, 16 May 1985, 2513). By the mid-1980s the intense generalised negativity characterising debate about statutory authorities had arguably become a barrier to understanding and sensible prescription.

The twin failings of the reform movement noted above produced a most unsatisfactory gulf between the desires for major change which were engendered and the meagre results achieved. The failure to introduce meaningful restrictions on statutory authority creation gave no reason to predict a
significant reduction in the numbers of bodies produced. Indeed, the most likely result is a continuation of the historically high rates of creation which were achieved during the early 1980s by governments nominally committed to tough stances against the use of the statutory authority. Nor do the government's guidelines preclude significant variation in frameworks of management and accountability for statutory authorities, another frequent cause of criticism over the years.

Two general responses to this impasse are possible. One is cynicism. The gap between analysis and prescription, or promise and performance, might be viewed as yet another example of the failure of political actors to live up to the principles they have ostensibly embraced. But this is a superficial response which ignores the evidence of inadequacies in existing analyses of statutory authorities. The alternative response is to argue for fresh analysis of the issues surrounding the use of statutory authorities. The present study adopts this approach for the issue of accountability. But another issue may be briefly considered here. This is the assumption, prominent in recent criticism, that the lack of constraints on the creation of statutory authorities has been responsible for an excessive use of this instrument. It is likely that a good case could be made that the choice of the statutory authority instrument is a more complex matter, less conducive to the indiscriminate creation of statutory authorities than is suggested in analyses, such as that of the SSCFGO, associated with the reform movement.
Two main points may be made to illustrate the lines along which such a case might be developed. To begin with, the decision to create a statutory authority is not a completely arbitrary matter. From a reading of SSCFGO reports, for instance, one would tend to conclude that statutory authorities are generally created to administer freshly acquired governmental functions. But in very many cases this is not so. Instead it is the experience of performing some activity within a ministerial department, or through a non-statutory body of some kind, which suggests the advantages of statutory authority status. One would not want to deny the importance of bureaucratic politics (or interest group politics) in this process, as the acquisition of statutory authority status gives a body greater visibility and independence and often also greater command of resources. But those with a material interest in such an outcome will frequently need to negotiate the obstacle of an inquiry of some sort, whose independence may be bolstered by the inclusion of 'outsiders'. An inquiry or review is increasingly the norm before any major policy proposal, especially if it involves legislation, is carried forward to cabinet (see Prasser, 1985, 1986 and 1989). It would be naive to suggest that this is always a serious obstacle. Nevertheless, to be successful a recommendation for a new statutory authority often needs to be supported by a reasoned case set out in the report of one of these inquiries.

The second point is that a sophisticated understanding
of the 'calculus of instrument choice' would reveal a more even balance between the incentives and disincentives for statutory authority creation facing ministers than seems to have been recognized by would-be reformers. Several factors ignored by this literature would seem to be important. One is uncertainty about the required policy response. Where it is unclear precisely which powers and what organizational arrangements would best suit a particular administrative task, or where objectives are uncertain, there will be an incentive to utilize an administrative form which may be readily altered or which will permit governments to make frequent marginal adjustments in policy. Such circumstances can be expected to occur quite commonly, either because of governmental inexperience in a policy area or because of instability in particular policy environments. Resort to a statutory authority in such conditions will involve a serious risk of entrenching an inappropriate administrative structure which may, in turn, prove a source of embarrassment to the government. Secondly, calculations of political advantage may impinge directly on the choice of agency type. Such calculations may just as easily favour ministerial administration as administration by a statutory authority. Thus Trebilcock, Prichard, Hartle and Dewees (1982) have suggested for Canadian regulatory policy that

... a high degree of uncertainty as to either the impact of alternative policies on different interests or the intensity of voter preferences as to these impacts, or the potential for ongoing mutually

23. The term is taken from Trebilcock, Prichard, Hartle and Dewees (1982). This paragraph draws upon that work.
advantageous accommodations between a political party and concentrated interest groups, are likely to argue for direct regulation where politicians can closely monitor and direct the administration of the regulatory regime (p.89).

There is no reason to believe that such pressures do not apply with equal force in Australia. They may explain, for instance, why the Commonwealth Postmaster-General's Department survived until 1975 despite repeated authoritative recommendations for postal and telecommunications services to be run by independent statutory commissions (see RCPTTS, 1910 and RCPEE, 1920-21). Thirdly, additional monitoring and coordination costs are entailed for ministers in the choice of the statutory authority instrument. These arise because the relative decision-making freedom possessed by statutory authorities creates the potential to pursue objectives at variance with governmental policies or preferences. Hence the need to monitor authorities to ensure that governmental objectives continue to be accorded due consideration and that authorities' activities harmonise with, or at least do not conflict with, other governmental policies. Monitoring and coordination costs can be expected to be weighed against the advantages to ministers of distancing themselves from the administration of an activity when a choice of agency type is made...

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24. An extreme example of a coordination cost was the legal action taken by the government of Prime Minister Bruce to prevent the Commonwealth Shipping Board pursuing a certain commercial policy (see Wettenhall, 1983:49 and The Commonwealth and the Attorney-General of the Commonwealth (on the Relation of Edwards) v. The Australian Commonwealth Shipping Board and Another (1926-27), 39 CLR 1.
These factors may upon investigation prove to be important constraints on the use of the statutory authority instrument. The absence of any reference to such possible constraints in the Australian literature, including the influential analysis conducted by the SSCFGO, has undoubtedly heightened the popular appeal of the case for restrictive formal guidelines for statutory authority creation. But as this prescription has proceeded from no explicit theory of the choice of agency type (and only very rudimentary and inadequate implicit theories) its worth is questionable.

The remainder of this thesis is devoted to a re-evaluation of the assumptions about accountability which have strongly underpinned orthodox thinking about statutory authorities in Australia. Part II begins that task with a fresh examination of the extent to which statutory authorities are accountable on a traditional understanding of the requirements of accountability. The analysis then progresses, in Part III, to a consideration of alternative understandings of administrative accountability which, it will be argued, are of growing importance in contemporary government.
PART II

PARLIAMENTARY CONTROL OF STATUTORY AUTHORITIES RECONSIDERED
In Part I it was argued that accountability for
Australian statutory authorities has traditionally been
highly derivative of the theory and practice of
accountability in ministerial administration. Accountability
for statutory authorities and ministerial departments alike
has meant 'parliamentary control' of administration. It will
be shown in Part III that persistent criticism of the
effectiveness of traditional arrangements for parliamentary
control has begun to produce a movement towards a more
complex system of accountability. Nevertheless, these
arrangements, strengthened in some cases by innovations in
parliamentary machinery, remain of primary importance for the
accountability of statutory authorities as well as
ministerial departments. A primary aim of Part II of the
thesis is to demonstrate this point.

The point requires an extensive demonstration because it conflicts with a widespread perception that the
parliamentary control of statutory authorities in Australia is especially defective. A convenient statement of this
belief is provided by Aitkin and Jinks (1982:216):

... Australian parliaments have made no provision for the kind of special scrutiny of statutory bodies that exists in the [British] House of Commons, and MPs may know nothing more of them than is contained in their annual reports, which sometimes reach parliament a year or more late and could not all be absorbed by a member in any case... The vast majority of statutory bodies are virtually free from scrutiny...

This statement is misleading in two important respects. Firstly, as we shall see, it greatly exaggerates the extent
to which statutory bodies escape the standard parliamentary monitoring processes. Secondly, the claim that Australian
parliaments lack the special means of scrutinizing statutory bodies which exist at Westminster is not only factually incorrect for a number of parliaments, including the Commonwealth, but is based on a reading of comparative parliament - statutory authority relations in Britain and Australia which is almost a precise reversal of the actual situation. It may be assumed that the special machinery referred to by Aitkin and Jinks is the now defunct Select Committee on Nationalised Industry (SCNI). Australian parliaments have indeed lacked exact counterparts of this body. But it is important to understand that the historical reason for the SCNI's emergence was the strict arm's-length doctrine which was applied to the governance of the nationalised industries. As noted in Chapter 2, application of this doctrine either seriously weakened or eliminated all of the mechanisms of parliamentary scrutiny of the industries. The SCNI was called into existence to compensate in part for this loss. In Australia, in contrast, the arm's-length doctrine was, as we have seen, never embraced formally or, with any conviction, informally. As a consequence, Australian parliaments were not denied access to statutory authorities and so did not have the same incentive to press

1. Several Australian parliaments possessed a specialised public bodies committee by the early 1980s: the Senate Standing Committee on Finance and Government Agencies was given responsibility in 1977 for the 'continuing oversight' of Commonwealth statutory authorities and government-owned bodies; the Public Bodies Review Committee of the Victorian Parliament was established in 1980; and the Western Australian Legislative Council's Standing Committee on Government Agencies was established in 1982. It may be noted that the Aitkin and Jinks statement appears in identical form in the third edition of their book published in 1985.
for alternative arrangements for scrutiny.

This is not to say that parliamentary scrutiny of Commonwealth statutory authorities is without special problems. Certain obstacles additional to those involved in scrutiny of other areas of administration do exist and are described in the following chapters. The main argument of this chapter is, however, that parliamentary scrutiny and control of Commonwealth statutory authorities is greater than is generally conceded and indeed compares fairly well with the situation for ministerial departments. It is contended that this was the case even before the means by which parliament exercises its traditional 'control' function were improved in the 1970s and 1980s. But a secondary purpose of the chapter is to show that over the past decade or so innovation in parliamentary machinery and more stringent obligations imposed on statutory authorities have considerably enhanced the ability of the Commonwealth parliament to interest itself in the affairs of statutory authorities. Only some of the reforms responsible are discussed in the present chapter; others, involving mechanisms which fall outside the traditional notion of 'parliamentary control', are dealt with in Part III.

'Parliamentary control', as it is understood here, refers to the aspiration of classical interpreters of parliamentary government such as Mill (1971) and Bagehot (1973) that administrators should be continuously responsive to the concerns of members of parliament, as these are incorporated in legislation or expressed from time to time.
in connection with particular policies or actions\(^2\). Such responsiveness does not necessarily require active supervision - the sort of continuous monitoring and detailed intervention which is exercised in the control of a machine for instance. A reasonable likelihood that instances of maladministration would come to the attention of members of parliament is an obvious precondition. But the power on which parliamentary control was for the most part traditionally held to rest was deterrent power, or what Reid (1966:159) has described as 'the latent sanctions inherent in possible inquiry'. Ultimately, deterrence was seen to depend on a combination of the sheer unpredictability of parliamentary interest and parliament's ability to invoke severe sanctions\(^3\).

\(^2\) 'Parliamentary control' is an ambiguous concept (Reid and Forrest, 1989:341) and one whose applicability to contemporary Westminster-style parliaments is contested (see Norton, 1985:6; Crick, 1964:77; Pettifer, 1981:34-7; but note Reid and Forrest, 1989:387-8). However, the purposes of the present study do not require discussion of these matters.

\(^3\) Finer (1957:143) exemplifies the traditional understanding of parliamentary control:

Every action may provoke a question, every question an adjournment debate, and every adjournment a full dress debate ... By question and debate, all administration, in detail and in the large, is kept under a constant and ceaseless review, where the most trivial detail may be fraught with enormous consequences, where the Opposition spends the whole time seeking the Executive's weak point, and having once found it, has boundless opportunities to hammer and hammer away, constantly keeping it before the public eye.

On the deterrent power of the parliamentary question, Finer quoted Hugh Gaitskell: 'Anybody who has ever worked in a Civil Service Department would agree with me that if there is one major thing which leads civil servants to be excessively cautious, timid and careful to keep records which outside the Civil Service would be regarded as unnecessary, it is the fear of the Parliamentary question' (1957:141).
Parliamentary control of administration is thus related to the three fundamental sanctions, or powers, available to parliament: its power to legislate, its power to withhold support from ministers, and its power (circumscribed by the financial initiative of the Crown) to appropriate monies. The three forms of control which correspond with these powers form the basic principle of organization of Part II. Legislative control is treated in Chapter 4, administrative oversight in Chapter 5, and financial control in Chapter 6.
The contribution of legislation to public administration is two-fold: it empowers administrators (ministers or authorities specifically created by statute) and it simultaneously sets limits to, or controls, their activity. In his comparative study, Sharkansky (1979:31-66) has argued that Australian public sector managers are especially 'law-abiding' and that more importance is placed on legislation as a means of administrative control in Australia than in some other liberal-democracies. This would suggest that, in the absence of the special legislation governing large groups of statutory bodies which exists in some countries, the parent statute of a statutory authority should be a major component of the parliamentary control regime. The purpose of this chapter is to show that such is indeed the case for Commonwealth statutory authorities.

There is a basic sense in which the authority statute promotes parliamentary control. This can be appreciated when a comparison is made between statutory authorities and ministerial departments in terms of the ease with which organizational change can be effected by the executive.
Parliament's formal control of the process of creation and establishment of an operating framework for statutory authorities is in stark contrast to its complete absence of control over the creation and abolition of departments of state or the allocation of functions between departments. But how meaningful is the parliamentary control achieved? A first step in answering this question is to consider how and to what extent the provisions of enabling statutes attempt to constrain authorities.

The Enabling Statute

It has already been observed that the detail of statutory provisions varies enormously among authorities, to an extent in accordance with the different purposes for which they are created. Nevertheless, a standard set of matters is normally addressed, of which the most important are functions, powers, structure, staff, procedures, finance and accountability. These may be briefly described with reference to selected statutes covering a variety of agency types. The statutes selected were those creating the Australian Telecommunications Commission (Telecom), the Australian National Railways Commission (AN), the Australian Industry Development Corporation (AIDC) (trading authorities), the Australia Council (a granting authority), the Australian Broadcasting Tribunal (ABT) (an adjudicatory/regulatory authority) and the Australian Science and Technology Council
The length and specificity of the statement of statutory functions varies considerably between statutes, though functions are frequently couched in quite general terms. Provisions assigning functions to trading authorities can be particularly short and sweeping. For instance, Telecom's main function is 'to plan, establish, maintain and operate telecommunication services within Australia', and it is authorised 'to do anything incidental or conducive to the performance' of this function. The chief functions of AN and the AIDC are stated in similarly brief but generous terms. In other instances the functions of a new body are less self-evident and therefore need to be described more exhaustively. But they may nevertheless remain quite permissive. Thus fairly detailed lists of functions are laid down for the Australia Council and ASTEC, but the descriptions are again full of generalities. This is particularly so in the former case, the Council being instructed to formulate and carry out policies designed, among other things, 'to promote excellence in the arts' and 'to foster the expression of a national identity by means of the arts'. In comparison, the functions of the ABT are described in more precise and prosaic terms, no doubt reflecting both the more circumscribed nature of the Tribunal's work and a greater desire to carefully delimit the

1. The statutes are the Telecommunications Act 1975 (No. 55), the Australian National Railways Act 1975 (No. 26), the Australian Industry Development Corporation Act 1970 (No. 15), the Australia Council Act 1975 (No. 11), the Broadcasting and Television Act 1942 (as amended) and the Australian Science and Technology Council Act 1978 (No. 81)
activities of a body with considerable power and commercial importance.

Functions differ from objectives, as well as from policies. It is worth noting, therefore, that some authorities are assisted in interpreting and performing their functions by the inclusion in statutes of policy guidelines or statements of objectives. The terminology varies: some statutes speak of 'duties', others of 'matters to be taken into account', or more simply to 'policy' or 'objectives'. And there is just as much variety in the length and detail of the relevant provisions. For instance, while the ABT is simply instructed to consult with the commercial broadcasting and television stations with which it deals, Telecom's Act contains a four part section outlining the 'duties of the Commission' and the AIDC Act contains a fairly extensive section on policy.

The statutory provisions laying down the powers of authorities necessarily vary greatly depending on their functions. Trading authorities for instance must be granted the extensive range of powers they require to carry on a business enterprise, whereas no more than a few, limited powers are required by the average advisory body. It is usual for an authority to be given both general powers to do all things necessary for the performance of its functions and particular powers to do certain specified things, identifiable as indispensable for the particular authority. For Telecom and AN, for example, the latter include special provisions authorising entry to and utilisation of publicly
and privately owned land. Trading authorities may also be empowered to act as governmental agents or to form companies, or to enter into joint ventures, or to borrow moneys. On the other hand, regulatory and adjudicatory bodies, such as the ABT, mainly require the power to make enforceable orders.

Just as important as the grant of power to an authority are the limits which are placed on the exercise of such power. Such limits are imposed either by specifying the manner in which certain powers may be exercised or by requiring ministerial approval for some actions. Examples of the first mechanism are provided by the Broadcasting and Television Act which specifies the form of the orders which may be made by the ABT (S.17(2)), and the Telecommunications Act which instructs Telecom to do as little damage to private property as possible and to pay compensation (S.20). The other mechanism is widely employed to set limits to the freedom of authorities to enter into contracts, borrow moneys, form subsidiary companies and so on. Finally, it is necessary to note that the legal powers and obligations of an authority will vary according to whether or not it is given corporate form. Trading authorities and some executive authorities (for example the Australia Council) are established by statute as bodies corporate with perpetual succession and the capacity 'to sue and be sued' in the corporate name.

Another set of provisions relate to structure. These provisions constitute the authority board and determine its relationship to the management of the authority. The matters
dealt with include the size and composition of the board; the methods of appointment and termination of appointment; the term of office of members and whether they are to hold office on a full-time or a part-time basis; the terms and conditions of the appointment of 'acting', or 'associate', or 'deputy' or 'co-opted' members; arrangements for remuneration and allowances; qualifications and disqualifications for membership of the board; and requirements for disclosure of financial interests by board members. As for the role of the board in authority management, the statute determines whether or not the board chairman is also to be the chief executive and, if not, how the chief executive is to be appointed (by the board or by the government), on what terms and conditions, and whether the appointee may (or must) be a member of the board. The tendency is for the roles of chairman and chief executive to be combined in advisory, regulatory and quasi-judicial authorities and separated in trading authorities. This is the case for the particular authorities under consideration, but as with the other matters mentioned above there is some variability among Commonwealth authorities.

The statute also makes provision for the staff of the authority. As noted in Chapter 1, there are several broad types of staffing arrangement. The largest difference is between, on one side, quasi-judicial and advisory authorities, such as the ABT and ASTEC, whose staff are typically employed under the Public Service Act and, on the other side, trading authorities, such as Telecom and AN,
which tend to have the freedom to set terms and conditions for their staff. A middle group, to which the Australia Council belongs, is empowered to determine terms and conditions but only with the approval of the Public Service Board. Where an authority employs a very large staff and has no statutory relationship with the Public Service Board, as is the case with Telecom, Australia Post and AN, the statute may deal with staffing arrangements in considerable detail.

Regarding procedures, all constituting statutes lay down simple, familiar rules for the conduct of meetings of the board. But regulatory or quasi-judicial authorities, whose functions require the holding of hearings or inquiries, are subjected to additional sets of statutory procedural rules. For instance, inquiries held by the ABT are governed by detailed statutory provisions covering the need for an inquiry, public notification, the circumstances under which an inquiry may move into private session, evidence, rights to appear and to have legal representation, punishment of witnesses, the reaching of decisions, the preparation of reports and a number of other matters.

Not all authorities have their financial arrangements specified by statute. But authorities which spend large sums of money are commonly subject to statutory provisions regarding such practices as the keeping of accounts and records, banking, application of moneys, preparation of estimates, limitations on contracts, audit and liability to taxation. In the case of trading authorities matters such as the capital of the authority, financial policy,
borrowings, application of profits or surplus revenue and requirement to pay a dividend are also regularly treated in the statute.

The final major aspect of authority operations which receives attention in statutes is the obligation to account. This involves a statutory requirement that the authority submit to the minister an annual report, plus financial statements certified by the Auditor-General to have satisfied conventional criteria. A further provision requires the minister to table the report and financial statements in the parliament. Some statutes require the inclusion of particular items in annual reports (for example ministerial directions) and specify a particular form for financial statements. Provision is also sometimes made (for instance in Telecom's and AN's enabling legislation) for the minister to call for such further reports as may be required.

Thus the existence of a statutory authority testifies to the fact that the body's functions, powers, structure and so on have received explicit parliamentary approval. Moreover, these organizational attributes can only be altered with the consent of parliament, by the passage of amending legislation. Our survey of selected statutes suggests that this is a matter of some importance. Despite the permissiveness which tends to characterise certain standard provisions, especially statements of functions, the statutes do typically institute a real measure of control over a range of key administrative features. In terms of its mission, structure, powers and standard operating procedures,
therefore, every statutory authority is a creature of parliament. A ministerial department, on the other hand, is in an important sense solely an expression of the will of the executive, although it should not be forgotten that the powers a department (that is, a minister) may exercise and the purposes it may adopt are generally specified in legislation.

It is worth noting, finally, that managers of statutory bodies take the enabling statute very seriously as an instrument of control. The executive quoted by Sharkansky (1979:45) expressed an attitude which is widely shared among his counterparts in Australian statutory authorities: 'It must be explicitly permitted in the statute, or clearly derivable from the language of the statute. If it's not in the law, we don't do it'.

A Parliamentary Instrument?
The statute is thus an instrument of control, but can it truly be described as a parliamentary instrument? As is well known, little is as it seems with parliament. In particular, while its formal legislative role is great, in practice the situation is quite otherwise. In terms of the way it allocates its time, there is no doubt that the Commonwealth parliament is first and foremost a legislature. Between 1970 and 1980, for example, 53 percent of the sitting time of the House of Representatives each year was devoted to the

2. As Sharkansky (1979:45) notes, however, the source of amendments to statutes is often the managers themselves.
consideration and passage of legislation. However, all but a minuscule proportion of this legislation was sponsored by the government and most of it passed through parliament according to the tight, government-imposed timetable which is now a dominant feature of parliament (see Pettifer, 1981:778-80). The overwhelming majority of the amendments carried were proposed by ministers; back-bench members, once prolific movers of amendments, had by this time virtually vacated this field of activity in favour of the front benches (see Reid, 1982:48-9). While the volume of legislation dealt with by the Commonwealth parliament per year in the mid-1970s was some four times that considered half a century earlier, the number of sitting days had remained at a similar level (see Pettifer, 1981:744-7). Moreover, the growing pressure on the parliamentary timetable led in 1963 to the introduction of new procedures allowing the Committee stage to be by-passed in the House of Representatives3. As a result, the number of Bills which received Committee scrutiny each year in the House in the 1970s and 1980s was about the same as in the 1920s (Pettifer, 1981:746-7). Given that no new machinery for the detailed examination of legislation has succeeded in taking root in the House, this indicates a marked reduction in the ability of that chamber to give close attention to the individual provisions of Bills, including those Bills creating statutory authorities.

Is it not the case then that parliament merely 'rubber

stamps' the executive's proposals for statutory authorities? The answer is that, while there is certainly something to be said for this position, it is significantly exaggerated. The necessary correction can be made both in general terms and by looking at specific cases. Some familiar qualifications to the theme of executive dominance may be briefly outlined first. Most importantly, the Senate has a constitutional power of review which it has stood ready to exert whenever, as for most of the past two decades, its partisan composition has given it the necessary incentive (see Reid and Forrest, 1989:200-15). Also the Senate's Legislative and General Purpose Committees play a role, in some cases (discussed below) an important one, in the consideration of legislation. Further, Opposition front benchers regularly move and argue for amendments to legislation. The fact that few of these are accepted is important, but the influence of Opposition criticism and the presentation of alternatives may be greater than can be readily measured. For instance, ministers themselves move large numbers of amendments to legislation, some of which are formulated to meet Opposition criticism. Moreover, even if parliamentary pressure does not bear fruit immediately it may make an impact through subsequent amending Acts. It is worth noting that some authority statutes have been amended fairly frequently, creating a corresponding number of opportunities for past criticisms and suggestions to be acted upon. Finally, while backbench government

4. The number of amending Acts to the end of 1983 for the statutes discussed above are as follows: Broadcasting and Television Act 1942 (7 since the creation of the ABT in 1976);
members apparently no longer see it as part of their function to move amendments to legislation, they do still criticise legislation at times in parliament and they certainly push for amendments behind the doors of the party room (see Solomon, 1986:76-89; but note Uhr, 1981:40-1). Ministers must sometimes give ground to their party colleagues.

In these ways the attitudes of members of parliament contribute to determining both the broad uses to which the statutory authority device is put and the contents of authority statutes. But it would be useful to know more about the nature of this contribution. How actively are members normally involved in the fashioning of statutes and what are their attitudes towards the authority statute as an instrument of control? In other words, does their involvement in making this legislation give it the character of a distinctively parliamentary instrument? These questions were addressed through an examination of selected parliamentary debates concerned with the creation of particular authorities. The examples chosen include those authorities whose statutes have been discussed above, minus AN but plus the Australian Bureau of Statistics (ABS) (an executive authority), the Trade Practices Commission (TPC) (a regulatory/quasi-judicial authority), the Australian Statistics Advisory Council (ASAC) and the Broadcasting

Council (advisory authorities). All the authorities were created in the 1970s, most in the first two-thirds of that decade. They are thus a reasonably youthful selection of the Commonwealth's statutory bodies but are not so recently created for the debates on their legislation to have been influenced by the heightened interest in statutory authorities of the 1980s.

Certain aspects of bills establishing statutory authorities receive a disproportionate share of the attention of members of parliament. In the debates under examination members showed a clear preference for discussion of the goals or ends of the policy for which the statutory authority is the means (that is, the authority's 'mission') over operational and procedural matters. This is not surprising, particularly as many members will lack the expertise to involve themselves in the technical detail of such matters as administrative law or commercial accounting. Their inclination will be to keep to the more familiar territory of political principle and constituency needs. As a consequence other parts of authority legislation are relatively neglected.

Partly because of this preference among members it is difficult to generalise about these debates. Even where two Bills establish bodies with similar general functions there

5. References for ministers' speeches introducing the Second Reading debates are as follows: House of Representatives, CPD, 5 May 1970:1597 (AIDC); 23 July 1974:485 (Australia Council); 20 February 1975:552 (AN); 27 February 1975:835 (ABS and ASAC); 18 November 1976:2862 and 13 October 1977:2004 (ABT and Broadcasting Council); 13 April 1978:1502 (ASTEC); Senate, CPD, 30 July 1975:540 (TPC); 23 April 1975:1265 (Telecom).
will often be a lack of consistency in both the time devoted to particular matters and the views which are expressed. Issues, it is clear, are determined by a complex combination of factors, only some of which have to do with the objective attributes of pieces of legislation. One of the factors most responsible for the variation in the degree and kind of parliamentary scrutiny which occurs is the level of political controversy surrounding the substantive policy for which the statutory authority is the vehicle. Individuals are also important: often the airing of a significant issue or point of view is instigated by one speaker, whose contribution may either stimulate others or be submerged because of the lack of interest of his/her colleagues.

Before the content of the debates is addressed, it is relevant to observe that governments were compelled to accept amendments affecting the statutory basis of more than half the authorities to which we have referred. This statistic owes something to the time period in which several of the authorities were created (the years of the Whitlam Labor government) and perhaps to other atypical characteristics of the authorities selected. But the situation which produced three out of the five amendments, namely a Senate in which the governing party or coalition did not have a majority, has been the norm rather than the exception since the late 1960s (see Sharman, 1986). Thus the ability of parliament to amend proposals to establish statutory authorities should not be

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6. The Bills amended were those establishing Telecom, AIDC, TPC, ABS and ASAC.
neglected.

The salient features of the selected debates may now be briefly discussed. Given what has already been said about members' interests, it is no surprise that the statement of functions was the most regularly and extensively commented on of the standard legislative provisions. Functions were treated as a guide to the broad policy to be pursued through the authority and were commended or criticised in this light. Members showed themselves to be alert to the possibility of an overlap or duplication of functions with other public bodies. But statutory functions were rarely seen as a limiting device or as a means of ensuring performance of activities in accordance with parliamentary intentions. Only in the TPC and AIDC debates did members view statements of functions in this way. Otherwise, little or no emphasis was placed on the need for functions to be defined precisely and restrictively despite some very permissive phraseology, most notably in the Australia Council Bill. In no case was there any discussion as to whether functions were consistent or compatible. The remarkable failure in the debates on the ABT to explore the possible incompatibility between the body's quasi-judicial and regulatory functions, in spite of the Green Inquiry's recent identification of this as one of the problems for which the new arrangements should supply a solution (see Postal and

7. Statements of functions were criticised in the debates on enabling legislation for Telecom, ASTEC, AIDC and TPC.

8. This concern was raised in the debates on AIDC, ASTEC and TPC.
Telecommunications Department, 1976:23, 70-1), demonstrates the degree to which members can be blind to this consideration. On the other hand, the debates on Telecom and the AIDC did reveal considerable interest in statements of policy guidelines or duties in statutes as a means of regulating the activities of authorities. In no case, however, was there a demand for the inclusion of statutory objectives; indeed there was no sign that members recognised any distinction between functions and objectives.

The very significant powers commonly granted to statutory authorities — especially to trading, regulatory and quasi-judicial authorities — might be expected to be carefully scrutinised by contributors to the parliamentary debates. But the evidence from our sample of debates reveals a distinct lack of consistency in concern about authorities' powers. The differences in the treatment of the TPC and the ABT legislation in this regard were particularly marked. The former example shows that wide or loosely defined grants of power may be a target for criticism and that ministers may be pressured to justify particular discretionary powers proposed for a new authority. In this debate, and in that on the ABS, much attention was paid to the rights of individuals and private organisations vis-a-vis quasi-autonomous boards. Demands were made for powers to be defined more carefully and narrowly and for appeal mechanisms to be strengthened (in the case of the TPC), and for the exercise of the authority's powers to be supervised more closely by parliament (in the case of the ABS). The debate
on the ABT, by comparison, featured remarkably little concern with the statutory regulation of discretionary powers in the interest of either individual rights or democratic control.

As we have noted, in addition to allocating powers to authority boards, constituting statutes also confer various powers of control and direction on ministers. One of the most consistent features of the debates under examination was the greater readiness of speakers to see danger in ministers' powers than in those granted to boards; indeed, in a number of cases (for example ABT, TPC, AIDC, ASTEC) many members showed a clear preference for powers to be given to boards rather than to ministers. In only one of the debates (that on Telecom) was there any significant expression of opinion in favour of greater ministerial powers. This asymmetry of outlook on the part of members of parliament was perhaps most graphically illustrated in the debate on the AIDC Bill. Here was a proposed authority with a high degree of autonomy whose functions, powers and obligations were in some instances specified in quite broad terms. However, those who expressed concern about the relevant provisions did not complain that excessive discretion was being placed in the hands of the board, but rather that governments may succeed by formal and informal means to influence the decision-making of the authority! The debates thus revealed

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9. That there were important deficiencies with the legislation in these respects was demonstrated several years later by the Administrative Review Council (ARC, 1981 and 1982).

10. Note the similar finding by Slatter (1982:33-41) in his study of comparable debates in the Canadian House of Commons.
a strong sense among members of parliament that the role of the enabling statute is to empower and control the new decision-makers it establishes, not to confer discretion upon ministers.

However, treatment of ministerial powers of control and direction in these debates also demonstrated a lack of inclination among members of parliament to rise above the particular case and ask what should be the relationship between the political executive and statutory authorities performing particular sorts of functions. For instance, Opposition speakers were just as ready to complain about the existence of a ministerial power of direction in the ASTEC statute as in the TPC statute. But whereas there are obvious risks in allowing ministers too much power over quasi-judicial bodies, it is arguable that the putative role of advisory bodies - to assist governments to formulate policy - makes it appropriate for ministers to determine their work programs.

This partial survey of the several debates shows that parliament's role in forging the primary legislative instruments for the control of statutory authorities is far from negligible, though it is haphazard and often superficial\(^\text{11}\). A factor contributing to the inadequacies in the scrutiny of enabling legislation has been the absence of select legislation committees in the House of Representatives (apart from a brief period of tentative experimentation in

\(^{11}\) Compare Slatter's conclusion that parliament cannot be counted on as a 'consistent polisher' of legislation dealing with administrative agencies (1982:36).
the late 1970s) and the failure of the Senate to employ its select committees in the regular scrutiny of legislation (see Aldons, 1985:337-9; but note Uhr, 1981:42-3)\textsuperscript{12}. The problem is compounded by the fact, already noted, that only a small minority of Bills today are taken through the committee stage in the House of Representatives.

The Scrutiny of Bills Committee

In what has been said so far about the parliamentary consideration of authority statutes the 'administrative law' aspects of the latter, especially the powers conferred on authorities to make subordinate legislation and to exercise discretion, have been passed over. The omission must now be rectified. In this area the record of the parliament in devising means of controlling particular aspects of administrative activity regulated by legislation has been relatively impressive, and increasingly so in recent years.

Parliament has a power of disallowance over subordinate legislation and from 1932, the date of establishment of the Senate Standing Committee on Regulations and Ordinances, it has possessed a body able to scrutinise these statutory instruments and alert the parliament to instances of abuse (Odgers, 1976:460-5; Reid and Forrest, 1989:219-30). However, there are certain limitations on the

\textsuperscript{12} On the House of Representatives' experiment, see Reid and Forrest (1989:197-9, 361-2). It should be noted that the Senate moved to improve its performance in this area in late 1989. It adopted as 'continuing orders' recommendations of the Select Committee on Legislation Procedures (1988) designed to ensure that '[m]ore bills than at present be referred to committees' (Senate, CPD, 4 December 1989:3808,3851).
Committee's activity. It may comment only on matters of form and not on the policy content of regulations. Further, its remit to examine delegated legislation does not extend to scrutiny of the power to make regulations conferred by the primary legislation. It was partly in order to redress the latter limitation that the Senate Standing Committee for the Scrutiny of Bills was established in 1981 (see generally Tate, 1984; SSCSB, 1985).

The new committee is not concerned solely with delegated legislation. Its function is to exercise a 'watching brief' over all legislation coming before the Senate in order to identify those provisions which involve 'the possibility of infringements of rights and liberties or the erosion of the legislative power of the Parliament' (SSCSB, 1985:2). The Committee's terms of reference identify five criteria for its work: it must report on legislative provisions which -

(i) trespass unduly on personal rights and liberties;
(ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
(iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
(iv) insufficiently subject the exercise of legislative power to parliamentary scrutiny (SSCSB, 1985:9).

These criteria are especially relevant to much legislation constituting statutory authorities. As a result statutory authority legislation is often commented upon by
the Committee. It must be emphasized, however, that the Committee does not take the view that provisions infringing its principles are necessarily objectionable. Its claim is simply that such provisions deserve careful scrutiny before receiving parliamentary endorsement.

The Committee has exercised considerable influence in its short life. At the most general level it has played an important educative role. One of the weaknesses of parliamentary consideration of legislation in general, and statutory authority legislation in particular, has been the lack of ability or willingness of most members consistently to pursue issues of administrative law. By alerting members to provisions which require special attention from this point of view and providing some analysis of the relevant issues, the Committee has demonstrably improved the discussion of Bills in parliament\textsuperscript{13}. Like the Regulations and Ordinances Committee, it can also claim to have influenced the preparation of legislation. As early as 1982 a minister acknowledged 'a hidden flow-through effect into the Departments', resulting in 'a heightened awareness, in the pre-legislative stage ... of the sorts of principles with which the Committee is concerned.' (see Tate, 1984:20-1).

On those occasions when the Committee has pressed its

\textsuperscript{13} For instance, SSCSB (1986:12) identifies some half dozen parliamentary debates on particular Bills during 1985-86 in which the Committee's 'Alert Digests' and reports were referred to 'extensively'. It was noted that 'the Senate in particular drew attention to [the Committee's] comments, pursued matters on which the Committee had received responses from the relevant Minister and sought responses on the floor of the Senate where a written response had not been forthcoming'.
concerns, its influence can be gauged by the willingness of governments and private members to move amendments in accordance with its comments. On this measure the impact has been considerable: between 1982 and 1986, 63 government-sponsored amendments resulted and 88 amendments were proposed by other members and Senators (of which 50 were successful) (SSCSB, 1986:10,13). A sizeable proportion of these were concerned with statutory authority legislation. In 1985, for example, the Committee played an important role in bringing about amendments to five important pieces of statutory authority legislation\(^\text{14}\). Among these the Veterans' Entitlements Bill (dealing with the Repatriation Commission and the Veterans' Entitlements Board) attracted by far the most attention: 28 amendments were moved in the Senate, of which 25 were successful. These dealt with a range of important matters including the lack of provision of parliamentary scrutiny of the exercise of a number of the powers conferred on the Repatriation Commission (for example the power to establish a Veterans' Children's Education Scheme), failure to provide for review of decisions regarding various allowances and funeral benefits, failure to stipulate that the time and place at which a person may be required to attend to answer questions and produce documents must be reasonable, and the creation of an offence for the making of false or misleading statements which did not specify that the

\(^{14}\) These were the Australian Sports Commission Bill 1985, the Australian Trade Commission Bill 1985, the Veterans Entitlements Bill 1985, the Automotive Industry Authority Amendment Bill 1985 and the Trade Practices Amendment Bill 1985. For details of the amendments, see SSCSB (1986).
Conclusion

The contention of this chapter has been that through the enabling statute parliament exercises a modest but significant measure of control over Commonwealth statutory authorities. Two objections have been considered. These are, firstly, that statutory provisions are too permissive to constitute a meaningful set of controls and, secondly, that the authority statute is not truly a parliamentary instrument as parliament merely 'rubber stamps' the executive's legislation. Our examination of several sorts of evidence suggests that, while these objections undoubtedly carry considerable weight, they exaggerate the weakness of parliamentary control through enabling legislation. Clearly, however, there exists a good deal of unrealized potential for greater parliamentary influence, in particular in the form of select legislation committees.
CHAPTER 5

ADMINISTRATIVE OVERSIGHT

Once a statutory body has been established, parliament's traditional instruments for scrutiny, criticism and inquiry, backed by the sanction of withdrawal of support for ministers, become key determinants of the potential for active parliamentary control. Familiar procedural mechanisms for administrative oversight in more or less regular use in the Commonwealth parliament (with some variations in form and usage between House of Representatives and Senate) include questions without notice, questions on notice, discussions of matters of public importance (House of Representatives) or urgency debates (Senate), and various speaking opportunities for backbenchers (the Address in Reply to the Speech from the Throne at the start of each session, the second reading debate on the main Appropriation Bills twice a year, half-hour Adjournment debates at the close of the majority of sitting days, and the 'grievance debate' every second Thursday morning). Further, 'want of confidence' or 'censure' motions may be moved from time to time against the government as a whole or a particular minister. Finally, either house may employ its formidable powers of inquiry,
normally exercised through a standing or ad hoc select committee, to mount a full investigation into any aspect of public administration (see Odgers, 1976:475-6; Pettifer, 1981:604-39).

As measured by the proportion of parliamentary time devoted to it, the function of scrutiny facilitated by the devices listed above is one which is rated highly by the parliament. Between 1970 and 1980 more than 25 percent of the sitting time of the House of Representatives was utilised in this way (see Pettifer, 1981:486). Moreover, this statistic does not take account of the channel for scrutiny provided by the large number of questions 'on notice' to which the government must produce written replies.

In order to determine the efficacy of administrative oversight as a means of parliamentary control over statutory bodies we must do three things. Firstly, we must ask whether parliamentary procedures pose special problems for the scrutiny of statutory bodies. Secondly, we must discover the extent to which the available opportunities are actually used to focus on matters concerning statutory authorities. And finally, we need to evaluate the effectiveness of the resulting scrutiny. This chapter addresses these tasks. The empirical base for much of the chapter was provided by a comprehensive examination of material on seven statutory bodies in the Commonwealth Parliamentary Debates for the years 1981 to 1984.

1. The authorities are the Australian Telecommunications Commission (Telecom), the Australian National Railways Commission (AN), the Australian Industry Development Corporation (AIDC), the
Parliamentary Procedure

We begin with the issue of parliamentary procedure. Under Westminster-style administrative arrangements ministers represent the administration to parliament and administrative oversight by parliament normally rests on the principle of ministerial responsibility. This suggests the possibility that the possession by statutory authorities of decision-making powers whose exercise is more or less independent of ministerial authority may impose special constraints on parliamentary scrutiny by making ministers less able or willing to supply information or take action. We have observed that in Britain ministerial responsibility has been interpreted as imposing severe restrictions on the use of Question Time to question ministers about the exercise by non-ministerial authorities of their statutory powers.

However, as we have noted, the situation in the Australian Commonwealth parliament is and has always been much more relaxed. This is so despite the fact that the relevant Standing Order is taken word for word from Erskine May\(^2\). The institution of 'questions without notice', one of

\(^2\) House of Representatives Standing Orders, Standing Order No.142: 'Questions may be put to a Minister relating to public affairs with which he is officially connected, to proceedings in the House, or to any matter of administration for which he is
many antipodean departures from Westminster practice, is a major reason for the leniency shown to questions in Australian parliaments which would not be permissable on a strict application of May's *Parliamentary Practice*. Thus the Standing Orders seem never to have been interpreted in such a way as to impose special restrictions on the questions which may be asked about statutory authorities. Pettifer (1981:490) states simply that 'The practice of the House has been to allow such questions'. Moreover, this is also true of questions on notice, to which the rules of form and content are more stringently applied. Of course, there is no obligation on ministers to answer questions. As in Britain, the fact that a question addresses matters outside the scope of a minister's authority may be cited by a minister as an adequate reason for refusing to supply an answer to all or part of the question. Given the Speaker's reluctance to rule questions out of order on such grounds in Australia, it is surprising that ministers in practice make only very infrequent use of this option. Pettifer (1981:490) notes again that 'on all but relatively rare occasions full replies have been provided'.

The evidence from the survey of the parliamentary record undertaken for the present study confirms that ministers are usually just as ready to answer questions on statutory authorities as on departments of state. It is noteworthy that in no case was an answer refused on the argument that the matter was beyond the authority of the responsible'.

minister. Answers were, however, occasionally refused. Pettifer (1981:491) notes that ministers have sometimes refused to supply answers on the ground that disclosure of certain information could cause commercial disadvantage to authorities operating in a commercial environment. No examples of such refusals were produced by the survey. The nearest instance was the reply to a question on notice regarding the provision by the AIDC of low interest housing loans to its staff. The minister observed that particulars of remuneration and benefits provided to staff of private enterprise firms are confidential between employer and employee and asserted his belief that AIDC staff should not be placed in a different position (Senate, CPD, 24 August 1983:213). Among the seven selected authorities, the Australia Council furnished the only other instance of a minister refusing to answer on the grounds of principle. Several questions on notice relating to the business arrangements and commercial viability of magazines receiving subsidies from the Council's Literature Board were denied an answer because the information had been supplied to the Board under agreement that it would be kept confidential (House of Representatives, CPD, 2 May 1984:1695).

The device of the parliamentary question is used not

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3. But in the same period other authorities were occasionally protected in this fashion. For instance, a question on notice seeking information on elements of the running costs of two Australian National Line vessels for each of the preceding five years was met with the following blunt reply: 'The information sought is commercial in nature and I believe it would not be appropriate to seek such information from owners or operators of the ships' (House of Representatives, CPD, 31 May-1 June 1984:2703).
only to seek information but also to press for action. On a slightly larger number of occasions than they refused to supply information ministers emphasized the statutory autonomy of the authority in refusing, or denying authority, to take the recommended action. Several questions concerning the Australia Council and the Australian Broadcasting Tribunal received this sort of treatment. In the case of the trading authorities ministers are more likely to cite prudential, or policy, rather than legal reasons for their non-involvement, especially where commercial decisions about provision of services (such as a particular airline service) or prices are concerned. This reflects the fact that ministers do usually have the requisite power should they wish to use it. There were, however, no instances of ministerial refusals to act in response to questions about the particular trading authorities selected for examination.

In general, when urged to do something about the quality of services or particular policies (including pricing policies) adopted by any authority, ministers either agreed to take the matter up with the authority or (where there had been advance warning of the question and time for consultation) provided the authority's reasoned defence of its position.

The principle of ministerial responsibility might also be thought to restrict the use of discussions of 'matters of public importance' to raise issues relating to statutory authorities. In determining whether a matter of urgency is proper to be discussed, or which of two or more proposed matters should receive priority, the Speaker at Westminster
is expected to take into consideration the extent to which
the matter concerns the administrative responsibilities of
ministers or could come within the scope of ministerial
the Speaker of the House of Representatives will 'pay regard'
to these factors in determining whether a matter of public
importance is in order. But this restraint (if it is one)
stops well short of prohibiting 'discussions' about statutory
authorities. The considerable ministerial capacity for
involvement in the affairs of most authorities provides
oppositions with a ready means of gaining acceptance of
proposed 'matters' which provide opportunities for quite
extensive discussion of authority operations. In the period
1981-84 this avenue was employed on a number of occasions to
focus parliamentary attention on specific issues involving
particular authorities. Moreover, it is doubtful whether
members of parliament perceive any constraint when they hang
their urgency motions on the actions of some minister. As
we shall argue, the game of parliamentary politics in any
case produces a natural inclination to focus attention on
ministers at every opportunity.

The final procedural obstacle to be considered is the
parliament's sub judice rule, which might be thought to pose
special difficulties for the scrutiny of authorities
performing functions of an adjudicative nature. But the rule
seems not to constitute a serious impediment. The
implication to be drawn from Odgers (1976:250-3) and Pettifer
(1981:464-8) is that it is applied only to matters awaiting
decision in courts of law and to proceedings before Royal Commissions which are concerned with issues of fact or findings relating to the propriety of the actions of specific persons. The only other body referred to by these authorities is the Commonwealth Conciliation and Arbitration Commission, the proceedings of which are permitted to be discussed except where any references would cause 'a real and substantial danger of prejudice to the proceedings' (Pettifer, 1981:465). While this does suggest a possible limitation on the rights of members to pursue issues arising out of proceedings before administrative tribunals, Pettifer (1981:508) observes that in 1969 a proposed discussion of 'a matter of public importance' relating to a matter currently before the Conciliation and Arbitration Commission was ruled to be in order on the ground that it was not before the Commonwealth Industrial Court. It is also relevant to note that the policy of the presiding officers of the Commonwealth Parliament is to restrict the application of the rule as much as possible. But, again, it must be kept in mind that a minister remains perfectly free to choose as his or her ground for refusing to supply an answer to a parliamentary question the argument that a quasi-judicial authority's deliberations should not be subject to political pressure or comment. Unfortunately, the survey of questions upon which this section is based does not allow us to say how often, if at all, ministers resort to this tactic as questions asked about the Broadcasting Tribunal were not of a kind which could have induced such a response.
It may be concluded that parliamentary procedures do not place significant special impediments in the way of parliamentary oversight of statutory authorities.

Parliamentary Interest in Statutory Authorities

Members of parliament are virtually as free to scrutinise statutory authorities as they are to scrutinise ministerial departments. But to what extent do they exploit the opportunities they possess? A priori, there is a case for saying that opportunities for scrutiny are likely to be significantly underexploited. To anticipate later discussion, parliamentary politics on the Opposition side is a game of 'get the minister'. It might be thought to follow that the attenuated relationship between ministers and statutory authority administration would act as a disincentive to parliamentary interest in statutory authorities.

The parliamentary record offers little support for this hypothesis. Statutory authorities as a group attract substantial attention, although there is great variation in the amount of scrutiny which individual bodies receive. The numbers of questions asked provide a useful measure of the level and distribution of parliamentary interest. Table 5.1 shows the numbers of questions directed at selected authorities in the period 1981 to 1984.
Table 5.1 Parliamentary Questions on Selected Statutory Authorities, House of Representatives, 1981-84.

<table>
<thead>
<tr>
<th>Body</th>
<th>Number of Questions without notice</th>
<th>Number of Questions on notice</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telecom^b</td>
<td>40</td>
<td>46</td>
<td>86</td>
</tr>
<tr>
<td>Australian National Railways</td>
<td>1</td>
<td>36</td>
<td>37</td>
</tr>
<tr>
<td>Australian Industry Development Auth'y</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Australia Council</td>
<td>5</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Australian Broadcasting Tribunal</td>
<td>0</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Trade Practices Tribunal</td>
<td>3</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>National Companies and Securities Commission</td>
<td>0</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Australian Science and Technology Council</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

^a The numbers refer to questions which mentioned the body rather than to questions which raised matters for which the body was responsible.

^b Not included are 17 questions without notice and 85 questions on notice which addressed telephone and telegraph services (see above).

Source: Commonwealth Parliamentary Debates.

Among these bodies much more attention was devoted on average to the trading authorities than to the rest; and among the latter the granting authority was monitored more closely than the regulatory and adjudicative/licensing bodies, which in turn were the subject of more debate and questions than the advisory body. This pattern of attention is partly a
function of the choice of authorities, and it is not difficult to find examples of non-trading authorities (for example, the Australia Council) which excite more parliamentary interest than trading authorities (for example, the AIDC), or of advisory bodies (for example, the Industries Assistance Commission) which consume more debating and questioning time than selected examples from each of the other categories. But, as a general rule, authorities which immediately affect the daily lives of large numbers of Australians as a result of the services they provide are, not surprisingly, of greater concern to members of parliament than others. The same is true for ministerial departments.

It is well established that Australian members of parliament, like their counterparts elsewhere, place a high priority on the 'ombudsman' work they perform for their constituents (see Emy, 1974:469-80). It is logical that this should express itself in the use of the parliamentary forum (even if only as a secondary option when direct representations to ministers have not had the desired result) to pursue grievances or queries about levels and quality of services, pricing policies, the need and potential for new services, anomalies in existing services, the particular economic consequences (for example, increased unemployment) of given authority decisions or policies and so on. A constant stream of questions, oral and written, and speeches in Adjournment and Grievance debates address such subjects as they concern Telecom, Australia Post, the Australian Broadcasting Corporation, Australian Airlines, Qantas,
Australian National Railways, the Australian National (shipping) Line, the Commonwealth Bank and the like.

In 1983 and 1984, for instance, all of these mechanisms were used by a group of Members and Senators to voice the concern of constituents in rural areas about Telecom's new 'Countrywide Calling' policy. This had resulted in some telephone subscribers losing their access to untimed local calls and various other anomalies. The campaign waged by members of parliament featured much questioning and speech-making in parliament. But it also involved private representations to the Minister for Communications, the lobbying of Telecom regional managers and meetings, arranged by the Minister, with Telecom head office personnel.

It would be difficult to distinguish the relative contributions of each of these channels of influence in bringing about the adjustments which were subsequently made by Telecom. Parliament offers a means of publicising this sort of issue and bringing added pressure to bear on the authority via its link with a minister. But one suspects that the questions and speeches have as much, if not more, to do with the desire of members to broadcast the fact that they are working diligently on behalf of their constituents. Nevertheless, members obviously do believe in the efficacy of 'raising a matter in parliament', and if this belief is held sufficiently widely and strongly it must become self-fulfilling.

In this case the interest shown by members of
parliament led in February 1984 to an inquiry by the House of Representatives Expenditure Committee into Telecom's zonal charging policies. Reports were produced in October 1984 and November 1986 (HRSCE, 1984 and 1986a). By the latter date many of the 23 recommendations of the 'phase I' report had been accepted by both the government and Telecom and a number were being implemented. So what began as merely a large number of parochial grievances culminated in a fairly major parliamentary investigation of an authority's performance in relation to important aspects of its mandate.

This outcome was unusual, but the example provides a good illustration of the uses to which the opportunities for backbench contributions to the scrutiny of statutory authorities (and public administration more generally) are normally put. Through such channels a succession of individual cases and operational matters concerning statutory authorities are aired in parliament.

However, the process does have its weaknesses as a form of scrutiny. For instance, rarely is any attempt made to connect service or operational matters with more general issues of agency policy regarding objectives and the efficient employment of resources. The function which is performed is undoubtedly important, but it produces only a superficial form of accountability. Moreover, because the process depends heavily on the initiating role of citizen grievance, the accountability that it does secure will be very unevenly spread among statutory authorities. While some, such as Telecom, are quite extensively monitored,
albeit too often only at the level at which they interact with members of the public, others are scarcely noticed due to their lack of visibility in the community at large. Finally, the nature of Question Time and Adjournment and Grievance debates militates against systematic or prolonged scrutiny. Unlike the situation at Westminster, where a 'rota system' operates for parliamentary questions and supplementary questions are allowed, the content of a sequence of questions in the Commonwealth parliament will usually be wholly random. Similarly, the five minutes allotted to each speaker in the half-hour Adjournment debates and the ten minute slots allocated in the hour or so occupied by Grievance debates (on the relatively rare occasions when these are held) are hardly conducive to sophisticated or organized criticism of aspects of public administration. In practice they are devoted almost entirely to constituency matters, various good causes with which members are associated, and disparate issues of national and international politics.

'Questions on notice' would seem to have more potential as a means for a member of parliament to scrutinise in an organized manner the policies and performances of a statutory authority. Questions seeking detailed, technical or statistical information are generally asked in this way

4. This is especially true of the House of Representatives where immediate supplementary questions are virtually non-existent (Pettifer, 1981:497).

5. The average number of days on which grievances were debated in the House of Representatives in the years 1975-80 was 8.33 (see Pettifer, 1981:515).
and there is no limit to the number an individual member may ask. Examples of the use of this device in the manner outlined can be found, but they are not common. Moreover, they are usually furnished by shadow ministers. In 1981, for instance, the shadow ministers for Transport (Morris) and Primary Industry (Kerin) asked questions which elicited a good deal of information about the financial performance of Australian National Railways and the Australian National Line, in the first case, and the appointment of industry representatives to statutory marketing corporations for primary products, in the second (House of Representatives, CPD, 5 May 1981:2012 and 26 May, 1981:2589-91). These examples are notable because the reforms undertaken by the two individuals when they became ministers after the 1983 election reveal that their questions on notice had been part of the process of planning new policies. Examples of systematic scrutiny by means of questions on notice by shadow ministers from the period after the change of government in 1983 include a series of questions seeking information on, and attempting to expose anomalies in, the Telecom Countrywide Calling policy, and a 17 part question probing weaknesses in the arrangements governing Trans Australia Airlines' financial accountability (House of Representatives, CPD, 7 March 1984:687-8). The extent to which this device is utilized by shadow ministers as compared with backbench members and Senators is demonstrated by the statistic that, of the 37 questions on notice asked about Telecom in both houses during 1984, 30 came from the shadow minister for
Communications.

The Opposition front bench dominates Question Time in parliament for reasons which have little to do with the lack of desire of backbenchers to participate, but its grossly disproportionate share of the questions put on notice concerning statutory authorities suggests that backbenchers generally do not have a great deal of interest in, or use for, the detailed information which could be elicited through an organized series of questions. Rare instances of such activity - for example, the scrutiny by a Labor member in 1982 of Telecom's ability to plan for and meet the demand for telephone services in particular rapidly developing areas - demonstrate the undeveloped potential of this device as a mechanism for serious administrative scrutiny by private members (House of Representatives, CPD, 18 August 1982:649-50).

We may conclude that members of parliament make substantial use of standard parliamentary mechanisms in order to scrutinise statutory authorities. However, the nature and level of members' interests dictate that the potential for scrutiny will not be fully exploited. In this, though, there seems to be little to distinguish the treatment of statutory authorities from that of public administration in general.

The Context of Parliamentary Politics

To this point the discussion has largely ignored the context within which parliamentary scrutiny of public administration occurs. Parliamentary politics, focused as it is on the
successes and failures of ministers, has an adversarial character. This follows from the design of responsible parliamentary government. The essence of parliamentary government is that ministers and not others are responsible to parliament for the conduct of public administration. Parliamentary procedures translate this constitutional doctrine into practice. They facilitate the questioning and criticism of ministers, but provide no regular opportunities for holding other officials to account. Additionally, they emphasize the division of each house of parliament into government and opposition sides and operate to promote debate between the two. In Australia the adversarial character of parliamentary politics is strongly reinforced by several other factors. These include highly disciplined parliamentary parties, the strongly two-sided nature of partisan alignment (especially in the House of Representatives) and the sense of an almost continuous election campaign created by frequent elections.

Parliamentary scrutiny within such a system is very far from being a disinterested activity performed by 'parliamentarians' seeking to keep government administration efficient, effective and accountable. The devices which permit oppositions to determine a portion of the parliamentary agenda are seen instead as so many opportunities to attack and discredit ministers, with a view to lowering the standing of the government in the eyes of the public. In scrutinizing the administration oppositions naturally tend to focus on matters which promise to advance
this objective.

Whatever the strengths and weaknesses of such a pattern of politics in other respects⁶, it is arguably less than ideally suited to the scrutiny of statutory authorities because of its preoccupation with ministers. As we have seen, there is little evidence that parliamentary procedures prevent scrutiny of statutory office holders' activities. But the structure of incentives in parliamentary politics dictates that only where shortcomings in statutory authority administration provide a means of 'getting at' ministers will oppositions feel it worthwhile to mount co-ordinated or time-consuming attacks.

The parliamentary record for the first half of the 1980s illustrates this point. Two incidents concerning statutory authorities were given enormous prominence in this period: the breach of an international agreement by a subsidiary of the Australian Dairy Corporation (ADC) and the probity of the financial settlement negotiated for the Chief Executive Officer of the Australian Bicentennial Authority (ABA) upon his resignation. These matters were pursued by oppositions in 1981 and 1985 respectively to the limit allowed by parliamentary procedure. The character of the questions and debates recorded in Hansard shows why: in each case it was possible to link a minister (in the latter case the Prime Minister) directly with maladministration. Where such a linkage could not be plausibly inferred, as for

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⁶. For criticism of the 'adversary system' in the British context see Finer (1975 and 1980) and Johnson (1977).
instance with allegations of maladministration in the ABA prior to the Chief Executive's departure, oppositions not surprisingly showed much less interest. Moreover, in the ADC and ABA cases parliamentary questions and debates were overwhelmingly concerned with the role played by ministers.

For any issue in statutory authority administration there is much the Opposition can do to ensure that the focus of criticism is the minister rather than the statutory office-holders. As we have observed, most authority statutes give a minister a wide power of direction and this leaves ministers open to attack for failures of omission as well as failures of commission. The parliamentary record shows that the opportunity thus afforded oppositions is exploited quite frequently. For instance, ministers are urged through parliamentary questions to take action to deal with staffing and industrial relations problems in Telecom, Australia Post and Qantas, or to instruct the Australian Broadcasting Tribunal and the Australia Council to reverse particular decisions. The tactic of charging that ministers are either negligent in failing to resolve the problems of statutory authorities or else in agreement with authorities' actions is also employed in launching and debating urgency, matter of public importance and censure motions.

In this way the 'political logic' of parliamentary scrutiny leads oppositions to attribute an exaggerated degree of responsibility to ministers for the activities of statutory bodies. As noted in an earlier chapter, Wilding (1982) has suggested that the same logic may produce a
tightening of the relationship between minister and statutory authority, diminishing the practical distinction between ministerial and non-ministerial administration. If ministers are pressed too hard in parliament on administrative matters entrusted by law or practice to statutory office-holders, they will tend to take action to avoid further political embarrassment. This will typically involve a strengthening of ministerial control.

Some evidence in support of this hypothesis is provided by the outcomes of the Dairy Corporation and Bicentennial Authority episodes, particularly the latter. In that case criticism was levelled at the Prime Minister's supervision of the financial settlement associated with the enforced resignation of the Chief Executive of the Authority (see House of Representatives CPD for September and October 1985). The Prime Minister's defence rested heavily on the 'very considerable difficulties' posed by the statutory independence of that body. It was not surprising, therefore, that after sustained parliamentary attack he announced a series of measures to tighten ministerial control. Henceforth the authority would be required to supply monthly reports on its programs and quarterly financial estimates; a senior departmental officer would attend board meetings; and the capacity of the Department of Prime Minister and Cabinet to monitor the ABA would be bolstered through the establishment of a separate Bicentennial Division, supported by two branches, reporting to a Deputy Secretary (House of Representatives, CPD, 8 October 1985:1594 and 11 October
1985:1907). The rationale of these changes would seem to be that Prime Minister Hawke had felt the need to give himself a capacity for control commensurate with the level of responsibility the parliament had shown it wished to exact.

Wilding's argument clearly has some force. But it should be noted that the pressures on ministers are not all in the same direction. Ministers are just as readily criticised by their parliamentary opponents for seeking to infringe authority independence as for not supervising authorities sufficiently closely. Ministers with responsibility for the Australian Broadcasting Corporation are always candidates for such criticism. Among our seven selected authorities there were in the period 1981-84 two good examples of members of parliament assuming the role of defender of statutory authority independence. During the period of the Fraser government the Labor Opposition frequently supported Telecom against various government policies which threatened Telecom's growth potential and autonomy. The imposition of staff ceilings on the authority, a governmental veto on its expansion into the profitable 'interconnect' market, perceived constraints on its ability to increase capital expenditure at an optimal rate, the government's keenness to introduce a separately owned and controlled communications satellite which Telecom saw as a potential competitor in some of the most lucrative areas of communications, and, finally, the establishment of the Davidson inquiry to determine how the private sector might play a greater role in the provisions of telecommunications
services were all issues which brought the Opposition and individual Labor members of parliament to the defence of Telecom's interests in 1981 and 1982. As the various matters were interrelated and came to be seen by the government's opponents as products of a continuing 'campaign' by the government against Telecom, most of the devices for parliamentary scrutiny we have discussed were utilised in the opposition's own prolonged attack. The other example occurred in 1983 when Liberal Senators made use of question time and the committee stage of the passage of an Appropriation Bill to defend the independence of the Australia Council against alleged ministerial pressure. Parliamentary activity of this sort helps to counterbalance the incentives to greater ministerial control discussed above.

In this chapter so far it has been shown that the Commonwealth parliament makes substantial use of its devices for administrative oversight in order to scrutinize statutory authorities. But we have also noted certain inadequacies in the scrutiny of administrative agencies generally, stemming from the interests of members of parliament and the character of parliamentary politics. We have found no indication that statutory authorities are neglected by comparison with ministerial departments. However, we have identified some adverse consequences of the fact that the scrutiny of statutory authorities is constrained to follow the form devised for ministerial administration. It remains to consider a prominent reform designed to address some of the
deficiencies we have observed.

Scrutiny by Committee

Since the 1960s, widely acknowledged weaknesses in the traditional means of parliamentary oversight of administration have led to an increased use of standing select committees in Australia and elsewhere. The Commonwealth parliament, especially its Senate, joined the trend in the 1970s. As we saw in Chapter 2, Commonwealth statutory authorities have been subjected from time to time in the past to inquiry by ad hoc and standing select committees. But with the creation in particular of the House of Representatives Standing Committee on Expenditure and the Senate Standing Committee on Finance and Government Operations, this activity became much more frequent. A brief account of the work of those two bodies will serve to demonstrate the increased level and quality of scrutiny which has resulted. It should be noted that we are presently concerned mainly with the use of select committees in their traditional manner - that is for special or ad hoc inquiries.

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7. This section deals with the situation prior to the major changes in the Committees of the Commonwealth parliament announced in late 1987 (see Reid and Forrest, 1989:380-1). The introduction of a standing committee system into the House of Representatives at that time saw the Expenditure Committee abolished and a Standing Committee on Finance and Public Administration put in its place. In the Senate, the Standing Committee on Finance and Government Operations became the Standing Committee on Finance and Public Administration. At the time of writing it is too early to attempt an evaluation of the new arrangements. However, the creation of a committee system in the House seems to demonstrate the persistence of the trend identified above and to extend further the potential for scrutiny by committee discussed in this section.
- rather than for the regular scrutiny of each statutory authority. The latter subject is treated in subsequent chapters.

The House of Representatives Standing Committee on Expenditure, established in 1976, was modelled on the Expenditure Committee of the House of Commons and was vaguely intended to improve the capacity of the House to scrutinise the expenditure plans of the government (see Garland, 1978; Uhr, 1981:26-7). However, the failure of the government to publish forward estimates before 1983 or to follow the practice of the British government in preparing White Papers on public expenditure meant that the Committee devoted much of its attention to the other function implicit in its broad terms of reference, the conduct of 'effectiveness reviews' of public expenditure programmes. Among the reports which resulted from this form of inquiry were a number which evaluated the general performance of particular statutory authorities, including the Australian Industry Development Corporation (AIDC), the Australian National Railways Commission (AN) and the Australia Council (HRSCE, 1980, 1982, 1986b). A further two reports (HRSCE, 1984 and 1986a) were devoted to Telecom's zonal charging policies.

The Committee's inquiry into the AIDC was its first into the operations of a statutory authority. The aim of the inquiry, which was its own justification, was 'to ensure that a major statutory body ... was required to explain, to document and to justify its performance far beyond the disclosures contained in its Annual Report to the Parliament'
In fact the report went further than assessing the performance of the Corporation against its statutory objectives. Considerable attention was also given to the continuing relevance of the objectives themselves and to the various statutory constraints on the Corporation's activities. The Committee's interest in accountability was underlined by recommendations designed to clarify the body's objectives, its financial relationship with the Commonwealth and the relationship between chairman and chief executive.

The other reports referred to above conformed in general terms to this model, with individual variations determined by the circumstances of the authority and the breadth of the inquiry. Thus the AN's large annual operating losses, funded from the Budget, and its doubtful progress in eliminating these in accordance with a governmental direction provided a clear focal point for the Committee's inquiry. The recommendations of this report were designed to improve the ability of the Commission to operate as a commercial enterprise and addressed the need for alterations to the statute, strengthened financial accountability, better corporate planning and the rapid adoption of sound commercial arrangements for performance of 'public service obligations'.

The Committee's review of the Australia Council took a slightly different form due to the fact that it was part of a broad inquiry into the Commonwealth's role in arts funding and 'the effectiveness and efficiency of the procedures for delivery of Commonwealth assistance to the arts'. Nevertheless, the recommendations showed a concern with the
Council's objectives, structure and relationship with the government which was basically similar to the approach of the earlier reports. The two reports on Telecom, on the other hand, were more narrowly focused, reflecting their origins in particular objections raised by members of parliament on behalf of their constituents. As a consequence, while the recommendations touched upon the Commission's objectives and general performance, there was no attempt to deal comprehensively with these matters. In accordance with the nature of the report, the aspect of Telecom's public accountability which received most attention was its customer relations mechanisms and policies.

As this partial survey suggests, the Expenditure Committee's reports on statutory authorities represent an almost continuous stream of investigation of non-ministerial administration by the House of Representatives over recent years. Furthermore, the reports themselves are substantial studies, as befits a committee possessed of full parliamentary powers of investigation including the ability to call for and examine witnesses, papers and records. Whether or not the recommendations of the Committee are implemented, the process of inquiry is, as the Committee has suggested, a mechanism of accountability in its own right. Additionally, the publicity given to the Committee's findings through public hearings and upon the release of reports has undoubtedly contributed to better informed public and parliamentary debate on the problems associated with both the particular bodies examined and statutory authorities
generally.

Governments in the 1980s find it difficult to ignore committee reports and are under pressure to respond reasonably promptly. In May 1978 Prime Minister Fraser announced a government undertaking to provide responses to reports within six months of their presentation, and in August 1983 the new Labor government committed itself to a reduction in the period of response to three months (House of Representatives, CPD, 25 May 1978:2465-6; Senate, CPD, 24 August 1983:141). While these limits are frequently exceeded, and were exceeded in two of the three relevant cases among those under discussion, they have created expectations which it may be costly for governments to disappoint too severely (but note Aldons, 1986).

But getting governments to respond to reports is only part of the battle. An examination of the responses to the reports on the AIDC, AN and the first of the two on Telecom reveals that the Committee met with only mixed success in having its recommendations adopted. In the first of these cases the government took the view that it would not be appropriate to provide a detailed response while the Campbell Committee of Inquiry on the Australian Financial System was considering some of the same matters. The Treasurer stated that a copy of the report had been formally referred to the Campbell Committee inquiry into Australia's financial system, but added that he proposed to introduce legislation to raise the AIDC's statutory debt gearing ratio in accordance with the spirit of one of the findings of the report (House of
Representatives, CPD, 20 August 1980:496-8). The report on AN met with greater immediate success. The Minister for Transport stated that the government agreed with the Committee's general argument about the need to re-establish the Commission on a more fully commercial basis and observed that many of the recommendations were reflected in the new AN Bill then before the parliament. Reasons were given for the rejection of several recommendations, but several others received no comment (House of Representatives, CPD, 10 November 1982:2977). Finally, the response to the report on Telecom fell somewhere between these two outcomes. Telecom commented on each of the recommendations and committed itself to changes in accordance with many of them - but only to an extent, and over a time period, consistent with 'financial responsibility' (House of Representatives, CPD, 15 November 1985:2940-41).

While the Expenditure Committee justified its inquiries into statutory authorities partly in terms of the need for authorities to be actively accountable to parliament, its main priority was, as we have seen, to evaluate the effectiveness of public expenditure programmes. The choice of subjects for inquiry (that is, authorities which control or expend large amounts of public funds) and the nature of the inquiries themselves (that is, full scale investigations of single authorities) were heavily influenced by this conception of the Committee's purpose. When we turn to the work on statutory authorities undertaken by the Senate Standing Committee on Financial and Government Operations.
(SSCFGO), however, we find a stronger direct concern with the issue of accountability.

Various aspects of the SSCFGO's approach have assisted its ability to promote accountability issues. From its genesis through to the mid-1980s its activity ranged widely from surveillance of the whole statutory authority sector to detailed inquiries into particular authorities, and included both exploration of the deficiencies in existing practice and promotion of a major revision of the whole accountability regime for statutory authorities. The practice of the Committee was to monitor authorities' annual reports and to use lateness of submission and Auditor-General's qualifications as guides to the selection of individual authorities for further investigation. Consequently the choice of subjects for inquiry was part of a broader stream of scrutiny and publicity designed to bring about a general improvement in the performance of authorities in accounting to the parliament.

A related aspect of the Committee's modus operandi which suited its overall purpose was its willingness to explore issues in varying degrees of depth. Thus a single report sometimes contained a survey of the reporting record of a multitude of authorities, a series of brief remarks about particular annual reports to alert the authorities responsible to matters which the Committee would pursue if remedial action was not taken, and several case studies based upon committee inquiry into 'problem' authorities. Where it was deemed appropriate, however, a large scale inquiry would
be undertaken. One such inquiry produced probably the best known of the Committee's reports, that on the Australian Dairy Corporation and its Asian Subsidiaries, which ran to more than 300 pages (SSCFGO, 1981).

The terms of reference which authorised 'continuing oversight' of the affairs of statutory authorities also empowered the Committee to investigate and report on 'the appropriateness and the significance of their practice in accounting to the parliament'. In accordance with this aspect of its responsibilities, the Committee conducted research to identify anomalies and deficiencies in current accountability arrangements. This work was not confined to the relationships between authorities and parliament. Given the lack of a systematised bank of data about Commonwealth statutory authorities at the time the Committee commenced its inquiries, the Committee felt justified in devoting substantial effort to compiling information about the numbers of authorities, the work they perform, their economic significance and the varying legislative provisions which prescribe the ways in which they must account. This comprehensive program of inquiry resulted in a similarly comprehensive approach by the Committee to the reform of the accountability regime for statutory authorities. Additionally, the Committee conducted inquiries into various aspects of statutory authority financing, including the funding of superannuation (see SSCSAF, 1983). Some of the issues it raised in this area are important to the accountability of statutory trading enterprises.
To conclude this overview of the work and work-style of the SSCFGO, it is worth noting the considerable extent to which the different components of the Committee's work under its reference on statutory authorities complemented each other. As is suggested by the manner in which authorities were selected for inquiry and the Committee's preoccupation with the issue of accountability, even the most detailed reports on individual authorities often attempted to link particular findings with the Committee's broader concerns. The report on The Superannuation Investment Trust (SSCFGO, 1985) illustrates this characteristic approach. The report contained a number of findings on the immediate matters at issue - the investment policies and practices of the authority and the working relations between the Chairman and the Chief Investment Manager - and recommended improvements in the process of appointment of the chairman and a continuation of efforts within the authority to upgrade financial management and to review the organization. But it then sought to apply the experience of the SFIT to statutory authorities generally, addressing such matters as the standards of conduct expected of a Commonwealth statutory authority and its chairman, arrangements to ensure consideration of government policy by authorities and problems in the accountability of subsidiaries. The Committee used this opportunity to reiterate several of the themes of its previous reports, and recorded its disappointment that governments had not seen fit to respond to certain recommendations of its Fifth Report. Finally, an
appendix contained an examination of the Government's Bill to amend the Act constituting the SFIT and recommended changes based on both the general and the particular concerns raised in the Report.

It is thus demonstrably true that the growth of committees increased the potential for parliamentary scrutiny of Commonwealth statutory authorities. By the late 1970s there was little doubt that parliament had become a significant active influence on these bodies. Moreover, in the light of our discussion of the work of the Expenditure Committee and the SSCFGO, it seems that the Aitkin and Jinks statement about the lack of special instruments for parliamentary scrutiny of statutory authorities was simply incorrect as far as the Commonwealth is concerned. Whether the SSCFGO has been as effective as the British Select Committee on Nationalised Industries is a different matter, but one whose examination is foreclosed by a denial of the Australian body's comparability. By and large the new committee activity was of a familiar sort - the investigation of instances of maladministration or administrative difficulty brought to the parliament's attention. But there was now also a greater capacity and willingness to conduct inquiries before the matters investigated had reached crisis point or where there was little possibility of crisis. Further, our discussion has provided a glimpse of a new, more systematic approach to authority scrutiny in the activity of the SSCFGO. As we shall see, this development was reinforced by others in the area of financial control and in the way
consideration of authority annual reports has begun to be integrated into the routine task-load of the Senate's specific purpose standing committees.

Conclusion
The conclusion of this chapter has been amply foreshadowed. Parliament is actively involved in the oversight of administration in Commonwealth statutory authorities. The effectiveness of the arrangements is certainly open to question. But they are not significantly less effective as part of the accountability regime for statutory authorities than they are for other governmental agencies.
Finance is the life blood of the modern 'provider state'. It is not surprising therefore that legislatures are liable to see their power and status as intimately related to their capacity to exercise financial control. In countries with Westminster-derived constitutions there are special historical as well as pragmatic reasons for considering 'Parliamentary Control of the Purse' the keystone of responsible government. Australia, as one such country, has drawn heavily on British views not only about the importance of financial control but also about the machinery for achieving it. Financial scrutiny in the Commonwealth parliament has, as a consequence, been modelled on the Gladstonian 'circle' of parliamentary control. The idea has been explained by Reid (1966:58) as follows:

Gladstone's expenditure circle started with the Executive's presentation to the House of Commons of annual and comprehensive estimates; it ran through the long and tedious procedures for parliamentary vote and legal appropriation, the departmental spending processes, and the keeping of annual cash accounts; the next point was the audit of accounts, on behalf of Parliament, by the Comptroller and Auditor-General, to ensure that money had been spent in accordance with the appropriations made; and, finally, the circle returned to Parliament via the House's Committee of Public Accounts and its follow-
up enquiry into the criticisms made in the auditors' report.

It is against the backdrop of broadly similar machinery in operation in the Commonwealth Parliament that an analysis of the financial control of Commonwealth statutory authorities must proceed¹.

While it is appropriate for our present purposes to focus on traditional processes of financial control as they impinge on statutory authorities, it is also important to understand that in recent years there has been, in the Commonwealth Parliament as elsewhere, a significant expansion of the nineteenth century conception of expenditure control. Particularly in the later stages of the control cycle, it is apparent that the interests and outlook of the relevant actors (principally the Audit Office and the Joint Committee of Public Accounts) have broadened in a way which is adding a new dimension to administrative accountability. It is now common to describe the change as involving a movement away from a preoccupation with the 'control of inputs' into administrative agencies towards a concern with 'accountability for agency outputs'. Nothing more will be said about this development in the present section, but its considerable importance for the accountability of statutory authorities will be discussed at length in the next chapter.

There have in fact been two recent trends of importance in parliament's financial scrutiny of statutory

¹. Parliamentary procedures for financial legislation have, however, evolved considerably since Gladstone's time. For an account of the changes at Westminster see Reid (1966) and for the Australian Commonwealth Parliament see Reid and Forrest (1989:347-60).
authorities. Alongside the development in financial accountability to which attention has just been drawn, there has been a drive to extend and tighten the application to statutory authorities of traditional controls. In the abstract the two trends, emphasizing on the one hand closer external control of authorities and on the other greater ex-post accountability, seem contradictory. Certainly to those running statutory bodies the inconsistency between greater control, implying reduced responsibility, and greater accountability, implying greater responsibility on the part of the authority, has appeared manifest. But parliament's limited freedom of manoeuvre and limited capacity to view problems synoptically meant that its approach was bound to be piecemeal and opportunistic, with any inconsistencies only slowly being recognized as such, let alone dealt with. Once members of parliament became convinced that the parliament needed to pay more attention to this sector of government it was natural for them to attempt to strengthen all of the existing links between parliament and statutory authorities as well as to develop whatever new links seemed desirable. The initial reaction by the parliament to the eruption of concern about statutory authorities in the 1970s was understandably to put in place and to pull the 'levers' of control and accountability with which it was most familiar. Other initiatives have gradually taken shape alongside the responses informed by traditional thinking, and so far only a small amount of rationalization has been found necessary.

Our present interest then is in those changes aimed
at completing or reinforcing the Gladstonian circle as it applies to statutory authorities. We shall begin with the first stage of the control process, examination by parliament of estimates of expenditure and appropriation of funds.

The Weakness of Traditional Arrangements

This would appear to be one of the weakest points in the parliamentary control of statutory authorities - especially of those authorities which are wholly or substantially funded outside the budget from their own revenues and loan raising activities. As we have seen, in the case of trading activities the statutory authority form is often employed quite deliberately to remove financial decision-making from the parliamentary arena. These authorities do not require parliamentary authorization of their expenditure plans; consequently there would seem to be little more to be said about them in the present context. The situation of the remaining authorities (the overwhelming majority) is less clear-cut. But again there would seem to be no difficulty in drawing the conclusion that parliamentary capacity to scrutinise and alter expenditure plans is less than is the case for ministerial departments. For while these authorities are wholly or very largely funded by moneys appropriated from Consolidated Revenue by parliamentary enactment, they often receive their allocation in a small number of consolidated blocks, or 'votes', rather than in the larger number of more differentiated votes through which ministerial departments are funded. For instance, a glance
at the schedule of estimates accompanying Appropriation Bills No. 1 and No. 2 for any recent year will reveal that the Australian Broadcasting Corporation receives its funding under only two headings, as does the Australian Science and Technology Council; and that the Australia Council, the Australian Broadcasting Tribunal and the National Companies and Securities Commission are funded by single line votes. This form of appropriation gives budget-dependent authorities some of the autonomy of the 'non-budget' sector and 'financial enterprise' sector authorities. But greater autonomy in this respect must surely mean reduced parliamentary control of finance.

The above argument is at once correct and misleading. There is little doubt that parliamentary control of the funding and the expenditure decisions of statutory authorities (of all sorts) is indeed very weak. But we should not jump to the conclusion that this constitutes an important difference between statutory authorities and ministerial departments. Formal and informal constraints on parliament's ability to scrutinise and alter the expenditure estimates of administrative agencies in general greatly reduce the advantage to parliament of a requirement that it vote detailed appropriations.

Before turning to the familiar obstacles to meaningful parliamentary involvement in matters of finance, we may note that some trading authorities have less financial autonomy vis-a-vis parliament than implied above. Chronic loss-making authorities —notably in the 1980s the Australian National
Railways and the Australian Shipping Commission - receive annual subsidies from the budget which are fully subject to parliamentary scrutiny. Further, even authorities which do not require continued budgetary support have from time to time received 'one-off' injections of public funds. The 'capital injections' provided by the Hawke government in 1983 to the Australian Industry Development Corporation, the Australian National Airlines Commission and the Australian Shipping Commission are recent examples. Both sorts of claim on Consolidated Revenue provide the potential for parliamentary scrutiny of, and parliamentary influence over, more or less broad areas of particular authorities' financial decision-making processes.

That this potential is not realized in practice tells us as much if not more about the weakness of parliament's capacity for scrutiny of financial administration generally as it does about the special difficulties parliament faces in dealing with trading authorities. It will be instructive to consider an example. In the additional estimates of 1983 $115M was earmarked to augment the working capital of the Australian National Airlines Commission (TAA). As this amount represented not only a substantial item in the additional estimates but also an increase in TAA's equivalent of paid up capital of around 360 percent, it naturally attracted attention in the Second Reading debates and in the relevant Senate Estimates Committee.

The Opposition's contribution was based on the reasonable proposition that information concerning the
authority's financial management and any assurances sought or given about the use of the funds being provided was necessary for a proper evaluation of the item. In the House of Representative's debate the Opposition spokesman on aviation, Mr Spender, noted the discrepancy between the $25M that the previous (Coalition) government had authorised and the present sum. Querying the grounds for the government's decision, he asked whether the minister had called for financial forecasts or cash flow statements from TAA. Further, since the government had portrayed the decision as a shareholders' commercial injection of funds, he argued that the minister should be able to say what return on the funds was expected (House of Representatives, CPD, 11 May 1983:422-4).

In his reply the Minister (Mr Beazley) sketched the financial circumstances which he claimed had led to the decision: the fact that under the previous government TAA had not been allowed to build up reserves of funds leading it to depend too heavily on borrowings, and the heavy cost of the government-imposed obligation to operate uneconomical services. He also produced evidence of TAA's efforts to improve its efficiency through decreases in staff numbers, rationalisation of services, better controls over capital expenditure and the introduction of innovative fares to stimulate demand and increase market share (House of Representatives, CPD, 11 May 1983:445-9). But he did not address the specific matters raised by Spender.

And that was where the scrutiny of this item of public
expenditure ended in the House of Representatives\(^2\). The 'capital injection' along with the rest of the additional estimates was approved by the House, like each annual budget, without any effort at further inquiry or amendment. The matter was also examined in the Senate - more exhaustively but with much the same result (see especially Senate Estimates Committees, *Hansard*, 12 May 1983:185-8). In essence parliament received little more than an assurance that the government had 'inspected the books' before it determined the quantity of funds it would make available to the airline, as no information was supplied which would allow an independent judgement about the merits of the expenditure. The fact that parliament was content with this owed something to the government's appeal to the commercial prerogatives of a business authority in order to justify not releasing certain information. But it had far more to do with the ability of a Commonwealth government to rely implicitly on the support of its party majority in the House, and with constitutional provisions and 'conventions' according the government strong control over financial measures (see Reid and Forrest, 1989:347-60 and passim). Government dominance in such instances arguably also owes something to the acquiescence of the Opposition and the Senate. A more aggressive parliament, and one more interested in scrutiny of financial administration, might have made more of the

\(^2\) Later in the year, however, Spender pursued the matters raised in the House in several questions on notice. But the answers eventually provided more than six months later added little to what had already been said (see House of Representatives, *CPD*, 7 March 1984:687-8).
opportunity presented by the capital injection.

This takes us back to the institutional weakness of parliament in the estimates process. It is clear that parliamentary examination of appropriation bills cannot afford regular opportunities for scrutiny of off-budget authorities' expenditure plans. Nor should it. But the fact that the expenditure estimates of ministerial departments and other statutory authorities do regularly come before parliament is not a sufficient condition for meaningful parliamentary involvement. A variety of factors work to eliminate the capacity of members of parliament to contribute at the estimates stage. Some are more or less broadly constitutional or have to do with party discipline. These have been briefly referred to above. Others are attitudinal and have to do with the parochial and idiosyncratic concerns of members of parliament and what has been referred to as their lack of 'affinity' for questions of finance (Emy, 1978:483). The predilections of members of parliament help explain why contributions to Second Reading and Committee stage debates of appropriation bills are frequently dominated by references to matters requiring expenditure in members' electorates or to members' pet projects. A third set of factors is procedural in nature. Since there have been attempts in recent times to reform parliamentary procedures so as to increase the involvement of members in the estimates process, it is relevant for us to look a little more closely at this area.

The main opportunity for detailed examination of
proposed expenditure occurs at the Committee stage of the consideration of the main appropriation bills. The preceding Second Reading debate is inevitably too unfocused for this purpose. Although the Second Reading debate continues over several weeks and provides a generous allotment of speaking time, it is by tradition a broad ranging debate on public affairs for which the Standing Order on relevance is suspended\(^3\).

In the House of Representatives estimates are dealt with in 'Committee of the Whole'. A close examination of the treatment of the estimates of several departments and associated statutory authorities in two years confirmed claims about the weakness of the arrangements\(^4\). The most obvious problem is that insufficient time is allocated. The Labor party's transport spokesman, Peter Morris, might have been referring to the normal situation in Committee of the Whole consideration of any group of estimates when he commented as follows about the time constraint on scrutiny of the Transport and Aviation Department's estimates for 1982-83:

> Disgracefully the Committee is to be allowed one hour to examine, question and discuss the hundreds of items of expenditure involved. Of that 60 minutes the Opposition is to be allowed 3 speakers, each for 10 minutes. In practical terms that means a fraction of a minute per item of expenditure. This makes an absolute farce of parliamentary procedure and of any responsible consideration of the vast amount of

\(^{3}\) See House of Representatives Standing Order No.81.

\(^{4}\) Committee of the Whole debates on the estimates for the departments of Communications, Attorney-General, Home Affairs and Environment, and Transport were examined for the years 1981 and 1982.
In these circumstances it is not surprising that proceedings in the Committee of the Whole tend to repeat in abbreviated form the Second Reading debate. Moreover, even this cursory treatment is lacking for the additional estimates contained in Appropriation Bills 3 and 4 which are normally introduced in April of each year. These bills are not taken through a committee stage in the House of Representatives.

Another problem with the House estimates committee stems from the fact that business is organized as for a Second Reading debate. One consequence is that the relevant minister participates only once, making it difficult for members to probe the rationales for particular items of expenditure. Ministers are under virtually no pressure to justify the policies implicit in the estimates as the procedure allows them simply to omit any reference to sensitive matters or those for which they may have inadequate information. For the same reason these sessions do not provide an opportunity for members to acquire new information about financial administration. Also, as with the Second Reading debate, the practice of the House is to disregard the requirement of relevance to the estimates.

Taking such procedural factors into account, it is little wonder that members' speeches in the Committee of the Whole are largely dispiriting catalogues of constituents'
grievances, interspersed with partisan rhetoric and pleas for public spending on members' hobby-horses. The important conclusion for our argument is that it would be a gross abuse of language to describe Committee of the Whole examination of departmental estimates as an exercise in financial control by parliament. When the relevant facts are taken into account, that parliament sees no estimates or only consolidated estimates of statutory authorities reflects much less adversely on the relative public accountability of the latter.

**Estimates Committees**

Advocates of procedural reform have long argued that members could do better if given the opportunity through the establishment of systems of estimates committees. Members of Commonwealth Parliament themselves have shown some willingness to experiment along these lines. This has been particularly true of the Senate where in 1970 five six-member estimates committees were established to examine and report on the expenditure proposals contained in Schedule 2 of the Appropriation Bills prior to the consideration of the Bills in the committee of the whole. Senate estimates committees have been appointed by resolution at the commencement of each subsequent parliament. They examine the additional estimates (associated with Appropriation Bills Nos 3 and 4) as well as those associated with the annual budget. By comparison

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6. For details of the procedures and operation of Senate estimates committees see Odgers (1976:421-6). For commentary on their work see Emy (1978:483-5), Uhr (1981:19-22) and Reid and
with the Senate, however, the House of Representatives has lacked a spirit of innovation: estimates committees were given a brief trial between 1979 and 1981 but have not been appointed subsequently (Uhr, 1981:13-15; Reid and Forrest, 1989:356-7).

The most obvious result of the introduction of Senate estimates committees has been roughly a doubling of the time spent on the estimates by that house. But the change in the nature of the proceedings has been equally dramatic. In accordance with guidelines circulated in 1970, not only is the appropriate Senate minister normally present throughout but departmental officials and representatives of budget-dependent statutory authorities are also available to answer questions. While the committees have continued to focus on Schedule 2, members are assisted in their efforts to look behind the often uninformative items by the substantial Explanatory Notes which agencies are required to provide in accordance with guidelines established by the Senate. These often extensive documents provide breakdowns of individual items and a variety of detailed information about the resources utilized and the work performed by agencies. The record of committee proceedings shows that the explanatory notes are used constantly by Senators.

Perhaps most importantly, estimates committee members have through their conduct contributed directly to the


7. For the five years prior to 1970 the Senate averaged 42.5 hours on the estimates; in 1970 it spent 74 hours and in 1975 86 hours (Odgers, 1976:424).
creation of a new approach. Members and chairmen have not insisted on a rigorous interpretation of members' rights under the formal (Committee of the Whole) procedures where to do so would inhibit the effectiveness of scrutiny. Estimate Committee meetings operate as question and answer sessions. It is important, therefore, that members have resisted the temptation to make speeches. Ministers too have played their part by not over-exploiting their right to refuse to provide information about 'policy', by not interposing themselves continually between officials and committee members, and by keeping their responses reasonably short and relevant. This contrasts with the operation of the House of Representatives' estimates committees between 1979 and 1981 where there seems to have been a greater tendency for ministers and members to enter into debate.8.

It is important to add that the questions and answers do relate to the estimates, though the latter are often used as a basis for the exploration of a wide range of operational and policy matters. In this respect they compare favourably with the Canadian parliament's estimates committees, the work of which was described in a recent careful study as having 'nothing to do with the Estimates' (Slatter, 1982:71; see also p.67).9.

From the point of view of parliamentary scrutiny of

8. But note Uhr's concern (1981:20-21) that the smaller role played by ministers in Senate estimates committees is a threat to ministerial responsibility.

9. But see Emy (1978:484) for other criticisms of the estimates committees.
statutory authorities, a great benefit of the Senate estimates committees is that they allow members of parliament to question senior representatives of those bodies. In fact these meetings are the only regular formal opportunity members of parliament have for direct contact with such individuals. The meetings thereby go some way towards overcoming the impediment to parliamentary scrutiny posed by traditional parliamentary procedures based on the assumption of full ministerial responsibility.

The Senate had an early opportunity to assert the right of estimates committees to scrutinize the expenditure proposals of statutory authorities. In its Report to the

10. Such representatives are not always present, however. For instance, in the period 1981-84 a representative of Australian National Railways (AN) was present at less than half the relevant meetings of Estimates Committee F. As a result questions were often answered by departmental officials whose knowledge of the financial administration of AN was demonstrably limited. Moreover, on only one occasion was AN represented by a senior officer. At the two meetings in 1981, for example, the Budget Officer was the only AN representative present. His junior status and lack of support meant that he had to take many questions on notice. In 1985 the Committee saw fit to draw attention to the difficulties caused by the lack of suitable witnesses (SEC, 1985:201-2).

11. It is surprising, therefore, that there was pressure from Senators in the mid-1980s to reduce non-ministerial representation at estimates committee meetings. In his opening statement to Estimates Committee A in September 1984, the minister announced that, in response to a request from Senator Peter Rae to restrict the number of officials appearing at committee meetings, no representatives of Telecom, Australia Post, the Overseas Telecommunications Commission and Aussat Pty Ltd were present. He suggested that where they were able departmental officers would respond to questions about these authorities, and in other cases questions would be taken on notice. Senator Rae welcomed the arrangements as a means of avoiding unnecessary costs and lent his support to moves to further reduce the attendance of officials on the grounds that 'much of the information is now provided automatically in the explanatory notes' (Senate Estimates Committee A, Hansard, 4 September 1984:139-40).
Senate in November 1971, Estimates Committee B (chaired by Peter Rae) noted that its examination of the estimates for the Australian Broadcasting Commission was 'hampered by a lack of officers with sufficient authority and information to reply adequately to questions asked by Senators' (SEC, 1971:20). It stated that

The Committee is of the opinion that whilst it may be argued that these bodies [statutory corporations] are not accountable through the responsible Minister of State to Parliament for day to day operations, Statutory Corporations may be called to account by Parliament itself at any time and that there are no areas of the expenditure of public funds where these corporations have a discretion to withhold details or explanations from parliament or its committees unless the parliament has expressly provided otherwise (p.20).

During the consideration of Appropriation Bill (No.1) 1971-72 in the Committee of the Whole this statement was adopted as a resolution of that Committee (Journals of the Senate, 9 December 1971:827). It was reaffirmed by the Senate in 1974 (Journals of the Senate, 23 October 1974:283) and its acceptance by the Senate as a settled principle has been cited on subsequent occasions to bolster the authority of Estimates committees in their dealings with particular authorities12.

Statutory authorities with no reliance on annual parliamentary appropriations presumably fall into that category of agencies, referred to in the above quotation, for which parliament has provided other means of financial accountability. Their expenditure plans fall outside the

purview of the estimates committees and have never been sought by the latter. Even in the case of Australian National Railways which has been regularly and heavily subsidised from the budget there has been no suggestion that the authority of the estimates committees encompasses a right to scrutinise spending plans in order to satisfy itself that the level of subsidy represents a justifiable use of public funds. It is arguable, however, that financially independent authorities are nonetheless spenders of public funds and should as a consequence be subjected to the estimates scrutiny process. Such an approach would of course be inconsistent with the present system, based as it is on the Appropriation Bills. Moreover, there are other parliamentary mechanisms for inquiry into the finances of statutory trading authorities. As a result, there has been no serious attempt to use estimates committees for this purpose.

However, it has been a practice for time to be made available in the relevant committee for questioning of representatives of the authorities attached to the Communications portfolio (Telecom, Australia Post, the Overseas Telecommunications Commission and Aussat Pty Ltd). The arrangement is most likely explained by the high level of interest among members of parliament in the activities of Telecom and Australia Post and their desire to have extra opportunities to raise grievances and acquire information. In these meetings there is no pretence of systematic scrutiny of the authorities' expenditure plans or management. However, questions are often directed to these areas and,
except for the fact that time is not devoted to these bodies on a regular basis, the result is often not inferior as an exercise in financial scrutiny to that achieved with many budget-funded agencies.

Among budget-dependent authorities the effectiveness of estimates committee scrutiny varies considerably in accordance with such factors as the size of expenditures involved and the extent to which authorities' activities are meaningfully summarised by expenditure figures. Authorities whose importance is unrelated to the size of their budgets and whose expenditures are largely accounted for by staff costs are likely to receive less attention than others. These characteristics are typically associated with regulatory and quasi-judicial authorities. Because the powers exercised by such bodies are not reflected in their relatively small and undifferentiated budgets, the latter do not provide a means of addressing the aspects of the bodies' operations which are most important for their accountability. For instance, the criteria by which the Australian Broadcasting Tribunal (ABT) and the National Companies and Securities Commission (NCSC) use the substantial discretionary powers at their command cannot be readily pursued in the estimates committee forum. In the light of this constraint, it is not surprising that examination of the Senate estimates committee treatment of estimates for the ABT and the NCSC for the years 1981-84 revealed only a meagre amount of time and effort devoted to scrutinising these bodies' expenditure proposals.
Other authorities, the Australian Broadcasting Corporation and the Australia Council for example, score well against the above mentioned criteria and consequently receive a good deal of attention from the estimates committees. The case of the Australia Council, one of the selected authorities whose scrutiny by parliament in the period 1981-84 has been closely examined for the purposes of this chapter, may be used to illustrate the potential value of estimates committees.

There are several factors behind the success of estimates committee meetings involving the Australia Council. The Council contributed through the regular attendance of the chairman or general manager, along with other senior staff. On the other side, members demonstrated considerable interest, as reflected in the fact that the meetings were usually quite long and regularly explored a wide range of funding and operational matters. Further, meetings were well organized with the committee chairman leading the committee through the various areas of activity in a manner which was both systematic and well understood by members. The committee was also well supplied with background information: in addition to the Explanatory Notes provided ahead of the meeting, a variety of other documents were frequently offered at the commencement and during the course of meetings.

Some deficiencies are nevertheless apparent in the operation of the meetings. The way in which the information was supplied caused problems for committee members on a number of occasions. Moreover, even where explanatory
material was available there was no certainty that it would be used, and committee members occasionally admitted that they had not read the Notes. Other problems stemmed from the complexity of the Australia Council's organization. Although most committee members seemed to have familiarised themselves in a general way with the Notes, the questions asked often reflected a lack of knowledge about the structure and mode of operation of the body. In many cases such knowledge might have been readily acquired from annual reports and other material published by the Council. The evidence from estimates committee meetings is, however, that few members of parliament are willing or able to become experts on any area of public administration. But, given this fact, the meetings serve a useful function in raising the level of sophistication of members' understanding of administrative structures and processes.

The predominant themes in members' questions in the years selected for examination reinforce this impression of the committees' worth. The policies of the specialist arts boards and, to an even larger extent, policies on such matters as the mobility of, and deployment of orchestras by, the Opera and Ballet companies were of constant interest. The apportionment of responsibilities between the Council and the subordinate yet powerful art-form boards was explored in various ways through questions about the mechanisms securing the accountability of the boards to the council, the reasons for particular organizational changes, the levels at which different sorts of funding decisions are made and the timing
of those decisions. A third group of questions focused upon the consequences for the Australia Council of government decisions about the overall funding level. These themes were all fairly predictable. However, some matters in which one might have expected considerable interest were not well represented in the questions. For instance, although questions were asked about the criteria employed by boards in the making of grants, they were asked less frequently and less insistently than might have been expected from members of parliament concerned with accountability or from politicians under pressure from aggrieved constituents and local and state governments. Even more surprisingly, while explanations were sometimes required of particular components of the Council's budget, there was hardly a complaint about a particular funding decision. This is hardly to be regretted, however, as it suggests the committee was able to leave behind the preoccupation with particular constituency matters which is so evident in other areas of parliamentary activity.

A final aspect of estimates committee scrutiny of the Australia Council may be noted. At a meeting of Estimates Committee D (Hansard, 13 September 1984:300-1) a Senator asked a series of questions about the decision-making processes of the seven art-form boards which are responsible for deciding the allocation of arts support moneys to the individuals and organizations applying for grants. She was informed that the boards' expenditure decisions are mostly made after the passage of the Budget Bills and in some cases
at various stages over the financial year. While the extensive Explanatory Notes purported to show how the Council planned to distribute its funds, the Senator was surprised to discover that this did not convey anything like a full picture of the ultimate uses to which the money was to be put. She drew the obvious conclusion that rolling programmes of expenditure, while readily justifiable in the light of the Australia Council's function, inhibit committee scrutiny. It may be assumed that financial scrutiny of other granting authorities is similarly weakened.

What conclusions can be drawn about the consequences of estimates committee activity for parliamentary control of statutory authorities? It could be argued that the committees have in some measure indirectly increased parliamentary control of finance for all budget-dependent agencies (including, that is, the great majority of statutory authorities). Their contribution could only be indirect because the committees were designed to supplement rather than replace the Committee stage in the passage of the Appropriation Bills. Their function is solely an 'explanation-seeking' one; they do not have the power to amend estimates. However, by providing Senators with a much better information base they have probably enhanced the Senate's ability to force ministers to justify expenditures. They are certainly referred to frequently in parliamentary debates on public expenditure. It is also likely that in framing their estimates government agencies have become more conscious of the need to satisfy parliament.
The development of program budgeting which has from 1986 changed the form of the budget papers will arguably further assist parliament's scrutiny of the estimates by making budgetary information more meaningful in policy terms. But it is too early to say what difference program budgeting will make to the estimates process. A glance at recent Budget documents reveals that the new approach is still in its infancy. Indeed for some statutory authorities (for example, the Broadcasting Tribunal and the Australia Council) the superiority of 'Portfolio Program Estimates' over its predecessor document in terms of the amount of information conveyed is by no means obvious, though the classification is undoubtedly a more meaningful one. Over the next decade, however, it is possible that the role of the Senate estimates committees will undergo major change. In its report for the year 1985-86, Estimates Committee A (SEC, 1986:17) argued that program budgeting offered more potential for effective scrutiny and control:

The "stewardship" emphasis of scrutiny under the traditional format is becoming more automated and subject to control techniques such as cash limiting. ...the Parliament, with scarce resources of time and personnel, should concentrate more on performance and on the results achieved for the appropriations it votes.

Among the changes which the Committee believed this reorientation would entail were 'an inevitable increase' in the involvement of estimates committees in judgements on policy matters. It also foresaw 'a shift in emphasis from consideration of the current year's estimates to the previous year's expenditure', in line with the new focus on 'outputs'
and performance (SEC, 1986:19). These changes may well be desirable, but if they were to occur the unique function presently performed by estimates committees would be abandoned for activities more like those of the Public Accounts and Expenditure Committees.

The value of estimates committee scrutiny varies among statutory authorities. It is of greater value for 'spending' agencies and of lesser value for agencies whose principal activity is regulatory or adjudicatory. (There is a similar variation in the value of the process among ministerial departments). Within the former group there are special problems with bodies such as the Australia Council which need to spread the making of important expenditure decisions over the financial year. The process is obviously of least value to parliament for the authorities which are largely outside its ambit: trading authorities are dealt with either superficially or not at all.

The claim that estimates committees have increased parliamentary control of finance is, however, subject to an important caveat. There is little evidence that members of parliament have become more willing to exert active control by seeking to modify estimates. The initiative of members of the House of Representatives in this area is in any case limited. Under House of Representatives Standing Orders (No.292) only ministers may move amendments which would increase proposed appropriations. Senators are not similarly constrained, although under section 53 of the Constitution the Senate may not directly amend budget bills but only
'request' amendments. The Senate does have a history of modifying financial legislation (see Odgers, 1976:410-19). But Senators' experience with estimates committees does not seem to have encouraged a greater desire to refashion expenditure proposals.

Ultimately, the fact that parliament is not interested in modifying the detail of the estimates means that the number of separate items under which funds are appropriated is largely irrelevant to the question of parliamentary control. The very detailed estimates which have been traditionally associated with the budgetary process for ministerial departments have had much more to do with Treasury/Department of Finance control than with parliamentary control (note Howard, 1986:54). We can conclude, therefore, that while the expenditure estimates of financially independent statutory authorities are certainly less subject to parliamentary influence than are those of departments of state, the consolidated estimates of budget-dependent statutory authorities do not imply any meaningful diminution of effective parliamentary control. To argue otherwise would be to contend that the contemplated move to more consolidated estimates for departments in accordance with current budgetary reform (see Howard, 1986:54-5) would also reduce parliamentary control. Despite some dissatisfaction among members of parliament with changes in the form of the budget, this view does not seem to have much support.
Ex Post Facto Financial Scrutiny

Let us now turn to the end of the Gladstonian circle to examine the other main point at which parliament is involved in the financial control process. The traditional instrument of its involvement here is the Joint Committee of Public Accounts (JCPA). But the work of the Auditor-General's office forms the basis of that of the JCPA and needs to be considered first.

A primary issue is whether or not the Auditor-General is able to audit agencies which are not funded by parliamentary appropriation. It has already been noted that there is no Australian counterpart to the principled limitations on parliamentary audit which were applied in Britain as part of a series of measures designed to isolate public corporations from parliamentary influence. Under the Audit Act the Commonwealth Auditor General has long had 'full and free access' to statutory authorities generally. Moreover, as the Audit Office noted in 1985 the enabling legislation of 'most' (in fact, almost all) statutory authorities 'includes express references to the appointment of the Auditor-General, his powers, responsibilities, and the submission and frequency of audit reports' (Auditor-General, 1985a:50). On very rare occasions, however, parliament has written into authorities' enabling legislation other arrangements for audit. The most important recent instance

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13. Audit Amendment Act 1948 (No.60) conferred on the Auditor General an explicit right to 'full and free access to all accounts, books, documents and papers in the possession of any authority established or appointed under any law of the Commonwealth.'
was the Australian Industry Development Corporation Act of 1970 which gave the Corporation board the right to utilize any approved auditor. But the history of this legislation is a good illustration of the move to tighten parliamentary controls. An amendment to the Act in 1983 repealed the previous audit provision and made the Auditor-General auditor of the Corporation and its subsidiaries.\(^{14}\)

While the principle of Auditor-General access to statutory authorities is thus well established, the Auditor-General's reports indicate several unresolved problems. Firstly, the absence of complete uniformity in basic audit provisions produces certain anomalies. For instance, in a few cases only a partial audit can be performed and the Auditor is not authorised to report the results of his audits (Auditor-General, 1985b:21-2). Secondly, over the past decade Auditors-General have complained regularly of restrictions on their ability to audit the subsidiaries of statutory authorities (see for example Auditor-General, 1986:89). As with the parent authorities, however, the trend in recent years has been towards greater access. Again the 1983 amendments to the AIDC Act, which \textit{inter alia} appointed the Auditor-General auditor of the five subsidiary companies, furnish an important example. Finally, on a couple of occasions in the 1980s conflict has arisen over the extent of the Auditor-General's authority to comment on the commercial judgements and methods of statutory trading.

\(^{14}\). \textit{Australian Industry Development Corporation Amendment Act 1983} (No.122). Note that under S.29(8) the Corporation retains the right to engage a private auditor as well.
enterprises and government-owned companies. Spokesmen for the particular bodies (Qantas and the AIDC) have argued that the responsibility of the Auditor-General ceases once he has satisfied himself that the actions taken are not unlawful and do not prevent the accounts from giving an accurate view of the company's affairs. The Auditor-General has argued in response that he has a general responsibility to ensure that Commonwealth enterprises are accountable, and that S.51A of the Audit Act gives him authority to include in his reports any information which he considers necessary to achieve that aim (see JCPA, 1985a:4-5, 22-3).

Today the Auditor-General undertakes two types of audit of statutory authorities. The first is an updated version of the traditional 'regularity audit' which involves inspection of financial systems, transactions and records in order to determine compliance with accounting, administrative, budgetary and financial statutes and regulations; examination of the 'probity and propriety' of all administrative decisions; and review of internal control and audit arrangements (Auditor-General, 1986:81). The second is termed 'performance' auditing by the Audit Office and is described by the latter as:

- evaluation of economy, efficiency and effectiveness of management of departments and other Commonwealth bodies, including review of: (i) utilization of human, financial and other resources; information systems, performance measures and monitoring arrangements; and (ii) procedures followed by auditees for remedying identified deficiencies (p.81).

Authority to undertake this second type of audit, the need
for which had been argued in the RCAGA Report of 1976, was conferred on the Auditor-General by an amendment to the Audit Act in 1979\textsuperscript{15}. The development of efficiency or performance auditing is, however, arguably as much a departure from as a reinforcement of the 'Gladstonian' conception of financial control. For that reason further comment on the change and its consequences will be reserved for the next chapter.

In any case, regularity auditing continues to occupy 'much the greater part' of the Audit Office's workload (Auditor-General, 1985a:9). Standard provisions for regularity auditing of statutory authorities are set out in the new Part XI of the Audit Act inserted in 1979. Division 2 of that Part relates to authorities 'required to keep accounts in accordance with commercial practice'; Division 3 relates to other authorities. The provisions of the respective Divisions are applied to statutory authorities either through a reference in an authority's enabling legislation or by regulation under the Audit Act (Auditor-General, 1986:83-4).

An important part of the regularity audit of statutory authorities, especially the trading authorities, is the audit of financial statements. This includes an evaluation of the accounting systems integral to many authorities' daily operations which generate the data summarized in the financial statements (Auditor-General, 1986:40). Two reforms introduced in 1983 have attempted to improve the value of statutory authorities' financial statements for

\textsuperscript{15.} Audit Amendment Act 1979 (No.8)
accountability purposes. Firstly, as a result of an amendment to the Acts Interpretation Act (by Statute Law (Miscellaneous Provisions) Act (No.1) 39/1983) all statutory authorities became legally obliged to present to parliament their annual reports, including audited financial statements, within six months of the close of their financial year. The importance of timely reporting is self-evident, so the point need not be laboured here. However, more will be said in the next chapter about the reporting reforms in the context of parliament's developing view of the significance of statutory authority annual reports. The second reform consisted in the tabling by the Minister for Finance of 'Guidelines for the Form and Standard of Financial Statements of Commonwealth Undertakings' to be applied to some 80 statutory authorities and a number of departmental undertakings (Department of Finance, 1983). It should be noted that the parliament, through its Joint Committee of Public Accounts, played an active part in the development of these guidelines (see JCPA, 1982 and 1983). The aim of the guidelines is to ensure the comparability of financial statements, adequate disclosure of financial performance and the application as appropriate of accounting standards promulgated by Australian professional accounting associations. As the enabling legislation of statutory authorities typically requires that financial statements be prepared in a form approved by the Minister for Finance, the latter has sufficient leverage to ensure that the Guidelines are acted upon.

According to the Senate Standing Committee on Finance
and Government Relations (1982a:124) the Guidelines establish a higher standard of disclosure than required by either Companies Acts or Stock Exchange regulations for private sector companies. This achievement means that the financial reporting of many statutory authorities compares more than favourably with that of ministerial departments which utilize a less comprehensive cash accounting system and are subjected to only rudimentary guidelines for financial statements (note SSCFGO, 1982a:124)\textsuperscript{16}. Some evidence is provided by a comparison of the Auditor-General's findings regarding the financial statements of statutory authorities and departmental commercial undertakings for the 1985-86 financial year. Of 108 audit reports on the financial statements of statutory authorities prepared that year, 22 were qualified on technical breaches of legislation and 24 were qualified for substantial reasons, generally to do with unsatisfactory accounting practices. (In all 80 individual matters were raised.) By comparison all 11 financial statements of the departmental undertakings were qualified for substantial reasons (63 matters were raised) (Auditor-General, 1986:42, 45). This result reflected what the Auditor-General described as 'a general attitude of indifference' by departments to the preparation of the statements (Auditor-General, 1985b:19).

The Auditor-General (1985b:21) has recently declared himself generally satisfied with the current audit

\textsuperscript{16} See the criticism of and recommended amendments to these guidelines in JCPA (1986:9-11).
arrangements for most statutory authorities. Audit quality, in turn, has direct consequences for the work of the Joint Committee of Public Accounts. There is a close working relationship between the Audit Office and the JCPA. This has its basis in the latter's enabling act which requires the Committee, _inter alia_, 'to examine all reports of the Auditor-General' and to report on any matters contained therein which it believes should receive the attention of the parliament (Public Accounts Committee Act 1951, S.8(1)). The Committee is permitted to use its discretion in selecting items from audit reports and normally consults with the Audit Office before making its choice. Further, the Audit Office supplies an officer to assist the committee at public inquiries (Auditor-General, 1986:45-6). JCPA reports fairly often address matters connected with statutory authorities\textsuperscript{17}.

Reflecting the growth of parliamentary interest in the financial accountability of statutory authorities, the right of the JCPA to scrutinize these bodies has recently been clarified. JCPA access to authorities funded by means of parliamentary appropriation has never been a problem - it followed as a matter of course from the requirement for Committee scrutiny of the statements of 'Expenditure from the Consolidated Revenue Fund' and 'Expenditure from the Advance to the Minister for Finance'. But one of the others could be examined only if attention was drawn to it in the Auditor-

\textsuperscript{17} See the complete list of reports to October 1984 in JCPA (1985b).
General's annual report (or supplements to the latter). The Public Accounts Committee Amendment Act 1979 (No.187) removed this impediment 18. The change is a good indication of the parliamentary attitude towards control of statutory authorities at this time, but its practical effect seems not to have been great. As was observed in the debate on this amendment, the Auditor-General had when necessary in the past employed the 'subterfuge' of mentioning an authority in a report so as to provide the Committee with the pretext it needed (House of Representatives, CPD, 15 November 1979:3125).

Public Works Committee
We have now dealt with the most important mechanisms associated with parliament's traditional function of financial control. For the sake of completeness, however, it is worth drawing attention to the role of the Joint Public Works Committee. In addition to checking the costing of public works, this committee is required to examine, for each public work, 'the stated purposes of the work and its suitability for that purpose; the necessity for, or the advisability of, carrying out the work; [and] the most effective use that can be made, in the carrying out of the work, of the moneys to be expended...' (Pettifer, 1981:595). While the value of this committee is often questioned (for example Emy, 1978:485) and a parliamentary inquiry has even

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18. The amendment added S.8(1)(aa) to the Public Accounts Committee Act 1951.
suggested its abolition (JSCPCS, 1976), it is the only committee which allows members of the House of Representatives to scrutinise expenditure before that expenditure has been committed. Moreover, the committee has shown that it is not prepared merely to rubber stamp the capital works proposals referred to it; on at least one recent occasion the failure of a minister to explain adequately the rejection of a Committee report provoked a lengthy public dispute between the Committee and the government (see Uhr, 1981:34-5).

Until 1981 works undertaken by statutory authorities did not fall within the Committee's remit. But, as a result of the efforts of the Committee, in that year the government introduced amendments to the Public Works Committee Act to give it authority to scrutinise the works of statutory authorities and other governmental bodies, as well as overseas projects\(^\text{19}\). The coverage of statutory authorities is not complete. Specific exemptions are made for a number of bodies, including the National Capital Development Commission, tertiary education institutions in the Australian Capital Territory and the Parliament House Construction Authority. Further, the Act confers on the government the power to exclude other authorities by regulation. In his speech introducing the amendments the minister suggested that trading authorities which compete with the private sector would be candidates for exemption, and Trans Australian Airlines and Qantas were given as examples in the

\(^{19}\) See *Public Works Committee Amendment Act 1981*(No.20).
accompanying notes (House of Representatives, CPD, 5 March 1981:488-9; see also 746-51). In addition, only public works whose estimated cost exceeds $2 million ($6 million from July 1985) may be examined, and particular works may be declared urgent by resolution and permitted to proceed without being referred to the Committee (Pettifer, 1981:596). Despite these constraints, the Public Works Committee is an important mechanism of scrutiny of statutory authorities with large capital budgets. Examination in 1985 of a proposal by Telecom for a new State Head Office building in Sydney estimated to cost $45.5 million is an illustration of the substantial amounts of money regularly involved (see House of Representatives, CPD, 9 October 1985:1732)\textsuperscript{20}. Moreover, from the point of view of the general argument of this chapter, the legislative changes made in 1981 are further evidence of parliament's efforts to extend to statutory authorities the full force of the control arrangements devised for ministerial administration.

Conclusion

This chapter has reinforced the argument of the preceding two. The main conclusion of Part II of this thesis is that the concept of parliamentary control of administration has greater relevance for the accountability of statutory

\textsuperscript{20}. Note that Telecom, the Overseas Telecommunications Commission, Aussat and Australia Post have recently been removed from the ambit of the Public Works Committee (see Minister for Transport and Communications, 1988a:11).
authorities than the conventional wisdom would lead us to believe. The familiar parliamentary mechanisms associated with the control of ministerial administration are by and large also available for the control of statutory authorities, and, moreover, are extensively used. The result achieved is not obviously inferior to that achieved for ministerial departments. While financial control is weaker for trading authorities, control through legislation is stronger for statutory authorities generally. Administrative oversight, the third element of parliamentary control, varies greatly from agency to agency, but seemingly not in a way which adversely affects the scrutiny of statutory authorities as a whole. Indeed, given the disproportionate parliamentary attention paid to agencies delivering services to the public, among which statutory authorities are well represented, oversight may even be weighted in favour of statutory authorities.

Nor is this situation simply a consequence of the various reforms of the late 1970s and the early 1980s. We have seen that the institutional arrangements for parliamentary interaction with Commonwealth statutory authorities have never incorporated a strong version of the 'arm's length' principle. However, the present chapter demonstrates that parliamentary control of statutory authorities has certainly been strengthened in recent years. Improvements have been achieved, firstly, by extending more fully to statutory authorities pre-existing mechanisms of control and, secondly, through the development of
parliament's capacity for both ad hoc inquiry and systematic financial scrutiny.

The main problem with the accountability of statutory authorities, then, is not that they are less amenable to parliamentary control than ministerial departments. Rather it is that too much emphasis has been placed on such control as the key to accountability. This is most obviously so because for statutory authorities, as for ministerial departments, parliamentary control, in any strong sense of the term, is an unrealistic objective. It has been noted in this chapter that parliamentary scrutiny is uneven and often superficial. Improvement is surely possible, but the interests of members of parliament and the nature of parliamentary politics would seem to impose clear limits on what can be achieved. That parliament must play a major role in arrangements for administrative accountability is not in dispute. But this does not necessitate control. Moreover, parliament may make its contribution within a scheme of accountability incorporating a variety of mechanisms additional to those we have examined here.

In the case of statutory authorities the unsuitability of some conventional mechanisms of parliamentary control constitutes an additional incentive to explore alternatives. In Part III of this thesis it will be argued both that alternative approaches to accountability are already present in Commonwealth government and that the development of such alternatives offers the best prospect for further improvement in the accountability of statutory authorities.
PART III

THE ACCOUNTABLE STATUTORY AUTHORITY:
ALTERNATIVE PERSPECTIVES ON ADMINISTRATIVE ACCOUNTABILITY
CHAPTER 7

THE MANAGERIALIST PERSPECTIVE ON ACCOUNTABILITY

This chapter examines a currently influential conception of administrative accountability which, while quite compatible with the basic features of responsible government, departs significantly from the traditional Australian approach treated in Part II. I have termed this a managerialist conception in recognition of its close association with a dominant trend in administrative reform in Anglo-Saxon parliamentary democracies in the 1980s (for Australia see Emy and Hughes, 1988:337-68; Painter, 1988; Considine, 1988; Paterson, 1988; Davis, Weller and Lewis, 1989).

Little has been written about the history of 'managerialist' ideas in public administration (but see Garrett, 1980:130-36; Gray, 1982), but this is not the place to attempt to rectify that deficiency. For present purposes it is sufficient to note that the major inquiries into national government administration in Britain, Canada and Australia in the period 1960-1980 - namely, Glassco (RCGO, 1962), Fulton (CCS, 1968), Coombs (RCAGA, 1976) and Lambert (RCFMA, 1979) - all argued for changes to administrative arrangements which would achieve three purposes. These were, firstly, to improve management skills in the respective public
services in response to a shift in the nature of governmental activity, especially since the Second World War, from regulation to service delivery; secondly, to delegate authority for resource management down the administrative hierarchy so as to unify policy and resource allocation responsibilities; thirdly, to develop information systems and objective measures of performance which would enhance the capacity of top bureaucrats and the political executive to 'steer' program development.

These inquiries, together with subsequent reform efforts, challenged two important assumptions, or habits of thought, about administrative accountability. One was the tendency, implicit in the approach discussed in Part II, to treat accountability and control - that is, political control of administration - as virtually synonymous. The desire of reformers simultaneously to devolve administrative responsibilities and to enhance 'strategic' direction, or steering capacity, seems to have led them to draw an increasingly clear distinction between the two concepts.

The other assumption was that there is normally a sharp trade-off between accountability and efficiency. This provided a classic rationale for the statutory authority, namely that it facilitated a reduction in political control over administration (and hence in accountability) in order that certain functions could be executed more efficiently. It is true that recent 'managerialist' reform initiatives have

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1. But note that the Australian public sector has always been strongly oriented to the production of goods and services (Paterson, 1988:289).
been motivated by, if anything, a greater awareness of the possible adverse effects of close control on administrative efficiency and effectiveness. But, by distinguishing clearly between control and accountability, reformers have been able to suggest that, within broad limits, accountability and efficiency are directly rather than inversely related, are complementary rather than rival values. Indeed, they have gone further. Since the mid-1970s the central goal of administrative reform has very definitely become the improvement of program efficiency under increasing resource constraints, as size and rate of growth of government have become major political and economic issues (see Howard, 1986; Painter, 1987). In this environment the strengthening of accountability for the exercise of devolved managerial functions has tended to be seen as a primary means of raising bureaucratic efficiency (see for example Keating, 1988a).

Of the several inquiries referred to above, the Canadian Lambert Commission produced the strongest statement of the managerialist position in general, and of the managerialist approach to accountability in particular. It is relevant to draw attention to the report of this body because its spirit and language, indeed many of its detailed proposals for institutional reform, have been very much a part of administrative, and in particular statutory authority, reform in Australia in the 1980s. Lambert conceptualised government

2. Note for instance the subtitle of Davis, Weller and Lewis (1989): 'reconciling accountability and efficiency'.
as an essentially managerial activity. Accountability, in turn, was seen as an aspect of the governmental 'management system', or 'that quality of a system that obliges the participants to pay attention to their respective assigned and accepted responsibilities' (RCFMA, 1979:10; emphasis in original). We shall refer below to Lambert's deployment of the control-accountability distinction. But even greater emphasis was placed on the contribution of accountability to efficient management:

Accountability is the fundamental prerequisite for ... ensuring ... that power is directed towards the achievement of broadly accepted national goals with the greatest possible degree of efficiency, effectiveness, probity and prudence (p.21).

The Report went on to identify weaknesses in the management of Canadian government departments and agencies as resulting most importantly from inadequacies in accountability arrangements:

In the absence of a requirement to account adequately for the conduct of their affairs, departments and agencies have been under little compulsion to husband the resources available to them ... and to ensure that they were being employed with the greatest possible efficiency and effectiveness (p.26; see also p.42).

A managerialist approach to accountability has three main features which distinguish it from the approach familiar in Westminster-style systems of government through most of the

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3. Note for instance the following statement: 'Management in the public sector has suffered traditionally from a narrow definition and indeed a narrow perception of what was really involved in it. This in turn led to abnormal stress being placed on the differences in the roles of policy adviser and manager. A good manager in the public sector should see his mandate as understanding policy objectives and priorities as established by the political process, working to help develop programs to implement these policies and priorities, and then seeking adequate resources to implement them effectively and with due regard to economy and efficiency' (p.26).
twentieth century. These may be briefly outlined here, with a more detailed exposition being reserved for the body of the chapter.

The first feature is an emphasis on 'strategic direction' or 'strategic control' over and within administrative organizations, accompanied by broad delegations of authority. This contrasts with the close or detailed control and correction which long constituted the principle, if not always the practice, of modern public services. The standard administrative 'control' is the need to gain clearance for a proposal with a superior, with the possibility of amendment, before proceeding to implementation. As Dunsire (1981:177) has noted, a shift to strategic control implies 'taking a longer or broader view of the control objective', relying less on 'the "bottleneck" one-by-one or project-by-project controls' and more on the setting of broad parameters and guidelines. In this process the superior loses some of his/her capacity for 'immediate and detailed error-correction' as the agency itself is 'induced to do its own day-to-day monitoring and correcting' within the specified limits (emphasis in original).

The second feature follows from this increase in agency self-monitoring and self-correction. From the managerialist perspective accountability rests heavily on enforced agency self-evaluation and reporting. Greater self-evaluation is partly a matter of necessity under conditions of strategic control and delegated authority: if one moves away from close external supervision the capacity for external evaluation is
also reduced. But it is also the case that managerialism places a positive value on agency self-evaluation, which it sees as integral to the task of management (see for example Keating, 1988a:78). However, as Wildavsky (1972) has argued, there are limits to the ability of an organization to evaluate itself. Hence the cognate emphasis in managerialist reform initiatives on improving information flows to external or quasi-external evaluators (ministers, the Auditor-General, parliament) by means of stricter reporting requirements, external involvement in the selection of performance indicators and so on. The aim is in part to duplicate the task of evaluation and in part to ensure that agency self-evaluation satisfies certain objective criteria.

The third feature of the managerialist approach to accountability concerns the quality of responsiveness involved in the accountability relationship. In the past administrative accountability tended to mean responsiveness to political demands, or to the 'value expectations' of politicians (ministers and members of parliament). This is evident in the pattern of evaluation by politicians. Traditionally, as Linder (1978:191) has noted for the United States, program evaluation was typically undertaken only when programs or their administrators were failing seriously to meet the expectations of politicians. Gradually, however, program evaluation is being 'rationalised' in the Weberian sense. This means, firstly, that evaluation is increasingly regularised or systematised and governed by 'instrumental' or process values, rather than political values. Secondly, it
means that the process is increasingly professionalised, whether the 'professional' evaluators are auditors authorised to undertake 'performance' audits, or members of parliament organized into specialist select committees, supported by smaller or larger numbers of professional research staff. The rationalisation of program evaluation has proceeded further elsewhere (especially in the United States - see Rosen, 1982; Dodd and Schott, 1979; Ripley and Franklin, 1980) and within Australia practice lags considerably behind the aspiration (see for example JCPA, 1989:221-47 and passim). But the development is nevertheless unmistakable. The implications for accountability too are clear. Simply stated, the traditional view is that an agency is accountable if it satisfies its political masters (and has demonstrably complied with its legal obligations and any additional public sector requirements); whereas, on the managerialist view, accountability requires the agency to meet certain objective tests, or to satisfy certain objective 'specialised performance values' (Linder, 1978:191). It is responsiveness to such values which characterises accountability from the managerialist viewpoint.

The three features of the managerialist conception of accountability outlined above constitute the organizing principle of this chapter. The basic tasks of the chapter are to substantiate the claim that we have identified a distinctively different approach to accountability and to show that the latter is an important influence in the contemporary design and redesign of accountability regimes for Commonwealth
statutory authorities. The immediate purpose is to show the potential of the managerialist approach to alter the terms of debate about the accountability of statutory authorities. But it will ultimately be argued that, insofar as administrative accountability can be adequately conceptualised in managerialist terms, the statutory authority, far from being an impediment to accountability, is in fact a good basis upon which to build an accountable public administration.

I. STRATEGIC CONTROL
Linder (1978:182) has shrewdly observed that 'the quest for accountability is a response to the biases associated with discretion' (my emphasis). One general means of attacking such biases is to reduce, or preferably eliminate, discretion. There are two main methods of achieving this: what we may term 'type 1' control, which involves the need for subordinates to receive clearance from superiors before proceeding; and 'type 2' control, the more 'hands-off' form, which involves the setting of policy and procedural guidelines by superiors within which subordinates must work. The other general approach to the problem of accountability is to tackle only the biases associated with the exercise of discretion rather than the discretion itself. There are a variety of institutional mechanisms which might be employed to this end, including appeals procedures; direct representation of outside interests in decision making; wider participation of 'insiders' in the exercise of discretion, for instance through formalised objective setting and policy planning processes;
and external reviews of performance or other means of requiring the public justification of the use to which discretion is put.

As understood here, strategic control draws upon both of the approaches outlined above. It emphasises objective setting and processes of periodic assessment by superiors to establish overall direction (that is, to limit discretion) and to combat biases in the use of discretion. But it seeks to minimise the use of direct, or operational, controls - especially type 1 controls. The formulation of strategies and policies to achieve objectives is broadly delegated to subordinates (who will usually have participated in the creation of the primary objectives) and the performance of the subordinates against agreed criteria is formally assessed and must be justified at set intervals.

In its application to public administration, and statutory authority administration in particular, strategic control is not confined to relations within the single administrative organization. What gives the concept its relevance to the general issue of public accountability is its application to relations between institutional actors - specifically between agency management, agency board, minister and parliament. These actors, in a context of strategic control, ideally constitute a clearly defined hierarchy of levels for the setting of objectives and policy guidelines (and for review): objectives are broadest and most firmly fixed at the parliamentary level (where they are incorporated in agency statutes), most detailed and flexible at the level
of agency senior management. (The agency itself may also be organized into a hierarchy of objective setting and reviewing responsibilities).

Strategic Control and Statutory Authorities

It should be apparent that the notion of strategic control as outlined here has particular relevance to statutory authorities. Indeed it is arguable that the design of Commonwealth statutory authorities has generally expressed this idea quite clearly. The defining feature of a statutory authority is the assignment of primary decision-making responsibility in an area of administration to an entity other than a minister. However, as we have shown, parliament and ministers are normally placed in a position of strategic control by means of several mechanisms. Firstly, the enabling statute provides a formal 'mandate' (though the term has not been used) for the authority, typically comprising a set of statutory 'functions' (sometimes also 'purposes' and 'policy guidelines') and the powers thought adequate to accomplish the set tasks. Secondly, the minister is typically given a power of direction (qualified or unqualified) over the authority, in order where necessary to lay down the government's objectives and policy guidelines for the authority within the more general statutory framework. The direction and guidance thus provided by parliament and minister was, moreover, historically well understood to be different from control. From the commencement of the modern era of statutory authority creation, with the establishment of railway commissions in
late nineteenth-century Australia, there was seen to be a need to avoid excessive detailed controls so that responsibility could be firmly fixed on the statutory office holders. 'Recoup' provisions, where used, and the frequent requirement for 'open' ministerial directions are further evidence of this desire. Finally, the usual statutory requirement for the authority to submit an annual report to the minister for tabling in parliament was envisaged not only as a functional substitute for close parliamentary supervision but also as providing an annual opportunity for a review of the performance of the agency. (Ministers are given additional opportunities for evaluation, for instance through their responsibility for appointments and their receipt of quarterly financial statements from trading authorities.)

While the basic administrative framework for statutory authorities thus conforms to the concept of strategic control, evidence presented in earlier chapters shows that practice has departed from that ideal in a number of ways. In the first place, parliament has never clearly defined its role in this area as involving primarily the rigorous definition of an authority mandate and periodic reviews of authority performance. As we have seen, statements of 'functions' in authority statutes are often both permissive and imprecise. Importantly, too, functions are not the same as objectives (though lists of statutory functions sometimes mix objectives, or purposes, with statements of tasks and permissible activities). Again, the evidence of members' attitudes, as revealed in debates on authority legislation, shows that they
regard the statute as something less than the foundation of a system of strategic control. A key reason for this is the tendency, documented at length in Part II, for parliament to model its relations with statutory authorities on the standard Westminster model of ministerial administration and parliamentary control of administration through ministers. For the same reason, 'parliamentary control' of statutory authorities and irregular review, in response to crises, has generally prevailed over periodic review focused on parliamentary consideration of annual reports.

Ambiguity has also surrounded the proper role of the 'responsible' minister with regard to the statutory authority. An accepted set of principles governing the use of the ministerial power of direction has never been established, with the consequence that the instrument has generally lacked legitimacy. While it is widely assumed that ministers often attempt to influence authorities' decision-making, use of formal directions for this purpose has traditionally been very rare. To be sure, there has been an understanding that the directive power should be used infrequently and mainly to lay down general policy, rather than to interfere in matters of administration. But such an understanding runs into the old difficulty of distinguishing policy matters from administration. Moreover, there is an important difference between the imposition as a last resort of a clear statement of government policy on a potentially errant authority, on the one hand, and the use of directions at more frequent intervals to 'flesh out' the statutory mandate, on the other. The
latter understanding of the ministerial directive power has not in the past been evident in Australia. Ministerial control has not necessarily been any less as a result, but it has been less clearly of a strategic sort.

The purity of the strategic control model of minister-authority relationships has also been sullied in practice by the existence in the typical authority statute of a more or less extensive range of type 1 ministerial (and other) controls designed to limit discretion in matters of finance, resource allocation and general policy making. These have been introduced for macro-economic policy reasons, or to ensure conformity with other government policies, or to minimise the potential for adverse public responses to authority decisions (for example, pricing decisions).

Finally, mirroring the ambiguity surrounding the roles of parliament and the minister, the role and responsibilities of the authority board in its relations with agency management, on the one side, and the minister, on the other, has been another point in the system of accountability relationships at which the notion of strategic control has not been fully or clearly established. Ministerial, rather than board, appointment of the chief executive officer under many statutes has weakened the status of the board. The authority of the board over agency policy has also been weakened by ambiguity surrounding the obligations of departmental representatives typically appointed to boards. (Are they there to keep the minister informed? Or to bring ministerial influence to the heart of the board decision-making?) In some
cases the lack of a clear focus of responsibility on the board has created a tendency for government to deal directly with the chief executive, with the board as a largely irrelevant onlooker.

Adverse comments on these departures from the strategic control model, and recommendations designed to refashion the control regime to bring it closer to the model, have been the stock in trade of the small amount of critical commentary there has been on Commonwealth statutory authorities (see especially JCPA, 1954 and 1955; Wettenhall, 1976). The focus has, however, been mainly on the relationship between ministers and statutory boards, in accordance with the assumption that the main problem with statutory authorities was to work out the extent and nature of the necessary departure from full ministerial responsibility. The respective roles of parliament and the board with respect to agency management have received less attention. Moreover, while the idea that strategic control is a desirable principle to structure relationships involving statutory authorities has been strongly implied by proposals for reform over the years, there has been little attempt in this literature to work out a comprehensive, well articulated model of the desired relationships.

The Lambert Report
These deficiencies explain the wide appeal of the Lambert

4. My interviews indicated that this was much more the case with some authorities (for example Telecom) than others (for example the Australian Industry Development Corporation).
Commission's analysis. Lambert's reading of the situation in Canada was similar to that sketched above for the Australian Commonwealth. Moreover, neither the ideas underlying Lambert's analysis nor his prescriptions would generally have struck Australian readers as particularly novel. But the comprehensiveness and clarity of the model developed in the Lambert report distinguishes that document from its counterparts in the Anglo-Saxon parliamentary democracies. Lambert's starting point was to identify four key elements in any accountability regime (RCFMA, 1979:274-5). These were:

- **mandate**: which 'defines what must ultimately be answered for by the board', and consists in 'a rigorous definition of tasks, purposes and objectives assigned to an agency and a clear delegation of the powers and managerial authority necessary to accomplish them' (p.274);
- **direction**: whose purpose is 'to define and interpret the mandate' (p.334) and which 'requires a clear statement of the powers that parliament and the Government reserve to themselves... and of the conditions under which they can be used' (p.274);
- **control**: the choice and application of instruments to 'affect the delegation of powers to, and managerial authority of, the Crown agency' (p.274); and, finally,
- **evaluation and reporting**.

The next step in logical sequence was to identify specific instruments associated with each of these elements (see RCFMA, 1979:301-7). The report then showed how parliament, ministers, central agencies and statutory
authorities, as the actors controlling or sharing the use of the various instruments, should relate to each of three types of agency, namely 'independent deciding and advisory bodies', 'Crown corporations', and 'shared enterprises and quasi-public corporations'.

Lambert's objective for the wholly public agencies (that is, the first two types listed above) was to create as nearly as possible a framework of strategic control (the term itself was not used) over the differing forms of administrative discretion properly assigned to each agency type. This emphasis is particularly apparent in the desire to expand the complementary roles of mandate and evaluation in accountability regimes, and correspondingly to reduce the reliance on 'on going' controls as much as possible (see RCFMA, 1979:303-5). It is also apparent in the considerable effort devoted to differentiating and delimiting the roles of parliament, minister and board in order to maximize the freedom of the actors closest to the administrative task, while also improving the ultimate 'steering' capacity of the elected actors. For Lambert the relevant agent at each level of the hierarchy of strategic control has four key managerial responsibilities - objective setting and policy guidance; appointments; monitoring; and evaluation - which together create a capacity for strategic control. Lambert set out to show in some detail (in Chapters 18 and 19 of the Report) how these responsibilities could be arranged into a hierarchy so that each level could play a role appropriate to its political status and managerial capacity, without encroaching
excessively upon, or obfuscating, the responsibilities of its counterparts elsewhere in the hierarchy.

Towards Strategic Control for Commonwealth Statutory Authorities

Reform of accountability regimes for Australian Commonwealth statutory authorities over recent years has been broadly along the lines laid down by the Lambert Commission. This is not to suggest that the latter body has been the only or the major influence; the Australian reforms are the end product of an Australian history of criticism, inquiry and report which has been outlined in Chapter 3. There have also been some notable departures from Lambert's prescriptions. For present purposes, however, the point is that the trend in the design of accountability regimes for Commonwealth authorities is towards a significantly stronger institutionalisation of the idea of strategic control already implicit, but often only weakly established, in existing arrangements. This can be demonstrated through an examination of four aspects of recent changes. These are:

i) a strengthening of the role of the authority statute as 'mandate';

ii) greater emphasis on, and clarification of, the use of the ministerial power of direction;

iii) a reduction of 'on going' controls over authority boards, especially those engaged in trading activities; and

iv) a strengthening of the role of the authority board in
the overall system of control and accountability. These will now be considered in turn. Another change which has strengthened strategic control is the development of instruments for regular evaluation and review of statutory authority performance. This important matter will be dealt with at length in the next section.

The Statute

For Lambert (RCFMA, 1979:301-2) a fundamental role of the authority statute was to provide a clear and comprehensive statement of the 'tasks, purposes, objectives and powers' of the authority it establishes. In particular, it should make clear what the parliament, whose instrument the statute is, requires the authority to attempt to achieve. This was seen to be important as the first stage of the objective-setting process which not only directs the authority's activity but also assists the assessment of its performance.

From the managerialist perspective it is thus a weakness of the statutes of Commonwealth authorities that they have not traditionally attempted explicitly to define objectives. More or less meaningful statements of 'functions', or tasks expected to be performed, were always present and were sometimes accompanied by statutory policy guidance of some kind. But only very rarely (as for example in the Australian Tourist Commission Act 1967) was the mention of a 'purpose' thought necessary.

Against this background, a development of significance over recent years is the growing use of 'objects' provisions
in authority statutes. Virtually unknown until the early 1980s, these provisions have appeared since 1983 in about one half of statutes creating or reconstituting Commonwealth authorities (see Table 7.1). In addition, where statements of objectives are not present statutory functions and policy guidelines often contribute, more so than previously, towards the same end by assisting to define the authority's mission, guiding the pursuit of long term goals, establishing or clarifying priorities, and the like.

Table 7.1 Use of Statutory Objectives and Policy Guidelines in Statutory Authority Enabling Legislation, 1983-88

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Statutes</th>
<th>No. with an Objectives Section</th>
<th>No. of Remainder Containing Policy Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>7</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>1984</td>
<td>5</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>1985</td>
<td>8</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>1986</td>
<td>7</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>1987</td>
<td>9</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>1988</td>
<td>5</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>41</td>
<td>19</td>
<td>9</td>
</tr>
</tbody>
</table>


To a degree this change is a matter of symbols and terminology. One can question the value of necessarily broad statutory objectives for purposes of guidance or evaluation of performance. Also, it might be pointed out that statements of functions have in the past sometimes included de facto objectives, and that the contents of objects and functions provisions in recent statutes are not always easily differentiated. But it is important to recognize that what
the statute symbolises is likely to be of practical significance. Whether the statute is seen as establishing an entity authorised by parliament to pursue a specific mission, or alternatively (as hitherto) as defining a field of administrative activity and perhaps setting a few ground rules for that activity, will surely influence attitudes about performance and evaluation.

Changes in the content of statutes suggest a shift towards the first of the above understandings - at least within the executive, which dominates the drafting of legislation. But a recent report on the Australian Broadcasting Tribunal by a House of Representatives committee provides a little evidence that the managerialist view of the constituting statute has growing support among members of parliament (see HRSCTCI, 1988). At the Tribunal's establishment in 1976 and 1977 members of parliament had shown an almost total lack of interest in the virtually unlimited discretionary powers conferred on the Tribunal to perform its licensing function. In marked contrast the 1988 report argued a sophisticated managerialist case for the inclusion of a specified set of objectives in the enabling legislation5 (see especially HRSCTCI, 1988:16-19).

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5. This outcome cannot be attributed solely to an autonomous change in attitudes among members of parliament towards governance of statutory authorities. An Administrative Review Council report in 1981 (ARC, 1981), controversy over changes to the Broadcasting and Television Act in the same year, and submissions from the Department of Transport and Communications and the Tribunal itself to the Committee's inquiry requesting statutory policy objectives were obvious influences on the committee members.
Ministerial Direction

The second notable development of recent years is the growth in legitimacy of the ministerial power of direction as an instrument of strategic control. This has occurred in line with an emphasis on the idea that a key managerial function of the minister is to interpret, or 'flesh out', the statutory mandate in certain non-extraordinary circumstances. At the same time, however, new instruments have been created to assist in the performance of that function, which means that any increase in the use of the directive power is likely to be less than might otherwise be expected.

In fact two distinct conceptions of the role of the power of direction appear to be present in Commonwealth statutes in the late 1980s. The first envisages relatively frequent use of the power, along the lines sketched in the report on the Broadcasting Tribunal referred to above. The report noted that the problem with statements of objectives in authority statutes is their inevitable generality. More detailed objectives and policy guidelines are necessary to guide decision making in the organization, especially where trade-offs between objectives are necessary or where alternative means of achieving objectives are available. Therefore, the report recommended that the Act be amended to enable the minister from time to time to impose upon the Tribunal a statement detailing the way in which its statutory objectives should be achieved⁶ (HRSCTCI, 1988:19-20).

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⁶. This is arguably less novel than it may seem. It is worth noting that a requirement that the authority have regard to government policy is included in many authority statutes. It
The second conception envisages use of the power only in exceptional circumstances. The statutes of trading authorities and primary produce marketing authorities have over recent years tended to embody this idea. In these cases Acts now commonly create an alternative instrument for regular ministerial input into the establishment of a policy framework for the authority - namely medium term corporate plans and, sometimes, annual operating plans as well. More will be said about these instruments later. But where they exist the use of the ministerial directive would seem to be restricted to those unusual circumstances where serious conflict with government policy is imminent, or where the authority feels a need for immediate clarification of some aspect of its mandate.

In order for the ministerial directive to realise its potential as an instrument of strategic control three conditions must be satisfied: the directive power must be a standard part of authority statutes, it must be viewed by ministers as a politically available instrument, and there must be both an understanding of the appropriate role of the power among relevant actors and some means of bringing this understanding to bear upon ministers tempted to abuse the power. These conditions are close to being achieved in the late 1980s.

With respect to the first condition, the statutory power of ministerial direction, always very common in
Commonwealth authority statutes, has become virtually universal in the 1980s. There is not now, nor has there been for a decade, any debate about the application of such a provision to a trading authority. But two recent examinations of its employment among what Lambert termed 'independent deciding and advisory bodies' may be referred to to illustrate current thinking in government and parliamentary circles about the breadth of its application.

One examination concerned the prominent advisory body, the Industries Assistance Commission (IAC). The IAC Act 1973 had been amended in 1978 to permit the minister to inform the Commission (under S.22(2)) of any matters additional to the policy guidelines contained in the Act and (under S.22(3)) of any priorities among the guidelines to which it should have regard in the performance of its functions. In 1984 the report of a major review of the IAC was published (RIAC, 1984). The inquiry had received conflicting submissions about the 1978 amendments; in response it supported the retention of S.22(2) but recommended the repeal of S.22(3). Bolstered by the new conventional wisdom, however, the minister was able, without political difficulty, to dismiss this recommendation as a violation of the 'principle' that the government should determine priorities among policy guidelines (Senate, CPD, 7 June 1984:2786). This argument would not have been nearly so readily accepted a decade earlier.

The other examination formed part of a House of Representatives Expenditure Committee inquiry during 1984-86 into the Australia Council and Commonwealth support of the
arts in general. The inquiry received criticism of the informal arrangement for ministerial policy input which had grown up in the absence of a ministerial power of direction in the 1975 Act. This involved a written communication to the Council after the budget was presented in parliament, otherwise known to Council members and staff as 'the letter that comes with the cheque'. The Committee concluded that this was productive of uncertainty in the government-Council relationship and recommended that the minister be empowered under the enabling Act to direct the Council, but not on individual grants (see HRSCE, 1986b:71-9).

Evidence that ministers are today more prepared than previously to countenance use of the directive power, the second condition, is provided by my survey of debates on authority legislation in the 1980s (referred to in Chapter 3). As always the powers conferred on ministers, and the likely effect of these on the functioning of authorities, were closely scrutinised in parliamentary debate. But ministers were more forthright than their 1970s predecessors in stating their need for considerable powers, both in order that authorities should operate in accordance with declarations of government policy and to ensure adequate accountability. Moreover, to an extent this was accepted by members of parliament; in comparison with the earlier set of debates examined the relationship between ministers and authorities was discussed with a greater appreciation of the case for (strategic) controls.

The third and final condition, the presence of adequate
restraints to prevent abuse of the power, has been satisfied in part by the growing influence of the managerialist conception of the minister's role vis-a-vis quasi-independent authorities. But there are also formal restraints in the form of statutory requirements for openness in the use of the directive power. These have been strengthened in recent years and applied more uniformly. They include, at a minimum, prompt publicity of directions issued and the recording of directions in the authority's annual report. Such provisions are now virtually universal. Less commonly, but still fairly frequently, parliament is given an opportunity to supervise the issue of directions through a statutory requirement that they be laid before the parliament (for possible disallowance), sometimes within a specified time.

A further means of ensuring that the ministerial directive is used for the purpose of strategic rather than detailed control is for some form of explicit statutory constraint to be imposed on possible uses of the instrument. For instance, it is common in the case of granting authorities for the minister to be proscribed from issuing directions regarding particular recipients. But there is great variety among recent statutes in the extent and nature of the constraints on ministers. The range of options in use extends from no restriction (as in the Australian Institute of Sport Act 1986, No.103); to an obligation on the minister merely to satisfy himself on certain matters before issuing a direction (as in the Australian Nuclear Science and Technology Organization Act 1987, No.3); to a requirement for
consultation between minister and authority (as in the Australian Institute of Health Act 1987, No.41); to the limiting of directions to the laying down of general principles (as in the Anti-Dumping Authority Act 1988, No.72); to the specification of matters on which there can be no direction without a prior inquiry (as in the Federal Airports Corporation Act 1986, No.4); to a proscription on the issue of directions on particular cases (as in the Management and Investment Companies Act 1983, No.123); to a restriction of directions to specified matters only (as in the Aboriginal Land Grant (Jervis Bay Territory) Act 1986, No.164).

Corporate Plans

The appearance in recent authority statutes of a requirement for the board to prepare a formal 'corporate' or 'strategic' plan has provided an important new instrument for ministerial guidance. Before we examine the way in which ministerial input occurs, however, it is worth noting that the growth of statutory provisions for corporate planning is a good indication of the strength of the managerialist tide in Australian public administration. Corporate planning is the essence of contemporary managerialism (see for example Beringer, Chomiak and Russell, 1986). In managerialist thinking a corporate plan is 'the vehicle for defining and refining the corporation's mandate' (RCFMA, 1979:335); it 'provides a collective and functional identity for the organization as a whole'; and it 'should be a dynamic framework for communicating corporate objectives and
priorities' (Beringer et al., 1986:54). To perform this role the plan should include such components as a situation review, a statement of objectives, an account of strategies chosen to achieve the objectives, a set of policies for implementing strategies in specified circumstances, and in greater or lesser detail the proposed allocation of resources. The formal plan itself, however, should constitute only the end point of an extensive process of discussion and discursive formation of commitments, both within the organization and in association with major 'stakeholders' (see Beringer et al., 1986:53-83).

A corporate planning provision has become a fairly common feature of authority statutes in the 1980s. Table 7.2 lists the 22 examples discovered in statutes passed into law between 1983 and 1988.
Table 7.2 Statutory Authority Legislation Establishing a Corporate Planning Requirement, 1983-88.

<table>
<thead>
<tr>
<th>Year</th>
<th>Legislation</th>
</tr>
</thead>
</table>
Australian National Railways Commission Amendment Act 1983, No.140 |
| 1984 | Australian Meat and Livestock Corporation Amendment Act 1984, No.57  
Canned Fruits Marketing Amendment Act 1984, No.148 |
Australian Sports Commission Act 1985, No.77  
National Parks and Wildlife Conservation Amendment Act 1985, No.94  
Rural Industries Research Act 1985, No.102  
Australian Trade Commission Act 1985, No.186 |
| 1986 | Federal Airports Corporation Act 1986, No.4  
Dairy Product Act 1986, No.54  
Australian Wine and Brandy Corporation Act 1986, No.60  
Australian Institute of Sport Act 1986, No.103  
Science and Industry Research Legislation Amendment Act 1986, No.121 |
| 1987 | Defence Housing Corporation Act 1987, No.101  
Australian Tourist Commission Act 1987, No.136  
Australian Meat and Livestock Industry Legislation Amendment Act 1987, No.155  
Australian Horticultural Corporation Act 1987, No.164  
Horticultural Research and Development Corporation Act 1987, No.166  
Commonwealth Banks Amendment Act 1987, No.182. |
| 1988 | Textiles, Clothing and Footwear Development Authority Act 1988, No.14  
Civil Aviation Authority Act 1988, No.63. |

Source: Acts of the Australian Parliament
The Lambert Commission prescribed corporate planning for Crown Corporations (that is, trading authorities)\textsuperscript{7} and Table 7.2 shows that it is also mainly associated with this category of authority in Australian Commonwealth government. Most, but not all, statutes establishing or reconstituting such authorities in the period covered by the table contained a requirement that a corporate plan be produced. But authorities outside the trading category were also subjected to the same requirement. These included not only authorities with major managerial responsibilities in some ways similar to trading authorities (for example the Australian Institute of Sport or the Commonwealth Science and Industry Research Organization) but also such diverse bodies as the Australian Sports Commission, National Parks and Wildlife Conservation Boards, Rural Industries Research Councils and the Textiles, Clothing and Footwear Development Authority. Thus the possibility suggests itself of a very extensive use of this device as a standard part of accountability regimes for statutory authorities generally.

The corporate planning provisions differ quite considerably in their degree of detail. Those employed in the \textit{Australian Shipping Commission Act} and \textit{Australian National Railways Commission Act} at the beginning of the period examined (1983) are very rudimentary, simply stating that the Commissions must develop objectives, strategies and policies and must review and revise these from time to time.

\textsuperscript{7} Lambert's criteria for a Crown Corporation (RCFMA 1971979:439) establish the equivalence of these entities.
Others are a good deal more complex, requiring the production of two forms of plan (a three to five year corporate plan and an annual operational plan) and specifying both a longer list of contents for the plans and sophisticated arrangements for their approval and variation. Although there remains a good deal of variety among the particular provisions, those contained in later statutes tend to be more demanding. In this respect the remodelling of legislation for the primary produce marketing and research authorities, the results of which began to appear in 1984 (see Australian Meat and Livestock Corporation Amendment Act 1984), and the Australian Trade Commission Act of 1985 were early indications of the direction of later legislation.

Where they are employed in Commonwealth statutes, corporate planning provisions typically facilitate ministerial involvement by requiring the plan to receive the minister's approval and giving the minister some measure of power to vary the plan. As with the provisions generally, the formal arrangements for ministers to alter the plans vary considerably - from no such arrangements (as in the Australian Shipping Commission and Australian National Railways Commission Acts of 1983); to a simple provision for ministerial approval of plans (as with the Australian Sports Commission Act 1985); to a requirement for ministerial approval, together with the stipulation that the board shall vary the plan at the request of the minister (as with the Australian Trade Commission Act 1985); to ministerial approval plus a ministerial power to request variations, but with the
board retaining the right to revise as it 'considers appropriate' (as for the primary produce authorities). In some cases the use of the corporate plan as an instrument of control is further emphasized in the statute through a statement that the functions of the authority are not to be performed otherwise than in accordance with the approved corporate plan (see Australian Institute of Sport Act 1986, Australian Sports Commission Act 1985).

In Australia there has been little public debate over the subjection of corporate plans to ministerial approval. But the Lambert report (RCFMA, 1979:336) came out firmly against such a proposal by the Canadian government of the day. The Report agreed that the minister and his/her department needed to see a plan in order 'to ascertain whether the corporation's strategy is consistent with the policy interests of the Government and to ensure that there will be no surprises when capital and operating budgets come to the minister...'. But it argued that the plan should be forwarded for the minister's information only and not for approval. To subject the plan to ministerial approval, the Commission seems to have concluded, would be, firstly, to encroach upon the legitimate prerogatives of the board (to lay down policy for the organization) and, secondly, to duplicate and hence weaken the role of the ministerial directive.

Similar views have been put semi-publicly to the Australian Commonwealth government by authority boards, but

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8. Criticism of the proposal in the Policy Discussion Paper of 1986 (Department of Finance, 1986:21) that the corporate plans of 'government business enterprises' be submitted to ministers
have evidently been rejected (as indeed they were by the Canadian government)⁹. This would seem to raise the possibility of quite detailed ministerial intervention, intervention which moreover would escape those arrangements for disclosure of ministerial directives intended to ensure that ministerial input promotes strategic rather than detailed control. However, it needs to be recalled that corporate plans, as instruments for direction-setting over several years, are inevitably broad-brush exercises and, as such, are not especially suitable instruments for detailed control. A better test, therefore, is the nature of the arrangements for ministerial consideration of the annual operational plans (or in some cases annual financial plans) which are required to be produced in a majority of cases along with the corporate plan.

Annual operational plans, for which the managing director rather than the board is generally made formally responsible, are intended to be quite detailed documents. They are typically required to include details of the strategies the board proposes to pursue, the programs the board proposes to carry out, and the resources the board proposes to allocate to each program during the financial year. Statutorily prescribed arrangements for ministerial oversight vary considerably. In almost all cases the plan must be approved for approval was a feature of those authorities' written responses to the Paper.

⁹. A requirement that each Crown Corporation 'annually submit a corporate plan to the appropriate Minister for the approval of the Governor in Council on the recommendation of the appropriate Minister' was included in the Canadian Financial Administration Act by S.129 of C.31, Statutes of Canada 1984.
by the minister, but the scope this provides for ministerial intervention is typically limited by an additional stipulation that the minister may fail to approve or may request variations only on the grounds that the annual operational plan is inconsistent with the corporate plan. A stronger safeguard against excessively detailed interference is provided by the Commonwealth Science and Industry Organization's enabling statute, which confines the approval process for the annual operational plan to the CSIRO Board (see Science and Industry Research Legislation Amendment Act 1986). In several cases where annual 'financial' plans are required ministers are given the power to vary financial targets and performance indicators\(^{10}\). But only in one or two cases could it be said that statutory provisions for ministerial oversight of the plans appear to give the minister a truly broad power to vary or request variation of detailed aspects of policy\(^{11}\).

**Controls**

A reduction of the burden of 'on-going' ministerial and other controls over authorities is the counterpart to efforts to

\(^{10}\) Examples are the Federal Airports Corporation Act 1987, the Defence Housing Authority Act 1987 and the Civil Aviation Act 1988. It should be noted, however, that financial targets are subject to ministerial variation under all Commonwealth statutes which require their use.

\(^{11}\) The Commonwealth Banks Amendment Act 1987 seems to confer such a power, as does the Textile, Clothing and Footwear Development Authority Act 1988. But, with regard to the latter example, it needs to be kept in mind that budget dependent authorities are typically required in any case to forward annual estimates of expenditure for the minister's approval. This gives the minister considerable potential for detailed intervention.
create new capacities for strategic control. On the government's own assessment a major problem with the administrative arrangements for trading authorities was that, while they were fettered with 'precise detailed operational controls', they tended to be provided with 'little in the way of strategic guidance or accountability' (Minister for Transport and Communications, 1988b:160). With appropriate instruments for 'strategic guidance' in place, so the now familiar managerialist argument runs, the bulk of 'operational controls' which are harmful to both efficiency and accountability may be relaxed or removed. The Hawke government's characterisation of its government business enterprise reforms is the essence of contemporary managerialist wisdom:

The emphasis will no longer rest on scrutiny and approvals of the processes of running an organization, but on the extent to which it is successful in meeting its goals. Constant oversight of individual transactions...does not ensure that an organization will be successful in meeting its goals, diverts resources from more productive activities, and obscures the accountability for the decisions that are involved (Minister for Transport and Communications 1988b:161; emphasis in original).

The focus of reform in this area has been the trading authorities. This is so because the primary issue has been the necessary extent of ministerial controls over authorities' resource management, the need for a measure of autonomy in which constitutes the raison d'etre of statutory trading authorities. Other sorts of statutory authority, by contrast, do not require so much freedom in resource allocation decisions, at least insofar as resource allocation is not used to compromise the objectivity and impartiality of their
decision-making in other areas (the need for which provides their raison d'etre). Moves to reduce such controls may be understood in part as an extension to trading authorities of the managerial reforms under way in ministerial departments which are designed to delegate responsibilities for detailed resource allocation from central agencies to departmental managers (see Dawkins, 1984; Keating 1988a and 1988b). (They are also part of a drive to commercialise the authorities, to 'level the playing field' as between public and private businesses, either as a substitute for, or prior to, privatisation). But reduction of external controls over resource management is of special significance to trading authorities precisely because it reinforces their essential raison d'etre.

The Telecommunications and Postal Services Acts of 1975 are illustrative of the range of controls imposed on Commonwealth trading authorities by their constituting statutes. The most prominent control is that over prices. While the Commissions are empowered to fix and vary charges for their services, for basic services - such as standard telephone rentals, telephone calls and telegrams in the case of Telecom, and standard postal articles and registered publications in the case of Australia Post - ministerial approval of tariff charges is required. Ministerial approval is also required for the Commissions to enter into contracts exceeding $500,000 (raised in recent times to $2m) or to lease land for a period exceeding ten years. In addition, all borrowings are made subject to the Treasurer's approval, as
are short term investments in other than bank fixed deposits or Australian government securities. The Treasurer (subsequently the Minister for Finance) is also made responsible for determining interest rates on advances from the Commonwealth (that is, the Commission's capital). The portfolio minister determines how surplus earnings shall be applied. With regard to staffing matters, the Commissions are required to comply with detailed statutory provisions which, inter alia, preserve Public Service terms and conditions of employment.

Moreover, the constituting statutes are far from the only source of controls over these and other trading authorities. Appendix 2 lists a wide range of additional controls applying to Australia Post. These are implemented by a variety of statutory and non-statutory instruments, and supervised by a dozen ministers.

The reform of controls regimes promised for all Commonwealth 'Government Business Enterprises' (GBEs) has so far been most conspicuous among authorities in the transport and communications sectors. Reform efforts in these authorities have been assisted by the amalgamation of the Transport and Communications departments in 1987 which brought eight of the most important GBEs under the one departmental umbrella. This gave greater prominence to the GBE reform agenda and, at the same time, made possible a more consistent approach to reform among the eight authorities.

The minister's policy statement on the reform of transport and communications GBEs (Minister for Transport and
Communications, 1988a:8-11) distinguishes between two sets of controls: those 'strategic controls'\textsuperscript{12} which serve macro-economic purposes, or implement government policy regarding public sector employees, and 'day-to-day controls' which were part of the traditional approach to accountability. Different measures were prescribed for the two categories: the so called 'strategic controls' were to be 'relaxed', replaced with less intrusive controls based on 'guidelines', and selectively removed, whereas 'day-to-day controls' were by and large to be abolished as new mechanisms (namely, corporate plans and financial targets) for what I have termed strategic control were introduced. Table 7.3 sets out the most common controls and the action to be taken with regard to each.

\textsuperscript{12} Note that this usage of the term 'strategic control' differs from that which I have adopted in this chapter.
Table 7.3 Reform of Controls over Transport and Communications Government Business Enterprises* Announced in 1988

<table>
<thead>
<tr>
<th>Activity</th>
<th>Current Control</th>
<th>Reform</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STRATEGIC CONTROLS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Borrowings</td>
<td>Co-ordination through Loan Council</td>
<td>Possible exemption of Qantas, Australian Airlines and ANL</td>
</tr>
<tr>
<td>Industrial Relations</td>
<td>Extensive requirements for Department of Industrial Relations approval</td>
<td>'Greatly increased responsibility' for enterprises.</td>
</tr>
<tr>
<td>Executive Remuneration</td>
<td>Remuneration Tribunal determination (except for AUSSAT)</td>
<td>Boards to be given responsibility, subject to prior negotiation with Remuneration Tribunal</td>
</tr>
<tr>
<td>Superannuation</td>
<td>Participation in Commonwealth Superannuation Scheme</td>
<td>Devolution to enterprises, subject to government guidelines</td>
</tr>
<tr>
<td><strong>DAY-TO-DAY CONTROLS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contracts</td>
<td>Minister's approval for amounts above $6m.</td>
<td>Abolition of control</td>
</tr>
<tr>
<td>Borrowings</td>
<td>Treasurer's approval of terms and conditions</td>
<td>Abolition of control</td>
</tr>
<tr>
<td>Bank Accounts &amp; Investments</td>
<td>Treasurer's approval</td>
<td>Abolition of control</td>
</tr>
<tr>
<td>Subsidiaries and Joint Ventures</td>
<td>Minister's approval</td>
<td>Abolition of control (but prior notification reqd)</td>
</tr>
<tr>
<td>Buying and Selling Land</td>
<td>Department of Administrative Services conducts for Telecom, OTC &amp; Aust. Post</td>
<td>Abolition of control</td>
</tr>
<tr>
<td>Buildings &amp; Public Works</td>
<td>Australia Post are subject to Parliamentary Standing Committee on Public Works; Telecom required to use Department of Administrative Services Construction Group.</td>
<td>Abolition of controls</td>
</tr>
</tbody>
</table>

* AUSSAT, Telecom, Overseas Telecommunications Commission (OTC), Australia Post, Australian National Line (ANL), Australian National Railways (AN), Qantas, Australian Airlines.

Source: Minister for Transport and Communications 1988a
The Board

In conjunction with the reduction of ministerial controls just discussed, several other measures have been introduced to give the statutory boards of trading authorities a more important role. The general purpose is to create a clearer focus of devolved responsibility in order to strengthen the incentives upon which strategic control depends. Perhaps due in part to the influence of the Westminster identification of public accountability with ministerial administration, statutes have in the past held back from assigning boards full responsibility for the running of their undertakings. The focus of responsibility on authority boards has also been blurred by their immersion in the dominant public service culture, emphasizing security of tenure, central agency controls and the need to refer matters upwards for a political sounding. Finally, the fact that boards have a policy rather than an executive role has made it possible for them to be bypassed with relative ease. In at least some cases boards have been seen as a result to be 'off to one side' while senior management, departmental staff and ministers made all the main decisions. Recent reforms are designed to give the 'policy board' a more central place in the system of linkages between parliament and the administration of the activity entrusted to the agency. As such, they have involved renewed efforts both to devolve responsibility from ministers (and departments) to boards and to bolster the board's

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13. This observation was made by interviewees about the situation of the Telecom and Australia Post boards in the late 1970s and early 1980s.
authority over the agency's senior management.

Specific measures to devolve responsibility include all of those noted in the previous sub-section. In addition, the movement towards a statutory requirement for trading authorities to undertake corporate planning has meant assigning the board a more explicit responsibility for setting medium term and (sometimes) annual objectives and policies, financial targets, performance indicators and the like, and for negotiating such matters with the minister (see for example Australian Telecommunications Corporation Act 1989). As for the relationship between the board and senior management, statutes are now more likely than previously to emphasize that the chief executive officer runs the agency under the guidance of the board, and to give practical force to this desire by granting the board, rather than the minister, sole or major responsibility for appointing (that is, hiring and firing) the chief executive and determining the terms and conditions of the appointment. The latter development is important since the power of appointment is regarded as a particularly effective control (RCFMA, 1979:304). However, as Table 7.4 indicates, there is no strong trend towards uniformity in this matter. While the government has committed itself to make the chief executives of the eight major transport and communications authorities 'squarely accountable to their boards for performance' (Minister for Transport and Communications, 1988a:7), a number of recent statutes place the power to appoint, and set the terms and conditions for, the chief executive completely
in the hands of the minister (see for example Australian Trade Commission Act 1985).

**Table 7.4** Principal Location of Authority to Appoint the Chief Executive Officer and to set the Terms and Conditions of this Appointment in Statutory Authority Legislation, 1983-88

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases where Authority Placed with Board</th>
<th>Cases where Authority Placed Elsewhere*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>1984</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1985</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>1986</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>1987</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>1988</td>
<td>6</td>
<td>1</td>
</tr>
</tbody>
</table>

17 8

* In all but one case this means either the minister or the Governor General. In one case provision was made for an elected executive.


If boards are to be given, or encouraged to exercise, greater powers, they should be subject to appropriate sanctions for failure to discharge their responsibilities adequately. The transport and communications GBEs are also at the forefront of an effort to heighten responsibility by extending the grounds for removal of board members. For ordinary part-time members these have typically included misbehaviour, physical or mental incapacity, bankruptcy, failure to disclose interests, conflict of interest as a result of other paid employment, and failure to attend three consecutive board meetings. For transport and communications GBEs the grounds for removal will now also include ongoing under-performance (Minister for Transport and Communications,
II. EVALUATION AND REVIEW

Strategic direction-setting by a range of actors is one of the two main components of what I have termed strategic control; the other is evaluation. The development of arrangements for regular, performance-oriented evaluation is the essential complement of a movement from detailed to strategic direction.

Our primary purpose in this section is to show that there has been over recent years an increased emphasis on this sort of evaluation of Commonwealth statutory authorities. A secondary purpose is to elucidate further the managerialist model of accountability and to show what it might mean in the Australian context if it were fully institutionalised. To this end Figure 7.1 sets out the main forms of periodic evaluation and review of statutory authorities which have been promoted in Australia and in other parliamentary democracies (in particular, Canada under its amended Financial Administration Act) over recent years. The discussion will follow the categories identified there, enabling us both to appreciate what a serious emphasis on evaluation would imply in practical terms and to determine how far current arrangements fall short of this situation.
### Figure 7.1 Forms of Evaluation and Review Associated with a Managerialist Approach to Accountability

<table>
<thead>
<tr>
<th>Type of Evaluation/Review</th>
<th>Basis/Associated Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ENFORCED INTERNAL EVALUATION</strong></td>
<td></td>
</tr>
<tr>
<td>Ex ante</td>
<td>Corporate and Annual Operational Plans required by enabling statute</td>
</tr>
<tr>
<td>Effectiveness</td>
<td>Annual reporting obligation</td>
</tr>
<tr>
<td><strong>EXTERNAL EVALUATION</strong></td>
<td></td>
</tr>
<tr>
<td>Parliamentary</td>
<td>Annual report; statutory and self-assigned objectives, strategies and policies</td>
</tr>
<tr>
<td>Ministerial</td>
<td>Annual report and other reports or information requested pursuant to minister's statutory right to information</td>
</tr>
<tr>
<td>Ministerial/governmental</td>
<td>Statutory power of appointment evaluation of board members' performance as part of the reappointment process</td>
</tr>
<tr>
<td>Performance Audit (by Australian Audit Office)</td>
<td>Audit Act</td>
</tr>
<tr>
<td>Parliamentary (Public Accounts Committee)</td>
<td>Performance Audit</td>
</tr>
<tr>
<td><strong>EXTERNAL REVIEW</strong></td>
<td></td>
</tr>
<tr>
<td>Periodic review of mandate by government and parliament</td>
<td>Statutory requirement</td>
</tr>
</tbody>
</table>

**Internal Evaluation**

As was suggested at the beginning of this chapter, managerialism sees the evaluative process as beginning with agency self-evaluation. During the 1980s there have been considerable efforts to promote agency self-evaluation, or internal evaluation, in the Commonwealth public sector. For
ministerial departments the vehicle has been the Department of Finance's Financial Management Improvement Program (Department of Finance and Public Service Board, 1984; Department of Finance, 1987). Since 1984 this program has attempted to upgrade evaluation within budget-dependent agencies, as part of a gradual reform of resource management processes generally. In the case of statutory authorities the change has been reflected in new obligations imposed upon authorities through amendments to their enabling statutes.

But internal evaluation only becomes relevant to accountability, as distinct from contributing to efficient and effective management within the agency, when it facilitates external evaluation. There are two reasons why this is more likely to occur with statutory authorities than with ministerial departments. Firstly, the statute can be used to spell out and enforce a clearer set of linkages between internal and external evaluation. Secondly, statutory authorities have, in the annual report presented to parliament, a well established mechanism for making internal evaluation relevant to external evaluation. In very recent times ministerial departments have also been required to present annual reports. But, as Wettenhall (1987:21) has argued, the meaning of the annual report is inevitably different for the ministerial department and the statutory authority. In general the problem with evaluation in ministerial departments is that the pervasiveness of ministerial responsibility is a major impediment to the creation of a process of agency evaluation which does not
directly implicate the minister (or, in other words, which is separate from the normal arrangements for ministerial accountability). These circumstances must strictly limit the extent to which internal evaluation can flow through to the external evaluative process.

Internal evaluation may be divided into three main stages: **ex ante evaluation** - the assessment of alternative objectives, strategies and policies; **process evaluation** - associated with the task of implementing programs and keeping them 'on the right track'; and **effectiveness evaluation** - assessment of how well objectives are being met and whether established programs continue to be necessary (Department of Finance, 1988:67). The first and the third of these stages are the most relevant for the external evaluation of statutory authorities. Increasingly, enabling statutes require both the performance of such evaluations and that the results of the evaluations be formally presented to key external actors (ministers and parliament). **Ex ante** evaluation is implied by statutory requirements for corporate and annual operational plans; and, as we have seen, these plans are typically required to be brought before ministers for approval\(^\text{14}\). This must assist ministers in evaluating the execution by authorities of key responsibilities vital to successful performance overall. By establishing objectives and sometimes performance indicators, the plans also create the preconditions for effectiveness evaluation. Effectiveness

\(^{14}\) In at least one case, the *Australian Institute of Sport Act* 1986, there is a requirement that the corporate plan be laid before parliament.
evaluation itself is implied (albeit, as we shall see, more or less strongly) by the annual reporting obligation. The tabling of the annual report by the minister, in turn, makes (some part of) the internal evaluation available to the parliament for the latter's evaluative purposes.

Enough has already been said about the corporate planning process in Commonwealth statutory authorities to suggest how it might be relevant to external evaluation. A little more will be said on the subject later in passing. It is time, however, to look more closely at the annual reporting process and its relationship to evaluation.

Annual Reports and Evaluation

Two basic conditions need to be satisfied for the annual report to provide a strong foundation for external evaluation and hence to contribute importantly to public accountability. Firstly, there must be an obligation for statutory authorities to submit a report and for that report to be tabled in parliament in timely fashion. And secondly, the authority must be obliged to include in its reports specified information of particular relevance to the evaluation of its performance. The latter condition is likely to be more adequately satisfied the more the authority views the annual report as an exercise in explaining and accounting for its performance. Thus conceived, the annual report would assist external evaluators by communicating, in summary form, pertinent aspects of the agency's own effectiveness evaluation. It can be shown that significant progress has
been made in the 1980s towards fulfilling these conditions in Commonwealth government.

In an earlier chapter reference was made to action taken in this period to strengthen the obligation of statutory authorities to report to parliament. This reform was primarily due to pressure by the Senate Standing Committee on Finance and Government Operations (SSCFGO)\(^15\). The need for improvement in reporting was a central theme of that Committee's first six reports on Commonwealth statutory authorities (SSCFGO, 1979a, 1979b, 1980, 1980b, 1982a, 1982b). Two basic weaknesses in existing arrangements were highlighted. The first was a lack of uniformity in the reporting requirements such that only 67 out of the 194 bodies listed in the Committee's First Report had what was described as the 'standard' reporting requirement: that the body 'report to the Minister as soon as practicable after the end of the financial year, with the minister to table in the Parliament within 15 days of receipt'. Some 98 bodies and their ministers were subject to a variety of other, generally less stringent, requirements and 29 had no obligation whatsoever to report (SSCFGO, 1979a:73). The second complaint concerned the lateness of submission and tabling of many reports. In this respect the Committee's Third Report found that '[t]he current situation is so bad that we consider that major and comprehensive changes...are required' (SSCFGO, 1980a:63).

\(^{15}\) But this was not the only parliamentary influence (see JCP, 1979).
The Committee's preferred vehicle for rectifying these and other deficiencies in current reporting practice was an Annual Reports Act, modelled on similar Canadian legislation. This recommendation has not been adopted, but a similar result has been achieved by changes to legislative drafting practice and by the 1983 amendments to the Acts Interpretation Act referred to in Chapter 5. These amendments imposed an obligation on all statutory bodies which did not have a specific period within which to furnish a report to the minister to do so within six months of the close of the reporting period. The minister is required to table the report in parliament within 15 sitting days. In the case of late reports a written explanation must be provided, after which an extension may be granted. But both the letter and the reasons for the extension must be tabled in parliament.

The SSCFGO was also keen to see an improvement in the contents of annual reports. Its particular concern was inconsistencies in the form of financial statements. It argued that bodies carrying out similar activities should be required to adopt a common form for their accounts so that their performance could be compared, both with one another and, where appropriate, with private sector organisations (SSCFGO, 1979a:80). The Committee also paid a good deal of attention to the related issue of the appropriate accounting standard for statutory authorities. Its interest in this question seems to have been stimulated by delays in reporting.

16. But note that complaints about persistent lateness in lodging reports continue to be voiced (see ACT Division RAIPA, 1989:13).
which resulted from the need for some authorities to operate under both cash accounting and accrual accounting standards (see SSCFGO, 1980a:72-3). It was thus led to consider the relative merits of the two approaches. Cash accounting, the approach traditionally utilized by ministerial departments, shows only the receipts and payments of an organization during the year; whereas accrual, or commercial, accounting also monitors the assets and liabilities of the organization so that a balance sheet and a profit and loss statement can be prepared. The Committee came to the view that where possible accrual accounting should be used because of its ability to disclose more fully the financial affairs of an authority, including any financial support an authority may receive from the government (SSCFGO, 1980a:74).

The nature of financial information communicated by annual reports was addressed by the 'Guidelines for the Form and Standard of Financial Statements of Commonwealth Undertakings' issued by the government in 1983 (Department of Finance, 1983). These are a fairly extensive and detailed set of instructions, plus a useful crib on the 'philosophy' of financial reporting. Under the Guidelines, the financial statements of all 'undertakings' (80 statutory authorities and a number of departmental operations) are required to be prepared on an accrual basis, 'except where it may be demonstrated to the Minister for Finance that financial statements prepared on a cash basis are not materially different in terms of information conveyed to readers'. Another set of 'guidelines', in this case for the 'Content,
Preparation and Presentation of Annual Reports of Statutory Authorities', were issued by the government in late 1982 (Guidelines, 1982). Like the guidelines on financial statements, these originated in a governmental working party established in the late 1970s. The document is brief, but sets out time limits for reporting and includes a list of matters upon which authorities would henceforth be required to supply information. The specified items include enabling legislation; responsible minister; powers, functions and objects; membership and staff; financial statements; activities and reports; operational problems; and subsidiaries. Issued at the same time were 'Guidelines for Departmental Annual Reports' (Guidelines, 1982). In support of the earlier claim that departmental annual reports have been viewed differently to those for statutory authorities and have less potential as an instrument of accountability, it may be noted that the guidelines for departments were less commanding and less detailed than their counterpart for statutory authorities. They were, however, replaced by a stronger set in 1986\textsuperscript{17}.

The measures described above have demonstrably improved the timeliness and the contents of annual reports. Financial reporting, in particular, is now generally of a high standard. Moreover, these developments have clearly assisted the process of external evaluation. However, the reforms discussed so far fall short of requiring authorities to improve their use of

\textsuperscript{17} The later Guidelines for the Preparation of Departmental Annual Reports are reproduced and commented upon in JCPA (1986).
annual reports to explain and assess performance. It is to this aspect of annual reporting that we must now turn.

The primary purpose of an annual report has always been understood to be to provide an 'account' of the authority's performance. But there is sufficient ambiguity about this concept for it to be unclear whether a report should simply provide a 'public record' of an authority's actions or, additionally, fulfil definite 'explanatory' and 'justificatory' functions (Parliament of Western Australia, 1983:9). The difference between these attributes of a report has become increasingly noticeable to Australian observers as notions of objective-setting and performance measurement have taken root in the Australian public sector, sharpening the meaning of explanation and evaluation of performance. Along with a firmer distinction between the ideas of public record, on the one side, and explanation and evaluation, on the other, has come a recognition that Australian reports have emphasized the former function to the neglect of the latter functions. Certain efforts to rectify this situation have ensued.

For once the SSCFGO was not an important agent of change. Despite (or perhaps because of) its preoccupation with annual reporting processes, that committee paid very little attention to the possible either need to rethink the role of reports or to inculcate in authority management a better understanding of the purpose of the exercise. Other parliamentary committees have been similarly unprepared to address these matters in any depth (but note SSCSE, 1978:1-2). The Royal Australian Institute of Public Administration (RAIPA) has, however, made
a significant contribution to raising the explanatory and evaluative quality of reports through its Awards Scheme for annual reports begun in 1983. So too has the insertion of new reporting obligations in authority statutes.

The survey of recent authority legislation conducted for this chapter revealed ten instances between 1983 and 1988 where authorities acquired an explicit statutory obligation to include an evaluation of their performance in their annual reports. Table 7.5 lists the relevant legislation. Statutory provisions requiring self-evaluation seem not to have been used before 1985, but they have appeared sufficiently frequently since to suggest that they may become widespread in the future. A notable feature of the cases listed in Table 7.5 is the link they establish between the annual report and the corporate planning process. The authorities must settle short term objectives or (where applicable) financial targets and performance indicators year by year as part of their formal planning and, subsequently, report on performance against these yardsticks.
Table 7.5 Legislation Requiring Statutory Authorities to Evaluate Own Performance, 1983-88

<table>
<thead>
<tr>
<th>Year</th>
<th>Legislation</th>
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| 1985 | Meat and Livestock Research and Development Corporation Act (No.12)  
Australian Trade Commission Act (No.186) |
| 1986 | Federal Airports Corporation Act (No.4)  
Dairy Produce Act (No.54)  
Industry Research and Development Act (No.89)  
Pig Industry Act (No.157) |
| 1987 | Defence Housing Authority Act (No.101)  
Australian Tourist Commission Act (No.136)  
Australian Horticultural Corporation Act (No.164) |
| 1988 | Civil Aviation Act (No.63) |


Growing expectations for annual reports of greater explanatory and evaluative quality have begun to produce results. The annual reports of Commonwealth statutory authorities of the late 1980s have in general been much more performance-oriented than hitherto. Commenting on the 1987-88 reports of the government business enterprise group of authorities, the RAIPA Annual Reports Awards Panel expressed satisfaction that '[i]ncreasing attention is being given to identification of objectives and the difficult area of reporting performance against those objectives' (ACT Division RAIPA, 1989:13).

A perusal of a cross-section of the 1987-88 annual reports of Commonwealth statutory authorities confirms that a
good deal has been achieved in this area. Good performance reporting requires a number of things (not all of which are equally applicable to each case): a meaningful statement of objectives; a discussion of the year's activities related to those objectives; presentation of an adequate range of performance indicators closely related to the authority's objectives; as far as is possible, measurement of performance in terms of those indicators and in comparison with relevant targets; comparison of measures of performance over a sufficient period of time to enable trends to be detected and, where appropriate, comparison of performance with other public or private sector entities; and explanation of outcomes against objectives. Of 35 more or less randomly selected reports very few, if any, fully satisfied these requirements. But a great majority of the authorities concerned evidently conceive annual reporting at least partly in these terms and a substantial minority of reports rated well against most of the above criteria. When allowances are made for the differential applicability of performance measurement, examples of good performance reporting can be found among budget-dependent, non-trading authorities and off-budget, trading authorities alike.

Nevertheless, there is clearly much room for improvement in the reporting of performance. A small proportion of authorities are clearly either ignorant of the principles of this sort of reporting or unconvinced of its

18. For instance, five year summaries of financial performance are now common, as are statements of short term and medium term objectives.
relevance to their activities. Even among those authorities for which the exercise has the most obvious relevance, that is the government business enterprises, the Awards Panel has identified a number of cases where public relations considerations have predominated in the preparation of reports (see ACT Division RAIPA, 1989:13). But authorities seem increasingly to view the quality of their annual reports as an indicator of managerial competence. With this incentive to better reporting, the good role models which are liberally sprinkled through the 1987-88 reports are likely to influence growing numbers of authorities.

Use of Annual Reports by Parliament

As a result of the developments we have traced above, annual reports of Commonwealth statutory authorities in the late 1980s are of considerable value for external evaluation. Such evaluation may be undertaken informally or semi-formally by a range of public and private sector actors with a variety of degrees of influence over the bodies concerned. However, if annual reports are to play an important role in formal evaluation, it is essential that there be adequate means of utilising them once they are tabled in parliament.

The Commonwealth Parliament has traditionally shown little interest in annual reports, treating them simply as a part of the mass of documents vaguely intended to satisfy the informational needs of members of parliament. The Lambert

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19. One piece of evidence is that references to awards won for previous annual reports are prominently displayed in the reports.
Commission reported the existence of similarly unsatisfactory arrangements for the scrutiny of reports in the Canadian parliament:

In the vernacular of the House of Commons a report 'lies on the table' and unfortunately this expression conveys quite literally what happens to such reports: they just lie there (RCFMA, 1979:353).

This description was fully applicable to the Australian House of Representatives through the 1980s. Moreover, in the House of Representatives the tabling of authority reports is not even an occasion for the raising of issues related to the performance of the authorities, as happens fairly often in the Senate.

From the late 1970s, in contrast, the Senate has attempted to institutionalise the consideration of annual reports. Under a sessional order first agreed to in March 1978 annual reports are automatically referred (that is, without any Question being put) by the President of the Senate to the appropriate Legislative and General Purpose Committees. The order specifies that these Committees 'may, at their discretion, pursue or not pursue inquiries into reports so received'. As has been discussed, the SSCFGO made scrutiny of the annual reports of statutory authorities an important part of its activity. Several of the other committees have also reported on the annual reports referred to them. But the process is still evolving, with the Committees experimenting in an attempt to discover a satisfactory means of dealing with the documents. Until recently it was both usual and justifiable for the committees to focus on the standard of
reporting as part of the campaign to improve the timeliness, consistency and quality of reports. By the early 1980s, however, enough progress had been made on this front for committees to feel the need to devise strategies for dealing with the contents of reports. The experience of the two committees which have made the greatest commitment to using annual reports as a basis for inquiry may be briefly reviewed in order to illustrate the progress which has been made as well as the pitfalls which have been encountered.

In its second report on annual reports the Senate Standing Committee on Science and the Environment observed that 'annual reports of departments and statutory authorities offer a potentially vast field of inquiry for Legislative and General Purpose Committees' and announced its intention to explore some areas of the field by calling evidence from time to time on some of the reports referred to it (SSCSE, 1978:1). Several reports later the Chairman reflected on the change which had taken place in the Committee's approach to its task:

In earlier years, a common approach by standing committees was to examine briefly all the annual reports referred to them... Limitations of time and staff impose severe constraints on the standing committees in attempting to use the review of annual reports as a means of overseeing the activities of the Executive. In the inquiry leading to its May 1982 report, the Committee tried to circumvent these constraints by selecting particular aspects of two of the 45 annual reports referred to it for examination that year (Senate, CPD, 2 November 1983:2109).

The two inquiries conducted in accordance with this selective strategy revealed certain difficulties which led the Committee to adjust its practice again. The Chairman now felt that, in order to ensure the collection of a sufficiently wide range of
evidence and to give proper consideration to matters raised, at least six months needed to be allotted to an inquiry. As a result, he considered it 'advisable' that issues chosen for investigation in the future should, in most cases, be of 'relatively long term interest' (Senate, CPD, 2 November 1983:2110).

In 1985 the same committee considered a submission from the Royal Australian Institute of Public Administration (RAIPA) and heard evidence from a representative of the Australian Capital Territory Division of that body on the question of the manner in which annual reports should be dealt with (see SSCSTE, 1985). While much of the advice received focused on the old issue of timeliness and the related matter of the Committee's work timetable, a selective approach to the review of reports was endorsed. Little was said or concluded, however, about the sort of subject that should be chosen. The Committee subsequently began an inquiry into National Information Policy, a topic which arose from its consideration of the 1983/84 Annual Report of the Australian Libraries and Information Council. It is understandable that the Committee should feel that its scarce resources of time and manpower are best utilised on inquiries into matters of enduring interest, somewhat removed from the immediate context of politics and administration. Indeed, the Legislative and General Purpose Committees were intended to perform precisely this role and by now have a history of substantial achievement in work of this kind (see Uhr, 1981:53-7; Aldons, 1985; Reid and Forrest, 1989:375-80, 396). Nevertheless, it is questionable whether
such activity contributes greatly to the review of the recent performance of administrative agencies, which is surely the main purpose of scrutinising annual reports.

However, an attempt to take this objective seriously can cause problems in the relationship between parliament and statutory authorities, as the Senate Standing Committee on Education and the Arts has discovered. Like the Science, Technology and Environment Committee, this committee had by the mid-1980s passed from the stage of reporting on the timeliness and form of annual reports to that of considering substantive matters of policy and administration arising out of the documents. Its first exercise of this type was an inquiry based on the annual reports of four agencies involved in the production, the regulation and the framing of policy for children's television (SSCEA, 1985a and 1986a). This was followed by reports on aspects of the operation of the Australian Capital Territory Schools Authority and the Australian National Gallery respectively (SSCEA, 1985b and 1986b). But it was the Committee's decision to conduct an inquiry into changes in the Australian Broadcasting Corporation's radio coverage of horse racing in Queensland, following its examination of the Corporation's 1983-84 and 1984-85 annual reports, which revealed the sort of difficulty which committees may encounter in attempting to review the recent performance of particular statutory authorities.

The ABC objected to an inquiry which it saw as 'narrowly confined to a particular programming decision' and which, it argued, 'placed ABC programming under external authority and
impaired its editorial functions'. It drew a distinction between administration, for which it had an active responsibility to parliament, and programming powers, which were held as 'a trust on behalf of the people of Australia' and exercised 'by law and convention' free from governmental and parliamentary intervention. The Corporation stated that it was prepared to comment on the issues of principle and the general processes by which ABC programming decisions are made, but not on the decisions themselves. Accordingly, it refused to appear before the Committee to give evidence on the adequacy of its racing service in Queensland.

The Committee, for its part, asserted its 'right and duty' to examine decisions of a statutory authority which affect the services it provides to the public. It argued that in practice programming and administrative matters could not be as neatly separated as the corporation seemed to believe, because 'programming decisions will invariably have financial and administrative implications'. Against the Corporation's allegation of parliamentary interference in programming, the Committee insisted on a distinction of its own: between the explanation of past events and the direction of future actions. The Committee simply 'wished to know how and why a particular decision was made and to ascertain the effects of this decision on the people of Queensland'. Its inquiry would

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20. The objections raised in the ABC's submission to the inquiry are reproduced at various points in the Committee's report (SSCEA, 1986). The submission was subsequently published as a monograph (ABC, 1986).
not have infringed the 'ABC's responsibility to consider whether any further changes to its radio racing service in Queensland were necessary' (SSCEA, 1986c:59-63).

It is doubtful, however, whether the Committee's distinction is any more meaningful in practice than that advanced by the Corporation between programming and administration. Clearly an adverse finding by the Committee would exert pressure on the Corporation to alter its programming and in that sense might be held to constitute interference in program decision-making. On the other hand, the Committee's position is understandable. The injunction to take seriously the examination of annual reports leads naturally to a focus on the decisions which have affected a body's recent performance. The choice of subject in this case may have been unwise, as the scrutiny of particular recent programming decisions inevitably called up the spectre of a parliamentary committee seeking to assume editorial powers over the ABC. It might also be argued that the subject was not well chosen to facilitate an evaluation of important aspects of the Corporation's performance. But it is, in fact, precisely this sort of issue - a matter of policy having a wide and direct impact on members of the public - which committees are likely to feel the strongest temptation to pursue.

Thus parliament has made tentative efforts towards institutionalising consideration of statutory authority reports. Despite recent progress, however, the achievement is not impressive. Some improvement is possible as parliament
continues to experiment and to learn from its experience. Nevertheless, the sort of performance evaluation which is likely to result from this process is likely to be less systematic, more particularistic, and more policy oriented - in a word, more political - than managerialists might hope. But this is not a legitimate cause for complaint; it is simply inevitable.

Ministerial Evaluation
Because of their prominence in recent efforts to improve statutory authority accountability, the first two forms of evaluation presented in Figure 7.1 have been discussed at considerable length. Most of the remaining instruments identified in Figure 7.1 may be dealt with more briefly either because they have been less prominent in recent reforms or because they are more familiar.

Figure 7.1 identifies two types of ministerial evaluation of statutory authority performance. The first is implicit in the process, discussed earlier in this chapter, of ministerial approval of corporate and annual operational plans which is mandatory for growing numbers of statutory authorities. Similarly, for budget-dependent authorities it is implicit in ministerial approval of estimates of expenditure submitted in advance of the earmarking of annual appropriations. In both cases more or less careful judgements about previous performance are made before future funding or future programmes of action are approved. In making their evaluations ministers may draw upon annual reports. But they
may also acquire additional information as a result of either their statutory powers to call for additional reports or the statutory obligations imposed on authorities to keep ministers informed.

The second type of ministerial evaluation concerns judgements about the performance of individuals which are made by ministers and cabinet in deciding the appointment and (especially) reappointment of members of statutory boards and, in those cases where ministers have the power, chief executive officers as well. The Lambert Commission emphasized the potency of this form of evaluation and argued for its further development and institutionalisation in Canada (RCFMA, 1979:322-3). But it is not clear how well developed is the corresponding process in Australian Commonwealth government.

Virtually nothing has been said in parliamentary reports or ministerial statements about the need to improve either of the forms of ministerial evaluation identified above. It is relevant to recall, however, that the 1988 reforms to the Transport and Communications GBEs include the addition of ongoing underperformance to the grounds for removal of board members. Taking this seriously would imply a strengthening of the machinery of formal evaluation of individual performance.

**Performance Audit**

The next item in Figure 7.1 is performance audit. As suggested in the previous chapter, the development of performance auditing by the Australian Audit Office since 1979
is a significant departure from the traditional role of the Auditor-General within the Gladstonian circle of financial control. Indeed, that development fits squarely within the trend, under examination in the present section, towards a strengthening of mechanisms for elected representatives to evaluate administrative performance. A recent parliamentary report on the audit function has insisted, as have previous commentaries, that audit and evaluation are different activities (JCPA, 1989:156). This accepted, it remains the case that an important purpose of performance audit is to assist performance evaluation.

What then does performance audit entail, and how relevant is it to the evaluation of statutory authorities? The first point to make is that the Audit Act does not speak of performance audit but of 'efficiency audit' which (in Section 2(4)) it defines as follows:

(a) an examination of the functions performed by, and the operations carried on by, the body or person for the purpose of forming an opinion concerning the extent to which those operations are being carried on in an economical and efficient manner; and

(b) an examination of the procedures that are followed by the body or person for reviewing operations carried on by the body or person, and an evaluation of the adequacy of those procedures to enable the body or person to assess the extent to which those operations are being carried on in an economical and efficient manner.

As noted in Chapter 5, these provisions have been interpreted by the Auditor-General as including review of the effectiveness of management and management techniques. As the Department of Finance has recently observed, however, the
limits of efficiency audits are ambiguous. Both the Department of Finance and the Joint Committee of Public Accounts (JCPA) have suggested the need to draw a clearer distinction between the review of administrative effectiveness, which they claim is the Auditor's proper responsibility, and the review of policy effectiveness, which should normally be the executive's responsibility. The JCPA, in its major report on the Australian Audit Office, has argued that such a division of labour can be achieved by means of two rules (JCPA, 1989:154-7). Firstly, the Auditor-General should not comment directly on policy but may legitimately identify a policy (for example, staff ceilings) where this is a factor affecting efficiency. Secondly, the Auditor-General should not evaluate programs but should confine himself to reviewing the adequacy of agencies' evaluation planning. On this argument, which largely refines and makes explicit the understandings informing current practice, it seems that audit has a strictly limited (albeit significant) role to play in assisting the evaluation of administrative performance.

21. The Department's views were presented in a submission to the Public Accounts Committee's inquiry into the Audit Office and are reported in JCPA (1989:155).

22. Note the Auditor-General's claim, as reported, that he 'did not believe that he had the legislative right to examine government policy in any field, nor did he wish to' (JCPA, 1989:155).

23. Compare the situation in the United States where the General Accounting Office is involved in the audit of 'program results'. According to 'Standards for Audit of Government Organizations, Programs, Activities and Functions' published by the GAO in 1972, the purpose of this activity is to determine whether the desired results or benefits are being achieved, whether the objectives established by the legislature or other authorising body are met, and whether the agency has considered
But the JCPA's position, as stated in its 1989 report, is in fact more complex than this. Interestingly, from our point of view, the report reaches quite different conclusions about the limits of the audit function for statutory authorities and ministerial departments respectively. The argument described above was directed exclusively at the audit of ministerial departments. In contrast the JCPA (1989:182) found as follows for other forms of administrative agency:

Audits of SAs, SMAs, GBEs and government companies can examine policies of those organisations by reviewing, for example, whether these were achieved. Essentially the focus of efficiency audits is a matter for the Auditor-General's judgement. In the conduct of efficiency audits in these organisations, the Auditor-General should not feel constrained if efficiency audit reports comment on auditees' policies... [whereas] a commentary or analysis on government policies in ministerial departments will remain beyond the Auditor-General's charter.

These sharply differing findings for the two broad categories of government agency were a product of the JCPA's assumption that ministerial departments are 'primarily involved in administering or implementing predetermined government policy' whereas 'government business enterprises', if not other statutory authorities, are 'independent, self-managing businesses setting their own commercial and investment policies within the framework of their legislative guidelines' (JCPA, 1989:181; also JCPA, 1987:16). We know enough about both ministerial departments and statutory authorities to realize that this exaggerates the difference between them. Nevertheless, the JCPA provides an authoritative statement of alternatives which might yield desired results at a lower cost' (see the description of the General Accounting Office in RCAGA Appendix Volume Four, 1976:173-81).
the view that performance evaluations of statutory authorities should be able to draw upon more comprehensive performance audits than their counterparts for ministerial departments. Indeed, on the JCPA's argument, there would be little if any distinction between audit and evaluation of statutory authority performance: audit would in fact be a major instrument of evaluation.

If this suggests that the potential relevance of efficiency audit may be greater for statutory authorities than for ministerial departments, its present relevance is somewhat less. (In neither case, however, could the role of efficiency audit be described as well developed.) This is because of the very small number of efficiency audits of statutory authorities which have been completed24. But another factor which may impair the potential of efficiency audit in the case of statutory authorities is the possible shift to private auditors. The primary produce marketing authorities and the transport and communications GBEs have recently been permitted choice of auditor. By early 1989, only one marketing authority and one GBE had appointed a private audit firm. But the Auditor-General and the JCPA have expressed concern that an increase in the number of efficiency audits of these

24. Only 7 (or 13.5 per cent) of the 52 efficiency audits conducted by the Commonwealth Auditor-General between 1979 and 1988 were concerned with statutory authorities or government-owned companies. This compares with 23 for departments and 22 for 'departmental outriders' (JCPA, 1989:136; see also p.138). Another form of comparison is in terms of length of 'audit cycle' - that is, years taken to complete audits of all programs with income or expenditure over say $10m. At the rate of progress achieved in the late 1980s audit cycle lengths were 54 years for statutory authorities, 48 years for ministerial departments and 20 years for departmental outriders (JCPA, 1989:223).
authorities would produce a flight to private auditors (who do not conduct unsolicited efficiency audits) (JCPA, 1989:166-7).

Efficiency audit is thus far from having realized its potential as an instrument of, or an instrument assisting, evaluation. However, it has some prospect of doing so over the next decade. The JCPA (1989:221-31) has strongly recommended a major increase in funding for efficiency, or performance, audits. If that recommendation were to be implemented, audit could be expected to contribute greatly to the consolidation of the managerialist approach to administrative accountability. Moreover, the audit of statutory authorities might make an especially significant contribution to that end as, on the JCPA view, audit would be afforded greater scope in the case of statutory authorities.

However far audit develops towards an instrument of evaluation in its own right, it will remain also an important input into the evaluative activities of other, especially parliamentary, actors. We must therefore briefly trace the influence of efficiency auditing in this area. The JCPA has been the traditional recipient of audit reports and its role has, not surprisingly, expanded in recent years in line with the development of the audit function.

Following the adoption of efficiency auditing the Public Accounts Committee Amendment Act 1979 gave that Committee

25. Note that Australia compares poorly with New Zealand and Canada in terms of the proportion of audit resources devoted to efficiency audits. The figures for national government audit were 10 per cent and 42.8 per cent for New Zealand and Canada respectively in 1988-89, compared with 6 per cent for Australia in 1987-88 (JCPA, 1989:223-5)
explicit authority to examine efficiency audit reports. A year or so later the parliament enhanced the Committee's freedom of access to these reports by abandoning its requirement for the reports to be formally referred to the Committee by parliamentary motion. In response the Committee has begun to move beyond its traditional concern with 'fraud, over-expenditure, non-observance of Treasury regulations and the absence of proper auditing procedures' (Emy, 1978:490) to embrace tentatively the notion of performance evaluation.\(^{26}\)

The JCPA does not monopolise the parliamentary consideration of efficiency audit reports. The House of Representatives Expenditure Committee was also involved until its disappearance in 1988. For instance, in 1986, while the JCPA was engaged in inquiries resulting from efficiency audit reports on the Export Development Grants Board and the property operations of the Australian Wool Corporation (Auditor-General, 1986:46-7), the Expenditure Committee presented a report on the Overseas Telecommunications Commission's control over manpower and property, based on another efficiency audit (HRSCE, 1986c). The Senate Standing Committee on Finance and Government Operations (SSCFGO) has also examined matters raised in Auditor-General reports on reference from the Senate, or by its own decision under its standing reference to oversee the finances, administration and accountability of statutory authorities and other government-

\(^{26}\) In 1985 the Committee reported that, while its primary concern remained 'the cost effectiveness of policy rather than its objectives, it was 'becoming more interested in analyzing the process by which those objectives are determined' (JCPA, 1985b:1).
owned bodies. As part of its long-term program of monitoring the annual reports of statutory authorities, the SSCFGO frequently explored instances where the Auditor had qualified the financial statements of an authority. With the establishment of a system of select committees in the House of Representatives in 1987, the range of parliamentary committees making use of efficiency audit reports has expanded further (see JCPA, 1989:319).

**Periodic, Comprehensive Review**

The final instrument listed in Figure 7.1 is the periodic review of the mandate and overall performance of a statutory authority. The potential benefits of this instrument have not been seriously canvassed in the Commonwealth public sector, mainly, one suspects, because the notion of periodic review has tended to be treated as incidental to the idea of 'sunset' legislation. For instance, the SSCFGO (1979a:87-92; 1982a:49-57) gave serious consideration to the sunset concept—that is, a periodic reauthorisation requirement for statutory authorities. But, having concluded that only very occasional use of the measure was desirable (1982a:54-5), the SSCFGO saw no need to examine separately the case for mandatory periodic reviews. (But it did state its preference for the use of annual reports to identify agencies for selective review.)

The Canadian Lambert Commission, in contrast, was careful to separate the two issues. Like the SSCFGO, it
argued for a statutorily imposed ministerial review of mandate and operations of each body not less than once every ten years. Further, a report on each review should, it argued, be required to be tabled in parliament and be automatically referred to the appropriate standing committee. Such a review might or might not lead to the abolition of an agency. But its primary purpose, building on the regular assessments conducted by parliamentary committees, would be to determine whether the agency had fulfilled, or was making satisfactory progress towards fulfilling, its statutory objectives and, just as importantly, whether these objectives required modification in the light of a decade's experience (RCFMA, 1979:325,353).

Despite the absence of strong support for either sunset clauses or periodic review in Australian Commonwealth government, the ideas have attained a degree of practical expression in that arena. But, in accordance with the tendency noted above for review to be viewed as subordinate to the sunset idea, such requirements for review as have been imposed are mostly implicit ones, consequent upon the existence of a statutory provision terminating the authority at a set date some years on\(^\text{27}\). In only one case (the Employment, Education and Training Act) is there an explicit statutory requirement for a formal review along the lines

\(^{27}\) The following Acts (to 1988) have imposed some form of obligation for review: Human Rights Commission Act 1981 (No.24); Steel Industry Authority Act 1983 (No.124); Automotive Industry Authority Act 1984 (No.106); Textiles, Clothing and Footwear Development Authority Act 1988 (No.14); Anti-Dumping Authority Act 1988 (No.72); Employment, Education and Training Act 1988 (No.80).
recommended by Lambert. Within five years of the enactment of
the enabling legislation the minister is required to bring
about an external review of the authorities created and to
table the resulting report in the parliament within 15 days.

Periodic review, then, is currently a very minor part of
the machinery of accountability for Commonwealth statutory
authorities. But there are some signs that it may come to
play a larger role. The instances of its use noted above are
recent and are likely to inspire imitation. A related
instrument whose wide use may be envisaged has also recently
been discussed by the JCPA (1989:181-2). This is a five-
yearly 'strategic audit' of trading authorities, an idea
originally advocated in Australia by the New South Wales
Commission of Audit (1988:94). The strategic audit would be
essentially an efficiency audit, but one conducted, unlike
current efficiency audits, at regular and reasonably short
intervals. Also unlike many current efficiency audits, it
would concentrate on the organization as a whole rather than
a particular aspect, or aspects, of its operations.

III. A NEW CONCEPTION OF ADMINISTRATIVE RESPONSIVENESS

The third feature of the managerialist approach to
accountability identified at the outset has been an implicit
theme in the previous sections of this chapter. We must now
draw explicit attention to its presence and elaborate some of
its more important manifestations.

It will be recalled that along with its complementary
emphases on strategic direction and evaluation and review, the
managerialist approach, as we have explained it, understands the accountability relationship as involving responsiveness to objective performance values rather than, as has been the tendency hitherto, responsiveness to the expectations of political representatives. There are in fact two aspects to this development which may be distinguished. Firstly, the government-authority relationship is increasingly seen in quasi-contractual terms, whereby legislative and ministerial direction establish an objective 'mission' for the authority which the latter is thereafter responsible for achieving. (It is for this reason that it has become popular to identify the lack of a strong framework of legislative and ministerial directions as a serious defect in accountability regimes for statutory authorities - see for example PBRC, 1981:131.) This understanding of the relationship de-emphasises the need for the authority to interpret, and to stand continually ready to respond to, the wishes of politicians and focuses attention instead on fulfilment of the specified terms of the 'contract'.

The second aspect is the growing significance of pre-established, objective, and often instrumental criteria against which the adequacy of an authority's discharge of its responsibilities is assessed. Such formalisation of evaluation is manifested in the new emphasis on timely formal reporting of performance against pre-established objectives; in the effort to develop quantifiable performance indicators; and in the growing importance of audit within the evaluative process, audit being virtually synonymous with the application
of 'objective rules and criteria' (Linder, 1978:191) to administrative performance.

A related development, insofar as it is also symptomatic of the prominence of process, or instrumental, values in the contemporary conception of accountability, is the movement towards stricter formal standards for decision-making processes. One manifestation, following the Committee of Inquiry on Public Duty and Private Interest (Bowen, 1979), is new statutory provisions to prevent conflict of interest in the decision-making of statutory boards. Another manifestation, this time a product of the 'new administrative law' introduced in the late 1970s and early 1980s, is the requirement that many decisions taken by statutory authorities be open to scrutiny by the Ombudsman, to judicial review and to review on their merits by the Administrative Appeals Tribunal (AAT). Also part of the administrative law reforms was the Freedom of Information (FOI) Act (1982), under which agencies must make available internal rules and guidelines used in making decisions affecting citizens. This requirement, together with the fact that under the AAT Act 1975 and the Administrative Decisions (Judicial Review) Act 1977 decision-makers must supply on request a written statement of the reasons for a reviewable decision, has created a strong incentive for agencies to enhance the regularity of their decision-making processes (Griffiths, 1985:462). It should be noted, however, that the developments outlined in this paragraph are not unique to statutory authorities (though the administrative law reforms were
applied to Commonwealth statutory authorities earlier than to the ministerial departments) and that trading authorities enjoy significant exemptions from the FOI Act\textsuperscript{28}.

If accountability is increasingly understood in terms of responsiveness to specialized performance values, then the value upon which most emphasis has recently been placed is that of economic efficiency in the use of resources\textsuperscript{29}. Among statutory authorities this value clearly has most relevance to trading authorities, or Government Business Enterprises (GBEs) - that is, those authorities whose performance is most readily and appropriately measured in economic terms. In what follows we shall concentrate on this category of bodies.

We noted above the trend towards a more formalised government-authority relationship. In the case of trading authorities this is particularly clear\textsuperscript{30}. The model which has been increasingly promoted as the basis of government-authority interaction is that of shareholder to public company. Like any shareholder, so the argument goes, the government should be primarily interested in achieving an acceptable financial return on the funds it has invested in the particular enterprise. In addition to its role as shareholder, however, the government is acknowledged to have

\textsuperscript{28} See Schedule 2 of \textit{Freedom of Information Act 1982} (No.3).

\textsuperscript{29} The reasons for this development were touched upon in Chapter 1.

\textsuperscript{30} The ideas outlined in this paragraph were very much 'in the air' of the Commonwealth public sector in the late 1980s. For instance, they pervaded the remarks of my interviewees in early 1989.
another legitimate role which will be more or less evident in different cases. This is to determine the nature and level of other than commercially justifiable activities it wishes the enterprise to undertake in pursuit of certain policy objectives. But, once identified, these activities should, it is held, be performed by the authority under a de facto contract with the government. In order that the authority should not take decisions on non-commercial grounds, it should be made clear that 'community service obligations' (CSOs) are met at the direction of the government and constitute grounds for some form of financial compensation from the government.

The attribution to the government of these two roles, and these alone, is intended to clarify the decision-making environment of authorities. In particular, proponents of this approach suggest that one of its virtues is to make unambiguously clear that the primary obligation of authorities is to use the resources at their disposal in an economically justifiable manner. Authorities should not, it is said, be required to make trade-offs between commercial and political objectives; that is the job of governments. Economically justifiable resource use is also the principal criterion against which, it is argued, the performance of authorities should be judged.

These ideas about the running of statutory trading authorities are not new to the Commonwealth public sector but they have been taken up with much greater enthusiasm in the 1980s than ever before. Two major reports - that of the (Davidson) Committee of Inquiry into Telecommunications
Services in Australia (CITSA, 1982) and that of the Senate Select Committee on Statutory Authority Financing (SSCSAF, 1983) - were particularly influential in producing a favourable political climate, though the main (proximate) sources of ideas have been Treasury, the Department of Finance and private financial management consultants. A formal commitment to reform by the government, however, came only in October 1987 with the Paper on Policy Guidelines for Commonwealth Statutory Authorities and Government Business Enterprises (Minister for Finance, 1987). The thrust of the changes recommended for GBEs by that paper was to combine a reduction in controls over enterprise operations (as discussed earlier) with a requirement that enterprises operate within the discipline imposed by a rate of return financial target. As a result of work done to realize this projected change, the Minister for Transport and Communications subsequently issued a more detailed policy statement outlining reforms concerning the eight enterprises associated with that portfolio (Minister for Transport and Communications, 1988a). As the latter include many of the most important Commonwealth GBEs, this development is important in its own right. But because of the prominence of the authorities involved it is possible that the reforms will also generate a significant flow on effect to authorities in other sectors.

Before examining more closely the changes underway in the authorities mentioned above, it will be useful to outline briefly certain salient features of the pre-existing situation. As part of its 1983 report the Senate Select...
Committee on Statutory Authority Financing analyzed the financial performance of nine major authorities and found that performance to be both variable and often unimpressive (SSCSAF, 1983:37-72; see also Carroll, 1986). But as significant as this finding was the difficulty the committee experienced in attempting to derive an economically meaningful and consistent set of rate of return figures, due to the diverse financial management and accounting techniques employed by the authorities (see SSCSAF, 1983:23-35). These problems had been highlighted the previous year by Shand. In his examination of eight Commonwealth authorities, Shand (1982) found marked and apparently arbitrary discrepancies in the nature of their capital bases, in the nature of dividend and other payments to the Commonwealth, in the liability for Commonwealth taxes and charges, in the form and level of financial targets, and in pricing policies. His particular concern was that these discrepancies made it difficult to compare the financial performance of authorities, both with one another and with private sector enterprises, in order to judge whether capital was being employed in its most productive uses.

The differing target rates of return and the poor financial performance of many authorities are partly explained by the fact that authorities are, for community reasons, often expected to deliver certain services which they either would not perform at all or would provide at a lower level if they were acting solely on commercial considerations. They have also been subjected to certain costs as a part of the public
sector which they would not have experienced otherwise. The problem here is that 'community service obligations' (CSOs) are very rarely specified clearly or explicitly required by legislation or regulation. In general their 'implementation is broadly at the discretion of the management of the GBE' (BTCE, 1988:3). For these reasons, and because explicitly targeted financial assistance on the 'recoup' principle is rarely paid to Commonwealth authorities, there has been very little incentive for authorities to cost CSOs separately. As a result the impact of CSOs on rates of return was simply unknown with any degree of accuracy (see Shand, 1982; BTCE, 1988).

For present purposes the main conclusion to be drawn from the above is that rate of return targets have traditionally played little or no role in accountability arrangements for Commonwealth GBEs. The financial targets which have been employed are, as Shand (1982:56) has shown, often so vague or so easily achievable that 'no effective target' has existed. Further, Shand (1982:58) has suggested that targets have been to an extent historically determined, their form and levels being in some cases 'merely an ex post rationalization for failure to achieve a [meaningful] financial target'.

A central feature of current GBE reforms, as noted above, is the shift to an economically meaningful rate of return financial target as the main disciplinary force in GBE decision-making. The idea of rate of return targets for

31. On the other hand, membership of the public sector also confers certain benefits on trading authorities (Shand, 1982:55).
public enterprises is 'to ensure that, after allowing for any identified CSOs, resources are used at least as efficiently in the public sector as would be the case if they were subject to normal commercial judgements' (Department of Finance, 1988b:3). This means that for each GBE the financial target should, in the words of the 1987 Policy Guidelines Paper, 'be designed to achieve a ... return sufficient to justify the long term retention of assets in the enterprise', rather than their application to some other public or private use (Department of Finance, 1987:22). Consequently, target rates of return are set to reflect rates achieved by comparable private sector enterprises or, in the absence of the latter, some other relevant private sector benchmark.

The rate of return target is the quintessential objective performance criterion for statutory trading authorities. Its projected adoption in accountability regimes for Commonwealth GBEs is thus clear evidence of the particular change under discussion in this section. As an economist in the Bureau of Transport and Communication Economics succinctly observed, in very much the same terms we have employed, whereas accountability for these authorities in the past meant 'political control' it now means 'achieving a satisfactory return on resources employed' (Interview, February 1989).

This observation reinforces the impression that what we are discussing is something akin to a Kuhnian paradigm shift. The rate of return concept is not so much a means of making statutory authorities more accountable in some accepted sense as it is part of a different way of understanding
accountability. Moreover, as with a Kuhnian paradigm shift, the new conceptual framework produces a new agenda for research and new difficulties as much as it produces new ways around old problems. In this case the research agenda has to do with the problems involved in operationalising the rate of return concept. This task is by no means straightforward, especially given the generally unsuitable accounting and financial management practices previously followed by Commonwealth authorities. While progress has been made towards applying the new approach, a target which is soundly based in economic terms had not been achieved for any authority by early 1989 (the time of writing). Indeed, the difficulties in operationalising rate of return targets (discussed below) are serious enough to dampen any residual feeling that the latter offer a readily available and obviously superior approach to accountability. On the other hand, the fact that considerable effort has been applied to overcoming the obstacles since the publication of the Department of Finance policy papers in 1986 and 1987 suggests a strong commitment to the new approach in the Commonwealth public sector.

We may briefly refer to the main tasks involved in deploying the rate of return concept in order to illustrate the magnitude of the undertaking as well as the difficulties which may prevent a fully successful outcome. The tasks have to do with asset valuation; identification and costing of CSOs; choice of the form of rate of return measure; and the setting of the target rate (see generally Bureau of Transport
and Communications Economics, 1988).

The appropriate valuation of assets is important because 'in broad terms the economic rate of return of an enterprise is determined by comparing the enterprise's economic income to a market valuation of the enterprise or its assets'\(^{32}\) (Treasury, 1988:1). Typically, for Commonwealth authorities current asset values have not been known because the authorities have traditionally practised historical rather than current cost accounting (SSCSAF, 1983:27-8). Valuing assets on a purely historical basis, as the Department of Finance (1988b:3) has noted, 'inject[s] an element of arbitrariness into a rate of return comparison due to differences in longevity of assets and in the relative inflation rate of different assets'. The process of shifting to market valuations of assets is, however, underway. The Department of Finance (1988c:4) reported that 'in most cases Commonwealth GBEs are required to undertake a valuation of assets before finalising 1987-88 dividends or before any legislation necessary to implement the [1988] reforms comes into force; and in other cases, in the absence of special arrangements, revaluations should be reflected in the accounts for the year ended 30 June 1989'. The Department of Finance's draft guidelines for asset valuation in GBEs provide for comprehensive current valuations at least every five years or over a five year cycle (Department of Finance, 1988c:4). But determining the current cost of a large variety of the non-

\(^{32}\) The change in the market value of an enterprise or its assets is in turn central to the determination of economic income (Treasury, 1988:1).
current assets held by public authorities, such as special purpose buildings or equipment of specialised design, is a difficult undertaking. Where there does not exist an effective market for the asset surrogate measures of its current cost must be devised. This is to some degree a creative and inexact exercise (see generally Department of Finance, 1988c).

The identification and costing of CSOs is obviously necessary if GBEs are required to meet rate of return targets set on a commercial basis, as the CSOs (and 'costs of public ownership' - CPOs) will affect performance as measured. Some of the problems involved in identifying CSOs which were touched on above will be overcome as CSOs are explicitly defined as a result of being brought within the corporate planning process. But costing CSOs and CPOs involves some considerable difficulties regarding the allocation and attribution of revenues and costs within the enterprise (see BTCE, 1988:3-8).

The choice of the form of the rate of return is a less difficult matter. Where possible it should reflect the point of comparison in the private sector. Normally the appropriate measure would be the rate of return on some definition of the enterprise's total assets, but in some circumstances a case can be made for some other measure such as rate of return on turnover, or on equity as distinct from total capital (see Department of Finance, 1988b:5).

The setting of the target rate of return, the final task, seems particularly fraught with difficulties (see Department
One problem is the determination of an appropriate allowance for risk, since rates of return should vary with the riskiness of the enterprise. This is not a concern where there are private sector counterparts, but such benchmarks are often lacking for public enterprises. Use of the average private sector return is the ultimate fallback position, but given the considerable variation in private sector returns both over time and between enterprises this seems a rather arbitrary approach. In addition to the problems caused by differential riskiness, the Department of Finance (1988b:9-14) has identified a range of circumstances which may justify modification of target rates, often one suspects necessarily in accordance with 'seat of the pants' judgements. These include situations where unexpected technological change, movements in factor prices or poor past investments have left GBEs with capital stock inappropriate to current trading conditions; where enterprises have inherited non-optimal levels of manning or work practices; where enterprises are capital or labour intensive; and where the general business climate or the economic circumstances of the industry in which the enterprise is operating are unusual.

To reiterate, the above discussion is not intended to suggest that the rate of return concept is fatally flawed. On the contrary, even if it can only be operationalised in a rough and ready fashion, the rate of return target may serve its purpose. Rather, the point of indicating the difficulties of operationalisation was to emphasize that the shift to required rates of return is not to be explained as the
discovery of a better way of achieving what has always been sought by way of accountability for trading authorities, but is better understood as part of a new way of conceiving accountability itself.

**Conclusion**

This chapter has accomplished several tasks. Firstly, it has differentiated what we have termed a 'managerialist' conception of accountability from the conception of accountability as parliamentary control, discussed in the previous chapter. Secondly, it has shown that while important aspects of the managerialist conception have long been implicit in basic institutional arrangements for statutory authority accountability, these have been only weak influences on practice. Thirdly, it has demonstrated that during the 1980s major steps have been taken towards institutionalising the managerialist conception in accountability regimes for Commonwealth statutory authorities.

When accountability is conceived in managerialist terms, the supposed impediments to public accountability posed by the statutory authority form disappear. Indeed, viewed in this light, the statutory authority offers certain advantages compared with the ministerial department. Among the most important of these is, as we have suggested, that the institutional 'distance' established between minister and agency facilitates strategic rather than 'simple', or detailed, control. Such distance is also (as the Public Accounts Committee seems to have recognized) an essential
prerequisite for developed arrangements for formal public evaluation and review.

The evidence about recent administrative change presented in this chapter shows that accountability for statutory authorities is increasingly being understood, implicitly or explicitly, in managerialist terms. It is no longer adequate to make judgements about administrative accountability by reference to the traditional 'parliamentary control' paradigm alone. Moreover, this is not merely a matter of changed perceptions. As has been shown, considerable practical efforts have been made over recent years to ensure that statutory authorities contribute, along the lines we have discussed, to an accountable public administration.
CHAPTER 8

ACCOUNTABILITY AS CONSTITUENCY RELATIONS

This chapter examines a further alternative to the traditional conception of accountability as parliamentary control. The ideas it examines have had less influence on recent changes, or 'reforms', in accountability relationships than those discussed in the previous chapter, and for that reason can be dealt with more briefly. The point of the chapter is thus not so much, as in Chapter 7, to argue for a major contribution of new thinking to the practice of accountability in statutory authorities, as to draw attention to phenomena, in some cases of long standing, whose existence is often unnoticed or whose significance for public accountability has been underestimated.

Accountability arrangements following from this 'third perspective' may take many varied forms and are consequently more difficult to generalise about than was the case with the institutional expressions of the 'second perspective'. Indeed, their importance can be properly demonstrated only through in-depth studies of particular organizations. There are, however, few suitable existing studies to draw upon, and this deficiency cannot be rectified in a generalised study of the present kind. All that can be done here - and all that
needs to be done given the aims of the thesis - is to make a case for the 'third perspective' as a valid and distinctive way of conceptualising accountability; to outline and provide examples of the various ways in which the ideas are manifested in Commonwealth statutory authorities; and to discuss the extent to which what is discovered should cause us to reassess conventional judgements about the accountability of Commonwealth statutory authorities. In addition, it will be argued that, as with the approach to accountability considered in Chapter 7, that dealt with here is especially compatible with the statutory authority device.

Accountability as Constituency Relations

What shall be referred to here as a 'constituency relations' approach to accountability is similar to what has been described in recent British and Australian literature as 'mutual accountability'. The latter term was a product of an Anglo-American research project on accountability conducted between 1967 and 1973 (see Smith and Hague, 1971; Smith, 1974; Hague, Mackenzie and Barker, 1975; Barker, 1982a). This project focused on organizations, mainly quangos and quagos, which were sites for the interpenetration of public and private activity. The researchers became convinced of the importance for accountability of the web, or 'network', of relations of dependence and influence in which these bodies were typically enmeshed. Such relations were, they felt, at least as essential to the meaning of accountability as the legal (that is, statutory) situation which normally only
addressed relationships between authorities and ministers. Pursuing this empirical approach, the British participants in the project concluded that 'the relationships subsumed in the actual practice of accountability include ... "answerability", "fiscal control", "peer-group judgement", patterns of "reference group" or "reputational" authority, "clientele relations" and "participation" - a fairly mixed bag, pointing towards a broad, interactive or "network" model of the process' (Barker, 1982b:16). Thus alongside 'upward' accountability to ministers and parliament, the British authors argued for the recognition of 'downward' accountability to clientele and 'horizontal' accountability to peers and other reference groups. The balance struck in particular cases between these several forms of accountability should, it was argued, be determined by the nature of the activity performed by the organization. For instance, '[w]here a governmental body (whether advisory or executive) is acting as the expert and unbiased judge of subjective matters (grants to arts or historic buildings) it should enjoy minimum upward accountability in making its decisions but accept maximum outward or downward answerability by joining in public discussion of its field and work...' (Barker, 1982a:18; see also Keeling, 1976). We shall reserve until later the question of what precisely 'accountability' may mean when used in these ways.

This work has been summarised for Australian readers by Wettenhall (1983:33-8; note also 1986:130), who has suggested its applicability to Australian statutory
authorities (see also Thynne and Goldring, 1987:226). Wettenhall noted a few likely analogues to the cases explored in the British literature: the Human Rights Commission and Trans Australia Airlines (as these bodies were then named) were offered as examples of bodies for which downward answerability could be expected to be important, while primary produce marketing authorities, the Australia Council, the Heritage Commission, the National Standards Commission, professional registration boards, courts and appellate tribunals were seen as likely to employ a mixture of horizontal and downward accountability (1983:36-7).

The Australian literature does not go much beyond this point. There has been little effort to scrutinise the underlying conception of accountability or to examine, however superficially, the mechanisms through which it is manifested in Australian bodies. Nor has there been an attempt to assess the significance for judgements about accountability of recognizing horizontal and downward relationships of the above-mentioned types, except for Wettenhall's suggestion (1983:38-9) that 'the need for a "mutual accountability" system' justifies the independence from ministerial control apparently signified, though not always realized, by statutory authorities.

One basic issue may be raised at this point. If downward and horizontal forms of accountability are to be accorded anything like equality of status with upward accountability, it would seem that statutory office-holders must be sufficiently independent that the interests and
opinions of peers, clients and so on can be as fully incorporated into decision-making as office-holders choose. This might be held to raise some difficulties.

The questions of the authority of officials to exercise responsibility independently of political superiors and of the desirability of their doing so have long been debated in the international public administration literature. (The Finer, 1941-Friedrich, 1935; 1940 exchange is the most cited example; but see also Long, 1952; Appleby, 1965; and Saltzstein, 1985). In general, American writers have over the years been more prepared to countenance, and even promote, the independent responsibility of officials than have their counterparts in parliamentary systems of government. It has been argued, for instance, that the United States Constitution establishes not the supremacy of the legislature but the equality of the three branches of government, each of which exercise powers delegated by the sovereign people. On this view 'all officers, elected and unelected, are representatives of the people even though their constitutional duties may differ' (Rohr, 1983; cited in Saltzstein, 1985:290). In contrast British and Australian thinking has been very much in tune with the position championed by Finer (1941:336) in his exchange with Friedrich:

... the servants of the public are not to decide their own course; they are to be responsible to the elected representatives of the public, and these are to determine the course of action of the public servants to the most minute degree that is technically feasible... This kind of responsibility is what democracy means.

Such unwillingness to allow that unelected
administrators may possess an independent responsibility to the public has influenced thinking about statutory authorities. As we saw in Chapter 2, some Australian commentators have argued that statutory office holders exercising administrative (as distinct from judicial) functions possess only a strictly circumscribed discretion vis-a-vis ministers - defined only uncertainly by enabling statutes, but rigidly delimited by statements of government policy and ministerial directions. In constitutional terms, they have argued, the statutory authority may well be no different in status to the ministerial department:

whatever organization is used must be consistent with the principles of responsible government'; '... it is at least arguable that any provision which seeks to oust the answerability to the minister for the activities of the authority offends against the Constitution... (Goldring, 1980:367, 370).

Since Wettenhall has associated himself with this position (Goldring and Wettenhall, 1980), his support for the relevance of 'mutual accountability' to statutory authorities seems a little incongruous. Presumably his view is that the wider recognition of alternative channels of accountability may persuade ministers, despite their pre-eminent position in the system of public accountability, to exercise greater forbearance in their dealings with statutory authorities. The latter is a cause which Wettenhall has championed throughout his writings. Such forbearance would give authorities freedom to be responsive to clients and other relevant actors. However, as argued in Chapter 2, the Goldring-Wettenhall reading of the constitutional standing of statutory
authorities is a dubious one. It is more likely that parliament has complete freedom to confer independent decision-making authority upon statutory bodies and to specify whatever arrangements for the public accountability of the latter it judges appropriate. If this is correct, the real issue is what is desirable in arrangements for the accountability of statutory authorities, not what is constitutionally allowable.

As well as drawing upon the British literature discussed above, our 'constituency relations' perspective owes something to an interesting conceptualisation of accountability by American authors Romzek and Dubnick (1987). Romzek and Dubnick also see accountability as inherent in a range of agency relationships. Their main contribution, however, is their characterisation of the accountability relationship. Accountability, they claim, has traditionally been closely associated with answerability, which implies 'limited, direct and mostly formalistic responses to demands'. They argue that this is too narrow an understanding of what is involved in public accountability and that accountability is better understood in terms of the various 'means by which public agencies and their workers manage the diverse expectations generated within and outside the organization' (1987:228).

The Romzek and Dubnick position I take to be related to Linder's view (1978:182), presented in Chapter 7, that accountability is sought as a response to the biases associated with discretion. The possession of discretion by
administrators gives rise to expectations and suspicions in a diverse range of groups, which in turn creates a need for the exercise of discretion to be justified or legitimised. Romzek and Dubnick (1987:228-9) identify four generic means of achieving this result. Alternatively, six main types of institutional mechanism would seem to be available for the task. These are:

- firstly, ministerial controls of various kinds (including strategic as well as detailed controls);
- secondly, arrangements for appealing against decisions, or review mechanisms;
- thirdly, arrangements for outside participation in decision-making;
- fourthly, arrangements whereby decision-making is placed in the hands of acknowledged experts, on the assumption that decisions will be governed by the norms as well as the expertise of a profession;
- fifthly, arrangements for answerability, or the rendering of formal accounts, statements of reasons for decisions and the like;
- and sixthly, arrangements for external evaluation of decision-making.

The managerialist approach to accountability considered in the previous chapter relies heavily on the first and last of these mechanisms. The 'constituency relations' approach, by contrast, is distinguished by the use it makes of the other four mechanisms.

We may now draw together the threads of the discussion
in order to define our third perspective on the accountability of statutory authorities. A constituency relations perspective interprets accountability as satisfaction of the diverse expectations generated by the organization. It follows that the third perspective is distinguished from the perspectives examined so far in terms of the number and nature of the actors with whom relationships are formed, as well as in terms of the means by which the exercise of discretion by the authority is legitimized. The actors to whose expectations the authority responds include all of those who can make a successful claim to have a legitimate interest in the authority's decisions. These will vary from case to case but will often include professional peers, clients, employee bodies and bodies with which the organization has commercial relationships, as well as ministers, parliament and other public sector 'watchdog' agencies (such as the Auditor General, the Administrative Appeals Tribunal, the Prices Surveillance Authority). However, the distinctive feature of the third perspective, as far as the range of actors is concerned, is the use it makes of 'downward' and 'horizontal' relationships rather than 'upward' ones. The characteristic means by which these relationships are sustained and the exercise of authority legitimized are those listed above; they will be discussed in greater detail in the next section.

There are two other noteworthy characteristics of this understanding of accountability. The first is that it expresses what might be termed a 'statutory authority centred' perspective on accountability. Traditionally, accountability
has been approached from the point of view of ministers or parliament: the task has been seen as one of making unelected officials ('them') responsible to elected officials and thence to members of parliament ('us'). Indeed, even an observer as sympathetic to the statutory office-holders' point of view as Wettenhall has implied that the notion of accountability is inseparably associated with a ministerial or parliamentary perspective:

> Emphasizing the accountability problem does, however, tend towards a "top-down" view - looking in on the SAs, as it were, to see whether they are behaving themselves... (1983:43)

Whereas the approaches to accountability considered in previous chapters have embodied such a 'top-down' view, our third perspective denies the necessity of this connection. It seems more in conformity with the vantage point of the statutory office-holders and senior staff, who will typically be as keenly aware of demands for responsiveness stemming from the agency's interactions with clients, consumers, professional peers, commercial rivals, public interest groups, employees and their associations, semi-independent public sector inquisitorial bodies and so on, as they will be aware of the need to respond to pressures from 'above' generated by politicians. That some agencies at least implicitly understand accountability in terms of responsiveness to a range of interested actors is evidenced by the emphasis they have placed on 'stakeholder management' or effective communication with 'key audiences' (see for example SFIT, 1988; Telecom, 1988a).

The second characteristic follows from the first.
Because it adopts the vantage point of the statutory authorities, the third perspective treats accountability not as something to be extracted from the administrative agency by some 'responsible' entity but as something for which the agency itself has the primary public responsibility. In other words, the agency is seen to some extent as a political entity in its own right, with a direct responsibility to various 'publics' or 'constituencies'. It is to capture this most distinctive feature of the third perspective that I have chosen to call it 'accountability as constituency relations'. Figure 8.1 compares this aspect of the third perspective with the corresponding aspects of the perspectives on accountability examined in Part II and Chapter 7.

**Figure 8.1** Relationships within Accountability Systems

<table>
<thead>
<tr>
<th>Type of Accountability System</th>
<th>Basis of Relationship</th>
<th>Analogous Relationship (Controller-Administrator)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Parliamentary (and ministerial) control</td>
<td>Supervision/command</td>
<td>Superior-subordinate</td>
</tr>
<tr>
<td>2. Managerialism</td>
<td>Fiduciary/contract</td>
<td>Principal-agent</td>
</tr>
<tr>
<td>3. Constituency relations</td>
<td>Representation/responsiveness</td>
<td>Constituent-representative</td>
</tr>
</tbody>
</table>

*The figure was suggested by Romzek and Dubnick (1987:230).

**Manifestations in Commonwealth Statutory Authorities**

Aside from the public sector actors which have dominated the discussion to this point in the thesis, we can identify several main sorts of 'constituency' whose expectations vis-a-
vis particular statutory authorities may, depending on the activity in which the body is involved, be especially important to the public justification of statutory authorities' decision-making powers. These are professional peers, consumers (that is, paying customers), clients and, finally, individuals or groups with public interest concerns. In this section we shall describe a number of specific mechanisms through which the expectations of each of these generic groups is managed or satisfied. Observations will also be made on the adequacy with which particular mechanisms perform this task. One mechanism is relevant to most of the above types of constituency. This is the authority board, typically composed largely of part-time, limited tenure appointees. Because of its prominence and its relevance to the several constituency types, the board is considered separately.

Before proceeding to the tasks outlined above, we should perhaps take a moment to consider why statutory authorities might be expected to have a special affinity for 'horizontal' and 'downward' accountability relationships. Agencies other than statutory authorities will of course also feel the need to address a range of different audiences. In general, the number and strength of the demands on agencies will depend on the nature of their task environments. But the way agencies view and respond to such demands will be affected by those actors (parliament and ministers) able to determine what their formal accountability will consist in. These actors will affect the way authorities prioritise and satisfy
demands for responsiveness, both by the level of their own demands and by the arrangements for interaction with other actors that they impose on authorities. If in accordance with their basic raison d'être statutory authorities are generally characterised by a lower volume and intensity of demands from ministers and parliament than ministerial departments, they should have greater freedom to develop strong relationships with other actors. The strength of these relationships may be enhanced where enabling statutes counterbalance a reduction in intended responsiveness to ministers with formal obligations to respond to other actors. The result would be a greater propensity for statutory authorities, compared with ministerial departments, to view their external environment as placing upon them a variety of more or less equally strong demands.

Clients and public interest groups
Downward accountability to clients or interested sections of the public may be purely a result of strategic considerations on the part of the authority, or it may be engineered or reinforced by institutional arrangements. British writing has paid most attention to the former situation, in particular to bodies with overtly promotional objectives (for example, the Commission for Racial Equality, the Equal Opportunities Commission, and the National Consumer Council) whose downward links are based largely on a strategic need to cultivate community groups with a close interest in their work (see Barker, 1982b:19-20). In Australia, too, a number of such
bodies have been created in the 1970s and 1980s. Moreover, the ex-Director of one such body, the now defunct Australian Institute of Multicultural Affairs, has acknowledged the importance to a promotional body's effectiveness, and ultimately to its survival, of developing a supportive social base or constituency (Sheldrake, 1987). However, our interest is principally in the second category of cases because institutional links offer a greater guarantee of responsiveness to interested groups, and hence establish a stronger form of accountability.

Several sorts of institutionalised downward linkages can be found in Commonwealth statutory authorities. The best known and most common sort is that produced by giving particular groups or associations the legal right to nominate or elect members of a statutory body's governing board. As noted above, the role of the board is reserved for separate discussion below. Occasionally, however, processes for filling boards are supplemented by other arrangements for representation. Perhaps the most notable case is the proposed Aboriginal and Torres Strait Islander Commission (ATSIC) which embodies a two-tiered representative structure comprising the Commission and a system of Regional Councils replacing the existing Regional Offices of the Department of Aboriginal Affairs. The Regional Councils are to be elected by Aborigines and Torres Strait Islanders resident in each region and will, in turn, elect 17 of the 20 commissioners, in addition to their other tasks of determining regional priorities, developing and implementing regional plans, and
generally representing the interests of the region (Hand, 1987; Tate, 1989; Aboriginal and Torres Strait Islander Commission Bill 1989). ATSIC is thus explicitly designed to combine upward accountability through the minister (who, inter alia, must approve budgetary estimates and a corporate plan, and may issue financial directives) with downward accountability to clients.

Commonwealth primary produce marketing authorities (SMAs) utilize a different mechanism. For many years the procedure for determining board membership constituted the main formal means of achieving downward responsiveness and legitimising the authorities to their client base. However, the White Paper Reform of Commonwealth Primary Industry Marketing Authorities (Department of Primary Industry, 1986) announced a new approach to achieving these ends. The Paper affirmed the government's commitment to 'dual accountability' for the authorities: accountability to parliament, 'which provides the statutory powers', and accountability to the industries, 'on whose behalf they act and which provide SMAs funds' (Department of Primary Industry, 1986:5). The latter objective would henceforth be achieved by requiring each authority to hold an annual general meeting of growers or, alternatively, to report to a suitably representative industry organization.

The annual general meeting mechanism had by 1988 been included in legislation for the Australian Meat and Livestock Corporation and the Australian Wine and Brandy Corporation. In these cases the authority is required 'to establish a
register of bona fide industry members and to provide those members with its annual report and an invitation to attend the AGM' (Department of Primary Industry, 1986:5). Through the annual general meeting industry members are able to

consider the annual report of the SMA; receive an address by the Chairperson on the performance of the SMA in the past year and on the outlook and intended performance in the coming year; question the Chairperson and Board on any aspect of the SMA's activities, including financing; and debate and vote on specific motions including levy determination and confidence in the Chairperson or the Board as a whole (p.5).

The minister is required to terminate the appointments of board members in whom motions of no confidence are passed.

The alternative arrangements for accountability to rural industries - which have been adopted for the Australian Wheat Board, the Australian Wool Corporation and the Australian Horticultural Corporation - establish a similar set of procedures, except that they apply to the executives of grower associations rather than growers and they do not make provision for votes of no confidence. Rural Industry Research Councils have also been required to account to relevant industry organizations in this fashion (Department of Primary Industry, 1986:5-6; Australian Horticultural Corporation Act 1987, No.164; Rural Industries Research Act 1985, No.102).

A third mechanism of downward accountability, this time to interested or affected groups rather than clients, is the public hearing. Advisory authorities make regular use of public hearings, and some regulatory bodies (for example the National Companies and Securities Commission) can choose to employ them. But it is unusual for Commonwealth bodies with
executive powers to use the procedure on a regular basis in the exercise of their powers. This contrasts with the United States of America where a requirement for a public hearing in advance of specified categories or decisions is a standard feature of regulatory processes (see for example Rosen, 1982; Gormley, 1986). Among Commonwealth bodies the Australian Broadcasting Tribunal (ABT) comes closest to the American model, that is to the use of the public hearing as a major channel of accountability. A brief look at that body is worthwhile for what it can tell us about the conditions in which public hearings are effective for this purpose.

Throughout most of the post-war period powers to grant, renew, suspend and revoke broadcasting licences; to approve transactions affecting the control or ownership of licences; and to determine the general standards and conditions with which broadcasters must comply were exercised by the minister, acting on the advice of the Australian Broadcasting Control Board. The system of accountability was based on the premise that the minister, assisted by the Control Board and answerable to the parliament, adequately represented the public and that, consequently, there was no need for direct public involvement (ARC, 1981:3). The legislation of 1976 and 1977 which established the ABT rejected that premise. In placing the powers listed above in

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1. There is, however, room for argument about the importance of the public hearing mechanism for the accountability of the ABT. At a RAIPA (ACT Division) Monthly Meeting, on 30 March 1988, the Chairman of the ABT, Ms D. O'Connor, argued that public accountability was better served by the publication of reasons for decisions and the 'pyramid of review' constituted by the system of administrative law.
the hands of the ABT, the legislation constrained that body to make its decisions regarding the renewal of licences through a process designed to enable extensive participation by the public and by the industry being regulated. The newly formed Tribunal announced that '[t]he philosophy of direct public accountability is the basis of our approach to the regulation of broadcasting' (ABT, 1977; cited in ARC, 1981:4). The mechanism through which this was to be achieved was the 'inquiry procedure' which gave members of the public and persons affected the right to make submissions and participate in public hearings held prior to ABT decisions. Also important for accountability was the requirement for the ABT to prepare and publicise a report of every inquiry, containing its findings and its reasons for any decision or recommendation.

Obligations to hold a public hearing and to report, however, do not guarantee effective public participation or an appropriate level of satisfaction of public expectations. A number of deficiencies in the ABT's procedures for public participation were highlighted by the Administrative Review Council (ARC, 1981). Two of the ARC's criticisms are particularly worthy of note here. The ARC found that a basic weakness was that too much had been expected of the hearing alone as a vehicle for public participation:

The Tribunal's inquiries are at present conducted on the basis that a hearing will be the sole occasion for allowing participation, receiving evidence and deciding issues. The problems caused by expecting so many things to be achieved in a brief time gave rise to most of the criticisms received by the Council. The Council has proposed a more staged procedure, in which hearings would be held only where they were
clearly necessary, and would always be thoroughly prepared in advance (1981:22). The ARC was also critical of the lack of adequate procedural rules to protect rights of participation and to ensure natural justice to all parties. A particular issue was 'standing' to appear at hearings. This involved practices based on the Tribunal's reading of that part of the Broadcasting and Television Act which confined the right to appear before the Tribunal to individuals 'having an interest in the proceedings.' The ARC (1981:23-6) found those practices to be essentially arbitrary and restrictive of the rights of interest groups to participate. Liberal rules on standing to make submissions and to give oral evidence at hearings are vital for genuine public participation, as are prior publicity of a hearing, a clear description of its purpose, and its conduct at a convenient location and time. But even these may not prove sufficient to prevent regulatory 'capture' - that is, accountability principally to the actors who are subject to regulation. In the United States during the 1970s concern about the narrowness of participation led to the funding of groups lacking the resources to participate, as well as to the passage of 'sunshine' laws to proscribe ex parte communications between members of regulatory agencies and interested members of the public and to open the processes of the agencies to public scrutiny (Rosen, 1982:74). The ARC (1981:36) canvassed the issue of funding interest groups but made no findings or recommendations.

While the ARC thus exposed some major weaknesses in the ABT's arrangements for direct public accountability, it
also recognized that these weaknesses were due as much as anything to a lack of familiarity in the Commonwealth public sector with the particular form of public inquiry. The latter instrument was acknowledged to be a valid means of engineering 'downward' accountability. Subsequent changes to the ABT's enabling legislation began the reform of procedures along the lines recommended by the ARC (see Broadcasting and Television Amendment Act 1985, No.66).

We may conclude that Commonwealth statutory authorities exhibit at least three main sorts of institutionalised linkages to client and public interest groups, through which these groups may seek to satisfy their expectations. In terms of the six types of mechanism identified above, the specific linkages discussed here would seem to be examples of participation (the third category) and answerability (the fifth category).

Peers
The Carnegie-sponsored, Anglo-American research project of the late 1960s and early 1970s referred to above has probably done most to raise awareness of the importance of 'reputational' or 'reference group' communities to accountability (see Barker, 1982b:16-22). Those involved were particularly impressed by the evidence they uncovered regarding the influence of professional peer groups - as, for instance, the finding that 'engineers in the BBC research department saw themselves as accountable to scientists within the ITA [the rival organization] who formed part of their 'community', though
there was manifestly no formal requirement to do so' (Mackenzie and Hood, 1975:44).

Why should peer groups be regarded as important to public accountability? It is not difficult to see why the other sorts of group discussed in this chapter should have been chosen: clients, public interest groups and customers are all obvious surrogates for 'the public' in certain circumstances. But peer groups surely lack this intimate connection with the public interest. This accepted, the reason for their importance is related to the frequent use of statutory authorities to place decision-making power in the hands of 'experts'. Under these circumstances, peer reference is an important (though not necessarily a sufficient) safeguard against bias (other than that of a professional nature).

What of the mechanisms through which peer influence is brought to bear on statutory authorities? Responsiveness to professional peer groups is produced by the internalisation of professional attitudes and values, resulting in self-policing, combined with habits of subjective reference. But it may be reinforced by institutionalised patterns of interaction such as cross-representation on committees. In general, then, peer influence draws upon the third (that is, participation) and the fourth (that is, use of experts) of the mechanisms for legitimising the exercise of discretion identified earlier.

An example of institutionalised interactions with peers is provided by Mitchell's study of the British Medical
Research Council (MRC). Mitchell (1975) found that the MRC was embedded in a web of interaction, involving competition as well as co-operation, with a range of public and private bodies belonging to 'a series of overlapping arenas'. The latter included a departmental arena (the Department of Health and Social Security), a university arena (the Universities Grants Committee (UGC) as well as individual universities), a research council arena (the four other councils) and a medical research funding arena (private charities and foundations). Among the forms of linkage involving the MRC in a network of relationships between the various bodies were mutual dependencies in the training of researchers, high rates of staff interchange, physical interdependence of research establishments, liaison to maintain consistency in terms of employment and salaries (all of which brought the MRC into continuous contact with the universities); joint research ventures (with the DHSS); negotiation in the primary division of funds available for research (involving the five councils); the 'dual-support' granting system (involving the MRC and the UGC); and cross-representation on funding advisory committees (with the DHSS and private organizations) (1975:229-37).

Commonwealth statutory authorities offer many examples of institutionalised or semi-institutionalised interactions with professional peer groups. Perhaps the most obvious are granting authorities such as the Australia Council and the Industry Research and Development Board. In these cases the main form of linkage is that provided by the direct representation of relevant groups in the decision-making
structure. Rotation of these part-time office-holders at relatively short intervals preserves the immediacy of peer group influence. In recognition of the 'horizontal' accountability relationship on which it is based, this decision-making structure is commonly referred to as 'peer review'.

In both the Australian Council and the Industry Research and Development Board relevant professionals or practitioners are represented at all levels of multi-layered structures. Ideally, this enables peer influence to be brought to bear on all important decisions, from matters of general policy to the awarding of individual grants. The nine member Industry Research and Development Board at 30 June 1988 consisted of a senior hospital administrator, a technology consultant, a deputy general manager of the Australian Industry Development Corporation, two senior managers from metals industry companies, a senior academic geneticist, the principal of an engineering consultancy, a solicitor and a First Assistant Secretary from the Department of Industry, Technology and Commerce (IRDB, 1989). But the Board does much of its work through eight specialist committees each chaired by a board member and containing on average three to five other part-time members drawn from professions or businesses relevant to the particular concern of the committee. The Biotechnology Committee, for example, comprised at 30 June 1988 an academic geneticist (chairman), a technology consultant, a CSIRO researcher, a management consultant, a senior academic biochemist and a senior medical school
academic (IRDB, 1989). The Australia Council has a three-level decision-making structure. Beneath the Council are a set of specialist art-form Boards (seven to ten members) which like the Council must contain a majority (excluding chairpersons and government representatives) of 'persons who practice the arts or are otherwise associated with the arts' (Australia Council Act 1975, sections 9, 22). The Boards have been the key decision-making arenas, enjoying a high degree of autonomy in developing policy and administering grants for their respective art-forms (HRSCE, 1986:65). But in selecting grant recipients the Boards have, in turn, made widespread use of assessment panels or committees (of three to four members with a Board member in the chair) comprising specialists drawn from particular sub-branches of the arts (HRSCE, 1986:83; Interview: Bourke, 1989).

As noted above, responsiveness to peer group standards and opinions requires fairly frequent rotation of decision-makers. Thus in the case of the Australia Council membership of the Committees turns over annually, that of the Boards every two to three years and that of the Council every three-four years. Efforts are also made to ensure that members are representative of relevant artistic communities; or, in other words, that review is performed by genuine peers. To this end Australia Council Boards are required to advertise regularly for, and maintain lists of, potential members. The field is also invited to submit lists of suitable individuals (Interview: Bourke, 1989).

Away from grant-giving bodies, the Commonwealth
Science and Industry Research Organization (CSIRO) offers an example of a more complex set of linkages with its peer group, the science and technology community. The mechanisms for interaction include representation on the Organization's governing board, advisory mechanisms throughout the Organization, co-location of CSIRO research units with other research organizations, joint funding of collaborative research, joint appointments of staff, and participation in the use of national research facilities (see ASTEC, 1985:30-32). The CSIRO is of additional interest because it also has important 'downward' links with industrial end-users of research, especially through contracts with the eleven or so Rural Industry Research Funds and with research associations, such as the Australian Mineral Industry Research Association (ASTEC, 1985:32-3). In an attempt to improve the contribution of the CSIRO to 'usable' research, the government has recently sought to strengthen both horizontal and downward interactions (Jones, 1986). The report on which recent changes to the CSIRO have been based identified three main sets of actors with which it saw a need for the Organization to interact—the industrial end-users of research, members of the scientific and technological community, and Commonwealth and state governments. By increasing direct links with the first group and forging closer working relationships with the second group, the CSIRO would, the report argued, improve both its performance and its public accountability (ASTEC, 1985:24).

Horizontal accountability relationships, like their downward counterparts, are clearly not of equal relevance to
all statutory authorities. Barker (1982b:19) has suggested that the Carnegie work may have exaggerated their general importance. The reason horizontal accountability achieved such prominence in these studies, in Barker's view, was that the Carnegie project was stimulated by the major shift to contracting out of United States government research and development to universities in the 1960s. This gave the project a bias towards an activity and organizations in which formal peer group control plays an important role.

The Australian examples referred to above bear out the relevance of peer influence to research activities. But they also indicate that the distribution of government grants in any specialised field is an activity which encourages receptivity to the judgements of fellow professionals. It is likely that peer group interactions are also important to other categories of statutory authority. For instance, one would expect to find important professional influence flows between major quasi-judicial or regulatory bodies, on the one side, and the legal profession and courts, on the other. Managers and professional employees of trading authorities are also likely to see their counterparts in private business as important reference points and arbiters of sound business or professional practice.

Not only is horizontal accountability thus relevant to a range of Commonwealth statutory authorities, there is also every likelihood that it is more important to statutory authorities than to ministerial departments. Dunleavy (1982) has argued this case for British trading authorities, and
several of his supporting arguments seem equally relevant to the Australian situation. In general, many of the activities performed by statutory authorities are technical or highly specialized in nature. A primary reason for establishing statutory authorities to conduct these tasks is to give individuals with relevant specialised knowledge key roles in decision-making. This can be achieved either by placing such individuals in the top structures of organizations or by devolving decision-making within organizations. Moreover, habits of subjective reference to peers and peer norms will be reinforced among individuals who are part-time members of statutory boards as they will typically continue to be actively involved in their professions outside the public sector.

Customers
A particular form of downward accountability for that category of statutory authorities which market goods and services to the public, the trading authorities, is accountability to customers. There is a range of mechanisms, of varying degrees of effectiveness, through which Commonwealth trading authorities seek to manage customer expectations or through which customers may pressure authorities to pay attention to their interests and demands. As we shall see, they tend to be instances of either the second type (that is, arrangements for appeal or review) or the fifth type (that is, answerability) of our generic mechanisms for legitimising the independent decision-making powers of statutory bodies. The specific
mechanisms to be dealt with here may for convenience be divided into two main types: those which exist primarily to deal with individual grievances and those concerned with policy and general performance. We shall consider each type in turn.

Each authority has its own internal arrangements for dealing with individual complaints. By themselves, however, these cannot provide sufficient public reassurance. As the Commonwealth Ombudsman has argued,

the public will not be satisfied by rejection of a claim by an internal review officer or body. Members of the public do not distinguish between deciding officers and internal reviewing officers or bodies (Commonwealth Ombudsman and Defence Force Ombudsman, 1988:26).

It is for this reason that the machinery of administrative law, in particular the Ombudsman, is of great importance in the handling of customer grievances.

The Ombudsman Act 1976 gave the Commonwealth Ombudsman jurisdiction over both departments of state (excluding the parliamentary departments) and 'prescribed authorities', including all Commonwealth statutory authorities. In June 1977, regulations placed 17 statutory bodies, including three trading authorities (the Australian National Airlines Commission, the Australian Shipping Commission, and the Commonwealth Banking Corporation), outside the scope of the Ombudsman's inquiries (Commonwealth Ombudsman, 1978:24). But

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2. These are not watertight categories. Bodies responsible for dealing with complaints may be best placed to advance forceful criticisms of policy and performance. Conversely, machinery to monitor performance is, as Prosser (1986:176) has argued, 'a prerequisite for adequate complaints handling'.
for other trading authorities the Ombudsman provides a major, often the only, avenue of external review for dissatisfied customers. Take the case of Telecom. That authority generates a huge volume of customer complaints each year; in 1987-88, for instance, just under 2,600 complaints received by the Ombudsman, or 21.1 percent of those within jurisdiction, concerned Telecom (Commonwealth Ombudsman and Defence Force Ombudsman, 1988:8-10). In the absence of the Ombudsman most of those complainants, having presumably exhausted the possibilities afforded by internal complaints mechanisms, would have no further avenue available through which to seek redress. This is so because Telecom's customers are in many circumstances prohibited by law from taking legal action against Telecom, even if they have suffered financial loss due to its action or inaction.

The Ombudsman has considerable capacity to pursue grievances. An investigation may be initiated on the basis of either oral or written complaints, or on the Ombudsman's own motion. The Ombudsman may find an administrative action to have been defective for a number of reasons, including that the action appears to be contrary to law; is unreasonable, unjust, oppressive or improperly discriminatory; is based either wholly or partly on a mistake of law or fact; or is otherwise, in all the circumstances, wrong (Section 15, Ombudsman Act 1976). In pursuing his/her investigations the Ombudsman has the power to require the production of documents and other relevant materials. Where a defect is discovered various remedies may be sought - ranging from an apology, to
a statement of reasons, to reversal of the adverse decision, to compensation. The Ombudsman may go beyond the securing of a remedy for the particular grievance to recommend a future course of action such as a change in procedures. In these cases he/she must submit a report of the findings and recommendations to the agency and the minister. If dissatisfied with the response the Ombudsman may, as a final recourse, submit special reports to the Prime Minister and the Parliament (Section 15, Ombudsman Act 1976; Commonwealth Ombudsman, 1978:31-2).

The Ombudsman has recently reported difficulties in getting prompt attention paid to his reports and in adequately publicising the office, its role and achievements (Commonwealth Ombudsman and Defence Force Ombudsman, 1987:1-2). Nevertheless the large number of complaints received each year (22,370 in total in 1987/88) demonstrates substantial public awareness of the complaints mechanism, as the reasonably high level of successful outcomes testifies to its effectiveness (see Commonwealth Ombudsman and Defence Force Ombudsman, 1988:11-12). It certainly compares favourably with the primary mechanism used to handle complaints about British nationalised industries, the consumer councils. The performance of these bodies in this role has been widely criticised as weak: 'their existence has been little-known and their effectiveness limited; they have deferred too much to the industries and have not used agreed settlements as precedents for future agreements' (Prosser, 1986:190; see generally pp.190-92).
We turn now to the second set of instruments, those which enable customers' expectations to be made known and satisfied in the areas of general performance and policy. As regards performance, an essential prerequisite to the satisfaction of expectations is reliable knowledge about the standards of performance being achieved. Over recent years, in Australia and elsewhere, considerable emphasis has been placed on the development of 'performance indicators' to provide such knowledge. Even where trading authorities are required to meet rate of return financial targets (as discussed in the previous chapter) performance indicators have an important role to play, due to the fact that authorities may raise prices to meet targets where they have monopoly power or may sacrifice quality of service for 'bottom-line' performance.

As Prosser (1986:177) has observed for Britain, the term performance indicator has been used to refer to several distinct things: performance aims negotiated between the government and the enterprise, such as the new price control arrangements for Telecom outlined below; management performance indicators, covering such matters as productivity trends and manning levels, for use in management information systems; and, finally, indicators of adequacy of service to customers. Prosser also noted the tendency, prevalent in Australia as well, to confuse performance 'indicators' with performance 'targets'. Ideally, there should be targets set to represent desirable performance against which actual performance is subsequently reported, so that customers or
their representatives can identify strengths and weaknesses on the basis of agreed standards.

Keeping these distinctions in mind, we may briefly survey the use of performance indicators by six Commonwealth trading authorities with among the highest volumes of commercial dealings with the general public. The authorities are Telecom, Australia Post, Australian Airlines, the Health Insurance Commission, the Commonwealth Bank, and the Australian National Railways Commission. The standard of performance measurement as displayed in recent annual reports varied greatly among these bodies. For Telecom and Australia Post it was generally very good: in each case a variety of indicators were employed, including a number of indicators of service standards, and both targets and measures of actual performance were presented. Telecom also provided eight measures of customer satisfaction. The Health Insurance Commission compared favourably with Telecom and Australia Post in some respects but not in others. It utilized a similarly extensive range of indicators. In addition, it presented informative comparisons of its efficiency and financial viability with those of the private industry. However, although the financial and managerial performance data showed trends over a ten year period, no performance targets were provided. The Railways Commission's performance reporting also blended strengths and weaknesses. A large number of performance indicators (20 or more) were displayed, but only three concerned customer service. Moreover, the information was presented only on the basis of comparisons with previous
years, with no accompanying targets. Finally, the Commonwealth Bank and Australian Airlines showed little commitment to performance measurement, particularly in the area of service quality. Again no performance targets were presented.

Performance indicators give customers and consumer associations a certain capacity to monitor performance. But satisfaction of customer expectations arguably requires, in addition, a capacity to make authorities justify their performance. Several public sector bodies play this role to a greater or lesser extent vis-a-vis Commonwealth trading authorities.

One has already been encountered in another guise. This is the Ombudsman, who not only seeks remedies for individual grievances but is also intended to improve the general standard of administration. Such an outcome may result where the investigation of a complaint uncovers an institutionalised deficiency which is then pursued in its own right by the Ombudsman. Alternatively, the Ombudsman may launch an own-motion investigation into some aspect of administration in which his/her own monitoring has revealed a difficulty. The latter course is more likely the more familiar the Ombudsman is with a particular authority as a result of the burden of case work it generates. For instance, Telecom, the leading source of complaints to the Ombudsman, produced such an investigation in 1987-88 by its decision to remove the pip tones from time charged community telephone calls (Commonwealth Ombudsman and Defence Force Ombudsman,
1988:16-17).

The Prices Surveillance Authority is another body which has had a role in monitoring important trading authorities and pressuring them to justify their pricing policies\(^3\). Prices for standard or basic services delivered by Telecom, the Overseas Telecommunications Commission and Australia Post were (prior to new arrangements being introduced for the first two authorities in 1989) subject to ministerial approval following Prices Surveillance Authority consideration. While its scrutiny is triggered by and focused upon proposals to increase prices, the Authority's public hearings have provided an opportunity for individuals and consumer associations to publicise their discontent with various aspects of these enterprises' operations (for example, the absence of consumer representatives on boards). Moreover, its reports have criticised particular features of an enterprise's performance, such as poor industrial relations in the postal service, which have led to otherwise unnecessary price increases (note Wettenhall, 1986:107-8).

The other notable performance scrutinising body is AUSTEL, a new regulatory authority established in 1989 (see Minister for Transport and Communications, 1988a:122-56; Telecommunications Act 1989, No.53). It has jurisdiction over Telecom, Aussat and the Overseas Telecommunications Commission in the areas of technical regulation, protection of the carriers' monopoly, protection of competitors from unfair

\(^3\) It was established by the Prices Surveillance Authority Act 1983 (No.145).
competition by the carriers, promotion of efficiency, and protection of consumers against misuse of the carriers' monopoly powers. It is the last of these functions which is of relevance in the present context. AUSTEL's general authority to protect consumer interests is combined with specific roles in price control, consumer complaints and customer service standards (Minister for Transport and Communications, 1988a:145-51). In the area of consumer complaints a division of labour has been worked out with the Ombudsman, whereby the latter will continue to deal with individual grievances while AUSTEL will be responsible for pursuing complaints which raise 'wider regulatory policy considerations' (1988a:152). With regard to customer service standards, AUSTEL's role will be to advise the government on the setting of performance targets for the three enterprises following consultation with the service providers and user groups. According to the Minister, in carrying out its consumer protection functions AUSTEL will be required to establish 'consultative arrangements' with 'representative consumer groups and other relevant interest groups' (1988a:145).

It remains to draw attention to several recent innovations designed to require trading authorities throughout their operations to pay greater attention to customer interests and preferences. The desirability of public organizations 'getting closer' to consumers has become a

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Note the Ombudsman's reservations about this outcome and his displeasure with decision-making processes in the Department of Transport and Communications (Commonwealth Ombudsman and Defence Force Ombudsman, 1988:27-8).
catch-cry in Australia and elsewhere in the 1980s. Addressing developments in Britain, Hambleton (1988) has identified a simultaneous trend of the same sort in private sector management. But he also argues that the threat of privatisation and deregulation are crucial factors behind the recent popularity of 'consumerism' in government. These factors have been at work in Australia too. Their effects are nowhere more evident than in recent changes within Australia's largest public enterprise, Telecom.

Three notable developments have occurred almost simultaneously in Telecom. The first is its reorganization into three divisions, reflecting its main customer groups - corporate customers, metropolitan customers and country customers (see Telecom 1988b). Accompanying the new structure has been a major effort to change the organizational culture, so that through devolution of managerial responsibility, decentralisation and differentiation of service the enterprise can become truly 'customer driven' (see Ward, 1988). The second development is the establishment of an ongoing large-scale survey of consumer satisfaction with Telecom's main services. The survey, known as 'Telecats', is conducted by a private market research company in order to establish its independence in the minds of customers. Telecats is intended as both a performance measure, enabling districts to measure their performance against national targets and regional results, and a management tool, helping to identify reasons and remedies for customer dissatisfaction (Remark, 1987; Telecom Business Communications, 1988). Thirdly, an interim
Telecom Consumer Consultative Council has been formed, the first of its kind associated with a Commonwealth trading authority. It comprises Telecom representatives and representatives of seven major consumer and other interest groups (Telecom, 1988c, 1988d). For Telecom's managing director the Council appeared as a way 'to build a bridge of understanding' between telecom and its customers; whereas the Director of the Australian Federation of Consumer Organizations, the Deputy Chairman of the interim Council, envisaged the permanent body as a 'legitimate forum' where consumers' views on issues could be 'put before Telecom at the most senior level' (Telecom, 1988c).

A considerable amount has thus been achieved over recent years in institutionalising responsiveness to the interests and expectations of the customers of Commonwealth trading authorities. Moreover, several of the very recent innovations we have discussed will undoubtedly attract widespread interest, and pressure may well develop to extend them to other authorities. In general, the achievement seems quite notable when one takes into account the virtual neglect of this whole area by the 'reform' movement of the 1970s and 1980s.

This having been said, however, it cannot be concluded that mechanisms of accountability to the trading authorities' customers are particularly strong. To begin with, the mechanisms discussed above are far from having effective

5. The objectives and terms of reference of the Council are set out in Attachment A to Telecom (1988e).
application to all trading authorities. Further, certain mechanisms found to be of value elsewhere are either absent or poorly developed among Commonwealth authorities. For instance, unlike some of their state counterparts, Commonwealth trading authorities are not required to have consumer representatives on their boards. Similarly, codes of practice setting out standards to be observed in dealing with customers on various matters, such as have been adopted for several of the nationalised industries in Britain (see Prosser, 1986:183-8), have no Commonwealth counterparts. Perhaps most notably, in comparison with the British situation there are no consumer councils which authorities are obliged to consult.

The new Telecom Consumer Consultative Council, noted above, appears to lack the necessary institutional autonomy. It is a Telecom creation rather than a body with its own statutory basis; it is chaired by a Telecom representative; its agenda is determined by Telecom; and it is presumably funded by Telecom (Telecom, 1988e). This compares with the more independent consumer councils attached to British nationalised industries. In Britain the statutory requirements for consultation with the consumer councils are 'fragmented and inconsistent' and the record of consultation is 'highly varied', but the consumer councils have had some notable successes in promoting consumer causes (see Prosser, 1986:157-8; see generally 157-68).

The absence of strong arrangements for consumer consultation, in turn, weakens the potential of other
mechanisms to contribute to genuine responsiveness to consumers. Thus while the use of published indicators of performance has improved, in line with a more general emphasis on this instrument in Australian public administration, such indicators make no institutionalised contribution to satisfying consumer expectations. This is because performance indicators and performance targets are generally set solely by the authorities themselves and failure to meet targets has no automatic consequences. (In this respect, the role of AUSTEL in the setting of performance targets, noted above, is a significant departure from past practice). By contrast, Redwood and Hatch (1982) have shown how performance targets could be employed to strengthen the position of consumers. Targets would be set by the enterprises in consultation with consumer councils and the reasons for choosing particular targets would be published. Annual reports would describe actual performance against the targets and explanations would be provided for underperformance. Performance would also be monitored by the consumer councils and the auditors. Failure to meet targets would engender publicity and some form of special investigation.

The Board

We may now consider perhaps the most prominent and widespread mechanism through which the responsiveness of statutory authorities to key constituencies is facilitated, namely the placement on authority boards of representatives of particular groups. A glance at the annual reports of Commonwealth
statutory authorities confirms that statutory boards are vehicles for the participation in public sector decision-making of a very large number of individuals, from a great variety of niches in Australian society. But how adequate is this mechanism as a means of managing or satisfying the expectations of relevant groups? How effective is it, in other words, as an instrument of accountability?

The question is a difficult one to answer with any certainty. Indeed, the potential of the part-time policy board to act as an instrument of 'downward' or 'horizontal' accountability has been differently assessed in two recent Commonwealth documents. A favourable evaluation of this potential underpinned the recommendation of the Australian Science and Technology Commission report *Future Directions for CSIRO* (ASTEC, 1985) that the top structure of the Science and Industry Research Organization, one of the very few executive boards in existence among Commonwealth authorities, be replaced by a policy board. ASTEC argued that '... the Board should be perceived as a key element in the Organization's overall accountability to the broader community, bringing external views into the Organization and representing the Organization's views to that community' (1985:49-50). On the other hand, the White Paper *Reform of Commonwealth Primary Industry Statutory Marketing Authorities* (Department of Primary Industry, 1986) argued against industry representation on boards as a means for authorities to account to their industries:

The Government's view is that it does not allow sufficient accountability because as Board members,
industry representatives have corporate responsibilities and commitments to Board policies through their involvement in the policy formulation process. They are not well placed to question Board policies after those policies have been agreed upon and implemented (1986:6).

The two positions were, however, not as far apart as they may seem. The White Paper did not deny that industry representation on boards had operated as an instrument of accountability, only that it had certain deficiencies which made other arrangements more 'suitable' for the purpose. For its part, ASTEC did not envisage the individual accountability of board members to the groups from which they were chosen, as it insisted that board members 'should not sit in a representative capacity' (1985:47).

It seems clear, however, that if the board is to operate as a strong mechanism of accountability then board members must, formally or informally, play representative roles. They are more likely to do so where there is a statutory requirement for representatives of particular fields of endeavour, associations or industry organizations to be appointed. The latter bodies will, in these circumstances, be in a better position than otherwise to exact responsiveness from boards. They will be in an even stronger position where statutes give the industry or association the right to nominate or elect its representatives. Both of these sorts of arrangement can be found among Commonwealth authorities.

Among the best known examples of the stronger requirement are the primary produce marketing authorities, the first batch of which were created in the period between the world wars. In these cases it was typically provided that
growers and those involved in the processing and marketing of particular products should elect representatives to the board established to control the marketing of their product. Higher education authorities are also well known examples. The Australian National University Act 1946 (No.22), like the university Acts of the states, specified the composition of the University's governing Council in some detail. It required that, of the maximum of 30 Council members, five to nine must be elected by Convocation, two must be appointed or elected (as determined by the University Statutes) to represent students, three must be elected or appointed by the professorial and teaching staff, and four must be drawn from and elected by members of the Commonwealth Parliament (two from each House). We have also noted that the Aboriginal and Torres Strait Islander Commission is to be largely composed of members elected by representative Regional Councils themselves elected by Aborigines and Torres Strait Islanders. Various other statutes contain weaker versions of this sort of provision. For instance, the Economic Policy Advisory Council Act 1983 (No.26) specified that a majority of members be appointed after 'consultation' between the minister and various organizations representative of particular interest groups. Similarly, the Institute of Health Act 1987 (No.41) made provision for nominees of two health associations to be included in the 12 member Institute. In all of these cases accountability to non-governmental groups or associations is, to a greater or lesser degree, part of the design of the statutory authority.
Formal arrangements for fully or partially representative boards are, however, relatively rare among Commonwealth authorities. More common is a requirement that the individuals selected have particular sorts of expertise or experience. For example, the *Australia Council Act* 1975 (No.11), the *Australian Broadcasting Corporation Act* 1983 (No.6), the *Management and Investment Companies Act* 1983 (No.123), and the *Defence Housing Authority Act* 1987 (No.101) stipulate that an individual should not be appointed unless he 'appears to the Governor-General' to be qualified by virtue of expertise or experience in specified relevant fields of activity. Often, however, the fields specified are so numerous or so broad as to place little constraint on the appointing authority. This sort of provision seemingly owes far more to the perceived need of ministers to protect themselves from allegations of patronage than to anything else. And even this minor constraint on the choice of board members is absent in the majority of authority statutes.

Furthermore, the representative board has been under attack to some extent over recent years, most notably in the statutory authority reform White Papers of 1986 and 1987. The White Paper on primary produce marketing authorities foreshadowed the end of representative boards for these authorities, although the statutory selection committees which were henceforth to nominate board members would be filled on a representative basis (Department of Primary Industry, 1986:16-21). The subsequent 'Policy Guidelines' Paper on statutory authorities and government business enterprises took
the trouble to emphasize that, unless statutes provide otherwise, the duty of members of statutory boards is to contribute their expertise for the good of the authority rather than to represent the views of the group or profession from which they are drawn (Minister for Finance, 1987:11).

It is tempting to conclude that, except in the few cases where Commonwealth statutory boards are formally representative of outside interests, the board is not an important mechanism of either 'horizontal' or 'downward' accountability. But this is not necessarily so. Even in cases where ministers have complete freedom of choice they (or their advisers) would surely often need to consult interest groups and professional associations in search of suitable appointees. One suspects that in many cases the result is that appointees are the de facto nominees of such bodies. Conversely, it seems natural that board members will often feel that they are expected, as far as possible, to represent the point of view of the group, association or profession from which they are drawn (and to which they may, as suggested above, owe their appointment). Moreover, it is likely that appointments will often reflect the desire of the minister to legitimise the agency and its programs in the eyes of particular social groups. Therefore, while formal efforts to produce accountability to clients, peers and so on may be relatively few, such relationships may well commonly grow out of the use of selection processes to manage the expectations of relevant groups. Of course, this is a speculative conclusion. And even if it is soundly based speculation, the
lack of formal arrangements to cement the links would tend to keep any relationships of accountability relatively weak.

Implications for Judgements about Statutory Authority Accountability

The aim of the foregoing has been to reveal the existence of a hitherto underemphasized dimension of statutory authority accountability. On the evidence presented it is not possible to estimate with any precision the current contribution to public accountability of the phenomena we have discussed. But that contribution is clearly significant - both in terms of the number of authorities affected and in terms of the degree of institutionalisation of the relevant relationships. Thus, it has been shown that 'accountability', as the term is defined in this chapter, is importantly multi-faceted, or multi-directional, for a substantial number of statutory authorities. We have also demonstrated the considerable extent to which horizontal and downwards relationships are strengthened by formal mechanisms. By contrast, the previous writing on this subject (discussed earlier in the chapter) has tended to concentrate on informal linkages, which generally signify weaker (because less reliable) forms of accountability. Further, it has been argued that accountability as constituency relations, in its developed forms, is closely associated with statutory authorities. That is, the relevant phenomena are more likely to exist, and to be more strongly established, among statutory authorities than among ministerial departments, making this type of
accountability a compensation for any comparative weakness in
the system of ministerial control over the former bodies.

It seems to be the case, too, that downward and
horizontal accountability relationships have become more
important among Commonwealth authorities over recent years.
There is no evidence of a conscious movement aimed at
institutionalising a constituency relations conception of
accountability. Nevertheless, many of the examples mentioned
in the previous section, especially those involving notable
innovations, originated in the 1970s and 1980s.

Further evidence of a growth in the popularity of the
general approach is that during the 1980s it found favour with
a small number of academic commentators. Wettenhall's
contribution has already been noted. Ward's (1985) use of the
idea, applied to the particular case of universities, is also
of interest, not least because it seems to bear out that what
is important as far as public accountability is concerned is
highly dependent on the vantage point of the observer. Ward,
as the Vice Chancellor of Sydney University, argued that
government policy towards universities in the 1980s rested on
an excessively narrow conception of accountability, reflecting
a specifically governmental point of view and defined in terms
of ministerial control. From the seat of the chief executive
of a university, matters could be viewed differently:

... the most important aspect of accountability is
not to be found in the formal obligations attached to
grants of money or in the statutory responsibilities
of reports to legislatures. Rather, it is to be
found in the relationships between universities and
the communities that nourish them and in some cases
founded them... If university relationships with
communities were in a strong state of mutual
understanding... there would then certainly be no political gain in demanding that universities should demonstrate repeatedly that their finances are intact, that their courses and research are "relevant" to some government's concepts of the national interest, that their efficiency is so high that not a dollar is ever wasted (1985:75).

But the maintenance of this aspect of accountability over time was, Ward implied, ultimately the responsibility of the universities. Governments could not be expected, without prompting, to share this outlook. Indeed, he argued, it was precisely because universities had underplayed the importance of downward relationships with local communities that governments, 'driven by long term trends and by immediate political and financial pressures' (p.75), were enabled to impose their preferred uni-dimensional view of accountability.

So accountability as constituency relations is, if not 'on the march', then at least 'up and about'. And there is reason to think that it may become even more important in the future. To be sure, pressures to restrain governmental growth and to increase efficiency will undoubtedly produce further pressures, such as Ward has objected to, to equate accountability with hierarchical control. But, as Barker (1982:21) has suggested, 'Big Government', while probably here to stay, is now sufficiently distrusted that its future acceptability in the eyes of the governed may depend on its adoption of 'an open and participatory disposition'. On the evidence of this chapter, we can agree with Barker's iconoclastic assessment that statutory authorities can promote this style 'very considerably'.

Before concluding our case for the relevance of
constituency relations perspective on accountability, we must consider a possible objection to the whole argument. This is the possibility that what we have identified as a form of accountability is not genuine accountability at all, or else is an inferior species of accountability. Three distinct criticisms along these lines might be advanced. The first is that the 'statutory authority centred' perspective which the constituency relations approach incorporates is an inappropriate one. The argument here is that accountability, as either a process or an accomplishment, should be defined or controlled by the public or its representatives, not by non-elected officials (whether statutory officers or otherwise). Only then, it might be contended, does public accountability assume the central role we wish it to play in ensuring democratic government. The second criticism focuses on what may be regarded as a mis-specification of the entity to which statutory office-holders must be held accountable. The objection here is that the constituency relations approach satisfied itself with accountability to groups with particular interests, whereas the traditional Westminster approach institutionalises accountability to representatives of the public at large. In other words, while responsiveness to groups may be, up to a point, a desirable aspect of public administration, it does not constitute accountability. A third criticism might be that the constituency relations approach rests on an 'explanatory and co-operative' understanding of accountability (see Marshall, 1978 and 1984:119-21), which is much weaker than the traditional
conception which links answerability to control. The assumption is that it needs to settle for this weaker form of accountability because the groups and individuals to whom, on the constituency relations approach, officials respond do not have any executive authority (such as ministers possess) to issue instructions, nor are they able to invoke sanctions when performance proves unsatisfactory. We shall deal with each of these criticisms in turn.

The first criticism may be quickly dismissed. It is true that the constituency relations approach has been identified with the statutory office-holder's vantage point. But, in determining whether or to what extent statutory authorities are accountable, the emphasis in this approach is not on how the statutory authority perceives its level of responsiveness, but on the ability of the statutory authority to satisfy the exogenously determined expectations of the relevant constituencies.

The second criticism cannot be so easily brushed aside. It arises from two fundamental problems in the political theory of democracy. One is how to operationalise 'the public interest' or 'the will of the people'. The other concerns what should be required of individuals acting in a representative capacity (as the constituency relations approach tends to view statutory office-holders). Should they be required to respond to expressed demands and tangible pressures? Or should they act in accordance with a more detached view of the public interest? A large literature addresses these problems (see in particular Pitkin, 1967;
Pennock, 1979; Saltzstein, 1985) and solutions are likely to remain strongly contested into the foreseeable future.

The constituency relations approach stakes out a particular position in these debates. It assumes that accountability is a matter of responsiveness to desires or expressed demands, rather than to some official's view of what the public interest requires. It also assumes that the constituencies of peers, clients, public interest groups and customers to which statutory authorities respond are able to give adequate practical expression to key components of 'the public interest'. At the same time, the approach does not suggest that accountability to such constituencies should ever be regarded as the whole of a public accountability regime. The approach is an inherently pluralistic one: it holds that accountability necessarily involves a variety of relationships - including those with actors, such as ministers and parliament, who can claim to stand for a more inclusive view of the public interest. An adequate regime of public accountability for statutory authorities is, on this view, a matter of striking an appropriate balance between different channels of accountability connecting administrators and a variety of interested actors. The problem of public accountability for each statutory authority is thus most appropriately seen as a particular exercise in institutional design.

The third criticism invites two sorts of response. One is that explanatory accountability has, in effect, long been the norm in parliamentary democracies, and that the
notion of a stronger form of accountability within such systems is for the most part a myth. To be sure, ministers are in a position to sanction and instruct officials, and to dismiss or fail to reappoint statutory office-holders. But this is not sufficient to ensure a system of public accountability. In parliamentary government the linchpin of accountability is the relationship between parliament and ministers: ministerial control ensures public accountability only in conjunction with its necessary complement, parliamentary control of ministers. It is a commonplace of studies of contemporary parliaments that parliament cannot usually control ministers in any strong sense. The result is that ministerial responsibility functions today much more as a mechanism for exacting explanations than for controlling or sanctioning ministers or official⁶.

The other response is that it is by no means clear that the alternative mechanisms we have discussed in this chapter cannot provide sanctions or other forms of influence sufficient in most cases to ensure explanations or remedial actions which are at least as satisfactory as those produced by ministerial responsibility. Ministers and parliament have an important role in accountability regimes for statutory authorities because they have the greatest potential to punish lapses of responsibility or authoritatively to redirect the work of an agency. But this power is deployable only in extreme circumstances or at substantial intervals. A range of

⁶. These matters are discussed more extensively in Chapter 9. For a recent overview of the large literature on this topic see Emy and Hughes (1988:294-331).
more subtle influences, of precisely the kind that we have considered, will also be necessary to ensure the satisfaction of the variety of legitimate expectations which a multiplicity of interested 'audiences' or 'constituencies' will typically have of semi-independent governmental bodies. And it is the satisfaction of such expectations which, on the argument of this chapter, should be regarded as a primary test of accountability.
CHAPTER 9

ADMINISTRATIVE ACCOUNTABILITY AND THE STATUTORY AUTHORITY IN CONTEXT

This final chapter places the issue of statutory authority accountability in the context of general trends in Commonwealth public administration. As suggested in Part I, statutory authorities can only be fully understood when seen as part of a wider system of public administration. Their very existence is a consequence of perceived limitations in ministerial administration. Further, the ministerial department has traditionally been adopted as the reference point for judgements about the strengths and weaknesses of statutory authority administration. In particular, it is in (explicit or implicit) comparison with ministerial administration that statutory authorities have been held to lack accountability. It is thus of considerable interest that the 1970s and 1980s have witnessed a major reassessment of the quality of public accountability furnished by ministerial administration, leading to pressure for institutional change. I shall characterise and explain this development before discussing its significance for statutory authorities.
The Shift from a Monistic to a Pluralistic Conception of Accountability

Recent critical discussion of public accountability has been based most importantly on a desire to confront the perceived de facto independence of the officialdom in contemporary government. In effect, the traditional problem of statutory authority accountability - how to reconcile independence with accountability - has been recognized as a key problem in modern government generally. The most authoritative and influential Australian analysis of the problem is that of the Royal Commission on Australian Government administration which reported in 1976 (RCAGA, 1976). We shall consequently pay close attention to the findings and recommendations of that body and its researchers.

The Royal Commission's main finding was that the

1. Up to the early 1980s there would have been room for dispute over a description of the Coombs Commission as either authoritative or influential. Initially the government and senior public servants appeared keen to dispute its authority. Prime Minister Fraser enunciated a largely conventional understanding of 'responsibility in government' in 1978 (Fraser, 1978). And over the following year, as Hawker (1980:178) noted, no less than three senior public servants felt compelled to restate 'what once did not need to be stated', offering a defence of the public service 'in familiar terms of instrumentality and a certain isolation from the political level of control'. Moreover, while some action was taken in the late 1970s in accordance with the Coombs reform agenda, the fate of the Coombs report under the Fraser Coalition government was in general 'a textbook case of the non-implementation of administrative reform' (Wilenski, 1986: 267). However, through the cumulative effect of further inquiries (both executive and parliamentary), several politically embarrassing demonstrations of administrative weaknesses and the pressure of tighter fiscal constraints, the Coalition parties were won over to key elements of the Coombs reform proposals. Under the Hawke Labor governments (1983- ) the Coombs report has been a primary source of initiatives for administrative reform, most of which have received bipartisan support.
'Westminster model' no longer provided an adequate framework for public accountability:

...in a system which combines the anonymity of officials with an inability of ministers effectively to accept responsibility, effective and economical administration can fall between the stools of the theory of ministerial responsibility and of the practice of management by anonymous official (RCAGA, 1976:12).

On the basis of this diagnosis, the Commissioners took their task to be the development of a new system in which a more limited, or 'realistic', notion of ministerial responsibility would be supplemented by means of holding officials directly accountable for the powers which they inevitably exercise independently of ministers (RCAGA, 1976: 12). This was a bold departure from the Australian orthodoxy. But, considered in an international context, it merely followed the trend of comparable inquiries in Britain (CCS, 1968) and Canada (RCGO, 1962).

The wisdom of overseas experience was distilled for the Commission and applied to the Australian situation in the consultant's report of Professor H.V. Emy (1976). In Emy's view the Westminster model was not only descriptively inaccurate in contemporary circumstances, but it had become an obstacle to efficiency, effectiveness and accountability in government. Three aspects of existing arrangements in

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2. Emy's report was seen to have exerted a 'profound influence' on the Commission (Reid, 1976: 323). Further, it was described by Reid (1976:322), himself one of Australia's foremost analysts of responsible government, as 'the most penetrating examination of the notion of ministerial responsibility yet published in Australia'. Emy's report is discussed here because it contains a clearer, more fully argued and more forceful statement of the Commission's dominant theme than can be found in the Coombs report.
particular needed to be overturned.\textsuperscript{3} Firstly, in place of the policy-administration dichotomy, which supported an artificially rigid distinction between the role of the minister and that of the public servant, one should posit a continuum of activity to which both politicians and officials contribute. Thus the roles of the two sets of actors should not be determined by any supposedly inherent differences in the nature of their tasks, but should be actively defined. It should be made clear that the minister is responsible for the overall, or strategic, control of the department and efforts should be made to make such control a reality. But, at the same time, senior officials should be made clearly responsible for operational matters. Central to Emy's scheme of reform was the need to deny ministerial responsibility the 'holistic' significance it has in the Westminster model. Individual ministerial responsibility should, he thought, apply only to the instructions ministers give to public servants (1976:45-6).

Secondly, Emy argued that, in place of the idea that responsibility can be concentrated in the person of the minister, the reality of diffused responsibility should be recognized and dealt with through the deliberate delegation of authority within departments and the strengthening of management control systems. Once it was accepted that officials necessarily exercise executive power and play

\textsuperscript{3} The following summary pulls together matters dealt with at various points in Emy's paper. The three points are, however, clearly expressed in Emy's own account of his general proposal for reform (1976: 45-9).
important policy roles, mechanisms could be developed to hold them accountable. For Emy the controlled devolution of responsibility and accountability was also desirable on the ground that it would create an organizational environment conducive to better administrative performance. Recognizing a degree of independence in the exercise of power by public servants would entail the development of a 'constitutional persona' for the latter, but this process was already underway and could in any case be dealt with more effectively through codes of conduct for public servants than through a reassertion of the old notions of neutrality and anonymity (1976: 61-63).

Finally, a system of 'positive controls' should, in Emy's view, be substituted for the current regime of 'negative controls' (1976: 46). Negative controls, a consequence of ministerial responsibility, emphasized close supervision, rule following and the values of reliability and predictability. The proposed positive controls, in contrast, would emphasize personal responsibility and goal seeking and would be imposed through performance review. This final proposed change was closely related to the second. If officials were to be recognized not as inert instruments of the minister's will but as exercising significant initiative, they should be subjected to stimuli which encourage goal attainment rather than simply conformity to rules and directions.

Emy's analysis was broadly accepted by the Commission. In keeping with its tacit acknowledgement of the need for a pluralistic approach to accountability in modern government,
the Coombs report sought in essence to combine three accountability principles. These were what we may describe as a responsible government' principle, an 'accountable management' principle and a 'downward responsiveness' principle. We shall briefly examine each of these.

The first principle is the Westminster notion that the minister must control his department so that he can answer for it in public. The Commission remained firmly wedded to this idea. Its proposals were designed both to strengthen ministerial control directly and to make it more credible by clarifying its content. The minister's role within the department, as the Commission saw it, was to give general direction and several of its recommendations sought to enhance capacity in this area (RCAGA, 1976: 63-67). On the other hand, the Commission observed that 'the more usual need' was to relieve ministers of managerial pressures so that they can apply themselves to their other roles and so that departments are 'not continually hampered by being unable to proceed for want of authority (p.66). To rectify this situation and, equally importantly, to improve accountability, the Commission wanted the formal responsibilities of the departmental head to be clarified and increased. Specifically, it was recommended that departmental heads be appointed as Accounting Officers and that they be held responsible to ministers and cabinet for departmental efficiency (p.97, p.44).

This characterisation of the Coombs report has similarities with Spann's analysis of the 'Coombs doctrine' of administration into three 'themes': 'the politics-administration continuum', 'accountable management' and 'flexible responsiveness' (Spann, 1977).
Accountable management, the second of the components in the Commission's revised system of accountability, has been defined as 'the development of the maximum of independent command at the lowest possible level and the development of an objective yardstick to measure performance in these commands' (Drucker, 1960; cited in Garrett, 1980: 130). Such a management system imposes a number of organizational requirements: the organization must be divided into 'accountable units' which can function as largely self-contained budgetary entities; there must be a 'performance appraisal procedure for setting and reviewing objectives'; means must be developed to sustain a good supply of competent middle managers; and 'a comprehensive system of planning and control information' is needed to coordinate the units, to relate objectives to the overall goals of the organization and to enable middle managers to be held accountable (Garrett, 1980: 130-31). These prerequisites are sometimes difficult to satisfy, especially in government, but the incentive for the effort is the attractiveness of the promised result: 'a rapidly-reacting, adaptable, cost- and results-conscious... [organization] with a minimum of bureaucratic rules and regulations and an active and self-reliant management style' (p.131).

The influence of this model of management pervades the RCAGA report. In particular, it was an essential element in the argument that departments should have greater control over financial and manpower resources, with the key central agencies, Treasury and the Public Service Board, exercising
only global controls (pp.44-5). A necessary counterpart to greater departmental freedom in these areas is a strengthening of the procedures for review. The Commission addressed this matter by advocating periodic efficiency audits conducted by the Auditor-General (pp.375-9), effectiveness reviews by the Department of Prime Minister and Cabinet (pp.384-5), and the monitoring of general standards and guidelines on departmental establishments by the Board (pp.388-400).

The third component of the Coombs' accountability system I have termed 'downward responsiveness'. In the context of relations between the bureaucracy and the public, responsiveness has several dimensions: a spirit of helpfulness on the part of officials; procedures which facilitate prompt service and provide flexibility to allow the particular circumstances of clients to be taken into account; and the ability of interested individuals and groups to influence the policy of the organization. The Commission identified various causes of a lack of responsiveness on each of these dimensions and framed recommendations to overcome a variety of impediments. Recommendations included training programs, development of guidelines and codes of behaviour, a change in the social composition of the bureaucracy, revision of excessively restrictive rules and regulations and encouragement of greater outside participation in the policy process (pp.128-146).5

The decade following the appearance of the Coombs

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5. See Self (1978: 317-19) for a more detailed and complete summary of the proposals.
report witnessed an unprecedented stream of administrative reform (Wilenski, 1986). Reform has encompassed initiatives related to each of the three accountability principles outlined above, though it has not always followed the Coombs agenda. Thus the main administrative reforms with which the Fraser government was associated were largely outside the concerns of the Coombs Commission, although they can be seen as a response to that body's emphasis on both the need for responsibility to be placed directly upon public servants and the need to strengthen the 'downward responsiveness' of government administration. These reforms involved the creation in a series of steps between 1975 and 1982 of a body of 'new administrative law', a program of change which even before its completion was described by the Law Reform Commission of Canada as 'an awesome leap' towards a new legal structure for public administration (Katz, 1980; cited by Griffiths, 1985:445).

Administrative reform under the 'responsible minister' and 'accountable management' heads has been mostly the work of the Hawke Labor government, though to some extent that government has been able to build on a process of change within the public service extending well back into the 1970s.7


7. For the Hawke Government's reforms, see Kouzmin et al. (1984), Nethercote et al. (1986) and Wettenhall and Nethercote (1988).
Reforms designed to strengthen ministerial control of departments were a feature of the Public Service Reform Act 1984 and accompanying legislation. One set of changes sought to bolster the authority of the minister over the departmental head. Other changes addressed the capacity of the minister to give direction. From 1973 the personal staffs of ministers had gradually been increased and upgraded to augment the political input into the work of departments (Wilenski, 1986:272). In 1984 the Members of Parliament (Staff) Act gave ministers the ability to engage a 'limited number' of individuals 'for work on nominated projects or reviews directly for a Minister, or on duties agreed between the Minister and the secretary to the department and under the secretary's supervision and direction' (Dawkins, 1984).

Reforms associated with the accountable management principle are less confined to a few pieces of legislation and extend over a longer period of time. A prominent component of these reforms is the devolution to departments of greater responsibility for the disposition of human and financial resources. The 1984 public service reform package was an important step in this process. The Senior Executive Service it introduced in the place of the Second Division gave departmental heads much greater freedom in the appointment, promotion and redeployment of senior staff. It also transferred the authority to create, abolish and classify positions and determine duties from the Public Service Board to departmental heads. A second wave of public service reform in 1986 included measures increasing the ability of
departmental heads to retire and discipline staff, giving managers broader criteria on which to determine positions, and streamlining (in some cases abolishing) appeals processes (Hawke, 1986). Then in 1987 the whittling away of the responsibilities of the Public Service Board culminated in its abolition and the devolution to departments of its remaining powers over the operational aspects of personnel matters (Hawke, 1987).  

As for financial resources, moves to enhance the decision-making powers of departments began in the late 1970s but gathered force under the Hawke government. Administrative 'votes' were amalgamated in the 1984-85 Appropriation Act, reducing the number of separate appropriations for each department from as many as 21 to two (Howard, 1986: 55). Further, as part of his 1986 reforms, the Prime Minister announced that departments (and budget-dependent agencies) would be permitted within limits to carry over unused administrative funds from one year to the next and to exercise more freedom in the movement of funds between their salaries and administrative expenses votes (Hawke, 1986: 1450).

The counterpart of greater resource management powers

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8. The waning of the Board was to some extent offset from the point of view of line departments by the growing power of the Department of Finance. Under the 1984 changes, the Department of Finance gained control over departmental staffing levels and, with the abolition of the Board, it took over responsibility for the public service classification system.

9. It is likely, however, that these changes mask the extent of continuing Department of Finance constraints on decision-making given the government's overwhelming concern in recent years with the achievement of savings and reductions in public expenditure (Howard, 1986).
for departments, within an evolving system of accountable management, is the development of mechanisms to hold departmental managers responsible for the exercise of those powers. The first important step in this direction following the Coombs Commission was the amendment of the Audit Act in 1979 to clarify and enhance the financial responsibility of departmental heads and to authorise the Auditor-General to undertake efficiency audits (see Audit Amendment Act 1979, No.8). The Hawke government's contribution has been to accelerate the hitherto tentative progress towards program budgeting¹⁰ and, relatedly, to stimulate development of the managerial capabilities and information systems necessary for accountable management within departments.¹¹ Central to these reforms is the identification of the 'program' - that is, 'a set of resources and actions directed towards one or more common goals and under the direction of one manager or management team' (Department of Finance and Public Service Board 1981; cited by Howard, 1986: 53) - as the main focus of both management systems and public accountability. In addition to the organization of administrative activity into a 'hierarchical structure of programs', the government's budgetary and 'financial management improvement' reform aspirations encompass several other elements of accountable management: the specification of program objectives, the

¹⁰. See Howard (1986: 43-4) for an account of developments in the 1970s.

¹¹. The progress of these efforts can be traced in a series of official documents: Dawkins (1984), Department of Finance and Public Service Board (1984), Department of Finance (1987) and Department of Finance (1988a).
development of indicators to enable performance to be measured, the regular review of the efficiency and effectiveness of programs as part of the budgetary cycle, the presentation of the budget in program format, and the delegation of responsibility within departments (Howard, 1986: 52, 56-7).

The administrative reforms of the 1970s and 1980s have been portrayed in newspaper and academic commentary as highly consequential for the shape of Australian government. Reference has been made to the emergence of 'a hybrid structure which incorporates Westminster features with those of the U.S. - a peculiarly Australian form of government' (AFR, 1987). Similarly, for Wilenski (1986:273, 275), Australia has been moving towards 'its own model of responsible administration' comprised of 'British, American and European approaches'.

It is the argument of this section that the trend of administrative reform may be understood as a shift from a monistic to a pluralistic conception of accountability, encompassing a partial differentiation of administrative accountability and ministerial responsibility. Administrative accountability in Westminster-style government has traditionally emphasized a single, fixed chain of relationships connecting officials to ministers, ministers to members of parliament and members of parliament to the public. In response to perceived weaknesses in this constitutional mechanism in contemporary circumstances, recent reforms have attempted to remove some of the strain by developing
alternative means of ensuring that government bureaucracy serves public purposes. These involve direct relationships with both parliament and public to supplement the 'mediated' public accountability provided for by the Westminster model.\textsuperscript{12}

The search for a broader framework for administrative accountability is in keeping with growing interest over recent years in the creation of a variety of new checks on executive power. This theme may be detected in a range of otherwise disparate developments such as the rediscovery and celebration of the 'consensual' as opposed to the 'majoritarian' components of Australian democracy (Sharman, 1989); the interest in a bill of rights (Galligan, 1987); and the growing role of various forms of public participation, including interest group participation in the policy process (Marsh, 1983) and the involvement of 'outsiders' in committees set up to review government activity (Prasser 1985; 1986; 1988).

Consequences for Ministerial Administration

If the Coombs Commission argued an influential case for tendencies toward bureaucratic independence in contemporary government to be dealt with through the development of pluralistic accountability arrangements, it also

\textsuperscript{12}. The emergence of a pluralistic model of accountability raises the possibility of conflicting pressures on administrators. This has important consequences for democratic theory and practice which cannot be pursued here. See Saltzstein (1985) for a good outline of the issues from an American perspective.
unintentionally demonstrated the difficulty of accommodating the desired change within the framework of the ministerial department. An important part of the problem is that, by promoting the direct public accountability of officials, the two additional principles which Coombs regarded as essential for adequate administrative accountability in contemporary government threaten to erode ministerial responsibility, the keystone of the ministerial department.

Early commentary on the Coombs report was sceptical about the apparent belief of the Commissioners that they had successfully married the three principles. In Spann's view (1977:86) the very aspiration was 'Utopian'. Similarly, Parker (1978b:348-9) suggested that basic inconsistencies could be perceived merely by juxtaposing the Report's main propositions:

... first, that at one end of the administrative scale machinery should be developed to enhance ministerial control and broaden ministerial responsibility; second, that through the middle of the scale the old vertical lines of hierarchical control should be weakened in favour of rank-and-file participation in decisions, task-force-type operational teams, more informal procedures and more delegation of authority; third, that officials at all levels should be held directly accountable for administration through processes of incentives, penalties, efficiency audits and appeal tribunals monitored not by ministers but by parliamentary committees; and fourth, that officials in the operational front line should abjure their vows of silence, anonymity and obedience and become somehow directly accountable not to parliament but to the public.

It is possible, however, that such complex arrangements will necessarily result from an attempt to take accountability seriously in contemporary circumstances. Insofar as the Commission had convinced itself that its three principles
could be perfectly harmonized the criticism levelled at them by Spann and Parker was justified. But the more modest claim that each of the principles is important and that a balance must be struck between them, through explicit trade-offs where they are clearly contradictory, is much less vulnerable.

The Coombs Commission appears, nevertheless, to have been deficient in two respects in its treatment of the relationship between the accountability principles. Firstly, it did not squarely confront the need to limit the responsible minister principle in order to accommodate its new principles. And, secondly, those trade-offs which it did make were consistently in favour of the traditional principle. In other words, the Commission failed to follow through with its analysis. To illustrate this point we may examine those parts of the Coombs report dealing with each of the new principles.

The first of the above deficiencies is strongly manifested Coombs' treatment of accountable management. There is, for instance, little effort to address the likelihood that continued support for a strong notion of ministerial control would have the effect of shoring up the concentration of authority at the top of departments, thereby impeding the devolution of responsibility within departments essential to accountable management. The Commission's proposal to strengthen the personal accountability of departmental heads arguably also encourages this outcome.\footnote{Nethercote (1977:114) claims that this is what happened in Canada in the mid-1960s following the implementation of the Glassco Commission's recommendations to 'let the managers manage'. In Britain, the Accounting Officer arrangement which the Coombs Commission recommended for Australia has been neglected by the Conservatives in favour of the Conservative's own management style.}
The issue of possible trade-offs is avoided in another way by vagueness about the status of the accountability the Commission wished to produce through its accountable management reforms. Parts of the Report (for example, section 3.4.6) read as though the Commission, like the Fulton Committee, envisaged the establishment of 'an "internal" system of managerial accountability in departments' which would not affect 'the "external" or public accountability of Accounting Officers and Ministers' (Garrett, 1980:134). But the Report has also been interpreted as advocating a radical extension of the public accountability of officials (at least down to the level of middle level managers) to parliamentary committees (Parker, 1978b:348-9). Such public answerability may indeed be necessary, as the Expenditure Committee of the British Parliament has suggested (Expenditure Committee, 1977; cited by Garrett, 1980:137), if accountable management is to operate effectively. But if so a number of questions about the arrangements required to operate the resulting, more complex system of public accountability need to be answered.

On the key question of the implications for ministerial responsibility, Emy's report accepted the need for major identified as a major restraint on delegation within departments (Garrett, 1980:133).

14. See the passage from Parker (1978b) quoted above.

15. For instance, what sanctions can be applied by the parliament to enforce the accountability of officials? If officials are to be drawn into the political arena should they be permitted, or granted, some means of defending themselves publicly? If so, what should this be? (Reid, 1976:324; Parker, 1978b:358).
change if accountable management were to be taken seriously. It stated that 'accountable management pulls in the opposite way to ministerial responsibility' (Emy, 1976:50), that '[t]he managerial concept has a holistic significance of its own' (p.48), and that 'ministerial responsibility must fit within the new system, and not vice versa' (p.58). By comparison the Coombs Commission, desiring as strongly to breathe new life into ministerial responsibility as to establish a meaningful system of accountability for officials, was generally not prepared to face a choice between the two. But when forced to choose the Commission tended to defer to tradition, as in its acceptance on classical Westminster grounds of restrictions on public servants' freedom of comment before parliamentary committees (RCAGA, 1976:116-7).16

We turn now to the Commission's treatment of the other new principle, downward responsiveness. The Report suggests three main ways in which the Westminster model had inhibited bureaucratic responsiveness. Firstly, it had produced a concentration of decision-making authority at the top of departments and a preoccupation at the lower levels, among those having most contact with the public, with the avoidance of error (RCAGA, 1976:149-50). This was productive of inflexibility in dealings with clients. Secondly, work associated with the delivery of services to the public had been undervalued because policy development and provision of inflexibility in dealings with clients. Secondly, work associated with the delivery of services to the public had been undervalued because policy development and provision of

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16. The notions supported were that public servants should not express opinions on the merits of 'a ministerial or government decision' or policy or divulge advice tendered to ministers (1976:116).
advice to ministers had been viewed as the main functions of the ministerial department (1976:21). Thirdly, the Westminster model encouraged officials to regard members of parliament and ministers as the sole agents responsible for transmitting citizen demands into administration (p.20, p.126).

As diagnosed, then, these are structural problems, to be dealt with presumably by restricting the responsible minister principle. In framing its recommendations, however, the Commission played down the relationship between Westminster principles and the offending attitudes and practices. It tended instead to suggest that the latter could be addressed independently of the former, through new administrative arrangements or through the psychological reorientation of officials (see, for example, pp.126-7). So once more the Commission failed to confront the apparent need to trade-off accountability principles.

Whether in order to avoid the need to make such trade-offs, or for other reasons, the Commission also forsook a potentially major means of improving bureaucratic responsiveness to the public by focusing almost exclusively on internal administrative reform and neglecting the possibility of empowering the public through rights to information and rights of appeal against administrative decisions.\(^{17}\) This bias is exemplified in the discussion of public access to information where administrative guidelines are tentatively

\(^{17}\). Some administrative law reforms are supported (pp.134-5) but the discussion of the whole subject occupied less than three pages in the 412 page report.
supported in preference to freedom of information legislation (p.350).

What of the reforms enacted in the period since the Coombs report? Have these exhibited the same reluctance to interfere with traditional principles? The answer is a mixed one. Recent reforms show different degrees of deference to ministerial responsibility. The new administrative law has decidedly radical elements. Probably the most striking is the ability of the Administrative Appeals Tribunal to substitute its own decision for the original administrative decision, even if the former conflicts with departmental policy. While the Tribunal has attempted to work out an accommodation with ministerial responsibility (Sharpe, 1986; Bayne, 1988), the very existence of the power has been criticized by a prestigious British body on the ground that it 'substitute[s] for ministerial answerability in Parliament an unaccountable policy-making tribunal' (The Justice-All Souls Committee, 1981; cited by Griffiths, 1985:451). It is also relevant to note that the British Parliamentary Commissioner for Administration was established in a way which showed greater sensitivity to the traditional role and status of the member of parliament than does the office of Ombudsman in Australia (Griffiths, 1985:455).

On the other hand, the central role of ministerial responsibility has been directly bolstered by those reforms designed to strengthen the capacity for ministerial control. In addition, the accountable management reforms have reflected Coombs' conservatism, with the result that the potential for
a new channel of accountability between departmental officials and parliament which might diminish the dominance of ministerial responsibility is presently very underdeveloped. Moreover, the 'Government Guidelines for Official Witnesses Before Parliamentary Committees and Related Matters' (Guidelines, 1984) seem well designed to ensure that this remains so. These Guidelines severely restrict the answerability of public servants for the exercise of their responsibilities on familiar grounds: 'consistent with the traditional understanding of ministerial responsibility, the public advocacy and defence of government policies and administration has traditionally been, and should remain, the preserve of ministers, not officials' (1984:309).

Thus administrative accountability within Commonwealth departments of state no longer rests exclusively on ministerial responsibility. But, as with the Coombs report, the development of a pluralistic system of accountability has been compromised by efforts to shore up traditional arrangements. If the Coombs Commission's analysis (as distinct from its recommendations) is accepted, it must be concluded that public accountability remains compromised by the great weight which continues to be placed on ministerial responsibility.

The Statutory Authority as a Model for Administrative Reform? We have focused above on the potential for certain new accountability mechanisms to conflict with ministerial administration as traditionally understood. But it is
important to recognize that the basic issue is the alleged need for ministerial administration to accommodate a degree of overt bureaucratic independence. At bottom, it is this requirement rather than the particular mechanisms employed to secure the accountability of the quasi-autonomous officials which is the source of difficulty.

Emy and the Coombs Commission, the former more insistently than the latter, both felt that the reality of significant independence in the exercise of power by public servants should be met with the development of a 'constitutional persona' for the latter. What I want to highlight here is that, in attempting to accommodate this development, Emy and Coombs argued in effect for the importation into the structure of the ministerial department of elements of statutory authority administration.

At the most basic level, this tendency is manifested in a desire to separate the responsibility of the minister from the responsibilities of departmental officials. Emy (1976:28, 45-46) saw several benefits resulting from such a change. Firstly, the responsibility of the minister could be made more 'realistic' by being limited to the use made of the minister's power to issue directions. Secondly, the de facto exercise of power independently of the minister could be formally acknowledged and separate arrangements could be made to ensure its accountability. Finally, the overwhelmingly 'political' orientation of departments, their subordination to the dictates of the immediate partisan struggle, might be reduced, thereby facilitating more and better research and planning and
more attention to delivery of services to the public as opposed to the work of advising the minister.

A separation of responsibilities as between minister and agency, with the ultimate dominance of the former guaranteed by a power to direct the latter, are primary features of the statutory authority. Moreover, the benefits just listed could be, and often have been, given as justifications for the creation of statutory authorities.

The parallel between the new arrangements advocated for ministerial departments and arrangements traditionally associated with statutory authorities continued at a more detailed level. It was particularly marked in the suggested reforms of the office of departmental head, which was not only to be given a statutory basis and independent statutory responsibilities but was also to be filled in a manner and on a tenure something like that of statutory boards (RCAGA, 1976:95-103). Other similarities included the recommendations that departments submit annual reports to ministers for tabling in parliament (pp.75-6) and that collegial arrangements for decision-making be experimented with at the top of departments (p.71).

As has been noted, the similarities with the statutory authority model are more apparent in Emy's paper than in the Coombs report. In spite of its desire to fix responsibilities more firmly, the Coombs Commission was determined to preserve the administrative flexibility and the pragmatic character of

18. Emy (1976:45) argued that political control should be explicitly defined as the 'power to direct' rather than management by the minister of all aspects of the policy process.
the relationship between ministers and officials which it saw as among the leading advantages of the ministerial department. Further, the Commission was loath to endorse any arrangement which might have the effect of isolating the minister from the management of the department. Indeed, it sought the active involvement of the minister in the improved management control and performance evaluation system which it had identified as a major goal. Consequently, the idea that departments might, like statutory bodies, be granted responsibility for the conduct of their affairs subject only to ministerial directions (and a limited number of other controls) was explicitly rejected in the Report (RCAGA, 1976:43).

Coombs' position on the role of the minister hints at an important contradiction in the Report. The latter's central theme was accountability (Spann, 1977:79); yet it was equally insistent on the value of administrative flexibility. The problem is that flexibility, or fluidity, and accountability are not mutually consistent objectives. Accountability requires, as the Commission recognized, the formalising of structures through a clear specification of responsibilities. The more clearly defined, differentiated and firmly fixed the responsibilities the better so far as accountability is concerned. But the traditional ministerial department, especially at its highest levels, fuses rather than separates roles (the departmental head is both chief policy adviser and departmental chief executive) and leaves great freedom for the minister and senior officials to fashion a division of labour to suit circumstances and personalities.
In its attempt to retain such an administrative structure while seeking to strengthen ministerial accountability and to have officials held directly accountable, the Coombs Commission expressed a desire to have its cake and eat it. In Self's words, 'as long as Australia practices a highly fluid, flexible and pragmatic system of administration, so long will rules of accountability prove elusive or illusory' (Self, 1978:328).

As we saw in Chapter 3, subsequent work on administrative reform in Australian Commonwealth government has also evaluated very positively the flexibility of the ministerial department. For instance, the Senate Standing Committee on Finance and Government Operations, in its influential Fifth Report on statutory authorities, argued that the ministerial department's 'flexibility' gave it a 'basic advantage' over the statutory authority: 'when governmental functions being performed by departments change ... the consequent structural alterations are relatively simple: the Administrative Orders can be changed and staff can be transferred' (SSCFGO, 1982:22-3).

Given the Senate committee's preoccupation with the issue of accountability, its failure to note any consequences for accountability of such flexibility suggests that it saw none. But this is far from the case. The costs of the frequent administrative change which results from the fact that the ministerial department is wholly an expression of the will of the executive have been emphasized elsewhere. Coombs drew attention to the costs in 'money and manpower' and the
damage to public service morale of excessive administrative change (RCAGA, 1976:387). More recently, the (Reid) Review of Commonwealth Administration observed that between 1972 and 1982 41 departments were abolished, 40 created and 24 retitled (RCA, 1983; cited by Nethercote, 1986:4). Its report included an extensive list of the associated costs and adverse administrative consequences (RCA, 1983:191-2). Reviewing the instability created by the record of departmental reshuffling just noted, the Chairman of the Review was moved to 'ponder how anything was achieved in a consistent way with any prospect of coherent planning or sensible results' (Reid, 1984; cited by Nethercote, 1986:5).

From our perspective, the main point is that governments are scarcely required to account for such machinery of government changes. It is hardly surprising that critics have called for machinery of government legislation or an affirmative resolution by parliament prior to administrative reorganizations. In a remarkable departure from the normal tenor of comparisons between ministerial departments and statutory authorities, one critic has argued that:

> Proper accountability may even require that departments be constituted individually by legislation. These requirements apply in the case of statutory agencies; the departmental system should now likewise be brought within the pale of parliamentary scrutiny and sanction. (Abel 1982; cited by Nethercote, 1986:6).

In short, then, efforts to take administrative accountability seriously in the circumstances of contemporary government have led to various pressures, so far fairly
successfully resisted, for the traditional arrangements of ministerial administration to be restricted or replaced by arrangements closer to those associated with statutory authorities.

The Rise and Fall and Rise of the 'Swedish Model'

As well as suggesting in effect a remodelling of the ministerial department along lines closer to those of the statutory authority, reformers aiming to improve administrative accountability have also argued for a reduction in the role of the ministerial department in government and a corresponding increase in the role played by non-ministerial or quasi-autonomous agencies. The ultimate reference point for advocates of this approach, such as the British Fulton Committee and Emy (1976), has been the Swedish model of public administration. The latter involves a fairly rigid division of functions between institutions: small ministries take responsibility for policy formulation and strategic control while the bulk of administration, including policy implementation and delivery of services to the public, is entrusted to statutory authorities (Elder, 1970).

Emy (1976:50) believed the application of this model to Australia would yield two interrelated benefits. It would help to narrow and define more clearly 'the ambit of political management' with beneficial consequences for ministerial accountability. At the same time, it would clearly identify those officials who were to be covered by the conventions of anonymity and confidentiality, enabling a strong system of
accountable management to be imposed on the remainder. Emy suggested that full statutory separation may not be necessary to reap these advantages.

An echo of Emy's prescriptions can be detected in Coombs' support for the 'bureau' framework for research bodies (RCAGA, 1976:79-80). But in general the Coombs Commission refused to countenance the Swedish model. The grounds for its opposition are unclear, but several factors were probably at work. Firstly, there was the perception, registered in Wettenhall's report for the Commission, that the 'hiving off' recommended for Britain by the Fulton Committee was not proving 'as easy or successful' as its advocates had hoped.19 Wettenhall (1976:332) warned that

... we should be wary of establishing new statutory authorities just because an activity is self-contained, lacks policy content, etc. etc. We have no easy solutions to the problems of accountability that this course produces, and no guarantee that the work will be better done than in a department.

Secondly, as Self (1978:323) noted, departmental permanent heads would most likely have been opposed for the self-interested reason that large-scale hiving-off would have weakened their authority in the system of public administration.20 Thirdly, there was the Commission's

19. This view was advanced by the Civil Service Department in Britain (Garrett, 1980:69). But according to Garrett, 'the failure to persevere with hiving off was ... probably due more to a change in political attitudes than to any intrinsic difficulty in constructing them [hived off organizations]... The tide of parliamentary opinion had swung away from the emphasis on managerial efficiency, which hiving off was supposed to bring, and towards an emphasis on surveillance and scrutiny' (1980:70).

20. Self (1978:332, endnote 15) for further discussion of this point.
unwillingness to consider a reduction in the flexibility it valued in ministerial administration. This was part of the Commissioners' deep attachment to the Westminster model despite their criticisms of it (Self, 1978:322).

The Coombs position on the Swedish model was and is the unchallenged mainstream Australian position. The same was true of the other Anglo-Saxon parliamentary democracies over many years. In very recent times, however, the Swedish model has received renewed support in New Zealand and Britain. In the New Zealand case the State-Owned Enterprises Act 1986, affecting 60,000 public servants or around 25 per cent of the central government workforce, was a major example of the systematic employment of the statutory authority as part of a strategy to improve the efficiency and accountability of the public sector (Boston, 1987:424). Commentators have suggested that this may be the beginning of an extensive remodelling of New Zealand public administration along Swedish lines (Roberts, 1987; Boston, 1987). In this scenario a core of 10 to 12 smallish 'ministries' (replacing some 30 departments) would have responsibility for 'gathering information, supplying policy advice to ministers, drafting legislation and regulations and preparing budgetary proposals'; while new administrative agencies, each 'run by a separate independent board of directors' but 'subject to the overall direction of the government', would be established to implement policy (Boston, 1987:426).

21. More precisely the new entities are statutory limited liability companies established under the State-owned Enterprises Act and incorporated under the Companies Act 1955.
In Britain the need for a new administrative framework for public administration, with a greater role for semi-autonomous agencies, was advocated once more in the Efficiency Unit report *Improving Management in Government: the Next Steps* (1988). The recommended change reflected the view that substantial improvements in resource management and a greater emphasis on service delivery required greater status and autonomy for civil service managers than could be gained within the existing system. The impediments targeted by the Report were nothing less than the unified civil service, which constrains flexibility in pay and conditions, and ministerial administration, which fuses policy advisory and managerial roles and confers greater status on policy work than on management. Subsequent governmental action has been viewed as a much watered down version of the Report's scheme for devolving power. But in responding to the Report, the Prime Minister committed the government to a 'continuing programme' for establishing agencies and suggested considerable potential for the initiative to develop beyond its initial modest form (House of Commons *Weekly Hansard* 1988, cited by Fry, Flynn, Gray, Jenkins and Rutherford, 1988:433).

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22. Some 12 blocks of work, involving about 70,000 civil servants, were identified as candidates for 'executive agency' status. For a list of the entities concerned see Fry et al. (1988:433). The government stepped back from the more radical possibilities presented by the Efficiency Unit report. Thus the Prime Minister stated that agencies would in most cases be set up within the Civil Service and subject to full ministerial responsibility, but under the day-to-day control of a chief executive and with greater flexibility on pay (The Times, 1988a and 1988b). The Times newspaper described the changes as an "anti-climax" and 'small beer' but also suggested the possibility that the experiment might lead to bigger things. (The Times, 1988c)
Fry has suggested that the existing arrangements - with the government on one hand fully endorsing ministerial responsibility and on the other hand promoting autonomy for civil service managers - are unstable and may well give way to 'an Anglicized form of a Swedish style structure' (Fry et al., 1988:436-7).

There has so far been almost no acknowledgement of the possible relevance of these developments to Australia. But various recent initiatives suggest that similar pressures are at work in the Australian public sector. At the Commonwealth level an important example is the 'hiving off' of functions from the Department of Transport to the Federal Airports Corporation created in 1986 and the Civil Aviation Authority created in 1988. Another is the 'corporatisation' of public enterprise within the Department of Defence (Beazley, 1989). More generally, Australia shares with Britain and New Zealand the growing attraction to a 'corporate management' approach to public administration (Davis et al., 1989) which has been an important influence on developments in the latter countries.

Australian academic commentary has barely begun to digest these trends. Wettenhall (1988) is a partial exception. Exemplifying his own earlier contention that ideas in public administration follow a pendulum swing (1968b:352-3), Wettenhall (1988) has articulated a reversal of his

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23. Federal Airports Corporation Act No.4 1986; Civil Aviation Authority Act No.63 1989. The Department of Transport was absorbed into the Department of Transport and Communications in 1987.
previous position that statutory authority status should be reserved for 'exceptional cases' (1976:342). His suggestion, offered entirely without argument, that 'it may now be time to resurrect the Swedish model of administrative structure' (1988:196) would nevertheless strike many Australian readers as curious after a decade and a half of almost unrelieved vilification of the statutory authority and a much longer administrative history which made the Westminster arrangements for ministerial administration the model of accountable public administration. But, on the argument of this thesis, he is undoubtedly correct to call for a re-examination of settled attitudes towards the structure of public administration in Australia.

Conclusion

Those making judgements about the accountability of statutory authorities have traditionally employed the ministerial department as an explicit or implicit bench-mark. But while commentators on statutory authorities often continue to adopt the ministerial department as the model of the accountable administrative agency, wider ranging studies of administrative accountability - notably, for the Australian Commonwealth government, the Coombs report - have called the relevance of that model into question. Moreover, in attempting to devise institutional arrangements which answer the challenges to administrative accountability posed by the circumstances of contemporary Westminster-style government, reformers have more or less consciously turned to the statutory authority and have
sought both to inject elements of the statutory authority form into the ministerial department and to argue for a larger role for the statutory authority in public administration. In this broader context, then, the statutory authority has come to rival the ministerial department as a model of accountable administration, with advocates of the Swedish system arguing for an administrative structure which treats both agency types as normal or standard instruments to be used in tandem to maximize the 'accountability potential' of government. The value of the statutory authority as far as accountability is concerned is that it permits the firm assignment of independent responsibilities to non-ministerial actors and thereby opens the way for the full development of alternative forms of accountability whose presence alongside ministerial responsibility have been seen as essential to an adequate contemporary system of accountability. We have seen in Chapters 7 and 8 that Commonwealth statutory authorities have proved to be apt vehicles for forms of accountability similar to the accountable management and downward responsiveness principles discussed in the present chapter.
CONCLUSION

This thesis has both critical and constructive purposes. Its critical purpose has been to show that the dominance of a particular conception of accountability has distorted understanding of administrative accountability in Commonwealth statutory authorities. The idea of 'parliamentary control' - which is a shorthand way of describing the distinctive Westminster 'syndrome' (Parker, 1978b) of ministerial control of administration and ministerial responsibility to parliament - developed alongside the idea of ministerial administration and the ministerial department. But there has been a strong tendency to sever parliamentary control from its institutional moorings in the ministerial department and to make it synonymous with administrative accountability. Once this step has been taken the notion of an accountable statutory authority becomes highly problematic - but for reasons which have nothing to do with matters of substance. The thesis has explored a number of diverse consequences of the hegemony of 'parliamentary control':

- despite a good deal of opinion to the contrary, accountability arrangements and levels of accountability (that is, parliamentary control) for statutory authorities are not markedly different to those for ministerial departments (the argument of Part II);
- past efforts to devise or implement forms of account-
ability specifically designed for statutory authorities have been very restricted exercises (Chapter 2);
- the recent statutory authority reform movement has by and large perpetuated the limited thinking of the past (Chapter 3);
- the interests of the executive rather than those of the parliament (or the public) have been served by a narrow (Westminster) interpretation of the ways in which parliament may 'control' statutory authorities (Chapter 3).

The thesis has also argued that the need to rethink the issues of accountability surrounding statutory authorities has gained urgency from the fact (demonstrated in Chapter 9) that 'parliamentary control' has over recent years begun to lose its hegemonic position in Australian public administration.

The constructive purpose of the thesis has been to develop an adequate understanding of the public accountability of Commonwealth statutory authorities. An important part of this task was to establish an appropriate conceptual framework. This involved, firstly, drawing upon the ideas of Linder (1978) and Romzek and Dubnick (1987) to define the root idea of accountability as the satisfaction of diverse expectations and concerns about the exercise of administrative discretion. Secondly, two additional conceptions of, or 'perspectives' on, administrative accountability were introduced - a 'managerialist' conception and a 'constituency relations' conception. Thus, as others have identified multiple conceptions of liberty (see Berlin, 1969), democracy
(see Schumpeter, 1942; Dahl, 1956; Lijphart, 1984), social justice (Miller, 1976) and so on, I have argued that three main conceptions of accountability may be usefully distinguished for a discussion of Commonwealth statutory authorities in the 1980s. The differences between the three conceptions of accountability may be described (as in Figure 8.1) in abbreviated fashion as follows: the traditional notion of parliamentary control rests on essentially bureaucratic relationships of close supervision or control of the administrative agency; the managerialist conception rests on quasi-contractual relations, emphasizing strategic control and periodic evaluation; and the constituency relations conception rests on an essentially political set of relationships, emphasizing the responsiveness through various mechanisms of the agency to a range of interested constituencies. It was argued in Part III that, in the light of the appropriately sophisticated understanding of public accountability permitted by this conceptual framework, Commonwealth statutory authorities appear more accountable than is commonly supposed. Moreover, the statutory authority can be seen to have certain advantages over the ministerial department as the basic building block of an accountable public administration.

The way in which each of the above conceptions of accountability relates individually to the statutory authorities of Australian Commonwealth government has been extensively illustrated in Chapters 4 to 8 of the thesis. But
something needs to be said about the relationship which is envisaged between the three conceptions.

The main point is that the latter are not intended to be seen as mutually exclusive ways of viewing accountability. Nor has the thesis sought to argue that any one conception is intrinsically superior to the others. All have a role to play in contemporary public administration, and indeed all three may be utilized in tandem to engineer a desired level and form of public accountability for particular statutory authorities. But all will not be equally relevant to each agency: depending on the task of the agency and the associated institutional arrangements, different combinations of the three conceptions - and of the mechanisms through which each is realized - will be appropriate. This is true for ministerial departments and statutory authorities alike. But it is important to note that ministerial departments, as a class, are far more constrained in the variety of accountability regimes they may adopt: parliamentary control via ministerial responsibility must, almost by definition, remain the dominant form of accountability for the ministerial department.

The position on the design of accountability regimes advocated in this thesis is thus in sympathy with the view of Romzek and Dubnick (1987) that accountability should be treated in effect as an aspect of organizational design and that accountability regimes ought to be tailored to the nature and mission of the particular administrative organization.
It might be thought that the emergence over recent years of a pluralistic set of accountability arrangements in Commonwealth government (as described in Chapter 9) would have encouraged intellectual acceptance of the approach just outlined. In fact, however, thinking about accountability continues to exhibit a definite monistic tendency. This is illustrated by current enthusiasm for a managerialist, or corporate management, approach to improving effectiveness, efficiency and accountability of administrative operations across the board. It seems obvious that reforms which may make great sense in, for instance, Telecom's task environment (such as development of more objective measures of performance, establishment of clearer objectives and medium term corporate strategies) may be of much less relevance, if not a complete absurdity, in the task environment of key parts the Department of Foreign Affairs and Trade or the Treasury. But the Commonwealth's Financial Management Improvement Program, in its design if not in its implementation, seems to have made little concession to this ostensibly self-evident point (see Department of Finance, 1984, 1987, 1988). The overzealous promotion of this fashionable approach has provided an easy target for academic critics (see Peachment, 1986; Yeatman 1986, 1987; Painter 1988; Considine 1988). It may be expected as well to produce more protests - like John Ward's on behalf of universities noted in Chapter 8 - from senior administrators who are aware, as those at the centre of government captivated by the latest cure-all are not, that
their accountability properly resides in a number of relationships and a variety of mechanisms for satisfying expectations or justifying the exercise of discretion.

Debate over the accountability of statutory authorities may be viewed, finally, as an aspect of a wider debate over the relative merits of competing models of democracy. On one view, democracy is essentially about majority rule. In a majoritarian model of democracy (see Lijphart, 1984), accountability is closely related to the responsibility of the 'elected government' with its 'mandate'. Because governments must be able to carry out their responsibilities (that is, possess power) in order to be held responsible, the majoritarian conception of democracy requires power to be concentrated in the hands of the elected representatives of the majority. As Lijphart (1984) has shown, this approach is closely associated with the 'Westminster model'. But it has also been widely promoted in the literature on public administration in other liberal-democratic countries. For instance, Dwight Waldo is said to have recently characterised 'orthodox' American public administration as assuming that 'democracy is realistically achievable only if power is concentrated so that it can be held accountable ... Otherwise, responsibility bleeds into the social surround' (Waldo, 1980, cited by White, 1989:525). From this point of view, statutory authorities are suspect because they diffuse administrative authority and weaken the responsibility of 'elected ministers', thereby weakening democracy itself.
But if statutory authorities are challengeable on this ground so are other familiar institutions. Thoroughgoing majoritarian democrats are not hesitant to make the connection:

Like looking to the courts and to upper houses to limit the powers of elected governments, statutory authorities are a masochistic perversion of the sovereignty of the people which after all is the only ultimate source of power (Day, 1982:4)\(^1\).

On this view, then, statutory authorities have something in common with federalism, bicameralism, entrenched constitutions, judicial review, bills of rights and electoral systems which facilitate representation of minorities: they disperse power, create opportunities for the will of the majority (party) to be frustrated and weaken the responsibility of the elected executive for governmental activity at large.

But in an alternative, 'consensus' model of democracy (Lijphart, 1984), such limits on the powers of elected governments are valued where they institutionalise wide participation in decision-making among affected groups and individuals and necessitate broad agreement on the policies which should be pursued. The irony of the majoritarian model of democracy is that it implies that autocratic administration is a precondition for democratic government. A consensus model of democracy, on the other hand, permits administration

\(^1\) My attention was drawn to this statement by Wettenhall (1983:37). As Wettenhall notes, the context was a discussion of urban planning in the Australian Capital Territory.
to contribute directly to the liberal-democratic ends of the political system (see generally Ostrom, 1974). Statutory authorities have a role to play in such a system of government. They allow administrative tasks to be located in a wide variety of purpose-built administrative agencies with a wide range of purpose-related means of responding to the concerns and expectations of many relevant constituencies regarding the use of administrative discretion.
APPENDIX 1
Creation of Commonwealth Statutory Authorities 1901-04 to 1980-84

1. Trading Authorities

Number

Source: See text
Creation of Commonwealth Statutory Authorities 1901-04 to 1980-84
2. Appellate Authorities

Number

Source: See text
Creation of Commonwealth Statutory Authorities 1901-04 to 1980-84
3. Executive Authorities

Source: See text
Creation of Commonwealth Statutory Authorities 1901-04 to 1980-84
4. Regulatory Authorities

Number

Five years ending

Source: See text
Creation of Commonwealth Statutory Authorities 1901-04 to 1980-84
5. Advisory Authorities

Source: See text
Creation of Commonwealth Statutory Authorities 1901-04 to 1980-84
6. Research & Education

Number

Source: See text
Creation of Commonwealth Statutory Authorities 1901-04 to 1980-84
7. All Authorities

Source: See text
APPENDIX 2
# OUTLINE OF EXISTING GOVERNMENT CONTROLS ON AUSTRALIA POST

<table>
<thead>
<tr>
<th>Controls</th>
<th>Instrument</th>
<th>Responsible Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic tariffs and charges to be examined by the Prices Surveillance Authority: inquiries may be ordered.</td>
<td>Prices Surveillance Act</td>
<td>Treasurer</td>
</tr>
<tr>
<td>Duty to protect the national estate.</td>
<td>Australian Heritage Commission Act</td>
<td>Arts, Heritage Environment</td>
</tr>
<tr>
<td>Duty to prepare Environmental Impact Statement and to observe conditions imposed</td>
<td>Environment Protection (Impact of Proposals) Act</td>
<td>Arts, Heritage Environment</td>
</tr>
<tr>
<td>Judicial and Administrative Review processes apply</td>
<td>Freedom of Information Act</td>
<td>Attorney-General</td>
</tr>
<tr>
<td></td>
<td>Administrative Decisions (Judicial Review) Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administrative Appeals Tribunal Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Crimes Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trade Practices Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ombudsman Act</td>
<td></td>
</tr>
<tr>
<td>Remuneration of Commissioners and statutory officers controlled.</td>
<td>Remuneration Tribunals Act</td>
<td>Special Minister of State</td>
</tr>
<tr>
<td>APS Standards of compensation for injury etc apply.</td>
<td>Compensation (Commonwealth Government Employment) Act</td>
<td>Social Security/Community Services</td>
</tr>
<tr>
<td>Controls</td>
<td>Instrument</td>
<td>Responsible Minister</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Australian Public Service Superannuation Scheme</td>
<td>Superannuation Finance Act 1976</td>
<td>Finance Minister</td>
</tr>
<tr>
<td>Obligation to pay maternity leave.</td>
<td>Maternity Leave (Commonwealth Government Employees) Act</td>
<td>Prime Minister</td>
</tr>
<tr>
<td>Australian Public Service long service leave requirements.</td>
<td>Long Service Leave (Commonwealth Employees) Act 1976</td>
<td>Employment &amp; Industrial Relations Minister</td>
</tr>
<tr>
<td>Public Works in excess of $6 million subject to Public Works Committee procedures.</td>
<td>Public Works Committee Act and Construction</td>
<td>Housing, Act and Construction</td>
</tr>
<tr>
<td>Conditions of employment of staff of Commission are controlled.</td>
<td>Industrial Employment Relations and Industrial Co-ordination Act</td>
<td>Prime Minister Relations/Prime Minister</td>
</tr>
<tr>
<td>The Conciliation and Arbitration Commission may make an award on an industrial question which overrides the Postal Services Act</td>
<td>Conciliation and Arbitration Act</td>
<td>Employment and Industrial Relations Minister</td>
</tr>
<tr>
<td>Obligation to comply with Acts of Universal Postal Union</td>
<td>Acts of Universal Postal Union</td>
<td>Communications Minister</td>
</tr>
<tr>
<td>Acquisition and lease of the Commission's real property not to be undertaken by Australia Post.</td>
<td>Lands Acquisition Act</td>
<td>Local Government and Administrative Services</td>
</tr>
<tr>
<td>Disposal of the Commission's real property to be undertaken by Dept. of Local Government and Administrative Services</td>
<td>Government Policy</td>
<td>Local Government and Administrative Services</td>
</tr>
<tr>
<td>Standards of office accommodation are prescribed</td>
<td>Government Policy</td>
<td>Local Government and Administrative Services</td>
</tr>
<tr>
<td>Controls</td>
<td>Instrument</td>
<td>Responsible Minister</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-----------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>Compliance with Australian preference policy in procurement of goods and services</td>
<td>Government Policy</td>
<td>Local Government and Administrative Services</td>
</tr>
<tr>
<td>Standards of housing for employees have to accord generally with standards defined by a Government body.</td>
<td>Government Policy</td>
<td>Prime Minister</td>
</tr>
<tr>
<td>Compliance with policy on financial leases</td>
<td>Government Policy</td>
<td>Finance</td>
</tr>
<tr>
<td>Compliance with offsets policy in procurement.</td>
<td>Government Policy</td>
<td>Industry, Technology and Commerce</td>
</tr>
<tr>
<td>Dept. of Housing and Construction is the preferred designer and constructor of Australia Post buildings where large scale or complex buildings are involved.</td>
<td>Government Policy</td>
<td>Housing and Construction</td>
</tr>
</tbody>
</table>

In addition the Postal Services Act includes the following controls:

<table>
<thead>
<tr>
<th>Controls</th>
<th>Instrument</th>
<th>Responsible Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td>A duty to meet the social, industrial and commercial needs of the Australian people for postal services and as reasonably practical, throughout Australia; taking account of developments in communication, efficiency, economy and the needs of people living outside the cities.</td>
<td>S7</td>
<td>Communications</td>
</tr>
<tr>
<td>Services to be provided at rates and charges as low as practicable, consistent with the financial policy.</td>
<td>S76(2)</td>
<td>Communications</td>
</tr>
<tr>
<td>Australia Post is to meet all expenses chargeable to revenue and provide for at least 50% of capital expenditure.</td>
<td>S76(1)</td>
<td>Communications</td>
</tr>
</tbody>
</table>
Controls | Instrument | Responsible Minister
--- | --- | ---
Surplus earnings in excess of these financial policies shall be applied as the Minister determines. | S79(2) | Communications
The Minister may direct the Commission with respect to the performance of its functions and the exercise of its powers. | S8 | Communications
Postal rate of standard articles and registered publications to be approved by the Minister. | S18(1) | Communications
Concessional rentals or charges may be specified by the Minister. | S19(4) | Communications
Estimates of revenue and expenditure to be submitted to the Minister as directed. | S81 | Communications
Reports must be made annually to the Minister. | S102 | Communications
Contracts in excess of $2M to be approved by the Minister. | S82 | Communications
Interest rates on advances from Commonwealth to be determined by the Minister for Finance. | S75(2) | Finance
Provision for superannuation to be determined by the Minister for Finance. | S76(3) | Finance
Auditor-General to inspect accounts. | S84 | Prime Minister
Short term investments in other than bank fixed deposits or Australian Government securities to be approved by the Treasurer. | S78(2) | Treasurer
All borrowings proposals to be approved by the Treasurer. | S75(1) | Treasurer

### SOURCE MATERIAL

#### I. INTERVIEWS

<table>
<thead>
<tr>
<th>Name</th>
<th>Position and Affiliation</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Geoff Niehus</td>
<td>Manager, Corporate Strategy Directorate, Telecom Australia</td>
<td>6 February 1989</td>
</tr>
<tr>
<td>Mr Bill Eady</td>
<td>Manager, Finance Directorate, Telecom Australia</td>
<td>6 February 1989</td>
</tr>
<tr>
<td>Mr Max Bourke</td>
<td>General Manager, Australia Council</td>
<td>8 February 1989</td>
</tr>
<tr>
<td>Mr Graham Gosewinckel</td>
<td>Managing Director, Aussat Pty Ltd.</td>
<td>8 February 1989</td>
</tr>
<tr>
<td>Mr Brian Gittings</td>
<td>General Manager, Corporate Services, Australian Film Commission</td>
<td>9 February 1989</td>
</tr>
<tr>
<td>Mr Rob McDonnell</td>
<td>General Manager, Corporate Affairs, Australian Industry Development Corporation</td>
<td>9 February 1989</td>
</tr>
<tr>
<td>Ms Ruth Medd</td>
<td>Acting General Manager, Australian Broadcasting Tribunal</td>
<td>9 February 1989</td>
</tr>
<tr>
<td>Mr John Bennett</td>
<td>General Manager, Corporate Services, Australian Trade Commission</td>
<td>13 February 1989</td>
</tr>
<tr>
<td>Mr Greg Cunningham</td>
<td>Chief Finance Officer, Special Projects Section, Department of Finance</td>
<td>14 February 1989</td>
</tr>
<tr>
<td>Ms Pauline Nesdale</td>
<td>Officer, Transport and Industry Section, Department of Finance</td>
<td>14 February 1989</td>
</tr>
</tbody>
</table>
II. STATUTORY AUTHORITIES' RESPONSES TO THE POLICY DISCUSSION PAPER, STATUTORY AUTHORITIES AND GOVERNMENT BUSINESS ENTERPRISES: PROPOSED POLICY GUIDELINES (Minister for Finance, 1986)

This material was received from the following authorities:

A.C.T. Health Authority
Aussat Pty Ltd
Australian Broadcasting Commission
Australian Film Commission
Australian National Railways Commission
Australian Postal Commission
Australian Telecommunications Commission
III OTHER SOURCES


_____ (1986) 'Promise and Performance: An Analysis of Time Taken for Commonwealth Governments to Respond to Reports from Parliamentary Committees', Legislative Studies 1, 2:20-23


ASTEC (Australian Science and Technology Council) (1985) Future Directions for CSIRO: A Report to the Prime Minister by ASTEC. Canberra, Parliamentary Paper No.470


Barker, A. (1982b) 'Governmental Bodies and the Networks of Mutual Accountability', in A. Barker (1982a)


____ (1929) 'The Administration of Government Enterprises', The Economic Record 5, 1:1-21

____ (1934) Planning the Modern State: An Introduction to the Problem of Political and Administrative Reorganization. Sydney: Angus and Robertson


____ (1937) 'Some Implications of the Statutory Corporation', Australian Quarterly 9, 2:37-49


Boyer, R. (1953a) 'The Australian Broadcasting Commission - A Criticism', Public Administration (Sydney) 12, 1:56-59

_____ (1953b) 'A Further Criticism', Public Administration (Sydney) 12, 2:113-115

_____ (1957) 'The Statutory Corporation as a Democratic Device', Public Administration (Sydney) 16, 1:29-36


Canberra Bulletin of Public Administration (1989) Special Issue on 'Administrative Law: Retrospect and Prospect' No.58


Castle, B. (1973) 'Mandarin Power: An Attack on Civil Service Methods and How They Stifle True Political Decision', Sunday Times, 10 June


CPD (Commonwealth Parliamentary Debates)


Crossman, R.H.S. (1975 and 1976) *The Diaries of a Cabinet*


Evatt Research Centre (1988) *The Capital Funding of Public Enterprise in Australia*. Sydney: H.V. Evatt Research Centre


Galligan, B. (1987) 'Entrenching Rights in the Constitution', Work-in-Progress Seminar, Department of Political Science, Research School of Social Sciences, The Australian National University


Hancock, W.K. (1930) *Australia*. London: Ernest Benn


Hanson, A.H. (1951) 'Parliamentary Questions and the Nationalised Industries', *Public Administration* 29,1:51-66


_____ (1986b) Patronage, Power and the Muse: Inquiry into Commonwealth Assistance to the Arts. Canberra: AGPS

_____ (1986c) Call us Again - Review of the Auditor-General's efficiency audit report on the control over manpower and property by the Overseas Telecommunications Commission. Parliamentary Paper No.303

HRSCTCI (House of Representatives Standing Committee on Transport, Communications and Infrastructure) (1988) The Role and Functions of the Australian Broadcasting Tribunal. Canberra: AGPS


JCPA (Joint Committee of Public Accounts) (1954) Twenty-First Report: Australian Aluminium Production Commission - Part I, Canberra, Parliamentary Paper No.69

_____ (1955) Twenty-Second Report: Australian Aluminium Production Commission - Part II, Canberra, Parliamentary Paper No.69A


_____ (1985a) 232nd Report. Canberra, Parliamentary Paper No.204


JCP (Joint Committee on Publications) (1979) Annual Reports of Commonwealth Departments and Statutory Authorities (Seventh Special Report). Parliamentary Paper No. 211


JPCWB (Joint Parliamentary Committee on Wireless Broadcasting) (1942) Report, Canberra, Parliamentary Paper No. 73

JSPCS (Joint Select Committee on the Parliamentary Committee System) (1976) Final Report, Canberra, Parliamentary Paper 128


Kewley, T.H. (1957) 'Some General Features of the Statutory Corporation in Australia', Public Administration (Sydney) 16,1:3-28

_____ (1950) 'Australian Commonwealth Government Corporations', Public Administration (Sydney) 9,1:200-221


_____ (1986) 'Government Changes and Public Service Reform', in Nethercote et al. (1986)


(1965) 'Power in Australia', Australian and New Zealand Journal of Sociology 1,2:85-96


(1986) 'The Hawke Government and Public Inquiries', in Nethercote et al. (1986)


RCAGA (Royal Commission on Australian Government Administration) (1976) Report and Appendices. Canberra: AGPS


RCPEE (Royal Commission appointed to consider and report upon Public Expenditure of the Commonwealth with a view to effecting Economies) (1920-21) Final Report. Canberra, Parliamentary Paper No.84


Remark (1987) Telcats: Telecom Customers Attitudes to Service (Special Edition for Telecom Australia), August 1987


Rydon, J. (1952a) 'The Australian Broadcasting Commission, 1942-1948', Public Administration (Sydney) 11,1:12-25

(1952b) 'The Australian Broadcasting Commission, 1942-1948', Public Administration (Sydney) 11,4:190-205

(1953a) 'A Rejoinder', Public Administration (Sydney) 12,1:59-62

(1953b) 'Rejoinder', Public Administration (Sydney) 12,2:115-116


_____ (1989) 'Australia as a Compound Republic', Presidential Address, Australasian Political Studies Association Conference, University of New South Wales, 26 September


(1986) Non-Statutory Bodies. Canberra: AGPS

SSCSAF (Senate Select Committee on Statutory Authority Financing) (1983) Statutory Authorities of the Commonwealth: Financing, Vols 1 and 2. Canberra: AGPS


SSCSTE (Senate Standing Committee on Science, Technology and the Environment) (1985) Examination of Annual Reports Referred to the Senate Standing Committee on Science, Technology and the Environment. Canberra, Parliamentary Paper No.342

SSOC (Senate Standing Orders Committee) (1970) Report Relating to Standing Committees, Canberra, Parliamentary Paper No.2

Stone, B. (1985) 'Non-departmental Agencies of Government in Australia', Work-in-Progress Seminar, Department of Political Science, RSSS, Australian National University
(1986) 'The Choice of Agency Type in Public Administration - Two Commonwealth Cases', Work-in-Progress Seminar, Department of Political Science, RSSS, Australian National University


(1989) 'Aboriginal and Torres Strait Islander Commission: The Way Ahead' (Ministerial Statement), Senate, CPD, 11 April 1989:1355-1361


Telecom (1988a) Stakeholder Management is a Fundamental Business Issue. Document produced by the Australian Telecommunications Commission


(1988e) 'Community Relations', Document 8225n


The Times (1988a) February 18

(1988b) February 19

(1988c) February 20

Tivey, L. (1979) 'Structure and Politics in the Nationalised Industries', Parliamentary Affairs 32,2:159-175


WASCGA (Western Australian Standing Committee on Government Agencies) (1983) _Second Report: Government Agencies in Western Australia_. Parliament of Western Australia

_____ (1983b) _Third Report: Annual Reporting Requirements for Government Agencies_. Parliament of Western Australia


_____ (1955a) 'Statutory Corporations Under Review', _Public Administration (Sydney)_ 14,3:158-165

_____ (1955b) Submission to Inquiry - Appendix 16, _JCPA_ (1955)


_____ (1960) 'Early Railway Management Legislation in New South Wales', *Tasmanian University Law Review* 1,3:446-474


_____ (1963) 'Administrative Boards in Nineteenth Century Australia', *Public Administration (Sydney)* 22,2:255-267

_____ (1964) 'Federal Labor and the Public Corporation under Mathew Charlton', *Labour History*, 6:10-24


_____ (1968b) 'Government Department or Statutory Authority?', *Public Administration (Australian Regional Groups)* 27,4:350-359


_____ (1976) 'Statutory Authorities', in Royal Commission on Australian Government Administration Appendix - Volume One, pp.312-74. Canberra: AGPS

_____ (1976a) 'Modes of Ministerialization Part 1: Towards a Typology - The Australian Experience', *Public Administration* 54,1:1-20


(1979) 'Ministers, Public Servants and Public Policy', Australian Quarterly 51,2:31-45

(1986) 'Administrative Reform - General Principles and the Australian Experience', Public Administration 64,3:257-76


(1955) 'Ministries and Boards: Some Aspects of Administrative Development Since 1832', Public Administration 33,1:43-58

