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# A FRAMEWORK FOR A SHADOW CABINET IN MALAYSIA



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## EXECUTIVE SUMMARY

This paper considers the viability of establishing a shadow cabinet mechanism in Malaysia. Aided by conceptual principles regarding parliamentary opposition, hybrid democracies, political party systems and institutional design, and informed by case studies on shadow cabinets in the United Kingdom (UK) and Australia, this paper discusses the political and institutional challenges often raised as barriers against a shadow cabinet, and proposes a conceptual and structural framework for the formation of one in Malaysia.

## SUMMARY OF FINDINGS

Unlike the Executive's cabinet structure, the shadow cabinet in a Westminster political system is not grounded in formal institutional foundations. A key lesson from the UK and Australian case studies is that the concept of a 'shadow cabinet' developed organically and was led by political parties not by governing institutions. Increased institutional standing and structural opportunities often followed where the opposition succeeded in coordinating their frontbench functions and formalising their relationship.

The underlying premise for a shadow cabinet or formal opposition frontbench lies in the constitutional principle that the paramount duty of the Leader of the Opposition is to be ready to assume the office of the Prime Minister. In the UK and Australia, the standing and privileges of the Leader of the Opposition and his/her shadow cabinet is actualised both within the structures and processes of Parliament, and through the vesting of constitutional standing and a certain level of influence over Executive decision-making.

In general, the Leader of the Opposition has the discretion to name his/her shadow cabinet. By practice and convention, duties of collective responsibility and (modified) ministerial responsibility are imposed on shadow cabinet members. The shadow cabinet leads its opposition bloc in policy and political competition against the incumbent government. Its organisation and operations mirror the cabinet's where practicable, and in that regard, shadow cabinet members are allocated portfolios that correspond as closely as possible to cabinet portfolios. The main site of cabinet-shadow cabinet competition and confrontation is Parliament, and parliamentary procedures are utilised by shadow ministers to perform their functions. Shadow cabinet members are thus accorded advantages over other parliamentarians in relation to parliamentary time and procedural access.

Within the dominant political parties in the UK and Australia, the responsibility for policy and political decision-making have, over time, been centralised in their cabinets/shadow cabinets. To manage dissent and maintain cohesion, the parliamentary party leadership adopts various methods to incorporate backbench and extra-parliamentary party participation in the policy-formulation process.

Shadow cabinets play a role in facilitating the division of labour and specialisation within their parliamentary party groups. They provide a platform to develop negotiated minimum common denominators with regard to difficult policy and administrative issues and to impose the duty of collective responsibility within the opposition frontbench, which can help ensure party cohesion.

The challenges often raised against installing a shadow cabinet mechanism in Malaysia are either institutional or political in nature. They include the ethno-religious contingencies of Malaysia's political structure, the current fragmentation of traditional political configurations, and lack of institutional readiness to effectively operationalise a shadow cabinet mechanism. It is argued that certain political and institutional conditions needed to be in place before a shadow cabinet can be

instituted, such as a two-party instead of a multi-party system, a unified opposition, and the allocation of additional resources to the opposition. On the contrary however, undertaking the formation of a shadow cabinet may in fact provide a partial solution to many of the concerns raised. For example, a shadow cabinet can be useful to compel parties to unify around the basis of a shared policy and governance platform. It can help limit policy drift and maintain the parameters of a policy framework particularly for a coalition of parties. The separation of opposition MPs into a frontbench and a backbench also incentivises MPs to compete for frontbench seats and as a consequence, to professionalise themselves. The demonstration of a viable alternative leadership team with a coherent policy platform, especially in a fragmented political landscape, fosters voter confidence in the stability of the political bloc, which can help withstand subsequent party-hopping.

The formation of a shadow cabinet at federal level can also provide an added method of coordinating a political bloc's state (sub-national) government policies with its federal-level policy positions. In Malaysia, the links between political blocs at the federal and state level can incentivise parties to collaborate and ensure multi-level complementarity.

A shadow cabinet with a clear hierarchical structure results in more robust legislative debates, which strengthens overall policy outputs. The establishment of a shadow cabinet also compels the opposition to develop and articulate cogent policy positions that both appeal to their broader party and can hold up under plausible scrutiny, rather than merely espousing populist policies and programmes at the pre-election stage.

While lack of resources can pose a serious challenge, it does not in itself obstruct the setting up a shadow cabinet. In fact, the formation of a shadow cabinet can potentially result in a more efficacious utilisation of existing resources, by providing an avenue for the consolidation of a party's collective resources and preventing the duplication of individual expenditure streams in the pursuit of the same objectives. In addition, the adoption of a shadow cabinet can itself become the rationale for demanding additional resources to support the work of the parliamentary opposition.

The limited ability to access state and public sector information is a common challenge faced by parliamentary oppositions, but is also not in itself a barrier to forming a shadow cabinet. As with resource limitations, the formation of a shadow cabinet and the assertion of an organised 'government-in-waiting' can help make the case for institutional structures to support it, including information access.

The underlying institutional conditions that facilitate the shadow cabinet mechanisms in the UK and Australia are not substantially present in Malaysia. For example, the opportunities within the Dewan Rakyat for the parliamentary opposition to pursue the objectives of law-making, government oversight and presentation of alternative policies are severely limited. However, post-2008, Parliament is and remains a robust arena of contestation and some institutional reforms have taken root. This positive shift can potentially be harnessed towards improving structural opportunities in support of the work of a shadow cabinet.

## **SUMMARY OF RECOMMENDATIONS**

The recommendations for a shadow cabinet framework that are proposed in this paper are intended as building blocks for the formulation of detailed structures and processes. The recommendations are separated into three broad categories:

**Building consensus and a conceptual framework.** As a first step, a consensus is needed among the party groupings within the parliamentary opposition to establish a shadow cabinet. This requires a commitment in principle to the formation of a formalised, hierarchical leadership team from within

the parliamentary opposition; that the primary functions of government scrutiny and the articulation of an alternative policy agenda is distributed within this leadership team; and that the leadership team will coordinate the organisation and operations of the parliamentary party group.

This consensus must have representative legitimacy and functional authority within the opposition. The broader the acknowledgement of the shadow cabinet, the stronger its influence to push for institutional access and privileges. The perception of its viability as an alternative government will depend on its composition. Hence, the shadow coalition should encompass a clear majority of the parliamentary opposition, and be reflective of the cultural and geographical politics of Malaysia.

It is also required that a policy consensus be negotiated and agreed. However, a fully formulated policy platform is not necessary, if a consensus can be achieved around minimum common denominators of policy. The development of an annual shadow budget should be undertaken as a fixed activity.

A critical pre-condition to the consensus is an agreement regarding who will assume the position of 'Prime Minister-in-waiting'.

In the interim, political parties and coalitions should work towards forming and facilitating shadow cabinet mechanisms at state (sub-national) level, as a prelude and springboard for developing an organisational and operational framework for federal shadow cabinet, and to put pressure on the federal system to reciprocate.

**Formation, mandate and organisational structure.** The first iteration of a shadow cabinet need not include more than minimum conditions regarding its formational and organisational aspects. A flexible framework should be prioritised over one that is purpose-built for a specific political configuration, so that the framework can be adapted in the event of political realignments.

Given present political dynamics, it is unlikely that the Leader of the Opposition can have absolute say in choosing his/her shadow cabinet. Several alternative processes are available. A committee of coalition party leaders could select members of the shadow cabinet and allocate portfolios through negotiation and compromise. Alternatively, individual parliamentary party groups could each elect or nominate a quota of members for the shadow cabinet, and the Leader decides their portfolios. In addition, a 'senior' and 'junior' minister from different coalitions parties could be appointed jointly to each portfolio. Regardless of the mechanics of selection, merit (or issue expertise) must be prioritised.

In terms of organisational and operational structure, the shadow cabinet should meet regularly and at least weekly. Pro forma agenda items should include:

- A report or update by the Leader providing a political overview that covers a review of the activities undertaken by the opposition;
- Consideration of the government's upcoming items of business in Parliament, (e.g. bills and motions) and of the opposition's response and strategy, to be led by the relevant shadow minister;
- Discussion of outstanding matters of opposition policy, to be led by the shadow minister concerned;
- Discussion of opposition members' upcoming items of business in Parliament, including proposed motions and questions.



The Leader and shadow ministers should be the principle media/public spokespersons to deliver the opposition's response to government policy and actions, and present the opposition's alternatives. Shadow ministers should adhere to similar operational and behavioural codes that apply to ministers, and these codes should be codified.

A regular and structured means of communication and consultation should be established between the shadow cabinet, and (i) the opposition backbench; (ii) the extra-parliamentary party/coalition.

**Formal recognition and empowerment.** There should be formal recognition of an 'Official Opposition' alongside the Leader of the Opposition. This serves to acknowledge the peer-to-peer relationship between government and opposition frontbenches.

The shadow cabinet line-up (and any subsequent changes) should be communicated to and acknowledged by all relevant institutional actors. Such an acknowledgement can form the basis of according privilege and advantages to shadow ministers/spokespersons in Parliament.

The role and authority of the Leader of the Opposition and/or an Opposition Business Manager to be consulted on decisions relating to scheduling of the business of the House and the administration of the House should be formalised. This serves to acknowledge the Leader's and shadow cabinet's representative authority over their opposition bloc.

The rules and practices of the Dewan Rakyat should be revised:

- To introduce equity of opportunity between the government bench and opposition bench in terms of parliamentary time and access; and
- To recognise the standing of an opposition, while preserving the priority of government business.

In the lead up to an election, procedures should be enacted to allow the shadow cabinet to meet and be advised by government officials regarding their election manifesto.

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# 1. INTRODUCTION

## 1.1. BACKGROUND

In Westminster political systems, the cabinet is conventionally the central decision-making body of the executive branch. Its authority, organisation and functions are institutionalised and operationalised by the laws and structures of government, and through informal conventions. Although the shadow cabinet is the cabinet's political counterpoint and functions as an alternative government in established Westminster political systems, its formal institutional basis - and thus its organisational capacity - 'occupies a far less certain place' (Bateman, 2009, p. 1)

A shadow cabinet may take on different appellatives, but in essence refers to the leadership team on the opposition frontbench<sup>2</sup> who take the lead on different policy areas under the organisational command of the leader of the largest opposition party or coalition in Parliament. Punnett (1973 quoted in Lim, 2013, p. 1) defines shadow cabinet as:

...a group of leading figures of the opposition who organise itself in ways that bear comparison with government... this is done by modelling its structure on that of the government by allocating portfolios to frontbench members... keeping a parliamentary check on government.

The concept of Shadow Cabinet evolved organically through the emergence of an organised opposition in the mid-19<sup>th</sup> century British Parliament.<sup>3</sup> A typical shadow cabinet comprises the Leader of the Opposition as shadow prime minister and a number of shadow ministers and assistant shadow ministers. A shadow minister's portfolio typically mirrors the responsibilities and areas of administration under one or more cabinet ministers. Shadow ministers are held up as potential ministers of the political opposition's 'government-in-waiting;' they are the spokespersons who present the opposition's critique of the government and its alternative policy positions in parliament, the media and other public forums. The establishment of a shadow cabinet (or formalised frontbench) also serves to coalesce and organise parliamentary opposition, its operations and output, and to improve the execution of government oversight. By its nature, a shadow cabinet and its ministers or spokespersons carry higher political authority and attract an elevated level of scrutiny compared to other members of Parliament. As a consequence, higher expectations as to capacity and conduct often attach to such positions.

The objective of this paper is to assess the establishment of a shadow cabinet structure within the Malaysian political system. The research is guided by studies on conceptual principles regarding parliamentary systems and political parties, and informed by the structure and practice of established shadow cabinet mechanisms in the United Kingdom (UK) and Australia. These principles and findings are applied to the Malaysian context and in developing recommendations for a shadow cabinet framework in Malaysia.

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<sup>2</sup> For the purposes of this paper:

- i. An MP is considered to be a member of the opposition frontbench team if they are in the shadow cabinet, a shadow minister, an opposition spokesperson, opposition whip or senior party leader.
- ii. MPs are considered to be members of the government if they are a minister in the cabinet, junior or deputy minister or a whip.
- iii. The 'parliamentary opposition' refers to opposition party MPs and independent MPs as a unitary body engaged in political and electoral competition with the government of the day, although some of those MPs may also engage in electoral competition with each other.

<sup>3</sup> The term 'shadow cabinet' was in common use as far back as the 1880s (Turner, 1969 cited in Bateman, 2009, p. 7).

## 1.2. THE MALAYSIAN CONTEXT

Malaysia is situated in a region that throughout history, was buffeted by the crosswinds of Indo-China competition, and rival colonial and ideological forces. On gaining independence in 1957, Malaysia's deeply-embedded communal identities formed the bulwarks for a system of governance that combine a competitive authoritarian political structure<sup>4</sup> with consociational power sharing<sup>5</sup> that are mutually reinforcing (Case, 2013; Balakrishnan, 2014b)). The grounding of the political structure in the reification of ethnoreligious pillarisation formed the organising principle for a cleavage-based party system, and enabled a single political coalition, the *Barisan Nasional* (BN) to stay in power for 61 years (Ufen, 2012; Case, 2001; Smith, 2005).

In the last 13 years however, Malaysia's semi-authoritarian political structure experienced a level of democratisation. A coordinated opposition coalition (the 'Pakatan Rakyat'<sup>6</sup>) that promised an agenda of democratic reforms made successive electoral gains in 2008 and 2013, including winning (and subsequently retaining) several state governments within Malaysia's federation of states. This placed the ruling regime under sustained pressure to democratise the political system; partnerships between political parties and civil society flourished and public acceptance of robust democratic contestation grew, despite pushback from the regime (Case, 2013; Welsh, 2013; Balakrishnan, 2014a; Saravanamuttu, 2016, pp. 240-241). The continued saliency of the reformist agenda through successive election cycles, alongside a marked class divide, served to undercut but did not supplant traditional cleavages of race and religion (Ufen, 2012; Welsh, 2020; Weiss, 2013).

In 2018, regime change was achieved for the first time when BN was defeated at the polls. A new Pakatan Harapan (PH) government was installed in Putrajaya. PH comprised component parties from Pakatan Rakyat (PKR and DAP as well as the PAS offshoot party AMANAH) and Bersatu<sup>7</sup>, a party of BN rebels, with the Warisan party from the eastern state of Sabah backing the coalition in an electoral pact. This 'PH plus' coalition also won control of an unprecedented eight out of the 13 states in the federation. The BN grand coalition was relegated to the opposition bench for the first time and partially split from the fallout.

However, partly due to 'sharp, identity-driven divisions' (Welsh, 2020, p. 41), the new PH government's coalition collapsed in February 2020, returning component parties of BN to Putrajaya along with PAS under the leadership of minority party Bersatu. The parties currently on the opposition bench comprise the tri-party coalition of PH, Pejuang<sup>8</sup> (comprising rebels from Bersatu), Warisan, and several independent MPs and smaller parties. These various opposition blocs do not have a formal political or electoral pact. Although the current Leader of the Opposition is the leader of PKR, and PH holds a majority in the Opposition, there is no explicit consensus at present that he is the choice for 'Prime Minister-in-waiting'.

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<sup>4</sup> Malaysia's political structure has been categorised within the spectrum of authoritarianism by leading political scientists as 'competitive authoritarian' or 'electoral authoritarian' (Diamond, 2002, pp. 21-35; Levitsky & Way, 2002, pp. 51-65; Howard & Roessler, 2006, pp. 365-381; Pepinsky, 2009; Levitsky & Way, 2010).

<sup>5</sup> Consociationalism is a political model based on the building of a grand coalition of the political elite, where political power is uniformly shared between the dominant political parties for each cleavage group (Lijphart, 2008; O'Leary, 2013).

<sup>6</sup> Pakatan Rakyat comprised the People's Justice Party (PKR), the Democratic Action Party (DAP) and Parti Islam Se-Malaysia (PAS).

<sup>7</sup> *Parti Pribumi Bersatu Malaysia*.

<sup>8</sup> *Parti Pejuang Tanah Air*.

The totality of these events has had significant ramifications on traditional Malaysian party/coalition politics. Of particular note is the dismantling or fragmenting of the BN grand coalition comprising different ethnoreligious parties that had acted as the fulcrum for policy rationalisation, negotiations on the distribution of the common good and positions on socio-political rights. At the time of writing this paper, the inter- and intra-party relationships on both sides of the political divide remain in flux, and it is uncertain how the chips will land at the next election. Nevertheless, at present, the loose coalition of parties holding government at best has a bare parliamentary majority, at worst is a minority government held together by a confidence and supply arrangement. In either scenario, the present partnership is not expected to fully carry into the next general election (Wong, 2020b; Welsh, 2020; Kassim, 2020; Waikar, 2020). In the current landscape, it is argued that a formalised shadow cabinet is a vital tool to consolidate and organise the parliamentary opposition so that it can act as a necessary check on the present government and present a credible alternative government (Wong, 2020a).

### **1.3. METHODOLOGY & ANALYTICAL FRAMEWORK**

In view of the scope, time frame and resources for this project, this paper was developed through qualitative research, utilising content analysis and predominantly secondary research. This includes an evaluation of existing literature from primary and secondary data sourced from text books, journals, research papers, policy papers, legal documents, official government and party publications. Data sources also include parliamentary standing orders, authoritative texts on parliamentary procedures, and government and political party resources. The research questions are primarily answered through a comparative study of the structure and practice of shadow cabinets and opposition frontbench in the UK and Australia. The UK and Australia were selected as comparators due to the evolution and durability of their shadow cabinet mechanisms, and the structures, systems and norms that sustain their practice of shadow cabinet.

Case studies from established parliamentary systems with functioning shadow cabinet mechanisms are vital to establish the role of a shadow cabinet in discharging the functions of the opposition frontbench, how it corresponds with the broader purpose of parliamentary opposition and how it interplays with intra- and inter-party/coalition dynamics. Case studies are equally important in deriving details on the formation and organisational structure of shadow cabinets, and the operationalisation of its functions.

However, the shadow cabinets in the UK and Australia work within their core democratic norms that both enable, and are produced by, the regular alternation of government. These norms are adapted into the rules and conventions of their parliamentary framework and executive-legislative relations. The efficacy and durability of their shadow cabinet mechanisms rely on these operational rules and conventions. Therefore, in order to evaluate the viability of a shadow cabinet mechanism in Malaysia and to make recommendations, this paper also identifies some of the principal rules and conventions in the UK and Australia's domestic constitutional and legal frameworks that confer institutional standing and authority to an official opposition, and provide opportunity structures to realise the objectives and functions of a formalised frontbench. These underlying conditions are then compared to the existing institutional framework in Malaysia to identify similarities and gaps.

This paper is presented in four chapters. Chapter 2 contains a literature review of the principles relating to parliamentary opposition, hybrid systems and political parties, the functions of shadow cabinet, and the institutional and opportunity structures for an effective parliamentary opposition. Chapter 3 presents the case study summaries on the UK and Australia. Chapter 4 applies the information and findings from Chapters 2 and 3 to an analysis of the dynamics in Malaysia, and closes with a set of recommendations.

Feedback from select stakeholders was obtained on the initial findings and recommendations of this paper. The stakeholders include analysts, civil society groups and party members who serve or served in government and/or parliamentary opposition at national or sub-national level. Efforts were taken to include a representative range of stakeholders within this consultation process. Unless specified, their feedback has been anonymised and incorporated within the analysis and conclusions presented in Chapter 4.

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## 2. OPPOSITION'S ROLE, IMPACT AND INSTITUTIONAL SUPPORT

### 2.1. THE PURPOSE AND FUNCTION OF PARLIAMENTARY OPPOSITION

Shadow cabinets are considered an understudied area of Westminster politics, and this lends to the dearth of available modalities on shadow cabinets. The leading contemporary studies on shadow cabinet remain Joel Bateman's analysis of the Australian shadow cabinet system (Bateman, 2009) and the mid-twentieth century works by D.R. Turner (1969) and R.M. Punnett (1973) on shadow cabinets in the British system. Despite the paucity of research, academic works from other areas such as political opposition, political parties and parliamentary institutions are instructive in constructing an analytical matrix for the purposes of this paper.

#### 2.1.1. The role and impact of parliamentary opposition

The functions of the parliamentary opposition are widely perceived to mirror those of legislatures in general, namely to oversee law-making, scrutinise government administration and policy execution and represent the electorate (Norton, 2008). The role of parliamentary opposition within the elected chamber in a Westminster parliament additionally includes: (a) to serve as the representative voice of the electorate; and (b) to identify, by a majority, one of their members to lead the Executive as Prime Minister.<sup>9</sup> Westminster parliaments also serve as an arena of contestation for competing political actors. While the conceptual and institutional scheme of Westminster parliaments limits non-government parties from directly affecting policy-making, it does provide opportunities for political teams to challenge their rivals and present their policy packages in order to present to voters the clear choice between the incumbent and an alternative government (Helms, 2004; Kaiser, 2008).

In addition, the typological range of political systems extending from liberal democracies to politically-closed authoritarianisms (Diamond 2002) impacts a parliamentary opposition's ability to undertake its traditional roles, and therefore can determine its role-orientation. At a macro-level, the institution of parliamentary opposition functions to preserve or expand democratic contestation and participation (Dahl, 1971). However, the importance and prioritisation of these macro-level goals within a particular political system is contingent upon the political structure (or regime type) under which the parliamentary opposition operates. In closed authoritarian systems for example, political opposition<sup>10</sup> may contribute to democratising such systems in a variety of ways, including by: (a) continuing or preserving the existence of opposition; (b) challenging the legitimacy of authoritarian regimes; (c) raising the costs of authoritarian rule; and (d) creating a credible democratic alternative (Stepan, 1997, p. 662).

In competitive authoritarian systems (as Malaysia has been described<sup>11</sup>), there is a deliberate presence of formal democratic institutions and therefore some space within which democratic contestation may take place (Levitsky & Way, 2002, p. 53). However, while elements of political

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<sup>9</sup> In Malaysia, the discretion of the Yang di-Pertuan Agong (constitutional monarch) to appoint the Prime Minister is circumscribed by the obligation to choose the member of the House of Representatives (Dewan Rakyat) who enjoys the confidence of a majority of members of the House. The Prime Minister's obligation to retain the confidence of the majority of members is a continuing obligation throughout the life cycle of that Parliament. (Federal Constitution of Malaysia, Arts. 40 & 43; Md Yusof, 2020c, pp. 525-544; Smith & Balakrishnan, 2020, pp. 1-3).

<sup>10</sup> Political opposition here includes parliamentary opposition.

<sup>11</sup> See Chapter 1, Section 1.2 of this paper.

contestation may exist - such as regularly held elections and functioning parliaments - the incumbent regime utilises illiberal means 'to create an uneven playing field between government and opposition', not through open violation of the democratic rules, but through subtle forms of persecution and manipulation of the institutional framework, to ensure that the regime succeeds in an electoral contest (Levitsky & Way, 2002, p. 53). As Case (2001, p. 44) observed in reference to Malaysia, the BN coalition that held power for 61 years succeeded in a strategy of exploiting ostensibly democratic institutions 'to make them yield highly complementary strands of democratic legitimacy and authoritarian controls'. Within such an environment, the parliamentary opposition's role as a democratising force continues to play a vital, if not dominant, role: parliamentary opposition should 'pursue transition-seeking objectives' as a continuing goal (Eisenstadt, 2000, p. 18) so as to build or reinforce mechanisms for democratic contestation.

Another dominant feature of Malaysia's political system is a historical contingency to consociationalist (grand coalition) power-sharing, arising from the dominance of ethno-religious identity politics,<sup>12</sup> that has shaped the party system. Cleavages from fundamental social conflicts are institutionalised and reinforced in party structures and platforms, voter preferences and in the choices of coalition formation (Ufen, 2012, pp. 443-444; Lipset & Rokkan, 1967, pp. 1-64). There are questions regarding the continued saliency of consociationalism as an organising principle for political power-sharing in Malaysia. The equilibrium of the BN's power-sharing model began a slow erosion in the 1970s, and effectively broke down when BN lost power in 2018. There is also a glaring lack of minority inclusion in the current governing coalition under Bersatu, whose survival is dependent on confidence and supply arrangements. This has contributed to a fluidity of parliamentary alliances. Studies suggest that in such environments, parliament has the potential to become a robust locus of contestation, and opposition groups can exploit the opportunity structures within it (Andeweg, et al. 2008).

Relevant to both authoritarian and consociationalist structures, the coalescing of the political opposition in multiparty systems into its own coalition or alliance has proven to be advantageous for electoral success and regime change, and arguably for democratic consolidation.<sup>13</sup> Coalitions may be formed either prior to, or immediately after, an election. Opposition parties in particular are incentivised to form pre-election coalitions to circumvent disproportional electoral systems and to signal a credible alternative to the incumbent (Golder, 2006; van de Walle, 2006; Wahman, 2011). Pre-election coalitions involve both legislative and electoral partnership and coordination, and contribute to locking in each party's commitment and investment in the campaign success of the coalition as a whole. In forming coalitions, parties will weigh the risk of alienating some of their core base against the benefit of securing cross-party votes. Coalition arrangements invariably include trade-offs on some policy positions and on distributions of cabinet portfolios, which is typically determined by coalition partners' seat contributions, balanced against countervailing factors such as the need to compensate kingmakers and to include critical partners in a multidimensional policy and ideological space (Lees, 2010; Carroll & Cox, 2007; Gandhi & Ong, 2019). Studies have found that coalitions formed prior to an election are more likely to distribute portfolios in proportion to seat contributions post-election, than are coalitions brought together post-election (Carroll & Cox, 2007).

### **2.1.2. The role of a shadow cabinet**

In the context of the parliamentary opposition's role, objectives and impact outlined above, the organisation of the opposition frontbench in the form of a shadow cabinet can serve to advance the

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<sup>12</sup> See Chapter 1, Section 1.2 of this paper.

<sup>13</sup> Although opposition cohesion is not the singular factor leading to regime change or democratization (Saravanamuttu, 2016, pp. 240-241; Howard & Roessler, 2006; van de Walle, 2006; Wahman, 2013; Gandhi & Ong, 2019).

fulfilment of the traditional functions of parliamentary opposition as well as its political goals. Bateman (2009, p. 11) synthesises the principal roles of a shadow cabinet from the studies conducted by Turner (1969) and Punnett (1973) and from his own analysis of the Australian shadow cabinet system, into the following:

- To organise the primary tactics of the opposition;
- To facilitate the Opposition's position as an alternative government; and
- To provide experience and training for potential future ministers.

Eggers and Spirling (2018, p. 344) similarly concluded from existing literature that a shadow cabinet's significant functions are to:

- Present itself as a 'government-in-waiting';
- Organise opposition to the government's legislative plans;
- Hold ministers to account; and
- Provide a formal link between the parliamentary party and its grassroots.

To operationalise a shadow cabinet, a range of systems and resources must be put in place that cover: the process of appointing shadow ministers and the allocation of resources to them; the provision of powers and resources to shadow ministers relating to their policy-making and other functions; and the process of conducting shadow cabinet meetings and providing necessary structural support (Bateman, 2009, pp. 27-39).

Taking the roles and functions of a shadow cabinet in turn: the shadow cabinet's capacity to organise the parliamentary opposition is chiefly mechanical, relating to the organisation of the opposition's activities and priorities within the business of the House. Consequently, a formalised shadow cabinet can become a funnel for channelling and distributing the institutional resources and opportunities that are allocated to parliamentary opposition as a whole within parliament.

The presentation of the opposition as a viable alternative government involves two aspects: making the case against the incumbent government's policies and administrative actions, (holding government to account) and presenting alternative policy visions (Bateman, 2009, p. 13). These core functions are routinely performed by any parliamentary opposition, whether by individual MPs or as inter- or intra-party groups. However, a shadow cabinet demarcates the 'conceptual distinction between an opposition and an alternative government' - where the former describes a reactive response to government policy and administrative action, the latter includes an organised strategical presentation of an alternative 'policy set to provide choice to voters' (Bateman, 2009, p. 13).

While the cabinet is able to discharge its functions and establish political authority because of its access to civil service's information and resources, and to media and other communications platforms, equivalent tools are not available to the parliamentary opposition, and thus it is 'less able to present itself on terms of equality with government' (Bateman, 2009, p. 12). However, by presenting a formal counterpoint to the current government and by approximating the existing institutionalised cabinet structure and roles, an opposition is able to 'demonstrate how Government would appear should it change hands' (Bateman, 2009, p. 13) while also directing the pressure of a competitor against sitting ministers. It also allows for specialisation among opposition members in the increasingly complex business of government and thus creates identifiable issue specialists among the opposition frontbench (Bateman, 2009, p. 14).



The notion that the shadow cabinet mechanism can act as a training ground for future ministers is not unchallenged. Some academics draw a distinction between the skills of a parliamentary debater (an opposition frontbencher) and that of a government administrator (a successful cabinet minister) (Punnett, 1973 cited in Bateman, 2009, pp. 21-22). Shadow ministers do not have access to key aspects of ministership experience, such as the mechanics of managing and working with the public service, bilateral engagement, as well as dealing with the competitive nature of policy formulation and adoption within cabinet. Nor is knowledge of any of these aspects critical to the performance of their roles on the opposition frontbench (Bateman, 2009, pp. 22-23). Nevertheless, studies indicate that some opposition members found their experience in shadow cabinet useful in preparing for the Executive (Bateman, 2009, pp. 22-25).

The creation of a shadow cabinet also allows for the consolidation of the functional distinction between the opposition frontbench and the backbench, as cabinet does with the government backbench (Webber, 2016). A case study on the UK, Australia and New Zealand found that, regardless of whether a party is in opposition or in government, the primary responsibility for decision-making rests with the frontbench (i.e. cabinet or shadow cabinet) (Gauja, 2013, pp. 187-216). This is particularly apparent in larger parliamentary parties where there develops 'a strong division of labour between the front and backbenches and a clear hierarchy of influence and control', often with the implication that the decision-making process over policy and strategy becomes concentrated within the party leadership in parliament (Gauja, 2013, p. 190). Some of the drivers for this centralisation of power include: the size of the parliamentary party/coalition and its structural or organisational ideology; the need for 'quick decision-making' to respond to parliamentary scheduling and media demands; policy complexity and the concentration of the party's issue specialists within the frontbench; and resource distribution which 'favours the parliamentary party' (Gauja, 2013, p. 192). Accordingly, the depth of consultation, deliberation or compromise between frontbench and backbench varies between party systems (Gauja, 2013, pp. 191-192, 205-209). The division of decision-making power between the front and back benches can create tensions within the two groups; nevertheless, backbenchers do act as a mediating force to the decision-making power of the frontbench, by playing the crucial role of transmitting the views and preferences from the party membership to the parliament (Gauja, 2013, pp. 199-202).

## **2.2. INSTITUTIONAL CONDITIONS FOR AN EFFECTIVE OFFICIAL OPPOSITION**

As addressed in Section 1.3 of this paper, in analysing the workings of a political system's shadow cabinet mechanism, it is important to incorporate the extent to which parliamentary opposition is recognised and empowered within its constitutional institutions, and the structural opportunities available to the parliamentary opposition. These institutional aspects underpin a shadow cabinet's functions and performance. This issue is particularly relevant for the purposes of this paper, as comparable structures and opportunities are on balance under-developed within the Dewan Rakyat in particular, and Malaysia's political system in general. Any recommendations on establishing a shadow cabinet mechanism in Malaysia would consequently require identifying if and where such underlying institutional structures and opportunities need to be strengthened.

### **2.2.1. Recognition and legitimisation of an official opposition**

The shadow cabinet remains, in the main, an informal institution. Even in systems with established shadow cabinets, their status, structures and privileges are largely not set in law, in stark contrast to its competing institution, the cabinet. Nevertheless, Westminster systems to varying degrees recognise and confer precedence on the parliamentary opposition leadership. At a bare minimum, there is formal recognition of the official Opposition and Leader of the Opposition. Some systems

additionally confer on the Leader of the Opposition executive-level influence, such as advisory powers over appointments to public office and access to information relating to national security. In so doing, these formal and informal rules entrench broad constitutional and political consensus on the vital institutional role of an official Opposition and in some cases, establish formal platforms for cooperation in executive-legislative relations.

### 2.2.2. Parliamentary opportunity structures for the official opposition

From an institutional perspective, there is a strong correlation between the strength of a parliament and the positive trajectory for democratization. Stronger legislatures advance democratization; weaker (or weakened) legislatures inhibit democratization by, for example, reducing effective 'horizontal accountability' and undermining the development of political parties. Stronger legislatures stimulate party building, encouraging investment and participation in political parties, which in turn strengthens the role of parties within the legislature (Fish, 2006, pp. 181-197).

A strong parliament is of particular significance to a coordinated, formalised opposition frontbench. Most of the interactions between ministers and shadow ministers are conducted on the floor of Parliament, specifically the elected chamber in Parliament, which holds the seat of the Prime Minister and Prime Minister-in-waiting. The principal parliamentary opportunity structures that support parliamentary opposition and the opposition frontbench are identified below.

**Controlling parliamentary time and order of business.** Most of the time of the House is occupied in the consideration of government business, a situation which is common in most Westminster-style Parliaments. The extent of government control over the arrangement of business and parliamentary time impacts how parliamentary opposition can actualise their roles and functions. Therefore, the working arrangements relating to the management of business in the House and the opposition leadership's ability to influence the same, are key. In established parliaments, it is accepted that government and opposition 'have a claim to equal speaking time in debates'; that opportunities to speak and ask questions 'should alternate between government and non-government Members'; and that the opposition should have opportunities to initiate debate on subjects of its own choosing (Elder, 2018, pp. 82-83).

**Parliamentary Questions.** Parliamentary Question Time is a longstanding and vital oversight tool of Westminster parliamentary systems. It is a means of compelling information from the government on their policy positions and administrative actions. The procedure can help address the informational asymmetry between the government and the opposition, while communicating the opposition's alternative policy positions and issue expertise. Parliamentary questions allow opportunities for political opportunism for both the opposition (e.g. to embarrass the government) and the government (e.g. to put government policies in a favourable light). For the opposition frontbench, and in particular a shadow cabinet, parliamentary questions are not only a vital oversight tool but also a singular opportunity for a shadow minister to directly confront his/her cabinet counterpart in real time on government policy and administration, to contrast the opposition's alternatives and to portray him/herself and the opposition frontbench as a minister/government-in-waiting. As Question Time is typically televised or livestreamed, it is also the most visible part of the parliamentary process and the best opportunity for shadow ministers to capture the news cycle and influence the public case against their government counterparts (Balakrishnan, 2020, pp. 275-292; Bateman, 2009, p. 45).

Factors to be taken into consideration in weighing the level of opportunity available within a particular parliament's Question Time procedures include: whether questions must be asked on notice or whether questions can be posed without notice, and the length of the notice period. Ministers answer questions both orally and in writing, and the former is generally preferred by MPs

because they are able to immediately challenge Ministers through supplementary questions, and the process takes place in a public forum. Additionally, since not all questions are answered on the day they are scheduled because of limited parliamentary time, the impartiality and parity of the scheduling process is important (Balakrishnan, 2020, pp. 275-292).

**Parliamentary debates.** Parliamentary debates are the key platform for political and policy contestation in Parliament. Compared to parliamentary questions, debates allow for a more participatory back-and-forth between the government and opposition benches, in particular the frontbenches, on questions of policy and administration. In established parliaments, entrenched conventions temper the Executive's control over both the legislative agenda and parliamentary time, and provide opportunities for opposition to influence policy. Most of these norms are actualised through an independent, unbiased Speaker who regulates access to the floor, and who moderates parliamentary party requests for speaking time in debates (Balakrishnan, 2020, pp. 293-294).

**Non-government Bills.** Private Member's bills are a parliamentary tool used by shadow cabinets to present policy initiatives and challenge or critique government policy. Its effectiveness is facilitated by parliamentary procedures that lay out straightforward procedural rules, provide necessary technical resources to parliamentarians, set aside floor time for the parliamentary opposition to present such bills, and allow a distinct vote of the House on such bills.

**Private Members' or Opposition Time.** Equally important is time set aside within the House calendar where non-government business is given precedence and the opposition is able to shape the agenda. Typically, such parliamentary time provides opportunities for non-government members to initiate debate on topics of their choice, propose legislation and move a vote in the House.

**Participation in parliamentary committees.** Parliamentary committees are widely considered the principal parliamentary procedure for 'the detailed scrutiny of government policy, spending and actions' by which ministers and their departments are held to account (Natzler & Hutton, 2019, para. 38.1). Committee inquiries and reports carry weight in changing the course of government policy and administrative action (Benton & Russell, 2013). For the opposition frontbench, it is an opportunity to bring opposing and alternative views to bear and to utilise the resulting public attention. Committee membership is also an important tool that can be utilised to reconcile discontent within the opposition backbench. Committee members have the opportunity to acquire significant levels of expertise in the subject matter, access to specialist resources (Natzler & Hutton, 2019, para. 38.1), and to attach their name to coordinated critique of government policies and action.

Factors that impact the effectiveness of parliamentary committees as a tool for the opposition frontbench and parliamentary opposition include: the rules relating to composition and appointment of committee members and committee chairs; committee powers to hold inquiries and compel the giving of evidence; the ability for committee members to put forward minority or dissenting reports.

## 3. THE CASE STUDIES

### 3.1. SHADOW CABINET IN THE UNITED KINGDOM

#### 3.1.1. Background

The UK Parliament is a bicameral legislature comprising the elected House of Commons (Commons) and the appointed House of Lords (Lords). Only the practices and procedures of the Commons are studied in depth for the purposes of this paper. As will become obvious below, the rules and norms of the Westminster political system emphasise the Commons as ‘the engine for democratic, party politics and the site for the confrontation between governments and governments-in-waiting’ (Webber, 2016, p. 367).

Of the 650 seats in the Commons, the Conservative Party holds 364 seats, the Labour Party 200, the Scottish National Party (SNP) 47, the Liberal Democrat party (Lib Dem) 11, the Democratic Unionist Party 8 and Sinn Féin 7, with the remaining seats held by independents and smaller parties. The Conservative Party currently has a working majority of 85 MPs.<sup>14</sup> The Labour Party is the Official Opposition (UK Parliament, *The Opposition*, n.p.), and its leader holds the office of Leader of the Official Opposition, who heads the Shadow Cabinet made up of members of the party from the Commons and the Lords (UK Parliament, *Government and Opposition*, n.p.). The current Labour Shadow Cabinet comprises 32 members (including the Leader of the Official Opposition (UK Parliament, *Her Majesty’s Official Opposition: The Shadow Cabinet*, n.p.)).

The coordination of parliamentary opposition as a shadow cabinet grew organically from the passing of the 1867 Second Reform Act and the introduction of a ‘party orientated electorate’ (Eggers & Spirling, 2018, p. 345). What began as the informal gathering of senior opposition members to coordinate strategies to government action led to the ‘establishment of a hierarchical opposition leadership, with small numbers of senior individuals increasingly dominating exchanges’ in Parliament (Eggers & Spirling, 2018, p. 345; Bateman, 2009, p. 8). The alternation of government between blocs from one election to another from the mid-1800s which gave rise to an expectation of a ‘standing, systemic opposition to government, formed of a body of members ready and able to assume office’ (Webber, 2016, p. 366), further intensified the formalisation of a parliamentary opposition. The early shadow cabinet mechanisms, which took the form of consultative committees, were coordinated but less reflective of a parallel cabinet structure. Eventually, the Labour Party’s organisation of a shadow cabinet framed on the composition and structure of Cabinet, became the pattern adopted by all parties. In tandem, the concept of a standing, coordinated parliamentary opposition came to gain status and precedence in the written rules and unwritten norms of parliamentary practice (Johnson, 1997, pp. 493-494).

#### 3.1.2. Institutional status and authority

The standing and consequence of several aspects of an official Opposition are recognised in the UK’s laws, conventions and cultural norms, and some are additionally accorded precedence and privileges.

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<sup>14</sup> Including the current Speaker (UK Parliament, *State of the parties*, n.p.).

**Recognising and empowering an official opposition and its Leader.** By constitutional convention, the party that wins the second largest number of seats in the Commons is recognised as Her Majesty's Official Opposition, or the Official Opposition.<sup>15</sup>

The Official Opposition was first recognised by statutory law in the Ministers of the Crown Act 1937, which defined and vested the leadership of the parliamentary opposition in the leader of 'the party in opposition to Her Majesty's Government having the greatest numerical strength in the House of Commons' (Ministers of the Crown Act 1937, s. 5). The Act provides for a salary to the Leader of the Opposition in addition to the salary as an MP that was, and continues to be, payable out of the Consolidated Fund. Statutory law also provides for payment of additional salaries to Chief Whips and Deputy Chief Whips from both the government and opposition (Ministerial and Other Salaries Act 1975).

The 'paramount constitutional duty' of the Leader of the Opposition is to be ready to assume the office of Prime Minister (Brazier, 1999, pp. 165-167). Brazier postulates that the entrenched nature of this constitutional convention, rooted in the regular transitions of power in the two-party system, explains why the office of Leader of the Opposition, and to a lesser but no less significant extent, his or her shadow ministers, are accorded power and influence through both formal and informal means over a few areas under Executive domain. For example, the Leader of the Opposition and some members of the Shadow Cabinet may, on the advice by the Prime Minister to the Monarch, be appointed as members of the Privy Council from time to time and as a result, entrusted with the handling of 'on Privy Councillor terms' (Webber, 2016, p. 11). The UK civil service too is permitted, in exceptional cases, to give briefings on confidential ('Privy Council') terms to the senior members of opposition parties (UK Government Cabinet Office, 2011, p. 9).

The Leader of the Opposition is by custom asked to provide names when appointments are made to investigative bodies like Royal Commissions. Also by custom, the Prime Minister consults the Leader of the Opposition and also other party Leaders on honours lists (Brazier, 1999, pp. 165-166). Statutory law requires that the members of the joint parliamentary Intelligence and Security Committee, which conducts oversight of the UK's intelligence and security agencies, be appointed by the Prime Minister in consultation with the Leader of the Opposition. The ISC examines the agencies' policies, administration, expenditure and operations, and has the power to compel the disclosure of information (Justice and Security Act 2013; Intelligence Services Act 1994, s. 10; Barker, et al. 2017-18, pp. 51-52).

As a matter of longstanding custom and practice, the Prime Minister consults and keeps informed his/her opposite member on serious matters of defence and foreign and domestic policy, for example in relation to dealings relating to domestic or national emergencies, the Irish partition, the European crisis in the 1930s, the progress of wars and armed conflicts and dealings with certain foreign leaders. These discussions are typically held in secret and it is a matter of security but also political judgement whether they are acknowledged publicly, as it may inhibit the Opposition's ability to critique the government's policies (Brazier, 1999, pp. 165-167).

The UK Government Cabinet Manual concretises the practice began since the 1960s that during an election, the civil service are tasked with meeting and advising the Opposition on its election policies and manifesto as part of the preparation for transition in the event the Opposition wins the election. Opposition shadow ministers are allowed to ask questions about departmental organisation and to inform civil servants of their planned organisational changes to the civil service in the event of a change of government (UK Government Cabinet Office, 2011, p. 16).

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<sup>15</sup> It is a constitutional convention that, in the parliamentary system, the Crown recognises that Her Majesty's Government exists, for the time being, as the preference of the House over Her Majesty's Opposition (Wilding & Laundry, 1972, p. 509 cited in Elder, 2018, p. 79).

**Financial support to the parliamentary opposition from the public purse.** As set out above, parliamentarians receive a salary drawn from public funds, with additional sums paid to certain senior leaders within the official Opposition. In addition, since 1975, parliamentary opposition parties in the Commons are also allocated financial assistance from the House Budget (also from the public purse) commonly known as “Short Money”. The stated intention of the funding is to create a more level playing field so that opposition parties come closer to matching the resources available to the Government (Head of the UK Fees Office UK Parliament, 2000), which serves as another form of recognition of the institutional role of the Parliamentary Opposition. Short Money are fixed sums allocated for specific purposes: (a) to fund costs and expenses associated with the conduct of parliamentary business; (b) to cover travel and associated expenses; and (c) to fund the running costs of the Leader of the Opposition’s office.

### 3.1.3. Formation and mandate

There are some differences in the shadow cabinet formation procedures between the Conservative Party and the Labour Party. Taking an overview of the Conservative Party first, with regard to the party leader, until 1965, the party had no formal machinery for choosing or removing a leader, and the leader’s position always depended upon the parliamentary party. This was in keeping with the foundational structure of the party that ‘the extra-parliamentary party would always be subservient to the parliamentary leadership’ (Kelly, 2003, p. 83).<sup>16</sup> A leader was effectively determined by a small circle of top leaders, which ordinary party members merely rubber stamped. In 1965 a procedure was introduced to elect the leader by a ballot of Conservative MPs, which in effect, formalised the existing process (Ball, 2003, pp. 9-10). Following its electoral rout in 1997 and internal self-examination, the Conservative Party’s current leadership election rules were introduced which provide a two stage process: in the first stage, Conservative MPs select two candidates from all those standing to be presented for the vote of the membership of the whole party. The party members then vote on the shortlist of two to elect the party leader (Johnston, 2019).

The leader of the Conservative Party by custom and practice enjoys unfettered discretion in the appointments of shadow ministers, meaning that he or she can appoint, remove, replace and reshuffle shadow ministers at will. Correspondingly, it is within the leader’s authority to structure the Conservative shadow cabinet’s method of working according to his/her personality and wishes (Johnson, 1997; Brazier, 1999, p. 172).

The Labour Party leader is elected through a tiered election process. Candidates in the first round must be nominated by at least 10% of the MPs in the Parliamentary Labour Party in the Commons (PLP) and must also secure the nominations of at least 5% of the party’s extra-parliamentary bodies. In the second round, votes are cast by party members through a preferential ballot on the nominated candidates, till a candidate secures over 50% of the vote (Johnston, 2020; Brazier, 1999, pp. 172-174).

Up until 2011, the Labour Party leader had a narrow discretion on the appointment of shadow ministers; the PLP was empowered to elect a 19-member cabinet (the formal title of which is ‘Parliamentary Committee’), and the cabinet was rounded off by seven *ex officio* members including the Leader of the House of Lords, the Chief Whips of both Houses and a peer’s representative

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<sup>16</sup> Since its inception following the 1867 Reform Act, the Conservative Party has had three disparate components: the Conservative parliamentary party, the National Union of Conservative Associations (the voluntary extra-parliamentary party) and the Conservative Central Office (the professional or bureaucratic wing of the extra-parliamentary party). While party democracy was improved during the Thatcher and Major governments, they were seen as largely cosmetic. In the post-1997 reforms, the party’s National Union was replaced with a Party Board that created an accountability structure to a centralized committee, and a party Policy Forum was created to seek member feedback and contributions on central party policy ideas (Kelly, 2003).

(Johnson 1997, Brazier, 1999, pp. 172-174). Since 2011 however, the Labour leader has been given a free hand to name his/her own shadow ministers. The party rules and norms require that all elected members of the shadow cabinet be given seats in the Cabinet. Nonetheless, not all Labour Party leaders have strictly adhered to these rules when they have assumed the premiership (Brazier, 1999, pp. 64-65).

The modern UK shadow cabinet system had more or less settled into its present structure by 1964.<sup>17</sup> Shadow cabinets for both major parties in general comprise a suit of shadow ministers, junior spokespersons, Opposition Whips and party spokespersons in the House of Lords (Brazier, 1999, pp. 65-66, 174-175). Prime Ministers have (to a large extent but not exclusively) relied on their former shadow team to make up their cabinet (Brazier, 1999, pp. 65-66). There are few limitations on the Opposition Leader in the making of such appointments, and the leader is typically guided by intra-party, inter-party and external political exigencies of the day, including ensuring regional representativeness and mediating factionalism. The importance of gender and ethnic balance is acknowledged, although adherence is limited by the corresponding composition of the parliamentary party and party ideological priorities. The high water mark was hit under Corbyn's leadership when the Labour's shadow cabinet consistently comprised 40% women at a time when the proportion of women MPs in the House was at approximately 32%, and for the first time hit 50% following his shadow cabinet reshuffle in 2016 (Democratic Audit 2018, pp. 380-381). Both Conservative and Labour opposition leaders have been accused of allowing rewards and personal relationships to overrule merit in the appointment of their shadow cabinet line-up (Dorey, et al. 2011, pp. 136-154).

In order to present as an alternative government and to demonstrate that the party leader is in command, shadow ministers accept the duty of collective responsibility similar to that which is imposed on their cabinet counterparts (Brazier, 1999, pp. 169-170). However, shadow ministers are not bound by the same range of constraints attached to the doctrine of ministerial responsibility. Unlike the situation in Cabinet, resignations or dismissals from the shadow cabinet do follow a shadow minister's fundamental disagreements with the Opposition Leader over policy or operational strategy (Brazier, 1999, pp. 169-171), although shadow ministers may choose to voluntarily resign.

#### **3.1.4. Relationship with backbench and party/coalition leadership**

In the Conservative Party, the extra-parliamentary organisations have typically played a supportive role to the parliamentary party. The parliamentary party leadership defines the party's policy and determines its strategic direction; the role of the extra-parliamentary party was, in the main, confined to general influence over policy-making (Ball, 2003, pp. 7-28).

For the Labour Party, party rules guide the working relationship between the parliamentary party and the extra-parliamentary organisations. The rules require these different components to meet weekly to discuss matters of policy and forthcoming business in Parliament (Brazier, 1999, pp. 173-174). There have been occasions when the Labour's parliamentary leadership has clashed with the extra-parliamentary groups over the party manifesto and the latter's straying outside of agreed policy directions. Fairly recent party reforms have centralised the national manifesto policy formulation process in the party's National Policy Forum, which streamlines the input received from the various extra-parliamentary components of the party. These changes are seen as a win for the

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<sup>17</sup> The standing practice of identifying shadow ministers to be opposition spokespersons on specific ministerial portfolios is credited to the Labour Party's extended tenure in opposition between 1951-1964. (Punnett, 1973, p. 36 cited in Webber, 2016, p. 21; Johnson, 1997, p. 493-494).

parliamentary party leadership, as it allows the leadership to 'filter out undesirable policies and dampen debate at the annual conference' (Pettitt, 2016, p. 8).<sup>18</sup>

Apart from internal party dynamics and historical contingencies, there are pragmatic reasons for the concentration of policy and political decision-making in the hands of the party's parliamentary leadership, relating to funding and distribution of a party's resources for its policy process. A gradual change in funding sources and patterns on which political parties rely, and conditions on the spending of such funds (Gauja, 2013, p. 131), have consequently shifted the coordination and operational aspects of the party from the extra-parliamentary elements towards the parliamentary group (Gauja, 2013, pp. 128-129). In the UK, the number of paid staff employed by the main parties has declined; income derived from parliamentary roles and duties is now the largest source of funds, exceeding donations and other traditional political party income sources. The latter sources of income used to staff the party organisation. Currently, it is the parliamentary arm of the party and its activities that are 'the largest employer of staff' (Gauja, 2013, p. 131). It is these staff, rather than the extra-parliamentary components, who undertake the bulk of the parties' policy research and deal with the day-to-day policy matters, as frontbench and backbench MPs are called upon to make statements or vote upon positions. As a consequence, the parliamentary party setting has become the 'locus of policy development' (Gauja, 2013, p. 129). In so doing, the policy work and activities of the parliamentary group are to some extent and by necessity kept separate from the party-at-large in order to comply with the limits on spending purposes imposed on parliamentary funds.

With regard to frontbench-backbench relations, occasionally, a shadow cabinet and its backbench have clashed over policy and parliamentary tactics. In the Conservative Party's first term as parliamentary opposition following electoral loss in 1997 after 18 uninterrupted years in power, the opposition frontbench came under sustained criticism from its backbench for being insufficiently adversarial against the Labour government, and this was compounded by small groups of MPs rebelling against their whips, voting up to 163 occasions against the party line (Cowley & Stuart, 2004, pp. 69-70). The Corbyn leadership of the Labour Party from 2015 to 2019 witnessed intense fractionalisation and a breakdown of working relationships not only between the Labour frontbench and backbench, but also within the Labour Shadow Cabinet (Goes, 2016; Lynskey, 2020).

In addition, the size of the shadow administration relative to the opposition bench has the potential to create friction between frontbench and backbench; by parliamentary convention those on the frontbench have precedence in being called on by the Speaker during parliamentary questions and debates. Internal party rules are relied on to balance the advantage between the frontbench and backbench by, for example, the former ceding opportunities for supplementary questions to the latter, and through management by the Whip (Brazier, 1999, pp. 175-176).

### **3.1.5. Operations and performance of functions**

The regular shadow cabinet meetings are held once a week, and in the main, follow the structure of a cabinet meeting. A typical agenda would include matters of business related to party policy direction and matters of parliamentary party coordination. The shadow cabinet role in explicating the policy position of the Official Opposition is grounded in the 'Whitehall' concept of British constitutionalism: in practical terms, it means that the opinions that matter on issues of policy are those of the government and those of its rival for office, and that the contestation that takes place in

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<sup>18</sup> The National Party Forum (NPF) is made up of representatives from the PLP, Cabinet or Shadow Cabinet, constituency parties, trade unions, the European Parliamentary Party, affiliate socialist societies, a number of councillors and representatives from the National Executive Committee. The NPF conducts a rolling programme of consultation, and produces a final report that must receive the endorsement of the party conference as the party's manifesto.



the Commons is predominantly between two parties seeking to win or retain Executive control (Johnson, 1997, p. 495).

In this context, shadow ministers are expected to specialise on the specific matters of policy falling under their portfolio. In terms of shadow ministerial autonomy however, shadow administrations have varied in their approach to balancing the authority of a shadow minister to frame policy details and direction, against control over policy formulation by the office of the Shadow Prime Minister and his/her elite group of advisors. Friction has arisen in past Labour and Conservative shadow cabinets over the concentration of policy decisions within the Shadow Prime Minister and his cadre and the failure to adequately consult with shadow colleagues (Gruhn, 2011).

In the UK, the Shadow Chancellor plays a vital role. The position is often conceived to share strategic control of the shadow cabinet with the party leader. The Shadow Chancellor exercises a central coordinating role, largely through his/her power of veto over policy ideas that commit potential government spending. The Chancellor's role is also to attack and weaken the government's fiscal policy decisions both in the chamber of the House but equally important in the media, in order to present a credible alternative to the electorate (Barber, 2015).

Both parties have different arrangements for intra-party consultation on aspects of party policy. Labour shadow ministers must take on board input from the rolling policy consultation programme coordinated under the party's National Party Forum (Pettitt, 2016). Conservative shadow ministers obtain feedback and contributions from the Conservative Policy Forum, which coalesces and collates feedback and contributions on the party's policy ideas and positions from the party's grassroots associations (Kelly, 2004; Conservative Party Forum). Overall, however, there is minimal formal influence from party members; key policy decisions remain vested in the shadow cabinet and to a lesser degree the national party machine (Democratic Audit, 2018, p. 106).

Most of the interactions between ministers and shadow ministers take place on the floor of Parliament, in particular the Commons, and parliamentary procedures such as Question Time and debates provide shadow ministers from the Official Opposition with their main peer-to-peer platforms to critique government, present rival policies and display their readiness for government. In addition, as Official Opposition spokespersons, shadow ministers are given significant media access and coverage, and must be ready to respond rapidly to current developments. The 'guaranteed' media access is another privilege not easily available to backbenchers.

In his 1970s study on the opposition frontbench in the UK, Punnett concluded that the key function of the Shadow Cabinet is to meet 'on a regular basis to assist the Leader of the Opposition in the task of managing the business of Opposition,' such as in identifying the MPs who would speak in debates on government Bills and table parliamentary questions to Ministers (Punnett, 1973, pp. 35 & 220 quoted in Bateman, 2009, pp. 11-12). Since Punnett's treatise however, the pace of democratic reforms both within the UK Parliament and Government has created new opportunities for the parliamentary opposition to pursue their functions as a 'government-in-waiting'. These changes have also created alternative mechanisms for the management of parliamentary business. Both these aspects are discussed in the next section of this paper. Nevertheless, the UK Shadow Cabinet does continue to play a role in determining the parliamentary party's prioritisation and strategy relating to parliamentary procedures such as legislative debates and Question Time, as well as the nomination of members to committees. The Labour parliamentary leadership for example, meets weekly with the entire parliamentary party to communicate and discuss policy decisions and strategies relating to upcoming parliamentary business.

In terms of resources for the work of a shadow cabinet, there are no specific funds allocated to MPs in their capacity as 'shadow ministers'. However, the financial support awarded to the Official Opposition may and is utilised in part to sustain a shadow administration. These human and financial resources are channelled towards not only preparing shadow ministers for their work in the House,

but it also helps brief them for their appearances outside Parliament as spokespersons for the Official Opposition (Johnston, 2019, pp. 494-495), and are said to support a shadow minister as a civil service department supports a minister (Webber, 2016, pp. 21-22). Not unexpectedly, the financial and human resources available to a shadow administration do not mirror the range and breadth of civil service resources available to a cabinet and government departments. One area in which the lack of resource and expertise particularly impacts shadow ministers is in the scrutiny of bills and the drafting of amendments. Shadow ministers do not benefit from the assistance of draftsmen that are available to the government, and are limited by their resources in what they can accomplish particularly when they receive requests from stakeholders to table amendments to bills (Thompson, 2013).

### 3.1.6. Opportunity structures in Parliament

A significant factor in the ability of the Leader of the Opposition and his/her shadow cabinet to successfully translate their decisions and strategies into action in Parliament is the recognition and access accorded to them in/to parliamentary procedures and opportunity structures.

**Control over parliamentary time and order of business.** Although the standing orders of the Commons gives government business precedence at every sitting, the rules have been accommodated to set aside parliamentary time for opposition business (20 days), backbench business (at least 27 days) and Private Members' Bills (13 Fridays) (Natzler & Hutton, 2019, para. 18.11). Over and above this, the government of the day has on occasion provided a day or part of a day from its allocation of business days/time in the Commons for a debate on a motion in the name of the Leader of the Official Opposition or the leader of another opposition party, although this is not required of the government in the parliamentary rules (Natzler & Hutton, 2019, para. 18.13). The ceding of parliamentary time to groups other than the government is arguably part of the conventions of mutuality arising from the established alternation of government in the UK.

**Parliamentary Questions.** Parliamentary Question Time is scheduled for four days a week for an hour each day. It is a staple forum for the parliamentary opposition, particularly the frontbench, to scrutinise the government and their counterparts on matters of policy and administration. Ministers answer questions both orally and in writing, and any MP may ask supplementary questions during oral questioning. The Speaker decides who to call on for supplementary questions, and shadow ministers by convention are accorded precedence (Natzler & Hutton, 2019, para. 19.15). Questions must be submitted three days in advance, which is a reasonably short period. The order of questions for the day is determined by a computerised random 'shuffle' and by convention, incorporates parity of opportunity and representation for all parties (Natzler & Hutton, 2019, paras. 22.2-22.4).

The weekly Prime Minister's Question Time, while open to all MPs to pose questions, has become an established forum of face-to-face, peer-to-peer contestation between the UK's sitting Prime Minister and Prime Minister-in-waiting. This opportunity structure is enhanced by two factors: first, by convention, the Leader of the Official Opposition is permitted to ask three to four supplementary questions, while the leader of the next largest opposition party is permitted two supplementary questions. Second, exceptionally permissive rules on the germaneness of supplementary questions means that those posing questions to the Prime Minister are not obliged to give advanced notice of the direction of their attack. An MP's original question to the Prime Minister may be framed in open, innocuous terms, and his/her supplementary questions need not relate directly to the original question. This compels the Prime Minister to be prepared to answer questions and defend government policy on a variety of topical issues (UK Parliament, *Question Time*).

**Parliamentary debates.** The usual practice in the Commons is for MPs wishing to speak in a debate to submit their names to the Speaker. The Speaker may announce time limits for speeches during

debates, but the standing orders of the House also prescribes time limits on frontbench speeches (Natzler & Hutton, 2019, paras. 21.8-21.14). The government may also put forward 'programme motions' immediately after a government bill has passed its Second Reading. Programme motions set out a detailed timetable for each stage of a government bill, and are currently utilised to progress most government bills in the House of Commons.<sup>19</sup> When it comes to the sequencing of speaking orders for MPs participating in debates, frontbenchers are normally given precedence over backbenchers (Natzler & Hutton, 2019, para. 21.8).

**Non-government bills.** The Commons' rules of procedure allow for the introduction of Private Members' Bills. Private Members' Bills are given precedence during 13 Fridays in the parliamentary calendar. There are limitations on the subject matter of such bills, which are common in most Westminster Parliaments: Private Members' Bills cannot be tabled for the authorisation of expenditure, which requires the assent of the Executive. The scheduling of Private Members' Bills is mainly determined through a ballot (Natzler & Hutton, 2019, para. 21.16).

**Opposition Days/Time.** One of the main ways in which the Official Opposition in general and the parliamentary frontbench or shadow cabinet in particular can assert its policy agenda and steer the direction of political discourse is through Opposition Days. The opposition in the Commons is given 20 days in each parliamentary session to set and lead the agenda of the House, and choose subjects for debate. These are referred to as 'Opposition Days'. Of the 20 days, the Leader of the Opposition selects the topics for debate on 17 days, while the remaining three are allocated to the second largest party in opposition. Any private Member may introduce motions or bills which may be debated and/or voted upon (Natzler & Hutton, 2019, paras. 4.6 & 18.13).

**Participation in parliamentary committees.** The Commons' select committees have become 'the principal mechanism by which the House discharges its responsibilities for the detailed scrutiny of government policy, spending and actions' and is 'the most widely recognised and public means by which Parliament holds government Ministers and their departments and agencies to account' (Natzler & Hutton, 2019, para. 38.1). The select committee system is structured into 'departmental select committees,' in that they provide scrutiny and oversight over the corresponding government department. Cross-cutting committees cover topics that straddle more than one policy set or government department. The Commons also creates public bills committees which are specially purposed to review bills in committee stage. Finally, parliamentary standing committees govern the internal business and administrative affairs of the House.

Positions on departmental select committees are highly sought after. The membership typically reflects the strength or proportion of each party in the Commons, and by convention, it is limited to government and opposition backbenchers. Although shadow ministers are not typically members of these committees, it remains an important tool in the Official Opposition's arsenal, because it can be utilised to provide opportunities and reconcile discontent within the opposition backbench. Committee members have the opportunity to acquire significant levels of expertise in the subject matter, access to specialist resources (Natzler & Hutton, 2019, para. 38.1), and to attach their name to coordinated critique of government policies and action and to influencing change. In that regard, select committee inquiries and reports have been found to carry weight in changing the course of government policy and administrative action (Benton & Russell, 2013). For the opposition frontbench, it is an opportunity to bring opposing and alternative views to bear and to utilise the resulting public attention.<sup>20</sup>

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<sup>19</sup> Programme motions were introduced in 1997/98, and have replaced the rather controversial Allocation of Time (or 'guillotine') motions (Lilly, 2019).

<sup>20</sup> Select committee hearings and findings receive high media and public attention. For example, press mentions broadly tripled from 2008 to 2012 particularly on committee inquiries tackling government spending, topical policy and public interest issues (Democratic Audit, 2018, pp. 166-167).

Select committee chairs are apportioned according to party strength and allocated through inter-party discussion. By standing practice between the parties, certain committees, such as Public Accounts, Standards and Backbench Business and Joint Committee on Statutory Instruments are traditionally held by the Opposition, while Treasury and Foreign Affairs are held by the government. Within these parameters, the members of a committee elect their chairperson. At the end of the 2015-17 stretch, the Conservatives held 14 chairs, Labour 10 and the rest held by other parties (Democratic Audit, 2018, p. 160).

With regard to public bill committees, the House's Committee of Selection decides the number of members and party composition for each committee, which should reflect the composition of the House. The relevant Minister(s) is/are included in the committee, along with the corresponding shadow minister and whips (Natzler & Hutton, 2019, paras. 39.21-39.31; Democratic Audit, 2018, p. 164). Shadow ministers are able to influence the committee's findings and proposals for amendments to government bills (Thompson, 2013).

### **3.1.7. Conclusion**

The Official Opposition is seen to bear the greater weight of the duty of Parliament to 'realise ministerial responsibility' and hold the government to account, because of the special role, rights and privileges accorded to them in the constitutional and parliamentary rules and norms. With the formalisation and multi-party embrace of the shadow cabinet mechanism since the mid-20<sup>th</sup> century, the responsibility to hold government to account has largely transferred from the whole of opposition to the shadow ministers (Webber, 2016, pp. 12-13 & 21).

One of the key reasons for the durability and functionality of the British model of shadow cabinet is the institutionalisation of various elements necessary for its effective functioning. This includes the institutionalisation of the status, precedence and access to procedural tools and resources for the frontbench opposition in particular and parliamentary opposition in general. In addition, through various statutory laws and conventions, standing and influence is granted to the leadership of the Official Opposition that signals broad constitutional and political recognition of their entitlement and readiness to assume government.

Despite some individual variations, in both the Labour and Conservative parties, primary responsibility for decision-making, including policy formulation, broadly rests with the shadow cabinet. The centralisation is partly due to contingent historic and schismatic factors, but other reasons play a part, such as the need for rapid response decision-making including in relation to parliamentary proceedings and the media, the increasing complexity of policy formulation which benefits from expertise and the convening power of senior parliamentary leadership, and the availability of resources which is increasingly located or centred in the parliamentary party (Gauja, 2013, p. 192).

## **3.2. SHADOW CABINET IN AUSTRALIA**

### **3.2.1. Background**

The Australian Parliament is a bicameral legislature comprising the House of Representatives (House) and the Senate. As the dominant legislative chamber in which is located the parliamentary seat of the Prime Minister and Shadow Prime Minister, only the House of Representatives is studied for the purposes of this paper.

Since the turn of the 20<sup>th</sup> century, the Australian federal political structure has stabilised into a party system of two factions: the Labor Party on the one hand, and the Liberal party-National party coalition on the other. The stability creates a clear division and distinction between government and opposition through the election cycles, and 'historically produced an almost total absence of representation of minor parties in the House of Representatives' (Elder, 2018, p. 79). During the Labor Party Government in 1983-1993 and 2007-2013, the official Opposition comprised the Liberal Party-National Party coalition which shared shadow cabinet positions in the House.<sup>21</sup>

### 3.2.2. Institutional status and authority

As in the UK, the status of an official opposition in Australia is legitimised by or through the country's laws, conventions and norms, some of which additionally accord these offices or institutions precedence, privilege and executive influence.

**Recognising and empowering an official opposition and its Leader.** By constitutional convention, the party or coalition with the greatest number of non-government MPs in the House is acknowledged as the Official Opposition. This is based on the recognition that the Official Opposition is the 'alternative government' in the event the Prime Minister were to lose the confidence of the House (Elder, 2018).

If the parties opposed to the government in the House include more than one party that remain distinct/unallied, the party with the largest number of members is recognised as the Official Opposition. If it is not clear which party has the larger share from the number of seats in the House, the Speaker has the power to decide which party or group will be designated as the Official Opposition and who should consequently be recognised as the Leader of the Opposition (Elder, 2018, p. 79).

The office of the Leader of the Opposition was formally recognised in the standing orders in 1931, but the position was well established beforehand. The role was also statutorily acknowledged for the purposes of payment of additional remuneration under the Parliamentary Allowances Act 1920 (Elder, 2018, p. 80).

While not as extensive as the UK, there are a few areas within Executive domain over which the Leader of the Opposition has decision-making influence. For example, the Prime Minister is required to consult with the Leader of the Opposition before recommending an appointee to the Governor-General for the office of the Australian Inspector-General of Intelligence and Security (IGIS). The IGIS has powers of oversight over the Australian intelligence community (Inspector-General of Intelligence and Security Act 1986, s. 6; Barker, 2017, pp. 17-20). In addition, classified versions of the annual report of Australia's national security intelligence agency are statutorily required to be shared with the Leader of the Opposition (Australian Security Intelligence Organisation Act 1979, s. 94; Barker, 2017, pp. 11-12).

**Financial support to the parliamentary opposition from the public purse.** Parliamentary party leaders, deputy leaders and certain other office holders receive additional allocation to their salary as a regular MP.<sup>22</sup> In respect of the parliamentary opposition these include the Leader and Deputy

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<sup>21</sup> Except for a period of separation prior to the 1987 general election (Elder, 2018, p. 80).

<sup>22</sup> Remuneration for MPs is determined by a Remuneration Tribunal pursuant to the Australian Parliamentary Business Resources Act 2017 (Elder, 2018, pp. 154-155).

Leader of the Opposition, Leader or Head of a recognised party,<sup>23</sup> Manager of Opposition Business, Shadow Ministers, Chief Opposition Whip and Deputy Whips (Elder, 2018, p. 81).

### **3.2.3. Formation and mandate**

The shadow cabinet in Australia has also been known as the Opposition Executive and the Shadow Ministry. The process for the appointment of the Leader of the Opposition and members of the shadow cabinet vary between the two political factions.

The cabinet usually includes members from both the House and the Senate. Shadow cabinet appointments typically include both ministers and assistant ministers (formerly designated as 'parliamentary secretaries'). A shadow minister's portfolio traditionally encompasses the responsibilities of one or more cabinet ministers. One member of the shadow cabinet is additionally designated as Manager of Opposition Business, and tasked with liaising and negotiating with the Leader of the House on parliamentary business and procedural matters, such as the ordering of business and allocation of debate time (Elder, 2018, p. 81). Typically, a shadow minister fills the role of Shadow Cabinet Secretary and the shadow cabinet secretariat is situated in the Leader of the Opposition's office (Bateman, 2009, pp. 28-29).

Unlike the official delineations for ministerial portfolios, shadow ministerial portfolios adopt a less formal or prescriptive definition in terms of priorities and responsibilities. The absence of formal guidelines 'allows for considerable scope for shadow ministers to approach the position' while at the same time, allows their priorities to be 'directed by those of their corresponding minister' (Bateman, 2009, p. 34). Nevertheless, a shadow minister's broad mandate is to respond to and act as a counterfoil to his/her opposite number in the government. A shadow minister is expected to coordinate the Official Opposition's response on a matter falling under his/her portfolio, and to a large extent be the public face for the Official Opposition on the issue. This includes taking the lead in challenging the government's position on the floor of the House through parliamentary procedural platforms, in media interviews and community forums (Bateman, 2009, pp. 37-39). A level of autonomy in how shadow ministers undertake their role allows them to adapt to how their Cabinet counterparts undertake theirs (Bateman, 2009, p. 57).

The distribution of resources within the shadow cabinet, both human and financial, reportedly also does not follow a fixed structure, with the Leader of the Opposition exerting significant control (Bateman, 2009, pp. 32-33).

### **3.2.4. Relationship with backbench and party/coalition leadership**

As stated above, the format and operations of a shadow cabinet between the two political factions in Australia, adapt towards their respective parties' ideological and organisational approach. The clearest example of this is in the apportioning of responsibilities over policy development, parliamentary strategy and political decision-making between the shadow cabinet, the extra-parliamentary party / coalition caucus, and the opposition backbench.

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<sup>23</sup> This comprises parties other than those led by the Prime Minister or Leader of the Opposition and that have a minimum of five party members in the House. Where the leader of such a party sits in the Senate, the appointed Head of the party in the House may receive an additional allocation to his/her salary (Elder, 2018, p. 54; Australian Parliamentary Business Resources Act 2017, ss. 7 & 14).

Much of the cohesion between these parallel processes depends on the symmetry between the composition of the parliamentary leadership group and the party leadership group. In both the Labor and Coalition blocs, the party leader and deputy leader lead the party leadership groups and are members of the House, while the party's leader and deputy leader in the Senate are also part of the party or coalition leadership group. The parliamentary opposition members who are the Managers of Opposition Business in both chambers typically join leadership group meetings, as do shadow ministers where their portfolios are relevant to matters being discussed. When parliament is in session, the leadership group meets to decide on the Opposition's daily agenda and parliamentary tactics (this is discussed in greater detail below). When parliament is in recess, the leadership groups meet to decide on urgent matters, such as sudden Government policy announcements. (Bateman, 2009, pp. 44-45).

As in the UK, the change in party funding sources and patterns has impacted the concentration of policy and political decision-making in the hands of the party's parliamentary leadership, consequently shifting the coordination and operational aspects of the party from the extra-parliamentary elements towards the parliamentary group (Gauja, 2013, pp. 128-131). As the current Leader of the Opposition, Anthony Albanese noted about the shift in policy-making within the Labor Party: 'Politics is now driven by people who are full time members of parliament and members of staff' (Gauja, 2013, p. 131).

Shadow cabinet processes can be utilised to synchronise the activities and positions of the opposition frontbench and backbench, so that their relationship is more cooperative or collaborative and less competitive. One example is to involve backbench in shadow cabinet's policy development process, and facilitating opportunities for backbench to build their own policy expertise through, for example access to parliamentary committee memberships. These aspects are explored later in this paper.

### 3.2.5. Operations and performance of functions

The performance of shadow cabinet functions are operationalised through several processes, chief among which are:

- Regular strategy and operation meetings
- Production of policy papers / legislative proposals
- Utilisation of parliamentary procedures
- Media and stakeholder engagement

**Shadow Cabinet meetings.** At federal level, Australian shadow cabinets model their operational structure on that of the Federal Cabinet, albeit on a smaller and less formalised scale, and without the bureaucratic support (Bateman, 2009, pp. 27-28). Shadow cabinets meet once a week on every sitting week, with additional meetings called as required. The practice of including extra-parliamentary members in shadow cabinet meetings varies between the two political blocs, and to an extent, mirror their respective parties' ideological and organisational approach (Bateman, 2009, p. 43). The Labor Party Shadow Cabinet meetings were/are reserved for shadow ministers, and in some instances only senior shadow ministers (Bateman, 2009, pp. 42-43). The National Party-Liberal Party Shadow Cabinet included leaders from the respective parties' national secretariat in their weekly meetings, but they took on an observer's role and participated only on being asked to do so (Bateman, 2009, pp. 28-29). The Coalition's shadow cabinet meetings has also included the shadow outer ministry (i.e. shadow junior or assistant ministers), a decision that is said to have been taken in

order to widen the participation within shadow cabinet and extend the decision-making process to a larger group within the Coalition as a means of consolidating the pact following an electoral defeat (Bateman, 2009, pp. 41-42).

Unlike Cabinet meeting discussions which are covered by official laws and conventions of secrecy, Shadow cabinet discussions may only rely on personal undertakings of confidentiality and discretion to ensure that leaks do not take place. The lack of concrete confidentiality obligations may impede 'robust debate and the airing of differing viewpoints' (Bateman, 2009, p. 30). The larger the shadow cabinet, the more likely the result of leaks.

The agenda for the meetings are set by the office of the Leader of the Opposition or his/her chief of staff. The contrast between cabinet and shadow cabinet is exemplified by the dominant items on the agenda - while cabinet would be expected to have new legislation and policy realisation on its agenda, the focus of shadow cabinet meetings are the Opposition response to the Government's agenda. The meeting agenda circulated ahead of time to all shadow ministers, who are given a deadline to submit relevant discussion papers. These discussion papers are then circulated in advance of the meeting (Bateman, 2009, pp. 27-29).

Meetings usually commence with a report by the party/coalition leader which consists of a general political overview. It typically outlines the opposition's critique of the government and its alternative position, and includes a review of the opposition's successes and failures. The leader's report is followed by a general discussion on the matters raised in the report (Bateman, 2009, pp. 29-30).

The subsequent item on the agenda is usually consideration of any proposed legislation by the government, and the discussion on coordinating the opposition's response 'forms the heart of the shadow cabinet's purpose' (Bateman, 2009, p. 31). The Opposition must decide whether to support, oppose or suggest amendments to the Government's proposed legislation. To that end, the relevant shadow minister is tasked with preparing submissions in response to a piece of proposed legislation that follows the structure of standard cabinet submissions, i.e. comprising a background, statement of issues, summary of stakeholder consultation feedback, recommendations and chamber tactics to adopt in Parliament (Bateman, 2009, pp. 30-31). It is the practice for the Opposition to lean on groups or committees of private Members to assist in the consideration of legislative proposals and otherwise organise its parliamentary response on specific policy areas (Elder, 2018, p. 643).

The final component of a typical shadow cabinet meeting is reserved for discussions about the Opposition's own policy initiatives, whether in general terms or through specific measures such as Private Members' Bills. The relevant shadow minister leads on outlining the policy rationale and course of action.

**Shadow cabinet's role in policy formulation.** Along with the minimal guidelines for individual portfolios, comes autonomy for shadow ministers to outline policy. Shadow ministers from both factions work directly with their leader or the leader's office to formulate policy submissions, or with other shadow ministers whose portfolios are relevant to the policy area in question. Shadow cabinet meetings mainly function to approve, amend or reject policy ideas. Early buy-in from the Leader of the Opposition is vital, as he/she has 'near-veto capacity' (Bateman, 2009, p. 35).

Bateman explains that the key reason why shadow ministers in Australia do not appear to undertake policy development in a structured manner is because the primary policy-building process particularly long-term policy formulation (or elements of the same), remain the purview of either an inner or parallel leadership circle within the shadow administration (Bateman, 2009, pp. 46-48). In the Coalition, a sub-committee of the shadow cabinet called the Policy Review Committee comprising senior party members develops the Coalition's policy positions while in opposition. The committee discusses policy directions with the shadow minister concerned and provides 'overarching frameworks for each portfolio', on the basis of which each shadow minister etches out policy details



for shadow cabinet approval (Bateman, 2009, pp. 46-47). The committee's objective appears to be to ensure consistency and control over the direction of the coalition's complete policy platform. The Labor Party on the other hand, established a separate Shadow Economic Review Committee that provided costing estimates for policy proposals brought forward by its shadow ministers, and a Priority Review Committee that decided whether the policy proposal is of sufficient importance to be allocated money for implementation if Labor won government, and if not the shadow minister would need to review the proposal (Bateman, 2009, p. 47).

Notwithstanding this, Australian shadow ministers reportedly have a fairly high degree of autonomy to issue a first or rapid response to the Government's policy positions and offer at least short-term counter-policy proposals. Part of the rationale for empowering shadow ministers to do so is the political communications imperative to respond promptly to any government announcements or disclosures to ensure the response gets into the same news cycle (Bateman, 2009, pp. 36-37).

External to the shadow cabinet, both the Coalition and Labor blocs have established policy committees comprising the relevant shadow minister and party backbenchers with the objective of developing and refining policies in specific portfolio areas. Bateman found that these committees are opportunities to broaden party representation in policy formulation to include backbenchers, to provide a training ground for junior or less experienced party members of parliament, particularly on developing and costing policy ideas, and to help address the general resource shortage faced by parties when in opposition. Bateman also found that the extent to which these committees can usefully impact policy formulation varies according to the portfolio, and commitment and capacity of the shadow minister and committee members involved (Bateman, 2009, pp. 48-49).

**Shadow Cabinet's role in organising parliamentary opposition.** In addition, Bateman finds that as a question of efficacy, neither Labor nor Coalition Shadow Cabinets take part in the day-to-day decision-making on parliamentary agenda and tactics, which is left to the party or coalition leadership group. Smaller decision-making groups are easier to organise and quicker to act on day-to-day issues, when decisions need to be made in rapid response to the previous day's parliamentary outcomes or developing news items. The implications are that strategies relating to some of the key functional outputs of an opposition, such as Question Time, are centralised within a smaller group (Bateman, 2009, pp. 45-46). However, this may be reflective of the particularities of the House's parliamentary procedures compared to other Westminster systems, i.e. the system in the House of oral questions not requiring notice, so that a coordinated response time must by necessity be immediate, compared to when questions are submitted on notice, which have a longer gestation time.

**Resources.** Not unexpectedly, shadow ministers are significantly out-resourced compared to their cabinet counterparts in terms of access to expertise and data, and human and financial capital. While the two positions are by no means identical, the general consensus from Bateman's research is that existing institutional resources are not commensurate with the 'quantity or variety' of work their role requires (Bateman, 2009, pp. 48-50). As members of Parliament, shadow ministers are entitled to employ one additional staff member than other private Members. For some shadow ministers, the more crucial challenge was lack of access to information and expert advice required to produce policy documents. Available parliamentary resources, such as the Parliamentary Library are heavily relied upon. Shadow ministers are also reliant on portfolio area stakeholders for data and advice (Bateman, 2009, pp. 49-50).

### 3.2.6. Opportunity structures in Parliament

**Control over parliamentary time and order of business.** In keeping with Westminster convention, government business takes precedence over other business of the House except where the rules

provide for non-government business to take precedence.<sup>24</sup> However, a consultative arrangement has existed since 1951 whereby consultations take place between the Leader of the House, Chief Government Whip and the Manager of Opposition Business (who is a member of the shadow cabinet) on the daily programming of the House.<sup>25</sup>

**Parliamentary Questions.** MPs in the House may pose questions to Ministers for written or oral answers. Questions without notice are asked during Question Time, which regularly occurs on each sitting day.<sup>26</sup> While questions for a written answer must be submitted with advance notice, questions for oral answers do not require notice, but must relate to important matters calling for immediate attention (Elder, 2018, pp. 543-563). This provides a political advantage to backbench and opposition MPs, as they are able to use the element of surprise. Ministers are not compelled to answer questions without notice, but refusal to do so have often attracted (adverse) public attention for the Government or Minister concerned (Elder, 2018, pp. 543-545). The posing of questions alternate between the government and opposition benches. Priority is accorded to the Leader and Deputy Leaders of parties in the Opposition (Elder, 2018, pp. 546-547).

**Parliamentary debates.** By convention, the Leader of the Opposition or relevant Shadow Minister is permitted latitude to speak during debates, for example to restart adjourned debates on bills in second reading (Elder, 2018, p. 364). Although any MP may move an amendment to a bill, it is usually the relevant shadow minister who will move the Opposition's amendment during his/her speech at the start of the debate (Elder, 2018, p. 368). It is also usually the Leader of the Opposition or the relevant shadow minister who moves any amendment to the main Appropriation Bill, which puts forward the Opposition's alternative position on policy and administrative aspects of the Budget (Elder, 2018, p. 427). Shadow ministers are also typically accorded precedence to speak during the committee stage for the consideration of expenditure estimates under the Appropriation Bill.

**Non-government bills.** Any private Member may initiate a bill, but not one imposing or varying a tax or requiring an appropriation of public funds (unless with the requisite prior approval of the executive branch) (Elder, 2018, pp. 582-583).<sup>27</sup> The House has in place a fairly efficient and robust practice of tabling Private Members' Bills.<sup>28</sup> The process of tabling such a bill substantially takes place during the period reserved for Private Members' business (see below). Private Members are entitled to rely on the internal resources of the House in the drafting of their bills.

**Opposition Days/Time.** As in the UK, time is reserved on each sitting Monday of the House for non-government and Private Members' business. The selection and order of consideration of items, as well as Members' speaking order in debates, is determined by the Selection Committee of the House (Elder, 2018, pp. 574-575), whose membership is in proportion to parties' numerical strength in the

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<sup>24</sup> Government business in the House of Representatives takes precedence over all other business except during Opposition Time on Mondays when non-government business takes precedence. The Leader of the House has the power to arrange and reorder the order of business as he/she thinks fit. Recent estimates are that approximately 55% of the time of the House is taken up by government business (Elder, 2018, p. 45).

<sup>25</sup> Notwithstanding the longstanding consultative arrangement, the Leader of the House retains final responsibility and authority over programming (Elder, 2018, p. 58).

<sup>26</sup> However, the Prime Minister (or a Senior Minister present) has a discretion to request the Speaker to skip or cut short Question Time, which the Speaker is obliged to adhere to and call the next item of business. The basis of the Prime Minister's discretion rests in the principle that Ministers are not obliged to answer questions, and if the Prime Minister indicates as such, it would be pointless to proceed with Question Time. However, by custom Question Time is rarely refused, as to do so would invite negative public reaction (Elder, 2018, pp. 545-546).

<sup>27</sup> Any legislation proposing an expenditure or increase in expenditure funded by an appropriation requires the support of the Governor-General which in practical terms cannot be obtained by a private Member.

<sup>28</sup> For example, a record 28 Private Members' Bills were introduced in 2017, and there were numerous instances of Private Members' Bills being incorporated into government legislation (Elder, 2018, pp. 584-585).

House, and includes the Speaker (or Deputy Speaker) who is also chair, and the various Party Whips (or their nominees) (Elder, 2018, pp. 646 & 656-660). The Selection Committee is required to have regard to a set of general principles including the importance and current level of interest of the subject sought to be raised by the private Member, the extent to which it falls under the purview of the House, the probability of the matter being brought to the House by other means and whether the same matter had been recently debated (Elder, 2018, pp. 574-575). The order of business during Private Members' Mondays typically alternates between government and non-government Members. However, Private Members' Bills are given priority (Elder, 2018, p. 557). Private Members' motions are moved, debated and voted. However, the Government is not compelled to act or be bound by resolutions of the House pursuant to a Private Member's motion (Elder, 2018, pp. 578-579).

The government has also ceded government time in the House for the conduct of Private Members' business, although such occurrence is infrequent, and typically reserved for matters where the government by convention cedes the floor such as on motions of censure or no confidence and matters of particular public or parliamentary significance (Elder, 2018, p. 578).

Additionally, the discussion of matters of public importance (MPI), which is scheduled for every sitting day except Mondays, has by practice, developed into a vehicle and preserve for the Opposition, particularly the Shadow Cabinet, to propose for discussion matters relating to current government policy and administration (Elder, 2018, p. 591-592).

**Participation in parliamentary committees.** As in the UK, the parliamentary committee system in the Australian House of Representatives has become a principal site for the detailed scrutiny of government policy, spending and actions. The House has a system of 'general purpose standing committees' that are investigatory or scrutiny committees mandated and specialised by subject matter to cover most of the ministerial areas of government policy and administration (Elder, 2018, pp. 643-644).<sup>29</sup> Bills may be referred to the relevant committee for an advisory report (Elder, 2018, pp. 359-361). In addition, the House may form select committees for specific purposes with limited tenure as and when the need arises (Elder, 2018, pp. 646-647).<sup>30</sup>

General purpose standing committees are important avenues for shadow ministers and assistant shadow ministers to discharge their roles. Positions on these committees are competitive and their composition follows parties' numerical strength in the House. Committee appointments are negotiated and determined internally by the party and organised by party whips, before endorsement by the House. However, shadow and assistant shadow ministers are typically appointed to the committees relevant to their portfolios (Elder, 2018, pp. 658-659). Chairs of House committees are appointed by the Prime Minister and invariably government members,<sup>31</sup> while deputy chairs are appointed by the Leader of the Opposition and are opposition members.<sup>32</sup>

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<sup>29</sup> The names of the general purpose standing committees and the division of their responsibilities vary from Parliament to Parliament. The House also has generic fixed standing committees relating to the administration and operations of the House, such as the Committee of Privileges and Members' Interests, the House Committee, Standing Committee on Procedures and the Selection Committee (Elder, 2018, pp. 644-646). The House also sits in several joint committees with the Australian Senate (Elder, 2018, pp. 648-656).

<sup>30</sup> On a few occasions, the House has suspended standing orders in order to refer bills a select committee (set up specifically for that purpose or otherwise) immediately following second reading (Elder, 2018, pp. 360-361).

<sup>31</sup> There is little significant change from the prior practice of electing chairs, as previously the positions were required to be held by government members and would normally mean that the Prime Minister's nominee was usually elected. Certain committees such as the Selection Committee and House Appropriations and Administration Committee, the Speaker is the ex officio chair (Elder, 2018, pp. 660-661).

<sup>32</sup> As with the role of chairs, deputy chairs were formerly elected and were in practice, opposition members (Elder, 2018, p. 663).

### **3.2.7. Conclusion**

Bateman's research on the Australian shadow cabinet model illustrates that shadow cabinet models can serve different functional priorities, which depend on the external needs and available opportunities. In the House, the organisation of the parliamentary opposition's business is managed by other groups, and therefore the shadow cabinet's role as an organising entity was minimal (Bateman, 2009, p. 12). The shadow cabinet's principle role therefore is to publicly hold the incumbent government to account and present a different policy agenda, in addition to offering an avenue to 'train' future ministers (Bateman, 2009, p. 25).

In that regard, crafting a shadow cabinet's internal procedures to resemble those of cabinet - albeit on a scaled-down basis and absent critical bureaucratic input - allowed shadow ministers to build a familiarity with the conduct of meetings and the processes of policy formulation and legislation review. The high-pressure and poor-resourced working environment of a shadow cabinet was seen to potentially produce ministers qualified to work under intense conditions. The relationships that shadow ministers build relationship with non-government subject-matter stakeholders as a means to address their information and expertise gap, is considered an advantage as they are able to bring these relationships and knowledge source with them in government (Bateman, 2009, pp. 22-25).

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## 4. SHADOW CABINET IN MALAYSIA: CHALLENGES AND SOLUTIONS

The challenges to installing a shadow cabinet mechanism in Malaysia are either institutional or political in nature, and include the ethno-religious contingencies of Malaysia's political structure, the current fragmentation of traditional political configurations, and lack of institutional readiness to effectively operationalise a shadow cabinet mechanism (Wong, 2020a). The stakeholders who were consulted on this paper's preliminary conclusions and who were broadly in agreement on the value of formalising the opposition frontbench into a shadow cabinet, nevertheless identified these institutional and political challenges as obstructions. These challenge points are addressed in this chapter, applying the conceptual principles discussed in Chapter 2 and the insights from the UK and Australian case studies set out in Chapter 3.

### 4.1. OBSERVATIONS FROM CONCEPTUAL PRINCIPLES AND CASE STUDIES

A formalised shadow cabinet can advance the role and impact of parliamentary opposition. As laid out in Section 2.1, in addition to legislating and government oversight, parliament provides an arena for political competition, enabling the opposition to critique and contrast the incumbent's policies and failures against the opposition's alternatives, and telegraph the opposition's credibility and readiness to assume government. Parliamentary opposition also plays a role in advancing democratization imperatives by strengthening and reinforcing mechanisms for democratic contestation.

The significance of the shadow cabinet mechanism in the performance of these parliamentary functions is borne out by the case studies: a formal, coordinated opposition frontbench is an entrenched component of all the main political parties in the UK and Australia and it has been central to the organisation and operation of the opposition bloc in those systems. As the shadow cabinet mechanism becomes entrenched within the party structure and gains substantive institutional recognition and standing, the weight of the parliamentary opposition's institutional responsibility to hold the government to account is increasingly borne by the professionalised frontbench.

From an institutional and normative perspective, the Westminster system requires the Leader of the Opposition to be ready to assume the office of Prime Minister (Brazier, 1999, pp. 165-167). Within this premise lies the imperative for the opposition force to challenge the perception of governing competence that is an advantage of incumbency by presenting itself as a convincing coherent government-in-waiting. The UK and Australian experience establishes the value of the shadow cabinet mechanism as a site to coordinate the opposition's primary tactics, position the opposition as an alternative government, and provide experience and training for potential future ministers.

In the Malaysian context, a coordinated, formalised opposition frontbench also serves the macro-level purpose of democratic consolidation. It is critical in this nascent post-regime period to keep open the spaces of democratic contestation and impede anti-democratic practices from gaining a further foothold. The political opposition in less liberal democracies plays a frontal role as a democratising force (Dahl, 1971; Stepan, 1997) in the pursuit of 'transition-seeking objectives' (Eisenstadt, 2000, p. 18). An added incentive is found in the defining elements of present-day Malaysian politics. The political flux created by the fragmentation of traditional coalitions, the consequent fluidity of parliamentary alliances and absence of a consolidated opposition force, provides an impetus for the strongest opposition groupings to coalesce and coordinate in a formal way, and to act as both a stabilising counterpoint and a focal point for democratic consolidation.

The central component of shadow cabinet formation is ministerial selection and allocation of portfolios. In Malaysia, this will involve managing both intra- and inter-party dynamics, as coalitions remain an integral feature of Malaysian politics.<sup>33</sup> As outlined in Section 2.1.1, portfolio allocations are typically distributed based on coalition partners' seat contributions, and balanced against the need to maintain party/coalition cohesion, compensate kingmakers, mediate factionalism and ensure inclusivity. In the UK and Australia, similar considerations bend the discretion of opposition leaders in selecting their shadow cabinet members. In Malaysia, the ethno-religious dimension adds a layer of complexity, and this is discussed in the next section.

A shadow cabinet also functions as a forum for policy articulation and consensus. To present as a viable alternative government, Westminster parliamentary oppositions cannot solely rely on electoral competition; they must also engage in policy competition. This requires the prospective 'government-in-waiting' to lead and take ownership of the business of policy formulation. In the UK and Australia, decision-making on policy and strategy has moved from the extra-parliamentary party to the parliamentary party, and primary responsibility for policy formulation broadly rests with the opposition's shadow cabinet or frontbench team. A shadow cabinet can serve to funnel policy proposals and channel expertise. It can facilitate the tough work of negotiating policy trade-offs and compromise between party factions and coalition partners, and between the parliamentary and extra-parliamentary groups. The case studies also lay out the different avenues and processes for managing dissent which have been developed by the UK and Australian political parties. Mechanisms include: the division of responsibility and authority within shadow cabinet members, and between the opposition frontbench, backbench and extra-parliamentary party; and the imposition of collective responsibility and a modified version of ministerial responsibility on shadow cabinet members.

A formal shadow cabinet with assigned ministerial portfolios also facilitates the management and allocation of parliamentary time for legislative debates and parliamentary questions, allowing for match-ups between cabinet minister and shadow cabinet minister. This is particularly useful during budget debates and the presentation of the opposition's alternative budgetary policy and allocation proposals.

The importance of the opposition's policy function dovetails with the trajectory of Malaysian politics following the 2018 election. The collapse of BN's 'single-party' regime and the installation of opposition parties in federal government for the first time have opened possible pathways for further alternations of government at both national and sub-national level. After finally serving a short term in federal government, voter expectations of these parties moving forward are likely to include the formulation of a defined policy agenda that addresses their previous policy shortcomings. As the parliamentary party leadership will bear primary responsibility of articulating and implementing policy on assuming government, the site of policy-making (in particular the formulation of the opposition's policy manifesto), should accordingly be located within the parliamentary party.

The modular evolution of the shadow cabinet mechanism in the UK and Australia also illustrates that a shadow cabinet's functional priorities adapt to existing needs and available opportunities. Institutional recognition and structural opportunities often followed as the main actors in the alternations of power formalised and consolidated their operations on the opposition frontbench. The recognition of standing, and access to procedural tools and resources in Parliament, ensured the durability of the Westminster model of shadow cabinet. Common parliamentary structural opportunities include privileges accorded during parliamentary questioning and legislative debates; the opportunity to present non-government bills; the opportunity to advance the opposition's agenda during Opposition Time/Days; and priority of participation in parliamentary committees.

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<sup>33</sup> Under the current first-past-the-post electoral system and the dominance of identity-based political parties, it is difficult if not improbable for a single party to achieve a parliamentary majority on its own.

Some financial support from the public purse (apart from salaries) for the Leader of the Opposition's office and for all parliamentarians to conduct parliamentary business, may be channelled to sustain a shadow administration; however, even in established parliamentary systems the demand for resources remains ahead of supply.

## 4.2. THE CASE FOR A SHADOW CABINET IN MALAYSIA

In the slipstream of its unprecedented electoral gains in 2008, there was pressure on Pakatan Rakyat to establish a shadow cabinet. However, a formalised frontbench never took off the ground; Pakatan Rakyat instead elected to form separate shadow policy committees comprising spokespersons from each of the three component parties to oversee one or more ministerial portfolios, with the end result that every Pakatan Rakyat MP was a member of a shadow committee (Wong, 2008).

During BN's short tenure on the opposition bench between May 2018 to February 2020, it announced a shadow cabinet led by Ahmad Zahid Hamidi, the former deputy prime minister. It adopted a portfolio committee system, with at least two parliamentarians from BN component parties assigned to a committee to monitor each PH government ministry. While some MPs were given new portfolios, many took up portfolios that mirrored their previous ministerial posts in government (The Straits Times, 2018; Wong, 2008). The BN Shadow Cabinet's stated objective was to 'play a check and balance role for each ministry', 'serve as policy watchdog' and 'formulate alternative policies to compete with Pakatan Harapan' (Abdullah, 2018). The BN Shadow Cabinet soon found its operations hindered by a lack of resources and access to government data and information.<sup>34</sup> Despite urging from the BN MPs to 'institutionalise the shadow cabinet' and allocate resources, no reforms were instituted by the time PH lost power in February 2020.

In the stakeholder consultation sessions held for this paper, seasoned legislators who had spent time in both the government and opposition benches at either federal or state level, agreed that conceptually, the shadow cabinet mechanism would improve the delivery of government oversight and the presentation of alternative policy proposals, allow legislators to gain experience in policy articulation and provide voters a clear contrast of competing policies and ministerial competence.<sup>35</sup> However, many expressed the view that certain political and institutional conditions needed to be in place before a shadow cabinet can be embarked upon, such as a two-party instead of a multi-party system, a united opposition, and the allocation of additional resources to the parliamentary opposition. These issues are taken in turn below.

### 4.2.1. Strengthening cleavage-based coalitions

It is argued that forming a shadow cabinet would expose coalition-based political alignments to external and internal disagreements over the allocation of portfolios between coalition partners. The concern is that shadow ministerial appointments would be exploited to play up ethnoreligious sentiments. A related concern is that the formation of a shadow cabinet would necessitate naming a shadow prime minister, a decision complicated today by coalitional power-sharing disagreements and intense rivalries between leaders (Wong, 2020a).

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<sup>34</sup> Based on feedback obtained from stakeholders who serve or served in government and/or parliamentary opposition either at national or sub-national level, during the Closed Door Consultation Workshop on Shadow Cabinet at Federal and State Level, 12 & 14 January 2021, Bersih 2.0. See also: Abdullah (2018).

<sup>35</sup> Based on feedback obtained from stakeholders who serve or served in government and/or parliamentary opposition either at national or sub-national level, during the Closed Door Consultation Workshop on Shadow Cabinet at Federal and State Level, 12 & 14 January 2021, Bersih 2.0.

Contrary to concerns however, the process of forming a shadow cabinet may in fact be useful as a unifying tool to compel parties to compromise around a shared policy and governance platform. An opposition's failure to resolve such outstanding issues merely postpones tough decisions and underscores to the electorate their lack of unity and preparedness to assume power. Any fallout from decisions made regarding shadow cabinet appointments can be dealt with through outreach or if necessary, through a reshuffle. PH's first and only truncated term in government, when cabinet selection (and the method of selection) took place post-election, speaks to this point: given the level of public scrutiny and the potential political and policy ramifications, it is better to test prospective ministerial candidates through the opposition frontbench and to work out the methods of mediating political impasse while the parties are still in opposition, than to do so once they are in government. Shadow cabinet positions can hold an opposition together, and provide voter reassurance regarding, for example, ethnic, geographic and gender inclusion within the opposition leadership line up. Equally important, having a shadow cabinet can help limit policy drift and move electoral competition towards a choice between policies instead of personalities (Weiss, 2021).

In addition, the composition of a formalised frontbench, adjusted according to negotiated realpolitik and not only on parliamentary party strength, may be a tactical advantage if the coalition subsequently wins government – a configuration that becomes entrenched and widely accepted while in shadow cabinet potentially places that Leader on the front foot with regard to negotiating cabinet appointments subsequently. In any event, there are methods of managing intra- and inter-party disagreements over shadow cabinet appointments, and some suggestions are proposed in the Recommendations section of this Chapter.

On that score, the former Pakatan Rakyat model of forming shadow policy committees (that include representatives from each coalition party and incorporates all MPs) is ultimately counterproductive. A shadow cabinet that includes all opposition MPs loses its own watchdog. Forming shadow policy committees with representatives from every coalition party (in essence, multiple shadow spokespersons for each policy portfolio), instead of selecting a clear lead shadow spokesperson, does not resolve interparty disagreements or prevent interethnic backlash over the allocation of portfolios between coalition partners (Wong, 2008). Far from engendering confidence in an opposition coalition, such a system may be construed as a failure of the leadership's ability to achieve compromise and secure party loyalty. It also risks fostering rivalry and conflict within each shadow policy committee, as the multiple spokespersons see each other as competitors for cabinet positions should the opposition win government.

A related concern about shadow cabinets is the division of opposition MPs into a frontbench and a backbench, thus relegating the MPs into leagues. However, doing so serves to incentivise MPs to compete for frontbench seats and as a consequence, to professionalise themselves (Wong, 2020a), i.e. by seeking to build their policy expertise and political skills. In any event, the UK and Australian experiences demonstrate that policy working committees that include junior MPs can be set up to assist shadow ministers in formulating and responding to specific policy issues. This method, along with other measures such as allocating parliamentary committee positions, can provide non-frontbench MPs with opportunities to gain experience and exposure, and to compete inter-party, while still preserving a tangible opposition backbench.

Another argument put forward is that settling on a team of shadow ministers may remove a prime incentive for government backbenchers with ministerial ambitions to defect (Wong, 2020a). While this is not a sound basis to reject the benefits of a shadow cabinet, the mere setting up of one is not a commitment that the same shadow ministers will be made ministers or hold the same portfolios if the opposition wins government. The demonstration of a viable alternative leadership team with a coherent policy platform, especially in a fragmented political landscape, fosters voter confidence in the cohesion of the core political bloc, despite party-hopping and subsequent additions to the coalition. In that regard, the more critical outcome from the formation of a shadow cabinet is the



building of a conceptual and structural framework for cabinet selection that is both durable and adaptable to changes in political party pairings.

While the shadow cabinet mechanism is mainly associated with political systems in which there are two dominant political parties, it can be effective in multi-party systems. A shadow cabinet need not be inclusive of the opposition as a whole, and minor parties can form their own shadow cabinet, and in doing so, compel a level of coherence among the parties (Weiss, 2021). For example, the UK's Liberal Democrats, Canada's Green Party and New Zealand's Green Party all maintain a frontbench team of policy spokespersons despite being minor parties within their parliaments.

In any event, the durability of shadow cabinets in established parliaments demonstrates that the benefits outweigh the risks, and these include: a division of labour and specialisation; the provision of a platform to develop negotiated 'minimum common denominators' (Wong, 2008) with regard to difficult policy and administrative issues; and the application of the principle of collective responsibility within the opposition frontbench, which can have a knock-on effect in building cohesion.

#### **4.2.2. Shadow cabinets in multi-level political systems**

The formation of a shadow cabinet at federal level may provide an added method of coordinating a political bloc's state (sub-national) government policies with its federal level policy positions. Federalism within a parliamentary system where the federal opposition functions as government at state (sub-national) level has been described as a potential 'institutional veto site' and a means of institutionalising the opposition's alternative policy agendas. The control of state government(s) provides the federal opposition public visibility and policy influence, and assists in achieving 'a cohesive political strategy... in multilevel politics', as demonstrated in studies of federalism in Australia and Canada (Kaiser, 2008, pp. 34-36). In Malaysia, the links between political blocs at the federal and state level incentivise parties to collaborate and ensure multi-level complementarity, while institutionalising shadow cabinets as a functioning part of government at both the federal and state level encourages sharing of resources and evidence-guided policy-making (Weiss, 2021).

#### **4.2.3. Strengthening government and opposition policy accountability**

It is also advantageous for the ruling government if the opposition organises itself as a shadow cabinet or formal opposition frontbench. A shadow cabinet with a clear hierarchical structure results in more robust legislative debates, which strengthens overall policy outputs (Weiss, 2021). In addition, the establishment of a shadow cabinet compels the opposition to develop and articulate cogent policy positions that both appeal to their broader party and withstand plausible scrutiny, rather than merely espousing populist policies and programmes at the pre-election stage.<sup>36</sup>

#### **4.2.4. Lack of resources and information access a disadvantage, not an obstruction**

Lack of resources and access to government information can pose serious challenges, but they do not block the formation of a shadow cabinet. In both the UK and Australia, the development of

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<sup>36</sup> Based on feedback obtained from stakeholders who serve or served in government and/or parliamentary opposition either at national or sub-national level, during the Closed Door Consultation Workshop on Shadow Cabinet at Federal and State Level, 12 & 14 January 2021, Bersih 2.0.

shadow cabinet mechanisms were led by political parties, while institutional recognition, special resources and information access often followed. The value proposition in favour of forming a coordinated opposition frontbench when additional resources have yet to be made available is twofold: first, the formation of a shadow cabinet can ensure a more efficacious utilisation of existing resources, by providing an avenue for the consolidation of a party's collective resources and the prevention of individual streams of expenditure in the pursuit of the same objectives. Secondly, the adoption of a shadow cabinet can itself become the rationale for demanding more resources to support the work of the parliamentary opposition.

The limited ability to access state and public sector information is a challenge faced by opposition parties in mature democracies too, as the UK and Australian case studies illustrate. As with their counterparts, the parliamentary opposition in Malaysia is able to obtain some government data and information through procedures such as parliamentary questions and committee inquiries. In the UK and Australia, information may also be sought through Freedom of Information laws, and the access to the public service granted to the opposition in the pre-election stage. Similar channels of information are not available in Malaysia. On the contrary, the application of a strict interpretation of the Official Secrets Act renders the bulk of government records 'secret' and the sharing and possession of such materials a strict liability offence punishable by imprisonment (Balakrishnan, 2015, pp. 4-11). As with resource limitations, making the case for improved information access will be strengthened if the approach is made by a formal shadow cabinet asserting their position as a 'government-in-waiting'.

In any event, even under resource and informational constraints, a shadow minister can continue to apply the pressure of a competitor against a cabinet minister, and a shadow cabinet can continue to demonstrate a formal counterpoint to the current government (Bateman, 2009, pp. 13-14).

### **4.3. EXISTING INSTITUTIONAL CONDITIONS IN MALAYSIA**

Section 2.2 of this paper makes the point that the extent to which parliamentary opposition is recognised and empowered within its constitutional institutions, and the structural opportunities available to it, underpin a shadow cabinet's ability to function. As compared to the UK and Australia, Malaysia's institutional structures fall woefully short.

#### **4.3.1. Minimal institutional status and authority**

The designation of Leader of the Opposition is recognised in the Dewan Rakyat's standing orders (Standing Orders of the Dewan Rakyat, SO 4A). The Leader of the Opposition is defined as the MP 'who is presently the leader of the group in Opposition'. Where there is a dispute on who is entitled to be the Leader of the Opposition, the Speaker shall make the decision. The Leader of the Opposition is entitled to an additional allowance on top of his/her salary as a member of the House (Members of Parliament (Remuneration) Act 1980, s. 3). However, apart from that bare acknowledgement of the existence of the office, no specific standing, powers, privileges or duties are attached to the office of the Malaysian Leader of the Opposition, either in the standing orders or in any other statute, unlike the scenario in the UK and Australia.

### 4.3.2. Limited existing opportunity structures in Parliament

The opportunities within the Dewan Rakyat for the parliamentary opposition to pursue the objectives of law-making, government oversight and presentation of alternative policies are severely limited. Lacunae in the rules of parliamentary procedure in more established parliaments are typically addressed by conventions and norms that equilibrate between the interests of non-government MPs and government MPs. In Malaysia however, gaps in the written rules of procedure are often applied a default construction favouring the government as the party having control over the business of the House. This is apparent, for example, in the reluctance to establish a clear convention and norm to accelerate motions from Private Members that are on matters of urgent public interest or that seek resolutions of no confidence against the Prime Minister. It is also evident from the restrictions imposed on bill debates, and the procedural impediments that render it difficult for Private Member's Bills to be presented, let alone tabled in the Dewan Rakyat.

**Control over parliamentary time and order of business.** Although appearing at first blush to be a matter of routine administration, the opportunity for parliamentary opposition to feed into the arrangement of parliamentary time and order of business impacts the range and depth of the opposition's access to parliamentary platforms. For frontbench opposition and parliamentary party leadership, it is also a means of exerting 'managerial' control or authority over their party MPs. In Australia, the management and organisation of the parliamentary party group appear to be separated from the functions of the shadow cabinet. Nonetheless, regardless of which arm of the party leadership holds the reins on this issue, the ability to feed into the arrangement of parliamentary business and influence the activities of their party colleagues in the House is beneficial to the opposition frontbench, as is having an established channel of trilateral communication with the Speaker and the government parliamentary leadership.

In both the UK and Australia, although government retains control over parliamentary time and the scheduling of business, there are entrenched practices and arrangements in the Houses for consultation between the government and opposition leaders on upcoming parliamentary agendas. Similar arrangements do not appear to exist in the Dewan Rakyat. The Speaker retains broad authority to determine the order of business in the House, but within the fixed arrangement of items under the standing orders, which prioritises government business (Standing Orders of the Dewan Rakyat, SO 14(1); Md Yusof, 2020a, pp. 153-154). While the parliamentary party leaders may consult the Speaker on issues of scheduling and timetabling, these consultations occur on a bilateral basis; there do not appear to be established a regular trilateral consultative group comprising the Speaker and managing leaders of the various parliamentary party groups (Balakrishnan, 2020, pp. 269-273).

**Parliamentary Questions.** Parliamentary questioning is used prolifically in the Dewan Rakyat, with the opposition and government backbench utilising on average three-fourths of their quota of questions for each meeting. Parliamentary questions is an influential opposition tool in influencing agenda-setting. In addition to seeking and imparting information on government policy and administration, Question Time is an effective platform for parliamentary riposte (Balakrishnan, 2020, pp. 275-277).

The Dewan Rakyat's formal and informal rules of procedure for parliamentary questions provide parity of access to both government backbenchers and the opposition bench: the scheduling of questions is largely randomised, and both sides are subject to the same treatment in relation to the asking of supplementary questions (senior party leaders, or the frontbench, are accorded privilege in that regard). However, the Speaker and to a lesser extent the Secretary (Clerk) of the House have broad discretion to edit and reject questions on a number of fairly subjective criteria (Balakrishnan, 2020, pp. 281-288). Further, unlike Australia, all questions from MPs, whether intended for oral or written government responses, must be submitted to the House in writing and with advance notice.

Only supplementary questions may be posed in the Dewan Rakyat without notice, but unlike both its counterparts in Australia and the UK, the probing range of supplementary questions is limited to the subject of the original written question (Balakrishnan, 2020, pp. 278-281 & 288). Also unlike the UK with its three-day notice period for questions, the Dewan Rakyat requires MPs to submit questions with between seven to ten working days' notice.

The Dewan Rakyat does not have Prime Minister's Question Time, but by recent standing arrangement, the Prime Minister periodically attends Minister's Question Time to answer oral questions. However, the rules on notice of questions apply (although reduced to one day), and there are no rules or standing arrangements that privilege the Leader of the Opposition to ask supplementary questions.

**Parliamentary debates.** Parliamentary debate is the key tool through which the political and policy contestation in Parliament take place. Debates allow for more in-depth challenge between the government and opposition benches on questions of policy and administration and the presentation of the opposition's alternatives (Balakrishnan, 2020, p. 293).

In the Dewan Rakyat, the Speaker decides the sequence and time limits for debate speakers, within the parameters of the government's scheduled order of business. Although MPs or party whips can submit their names or speaker lists to the Speaker, there is no formalised consultation process with parliamentary party leadership or whips (Balakrishnan, 2020, pp. 300-301), unlike the procedure in UK and Australia. Opposition MPs must rely upon the Speaker's adherence to non-partisanship for the continuation of practices such as alternating debate speakers between the government, opposition and independent benches and the giving of priority to the Leader of the Opposition and senior frontbench MPs (Md Yusof, 2020a, p. 163).

The UK and Australia, along with other established parliaments, have tempered Executive dominance over plenary time by accommodating debate opportunities for non-government and backbench MPs through, for example, including Opposition Days or Opposition Time within the parliamentary schedule. In addition, the accepted parliamentary custom in those legislative bodies is to guarantee floor time to certain members, such as Ministers, the Leader of the Opposition, shadow ministers (or senior opposition frontbenchers) and committee chairs when matters pertinent to their roles are raised (Balakrishnan, 2020, p. 294). These arrangements and conventions have not been embraced within the rules and practices of the Dewan Rakyat.

**Opposition Days/Time.** No parliamentary time is set aside for Opposition business in the Dewan Rakyat's rules, nor have any informal practices evolved in that regard. This is a serious lack, given strict government control over the order of business in the Dewan Rakyat. As it currently stands, there is no real opportunity for Opposition or non-government business to see the light of day.

**Non-government bills.** One means through which shadow cabinets/ministers in the UK and Australia present their policy initiatives and highlight their alternative positions is through the introduction of Private Member's Bills. This is enabled by parliamentary practices and procedures within their Houses that lay out straightforward procedural rules, provide necessary technical resources and set aside floor time for the parliamentary opposition to present such bills.

In contrast, the Dewan Rakyat's standing orders effectively discourages the introduction of Private Members' Bills. While a process is laid out under the Dewan Rakyat's standing orders for Private Members' Bills, it is laborious, ambiguous and subject to the discretionary powers of the Secretary of the House. In the first stage, an MP must present a motion to obtain the leave of the House to present the bill. Before it can be placed before the House, the motion is vetted by the Secretary for compliance with the provisions of the standing orders and Federal Constitution; however, the exact provisions to be complied with are not specified (Smith & Balakrishnan, 2020, pp. 51-52). Even if the motion is accepted by the Secretary, there is no guaranteed pathway by which the motion can get to

the floor of the House for a vote on leave; government business takes precedence over Private Members' Bills in the order of business of the House, and it is up to the government to make way, which they have not been known to do.

In the second stage, once leave is granted by the House through a vote, the bill is considered read for the first time. The standing orders provide that the bill is then turned over to the minister having purview over the subject of the bill or to a minister nominated by the Speaker. The standing orders do not explicitly preserve the original MP's continued ownership of the bill, once the bill is handed over to the minister. Once the minister reviews and reports to the House on the bill, it is set down for second reading, and follows the general procedures for bills. Although the process of drafting and introducing bills requires technical knowledge, no specific resources are set aside for MPs (Md Yusof & Faruqi, 2020, p. 37), unlike the position in the UK and Australia.

**Participation in parliamentary committees.** The Dewan Rakyat does not have fixed committees tasked with departmental or policy cluster scrutiny, save for the Public Accounts Committee (PAC). The Dewan Rakyat instead establishes special select committees for that purpose. Committees have the power to hold inquiries and call for witnesses and documents. Their reports are presented to the House. However, there is no process for the submission of a minority or dissenting report (Standing Orders of the Dewan Rakyat, SOs 83-86). Membership of special select committees must reflect the balance of the parties within the Dewan Rakyat (Standing Orders of the Dewan Rakyat, SO 82(1)).<sup>37</sup> Members are typically nominated by their respective party leadership and approved by the House's Committee of Selection. Committees are typically chaired by government MPs, save that a fairly recent practice has been instituted of appointing an Opposition Chair to the PAC.

The conclusions drawn from studies of committee proceedings in other parliaments are applicable here; inquiries and discussions are conducted in a more collegiate and discursive fashion in committee than in the floor of the House. Efforts are made to achieve consensus on committee findings; government backbenchers have displayed a readiness to criticise government policy and action and support recommendations for change where cogent evidence was presented.

The parliamentary committee system in the Dewan Rakyat has seen some positive impact from the parliamentary strengthening initiatives undertaken after the 2018 elections. Progress was halted following the change of government in February 2020. In December 2020, it was announced that the number of subject matter select committees begun under the PH government would be re-designated and reduced to nine. However, the membership of these new committees is skewed in favour of the parties in government, with each committee comprising five MPs from the government side and two MPs from the opposition side (Dewan Rakyat Committee of Selection, 2020). Hence, only a total of 18 committee seats has been allocated to the multiple parties on the opposition bench although they held in total 108 seats in the House at the time of the selection of these committee members. UMNO, which at the relevant time held 38 seats in the House has 18 seats across the nine special select committees, while PAS with 18 seats in the House occupies 10 committee seats, with some UMNO and PAS MPs being members of more than one committee. In contrast, PKR with 38 seats in the House and DAP with 42 seats in the House have only seven seats each across the nine special select committees.

The membership configuration of these nine select committees is in clear breach of Standing Order 82(1) which requires that the committee composition shall as far as practicable reflect the balance of the parties in the House. In practical terms, the current configuration considerably reduces the availability of select committees as a vehicle for opposition impact. In addition to achieving representational balance, the parliamentary committee system should as far as practicable facilitate the participation of a maximum number of available MPs; in the case of the Dewan Rakyat, this can

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<sup>37</sup> Unlike special select committees, the membership of the PAC is not expressly required to reflect the balance of the parties within the House (Standing Orders of the Dewan Rakyat, SO 77).

be achieved by increasing the number of committee members and/or the number of departmental or policy cluster select committees.

**Prospects of further parliamentary strengthening.** Following the 2008 election, the use of parliamentary procedures such as parliamentary questions, bill debates, motions and committee proceedings, to further the objectives of parliamentary opposition, grew increasingly more organised and rigorous (Faruqi, 2020, p. 507). The PH coalition's short stint in government led to a handful of reforms in the practice and procedures of the Dewan Rakyat, particularly on the parliamentary committee system and practices relating to question time and debates. In February 2020, the PH MPs returned to the opposition bench seasoned from their time in government, and that experience appears to have added to the robustness of parliamentary questioning and legislative debates. While it is too early to ascertain if the parliamentary reforms begun during the PH administration will continue, there are signs that at least some of the initiatives relating to strengthening parliamentary committees will continue. Regardless, the liberalising electoral outcomes over the last decade and a half have turned Parliament into a robust arena of contestation and that positive shift can potentially be harnessed towards improving structural opportunities in support of a shadow cabinet mechanism.

#### 4.4. RECOMMENDATIONS

The earlier sections of this chapter demonstrate that the political and institutional factors often raised as barriers against the establishment of shadow cabinets in Malaysia, while challenging, are not insurmountable. On the contrary, some of these challenges may be overcome or mitigated by setting up and operationalising a formalised, coordinated opposition frontbench. Drawing from the overall conclusions in this paper, the recommendations below propose a conceptual and structural framework for a shadow cabinet in Malaysia. These recommendations are intended to be building blocks for the formulation of detailed structures and processes.

##### 4.4.1. Building consensus and a conceptual framework

As the case studies in this paper reveal, the establishment of shadow cabinet is led by political parties, not by governing institutions. The latter serve mainly to facilitate the recognition and operations of a shadow cabinet. On that basis, the first step in establishing a shadow cabinet mechanism in Malaysia is to achieve consensus on the issue among the parties and groupings in parliamentary opposition.

- Parties, and particularly party leadership, would need to commit at least in principle to the formation of a formalised, hierarchical leadership team from within the parliamentary opposition, among whom is distributed the primary functions of scrutiny of government and the presentation of an alternative policy agenda, and that provides at least high-level coordination over the organisation and operations of the parliamentary opposition.
- The consensus should be achieved among a clear and strong majority of members of the parliamentary opposition in order for the decision to carry representative legitimacy and have functional authority.
- General recognition and acknowledgement of a shadow cabinet will invariably depend, among others, on whether it is perceived to be a viable alternative government within the polity. Such recognition will underpin efforts to institutionalise the shadow cabinet's standing and to seek institutional access and privileges for members of the shadow cabinet.

With this in mind and in view of Malaysia's particular ethnoreligious and geopolitical drivers, the consensus to form a formalised shadow cabinet should include parties and parliamentarians that are reflective of salient societal cleavages.

A parallel step involves negotiating and framing a policy consensus. A fully formulated policy platform need not be a prerequisite to begin the process of forming and operationalising a shadow cabinet, if consensus can be achieved around 'minimum common denominators' of policy (Wong, 2008). As a fixed activity, the shadow cabinet, coordinated by the shadow finance minister, should undertake the development of an annual shadow budget that offers an alternative analysis on what the annual national budget should contain in terms of spending and revenue.

A pivotal issue in the current opposition dynamics is the competition for the position of Prime Minister-in-waiting. While the party leader of PKR is currently the titular Leader of the Opposition, there is lack of unanimity over his acceptability as 'Prime Minister-in-waiting', both at inter- and intra-party level in PH and among the other parties in the opposition. Needless to say, this is an issue requiring swift, decisive resolution, which is beyond the scope of this paper. The presentation of a shadow cabinet without a clear leader to assume premiership of the 'government-in-waiting' would severely impact its standing and the public perception of its stability and durability.

In the interim, political parties and coalitions should work towards forming and facilitating shadow cabinet mechanisms at state (sub-national) level, as a prelude and springboard for developing an organisational and operational framework for federal shadow cabinet, and to put pressure on the federal system to reciprocate.

#### **4.4.2. Formation, mandate and organisational structure**

**Formation and mandate.** It is recommended that the first iteration of a formalised shadow cabinet adopt as its starting premise, a formational and organisational model of minimum conditions, with a flexible framework rather than a comprehensive, bespoke structure catered specifically for the current political configuration. This is to allow for adaptability in the event of a realignment or consolidation of political blocs.

As a shadow cabinet is likely to be composed of representatives from a coalition of parties, its composition will indubitably need to be guided as much by merit as by intra-party, inter-party, ethnic composition and other political exigencies, including ensuring regional representativeness and mediating factionalism. Youth and gender balance should also be a priority. As a result, it is not likely that there would be consensus that the Leader of the Opposition have a free hand in choosing his/her shadow ministers or spokespersons. One solution is for a committee comprising the leaders of the parties in the coalition to select the members of the shadow cabinet and allocate portfolios through negotiation and compromise. An alternative solution is for individual parliamentary party groups to each elect or nominate an agreed upon quota of MPs from their party to the shadow cabinet, and the allocation of portfolios be left to the Leader of the Opposition. A third option could be that a senior minister and junior minister, or co-ministers, from different parties within the coalition are appointed jointly to each portfolio. With any of these options, a minimum list of standards can be imposed with regard to candidate suitability, including (Gruhn, 2011):

- That experience or expertise in the subject matter or in governance should be a priority;
- That 'having the best people' should be balanced against 'having the best people for the job at hand', and this requires balancing strong, effective personalities and candidates that can operate within a team and project a unified approach;

- That the team must be drawn to balance skills in effective opposition on the one hand, and ministerial skills on the other. In other words, between the skills of a parliamentary debater and that of a government administrator (Punnett, 1973, pp. 148-150 cited in Bateman, 2009, pp. 21-22).

**Organisational structure, functions and operations.** The convention of modelling shadow cabinet operations along that of the cabinet should be adopted. The shadow cabinet should meet regularly and at least weekly, and standard items on the agenda should include:

- A report or update by the Leader providing a political overview that covers a review of the activities and measures taken by the Opposition;
- Consideration of the Government's upcoming items of business in Parliament, (e.g. bills and motions) and of the Opposition's response and strategy, led by the relevant shadow minister;
- Discussion of outstanding matters of Opposition policy, led by the shadow minister concerned;
- Discussion of Opposition member's upcoming items of business in Parliament, including proposed motions and questions.

The Leader and shadow ministers should be the principle media/public spokespersons to deliver the Opposition's response to government policy and actions, and present the Opposition's alternatives. Shadow ministers should adhere to similar operational and behavioural codes that apply to Cabinet ministers. Sub-committees should be set up where required to facilitate policy and strategy formulation. A regular and structured means of communication and consultation should be established between the shadow cabinet, and (i) the Opposition backbench; (ii) the extra-parliamentary party/coalition. The UK Cabinet Manual (UK Government Cabinet Office, 2011) provides a sound starting point to construct operational guidelines for a shadow cabinet. Any guidelines should, among others, encompass:

- the allocation of roles and functions of shadow ministers and junior/deputy ministers;
- the organisational structure and functions of shadow cabinet committees and the shadow cabinet secretariat;
- the applicability of duties of collective responsibility and individual ministerial responsibility;
- the processes and procedures for shadow cabinet work, such as the conduct of meetings, the setting of agendas, the presentation of papers, and the clearance of policy or administrative proposals involving expenditure or legal implications;
- the duties and coordination of regular engagement and consultations with the wider parliamentary party groups; and
- the formalities relating to shadow cabinet and shadow ministerial communications with the media and third parties.

**Codes of operation and behaviour.** Formalised guidance on the functions and operations of the shadow cabinet should be accompanied by a ministerial code of conduct. Again, the UK's Ministerial Code (UK Government Cabinet Office, 2019) is a useful starting point. It is constructed along seven areas of conduct, all of which are adaptable to the context of a shadow cabinet:



- Ministers must act solely in the public interest;
- Ministers must avoid obligations to organisations that might influence their work, must not act in a manner that gains financial or material benefits to themselves, their family or friends, and must declare and resolve any such interests and relationships;
- Ministers must act impartially, fairly and on merit, using the best evidence and without discrimination or bias;
- Ministers must submit themselves to scrutiny necessary to ensure that they are held accountable for their decisions;
- Ministers must act and take decisions in an open and transparent manner and, unless there are clear and lawful reasons for doing so, not withhold information from the public;
- Ministers must be truthful; and
- Ministers must exhibit these principles and support them, and be willing to challenge poor behaviour when it occurs.

#### **4.4.3. Formal recognition and empowerment**

As highlighted in Section 4.3, the standing orders of the Dewan Rakyat provide the sole basis of formal recognition of the Leader of the Opposition, along with statutory recognition for the purposes of payment of salaries.

In addition to the Leader of the Opposition, the standing of 'Official Opposition' should be conferred to the majority parliamentary group in Opposition under the leadership of the Leader of the Opposition. Such recognition will serve as an acknowledgement of the peer-to-peer relationship between the government and opposition frontbenches.

On the formation of a shadow cabinet, the Leader of the Opposition should inform both the Speaker and the government of the line-up (and any subsequent reshuffles) and issue a public announcement. A formal announcement places the onus on their counterparts to acknowledge their status, and can form the basis for the request that privileges and advantages be given to shadow ministers during procedures such as parliamentary questioning and legislative debates.

In the immediate to medium term, steps should also be taken to adopt and operationalise the practice that during an election, the public service must meet and advise the Official Opposition on its election policies and manifesto as part of the preparation for transition in the event the Official Opposition wins the election. Opposition shadow ministers should be allowed to ask questions about departmental organisation and to discuss with public servants organisational changes to the public service. As in other jurisdictions, the responsibility of public servants to provide such information and input, and their protection from repercussions from the government of the day, should be encapsulated in formal codes and guidelines such as in the cabinet manual proposed above.

On a longer term basis, further analysis should be undertaken to evaluate the viability of empowering the office of the Leader of the Opposition with consultative influence over certain appointments to public office, and to establish a channel for the communication of national security matters or serious matters of defence or foreign policy (following the necessary security vetting procedures). This is in keeping with the constitutional premise that it is the duty of the Leader of the Opposition to be ready to assume the office of Prime Minister.

#### **4.4.4. Improving opportunity structures in the Dewan Rakyat**

In the immediate term, the rules and practices of the Dewan Rakyat should be revised to formalise the power and authority of the Leader of the Opposition and/or a representative of the shadow cabinet to be consulted on decisions relating to scheduling and timetabling of the business in the House. Such a step will serve to recognise the shadow cabinet's authority and standing over the wider parliamentary opposition and in relation to the government bench. It also provides a formal platform for cooperation in the management of House affairs (Webber, 2016, p. 15).

In the medium term or once the framework for a shadow cabinet has been constructed and its roles and functions outlined, proposals should be formulated (ideally led by the opposition frontbench) to revise the rules and practices of the Dewan Rakyat. The revisions should introduce more equity of opportunity between the government bench and the opposition bench, recognise the standing of a formal opposition frontbench and facilitate its roles and functions, while still preserving the priority of government business. A coordinated shadow cabinet asserting its position as a 'government-in-waiting' or alternative government is a stronger motivational force to drive the discussion of institutional improvements in parliament, among others because they represent the value proposition for such improvements. It is recommended that a separate audit of the Dewan Rakyat's parliamentary systems and processes be conducted to identify specific improvements. Some starting points can be extrapolated from the comparative analyses of the UK and Australian parliamentary systems outlined in Chapter 3.

In a similar vein, once a shadow cabinet mechanism is in operation, it will be easier to identify the lack of necessary financial and human resources and gaps in access to public data and information, and to justify the case for additional allocations and the loosening of information and secrecy laws.



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