

Democracy in Australia – Incorporation into legislation of accountability reforms

Since its election in late 2007, the Rudd Government has introduced a number of significant public accountability and transparency reforms. While other major reforms are still needed, it is important to consolidate and protect what has so far been done.

The best method of consolidation and protection is to incorporate the reforms into legislation. While the reforms remain in the form of codes of conduct or administrative procedures without legislative backing they can be changed at the whim of the government of the day out of public view and without any involvement of the parliament. When they are embodied in legislation, it is much more difficult to make such changes. First, amendments to acts have to be publicly debated in the parliament and if they are clearly not in the public interest they will attract attention from the media, non-government bodies and others. Second, if, as is likely to be the case, the government of the day does not have a majority in the Senate, it will be very difficult to get an amendment passed in the upper house unless it is a strengthening rather than a weakening of accountability measures.

Some examples of desirable reforms that have not yet been and deserve to be incorporated into legislation follow.

Code of Ministerial Conduct

The Government has developed a new code of Ministerial Conduct which covers disclosure of interests, employment after leaving parliament for former Ministers, contact with lobbyist and other matters. This code of ethical conduct should be incorporated into legislation to ensure that it will be enforced by future governments. A legislated code is also more likely to be looked upon in a bipartisan way since both major parties will anticipate being bound by it.

Code of conduct for ministerial advisers

The Government has introduced a new code to govern the actions of ministerial staff. This code requires that ministerial staff make declarations of their private interests and of the receipt of gifts. It asks them to facilitate prompt and clear communication between ministers and their departments. It asks for recognition that executive decisions are the sole prerogative of ministers and public servants. It also makes clear that ministerial advisers cannot in their own right give directions to public servants.

The code does not, however, require advisers to appear before parliament, if called.

The code needs to be strengthened by the inclusion of the requirement to appear before parliament if called and incorporated in legislation.

Appointment system

The Rudd Government has developed guidelines for merit-based appointments to the boards of the ABS and SBS. Under these guidelines, vacancies are widely advertised and applications are assessed by an independent selection committee according to published selection criteria.

Minister Conroy announced that the Government intended to introduce legislation in 2009 that would entrench merit based selection. At December 2009, no such legislation has been introduced. The current guidelines and proposed legislation are also limited to appointments to the boards of the ABC and SBS. Reform is required to the appointment processes for all public sector boards.

T H E A U S T R A L I A N C O L L A B O R A T I O N

The current system therefore needs to be extended to all public appointments as in Britain and Canada, there needs to be legislation to back the appointment system and under the legislation an independent Commissioner needs to be appointed by statute to oversee the system.

Operation Sunlight

As described on the Government's web site, Operation Sunlight is the Government's reform agenda to improve the openness and transparency of public sector budgetary and financial management and to promote good governance practices. Operation Sunlight has six key objectives:

1. Tightening the outcomes and outputs framework;
2. Changing the Budget Papers to improve their readability and usefulness;
3. Improving the transparency of estimates;
4. Expanding the reach of budget reporting;
5. Improving inter-generational reporting; and
6. Improving the financial framework.

Operation Sunlight is based on the recommendation of a report prepared by the then Democrat Senator, Andrew Murray, an expert in the field of financial transparency and parliamentary accountability. The Murray Report and the Government's response to the report were publicly released on 9 December 2008.

These desirable changes to improve budget and financial transparency need to be guaranteed by legislation.

Restrictions on Government Advertising

New conditions for Government advertising give the Auditor-General responsibility for reviewing certain expenditure on advertising campaigns, and set obligations for reporting expenditure to parliament. Auditor General approval is, for example, required for advertising campaigns costing in excess of \$250,000. Currently the rules exist in the form of guidelines which are all too easily able to be modified by future governments.

Whistleblower legislation

Following receipt of the report on whistleblower protection by the House of Representatives Standing Committee on Legal and Constitutional Affairs, the government stated that it aimed to introduce whistleblower legislation in 2009. This has not yet been done.

The principle at stake

These are examples only. The principle at stake is the significance and desirability of open, accountable and transparent government. Reform of the kind described above is hard won. Everything possible should be done to ensure that future governments, for their own political advantage, cannot easily weaken these accountability measures.

See also

Accountability of Ministers for actions taken under their direct and indirect authority;
Responsibilities of Ministerial advisers;
Parliamentary Codes of Conduct and Ethics;
Whistleblowers; and
An independent appointment system to public offices.

<http://www.australiancollaboration.com.au/democracy/index.html>