

## Democracy in Australia – Ethics Commissioners as statutory officers of the Parliament

When a major daily newspaper in the UK published leaked documents, a deeply embarrassing parliamentary expenses scandal was exposed. It showed that Members of Parliament were receiving large sums of money under a second home allowance which they were using for home renovations and for payments made to rent the houses of their own family members. Even parliamentary leaders from the various parties were personally implicated. The leaked publication followed a series of attempts by newspapers to gain access to information about allowances through freedom of information requests which were consistently opposed by the Parliament.

The UK scandal has damaged the confidence of Britons in their government. In Australia, too, public confidence in the operation of government has long been declining. Drawing on evidence from two surveys investigating attitudes to democracy, Brenton found that, while Australians are satisfied with the Australian system of democracy, they are critical of governments, politicians and other public officials.

### **Australian Incidents**

A Ministerial Code of Conduct was prepared by former Prime Minister Howard but, following a number of ministerial indiscretions in breach of the Code and subsequent forced resignations, the Code was thereafter largely abandoned although it remained in being.

Following the 2007 election, Prime Minister Rudd's Government greatly strengthened the Ministerial Code of Conduct, introducing strict rules about share holdings for Ministers. Former Defence Minister Joel Fitzgibbon resigned his portfolio in June 2009 after it was revealed that he had breached the Code by failing to disclose gifts made to him and had used ministerial resources to arrange a meeting for a company operated by his brother.

The Minister decided or was encouraged to resign after he was advised that the Opposition had requested documents relating to his register of interests. Leaving investigations of parliamentary conduct to political interests, however, risks ethical practice being seen as a political matter. Robust, independent and transparent statutory office holders are required objectively and consistently to monitor the conduct of all members of parliament and holders of public office.

### **International Practices**

The Canadian Government has appointed a Conflict of Interest and Ethics Commissioner, responsible to the Parliament, with the power to fine members of parliament and public servants for violations of public trust. The Commissioner is able to investigate complaints from members of the public, and regulates the disclosure of the financial interests of members of parliament, including those held in trust.

The Federal Government of the United States relies on the "Honest Leadership and Open Government Act, 2007", which regulates the activities of lobbyists, including those who were formerly holders of public office. It also restricts the travel spending of members of congress and requires regular public reports from a range of other Government departments.

In all but eleven US states there are also ethics commissions whose members include citizens and public officials. The commissions oversee state employees' and legislators' compliance with ethics laws. In 24 states public officials are forbidden from serving on ethics commissions. There are also ethics committees in every state legislature.

# 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

## **Recent reforms in the UK**

In the United Kingdom, the Parliamentary Standards Commissioner and an Independent Adviser on Minister's Interests monitor compliance with the Parliament's Code of Conduct. However, the recent second home allowances scandal has prompted a strengthening of these practices and the creation of an independent parliamentary standards authority. The Prime Minister has also signalled his intention to give legislative backing to the code of conduct for members of parliament. The new authority will have the power to;

- establish an allowances and expenses system without requiring parliamentary approval;
- when necessary, direct those who have received allowances to which they were not entitled to repay money;
- if the instructions of the Commissioner are not followed, recommend that Parliament withhold a salary for a specified period, suspend a Member from the House for a specified period or expel a Member from the House; and
- refer matters to the police for prosecution since the new Bill will create new criminal offences of not complying with the Authority.

## **Next steps for Australia**

The regulation of the conduct of members of parliament and senior public servants by parliament is often seen as a political issue rather than one of public interest and honesty.

Australia needs new independent bodies to monitor the ethical practices of parliamentarians and office holders. Both the Canadian system and the UK system exemplify independent arrangements for the regulation and enforcement of ethical standards. The adoption of one or other of these models or a hybrid based upon them would enhance Australians' confidence in the practice of their democracy.

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