

## Democracy in Australia – Ministerial codes of conduct

### A Code for Ministers

Ministers are responsible for the implementation of legislation in their portfolios and for the management of policy. While the administration of portfolios is in theory a non-partisan task, Ministers are subject to political forces during their time in office. When these administrative and political priorities clash there is no clear instruction for Ministers on how to deal with the clashes, nor a set of sanctions when improper decisions are made.

An effective and comprehensive Code of Conduct is necessary for Ministers. Agreed standards would serve to guide the activities of Ministers and their staff and provide a set of agreed benchmarks to which the public can hold Ministers.

A Code of Conduct should clarify what is required of Ministers in the exercise of their duties and act as a public statement of the minimum standards of behaviour that the public and the media can and should insist upon.

It should regulate:

- Employment by the Minister of his or her family members while in office
- Investments, of Ministers and their immediate families and their disclosure;
- Relationships of Ministers with donors to their parties;
- Gifts Ministers may receive;
- Contact of Ministers with lobbyists;
- Post-Ministerial employment (see separate sheet);
- Fund raising protocols; and
- Procedures for the use of cabinet documents and the banning of the exclusion from release of documents from Freedom of Information processes for political purposes.

### Reform by the Rudd Government

Following the 2007 election, Prime Minister Rudd's Government greatly strengthened the Ministerial Code of Conduct, introducing strict rules about share holdings for Ministers.

Prime Minister Rudd in 2008 revised chapter 5 of the *Guide on Key Elements of Ministerial Responsibility*. The new standards introduced obligations in dealing with lobbyists, investment disclosures, a ban on some lobbying activity for a period of time after serving as a Minister, and the banning of fundraising at the Lodge and Kirribili House.

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.

### Further reform needed

The changes introduced by the Rudd Government are to be commended. Further changes are, however, needed to develop a fully effective Code of Conduct for Ministers.

An agreed set of principles would serve to guide the activities of Ministers, and provide to the public set of agreed benchmarks to which the public could hold Ministers. The statement of principles should, *inter alia*, declare that

- Ministers are answerable for all acts and omissions of persons and organisations acting under prerogative,

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legislative or contractual authority assigned to them. This means that Ministers are personally responsible for their own acts and omissions, and those of their staff and department heads other than those to whom the responsibility is fully delegated. The only exceptions might be where the Parliament has agreed to delegate responsibility for a matter to a particular officer (see the practice of appointment of Accounting Officers in the UK).

- Ignorance of a matter does not excuse the Minister. Ministers should have systems in place to ensure they are kept informed.
- Ministers must respond to questions about their responsibilities in Parliament, and use freedom of information law in a way that does not hinder appropriate public disclosure. This includes facilitating the attendance of their personal or departmental staff at parliamentary committees when requested.

The principles and the specific duties and obligations of Ministers, as outlined at the beginning of this sheet, should be set out in a public document and then incorporated in to legislation. The code should be legislated to ensure that it will be enforced across changes of government. A legislated code is also more likely to be the subject of true bipartisan work, as both parties anticipate being bound by it. Finally, a legislated code can ensure that the code is not enforced or disregarded for political purposes.

## **Effective Enforcement**

The manner of administration of the Code of Conduct is crucial. Currently, Prime Ministers may ask a Minister to resign. But Prime Ministers have political as well as administrative priorities. In the First Report of the Senate on Pay Television there was, for example, a discussion of ministerial responsibility. It maintained that the Prime Minister must weigh the gravity of the ministerial failing with a “pragmatic judgement as to what is best for the government’s future”.

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. When a code of conduct is neither legislated nor independently enforced, it remains a tool to monitor the executive that is controlled by the executive.

An independent and non-partisan body for the enforcement of all parliamentary codes of conduct is necessary. Hence the importance of the establishment of a statutory Commissioner for Ministerial and Parliamentary Ethics, reporting directly to the parliament, to enforce the Code and allow any breaches of the Code to be reported to parliament along with any disciplinary recommendations.

See Australian Collaboration Sheets on “Ministerial responsibility” and on “Ethics Commissioners as statutory officers of the Parliament”.

## **Resources**

Sawer, M., Abjorensen, N., & Larkin, P. (2009). “Australia: the state of democracy”, The Federation Press, Sydney.

Accountability Working Party, Australasian Study of Parliament Group (2007). “Be Honest Minister! Restoring Honest Government in Australia”.

<http://www.democraticaudit.anu.edu.au/misc/aspghonestminister.pdf>

Parliamentary Library Background Note, (December 2009). “A survey of codes of conduct in Australian and selected overseas parliaments”.

<http://www.aph.gov.au/Library/pubs/BN/pol/CodesOfConduct.pdf>