

Democracy in Australia – Ministerial and parliamentary codes of conduct

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 many 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.

Effective and comprehensive codes of conduct are necessary for ministers. Agreed standards serve to guide the activities of ministers and their staff and provide a set of benchmarks to which the public can hold ministers.

Codes 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.

Codes 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 issue sheet*)
- fund raising protocols
- procedures for the use of cabinet documents and the banning of the exclusion from release of documents for political purposes.

Ministerial codes of conduct should also, *inter alia*, deal explicitly with the question of ministerial responsibility. Westminster conventions require that:

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

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 not take any steps to hinder appropriate public disclosure under freedom of information or other laws. They should facilitate the attendance of their personal or departmental staff at parliamentary committees when requested.

If the code is to permit any variation from these standards it should be fully justified.

The principles and the specific duties and obligations of ministers, as outlined in this sheet, should be set out in a public document and then incorporated into 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 bipartisan work as both parties would anticipate being bound by it. Finally, a legislated code would ensure that the code is not enforced or disregarded for political purposes.

(For a description of current guidelines for ministers in the Federal Government and for a further discussion about the responsibilities of ministers see the related Australian Collaboration issue sheet 'Accountability of Ministers'.)

A code of conduct for all parliamentarians

As in many other countries, a separate code of conduct for all parliamentarians is needed. The code should incorporate all existing rules for parliamentarians such as

disclosure of financial interests and should be enforced in the same manner as the ministerial code.

The Independent Parliamentary Standards Authority in the House of Commons in the UK offers an excellent example of how such enforcement might be carried out.

Slow progress towards a code of conduct

A revelation in late 2013 about the inappropriate use of travel entitlements by Federal MPs, alerted the public to a broader problem about the lack of accountability of parliamentarians. This situation is not new as it also arose under the earlier Howard administration with the discovery of travel rorts that led to a number of ministers losing their portfolios. An initial response by Government to raise standards eventually resulted in rules established to allow breaches with respect to travel to be forgiven with the repayment of allowances that were deemed outside the rules.

Published in 1966 by the Howard Government, the Guide on Key Elements of Ministerial Responsibility, was revised by the Rudd Government in 2008 – replacing Chapter 5 – and released as Standards of Ministerial Ethics (and then re-released by Prime Minister Gillard in 2010), introducing, e.g. obligations for dealing with lobbyists, investment disclosures, a bar on some lobbying activity for a certain period of time after serving as a minister, and a ban on fundraising at the Lodge and Kirribili House.

Accountability Round Table (ART) proposal

In 2012, the Accountability Round Table sent to Parliament's Standing Committee of Privileges and Members' Interests, a proposal for a Code of Conduct to be adopted by all parliamentarians. It argued that the absence of such a code was resulting in continuing uncertainty for Members and Senators, and for the people of Australia, as to the ethical standards which are required to be met by all Members of Parliament. Noteworthy is the fact that the Australian Public Service has its own Code of Conduct.

Two Codes were proposed, one for the House of Representatives and one for the Senate:

- ART Proposals for Standards of Conduct for Members of the House of Representatives
- ART Proposals for Standards of Conduct for Members of the Senate

The ART draft Codes articulate clearly a number of fundamental principles on which they are based, including the principle that public office is a public trust. In addition, the draft Codes articulate aspirational goals in terms of the obligations owed by holders of public office, and provides guidance for particular situations where ethically problematic issues can and do arise. The draft Codes also put forward a specific regime for making and dealing with complaints appropriately. The two were designed to work consistently with each other, being based on the same set of ethical principles and standards of integrity.

Both the House and Senate continue to be resistant to the establishment of Codes of Conduct, with the House of Representatives fighting off six attempts over four decades. That said, the current system of accountability is not transparent. It still has "grey areas" which has enabled the charging of expenses to attend colleagues' weddings or participate in sporting events. It requires a bevy of public sector departments to manage both prior approvals for expenses or refunds for claimed back funds rather than concentrating all conduct issues and rules interpretations into one agency, e.g. the proposed Office of Integrity.

Effective enforcement

If passage of the codes of conduct were to succeed, then a Parliamentary Integrity Commissioner should be established in the Federal Parliament to oversee the codes of conduct and to represent the public interest in ensuring that all parliamentarians and ministerial advisers strictly observe the codes.

The manner of administration of these codes 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. The report observed 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 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 purportedly in place to monitor the executive but still 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 the proposed Parliamentary Integrity Commissioner.

To be fully effective, the office of Commissioner must be a statutory officer reporting directly to the parliament. The Commissioner's role should be to enforce the code and allow any breaches of the code to be reported to parliament along with any disciplinary recommendations.

(See also Australian Collaboration Sheets, 'Ministerial responsibility' and 'Parliamentary Ethics or Integrity Commissioners'.)

Sources

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