

Democracy in Australia – Incorporation into legislation of accountability reforms

Since election in late 2007, the Rudd and Gillard Governments introduced a number of significant public accountability and transparency reforms. While other major reforms are still needed, it is important to consolidate and protect the reforms that have been introduced.

The best method of consolidation and protection is to incorporate as many of the reforms as possible 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 statutory appointment of a Parliamentary Integrity Commissioner

Following the federal election in 2010, and the formation of the Gillard Government with the support of the Australian Greens and lower house independent members, the ALP reached agreement with the Greens to establish a Parliamentary Integrity Commissioner who would uphold the Parliamentary Code of Conduct as well as advise on and investigate parliamentary entitlements and ethical issues.

The establishment of the Commissioner needs to be formalised by legislation.

A statutory appointment system for holders of major public offices

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

The National Broadcasting Legislation Amendment Bill was assented to in July 2012, establishing a merit-based appointment process for the ABC and SBS non-executive directors for the respective boards and re-establishing the position of staff-elected director to the ABC Board.

Further reform is required to the appointment processes for all public sector boards. The merit-based appointment system 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 website, 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
6. improving the financial framework.

Operation Sunlight is based on the recommendation of a report prepared by 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

The Rudd Government set new conditions for government advertising and gave the Auditor-General responsibility for reviewing certain expenditure on advertising campaigns, and set obligations for reporting expenditure to parliament. Auditor-General approval was required for advertising campaigns costing in excess of \$250,000, but in the lead up to the 2010 Federal election, the Prime Minister removed the Auditor-General from the process and instead appointed a committee to approve Government advertising spending. This move was widely condemned, with the Auditor-General writing to the Special Minister of State to protest.

In September 2010, the ALP, in its arrangement to form government with the Independents and the Greens, agreed

to take further action on electoral funding and on truth in political advertising.

Embedding accountability reforms

These are a few examples of accountability reforms to be formalised through legislation. The principle at stake is significant and important - open, accountable and transparent government. Reform of the kind described in this issue sheet is hard won. Everything possible should be done to ensure that future governments cannot easily weaken these accountability measures to their own political advantage.

See also

Accountability of Ministers

Accountability of Ministerial advisers

Ministerial Codes of Conduct

Independent appointment systems to public offices

<http://www.australiancollaboration.com.au/democracy-in-australia/>

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