

Parliamentary Accountability to the Public – the role of Professional development programmes for MPs

by

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Abstract

The contradiction between public concerns over reports of the behaviour and performance of parliamentarians and parliaments and the standards which the public expects of its democratic institutions and representatives raises a key accountability issue: what steps are appropriate to be taken by parliaments to address such public concerns?

The paper examines the particular issue of the exercise of ethical judgments by parliamentarians. It reviews the experience of parliaments and other public institutions in addressing ethical standards of behaviour, including through training, institutions such as parliamentary standards commissioners. Particular attention is given to appropriate sources of professional development in ethical behaviour.

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INTRODUCTION

This paper is concerned with the accountability of parliamentarians for their behaviour and actions in their official capacities, that is when they are acting in their capacities as elected representatives; it does not concern itself with conduct in purely personal relationships, business or financial affairs for example.

Australia is fortunate that the overall standards of behaviour by parliamentarians are generally similar to those expected by the community. Nonetheless, instances such as illegal expenses claims (Fitzgerald 1989), the diversion of publicly provided resources for personal or political party advantage (7News 2007), taking advantage of government funded hospitality for family members (News.com.au 2007; Gordon 2007) and improper relationships with lobbyists involving the leaking of sensitive information and putting vested interests ahead of the public interest (Staff Writer 2007) do occur. These isolated, infrequent cases contribute to the relatively low esteem in which Australian parliamentarians are held (Morgan Gallup 1998).

The reputation of parliamentarians is of uniquely high significance, however. The parliament is the paramount sovereign institution of the respective jurisdiction. More than any other, it is the institution whose members are looked to as the exemplary role models for members of society. If the members, as the leaders exercising power on behalf of the society, display less than the irreproachable standards of ethical behaviour, then more members of society will see that conduct as acceptable, or the democratic system will lose legitimacy, or both.

Accountability for the ethical behaviour of parliamentarians operates at a number of levels and through several mechanisms.

The most direct form of accountability for the parliamentarian's conduct is exercised by the electors of each member's constituency, whether that is the entire state or territory in the case of a senator or a single member electoral district in the case of most lower houses. However, that is a very blunt, binary instrument and can only be exercised every 3 to 4 years. It may only either accept and implicitly endorse the corpus of the parliamentarian's performance, or reject it. In accepting or rejecting individual members, the electorate does not pass any meaningful judgement on the role or performance of the parliamentary chamber. Also, there may be a considerable lag in the opportunity for judgement. An incident offensive to the electorate may be largely overwhelmed by later events by the time of the next election.

At most, the aggregate electorate of the entire jurisdiction - state, territory or national - may be held to have passed judgement on the performance and policies of the Government and Opposition.

In practice, this blunt accountability instrument can do little to address individual instances of unacceptable conduct and even less to provide guidance to members on the standards expected and how to resolve ethical dilemmas.

We argue that parliamentary chambers have legitimate interests in protecting their reputations where these can be adversely affected by the conduct of members and advancing their outcomes through measures to improve performance standards, particularly the handling of ethical dilemmas.

ROLE OF PARLIAMENTS

Parliaments have few formal mechanisms for handling the standards of conduct of their members.

In earlier times, parliamentarians enjoyed extra-ordinary privileges, equivalent to the immunity asserted by heads of state – Crown immunity. Thus, a parliamentarian could and did escape prosecution for an alleged murder whilst he continued to be an elected member. That concept has virtually disappeared from modern Westminster-derived parliaments such as in Australia.

One important vestige of those ancient privileges remains though: parliamentary privilege – in particular, immunity from the application of defamation laws in the case of statements made in the course of parliamentary proceedings. It derives from Article 9 of the Bill of Rights 1688. Nonetheless, it is held that each member is responsible for the accuracy of whatever he or she says. Any statement that may have misled the chamber should be corrected at the first opportunity. If another member claims to have been misrepresented, he or she can make a statement in the chamber in rebuttal (Harris 2005).

Each chamber has, or can create, a Privileges Committee to deal with alleged breaches of the privileges of the parliament, whether by a member or some outside person. These committees investigate alleged breaches and report to the chamber, which then has extensive powers to discipline or even expel a member (Harris 2005).

Where someone who is not a fellow parliamentarian feels that a member has misrepresented them, there are now processes in many chambers for that person to submit a statement rebutting the allegation and, subject to passing scrutiny (e.g., by the Privileges Committee), for it be incorporated into Hansard (Harris 2005).

These mechanisms relating to proceedings constitute limited forms of accountability for the conduct of members. Beyond the educative impact of actions against members found to have offended acceptable standards of parliamentary behaviour, these mechanisms have no role in helping members to learn and practice improved standards of conduct or build their capacities to deal with ethical dilemmas.

THE ISSUE OF SELF REGULATION

The concept of self regulation as a way of managing and maintaining parliamentary standards of conduct is therefore an increasingly contentious issue and subject to much debate (De George 2006). Those who support self regulation argue that it is only the profession itself that best understands the needs of its members, potential problems and expectation of its constituents. From this perspective it is argued that they are best placed to develop and educate their members. From this perspective self-regulation is the best approach to enforce standards or a code of practice or ethics upon members and upgrade and enforce these basic norm and values as a way of maintaining the professions integrity. The alternate position is that without discrete and enforceable sanctions that act as standards, and enforcement by an independent third party, such guidelines can be ignored.

The key premise on which the self-regulatory approach for setting standards, educating members and policing these standards is based is, firstly, that those who self-regulate have near perfect knowledge of the issues and perception in a changing environment of appropriate conduct and secondly, in adjusting the standards in a changing environment self-regulation, it will not be abused. This premise is at best unrealistic. Whilst self-regulation may be argued as the best way of developing consensus and commitment to standards, standards cannot be developed and reviewed in isolation. The input of a variety of 'concerned' stakeholders representing a range of perspectives to examine issues and a code of ethics and conduct is essential for quality and therefore the integrity of the regulatory system. This input will lead to more robust and acceptable standards and actions, as these ethical standards will be a reflection of a consensus position from concerned parties (De George 2006).

In exploring this issue from the perspective of Parliamentarians' code of ethics, it is clear that the concept of self-regulation is one of increasing concern. As McAllister (2000:22) notes, from an Australian perspective, allegations and convictions associated with misconduct in the ranks of politicians are of widespread concern. Research from studies of the Australian Election Study survey reveals that the majority of Australians believe our parliamentarians make improper personal gains from their public office, will lie for political gain and care more for vested interest than taking a public interest view of their decision making capacity (McAllister 2000). This is reinforced by research comparing the public perception of the ethics and honesty of medical doctors, lawyers and parliamentarians (Morgan_Gallup 1998). Whilst doctors remained in a band ranking between 60 and 70 per cent, lawyers dropped from 42 per cent to 30 per cent and parliamentarians starting at a low base of 20 per cent declining to 8 per cent. These figures suggest that in terms of ethical standards, parliamentarians are becoming increasingly out of touch with public expectations of their elected leaders.

THE NEED FOR A PLURALIST APPROACH TO SELF-REGULATION

This increasing divergence in the view or perceptions of the behaviour of parliamentarians can be seen in the context of what McAllister identifies as public and elite perspectives of ethical behaviour. He argues that what constitutes ethical behaviour can be explored or categorised by evaluating the stakeholders' responses to unethical behaviour and therefore determining the need to review the self-regulatory approach (McAllister 2000). Using Heidenheimer's (1989) categories or scale of (un)ethical behaviour, it is argued that if both the public and elite identify a particular activity as improper but not worthy of sanction this would be categorised as 'white' behaviour (Heidenheimer 1989). In contrast 'black' behaviour is seen as improper behaviour that both public and parliamentarians agree should be sanctioned. The third category 'grey' misconduct is where there is disagreement between public and parliamentary perceptions as to the unethical nature of the activity. Where the indications are that most unethical issues are categorised as white or black, it would be expected that sanctions and public scrutiny of the issue would curtail the activity. However, the decline in the perception of parliamentarians' honesty, integrity and ethical behaviour revealed by research over the last 30 years would suggest that unethical activities are increasingly categorised as 'grey'.

This could be due to changes in the behaviour of parliamentarians, changes in public perceptions of parliamentarians conduct or some combination of both. This may be more to do with the nature of politics as an occupation in a changing environment of media scrutiny, than the parliamentarians themselves. Irrespective of the cause, this creates a problem for self-regulation. The longevity of the decline suggests that the system needs a significant review and, at least, increased input from concerned stakeholders. As Coghill et al (2006) pointed out, across what are described as the professions, training and development is a critical platform for ensuring that practitioners seeking accreditation to a profession possess the level of knowledge, skill and ethical standards required to practice competently and to meet rising public expectations (Coghill et al. 2006). For parliamentarians, however, there are no defined qualifications or criteria for their role; nor is there a professional supporting body. Nonetheless, those elected to public office are expected to "possess indefinable qualities to accomplish an indescribable job" (Jones 2006) 648. In such a high profile position and the increasing complex environment within which parliamentarians work, particularly over the last two decades, expectations both in parliamentarians' own expectations and those of the public have increased. The recent decline in the perception of parliamentarians may be reflect these higher expectations.

SOLUTIONS

Training in ethics

What then are the mechanisms potentially available to parliaments and their chambers to address these matters?

As we have argued elsewhere,

(g)iven the diverse backgrounds of parliamentarians it is important for training and development programmes to focus on the skills and competencies required to function effectively immediately upon election as well as on-going development for the specialist skills required for such roles as committee chair or parliamentary secretary and so on up the career ladder. Each stage requires a further refining of these skills ... Defining the evolving elements of the parliamentarian's role is critical to determining what knowledge and skill transfer needs to take place and what resources are required to run and manage the ongoing programme.

... it is a legitimate, non-partisan role for each chamber of parliament to provide continuing professional development (CPD) programmes, noting each chamber of a bicameral legislature is independent in the delivery services to its members. However, the provision of specialised CPD for parliamentarians is remarkably limited. There is no formal professional development regime and whatever training opportunities are available are ad hoc. Members of minor parties and independent members are further limited by having little or no information and advice from political party personnel (Coghill et al. (under revision))

This argument that training should include dealing with ethical conduct is not accepted by some. In the course of research reported by Coghill et al 2006, a view was strongly expressed by senior officers of the Australian Commonwealth Parliament that training in ethics was not an appropriate role for the parliament. Rather, training by parliament was properly concerned with and largely limited to procedure, parliamentary entitlements and facilities (Coghill et al. 2006).

As part of a larger programme of research examining the training and induction provided to new parliamentarians, we conducted a pilot study involving semi-structured interviews with the five parliamentary officers of the Australian Senate responsible for the provision of induction and orientation training to new senators commencing their term in 2005. These five parliamentary officers are also responsible for the provision of ongoing training support to existing senators. Interviews were also conducted with 12 of the 15 senators commencing their fixed six-year term on 1 July 2005. These data were collected following the induction and orientation programme conducted in July, prior to the first sitting of the Senate. These interviews focused on a number of topics relating to the process and content of the induction and ongoing support provided to senators, with one line of questioning examining the relevance of ethics in this programme.

Interestingly, ethical principles and behaviour are not addressed in either the induction and orientation programme or the ongoing professional development offered to senators. Typically, the parliamentary officers believed that ethics and ethical behaviour were outside of their ambit of responsibility. As one parliamentary officer stated "*I don't necessarily see it as our lot to preach ethics*". They also believed that these were highly idiosyncratic issues that should be largely self-generated by individual parliamentarians or derived through dialogue with their peers. Indeed, the belief that ethical issues should be determined by peer agreement and monitored through peer review was evident in one parliamentary officer's statement that the appropriate fora for discussing and resolving such issues were those comprised of the senators themselves, such as the Committee on Senators' Interests and the Privileges Committee.

Essentially, the parliamentary officers felt that senators were in fact the individuals within society who set the standards for moral and ethical behaviour and therefore it would be inappropriate and appear condescending for mere public servants to provide such advice. Moreover, they felt that it was not their place to advocate for the inclusion of ethics as a topic in the training programme. This

sentiment is evident in the following comment by one parliamentary officer. *“We don’t set the agenda here you see. The agenda is set by the constituency and the political drivers; we can’t come in and say don’t talk about that, you need to talk about ethical practices, you know and this is the real bind that we’re in”.*

Additionally, the parliamentary officers believed that the subject matter of ethics was outside their area of expertise and they were unsure as to what should even be the content of this type of training. As one parliamentary officer stated, *“what do you talk about you know - how to avoid adultery, drunkenness or whatever? It can be difficult”.* The parliamentary officers also believed that given the wide spectrum of political orientations likely to be represented by senators in any new cohort, attempts to discuss ethical dilemmas could potentially be contentious and fractious. In light of the influence of political values in shaping ethical positions, a number of parliamentary officers believed that the political parties were the institutions best placed to provide training and advice on these matters.

These responses did not make a distinction between, on the one hand, advocating particular standards of conduct and, on the other hand, training to enhance the skills to identify, analyse and resolve ethical dilemmas. However, implicit in the responses was a feeling that the officers were not equipped with the skills to offer training in the latter.

Another factor, identified by the parliamentary officers as precluding the inclusion of ethics as a content area in the induction and orientation offered to senators, is that the four-day programme is already crowded. It was generally held that the addition of ethics to the programme would require extending it by at least another half day and that this would be too big an impost on the new senators’ valuable time. Moreover, some parliamentary officers questioned whether the topic of ethics would generate sufficient interest among new senators to include it in their busy schedule.

While the parliamentary officers responsible for senators’ induction and professional development saw ethics as being outside their remit and questioned whether training on this topic would be well attended, a number of the new senators interviewed believed they would benefit from explicit training and advice in this area. Many senators indicated that as a result of being new to the role, they were uncertain about appropriate ethical behaviour. As expected standards of ethical behaviour are largely tacitly acquired through experience and observation, many new senators were concerned that their inexperience may cause them to act inappropriately in novel and uncertain circumstances. Therefore, the new senators felt that training and advice on how to negotiate ambiguous “grey” issues, on matters for example such as potential conflicts of interest, would be highly instructive.

While the parliamentary officers believed that it was each political party’s responsibility to provide ethical training, our interviews with new senators indicated that this did not occur in practice. Clearly, what is of concern is that while new senators believed that they require information and advice on ethical issues, neither the Department of the Senate nor the political parties provided training that met this need.

ALTERNATIVES TO SELF-REGULATION

Training and development directly related to the area of professional ethics for parliamentarians is therefore virtually non-existent in some jurisdictions. As we note above, on-going training and development has not been adequately addressed. This situation gives rise to a series of questions regarding the development of self-regulation of parliamentarian’s conduct if the situation is to be addressed. A more holistic approach to the development and evolution of the ethics and conduct of the political may be required. For example the use of principal-agency relationships or a balance score card may provide a more realistic assessment and management of the role of parliamentarians. In the context of principal–agency theory, which is derived from Agency theory, it is assumed that the principal (the electorate) and agent (parliamentarians) have differing interests

and in order to ensure the agent acts in the interest of the principal rather than not self-interest and that incentives and sanctions must be in place to induce the agent (parliamentarian) to operate and make decision reflecting the public interest. This 'incentive alignment'(Armstrong 1997) could include intangibles such as ethical behaviour. Another approach to assessing the role of parliamentarians is to use a Balanced Scorecard (BSC), approach to determining their effectiveness and subsequently their rewards (Kaplan and Norton 1992). The BSC takes a holistic approach to performance and its assessment. Kaplan and Norton (1992) argue that no single measure can truly measure performance. In this context, the BSC draws attention to a variety of critical issues and areas and provides them with equal standing. For example, for parliamentarians, ethical behaviour and good fiscal management maybe considered to be of equal importance. The underpinning logic to the BSC is that people will adopt the appropriate behaviour and take what ever action is required to achieve these multiple goals (Kaplan and Norton 1996). Whilst this may seem to raise difficult questions from a parliamentary perspective, other constituencies are adopting ethical codes.

A GLOBAL PERSPECTIVE

In contrast to the Australian Parliament, the UK Parliament prepares guidance and provides "training for Members on matters of conduct, propriety and ethics." (UK Parliament Parliamentary Commissioner for Standards 2007) However, there are very real difficulties in providing professional development programmes in a manner and at times that make participation attractive to parliamentarians. In a democracy like Australia, formal threshold qualifications are limited to citizenship and electoral support, whilst political party membership and support is generally also required. In these circumstances, it is generally believed that training or qualification cannot be made a pre-condition for election, for being sworn in as a member of a chamber or for any further role available as a parliamentarian. In some other systems, these constraints are not seen as so limiting. For example, prospective candidates for election to the Vietnamese National Assembly are subject to far reaching scrutiny before their candidature is accepted. The scrutiny by the Communist Party of members seeking election as Party candidates is even more rigorous.

The New York State Legislative Assembly is reported to have gone further and recently introduced ... new rules (which) call for members of the Assembly Committee On Ethics and Guidance to develop a comprehensive ethics training course that would be mandatory for all Assembly members and staff (Jochnowitz 2007).

Whilst Australians might one day aspire to such models, currently the most effective time at which to "catch" members is shortly after election, preferably before sittings commence. Once sittings commence, new members find themselves caught up in the whirlpool of political issues and events and most find it difficult to make the time for the seemingly more abstract and less immediate ask of learning skills affecting conduct. However, it worth noting that since the Fitzgerald Royal Commission report, the Queensland Legislative Assembly has taken a strong stand and included ethics as a central element of its induction programme for new members. It is estimated that 70 percent of current members have participated in this training.

These practical difficulties must be taken into account in ways of helping parliamentarians learn skills and improve their resolution of ethical dilemmas.

LEARNING ETHICS

In arguing for a role for parliamentary accountability in the ethical conduct of parliamentarians, we recognise that simply monitoring and/or enforcing compliance is an inadequate response.

Skill in identifying, analysing and responding to ethical dilemmas is not readily learned through reading or instruction. If it were, then few people entering public life would have been unmoved by various sources of information and teaching of moral precepts and ethical principles. The range of perceptions of ethics by parliamentarians was demonstrated by Jackson and Smith (1995). They asked a sample of parliamentarians to respond to various scenarios, some in which whether the act was corrupt was relatively clear-cut whilst others required careful thought, analysis and judgement. The responses were neither uniform nor necessarily reflective of high levels of skill in identifying corrupt acts or accepted standards in their responses (Jackson and Smith 1995).

Preston advocated the key role of prior advice as a key preventative area, when speaking at the *Parliamentary Accountability And Ministerial Responsibility: What's Working And What's Not* conference in Brisbane (Preston 2007). Whilst not directly arguing that such prior advice is the responsibility of the parliament, in the face of evidence of the efficacy of preventive measures, there is an argument that the parliament has a moral responsibility to implement such measures.

This approach is now taken in a number of jurisdictions through parliamentary standards commissioners, ethics commissioners or like offices e.g. Queensland, UK House of Commons, Canadian House of Commons and a number of Canadian provincial parliaments. In several cases, the nature of the "prior advice" includes training for members, especially newly elected members.

The establishment of these offices recognises that there are limits and dangers in relying entirely on self-regulation by those affected by standards of conduct and informal rules of behaviour. It is difficult for those establishing such rules to distance themselves from self-interest and as a consequence there is a tendency for their rules to be out of step with what disinterested people including the wider community would endorse. An expectation gap tends to develop between what the general populace expects and what the self-regulated accept as reasonable. A commissioner can provide that more dispassionate perspective and provide advice closer to community standards.

A parliamentary standards commissioner office and role is currently being considered by an all-party Victorian Parliamentary Committee. The proposal would establish it as an independent office of the parliament, as described in the earlier Victorian report. The commissioner would be appointed on the recommendation of a specific all-party committee and would not be subject to direction (Victorian Public Accounts and Estimates Committee 2006). The authors of *Be Honest, Minister!* have argued that one should also be established by the Federal Parliament (Coghill et al. 2007).

The most effective form of adult learning is experiential learning. As we have argued elsewhere,

(a)s many leading researchers in the field have identified, mature age learning is fundamentally different from that of children and adolescents (Knowles 1990; Rogers 1983; Cheetham and Chivers 2001). Those who undertake mature age learning are generally motivated by its practical relevance to their sphere of interest and draw on 'real-life' experiences to understand, interpret and develop both knowledge and competencies. To be considered relevant, particularly for more advanced skill building, the design and development of programmes needs to have input from both parliamentarians and the public servants who work closely with them. It is seen as an important element that participants take responsibility for their own development and is to be expected from mature age learners (Smith 1998). In this context, the initial phase of the programme should focus on semi-structured interviews and focus groups with participants and training coordinators identifying key aspects and features central to their training and development needs. Not only does this give participants a voice and a sense of ownership it allows facilitators to identify the key features of training needs thereby enhancing the chances of success. This approach or application of the learning framework can lead to more experiential approaches including simulations, role-plays, case studies, group discussions and debates (Smith 1998).(Coghill et al. (under revision)).

It follows from this evidence that these experiential approaches are the appropriate manner in which to develop the ethical skills of parliamentarians. The obvious time at which to conduct such training is in the course of the induction programme as soon as possible following election.

In addition, when cases of questionable behaviour become known in the home jurisdiction or another, group discussions could be arranged at short notice during which the commissioner would lead discussion. Party leaders could indicate their concern for ethical behaviour by attending and participating.

Preston argues strongly that the preventative and advisory/counselling role should be separated from the role of investigating and reporting suspected unethical behaviour. The advantages are clear. The trust necessary for parliamentarian to seek counsel would be strained if that same individual counsellor could also be the investigator in the event of suspicions being raised with the investigator or worse, on the investigator's own motion. The latter case, the parliamentarian could reasonably be apprehensive that the very act of seeking advice could trigger an own motion investigation.

Preston also argues for six-monthly review meetings between ethics commissioners and parliamentarians (Preston 2007).

CONCLUSION

The standards of ethical conduct in the discharge of their official responsibilities by parliamentarians are of concern to the public and do reflect on the standing and legitimacy of both parliamentarians and parliaments. Accordingly, we argue, these are issues legitimately affecting the types and levels of training and other support provided by chambers to their members. Nonetheless, some chambers do not see themselves as accountable for the maintenance or enhancement of standards and accordingly do not provide training in how to deal with ethical dilemmas.

However, an increasing number of chambers are providing advice and training for members on how to handle ethical issues and the appointment of independent parliamentary officials with related responsibilities is spreading.

The evidence suggest that it is in the interests of parliaments to provide training to their members from the time of election, continuing opportunities to develop and refine skills in ethics and ready access to advice at all times. Training should be of the types known to best facilitate adult learning, with a particular emphasis on experiential learning such as through simulations, role plays and discussions of real life cases. This should be supported by the appointment of an independent parliamentary commissioner with the primary role of assisting all parliamentarians (government and non-government) in enhancing their capacities to resolve dilemmas as they arise.

A more difficult issue is whether training in identifying, analysing and resolving ethical issues should be compulsory, with review sessions every few months. Whilst seeming to go against the principle of the autonomy of individual parliamentarians - judged by their electorate rather than peers - that principle is already almost meaningless within the political party parliamentarians. Is it now time to require this increasingly professional vocation to accept mandatory continuing professional development?

Professional development programmes of this type could improve the accountability of parliaments, especially for the ethical standards practiced by their members.

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