Parliamentary Accountability to the Public — Developing MPs' Ethical Standards[#]

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Abstract

The discrepancy between the reported behaviour and performance of parliamentarians and parliaments and the standards 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 the public concerns over the discrepancy? This article examines the particular issue of the exercise of ethical judgments by parliamentarians and the role of professional development programmes in establishing and maintaining ethical standards. It reviews the experience of parliaments and other public institutions in addressing ethical standards of behaviour, including how to address ethical issues and institutions such as parliamentary standards commissions. Particular attention is given to appropriate sources of professional development in ethical behaviour. The option of mandatory ethical training for parliamentarians and its implications are also discussed.

Introduction

The accountability of parliamentarians for their behaviour and actions is a complex, contentious issue. This article is concerned with conduct in their official capacities; that is when they are acting in their capacities as elected representatives. It examines the role of 'education to enhance quality, reputation, respect and trust which will in turn produce consistency and effectiveness in decision-making and outcomes' (Coghill, Holland, Donohue, Rozzoli, & Grant 2006) and related issues. The article does not concern itself with conduct in purely personal relationships, business or financial affairs for example. Arguments as to whether their occupation should be considered a profession are also beyond the scope of this article Australia is fortunate that the overall standards of behaviour by parliamentarians are generally of a standard expected by the community. Nonetheless, instances such as illegal expenses claims (Fitzgerald 1989), the diversion of publicly provided resources for

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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 infrequent but high profile cases contribute to the relatively low esteem in which Australian parliamentarians are held (Morgan Gallup 1998).

Self-regulation by parliamentarians of their codes of ethics is clearly an increasing worry. As McAllister (2000: 22) notes 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 believes 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. This is reinforced by research comparing the public perception of the ethics and honesty of three professions: medical doctors, lawyers and parliamentarians (Morgan-Gallup 1998). Over a period of three decades, 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 of the public believing they act with honestly and integrity. These figures suggest that in terms of ethical standards, parliamentarians are becoming increasingly out of touch with the expectations held by the public in regards to elected leaders.

The reputation of parliamentarians is of uniquely high significance, however. The parliament is the paramount sovereign institution of the respective jurisdiction. We argue that more than almost any other institution except the courts, parliament is the institution whose members should be 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 suffer diminished 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 be exercised (usually) only 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 time lag in the opportunity for judgement. An incident offensive to the electorate may be largely overwhelmed by later events by the next election, although there is evidence that it can be influential in particular cases such that of Merri Rose, a disgraced Queensland State MP later convicted and jailed (Reynolds 2007).

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 is severely limited in its capacity to address individual instances of unacceptable conduct and has even less capacity 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. We also argue that the electoral process has a negligible effect in terms of guiding and maintaining the ethical behaviour of parliamentarians. Given the public's generally pejorative views of their elected representatives, clearly other approaches should be considered. As the formation of parliamentary ethical standards is at a relatively nascent stage, we discuss the development of ethical standards in similar professions in order to identify practices and principles that may be applied to the parliamentary context. The nature and limitations of such self-regulation is examined and the unique features of parliamentarians' vocation are identified and their implications for self-regulation reviewed. Developments in other jurisdictions to address these issues, such as parliamentary standards commissions, are canvassed and suggestions made concerning the potential for their introduction in Australian parliaments.

Ethical Standards in Related Professions

Comparisons between parliamentarians and other professions are problematic due to the unique nature of parliamentary careers. However, notwithstanding differences, company directors and judicial officers are two professional groups which have some commonalities with parliamentarians. Similar to many parliamentarians, company directors typically enter the profession with little in the way of training or preparation for holding a position on company boards. Judges are chosen from experienced lawyers. However as the chief justice of New South Wales noted, 'There has also been a growing recognition that the skills and experience acquired in the practice of the legal profession, whilst of great significance, do not necessarily equip a person with the full range of skills required of a judicial officer' (Spigelman, 2001). Moreover, company directors, judges and parliamentarians all deal with broad social issues, they each exercise considerable power in the conduct of their roles and there is a strong expectation among the public that members of these professions should behave ethically and that they are held accountable for their actions.

In terms of company directors, in 1995 the Australian Institute of Company Directors (AICD) adopted a code of conduct to guide its members in carrying out

their duties in accordance with the best professional standards. The code of conduct was developed following input by 500 company chairpersons, eminent lawyers, accountants, and politicians (Bosch 1995). The preamble to the code of conduct states that the AICD expects its members to uphold the values of *honesty, integrity, enterprise, excellence, accountability, justice, independence,* and *equality of shareholder opportunity* and it also states that members are bound by the code. The code of conduct consists of 11 standards that stipulate unequivocally what is acceptable behaviour in relation to issues such as the improper use of information, conflicts of interest, taking advantage of the position of director, the use of power for improper purposes, and bringing discredit to the company. According to Francis (1997), the standards espoused in the code, with some minor exceptions, are merely restatements of the legal duties expected of company directors. However, the code of conduct is accompanied by a highly instructive and extensive (32 pages) practical guide to interpreting, and complying with, the principles of the 11 standards. The code of conduct is also supplemented by a document outlining the disciplinary procedures for members who fail to comply with the standards, which include reprimand and/or remedial advice, publication of the result of the finding and the member's name in the AICD magazine, suspension of rights of membership, and expulsion. It is interesting to note that other professional business associations, such as the Australian Institute of Chartered Accountants, have adopted modified versions of AICD code of conduct, adapted to suit their memberships. Additionally, the AICD has produced publications outlining a methodology that its members can use to develop their own codes of conduct.

In 2002 the Australian Institute for Judicial Administration, on behalf of the Council of Chief Justices, developed the *Guide to Judicial Conduct* which outlines the ethical standards expected of judicial officers. The intent of this document was to provide a practical guide to members of the Australian judiciary at all levels by indicating, in a positive and constructive manner, how potentially problematic situations might be handled. This guide was developed collegially as its content and focus were initially informed by the results of a survey of Australian judicial officers. Moreover, the document avoids providing prescriptions of expected behaviour for judges. Instead, the code is aspirational and seeks to identify principles or standards of conduct appropriate for judicial officers, with the expectation that their application will vary according to the circumstances of each specific issue and indeed the idiosyncratic interpretations of individual judges. The three guiding principles articulated in the document are *impartiality*, *judicial independence* and *integrity and personal behaviour* and under each of these broad rubrics more specific situations and issues are discussed. For example, subordinated under the principle of *integrity and personal behaviour,* the guide addresses issues relating to intellectual honesty, respect for the law and observance of the law, prudent management of financial affairs, diligence and care in the discharge of judicial duties, and discretion in personal relationships, social contacts and activities. However, as previously stated, the guide generally avoids providing

definitive recommendations in favour of identifying 'issues requiring consideration' and highlighting the relevant ethical implications.

In the United States, a more prescriptive approach was followed by the American Bar Association when, in 1972, it developed the Model Code of Judicial Conduct. The code which specifies mandatory standards of behaviour, has been adopted (in whole or in part) by 48 states and violation of its rules can result in punitive action being taken against offending judges. New Mexico, one of the states to adopt the code, has also established the Judicial Education Center to provide education and training to the judges, administrators and other staff of that state's judicial branch. As part of its remit, this centre provides guidance on judicial ethical issues principally through online exercises and case studies. These interactive exercises and video case studies present examples of ethical dilemmas that judicial officers may encounter in the course of their activities. After viewing or reading each case, the user answers questions regarding how the conduct of the characters conforms to the ethical code. Users can then compare their responses to online model answers provided by experts on the judicial code, as well as access additional electronic resources on judicial ethics that are linked to the Judicial Education Center's webpage.

The National Judicial College of Australia includes 'judicial conduct and ethics' in its orientation program for newly appointed judges (Australia 2007).

Standards of Conduct in Parliaments

Australian parliaments have not adopted the processes increasingly used to improve the performance of company directors and judges. They 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, an Italian parliamentarian could and did escape prosecution for an alleged murder whilst he continued to be an elected member in the late twentieth century (Italian Parliament Official, 1989). That concept has virtually disappeared from modern Westminster-derived parliaments such as in Australia.

One important vestige of those ancient privileges remains: 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. Notwithstanding this immunity, 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 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. At most, standards of parliamentary behaviour are subject to weak self-regulation.

Self-Regulation

The concept of self-regulation as a way of managing and maintaining parliamentary standards of conduct is 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. This argument suggests that members of the profession are best placed to develop and educate their members and accordingly, that self-regulation is the best approach to enforce standards linked to a code of practice or ethics upon members and to upgrade and enforce these basic norms and values to maintain the profession's integrity.

Alternatively, the failure of self-regulation is associated with one or more of three factors: the lack of clear and consistent standards; an absence of self-monitoring; and insufficient feedback to indicate breaches of standards leading to remedial action (Heatherton & Baumeister, 1996). Without discrete and enforceable sanctions that act as standards, imposed 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 and are able to determine appropriate conduct; and secondly, that in adjusting the standards in a dynamic environment self-regulation will not be abused. These premises are at best unrealistic. Standards cannot be developed and reviewed in isolation. Self-regulation may be argued as conducive to developing consensus and commitment to standards. The input of a variety of 'concerned'

stakeholders representing a range of perspectives to examine relevant issues and development of a code of ethics and conduct is essential for achieving quality standards. This input will lead to more robust, soundly-based and acceptable standards and actions, as these ethical standards will reflect a consensus position from concerned parties, thereby adding to the integrity of the self-regulatory system (De George 2006).

Perspectives on Standards

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. In this article, 'elite' is applied to parliamentarians. McAllister argues that what constitutes ethical behaviour can be explored or categorised by evaluating the stakeholders' responses to unethical behaviour, facilitating identification of the need to review self-regulatory standards (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, it would be categorised as 'white' behaviour (Heidenheimer 1989). In contrast 'black' behaviour is seen as 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. 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 black activity.

However, the decline in the perception of parliamentarians' behaviour revealed by research over the last 30 years would suggest that unethical activities are increasingly categorised as 'grey'. The increase in the 'grey' category could be due to changes in the behaviour of parliamentarians, changes in public perceptions of parliamentarians' conduct or some combination of both. Alternatively it may be due more to the nature of politics as an occupation in a changing environment of media scrutiny than to the actions of the parliamentarians themselves. In other words, change may have applied to scrutiny rather than the behaviour of parliamentarians. Irrespective of the cause, 'grey' behaviour creates a problem for self-regulation. The long-term decline in the perception of parliamentarians 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 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, public expectations of parliamentarians have increased.

Solutions

What then are the mechanisms potentially available to parliaments and their chambers to more appropriately address the issues of, grey, behaviour?

Developing a broad and consistent code of conduct

We believe the first step that parliaments and their chambers should undertake is the development of a broad, but clear, set of guidelines for ethical behaviour, which is applicable to all parliamentarians. Over the preceding 10 years, most Australian parliaments have adopted some form of code of conduct for members and/or ministers; however, there is considerable variation across the parliaments in terms of the referents for each code. For example, the Commonwealth and the Australian Capital Territory parliaments have codes of conduct that relate to ministers but not to members, while only three state parliaments (Victoria, Western Australia, and New South Wales) have codes that apply to both ministers and members (McKeown, 2003). These codes of conduct tend to be narrow in focus and confined to issues such as conflicts of interest, travel contributions, gifts, outside interests and bribery. According to Brien (1998) narrowly focused codes of conduct for parliamentarians fail to address the broader issues of accountability and transparency, which he argues are essential elements required for the community to have confidence in its system of government. Perhaps a useful starting point for the development of a comprehensive and consistent code of conduct for Australian parliamentarians, capable of engendering accountability and transparency, is The Seven Principles of Public Life issued by the Nolan Committee (1995) in the United Kingdom. This committee was established by the then Prime Minister, John Major, following controversy over the 'cash for questions' affair, where members asked questions in parliament on behalf of business leaders in exchange for cash payments. The Seven Principles of Public Life resulted from an extensive inquiry undertaken by the Nolan committee and subsequently formed the centrepiece of the UK Code of Conduct for Members of Parliament. The seven principles are:

Selflessness — Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends;

Integrity — Holders of public office should not place themselves under any financial obligation to outside individuals or organisations that might influence them in the performance of their official duties;

Objectivity — In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit;

Accountability — Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;

Openness — Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands;

Honesty — Holders of public office have a duty to declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest; and

Leadership — Holders of public office should promote and support these principles by leadership and example. (United Kingdom 1995a).

Training in Ethics — a *Reflective Approach*

The key points to re-emphasis from these guidelines for this unique profession is that the election to parliament does not come after years of training and socialisation during which certain value systems can be developed and imbued over years of study and practice, such as happens with doctors and lawyers. Parliamentarians come from a diverse background of values and belief systems as well as life experiences, educational and ability levels. 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 ...
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> … 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. (Coghill et al. 2008)

To address this training and development issue in the context of the seven principles noted above, we propose a reflective approach to the development of a consistent set of values and ethics to cultivate a level of knowledge and consistency across the profession. Reflective ethics allows parliamentarians to be guided by a set of decision making steps in any situation. Using Goodpaster's (1983) concept in a professional context, Parker and Evans (2007: 7) argue that three distinct steps can be identified in the development of reflective ethics: be aware of the ethical issues that arise in practice, and of our own values and predispositions; take into account a range of standards and values that are available to help resolve those ethical issues and make a choice between them; and implement that resolution in practice.

An important premise of reflective ethics is that the parliamentarians are aware that the ethical dilemma exists and have the capacity to understand it and the knowledge, skill and ability to take an holistic approach in their decision-making. A reflective rather than directive approach to this training and development allows the parliamentarians to take a considered approach. Using case studies, scenarios and role play and simulations (similar to those undertaken by judges in New Mexico) (Judicial Education Center, 2008) to practice ethical decision-making is supported from an andragogical perspective. When done in the right environment, they are non-threatening and allow for discussion and debate on issues that are central to the role and function of a parliamentarian. By adopting such a practical approach the parliamentarians could identify, clarify and resolve such dilemmas in a more effective and considered way. As Parker and Evans note:

> We often learn more about these aspects of ethical reasoning if we discuss case studies with other people with different knowledge, values and experiences from our own (2007: 7).

A Study of the Australian Senate

A study of these issues has been conducted as part of a larger programme of research examining the induction and training provided to new parliamentarians. The pilot study found that the argument that training and development 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 and development in ethics was not an appropriate role for the parliament. Rather, training and development by parliament was properly concerned with and largely limited to procedure, parliamentary entitlements and facilities (Coghill et al. 2006). In the context of the complex and on-going role and development of parliamentarians, this could be argued to be a limited agenda. As noted, parliamentarians come to the job with a set of values and beliefs, undertaking reflective ethical training and development as they begin this complex and high profile decision making role is likely to provide them with new and alternate perspectives with which to view the issues and increase the quality of their decision making capacity. As Parker and Evans (2007: 254) point out in a professional context:

> Greater clarity about ethical choice could also lead to a better sense of professionalism and contribute to better public regard for those professionals ... using a values awareness process could assist in value identification and in strengthening the resolve to behave ethically.

The study involved 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 were 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 (as noted above) 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 (self-regulation) and monitored through peer review was evident in one parliamentary officer's statement that the appropriate forum for discussing and resolving such issues were those comprised of the senators themselves, such as the Committee on Senators' Interests and the Privileges Committee.

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 despite their experience and vested interest in enhancing parliamentary skill and knowledge. 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.

In addition, 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 and development 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 of training and development currently undertaken 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 those 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.

Although 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 there is a major skill gap here that does not appear to be addressed. It is of concern 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. Furthermore, the Senate staff did not see it as necessary.

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 dealt with. This situation gives rise to a series of questions regarding the development of self-regulation of parliamentarians' 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 balanced scorecard (BSC) 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. In order to ensure the agent acts in the interest of the principal (minimal 'grey' decisions) rather than self-interest, incentives and sanctions must be in place to induce the agent (parliamentarian) to operate and make decisions reflecting the public interest. This

'incentive alignment' (Armstrong 1997) could include intangible sanctions such as ethical standards. Another approach to assessing parliamentarians' performances is to use a balanced scorecard approach to determine 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 logic underpinning 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 applying a BSC approach may seem to raise difficult questions from a parliamentary perspective, other constituencies are adopting ethical codes which have this effect.

Global Context

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). In this context, it should be noted that the House of Commons has passed a number of resolutions which have established certain behaviours as being unacceptable and implicitly unethical. These resolutions date from as early as 1695 (United Kingdom 1997b). The code and the earlier resolutions provide the necessary sound basis and clear guidance on which to base further ethical decisions.

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, though 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 to 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.

A small number of states in USA have taken initiatives in this area. Georgia for example has legislated 'that it is in the fundamental interests of the citizens of Georgia and of the legislature as an equal branch of state government to foster the knowledge, professionalism, and standards of its membership' and that training in ethics is to be included i.e.

> 28-11-4. Availability of instructional classes and courses; payment of and reimbursement of expenses
>
> (a)All members of the General Assembly shall be authorized and encouraged to attend and complete a series of instructional classes or courses relating to the organization and operation of state government in general, and the role and powers of the General Assembly in particular. Such courses or classes shall include, but not be limited to, such general topics as the Georgia Constitution, the role of each branch of state government, the organization of state government, the role of state government in the U.S. federal system, the relationship of state and local government, sources of state and local revenue, and the state budgeting process. Additionally, such courses or classes shall include, but not be limited to, topics specifically related to the General Assembly, such as constitutional and statutory law, bill drafting, the legislative process, committee operations, parliamentary rules of procedure, the appropriation process, legislative customs and traditions, duties and responsibilities of members, ethics and rules of conduct, legislative oversight of the executive branch, local legislation, constituent service, legislative use of computers, the Internet, distance learning, public policy issues on the legislative agenda, and such other matters as deemed necessary and appropriate by the board (Georgia (USA) General Assembly 1988).

In 2000 a then Republican (minority party) member of the Georgia (USA) General Assembly proposed mandatory ethics training and 'the publication of the names of members and members-elect of the General Assembly who fail to attend such training sessions' (Price 2000). The proposal did not proceed beyond first reading. Similar legislation was proposed in Alabama in 2004 (Ward 2004). Again, it does not appear to have been enacted.

The New York State Legislative Assembly is reported to have proceeded 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). Mandatory training implies some sanction for non-compliance, which raises a potential conflict with the decision of the citizens to elect their representatives. Public exposure as proposed by legislators in Georgia and Alabama is a mild sanction which would not directly challenge a parliamentarian's legitimacy.

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 task of learning skills affecting conduct. However, it is 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 (Reynolds 2007).

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 in NSW 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 crucial 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 both a mandate and a moral responsibility to make it available.

Ethical advice is now provided 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 was being considered by an all-party Victorian Parliamentary Committee as part of its 2007 Inquiry into

Strengthening Government and Parliamentary Accountability in Victoria, at the time of writing (February 2008) (Victoria 2008). The proposal would establish the commissioner as an independent officer 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 (Victoria 2006). The authors of *Be Honest, Minister!* have argued that one should also be established by the Federal Parliament (Coghill et al. 2007).

The manner in which parliament and a commissioner could assist parliamentarians learn how to address ethical issues should be informed by understandings of how adults best learn. 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. 2008).

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 a 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 by the commissioner of the parliamentarian's conduct.

The desirability of separating the preventative, counselling roles from enforcement highlights the inappropriateness of relying on anti-corruption and other enforcement bodies for these roles. Preston also argues for six-monthly review meetings between ethics commissioners and parliamentarians (Preston 2007).

Conclusion

There is public concern about the standards of ethical conduct by parliamentarians and this does 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, development and other support provided by chambers to their members. Notwithstanding, 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.

Internationally 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 suggests 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 design should 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. The commissioner would not impose standards but would help parliamentarians be better aware of and sensitive to community standards and expectations of ethical conduct.

Compulsion is more difficult. Should training in identifying, analysing and resolving ethical issues be more than simply valued by and attractive to parliamentarians? Should it be mandatory, 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 parties to which parliamentarians largely surrender that autonomy. 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 in regards to the ethical standards practised by their members. ▲

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