

Chapter 2

Key issues

2.1 This chapter outlines the relevant sections of the ministerial code of conduct and the evidence gathered as part of this inquiry before setting out the committee's views.

Statement of Ministerial Standards

2.2 Since 1996, ministers and assistant ministers have been required to comply with a ministerial code of conduct, referred to as the Statement of Ministerial Standards (the Standards), issued by the Prime Minister of the day. The underlying principles are set out in paragraphs 1.1 and 1.2 within the Standards:

The ethical standards required of Ministers in Australia's system of government reflect the fact that, as holders of public office, Ministers are entrusted with considerable privilege and wide discretionary power.

In recognition that public office is a public trust, therefore, the people of Australia are entitled to expect that, as a matter of principle, Ministers will act with due regard for integrity, fairness, accountability, responsibility, and the public interest, as required by these Standards.¹

2.3 Relevant to this inquiry is the principle set out in subparagraph 1.3(iv) of the Standards:

Minister must accept the full implications of the principle of ministerial responsibility. They will be required to answer for the consequences of their decisions and actions – that is, they must ensure that:

...

- their conduct in a **private capacity** upholds the laws of Australia, and demonstrates appropriately high standards of personal integrity.² [emphasis added]

2.4 The responsibility of ministers is elaborated on at paragraphs 5.1 and 5.2 of the Standards:

Ministers are expected to be honest in the conduct of public office and take all reasonable steps to ensure that they do not mislead the public or the Parliament. It is a Minister's personal responsibility to ensure that any error or misconception in relation to such a matter is corrected or clarified, as soon as practicable and in a manner appropriate to the issues and interests involved.

1 The Hon Malcolm Turnbull MP, Prime Minister, *Statement of Ministerial Standards*, September 2015, p. 2, paras 1.1 and 1.2.

2 The Hon Malcolm Turnbull MP, Prime Minister, *Statement of Ministerial Standards*, September 2015, p. 2, subparagraph 1.3(iv).

Ministers must not encourage or induce other public officials, including public servants, by their decisions or conduct in office to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity...³

2.5 At the committee's hearing Ms Yael Cass, Acting Deputy Secretary, Department of the Prime Minister and Cabinet (the department) explained that the Statement represents 'the Prime Minister's standards' and that the role of the department is to provide advice pursuant to paragraph 7.4 of the Standards,⁴ which states:

The Prime Minister may seek advice from the Secretary of the Department of the Prime Minister and Cabinet on any of the matters within these Standards, at any time. In providing such advice the Secretary of the Department of the Prime Minister and Cabinet may, as required, seek professional advice.⁵

2.6 The department clarified that the Standards are primarily enforced by the Prime Minister; that the Prime Minister may seek advice from the Secretary of the department; that the department investigates potential breaches of the code at the discretion of the Prime Minister; and that the Prime Minister has not asked the Secretary to conduct any investigation or provide any advice in relation to Senator Fifield's conduct and his knowledge of Senator Parry's citizenship status.⁶

Details of the conversation

2.7 News that Senator Parry had discussed his dual-citizenship status first emerged on 3 November 2017.⁷ It was reported that Senator the Hon Mitch Fifield MP, Minister for Communications, 'knew for weeks that Stephen Parry could be a dual UK-Australian citizen, but said nothing after the then Senate President confessed to him.'⁸

3 The Hon Malcolm Turnbull MP, Prime Minister, *Statement of Ministerial Standards*, September 2015, p. 7, paras 5.1 and 5.2.

4 Ms Yael Cass, Acting Deputy Secretary, Department of the Prime Minister and Cabinet, *Committee Hansard*, 27 November 2017, p. 13.

5 The Hon Malcolm Turnbull MP, Prime Minister, *Statement of Ministerial Standards*, September 2015, para. 7.4.

6 Ms Yael Cass, Acting Deputy Secretary, Department of the Prime Minister and Cabinet, *Committee Hansard*, 27 November 2017, p. 13.

7 Mr Joe Kelly, 'Senior government minister knew of Parry's plight', *The Australian*, 3 November 2017, theaustralian.com.au/national-affairs/senior-government-ministers-knew-of-parrys-plaint/news-story/5c398438f22c7061630e4b793589237e (accessed 21 November 2017).

8 Mr James Massola, 'Fifield confesses he know of Parry's citizenship problem for weeks', *The Sydney Morning Herald*, 3 November 2017, smh.com.au/federal-politics/political-news/fifield-confesses-he-knew-of-parry-citizenship-problem-for-weeks-20171102-gzdgyc.html (accessed 23 November 2017).

2.8 On 13 November 2017, Senator Fifield informed the Senate that Senator Parry told him that 'he was endeavouring to check his family's own records.'⁹ Further, Senator Fifield stated the following:

Former Senator Parry always recognised that it was the responsibility of each senator and member to determine and be satisfied about their own circumstances, and I encouraged him to do so. This duty is individual and personal. It cannot be abrogated, outsourced or transferred, and former Senator Parry never sought to do so. Suggestions I directed the former senator are wrong. I did not speak to others about a private discussion with a colleague on a matter of their responsibility about which they had not, to my knowledge, reached a concluded view. On the Monday after the High Court decision, former Senator Parry let me know that he had sought advice from the British Home Office, had advised the Attorney-General of this and had thought it unlikely he would return to the parliament. Former Senator Parry has subsequently resigned his office. We are each responsible for assessing our own circumstances regarding eligibility to sit in this place.¹⁰

2.9 During questions without notice, Senator Fifield informed the Senate that the conversations he had with Senator Parry concerning his citizenship status were 'few in number and they were all verbal.'¹¹ At the public hearing Senator Fifield confirmed that he had two conversations with Senator Parry, which 'occurred a number of weeks before the High Court decision, but not months'.¹² Further, that these conversations were 'in fairly close proximity', but was not more specific about when these conversations occurred.¹³

2.10 The circumstances leading to the conversations were explained by Senator Fifield:

Senator Parry and I were flatmates in Canberra. The conversation on this matter which took place between us was informal and occurred at our accommodation after sitting. There were no formal meetings in his office nor mine, no appointments made, no sitting down and going through individual circumstances and no comparing and contrasting circumstances. There were a couple of brief chats.¹⁴

9 The Hon Mitch Fifield MP, Minister for Communications, *Senate Hansard*, 13 November 2017, p. 13.

10 The Hon Mitch Fifield MP, Minister for Communications, *Senate Hansard*, 13 November 2017, p. 13.

11 Senator the Hon Mitch Fifield, Minister for Communications, *Senate Hansard*, 14 November 2017, p. 14.

12 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, p. 2.

13 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, p. 3.

14 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, pp. 2–3.

2.11 When asked by Senator Wong, as a question without notice, whether Senator Fifield and Senator Parry discussed the similarities of Senator Parry's circumstances with that of the former Senator, the Hon Fiona Nash, Senator Fifield said:

Again, I think all senators would be aware that there were referrals to the High Court of a number of colleagues, including Senator Nash and Mr Joyce, and I'm sure that we, as I have done with many colleagues in this place, commented on that fact.¹⁵

2.12 However, at the public hearing Senator Fifield indicated that Senator Parry had informed him that 'he had always been of the opinion that his father was an Australian citizen' and that Senator Parry was 'endeavouring to check his family records'.¹⁶ Senator Fifield argued that he could not have knowledge of Senator Parry's citizenship status:

I did not know former Senator Parry's citizenship status. Former Senator Parry did not himself have it confirmed that he was a dual citizen until the UK Home Office did so. This committee reference is also premised on me being capable of knowledge greater than or equal to that of the former senator. This is absurd and I reject it.¹⁷

2.13 While the committee cannot conclude that Senator Fifield had conclusive knowledge of Senator Parry's UK citizenship prior to confirmation from the UK Home Office, it notes the similarity between his circumstances and those of former Senator Nash, which were revealed on 18 August 2017.¹⁸

Reasons for not informing others of the conversation

2.14 The committee questioned Senator Fifield as to why he chose not to alert others, including the Prime Minister and the Leader of the Senate, to his discussions with Senator Parry. Senator Fifield stated that he did not mention the conversations to others because it was a private conversation; it was not clear what the outcome of Senator Parry's enquiries would reveal; that it is the responsibility of each individual parliamentarian to assess their own circumstances; and that this responsibility cannot be transferred.¹⁹

15 Senator the Hon Mitch Fifield, Minister for Communications, *Senate Hansard*, 14 November 2017, p. 26.

16 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, p. 3.

17 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, p. 3.

18 Mr Henry Belot, 'Fiona Nash tells Senate she may be British citizen, will not stand aside as deputy Nationals leader', *SBS News*, 18 August 2017, <http://www.abc.net.au/news/2017-08-17/fiona-nash-says-she-is-a-british-citizen-will-not-stand-aside/8817998> (accessed 28 November 2017).

19 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, p. 2.

I didn't mention this to others; it would not have been appropriate to do so. The conversation was about a matter of his responsibility, about which he had not, to my knowledge, reached a concluded view. It was not my place to speak to others; it was not my place to assess his circumstances. He was the independent President of the Senate. This was his seat, his circumstance and his family. The matter had his attention. Claims that I directed, told, advised or suggested that he not take any steps he deemed appropriate until after the High Court decision are false. As to former Senator Parry's course of action, he addressed that in a statement to colleagues on 31 October and a subsequent statement on 1 November.

It is the responsibility of each senator to assess their own eligibility to stand for and to sit in the parliament. We're all asked to certify on our Australian Electoral Commission nomination form that we comply with the eligibility requirements under the Constitution. Once elected, each senator needs to remain satisfied in relation to their circumstances. This duty is individual and personal. It cannot be abrogated, outsourced or transferred, and former Senator Parry never sought to do so. The questions to me in question time and posed in some of the contributions in the High Court referral debate have sought, in effect, to transfer the responsibility of another senator to me, and I reject that. I warn against trying to transfer the responsibility of one colleague to another. If that were to happen, this place would not function.²⁰

2.15 The committee contrasts the action of Senator Fifield to that of Senator the Hon George Brandis, Attorney-General, when he was first informed of Senator Parry's citizenship concerns. Senator Brandis explained that he was contacted by Senator Parry on 30 October 2017 at 9.11 am and that immediately after the conversation, he took steps to inform the Prime Minister:

...Senator Parry didn't tell me that he had discovered that he was a dual citizen. What Senator Parry told me was words to the effect that, having studied the High Court's decision, he thought he might have a problem and that he had taken urgent steps to clarify the position with the British Home Office, but he had concerns. That's what he told me. As soon as that conversation was finished, I immediately rang my chief of staff, at 9.22 am Queensland time, and related to him what Senator Parry had said to me—namely, that he thought he might have a problem but he was checking to see what the position was and seeking urgent advice from the UK authorities. I asked my chief of staff to convey that to the Prime Minister's office, which he tells me he immediately did...

...I'm not saying Senator Parry told me that he had concluded that he was a dual citizen. He told me that he had appreciated, having read the High Court's decision, that he may have a problem, and that is the

20 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, p. 2.

information I caused to be conveyed immediately to the Prime Minister's office.²¹

2.16 The committee notes that despite Senator Brandis not having conclusive information that Senator Parry was a UK citizen, that he considered it appropriate to immediately inform the Prime Minister.

Committee view

2.17 The committee notes that the Statement of Ministerial Standards extends beyond a minister's portfolio responsibilities. The principles within the Standards recognise that considerable privilege and discretionary power is entrusted to ministers, and in turn, requires ministers to ensure that 'their conduct in a private capacity upholds the laws of Australia, and demonstrates appropriately high stands of personal integrity'.²² The Standards outline the responsibility of ministers:

5.1 Ministers are expected to be honest in the conduct of public office and take all reasonable steps to ensure that they do not mislead the public or the Parliament...

5.2 Ministers must not encourage or induce other public officials, including public servants, by their decisions, directions or conduct in office to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity...²³

2.18 Senator Fifield states that he had two conversations with Senator Parry, which were in close proximity to one another and occurred a number of weeks prior to the High Court decision on 27 October 2017. Senator Fifield states that these conversations were informal and occurred while they were at their shared accommodation in Canberra. Consequently, no records exist of the precise date of the conversations or the details of what was discussed. During these conversations, Senator Fifield states that Senator Parry told him that he was 'endeavouring to check his family records'.²⁴ In response, Senator Fifield states that he encouraged Senator Parry to do so.

2.19 In relation to the details of what was actually discussed, Senator Fifield was questioned in the chamber and at the public hearing and has repeatedly stated that Senator Parry was 'endeavouring to check his family records'. Due to the nature of the conversations and the limited information provided by Senator Fifield the committee has not been able to determine any other details of the discussions.

21 Senator the Hon George Brandis, Attorney-General, *Senate Hansard*, 13 November 2017, p. 18.

22 The Hon Malcolm Turnbull MP, Prime Minister, *Statement of Ministerial Standards*, September 2015, p. 2, subpara 1.3(iv).

23 The Hon Malcolm Turnbull MP, Prime Minister, *Statement of Ministerial Standards*, September 2015, p. 7, paras 5.1 and 5.2.

24 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, p. 2.

2.20 Senator Fifield informed the committee that at the time, he did not relay his conversations with Senator Parry with any other person. Senator Fifield further states that it is the responsibility of each senator to comply with the eligibility requirements under the Constitution and that this responsibility 'cannot be abrogated, outsourced or transferred'.²⁵ The committee does not disagree with Senator Fifield's statement—that it is the sole responsibility of each parliamentarian to be satisfied of their eligibility to stand for parliament. However, this has not been the focus of this committee's inquiry. Rather, the committee has sought to determine if Senator Fifield had an obligation to take some course of action upon discovering that a fellow senator may be disqualified from sitting in Parliament due to potentially holding dual-citizenship. Potential courses of action open to Senator Fifield include:

- informing the Prime Minister;
- discussing the concerns with the Leader of the Senate and Attorney-General;
- informing the public; or
- encouraging Senator Parry to inform the Prime Minister, or the Leader of the Senate, or the public, of his concerns.

2.21 Senator Fifield chose to take no action. In contrast, the committee observes that when another senior member of government, Senator Brandis, became aware of Senator Parry's citizenship concerns, that within minutes, he informed the Prime Minister of these concerns through his chief of staff.

Senator Louise Pratt

Chair

25 Senator the Hon Mitch Fifield, Minister for Communications, *Committee Hansard*, 27 November 2017, p. 2.