

2018/05: The Barnaby Joyce scandal: should ministers be banned from having affairs with parliamentary staffers?

What they said...

'I certainly felt that the values I expressed and the action I took would have the overwhelming endorsement of Australians'

Malcolm Turnbull, Prime Minister of Australia, commenting on his ban on sexual relations between ministers and staffers

'It's a basic principle of human rights that people can have relationships with whom they like'
Ronnie Fox, a British employment law specialist from Fox and Partners

The issue at a glance

On February 15, 2018, the Prime Minister, Malcolm Turnbull, made an addition to the Australian Government's 'Statement of Ministerial Standards'. The addition states, 'Ministers must not engage in sexual relations with their staff. Doing so will constitute a breach of this code.'

<https://www.pmc.gov.au/sites/default/files/publications/statement-ministerial-standards.pdf>

The addition to the Ministerial Standards came after the Daily Telegraph revealed that the Deputy Prime Minister, Barnaby Joyce, had been having a sexual relationship with his former media adviser, Vikki Campion.

On February 7, 2018, the Daily Telegraph published a front page story reporting that Mr Joyce and Ms Campion were expecting a child together. <https://www.dailytelegraph.com.au/news/nsw/deputy-pm-barnaby-joyce-and-exstaffer-and-journalist-vikki-campion-expecting-a-baby/news-story/affccf8e8df768e5b9ddc9920154be6b>

Debate has since raged as to whether Mr Joyce had used his position to find alternative employment for Ms Campion on other ministers' staff. There were also questions asked about the free accommodation the couple had received from a party donor. <https://www.smh.com.au/politics/federal/pm-s-office-says-vikki-campion-jobs-did-not-breach-rules-because-she-was-not-barnaby-joyce-s-partner-20180212-p4yzzp.html>

Initially, both the Prime Minister and the leader of the Opposition, Bill Shorten, declared that the affair itself was a private matter. However, as media and public pressure grew for Mr Joyce to resign as Deputy Prime Minister, Mr Turnbull publicly criticised Mr Joyce's conduct and announced the changed Ministerial Standards. <https://www.theaustralian.com.au/national-affairs/barnaby-joyce-humiliated-as-mps-face-sex-ban/news-story/06f5c42ca98c27b964ffdcb223f2f6a>

Mr Joyce subsequently resigned and is currently serving his Party from the backbench. Some ministers have declared their full support for the ban on sexual relations between ministers and their staff. Others, such as Foreign Minister, Julie Bishop, have been more non-committal, simply stating that they would abide by the new standard. The Opposition has indicated that, if elected, it would maintain the new standard. <http://www.afr.com/news/politics/malcolm-turnbulls-sex-ban-goes-too-far-liberal-insiders-20180219-h0wb3v>

Commentators have been mixed in their response, with some seeing the addition as only appropriate, while others have suggested that transparency and proper protocols may be more effective than a ban.

Background

On February 15, 2018, the Prime Minister, Malcolm Turnbull, made an addition to the Australian Government's 'Statement of Ministerial Standards', otherwise known as the ministerial code of conduct.

The addition, Standard 2.24, states, 'Ministers must not engage in sexual relations with their staff. Doing so will constitute a breach of this code.' It was introduced under the subheading: 'Other relationships' on page 8 of the Standards. <https://www.pmc.gov.au/sites/default/files/publications>

[/statement-ministerial-standards.pdf](#)

Mr Turnbull also supplied a new foreword to the Standards. This is reprinted in full below:

' Ministers and Assistant Ministers are entrusted with the conduct of public business and must act in a manner that is consistent with the highest standards of integrity and propriety.

They are required to act in accordance with the law, their oath of office and their obligations to the Parliament.

In addition to those requirements, it is vital that Ministers and Assistant Ministers conduct themselves in a manner that will ensure public confidence in them and in the government.

This Statement is not, and cannot be, a comprehensive statement of rules.

Ministers need to exercise their judgement, and common sense, in complying with both the principles and spirit of the Standards and their letter.

Ministers must recognise that while they are entitled to privacy in personal matters, they occupy positions of great responsibility and public trust. The public has high expectations of them in terms of their personal conduct and decorum.

Ministers should be very conscious that their spouses and children sacrifice a great deal to support their political career and their families deserve honour and respect.

Ministers should also recognise that they must lead by example - values should be lived.

So as you will see I have today added to these standards a very clear and unequivocal provision:

Ministers, regardless of whether they are married or single, must not engage in sexual relations with their staff. Doing so will constitute a breach of the code.

While this new standard is very specific, Ministers should be acutely aware of the context in which I am making this change and the need for them always to behave in their personal relations with others, and especially their staff, the staff of other Ministers or members of the Australian Public Service, with integrity and respect.'

<https://www.pmc.gov.au/sites/default/files/publications/statement-ministerial-standards.pdf>

[History of Australia's Ministerial code of conduct](#)

The Commonwealth has a guide to ministerial conduct but no code of conduct covering senators and members. The former Prime Minister, John Howard, was the first Australian Prime Minister to establish a public ministerial code of conduct titled A Guide on Key Elements of Ministerial Responsibility. This was released in December, 1996. <http://australianpolitics.com/1996/04/13/howard-ministerial-code-of-conduct.html>

Dr John Uhr noted in reference to the Howard Code: 'Given that the document is not a law or regulation and that it does not even have any formal parliamentary authorisation, there is nothing to stop the Prime Minister as author of the document from using his authority to alter or amend it or to interpret it as he sees fit.'

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Conduct#_Toc325623491

This highlights how ministerial codes in Westminster-type systems are generally controlled by the executive (usually the prime minister or premier) rather than the parliament.

On 6 December 2007 the then Prime Minister, Kevin Rudd, released Standards of Ministerial Ethics which replaced chapter 5 of the Howard Code. The new Standards included:

the requirement that lobbyists register their details on a register of lobbyists before seeking access to ministers or their offices;

rules on the post-separation employment of ministers;

a ban on electoral fundraising at the Prime Minister's official residences and

requirements that ministers divest themselves of all shareholdings or place their shares in broad superannuation or trust funds.

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/Conduct#_Toc325623491

Internet information

On March 21, 2018, The New York Times published a comment by Waled Aly titled ' Can Australia

Regulate Intra-Office Sex?'

Aly argues against the ban on sexual relations between ministers and staffers claiming that it marks a serious decline in Australian political culture, legitimising previously unthinkable intrusions into the private lives of politicians and prospective politicians.

The full text can be accessed at <https://www.nytimes.com/2018/03/21/opinion/australia-office-sex-barnaby.html>

On February 23, 2018, The Conversation published a comment by Carol Johnson, Professor of Politics, University of Adelaide, titled 'Turnbull's "sex ban" speech reveals that politics is still not an equal place for women - but it is changing'.

The Professor argues that while politics remains a field within which women are under-represented, Turnbull's acknowledgement of the gendered nature of the federal Parliament is a step in the right direction.

<https://theconversation.com/turnbulls-sex-ban-speech-reveals-that-politics-is-still-not-an-equal-place-for-women-but-it-is-changing-91981>

On February 21, 2018, The Australian published a comment by Janet Albrechtsen titled 'Pregnant pause, then a patronising sex ban'.

Albrechtsen gives a number of arguments supporting her view that the ministerial sex ban is inappropriate and likely to prove ineffectual.

The full text can be accessed at <https://www.theaustralian.com.au/opinion/columnists/janet-albrechtsen/pregnant-pause-then-a-patronising-sex-ban/news-story/1032f0c1659a66a48016ef05ee8960b2>

On February 21, 2018, The Adelaide Advertiser published a comment by Miranda Devine titled 'The #bonkban goes to the heart of something bigger'. Devine defends the Prime Minister's ban on sexual relations between ministers and their staffers on the basis that it reflects the widespread community respect for marriage.

The full text can be accessed at <http://www.adelaidenow.com.au/rendezview/the-bonkban-goes-to-the-heart-of-something-bigger/news-story/480eaea3244b83e1495baadec966e3a4>

On February 19, 2018, Monash University's publication LENS published an opinion piece by Peter Holland, Associate Professor, Department of Management, titled 'Good intentions don't equal good management'. Holland argues that the ban is unlikely to work as the change in policy was not arrived at via a proper consultative process.

The full text can be accessed at <https://lens.monash.edu/2018/02/19/1317873/good-intentions-dont-equal-good-management>

On February 19, 2018, the University of New South Wales Newsroom site published an opinion by George Williams, Dean of Law at the University of New South Wales, titled 'Barnaby Joyce's indiscretions pose questions of power and passion'

Williams argues in favour of the ban imposed by Prime Minister Malcolm Turnbull, considering it appropriate given the potential scale of the conflict of interest.

The full text can be accessed at <https://newsroom.unsw.edu.au/news/business-law/barnaby-joyce%E2%80%99s-indiscretions-pose-questions-power-and-passion>

On February 18, 2018, The Stawell Times published a report drawing together criticisms from a number of commentators opposed to the ban imposed by Prime Minister, Malcolm Turnbull.

The full text of the article titled 'Australian government "bonking ban" slammed for depriving adults of dignity' can be accessed at <https://www.stawelltimes.com.au/story/5234905/sex-ban-slammed-for-depriving-adults-of-their-dignity/>

On February 18, 2018, The Australian published a report detailing the results of a Newspoll

released the day before which indicates that a large majority of those polled no longer support Barnaby Joyce and believe he should step down as Deputy Prime Minister.

The full text can be found at <https://www.theaustralian.com.au/national-affairs/newspoll-joyce-should-quit-as-voters-punish-government/news-story/a534bcf71efa99571bb359dd54772c04>

On February 17, 2018, ABC News published a report detailing an interview on 60 Minutes with Prime Minister, Malcolm Turnbull, in which he explained and justified his recent banning of sexual relations between ministers and their staffers.

The full text of this article can be accessed at <http://www.abc.net.au/news/2018-02-19/malcolm-turnbull-defends-barnaby-joyce-criticism-and-sex-ban/9459878>

On February 17, 2018, The Sydney Morning Herald published a comment by Josh Bornstein, lawyer, writer and board member of the Australia Institute, titled 'Malcolm Turnbull's "bonking ban" is a misplaced attack on consensual sex'. Bornstein is critical of the ban imposed by Malcolm Turnbull, seeing it as intrusive and inappropriate.

The full text of the comment can be seen at <https://www.smh.com.au/politics/federal/malcolm-turnbull-s-bonking-ban-is-a-misplaced-attack-on-consensual-sex-20180216-p4z0lp.html>

On February 17, 2018, The Age published a number of letters to the editor under the heading 'The sex ban: How on earth will this ban be enforced?' Several of the letters focused on the impossibility of ensuring that ministers and their staffers adhered to the Prime Minister's ban.

The full text of these letters can be accessed at <https://www.theage.com.au/national/the-sex-ban-how-on-earth-will-this-ban-be-enforced-20180216-h0w6gc.html>

On February 16, 2018, The Guardian published a comment by Gay Alcorn titled 'Malcolm Turnbull does the time warp with his ministerial sex ban'

Alcorn argues that in the name of attempting to advance women's equality in the Parliament he actually has damaged their situation.

The full text can be accessed at <https://www.theguardian.com/commentisfree/2018/feb/16/malcolm-turnbull-does-the-time-warp-with-his-ministerial-sex-ban>

On February 16, 2018, The Conversation published a comment by Paula McDonald, Professor of Work and Organisation, Queensland University of Technology, titled 'Banning workplace romances won't solve the problem of sexual misconduct in the office'

McDonald argues that protocols, including disclosure, are more effective than bans.

<https://theconversation.com/banning-workplace-romances-wont-solve-the-problem-of-sexual-misconduct-in-the-office-91975>

On February 16, 2018, The Sydney Morning Herald published a comment by Cara Waters, Fairfax Media's small business editor, titled 'Why a bonk ban isn't good for business'. Waters argues for the benefits of protocols and disclosure.

The full text can be accessed at <https://www.smh.com.au/business/small-business/why-a-bonk-ban-isn-t-good-for-business-20180216-p4z0kl.html>

On February 16, 2018, The Daily Mail published an item titled ' "Severe" sex ban could backfire: experts'

The report gives the views of a range of experts who believe the relationship ban will be counterproductive and likely to damage the social culture within the Parliament.

The full text can be accessed at <http://www.dailymail.co.uk/wires/aap/article-5398657/Severe-sex-ban-backfire-experts.html>

On February 16, 2018, The Sydney Morning Herald published an analysis by Wendy Tuohy titled 'Recent sex scandals have taken the romantic edge off the workplace affair'

Tuohy examines the position of Barnaby Joyce and comparable developments in corporations and sporting clubs to suggest that 'office affairs' are no longer tolerated.

The full text can be accessed at <http://www.heraldsun.com.au/news/victoria/recent-sex-scandals-have-taken-the-romantic-edge-off-the-workplace-affair/news-story/31ea6647857b5d9d69bb3840db7d44c0>

On February 16, 2018, The Sydney Morning Herald published a report titled "'Cameras in people's bedrooms': Labor blasts Turnbull sex ban'. The report details the opposition of a number of Labor parliamentarians who see the ban as intrusive and likely to promote keyhole journalism.

The full text can be accessed at <https://www.smh.com.au/politics/federal/cameras-in-peoples-bedrooms-labor-blasts-turnbull-sex-ban-20180216-p4z0ls.html>

On February 15, 2018, the Prime Minister, Malcolm Turnbull, announced that he was changing the Australian Government's 'Statement of Ministerial Standards' by including a direct ban on Ministers having sexual relations with their staff, irrespective of the marital status of either party.

The full text of the media release can be accessed at <https://www.pm.gov.au/media/press-conference-parliament-house-canberra>

On February 15, 2018, the ABC current affairs discussion program, Q & A, televised a discussion titled 'Me Too Special' which considered gender equality, sexual harassment and made some reference to the new ministerial code of conduct.

A full transcript can be accessed at <http://www.abc.net.au/tv/qanda/txt/s4793240.htm>

On February 15, 2018, The Australian published a report on the ABC's Q&A special on the MeToo movement. The report is interesting as it includes substantial quotations from some of the panel commentators.

The full text can be accessed at <https://www.theaustralian.com.au/business/media/broadcast/turnbull-casts-himself-as-morality-police-over-sex-ban/news-story/e4339fa033a4d9e4e50cce1675821918>

On February 12, 2018, Mamamia published a report giving the views of a number of commentators that Barnaby Joyce's personal life had had a negative impact on his performance of his political duties.

The full text, titled "'Let's not get distracted". What Lisa Wilkinson and Em Rusciano remind us about Barnaby Joyce', can be accessed at <https://www.mamamia.com.au/barnaby-joyce-affair-cover-up/>

On February 11, 2018, The Daily Telegraph published a comment by Miranda Devine titled 'The true cost of Barnaby's actions is staggering' which detailed what she claims is the negative impact that Joyce's private life has had on his political performance.

The full text can be accessed at <https://www.dailytelegraph.com.au/rendezview/the-true-cost-of-barnabys-actions-is-staggering/news-story/96bc850b8f6d2b77c8d7768c2c6befa2>

On February 8, 2018, The Sydney Morning Herald published a news report titled 'Bonking ban: Independent MP Cathy McGowan wants to stop politicians having sex with staff'

The report details McGowan's intention to table a private members bill which would prohibit parliamentarians having sexual relations with their staff.

McGowan's proposal was widely condemned by other politicians, including the Prime Minister, who at that time argued that sexual conduct was a private matter.

<https://www.smh.com.au/politics/federal/bonking-ban-independent-mp-cathy-mcgowan-wants-to-stop-politicians-having-sex-with-staff-20180208-p4yzpo.html>

Arguments in favour of banning ministers from having sexual relations with their staffers

1. The power imbalance between those involved makes such sexual relationships potentially exploitative

One of the reasons offered for banning sexual relations between ministers and their staff is that the staffers' terms of employment make them vulnerable to being exploited. Their jobs are often directly under the control of their minister who can alter their conditions or terminate their employment.

It has been claimed that staffers' dependence on their ministers means that it may be difficult for staffers to reject sexual advances from these ministers.

In an opinion piece written by George Williams, Dean of Law, at the University of New South Wales and published on the University's Newsroom site, Williams states, 'Staffers have little job security and are highly dependent on the favour of their minister. They are not covered by the normal arrangements and protections that apply to members of the public service. Instead, the Members of Parliament (Staff) Act 1984 says that their terms and conditions are set by whatever agreement is reached to cover their employment. These terms might be set by their minister.'

<https://newsroom.unsw.edu.au/news/business-law/barnaby-joyce%E2%80%99s-indiscretions-poses-questions-power-and-passion>

Williams concludes that staffers' dependence upon their ministers for their continued employment poses 'a high risk of exploitation'. This includes sexual exploitation. <https://newsroom.unsw.edu.au/news/business-law/barnaby-joyce%E2%80%99s-indiscretions-poses-questions-power-and-passion>

It has also been argued that the ban helps to protect female staffers in particular from the coercive attention of male ministers. Putting the ban in a broader context, an editorial published in The Australian Financial Review, noted the recent suspension of a consulting firm's managing partner following a sexual harassment complaint and stated with approval that 'Malcolm Turnbull's blanket sex ban between ministers and staff members, in response to Barnaby Joyce's extramarital affair with a staffer 17 years his junior, has set a new workplace standard.'

<http://www.afr.com/opinion/editorials/work-and-sex-rules-change--and-for-the-better-20180228-h0ws0z#ixzz5Ec0H6300>

The Prime Minister, Malcolm Turnbull, in announcing the ban on sexual relations between ministers and their staff, referred to the need to make Parliament a workplace 'where women are respected'. He also referred to the gender-based power imbalance in Parliament. He stated, 'Most of the ministers, most of the bosses in this building if you like, are men and there is a gender, a real gender perspective here.' <https://www.pm.gov.au/media/press-conference-parliament-house-canberra>

The Prime Minister has been seen as implying that male ministers may use their positions of power inappropriately to pressure female staffers for sex.

Carol Johnson, Professor of Politics at the University of Adelaide, has endorsed Malcolm Turnbull's position on the power imbalance, stating, 'Parliamentary culture in general remains highly gendered, with women often bearing the brunt of sexist attitudes. The culture is also one that has often rewarded particularly macho conceptions of masculinity.'

<https://theconversation.com/turnbulls-sex-ban-speech-reveals-that-politics-is-still-not-an-equal-place-for-women-but-it-is-changing-91981>

Thus a ban on affairs between ministers and staffers has been supported by many as a means of protecting these staffers, especially women, from sexual exploitation by ministers.

2. Sexual relationships between ministers and staff are contrary to community expectations

Supporters of a ban on sexual relations between ministers and their Parliamentary staff claim that the ban reflects general community attitudes. They claim that the community as a whole values the institution of marriage and thus does not approve of married ministers (or staffers) having affairs. It has also been claimed that whether the parties involved are married or not, the community is suspicious and disapproving of 'office affairs' and expects ministers to behave with more respect for their positions.

In announcing the change to the Ministerial Code of Conduct on February 15, 2018, the Prime

Minister, Malcolm Turnbull, detailed the values he was seeking to promote within the culture of the Australian Parliament. He referred to, 'the values that we all should live, values of respect, respectful workplaces, of workplaces where women are respected.' The Prime Minister also referred to respect for marriage, stating, '(Barnaby) knows that he let down his wife and daughters and he has apologised for that and to them... Ministers should be very conscious that their spouses and children sacrifice a great deal so they can carry on their political career. Their families deserve honour and respect. Ministers should also recognise that they must lead by example. Values should be lived.' <https://www.pm.gov.au/media/press-conference-parliament-house-canberra>

On February 17, 2018, during an interview on 60 Minutes, the Prime Minister, Malcolm Turnbull, indicated that he had imposed the ban because he believed it was in accord with community values. He stated, 'I certainly felt that the values I expressed and the action I took would have the overwhelming endorsement of Australians.' <http://www.abc.net.au/news/2018-02-19/malcolm-turnbull-defends-barnaby-joyce-criticism-and-sex-ban/9459878><http://www.abc.net.au/news/2018-02-19/malcolm-turnbull-defends-barnaby-joyce-criticism-and-sex-ban/9459878>

A Newspoll released on February 18, 2018, revealed the extent of public disapproval of affairs between ministers and their staffers. The poll of 1632 voters taken between February 15 and 18 found Mr Joyce had lost the confidence of the majority of Australian voters, with 65 per cent believing he should quit as Nationals leader. Only 23 per cent backed Mr Joyce to remain in the job.

Twenty-nine per cent of voters polled believe Barnaby Joyce England should step down as leader of the Nationals but still remain in parliament on the backbench, 15 per cent believe he should step down and not recontest the next election, and 21 per cent of voters say Mr Joyce should quit politics immediately. <https://www.theaustralian.com.au/national-affairs/newspoll-joyce-should-quit-as-voters-punish-government/news-story/a534bcf71efa99571bb359dd54772c04>

Referring specifically to popular attitudes to marriage, commentator Miranda Devine noted that the institution enjoys majority public support. In an article published in The Advertiser on February 21, 2018, Devine stated, 'Most married people in Australia treat their vows seriously and make the effort to resist the temptation of affairs. Most marriages don't end up in divorce in Australia - in fact fewer than one third break down - and most people don't cheat on their spouse... So good on the PM for upholding standards in government that most Australians either live by or at least aspire to.' <http://www.adelaidenow.com.au/rendezview/the-bonkban-goes-to-the-heart-of-something-bigger/news-story/480eaea3244b83e1495baadec966e3a4>

3. There is the potential to advance or otherwise favour the staffer involved

Supporters of a ban on sexual relations between ministers and their staffers also argue that this reduces the likelihood of favouritism. There is concern that ministers may seek to advance the careers or otherwise assist members of their staff with whom they are in a sexual relationship. It has been alleged that this sort of favouritism was displayed with regard to Vikki Campion who began an affair with Barnaby Joyce while she was the minister's media adviser. She was later transferred to two desirable positions in the departments of other ministers. Accusations have been made that Ms Campion was shown favouritism in these transfers, in part due to her special relationship with Mr Joyce.

In an opinion piece written by George Williams, Dean of Law, at the University of New South Wales and published on the University's Newsroom site, Williams states, 'When the government decided to act, it transferred her twice to high-salary positions in other ministerial offices. There was no requirement that these positions be advertised or that she be selected on merit, despite both jobs being paid for by the taxpayer.' <https://newsroom.unsw.edu.au/news/business-law/barnaby-joyce%E2%80%99s-indiscretions-pose-questions-power-and-passion>

Williams further noted that not only were Campion's original appointments potentially questionable because they may well not have been based on merit, there was also the possibility that even once appointed Ms Campion's work may not have been properly overseen and assessed because of her relationship with the then Deputy Prime Minister, Barnaby Joyce. Williams states,

'(Campion) came to work for other members of the government over whom the Deputy PM exerted great power. This no doubt left her new political masters in an awkward position if they felt Campion should be dismissed for poor performance.' <https://newsroom.unsw.edu.au/news/business-law/barnaby-joyce%E2%80%99s-indiscretions-pose-questions-power-and-passion>

Wendy Tuohy argued in an analysis published in The Herald Sun on February 17, 2018, that such workplace relationships were likely to create workplace disharmony. Tuohy stated, 'Issues may arise if there is any perception of favouritism, or if other staff feel affected by "covert behaviour".'

<http://www.heraldsun.com.au/news/victoria/recent-sex-scandals-have-taken-the-romantic-edge-off-the-workplace-affair/news-story/31ea6647857b5d9d69bb3840db7d44c0>

Tuohy explains some of the strains that may be created as other staff become concerned that an intimate relationship between co-workers is having flow-on effects that alter the workplace. Tuohy notes, 'Di Hallam (Barnaby Joyce's chief of staff) reportedly quit Joyce's office last December to take up a departmental role after seeking to have his now-partner, Vikki Campion, shifted.'

<http://www.heraldsun.com.au/news/victoria/recent-sex-scandals-have-taken-the-romantic-edge-off-the-workplace-affair/news-story/31ea6647857b5d9d69bb3840db7d44c0>

4. Sexual relationships between employers and staff are becoming unacceptable in the corporate and sporting worlds and in other jurisdictions

Supporters of the ban on ministers becoming involved in sexual relationships with their staff argue that the Prime Minister's ban is in step with similar codes of conduct being adopted in the sporting and corporate sectors and a ban recently approved by the United States House of Representatives.

The Prime Minister, Malcolm Turnbull, made passing reference to the standards being applied in other areas of employment when he issued his media release announcing the ministerial ban. Mr Turnbull stated, 'Of course, you know what attitudes in the corporate world and elsewhere are to this kind of thing.'

<https://www.pm.gov.au/media/press-conference-parliament-house-canberra>
Wendy Tuohy noted in an analysis published in The Herald Sun, on February 17, 2018, 'High-flying AFL executives Simon Lethlean and Richard Simkiss... were made to walk last year for having extramarital affairs with more junior women in their workplace.'

AFL chief executive Gillon McLachlan announced the departures on July 8, 2017, following an emergency AFL Commission meeting. McLachlan stated there were 'no excuses' for the pair who had 'inappropriate relationships with younger women that work in the AFL industry'.

McLachlan further stated, 'I think we are being clear about what we stand for as an organisation and the two men have taken accountability for their actions in a way that I think is commendable.'

<http://www.afr.com/business/sport/afl-axe-falls-after-sex-scandals-20170714-gxb9kl>

Herald Sun columnist, Tuohy then cited a similar corporate example, 'John Neal, the former CEO of insurance giant, QBE...had his pay docked by a whopping \$550,000 in February (2017) for delaying telling the board about his relationship with his personal assistant. He went from the job in December (2017).'

<http://www.heraldsun.com.au/news/victoria/recent-sex-scandals-have-taken-the-romantic-edge-off-the-workplace-affair/news-story/31ea6647857b5d9d69bb3840db7d44c0>
QBE's code of conduct requires executives to inform the board of relationships that could be regarded as posing a conflict of interest. Referring to the deduction made to Neal's remuneration, QBE stated, 'Both parties agree some recent personal decisions by the CEO have been inconsistent with the board's expectations.'

<http://www.heraldsun.com.au/business/qbe-chief-john-neal-docked-550000-for-relationship/news-story/792580519b3d559b51c81097e779135e>
A week before Mr Turnbull's media release announcing changes to the Ministerial Code of Conduct, independent MP Cathy McGowan announced that Australia's federal parliament needed to look to the corporate and sporting world and to the United States for direction in how to manage sexual relations between elected or powerful figures and their staff. She indicated that she might table a private members bill outlining a means of dealing with this issue.

Ms McGowan stated, 'There is a belief the Parliament is behind community expectations and corporate practice...There are examples set by the process undertaken by the United States

Congress and in the Australian corporate sector, including the action of the AFL in July last year regarding relationships in the workplace.' <https://www.smh.com.au/politics/federal/bonking-ban-independent-mp-cathy-mcgowan-wants-to-stop-politicians-having-sex-with-staff-20180208-p4yzpo.html>

5. Sexual relationships with members of their staff distract ministers from their duties to the electorate and damage their credibility

It has been claimed that engaging in sexual relationships with their staff distracts ministers from performing their professional duties.

Independent MP Cathy McGowan, when calling for a possible ban on sexual relations between parliamentarians and their staff stated, 'The Parliament is a place of work, and good workplace practice includes clear expectations about behaviour.' <https://www.smh.com.au/politics/federal/bonking-ban-independent-mp-cathy-mcgowan-wants-to-stop-politicians-having-sex-with-staff-20180208-p4yzpo.html>

Ms McGowan's observation suggests that workplaces where managers are able to conduct affairs with their subordinates are not workplaces conducive to work.

Australian comedian, singer, and radio presenter, Emelia Rusciano, has stressed that what is primarily at issue is whether the turmoil emanating from Barnaby Joyce's private life has allowed him to perform his professional duties properly. Rusciano stated, 'In my opinion, we should be focusing down on Barnaby Joyce's job as a politician and has this affected the way he is governing our country.' <https://www.mamamia.com.au/barnaby-joyce-affair-cover-up/>

Herald Sun columnist Miranda Devine has detailed the impact that Joyce's affair has had on his Parliamentary and political performance before the affair even became public. In a comment posted on February 11, 2018, Devine stated, 'The betrayal...invariably affects job performance, as it did with Barnaby, who was noticeably out of sorts last year.

It also leads, inevitably, to a breakdown in office relationships and across the party...

In May at the NSW Nationals Conference in Broken Hill, colleagues say he "was a mess" ...'

After the affair became public, Devine argues that Joyce's credibility as a social conservative and supporter of traditional family values became suspect which also undermined his political performance.

Devine writes, 'The man in the pub in Inverell who angered Barnaby last year by reportedly saying "Say Hello to your mistress" was just expressing the disdain and disappointment so many people now feel about Barnaby...

He has just added to the soup of disillusionment in politics. And there is a cost for everyone.' <https://www.dailytelegraph.com.au/rendezview/the-true-cost-of-barnabys-actions-is-staggering/news-story/96bc850b8f6d2b77c8d7768c2c6befa2>

In an analysis published in The Conversation on February 11, 2017, Michelle Grattan similarly considered the impact that an affair with a staffer was having on Barnaby Joyce's political performance. Grattan writes, 'There's criticism of Joyce's recent performance, including his handling of the Nationals' part of the pre-Christmas reshuffle, which saw Victorian MP Darren Chester dumped from cabinet and assistant minister Keith Pitt ending up on the backbench. There's ruminating about how his new circumstances will play out in the wider Nationals' constituency, which tends to be conservative and family-oriented. Will people have long memories or will they just move on when the fuss dies down?

Perhaps most relevant is whether Joyce will lose his political energy as he deals with new personal circumstances and some loss of respect.' <https://theconversation.com/labor-moves-in-on-the-barnaby-joyce-affair-91632>

Arguments against banning ministers from having affairs with their staffers

1. Consensual sexual relationships are not harassment or exploitation

Opponents of the ban imposed by Prime Minister Malcolm Turnbull on sexual relations between ministers and staffers claim that such a ban confuses consensual relationships with harassment. Commentators have noted that the critical distinguishing feature of any sexual interaction is

whether it involves consent. Any sexual interaction that does not rely on the consent of both parties is regarded as harassment at best and as assault or rape at worst. In an opinion piece published in *The Conversation* on February 16, 2018, Paula McDonald, Professor of Work and Organisation, Queensland University of Technology, outlined those types of sexual relationship that were already prohibited by law irrespective of the context within which they occurred. The professor stated, 'Unlawful sexual conduct includes sexual abuse, sexual assault and sexual harassment. Sexual harassment is any unwanted or unwelcome sexual behaviour that makes someone feel offended, humiliated or intimidated. It is not interaction, flirtation or friendship that is mutual or consensual.' <https://theconversation.com/banning-workplace-romances-wont-solve-the-problem-of-sexual-misconduct-in-the-office-91975>

During an episode of the ABC's current affairs program Q & A, televised on February 15, 2018, Josh Bornstein, a lawyer, writer and board member of the Australia Institute, stated, 'The line is very big and bright and loud and it's the line called "consent". And so, the law essentially says it's illegal to harass someone sexually, and that means the conduct is unwelcome.'

<http://www.abc.net.au/tv/qanda/txt/s4793240.htm>

What provokes critics of the new ban imposed by the Prime Minister is that it treats all relationships, including the consensual, as improper if they occur between a Parliamentary minister or staffer.

These critics of Turnbull's recent ban on sexual relationships between ministers and staffers have noted that the precipitating event, the affair between then Deputy Prime Minister, Barnaby Joyce, and his media adviser, Vikki Campion, did not appear to involve sexual harassment or coercion. Josh Bornstein noted in regard to the Joyce-Campion relationship, 'Consensual relationships are perfectly OK at work. I don't have a difficulty - despite some of the issues with Barnaby Joyce - he's had a consensual relationship with a 33-year-old woman who is perfectly able to decide.'

<https://www.theaustralian.com.au/business/media/broadcast/turnbull-casts-himself-as-morality-police-over-sex-ban/news-story/e4339fa033a4d9e4e50cce1675821918>

Rules effectively discounting the significance of consent and which treat all women as victims irrespective of the nature of the relationships in which they are involved have been criticised as belittling women. Critics view the ban imposed by the Prime Minister, Malcolm Turnbull, in this light. They maintain that not all relationships between ministers and staff involve coercion or exploitation and that to assume they do is demeaning to those involved. Janet Albrechtsen's comment published in *The Australian* on February 21, 2018, states, 'Turnbull's ministerial sex ban isn't a godsend for junior female staffers in the workplace. It's patronising to imagine that women need protecting from power imbalances and the "boys' club" of Canberra. Plenty of women have the upper hand in private relationships.' <https://www.theaustralian.com.au/opinion/columnists/janet-albrechtsen/pregnant-pause-then-a-patronising-sex-ban/news-story/1032f0c1659a66a48016ef05ee8960b2>

2. Prohibiting consensual sexual relationships between ministers and staffers is an infringement of their human rights

It has been claimed that banning consensual sexual relationships between ministers and their staffers runs counter to common sense and accepted human behaviour. A large proportion of people meet sexual partners in the workplace. It is one of the area where adults most commonly congregate, and, it is argued, it is inevitable that people will find others whom they are sexually attracted to in this setting.

This point has been made by Josh Bornstein, a lawyer, writer and board member of the Australia Institute. Mr Bornstein has stated, 'People spend more time at work than they do at home.

Relationships of every conceivable kind are forged in the workplace. Friendships are made. Friendships are broken. Whether sex is involved or not, sometimes it gets messy. Affairs of all descriptions occur. Sometimes they evolve into marriage and babies. Sometimes they end badly.'

<https://www.smh.com.au/politics/federal/malcolm-turnbull-s-bonking-ban-is-a-misplaced-attack-on-consensual-sex-20180216-p4z0lp.html>

Bornstein concludes that attempts to prohibit such behaviour are an infringement of human rights.

He states, 'When employees sign an employment contract, they should not be asked to relinquish their humanity.' <https://www.smh.com.au/politics/federal/malcolm-turnbull-s-bonking-ban-is-a-misplaced-attack-on-consensual-sex-20180216-p4z0lp.html>

University of Canberra School of Law and Justice assistant professor Bruce Baer Arnold has argued in the same vein. Professor Arnold has stated, 'I think it's fairly fundamental in Australia that consenting adults are free to do what they want to do as long as there is no harm to anyone else.

If we're concerned about the rights, the freedoms and the dignity of all Australians, adults should be free to do what adults want to do.' <https://www.stawelltimes.com.au/story/5234905/sex-ban-slammed-for-depriving-adults-of-their-dignity/>

Similarly, Ronnie Fox, a British employment law specialist from Fox and Partners has stated, 'It's a basic principle of human rights that people can have relationships with whom they like...

In the UK you can probably say that the senior person mustn't have a relationship with a junior person without informing somebody, or perhaps rearranging the reporting line. You could say they mustn't be seen kissing and hugging and touching each other in the office.

Nobody can defend sexual harassment, bullying, intimidation, stuff like that, people abusing a senior position to have sex with a junior member of staff. But we're not talking about that, what we're talking about is a right to have a relationship with somebody at work and if it doesn't harm anybody, why should it be prohibited?' <http://talkradio.co.uk/news/australias-prime-minister-malcolm-turnbull-has-gone-over-top-minister-sex-ban-1802152409>

Other commentators have noted that the ban denies the autonomy of the individuals concerned in matters that are essentially private. In an opinion piece published in The Conversation on February 16, 2018, Paula McDonald, Professor of Work and Organisation, Queensland University of Technology, stated, 'Outright bans on consensual sexual relationships at work are likely to be seen by many employees as over-reaching into their private lives. They may also perceive that it undermines their autonomy and dignity.' <https://theconversation.com/banning-workplace-romances-wont-solve-the-problem-of-sexual-misconduct-in-the-office-91975>

While, Tom Switzer, the executive director of the right-wing Centre for Independent Studies, has argued, 'It implies young staffers can't be trusted to make decisions about their own sex lives.' Mr Switzer has further stated, 'And it licenses the press to investigate politicians' private lives. It's an invasion of privacy.' <http://www.afr.com/news/politics/malcolm-turnbulls-sex-ban-goes-too-far-liberal-insiders-20180219-h0wb3v>

3. Banning sexual relationships between ministers and staffers will be extremely difficult to enforce and will lead to media intrusion

Opponents of the ban on sexual relationships between Ministers and staffers argue that the ban will be very difficult to police.

The difficulty of enforcing such a regulation has been stressed by both commentators and letter writers. In a letter published in The Age on February 17, 2018, Ross Kroger wrote, 'How will he determine when, and if, consenting adults have had sex? If someone falls pregnant, will a paternity test be applied, or will the "video" of events be the conclusive proof? What level proof will LGBTIQ ministers and staffers be subjected to? And what exactly will the punishment be? Sacking or merely a demotion?' <https://www.theage.com.au/national/the-sex-ban-how-on-earth-will-this-ban-be-enforced-20180216-h0w6gc.html>

Other letter writers published in the same edition of The Age were openly scornful of the new ruling for its intrusiveness and impracticality. Norman Huon wrote, 'If Malcolm is fair dinkum about the "bonking ban" between ministers and staffers, he will have his work cut out for him. It will not be much fun running around the ministerial dormitories with Lucy and a flashlight on cold Canberra nights, making sure everyone is properly tucked in.' <https://www.theage.com.au/national/the-sex-ban-how-on-earth-will-this-ban-be-enforced-20180216-h0w6gc.html>

The Opposition's Deputy Leader, Tanya Plibersek, has similarly criticised the new standard for its impracticality and inappropriateness. Ms Plibersek stated, 'Does anybody genuinely believe that writing a clause into the Prime Minister's code of conduct - which the Prime Minister has shown

he's completely unable to enforce already - is going to make a difference to people's behaviour in private?

Honestly, are we really the country that starts sticking long lens cameras in people's bedrooms?' <https://www.smh.com.au/politics/federal/cameras-in-people-s-bedrooms-labor-blasts-turnbull-sex-ban-20180216-p4z0ls.html>

In a report published in the Financial Review, Aaron Patrick noted there was concern that the pursuit of ministers in breach of the new regulations would encourage the media to intrude into aspects of politicians' lives that had previously been treated as private. Patrick states, 'Others are deeply concerned that journalists have been given a green light to report on politicians' affairs, which have long been protected by an informal convention guarding them from parliamentary scrutiny and media coverage.' <http://www.afr.com/news/politics/malcolm-turnbulls-sex-ban-goes-too-far-liberal-insiders-20180219-h0wb3v>

Janet Albrechtsen, a columnist for The Australian has similar apprehensions about media intrusion which she expressed in the same way. Albrechtsen states, '[Turnbull's] sex ban is a green light to the media to delve into the sex lives of ministers, to check if they're having "sexual relations" with a staff member. Get set for a proliferation of gossip and alleged gotcha moments from a media co-opted by Turnbull to be Canberra's moral police.'

<https://www.theaustralian.com.au/opinion/columnists/janet-albrechtsen/pregnant-pause-then-a-patronising-sex-ban/news-story/1032f0c1659a66a48016ef05ee8960b2>

4. Regulating sexual relationships is more effective than attempting to ban them

Those who agree that some action needs to be taken regarding the sexual relations of ministers and their staff tend to argue that regulation is more effective than bans.

It is claimed that sexual relations between ministers and staff causes two potential problems. One is the scope for various forms of harassment and abuse where a minister uses the power of his/her position sexually to coerce or intimidate a subordinate. Critics note that this behaviour is already illegal and that all that is required is proper complaints processes.

The other potential problem is the scope for favouritism and similar misuses of power. This occurs particularly where there is the suspicion that a minister has used his/her position to advance a subordinate with whom s/he is in a sexual relationship. It is in this last area that commentators claim there is need for regulation.

In an opinion piece published in The Conversation on February 17, 2017, Paula McDonald, Professor of Work and Organisation, Queensland University of Technology, stated, 'A common requirement in codes of employee conduct is for the person with the greater power to notify their supervisor of the relationship and immediately cease any decision-making role in respect of the subordinate.' <https://theconversation.com/banning-workplace-romances-wont-solve-the-problem-of-sexual-misconduct-in-the-office-91975>

In any workplace relationship involving a superior and a subordinate, colleagues are likely to suspect favouritism. Critics claim that the one means of dealing with this is full disclosure.

Workplace author and psychologist, Meredith Fuller, has stated, 'The most important thing people need is transparency of communications .' <http://www.heraldsun.com.au/news/victoria/recent-sex-scandals-have-taken-the-romantic-edge-off-the-workplace-affair/news-story/31ea6647857b5d9d69bb3840db7d44c0>

Protocols generally require that couples must announce their relationships and, in most cases, one or the other should be transferred or reassigned.

Australia's Fair Work Commission advises companies to consider the following key steps: Invoking a Conflict of Interest Policy that covers managers and subordinates, and outlines possible solutions; for example, reassigning one of the employees should a relationship form Implementing a Disclosure Policy that obliges those involved in an office romance to declare their relationship to human resources personnel

Ensuring that policies on office relationships are clear to all staff

Training supervisors to effectively manage any work relationships

<https://www.intheblack.com/articles/2017/05/18/office-affairs-are-they-anybodys-business>

Critics of Turnbull's ban have suggested that a regulatory approach, guarding against inequality rather than sexual affairs, would have provided greater assurance for the ministers, their staff and the electorate.

This point was made by columnist for The Australian, Janet Albrechtsen, who states, 'It's not sex between consenting adults, even between a minister and staffer, that matters. It's a boss's preferment of a staffer, arranging new highly paid jobs that matters. Had Turnbull stepped up earlier, telling voters that such preferment and conflicts will not be tolerated, he would have done a fine and measured job.' <https://www.theaustralian.com.au/opinion/columnists/janet-albrechtsen/pregnant-pause-then-a-patronising-sex-ban/news-story/1032f0c1659a66a48016ef05ee8960b2>

5. Bans will force relationships underground with adverse consequences

It has been suggested that the ban is unlikely to be effective because many ministers and staffers who become involved in sexual relationships will simply hide their association. It has been claimed that the threat of transfers, penalties and general public exposure is likely to make couples in these prohibited relationships more determined to hide them.

In a letter published in The Courier Mail of February 17, 2018, Lurie Parker wrote, 'Malcolm Turnbull's reactionary measure banning ministers from engaging in sexual relations with their staffers is reminiscent of the Prohibition era in the 1920s and 30s in the US. All that did was drive the liquor trade underground and create gangsters such as Al Capone. I think a similar scenario could be played out at Parliament House.'

<http://www.couriermail.com.au/news/opinion/letters-to-the-editor-february-18-2018/news-story/edd58483f8d36348175e825c7f1784f2>

Similar claims have been made by Peter Wilmot, the chairperson of the Australian Human Resources Institute, who has stated, 'The parties (will) work very hard to cover their footsteps. Frankly it's unlikely to cause that conduct to stop.' Wilmot suggests that where the consequences of exposure are potential dismissal, transfer or demotion then there is very little incentive for the parties involved to reveal their situation. Indicating what being exposed could cost, Wilmot states, 'Ministers now risk losing their jobs if they dare to engage in sex with staff, including public servants, whether they are married or not.' <http://www.dailymail.co.uk/wires/aap/article-5398657/Severe-sex-ban-backfire-experts.html>

It has further been suggested that not only is the ban likely to be futile because people will merely hide their behaviour, the intensified need for secrecy will have adverse effects on those involved. Paula McDonald, Professor of Work and Organisation, Queensland University of Technology, has explained some of the negative consequences that could result from forcing couples to hide their relationships. McDonald states, 'Bans may drive relationships underground. Employees who fear punitive consequences from ignoring a codified directive will likely conduct the relationship in secret. This may obfuscate loyalties and threaten the development of trust among co-workers. Engaging in a secretive relationship when those involved would prefer it was open may also prove stressful.' <https://theconversation.com/banning-workplace-romances-wont-solve-the-problem-of-sexual-misconduct-in-the-office-91975>

It has been claimed that the cost of this secrecy will be great for both the individuals involved and for the Parliament. Clear protocols around sexual relationships in the workplace, including disclosure, are regarded as best practice. The ban, in acting against disclosure, will mean that measures cannot be put in place to ensure that no favouritism or conflicts of interest arise. An institution cannot be protected against an unknown relationship.

Cara Waters, writing for The Sydney Morning Herald has noted that disclosure, not a ban, would have spared the government political pain regarding the Joyce-Campion affair. She writes, 'At the very least, disclosure when the relationship began would mean the government wouldn't be in the sticky situation of dealing with concerns about Joyce's use of public money to facilitate his affair.' <https://www.smh.com.au/business/small-business/why-a-bonk-ban-isn-t-good-for-business-20180216-p4z0kl.html>

Further implications

Malcolm Turnbull justified his ban on sexual relations between ministers and staffers as an attempt to address 'very serious cultural issues' within the Parliament. He went on to refer to the power imbalance that exists within the Parliament, where a majority of what he referred to as 'bosses' were male. The clear implication was that female subordinates were being preyed upon by their male superiors and Turnbull's intention was to create a situation 'where women are respected'. <https://www.pm.gov.au/media/press-conference-parliament-house-canberra> However, the women on whom Mr Turnbull most focused were not those working within the Parliament, rather the 'world of woe' which he mentioned was endured primarily by Barnaby Joyce's wife and daughters. Both in his speech announcing the ban and in the new foreword Mr Turnbull has written for the ministerial code of conduct, he states 'Ministers should be very conscious that their spouses and children sacrifice a great deal so they can carry on their political career. Their families deserve honour and respect.' While these are worthy sentiments, it seems remarkable that the Prime Minister should be promoting marital fidelity and respect for the family unit as part of a ministerial code of conduct.

All other directives in the code of conduct have a direct bearing on the ministers' performance of their parliamentary functions. Spousal fidelity seems irrelevant to this. It may be that a happily partnered minister will perform his/her duties more effectively, but the state of an individual's personal life is something beyond the scope of either a Prime Minister or any employer to engineer or dictate.

To the extent to which the Prime Minister was trying to protect female staffers from sexual harassment, there is little to suggest that the immediate impetus for the ban actually falls within this category. Despite the extraordinary level of media attention directed at the sexual relationship between Barnaby Joyce and his former media advisor, Vikki Campion, there appears to have been no suggestion that Joyce used his relatively privileged position to coerce Campion to enter into a sexual relationship with him.

What should be directly of concern to the Parliament is that there are potential conflicts of interest and scope for favouritism where a minister is having an affair with a subordinate. As human resources managers HR Advance note, 'It needs to be considered whether one of the parties is getting potentially favourable treatment, particularly when there is a direct reporting line.'

<https://hradvance.com.au/news-articles/what-can-employers-learn-from-the-afl-affairs-scandal> 'A direct reporting line' simply means where one party is directly overseen by and responsible to the other. This is an area where the Prime Minister and any other manager is entitled to intervene. Prior to the Prime Minister's intervention, the ministerial code of conduct already required that ministers not be able to employ family members. The rationale for this is the same; family members could well receive favourable treatment.

The Prime Minister made the claim that in imposing the ban he was following the lead of the corporate world. This is not the case. The corporate world cannot legally interfere in the personal life of an employee. What the corporate world does do is attempt to ensure that where sexual relationships form between employees they are declared and one of the two involved is likely to be transferred. Mr Turnbull has not put either of these measures in place, rather he has taken the extreme and unenforceable step of stating that no sexual relationships can exist between ministers and their staffers.

In his statement announcing the ban, Mr Turnbull stated, 'I am making today, some changes to the ministerial standards. I want to say that these will not be the last ones I will make. I will be working through this rather old document and making sure that it speaks clearly about the values of respect in workplaces, the values of integrity that Australians expect us to have.'

<https://www.pm.gov.au/media/press-conference-parliament-house-canberra>

It will be interesting to note whether Mr Turnbull does attempt to put in place disclosure and relocation requirements. It seems unlikely that this will happen as it is hardly possible to make regulations for rationally managing a sexual relationship which is not supposed to exist.

Some commentators have suggested that Malcolm Turnbull's sex ban, though unlawful under industrial law, is part of a pattern of overreach where employers or others in authority attempt to regulate excessively the lives of their employees or subordinates. It has further been claimed that

the Prime Minister's ban is likely to encourage such intrusions being attempted to an even greater degree. McDonald Murholme's managing director, Alan McDonald, an employment lawyer, has stated, ' It is dangerous for the PM to impose a ban on sexual relations between consenting adults on the advice of his wife which is contrary to the principles of current workplace law...

Under section 351 of the Fair Work Act 2009 (Cth), it is unlawful to dismiss an employee because of the attribute of marital status... The Prime Minister's code doesn't depend on legal status but he gets away with it by saying, "If you want to be on my team, these are the conditions." But it's not a lawful requirement a company could impose.' <http://www.news.com.au/finance/work/at-work/legal-experts-weigh-in-on-malcolm-turnbulls-new-ban-on-sexual-relationships-with-staff/news-story/4f64d1b3a9290290e952650325bd6150>

McDonald has warned that the Prime Minister's ban could lead companies to attempt to act in the same way, which would be illegal. It would also appear to be unjust and inhumane.