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Changing the culture

Codes of conduct for the Commonwealth Parliament





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Submission to the Joint Select Committee
on Parliamentary Standards

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Introduction

2021 was a turning point for Australia's parliamentary workplaces. Revelations of sexism, misogyny and bullying led to a reckoning that could not be ignored. The *Set the Standard* report by the Australian Human Rights Commission received evidence from 1,723 individuals and 33 organisations. While it is easy with the passage of time to forget the shock of its findings, the 51 per cent of people in Commonwealth parliamentary workplaces who reported suffering sexual harassment or bullying must not be forgotten as the Committee undertakes its work to implement the report's recommendation to develop a code of conduct.

The case for a code of conduct

As Professor Sarah Childs argued in the *Good Parliament* report for the UK House of Commons, parliaments play an important symbolic role in a society above and beyond their substantive roles. They should embody the principles of equality and fairness and act as 'role-model' institutions. Parliaments should not merely reflect their societies and cultures, but lead them with best practice.

Far from embodying best practice, to date, the Parliament of Australia has actively avoided taking responsibility for the conduct of its Members and Senators. Committees of both the House of Representatives (2011) and the Senate (2012) considered, but failed to introduce, a code of conduct or determined such a code was not warranted. As recently as August 2020 the Senate Finance and Public Administration Legislation Committee reaffirmed this position, stating that the best scrutiny mechanism for the conduct of parliamentarians was regular free and fair elections. Since then, new evidence, including that presented in *Set the Standard*, has revealed the extent of misconduct in the parliamentary workplace and the importance of establishing standards of behaviour. It is also clear that the federal parliament is out of step with best practice; all parliaments in the Australian states and territories have codes of conduct for their members.

The *Review of the Parliamentary Workplace: Responding to Serious Incidents* undertaken by Stephanie Foster noted that 'All parliamentarians should clearly articulate that assault, sexual assault, sexual harassment, and serious or systemic bullying and harassment are unacceptable in their workplaces, and act to support that commitment where necessary'. Foster recommended this be done by amending the Statement of Ministerial Standards (now called the Code of Conduct for Ministers) and Statement of Standards for Ministerial Staff (now called the Ministerial Staff Code of Conduct). Under the new government these codes of conduct have been updated to include requirements for conduct that 'supports a safe and respectful workplace' and for ministers to maintain 'a safe and respectful workplace for staff'. However there is no code relating to harms experienced in the workplace that applies to all parliamentarians, parliamentary and political staff, staff of parliamentary departments, volunteers, interns and visitors.

We support the approach recommended in the *Set the Standard* report of having one overarching behaviour code to cover all those working in the parliamentary precincts and workplaces and a separate code or codes to cover all parliamentarians (including those who are ministers) and their staff.

Establishing these codes of conduct will perform three essential functions. First, it will address the need for greater oversight and accountability for employment practices and conduct in the parliamentary workplace. Second, it will articulate the values and norms that should guide behaviour within the parliamentary precinct – a critical element in the cultural transformation needed for an inclusive and gender-sensitive Australian parliament. Third, it will contribute to restoring trust in Australia's democratic institutions.

What codes need to be put in place

A wide variety of people enter and inhabit parliamentary workplaces. For this reason, the arrangements put in place to improve the culture of parliament and make it a safe workplace need to apply beyond parliamentarians and their staff.

In establishing a new code, there are several elements that need to be considered – including the groups to which the code applies, the relevant mechanism used, the substantive content of the code, the institutional structures that support and enforce the code, and the sanctions put in place if the code is breached.

While it is disappointing that the Australian Parliament is lagging behind other democratic parliaments in implementing codes of conduct for parliamentarians, it does mean we can learn from their experience and build on what has worked and what hasn't. This will enable us to create a uniquely Australian system that delivers a safer, more respectful workplace.

International approaches

There are a number of key elements that are consistent across parliamentary codes of conduct in Canada, Scotland, the United Kingdom and New Zealand. They present alternative norms of conduct to established practices and unwritten norms such as Westminster traditions of 'robust parliamentary debate' and personal attacks.

All include an explicit statement on the unacceptability of bullying and harassment (including sexual harassment) and an independent commissioner or body to investigate complaints. In the European Parliament members sign a declaration that they will comply with the code of conduct and failure to do so disqualifies an MEP from office-holding or participating in official delegations.

New Zealand

Non-binding 'Behavioural Statements for the Parliamentary Workplace' were introduced for parliamentarians in 2020, covering bullying, harassment and sexual harassment as well as the need to behave respectfully, fairly and to speak up if observing unacceptable behaviour.

While the statements are not legally binding, in July 2022 a Commissioner of Parliamentary Standards was established, with power to investigate complaints about conduct of MPs that does not align with the Statements.

The Commissioner has the power to provide a report of their inquiry to the Speaker and to provide an annual public report on complaints. The authority to act on the report rests with the Speaker.

A binding Code of Conduct does however apply to the Parliamentary Service, which includes the staff of MPs. This code must be acknowledged and agreed to by Parliamentary Service employees and applies to agency staff, volunteers, interns, consultants and contractors. The Code covers integrity issues as well as behaviours such as bullying, harassment and sexual harassment. Serious breaches of the code can lead to dismissal. There is a separate code of conduct for staff who work for ministers.

Early attempts to have all parliamentarians sign up to the Behavioural Statements were unfortunately unsuccessful. This despite the statements being introduced as setting 'parliament's expectations for how we behave towards each other, while still allowing for free speech in parliament and freedom of the press, which are essential for a functioning democracy'.

The principles behind the New Zealand system are sound, particularly around the inclusive and proactive behaviours outlined for the workplace. However, the fact the code is not legislated and the lack (until very recently) of a clear process for dealing with complaints has meant the system has so far been ineffective in managing emerging issues.

United Kingdom

The United Kingdom has a Behaviour Code for parliament that applies to all those in the Westminster precinct as well as specific codes for parliamentarians and staff. It also has highly developed codes of conduct for parliamentarians and independent mechanisms for review.

Parliamentarians

In addition to the Behaviour Code, MPs are subject to the House of Commons Code of Conduct. The code is enacted in the Standing Orders and applies to MPs in all aspects of their public lives. It includes broad principles and values that govern the conduct of MPs as well as more specific rules on what is and is not allowed in terms of integrity, personal interests and the treatment of staff with dignity, courtesy and respect.

The code is administered by the Independent Parliamentary Standards Authority. Violations of the code can be investigated by the Parliamentary Commissioner for Standards (with whom members are required to cooperate) who provides a report to the Committee on Standards. The Committee then considers the report from the Commissioner and provides a report with recommendations to the House. The House is then able to impose a sanction on the member as necessary.

Members of the House of Lords are also subject to a code of conduct and the House of Lords Commissioners for Standards are responsible for the independent and impartial investigation of alleged breaches. The Code is kept under review by the Conduct Committee, which includes several lay members (non parliamentarians). The Code states that 'Members are required to treat those with whom they come into contact in the course of their parliamentary duties and activities (including parliamentary proceedings) with respect and courtesy. Behaviour that amounts to bullying, harassment or sexual misconduct is a breach of this Code.'

A separate ministerial code is also in place, which governs the conduct of government ministers and is overseen by the Cabinet Office.

Staff

In the House of Commons, all staff are covered by the overall behaviour code while physically working in parliament but there is no specific code of conduct for MPs' staff. There is a code of conduct for House of Lords Staff which prohibits 'behaviour that amounts to bullying, harassment or sexual misconduct'.

Special Advisers (equivalent to ministerial staff in Australia) are covered by the Code of Conduct for Special Advisers and the Civil Service Code. Neither specifically prohibits bullying and sexual harassment. As Special Advisers operate physically within civil service departments they are not generally involved in safety issues in the parliamentary workplace.

Canada

Canada has detailed codes of conduct for parliamentarians and their staff and clear review processes.

Separate arrangements are in place for the House of Commons and the Senate in the Canadian Parliament. The Members of the House of Commons Workplace Harassment and Violence Prevention Policy applies to parliamentarians, current and former staff and is an appendix to Standing Orders. The policy includes a requirement for parliamentarians to attend training on preventing harassment and violence in the workplace and to ensure their employees attend. It also includes an obligation to respond or refer all occurrences of harassment or violence within seven days of notification. A separate conflict of interest policy is also in place. Complaints are made to the Chief Human Resources Officer of the House of Commons/Investigator who can report to the Standing Committee on Procedure and House Affairs.

There is a separate policy to cover misconduct between Members, the Code of Conduct for Members of the House of Commons: Sexual Harassment. The policy establishes an investigation and sanctioning process. Every member must commit to contributing to a work environment free of sexual harassment by signing a pledge and returning it to the Chief Human Resources Officer.

Senators are bound by an Ethics and Conflict of Interest Code which prohibits harassment and violence and a Senate Harassment and Violence Prevention Policy applies to all senators and their staff. The policy outlines a process for investigation, findings, sanctions and detailed reporting. The Senate Ethics Officer, an independent officer of the Senate, receives reports from an external investigator and then reports to the Standing Committee on Ethics and Conflict of Interest for Senators. The committee may recommend disciplinary measures for consideration by the Senate, such as suspension or expulsion, or consider remedial or corrective measures.

The staff of MPs and senators are subject to the same policies as parliamentarians. Ministerial staff are subject to a Respectful Workplace Policy which states that 'Harassment, violence and discrimination will not be tolerated, condoned or ignored.' Under the policy Ministers are required to 'provide all employees with a harassment, violence and discrimination-free workplace'. This policy aims to protect ministerial staff (and ex-employees) but also binds them to standards of conduct. Ministerial staff must sign the policy on starting their employment with the commitment: 'I understand that compliance with this policy constitutes a condition of my employment and that any violation of this policy will lead to corrective measures, which may include disciplinary measures up to and including dismissal.'

Scotland

The Scottish Parliament's Code of Conduct was updated in May 2021 and governs behaviour of Members of the Scottish Parliament (MSPs) in relation to declaration of interests, paid advocacy and lobbying, engaging with constituents as well as general conduct. It covers the use of expenses, treatment of others, use of parliamentary staff, conduct in the chamber, confidentiality rules and responsibilities to their own staff. As well as requiring others to be treated with courtesy and respect, it prohibits bullying, harassment (including sexual harassment) and other inappropriate behaviour.

Complaints are dealt with by the Commissioner for Ethical Standards in Public Life in Scotland, and reports to the Standards, Procedures and Public Appointments Committee. The committee can recommend the imposition of sanctions against a member, the decision on which is then made by the parliament.

Members must take all reasonable steps to ensure their staff are fully aware of, and abide by all policies, rules, requirements and behavioural standards that apply to the conduct of staff, as well as compliance with the code of conduct. When a complaint has been made, parties are prohibited from talking to the media about the complaint.

A uniquely Australian approach

An overarching code of behaviour is required to set the culture and expectations of parliamentary workplaces as one that sets the standard for the nation and sends a clear signal about the values that underpin Australia's democracy.

This should then be bolstered by codified standards for all parliamentarians and their staff that set out clear behavioural expectations, an independent process for investigating complaints and a set of sanctions and consequences. Given the unique employment status of parliamentarians, the application of codes of conduct and particularly sanctions are more complex than for staff employed through standard contracts. The code should apply to all legislators, including Ministers.

For staff, we recommend separate codes be developed for the staff of ministers and of legislators, recognising their different work. This is a feature in several state legislatures, for instance, staff codes of conduct in the ACT Legislative Assembly make this distinction.

Code of Behaviour for the Parliament of Australia

The Parliament of Australia should be a model workplace, where everybody is treated with respect and courtesy.

Whether you are a visitor or working in Parliament House or elsewhere, there are clear guidelines on how you should be treated or how you should treat others:

- Ensure the parliament meets the highest standards of integrity, courtesy and mutual respect
- Make the parliament a safe and inclusive workplace where diversity is valued
- Show that bullying and harassment, including sexual harassment, are unacceptable
- Speak up about any unacceptable behaviour
- Act professionally towards others
- Participate in training on harassment prevention
- Understand that unacceptable behaviour will be dealt with seriously and independently, with effective sanctions.

A code of conduct for parliamentarians and staff

In developing our model codes of conduct we have drawn from key elements of codes already debated and adopted in comparable parliaments in both Australia and overseas, as well as the proposed requirements set out in the Commonwealth Parliamentary Standards Bill 2020 put forward by Dr Helen Haines MP.

Table 1 shows key features of codes of conduct and behaviour standards in a number of similar parliamentary systems internationally. There are clearly key elements around values that drive parliamentarians, the need to act with integrity and ensuring workplace safety that are common features and should form the basis of codes in Australia.

The lack of comprehensive standards for members of the House of Representatives and the Senate is clear. The Code of Conduct for Ministers as updated in June 2022 is the most comprehensive of the current standards in the federal parliament; however its application is limited to a subset of parliamentarians and it is enforced by the Prime Minister, rather than being independently administered.

The Haines Bill of 2020 provides a useful starting point for statutory codes of conduct for parliamentarians and their staff, outlining a framework for independent investigation and enforcement of breaches of the codes. While the proposed Bill includes most of the elements around values, and integrity that are features of codes of conduct and arrangements in similar countries, it was developed ahead of the *Set the Standard* review and does not include key elements around work health and safety. We believe it is important to include additional obligations to foster a safe working environment, to speak up or report unacceptable behaviour and to undertake mandatory training.

Table 1: Key elements of codes of conduct

	International approaches (codes and standards)				Australian approaches (Commonwealth)				
	United Kingdom	Scotland	Canada	New Zealand	House Standing Orders	Senate Orders	Code of Conduct for Ministers	Ministerial Staff Code of Conduct	C/wth Parl Stds Bill 2020 (Helen Haines)
VALUES									
Demonstrate leadership	✓						✓		✓
Do not discriminate									✓
Behave with respect and courtesy	✓	✓	✓	✓			✓	✓	✓
Encourage diverse perspectives				✓					✓
Treat staff with respect	✓	✓		✓			✓		✓
Act with fairness							✓		✓
Don't abuse power/use power to help others	✓		✓	✓			✓	✓	✓
INTEGRITY									
Act with/uphold standards of integrity	✓		✓				✓	✓	✓
Act in the public interest	✓		✓				✓		✓
Register/declare interests	✓	✓	✓		✓	✓	✓	✓	✓
Don't receive or use position for financial gain	✓	✓	✓				✓	✓	✓
An obligation to cooperate with investigations	✓						✓		✓
WORKPLACE SAFETY									
Statement that bullying, harassment and sexual harassment are unacceptable	✓	✓	✓	✓			✓		✓
Responsibility for work health and safety issues		✓	✓		✓		✓		
Foster a safe and respectful environment				✓			✓	✓	
Obligation to speak up/ not tolerate unacceptable behaviour	✓	✓	✓	✓					
Mandatory training			✓				✓	✓	

What should the mechanism be?

There are a range of potential mechanisms available to meet code-of-conduct requirements and expectations for parliamentarians and their staff, such as new or amended legislation or updates to standing orders and employment contracts. These mechanisms have varying levels of complexity and significant interdependencies with the broader integrity agenda. We support the new architecture outlined in the *Set the Standard* review, however, the exact mechanism is not as important as ensuring the codes are comprehensive and that a strong legal framework is in place to ensure they can be enforced.

At a minimum, there is a clear need for an independent commissioner to investigate and report to parliament, with parliament to impose sanctions for MPs and Senators. The Haines Bill proposed investigations be conducted by a Parliamentary Standards Commissioner; *Set the Standard* recommended an Independent Parliamentary Standards Commission; the Foster Report recommended the Parliamentary Service Commissioner undertake such a role. The UK has the highest level of independence in its disciplinary and investigative architecture and includes people external to parliament, known as 'lay members', indicating that the entire community has an interest in the conduct in the parliamentary workplace.

Whichever actor or body is tasked with oversight of the codes, it is vital that this be independent and that an annual report be tabled about the work of the body, including numbers of complaints investigated, the general nature of any breaches and results of regular surveys of those working in parliamentary workplaces about their perceptions of safety and culture at work.

Drawing from international experience, it is recommended that parliamentarians are not given the option to actively 'sign up' to the code of conduct or not. The risk of individual parliamentarians refusing to sign up to the code has the potential to undermine its status. Having it embedded in legislation or standing orders will ensure that the code is mandatory.

In line with the code proposed by Dr Haines (and codes in other jurisdictions) codes for parliamentarians and staff should also include post-retirement and post-separation restrictions. These are currently included in the Lobbying Code of Conduct but the ANAO in its 2020 audit found there is a lack of awareness of this code and a lack of compliance and enforcement. Post-employment activities need stronger regulation to prevent corruption, conflicts of interest and distortion in policy making in favour of private interests. While references to these policies do appear in the latest ministerial and ministerial staff codes, they are not addressed in detail.

With regard to codes of conduct for ministerial staff, it is essential that oversight be transparent and not solely within the purview of employing ministers and the prime minister. The apparent lack of enforcement of the current ministerial staff code of conduct and lack of information provided to parliament about investigations has undermined confidence in the operation of the code. The conduct of ministerial staff should not be seen as a private matter for their employing ministers and the prime minister.

Sanctions and consequences

If the codes of conduct are to be taken seriously and fulfil their potential to increase public trust and improve workplace safety it is essential that they are accompanied by consequences or sanctions for non-compliance or breaches. While misconduct or breaches by staff can be addressed through workplace contracts, the elected nature of parliamentarians prevents action such as dismissal of MPs and Senators in similar circumstances. The tradition of parliamentary privilege, intended to protect parliamentarians from external 'interference', has entrenched beliefs that elected members should only be accountable for their conduct to their constituents.

Despite the challenges, it is possible to impose sanctions and consequences on parliamentarians. In Canada, in 2021-22 there were eight complaints of workplace harassment and MPs were respondents in five of the cases. The most common outcome was a 'negotiated resolution'.

In the UK, the Independent Complaints and Grievance Scheme operates alongside Bullying and Harassment and Sexual Misconduct policies for the UK Parliament. These processes seek to provide clear processes and natural justice in dealing with serious complaints. In May 2021 a complaint to the Independent Complaints and Grievances Scheme that an MP sexually harassed

a member of his staff was upheld by the Independent Expert Panel and its recommendation of six weeks suspension for the MP was approved by the House of Commons. Whereas the review process is independent of parliamentarians in the House of Commons, in the House of Lords recommendations for sanctions made by the Commissioner for Standards are reviewed by a Conduct Committee, which then presents its recommendations to the House for approval.

Table 2 outlines existing arrangements in Australia alongside examples of sanctions in use internationally and those proposed by Dr Helen Haines MP through the Commonwealth Parliamentary Standards Bill 2020.

Table 2: Sanctions for parliamentarians

Existing consequences for Commonwealth parliamentarians	Examples of sanctions and consequences in international parliaments	Consequences proposed in the Commonwealth Parliamentary Standards Bill 2020
<ul style="list-style-type: none"> • Ministers can be stood aside for a breach of Ministerial Standards • MPs can be ‘named’ and suspended from the House for 24 hours, or 3 consecutive sittings for a second offence within a calendar year, or 7 consecutive sittings for a third offence • MPs can be asked to make an explanation or an apology • Senators can be suspended from sitting for the remainder of the day’s sitting for a first offence, for 7 sitting days for a second offence, or 14 sittings days for a third offence. 	<ul style="list-style-type: none"> • A written apology to the parliament or an apology delivered on the floor of the parliament • Withdrawal of parliamentary passes or access to the parliamentary precinct • Suspension from the parliament with no salary • Withdrawal of appointments, removal from committees, loss of privileges such as participating in official delegations/travel • Fines 	<ul style="list-style-type: none"> • Notice to rectify issue • Policy or procedural changes • Fines • Formal censures • Two month suspension

While ideally codes and sanctions would be applied independently and at arm’s length from the political process, any system put in place will require some element of self-regulation due to parliamentary privilege.

Having an independent party (such as an independent commissioner) undertake the investigation and provide a report is an important first step to add a level of probity to the process before it is presented to the parliament for consideration. Transparency and publication of the reports are another way to bolster confidence in the system.

Related reforms

Alongside the codes, the broader suite of reforms outlined in the *Set the Standard* report must be implemented if there is to be the greatest chance of success in changing the culture and improving the safety of the Australian Parliament. Key reforms that are particularly relevant to the codes of conduct include a requirement for training, transparency and regular reviews of the system.

Requirement for training

New codes of conduct must be accompanied by training – both on preventing harassment and bullying and the obligations and responsibility of both parliamentarians and their staff under the code. This should be part of higher quality induction processes and required once in each parliamentary term. It is only if people clearly understand their responsibilities and their rights that the workplace culture and its safety will improve.

Transparency and reviews

Annual reports and surveys of how systems are operating as outlined in *Set the Standard* should be undertaken and published, with a formal review of the codes of conduct undertaken every five years. The review needs to be undertaken by an independent reviewer at arm's length from government of the day.

Conclusion

While there are challenges and technical issues the Committee needs to work through, these are not insurmountable. The fact that the Parliament of Australia is not a safe workplace must stay at the forefront of the Committee's mind throughout the development of codes of conduct. The codes must cover both culture and behaviour for everyone in the parliamentary precinct and be enforceable with real consequences for those who break it.

Historically, parliamentary privilege has been a major obstacle to improving workplace culture and providing parliamentarians with clear obligations. However there is a groundswell of support for change in the community. The cross-party support for the implementation of the *Set the Standard* Recommendations and the establishment of the Parliamentary Leadership Taskforce indicates that like other democratic institutions both in Australia and overseas, the Australian federal parliament is now committed to making the changes needed to ensure safety and respect in its workplaces.

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