

Human
Rights
Law
Centre

Ms Sharon Claydon MP
Chair
Joint Select Committee on Parliamentary Standards
Parliament House, Canberra
2600

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Dear Chair,

Submission to the Joint Select Committee on Parliamentary Standards

Thank you for the opportunity to make a submission regarding codes of conduct for Commonwealth parliamentarians, parliamentary staff, and parliamentary workplaces.

It's our position that codes of conduct should be introduced for parliamentarians, parliamentary staff and for the parliamentary precinct, in order to protect everyone who works or visits Commonwealth parliamentary workplaces. However, our submission will primarily focus on how a code of conduct for Commonwealth parliamentarians could be structured and enforced.

Parliamentarians are elected on the commitment that they will represent the values we, their constituents, hold. When parliamentarians fail to behave in accordance with basic levels of respect and integrity, the damage they inflict is far-reaching.

This joint parliamentary committee was initiated on the recommendation of Sex Discrimination Commissioner Kate Jenkins in her *Set the Standard* report, which followed serious allegations of gender-based violence taking place inside Parliament. It follows that a significant focus of this review should be on preventing gender-based violence. However, this is not the only issue that needs to be addressed in order to create a Commonwealth Parliament that will rebuild public trust in our political system.

Gender is just one basis upon which people are discriminated against, and gender inequality is just one driver of the harassment, bullying and assault (together, "discriminatory abuse") that can take place in Commonwealth parliamentary workplaces.

As the Jenkins' review noted, Parliament was considered by participants to be "inherently unsafe" for people who are Aboriginal and/or Torres Strait Islander, people of colour, people with disability, and/or LGBT+ people.¹

¹ Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, Report (2021) 15.

The need for a strong code of conduct for all parliamentarians has also arisen in another context. Dr Helen Haines' *Commonwealth Parliamentary Standards Bill 2020* (Cth) responded to public calls to tackle corruption and misconduct in the Commonwealth Parliament with a legislated code of conduct. It is important that this review picks up these broader integrity aspects of a code's operation.

In summary, our interest in seeing strong, enforceable codes of conduct is threefold:

1. to ensure that anyone working in or visiting a Commonwealth parliamentary workplace is protected from bullying, sexual harassment and sexual assault;
2. to ensure the Commonwealth Parliament sets a higher standard of behaviour for the whole country, not just with respect to gender-based violence, but with regard to other forms of discrimination and abuse including racism, ableism, homophobia and transphobia; and
3. to increase the community's trust in parliamentarians and, by extension, our democracy, by applying stronger standards of integrity across the board.

Recommendations:

1. Introduce codes of conduct that apply to parliamentarians, parliamentary staff, and to the parliamentary precinct.
2. Establish a strong, independent parliamentary standards commission to enforce the codes of conduct.
3. With respect to serious breaches of the codes of conduct, ensure the parliamentary standards commission is empowered to impose proportional sanctions or penalties as it deems appropriate, including suspension from the House for very serious breaches.
4. The parliamentary standards commission should be made up of multiple people with a range of lived experience and expertise.
5. The code of conduct should be sufficiently broad to cover a range of behaviour that captures all forms of discriminatory abuse, bullying, harassment and violence.
6. The code of conduct for parliamentarians should make specific reference to obligations to treat people with respect, and not breach laws pertaining to discrimination, harassment, bullying and assault.
7. More detailed policies, covering discriminatory abuse, bullying harassment and assault should sit under the code to create a shared understanding of what "respect" means. These policies should be developed by an independent parliamentary standards commission, informed by experts, and in consultation with people who will be subject to the policies, including their respective trade unions.
8. The code of conduct for parliamentarians should also cover broader issues of integrity.
9. The *Public Interest Disclosure Act* should be extended to people employed or engaged under the *Members of Parliament (Staff) Act 1984* (Cth).

1. Parliament should establish a strong, independent parliamentary standards commission to enforce a code of conduct for parliamentarians

(a) People who have experienced bullying, sexual harassment and sexual assault in Commonwealth parliamentary workplaces have asked for an independent body to investigate and enforce a code of conduct, including against parliamentarians

A complaints process that victim/survivors can have the highest confidence in is vital, given that 81% of people who told Commissioner Jenkins they had experienced sexual harassment did not report their experience, and 59% of people who said they had experienced bullying did not report their experience.

Commissioner Jenkins noted that 45% of survey participants felt most confident reporting sexual harassment, sexual assault or bullying to somebody outside of, or independent to, the parliamentary workplace. Of this percentage, she noted 58% indicated their preference for an independent reporting and complaints mechanism set up specifically for the parliamentary workplace.²

The Morrison Government introduced the Parliamentary Workplace Support Service, which is overseen by the Parliamentary Service Commissioner. Commissioner Jenkins concluded that the Parliamentary Service Commissioner lacked the enforcement powers and independence necessary to adequately enforce a code of conduct, especially where parliamentarians are involved.³ Commissioner Jenkins recommended an independent parliamentary standards commission be established, with powers to investigate and report on alleged breaches of a code of conduct as it applies to parliamentarians.

(b) Only an independent body and strong penalties will provide sufficient deterrent for parliamentarians who may be inclined to silence complaints of abuse, or abuse themselves

Staff in parliamentarian's offices are a key contingent of those in the Commonwealth Parliament who are at risk of experiencing or perpetrating bullying, sexual harassment and sexual assault. Each staff member is also employed by their respective parliamentarian, which leaves parliamentarians with a significant degree of control over how a complaint of sexual harassment, bullying or sexual assault from and/or about a staff member is handled.

Currently, for many parliamentarians, fear of the political cost of being associated with a scandal may prove a powerful incentive to silence a complaint, rather than support one. To adequately subvert this incentive, we need a strong, independently enforced code of conduct, where a breach of which could lead to meaningful sanctions being imposed by the relevant chamber of the Commonwealth Parliament.

In addition, where allegations are made about powerful parliamentarians themselves, only the most clearly articulated, independent commission will be equipped to withstand significant political pressure.

Grounds for a complaint to the independent parliamentary standards commission should include where a parliamentarian has allegedly:

- engaged in bullying, sexual harassment or sexual assault;
- discouraged a complaint about bullying, sexual harassment or sexual assault;
- failed to act following allegations made about their staff;
- disrupted or intervened in a complaint investigation;
- taken reprisals against a victim/survivor or witness for making a complaint; or
- failed to adequately respond to the findings of an appropriate process.

² Ibid 228.

³ Ibid 230.

(c) What an independent parliamentary standards commission should look like

Commissioner Jenkins recommended that an independent parliamentary standards commission incorporate and expand the new Parliamentary Workplace Support Service.⁴ She further recommended that:⁵

- appointments to the independent parliamentary standards commission be by a non-partisan Joint Standing Committee on Parliamentary Standards;
- appointments be for a fixed term, with clear and limited grounds for termination;
- it be given a clear mandate and appropriate delegation of powers;
- it exercise powers without interference;
- it be empowered to report without the permission of the government;
- transparency over funding and resourcing;
- adequate funding to perform its functions.

We support these features, and further recommend that, on completing an inquiry, the parliamentary standards commission provide a report with its findings and recommendations to the Privileges Committee of the relevant House.

With respect to sufficiently serious breaches of the code of conduct, the relevant committee may recommend sanction by the House, which could include an apology, a temporary suspension from the House, or other proportional penalties as it deems appropriate.

Further, Commissioner Jenkins supported a multi-member parliamentary standards commission, as opposed to a single commissioner, to ensure it has the requisite diversity of experience to cover different types of complaints.⁶

This submission argues that the code of conduct should be broad, in which case it becomes especially important to have a commission with a range of experience, including lived experience of, but not limited to, ableism, homophobia, transphobia, racism, and victim/survivors of gendered violence and assault. The commission should also have the ability to access and consult with independent experts to assist in an investigation.

2. The code of conduct should address not just gender-based violence, but other forms of discriminatory abuse

Gender-based violence is complex enough, because it impacts people of different marginalised genders differently. But it is also only one basis for discrimination that can lead to harassment, bullying and assault. As the Jenkins' review noted, the Commonwealth Parliament was considered by participants to be "inherently unsafe" for people who are Aboriginal and/or Torres Strait Islander, people of colour, people with disability, and/or LGBT+ people.⁷

It is vital that any code of conduct be broadly drafted to cover not just gender-based violence, but other forms of discriminatory abuse. The direct harm experienced by victim/survivors of discriminatory abuse is well documented: severe physical and mental harm can persist for many years, and the financial impact can affect whole families and communities.⁸

⁴ Ibid 230.

⁵ Ibid 230.

⁶ Ibid 230.

⁷ Ibid 15.

⁸ Cooperative Research Centre for Aboriginal Health and Yin Paradies, Ricci Harris and Ian Anderson, *The Impact of Racism on Indigenous Health in Australia and Aotearoa: Towards a Research Agenda* (2008),

The risks are compounded for people who have intersecting identities. Intersectionality being how the different aspects of someone's identity including sexuality, gender identity, or Aboriginality can leave them exposed to overlapping forms of discrimination and marginalisation.

It is important that a code of conduct takes an intersectional approach to ending harassment, bullying, and assault in parliamentary workplaces. Particularly as discrimination law expert, Associate Professor Karen O'Connell has noted that 'people rarely understand or describe themselves according to the neat and limited identity categories of race, sex, age, and disability that form the scaffolding of anti-discrimination...schemes.'⁹ Adopting an intersectional framework in developing codes of conduct would contribute to creating a safe, accountable and diverse workplace.

There are many reasons for the Commonwealth Parliament's lack of diversity, but concerns around the safety of parliamentary workplaces is a key one. The consequence is that entire communities are, in yet another way, denied representation and locked out of power and representation.

When people in powerful, public positions are not held to account for racism, gender-based violence, ableism and transphobia, it implies that this behaviour is acceptable in the rest of the community. It signals to the community that our governments value some people's lives over others. It emboldens perpetrators. It discourages victim/survivors from raising complaints. Discriminatory abuse in our parliament makes the whole country less safe.

(a) The code of conduct should be drafted broadly so as to include forms of discrimination beyond gender

To address this, we need a code of conduct that is sufficiently broad to cover a range of behaviour that includes all forms of discriminatory abuse, bullying, harassment and violence. Respect is the broad standard by which parliamentarians and their staff should treat each other, their colleagues, and all people working in or visiting parliamentary workplaces.

Some of the wording of the code could be taken from rule 18 of the United Kingdom's *Code of Conduct for Members of Parliament* (UK Code), insofar as it references respect. The rule itself could be simple: "A Member must treat their staff and all those visiting or working for or in parliamentary workplaces with respect".

(b) This broad standard should be supplemented by more detailed policies which address different forms of discriminatory abuse

More detailed policies, covering discriminatory abuse, bullying, harassment and assault should sit under the code to create a shared understanding of what "respect" means. The code of conduct should introduce an obligation to comply with all laws and workplace policies prohibiting harassment, assault, bullying and discrimination.

For instance, in the United Kingdom, the *Bullying and Harassment Policy and the Sexual Misconduct Policy* has been developed by the Independent Complaints and Grievance Scheme team, the Parliamentary Commissioner for Standards, and the Independent Expert Panel. These policies apply to all members of the House of Commons and the House of Lords, as well as to all members of the "parliamentary community".

Both Houses of the Commonwealth Parliament should follow this example, with best practice policies to be created, enforced, and communicated, by an independent parliamentary standards commission which is informed by experts and works in consultation with people who will be subject to the policies, including their respective trade unions.

Discussion Paper No. 4; The Lowitja Institute and Angeline Ferdinand, Yin Paradies and Margaret Kelaher, *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: The Localities Embracing and Accepting Diversity (LEAD) Experiences of Racism Survey* (2013), Report; Niyi Awofeso, 'Racism: a major impediment to optimal Indigenous health and health care in Australia' (2011) 11(3), *Australian Indigenous Health Bulletin*; Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability*, Report (2016); NACCHO *Aboriginal Health News Alerts*, *What are the impacts of racism on Aboriginal health?* (Web Page, 24 August 2022) <<https://nacchocommunique.com/2014/02/28/naccho-aboriginal-health-and-racism-what-are-the-impacts-of-racism-on-aboriginal-health/>>.

⁹ Karen O'Connell, Isabel Karpin, 'Rethinking the Stress of Inequality as an Intersectional and Intergenerational Harm', (Conference Paper, Berkeley Comparative Equality & Anti-Discrimination Law Study Group 2018 Conference, 14 May 2018).

3. The code of conduct should address broader issues of integrity

Another national conversation has been running parallel to the conversation about the safety of parliamentary workplaces, which is the need to stop parliamentarians engaging in other forms of misconduct like pork barrelling – the practice of using public money to target certain voters for partisan purposes. A broad code of conduct similar to the one in force in the United Kingdom would achieve both ends.

A broad code of conduct could also capture other troubling forms of conduct that risk undermining public trust and confidence in the Commonwealth Parliament, or in our representative democracy more broadly. Recent examples that could be covered include: parliamentarians knowingly engaging in disinformation campaigns against opponents, and the former Prime Minister appointing himself to multiple ministries in secret.

Appropriate wording, as adapted from rule 17 of the UK Code, could be: *“Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House as a whole, or of its Members generally.”*

We could have a further standard which includes an obligation for members and senators to respect and uphold our system of representative democracy at all times.

4. Public Interest Disclosure Act 2013 (Cth)

The Human Rights Law Centre agrees with recommendation 23 in the *Set the Standard* report, which recommended that the *Public Interest Disclosure Act (PID Act)* should be extended to people employed or engaged under the *Members of Parliament (Staff) Act 1984 (Cth) (MOPS Act)*.

At present, whistleblowing law contains a double carve-out for misconduct committed in Parliament: MOPS Act employees are not within the scope of the protection of the PID Act, and misconduct perpetrated by members of Parliament or MOPS Act employees is not 'disclosable conduct' within the scope of the PID Act.

This makes Parliament a 'black hole' for the purposes of whistle-blower protections; even Australian Public Servants who are otherwise covered by the PID Act when in their ordinary workplace lose those protections when they are seconded to Parliament (where the misconduct is perpetrated by someone beyond the scope of the PID Act). These deficiencies should be remedied as a matter of urgency.

We would be happy to speak further to this submission should it be useful for the Committee.

Sincerely

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