



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE
SENATOR THE HONOURABLE SUE LINES

Committee Secretary
Joint Select Committee on Parliamentary Standards
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

Inquiry into the development of codes of conduct for Commonwealth parliamentarians.

I welcome the opportunity to make this submission to the Joint Standing Committee on Parliamentary Standards' inquiry into the development of a code of conduct for Commonwealth Parliamentarians.

The findings of the Australian Human Rights Commission (AHRC) report entitled Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces have highlighted that there is a gap in the regulatory framework that governs the behaviours of those that work within Parliamentary precincts and unveiled the prevalence of rampant bullying, harassment, sexual harassment, and sexual assault.

Sexism is an institutionalised attribute of Westminster parliaments. For so long, women have faced Westminster norms that were constructed to exclude them. Women now make up 57% of the Senate, defying the historical precedent set before them. The United Nations states that gender equality is necessary for a peaceful and sustainable world. The Australian Parliament and all its precincts must be free from sexual violence so as to restore integrity and build a stronger democracy.

The Commonwealth Parliamentary Association Gender Sensitising Parliaments (GSP) Guidelines stipulates that parliaments should strive to become institutions that are gender sensitive. The 2020 GSP Guidelines were designed to enable parliaments to drive and embed the reform required to eliminate bullying, harassment, sexual harassment and sexual assault from parliamentary processes, norms, and behaviours. Furthermore, in 2012 the Inter-Parliamentary Union developed a Plan of action for gender-sensitive parliaments to encourage parliaments to take up ownership of the implementation of gender-sensitive regulations that prioritise the wellbeing of all that work within the Parliamentary precinct.

The United Kingdom (UK), Canada and New Zealand have all addressed the ubiquity of sexual misconduct in the workplace. Explicitly defining sexual harassment as unlawful conduct in the Sex Discrimination Act 1984 made Australia a pioneer in gender equity on the world stage. The Joint Standing Committee on Parliamentary Standards has the opportunity to replicate the most effective components of and draw on the experiences of comparable parliaments to inform best practice for the Australian context.

Accountability is a necessary requisite in upholding this Code and in ensuring that Commonwealth Parliamentary Workplaces are free from discrimination, sexual harassment, misconduct, and bullying. This can be achieved through the establishment of the Independent Parliamentary Standards Commission, as highlighted in the AHRC report, along with regular reviews to monitor compliance and efficacy

As a Presiding Officer, I have the utmost privilege, of being responsible for the implementation of some of the recommendations from the AHRC report. Women should never have to face the additional challenge of staring down sexism when they choose to enter public life. I look forward to working with my parliamentary colleagues on such an important and much needed body of work.

Yours sincerely

.

Senator the Hon Sue Lines
President of the Senate

09 September 2022

This proposed code is consistent with the AHRC *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* recommendation 21. It follows the example set by the codes of the United Kingdom and Canada. All interpretations emanate from AHRC definitions as well as relevant Commonwealth law.

Proposed code of conduct, prepared pursuant to Joint Select Committee on Parliamentary Standards' invitation to Senator the Hon. Sue Lines to make a submission to the inquiry:

I. Objects

- a. The purpose of this proposed Code of Conduct is to:
 - i. Establish the standards and principles of conduct expected of all Senators in undertaking their duties
 - ii. Create an environment within the Australian Parliament, and by virtue, all precincts of Parliament that is gender sensitive and free of sexual harassment, misconduct, and bullying
 - iii. Implement and endorse the recommendations relating to bullying, harassment, and sexual harassment of the Australian Human Rights Commission (AHRC) report entitled 'Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces.'

II. Interpretations

- a. The following definitions apply in this code:

"Bullying"

Bullying is the repeated and unreasonable behaviour that is directed towards a worker or a group of workers and creates a risk to physical or mental health and safety.ⁱ

"Misconduct"

The term misconduct is used to refer collectively to bullying, discrimination, sexual harassment and sexual assault.ⁱⁱ

A power imbalance between a victim/survivor and an abuser, or an abuse of power by the respondent is a relevant factor for a finding of misconduct.

"Discrimination"

Discrimination occurs when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics. It is also discrimination when an unreasonable rule or policy applies to everyone but has the effect of disadvantaging some people because of a personal characteristic they share.ⁱⁱⁱ

The following Commonwealth laws concern discrimination:

- i. Age Discrimination Act 2004
- ii. Disability Discrimination Act 1992
- iii. Racial Discrimination Act 1975
- iv. Sex Discrimination Act 1984

"Harassment"

Harassment can include behaviour such as:^{iv}

- i. Telling insulting jokes about racial groups
- ii. Sending explicit or sexually suggestive emails or text messages
- iii. Displaying racially offensive or pornographic posters or screen savers
- iv. Making derogatory comments or taunts about someone's race

- v. Asking intrusive questions about someone's personal life, including his or her sex life.

"Sexual harassment"

Sexual harassment is defined as an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which, in the circumstances, a reasonable person, aware of those circumstances, would anticipate the possibility that the person would feel offended, humiliated, or intimidated.^v

"Sexual assault"

Sexual assault is an act of sexual nature carried out against a person's will through the use of physical force, intimidation, or coercion, including any attempts to do this. This includes rape, attempted rape, aggravated sexual assault (assault with a weapon), indecent assault, penetration by objects, forced sexual activity that did not end in penetration and attempts to force a person into sexual activity.^{vi}

"Commonwealth Parliamentary Workplace"

As defined by the *Parliamentary Precincts Act 1988*, Commonwealth parliamentary workplace or Parliamentary precinct, includes Parliament House and the Parliamentary precincts, ministerial, parliamentary and electorate offices and any other place where work is carried out for, or in connection with, a Commonwealth parliamentarian, whether paid or unpaid.

A Commonwealth parliamentary workplace also includes, but is not limited to, work related travel and events, engagements, functions, and any other work carried out by a person, in any capacity, in connection with the work of a Commonwealth parliamentarian.^{vii}

III. Interaction with Commonwealth law

- a. Parliamentary Precincts Act 1988^{viii}

- i. Section 4(1)

The Parliamentary precincts consist of the land on the inner side of the boundary defined by subsection (2), and all buildings, structures and works, and parts of buildings, structures and works, on, above or under that land.

- ii. Section 5 (1)

This section applies to property that is owned or held under lease by the Commonwealth and is not within the Parliamentary precincts defined by section 4.

- b. Sex Discrimination Act 1984^{ix}

- i. Section 28A (1)

For the purposes of this Act, a person sexually harasses another person (the person harassed) if:

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

- ii. Section 28A (1A)

For the purposes of subsection (1), the circumstances to be taken into account include, but are not limited to, the following:

- (a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;*
- (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;*
- (c) any disability of the person harassed;*
- (d) any other relevant circumstance.*

c. Work Health and Safety Act 2011^x

i. Section 104(1)

A person must not engage in discriminatory conduct for a prohibited reason

d. Fair Work Act 2009^{xi}

i. Division 3, Section 340 (1)

A person must not take adverse action against another person:

(a) because the other person:

(i) has a workplace right; or

(ii) has, or has not, exercised a workplace right; or

(iii) proposes or proposes not to, or has at any time proposed or proposed not to, exercise a workplace right; or

(b) to prevent the exercise of a workplace right by the other person

e. Disability Discrimination Act 1992^{xii}

i. Section 35(1)

For the purposes of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different.

ii. Section 35(1)

It is unlawful for a person to harass another person who:

(a) is an employee of that person; and

(b) has a disability;

in relation to the disability.

f. Racial Discrimination Act 1975^{xiii}

i. Section 9

It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

IV. Scope

- a. This code applies to allegations of misconduct made against Senators
- b. "The obligations set out in this Code are in addition to those that apply to all Senators by virtue of the Standing orders and other rules of the Senate and rulings

of Presidents, and to those which apply to Senators falling within the scope of the Ministerial Code”^{xiv}

V. Adoption

- a. This Code is to be formally adopted in the House of Representatives and the Senate.

VI. Rules of conduct

- a. Members and Senators are expected to observe the following rules of conduct.
- b. A Member or Senator shall not discriminate against, bully, harass, sexually harass or sexually assault another person in any Parliamentary Precinct or Commonwealth Parliamentary Workplace as defined in section 2.
- c. Discrimination, misconduct, bullying, sexual harassment, and sexual assault are defined in section 2. Without limiting the definition of misconduct in any manner, sexual harassment may include the following:
 - i. Demands for sexual favours or sexual assault.
 - ii. Inappropriate or unwanted physical contact such as touching, patting, or pinching.
 - iii. Insulting comments, gestures or practical jokes of sexual nature that cause discomfort or embarrassment; and
 - iv. Inappropriate enquiries or comments about an individual’s sex life.
- d. This Code recognises that misconduct can occur in all parliamentary precincts.
- e. Members and Senators “shall not retaliate or threaten retaliation against any individual because that individual has been a participant or potential participant in the resolution process.”^{xv}
- f. Every Member and every Senator shall commit to contributing to a gender sensitive environment within the Australian Parliament and all its precincts that is free of bullying, sexual harassment, and sexual assault.

VII. Resolution Process

- a. As outlined in the AHRC review into Commonwealth Parliamentary Workplaces, the Independent Parliamentary Standards Commission is to manage the operation of a fair, independent and confidential system to receive disclosures and handle complaints about breaches of this Code of Conduct.^{xvi}
- b. The Parliamentary Workplace Support Service shall engage with commonwealth parliamentary workers and manage reported incidents of bullying, sexual harassment, and sexual assault.^{xvii}

VIII. Upholding the Code

- a. Members and Senators shall undertake educational activities on the content of this Code and on matters related to the prevention of bullying, sexual harassment, and sexual assault.^{xviii}
- b. Members and Senators must sign a declaration to demonstrate their commitment to uphold the code. Failure to do so will prevent Members and Senators from participating in official delegations
- c. Similarly, to the practice of submitting Senators’ register of interests, the signing of the declaration must be made publicly available and transparent.

IX. Review/Efficacy

- a. This Code is to be reviewed within one of year of being implemented and embedded into the parliamentary process. From there onwards it is to be reviewed regularly to ensure the appropriate monitoring of compliance and efficacy of this Code.

- b. Until the Independent Parliamentary Standards Commission is established, the Joint Committee on Parliamentary Standards to provide a quarterly report to the Presiding Officers that is to be tabled in Parliament.
- c. The review must investigate the number of complaints made against Members and Senators, the number of breaches of the code and all other information relevant to the monitoring of compliance.

ⁱ Australian Human Rights Commission, *Set the Standard: Report into Commonwealth Parliamentary Workplaces*, 31, table 2.1.

ⁱⁱ Australian Human Rights Commission, *Set the Standard: Report into Commonwealth Parliamentary Workplaces*, 31, table 2.1.

ⁱⁱⁱ “Discrimination,” Australian Human Rights Commission, <https://humanrights.gov.au/quick-guide/12030>

^{iv} “Harassment,” Australian Human Rights Commission, <https://humanrights.gov.au/quick-guide/12040#:~:text=Harassment%20can%20be%20against%20the,gender%20identity%20or%20intersex%20status>

^v Australian Human Rights Commission, *Set the Standard: Report into Commonwealth Parliamentary Workplaces*, 32, table 2.1.

^{vi} Australian Human Rights Commission, *Set the Standard: Report into Commonwealth Parliamentary Workplaces*, 32, table 2.1.

^{vii} Australian Human Rights Commission, *Set the Standard: Report into Commonwealth Parliamentary Workplaces*, 31, table 2.1.

^{viii} [Parliamentary Precincts Act 1988](#)

^{ix} [Sex Discrimination Act 1984](#)

^x [Work Health and Safety Act 2011](#)

^{xi} [Fair Work Act 2009](#)

^{xii} [Disability Discrimination Act 1992](#)

^{xiii} [Racial Discrimination Act 1975](#)

^{xiv} [UK Code of Conduct](#)

^{xv} [Canadian Code of Conduct](#)

^{xvi} Australian Human Rights Commission, *Set the Standard: Report into Commonwealth Parliamentary Workplaces*, 141, figure 5.1b.

^{xvii} Australian Human Rights Commission, *Set the Standard: Report into Commonwealth Parliamentary Workplaces*, 141, figure 5.1b.

^{xviii} [Canadian Code of Conduct](#)