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Dr Jane Thomson
Committee Secretary
Joint Select Committee on Parliamentary Standards
PO Box 6100
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CANBERRA ACT 2600

By email: parliamentary.standards.sen.aph.gov.au

Dear Dr Thomson,

Inquiry into Codes of Conduct for Commonwealth Parliamentary Workplaces (Inquiry)

Thank you for the invitation to make a submission to the Inquiry.

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted, public and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as the public sector and not-for-profit organisations. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Executive Summary

This submission reflects our members' consideration of paragraphs b ii. and iii. relating to the prevention of 'bullying, harassment, sexual harassment and sexual assault' and 'reasonable expectations of professional respectful behaviour', c i. 'the enforcement of any proposed code' and vi the findings of the Set the Standard Report of the Inquiry's Terms of Reference.

- Governance Institute's members welcome the Committee's re-appointment and its inquiry into the development of codes of conduct for Commonwealth parliamentarians, parliamentary staff, and parliamentary workplaces (CPWs).
- Governance Institute supports the setting of clear standards of conduct through a uniform Code of Conduct for Parliamentarians in the Standing Orders of both Houses of Parliament, a Code of Conduct for Parliamentarians' Staff included in the *Members of Parliament (Staff) Act 1984* (Cth) (MOPS Act) and the establishment of standards of conduct that apply to all activity within the parliamentary precincts. Any codes of conduct should address both building safe and respectful workplaces, bullying, sexual harassment and sexual assault and integrity matters.

- Our members support the establishment of an independent Commission (Commission) to receive disclosures and handle formal and informal complaints, make findings about misconduct and apply sanctions for breaches of codes of conduct. Appointments to the Commission should be made by a non-partisan joint Committee, for a fixed-term, on a transparent, merits-based basis and be independent of the political process. The Commission should have adequate funding to perform its functions and there should be transparency around its funding and resourcing.
- It is fundamental that there are consequences for breaches of CPW codes of conduct. For a code of conduct to be more than words on a page it must be independently enforced. In the private sector positive duties with consequences for failure are a key part of accountability. There should be appropriate consequences which would also have a deterrent effect. The independent Commission should play a key role in enforcement of CPW codes of conduct.
- The Public Interest Disclosure Act, 2013 (Cth) should be amended to include disclosures by MOPS Act employees.
- Ministers, Members of Parliament and other leaders must model the culture they wish to see. Values need to be lived and codes of conduct must be supported by actions. They must lead on this issue, not only by supporting practical and systemic reforms, but personally as well, by setting the right example for their staff.
- Our members support Recommendation 4 of the Australian Human Rights Commission's (AHRC) *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (Set the Standard) in relation to strengthening individual leadership and Recommendation 14 of that Report relating to the provision of best practice training to those working in Commonwealth Parliamentary Workplaces (CPWs). This is to ensure that leaders and managers in CPW have the requisite knowledge and skills to prevent and respond to misconduct.

Our interest in this area

Governance Institute's members consider integrity, stewardship, transparency, accountability, and risk management – including acting ethically and responsibly – to be the five key components of good governance. Failures to act ethically and responsibly in CPWs is inconsistent with these principles and leads to a loss of trust. The Committee's Inquiry touches on the core governance topics of ethical and responsible behaviour and accountability where our members have subject matter expertise.

Each year, Governance Institute commissions the Ethics Index, a nationally representative independent survey of 1000 Australians. The 2021 edition found that Australian federal politicians were among the occupations perceived to be least ethical. Federal, state and local politicians were ranked in the lower occupations for ethical behaviour.¹ The survey also found a wide perception gap between the high importance Australians place on ethics in the public sector, and how ethically they believe those in public service conduct themselves. These findings illustrate the importance of restoring trust in public institutions by addressing behaviour that erodes trust. This loss of public trust is confirmed in the Set the Standard Report:

¹ [Governance Institute Ethics Index 2021](#). In 2021 the biggest declines were registered for government (5, down from 16) and media, which sat at the bottom of the list (-17 down from -3).

... research indicates that public trust in government has reached its lowest level in the past 50 years. This includes only one in four Australians believing that government can be trusted to do the right thing.²

In preparing this submission, Governance Institute consulted our standing Public Sector Governance Committee comprised of members currently and previously employed in governance roles at all levels of government. We also drew on the experience of our members in the private sector, where there has been an increased focus in recent years on the importance of these issues particularly the prevention of workplace harassment.

We have also considered the Australian Human Rights Commission's (AHRC) *Respect@work Report* (Respect@work Report) and the Department of Prime Minister and Cabinet's *Review of the Parliamentary Workplace: Responding to Serious Incidents* (Foster Report).³

Governance Institute also takes issues of gender equality and the prevention of sexual harassment in workplaces in all sectors very seriously. We regularly engage and advocate on these issues on behalf of our members. The Respect@Work Report recommended that Governance Institute develop education and training for boards and company officers on good governance practice in relation to gender equality and sexual harassment.⁴ We have developed a series of initiatives to respond to this recommendation and made a [submission](#) on the Respect@work legislative recommendations in March 2022.

Codes of conduct

The Set the Standard report identifies the current system of standards and accountability mechanisms in CPWs as 'incomplete and overly complex and often lacks enforcement in practice' leading to an undermining of public confidence in the system.⁵ Recommendation 21 of that Report recommends establishing codes of conduct to establish clear and consistent standards of conduct. As the Report notes codes of conduct are now 'best practice in Australian workplaces' and 'All parliaments across Australia other than the Commonwealth Parliament have standards of conduct for members of Parliament'.⁶ Many Australians, familiar with codes of conduct in their workplaces, as visitors to public facilities and as members of sporting clubs and community organisations, would be extremely surprised to learn that those working in CPWs are not held to any standard of conduct. The Set the Standard Report also notes that codes of conduct explicitly prohibiting bullying, harassment and sexual misconduct in Parliamentary workplaces are in force in comparable jurisdictions internationally.⁷

Governance Institute is a founding member of the ASX Corporate Governance Council which produces the leading Australian statement on corporate governance, the *Corporate Governance Principles and Recommendations* (Corporate Governance Principles and Recommendations).⁸ We strongly supported the inclusion in that document of Principle 3 Act ethically and responsibly and most relevantly for this Inquiry Recommendation 3.2 that listed companies have and disclose a code of conduct for directors, senior executives and employees. The commentary to Recommendation 3.2 refers to the importance of directors and senior executives speaking and

² See *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, Australian Human Rights Commission, November 2021 at p. 221.

³ See *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, Australian Human Rights Commission, March 2020 and *Review of the Parliamentary Workplace: Responding to Serious Incidents*, Department of Prime Minister and Cabinet, July 2021 (Foster Report).

⁴ See *Respect@Work* Recommendation 41 at p. 48.

⁵ Set the Standard Report at p. 221.

⁶ Above at p. 222.

⁷ Above at p.22.

⁸ ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 4th edition, February 2019.

acting consistently with a code of conduct, setting the 'tone from the top' and reinforcing codes by taking appropriate and proportionate disciplinary action against those breaching the code.

Box 3.2 of the Corporate Governance Principles and Recommendations contains suggestions for the contents of a code, namely a statement of an expectation that all directors, senior executives and employees will:

- act in accordance with the entity's stated values and in the best interests of the entity
- act honestly and with high standards of personal integrity
- comply with all laws and regulations that apply to the entity and its operations
- act ethically and responsibly
- treat fellow staff members with respect and not engage in bullying, harassment or discrimination
- deal with customers and suppliers fairly
- disclose and deal appropriately with any conflicts between their personal interests and their duties as a director, senior executive or employee
- not take advantage of the property or information of the entity or its customers for personal gain or to cause detriment to the entity or its customers
- not take advantage of their position or the opportunities arising therefrom for personal gain, and
- report breaches of the code to the appropriate person or body within the organisation.⁹

In addition, Box 3.2 provides that the suggested content should include a statement that the code will be periodically reviewed to check that it is operating effectively and whether any changes are required.

While directed at listed companies, the Corporate Governance Principles and Recommendations strongly influence governance practices in other sectors. Our members consider that at a minimum the contents of a code of conduct for CPW should address the matters outlined in Box 3.2 in addition to the minimum core elements set out in the Set the Standard Report.¹⁰

Our members support the Set the Standard recommendation that there be clear standards of conduct set through a uniform Code of Conduct for Parliamentarians in the Standing Orders of both Houses of Parliament and a Code of Conduct for Parliamentarians' Staff included in the *Members of Parliament (Staff) Act 1984* (Cth) (MOPS Act). Our members also support the establishment of standards of conduct that apply to all activity within the parliamentary precincts.

Our members consider that any Codes of Conduct should be consolidated and address both building safe and respectful workplaces as well bullying, sexual harassment and sexual assault and integrity matters.¹¹ This is on the basis that a code of conduct should address the expected standards in **all** areas as well as conduct engaged in by any means, including electronically. There is no point in arriving at a situation where a person in a CPW treats their staff extremely respectfully but fails to address conflicts of interest or uses their position for personal gain. A single set of standards will also mean there is a shared understanding of the expected standards. Our members also consider that a single set of standards will be more straightforward both from a training and an enforcement perspective. They note that a combined Code of Conduct may create a need for arrangements between any future Commonwealth Integrity Commission and any body set up to provide a reporting, investigation and sanctions authority in the context of CPW.¹² While our members have previously expressed support for a Commonwealth Integrity Commission as a suitable accountability mechanism for breaches of

⁹ Above at p.17.

¹⁰ Set the Standard Report at p. 223.

¹¹ See the discussion in the Set the Standard Report at p. 233.

¹² Loc cit.

codes of conduct, an independent Commission would also be appropriate, subject to appropriate arrangements with any future Commonwealth Integrity body.¹³

Recommendations

Our members **recommend**:

- the setting of clear standards of conduct through a uniform Code of Conduct for Parliamentarians in the Standing Orders of both Houses of Parliament and a Code of Conduct for Parliamentarians' Staff included in the MOPS Act
- the establishment of standards of conduct that apply to all activity within the parliamentary precincts
- at a minimum, any code of conduct should address the matters outlined in Box 3.2 of the Corporate Governance Principles and Recommendations, with appropriate modifications as well as the minimum core elements set out in the Set the Standard Report, and
- any codes of conduct should address both building safe and respectful workplaces, bullying, sexual harassment and sexual assault and integrity matters.

Reporting, complaints and accountability

As the Set the Standard Report notes the principle of accountability leads to the outcome that 'Clear and consistent standards of behaviour are in place; it is safe to make a report; complaints are addressed; and people are held accountable, including through visible consequences for misconduct'.¹⁴ Our members support Recommendation 22 of the Set the Standard Report relating to the establishment of an independent Commission to receive disclosures and handle formal and informal complaints, make findings about misconduct and apply sanctions for breaches of codes of conduct. Our members do not have a settled view on whether this Commission should also incorporate the Parliamentary Workplace Support Service, provided that Service's functions continue to be carried out.

Our members also consider that the Commission should operate in accordance with accepted best practice for receiving reports and complaints and delivering fair and effective accountability mechanisms. They consider the best practice principles for delivering fair and effective accountability mechanisms of impartiality and independence are critically important.¹⁵ Many of those who provided information to the AHRC for the Set the Standard Report felt they had nowhere to go and that reporting poor conduct would have extremely negative professional and personal consequences. Our members also support the model of a Commission as opposed to an individual commissioner.

Our members endorse the elements to support the independence of the Commission outlined in the Set the Standard Report.¹⁶ Appointments to the Commission should be made by a non-partisan joint Committee, for a fixed-term, on a transparent, merits-based basis and independent of the political process. It will also be critical for the Commission to have adequate funding to perform its functions and for there to be transparency around its funding and resourcing. It should also be able to exercise its powers without interference and without the permission of Parliament. There should be regular reporting to provide visibility of the actions taken.

Recommendations

Governance Institute's members **recommend**:

¹³ See Governance Institute [Submission](#) to the AHRC Independent Review into Commonwealth Parliamentary Workplaces, 29 July 2021.

¹⁴ Above at p. 218.

¹⁵ See Set the Standard at p.227.

¹⁶ See Set the Standard at p. 230.

- the establishment of an independent Commission to receive disclosures and handle formal and informal complaints, make findings about misconduct and apply sanctions for breaches of codes of conduct
- appointments to the Commission should be made by a non-partisan joint Committee, for a fixed-term, on a transparent, merits-based basis and independent of the political process
- the Commission have adequate funding to perform its functions and there should be transparency around its funding and resourcing
- the Commission should be able to exercise its powers without interference and without the permission of Parliament
- the Commission should make regular reports to provide visibility of the actions taken.

Consequences for breaches of CPW codes of conduct

As noted above many of those reporting to the AHRC for the Set the Standard Report felt that not only was there no redress for poor behaviour in CPW but there were no consequences for those behaving badly either. It is fundamental that there are consequences for breaches of CPW codes of conduct. In the private sector positive duties with consequences for failure are a key part of accountability. An example is that company directors have positive legal duties under the Corporations Act that promote accountability and good practice.

Our members consider there should be proportionate consequences for breaches of CPW codes of conduct which would also have a deterrent effect both on those breaching the code and CPW more generally. Unless there are visible consequences for poor behaviour, a code of conduct is just words on a page.

As noted above the independent Commission could play a key role in this area.

Amendment of Public Interest Disclosure Act, 2013 (Cth) (PIDA)

Our members also support Recommendation 23 of the Set the Standard Report relating to the amendment of the PIDA to include disclosures by MOPS Act employees. They consider that the protections that exist elsewhere in the public sector to those who speak up about misconduct should also extend to Parliamentary staff. The ability to speak up without fear of repercussions is an important part of a psychologically safe workplace and will further strengthen accountability. Our members agree with the Set the Standard Report that the independent Commission and any future Commonwealth Integrity Commission should be authorised to receive these disclosures.

Recommendation

Governance Institute's members **recommend** amendment of the Public Interest Disclosure Act, 2013 (Cth) to include disclosures by MOPS Act employees.

Leading by example to improve workplace culture

Governance Institute considers culture is the sum of an organisation's shared values, principles and behaviours.¹⁷ Our members consider there is a strong perception that the culture of Commonwealth Parliament does not reflect contemporary community expectations about workplace behaviour. This is evidenced by the Set the Standard Report, which frequently mentions culture. We would add that a culture that normalises overwork, the adversarial rather than collegiate atmosphere of Parliament, the high-pressure media cycle, and a culture of attacking political opponents all take their toll.

¹⁷ Chartered Accountants Australia New Zealand, The Ethics Centre, Governance Institute of Australia and Institute of Internal Auditors – Australia, *Managing Culture: A good practice guide*, p. 9.

In our members' experience, cultural problems are often the systemic cause of workplace issues. They consider there is also a direct relationship between workplace culture and bullying, sexual harassment, and sexual assault. This is supported by recent evidence. Submissions to the AHRC's Respect@Work report refers to 'the culture or 'climate' of a workplace, including the critical role of leadership in setting workplace culture',¹⁸ and the AHRC's recommendations included workplace culture as a key action area, including 'the role of policies and human resources practices in setting organisational culture'.¹⁹ The handbook released by the Champions of Change Coalition notes that 'Workplace cultures that normalise, tolerate and excuse disrespectful behaviour at one end of the continuum may lead to more serious issues at the other'.²⁰

Cultural change is driven by leaders at the top of an organisation. Governance Institute's joint guidance on culture makes it clear that boards are responsible for 'setting the tone from the top', including by 'modelling the firm's desired behaviours and values when interacting with management and staff'.²¹ The guide also notes that, 'Until recently, organisational artefacts – including policies, architecture and processes – have been the predominant mechanism by which an organisation's identity has been defined and its people's behaviour influenced and controlled within an organisation. While these artefacts have a significant influence over decision-making, there is evidence emerging that character and culture have a stronger influence than artefacts in affecting the decisions, behaviours and actions of an organisation's people, and in avoiding ethical failure.' Even with the best policies, procedures and oversight mechanisms in place, workplace issues will persist in the absence of demonstrated, visible leadership. Applying this to the political context, we consider it is crucial for Ministers, Members of Parliament and other leaders to model the culture they wish to see. Values need to be lived and codes of conduct must be supported by actions. Ministers and other members of Parliament must lead on this issue, not only by supporting practical and systemic reforms, but personally as well, by setting the right example for their staff.

In addition, our members consider that several of the AHRC's recommendations to prevent workplace sexual harassment and improve culture in the private sector can be adapted and applied to Commonwealth Parliament, namely:

1. Develop and display strong leadership that contributes to cultures that prevent workplace sexual harassment.
2. Strengthen focus on risk assessment and transparency to mitigate risks.
3. Build culture based on trust and respect in order to minimise the risk of sexual harassment and ensure it is managed adequately.²²

Monitoring culture is also important. As noted by Governance Institute, 'In order for changes to occur, an organisation's culture must be monitored, measured and reported on.'²³ The Commonwealth Parliament may draw on evolving best practice in the private sector, such as regular 'dashboard' measurement and reporting on key workplace cultural indicators and metrics to an oversight structure (such as a Parliamentary committee). In the private sector, cultural metrics include the results of periodic, anonymous employee engagement surveys; workplace health and safety statistics; key human resources statistics, such as staff turnover

¹⁸ Respect@work Report at p. 19.

¹⁹ Ibid, p. 35.

²⁰ Champions of Change Coalition 2020, *Disrupting the System: Preventing and responding to sexual harassment in the workplace*, p. 18.

²¹ Chartered Accountants Australia New Zealand, The Ethics Centre, Governance Institute of Australia and Institute of Internal Auditors – Australia, *Managing Culture: A good practice guide*, p. 15.

²² Australian Human Rights Commission 2021, *Equality across the board: Investing in workplaces that work for everyone*, p. 17.

²³ Chartered Accountants Australia New Zealand, The Ethics Centre, Governance Institute of Australia and Institute of Internal Auditors – Australia, *Managing Culture: A good practice guide*, p. 17.

rates and exit interview trends; de-identified trends in whistleblower data; completion rates of education and compliance training; and public reputation measures. Some of these monitoring functions may already be in place. The challenge for Government is to move from an annual compliance exercise, to proactively responding to and managing issues that arise from these monitoring functions and implementing change.

Given the vital role leaders play in shaping the culture of all organisations our members support Recommendation 4 of the Set the Standard Report in relation to strengthening individual leadership. They also support Recommendation 14 of the Report relating to the provision of best practice training to those working in CPWs to ensure they have the requisite knowledge and skills to prevent and respond to misconduct.

Recommendations

Our members **recommend** that Ministers, Members of Parliament and other leaders model the culture they wish to see. Values need to be lived and codes of conduct must be supported by actions. Ministers and other members of Parliament must lead on this issue, not only by supporting practical and systemic reforms, but personally as well, by setting the right example for their staff.

Our members **recommend** implementation of Recommendations 4 and 14 of the Set the Standard Report.

If you wish to discuss any of the issues raised in this letter, please contact me or Catherine Maxwell.

Yours sincerely,

Megan Motto
CEO