

FAIR AGENDA

Submission to the Joint Select Committee on Parliamentary Standards on Developing codes of conduct for Commonwealth Parliamentary Workplaces

9 September 2022

Thank you for the opportunity to make a submission to the Joint Select Committee regarding the development and implementation of codes of conduct for Commonwealth Parliamentary Workplaces.

The Set the Standard report set out three codes that need to be developed: for parliamentarians, parliamentary staff and for the parliamentary precinct. Fair Agenda supports the development of codes for all of these areas, but our submission primarily focuses on the code of conduct for parliamentarians.

We understand that the Joint Select Committee will be delivering a draft code for parliamentarians when the report is handed down in November, consistent with the recommended timeframe of the Set the Standard report. This submission primarily focuses on the principles and substance of a code of conduct for parliamentarians, but will also make reference to: the need for effective implementation, including the need for a review period; and the operation of the proposed Independent Parliamentary Standards Commission (IPSC) to perform effective investigations for alleged breaches of the code, and deliver appropriate sanctions for breaches.

1.0 - Background

Fair Agenda is a national, independent campaigning organisation advocating for gender equity. We have over 40,000 members around the country. Last year our members were galvanised around the need for a proper process to deal with the allegations made against then Attorney-General, Christian Porter.

2.0 - What a code of conduct for parliamentarians needs to address:

2.1 General principles of good conduct and character that apply to all parliamentarians

The Code should reflect community expectations that parliamentarians should act in the public interest and with integrity in all they do. As such the code should make specific mention of the values that the community would expect parliamentarians to uphold. These values can be drawn from a variety of sources: best practice examples of codes from other parliaments, professional codes, and feedback from members of the public. Fair Agenda has included examples of each to provide guidance.

Articulating these values is critical to set a clear expectation of good conduct and character. A breach of any of the values speaks to issues of character that are directly relevant to a person's appropriateness to undertake parliamentary duties. Failing to demonstrate these values also has far reaching impact and jeopardises the trust in our political system that parliamentarians are the chief representatives of. To be effective, the code must ensure it addresses conduct that is likely to diminish public confidence in the parliament and its integrity.

Examples of values from parliamentary and professional codes:

Our expectation is that any code of conduct will draw on the strongest examples from other parliamentary codes, both within Australia and overseas, or other professional codes. The code should consider the significant power and influence of parliamentarians, as well as the expectations of the public, in its development.

The UK Parliament Code of Conduct articulates "General Principles of Conduct" that include: selflessness, integrity, objectivity, accountability, honesty and leadership.¹ Other professional codes also articulate and define values, such as the Code of Ethics for Queensland Teachers which lists: integrity, dignity, responsibility, respect, justice and care.² Both of these examples name the specific value and go on to describe what these values mean in everyday life.

In practice, detailed articulation and policies related to these values could sit under the code to support and clarify intention, for example, articulating what respect means. These values and supporting detail and policy should be developed by an independent body, supported by experts, and in consultation with people who will be impacted by the policies e.g. parliamentary staff and their union representatives for the parliamentary staff code.

¹ UK Parliament 'The Code of Conduct for Members of Parliament: IV. General Principles of Conduct'
<https://publications.parliament.uk/pa/cm201012/cmcode/1885/188502.htm#a2>

² Queensland College of Teachers, 'Code of Ethics for Teachers in Queensland'
<https://cdn.qct.edu.au/pdf/CodeOfEthicsPoster20081215.pdf>

accountability and public service. These values would be more directly linked to issues of integrity such as: the declaration and management of interests, fair decision making, proper use of resources, and community and constituent service and relationships.

Determining and naming these values is critical to clarifying and supporting the behaviour of parliamentarians, as these values speak to how elected officials should act and make decisions.

2.2 Professional and personal conduct

As mentioned, the code should reflect community expectations that parliamentarians should act in the public interest and with integrity in all they do, particularly in parliamentary duties. This expectation should also apply to conduct in their personal lives where appropriate.

Due to the nature of their role parliamentarians have a high level of visibility and influence. There is a public expectation that their behaviour, both personally and professionally, is consistent with high standards of integrity. The code needs to be sufficiently broad to capture the variety of contexts in which unacceptable behaviour could occur in the workplace and in public life. For example, Set the Standard found that women experienced “bullying and sexual harassment online and via social media.”³ The work of parliamentarians takes place online, through telecommunications, and in a range of physical environments: in Parliament; at electorate offices; at community, party/candidate and business events. These various contexts must be captured in the code.

The scope of a code of conduct for parliamentarians that extends to personal lives is practiced in other countries, such as the UK Parliament House of Commons. In the UK it is specified that the scope of the code is primarily relating to elected officials and their professional duties, but that the code will apply to their personal lives where “...such conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its Members generally.”⁴ Fair Agenda would support a similar provision in the parliamentary code of conduct. In addition to this, Fair Agenda asks the Committee to consider extending the scope to any personal conduct that undermines the code and is relevant to a members parliamentary duties and responsibilities. This is explored further in 2.3.

2.3 How the code applies to elected officials with additional parliamentary responsibilities

In addition to considering the code as it applies to parliamentarians broadly, we ask the Committee to consider its application to elected officials undertaking additional responsibilities; and to weigh the additional impact that this has. This should include Ministers and committee members, and how their specific responsibility and duties are also directly relevant to any alleged breaches.

³ Set the Standard, page 86

⁴ UK Parliament ‘The Code of Conduct for Members of Parliament: II. Scope of the Code,’ <https://publications.parliament.uk/pa/cm201012/cmcode/1885/188502.htm#a2>

The Code, and its enforcement, must consider the relevance of the alleged conduct to the role and responsibilities of the parliamentarian, at the time the alleged conduct took place, and when an allegation is brought. Considering the impact of parliamentarians with additional responsibilities must be captured in the code so that there is room for sanctions that are proportionate to the impact of actions that breach the code.

Allegations that arose within the 46th Parliament demonstrate this point and the need to consider cases of elected officials undertaking additional responsibilities and weigh the additional impact that this has. For example:

- Historical rape allegations raised against former Attorney-General Christian Porter.
In his role, Mr Porter had powers that could impact laws affecting gender based violence, and defamation, which later became a key part of the response to these allegations
- Allegations raised against former Education Minister Alan Tudge.
Former staffer, Rachelle Miller, made allegations that Alan Tudge was at times 'abusive.'
In his role, Mr Tudge was influencing national violence prevention programs
- Allegation of sexual harassment against Barnaby Joyce.
Mr Joyce has served on the government's cabinet taskforce on women's safety

All parliamentarians are in public positions of trust, but parliamentarians with additional duties, such as Ministers, are in roles that are arguably more powerful and hold great weight in the public eye, given their decision-making power. If parliamentarians in these positions are not held accountable, such as not investigating actions or behaviours that undermine values it signals to the community that this behaviour is acceptable. This role modeling sets a tone for the country: if our Parliament will not deal with these issues, there is less confidence they will be dealt with in the community. The impact of this can be far ranging: emboldening perpetrators or discouraging survivors. Parliament should, as the title of Commissioner Jenkins report illustrates - set the standard for strong and respectful workplace cultures and processes, that can be replicated in the community.

2.4 Specifying unacceptable behaviours that relate to issues of gender-based violence, inequity and discrimination

To address the specific concerns raised in Set the Standard regarding the prevalence of gender-based violence and bullying, specific types of conduct that are inappropriate should be explicitly named and prohibited in all codes of conduct. This should include, but is not limited to: sexual harassment, sexual assault, bullying and harassment.

To prevent gender-based violence, we must address gender inequality - including attitudes of disrespect⁵ and power imbalances.⁶ As women working or visiting parliament will be from all walks of life, to make parliament truly inclusive, and properly address issues of gender-based violence, conduct that promotes respect for all people is critical. As such, Fair Agenda would also recommend that specific behaviours that relate to other areas of inequity and discrimination, that often intersect with gender inequity, should also be named as being inappropriate in all codes of conduct. Some examples could include, but are not limited to: conduct that is racist; conduct that is disrespectful to members of the queer community (e.g. homophobic, transphobic); conduct that is disrespectful to people with a disability (e.g. ableist).

2.5 A test of a successful parliamentary code of conduct

In the 46th Parliament there were examples of allegations of gender-based violence and misconduct made against parliamentarians that relate to actions that would fall within professional and personal contexts. Fair Agenda recommends to the Committee that a test of a successful code of conduct (and its enforcement), from a public perspective, would be one that would have addressed the various examples of allegations that arose within the 46th Parliament. Examples of these allegations were detailed in 2.3.

Recommendation 1:

The code of conduct should:

- Articulate positive values that parliamentarians should embody in their behaviour and attitude that reflect public expectations around character and integrity. Values of respect, inclusion, and public service should all be included in the draft code
- Apply the code to both professional and personal conduct, including the range of contexts parliamentarians undertake their work. This should include language such as: 'conduct which damages the reputation and integrity of the parliament or its members', and 'any conduct relevant to their parliamentary duties and responsibilities'
- Consider the responsibilities and position of parliamentarians with additional duties when investigating alleged breaches or determining sanctions for breaches
- Specify unacceptable behaviours that relate to gender-based violence, inequity and discrimination, including but not limited to: sexual harassment, sexual assault, bullying and harassment
- Be tested against, and ultimately solve for, the example allegations that arose in the 46th Parliament. Doing so would be an indication of the code's efficacy

⁵ Our Watch, Change the Story, page 50

<https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2021/11/18101814/Change-the-story-Our-Watch-AA.pdf>

⁶ Ibid, page 8

3.0 - Implementation of the code(s):

3.1 There should be only one code of conduct for parliamentarians

In order for a Code to be effectively implemented, Fair Agenda suggests that only one Code of Conduct for parliamentarians should be created. This Code should address all relevant conduct issues, including the issues set out in Set the Standard report and broader issues of integrity. Discussions around integrity and gender-based violence are happening in the Parliament, and in the public arena, and they must both be appropriately actioned in the context of the code to help restore public confidence.

Having multiple sets of rules (e.g. multiple codes) that may be overlapping in subject matter, such as integrity and gender-based violence, could make it harder for parliamentarians to follow. It also runs other risks, such as being confusing or potentially contradictory.

Helen Haines' *Commonwealth Parliamentary Standards Bill 2020* proposed a code of conduct as a complement to the *Australian Federal Integrity Commission Bill 2020*. It was drafted with a grounding in integrity that is focused on the behaviour of parliamentarians as it relates to decision-making over issues such as: material resources, conflict of interest and issues of character, such as honesty. While the focus, such as on decision making issues, are different to the issues of Set the Standard, there is clear overlap in terms of articulating values and expectations around character. Fair Agenda believes the purposes of promoting integrity and more safe and inclusive workplaces can be served best by a code which addresses both.

3.2 Intersecting rules around parliamentary conduct: standing orders, parliamentary privilege and the code of conduct

Fair Agenda understands that, consistent with the recommendations of the Set the Standard report, the Speaker of the House and President of the Senate are undertaking reviews of standing orders in their respective chambers. This is with a view to ensuring updates to how these chambers function and behave, for example, examining the required hours in the chamber to ensure better support for parliamentarians with caring roles, and ensuring that behaviour in the chambers is founded on mutual respect. Fair Agenda supports these changes, and understands that some changes have already been implemented.

The changes of these standing orders is critical to upholding integrity in Parliament, along with the introduction of a code. An issue that will need to be considered by the Committee will be the interaction between these various rules and how the code of conduct operates within the parliamentary system, and can be enforced.

Drawing on the example of the UK Parliament, the purpose of the code is articulated as foundational to all conduct in Parliament:

I. Purpose of the Code

1. The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the House, their constituents and the public at large by:

(a) establishing the standards and principles of conduct expected of all Members in undertaking their duties;

(b) setting the rules of conduct which underpin these standards and principles and to which all Members must adhere; and in so doing

(c) ensuring public confidence in the standards expected of all Members and in the commitment of the House to upholding these rules.

*Extract from UK Parliament: 'The Code of Conduct for Members of Parliament.'*⁷

The UK Parliament also provides further guidance, which the Australian Federal Parliament could draw upon, regarding the scope of these rules. In the UK Parliament for example, issues such as harassment, bullying and sexual misconduct fall under the remit of the code, and investigation by an Independent Commissioner, as "actions such as these would be not be regarded as part of proceedings in Parliament and would therefore be eligible for investigation ..."⁸

The UK Parliament navigates the intersections of these rules by trying to balance competing values: such as a code that promotes respect, and freedom of speech for parliamentarians. It does this by ensuring that the code acts as the basis for all expected behaviour, but enforcement of inappropriate behaviour is either dealt with by the relevant presiding officer e.g. Speaker or Committee Chair for issues such as inappropriate language, or the Independent Commissioner in the case of inappropriate conduct e.g. sexual misconduct.

The Committee should consider these intersections and tensions and determine how the code will operate as a basis for supporting and enforcing conduct in the Australian Parliament, and where an Independent Commissioner has grounds to investigate conduct by elected officials.

3.3 Future proofing of the code

The code of conduct binds the Parliament and as such, and power to change it should also sit with the Parliament. The code must be future-proofed so that it can not be changed by the whim of new Prime Ministers, Ministers or a Government. This means it should be legislated so it can only be changed by the Parliament itself.

As mentioned in 2.1 further articulation of the values, such as policies, could sit under the code to support and clarify intention, for example, articulating what respect means.

⁷ UK Parliament 'The Code of Conduct for Members of Parliament: I. Purpose of the Code.'
<https://publications.parliament.uk/pa/cm201012/cmcode/1885/188502.htm#a2>

⁸ UK Parliament, 'Parliamentary Privilege and the ICGS,'
<https://www.parliament.uk/about/independent-complaints-and-grievance-scheme/parliamentary-privilege-and-the-icgs/>

3.4 Review period

Given the complexity of this issue, and that the code should seek to address both the issues raised in Set the Standard, and issues of integrity more broadly, Fair Agenda suggests that the Committee should include a review period for all codes of conduct, to ensure they are robust and meeting their objectives.

Recommendation 2:

To effectively implement the code it is recommended that:

- There should only be one code of conduct that is broad enough in scope to address issues of integrity, and issues raised in Set the Standard
- The Committee consider how the code interacts with other rules and orders but that it is primarily seen as foundational to all expected behaviour in Parliament
- The code should be legislated for so that it can only be changed by Parliament
- There is a review period for all codes of conduct as part of this current process, to ensure the efficacy of the codes

4.0 - Investigations and sanctions regarding the code

4.1 Investigations of alleged breaches of the code

The Set the Standard report recommended that the Independent Parliamentary Standards Commission (IPSC) enforce any codes of conduct, including: investigations, making findings about misconduct and recommendations about sanctions. It is therefore critical that any code of conduct has a scope that enables the IPSC to deliver on its mandate.

Ensuring an independent body to investigate and make findings and recommendations is critical to addressing the issue of supporting survivors of gender-based violence in the parliamentary workplace. The Set the Standard report showed a high level of non-reporting: 81% of those who experienced sexual harassment, and 59% of people who said they had experienced bullying did not report their experience due to a lack of confidence in reporting and accountability.⁹ The Set the Standard report showed that 45% of people would “feel most confident reporting sexual harassment, sexual assault or bullying to somebody outside of, or independent to, the CPW [Commonwealth Parliamentary Workplace].”¹⁰

All codes should be enforced through the Independent Parliamentary Standards Commission, as suggested in the Set the Standard report and the *Commonwealth Parliamentary Standards Bill 2020*. The Commission should have powers that ensure:

- Consideration of any relevant conduct of sitting parliamentarians, including for non-recent events that have previously taken place e.g. outside the current Parliament
- Assessment of the severity of any breach based on the role of the parliamentarian and their seniority and responsibility

To ensure the proper functioning of the Commission, the Committee should also consider:

- An appropriate mechanism for selection of the Commissioners, ideally a process that is at minimum, bi-partisan
- Relevant experience and expertise of staff within the Commission to support investigations that deal with gender-based violence and providing a trauma-informed response
- Embedding the need for parliamentarians to cooperate with investigations of the Commission
- Ensuring parliamentarians do not seek to influence the process or finding of the Commission

Similar to the test of the code, a test of how the IPSC will operate could draw on the example allegations in the 46th Parliament outlined in 2.3. To clarify, Fair Agenda is suggesting that these allegations serve as examples to test against - similar to thought experiments. This is because Fair Agenda believes that these past allegations should have been able to be independently reviewed as alleged breaches of a parliamentarian code of conduct, if it had been in place.

⁹ Set the Standard, pg 221

¹⁰ Ibid, page 228

Enabling the IPSC to put such allegations through a proper process with independent review and findings is critical to restoring public trust in the Parliament. The importance of proper process and sanctions was reflected on by Fair Agenda members:

“Have someone in place that will actually hold them accountable. Have the decency to investigate all complaints and let women and men who have been affected be allowed to speak and their claims fully investigated.” - quote from Fair Agenda member

“...create an environment where everyone feels safe at work, and safe in reporting breaches of the code knowing that those breaches will be fully and impartially investigated.” - quote from Fair Agenda member

“Justice must not only be done, it must be seen to be done. Processes must be transparent, there must be accountability and sanctions for breaches... there must be no unintended consequences that harm victim survivors...it must be clear that parliamentarians are required to uphold legislation that speaks to anti-discrimination, sexual harassment, work health and safety, and criminal acts such as sexual assault.” - quote from a Fair Agenda member

4.2 Sanctions regarding breaches of the code

The efficacy of the code will be judged by the public, in large part, when it comes to the sanctioning of parliamentarians for inappropriate conduct. For this to be effective, any code must be accompanied by an appropriate range of sanctions, and an appropriate process that considers and delivers sanctions.

As recommended in Set the Standard, there should be an appropriate range of sanctions available for the Commission to recommend, as needed. These should include: suspension, withholding of salary, dismissal from a Committee or in the case of severe breaches, suspension from Parliament.

There must also be an appropriate process to deliver such sanctions. We expect that - consistent with the UK Parliament - there will be rules in the code of conduct that any Commission report, including conclusions and recommendations, must be considered by the appropriate parliamentary body, and that the decision to impose sanctions of elected officials is considered by the appropriate chamber.¹¹

Fair Agenda believes that transparency and accountability will be critical to the code's success and therefore recommend that there should be an expectation that overall investigation findings and recommended sanctions should be made public. This could be in the form of a summary, rather than a complete report, and would be contingent on the consent of the complainant and any privacy and confidentiality considerations for anyone alleged to have been harmed by the

¹¹ UK Parliament 'The Code of Conduct for Members of Parliament: VI. Upholding the Code'
<https://publications.parliament.uk/pa/cm201012/cmcode/1885/188502.htm#a2>

alleged breach. We believe making such information public is important to maintaining the credibility and independence of the Commission.

Recommendation 3.

To effectively implement the Code it is recommended that consideration of the role and function of the Independent Parliamentary Standards Commission should include:

- Scope that supports a robust, independent investigation of any relevant conduct; that creates confidence in the process and findings. This should include scope for investigating allegations of non-recent events involving sitting parliamentarians
- In-house expertise in the IPSC to respond appropriately to gender-based violence in a manner that is trauma-informed
- Ability to recommend an appropriate range of sanctions, and that recommendations on sanction take into consideration any additional duties of the parliamentarian
- Ensuring a transparent mechanism that upholds independence and confidence in the Commission
- Ability to make IPSC investigation findings public, contingent on the consent of complainants or other relevant privacy issues; and a requirement that findings be considered by the relevant body of Parliament.

5.0 - Recommendations

Recommendation 1:

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- e) Be tested against, and ultimately solve for, the example allegations that arose in the 46th Parliament. Doing so would be an indication of the code's efficacy

Recommendation 2:

To effectively implement the code it is recommended that:

- a) There should only be one code of conduct that is broad enough in scope to address issues of integrity, and issues raised in Set the Standard
- b) The Committee consider how the code interacts with other rules and orders but that it is primarily seen as foundational to all expected behaviour in Parliament
- c) The code should be legislated for so that it can only be changed by Parliament
- d) There is a review period for all codes of conduct as part of this current process, to ensure the efficacy of the codes

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- c) Ability to recommend an appropriate range of sanctions, and that recommendations on sanction take into consideration any additional duties of the parliamentarian
- d) Ensuring a transparent mechanism that upholds independence and confidence in the Commission
- e) Ability to make IPSC investigation findings public, contingent on the consent of complainants or other relevant privacy issues; and a requirement that findings be considered by the relevant body of Parliament.