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Submission to the Joint Select Committee on Parliamentary Standards

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Introduction

Dr Maley is a Senior Lecturer at the Australian National University. She has researched Australian politics for more than 10 years, and contributed to a review of the *Members of Parliament (Staff) Act 1984*. Dr Barrett is a former senior parliamentary official who in 2020 completed a PhD comparing parliamentary administration in Australia and the UK. Her book *Parliament: A Question of Management* will be published this year by ANU Press. This submission draws on their research in addressing terms of reference b) i, ii, iii and vi.

Establishing a code of conduct: issues for consideration

The Human Rights Commission report *Set the Standard: Report on the independent review into Commonwealth parliamentary workplaces* (the ‘Jenkins report’) brought to light poor standards of conduct in the parliamentary workplace, a lack of tools and processes to address such conduct and a pressing need for cultural change within the parliament to ensure a safe and respectful working environment, especially for women and people from diverse backgrounds.

A key recommendation was that Parliament should establish a code of conduct for parliamentarians and a code of conduct for parliamentarians’ staff. One of the most powerful effects of a code of conduct is to establish new institutional norms. A code of conduct for the Australian Parliament would contribute to creating a safer environment by changing expectations about how people should behave and - if properly promoted, supported and embraced - could result in significant cultural change. A code of conduct should be a powerful signal that the parliament is subject to, and not immune from, the norms and social values expected in other working environments across the community.

History shows that establishing a code of conduct for members in the Australian Parliament has been complex and difficult to achieve in the absence of political will. The last time a code of conduct for members was seriously discussed within this parliament was in 2011-12.¹ The catalyst for the discussion was the agreement made with independent members of the House of Representatives prior to the Gillard minority government being formed in the House of Representatives in September 2010.

The House of Representatives Standing Committee of Privileges and Members’ Interests consulted with the Senate Committee of Senators’ Interests with the aim of developing a uniform code for senators and members but no conclusive decision was reached. The

¹See House of Representatives Committee of Privileges and Members’ Interests 2011, *Draft code of conduct for members: discussion paper* and Senate Committee of Senators’ Interests 2012, *Code of conduct inquiry: Report 2/2012*. See also Brien, A 1998, ‘A code of conduct for all parliamentarians?’, *Research Paper No. 2 1998-99*, Parliamentary Library, Parliament of Australia, and McKeown, D & Sloane, M 2022, ‘Parliamentary codes of conduct: a review of recent developments’ *Research papers 2021-22*, 30 March 2022, Parliamentary Library, Parliament of Australia. We note also the benchmarks for a code of conduct recommended by the Commonwealth Parliamentary Association in 2015 and the private members bills introduced by Cathy McGowan (2018) and Helen Haines (2020).

Senate committee noted the House committee's observation that a code of conduct could make 'a modest contribution to an improvement in perceptions' but considered there was a 'paucity of evidence that the codes of conduct applying in other Australian jurisdictions have done anything to improve community perceptions' and the code of conduct operating in the UK House of Commons had done nothing to prevent the scandal arising from the misuse of members entitlements.² The committee observed that in many areas standards of conduct were set out in law and in procedures of the parliament. However, it was also concerned that a lack of support for a code of conduct is 'too easily equated to lack of support for an improvement in standards'.³

There is no doubt that this is the case today; it is no longer an option for the Australian Parliament not to establish a code of conduct for its members and senators. The threshold question now is how to ensure a sustained commitment from every current and future member and senator, and their staff, to the highest standards of behaviour in the various parliamentary settings without relying only on the threat of sanctions which, in our view, would serve to weaken rather than strengthen the parliament as a whole.

There are different options for developing a new code of conduct for senators and members and their staff. A starting point should be the Parliamentary Service Code of Conduct enshrined in the *Parliamentary Service Act 1999*. Other parliamentary models might also be useful, including an examination of where these have been found to be wanting. (For example, lessons can be learned from the UK Parliament's response to the misuse of expenses in 2009 in setting up the Independent Parliamentary Standards Authority which was considered to lack a sufficient understanding of the responsibilities and requirements of members of parliament and act as an impediment to members carrying out their roles.)⁴

In our view, one overarching code of conduct defining appropriate standards of behaviour for all those who work in Commonwealth parliamentary workplaces may be preferable. Appropriate behavioural standards apply across the board; the sanctions available for inappropriate behaviour may differ according to differences in status among those who work in the parliamentary environment. This would not preclude bringing together all the existing provisions and obligations members and senators are already subject to and publishing them as 'a frame of reference both for parliamentarians and for members of the public'.⁵ While the code itself may be considered to be aspirational, the obligations framework would establish the rules.

² Senate Committee of Senators' Interests 2012, *Code of conduct inquiry: Report 2/201* pp 4-5

³ Senate Committee of Senators' Interests 2012, *Code of conduct inquiry: Report 2/201* p 4

⁴ See vanHeerde-Hudson, J 2014, 'Should I stay or should I go?', in J vanHeerde-Hudson, (ed.), *The political costs of the 2009 British MPs' expenses scandal*, Palgrave Macmillan, Hampshire, pp. 62-87; and Barrett, V 2019, *Parliamentary administration: what does it mean to manage a parliament effectively*, Doctoral dissertation, Australian National University.

⁵ Senate Committee of Senators' Interests, 2012, *Code of conduct inquiry: Report 2/201* pp. 8-9

Sustaining behavioural and cultural change through stronger parliamentary leadership

Enforcement of the code of conduct would be an important responsibility of the Independent Parliamentary Standards Commission proposed by the Jenkins report. However, in this submission we want to highlight the need for stronger leadership within the parliament itself to foster and sustain a safe and respectful workplace. Whilst there will always be a need for independence in enforcing a code of conduct, the critical task of managing parliamentary behaviour belongs to the parliament. The primary focus should be on modelling and supporting appropriate behaviour in the first place, reducing the need for resort to investigative processes and sanctions.

As noted by the Australian Human Rights Commission in the Jenkins report, the level of misconduct in the federal parliamentary workplace reflects an institution-wide deficit in leadership.⁶ The independent review into bullying, harassment and sexual misconduct at the Parliament of NSW (the 'Broderick report') also stressed the importance of institutional leadership in preventing poor workplace behaviours.⁷ Yet where are the leadership structures or bodies within the Australian Parliament which can guide and support a better workplace culture? We argue they are currently missing.

One of the barriers to establishing a healthy workplace culture in parliament, which sets it apart from other workplaces, is the question of authority. The Australian Parliament does not have a CEO; it is not even a single organisation; its two houses are fiercely independent and the executive, acting through the Department of Finance, is responsible for its resourcing and the employment of staff for members, senators and ministers. Unlike the UK Parliament, which has the House of Commons Commission and House of Lords Commission, and the New Zealand Parliament, which has the Parliamentary Service Commission, the Australian Parliament does not have an overarching body responsible for its governance, management and public image. This leadership deficit sets it apart from comparable Westminster parliaments.⁸

Although responsibility for managing the parliamentary environment is vested in the Presiding Officers they are seen to be lacking in authority to act on behalf of all members and senators. They should be empowered, resourced and supported to play a leadership role in improving the culture of parliament and in modelling a moral commitment to the parliamentary code of conduct.

To strengthen the leadership of the Australian Parliament we recommend establishing an Australian Parliamentary Commission, which the Presiding Officers would co-chair. Our preference would be one modelled on the UK Parliament and consist of members of parliament, parliamentary officials and external non-executive members (ie community

⁶ Australian Human Rights Commission, 2021, *Set the Standard: Report on the independent review into Commonwealth parliamentary workplaces* p 150

⁷ Broderick, E 2022, *Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces* p 17

⁸ The two Canadian Houses of Parliament also have such governing bodies: the Board of Internal Economy (for the House of Commons) and the Committee on Internal Economy, Budgets and Administration (for the Senate).

members), including, ideally, a separately-appointed Parliamentary Service Commissioner. While this broad membership is preferable, the New Zealand Parliamentary Service Commission provides another model comprising only parliamentarians: chaired by the Speaker, it includes the Leader of the House, the Leader of the Opposition and one member for each recognised party represented in the parliament.

Alternatively, an opportunity exists to expand the roles of two existing committees—the House of Representatives Standing Committee on Appropriations and Administration and the Senate Standing Committee on Appropriations, Staffing and Security—each chaired by their respective Presiding Officer, and which are already enabled to meet jointly under their *Standing Orders*. However we believe this proposal may be less effective as their membership and remit is currently limited.

While new parliamentary bodies were established following the Jenkins review, they lack a broad and ongoing leadership function. The Joint Select Committee on Parliamentary Standards has a limited focus to inquire into matters relating to the development of codes of conduct for the parliamentary workplace. The Parliamentary Leadership Taskforce has no ongoing role, being established to oversee the implementation of the recommendations of the Jenkins report. Critically, the Presiding Officers are not represented on these bodies. Nor do these bodies include sufficient representation of political parties and independents in parliament and groups such as staff of parliamentarians and ministers, staff working for the parliamentary departments, or outside experts.

Implementing the Jenkins report provides an opportunity to strengthen the leadership role of the Presiding Officers and, drawing on their authority, to reflect on what leadership structures should be established to provide ongoing behavioural and cultural leadership in the Australian Parliament.

Cultural change is being driven by the parliament in other countries. For example, in New Zealand the Parliamentary Service Commission created the Parliamentary Culture Committee to provide advice on improvements to the workplace culture. The UK House of Commons Commission appointed an independent Director for Cultural Transformation to develop and lead the action plan responding to the Cox Report.⁹ The UK House of Lords appointed a Director of Culture Change to develop strategies to achieve a positive and respectful workplace culture, addressing the issues identified in the Ellenbogen Report.¹⁰ A Steering Group for Change was also created, consisting of both staff and members of the House of Lords; recommendations to strengthen these arrangements, following an external management review, are being considered by the Commission.¹¹ The NSW Parliament's Parliamentary Executive Group established a Parliamentary Advisory Group on Bullying,

⁹ Cox, L 2018, 'The bullying and harassment of House of Commons staff', Independent inquiry report, 15 October 2018, <https://www.parliament.uk/globalassets/documents/conduct-in-parliament/dame-laura-cox-independent-inquiry-report.pdf>

¹⁰ Ellenbogen, N 2019, *An Independent inquiry into bullying and harassment in the House of Lords*, Report, 10 July 2019, <https://www.parliament.uk/documents/lords-committees/house-of-lords-commission/2017-19/ellenbogen-report.pdf>.

¹¹ See Leslie, K & Mohr E, *House of Lords external management review*, 27 January 2021, <https://committees.parliament.uk/publications/4441/documents/44971/default/>.

Sexual Harassment and Sexual Misconduct (the PAG). The PAG is chaired by the Deputy Speaker in the Legislative Assembly and includes members of parliament from each of the major parties, staff of parliamentarians across both Houses and Ministers, staff working for the three parliamentary departments, members of the Public Service Association, and a survivor of sexual assault. The Broderick report described the role of the PAG as critical: 'Unique in terms of bringing together all the key cohorts into a single, purposeful group, the PAG will play a key leadership role in helping the NSW Parliament to shift both its culture and its practice'.¹²

The Joint Committee on Parliamentary Standards and the Parliamentary Leadership Taskforce are new bodies created to collectively steer the changes the Australian Parliament has committed to by endorsing all 28 recommendations of the Human Rights Commission report. This is a positive start, and a code of conduct is an important, and now politically essential, element of cultural change. Strengthening the authority of the Presiding Officers would help to embed and sustain these changes. Creating a Parliamentary Commission to provide ongoing collective leadership would ensure they are seen by all members, senators, their staff and parliamentary staff as being intrinsic to parliamentary life rather than an impediment; this will enable effective leadership of the parliamentary institution into the future.

In summary:

- we welcome the development of a code of conduct for Commonwealth parliamentarians, parliamentary staff and all those working in Commonwealth parliamentary workplaces to contribute to ensuring safe and respectful behaviour
- we recommend that a single code of conduct should be based on the existing Parliamentary Service Code of Conduct, and be part of a wider framework of obligations and sanctions which recognises different employment status among those who work in Commonwealth parliamentary workplaces
- we recommend an Australian Parliamentary Commission be created as an ongoing and inclusive leadership structure within the Australian Parliament. This would empower the Presiding Officers to provide behavioural leadership, enable parliament to guide its own culture and practices, and help to drive much-needed cultural transformation within the parliamentary institution.

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¹² Broderick, E 2022, *Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces* p 24