



**Submission from the Commonwealth<sup>1</sup> Parliamentary Association (CPA)**

to the

**Joint Select Committee on Parliamentary Standards**

On their inquiry into the development of codes of conduct for Commonwealth parliamentarians, parliamentary staff, and parliamentary workspaces and to consider related matters.

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**Introduction**

The CPA welcomes the establishment of a Joint Select Committee on Parliamentary Standards and following a call for submissions presents the following contribution which focuses primarily on Committee Resolution (1)(a) and (1)(b)(i) and (ii). This submission attempts to offer insight from a number of key CPA resources on related topics which it is hoped will provide insight and guidance to the Committee as part of its deliberations. These outputs are: the CPA Recommended Benchmarks for Democratic Legislatures, The CPA Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament, and the most recently published, the CWP<sup>2</sup> Anti-Harassment Policy Guidelines: A Toolkit for Commonwealth Parliaments.

The CPA as an international community of Commonwealth Parliaments and Legislatures works to deepen the Commonwealth's commitment to the highest standards of democratic governance and parliamentary practice. Over the last decade the CPA has provided ongoing technical support to Commonwealth parliaments in the establishment or updating of codes of conduct and codes of ethics. This work remains challenging as there is considerable sensitivity amongst parliamentarians over what rules should be in place and how such rules should be policed. Unfortunately, such reform is predicated around scandals or significant abuses of power by parliamentarians, or in some cases senior parliamentary officials. Regardless of the motive to drive reform, it is essential that parliaments uphold, in practice and perception, the highest standards of conduct. Considering our experience in this field, the CPA would stand ready to provide ongoing support to the Parliament of Australia in pursuing this worthwhile endeavour.

This submission does not go into great depth around the need for and importance of having a code of conduct. It is assumed that in establishing this Committee and in pursuing such work the arguments have been accepted. But it is clear from the Australian Human Rights Commission's *Set the Standard*:

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<sup>1</sup> The 'Commonwealth' Parliamentary Association refers to the Commonwealth of Nations and not the 'Commonwealth' of Australia.

<sup>2</sup> CWP is the Commonwealth Women Parliamentarians network which is one of three networks making up the CPA. The other two being the CPA Small Branches network and the Commonwealth Parliamentarians with Disabilities network (CPwD).

*Report on the Independent Review into Commonwealth Parliamentary Workplaces (2021)*<sup>3</sup> coupled with the low levels of trust in politicians in Australia<sup>4</sup> and the distress and devastation of harassment and abuse inflicted on parliamentarians, parliamentary staff, members staff, families, and communities that there is a clear need for reform.

Whereas the Parliament of Australia is perhaps behind most Commonwealth Parliaments in this work, it is important to note that the Federal Parliament only need look at its state counterparts, especially the Australian Capital Territory (ACT) Legislative Assembly to see an exemplary example of how a fit for purpose Code can be developed. The ACT Legislative Assembly also works to actively support parliaments around the Commonwealth to develop their versions of a code of conduct.

### **CPA Recommended Benchmarks for Democratic Legislatures**

In 2018, the CPA completed a consultation and review process that resulted in the adoption of updated [CPA Recommended Benchmarks for Democratic Legislatures](#). The 136 Benchmarks provide a minimum standard and a guide on how a parliament should be constituted and how it should function. They play an important role in developing the effectiveness of parliamentary institutions across the 180 national and subnational parliaments of the CPA, including the Commonwealth of Australia, and contribute to the implementation of the Sustainable Development Goals (SDGs).

In terms of Codes of Conduct for Parliaments, the Benchmark clearly stipulates under section 11, the following:

#### **11. ETHICAL GOVERNANCE**

##### **11.1 Transparency and Integrity**

11.1.1 Legislators should maintain high standards of accountability, transparency, responsibility, and propriety in the conduct of all public and parliamentary matters including strict adherence to codes of conduct, and interest disclosure rules.

11.1.2 The Legislature shall approve and enforce codes of conduct, including rules on conflicts of interest and acceptance of gifts.

11.1.3 Legislatures shall require legislators to periodically, fully, and publicly disclose their financial and other relevant interests.

11.1.4 There shall be mechanisms to prevent, detect, and bring to justice legislators and staff engaged in corrupt practices.

In addition:

#### **5.4 Organisation and Management**

5.4.4 All staff shall be subject to a code of conduct

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<sup>3</sup> Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces, Australian Human Rights Commission, November 2021

<sup>4</sup> [Trust in government hits all time low, Australian National University, Dec 2019](#)

As well as sections 11 and 5, the Benchmarks highlight the importance of Natural Justice, which should be a key consideration in deliberations around the development, implementation, and policing of a code. Accordingly, section 1.8 stipulates that:

**1.8 Natural Justice**

1.8.1 The Legislature shall incorporate principles of natural justice into its rules and procedures, and these shall be applied rigorously to all situations where serious allegations are made against named or identifiable persons during the course of proceedings, either in the Legislature or in its Committees.

1.8.2 Members, or others, who are subject to serious charges of contempt of, and offences against, the Legislature are accorded natural justice during the whole process of consideration, and the charges are decided on the basis of all properly admissible evidence.

1.8.3 Punishments imposed by the Legislature on Members or other people (for example, fines, or suspensions from attending or participating in further sittings of the Legislature and its Committees) are proportionate and fair.

There are of course other Benchmarks which indirectly relate to the content of any codes of conduct, whether that be preventing discrimination on the basis of race, religion, ethnicity, gender, disability, etc or establishing an independent ombudsperson. But it is important to highlight that these Benchmarks are only the minimum standard for parliaments to abide by. As the Benchmarks are intended for application by all Commonwealth parliaments, they are not country or jurisdiction specific and there will be unique characteristics only applicable to the Parliament of Australia.

**Benchmark Case Studies from around the Commonwealth**

**Kenya:**

Chapter 6 of the Constitution on Leadership and Integrity forms the basis upon which all other Laws or regulations on the conduct of MPs and Senators are derived. The Leadership and Integrity Act 2012 is designed to ensure that State Officers respect the values, principles and requirements of the Constitution (e.g. Section 12 provides for financial integrity; Section 14 provides for the receipt of gifts or benefits; and Section 16 requires state officers to declare conflicts of interest in the course of discharging their duties). The Anti-corruption and Economic Crimes Act provides for the prevention, investigation and punishment of corruption and economic crimes. The Ethics and Anti-Corruption Commission (EACC) bears the ultimate responsibility for overseeing the implementation of the Leadership and Integrity Act. The Public Officers Ethics Act governs the conduct of members and provides a code of conduct and ethics for public officers. The Parliamentary Powers and Privileges Act, 2017 entrenches a Code of Conduct for Members of Parliament and Senators and prescribes penalties for breaches of privilege and code of conduct. The Act also regulates admittance to and conduct within the precincts of Parliament, including sanctions for contravention. The Committee on Privileges is the body responsible for implementation of these Acts. The Speaker has ruled that criminal matters must be referred to appropriate bodies (the PAC also works closely with the EACC).

**Ghana:**

In 2014, Parliament adopted a Code of Conduct for MPs which requires Members to maintain high standards of accountability, transparency and propriety in the conduct of all public and

parliamentary matters including strict adherence to codes of conduct, and interest disclosure rules. The Code is anchored by the seven principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty and leadership - and provides guidance on how MPs should act and arrange their affairs in order to uphold high standards of behaviour. The Code states that the principles in the Code will be clarified in a Guide to serve as a useful tool and reference point for the interpretation of the Code.

#### **South Africa:**

The Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members is intended to provide a framework of reference for Members when discharging their duties and responsibilities. The Code outlines the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct. The purpose of the code is to create public trust and confidence in public representatives and to protect the integrity of Parliament. The Registrar of Members' Interests is responsible for maintaining the Register of Members' Interests and performing other duties to support Parliament's Joint Committee on Ethics and Members' Interests. Parliament has also launched an anti-fraud hotline, and fraud awareness workshops have been rolled out.<sup>5</sup>

#### **United Kingdom:**

The UK House of Commons has had some form of codes of conduct since 1996 and the recommendations emanating from the Select Committee of Standards in Public Life. These have been reviewed and updated frequently. Responsibility for the code sits with the Committee on Standards (formally the Committee of Standards and Privileges) and the Parliamentary Commissioner for Standards, an independent officer of the House who is directed to investigate breaches of the code. In 2020, the Committee began an inquiry into reviewing of the 2015 codes of conduct. This is a two-phased process. In November 2021 the Committee published its initial report with proposals for the consultation and is now working on a revised set of codes and a review of the fairness and natural justice within the House of Commons standards system.

### **Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament**

Beyond the basic principles outlined in the Recommended Benchmarks for Democratic Legislatures, the CPA has undertaken specific work around codes of conduct in the form of the 2015 Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament. Any Committee looking to establish or update a code of conduct should refer to this publication as part of its initial deliberations. The Code came about following comprehensive consultation with a broad cross-section of Commonwealth parliaments and was developed in partnership with Monash University led by Prof. Hon. Dr Ken Coghill who remains one of the leading academics in this field of work.

Whereas a full version of the Benchmarks for Codes of Conduct can be found [here](#), in summary, the Codes cover the following key areas for consideration:

- Purposes and Functions of Parliaments
- Ethics Adviser
- Public Office of Member of Parliament
- Enforcement

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<sup>5</sup> CPA Benchmark Assessment reports for Kenya, Ghana and South Africa.

- Purpose and Role of Parliamentary Codes of Conduct
- Making and Updating the Code
- Principles
- Fostering a Culture of Ethical Conduct
- Disclosure and publication of Interests
- Use of Public Property
- Inducements
- Civility
- Behaviour
- Attendance

Overall, what is clear from these Benchmarks is the importance of any breaches of codes of conduct being accompanied by sanctions, otherwise the codes become meaningless. What is also a key message is the importance of authorities, either internally or through an independent entity, providing ongoing education that seeks to change any historic negative political culture within the parliamentary environs, which might be perpetuating poor ethics and behaviours. A code, on its own, is insufficient to tackle issues which might currently exist or could arise in the future. The CPA works closely with newly elected parliamentarians during their induction training to cover ethics and behavioural standards. This approach, delivered with parliamentary authorities, embeds good practice from the outset of a parliamentary term. However, that training should be provided at regular intervals. It could be said, that if a parliamentarian is having to refer to the codes in the first instance, something has already gone wrong.

#### **CWP Anti-Harassment Policy Guidelines: A Toolkit for Commonwealth Parliaments**

No matter how useful these Benchmarks for Codes of Conduct are, they are deficient in one very important respect, and that is they do not specifically address gender equity, sexual harassment, sexual violence or bullying. Which consequentially means that they are only partially of value. As a result, any Committee undertaking this work should also look to the most recent resource developed by the CPA in this field, namely the CWP Anti-Harassment Policy Guidelines: A Toolkit for Commonwealth Parliaments. The Guidelines (which can be found [here](#)) focus intentionally around bullying and harassment within parliaments. The Guidelines deal with the definition of harassment, how to overcome misconceptions, what action needs to take place to strengthen the parliamentary institution and who is responsible, how to consult and ensure that all key stakeholders are involved and have some form of ownership, how to ensure the content and focus of any anti-harassment policy are embedded into a Code of Conduct, and what procedures should be put in place to police and uphold such anti-harassment policies. The Guidelines also highlight the importance of monitoring and evaluating progress, and therefore encourage the view that policies of codes of conduct should be live documents which should be constantly managed and monitored.

#### **Conclusion**

Whichever direction the Committee takes and whatever the content of the codes, there are key principles and elements that should be included as a minimum standard. These minimum standards have been developed by the CPA and highlighted in this submission. Finally, the CPA would wish to emphasise that, as part of its deliberations, the Committee looks to many of its international and domestic parliamentary counterparts in identifying examples of good practice.

We wish the Committee success in its inquiry and outcomes.

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