

AN INDEPENDENT COMPLAINTS MECHANISM TO ADDRESS COMPLAINTS OF MISCONDUCT BY MEMBERS OF PARLIAMENT

Background

The prevalence of sexual assault and sexual harassment in the workplace has been the subject of community concern in recent years. The majority of sexual harassment occurs in the workplace, encompassing all kinds of industries and sectors from sporting associations to schools and universities and the legal profession¹. State and national parliaments are no exception.

Allegations of sexual harassment continue to surface while the Australian Parliament awaits the results of the Australian Human Rights Commission's independent review, to be tabled in November 2021². As former Acting Commissioner for Equal Opportunity Ms Steph Halliday noted in her *Review of Sexual Harassment in the South Australian Legal Profession*:

*The fact that legal and political institutions are far from immune from unacceptable, unlawful behaviours is deeply disturbing. These are, after all, the workplaces of those who make and administer the laws by which the rest of society functions*³.

Following allegations of sexual harassment in the South Australian Parliament in 2019, the Government called on the Commissioner for Equal Opportunity to conduct a Review of Harassment in the Parliament Workplace to recommend how Parliament should address any future allegations.

That response both anticipated and reflected the levels of public scrutiny attending the high public office enjoyed by Members of Parliament.

In February 2021, Ms Emily Strickland, the then Acting Commissioner, completed the *Review of Harassment in the Parliament Workplace*, recommending the adoption of 'a behavioural code' for all staff, alongside 'robust' human resources, training and a complaints functions to enforce it⁴.

¹ Research exploring the prevalence of sexual assault and sexual harassment in the workplace has been undertaken by the Australian Human Rights Commission since 2003, with the 2008 National Survey finding that 65% of respondents who had experienced sexual harassment at some time in their lives had experienced it in the workplace. See Elisabeth Broderick, Australian Human Rights Commission 2008, *Sexual Harassment: Serious Business*, 1, available: <https://humanrights.gov.au/our-work/chapter-3-extent-sexual-harassment-australia-sexual-harassment-serious-business>

² Following allegations of sexual assault in the Australian Parliament, the Australian Human Rights Commission has been tasked to conduct an *Independent Review into Commonwealth Parliamentary Workplaces* with the aim of ensuring parliamentary workplaces are 'respectful and safe' and reflect 'best practice in the prevention and handling of bullying, sexual harassment and sexual assault'. The report will be published in November 2021. See <https://humanrights.gov.au/CPWReview>. Australian Federal Police have received another 40 reports involving parliamentarians and their staff since Brittany Higgins alleges she was raped by a male colleague in February 2021, <https://www.abc.net.au/news/2021-06-21/brittany-higgins-alleged-rape-case-evidence-received/100231284>. Allegations of sexual harassment by Tasmanian Labor leader David O'Byrne led to his resignation on 4 July 2021, and ex-Liberal MP Julia Banks detailed her experience of sexual harassment in the Federal Parliament in her new book, describing the culture of the party as 'underpinned by sexism and misogyny', <https://www.abc.net.au/news/2021-07-03/julia-banks-inappropriate-touching-sexism-imp-politics-claims/100265384>.

³ Equal Opportunity Commission, *Review of Harassment in the South Australian Legal Profession*, 9 April 2021,1. Available: <https://www.eoc.sa.gov.au/documents/Final-Report-of-the-Review-of-Harassment-in-the-South-Australian-Legal-Profession.pdf>.

She also recommended a Code of Conduct for Members providing that Members must not engage in sexual harassment or other forms of discriminatory behaviour. Strickland highlighted the need for such a Code to reflect the unique nature of the parliamentary workplace⁵. Parliamentarians are expected to uphold standards of behaviour befitting their status as the State's highest-ranking public officials, and that role extends to management of staff and electorate offices.

In April 2021, the Deputy Secretary of the Department of Prime Minister and Cabinet, Ms Stephanie Foster, recommended the Federal Parliament amend its *Statement of Ministerial Standards* to clearly articulate that sexual harassment and serious or systemic bullying are unacceptable in the workplace, and commit to providing an independent and confidential complaints mechanism to respond to such incidents when they arise in the parliamentary workplace⁶.

The recommendation for a Code of Conduct for Members echoes previous calls by the Independent Commissioner Against Corruption (the ICAC)⁷, and builds on similar recommendations dating back to the 1990s in both the federal and state jurisdictions⁸. Parliaments in all the other states and territories have adopted Codes of Conduct, leaving South Australia and the Commonwealth the only jurisdictions without a Code⁹.

The need to institute a Code of Conduct for Members has been in the past variously recognised and resisted by successive South Australian governments. Delays in adopting a Code rest in a complex history of parliamentary convention upholding parliamentary 'supremacy'¹⁰ in the regulation and investigation of parliamentary affairs. That authority extends to Members establishing a Privileges Committee to adjudicate the conduct of their peers when allegations are raised.

In the wake of recent bullying allegations against at least one Member, I welcome statements by the Premier and the Attorney-General committing to a Code of Conduct to govern the conduct of Members¹¹.

Further, the Fifth Report of the Crime and Public Integrity Police Committee into Matters of Public Integrity in South Australia also recommended the introduction of a Code of Conduct.

⁴ Equal Opportunity Commission, *Review of Harassment in the South Australian Parliament Workplace*, 26 February 2021, <https://eoc.sa.gov.au/review-harassment-south-australia-parliament-workplace>, 5-6. See also the discussion on 110-122.

⁵ Strickland, *Review of Harassment in the South Australian Parliament Workplace*, 4.

⁶ Stephanie Foster, 2021, *Review of the Parliamentary Workplace: Responding to Serious Incidents*, (consultation copy), 12, available: [Review of the Parliamentary Workplace: Responding to Serious Incidents | Department of the Prime Minister and Cabinet \(pmc.gov.au\)](#)

⁷ See Independent Commissioner Against Corruption and Office for Public Integrity *Annual Report 2013-2014*, 62. See also Independent Commissioner Against Corruption, August 2020 *Looking Back: A Report by the Hon Bruce Lander QC*, 15. The institution of the Independent Commissioner Against Corruption as part of an integrity framework was to be accompanied by a Code of Conduct for both Houses of Parliament to govern the conduct of members, outlined in the speech of The Hon Tom Kenyon, MP, 2nd reading of the Independent Commissioner Against Corruption Bill 2012, South Australia, *Parliamentary Debates*, House of Assembly 2012.

⁸ In South Australia, the Legislative Review Committee of the South Australian Parliament tabled a Discussion Paper concerning a Code of Conduct for Members of Parliament on 10 April 1996. A Joint Committee rejected a Code of Conduct in 2004, recommending instead a *Statement of Principles* to govern Members' conduct. The SA Parliament adopted the *Statement of Principles* in May 2016, but this did not have the status or effect of a Code of Conduct.

⁹ The Federal Parliament has not yet established a Code of Conduct for Members. In Western Australia, a code has only been adopted by the Legislative Assembly.

¹⁰ Report of the Joint Committee on a Code of Conduct for Parliamentarians 2004, 1.3 (b).

¹¹ Following recent claims of bullying in a Labor parliamentary office, the Premier agreed a Code of Conduct was necessary, 3 June 2021.

A Code of Conduct

A Ministerial Code of Conduct has been in place since 2002 to regulate Ministers' financial dealings and interests and restrict employment of former Ministers after leaving Parliament. As already observed the conduct of Members is further guided by a *Statement of Principles* adopted in 2016¹².

However, as the former ICAC, the Hon Bruce Lander QC, argued, those Principles merely offer an 'aspirational' guide for Members. In his submission to the inquiry into public integrity by the Crime and Public Integrity Policy Committee, the former ICAC said, 'The Statements of Principles are not codes of conduct for the purposes of the ICAC Act (section 5(6))'¹³.

I have noted the Australian Government's agreement in principle to support all 55 recommendations made by Federal Sex Discrimination Commissioner, Kate Jenkins, in her review, *Respect@Work*, aimed at creating a new culture of respectful behaviour in Australian workplaces¹⁴.

I am of the view that implementing a Members' Code of Conduct would strengthen the State's existing integrity framework and increase public trust in the Parliament as an institution. It would provide a yardstick against which conduct could be measured. It would also provide clarity to Members and the community about the ethical principles and standards of behaviour the community expects of its elected public officials.

While Codes of Conduct for Members in other jurisdictions broadly address the required standards of conduct, most do not set out in any detail what behaviours in the workplace are unacceptable.

If Strickland's recommendation is accepted, a Code of Conduct should prohibit sexual harassment. Including a definition of sexual harassment so as to expressly impugn such behaviour is desirable. The *Equal Opportunity Act 1984 (SA)* provides a working definition which it is appropriate to replicate:

s87(9) For the purposes of this section—

- (a) a person **sexually harasses** another (the **person harassed**) if—*
- (b)*
 - (i) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or*
 - (ii) engages in other unwelcome conduct of a sexual nature in relation to the person harassed,*

¹² The Federal Parliament has not yet established a code of conduct for members. In Western Australia, a code has only been adopted by the Legislative Assembly.

¹³ The Hon Bruce Lander QC 12 April 2019, Submission to the Crime and Public Integrity Policy Committee.

¹⁴ Australian Government 8 April 2021, 'A Roadmap for Respect: Preventing and Addressing Sexual Harassment in Australian Workplaces', <https://www.pm.gov.au/media/australian-governments-response-respectatwork-report>. The response refers to the Australian Human Rights Commission's 2020 inquiry, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, available: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>.

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

(b) **conduct of a sexual nature** includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing; and

The Code of Conduct should reflect that Members' workplaces extend beyond the Parliamentary buildings and electorate offices in which they conduct the business of Parliament to those community, sporting and social functions and events which they might attend as representatives of their electors. This is important because, as Halliday observes, incidents of sexual harassment 'are exacerbated by social events centred around the availability and high consumption of alcohol'¹⁵.

I have examined Codes of Conduct for Members in other states and territories and considered the recommendations provided by the various reviews of parliamentary conduct. I present a draft Code of Conduct (Appendix A) in the hope of advancing the work of the Committee to address Strickland's recommendation.

Next I have considered the mechanisms available to deal with potential breaches of such a Code.

An Independent Complaints Process to Receive and Deal with Complaints Raised Against Members of Parliament

The reviews by Acting Commissioner for Equal Opportunity, Emily Strickland, and Deputy Secretary of the Department of Prime Minister and Cabinet, Stephanie Foster recommend that parliaments across Australia give serious consideration to the question of how complaints are best handled when they arise. Valid criticisms are made that the existing arrangements do not provide an appropriate complaints mechanism to respond when allegations of sexual harassment or bullying arise¹⁶.

In her *Review of the Parliamentary Workplace: Responding to Serious Incidents*, Foster called for the establishment of 'a trusted, independent complaints mechanism' to investigate misconduct, concluding that existing mechanisms in the Australian parliamentary workplace were neither designed for nor able to address complaints of this kind¹⁷.

¹⁵ Halliday 2021, 150.

¹⁶ Strickland highlights the absence of procedures and the inadequacy of complaint handling policies, 117. She notes the 'Grievance Policy and Guideline' may provide an internal mechanism to deal with an allegation of harassment is raised by a Member against another Member, ie in which there is presumed role equality. However, this is problematic because the policy is not victim-centred.

¹⁷ Foster 2021, 48, 5. Foster writes: 'current procedures and processes are not designed or able to respond to serious incidents in the parliamentary workplace, particularly to sexual assault', 5. She also notes the need for this mechanism to be 'independent of the employer', victim-centred and trauma-focused, 7, 5. The Federal Sex Discrimination Commissioner, Kate Jenkins, has also been tasked to conduct an *Independent Review into Commonwealth Parliamentary Workplaces* with the aim of ensuring parliamentary workplaces are 'respectful and safe' and reflect 'best practice in the prevention and handling of bullying, sexual harassment and sexual assault'. That report will be published in November 2021. See <https://humanrights.gov.au/CPWReview>

Strickland highlighted the need for a complaints mechanism that prioritises the safety of complainants throughout the process, as well as providing an avenue by which sanctions against offending Members could be applied. To that end, she recommended an independent complaints handling system. This is in part because a system in which Members investigate allegations against their peers risks becoming politicised¹⁸.

Currently, breaches of conduct by Members can be referred to a Privileges Committee. This is an *ad hoc* committee that meets if or when necessary to consider alleged breaches of privilege¹⁹. However, the research raises two key problems with that approach.

First, sexual harassment is more likely to occur in workplaces characterised by hierarchical structures, such as parliamentary workplaces²⁰. Power imbalances not only structure relations between staffers and Members and between junior and senior staff, but also produce gender inequality, which research shows underpins a broader pattern of gendered violence²¹. Gender inequality can be exploited by perpetrators who knowingly use their power or office to engage in these forms of conduct²².

Second, there is a perception that parliamentarians can engage, or have engaged, in harassing conduct with impunity²³. Almost 80 percent of those respondents to Strickland who had received unwelcome sexual advances did not report the behaviour.²⁴ Complainants stated they found it easier to ‘keep quiet’ than to report the harassment, because of perceived risks to their career prospects or work environment, fears of victimisation, or fears that their complaint would not be taken seriously.

¹⁸ Strickland 104.

¹⁹ A Privileges Committee is an *ad hoc* committee of Members established by the House as necessary for the consideration of matters that may be found to be breaches of parliamentary privilege or contempts of the House or the Parliament by its own Members or others. See <https://www.parliament.sa.gov.au/Committees/Committees-Home>

²⁰ Jenkins 2002, *Respect@Work*, 319. Foster 2021, 22.

²¹ Each of the reviews cites Our Watch, Australia’s leading agency for the primary prevention of violence against women and their children. See Jenkins 2020, *Respect@Work*, 145; Strickland 2021, 47. SafeWork Australia defines sexual harassment as a form of gendered violence, which is: “any behaviour directed at any person or that affects a person because of their sex, gender or sexual orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety. For example, this includes violence targeted at someone because they identify as lesbian, gay, bisexual, transgender, intersex, queer or asexual (LGBTIQ+). Sexual harassment may also be a form of gendered violence and may be perpetrated by various people including an employer, supervisor, co-worker, client, patient or customer”, <https://www.safeworkaustralia.gov.au/work-related-violence>.

²² The secondary research yields mixed results. Some studies find the harasser is likely to be in a more senior position than the victim, while others suggest harassment occurs more often between co-workers employed at the same level. Other studies suggest that sexual harassment is strategically directed against women in more senior positions, so as to ‘put them in their place’. See Jenkins 2020, *Respect@Work*, 227. The data show that ‘women experience sexual harassment more often than men’, with 39% of women having experienced sexual harassment, compared to 26% of men, *Respect@Work*, 175-176. Women also experience more negative health and employment outcomes as a result of experiencing sexual harassment than men do, 281. Jenkins notes that when men experience sexual harassment, it is most often perpetrated by other men, and occurs because the male victims are not perceived to perform societal gender norms governing the acceptable performance of masculinity, 176. When men do experience sexual harassment by women at work, they tend to perceive it as ‘not serious’ or ‘less damaging’, 177-178. Importantly, men tend to perceive that the complaint will not be taken seriously *because the harassment is perpetrated by a woman*, 177. *Respect@Work* also finds that men are more likely than women to have experienced sexual harassment by several perpetrators, 214. By contrast, women tend to experience multiple incidents of sexual harassment by a single harasser, suggesting that the behaviour is systemic, 175.

²³ Strickland 2021, 4-5, 57. The wider research into sexual harassment and sexual assault at work supports this finding. See Australian Human Rights Commission 2018, *Everyone’s Business: Fourth National Survey on Sexual Harassment in Australian Workplaces*; Australian Human Rights Commission 2020, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*. In her review, Acting Equal Opportunity Commissioner Steph Halliday found that 69% of those who experienced sexual harassment or assault did not report it: see Equal Opportunity Commission April 2021, *Review of Harassment in the Legal Profession*, 6. Similarly, the University of Adelaide cites research finding that 94% of students who had experienced sexual assault or harassment did not report it: see *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian universities*, July 2017, 11, cited in KPMG June 2021, *Towards a Safer and More Inclusive Future: University of Adelaide ICAC Response*, 5.

²⁴ Strickland 5, 59.

The perception that there would be no consequences or sanctions for Members was a key driver of the under-reporting²⁵. In addition, the research indicates that victims generally have no confidence in the integrity of an internal or in-house mechanism to handle reports²⁶.

For these reasons, referring matters of improper conduct to a Privileges Committee is unsatisfactory.

As Strickland notes, the existing state legislative context has been reformed in an attempt to ensure the handling of such complaints meets best practice²⁷. The *Equal Opportunity Act 1984* was amended in October 2020 to make it unlawful for Members to sexually harass other Members or staff in parliamentary workplaces, because the law as it stood did not allow for a complaint alleging sexual harassment by a Member to be raised under that Act²⁸. Nonetheless, in my opinion, those reforms are largely toothless.

I am of the view that an independent complaints process should be established to accompany a Code of Conduct. Without this, there is a risk that the Code will be symbolic only.

Potential Models

The research points to a range of external models that could serve to address complaints about Members' conduct:

1. Former Acting Commissioner for Equal Opportunity, Steph Halliday, called for a designated officer within the office of the Commissioner for Equal Opportunity to address complaints of discriminatory harassment and sexual harassment by legal practitioners. She asked the Attorney-General to 'create and fund an additional ongoing position within the Equal Opportunity Commissioner's office for a Designated Enquiries Officer to take enquiries and conciliate matters relating to sexual harassment'²⁹.

Halliday also noted the need for a range of informal and anonymous complaints mechanisms to be available, so as to provide complainants with multiple ways to raise complaints, including a means by which complaints could still be recorded when a complainant did not wish to proceed with an adversarial legal process³⁰.

Such a scheme could be broadened to receive complaints against Members.

²⁵ Ibid, 57.

²⁶ Halliday 2021, 146; AHRC 2020, *Respect@Work*, 15; University of Adelaide, June 2021, *Towards a Safer and More Inclusive Future: University of Adelaide ICAC Response*, 7; AHRC August 2018, *Everyone's Business: Fourth National Survey on Sexual harassment in Australian Workplaces*, 6, available: <https://humanrights.gov.au/our-work/sex-discrimination/publications/everyones-business-fourth-national-survey-sexual>; Strickland February 2021, 4; Foster 2021, *Review of the Parliamentary Workplace: Responding to Serious Incidents*, 5.

²⁷ Strickland, 126-132. A detailed discussion of the limitations of the existing regulatory and legislative framework with respect to sexual harassment, sexual assault, rape, intimidation and stalking is provided by Jenkins 2020, *Respect@Work*, Section 5: The Legal and Regulatory Framework, 485-642. The AHRC recommends strengthening Australia's human rights and Fair Work systems, and improving the laws regulating discrimination and workplace health and safety across State and Territory jurisdictions to provide clarity and bring them into line with Commonwealth legislation, 487-488.

²⁸ Strickland 7, 130-132. See *Equal Opportunity Act 1984*, s 87 (6) (c), s87 (6)(d). The Ministerial Code of Conduct 2002 makes explicit reference to this Section of the Act in Appendix 1: Relevant Legislation, 16. The Act sets out the manner for dealing with complaints of sexual harassment by judicial officers and Members of Parliament under Part 8, Div 1, s 93AA.

²⁹ Halliday, 2021 *Review of Harassment in the South Australian Legal Profession*, Recommendation 11, 168. As Halliday observes, the role would require that officer to have specialist trauma and legal training: 167.

³⁰ Halliday 2021, 166-167.

2. The South Australian Parliament could take up the call of the Australian Human Rights Commissioner for the establishment of a dedicated Workplace Sexual Harassment Council with specific powers to investigate or refer such matters for investigation³¹. Investigations might be referred to police if required, or conciliated by means of a Tribunal.
3. The NSW Parliament has created the role of Parliamentary Ethics Advisers, but the Adviser has no investigative or determinative function³². This model offers an internal mechanism for reporting or referring complaints to a Parliamentary Ethics Committee, but it neither prevents politically motivated complaints being raised, nor resolves complainants' lack of confidence and trust in internal mechanisms.
4. Other options for complainants to raise such matters with independent authorities include the South Australian Civil and Administrative Tribunal, the Commissioner for Public Sector Employment, the South Australian Employment Tribunal³³, or the Ombudsman. In my opinion each of these options entails difficulties. Each of these entities has an ongoing requirement for a budgetary allocation from the administrative unit under which it operates. This means that there is less than the desirable level of independence from the Executive.
5. It has also been suggested that the *Independent Commissioner Against Corruption Act 2012* provides the independent resolution process for examining disputed claims raised against Members. For example, in her review of sexual harassment in the legal profession, Halliday suggested that an 'entirely independent complaints process' already existed under Section 24(2)(b) of the ICAC Act³⁴.

As Independent Commissioner Against Corruption, I can under s 24(2)(b) my Act, investigate serious or systemic misconduct or maladministration in public administration by exercising the powers of an inquiry agency, if I am satisfied that it is in the public interest to do so.

As the ICAC Act makes clear, the primary object of the ICAC is to investigate corruption and to refer matters of misconduct or maladministration to an inquiry agency or public authority³⁵. The Act expressly prevents me from conducting an evaluation of the practices, policies and procedures of Parliament. In any event I have publicly stated that I do not intend to investigate any alleged misconduct or maladministration except in extraordinary circumstances.

In my opinion none of those models is satisfactory. Importantly, none provides an independent authority, free of the Executive, which could find facts in relation to disputed claims against Members, and make recommendations about disposition.

³¹ Jenkins 2020, *Respect@Work*, Recommendation 14. See Section 5.2 (b), 515-517.

³² Standing Committee on Administration and Procedure, Legislative Assembly for the ACT, August 2001, 14.

³³ Strickland discusses this option on pages 129-130 of her Review of Harassment in the South Australian Parliamentary Workplace.

³⁴ Halliday 2021, 6, 134-135. Strickland also notes that misconduct can be investigated by the ICAC exercising the powers of an inquiry agency, as set out under section 24 of the *ICAC Act*: see *Review of Harassment in the South Australian Parliament Workplace*, 134-135.

³⁵ The Independent Commissioner Against Corruption Act 2012, Part 1, section 3 (1) and (2).

Recommendation

I propose an independent complaints mechanism to determine disputed claims in relation to these matters. My proposal builds upon the existing mechanisms established in the *Judicial Conduct Commissioner Act 2015* (SA). The proposed model has some parallel with the system in the United Kingdom, which established its Parliamentary Commissioner for Standards in 1995³⁶.

As members will understand, the *Judicial Conduct Commissioner Act 2015* establishes a scheme whereby complaints about judicial conduct can be received by the Judicial Conduct Officer, subjected to preliminary examination and processed. They may be processed in one of four ways.

a) **Dismissal of the complaint**³⁷

This could be because, for example, the complaint is of a judicial decision – as opposed to conduct– or is trivial or vexatious.

b) **Referral to the jurisdictional head**³⁸

Accompanying such a referral, the Commissioner may recommend that specified action is taken, for example, counselling.

c) **Recommendation to the Attorney-General to appoint a Judicial Conduct Panel**³⁹

This is to occur either where the complaint has not, in the Commissioner's opinion, been satisfactorily dealt with by the jurisdictional head, or, importantly, where an inquiry into the conduct is necessary or justified. If the Attorney-General convenes a panel then the panel later reports to the Attorney-General as to its findings of fact, opinion as to whether removal of the judicial officer is justified and its reasons⁴⁰. The Attorney-General must lay before each House a copy of the report.

d) **Immediate Report to Parliament**

This is indicated where the Commissioner considers both that the complaint is not able to be dealt with satisfactorily by the jurisdictional head and that it warrants the immediate consideration by Parliament of removal.

In my opinion the *Judicial Conduct Commissioner Act 2015* could be readily amended to encompass complaints against Members. In Appendix B I consider some of the desirable amendments more closely. However, the main advantages of proceeding in this way are as follows.

- a) There are parallels between the status and independence of judicial officers and Members;

³⁶ The Parliamentary Commissioner for Standards investigates allegations of breach of the rules of the House of Commons' Code of Conduct for Members. The Commissioner also oversees investigations conducted under the Independent Complaints and Grievance Scheme. The Commissioner is the decision-maker for investigations conducted under the scheme, investigating allegations from the parliamentary community about harassment, bullying or sexual harassment by MPs. The Commissioner keeps the Register of Members' Financial Interests and ensures all investigations are independent, impartial, thorough and fair. See <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/>.

³⁷ Under ss 16 and 17 of the Act.

³⁸ Under s18 of the Act.

³⁹ Under s20 of the Act.

⁴⁰ Under s25 of the Act.

- b) The model provided by the *Judicial Conduct Commissioner Act 2015* addresses most if not all of the deficits in the current system which discourage complainants;
- c) The establishment of a panel on an *ad hoc* basis to deal with disputed claims overcomes the objection that standing entities are not wholly independent of the Executive; and
- d) The framework to accommodate the proposed changes already exists and can be readily expanded.

I ask the Committee to note that some weeks ago I advised the Attorney-General that I do not consider that the roles of the Independent Commissioner Against Corruption and the Judicial Conduct Commissioner are compatible. There is clear potential for embarrassment when application for warrants, or charges arising from an ICAC investigation are in court and come before a judicial officer who is or has been subject to examination by the Judicial Conduct Commissioner. The same point was made by my predecessor, the Hon. Bruce Lander QC. The Attorney-General told me she will accede to my request that I relinquish the Judicial Conduct Commissioner role at a convenient time.

As mentioned, in Appendix B I make some suggestions as to how the *Judicial Conduct Commissioner Act 2015* might be amended for these purposes.



The Hon. Ann Vanstone QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION

16 July 2021

APPENDIX A

A Draft Code of Parliamentary Conduct

Preamble

Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and institution and conventions of Parliament, and using their influence to advance the common good of the people of South Australia.

Members should aim to ensure that their personal and professional conduct meets community expectations and does not call into question their office as elected representatives.

By adopting this Code, Members acknowledge and reiterate the obligations expected of them as elected representatives of the people.

The Code

1. Members must –
 - a) make the performance of their public duties their prime responsibility;
 - b) exercise reasonable care and diligence in performing their public duties;
 - c) submit themselves to the lawful scrutiny appropriate to their office;
 - d) behave with respect and courtesy in their relations with all parliamentary staff and public servants with due regard for the imbalance of power in such relationships;
 - e) treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.
2. Members must not *bully or sexually harass* another Member or his or her staff or the staff of another Member, or an officer or member of the staff of the Parliament, or statutory officers or the staff of statutory officers, or departmental staff.

For the purposes of this Code a Member “sexually harasses” another if the Member makes an unwelcome sexual advance, or an unwelcome request for sexual favours, or engages in other unwelcome “conduct of a sexual nature” towards another.

“Conduct of a sexual nature” includes making a statement of a sexual nature to a person, or in the presence of a person, whether orally or in writing or by use of technology, and inappropriate physical contact, and intimidating or threatening behaviours.

3. Members must use *information received in confidence* in the course of their parliamentary duties only in connection with those duties and not for the private benefit of themselves or any other person or entity.
4. Members must apply the *public resources* to which they are granted access in accordance with any rule or guidance relating to the use of the resources.
5. Members must not accept *gifts*, hospitality or other benefits that could be perceived as an attempt to improperly influence the Member in the exercise of duty; or be expected to give rise to a conflict of interest.
6. Members must arrange their private affairs and carry out their official functions and duties in such a manner as to prevent any *conflict of interests* arising. Members must take all reasonable steps to declare any conflict of interests which does arise, both in-
 - a) proceedings of Parliament; and
 - b) in any communications with Ministers, members, public officials or public officers.
 - c) Members may not vote during proceedings in Parliament in respect of any matters in which a direct pecuniary interest is held.
7. Members must not *improperly use their influence* in an attempt to affect a public official, including a Minister, public sector employee, statutory officer or officer of a public body, to further their private interests or those of their family members or business associates.
8. Members must not -
 - a) receive a fee, payment, retainer or *reward*, or
 - b) permit any compensation to accrue to their beneficial interest or the beneficial interest of a family member -
for or on account of, or as a result of the use of, their position as Members; other than benefits flowing to them by application of the *Parliamentary Remuneration Act 1990*, or Determinations of the Remuneration Tribunal.
9. Members may engage in *employment*, business and community activities outside their duties as Members unless –
 - a) the activity gives rise to a conflict of interests, actual or perceived, or
 - b) where the activity compromises the Member's ability to fulfil parliamentary or public duties.

10. Members must not take improper advantage of any office held as a Member *after they cease to be a Member*, including
- a) by using information that was obtained in the course of public duty and which is not in the public domain for advantage to themselves or others; or
 - b) by breaking confidentiality obligations imposed in the course of public duties for advantage to themselves or others; or
 - c) using their status as former Members to obtain preferential treatment or privileged access to Government.

A breach of this Code of Conduct may constitute a breach of the law and lead to a report to police, a report to the Office for Public Integrity, or a report to the Parliamentary Conduct Commissioner.

APPENDIX B

Some suggested changes to the JCC Act if my proposal is accepted.

1. That the name of the Act becomes the *Parliamentary Members and Judicial Officers Conduct Commissioner Act*.
2. That minor changes be made to sections 1 to 11 to accommodate the expanded jurisdiction.
3. That section 12 be similarly slightly amended. Section 12(2) should continue to apply only to complaints about judicial officers.

I contend that complaints against Members should be required to be in writing and from an identified complainant. Anonymous complaints could be referred to the Office for Public Integrity.

4. That minor changes be made to sections 13 to 17 to accommodate the expanded jurisdiction. The Speaker and President would equate to the jurisdictional head for the purposes of the scheme.
5. Provision would be needed to accommodate referral of a complaint against the Speaker or President in terms of sections 18 and 19, probably to the Deputy Speaker or Deputy President.
6. The judicial conduct panel would be called the Parliamentary Members' conduct panel where appropriate.
7. The constitution of the panel should be the same whether for a judicial officer or Member. The obligations upon the Attorney-General to consult with the Chief Justice should ensure an objective approach to the appointing of panel members.
8. As regards the report of the panel (s25) I see no reason why a recommendation for removal should not be considered by both Houses in the same way as it can be for a superior court judge. (Section 26(1) would continue to apply only in the case of judicial officers other than judges.)
9. Currently the Reviewer appointed under the *Independent Commissioner Against Corruption Act 2012* is also the Reviewer of the Judicial Conduct Commissioner: s29A. Amendment would be required to appoint the Reviewer of the Parliamentary Members and Judicial Conduct Commissioner under this Act if the roles of Independent Commissioner Against Corruption and Commissioner under this Act were separately held.
10. The balance of the provisions would appear to be of general application.