

Code of Conduct

Discussion paper

June 2021

“Good conduct is crucial as it can help uncover and deter unethical behaviour and corruption. Good conduct is also crucial because it builds trust - when there are trusting relationships between the people, parliament and other institutions, democracy works at its best. When people trust that their elected representatives are acting in their best interests, this helps legitimise our parliaments and our democratic systems. Good conduct is also crucial because it is fundamental to the effectiveness of parliament in fulfilling its essential roles of legislating, approving budgets, scrutinising Executive Government and representing the public interest.”¹

Executive Summary

As far back as 1975 and as recently as 2020, the issue of whether Australia requires a parliamentary code of conduct has arisen for consideration.

In its 1975 *Report on declaration of interests*, the Joint Committee on Pecuniary Interests of Members of Parliament concluded that “a precise and meaningful code of conduct should exist”;² it suggested that this code should apply to conflict of interest situations, and specify a set of basic principles which Members of Parliament should observe.³

Yet in 2021 such a code remains to be implemented. With ongoing allegations of MP misconduct met with no real consequence, Australia’s weak parliamentary ethical standards framework must be strengthened.

This paper analyses and compares approaches taken in the UK, Canada and New Zealand and finds that Australia has weakest regime for holding parliamentarians to account. Based on international experience, the Centre for Public Integrity recommends a series of design principles to guide the creation of an appropriate code:

- Any code should combine broad principles with specific rules, enabling breach and the imposition of consequences to occur;
- Any code should be enforceable by an independent authority, modelled on Canada’s Conflict of Interest and Ethics Commissioner and the UK’s Commissioners for Standards; and
- Any code should be of appropriate applicability: in circumstances where certain provisions of the Australian Public Service Code of Conduct apply to public servants’ personal conduct, codes applicable to parliamentarians and political

¹ Commonwealth Parliamentary Association and Monash University, “*Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*”, February 2016.

² Joint Committee on Pecuniary Interests of Members of Parliament, *Report on declaration of interests*, Commonwealth of Australia, Canberra, 30 September 1975, p. 12.

³ Ibid.

staffers should be of the same scope. Any code should extend to bullying and sexual misconduct.

The case for a parliamentary code of conduct

Both the Inter-Parliamentary Union and the Commonwealth Parliamentary Association endorse the adoption of an enforceable code of conduct,⁴ and amongst comparable jurisdictions - namely, the United Kingdom, New Zealand and Canada - Australia is singular for its failure to enact either a code of conduct applicable to all parliamentarians, or a code applicable to political staffers (see Figure 1): both the UK and Canada have independently-enforced codes applicable to parliamentarians,⁵ and New Zealand joins them in having a code applicable to political staffers.

In the Inter-Parliamentary Union's (*IPU*) 2006 "*Parliament and Democracy in the Twenty-First Century: A Guide to Good Practice*", the implementation of standards and an enforceable code of conduct are identified as some of the procedural means via which accountability of a parliament can be realised (accountability is described by the IPU as one of the key characteristics of a democratic parliament).⁶

The Commonwealth Parliamentary Association's "*Recommended Benchmarks for Democratic Legislatures*" recommends that legislatures "approve and enforce codes of conduct, including rules on conflicts of interest and the acceptance of gifts".⁷

At a broader societal level, articulation by a legislature of the ethical standards its members are expected to uphold is inherently valuable: as Grattet and Jenness have acknowledged, "Promoting powerful symbols of what should be valued and what should be denied in society is no small thing".⁸

The below analysis reveals the weakness of the Australian approach to regulating parliamentary standards relative to the approaches taken in the United Kingdom, Canada and New Zealand, and makes recommendations designed to redress the current dearth of appropriate regulation at a federal parliamentary level.

⁴ Inter-Parliamentary Union, "*Parliament and democracy in the twenty-first century: A guide to good practice*", 2006 accessed at < <https://www.ipu.org/resources/publications/handbooks/2016-07/parliament-and-democracy-in-twenty-first-century-guide-good-practice> > 10 May 2021, at 10; Commonwealth Parliamentary Association, "*Recommended Benchmarks for Democratic Legislatures*" 2006 (revised and updated 2018), accessed at <https://www.cpahq.org/media/l0jjk2nh/recommended-benchmarks-for-democratic-legislatures-updated-2018-final-online-version-single.pdf> > 10 May 2021, at

⁵ In Canada this is limited to the House of Commons.

⁶ Commonwealth Parliamentary Association, above n 4, at 7 and 10.

⁷ Inter-Parliamentary Union, above n 4, at 5.4.4 and 11.1.2.

⁸ Ryken Grattet and Valerie Jenness. "*Transforming Symbolic Law into Organizational Action: Hate Crime Policy and Law Enforcement Practice.*" *Social Forces* 87, no. 1 (2008): 501-28, at 502.

Figure 1: Approaches to regulating parliamentary ethics in Australia, Canada, New Zealand and the United Kingdom

	Code or other form of regulation applicable to Ministers ⁹		Code for all parliamentarians	Code for political staffers
	Enforced by PM	Independently enforced		
United Kingdom	✓		✓ (separate codes for House of Commons and House of Lords)	✓ (special advisers)
Canada		✓	✓ (House of Commons)	✓
New Zealand	✓			✓ (ministerial staffers)
Australia	✓			

⁹ The relevant Canadian Act, the *Conflict of Interest Act*, is applicable to defined public office holders rather than being limited to Ministers as the relevant UK, New Zealand and Australian Codes are. These complexities are examined in detail in the below analysis.

United Kingdom

The United Kingdom's parliamentary ethical standards framework consists of a Ministerial Code, a Code of Conduct for Members of Parliament, a House of Lords' Code of Conduct, a Code of Conduct for House of Lords Members' Staff, a Code of Conduct for Special Advisers, and a Behaviour Code, Bullying and Harassment Policy, and Sexual Misconduct Policy.

While the Ministerial Code is enforced by the Prime Minister, both the House of Commons and the House of Lords have Commissioners responsible for investigating alleged contraventions of their respective Codes; these Commissioners can also recommend sanctions. Claims brought in relation to the Behaviour Code, Bullying and Harassment Policy, and Sexual Misconduct Policy are determined by an Independent Expert Panel.

This framework contains both broad principles and specific rules, enabling breach to occur.

Ministerial Code

Paragraph 1.1 of the UK's Ministerial Code states that "Ministers of the Crown are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety".

The principles which ministers are expected to observe include:

- the principle of collective responsibility;
- a duty to Parliament to be accountable for their departments' and agencies' policies, decisions and actions;
- not knowingly misleading Parliament;
- being "as open as possible" with Parliament and the public, and requiring civil servants under their direction to do the same;
- avoiding conflicts of interest, or the appearance of such;
- not accepting gifts or hospitality which might, or might reasonably appear to, compromise their judgment;
- separating their roles as Minister and constituency member (applicable only to Ministers in the Commons);
- not using government resources for Party political purposes; and
- upholding the political impartiality of the Civil Service.

Paragraph 1.3 states that Ministers are also expected to observe the Seven Principles of Public Life set out at Annex A to the Code. Some of these are substantially similar to the values set out at paragraph 1.1 (including the values of accountability, openness and integrity); furthermore, they are identical to the General Principles of Conduct contained within the Code of Conduct for Members of Parliament. The Seven Principles include:

- selflessness (requiring that decisions should be based solely on the public interest);
- integrity (requiring that members not place themselves under a financial or other obligation that might influence them in their official duties);
- objectivity (requiring merit-based decision-making);
- accountability (requiring that members be accountable for their actions and decisions and subject themselves to appropriate scrutiny);

- openness (requiring that members be as open as possible about their decisions and actions, give reasons for decisions and restrict information only when public interest “clearly demands”);
- honesty (requiring that private interests relating to public duties be declared and any conflicts resolved in such a way as to protect the public interest); and
- leadership (requiring that members should support the principles by leadership or example).

Enforceability

By operation of paragraph 1.6, it is the Prime Minister who is the “ultimate judge of the standards of behaviour expected of a minister and the appropriate consequences of a breach of those standards”.

Code of Conduct for Members of Parliament

The Code of Conduct for Members of Parliament (prepared pursuant to the Resolution of the House of 19 July 1995) establishes standards and principles of conduct, and sets rules of conduct underpinning these standards and principles. It applies to all members in all aspects of their public lives, and is explicitly stated not to apply to Members’ personal lives.

Members’ duties are expressed as requiring Members to bear allegiance to Her Majesty the Queen, and her heirs and successors, according to law; to uphold the law; to act in the nation’s interests (a general duty) and to act in their constituents’ interests (a special duty); and to act on all occasions in accordance with the public trust placed in them.

The General Principles of Conduct contained within the Code are identical to the Seven Principles of Public Life contained at Annex A to the Ministerial Code of Conduct.

Rule 9 of the Code states that members are also expected to observe the principles set out in the Parliamentary Behaviour Code: these include respect, professionalism, understanding others’ perspectives, courtesy, and acceptance of responsibility.²

The Rules of Conduct set out at Part V of the Code contain nine specific rules:

- Members’ conduct must be based on a consideration of the public interest; conflicts of interest must be avoided and where they arise, they must be resolved in favour of the public interest (Rule 11);
- No Member shall act as a paid advocate in any proceeding of the House, or accept a bribe to influence their conduct (Rules 12 and 13);
- Members shall register their interests as required, and be frank and open about those interests (Rule 14);
- Information received by Members in confidence must never be used for financial gain (Rule 15);
- Members must use public resources only in support of their parliamentary duties and comply with relevant rules in respect of this (Rule 16);
- Members must not take any action which would cause “significant damage to the reputation and integrity of the House of Commons whole, or of its members generally” (Rule 17); and
- Members must treat their staff and persons visiting or working for or with Parliament with dignity, courtesy and respect (Rule 18)

Enforceability

The application of the Code is expressed to be a matter for the House of Commons, and the Committee on Standards and the Parliamentary Commissioner for Standards in particular (Rule 19).¹⁰ The Commissioner investigates alleged contraventions and can either rectify less serious breaches herself (via a requirement to apologise and, if appropriate, repay misused resources) or refer more serious cases to the Committee for consideration and sanction.¹¹

House of Lords' Code of Conduct

The House of Lords Code of Conduct mirrors that of the Commons (with the exception of the requirement to “act on their honour” enshrined at paragraph 8 of the Lords’ Code).¹² As in the case of the Commons’ Code, the Lords’ Code is accompanied by a Guide which fleshes out the general principles enshrined in the Code itself.

Enforceability

The House of Lords Commissioner for Standards is responsible for investigating alleged breaches of the Lords’ Code of Conduct. The Commissioner’s Reports, which are made public, can recommend sanctions.

Code of Conduct for the House of Lords Members’ Staff

The Code of Conduct for the House of Lords Members’ Staff requires that members’ staff should at all times conduct themselves in such a way as to maintain and strengthen public trust and confidence in the integrity of the House. They are required to uphold the Parliamentary Behaviour Code, and must not take any action which would risk undermining any member’s compliance with the applicable Code. They must also comply with various provisions concerning the registration of interests (paragraphs 7-11), lobbying (paragraph 12), and not disclose confidential information (paragraph 14).

Enforceability

The House of Lords Commissioner for Standards is responsible for investigating alleged contraventions of the Code: investigations must be reported on (except where this is considered to be disproportionate to the contravention), and in cases where remedial action is not agreed upon or appropriate the Commissioner can report to the Conduct Committee for consideration and possible sanction.

Code of Conduct for Special Advisers

¹⁰ UK Parliament, “*The Code of Conduct for Members of Parliament*”, 10 October 2019 <https://publications.parliament.uk/pa/cm201719/cmcode/1882/188202.htm#_idTextAnchor000> accessed 10 May 2021.

¹¹ On 2 May 2019, Commissioner Kathryn Stone OBE wrote to Kate Green MP, Chair of the Committee on standards, setting out sanctions she considered to be “useful and meaningful” following contravention of the Code. These range from words of advice or warning, to expulsion from the House: accessed at <<https://publications.parliament.uk/pa/cm5801/cmselect/cmstandards/241/24109.htm>> accessed 10 May 2021.

¹² House of Lords, “*Code of Conduct for Members of the House of Lords , Guide to the Code of Conduct , Code of Conduct for House of Lords Members’ Staff*”, July 2020 <<https://www.parliament.uk/globalassets/documents/lords-commissioner-for-standards/hl-code-of-conduct.pdf>> accessed 10 May 2021.

Section 8(1) of the Constitutional Reform and Governance Act 2010 (UK) requires the Minister for the Civil Service to publish a code of conduct for special advisers.

Enforceability

By virtue of s 8(11) of that Act, the code forms part of the terms and conditions of service of any special adviser to whom it applies. Ministers are responsible for ensuring that their special advisers adhere to the Code.¹³

Behaviour Code, Bullying and Harassment Policy, Sexual Misconduct Policy

The Behaviour Code, the Bullying and Harassment Policy, and the Sexual Misconduct Policy apply to the entire Parliamentary Community and form part of the Parliament's Independent Complaints and Grievance Scheme.¹⁴

The Behaviour Code requires that everyone is respected and valued; that persons recognise their power, influence or authority; that they consider how their behaviour affects others; that they act professionally towards others; that they ensure Parliament meets the highest ethical standards of integrity, courtesy and mutual respect; and that they speak up about any unacceptable behaviour.¹⁵ The contents of the Bullying and Harassment and Sexual Misconduct Policies are directed specifically to these issues.

Enforceability

The provisions of the Code and Policies apply to all members of both House of Parliament, their staff, House Administration staff, Parliamentary Digital Services and third-party passholders.¹⁶ An Independent Expert Panel (which is independent of MPs) determines claims brought in relation to any of these policies.¹⁷

Canada

Canada regulates parliamentary ethical standards via a *Conflict of Interest Act*, a Conflict of Interest Code for Members of the House of Commons, and a Code of Conduct for Members of the House of Commons: Sexual Harassment. The Conflict of Interest Act applies to certain public office holders, while the Code - which features a combination of broad principles and specific guidance - covers all members of the House of Commons: an independent Commissioner is responsible for investigations of alleged breaches as well as, in some cases, the imposition of sanctions.

Conflict of Interest Act

¹³ Cabinet Office (UK), "Code of Conduct for Special Advisers", December 2016 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832599/201612_Code_of_Conduct_for_Special_Advisers.pdf> accessed 10 May 2021.

¹⁴ UK Parliament, "Conduct in Parliament" <<https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliaments-behaviour-code/>> accessed 22 June 2021.

¹⁵ UK Parliament, "Behaviour Code" <<https://www.parliament.uk/globalassets/documents/conduct-in-parliament/ukparliamentbehaviourcode.pdf>> accessed 10 May 2021.

¹⁶ Independent Complaints and Grievances Scheme, "Annual Report June 2019-June 2020" <<https://www.parliament.uk/globalassets/icgs-annual-report-2019-20.pdf>> accessed 10 May 2021

¹⁷ Above n 15.

The *Conflict of Interest Act* makes provision for certain conflicts of interest that may arise for members of Canada's Parliament, and contains post-employment rules for public office holders.

The Act binds current and former public office holders - some examples of which are Ministers and parliamentary secretaries. By virtue of subsections 2(1)(b) and (c) of the Act, the Act's provisions also apply to ministerial staff and ministerial advisers.

Section 3 of the Act states that it aims to (amongst other things) set clear conflict of interest and post-employment rules for public office holders, minimise the possibility of conflicts arising between the private interests and public duties of public office holders, and provide for the resolution of those conflicts in favour of the public interest should they arise.

Enforceability

The Act is administered and enforced by the Conflict of Interest and Ethics Commissioner, who is appointed pursuant to section 81 of the *Parliament of Canada Act*.

The Commissioner can issue compliance orders, and impose administrative monetary penalties; the Commissioner also has the power to institute formal investigations of potential breaches, which generally lead to a report to the Prime Minister (that is made public).¹⁸

Conflict of Interest Code for Members of the House of Commons

Canada's Conflict of Interest Code for Members of the House of Commons, which is appended to the Standing Orders of that House, applies to all Members when they are carrying out their parliamentary duties and functions.

The purposes of the code are stated at paragraph 1 to include - amongst other things - the maintenance of public trust in members' integrity as well as in the House of Commons as an institution.

Five principles with which members are expected to comply are set out at paragraph 2: specifically, members must:

- serve the public interest and represent constituents to the best of their abilities;
- fulfil public duties with honesty, avoid real or apparent conflicts of interest, and maintain public trust in the integrity of each member and the House itself;
- perform their official duties and functions and arrange their private affairs "in a manner that bears the closest public scrutiny";
- arrange their private affairs to avoid real or apparent conflicts of interest. In the case of such a conflict arising, it must be resolved in a way that protects the public interest; and
- avoid gifts or benefits connected with their position that might reasonably be considered to compromise their personal judgment or integrity.¹⁹

Some 20 rules of conduct follow and apply these principles to various circumstances.

Enforceability

¹⁸ Office of the Conflict of Interest and Ethics Commissioner (Canada), "Enforcing the Act and the Code" <<https://ciec-ccie.parl.gc.ca/en/About-APropos/Pages/Enforcing-Appliquer.aspx>> accessed 10 May 2021.

¹⁹ House of Commons (Canada), "Appendix 1: Conflict of Interest Code for Members of the House of Commons" <<https://www.ourcommons.ca/about/standingorders/appa1-e.htm>> accessed 10 May 2021.

The Conflict of Interest and Ethics Commissioner is responsible for investigating possible contraventions of the Code. While they are unable to impose sanctions for breach, they may recommend sanctions in investigation reports.²⁰

Code of Conduct for Members of the House of Commons: Sexual Harassment

This Code applies to allegations of non-criminal sexual harassment between Members. It is appended to the Standing Orders of that House, and the Standing Committee on Procedure and House Affairs is charged with reviewing matters relating to it.

New Zealand

New Zealand has a Cabinet Manual applicable to all Ministers, and a separate Code of Conduct for Ministerial Staff. There is no code for Parliamentarians, and the Cabinet Manual for Ministers is not independently enforced.

Cabinet Manual

New Zealand's Cabinet Manual actually applies to all Ministers, not only those in the Cabinet (as its title might suggest),²¹ Paragraph 2.53 requires Ministers to "conduct themselves in a manner appropriate to their office" in order to protect integrity in executive decision-making and preserve public trust.

The Manual identifies the various capacities in which Ministers may act - ministerial, political and personal²² - and declares that:

*In all these roles and at all times, Ministers are expected to act lawfully and to behave in a way that upholds, and is seen to uphold, the highest ethical standards. This includes exercising a professional approach and good judgement in their interactions with the public and officials, and in all their communications, personal and professional. Ultimately, Ministers are accountable to the Prime Minister for their behaviour.*²³

From reading these paragraphs together, it appears that the focus is very much equally on professional and personal conduct. This contrasts with the Australian approach to ministerial conduct.

The remainder of the Manual establishes requirements in respect of disclosure of certain interests, and processes for identifying and managing potential conflicts of interest (including pecuniary and non-pecuniary, direct and indirect interests).

Enforceability

²⁰ Above n 19.

²¹ Cabinet Office - Department of the Prime Minister and Cabinet, "Cabinet Manual 2017", Wellington New Zealand accessed at < <https://dpmc.govt.nz/sites/default/files/2017-06/cabinet-manual-2017.pdf> > 10 May 2021, paragraph 2.54.

²² Ibid, paragraph 2.55.

²³ Ibid, paragraph 2.56.

The Prime Minister is responsible for disciplining breaches of the Manual, although it has been suggested that the Prime Minister could in some circumstances be accountable to the House.²⁴

Code of Conduct for Ministerial Staff

New Zealand has a specific code of conduct for Ministerial staff, in recognition of the fact that Ministerial staff are not - by virtue of the nature of their work - subject to a political neutrality requirement and the State Services Standards do not apply to them.²⁵

With the exception of the impartiality requirement, this code holds Ministerial staff to the same standards as those set for public service staff, and requires that they be fair (specifically, that they treat everyone fairly and with respect, and work to make government services accessible and effective), responsible (that is, that they act lawfully and ethically, and use official resources and information for proper purposes), and trustworthy (that is, that they are honest and avoid conflicts of interest and activities - work or non-work related - that may harm the reputation of Minister's offices or the State Services).²⁶ The code includes an additional requirement that Ministerial staff be professional (requiring that the authority of the government of the day, and the duty of the State services to be impartial, be respected).²⁷

Enforceability

Insofar as ministerial staff are employed by the Department of Internal Affairs, that Department is responsible for adopting policies which give effect to the Code.²⁸

Australia

Australia has a Statement of Ministerial Standards which applies to government ministers. It is not independently enforced, and does not cover non-executive Parliamentarians.

Statement of Ministerial Standards

The Foreword to the Commonwealth's Statement of Ministerial Standards describes the Statement as "principles based and not a complete set of rules".

The specific principles with which Ministers must comply in carrying out their duties are enumerated at paragraph 1.3: they must act with integrity, observe fairness in decision-making, accept accountability and accept "the full implications of the principle of ministerial responsibility". Paragraph 1.4 also requires that Ministers act in a way consistent with advancing the public interest when taking decisions or in connection with their official capacity.

²⁴ Catherine Rodgers, "A comparative analysis of rights scrutiny of bills in New Zealand, Australia and the United Kingdom: Is New Zealand lagging behind its peers?" in *Australasian Parliamentary Review*, Autumn 2012, Vol. 27(1), 4-17 accessed at <https://www.aspg.org.au/wp-content/uploads/2017/09/2shRogers.pdf> 10 May 2021.

²⁵ Public Service Commission (New Zealand), "Code of conduct for Ministerial staff" <https://www.publicservice.govt.nz/assets/Legacy/Code-of-conduct-for-Ministerial-staff.pdf>, accessed 10 May 2021.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

The remainder of the Statement elaborates on these values. For example, in relation to integrity the Standards emphasise the importance of avoiding public office being used for private purpose. In relation to fairness the Standards focus on ensuring that all reasonable steps have been taken by Ministers to observe relevant standards of procedural fairness and good decision making, and their official decisions must not be affected by bias or irrelevant considerations.

In respect of Ministers' personal conduct, the Statement requires that Ministers "ensure that their personal conduct is consistent with the dignity, reputation and integrity of the Parliament"

Enforceability

Implementation of the code is expressed to be a matter for the Prime Minister, with paragraph 7.2 stating that Ministers "will be required to stand aside [...] if the Prime Minister regards their conduct as constituting a prima face breach of these Standards".

An Australian Parliamentary Code of Conduct

Any Australian parliamentary Code of Conduct should be designed in line with the following principles:

1. Combine broad principles with specific rules

The Centre for Public Integrity endorses the approach taken by the UK's Codes of Conduct for both the House of Commons and the House of Lords, whereby a set of broad ethical principles - such as the UK's Seven Principles of Public Life - is enumerated and then followed by specific rules (thereby creating a way for breach to occur and enabling the imposition of consequences).

The combining of broad ethical principles with specific rules would enable the legislation to perform the important functions of what van Klink has described as "communicative legislation"²⁹ - in this case, communicating the values that the Australian public expects its politicians to adhere to in such a way as to bring about discussion, interpretation, and lawmaking - but at the same time also serve as what Witteveen describes as "hard" law (which in Witteveen's conception is recognisable from the fact that it seeks to achieve compliance - and relies on sanctions rather than persuasion to do so -, lacks aspirational norms and issues clear directives).³⁰

2. Be enforceable

The National Democratic Institute for International Affairs (NDI) has found that "Self-regulation is often insufficient to effectively enforce ethics regulations. For this reason,

²⁹ Described by Witteveen as symbolic legislation in the positive sense, which is to be contrasted with symbolic legislation in the negative sense - legislation which articulates values but is not enforced: William Witteveen, "Turning to Communication in the Study of Legislation." In *Social and Symbolic Effects of Legislation under the Rule of Law*, edited by Nicolle Zeegers, William Witteveen and Bart van Klink, 17-44. Lewiston, NY: Edwin Mellen Press, 2005, at 30.

³⁰ Ibid, at 34-35.

many countries have tasked an independent or non-partisan entity to monitor compliance with ethical codes”.³¹

This conclusion is unsurprising: where enforcement of a code is left to a prime minister (as is the case of Australia’s Statement of Ministerial Standards), who has an obvious incentive to minimise allegations of ministerial wrongdoing, it becomes little more than a tool to be manipulated for political expediency.

For a code of conduct to be more than mere rhetoric, it must be independently enforced. Enforcement could be overseen by an authority similar to Canada’s Conflict of Interest and Ethics Commissioner and the UK’s Commissioners for Standards.

3. Be of appropriately wide application and scope

One critical question is whether any Australian parliamentary code of conduct should apply only to work-related conduct, or also capture non-work related conduct (as in the case of the New Zealand Cabinet Manual).

The Centre for Public Integrity considers that limiting the requirements of parliamentarians to behaviour in connection with their work would be difficult to justify in circumstances where subsections 13(11) and 13(12) of the *Australian Public Service Code of Conduct* require public servants to at *all times* behave in a way that upholds the APS Values and Employment Principles, as well as the APS’s integrity and good reputation and Australia’s good reputation.³²

Another key question is to whom any code should apply. The Centre for Public Integrity believes that ethical standards frameworks should be implemented both for members of Parliament and for political staffers, and a code could be drafted in such a way that it is applicable to both groups (otherwise, separate codes should exist). Any code should cover bullying and sexual misconduct.

The British concept of a “parliamentary community” to whom its Behaviour Code, Bullying and Harassment Policy, and Sexual Misconduct Policy apply, is meritorious insofar as all members of a workplace - no matter their status - should be subject to certain ethical standards. Of course, depending on the form any code takes, it may be the case that some standards are not universally applicable to the entire parliamentary community (for example, requirements of impartiality and neutrality should not apply to political staffers).

Conclusion

³¹ Above n 4, at 103.

³² In contrast to the other requirements of section 13, many of which are explicitly limited to behaviour in connection with APS employment.

The Centre for Public Integrity urges the Parliament to take up the task of designing an appropriate ethical standards framework to ensure that the high standards Australians expect of their elected representatives are upheld.

A code of conduct which combines broad principles with specific guidance, is independently enforceable and of appropriately wide scope and application, is a vital aspect of that framework.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Tony Fitzgerald AC QC, the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC. More information at www.publicintegrity.org.au.