

Independent Review into Commonwealth Parliamentary Workplaces Submission

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Introduction

On behalf of *The Australia Institute*, a not-for-profit research centre that has worked closely with the Commonwealth and State parliaments for twenty-five years, we are pleased to respond to the Australian Human Rights Commission's (AHRC) invitation to participate in the Commission's review into Commonwealth parliamentary workplaces.

Three of us have worked in Parliament House, Canberra, two as Chiefs of Staff and one in the Parliamentary Press Gallery, then as a media advisor. Allan Behm, Director of the Institute's International and Security Affairs program, was Chief of Staff to the Hon Greg Combet (Minister for Defence Personnel, Materiel and Science, subsequently Minister Assisting the Minister for Climate Change and Energy Efficiency and Minister for Defence Materiel and Science [2009-10], Minister for Climate Change and Energy Efficiency [2010-13] and Minister for Industry and Innovation [2011-13]). Ben Oquist, Director of the Australia Institute, joined the staff of Senator Bob Brown, the Leader of the Greens, in 1996 and was subsequently Senator Brown's Chief of Staff (2006-12), and upon Senator Brown's resignation in 2012, became Chief of Staff to Senator Christine Milne (2012-13). Ebony Bennett is the Deputy Director of the Australia Institute, and was previously a member of the Parliamentary Press Gallery (2002-05) working for the *Sydney Morning Herald* and *The Australian Financial Review*, then as an advisor to Senator Bob Brown (2005-09, 2010-13). Kathleen O'Sullivan is the Australia Institute's Chief Operating Officer with a long career in personnel and organisational management.

In 2015, Melbourne University Publishing issued Allan Behm's book *No, Minister*, an in-depth analysis of and reflection upon the role of Ministers' Chiefs of Staff, and a guide to navigating the often ambiguous, always competitive and sometimes treacherous backroom world of the Ministerial Wing in the Commonwealth Parliament. It remains the only book on the subject to have been published in Australia. Many of his observations on the role and responsibilities of Chiefs of Staff are pertinent to this particular AHRC Inquiry.

Some initial observations

As workplaces, Australia's Parliaments are *sui generis*. MPs and Senators are elected on the basis of their political appeal to the electorate. When one hears or reads the 'first speeches' of newly elected Members and Senators, one cannot help but be impressed by the commitment and dedication of Parliamentarians to making the nation a better place because of their service. The same applies to many of the political staff who serve the Parliament. They, too, approach their work in a spirit of idealism and national enterprise. But there are no prerequisite skills for election to the Parliament. Some arrive in the Parliament with substantial careers behind them, sometimes with significant managerial and leadership experience. Others arrive with little more than junior-level work experience, or time served in a political office. Nowadays many newly elected MPs and Senators have tertiary qualifications, many of them graduating in Law or Politics. For most, skills are acquired 'on the job': it is a hit and miss system where some MPs and Senators acquire constructive management and leadership capabilities, while others rely on bluster and bullying to make their mark.

The Commonwealth Parliament is different from most of the state and territory parliaments in that Commonwealth Ministers work from their Ministerial offices in Parliament House rather than from the Ministerial suite in the Departments of State. So the business of government, in its political dimension, is totally concentrated on Parliament House. Along with the Prime Minister's Office, the Ministerial wing is the real 'Canberra bubble'. With parliamentary security guards at its entrances, it is inaccessible to the ordinary citizen, and even backbenchers are reluctant to mix with the great and powerful sequestered in their suites and walking 'the blue carpet'.

Almost everyone who works at Parliament House regards it as a privilege. To be engaged in the core function of a democracy – government by, for and of the people – is rightly a matter of pride for those fortunate enough to work there. Nonetheless, it is a hot-house. For many, Ministers and staff included, the day begins around 0600 as the day's "lines" – the media briefing notes – are finalised and circulated, MPs rostered for 'the doors' (media comment on entering Parliament House, usually on the Senate side) and the 24-hour news cycle, and then the day's business begins. Many of the Ministers and staff breakfast at their desks, with most working in open-plan offices with little privacy. The day proceeds in a generally haphazard way, punctuated by party room meetings at least once per week, meetings with lobbyists and constituents, departmental officers, government members, staff from other Ministerial offices, lunch and dinner eaten in the office, until the Parliament finally rises for the day – sometimes after 10.30 pm. The pace of work is relentless, often mind-numbingly trivial, sometimes of the utmost importance as key Cabinet meetings take place or legislation is progressed through the two houses of Parliament.

From an Occupational Health and Safety perspective, Parliament House is widely recognised as one of the most dangerous places to work. By the week's end, many politicians and their staff are desperately fatigued and short-tempered. After some weeks or months of such pressure, staff may experience anxiety and/or depression and, to judge from hearsay, quite a few staff are on anxiety and anti-depression treatments. Alcohol is a constant social lubricant, with much of it consumed in Parliamentary or Ministerial offices. In the old Parliament House, the non-Members' bar was the focal point of much of the Parliament's social life. In the new Parliament House, however, the non-Members' bar was repurposed as the crèche and children's day care centre, with the result that after-hours partying often occurs in off-site bars and pubs.

This is not a lifestyle that accommodates the faint-hearted, the unfit, the middle-aged, or those with family responsibilities. Consequently, many parliamentary staff are young – eager to please their employing MP or Senator, enthusiastic, politically engaged, and with considerable stamina. Most are university graduates, with many cutting their political teeth in on-campus politics. Many have had little or no professional experience, and little workplace experience.

Many of the political staff are electorate or interstate-based, living in rental or shared accommodation within a reasonable commuting distance from Parliament House while Parliament is sitting, returning home at the end of sitting weeks. It is not a lifestyle well-suited to a stable personal or social life. Personal relationships form and wither quickly, and it is little wonder that the hot-house world of Parliament generates considerable ambiguity and fluidity in relationships.

There are no standardised work practices. Staff are appointed at the discretion (or some might say whim) of the MP or Senator for whom they work, sometimes on the basis of congeniality and 'fit' rather than experience or merit. Work in the MP's, Senator's or Minister's office is focused on the personal and political needs of the employer. Protecting the reputation of the Member, Senator or Minister and, by extension, their political party, is of paramount importance. While hiring staff is relatively straightforward, firing can be brutal, as any who have had to sack staff can attest. Staff can in effect be dismissed simply at the employer's wish. Severance payments are not generous.

Basically, the profession of the political staffer is even more precarious than that of the professional politician.

The political environment

The Commonwealth Parliament is a place of political contest. The rhetoric in a largely male-dominated working environment notwithstanding, politics is neither warfare nor sport. But it is adversarial, competitive and at times combative. Parliamentary sittings may start with The Lord's Prayer, but that is usually the beginning and end of niceties. The sledging and personal slanging that distinguishes Question Time in the House of Representatives is emblematic of a masculine culture where prisoners are never taken and hostages never exchanged. Whereas in former decades friendships extended across the political boundaries, they are rarer in the more contemporary world of political ideology unleavened by much real-world experience. Ecumenism may have taken the edge off religious sectarianism in Australia, but no such phenomenon has reached Parliament House. The thin veneer of civility that might be extended to 'the honourable member' quickly gives way to the heckling and jeering for which the Australian Parliament has become notorious.

Misogyny is as prevalent in the Australian Parliament as it is in the wider Australian community. While the gender balance in the Senate has reached 53/47 in favour of women, it remains at 69/31 in favour of men in the House of Representatives. On the government's front bench, men outnumber women by almost three to one. And while the Opposition's figures look better, still just over 40 percent of Parliamentary office holders are women. The disparagement and disrespect shown towards Australia's first and only woman Prime Minister, not least of all by the Leader of the Opposition who subsequently became Prime Minister, was emblematic of the gender discrimination that still infects the national Parliament.

As the Sex Discrimination Commissioner's *Respect@Work: Sexual Harassment National Inquiry into Sexual Harassment in Australia's Workplaces* Report (2020) noted, "Overwhelmingly, the Commission heard that gender inequality was the key power disparity that drives sexual harassment".¹ Gender equality, in terms of both equal representation and equal power distribution is, in all likelihood, the single most effective remedy to sexual harassment in the workplace.

¹ Australian Human Rights Commission (2020) *Respect@Work*, p. 18, <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

Institutional considerations

If the Parliamentary lifestyle is unhealthy, the institution supporting that lifestyle is unique. In the late 1950s, the Canadian sociologist Erving Goffman popularised the term ‘total institution’ – places where people work and live, following specifically and usually self-prescribed sets of rules, removed from the wider community, most needs being met from within the institution itself. Examples include monasteries, prisons, military cantonments, ocean liners and cruise ships, holiday resorts, boarding schools and university colleges. Total institutions breed their own behaviours and conventions, and tend to resist any external accountabilities or comparators. They are often unhealthy environments, physically and psychologically, and are usually distinguished by their uniformity and conformity with conventional and often undocumented practices.

So the Commonwealth Parliament is both institutionally and physically cut off from the community that it is supposed to regulate and serve. The demands of modern security management have heightened this separation. Bollards, fences, stationary obstacles and CCTV monitors abound. Visitors pass through security screening to enter the public areas of the Parliament, and then undergo even more intensive screening to enter the public galleries to view the Senate or the House of Representatives in session. As visitors arrive at Parliament House, they see armed guards carrying machine guns, and inside the Parliament there are scores of security personnel and armed police officers in both the public and private areas of the building.

The Commonwealth Parliament has become a highly securitised place.

Is it any wonder that the symbols of power and security reinforce the separateness of the Parliament from the wider community? This institutional separateness is further reinforced by the elite status accorded to the nation’s elected representatives and political office holders. When the Italian economist Vilfredo Pareto (who lent his name to the so-called 80/20 Pareto principle) conducted his work on political elites in the late nineteenth century, he identified the phenomenon that political power tended to be held in the hands of small politico-economic elites, and that this power, managed within political bureaucracies, is often independent of the democratic process.

Election to the Parliament confirms a person’s status as a member of the political elite. As the 2017 *Report of the Royal Commission into Institutional Responses to Child Sexual Abuse* confirmed, separation from the community (that is, elite status) often means that community standards do not apply to the behaviour of members of the elite. This may be an important contributory factor in cases of bullying, misbehaviour, unwanted sexual advances and sexual crimes committed in Parliamentary workplaces.

Elected members of the political elite occupy fine offices in an architecturally significant building. They travel to and from their electorates in reserved business class seats, separate from their electors. At the airports, they crowd into the Chairman's Lounge or the Virgin Lounge, rarely mingling with those outside the political elite. They are ferried around Canberra in a fleet of special purpose vehicles. On the weekends between sitting weeks, they can be seen in the special Commonwealth vehicles collecting their shopping at the markets and their liquor supplies from Dan Murphy's.

At around three times the average annual income for Australian workers, Commonwealth Parliamentarians are well paid, earning \$211,250 p.a. on 2020 figures. In addition, they are paid a minimum electorate allowance of \$32,000 (with additional allowances for MPs with large electorates), provided with a privately-plated vehicle and associated running costs, a generous tax-free *per diem* allowance of \$291 in Canberra with larger allowances in other capital cities, office holder allowances, allowances for Committee chairs and deputy chairs, and a variety of other small income adjustments. Many MPs and Senators convert their tax-free Canberra *per diem* allowance into a mortgage on a Canberra property, where they also enjoy unusual tax concessions on interest payments. Parliamentarians are also beneficiaries of a generous superannuation scheme.

By any measure, MPs and Senators are privileged, with office holders – the Speaker, the President of the Senate, the Prime Minister, Ministers and Shadow Ministers – enjoying greater perks of office. Privilege, and the sense of entitlement that often goes with it, very often influences behaviour, which can range from self-importance to arrogance and sneering condescension. It can also display as lack of propriety and decorum, over-familiarity towards staff and improper sexual advances. This, of course, is not confined to the institution of Parliament. In the legal world of courts and chambers, in academia, in medicine and in the arts and entertainment industries, entitled and improper behaviour, mostly by men, has been well-documented. The perpetrators are rarely brought to account, mainly because independent review and disciplinary mechanisms do not exist, and very often the perpetrators have enough political power to avoid accountability altogether.

While they do not hold elected office, Parliamentary staff are also members of the political elite, enjoying not only the reflected glory of their elected bosses but also the opportunity to build their own avenues to elected office. They also are part of a privileged and entitled system, and are subject to the same institutional rules. So it is not surprising that some Parliamentarians and Parliamentary staff act in ways that do not conform with community standards.

So while it was disturbing, it was not surprising to learn that the Australian Federal Police, in the aftermath of the rape allegations levelled by Ms Brittany Higgins, had received a further nineteen allegations of misconduct involving parliamentarians, their staff or "official establishments". According to the Commissioner of the AFP, of the forty reports relating to the nineteen allegations, some but not all were of a sexual nature. Twelve were identified as

sensitive investigations, ten were referred to state and territory police for assessment, one was subject to 'ongoing inquiries' and one was closed. Of the remaining seven matters, which did not relate to electorate officers, ministerial staff or official establishment, five were referred to state and territory police and two were dropped because no criminal offence had been identified. All this paints a dismal picture of an institution that, like the courts, should be above reproach.

Workplace management

Except for the four Parliamentary departments that support the operations of Parliament House, there are no evident workplace management practices across the offices of the Members and Senators, or across the various Ministerial offices. Routine management services such as salary and payments, the management of leave records and other entitlements, are provided by the Department of Finance. The Department of Finance also supports the day-to-day operation of Members' electorate offices and Senators' offices. The support staff in the Department of Finance are professional and always helpful. But they are not responsible for the management of the staff. That rests with the individual Member or Senator or, in the case of Ministers and party leaders, the Chief of Staff.

As mentioned previously, recruitment practices are haphazard. There are no standard selection criteria, nor are recruitment practices standardised. The governing and opposition parties have a staffing committee that set salary levels and provide general recruitment oversight, though that oftentimes amounts to little more than in-depth political vetting. There are no performance management systems in place, nor do staff negotiate performance agreements. The Department of Finance does offer some basic skills training courses, generally designed for the more junior staff, but professional development courses for senior MOPS staff are conspicuously absent. Now, if MOPS staff had previous leadership and management experience and training, the absence of professional development packages would not matter. But the fact is that most senior political staff have had little exposure to the demands of senior management in complex environments.

And more significantly, there is no leadership and management training available to Members and Senators. Many of them are elected totally without such skills, and remain that way for their entire political careers.

Sexual harassment and improper conduct towards women are not restricted to staffers. It has been pervasive, though usually unmentioned. And it has been continual. The July 2021 publication of *Power Play: Breaking Through Bias, Barriers and Boys' Clubs*, written by the former Member for Chisholm Ms Julia Banks, and the allegation of sexual assault in the early 1980s made by the Hon Kate Sullivan, one of Australia's longest-serving Parliamentarians, in the context of an Australian Broadcasting Commission TV program *Ms Represented*, reminds everyone that even serving MPs are not spared the abuse of unwanted sexual

advances.² *Sex, Lies and Question Time*, written by the former Member for Adelaide, Ms Kate Ellis, confirms that the problem crosses party lines.³

It is hardly surprising that poor or absent management is the performance hallmark when things go off the rails, as they evidently did in the aftermath of the events alleged by Ms Brittany Higgins. Her Minister claimed that she was not informed of the events even though her Chief of Staff was, the Minister responsible for the AFP claimed that he was not informed of the events even though some of his staff had been so informed, and the Prime Minister claimed that he, too, was unaware of the events even though some of his staff were aware. That is a shambles. And more than that, it is a dereliction of the duty of care for the personal and psychological wellbeing of a MOPS staff member. Whether the fact that, like the proverbial Sergeant Schultz, so many people ‘knew nothing’ is an instance of plausible deniability or the result of completely inept management, either way the Chief of Staff is ultimately responsible for the smooth and efficient operation of the Minister’s office and the staff who are employed there. The Defence Minister’s Chief of Staff failed to support the Minister, the consequence of which was the Minister’s demotion. The Minister paid a high price for appointing a Chief of Staff who should have handled the situation with professionalism and close attention to the duty of care that should have been extended to the person who was allegedly raped.

² See Annabel Crabb (2021) “Inspired by Brittany Higgins, one of Australian parliament’s longest-serving women comes forward with sexual assault allegation”, *Australian Broadcasting Corporation News*, <https://www.abc.net.au/news/2021-07-09/kate-sullivan-alleges-sexual-assault-in-parliament/100273484>

³ See Joshua Black (2021), “Julia Banks’ new book is part of a 50-year tradition of female MPs using memoirs to fight for equality”, *The Conversation*, <https://theconversation.com/julia-banks-new-book-is-part-of-a-50-year-tradition-of-female-mps-using-memoirs-to-fight-for-equality-163888>

Personnel management

Nor are there personnel management guidelines and protocols available to Members and Senators, or Ministers and their Chiefs of Staff. Overwork is a constant condition in the Ministerial Wing, yet there are no guidelines to assist Ministers to manage their own workloads, or to advise senior staff on how to manage office workflows. Many Ministers succumb to the pressures of the Parliament, where it can become increasingly difficult to distinguish the immediate from the important. So their offices fall into a frantic cycle of busy-ness. They often fall short in being able to liberate the resources of the public service to relieve themselves and their offices of heavy workloads. And their office staff, equally inexperienced, often find themselves in competitive rather than cooperative relationships with their public service departments, thereby exacerbating their management problems.

The personnel management problem is compounded in many instances where there is gender imbalance in the Member's, Senator's or Minister's office, and where women hold positions of lower seniority – and consequently less power – than the men. Work pressures can be a major contributor to bullying in the workplace, which can lead in turn to sexual harassment. But there are no systems in place to address or mitigate these problems. As these pressures compound, they create serious vulnerabilities for Members, Senators and especially Ministers, given their political and media profile, in addition to the serious risks to staff who experience such bullying or harassment. While wilful misdemeanour should be a matter for intense public scrutiny, the unavoidable fact is that oversight and unintentional slip-ups can be just as devastating on a Minister's career and reputation, as many examples in recent years amply demonstrate. Senator Reynold's does.

The unique role of Chiefs of Staff

It defies credulity that the Prime Minister, the Minister for Home Affairs and the Minister for Defence, in whose office the alleged offences against Ms Brittany Higgins occurred, were not informed or were otherwise unaware of such a serious allegation of criminal behaviour when senior members of their staffs were ‘in the picture’ from the beginning. The reputation of the government and the parliament were instantly brought into question. Just as importantly, the Minister’s reputation is immediately called into question, either for incompetence or for hiding behind ‘plausible deniability’ as a means of defusing the demands of accountability.

In this submission, we do not propose to review who knew what and when. That has been the subject of separate inquiries. The important issue is that the Minister of Defence was clearly unaware that her office was a possible crime scene until decisions had been taken by others, perhaps inadvertently, to complicate the issue by themselves committing a possible offence by interfering with the possible crime scene. The role of the Parliamentary security service, and the role of the Department of Finance in authorising a ‘deep clean’ of the Minister’s office, have been the subject of separate inquiries.

In our view, the Minister’s Chief of Staff failed in her responsibility to inform and protect the Minister, and to manage the situation professionally. The Chief of Staff should have recognised that the Minister’s office was a potential crime scene, and should have instructed Parliamentary security to seal access to the office until the Australian Federal Police had completed forensic investigation of the office, gathered evidence, and given their clearance for any cleaning of the office that might have been deemed necessary.

Integrity and propriety should always be the distinguishing features of a Minister and a Minister’s office. The constant question for a Chief of Staff should be “What is the right thing to do”, rather than “What can we get away with” or “Will it matter if we are not caught”. Trust and confidence in our democratic system is enhanced to the extent that the electors can have confidence in the moral compass and probity of those who govern them. And if a clear moral compass is not persuasive enough in determining ethical behaviour, then the cost of failure should be: Ministers can pay a very high price – the loss of their appointment as Minister – when their ethical position is deemed to be ambiguous or untenable.

No, Minister sets out in detail the principles that should inform the successful management of a Minister’s office. The core values must be trust, respect and loyalty, and if they are in place, sexual and other misdemeanours are unlikely to occur, and if they do, the Minister will be both in the picture and in charge. Chiefs of Staff have a duty to support, advise and protect their Ministers. They also have a duty to support the staff, to monitor intra-office

relations (to manage pressure and ensure the wellbeing of the staff), and ensure the smooth operation of the Ministerial team. This includes ensuring that the Minister's office always conducts its affairs professionally, and that the office never attracts a reputation for being unprofessional in its conduct, slovenly in its appearance, or used for purposes that are inconsistent with the dignity of the Minister's position. As mentioned earlier, it is our opinion that the Prime Minister and the other two Ministers were not well served by their senior staff.

When a reckoning of the damage done to the Government consequent upon the allegations of rape in the office for the Minister for Defence is finally complete – if it ever is – a key lesson should be that it was entirely avoidable. Much greater consideration needs to be given to whom Ministers appoint as their Chief of Staff, and newly elected governments would be well to ensure that appropriate induction training and professional development is provided to everyone who occupies such a critical and evidently vulnerable position.

Reporting, reviewing and remedying workplace malpractice

Given the individuated nature of employment in Parliament House and the lack of management guidelines, complaints handling procedures or clear avenues of adjudication and redress, the problems associated with bullying, sexual harassment or the commission of sexual crimes seem to be intractable. The Chief Justice of the High Court of Australia and the High Court's registrar may have found the handling of sexual harassment complaints relating to a High Court judge equally intractable, until they engaged the services of Dr Vivienne Thom to investigate the complaints and advise them on reporting, review and remediation. Dr Thom's recommendations may be generally relevant to the issues obtaining in an analogous workplace like Parliament House.

The recommendations to the Chief Justice were that the Court:

1. Develop a Human Resource policy designed for the particular employment circumstances of judges' personal staff;
2. Review the induction training provided to judges' staff to ensure that it is relevant to their specialised roles;
3. Identify a specified individual, subsequently identified as the Senior Registrar, to form a close working relationship with the judges' associates in particular – a person who would meet frequently with the associates, carry out some of the administrative duties of a supervisor, provide support if required, and act as a conduit to the Principal Registrar of the Court;
4. Clarify and advise judges' staff that confidentiality requirements relate only to the work of the Court and not attendant activities;
5. Advise judges' staff that their duties to the judges do not include an obligation to attend social functions;
6. And survey current staff to establish their experiences of work at the Court.⁴

The Chief Justice accepted these recommendations which, *mutatis mutandis*, could form a useful starting point for considering report management practices at Parliament House.

Of course, there are scalar differences between the High Court and Parliament House. It should be assumed that seven judges would not generate the volume of work that might be expected from 227 Senators and MPs, including upwards of 30 Ministers and their staff,

⁴ See Kiefel CJ's statement of 22 June 2020 as reported by Michelle Grattan (2020) "High Court apologises for Heydon's sexual harassment of six associates", *CityNews.com.au*, <https://citynews.com.au/2020/high-court-apologises-for-heydons-sexual-harassment-of-six-associates/> and Rex Patrick (2020) *Senate Question on Notice no 1678*, <https://parlwork.aph.gov.au/api/senate/questions/75969/Attachments/7dd378ef-1f78-4202-af18-91594af88c17/0>

employing around 1350 staff members under the Members of Parliament Staff (MOPS) Act 1984. It is noteworthy, too, that other Federal and State courts are yet to promulgate codes of practice for addressing complaints of sexual misconduct and inappropriate behaviour. Nonetheless, a justice of the Federal Circuit Court of Australia recently resigned due to allegations substantiated through a review conducted by three former judges of the Victorian Supreme Court.⁵ But the principles touched upon in Dr Thom's advice to the Chief Justice are pertinent.

First, the hallmarks of any reporting, review and remediating system must be integrity, impartiality, neutrality, political independence (non-political and non-partisan), and authority to act in the interests of any complainant while recognising the rights of anyone accused of inappropriate or criminal behaviour: the rule of law must be aligned with the duty of care. Just as the Parliamentary Budget Office enjoys a reputation for political neutrality, so too it would be critical that a reporting, review and remediation system not become yet another element in the conduct of political blood sports. Discretion must be totally protected.

Second, the system must be accessible while discretion is preserved. This creates difficulties in a place as busy and as inevitably public as Parliament House. But accessibility is not simply geographical – so long as there are good, private and properly protected communications between a complainant and a trusted person, physical location is not important. Indeed, there would be good arguments for situating a complaints management office off-site, though preferably in Canberra, with sufficient support and operating capability for review staff to travel to electorate offices as necessary.

Third, the system must protect complainants' identity and maintain anonymity where that is appropriate. Since women are likely to comprise most of those who might lodge complaints regarding improper conduct by Members, Senators or others who work in Parliament House, it is important that their identity is totally protected. Criminal matters will be referred to the relevant police jurisdiction where privacy must again be maintained.

Fourth, the system must be credible and authoritative, trusted and trustworthy. There are several institutional models that could provide useful guidance. The Office of the Inspector General of Intelligence and Security (IGIS), the very small office of the Independent National Security Legislation Monitor (INSLM) provide useful small-scale examples of how a complaints agency can be structured, while the whistleblower protections put in place by the Australian Securities and Investments Commission provide an example of how protections can be operationalised.

⁵ See Jamie McKinnell (2021) "NSW Federal Circuit judge resigns over 'inappropriate' behaviour towards women", *The Australian Broadcasting Commission*, <https://www.abc.net.au/news/2021-07-08/nsw-family-court-judge-resigns-over-inappropriate-behaviour/100276882>

Finally, under no circumstance should it be run by the Australian Federal Police. While the AFP has an important investigative role in matters where crimes may have been committed, it is neither empowered nor equipped to conduct inquiries and reviews that may be less associated with criminal activity than with due process and proper administration. And for reasons of its non-political character, the Australian Public Service Commission should not be made responsible for monitoring complaints in the parliamentary workplaces where those who are employed by Ministers, senior MPs and Senators are not themselves employed under the Public Service Act.

Is this a role for a Commonwealth Integrity Commission (CIC)?

In March 2021, the Australia Institute published a submission on the CIC Bill Exposure draft on behalf of the National Integrity Committee, an independent group of retired judges who are independent of the Australia Institute and act in the public interest.

The submission pointed out the serious flaws and deficiencies of the approach taken to corruption in the domain of public administration. While the submission did not address misconduct of a sexual nature, it did touch on breaches of Codes of Conduct, which may be taken to include the Prime Minister's 'bonking ban'. And as has been demonstrated in many court cases involving allegations of sexual crimes (most recently the two aborted trials of Mr Jack de Belin, a National Rugby League footballer, and the DPP's subsequent decision to drop charges that would have led to a third trial), sexual criminal charges are notoriously difficult to prosecute in the current court system.

In their submission, the former judges registered the following salient observations:

Corruption investigations into public sector agencies should not be limited to the investigation of criminal conduct. Nor should those into parliamentarians or their staff. Admittedly, much serious corrupt conduct that has been found to occur throughout Australia has involved criminal conduct. But there is a range of serious corrupt conduct that does not constitute a criminal offence. For example:

- nepotism and favouritism in appointments;
- the granting of contracts without appropriate scrutiny;
- the misuse of confidential information;
- misuse of public funds for political gain;
- serious conflicts of interest and serious misuse of entitlements;
- serious breaches of Codes of Conduct.

Mention should also be made of two further notorious categories: first the situation where large donations or financial favours to a political party or minister are followed by a decision conferring financial or other benefits on the donor or a related body; second the situation where senior public servants or ministers are seduced into accepting improper lobbying positions with corporations seeking benefits from the government.

In some of these instances, there could also arise the possibility of criminal misconduct. However, the difficulties of proof in a criminal case make it often desirable to brand them as non-criminal corrupt conduct, capable of proof by analysis of circumstantial evidence to be assessed on the balance of probabilities.⁶

The Australia Institute is quite aware of the inadequacies of the government's current approach to what might constitute corruption and improper conduct in the Commonwealth Parliament and the relevant Commonwealth agencies.

But what the allegations made by Ms Brittany Higgins, and the request for submissions from the AHRC, make implicitly manifest is that accountability practices in the Commonwealth Parliament are defective. We are agnostic on the issue of whether a CIC should extend to all matters of improper behaviour. But we do strongly support the AHRC in its efforts to strengthen the accountability and transparency of government while protecting the dignity and rights of individuals who may find themselves subject to unwanted or improper conduct. As we noted earlier, this is essentially a question of trust, without which our democracy cannot ultimately operate.

⁶ See The Australia Institute (2021) *Commonwealth Integrity Commission (CIC) Consultation: Submission of the CIC Bill Exposure Draft*, p. 4, <https://australiainstitute.org.au/wp-content/uploads/2021/03/CIC-Submission-WEF-Feb-21.pdf>

Making the Parliament responsible and accountable for Commonwealth Parliamentary Workplaces

Regardless of whether the AHRC's inquiry makes any recommendations with respect to the CIC, it will be important that the AHRC recommends a mechanism that places responsibility and accountability for what transpires in Commonwealth Parliamentary Workplaces squarely with the Parliament itself. While the power of the Executive with respect to the Parliament has grown inexorably since Federation, the Executive is still technically and constitutionally accountable to the Parliament. Sections 17 and 35 of the Constitution provide for the appointment of the President of the Senate and the Speaker of the House of Representatives. Section 50 of the Constitution provides that:

Each House of the Parliament may make rules and orders with respect to:

- (i) The mode in which its powers, privileges, and immunities may be exercised and upheld;
- (ii) The order and conduct of its business and proceedings either separately or jointly with the other House.

At a minimum, section 50 would appear to allow the President of the Senate and the Speaker to take whatever action they deem to be necessary to uphold the dignity of the Parliament, which may well include the development and management of protocols to investigate allegations of improper behaviour by Members or Senators and to make findings with respect to such allegations. That might well extend to the making of recommendations to the Prime Minister that a member of the Executive should resign or be dismissed, recommendations to party leaders that a Member or Senator should be disendorsed, or recommendations to a Minister or Office holder that the contract of a member of staff should be terminated. While in the current Parliament these might be considered to be 'heroic' actions, it is important to note that community standards, as they apply to many other workplaces, sanction such consequences of improper sexual conduct and inappropriate behaviour.

A series of polls conducted in Australia over recent years has tracked the decline in satisfaction with the way Australia's democracy works and trust in those who run the nation's governmental institutions.⁷ The Swinburne Australian Leadership Index in particular

⁷ See, for instance, Mark Evans, Gerry Stoker and Max Halupka (2018) "Australians' trust in politicians and democracy hits an all-time low: new research", *The Conversation*, <https://theconversation.com/australians-trust-in-politicians-and-democracy-hits-an-all-time-low-new-research-108161> and Swinburne University of

shows a sharp decline in women’s regard for federal political leaders in the wake of the scandals that have beset the Commonwealth Parliament in recent months. Because the Commonwealth Parliament is answerable only to itself, and is not subject to the management and disciplinary procedures available to the Commonwealth Public Service, for example, the exercise of accountability must be managed by the Parliament itself. This is the job of the President of the Senate and the Speaker.

Culture is always the most difficult thing to change in an organisation, but leadership comes from the top. For there to be a change in Parliament, its leaders must hold people to account. Perhaps the answer lies in the mandatory requirement that all allegations of improper sexual behaviour, improper conduct and bullying are reported to the Presiding Officers and independently investigated under their direction.

Accordingly, the Australia Institute respectfully encourages the AHRC to consider making clear and implementable recommendations that would identify the responsibility of the President of the Senate and the Speaker for the orderly operation and good reputation of the Parliament, and that would suggest that these two office holders be provided with the resources necessary to support the Parliament’s duty of care towards those who are employed in its precincts in the direct support of Senators and Members, that is, those who are employed under the Members of Parliament Staff Act.

Technology (2021) “Women losing trust in political leaders shows new Swinburne research”, , <https://www.swinburne.edu.au/news/2021/04/women-losing-trust-in-political-leaders-shows-new-swinburne-research/>