

2019-2020

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMONWEALTH PARLIAMENTARY STANDARDS BILL 2020

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of

Dr Helen Haines MP

COMMONWEALTH PARLIAMENTARY STANDARDS BILL 2020

OUTLINE

The Commonwealth Parliamentary Standards Bill 2020 will strengthen public confidence in the Commonwealth Parliament by equipping it with the appropriate powers and resources to prevent, manage and resolve its own integrity issues where possible, and provide clear pathways for the assessment, investigation, resolution and/or referral of serious integrity issues – including through the Australian Federal Integrity Commission.

In particular, the Commonwealth Parliamentary Standards Bill creates:

- A statutory code of conduct for the Members of each House of Parliament, and their staff (under the *Members of Parliament (Staff) Act 1984*);
- a statutory basis for the existing parliamentarians' registers of interests;
- a Parliamentary Integrity Adviser to provide independent, confidential advice and guidance to Members and their staff on the interpretation and day-to-day application of the relevant codes of conduct;
- a Parliamentary Standards Commissioner to assist the Presiding Officers, the Privileges Committees, the Prime Minister, and the Australian Federal Integrity Commission, with the assessment, investigation, resolution and/or referral of alleged breaches of the applicable codes of conduct that are sufficiently serious in nature.

The Parliamentary Standards Commissioner will have the same powers of the Auditor-General to conduct investigations, with appropriate safeguards to protect rights to procedural fairness, rights to privacy and protection of personal reputation, and the advancement of the public interest, including provisions to deal with vexatious, frivolous or otherwise unreasonable claims.

The code of conduct is based on the evidence-based recommendations of the Commonwealth Parliamentary Association, of which the Australian Parliament is a member. This code is specifically designed to protect robust debate on issues of public importance, ensure parliamentary offices and resources are used in the public interest, and discourage political office holders from clear unethical behaviors that discredit the integrity of the Commonwealth Parliament.

The Parliamentary Standards Commissioner will be an independent office of the parliament, housed within the Department of Parliamentary Services, and will report through the relevant Privileges Committee, Minister or the Prime Minister as specified.

Consensus Bill

The bill operates alongside the Australian Federal Integrity Commission Bill 2020.

These two bills have been developed as a robust consensus package through a non-aligned independent political office and the comprehensive *Beechworth Principles* consultation process, which commenced Australia-wide in February 2020 and involved legal academics, panels of retired judges, civil society stakeholders, leading ethicists, and members of parliament from across the political spectrum.

The overarching purpose of this package is to create a nationally coordinated pro-integrity framework, with an emphasis on prevention, supported by appropriate powers of investigation, assessment and referral to enable clear and practical responses to serious and/or systemic allegations of corruption issues and other integrity matters at the federal level in the public interest.

The *Beechworth Principles* consultation process and the bill itself builds on over a decade of prior consultation, policy development and evaluations of legislative best-practice, including:

- the Committee of Privileges and Members' Interests report of the *Draft code of conduct for Members of Parliament* (2011, 43rd Parliament);
- the Commonwealth Parliamentary Association's *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament* (2015);
- the Transparency International Australia and Griffith University led Australian Research Council Linkage Project, *Strengthening Australia's National Integrity System: Priorities for Reform* (2018); and,
- the private members bill introduced by Cathy McGowan MP in the 45th Parliament entitled *National Integrity (Parliamentary Standards) Bill 2018*, the iterations of the bill before it, and consideration of the various views expressed on the merits of those bill from:
 - the Senate Legal and Constitutional Affairs Legislation Committee (see Committee Report of 5 April 2019),
 - the Senate Standing Committee for the Scrutiny of Bills (see Scrutiny Digest 1 of 2019), and,
 - the Parliamentary Joint Committee on Human Rights (see Report 2 of 2019)

FINANCIAL IMPACT

This bill complies with the financial initiative rules for private members bills.

Special commencement clauses have been inserted throughout the bill to accommodate financial initiative rules for private members. Under these provisions, sections of the Commonwealth Parliamentary Standards Act 2020 that require appropriated funds would not commence until the day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of the Australian Federal Integrity Commission.

Similar provisions are included in the Australian Federal Integrity Commission Bill 2020.

The Parliamentary Budget Office published an official costing for the Australian Federal Integrity Commission and Commonwealth Parliamentary Standards Commissioner on 16 October 2020. The staffing and specified operating costs for the two new agencies is expected to decrease the fiscal and underlying cash balances by \$187.3 million over the 2020-21 Budget forward estimates.

The official costing is available [here](#).

NOTES ON CLAUSES

Part 1—Preliminary

Clause 1: Short title

1. This clause provides that the Act may be cited as the *Commonwealth Parliamentary Standards Act 2020*.

Clause 2: Commencement

2. This clause states that clauses 1 and 2, and anything in the Act not specified in the table, will commence on the day the Act receives Royal Assent.
3. Clauses 3 to 101 will commence the later of:
 - (a) the day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of this Act; and
 - (b) the day clause 3 of the *Australian Federal Integrity Commission Act 2020* commences.
4. However, the provisions do not commence at all unless both events mentioned in paragraphs (a) and (b) occur.
5. Schedules 1 to 3 will commence at the same time as clauses 3 to 101.

Clause 3: Objects of Act

6. This clause outlines the objectives of the Act.

Clause 4: Saving of powers, privileges and immunities

7. This clause provides that the Bill does not affect the powers, privileges and immunities of each House of Parliament, and of the members and committees of each House, except as expressly provided otherwise in this Act.

Clause 5: Act binds the Crown

8. This clause provides that this Act binds the Crown in right of the Commonwealth.

Clause 6: Application of Act

9. This clause provides that the Bill will have jurisdiction within and outside Australia and every external Territory.

Clause 7: Definitions

10. This clause defines terms and expressions used frequently in the Bill in order to avoid doubt and clarify the intended meaning of each word for the specific purposes of the Bill.

Part 2—Parliamentary values and conduct

Division 1—Statement of parliamentary values

Clause 8: Parliamentary values

11. This clause outlines the values that parliamentarians should demonstrate as public officials who have responsibility to secure and sustain the public trust against abuse or harm. The proposed parliamentary code of conduct provided in Division 2 sets out how a parliamentarian demonstrates these values.
12. The concept of public trust is one that originates from the principles of equity, where a person holds something for the benefit of another person and as such has fiduciary obligations to act in the interests of that person. The use of 'public trust' in clause 8 reflects that parliamentarians are elected to represent the public and are placed in a position of trust. This trust requires that all official powers and duties, including decision making, are performed honestly, equitably and responsibly, with integrity and accountability, and for the purpose of furthering the public interest, rather than personal or vested interests.

Division 2—Parliamentary code of conduct

Clause 9: Upholding democracy and respecting others regardless of background

13. This clause outlines the code of conduct relating to fundamental democratic values.

Clause 10: Conflicts of interest

14. This clause outlines the code of conduct relating to conflicts of interest.

Clause 11: Using position for profit

15. This clause outlines the code of conduct relating to using position for profit.

Clause 12: Outside employment and activities

16. This clause outlines the code of conduct relating to outside employment and activities.

Clause 13: Accepting any gift, hospitality or other benefit

17. This clause outlines the code of conduct relating to accepting any gift, hospitality or other benefit.

Clause 14: Use of influence

18. This clause outlines the code of conduct relating to use of influence.

Clause 15: Use of public resources

19. This clause outlines the code of conduct relating to use of public resources.

Clause 16: Personal conduct

20. This clause outlines the code of conduct relating to personal conduct. The clause recognises that parliamentarians are in a unique position of responsibility in influencing the nature of civic conduct in Australia and should act with that in mind.
21. This clause interacts with the principle of parliamentary privilege. It protects the right of parliamentarians to participate freely in debate in the Parliament without fear of prosecution. This clause seeks to ensure that this right is exercised responsibly, acknowledging that parliamentary commentary can have serious implications for individuals and groups of the Australian community.

Clause 17: Managing confidential and personal information

22. This clause outlines the code of conduct relating to managing confidential and personal information.

Clause 18: Post-retirement activities

23. This clause provides that a former parliamentarian must not take improper advantage of any office held as a parliamentarian after they cease to be a parliamentarian.

Clause 19: Staff of parliamentarians

24. This clause outlines that the duties and obligations of this Part apply to a person employed under the *Members of Parliament (Staff) Act 1984* as if that person were a parliamentarian.

Clause 20: Extending code of conduct

25. This clause outlines that this Bill is not intended to exclude or limit the power of a House of the Parliament to adopt a code of conduct or the operation of such a code of conduct.
26. This clause also provides that a code of conduct adopted by a House of the Parliament that is inconsistent with this Division has no effect to the extent of the inconsistency, but the code of conduct is taken to be consistent with this Division to the extent that the code of conduct can operate concurrently with this Division.

Part 3—Registers of Interests

Clause 21: Register of interests—House of Representatives

27. This clause provides that a member of the House of Representatives must register the member's interests as provided for in Schedule 1. Subclause (2) provides that the House of Representatives may, by resolution carried by two thirds of Members, impose additional requirements to those in Schedule 1, so long as the additional requirements are not inconsistent with Schedule 1.

Clause 22: Register of interests—Senate

28. This clause provides that a senator must register the senator's interests as provided for in Schedule 2. Subclause (2) provides that the Senate may, by resolution carried by two thirds of Senators, impose additional requirements to those in Schedule 2, so long as the additional requirements are not inconsistent with Schedule 2.

Part 4—Parliamentary Integrity Adviser

Division 1—Establishment and functions and powers of the Parliamentary Integrity Adviser

Clause 23: Parliamentary Integrity Adviser

29. This clause establishes that a Parliamentary Integrity Adviser is an independent officer of the Parliament.
30. Subclause (3) provides that the Parliamentary Integrity Adviser is not subject to direction by any person in the performance or exercise of the Parliamentary Integrity Adviser's functions or powers, subject to this Act and to any other laws of the Commonwealth.

Clause 24: Functions of Parliamentary Integrity Adviser

31. This clause outlines the functions of the Parliamentary Integrity Adviser, including that they have the power to do all things necessary or convenient to be done for or in connection with the performance of the Parliamentary Integrity Adviser's functions. This includes working with the Australian Federal Integrity Commission to understand the nature, scope, and impact of corruption risk and prevalence within the Parliament through objective research.

Division 4—Provision of advice

Subdivision A—Requests for advice

Clause 25: Parliamentarian, former parliamentarian or staff may request advice

32. This clause outlines that a parliamentarian, a former parliamentarian, or a person employed under the *Members of Parliament (Staff) Act 1984*, may request advice from the Parliamentary Integrity Adviser, including the nature of the advice that can be requested and limitations on who the advice can be about.
33. A parliamentarian may only request advice about a matter relating to the parliamentarian, their staff, a former employee or their family members.
34. A parliamentarian who is the leader of a political party may request advice about a matter relating to another parliamentarian who is a member of that party, staff or family members but the leader of the political party must first inform the parliamentarian, person or family member concerned of their intention to request the advice.

Clause 26: Minister may request advice

35. This clause provides that a Minister may request advice from the Parliamentary Integrity Adviser about the Minister's compliance with an applicable code of conduct, whether the request for advice relates to an issue that arose before or after the commencement of this Act.
36. Subclause (2) provides that a request for advice must be about a matter relating to the Minister; or a family member of the Minister; or a person employed or formerly employed under the *Members of Parliament (Staff) Act 1984* by the Minister.
37. A request for advice may not be about a matter relating to any other parliamentarian or person, except as provided for in subclause (3) which relates to requests by the Prime Minister.

Clause 27: Presiding officer or chair of committee may request advice

38. This clause provides that a Presiding Officer or a chair of a committee of a House of the Parliament may request advice from the Parliamentary Integrity Adviser about any ethics or integrity issue, or any general matter relating to ethics and integrity including revision or development of a code of conduct, as may relate to the roles, functions and operations of that House or committee.

Clause 28: Requirements relating to requests for advice

39. This clause provides that if requested by the Parliamentary Integrity Adviser, a request for advice under clause 25, 26 or 27 must be in writing. The person making the request for advice must disclose to the Parliamentary Integrity Adviser all information relevant to the matter or issue that is the subject of the request.
40. The Parliamentary Integrity Adviser may request additional information from the person for the purpose of giving the advice. The request must explain how the additional information relates to request for advice.

Clause 29: Provision of advice

41. This clause outlines the requirements of the Parliamentary Integrity Adviser in providing a person advice on the matter or issue requested under clause 25, 26 or 27.

Clause 30: Limited protection from acting on conflict of interest issue

42. This clause applies if a person:
- (a) requests advice under clause 25, 26 or 27 on a conflict of interest issue involving the person; and
 - (b) discloses all information relevant to the matter or issue that is the subject of the request when seeking the advice; and
 - (c) makes the request in writing; and
 - (d) receives written advice from the Parliamentary Integrity Adviser on the issue; and
 - (e) does an act to resolve the conflict of interest issue substantially in accordance with the Parliamentary Integrity Adviser's advice on the issue.
43. Subclauses (2) and (3) ensure that if subclause (1) is satisfied, the person is not subject to any civil liability for, or in relation to, that act prospectively. That is, satisfying subclause (1) does not affect the person's liability for any act or omission done or made in connection with the conflict of interest issue before the person receives the Parliamentary Integrity Adviser's advice.

Subdivision B—Confidentiality of information

Clause 31: Interpretation

44. This clause provides clarity for interpretation of key terms used in this Subdivision.

Clause 32: Authorised use or disclosure—performing functions etc.

45. This clause provides that the Parliamentary Integrity Adviser may use or disclose protected Adviser information if the Parliamentary Integrity Adviser uses or discloses the information for the purposes of performing functions or duties or exercising powers under this Division.

46. The notes included in this clause record that this proposed section is an authorisation for the purpose of other laws, including the Australian Privacy Principles, and “use”, in relation to information, includes to make a record of (see the definition of “use” in clause 7).

Clause 33: Authorised use or disclosure—required or authorised by law

47. This clause provides that the Parliamentary Integrity Adviser may use or disclose protected Adviser information if the use or disclosure is required or authorised by or under a law of the Commonwealth, or of a State or Territory.
48. This clause is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

Clause 34: Authorised disclosure—person to whom information relates

49. This clause provides that the Parliamentary Integrity Adviser may disclose protected Adviser information to the person to whom the information relates.
50. This clause is a requirement for the purposes of other laws, including the Australian Privacy Principles.

Clause 35: Offence for unauthorised use or disclosure

51. This clause provides that the offence for unauthorised use or disclosure is a penalty of imprisonment for 2 years or 120 penalty units, or both for a person that obtains, discloses or uses protected Adviser information.
52. Subclause (2) provides that the offence does not apply to a person to the extent that the person uses or discloses protected information in good faith and in purported compliance with a provision in this subdivision. A defendant bears an evidential burden in relation to the matters in subclause (2) (see subsection 13.3(3) of the Criminal Code).

Clause 36: No requirement to provide information to courts etc.

53. This clause provides that except where it is necessary to do so for the purposes of giving effect to this Act, the Parliamentary Integrity Adviser is not to be required to disclose protected Adviser information, or produce a document containing protected Adviser information, to a court; or a tribunal, authority or person that has the power to require the answering of questions or the production of documents.

Clause 37: Offence for unauthorised use or disclosure—any person

54. This clause provides that a person, other than the Parliamentary Integrity Adviser, must not record, use or disclose information in relation to an ethics or integrity issue about another person that came to the person’s knowledge because of the person’s involvement in the administration of this Act. The penalty for this offence is imprisonment for 2 years or 120 penalty units, or both.
55. Subclause (2) provides that the offence does not apply to a person’s recording, use or disclosure of information if the recording, use or disclosure is in the performance of his or her functions under this Act; or authorised under this or another Act. A defendant bears an evidential burden in relation to the matters in subclause (2) (see subsection 13.3(3) of the Criminal Code).

56. A person other than the Parliamentary Integrity Adviser who is or has been involved in the administration of this Act is not, in any proceeding, compellable to disclose information in relation to an ethics or integrity issue about another person that came to the person's knowledge because of the person's involvement in the administration of this Act.

Division 3—Better practices guides and fact sheets

Clause 38: Better practices guides and fact sheets

57. This clause outlines the role of the Parliamentary Integrity Adviser in promoting better practice in relation to matters of conduct, propriety, ethics and integrity for parliamentarians, former parliamentarians, and persons employed under the *Members of Parliament (Staff) Act 1984*, by preparing and disseminating better practice guides and fact sheets to those persons.

Division 4—Annual report

Clause 39: Annual report

58. This clause provides for the provision of an annual report each financial year and the contents of the annual report.

Part 5—Parliamentary Standards Commissioner

Division 1—Establishment and functions and powers of the Parliamentary Standards Commissioner

Clause 40: Parliamentary Standards Commissioner

59. This clause establishes a Parliamentary Standards Commissioner. The Parliamentary Standards Commissioner is an independent officer of the Parliament.

Clause 41: Functions of Parliamentary Standards Commissioner

60. This clause outlines the functions of the Parliamentary Standards Commissioner.
61. The Parliamentary Standards Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the Parliamentary Standards Commissioner's functions.

Division 2—Alleged or suspected contraventions of parliamentary code of conduct

Clause 42: Referral of alleged or suspected contravention

62. This clause provides for the process for referral of alleged or suspected contraventions of a parliamentary code of conduct, which can be made by any person.

Clause 43: How alleged or suspected contraventions must be dealt with

63. This clause provides the process of dealing with referrals under clause 42. In deciding how to deal with an alleged or suspected contravention, the Parliamentary Standards Commission must have regard to.

64. This clause also allows the Parliamentary Standards Commissioner to refuse to proceed with a referral based on statutory definitions of vexatious and frivolous claims.

Clause 44: Assessment and preliminary enquiries

65. This clause applies if an alleged or suspected contravention is referred to the Parliamentary Standards Commissioner under this Division; and the Parliamentary Standards Commissioner does not refer the alleged or suspected contravention under either subclause 43(2) or (3).
66. The Parliamentary Standards Commissioner must deal with the alleged or suspected contravention in one of the following ways:
- (a) by making preliminary enquiries to determine whether to further inquire into the alleged or suspected contravention;
 - (b) by inquiring into the alleged or suspected contravention;
 - (c) at any time, by determining to take no further action.

Clause 45: Inquiries

67. This clause outlines the process for conducting an inquiry, including applying certain provisions in the *Auditor-General Act 1997* to an inquiry conducted by the Parliamentary Standards Commissioner.

Clause 46: Reports of inquiries

68. This clause provides that after completing an inquiry into an alleged or suspected contravention, the Parliamentary Standards Commissioner must prepare a report on the inquiry. It outlines what the report must set out and provides that some information may be excluded and put in a supplementary report, such as information that may endanger a person's life or physical safety; or prejudice proceedings brought as a result of the inquiry, or another inquiry under this Act.

Clause 47: Opportunity to be heard

69. This clause provides that the Parliamentary Standards Commissioner must not include in a report under clause 46 in relation to an investigation of a corruption issue an opinion or finding that is critical of a person (either expressly or impliedly) unless the Parliamentary Standards Commissioner has given the person a statement setting out the opinion or finding and given the person a reasonable opportunity to appear before him or her and to make submissions in relation to the opinion or finding.

Clause 48: Parliamentary Standards Commissioner to give report to Committee

70. The Parliamentary Standards Commissioner must give the Privileges Committee of the House or Houses to which the report relates:
- (a) the report prepared under subclause 46(1); and
 - (b) if a supplementary report is prepared under subclause 46(6) in relation to the inquiry—the supplementary report.

Clause 49: Advice of outcome of inquiry

71. This clause provides that the Parliamentary Standards Commissioner may advise a person (or a representative nominated by the person) of the outcome of an inquiry.

Clause 50: Public advice of outcome of inquiry

72. This clause provides the conditions for the issue of public advice summarising the outcome of the inquiry.

Clause 51: Report to House

73. This clause provides the conditions for the tabling of a report of the Parliamentary Standards Commissioner in the relevant House of Parliament.

Clause 52: Failure to comply with parliamentary code of conduct

74. This clause provides for sanctions where either House of the Parliament determines, following an inquiry under clause 45 and consideration of a report tabled under clause 51, that a person has contravened a requirement of a provision of a parliamentary code of conduct.

Division 3—Alleged or suspected contraventions of ministerial code of conduct

Clause 53: Referral of alleged or suspected contravention

75. This clause outlines the process for a referral where there is an alleged or suspected contravention of a provision of a Ministerial code of conduct.

Clause 54: How alleged or suspected contraventions must be dealt with

76. This clause provides the process for how alleged or suspected contraventions of a Ministerial code of conduct must be dealt with.

Clause 55: Assessment and preliminary enquiries

77. This clause provides that where an alleged contravention is not referred to the Australian Federal Police or Australian Federal Integrity Commissioner, the Parliamentary Standards Commissioner may make preliminary enquiries, conduct an inquiry or determine to take no further action.

Clause 56: Inquiries

78. This clause outlines provisions that apply in relation to an inquiry that is conducted by the Parliamentary Standards Commissioner.

Clause 57: Report of inquiry

79. This clause provides for the Parliamentary Standards Commissioner to prepare a report after completing an inquiry into an alleged or suspected contravention.

Clause 58: Opportunity to be heard

80. This clause provides that the Parliamentary Standards Commissioner must not include in a report under clause 57, in relation to an investigation of a corruption issue, an opinion or finding that is critical of a person (either expressly or impliedly) unless the Parliamentary

Standards Commissioner has made a statement setting out the opinion or finding and the person has been given a reasonable opportunity to appear before him or her, to make submissions in relation to the opinion or finding. The opportunity to be heard must be exercised before a critical opinion or finding is made.

Clause 59: Parliamentary Standards Commissioner to give report to Prime Minister

81. This clause provides that the Parliamentary Standards Commissioner must give the Prime Minister the report prepared under subclause 57(1); and if a supplementary report is prepared under subclause 57(6) in relation to the inquiry—the supplementary report.
82. The Prime Minister may take such actions in relation to, or as a result of, the report, as the Prime Minister sees fit.

Clause 60: Advice of outcome of inquiry

83. This clause provides that the Parliamentary Standards Commissioner may advise a person (or a representative nominated by the person) of the outcome of an inquiry.

Clause 61: Public advice of outcome of inquiry

84. This clause provides the conditions for the issuing of public advice summarising the outcome of the inquiry.

Clause 62: Report to House

85. This clause provides that the Prime Minister may table, or cause to be tabled, a report under this Division by the Parliamentary Standards Commissioner, in the House of which the Minister is a member; or in both Houses.
86. Subclause (2) clarifies that nothing in this Division prevents the tabling in either House of a report of an inquiry into an alleged or suspected contravention of a parliamentary code of conduct under Division 2, in relation to a parliamentarian who also happens to be a Minister.

Division 4—Confidentiality of information

Clause 63: Interpretation

87. This clause provides clarity for interpretation of key terms used in this Subdivision.

Clause 64: Authorised use or disclosure—performing functions etc.

88. This clause relates to the use or disclosure of protected Commissioner information by the Parliamentary Standards Commissioner in performing the functions of the Parliamentary Standards Commissioner.

Clause 65: Authorised use or disclosure—required or authorised by law

89. This clause provides that the Parliamentary Standards Commissioner may use or disclose protected Commissioner information if this is required or authorised by or under a law of the Commonwealth, or of a State or Territory, subject to the privacy protection principles above.

Clause 66: Authorised disclosure—person to whom information relates

90. The Parliamentary Standards Commissioner may disclose protected Commissioner information to the person to whom the protected Commissioner information relates.
91. This clause is a requirement for the purposes of other laws, including the Australian Privacy Principles.

Clause 67: Offence for unauthorised use or disclosure

92. This clause creates an offence for unauthorised use or disclosure of protected Commissioner information by the Parliamentary Standards Commissioner.

Clause 68: No requirement to provide information to courts etc.

93. This clause provides that, except where it is necessary to do so for the purposes of giving effect to this Act, the Parliamentary Standards Commissioner is not to be required to disclose protected Commissioner information, or produce a document containing protected Commissioner information, to a court; or a tribunal, authority or person that has the power to require the answering of questions or the production of documents.

Clause 69: Offences for unauthorised use or disclosure—any person

94. This clause provides that a person, other than the Parliamentary Standards Commissioner, must not record, use or disclose information in relation to an ethics or integrity issue about another person that came to the person's knowledge because of the person's involvement in the administration of this Act. The penalty for this offence is imprisonment for 2 years or 120 penalty units, or both.

Division 5—Annual report

Clause 70: Annual report

95. This clause provides for the provision of an annual report by the Parliamentary Standards Commissioner each financial year and the contents of the annual report.

Part 6—Administrative provisions relating to the Parliamentary Integrity Adviser and Parliamentary Standards Commissioner

Division 1—Administrative provisions relating to the Parliamentary Integrity Adviser

Clause 71: Appointment of Parliamentary Integrity Adviser

96. This clause provides for the process of appointment of the Parliamentary Integrity Adviser by the Presiding Officers with the agreement of the Senate Committee of Privileges and the House of Representatives Committee of Privileges and Members' Interests.

Clause 72: General terms and conditions of appointment

97. This clause provides that the Parliamentary Integrity Adviser holds office for the period specified in the instrument of appointment. The period must not exceed 5 years. The sum of the periods for which the Parliamentary Integrity Adviser holds office must not exceed 10 years.
98. The Parliamentary Integrity Adviser may be appointed on a full-time or part-time basis.
99. The Parliamentary Integrity Adviser holds office on the terms and conditions (if any), in relation to matters not covered by this Act, that are determined by the Presiding Officers.

Clause 73: Other paid work

100. This clause provides that if the Parliamentary Integrity Adviser is appointed on a full-time basis, the Parliamentary Integrity Adviser must not engage in paid work outside the duties of the Parliamentary Integrity Adviser's office without the Presiding Officer's approval.
101. If the Parliamentary Integrity Adviser is appointed on a part-time basis, the Parliamentary Integrity Adviser must not engage in any paid work that, in the Presiding Officers' opinion, conflicts or could conflict with the proper performance of the Parliamentary Integrity Adviser's duties.

Clause 74: Remuneration

102. This clause provides that the Parliamentary Integrity Adviser is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Parliamentary Integrity Adviser is to be paid the remuneration that is prescribed by the regulations.
103. The Parliamentary Integrity Adviser is to be paid the allowances that are prescribed by the regulations.
104. This clause has effect subject to the *Remuneration Tribunal Act 1973*.

Clause 75: Leave of absence

105. This clause provides that the Parliamentary Integrity Adviser has recreation leave entitlements that are determined by the Remuneration Tribunal.
106. The Presiding Officers may grant the Parliamentary Integrity Adviser leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Presiding Officers determine.

Clause 76: Resignation

107. This clause provides that the Parliamentary Integrity Adviser may resign the Parliamentary Integrity Adviser's appointment by giving the Presiding Officers a written resignation.
108. The resignation takes effect on the day it is received by the Presiding Officers or, if a later day is specified in the resignation, on that later day.

Clause 77: Removal from office

109. This clause sets out the process and the grounds for the removal of the Parliamentary Integrity Adviser from office.

Clause 78: Disclosure of interests

110. This clause provides that the Parliamentary Integrity Adviser must give written notice to the Presiding Officers of all interests, pecuniary or otherwise, that the Parliamentary Integrity Adviser has or acquires, and that conflict or could conflict with the proper performance of the Parliamentary Integrity Adviser's functions.

Clause 79: Acting appointments

111. This clause outlines that the Presiding Officers may, by written instrument, appoint a person to act as the Parliamentary Integrity Adviser in specified circumstances and conditions.

Clause 80: Assistance to Parliamentary Integrity Adviser

112. This clause provides that a Department of the Parliament (within the ordinary meaning of that expression) may assist the Parliamentary Integrity Adviser in the performance of the Parliamentary Integrity Adviser's functions and the assistance this may include.
113. If an officer or employee of the department mentioned in subclause (1) assists the Parliamentary Integrity Adviser, the officer or employee is taken, for the purposes of this Act, to be a person assisting the Parliamentary Integrity Adviser under this clause.

Division 2—Administrative provisions relating to the Parliamentary Standards Commissioner

Clause 81: Appointment of Parliamentary Standards Commissioner

114. This clause provides for the process of appointment of the Parliamentary Standards Commissioner by the Presiding Officers with the agreement of the Senate Committee of Privileges and the House of Representatives Committee of Privileges and Members' Interests.

Clause 82: General terms and conditions of appointment

115. This clause provides that the Parliamentary Standards Commissioner holds office for the period specified in the instrument of appointment, not exceeding 5 years. The sum of the periods for which the Parliamentary Standards Commissioner holds office must not exceed 10 years.
116. The Parliamentary Standards Commissioner may be appointed on a full-time or part-time basis. The Parliamentary Standards Commissioner holds office on the terms and conditions (if any), in relation to matters not covered by this Act, that are determined by the Presiding Officers.

Clause 83: Other paid work

117. This clause provides that if the Parliamentary Standards Commissioner is appointed on a full-time basis, the Parliamentary Standards Commissioner must not engage in paid work outside the duties of the Parliamentary Standards Commissioner's office without the Presiding Officer's approval.
118. If the Parliamentary Standards Commissioner is appointed on a part-time basis, the Parliamentary Standards Commissioner must not engage in any paid work that, in the Presiding Officers' opinion, conflicts or could conflict with the proper performance of the Parliamentary Standards Commissioner's duties.

Clause 84: Remuneration

119. This clause provides that the Parliamentary Standards Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Parliamentary Standards Commissioner is to be paid the remuneration that is prescribed by the regulations.
120. The Parliamentary Standards Commissioner is to be paid the allowances that are prescribed by the regulations.

Clause 85: Leave of absence

121. This clause provides that the Parliamentary Standards Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
122. The Presiding Officers may grant the Parliamentary Standards Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Presiding Officers determine.

Clause 86: Resignation

123. This clause provides that the Parliamentary Standards Commissioner may resign the Parliamentary Standards Commissioner's appointment by giving the Presiding Officers a written resignation.
124. The resignation takes effect on the day it is received by the Presiding Officers or, if a later day is specified in the resignation, on that later day.

Clause 87: Removal from office

125. This clause provides the process and the grounds for the removal of the Parliamentary Standards Commissioner from office.

Clause 88: Disclosure of interests

126. This clause provides that the Parliamentary Standards Commissioner must give written notice to the Presiding Officers of all interests, pecuniary or otherwise, that the Parliamentary Standards Commissioner has or acquires, and that conflict or could conflict with the proper performance of the Parliamentary Standards Commissioner's functions.

Clause 89: Acting appointments

127. This clause outlines that the Presiding Officers may, by written instrument, appoint a person to act as the Parliamentary Integrity Adviser in specified circumstances and conditions.

Clause 90: Assistance to Parliamentary Standards Commissioner

128. This clause provides that a Department of the Parliament (within the ordinary meaning of that expression) may assist the Parliamentary Standards Commissioner in the performance of the Parliamentary Standards Commissioner's functions and what this may include.
129. If an officer or employee of the department mentioned in subclause (1) assists the Parliamentary Standards Commissioner, the officer or employee is taken, for the purposes of this Act, to be a person assisting the Parliamentary Standards Commissioner under this clause.

Clause 91: Assistant Parliamentary Standards Commissioner

130. This clause provides that the Presiding Officers may appoint one or more Assistant Parliamentary Standards Commissioners.

Division 3—Approval or rejection of recommendations for appointments

Clause 92: Committees may approve or reject recommendation for appointment

131. This clause outlines the process for the Senate Committee of Privileges and the House of Representatives Committee of Privileges and Members' Interests to approve or reject appointments of the Parliamentary Integrity Adviser and the Parliamentary Standards Commissioner.

Part 7—Miscellaneous

Clause 93: Offence of victimisation

132. This clause creates an offence of victimisation.

Clause 94: Protection from liability

133. This clause provides protection from liability for nominated persons in the performance or exercise, in good faith, of the person's functions, powers or duties under or in relation to this Act.

Clause 95: Immunities from certain State and Territory laws

134. This clause provides that the Parliamentary Integrity Adviser or Parliamentary Standards Commissioner is not required under, or by reason of, a law of a State or Territory:
- (a) to obtain or have a licence or permission for doing any act or thing in the exercise of the person's powers or the performance of the person's duties as the Parliamentary Integrity Adviser or Parliamentary Standards Commissioner; or
 - (b) to register any vehicle, vessel, animal or article belonging to the Commonwealth.

Clause 96: Review relating to Independent Parliamentary Standards Authority

135. This clause provides that it is the intention of Parliament that the *Independent Parliamentary Expenses Authority Act 2017* be replaced by an *Independent Parliamentary Standards Authority Act* and that the Minister conduct a review and table a report on how this is to be done.

Clause 97: Review relating to lobbying and post-separation employment

136. This clause provides that it is the intention of Parliament that the Lobbying Code of Conduct and policies, rules and standards for a public official's subsequent employment be revised to meet best practice. The Minister must cause a review of the legislative options for revising the Code and table a copy of the report of the review.

Clause 98: Review relating to political finance, funding, donations and campaign regulation

137. This clause provides that it is the intention of Parliament that Commonwealth legislation and enforcement for transparency, integrity and accountability in political campaign finance and campaign regulation be revised to meet national and international best practice and that the Minister must cause to be undertaken a review of the preferred legislative options to achieve these objectives. The Minister must table the report of the review.

Clause 99: Review of operation of Act

138. This clause provides that the Presiding Officers must cause an independent review to be undertaken of the first 3 years of the operation of this Act.

Clause 100: Schedules

139. This clause provides that legislation that is specified in Schedule 3 to this Act is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

Clause 101: Regulations

140. This clause provides that the Governor General may make regulations prescribing matters required or permitted by this Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

141. The regulations may require that information or reports that are required to be given under prescribed provisions are also to be given to prescribed persons in specified circumstances.

Schedule 1— House of Representatives—Register of Members' Interests

142. This Schedule includes the House of Representatives Register of Members' Interests.

Schedule 2— The Senate—Register of Senators' Interests

143. This Schedule includes the Senate Register of Senators' Interests.

Schedule 3 – Amendments

144. This Schedule includes consequential amendments to the *Public Interest Disclosure Act 2013* that result from the provisions in this Bill.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Commonwealth Parliamentary Standards Bill 2020

The Commonwealth Parliamentary Standards Bill 2020 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The Commonwealth Parliamentary Standards Bill 2020 creates:

- statutory codes of conduct for the members of each House of Parliament, and their staff (under the Members of Parliament (Staff) Act 1984);
- a statutory basis for parliamentarians' registers of interests;
- a Parliamentary Integrity Adviser to provide independent, confidential advice and guidance to Members and their staff on how to honour applicable codes;
- a Parliamentary Standards Commissioner to assist the Presiding Officers, Ethics & Privileges Committees, Prime Minister, and Australian Federal Integrity Commission, with the assessment, investigation, resolution and/or referral of alleged breaches of the applicable codes of conduct that are sufficiently serious in nature.

Human rights implications

This bill incorporates numerous safeguards to protect the right to privacy and reputation as part of the assessment, investigation, resolution and/or referral of sufficiently serious breaches of the code of conduct. This includes safeguards on disclosure, with proportionate penalties that apply to people who disclose information that might impact on rights to privacy.

The right to due process and procedural fairness is maintained throughout the bill to ensure no opinions or preliminary findings that are critical of a person or persons are publicly released unless the subject of those views have been given an opportunity to respond and the public release of that information does not unfairly damage a reputation or endanger a person's safety.

The burden of proof is reversed on a person who is believed to have breached the unauthorised disclosure provisions in relation to raising evidence of exceptions. This is a result of the express operation of section 13.3 of the Criminal Code which imposes an evidentiary burden on the defendant with respect to exceptions and exemptions. In these circumstances, it is accepted that it is appropriate for the defendant to bear this evidentiary burden because the exemptions relate to matters that, by their nature, are within the knowledge of the defendant.

Conclusion

This provisions in this bill are proportionate to purpose and wholly compatible with human rights.

Dr Helen Haines MP