

SUPPLEMENTARY SUBMISSION TO THE REVIEW OF THE MOP(S) ACT

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The Review presents an important opportunity to establish appropriate authority for parliamentary staffing under the Act. The vast majority of the 2000 or so staff employed under the MOPS Act work in roles supporting parliamentarians in their parliamentary and constituent work. Only approximately 460 MOPS Act staff work in ministers' offices. Yet the current Act creates no role for Parliament in managing and leading the workforce which supports its members. It is vital that this issue be addressed in the Review. A recommendation of the Review should be that a cross-party committee of Parliament be formed to provide ongoing leadership of staffing issues. All parties in parliament should be represented on the committee.

It is concerning that there has been no formal role for Parliament and parliamentarians in the conduct of the Review, which has been structured as solely in the purview of the Prime Minister and the government (according to its Terms of Reference). Yet parliamentarians are the main employers of staff under the Act, and most staff support parliamentary and constituent work, not ministerial duties. One way of addressing this problem would be to refer the Review's report to a parliamentary committee for consideration. Any proposed changes to the Act will of course be required to pass both Houses of Parliament and this is another reason why it is critical that parliamentarians be involved in framing possible changes to the Act.

As I argued in my original submission, the Review should address problems in the process for allocating staff under the Act. In light of recent concerns about staffing allocations I reiterate two points:

- The Prime Minister having powers to allocate staff for parliamentarians is unusual and not appropriate. In other countries (and in the states) parliament itself has authority over the electorate and parliamentary staffing for parliamentarians (through the Presiding Officers). Prime Ministers should only have authority over staffing for ministers.
- Staffing numbers should not be determined by political negotiation or Prime Ministerial fiat, and not publicly justified. They should be determined by an independent body, such as the Remuneration Tribunal or the Independent Parliamentary Expenses Authority, or periodically reviewed by an independent officeholder, to ensure they are based on need.

I recently published an opinion piece expanding on these points. I reproduce it here as part of my supplementary submission.

Rules appointing parliamentary staffers need a shake up

(*The Mandarin* 29 June 2022)

The furore about the reduction of staff numbers for independent federal parliamentarians raises questions about the role of staff and reveals fundamental problems with how staff numbers are allocated. The Australian federal parliament is out of step with practices elsewhere. The review of the *Members of Parliament (Staff) Act* that is currently underway provides an opportunity to rethink and reform staffing arrangements.

In the federal parliament, staff who support parliamentarians in their role as representatives and staff who support ministers in their roles as members of the executive are employed under the same legislation: the *Members of Parliament (Staff) Act* (the MOPS Act). Under the Act it is the Prime Minister who has the power to allocate staff numbers and determine the conditions for their employment. This is very unusual. In other countries, staff of legislators and staff of the executive are employed under different legal authority and their employment is administered in different organisations. The federal MOPS Act creates no role for Parliament in managing and leading the workforce which supports its members. Because of this lack of authority, Parliament cannot currently determine staff allocations, set conditions or enact consequences for staff in its workplace.

The MOPS Act needs to be restructured to clarify that it is Parliament (through the Presiding Officers) which authorises the employment of electorate and parliamentary staff, and that it is the Prime Minister who authorises the employment of ministerial staff. The NSW Parliament provides an example. Under the NSW *Members of Parliament Staff Act 2013 No 41* the authority to employ staff for Members of Parliament derives from Presiding Officers and it is the Presiding Officers who have powers in the employment relationship (s4-20).

The federal MOPS Act confers discretionary powers on the Prime Minister to decide the number of staff allocated, and these powers are not exercised in a transparent way. In recent years, when Senators ask the reason for increases in staff numbers during Senate Estimates, the only answer given is that 'it is a decision of the Prime Minister'. There is no clear justification for the current cut in staffing numbers for independent parliamentarians. Staffing entitlements are decided by convention, negotiation and Prime Ministerial fiat, rather than independent analysis. This means staffing levels are decoupled from evidence of need. The lack of transparency also undermines public confidence that current staffing levels are appropriate, necessary and safe.

Staffing numbers should be determined by an independent body. In the UK, the staffing entitlements of MPs are set by the Independent Parliamentary Standards Authority. In NSW the number of staff for Members of Parliament is determined by the Parliamentary Remuneration Tribunal (s 18 *Members of Parliament Staff Act 2013 No 41*). There is a precedent for an independent review of federal staffing numbers. In 2009, under the last federal Labor government, the Henderson Review examined the workloads and working hours of ministerial staff and recommended that staff numbers increase.

Independent and minor party parliamentarians complain that their parliamentary staff numbers have been cut. This raises the issue of the different functions that staff members perform. All parliamentarians have staff to assist them in their constituency work. However their parliamentary duties are above and beyond the work done in their electorates. This often complex work falls more heavily on independents and minor party parliamentarians compared to government backbenchers. In Canada all recognised parties are provided with resources to support ‘the fulfilment of their parliamentary duties’ and they operate parliamentary research bureaux whose staffing they control. This funding is provided by the governing body of the House of Commons. To qualify as a ‘recognised party’ though, parties must hold at least 12 seats in the House of Commons. Yet Canada provides an example of the Parliament itself determining the resources needed for parliamentary duties.

The question of how many staff members independents and minor party parliamentarians need to fulfil their parliamentary duties is a difficult one. However it is clear that rather than being an arbitrary decision of the Prime Minister, it should be determined by independent analysis, and authorised by the Parliament itself, through the Presiding Officers. These are matters that should be addressed in the current review of the *Members of Parliament (Staff) Act*.