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Submission:

This is a submission to the review of the Members of Parliament (Staff) Act 1984, following the invitation received from the Department of the Prime Minister and Cabinet.

By way of background, I first was employed under the Act in [REDACTED] working for [REDACTED]. I have subsequently worked for Senators and Members, including Ministers, and [REDACTED]

[REDACTED] I have also been a [REDACTED]
[REDACTED] My time spent working at Parliament House spans from [REDACTED]

I will make some remarks under each of the Terms of Reference.

ToR: The recruitment of MOP(S) Act staff, including the transparency of arrangements, the use of merit-based recruitment, and pre-engagement checks.

There is a tension between the fact that personal staff of Senators and Members are paid from public funds, but are not usually recruited in a transparent selection process, as public servants generally are. I don't think that is avoidable, because the nature of the job is different. A public servant serves the Commonwealth and is expected to abide by the APS Code of Conduct and provide objective advice. A MOP(S) Act staff member is recruited to serve the employing Senator or Member and provide administrative support to them in their parliamentary duties which inevitably are partly political activities. Recognition of the different nature of the duties is implicit in them being temporary employees, employed only for the tenure of their employer.

Provisions already exist for the Department of Finance to advertise on behalf of Senators and Members recruiting MOP(S) Act staff. This could be made compulsory, but that would probably only lead to unnecessary public expenditure when the employer has already decided who to engage.

I do not think these positions lend themselves to merit-based recruitment. They are, essentially, in the nature of 'patronage'. I think most properly informed members of the public understand that.

[REDACTED]

However, what might be desirable is a ban on Senators and Members appointing, to their own staff, a spouse or any relative of the first degree. I have known parliamentarians to employ spouses and children or siblings in the past, and some of these people have been diligent and good employees. However, especially in the case of spouses, it smacks of the Senator or Member effectively getting an additional financial benefit in terms of the household income. Unfair as that characterisation might be, it does not pass the 'pub test'.

ToR: Procedural fairness for the terms, conditions and termination of employees and employers under the MOP(S) Act.

ToR: The responsibilities, expectation, and accountability of MOP(S) Act staff.

I will comment on these two ToR together. I think the arrangement whereby the Senator or Member is the employer but the salary and conditions are the responsibility of the Department of Finance works.

However, in extreme cases (and they are rare) where there is a breakdown in the employer-employee relationship with a MOP(S) Act staff member, or a breakdown in inter-office relationships, there could be some improvement.

I submit that the MOP(S) Act should be amended to provide for an 'Office of Notional Employer'. This person would be funded by the Department but a statutory officer, not subject to the directions of the Minister of the day. The Notional Employer would be responsible for monitoring the terms and conditions of MOP(S) Act staff, not just in electorate offices but those employed by officeholders. The Notional Employer would have responsibilities for conciliating where there is a breakdown in the employment relationship and would also be a confidential contact point for a MOP(S) Act staff member who wants to complain of mistreatment. This could include harassment, or some other unfair work practice.

It would have to be a fundamental principle that the Notional Employer operates in a completely confidential manner in terms of handling such staff disputes. I think having such a person would provide an important interface between the MOP(S) Act staff member and their Senator or Member. Currently, there is nowhere really for them to go. As a Judge of the Federal Court found recently where a staff member of a Senator decided to take their complaint to the Prime Minister of the day, that was an action that was completely inappropriate and undermined the employment relationship.

ToR: Appropriate public reporting and accountability of the administration of the MOP(S) Act.

The operation of the Act should be reported on annually to Parliament. That report should include the allocation of MOP(S) Act staff to (a) Senators and Members; (b) Ministers; (c) other officeholders and (d) former Prime Ministers.

The suggested Office of the Notional Employer could also report, in the same document, on the activities of that Office by declaring how many actions it has done in the year in review in such a way that does not identify the parliamentarian or staff member concerned. That would be desirable as the Notional Employer would be publicly funded.

I hope these comments are of some use.

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