

Submission to the Review of the Members of Parliament (Staff) (MOPS) Act 1984

In 1984 the new Hawke Government made a decision to implement the Members of Parliament (Staff) (MOPS) Act for the purpose of:

“Provisions of the Members of Parliament (Staff) Bill will also empower Ministers and other members and senators to engage their own personal staff. As honourable members will be aware these staff are now engaged under the temporary employment provisions of the Public Service Act and decisions about the engagement of these staff must formally be taken by officials in the Department of the Special Minister of State. This is quite unsatisfactory. The terms and conditions of employment for these staff will henceforth be determined by the Prime Minister.... The numbers and levels of these staff will continue to be decided by the Government on the recommendation of the Remuneration Tribunal. These staff will have the same access to arbitration as other Commonwealth employees.”

Employing personal staff for Members and Ministers would enable the employing Member or Senator to directly employ someone, without reference to the Public Service, and avoiding using the fairly cumbersome public service structures which didn't readily meet the needs of Members and Senators.

There are some fundamental aspects of the workings of the MOPS Act. The ability to directly employ someone as well as ability to dismiss them as required without going through the complex process as set out in the Public Service Act. This is essentially due to the requirement of parliamentary staff having to retain the trust of the employing parliamentarian and if that trust is lost, the continued employment is untenable.

As the Minister's second reading speech outlines, the original intention was for employees to have access to the same arbitration processes as other Commonwealth employees. While that is legally true, in practice, anyone who makes a complaint about a parliamentarian's behaviour is marked by his party as a 'trouble maker' and not to be trusted. If an employee does take action in a tribunal, that is something that could bring the parliamentarian into disrepute and therefore the party, and that is a cardinal sin against the political party the parliamentarian belongs to and thus is treated in the harshest way.

The employer/employee relationship has developed to the point that the Department of Finance, while not the initiating employer, becomes the actual employer as determined by who pays the employee, who provides any HR support, guidance on best practice and other related issues. In relation to the job description for the employee, that is left to the parliamentarian and employee and it is those two parties to most directly engage. That situation works well in a harmonious environment however the structures fail when things are difficult



Parliamentarian/Employee Relationship

This relationship is the foundational reason the MOPS Act exists. It regulates the parliamentarian/employee relationship and sets the boundaries and guidelines on how parliamentarians can employ staff to assist them in the performance of their duties. Sitting underneath the MOPS Act are policies and guidelines that further assist employees and parliamentarians in the daily operation of their workplaces.

However if an issue arises where the employee feels the parliamentarian is behaving in a sub-standard way, there are very few avenues to make a complaint. All staff know that in practice, the Department of Finance is there to ultimately protect the parliamentarian, and that the staff member is expendable. Obviously in the written text of the act that isn't the case, but in the real world operation of the act, that is the effect.

As a parliamentarian has the ability to dismiss any staff member for as simple a reason as loss of confidence, which not objectively measurable in any way, they can essentially dismiss a staff member for any reason. This of course creates a huge power imbalance in an office and can lead to all manner of situations, from bullying by the parliamentarian, bullying by other staff, exposure to unhealthy habits of parliamentarians, such as smoking, verbal abuse and possibly even physical abuse.

It is very difficult to provide a more evenly balanced workplace where there is one person who is elected and another who is employed. It is even more difficult when at times new parliamentarians have no experience in managing people and may never have had to manage a number of personal staff before directly. There is no training provided to assist them in preparing to directly employ staff, and there are essentially no guidelines on who the best people are to employ, which can sow the seed of issues that blossom in the future.

Commonwealth Parliamentary Workplaces (CPWs)

A commonly said phrase by those who work in Parliament House is that the fair work laws stop at Parliament Drive. Obviously that statement is facetious but also holds an element of truth for those who work in CPWs. In a CPW the undisputed master is the parliamentarian. They have all the power and control the direction, tone and guide the behaviour in the workplace. The vast majority of CPWs are run in an exemplary manner with all staff content and happy in the support of their parliamentarian. My personal experience with parliamentarians has been overwhelmingly positive. However I was administratively bullied by a fellow staff member who had served for a long time with one parliamentarian I worked for. ■■■ took great pleasure in embarrassing me in front of the parliamentarian and others on numerous occasions. While it was a hostile environment, I was unable to do anything, or make a complaint to the parliamentarian, as I was very much aware what side the parliamentarian would take. So in this situation I was essentially trapped. There was no ability for me to complain to the parliamentarian, or even to make use of any dispute resolution services in the Department of Finance. It was a situation where I had little choice but to jut grin and bear it, and put up with the bullying.



Termination Procedures

[REDACTED] my employment was terminated by my employing parliamentarian. The termination was due to loss of confidence. [REDACTED]

[REDACTED] There needs to be significant clarification as to when the Special Minister of State can intervene and under what circumstances, and if the SMOS decides to intervene they need to provide a written reason for the intervention.

The termination procedures do not reflect best practice that would take place in the private sector. I was terminated immediately, without being paid in place of notice, and denied my severance payments [REDACTED]

[REDACTED]. This is not the way the Parliament of Australia should behave when it comes to terminations of staff.

Possible solutions

The Act needs to be amended to provide further protections for staff, better reporting avenues for bullying, stronger protections for staff, training for parliamentarians on how to manage staff. It also needs to clarify who is the employer of MoPS Act staffers, and who is ultimately responsible for them. While MPs hire the staff, Finance are essentially their employer, as they are paid by, administered by and regulated by the Department of Finance. I would suggest that the MaPS branch of Finance be taken out of the Department and established as a stand-alone agency of the Parliament. This would separate the human resources role from the legislative role, being responsible to the SMOS. I would suggest that any spun off agency actually be responsible to the Speaker of the House and President of the Senate, who would appoint some kind of Director or Chief Executive of the agency.