

Dr. Marie dela Rama
UTS Business School
PO BOX 123
Broadway NSW 2007

30th June 2022

Department of the Prime Minister and Cabinet
Mops.Act.Review@pmc.gov.au

Dear Department,

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

I welcome this opportunity to review the MOPS Act to assess the roles and responsibilities of taxpayer-funded public officials.

This is an important Act to review as part of the ongoing institutional challenges to address political corruption in Australia, and the deficit of public trust in our public officials and public institutions.¹ Over the past decade, Australia's ranking on Transparency International's Corruption Perceptions Index has plummeted.² The destruction of public trust in Australia's institutions and its public officials must be rebuilt.

I submit four recommendations to your review:

1. **Recommendation 1:** Implement the recommendations from the Jenkins Review including the establishment of the Independent Parliamentary Standards Commission and the expansion of the Parliamentary Workplace Support Service.
2. **Recommendation 2:** Establish an independent statutory authority such as a Nominations or Appointments Tribunal to complement the existing Remuneration Tribunal. This new Tribunal can provide guidance and oversee merit-based appointments of all public officials including MOPS staff. This Tribunal can help mitigate corruption risks associated with such appointments.
3. **Recommendation 3:** Establish a body similar to France's *Haute Autorité Pour La Transparence de Vie Publique* (HATVP or the High Authority for Transparency in Public Life³) to administer the MOPS Act and, *inter alia*, to address the conflicts of interests of all public officials.

All links working as at June 2022.

¹ dela Rama MJ, Lester ME, Staples W. (2022) The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC. *Laws*. 2022; 11(1):7, 27pp. <https://doi.org/10.3390/laws11010007>

² Brown, AJ (2022) Australia and Norway were once tied in global anti-corruption rankings. Now, we're heading in opposite directions, *The Conversation*, 25th January <https://theconversation.com/australia-and-norway-were-once-tied-in-global-anti-corruption-rankings-now-were-heading-in-opposite-directions-174966>

³ Haute Autorité Pour La Transparence de Vie Publique <https://www.hatvp.fr/>

4. **Recommendation 4:** Update the MOPS Act in order to reflect international best practice, to address community concerns, to meet community expectations and to restore public confidence and trust.

This Act is but one of many legislative instruments to hold our taxpayer-funded public officials to account in the general discharge of their duties. However, it must ensure it adheres to the current expectations of integrity and accountability.

I make this submission based on my professional experience and attendance as an accredited civil society observer to several UN and multilateral anti-corruption conferences including the:

- UN General Assembly Special Session Against Corruption (UNGASS), 2-4 June 2021, New York⁴
- US Biden Administration's Summit for Democracy (S4D) 9-10 December 2021, virtual⁵
- 9th UN Conference of States-Parties (COSP9), 13-17 December 2021, Sharm El-Sheikh⁶
- OECD Global Anti-Corruption Integrity Forum (GACIF), 30 March-1 April 2022, Paris⁷
- UNODC 13th Session of the Implementation Review Group of the UNCAC (13th IRG), 13-17 June 2022, Vienna⁸

Australia has ratified the UN Convention Against Corruption (UNCAC) (2003) in 2005,⁹ and has undertaken the second cycle of the implementation review mechanism (IRM) of the UNCAC.¹⁰ Changes to the Act must reflect international best practice and honour Australia's commitments to the UNCAC in substance.

I note that Australia, with Indonesia, is this year's co-host of the G20 Anti-Corruption Working Group (ACWG). The G20 ACWG has adopted the High-Level Principles for Preventing and Managing 'Conflict of Interests' in the Public Sector in 2018 (see Annex 1).¹¹ These High-Level Principles must also be reflected in any revision of the Act.

⁴ UN Special Session of the General Assembly against Corruption 2021

<https://ungass2021.unodc.org/ungass2021/index.html>

⁵ US Department of State Summit for Democracy <https://www.state.gov/summit-for-democracy/>

⁶ Ninth session of the Conference of the States Parties to the United Nations Convention against Corruption <https://www.unodc.org/unodc/en/corruption/COSP/session9.html>

⁷ 2022 OECD Global Anti-Corruption & Integrity Forum <https://oecd-events.org/gacif2022/>

⁸ Thirteenth session of the Implementation Review Group <https://www.unodc.org/unodc/en/corruption/IRG/session13.html>

⁹ UN Office of Drugs and Crime - Signature and Ratification Status <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

¹⁰ UN Office of Drugs and Crime – Australia <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Faus.html>

¹¹ World Bank Group, OECD and UNODC (2020) *Preventing and Managing Conflicts of Interests in the Public Sector: Good Practices Guide*, Prepared at the request of the G20 Anticorruption Working Group

The following contains my specific comments to the review’s Terms of Reference (bold italicised):

“The Review has been established to identify legislative, policy or other changes or initiatives necessary to ensure the employment arrangements of parliamentarians and their staff are fit for purpose to:

“Support a professional, high-performing, safe and respectful workplace for all parliamentarians and their staff, and

“Prevent bullying, harassment, sexual harassment and sexual assault and address its impacts according to best practice.”

Recommendation 1: Implement the recommendations from the Jenkins Review including the establishment of the Independent Parliamentary Standards Commission and the expansion of the Parliamentary Workplace Support Service.

The Jenkins Review has made substantive recommendations to address the above issues including this review.¹² Implementing all of the Jenkins Review’s recommendations would send a signal that the Review was not a waste of time and resources for those who have contributed to and participated in the Review. Recommendation 22 from the Jenkins Review seeks to establish an Independent Parliamentary Standards Commission. This is a suitable institutional response to address the behavioural issues that are at the heart of the Jenkins Review.

Other international bodies that cover the same issues as the proposed body include Malta’s *Commissioner for Standards in Public Life*¹³ and the UK’s *Parliamentary Commissioner for Standards*.¹⁴

The expansion of the Parliamentary Workplace Support Service to enhance the new Commission’s work will provide further resources to MOPS staff. Publication of quarterly data and an annual report into the progress of both the Commission and the Service’s work are necessary to allow community insight into whether the behavioural issues in Parliament are being sufficiently addressed.

<https://www.unodc.org/documents/corruption/Publications/2020/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.pdf>

¹² Australian Human Rights Commission (2021) *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces: Executive Summary*

https://humanrights.gov.au/sites/default/files/2021-11/ahrc_set_the_standard_report_executive_summary_2021.pdf

¹³ Malta - The Commissioner for Standards in Public Life <https://standardscommissioner.com/>

¹⁴ UK Parliament - Parliamentary Commissioner for Standards <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/>

“The Review is seeking feedback on:

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

Recommendation 2: Establish an independent statutory authority such as a Nominations or Appointments Tribunal to complement the existing Remuneration Tribunal. This new Tribunal can provide guidance and oversee merit-based appointments of all public officials including MOPS staff. This Tribunal can help mitigate corruption risks associated with such appointments.

“The relative youth of the political workforce would surprise some readers. Especially for junior MPs and assistant ministers, staff tend to be plucked from branches, the parties’ youth wings, university campuses and family connections. As one former Liberal staffer says: “They’re made up of hacks, stacks and freaks. There are very few normal people in the lower level of party branches. People who are normal have families and have to take kids to soccer and have real jobs.” The people interviewed for this story estimated at least 50 per cent of political staff in the building were under 30 years of age; even higher among backbenchers and the outer ministry. Most are also men. They arrive in the corridors of power with big pay cheques and an elevated sense of worth.” - Koziol (2021)¹⁵

The recruitment of all MOPS Act staff must be professionalised and published transparently so that they are:

- suitably qualified to meet community expectations on their taxpayer-funded role and responsibilities,
- appointed on merit by the publicly-elected official,
- not unqualified to remove any real or perceived unprofessional appointment through nepotism and cronyism, and
- resource-based and not subject to a political bribe.

Parliament House is the people’s house and allowing a “school camp” environment where unprofessional behaviour is encouraged to flourish, must end. Such behaviour undermines the public trust in our institutions and the credibility of appointing unqualified MOPS Act staff. This behaviour also undermines the confidence of qualified and honest MOPS Act staff who behave with integrity but are tarnished because of the undesirable behaviour from some members of their cohort.

The multiplication of MOPS Act staff in the people’s house has created a parallel universe where it is acceptable for them to behave with less than professional standards expected from members of the Australian Public Service:

¹⁵ Koziol, M. (2021) ‘Hacks, stacks and freaks’: Why do political staffers behave so badly? *Sydney Morning Herald*, 28 March <https://www.smh.com.au/politics/federal/hacks-stacks-and-freaks-why-do-political-staffers-behave-so-badly-20210324-p57do0.html>

“The number of ministerial advisers has swollen under both sides of politics from 155 in 1972 to 449 in 2019. This is a growing layer of government staff who live outside the usual rules of the public service.”-Crowe (2020)¹⁶

There has been spotlight on the qualification, the number,¹⁷ and the role of taxpayer-funded parliamentary advisers who are appointed under the discretion of the publicly-elected official under MOPS.¹⁸ Parliamentary advisers, during their tenure, are public officials by their taxpayer-funded salaries but are primarily accountable to the elected official. The corruption risks associated with the appointment of parliamentary advisers are notable. One corruption risk rests with the publicly-elected official, and the other with the advisers.

Firstly, a corruption risk exists for the publicly-elected official due to the discretionary power granted to the official over the recruitment, appointment and termination of these staffers. A publicly-elected official has the discretionary power to appoint unqualified close associates or friends with little regard to: the community expectations of fitness^{19 20}, behavioural issues during their appointment^{21 22 23 24 25 26}, and their post-political life with the revolving door.²⁷

¹⁶ Crowe, D. (2020) It's time we clipped the ministerial wing of its protected species – the advisers, *Sydney Morning Herald*, 14 February <https://www.smh.com.au/politics/federal/it-s-time-we-clipped-the-ministerial-wing-of-its-protected-species-the-advisers-20200213-p540j0.html>

¹⁷ Coorey, P. (2022) Albanese faces teal revolt over staff cuts, *Financial Review*, 24 June

<https://www.afr.com/politics/federal/albanese-faces-teal-revolt-over-staff-cuts-20220624-p5awfn>

¹⁸ Butler, J. (2022) 'Slap in the face': independents furious at PM's decision to cut advisory staff from four to one, *The Guardian*, 24 June <https://www.theguardian.com/australia-news/2022/jun/24/slap-in-the-face-independents-furious-at-pms-decision-to-cut-advisory-staff-from-four-to-one>

¹⁹ Willingham, R. (2021) Allegations of Liberal Party branch stacking involving Assistant Treasurer Michael Sukkar aired in defamation case, *ABC News*, 8 November <https://amp.abc.net.au/article/100601696>

²⁰ Aston, J. (2022) Teal MPs find their appetite for pork-barrelling, *Financial Review*, 28 June

<https://www.afr.com/rear-window/teal-mps-find-their-appetite-for-pork-barrelling-20220628-p5axgm>

²¹ Turnbull, M. (2018) Press conference, 15 February. <https://www.malcolmturnbull.com.au/media/press-conference-15-february-2018>

²² Byrne, E. (2021) Federal Labor staffer Alexander Matters charged with two counts of rape, *ABC News*, 18 September <https://www.abc.net.au/news/2021-09-18/david-smith-labor-staffer-alexander-matters-charged-with-rape/100473280>

²³ Murphy, K. and Karp, P. (2021) Liberal staffer accused of raping Brittany Higgins not sacked until 10 days after leaving office, *The Guardian*, 19 May <https://www.theguardian.com/australia-news/2021/may/19/liberal-staffer-accused-of-raping-brittany-higgins-not-sacked-until-10-days-after-leaving-office>

²⁴ Koziol, M. and Murdoch, L. (2016) Christopher Pyne staffer Jack Walker among Australian men arrested in Malaysia after stripping, *Sydney Morning Herald*, 4 October <https://www.smh.com.au/politics/federal/christopher-pyne-staffer-jack-walker-among-australian-men-arrested-in-malaysia-after-stripping-20161004-gru4sb.html>

²⁵ Probyn, A., Hitch, G. and Dalzell, S. (2021) Finance Minister warns other Coalition staffers involved in lewd Parliament sex acts will be sacked, *ABC News*, 22 March <https://www.abc.net.au/news/2021-03-22/coalition-staffer-lewd-sex-act-parliament-house-sacked/100022032>

²⁶ Crowe, D. (2021) Three changes for Morrison to fix a broken system, *Sydney Morning Herald*, 27 February <https://www.smh.com.au/politics/federal/three-changes-for-morrison-to-fix-a-broken-system-20210226-p5768v.html>

²⁷ Loussikian, K. and Hutchinson, S. (2019) Christopher Pyne lands a new job, *Sydney Morning Herald*, 26 June <https://www.smh.com.au/national/christopher-pyne-lands-a-new-job-20190626-p521fj.html>

The political corruption risk of the revolving door contributes to undermining public trust in public officials due to the networks and access they have gained during their employment as a political appointment. The revolving door compounds the challenges when delivering good public policy without the suspicion or interference of vested interests in certain sectors of the economy. The revolving door functions as a delayed bribe and more attention is required to address this in the MOPS Act. The revolving door of public officials and advisers have undermined public trust and gives rise to the perception of regulatory, policy or even state capture.^{28 29}

Secondly, a corruption risk is present when these parliamentary advisers function as gatekeepers to the publicly-elected official. They may hold and wield informal power and exercise influence such as limiting or encouraging access by lobbyists to the elected official. They can serve as unaccountable intermediaries and through their discretionary power, create another layer or hurdle between direct public dialogue to the elected official, or facilitate lobbying by vested interests.

As Juvenal reminds us: *Quis custodiet ipsos custodes?*

These taxpayer-funded appointments do not have the public accountability of an election for the electorate to support or disagree with these appointments. These political positions, because they are affiliated to an elected official, carry political risks as there is no centralised public information on these advisers.

Merit-based recruitment must be the standard and the names and professional qualifications of taxpayer-funded parliamentary advisers must be published as part of the condition of their employment. The revolving door and unqualified parliamentary advisers undermine public trust in our political class and the institutions they represent.

The following is an OECD table on the spectrum of appointments, from non-merit based to what constitutes merit-based appointments according to 21st century standards. The no merit-based appointments for MOPS Act staff - except whether they simply meet the needs of the publicly-elected official - must be addressed.³⁰ *Ipsa facto*, these positions are taxpayer funded; therefore their (dis)qualification and appointment must have light and be subject to taxpayer scrutiny:

²⁸ Robertson NM, Sacks G, Miller PG (2019) The revolving door between government and the alcohol, food and gambling industries in Australia, *Public Health Research and Practice*, 29(3):e2931921

<https://www.phrp.com.au/issues/september-2019-volume-29-issue-3/the-revolving-door-between-government-and-the-alcohol-food-and-gambling-industries-in-australia/>

²⁹ Australian Democracy Network – Confronting State Capture

<https://australiandemocracy.org.au/statecapture>

³⁰ OECD (2018) *Merit Civil Service: a Foundation for Public Integrity - Towards Tools for the Mmplementation of the Public Integrity Recommendation*, Working Party of Senior Public Integrity Officials, Joint Session of the Working Parties of Senior Public Integrity Officials (SPIO) and Public Employment and Management (PEM) 26 March [https://one.oecd.org/document/GOV/PGC/INT\(2018\)2/en/pdf](https://one.oecd.org/document/GOV/PGC/INT(2018)2/en/pdf)

Question for reflection	No merit	Merit on Paper	Bureaucratic Merit	21 st Century Merit
Who is hired and promoted in your civil service?	Only those with close personal connections to those in power.	Clear minimum requirements exist for education and/or experience, but the final decision is taken by one powerful person and is often based on how much they like you.	Decisions are fully based on calculated formulas from various forms of testing. There is very little room for management discretion.	Decisions are based on defensible merit criteria, decisions include some testing, the results of well-functioning performance systems, and the judgement of effective, values-driven management community
Are there clear and appropriate qualification and performance criteria for all positions?	No – this done a case by case basis	There are common some common criteria but they are not specific nor are they well aligned to real needs.	Criteria are automatically assigned based on measurable criteria only – such as education, credentials, years of experience.	Criteria include behavioural competencies and values.
Are HR decisions based on objective and transparent assessment?	There are no requirements for formal assessment of any kind.	Formal assessment exists, but the tools used are easily manipulated to achieve particular outcomes. Non transparent – slow process	Assessment is structured, fully transparent, overseen by external controller, standardised tools, etc.	Talent management approach – individualised Future potential vs past performance Diversity and inclusion, etc.
Are application processes open? Do they give equal opportunity for assessment to all potentially qualified candidates?	Positions are by appointment. Formal application procedures are not relevant or taken seriously.	Formal application procedures exist but, in practice, the procedures privilege application from certain groups.	Application procedures make it easy for all applications to be considered on equal terms. Often one standard application for all positions.	Range of application processes depending on the kind of position, including fast stream, temporary, etc.
Do appropriate Oversight and recourse mechanisms ensure a fair and consistent application of the system?	None are required as there is no system to protect	They exist but are under-resourced and under-perform, and as a result, have little impact.	They exist and exert significant controls which, while supporting the principle, limit flexibility and application of best approaches.	They exist and provide an effective oversight mechanism, overseeing the principle while recognising the need to variety in application. They provide a great deal of training opportunities.

MERIT CIVIL SERVICE: A FOUNDATION FOR PUBLIC INTEGRITY

For Official Use

Source: OECD (2018: 24)

At first instance, there must be real-time publication of these taxpayer-funded appointments. Transparency of these appointments and the people who hold these positions should not be left to be published through leaks in the media, or Senate Estimates committees for their disclosure. The former is unprofessional, the latter lacks currency.

Reiteratively, as long as they are taxpayer-funded appointments, they are public officials and therefore must be accountable to public standards and expectations of public service despite the largesse of being a partisan position. The risk management required with parliamentary staffers and other public officials are already covered by the High-Level Principles 4 and 5 on Preventing Conflicts of Interests of the G20 ACWG (see Annex 1).

More light, not less, is necessary to find out whether these appointments facilitate undue influence and interference from vested interests.

Therefore, one mechanism to improve the integrity of this process and mitigate the corruption risks is to establish an independent Nominations and Appointments Tribunal to complement the existing Remuneration Tribunal.³¹ While the latter covers remuneration of public officials, the former will cover the integrity of the appointments system.

Similar to a board's nominations and governance committees that oversee potential director candidates, this proposed Tribunal should be tasked with overseeing the appointment criteria of advisers. This criteria may include a guide to appointments of MOPS Act staff, expected standards of behaviour, declaration of conflicts of interests, minimum qualifications and publication of the appointees to meet the community's expectations of these taxpayer-funded positions.

Furthermore, this body should be given the oversight to determine the number of parliamentary advisers and other staff allocated to a publicly-elected official based on resource needs. This removes the discretionary power from the Prime Minister of the day to decide over the staff allocation numbers of an elected official.

This discretionary power currently functions as a political bribe (a carrot) to reward political supporters to pass favourable legislation; or to withdraw staff allocation (a stick) as a form of punishment to deter and penalise political opponents.

The office holder of Prime Minister, who is granted this power by the MOPS Act, may be clouded by interests and partisan judgements that go beyond allocating efficient and sufficient resources to the elected official. This discretionary power undermines the necessary objectivity required in determining the professional staffing resources to help publicly-elected officials in their discharge of parliamentary duties.

This discretionary power is reminiscent of an example provided by Rose-Ackerman (2008) on low-level corruption:

"First, a public benefit may be scarce, and officials may have discretion to assign it to applicants. Then the qualified applicants with the highest willingness to pay and the fewest scruples will get the benefit in a corrupt system. This would seem the least problematic case. The pay-off is a transfer, and the benefits go to those who value it the most in dollar terms." (2008: 330)³²

In this case:

1. The scarce public benefit is taxpayer funding for parliamentary staffers.

³¹ Australian Government - Remuneration Tribunal <https://www.remtribunal.gov.au/>

³² Rose-Ackerman, S. (2008) Corruption and Government, *International Peacekeeping*, 15 (3): 328-343

2. The selling of this scarce benefit to a qualified applicant is to a fellow member or senator of Parliament.
3. The pay-off in return for this scarce benefit is for the vote or political support from the fellow member or senator.

The perception of bribery, even if not proven to be real, is sufficient to create public distrust. Again, from Rose-Ackerman:

“Corruption is a symptom indicating that state–society relations are dysfunctional so that they undermine the legitimacy of the state and lead to wasteful public policies. Good policies are unlikely to be chosen or to be carried out effectively without honest institutions.” (2008: 338)

And if I may add, good public policy also requires honest people inside those institutions.

Therefore, it would behove to add to the integrity of the political system that such discretionary power is removed from the current office holder of Prime Minister or any other publicly-elected official; and that this responsibility be transferred to a politically impartial body such as a Nominations or Appointments Tribunal.

Finally, this body should also be able to receive complaints from any interested stakeholder. This may include members of the public who are concerned about adherence to the appointment requirements, or if a MOPS Act staff is not meeting expected behavioural standards.

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

- **The responsibilities, expectation, and accountability of MOP(S) Act staff.**
- **Appropriate public reporting and accountability of the administration of the MOP(S) Act.”**

Recommendation 3: Establish a body similar to France’s *Haute Autorité Pour La Transparence de Vie Publique* (HATVP or the High Authority for Transparency in Public Life³³) to administer the MOPS Act and, *inter alia*, to address the conflicts of interests of all public officials.

“Are you honest?”-Hamlet (Act 3, Scene 1)

Public institutions are the embodiment of a country’s values in organisational forms. Public servants, both appointed (discreetly or competitively) and elected, are fundamentally expected to discharge their roles within these public institutions with integrity. This includes the responsibilities, expectations and accountability of MOPS Act staff. There should be no division when it comes to public reporting and accountability when they are taxpayer-funded.

One of the issues, with the public expectations of a well-performing public service and taxpayer-funded public officials, is that any conflicts are managed. That is, in their taxpayer-funded role they must place the public interest above their private and self-interest. This tension between public interest vs private interest where the latter is seen to trump the former, is a source of distrust. Conflicts that are left unmanaged destroys the credibility of the officials involved and undermines public trust in institutional processes. Officials must be held to account when discharging their duties and that includes handling conflicts of interests that inevitably arise in their role.

I recommend that a similar body to France’s *Haute Autorité Pour La Transparence de Vie Publique* (HATVP or the High Authority for Transparency in Public Life) be established to administer the MOPS Act and, *inter alia*, to address the conflicts of interests of all public officials.

At the 2022 OECD GACIF, the President of the HATVP Didier Magaud spoke of their supportive role in building confidence and restoring trust in that country’s democratic institutions.³⁴ Magaud also discussed the administrative challenges and wins when dealing with pertinent conflicts of interests such as lobbying and revolving door of their public officials.³⁵

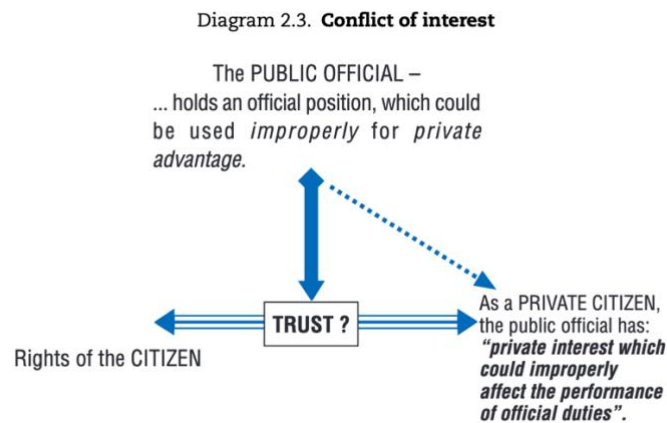
³³ Haute Autorité Pour La Transparence de Vie Publique <https://www.hatvp.fr/>

³⁴ HATVP (2022) *The President of the High Authority speaks at the OECD Global Anticorruption & Integrity Forum*, 26 April https://www.hatvp.fr/english_news/the-president-of-the-high-authority-speaks-at-the-oecd-global-anticorruption-integrity-forum/

³⁵ See the OECD GACIF precis (2022: 2) https://www.oecd.org/gov/ethics/meetingsconferencesagendas/2022_GACIF_highlights.pdf

The HATVP is a separate administrative body from l'Agence Française Anticorruption (French Anti-Corruption Agency)³⁶ though both work together to address corruption in the public sector and form part of that country's integrity system. Therefore, a similar body should be established to support any future National Anti-Corruption Commission.

The OECD has also published a toolkit which provides guidance on how to manage conflicts of interests.³⁷ The illustration below captures one conflict that may affect public officials between their private interests and taxpayer-funded public duties:



Source: OECD (2005: 17)

Conflicts of interests must be addressed based on the degree of their professional or institutional, personal, political and financial links.

While it is difficult to wholly remove any conflict of interest of an official, easily identifiable conflicts that might interfere with their job or discharge of their duties such as political and financial affiliation need to be acknowledged and recorded. They can be classified as politically-exposed persons (PEPs) and other sectors have already tried to manage the risks of PEPs.^{38 39}

Where a real or perceived conflict arises, recusal then becomes integral. The following diagram, again from the OECD's (2005) toolkit, demonstrates the recusal arrangements of a public official with a conflict of interest:

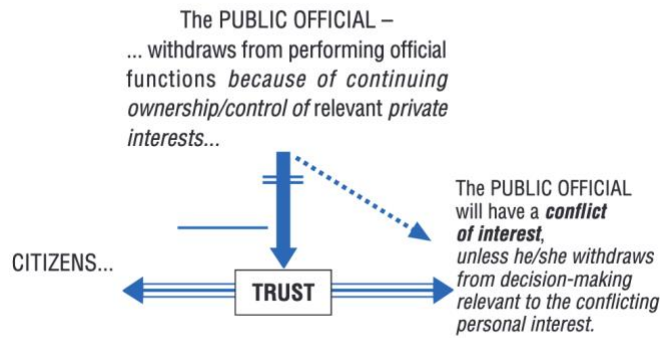
³⁶ l'Agence Française Anticorruption <https://www.agence-francaise-anticorruption.gouv.fr/fr>

³⁷ OECD (2005) *Managing Conflict of Interest in the Public Sector: A Toolkit*
<https://www.oecd.org/gov/ethics/49107986.pdf>

³⁸ Choo, KKR (2008) Politically-exposed persons (PEPs): Risks and mitigation. *Journal of Money Laundering Control* 11: 371–87

³⁹ Greenberg, TS, Gray, L., Schantz, D., Gardner, C. and Latham, M. (2010) *Politically Exposed Persons: Preventive Measures for the Banking Sector*. Washington, DC: World Bank Group.

Diagram 2.6. **Managing a conflict of interest: recusal arrangements**

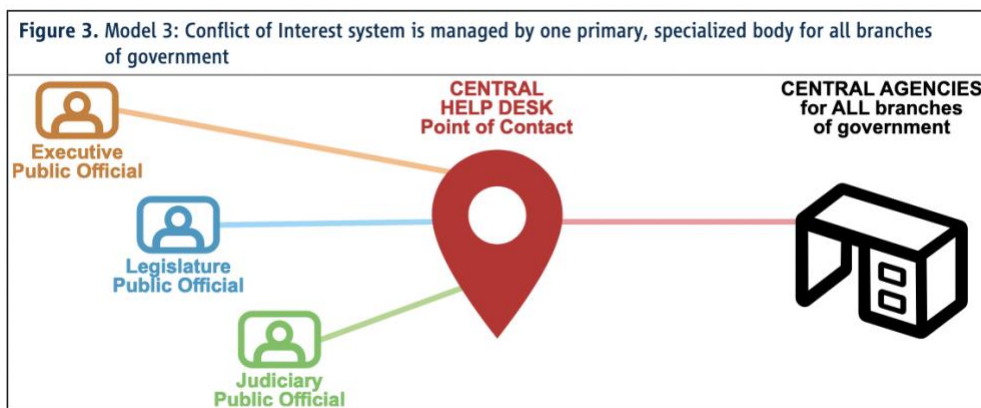


Source: OECD (2005: 20)

Arguably, MOPS Act staff are conflicted by the nature of their appointment. However, this does not exclude nor absolve them from managing their conflicts appropriately.

For a period of up to 10 years, former MOPS Act staff such as advisers, should have their names published on a public website. This publicly available information will allow transparency on the extent of their past political experience and whether any influence-peddling (or not) of said taxpayer-funded staff has occurred since their employment termination. This will address public concerns about the degree of influence, political interference, and the extent of the revolving door in this country.

Hence, a centralised body as recommended could oversee these conflicts. This body could also function as a help desk point of contact as per the model below:



Source: World Bank Group, OECD and UNODC (2020: 23)⁴⁰

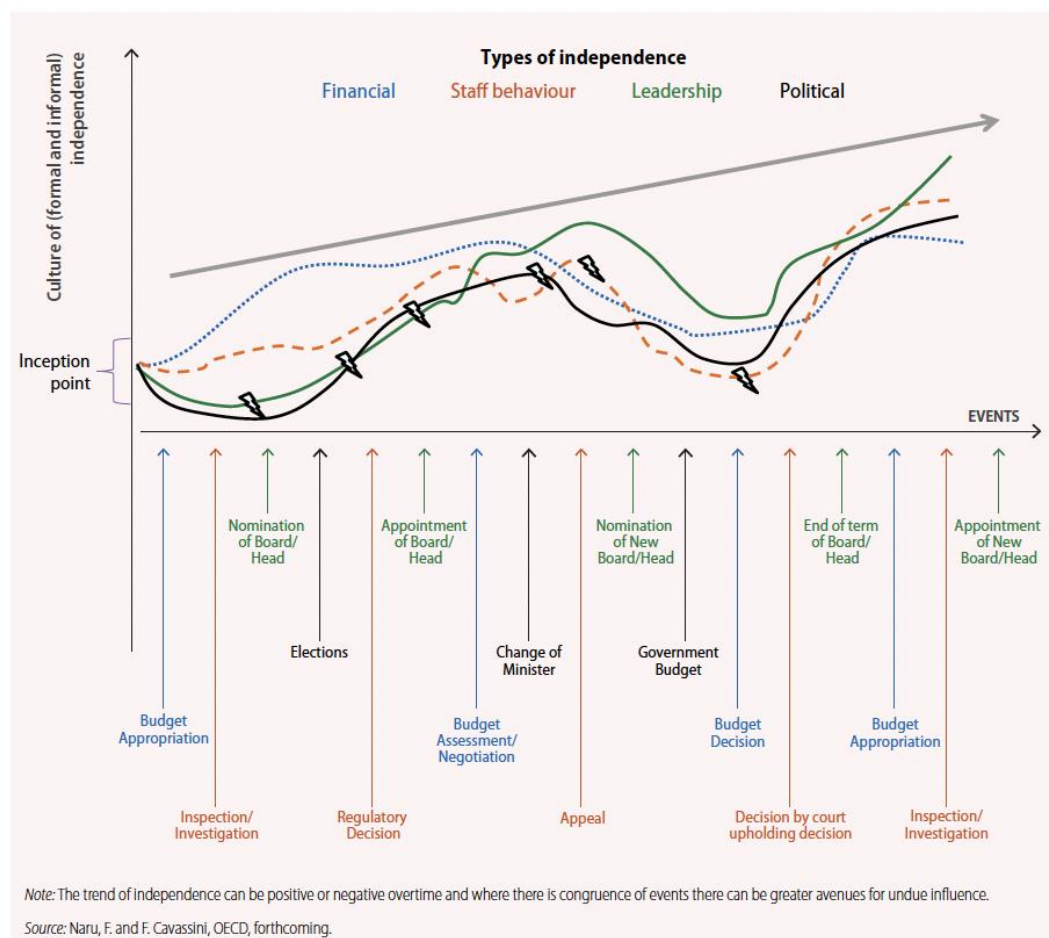
The G20 ACWG has also adopted high level principles on the prevention of conflicts of interests (see Annex 1). This proposed body would support these high-level principles and

⁴⁰ World Bank Group, OECD and UNODC (2020) *Preventing and Managing Conflicts of Interests in the Public Sector: Good Practices Guide*, Prepared at the request of the G20 Anticorruption Working Group <https://www.unodc.org/documents/corruption/Publications/2020/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.pdf>

would be the manifestation of Australia’s commitment to honour Articles 8 and 12 of the UNCAC.

The OECD has also developed a ‘pinch-point analysis’ to detect events where undue influence are more likely to occur. While aimed at government regulators, this analysis can be applied to mitigate corruption risks during certain events of the election-government cycle. It is incumbent that the MOPS Act takes a proactive approach to address these pinch-point events that are prone to corruption and corrupt conduct. The following figure is an illustration of this pinch-point analysis and the events that impact the independence of public service culture:

Figure 2. Pinch-point analysis of undue influence



Source: OECD (2017: 22)⁴¹

⁴¹ OECD (2017) *The Governance of Regulators: Creating a Culture of Independence – Practical Guidance of Against Undue Influence* <https://www.oecd.org/gov/regulatory-policy/Culture-of-Independence-Eng-web.pdf>

Recommendation 4: Update the MOPS Act in order to reflect international best practice, to address community concerns, to meet community expectations and to restore public confidence and trust.

Below are my specific recommendations to sections of the Act. This will ensure the Act is updated to meet current community expectations, and that it is match fit to address the issues of today.

Section 3: Interpretation

Update this section to include the definition provided to a public official as per UNCAC (2003) Article 2:

(a) "Public official" shall mean:

(i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;

*(ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent official" in the domestic law of a State Party.*⁴²

Section 4: Ministerial consultants

Update this section to include real-time publication of the list and qualifications of ministerial consultants that have been engaged while the public official is in a Ministerial capacity, and the taxpayer-funded payments made during their time of engagement.

Sections 6 and 7 Engagement

If this submission's Recommendation 2 is accepted, amend both sections to include that the engagement is overseen by a proposed Nominations/Appointments Tribunal.

Sections 9, 16 and 32 Termination

For 10 years after the termination of their taxpayer-funded employment, their record of Parliamentary employment must be made publicly available. This will act as an indicator of any post-political appointments that can be considered delayed conflicts of interests related to their employment with the publicly-elected official. This will provide a useful public indicator on the extent of the revolving door across Parliament.

Sections 13, 14, 20 and 21 Officeholders; senators and members may employ staff; terms and conditions

If this submission's Recommendation 2 is accepted, amend this section to include that the employment is overseen by a proposed Nominations/Appointments Tribunal. Update these

⁴² UN Convention Against Corruption

https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

sections to include real-time publication of the list and qualifications of staff that have been engaged by the officeholder, senator or member.

Remove sections 13 (2), 14 (3), 20 (2) and 21 (3) so that the discretionary power of the current office holder of the Prime Minister is not seen as politically interfering and acting in a manner that gives rise to the perception of political bribery to opponents or supporters. Employment of taxpayer funded staff must be seen as fundamentally addressing resource needs and not a political tool to be used at the discretion of the office holder.

Section 31: Annual report

Update this section to include real-time publication in a publicly available website of all taxpayer appointed staff, consultants and other MOPS Act staff and their qualifications, salaries and taxpayer funding of perquisites against the public official that they are attached to.

Section 32: Powers may be exercised by authorised person

Update this section to explicitly set out what type of powers are being authorised and exercised.

The following Articles of the UNCAC, mainly from Chapters II Preventive Measures and III Criminalisation and Law Enforcement, may provide further guidance in updating this Act to meet community standards and expectations, and to restore public trust in its taxpayer-funded officials.

- Article 5 – Preventive anti-corruption policies and practices
- Article 6 – Preventive anti-corruption body/ies
- Article 7 – Public sector
- Article 8 – Codes of conduct for public officials
- Article 9 – Public procurement and management of public finances
- Article 10 – Public reporting
- Article 12 – Private sector
- Article 13 – Participation of society
- Article 15 – Bribery of national public officials
- Article 17 – Embezzlement, misappropriation or diversion of property by a public official
- Article 18 – Trading in influence
- Article 19 – Abuse of functions

Annex 1 also provides further guidance to update this Act.

I look forward to the translation of Australia’s commitments to the UNCAC implemented in practice and reflected in a revised MOPS Act.

Kind regards,



Dr. Marie dela Rama



Annex 1: G20 Anti-Corruption Working Group 12 High Level Principles on the Prevention of Conflicts of Interests⁴³

Standards of conduct for public officials	
Principle 1	G20 countries should establish specific, coherent and operational standards of conduct for public officials. These standards should provide a clear and realistic description of what circumstances and relationships can lead to a conflict-of-interest situation. These standards should further advance public officials’ understanding and commitment to a) serving the public interest, and b) preventing any undue influence of private interests that could compromise, or appear to compromise, official decisions in which they officially participate.
Principle 2	G20 countries should further consider the need for additional standards of conduct for those public officials working in high-risk areas, reflecting the specific nature of these positions, exposure to conflict of interest risks, and public expectation.
Applying the conflict-of-interest standards	
Principle 3	G20 countries should put into place clear means for developing, implementing and updating conflict-of-interest policies at the appropriate level in the public sector. The implementation, effectiveness, and relevance of conflict-of-interest policies should be periodically reviewed using an evidence-based approach. G20 countries should also consider consulting relevant stakeholders, including the private sector and civil society, when developing and reviewing their conflict-of-interest policies. Consideration could be given to the designation of one or more special bodies to oversee systems for preventing and managing conflict of interest.
Risk-based approach to managing conflict of interest	
Principle 4	G20 countries should identify “at-risk” activities and duties that create heightened risks for potential conflict-of-interest situations and establish adequate preventive measures. G20 countries should establish effective organizational responses through, as appropriate, specialized bodies established for managing conflict-of-interest and/or competent officials within each organization. G20 countries should pay specific attention to safeguarding the public interest in the recruitment, nomination and promotion of public officials. Particular due diligence should be applied as appropriate to assessing and resolving conflicts of interest before individuals undertake public functions, as well as establishing appropriate post-employment restrictions, such as cooling-off periods.

⁴³ World Bank Group, OECD and UNODC (2020) *Preventing and Managing Conflicts of Interests in the Public Sector: Good Practices Guide*, Prepared at the request of the G20 Anticorruption Working Group <https://www.unodc.org/documents/corruption/Publications/2020/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.pdf>

Fostering a culture of integrity	
Principle 5	G20 countries should nurture an open organizational culture in the public sector, taking steps to promote the proactive identification and avoidance of potential conflict-of-interest situations by public officials. This should include ensuring that public officials can seek guidance and advice from competent officials regarding how to avoid potential conflict-of-interest situations, without fear of reprisal. Appropriate measures should be established to protect disclosures from misuse.
Averting conflict of interest risks in public decision making	
Principle 6	G20 countries should ensure that effective management policies, processes, and procedures are established for preventing and managing conflicts of interest in public decision making in order to safeguard the public interest and avoid undue influence. Such procedures could include management and internal controls, providing ethical advice on the application of conflict-of-interest policies to specific circumstances, recusal from decision-making as appropriate, the use of ethics agreements and other arrangements, such as reviewing interest declarations, recusal statements and orders, to mitigate potential conflicts of interest.
Principle 7	G20 countries should establish guidance and mechanisms, such as disclosure of interests, for members of boards, advisory committees and expert groups, in order to prevent unduly influencing the public decision-making processes.
Raising awareness, building capacity and commitment	
Principle 8	G20 countries should endeavour to ensure that sufficient information, guidance, training, and timely advice are provided to public officials upon taking up positions, throughout their careers, and upon leaving their position, in order to enable them to identify and manage actual, apparent, and potential conflict-of-interest situations.
Partnership with the private sector and civil society	
Principle 9	Preventing and managing conflicts of interest is a shared responsibility of the public and private sectors. Hence G20 countries should take steps to promote awareness within the private sector and the general public on the standards of conduct in place to prevent and mitigate public officials' conflicts of interest, as well as to promote the core values of public service in the society at large.
Enabling effective accountability	
Principle 10	G20 countries should adopt and implement appropriate and effective mechanisms for the prevention, identification and management of conflicts of interest, such as periodic financial, interest and asset disclosure systems for relevant public officials consistent with G20 High Level Principles on Asset Disclosure by Public Officials and applicable law.
Principle 11	Countries that have established declarations systems or are considering establishing them, are encouraged to support each other, where domestic law and institutional mandates permit, facilitating the identification and

	exchange of information on public officials' interests abroad and/or sources that could be consulted by foreign authorities to gather and/or confirm information on officials' interests abroad. In this regard, G20 countries should make appropriate use of new technologies, without prejudice to personal data protection.
Effective enforcement	
Principle 12	G20 countries should implement adequate mechanisms to resolve identified conflicts of interest, as well as enforcement mechanisms for proportionate and timely sanctions for violations of conflict-of-interest policies. This could include a specific set of disciplinary measures.