

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

Peter Woolcott AO, Parliamentary Service Commissioner

The Parliamentary Service Commissioner (PSC) welcomes the opportunity to provide a submission to the Review of the *Members of Parliament (Staff) Act 1984* (MOP(S) Act). The review represents an important component of the work being done to support reform of Commonwealth Parliamentary Workplaces (CPWs). The review is an opportunity to consider how to reform the Act to promote and embed cultural change in CPWs. It is important that an amended MOP(S) Act promotes appropriate behaviours and expectations, with the underlying principles of respect and safety in the workplace.

The PSC is a statutory officer appointed under the *Parliamentary Service Act 1999* by the Presiding Officers of the Parliament. Under section 40, PSC functions are to advise the Presiding Officers on the management policies and practices of the Parliamentary Service and, at the request of the Presiding Officers, to formally inquire into, report and, where appropriate, make recommendations on matters relating to the Parliamentary Service. The PSC is not subject to direction by or on behalf of the Executive Government of the Commonwealth in the performance of the PSC functions.

The PSC holds powers in relation to inquiries undertaken in relation to Section 40(1)(b) or (c) of the *Parliamentary Services Act 1999* consistent with those provided through the *Auditor-General Act 1997* sections 32, 33 and 35, to obtain information, access premises and regarding self-incrimination no excuse.

In September 2021, the PSC role expanded to include oversight of the Parliamentary Workplace Support Service (PWSS). The PWSS is an independent function that was established with cross party parliamentary support on the recommendation of the *Review of the Parliamentary Workplace: Responding to Serious Incidents (The Foster Review)*.

The PWSS is an independent function that was initially established to offer trauma-informed support and advice to parliamentarians and their staff who had been impacted by a serious incident, to make referrals and facilitate local resolution.

In April 2022, the *Parliamentary Service Amendment (Independent Parliamentary Workplace Complaints Mechanism) Determination 2022 (Attachment A)* expanded the PWSS, in response to recommendation 20 of the *Set the Standard Report*. The PWSS is now the primary support and complaints avenue for MOP(S) Act staff and parliamentarians in relation to workplace conduct issues. The PWSS also works with other CPW participants to build safe and respectful workplaces and provide support and resolve workplace conflict, bullying, harassment and sexual harassment and assault.

The opportunity for a comprehensive review is welcomed to ensure that the MOP(S) Act delivers a modernised, best practice employment framework. The employment framework as articulated by the MOP(S) Act and accompanying determinations, is complex and will benefit from review.

Parliamentarians and their staff bring diverse backgrounds and experiences to their roles. This diversity brings a richness to the contest of ideas that is the cornerstone of our democracy.

As outlined in *Set the Standard*, current aspects of the MOP(S) Act limit the ability of the Commonwealth to discharge its employer duties for employees to have safe and respectful workplaces. The MOP(S) Act formalised an arrangement for a parliamentarian to employ staff to assist them carry out duties as a Member of Parliament and not for party political purposes. MOP(S) Act employees have a variety of roles and critically they address any “blurring of lines” between an impartial public service and political advice.

Work done by the PWSS with MOP(S) Act employees and parliamentarians shows there is a strong view that professionalising the workplace and its employment framework through reform of the MOP(S) Act will achieve better outcomes for individuals, parliamentarians as employers of staff and collectively, the Australian Parliament.

The review would benefit from having regard to other relevant legislation, including the *Public Service Act 1999* and the *Parliamentary Service Act 1999*. MOP(S) Act employees often work alongside those employed under those Acts. While employees under those Acts are subject to a legislated Code of Conduct, MOP(S) Act employees are not.

The implementation of a Code of Conduct for MOP(S) Act employees in the MOP(S) Act is an opportunity to codify best practice and set clear expectations across all employment locations and settings. Importantly, such provisions would serve to hold individuals to account for their conduct and behaviour, while simultaneously providing robust and lasting cultural change.

By clearly defining the powers, functions, responsibilities and accountabilities of those employed under the MOP(S) Act and those who manage them, an amended MOP(S) Act will provide the clarity expected of a modern employment framework and its associated practices.

The MOP(S) Act reform should include an implementation review within two years to ensure achievement of the review objectives. This review would provide the opportunity to evaluate the current reforms and ensure there are no unintended consequences.

This focus on respectful workplace behaviour is not meant to impose rigid rules on workplace styles or on workplace relationships and social activities. Rather, respectful behaviour recognises that people with different backgrounds, interests and personal values need to work as harmoniously as possible in the workplace. An amended MOP(S) Act can embed cultural change to create a positive workplace environment and this in turn will increase the Parliament’s ability to attract and retain high quality staff. A stronger, more professional parliamentary workforce with a contemporary employment framework will build a stronger parliament which will benefit the Australian community.



Parliamentary Service Determination 2013

made under the

Parliamentary Service Act 1999

Compilation No. 6

Compilation date: 12 April 2022

Includes amendments up to: F2022L00591

Prepared by the Department of the Prime Minister and Cabinet, Canberra



make a record of, disclose or otherwise use certain information for the purposes of, or in connection with, the performance of his or her functions.

If the Commissioner gives a person about whom a disclosure has been made an opportunity to be heard in relation to the disclosure, the Commissioner may give the person information identifying the discloser to the extent the Commissioner considers appropriate in the circumstances.

112B Commissioner’s functions—independent parliamentary workplace complaints mechanism

- (1) For the purposes of paragraph 40(1)(d) of the Act, the following functions are conferred on the Commissioner:
- (a) to establish and maintain a mechanism for:
 - (i) reviewing, and making recommendations in relation to, complaints about serious incidents or misconduct involving MOP(S) Act employees, parliamentarians, or both, in the course of their work; and
 - (ii) providing support to current or former Commonwealth parliamentary workplace participants in relation to such serious incidents or misconduct and other matters relating to work health and safety in the course of performing duties in a Commonwealth parliamentary workplace or in the course of performing duties as a Commonwealth parliamentary workplace participant;
 - (b) to provide for education of current Commonwealth parliamentary workplace participants, and for informing current or former Commonwealth parliamentary workplace participants, in relation to:
 - (i) the mechanism; and
 - (ii) serious incidents or misconduct involving MOP(S) Act employees, parliamentarians, or both, in the course of their work; and
 - (iii) other matters relating to work health and safety in the course of performing duties in a Commonwealth parliamentary workplace or in the course of performing duties as a Commonwealth parliamentary workplace participant;
 - (c) to take steps to assure the independence, confidentiality and quality of the practices and processes that comprise the mechanism or relate to the provision of information;
 - (d) if a complaint is upheld following review—to receive a report of the review;
 - (e) if a report of a review makes recommendations to a parliamentarian—to engage with the parliamentarian in relation to implementing the recommendations;
 - (f) if recommendations made to a parliamentarian are not implemented—to refer the report to the relevant Presiding Officer, in accordance with any procedure that applies under the mechanism (which, if the relevant House of the Parliament has determined a procedure, must be the procedure determined by that House).
- (4) In this determination:

Clause 112B

Commonwealth parliamentary workplace participant means:

- (a) a MOP(S) Act employee; or
- (b) a parliamentarian; or
- (c) a Parliamentary Service employee; or
- (d) a person employed by the Commonwealth as a driver to provide the car-with-driver transport service known as COMCAR, where those duties relate to a Commonwealth parliamentary workplace participant; or
- (e) any other person who works in a Commonwealth parliamentary workplace.

Commonwealth parliamentary workplace means the area defined as the Parliamentary precincts as defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*, or an office provided or made available under the *Parliamentary Business Resources Act 2017*.

MOP(S) Act employee means a person who is employed under Part III or IV of the *Members of Parliament (Staff) Act 1984* or engaged under Part II of the *Members of Parliament (Staff) Act 1984*.

parliamentarian means:

- (a) a Senator; or
- (b) a Member of the House of Representatives; or
- (c) a senior office holder as defined under the *Parliamentary Business Resources Regulations 2017*; or
- (d) any other person to whom remuneration is payable under section 49 of the *Parliamentary Business Resources Act 2017*; or
- (e) a person not covered by any of the preceding paragraphs who held the office of Prime Minister, in the person's capacity as someone who may, on behalf of the Commonwealth, employ MOP(S) Act employees under Part III of the *Members of Parliament (Staff) Act 1984*.

serious incident or misconduct means:

- (a) sexual assault; or
- (b) assault; or
- (c) sexual harassment; or
- (d) harassment; or
- (e) a person being bullied at work (within the meaning of the *Fair Work Act 2009*); or
- (f) an instance of a person behaving unreasonably towards another person in a way that creates a risk to work health or safety.