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

1. Introduction

- 1.1. Gordon Legal appreciates the opportunity to make a submission to the Review of the *Members of Parliamentary (Staff) Act (Cth) (MoP(S) Act)*. Gordon Legal is a plaintiff law firm based in Melbourne that provides advice for employment, discrimination, harassment, workplace injury, and industrial disputes, including on behalf of parliamentary staffers employed under the MoP(S) Act. We have been shocked by the behavior and practices of the Commonwealth and the weak legislative framework that surrounds the employment circumstances of employees covered by the MoP(S) Act.
- 1.2. Our experience with the current regime is that power imbalances are exacerbated, victims are treated with suspicion and are not afforded procedural or substantive fairness during the complaints process, and outcomes fail to satisfactorily address complaints.
- 1.3. Our primary submission is that all the 28 recommendations from the *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces (Jenkins Report)* be implemented, as soon as practicable and, in any event, within the time frames set by the Jenkins Report, where a time frame is specified.
- 1.4. The key issues experienced by MoP(S) Act staff could be ameliorated through the implementation of these recommendations. This submission will focus on 6 key recommendations and how they ought to be implemented.
- 1.5. This submission is relevant to all the Terms of Reference specified by the Review of the *Members of Parliamentary (Staff) Act (Cth)*. We would be happy to expand on our submission, should that assist the Review.

2. Recommendation 11: Office of Parliamentarian Staffing and Culture

- 2.1. We note that Recommendation 11 states “*The Australian Government should establish an Office of Parliamentarian Staffing and Culture (OPSC), within 12*

months, to provide human resources support to parliamentarians and Members of Parliament (Staff) Act employees..."

- 2.2. *The Commonwealth Review of the Parliamentary Workplace – Responding to Serious Incidents – consultation copy (Foster Report)* found that “*the most significant gap is the absence of readily accessible, timely, independent, trauma-informed services and response mechanisms*” (at p2). This concern is reflected in Recommendation 3 of the Foster Report.
- 2.3. The establishment of an OPSC in the way set out in the Jenkins Report would eliminate this critical gap and would go a long way to remediate the difficulties that MoP(S) Act employees have experienced.
- 2.4. As recommended by the Jenkins Report (p184), the OPSC should be established under the MoP(S) Act.
- 2.5. The MoP(S) Act ought to set out:
 - (a) The establishment of the OPSC;
 - (b) The functions of the OPSC;
 - (c) The responsibilities of the OPSC; and
 - (d) The powers of the OPSC;
- 2.6. Bearing in mind Recommendations 3 and 4 of the Foster Report, and similar views expressed in the Jenkins Report (at p 22), the OPSC should be independent and non-partisan.
- 2.7. Among its other duties, the OPSC’s functions ought to incorporate Recommendations 12 and 13 of the Jenkins Report, those being:
 - Recommendation 12: Professionalising management practices for Members of Parliament (Staff) Act employees
“The Office of Parliamentarian Staffing and Culture (see Recommendation 11) should establish standards and processes to professionalise management practices for Members of Parliament (Staff) Act employees...to foster a safe and respectful work environment”
 - Recommendation 13: Professional development for Members of Parliament (Staff) Act employees
 - *“The Office of Parliamentarian Staffing and Culture (see Recommendation 11) should develop a professional development program for Members of Parliament (Staff) Act employees...”*

3. Recommendation 14: Best practice training

3.1. We note that Recommendation 14 outlines that *“to ensure that people working in Commonwealth parliamentary workplaces have the requisite knowledge and skills to prevent and respond to misconduct:*

(a) the Office of Parliamentarian Staffing and Culture (see Recommendation 11) should develop and deliver mandatory best practice training for parliamentarians and Members of Parliament (Staff) Act employees...”

3.2. In the Jenkins Report, it was found that *“expected standards of behavior either do not exist...or can be unclear and inconsistently enforced.”* Jenkins found that this was *“compounded by a lack of clear policies and uniform training.”*

3.3. Whilst some training has been implemented, as the Recommendation suggests, this training ought to be *“mandatory”, “be conducted during induction and annually”,* and administered by the OPSC.

3.4. This mandatory training should form part of the Code of Conduct (see Recommendation 21). It can be similar in form to the Canadian *Members of the House of Commons Workplace Harassment and Violence Prevention Policy* regarding training.

3.5. The Canadian policy states:

“Harassment and violence prevention sessions are provided to Members and their employees. This training gives participants a better understanding of the roles that the Member and the employees play in maintaining a culture of respect in the workplace and focuses on harassment and violence prevention in the workplace. All new Members and employees must receive training within three months after they start in their position. Further, Members and employees must receive this training again once every three years.”¹

4. Recommendation 16: Fair termination of employment process for Members of Parliament (Staff) Act employees.

4.1. We note that Recommendation 16 of the Jenkins Report proposes that the Office of Parliamentarian Staffing and Culture (OPSC) should support parliamentarians to meet their legal obligations where termination of employment is proposed, including by introducing a process for parliamentarians to inform the OPSC of any proposed dismissal. To avoid doubt,

¹ *Members of the House of Commons Workplace Harassment and Violence Prevention Policy, Pg 7.*

we consider that it should be made clear that the term 'dismissal', as used in Recommendation 16, includes termination as a consequence of alleged redundancy, as well as termination of employment for other reasons.

- 4.2. If the proposed dismissal does not satisfy legal requirements or is otherwise deficient, the OPSC provides parliamentarians with Rectification Advice. However, if a parliamentarian ignores or rejects the Rectification Advice, the OPSC appears to have no recourse other than to notify the Presiding Officer. It would seem that the dismissal itself may proceed, despite the issuing of Rectification Advice.
- 4.3. In our view, the issuing of a Rectification Advice ought logically to have the effect of putting a hold on the dismissal, so that appropriate steps may be taken to eliminate the possibility of any illegal termination of employment.
- 4.4. In addition, we note that, when the OPSC receives reports and complaints, there is already a pathway for referral of the matter to the IPSC (for example pp 214, 229). Consistently with this, we consider that the OPSC should notify the IPSC immediately, should a parliamentarian ignore or reject Rectification Advice.
- 4.5. We note further that the IPSC has the power to commence an own-motion investigation (p 244), which it may choose to do upon a referral that Rectification Advice has been ignored or rejected.
- 4.6. On a related note, the focus on termination of employment overlooks the fact that the termination itself may merely be the final step in a pattern of bullying or harassing by means of an unreasonable performance management process. In our experience, it is often at these earlier stages that a MoP(S) Act employee experiences inappropriate workplace behaviour. Bearing in mind the importance of prevention in a health and safety context, we consider that the OPSC should also be informed of any performance management process, so that it may issue Rectification Advice at that point, if the process is defective.
- 4.7. Finally, any Rectification Advice should be provided to an employee by the OPSC at the same time as it is provided to the parliamentarian, and in a timely way, so that transparency is ensured and advice may be obtained.

5. Recommendation 20: Expansion of the Parliamentary Workplace Support Service

- 5.1. We note that Recommendation 20 suggests *"The Australian Government should expand... the scope of the new Parliamentary Workplace Support Service..."*

- (a) *make it available to all Commonwealth parliamentary workplace participants;*
- (b) *include all allegations of bullying, sexual harassment and sexual assault;*
- (c) *establish a clear pathway for anonymous reporting, including through a digital platform;*
- (d) *publish additional information on what happens with anonymous and bystander disclosures; and*
- (e) *include historic complaints of bullying, sexual harassment and sexual assault and those relating to people who have left the workplace.*

5.2. Another issue that the Foster Report found was a “critical” area “requiring immediate action” was a “trusted, independent complaints mechanism able to deliver proportionate consequences for misconduct and tailored, face to face education and support for parliamentarians and their staff in preventing, identifying and responding to serious incidents in the workplace.”(at p 2)

5.3. Expanding the function of the Parliamentary Workplace Support Service (PWSS) would significantly improve MoP(S) Act staff’s experience when making a serious complaint. The most recent Jenkins Report Implementation Tracker states that the PWSS expansion should occur from March 2022. Parliament should ensure that any expansion should be done in a way that is consistent with the Recommendation in the Jenkins Report.

6. Recommendation 21: Codes of Conduct

6.1. We note Recommendation 21 is to “*establish clear and consistent standards of conduct*”

6.2. Jenkins found that “*setting clear standards of conduct...is best practice in Australian workplaces*”.² A code of conduct should be established in the form set out in Recommendation 21 of the Jenkins Report and ought to be incorporated into the MoP(S) Act. This will ensure that the Code of Conduct is consistent and widely understood. If the Code of Conduct is able to be frequently amended it would undermine its role in setting a clear and consistent standard across parliamentary workplaces. The enforcement of this code should be done by an Independent Parliamentary Standards Commission (see Recommendation 22 below).

² Jenkins Report, pg 222.

7. Recommendation 22: Independent Parliamentary Standards Commission

- 7.1. Recommendation 22 suggests that *“the Houses of Parliament should establish an Independent Parliamentary Standards Commission (IPSC) that would incorporate the PWSS, receive disclosures and handle informal and formal complaints, make findings about misconduct and recommendations on sanctions, and apply sanctions where they do not interfere with the functions of the Parliament”*
- 7.2. In order to enable the Code of Conduct to be effective, there must be some consequence for a breach. In the case of MoP(S) Act employees, that is relatively straightforward, as the administrators of the Scheme can impose a sanction up to and including dismissal.
- 7.3. However, if the sanction is imposed on an elected representative, any enforcement mechanism must be mindful of constitutional considerations and the consequences of a non-elected body imposing sanctions on an elected representative.
- 7.4. The United Kingdom House of Commons structure neatly resolves the issue of ensuring that the Code of Conduct is capable of enforcement, is meaningful, while safeguarding democratic concerns for elected parliamentarians. For the less serious sanctions, the administrator of the scheme can impose them using their own authority; however, for the more serious sanctions, including expulsion from the House, those sanctions are a decision for the House to make, after receiving a recommendation from the scheme administrator.
- 7.5. The United Kingdom has set up an ‘Independent Complaints and Grievance Scheme’ that is a central body, which hears complaints regarding breaches of:
 - (a) the Behavioural Code,
 - (b) the Bullying and Harassment Policy,
 - (c) the Bullying and Harassment Procedure,
 - (d) the Sexual Misconduct Policy; and
 - (e) the Sexual Misconduct Procedure.
- 7.6. When a complaint is made, an independent investigator conducts an assessment and then a decision is made about whether a breach is found. If a breach is found, a number of sanctions are available. There should be a wide range of sanctions available for a breach of the Code of Conduct. The less

serious sanctions should be enforceable by the administrators of the scheme themselves.

7.7. In the UK the sanctions enforceable by the administrators of the scheme themselves are:

- (a) An apology to the complainant in writing;
- (b) An apology on the floor of the House by means of a point of order or a personal statement;
- (c) Requiring a Member to attend training or enter into a behaviour agreement;
- (d) Withdrawal of services and facilities from a Member, and imposing other personal restrictions including on travel, where this will not affect the core functions of a Member;
- (e) For non-Members, withdrawal of the right to hold a former Member's pass, either indefinitely or for a fixed period; and
- (f) A formal reprimand by means of a published report.³

7.8. The sanctions that the scheme administrator may recommend, but are for decision of the elected body are:

- (a) Withdrawal of services and facilities from a Member, and imposing other personal restrictions including on travel, where this will affect the core functions of a Member, and where the sanction reflects the nature of the offence;
- (b) Dismissal from a select committee;
- (c) Suspension from the service of the House for a fixed period;
- (d) Withholding of a Member's salary or allowances even if he or she has not been suspended; or
- (e) In the most serious cases, expulsion from the House.⁴

7.9. The UK House of Commons structure is the best available mechanism for enforcing the Code of Conduct and ensuring that Jenkins Recommendation 22 is faithfully implemented. The IPSC should be established under the *Parliamentary Service Act 1999* (Cth) (**PS Act**). It should be an independent, non-partisan body (Jenkins Report p 228). The PS Act ought to outline its duties, responsibilities, consequences and limitations.

³ The Independent Expert Panel, *Appeals, referrals and sanctions: Guidance for the parties*, pg 14.

⁴ *Ibid*, 15.

- 7.10. Establishing the IPSC under the PS Act will enable the IPSC to be a function of the Parliamentary Service Commissioner, whose function already includes giving “advice to the Presiding Officers on the management policies and practices of the Parliamentary Service” (s40(1)(a)). This will ensure that the IPSC has greater independence from the Executive (Foster Report p 15) than if the IPSC was established under the MoP(S) Act.

8. ‘Serious’ Incidents and the Foster Report

- 8.1. We note that the Foster Report, constrained by its Terms of Reference, concentrates on ‘serious’ incidents and refers to ‘serious’ and systemic bullying and harassment.
- 8.2. In our experience, much inappropriate workplace behaviour involves a pattern of conduct comprised of incidents which, taken alone, might not appear ‘serious’ but, when viewed in combination, over time, are corrosive and harmful. It follows that care should be taken to address all inappropriate workplace behaviour, rather than waiting for a ‘serious’ incident before action is taken.

9. Conclusion

- 9.1. The Foster and Jenkins Report are both highly critical of Commonwealth Parliamentary workplaces. However, they offer a roadmap to improving the circumstances of current and future MoP(S) Act employees, as well as setting out a structure where complaints about historical behavior can be dealt with in an independent and fair manner, unlike the previous processes, which have failed too many victims.
- 9.2. The recommendations of these reports have been progressed at various stages of completeness. They all must be implemented in a timely manner, subject to the timeframes suggested in the Jenkins Report, to ensure that the safety of parliamentarians, their staff, and other MoP(S) Act staff are protected.