



Australian Government

Department of the Prime Minister and Cabinet

Review of the Members of Parliament (Staff) Act 1984 (Cth)

Recommendation 18 of the Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces by the Australian Human Rights Commission



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Executive summary

On 10 February 2022, the then Prime Minister commissioned the *Review of the Members of Parliament (Staff) Act 1984* (MoP(S) Act) (the Review) to be undertaken by the Department of the Prime Minister and Cabinet (PM&C). The Review was recommended (Recommendation 18) in the *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* undertaken by Sex Discrimination Commissioner Kate Jenkins¹ (*Set the Standard*).

The Review was asked 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.

Specifically, the terms of reference asked PM&C to consider the following:

- the recruitment of MoP(S) Act staff, including transparency of arrangements, the use of merit-based recruitment, and pre-engagement checks
- procedural fairness for the terms, conditions, and termination of employees and employers under the MoP(S) Act
- the responsibilities, expectations, and accountability of MoP(S) Act employees
- appropriate public reporting and accountability of the administration of the MoP(S) Act.

The Review should be considered within the broader context of the implementation of *Set the Standard*. The Parliamentary Leadership Taskforce, which has multi-party representation and an independent Chair, Kerri Hartland, is responsible for overseeing implementation of all the *Set the Standard* recommendations. The Government has committed to work across the parliament to implement all 28 recommendations of *Set the Standard*, and is directly responsible for implementing eight recommendations and one sub-recommendation, three of which have been implemented. In addition to undertaking a Review of the MoP(S) Act, two other key interrelated recommendations that the Government is responsible for include establishing:

- an Office of Parliamentarian Staffing and Culture (OPSC) to provide centralised human resources support and advice to parliamentarians and their staff, and to drive cultural change within the parliament (Recommendation 11), and
- an Independent Parliamentary Standards Commission (IPSC) to operate a fair, independent and confidential complaint system and investigate allegations of breaches of the Codes of Conduct for

¹ Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (2021), https://humanrights.gov.au/sites/default/files/document/publication/ahrc_set_the_standard_2021.pdf, 215, accessed 30 September 2022.

Parliamentarians and their staff, and Standards of Conduct for the Parliamentary Precincts (Recommendation 22).

In addition to supporting the Government to implement *Set the Standard*, PM&C has been directly engaged on matters relating to conduct in Commonwealth parliamentary workplaces since February 2021, through undertaking and then leading implementation of the *Review of the Parliamentary Workplace: Responding to Serious Incidents (Foster Review)*, conducted by Stephanie Foster PSM, Deputy Secretary Governance at PM&C, published on 26 July 2021.

In the course of this Review we received 47 written submissions, 388 survey responses, undertook more than 70 interviews and stakeholder engagements, and held a small group consultation session with people who work in, or have worked in, a Commonwealth parliamentary workplace. We heard from current and former MoP(S) Act employees and parliamentarians, academics, unions, relevant parliamentary departments and relevant government agencies, along with state government and international counterparts. We have drawn on this breadth of input not only in the context of the findings in this Review, but to help shape our thinking about the overarching employment framework, including the development of the OPSC and IPSC, and how these pieces best fit together.

The establishment of the OPSC is one of the key structural reforms recommended to assist parliamentarians and their staff build and maintain a workplace that is safe, supportive, respectful, professional and high performing. The OPSC model was recommended in *Set the Standard* to address issues identified as: a complex framework for HR services; a lack of clear authorising environment; and a loss of confidence in existing HR services. It is proposed to provide advice and education to parliamentarians and MoP(S) Act employees, undertake strategic initiatives to drive the OPSC values, improve culture and diversity, drive improved accountability and reporting, and be a central hub for operational HR support. The OPSC will be central to achieving better employment outcomes and practices in the MoP(S) Act employment framework, and to deliver on many of the changes recommended to the MoP(S) Act.

It was clear from the consultations and from our research that there are many different models for the employment of staff of parliamentarians, each with strengths and weaknesses. The most important factor for success was not the employment model per se, but its implementation - the quality of the support provided to parliamentarians and staff, and the fairness and transparency of its processes.

Throughout the consultation process, the key recurring themes were accessibility and effectiveness of HR support; recruitment practices; staffing allocations; workload/hours; termination (including resignation); culture and conflict in the workplace; handling of complaints; training; accountability; and the employment framework. We have used these themes to focus the report on four key areas covering the continuum of MoP(S) Act employment: the employment framework, setting an office up for success, clear accountabilities, expectations and responsibilities, and employment separation.

Employment framework

In the main, the Review concluded that the framework of the MoP(S) Act was broadly appropriate, but required some amendments to modernise it, provide greater clarity, and improve transparency. The biggest issues and gaps identified relate to human resource capability within offices, the HR advice and support available to parliamentarians and employees, and accountability mechanisms. The bulk of these issues identified will need to be first order priorities for the OPSC once it is established. It will be critical that the OPSC delivers high quality, fair and consistent support to all of its clients from its inception, enabling it to win trust and drive cultural reform over the mid to long term.

There was strong support for increasing clarity and reducing complexity in the Act by merging the two primary parts relating to employment – Parts III and IV. Having two separate but almost identical parts creates challenges and misunderstanding among parliamentarians and administrators over the coverage of Parts III and Part IV. Part III is seen to be for personal employees and Part IV is seen to be for electorate office staff, however, these terms are not used in the MoP(S) Act. Some contributors called for clearer separation between employees in the executive and legislature; others queried the differential treatment of personal staff and electorate office staff under the Act, and suggested that bringing these parts of the Act together would help with staff cohesion. The Review concluded that the MoP(S) Act should be reframed to have one part covering the core terms and conditions for the employment of all MoP(S) Act employees, and that they be defined in the Act in three categories: electorate employees, personal employees – ministerial, and personal employees – other. This will enable conditions and provisions to be applied that are specific to each category.

We heard about two key issues in relation to the employment model. The first was confusion about who the ‘employer’ actually was, and the second was about who held what accountabilities in the employment relationship. This is also evident in the findings of *Set the Standard* which highlighted a confusing employment relationship, where multiple parties hold employer and other legal obligations to staff.

We considered a range of employment models across the various Australian and international jurisdictions, including having one parliamentarian (such as the first minister) or the presiding officers as the employer; having an external employer such as a parliamentary department or public service department; or having different employers for different categories of staff. What we found across the board is that, no matter the model chosen, the day-to-day direction and management of staff is carried out by the parliamentarian or their office manager, and it is they who most influence the experience of their staff in terms of safety and respect.

The Review concluded that the existing model of parliamentarian as employer should be retained, supported by a clear articulation in the Act of their duties as employers. This should be complemented by also setting out in the Act the role of the Prime Minister (or delegate) in setting terms and conditions; and the OPSC in providing support and advice. To support consistent outcomes across the system, the

Review considers that the OPSC, once established, should be empowered to support better and more coordinated practices within offices, including through requiring training and reporting on the administration of the Act.

Parliamentarians should be supported to set their offices up for success. In a modern workplace context, this means resourcing the workplace with people with the right skills, right tools, and right support to meet organisational needs. We heard a strong and consistent message around the workload pressures on staff and concern about the method by which resource allocation is determined. In relation to staffing numbers, the key messages we heard from both parliamentarians and staff were in relation to work, health and safety implications, as well as the capacity to do the job due to the sustained workload pressure on staff. These pressures were articulated the most strongly by staff who were not aligned to the major parties. To inform an evidence-based consideration of workplace resources, the OPSC should review the factors affecting workloads in offices, including systems and processes, and examine the root causes of pressure points that exist, including those relating to government services and electorate composition. This review should also recommend principles to be considered by the Prime Minister in determining staffing allocations. While we heard about pressures in relation to both personal staff and electorate office staff, the most consistent message was in relation to electorate offices.

There were some calls for staffing allocation to be set by an independent entity and for there to be greater transparency in allocation decisions. Similarly to the employment framework, there is a range of approaches used in different jurisdictions, each with their strengths and weaknesses. Noting the broader structural reforms yet to be implemented, including the recommended workplace review above, and the absence of a clear alternative approach to deliver an effective outcome in the Commonwealth context, the Review concluded that the existing system should be retained, with enhanced transparency provided through a legislative requirement to report on the number of staff allocated by office annually.

Setting an office up for success

Contributors to this Review shared their experiences and insights into the workplace practices and culture of MoP(S) Act employment. On one hand, we heard about high-performing and professional offices with a positive culture set by the parliamentarian and senior staff. In these offices, people know what is expected of them at work, understand what they are responsible for, and are held accountable for their actions and behaviour. On the other hand, we heard from current and former MoP(S) Act employees about the challenges arising in offices that are not well structured or professionally run, or where the leadership of the office did not foster a safe and respectful workplace. While there will always be variable experiences in workplaces, we consider more can be done through amendments to the MoP(S) Act and operations of the OPSC to embed a consistent application of professional management practices.

The set-up and management of parliamentary offices is largely left to the discretion of parliamentarians and their senior employees. Some contributors to the Review, including parliamentarians, highlighted the challenge of finding themselves managing MoP(S) Act employees, offices and budgets despite having no experience as a people or office manager, or being required to do so with limited corporate support. Unsurprisingly, the Review heard that when parliamentary offices are set up well, fewer human resource issues arise. And when those issues do arise in offices set up well, these issues are quickly responded to and more likely to be resolved.

The Review considers it essential to ensure there is greater upfront investment and support provided in the setup of offices, which starts with thoughtful consideration about office structure and the mix of skills and attributes needed to fulfil the duties of the office and foster a diverse and inclusive team. This will help develop a workforce that reflects the diversity of the Australian community and supports representative democracy.

Related to this, the Review heard about the importance of human resource and budget management responsibilities being assigned to appropriately skilled employees within an office or employees who have the potential to develop these skills through training and development. Position descriptions (based on templates and guidance from the OPSC) should be developed for each position in the context of the office as a whole. The Review considers these not only to be central in providing a mechanism against which to undertake an assessment of a candidate's ability to do the job during recruitment, but to help form the basis of discussions about expectations and performance once an employee is recruited. Parliamentarians and their staff undertaking these functions should be supported to develop their management skills through training, and direct support from the OPSC.

It is critical that all processes be tailored to the parliamentary context, and be able to be implemented in a high pressure, time poor environment, without adding an unwarranted administrative burden. Offices can only be set up for success and maintain safe and respectful environments if the practices and policies developed by the OPSC are consistent with this principle, are therefore fit-for-purpose, and sustainable.

Recruitment

The Review heard a range of views about recruitment for MoP(S) Act employees. We heard about the need for greater transparency, for greater weight to be given to knowledge, skills, experience and attributes when considering the suitability of an individual for a role, and how recruitment processes should be looked at as a main channel for improving the diversity of the MoP(S) Act workforce. The concept of 'merit-based recruitment' elicited views ranging from there being no required process, through to introducing an APS-style merit recruitment process into the MoP(S) Act framework. The Review considers merit recruitment need not require a rigid process, nor a set of criteria for candidates that is incompatible with the day-to-day realities of parliamentary offices, but that some form of process is necessary. The MoP(S) Act should require parliamentarians to recruit staff against specified position

descriptions and undertake an assessment of a candidate's capacity to successfully perform a role. The OPSC should develop policies, guidance and tailored advice to support recruitment practices.

Although not covered by the MoP(S) Act, the Review did hear concerns about support for intermittent labour such as volunteers and interns in parliamentary offices. The Review considers it important to ensure this informal workforce is visible to the system and provided with details of support available in the event of WHS or workplace issues. We therefore recommend that parliamentarians be required to notify the OPSC when any person not engaged under the MoP(S) Act commences working in their office.

Accountabilities, expectations and responsibilities

A recurring theme from the Foster and Jenkins Reviews and throughout these consultations is that a no tolerance approach to poor workplace behaviours needs to be articulated and that eradication of those behaviours needs enduring leadership. Contributors told us about times when they were mistreated at work, or witnessed unacceptable behaviour in their workplace, with those responsible frequently not held to account. For them, the MoP(S) Act employment framework did not provide sufficient guidance or support to employees or employing parliamentarians about the expectations, obligations or responsibilities attached to their roles.

The Review acknowledges issues around unacceptable behaviours and accountability. Significant reform is being made to the overarching MoP(S) Act framework concurrent with, but separate to, this Review. Our recommendations are not intended, in and of themselves, to respond to all of the issues that we heard, but are designed to work alongside the implementation of other recommendations in *Set the Standard* and remedy other gaps in the MoP(S) Act we have identified. In particular, the Review supports the work of the Joint Select Committee on Parliamentary Standards to develop codes of conduct for Commonwealth parliamentary workplaces and recommend options for enforcing these codes; the role of the proposed OPSC, which as part of its cultural change function will also have a role in promoting the codes of conduct; and the establishment of the IPSC to handle investigations of misconduct and enforce codes of conduct.

The Review considers it important for the Act to include express employment principles around the desired and expected workplace culture. These are increasingly common in modern workplaces and can be found in other Commonwealth employment legislation. We heard consistently that parliamentarians, in their role as employers on behalf of the Commonwealth, and MoP(S) Act employees, were unclear on their obligations. The Act should set out the core expectations and obligations of both employing parliamentarians and MoP(S) Act employees in the workplace.

Many contributors talked about a lack of transparency in relation to employment under the MoP(S) Act, and we note that there is no requirement to report publicly on matters relating to the administration of the Act. The sole reporting requirement legislated by the MoP(S) Act is a requirement to report annually

on the engagement of ministerial consultants (who have not been engaged at all since 2006). Annual reports with detailed data on the MoP(S) Act framework were previously tabled in parliament, but this practice ceased in 2013. The current situation is out of step with the accountability and transparency requirements that apply in other areas of Commonwealth employment and expenditure. We note and support the *Set the Standard* recommendations about what the OPSC should report upon annually, and identify additional metrics for the OPSC to consider collecting to provide a transparent account of the MoP(S) Act employment framework.

Employment separation

There is a strong perception – backed up by observed or lived experience – that termination by parliamentarians is too easy and often lacks procedural fairness. Equally we heard concern to ensure that any processes required to be followed to terminate an employee should not be lengthy and onerous, and unworkable in small workplaces. Despite the legislative changes made in February this year (*Parliamentary Workplace Reform (Set the Standard Measures No. 1) Act 2022*) to require the parliamentarian to specify the ground/s for termination in any written termination notice, more support is required for both parliamentarians and staff to ensure that there is (a) a process, and (b) reasons are provided in the termination process. While termination data did not demonstrate a significant issue, we heard staff were reluctant to raise workplace issues out of fear of being terminated. In addition to the support the OPSC can provide to an office to deal with workplace issues early and professionally and educate employers about their obligations, parliamentarians should be required to consult with the OPSC on best practice prior to a termination being effected.

While a lack of procedural fairness was highlighted in the Review, so was the need for parliamentarians to act quickly and efficiently in certain circumstances. For example, where a workplace safety issue arises, an employee may need to be removed from the workplace immediately. Suspension of employment is not expressly provided for nor used in the current MoP(S) framework, although the Review found examples of this in modern workplaces and MoP(S) Act equivalent legislation in other jurisdictions. The Review considers suspension of employees from the workplace presents an alternative to termination which allows both immediate risks to be addressed and enables proper processes to be followed.

The Review also heard sometimes action required to manage a safety risk in the workplace may not be taken. Noting the work, health and safety obligations that the OPSC will have, we propose the OPSC be empowered to suspend an employee in limited circumstances, while proper processes are followed.

We found a general consensus that employees accepted their employment was linked to that of their employing parliamentarian, however, there was also confusion about how provisions in the Act which automatically trigger termination of employment work. The Review has made some technical recommendations to improve the clarity of these provisions.

Linked to the issues around employment security and termination, some contributors raised a lack of support for employees from the moment they cease employment. While we understand that some formal support is available, it is not well understood and considered very hard to access. We anticipate post-employment support being provided by the OPSC, including further consideration around options for redeployment where there has been a relationship breakdown, and potential linkages with opportunities within the Australian Public Service.

Review of Act in context of broader structural reforms

Implementation of the Review recommendations is likely to occur in parallel with the development of broader structural reforms such as the establishment of the OPSC, IPSC and codes of conduct. While care is being taken by PM&C to make these processes as complementary as possible, the success and impact of the changes are unlikely to be fully recognised until after the 18 month review recommended by *Set the Standard* (Recommendation 3). We consider it prudent to review the operation and effectiveness of the legislative amendments within five years of amendments to the Act.

Recommendations

Recommendation 1 – Employee categories

The MoP(S) Act should be simplified by merging Parts III (Staff of office-holders) and IV (Staff of Senators and Members) into one part and reflecting three categories of MoP(S) employees: electorate employees; personal employees – ministerial; and personal employees – other.

Recommendation 2 – Employer duties

The MoP(S) Act should provide greater clarity over employment roles and responsibilities by setting out the specific duties of parliamentarians, the OPSC and the Prime Minister, and include an express power to delegate. The OPSC should have powers to require specified training, and report on the administration of the Act.

Recommendation 3 – Resourcing of parliamentary offices

The OPSC should undertake a review of the factors affecting workloads, particularly in electorate offices, including support systems and processes, and external factors such as the adequacy of government services and electorate composition, to inform an evidence-based consideration of office and staffing resources. The review should recommend principles to be considered by the Prime Minister in determining staffing allocations.

Recommendation 4 – Transparency of staffing allocations

The MoP(S) Act should be amended to require the allocation of staff to be transparent through annual reporting arrangements.

Recommendation 5 – Modernising the Act

The MoP(S) Act should be modernised by including an objects clause to reflect the purposes of the Act, and amending provisions relating to superannuation and consultants to better reflect contemporary settings.

Recommendation 6 – Increase transparency for terms and conditions

Transparency of employment arrangements should be enhanced by including in the MoP(S) Act:

- A. a requirement that determinations made under the MoP(S) Act about terms and conditions be published except in circumstances where individuals may reasonably be identified
- B. a provision for the continuity of employment and employer powers when a seat becomes vacant, including between the date of dissolution of parliament and the date a poll is declared.

Recommendation 7 – Recruitment

The MoP(S) Act should require parliamentarians to recruit staff against specified position descriptions and undertake an assessment of a candidate's capacity to successfully perform the prescribed role. The OPSC should develop policies and guidance to support this, including consideration of the use of self-declarations and pre-engagement checks.

Recommendation 8 – Work health and safety of non-MoP(S) workers

Visibility and protection of non-MoP(S) Act workers should be increased by requiring parliamentarians to notify the OPSC when any person not engaged under the MoP(S) Act commences working in their office (e.g. volunteers and interns).

Recommendation 9 – Employment principles

The MoP(S) Act should be amended to include employment principles to professionalise the employment framework and provide legislative support to underpin broader implementation of the recommendations made in *Set the Standard* and this Review.

Recommendation 10 – Parliamentary obligations

The MoP(S) Act should list the requirements of a parliamentarian as employer, including to: provide a safe and respectful workplace; make recruitment decisions based on an assessment of capability and provide procedural fairness in termination.

Recommendation 11 – Employee obligations

The MoP(S) Act should list the requirements of an employee including to: contribute to a safe and respectful workplace; act in accordance with any applicable codes of conduct; and exercise delegations in accordance with legal obligations.

Recommendation 12 – Annual reporting

The OPSC should collect the information identified in Recommendations 7 and 19 of *Set the Standard* and any additional data required to provide a transparent account of the MoP(S) Act employment framework in its annual report to Parliament.

Recommendation 13 – Termination

The MoP(S) Act should be amended to improve the certainty and fairness of termination processes, including provisions that:

- A. a parliamentarian must consult the OPSC on best practice prior to effecting any termination
- B. the employing parliamentarian may suspend the employment of a MoP(S) Act employee
- C. the OPSC may suspend the employment of a MoP(S) Act employee in cases of immediate risk, including on advice from the Independent Parliamentary Standards Commission.

Recommendation 14 – Automatic termination provisions

The automatic terminations provisions in the MoP(S) Act should be amended to improve job security and increase clarity for staff by:

- A. retaining the existing high level automatic terminations triggers, but allowing for determinations to clarify specific circumstances
- B. providing that automatic termination provisions for electorate staff employed under Part III only apply where the employing parliamentarian ceases to have a personal staffing allocation.

Recommendation 15 – Five year review

The MoP(S) Act should be reviewed for effectiveness, in the context of broader changes to the parliamentary workplace, within five years of the amendments to the Act.

1 Introduction

1.1 Context and scope

The then Prime Minister the Hon Scott Morrison MP commissioned the Department of the Prime Minister and Cabinet (PM&C) to undertake a review of the *Members of Parliament (Staff) Act 1984* (MoP(S) Act) (Review) on 10 February 2022.

This was in response to Sex Discrimination Commissioner Kate Jenkins' recommendation in the Australian Human Rights Commission report *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces (Set the Standard)* that the Australian Government undertake a 'comprehensive review of the MoP(S) Act employment framework to reduce complexity, increase clarity and ensure consistency with modern employment frameworks'.²

The objective of the Review, as identified in the terms of reference,³ is 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
 - prevent bullying, harassment, sexual harassment and sexual assault and address its impacts according to best practice.

The terms of reference ask PM&C to consider:

- the recruitment of MoP(S) Act employees, including transparency of arrangements, the use of merit-based recruitment, and pre-engagement checks
- procedural fairness for the terms, conditions, and termination of employees and employers under the MoP(S) Act
- the responsibilities, expectations, and accountability of MoP(S) Act employees
- appropriate public reporting and accountability of the administration of the MoP(S) Act

In accordance with the terms of reference, the Review considers only the terms and conditions of employment legislated under the MoP(S) Act, but has regard to other legislation where relevant.

The terms of reference require a final written report to be provided to the Prime Minister by 30 September 2022.

² Ibid.

³ Department of the Prime Minister and Cabinet, *Review of the Members of Parliament (Staff) Act 1984 (Cth) Terms of Reference* (2022), <https://www.pmc.gov.au/government/review-members-parliament-staff-mops-act-1984-0>, 1, accessed 30 September 2022.

For the purposes of this Review, the MoP(S) Act framework includes the MoP(S) Act itself in addition to the instruments, determinations and policies flowing from it. While the exact terms and conditions of the Commonwealth Members of Parliament Staff Enterprise Agreement 2020-23 (EA) are considered to be out of scope, we note any changes to the MoP(S) Act are likely to impact upon the next EA.

In addition, although the Review team heard concerns from stakeholders around aspects of their broader employment landscape – for example, covered under the *Parliamentary Business Resources Act 2017* – these aspects were largely out of scope of this Review.

The full terms of reference are available at **Appendix 8.2**.

The Review covers all employees of parliamentarians, from casual through to full-time, non-ongoing to ongoing, including those of office-holders under Part III of the MoP(S) Act and those of Senators and Members under Part IV. Although much of the publicity around MoP(S) Act employees in recent years has focused on ministerial advisers, and other personal staffing positions, electorate officers (employed predominantly under Part IV of the MoP(S) Act) are the larger cohort. This Review considers all types of MoP(S) Act employees.

As at 1 August 2022,⁴ approximately 1,753 employees were engaged under the MoP(S) Act:

- 1,708 employees are engaged by parliamentarians (151 members of the House of Representatives and 76 senators)
- 21 employees are engaged by former Prime Ministers no longer in parliament, and
- 24 employees engaged at official residences.⁵

These employees, and their workplaces, are geographically dispersed across Australia. Of the 1,708 engaged by parliamentarians, 68 per cent are electorate staff and 32 per cent are personal staff. Sixty-four per cent are full-time ongoing, 14 per cent part-time ongoing, 7 per cent part-time non-ongoing, 10 per cent part-time non-ongoing, and 6 per cent casual staff.

1.2 The case for the review

As *Set the Standard* highlights, there has been no review of the MoP(S) Act since it was enacted in 1984.⁶ In that time the MoP(S) workforce has grown and the role of employees has changed significantly.

Set the Standard identified issues on the complexity and clarity of the employment framework including:

⁴ As at 1 August 2022, supplied by the Department of Finance.

⁵ Official residences includes The Lodge and Kirribilli House. As at 1 August 2022 there are 24 predominantly casual staff, supplied by the High Office Support Team, PM&C. Staff are managed by PM&C, operate under a separate MoP(S) Act determination and are not covered by the EA.

⁶ AHRC, *Set the Standard*, 210.

- lack of clarity about who is the employer on behalf of the Commonwealth (that is, the parliamentarian or the Department of Finance (Finance))
- lack of clarity as to the roles of the parliamentarian, Finance, and other parliamentary bodies in relation to workplace matters like work health and safety (WHS)
- the belief that employment-related legislation (for example, *Fair Work Act* (FW Act), *Work Health and Safety Act 2011*, and Commonwealth anti-discrimination legislation) doesn't apply to staff employed under the MoP(S) Act
- lack of awareness of determinations made under the MoP(S) legislation framework, both publicly available and not.

Set the Standard also highlights the lack of consistency between MoP(S) Act employment and modern employment frameworks which was a focus of the Review team's work, including but not limited to:

- other federal Commonwealth employment frameworks (e.g. *Public Service Act 1999*, *Parliamentary Service Act 1999*)
- other federal employment legislation (e.g. FW Act)
- employment frameworks in Australian State and Territory jurisdictions
- employment frameworks in Westminster democracies (United Kingdom, New Zealand, Canada)
- employment in the Australian private sector.

The following themes emerged during the Review, loosely in order of frequency raised:

- merit based recruitment
- culture and conflict in the workplace
- handling of complaints
- the accessibility and effectiveness of HR support
- training
- staffing allocations
- termination
- accountability
- workload
- employment framework.

There are also two underlying themes in what we heard which were also identified in *Set the Standard*. The first is the power imbalance between MoP(S) Act employees and parliamentarians. The second is the importance of leadership, by both parliamentarians and others, in making positive cultural change.

This Review, through its recommendations, seeks to put in place processes which acknowledge this imbalance and mitigate the impacts on staff.

The high turnover of MoP(S) Act employees presents both an opportunity and a challenge for embedding cultural change. Both short and long term strategies will be needed. As one contributor to

the Review indicated, many employees are seen to be ‘politicians in training’, and setting frameworks and culture correctly at an early stage in their career could translate to systemic improvements over the longer term if these employees return to parliament as employers in the future.

While the Review heard about negative experiences in MoP(S) Act employment, we also heard about MoP(S) Act employees’ positive experiences.

1.3 Interdependencies with *Set the Standard*

This Review looks comprehensively at the MoP(S) Act framework, as outlined in the terms of reference. *Set the Standard* also recommends initiatives that go to the same objectives. These recommendations are being implemented by a range of bodies. The Review team has assumed those recommendations will be implemented in line with *Set the Standard* and presents them as part of the proposed future state.

For example, this Review refers to the roles and functions of the proposed Office of Parliamentarian Staffing and Culture (OPSC) in accordance with Recommendation 11 of *Set the Standard*, and the proposed Independent Parliamentary Standards Commission (IPSC), in accordance with Recommendation 22 of *Set the Standard*. The IPSC is expected to be the formal complaints mechanism for breaches of codes of conduct for parliamentary workplaces. Currently, this function is undertaken by the Parliamentary Workplace Support Service (PWSS) for complaints of workplace misconduct involving MoP(S) Act staff or parliamentarians.

The IPSC is expected to be established following the Joint Select Committee on Parliamentary Standards’ consideration of matters relating to the development of codes of conduct for Commonwealth Parliamentary Workplaces (Recommendation 21 of *Set the Standard*). The Committee is due to report to parliament by 1 December 2022, including on its consideration of the development of a code or codes of conduct for parliamentarians, parliamentary staff and the parliamentary precincts.

The codes of conduct, in particular the MoP(S) Act employee Code of Conduct which *Set the Standard* recommends should form part of the MoP(S) Act, will be an important part of the future employment landscape. Given that the Committee reports after this Review, we refer to it where relevant, and indicate where implementation of our recommendations may need to take account of any codes settled.

We provide more detail about the OPSC below, given our frequent references to it in the Review and the central role we see it occupying in the future MoP(S) Act employment framework.

1.3.1 The OPSC

The establishment of the OPSC is one of the key structural reforms that the *Set the Standard* recommends to build a professionalised, safer, supportive and respectful workplace. The OPSC is

intended to support parliamentarians and their staff by providing centralised human resources support with a focus on policy development, training, advice and support, and education.

The OPSC is intended to address the following issues identified in the *Set the Standard Report* as currently present in the parliamentary workplace:

- a complex framework for HR services
- lack of clear authorising environment
- loss of confidence in existing HR services.

The central objective of the OPSC is to assist parliamentarians and their staff to build and maintain a workplace that is safe, supportive, respectful, professional and high performing. It will provide advice and education to parliamentarians and MoP(S) Act employees, undertake strategic HR initiatives, improve culture and diversity and be a central hub for operational HR support.

1.4 Methodology

The Review sought public submissions, interviewed a range of stakeholders, and surveyed current and former parliamentarians and MoP(S) Act employees. The Review also considered public submissions to other recent reviews, like *Set the Standard*.

Public submissions opened on PM&C's website on 28 February 2022 and closed on 1 July 2022. This period included two extensions of time, which were considered appropriate given the 2022 federal election.

The Review team engaged with both targeted stakeholders and those who nominated themselves for interview through a general request to current and former parliamentarians and MoP(S) employees.

Finally, PM&C arranged for a short survey to be sent to current and former MoP(S) Act parliamentarians and employees. The survey reached a larger number of people and gathered a broad range of views.

We want to sincerely thank everyone who contributed to this Review. In summary, the Review drew on:

- 47 submissions
- 39 interviews
- 33 targeted stakeholder engagements
- a staff consultation session with representatives invited from across parties and staffing levels
- 388 survey responses from current and former parliamentarians and MoP(S) Act employees.

Further detail on the methodology used in this Review is available at **Appendix 8.3**.

2 Employment framework

2.1 Introduction

The MoP(S) Act is a relatively short piece of legislation and sets out only part of the terms and conditions of MoP(S) Act employment. The Review considers the Act in the context of its history and relationship with other Acts, instruments and mechanisms.

This chapter covers:

- the history of the MoP(S) Act
- key features of the MoP(S) Act employment framework.

2.2 History of the MoP(S) Act

The MoP(S) Act commenced in 1984. Prior to the Act, senators and members engaged personal staff (including private secretaries for ministers and the Leader of the Opposition in both houses of parliament⁷) using temporary employment provisions in the *Public Service Act 1922*⁸ or by private contractual arrangements.⁹ Decisions regarding staff engagement were made by officials in the then Department of the Special Minister of State.¹⁰

A number of reviews into government administration recommended that special arrangements be developed for the employment of ministerial staff.¹¹ The Government at the time expressed the need for ministers to have assistance in key projects from people who shared the government's values and objectives¹² as opposed to apolitical public servants.

⁷ Ian Holland, *Members of Parliament (Staff) Act: Accountability Issues* (Research Note No. 5, 2002-03, Parliamentary Library, Parliament of Australia, 20 August 2002), 1, [https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/OJM76/upload_binary/ojm766.pdf;fileType=application%2Fpdf#search=%22Members%20of%20Parliament%20\(Staff\)%20%20Employment%20Issues%22](https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/OJM76/upload_binary/ojm766.pdf;fileType=application%2Fpdf#search=%22Members%20of%20Parliament%20(Staff)%20%20Employment%20Issues%22), accessed 24 August 2022.

⁸ *Public Service Act 1922* (Cth) (PS Act), s 48A.

⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 9 May 1984, 2150 (Mr John Dawkins MP, Minister for Finance and Minister Assisting the Prime Minister for Public Service Matters).

¹⁰ *Submission 42*, 2.

¹¹ Legislative Research Service, *Members of Parliament (Staff) Bill 1984* (Bills Digest 84/73, Parliamentary Library, Parliament of Australia, 24 May 1984).

¹² *Parliamentary Debates*, House of Representatives, 9 May 1984 (Mr Dawkins MP).

The *Members of Parliament (Staff) Bill 1984* was introduced as part of a legislative package aimed at improving the responsiveness of the public service to government priorities, improving equity within the workforce and enhancing efficiency.¹³

The MoP(S) Act created a legislative basis for parliamentarians to engage employees separate from the public service and consultants to assist with their electorate, parliamentary and ministerial work. Flexibility was expressly built into the MoP(S) Act to allow parliamentarians to hire staff to meet the 'volatile and partisan nature of political office' and to adapt and respond to changing needs.¹⁴ Employment terms and conditions could be varied by the Prime Minister.

2.2.1 Review of the MoP(S) Act

Since the commencement of the MoP(S) Act, the political, legislative, employment, and social landscape has evolved. There have also been significant reforms to workplace relations laws, work health and safety law, anti-discrimination laws, superannuation legislation, and the public service legislative framework.

In the last 20 years, review and inquiry bodies have considered:

- the accountability of ministerial advisers engaged under the MoP(S) Act and their interaction with public servants¹⁵
- the adequacy and appropriateness of the framework for employment, management and accountability of MoP(S) Act employees¹⁶
- the effectiveness of Finance's administration and support of staff employed under the MoP(S) Act¹⁷
- the appropriate number, classification and role of MoP(S) Act personal staff in the office of ministers and parliamentary secretaries¹⁸

¹³ Elaine Thompson, 'Democracy Undermined: Reforms to the Australian Public Service from Whitlam to Hawke', *The Australian Quarterly*, 63/2 (1991), 129; Second Reading Speech, Public Service Reform Bill 1984 (Cth).

¹⁴ Ian Holland, *Members of Parliament (Staff) Act: Background* (Research Paper No. 14, 2002-03, Parliamentary Library, Parliament of Australia, 15 October 2002), 1, https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/NJM76/upload_binary/njm765.pdf;fileType=application%2Fpdf#search=%22library/prspub/NJM76%22, accessed 24 August 2022.

¹⁵ Senate Select Committee of a Certain Maritime Incident, Australian Senate, *A Certain Maritime Incident* (2002).

¹⁶ Senate Standing Finance and Public Administration References Committee (Senate FPA Committee), Parliament of Australia, *Staff employed under the Members of Parliament (Staff) Act 1984* (2003).

¹⁷ Australian National Audit Office, *Administration of Staff Employed Under the Members of Parliament (Staff) Act 1984*, Report No. 15 of 2003-04 (2003), <https://www.anao.gov.au/work/performance-audit/administration-staff-employed-under-members-parliament-staff-act-1984>, accessed on 30 September 2022.

¹⁸ Anne Henderson, *Review of Government Staffing* (24 February 2009).

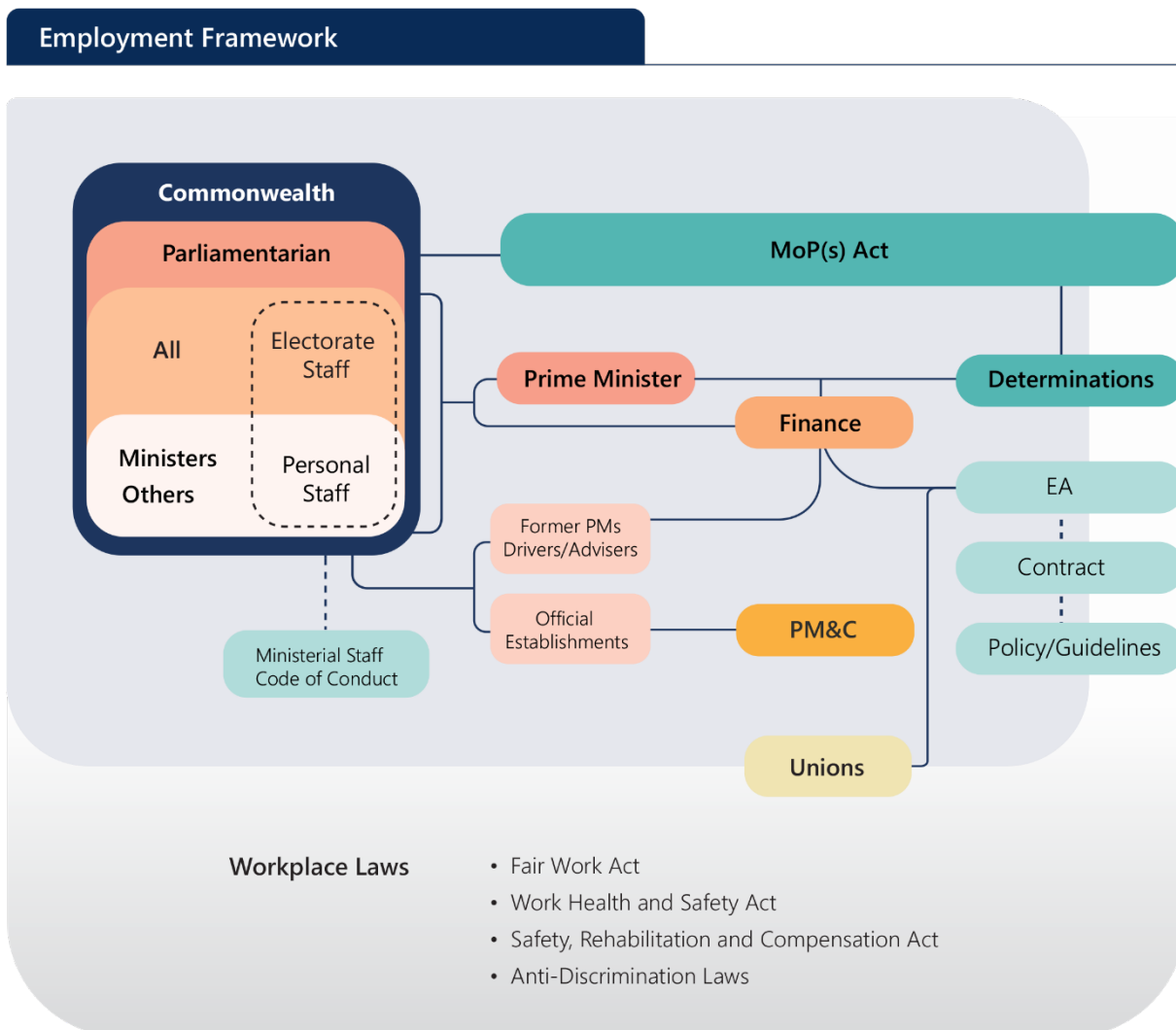
- the importance of effective partnerships between ministers, their staff and the public service, as well as clarity around roles, needs and responsibilities.¹⁹

Despite this focus on the role of MoP(S) Act employees, there has been minimal amendment to the MoP(S) Act during this period.

2.3 The current MoP(S) Act framework

MoP(S) Act employees draw their employment terms and conditions from multiple sources, including the Act itself, determinations made under the Act, the EA, employment contracts and workplace policies. While complex, this is not dissimilar to other employment arrangements across the Commonwealth.

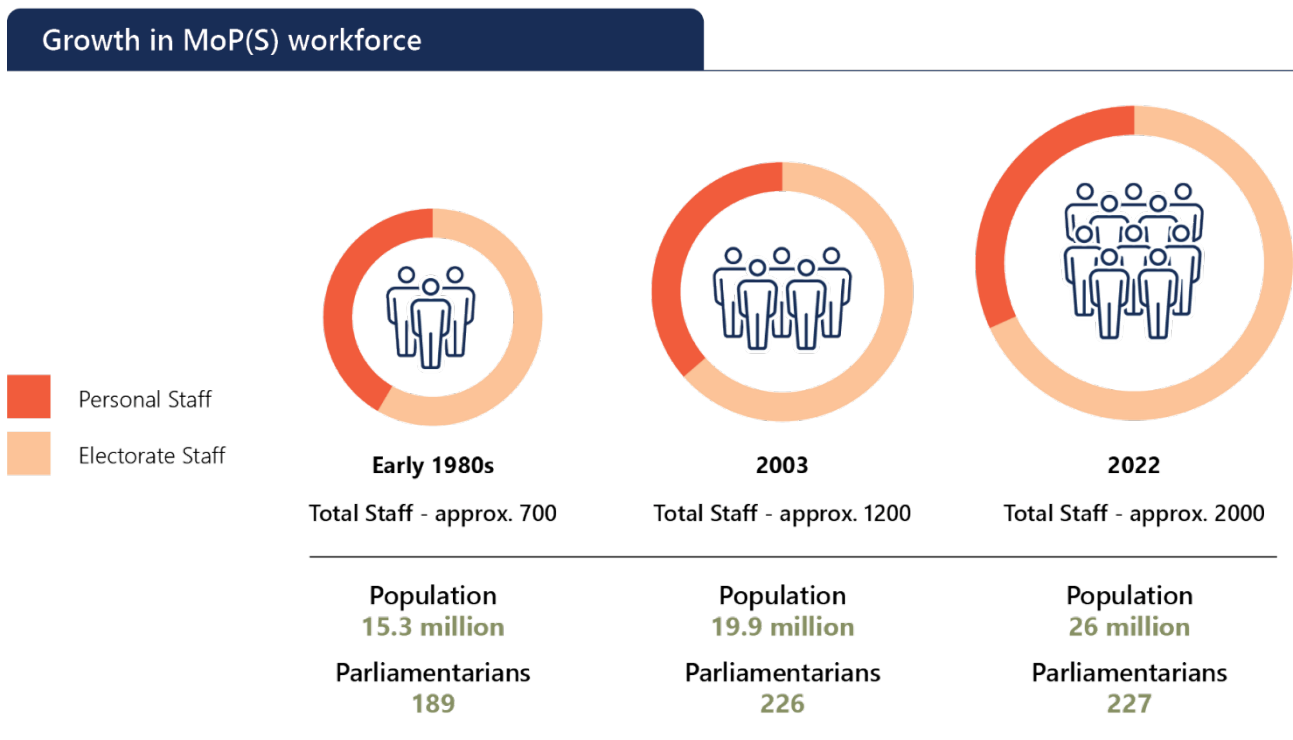
Figure 1.



¹⁹ Department of the Prime Minister and Cabinet, *Our Public Service, Our Future, Independent Review of the Australian Public Service* (2019) 35, <https://www.pmc.gov.au/sites/default/files/publications/independent-review-aps.pdf>, accessed 30 September 2022.

The MoP(S) Act workforce has grown steadily since the commencement of the Act in 1984 (see Figure 2).

Figure 2.



2.3.1 The MoP(S) Act

The MoP(S) Act is made up of five parts:²⁰

- preliminary
- ministerial consultants
- staff of office-holders
- staff of Senators and Members
- miscellaneous.

The legislation is a slim 35 pages covering only 23 operative provisions. Parts of the Act are duplicative, especially Parts III and IV. While there is provision for regulations to be made,²¹ there are none.²² The following table sets out the operation of the different parts of the MoP(S) Act.

²⁰ 'Part V – Reintegration Assessment Committees' was repealed in 1984. It created a formal assessment panel to determine the level at which public servants seconded to parliamentarian offices would be reintegrated into the Public Service upon completion of their MoP(S) Act engagement. It also extended the operation of the *Public Service Arbitration Act 1920* and jurisdiction of the then Conciliation and Arbitration Commission to MoP(S) Act employees, per Explanatory Memorandum.

²¹ *Members of Parliament (Staff) Act 1984* (Cth) (MoP(S) Act), s 33.

²² Previous Regulations were made in 1984 regarding matters in Part V of the Act, and repealed in 1985.

PARTS OF THE ACT													
	<table border="1"> <thead> <tr> <th>Part I - Preliminary</th> <th>Part II - Ministerial consultants</th> </tr> </thead> <tbody> <tr> <td> <p>What it does</p> <p>Sets out the interpretations for the MoP(S) Act including definition of office-holder:</p> <p>Section 3: An 'office-holder' is:</p> <ul style="list-style-type: none"> • a person who holds a 'relevant office' (a defined term including: minister, Leader of the Opposition in Senate and HOR, Deputy Leader of the Opposition in Senate and HOR, leader/deputy leader of a recognised political party. • ex-PMs • a person determined by the PM to be an office-holder <p>New provision 3A about the relationship with the FW Act - added post <i>Set the Standard</i></p> </td> <td> <p>Governs the engagement of consultants (persons or companies) by ministers and department secretaries, subject to approval of the Prime Minister.²³</p> <p>Engagement by ministers (subsections 4(2)(a) and 4(2)(b)):</p> <ul style="list-style-type: none"> • 1983 to 1996: common for consultants to be engaged by ministers • 1996 to 2007: only the Prime Minister engaged consultants • Ministerial consultants have not been engaged since 2006. <p>Engagement by minister, to work under departmental secretary supervision (subsections 4(2)(c) and 4(2)(d)) occurred occasionally between 1984 and 1993.</p> </td> </tr> <tr> <th>Part III - Staff of office-holders</th> <th>Part IV - Staff of Senators and Members</th> </tr> <tr> <td> <p>What it does</p> <p>12 – Prime Minister can make determination to empower a Senator or Member to employ staff under Part III</p> <p>13 – Office-holders may employ staff in accordance with arrangements approved by the PM, and subject to any conditions determined by the PM.</p> <p>14 – Terms and conditions of employment</p> <p>15 – Superannuation</p> <p>16 – Termination</p> <p>19 – Power to employ electorate staff under Part IV not affected</p> </td> <td> <p>20 - Senator and Member may employ staff in accordance with arrangements approved by the PM, and subject to any conditions determined by the PM.</p> <p>21 – Terms and conditions of employment</p> <p>22 – Superannuation</p> <p>23 – Termination</p> </td> </tr> <tr> <th>Part VI Miscellaneous</th> <td></td> </tr> <tr> <td> <p>What it does</p> <p>Sets out miscellaneous provisions relating to: the requirement for annual reporting of consultants; parliamentary power to authorise others to exercise their powers under the MoP(S) Act; and provides for the making of regulations.</p> </td> <td></td> </tr> </tbody> </table>	Part I - Preliminary	Part II - Ministerial consultants	<p>What it does</p> <p>Sets out the interpretations for the MoP(S) Act including definition of office-holder:</p> <p>Section 3: An 'office-holder' is:</p> <ul style="list-style-type: none"> • a person who holds a 'relevant office' (a defined term including: minister, Leader of the Opposition in Senate and HOR, Deputy Leader of the Opposition in Senate and HOR, leader/deputy leader of a recognised political party. • ex-PMs • a person determined by the PM to be an office-holder <p>New provision 3A about the relationship with the FW Act - added post <i>Set the Standard</i></p>	<p>Governs the engagement of consultants (persons or companies) by ministers and department secretaries, subject to approval of the Prime Minister.²³</p> <p>Engagement by ministers (subsections 4(2)(a) and 4(2)(b)):</p> <ul style="list-style-type: none"> • 1983 to 1996: common for consultants to be engaged by ministers • 1996 to 2007: only the Prime Minister engaged consultants • Ministerial consultants have not been engaged since 2006. <p>Engagement by minister, to work under departmental secretary supervision (subsections 4(2)(c) and 4(2)(d)) occurred occasionally between 1984 and 1993.</p>	Part III - Staff of office-holders	Part IV - Staff of Senators and Members	<p>What it does</p> <p>12 – Prime Minister can make determination to empower a Senator or Member to employ staff under Part III</p> <p>13 – Office-holders may employ staff in accordance with arrangements approved by the PM, and subject to any conditions determined by the PM.</p> <p>14 – Terms and conditions of employment</p> <p>15 – Superannuation</p> <p>16 – Termination</p> <p>19 – Power to employ electorate staff under Part IV not affected</p>	<p>20 - Senator and Member may employ staff in accordance with arrangements approved by the PM, and subject to any conditions determined by the PM.</p> <p>21 – Terms and conditions of employment</p> <p>22 – Superannuation</p> <p>23 – Termination</p>	Part VI Miscellaneous		<p>What it does</p> <p>Sets out miscellaneous provisions relating to: the requirement for annual reporting of consultants; parliamentary power to authorise others to exercise their powers under the MoP(S) Act; and provides for the making of regulations.</p>	
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²³ A Canberra Times article at the time indicated the consultants would be employed in 'limited numbers' and subject to Cabinet approval: Beverley Miller, 'PS reform Bills introduced', *The Canberra Times*, 10 May 1984, 13, in Trove [online database], accessed 27 September 2022.

2.3.2 Determinations

The Prime Minister has powers to determine conditions and arrangements relating to the employment of staff,²⁴ and their terms and conditions of employment²⁵ (except for some matters related to superannuation²⁶ and termination²⁷). Determinations are not required to be tabled in parliament or be published. This protects the privacy of individuals in some cases.

Under the MoP(S) Act, determinations can be made with regard to the matters listed in the table.

	Office-holders (Part III)	Senators and Members (Part IV)	Consultant (Part II)
Determining non-prescribed Senators and Members as office-holders	section 12	n/a	n/a
Arrangements for, and any conditions upon, employing staff	subsection 13(2)	subsection 20(2)	n/a
Setting terms and conditions of employment/engagement	subsection 14(3)	subsection 21(3)	section 5
Deferring the date of automatic termination	subsection 18(5)	subsection 23(4)	subsection 9(5)

The bulk of determinations made under the MoP(S) Act relate to individuals and their terms and conditions, particularly the deferral of termination dates. The number of determinations made each year is contingent on a number of factors, including automatic termination events and changes in office-holders. Over the period 2016-22, the number of determinations made annually averages between 20 and 30. After an election, the number of determinations tends to increase to reflect both staffing allocation, and deferral periods and terminations. These types of determination are generally not published.²⁸

In practice, the Prime Minister authorises a minister (usually the Special Minister of State (SMOS)), or occasionally the Finance Minister) to make determinations and to administer the terms and conditions of employment for most MoP(S) Act employees.²⁹

²⁴ MoP(S) Act, ss 12-13, 20.

²⁵ Ibid, ss 14 and 21.

²⁶ Ibid, ss 15 and 22.

²⁷ Ibid, ss 16 and 23.

²⁸ *Legislation (Exemptions and Other Matters) Regulation 2015* (Cth), reg 6, item 10.

²⁹ This has been the case since 1984. Authorisation is provided by way of a letter authorising the SMOS or any Minister acting in this capacity. For each new SMOS, the Prime Minister provides a new letter of authorisation.

Terms and conditions of employment for employees of The Lodge and Kirribilli House (Official Establishments) are set by determination of an authorised officer in PM&C.³⁰ These largely mirror the terms and conditions in the EA.³¹

2.3.3 Enterprise Agreement

The EA is an agreement between the Commonwealth (as the ultimate employer, signed by the Finance Minister) and MoP(S) Act employees³² and made under Part 2-4 of the FW Act. The current agreement commenced on 5 August 2021 and will run for three years.³³

The EA includes employment terms and conditions for electorate staff³⁴ and personal staff.³⁵ MoP(S) Act employees are remunerated through a combination of base salary, allowances and entitlements.

Terms and conditions covered by the EA include:

- o types of employment (e.g. ongoing, non-ongoing, casual, full-time and part-time)
- o position classifications
- o salaries and pay rises
- o allowances
- o relocations
- o working hours
- o leave entitlements
- o learning and development arrangements
- o allowances and payments when employment ends.

2.3.4 Contract

MoP(S) Act employees are required to enter into a written employment contract with their employing parliamentarian, on behalf of the Commonwealth.³⁶

The contract sets out details including the classification, salary, some employment terms and conditions, commencement date, whether a police check is required, probation, and work pattern/hours. Pro forma contracts are issued by Finance's Ministerial and Parliamentary Services Division (MaPS).

Contracts can be varied, for example following a change in ordinary hours of duty, or for specific terms under an Individual Flexibility Arrangement.³⁷ Alternatively, new contracts may be required where

³⁰ MoP(S) Act, s32; Department of the Prime Minister and Cabinet, *Prime Minister's Official Establishments Employees Determination 2020-2023* (12 October 2020).

³¹ Information provided by High Office Support Team, PM&C; *Submission 42*, 3.

³² The EA was signed by the Minister for Finance, an employee bargaining representative, and representatives of employees in June 2021.

³³ *Commonwealth Members of Parliament Staff Enterprise Agreement 2020-23* (EA) [online document], (3 August 2022) <https://maps.finance.gov.au/sites/default/files/2020-12/MOPS%20Enterprise%20Agreement%202020-23%20FINAL.pdf>, accessed 27 September 2022. The Review notes the EA may need to be varied as a consequence of any amendment to the MoP(S) Act.

³⁴ By position: Electorate Officer A, B and C.

³⁵ By position: Senior Staff (Principal Adviser, Chief of Staff, Senior Adviser, Senior Media Adviser), Government and Non-Government (Adviser, Media Adviser, Assistant Adviser, Executive Assistant/ Office Manager, Secretary/Administrative Assistant).

³⁶ The Act requires a written employment agreement: MoP(S) Act, ss 13 and 20.

³⁷ MaPS has indicated IFAs are not common.

employment classification changes, to vary the engagement of a casual, or if there is change in employment authority (such as a Part III to Part IV).

MoP(S) Act employees working in Official Establishments enter into fixed-term contracts with the Prime Minister, on behalf of the Commonwealth.

2.3.5 Workplace policies and guidelines

A number of workplace policies and guidance apply to MoP(S) Act employees. These are binding only insofar as a determination, a term of the employment contract or the EA requires compliance with a policy or guideline as a term and condition of employment. For example, 'Leave and public holidays', 'Part-time work' and 'Working from home' guidelines.

2.3.6 Workplace Laws

The MoP(S) Act employment framework is overlaid by statutory regimes set out in the FW Act, *Safety Rehabilitation and Compensation Act 1988*, the *Work Health and Safety Act 2011* (WHS Act) and Commonwealth anti-discrimination legislation.

The application of these statutes to the MoP(S) Act employment framework has been recently clarified. The *Parliamentary Workplace Reform (Set the Standard Measures No. 1) Act 2022* implemented the following measures recommended in *Set the Standard*:

- the MoP(S) Act was amended to provide that written notice must be given to an employee specifying the grounds for termination of employment, and to clarify that existing legislative requirements apply to the termination of employment of MoP(S) Act employees, including the FW Act and anti-discrimination laws³⁸
- the WHS Act was amended to clarify that senators and members owe duties as officers of a person conducting a business or undertaking (PCBU) under the MoP(S) Act³⁹
- the *Age Discrimination Act 2004* and the *Disability Discrimination Act 1992* were amended to clarify these laws apply to staff employed or engaged under the MoP(S) Act.⁴⁰

³⁸ AHRC, *Set the Standard*, 23 (Recommendation 17(a) and (b)).

³⁹ Ibid, Recommendation 17(c).

⁴⁰ Ibid, 26 (Recommendation 24).

3 Modernising the framework

3.1 Introduction

The Review identifies opportunities to reduce complexity, increase clarity and promote the consistency of the MoP(S) Act employment framework with modern employment frameworks. We recommend both structural and 'tidy up' changes relating to different categories of employees and to recognise the likely roles of the proposed OPSC and IPSC.

This chapter covers:

- staff categories under the MoP(S) Act
- the employment model
- workplace resourcing including staffing allocations
- other legislative amendments for clarity and consistency.

3.2 Staff categories under the MoP(S) Act

The definition and treatment of categories of employees under the MoP(S) Act is complex.

MoP(S) Act employees are engaged under either Part III or Part IV of the MoP(S) Act, depending on the role of the employing parliamentarian. The two parts are duplicative, with Part IV (Staff of Senators and Members) largely mirroring Part III (Staff of office-holders). The explanatory memorandum and second reading speech do not explain why the legislation was drafted in this way.

Part III or Part IV of the MoP(S) Act do not clearly distinguish between categories of staff. Electorate staff can be covered under either part depending on the role of the employing parliamentarian. Further, if the role of the employing parliamentarian changes (such as becoming an office-holder) electorate staff may need to sign a new contract if the legislative power under which they can be employed changes.

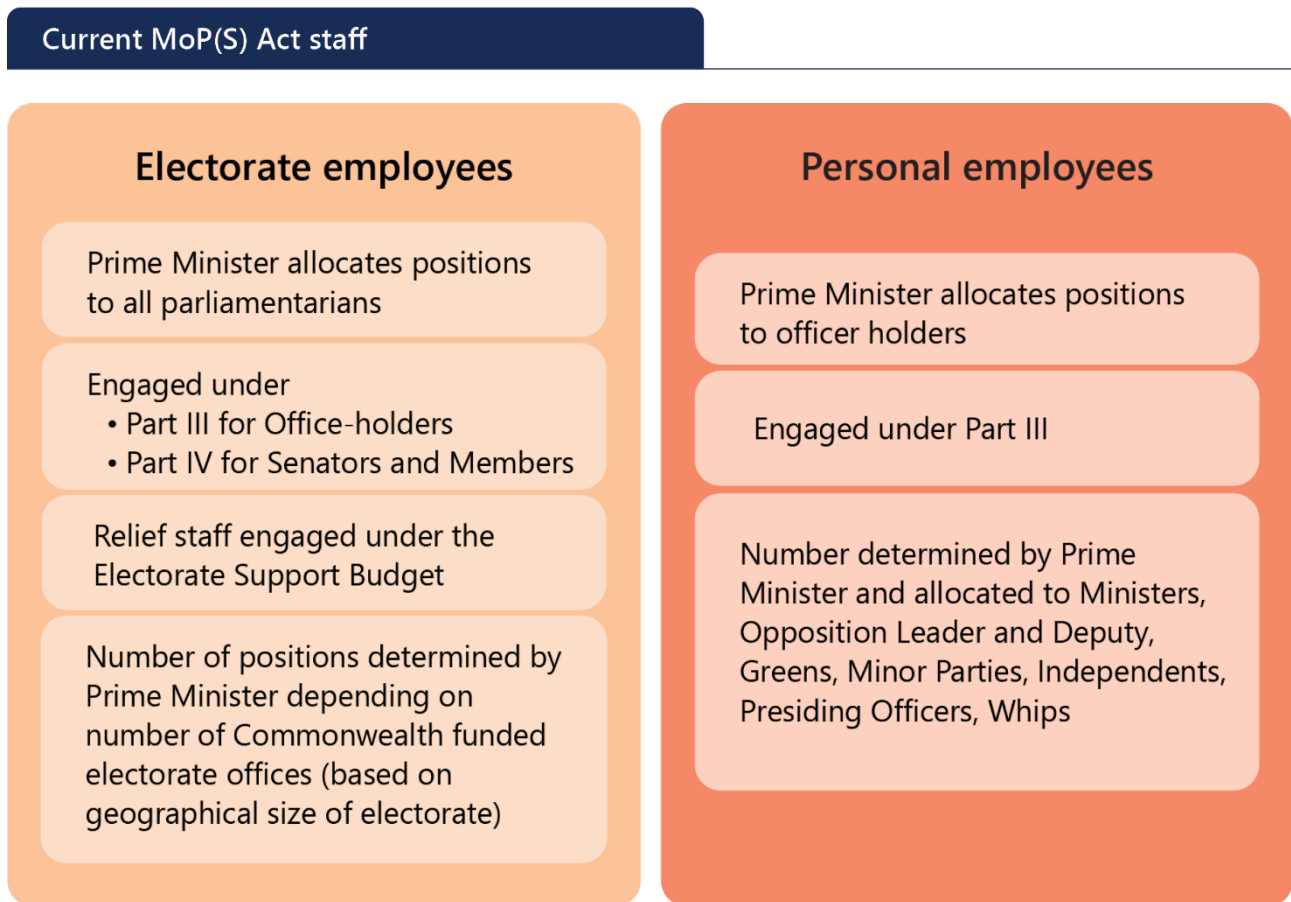
Similarly, the automatic termination of employment triggers differ between the two parts (see Section 6.5.1).

3.2.1 Current situation

MoP(S) Act employees fall into two broad categories known as 'electorate staff' (used interchangeably with the terms 'electorate officers', and 'electorate employees' in this report) and 'personal staff' (also referred to as 'personal employees' in this report).⁴¹

⁴¹ This does not include personal staff employed in official residences under the MoP(S) Act.

Figure 3.



Other staff working in the offices of parliamentarians who do not come under the MoP(S) Act framework include interns, volunteers, and APS officers such as Departmental Liaison Officers.

Electorate staff

Electorate staff are responsible for managing the parliamentarian’s office in their electorate, liaising with constituents and providing (non-party political) support to the parliamentarian. For a discussion on party political activity, see Section 5.3.3. All parliamentarians have the power to hire electorate staff on behalf of the Commonwealth, subject to arrangements and conditions (such as number of positions and office composition) determined by the Prime Minister.⁴² Ministers and Opposition office-holders hire electorate staff under Part III of the MoP(S) Act, and all other parliamentarians (including other office-holders) hire electorate staff under Part IV of the MoP(S) Act.

⁴² MoP(S) Act, ss 13 and 20.

Currently all parliamentarians are able to hire electorate staff against four full-time positions.⁴³ Three electorate staff positions must be based in the electorate and one electorate staff position can be based either in the electorate, at Parliament House, or in an office-holder's office within the state or territory of their electorate.⁴⁴ A Member of the House of Representatives in a geographically large electorate, with a second or third Commonwealth funded electorate office, may hire electorate staff against one additional full-time position per additional office.⁴⁵

Parliamentarians structure their electorate office composition in accordance with set arrangements. In a four position electorate office, parliamentarians may choose between two combinations of classification for their four staff.⁴⁶ Parliamentarians may also engage additional electorate staff on a part-time basis, within the limits of the maximum number of electorate positions (for example, two people could work part-time, filling one electorate staff position).

Terms and conditions of electorate staff employment are set out in the MoP(S) Act, determined by the Prime Minister (e.g. electorate staff must work under the direction of the employing parliamentarian and not be employed for party political purposes⁴⁷), in the EA, and in their employment contract.

Three classifications of electorate staff are set out in the EA. Classification is largely used to determine pay and conditions, and not how staff are referred to in their day-to-day roles.⁴⁸

All parliamentarians are provided with an annual Electorate Support Budget (ESB) to allow for employment of relief staff, and facilitate domestic travel for electorate staff (and some personal staff) on official business.

The tenure of electorate staff is linked to their employing parliamentarian. Their employment automatically terminates in circumstances where the parliamentarian resigns, dies, does not stand for re-election, or is defeated at election.⁴⁹ In addition, electorate staff of Government and Opposition office-holders are terminated, where the office-holder ceases to hold office or has their ability to employ personal staff (section 12 determination) revoked.⁵⁰ Termination is discussed further in Chapter 6.

⁴³ The standing determination for electorate staffing is: Special Minister of State (Cth), *Determination 2016/15: Employment of Electorate Officers* (2016).

⁴⁴ *Ibid*, items 3 and 9.

⁴⁵ *Ibid*, items 4 and 5.

⁴⁶ Either CBAA (Electorate Officer C; Electorate Officer B; 2 x Electorate Officer A) or BBBA (3 x Electorate Officer B; Electorate Officer A). In a five or six position electorate office, there is provision for one additional Electorate Officer B position per office. *Determination 2016/15*.

⁴⁷ *Determination 2016/15*.

⁴⁸ Electorate Officer A, B and C. Electorate Officer C is the highest classification. See *Determination 2016/15*.

⁴⁹ See Section 6.5.1.

⁵⁰ MoP(S) Act, s 16(2).

Personal staff

A person, who is not electorate staff, who is employed by an office-holder (on behalf of the Commonwealth) under Part III⁵¹ of the MoP(S) Act is referred to as 'personal staff'. Personal staff perform a range of roles, but are usually advisers and media advisers.

Personal staff can only be engaged by an office-holder with the approval of the Prime Minister and subject to any conditions determined by the Prime Minister.⁵² This is often referred to as 'staffing allocation' and is discussed further at Section 3.4.

The MoP(S) Act defines 'office-holder' as:⁵³

- a person who holds a 'relevant office' (a defined term including: minister, Leader of the Opposition in Senate and House of Representatives, Deputy Leader of the Opposition in Senate and House of Representatives, leader/deputy leader of a recognised political party)⁵⁴
- former Prime Ministers no longer in parliament
- a person determined by the Prime Minister to be an office-holder.

Current list of personal staff arrangements

As at 1 August 2022 the Prime Minister has approved personal staff arrangements for:

- President of the Senate and Speaker of the House of Representatives
- Deputy President and Deputy Speaker
- Government Whips
- the Opposition (including allocation for shadow ministers and whips)
- minor parties (including allocation for whips in relevant circumstances)
- independent Senators and Members
- former Prime Ministers
- official establishments.⁵⁵

Allocations of personal staff to the Opposition and minor parties are made to the leader of those parties for them to distribute across offices.

As with electorate staff, personal staff terms and conditions are set out in the MoP(S) Act, determined by the Prime Minister, in the EA, and in their employment contract.

⁵¹ Ibid, sub-s 13(1).

⁵² Ibid, sub-s 13(2).

⁵³ Ibid, s 3.

⁵⁴ The *Parliamentary Business Resources Regulations 2017* (Cth) (PBR Regulations) defines a 'minority party' as one which is not the Government or the Opposition, and which has at least five members in the Parliament.

⁵⁵ The High Office Support Team in PM&C provides operational support for Official Establishments.

Tenure of personal staff is linked to their employing parliamentarian and automatically terminates in certain circumstances, including where the office-holder ceases to hold office or has their section 12 determination revoked.⁵⁶ Other circumstances mirror Part IV automatic termination triggers – if the office-holder dies, resigns, does not stand for re-election, or is defeated at election.⁵⁷ This is discussed further in Chapter 6.

As distinct from electorate staff, personal staff may be employed to provide political, media, policy and other support. All staff of ministers are required to comply with the Ministerial Staff Code of Conduct (the Ministerial Staff Code), including electorate staff.⁵⁸ For further information on accountability, see Section 5.3.

What we heard

The Review heard several views about the distinction between the categories of MoP(S) Act employees. Some contributors called for clearer separation between employees in the executive and legislative branches and their lines of accountability.⁵⁹ Some suggested this requires two separate divisions for employees under the MoP(S) Act, including one specifically for the ministerial staff, with related duties and values clearly set out under the MoP(S) Act. Some suggested electorate employees, even those of ministers, should be distinguished because of their functions.⁶⁰

The Review heard a recurring theme around increasing clarity and reducing complexity in the MoP(S) Act by merging Parts III and IV of the MoP(S) Act.⁶¹

3.2.2 Options for improvement

The current provisions for the engagement of employees under Part III and Part IV are duplicative, create confusion and add to the burden of administering MoP(S) Act employment.

There have been calls for a number of years to restructure the MoP(S) Act to address this point.⁶²

Streamlining the employment powers and terms and conditions under a single Part in the MoP(S) Act

⁵⁶ MoP(S) Act, s 16(2).

⁵⁷ Ibid, sub-ss 16(1)-(2).

⁵⁸ The Ministerial Staff Code of Conduct notes electorate officers for ministers are covered by the Ministerial Staff Code of Conduct in recognition of the role they play assisting ministers to perform their duties (see: Special Minister of State, *Ministerial Staff Code of Conduct* [website], (no date) <https://www.smos.gov.au/ministerial-staff-code-conduct>, accessed 21 September 2022).

⁵⁹ *Submission 5*, 1; *Submission 10*, 2.

⁶⁰ *Submission 10*, 3.

⁶¹ *Submission 42*.

⁶² Senate FPA Committee, *Staff employed under the Members of Parliament (Staff) Act 1984*, xx (Recommendation 4).

would facilitate standardised terms and conditions to the extent they apply to all MoP(S) Act employees. The categories of staff allows for differentiation when needed (see, for example, Section 6.5 on automatic termination).

Most other jurisdictions distinguish between electorate staff and personal staff in their MoP(S) Act equivalent legislation.⁶³ In Victoria, personal staff are further delineated between the personal staff of ministers and shadow ministers, and personal staff of other parliamentarians. In South Australia (SA) and Queensland, the delineation is between personal staff of ministers and personal staff of other parliamentarians, including shadow ministers. In New South Wales, there are 'staff of members of parliament' and 'staff of special office holders'. In the UK, 'special advisers' are political advisers to Ministers and are subject to accountability mechanisms (for example, they are bound by a code of conduct, accountable to their ministers for their conduct, and required to complete a declaration of interest). Similarly, rules apply for certain House of Lords members' staff who are required to comply with a code of conduct. Non-government political staff are employed under resolution of each house of parliament – to distinguish the staff from ministerial advisers.

Personal staff of ministers work in a different arm of government (the executive) to other MoP(S) Act employees (the parliament). Articulating a distinct category of ministerial personal staff permits a different level of scrutiny and accountability to apply to employees in the executive arm of government (e.g. the Ministerial Staff Code which only applies to personal staff of ministers, see also Section 5.3 re accountability).

3.2.3 Conclusion

The Review recommends reframing the relevant part of the MoP(S) Act to focus on the role of the employee (personal staff or electorate staff) rather than the role of their employing parliamentarian.

Three categories of MoP(S) Act employees should be defined in the MoP(S) Act under one Part: a) electorate employees b) personal employees – ministerial,⁶⁴ and c) personal employees – other (to be determined by the Prime Minister consistent with the current determination powers under the MoP(S) Act). Currently this includes staff of shadow ministers, minor parties, independents, presiding officers, whips and former Prime Ministers (including advisers and drivers), staff employed at official residences,. On occasion, additional accountabilities (such as Ministerial Staff Code) will apply to electorate

⁶³ Although referred to by various other nomenclature. For example, personal staff are referred to as Ministerial Officers and Parliamentary Advisers (Vic); Staff of Political Office Holders, Staff of Members of Parliament and Staff of Special Office Holders (NSW); Government Office Holders and Other Office Holders (SA); Ministerial Staff and Other Office Holder Staff (Qld).

⁶⁴ This category includes Parliamentary Secretaries.

employees engaged by ministers. The 2003 Senate Finance and Public Administration References Committee inquiry into the MoP(S) Act made a similar recommendation to restructure the MoP(S) Act to define the different categories of MoP(S) Act employment.⁶⁵

Recommendation 1 – Employee categories

The MoP(S) Act should be simplified by merging Parts III (Staff of office-holders) and IV (Staff of Senators and Members) into one part and reflecting three categories of MoP(S) employees: electorate employees; personal employees – ministerial; and personal employees – other.

3.3 Employment model

The employment model is a key theme raised by contributors to the Review. Contributors often linked this theme to other issues, like employer responsibility, lack of management experience, gaps in human resource support, WHS risk, and accountability.

A significant number of MoP(S) Act employees and parliamentarians do not have a full understanding of the MoP(S) Act employment framework. This is evident in the findings of *Set the Standard* and reaffirmed in what we heard.

Set the Standard highlighted that the MoP(S) Act creates a complex and confusing employment relationship, where multiple parties hold employer and other legal obligations to staff.⁶⁶ This is not unusual in a parliamentary context – the Review found similar complexities in all models across the various Australian and international jurisdictions.

3.3.1 Current situation

There are various roles and responsibilities within the MoP(S) Act employment framework:

- the parliamentarian is responsible for day-to-day management of employees in their office and decides who to hire, their roles and functions, and whether to terminate employment (subject to the MoP(S) Act, any terms and conditions determined or varied by the Prime Minister, or set out in the EA and employment contract, and any applicable laws including the FW Act, anti-discrimination laws and WHS obligations)

⁶⁵ Senate FPA Committee, *Staff employed under the MoP(S) Act*, xx (Recommendation 4).

⁶⁶ *Submission 42*, 7, also raises this issue.

-
- the Prime Minister has the power to determine whether parliamentarians may employ staff (including allocation of electorate and personal staff), and their terms and conditions of employment
 - MaPS administers the MoP(S) Act framework and provides support services to parliamentarians and their staff, on behalf of the Commonwealth – this includes administering payroll, HR (HR) policy, and certain office management services.⁶⁷

At the centre of the framework is the employee, who is directly accountable to their parliamentarian, who employs them on behalf of the Commonwealth. These arrangements are not dissimilar to the Australian Public Service (APS), or public service employers generally, or indeed any large employer. However, as noted in *Set the Standard*,⁶⁸ the employment landscape operates like 227 small businesses operating in isolation.

This leads to confusion at times about where ‘employer’ responsibilities lie. Contributors to the Review indicated:

- there are issues with people understanding who their employer is
- ‘the MoP(S) Act needs to clarify who is the employer of MoP(S) Act employees, and who is ultimately responsible for them’
- ‘There are limited safeguards for MoP(S) Act employees experiencing workplace issues and a lack of clarity around who is responsible when something goes wrong. There is no clear ownership of employer responsibility in the MoP(S) Act by the various actors in the parliamentary workplace setting.’

We heard from a number of contributors who believed Finance was their employer, rather than their parliamentarian or the Commonwealth. This seems to stem from their interaction with Finance about administrative matters – such as their employment contract, advice on salary and allowances, and the name they see on their payslips.

⁶⁷ The MaPS website sets out the full range of services it has been set up to deliver, including advice on work health and safety (early intervention, compensable and non-compensable claims and workplace rehabilitation services); Delivery of professional development; Comcar; Policy advice in relation to non-travel expenses under the PBR Act.

⁶⁸ AHRC, *Set the Standard*, 178.

Consideration of alternative frameworks

The Review heard a range of views on the employer framework, including:

For changing

'A different, centralised employer could provide greater visibility of clusters of issues and identify trends that can be acted on'

'Parliamentarians should not have unlimited powers over employees. There needs to be external oversight of the relationship, and protections for staff who complain about behaviour of the MP, Senator or other staff.'

For retaining

'The person who hires the staff (i.e. the parliamentarian) needs to be the accountable person'

'Changing the employer doesn't work. It doesn't change the situation.'

'The arrangements should continue to give parliamentarians as much flexibility as possible. MPs need the capacity to hire their own staff.'

'The framework is excellent and needs minimal change, if at all.'

'In the end, the buck stops with the employing Member or Senator. No matter what...some members and senators are terrible employers. Frankly, more training for the members and senators would be helpful - many of them have never employed staff before being elected, and have no idea how to lead employees.'

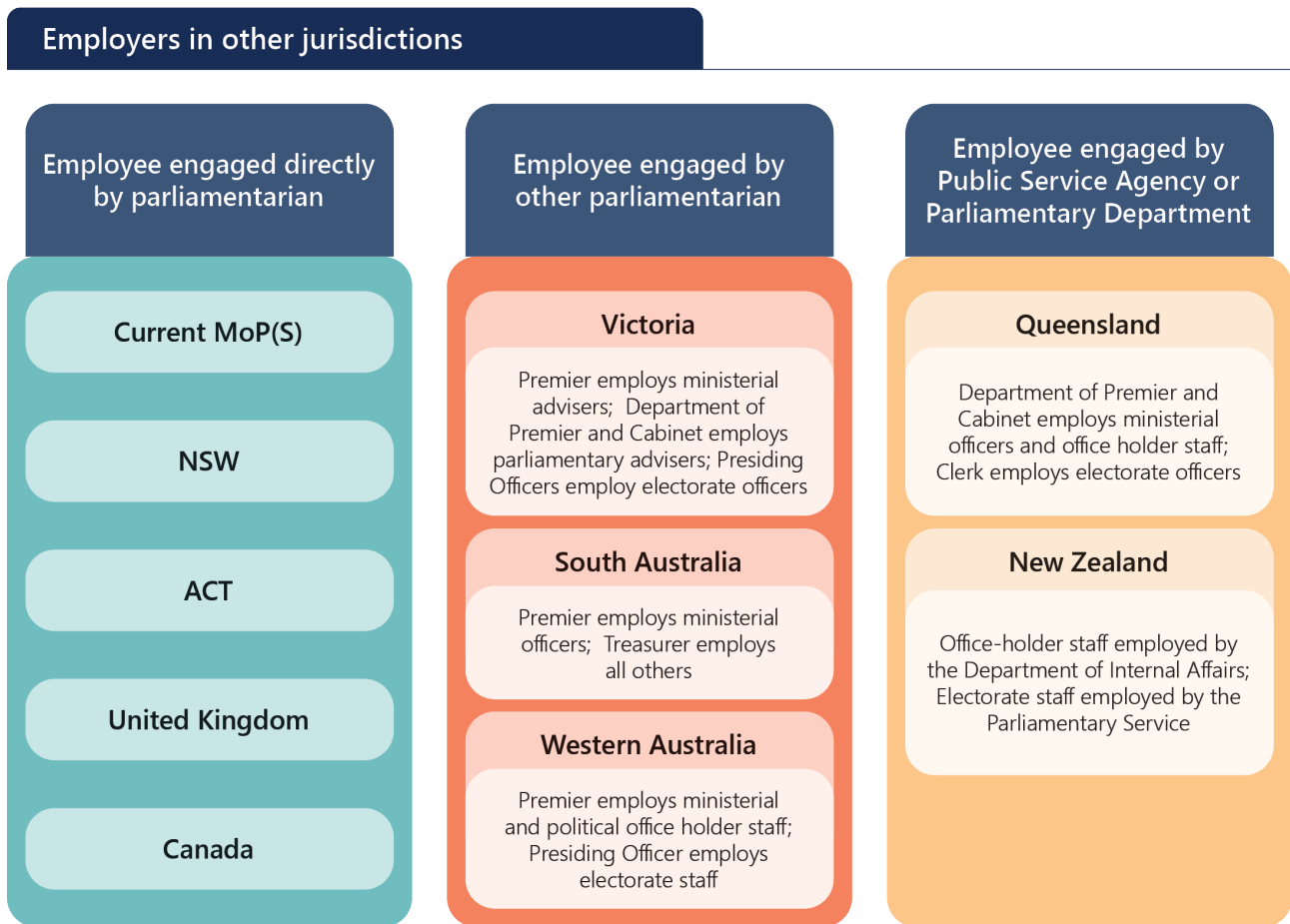
What others do

The Review examined employment models across a range of Australian and international jurisdictions (see Figure 4). Broadly speaking, there are three models of employment, with a parliamentarian's staff member employed by:

- the parliamentarian – on behalf of the state
- another parliamentarian – on behalf of the state (for example, the Premier or Treasurer)
- a public service agency or parliamentary department.

There are further distinctions within the models, for example, in Victoria the Premier employs ministerial advisers, the Department of Premier and Cabinet employs parliamentary advisers, and Presiding Officers employ electorate officers. In South Australia, the Premier employs ministerial officers and the Treasurer employs all others. In New Zealand the employer of Members' staff is the Parliamentary Service and, for ministerial staff, the Department of Internal Affairs.

Figure 4.



The Review heard:

- ‘It’s better at a state level, where an employee submits directly to a parliamentary department.’

And equally:

- ‘I’m not sure that the Victorian Parliament model helps as the same problem persists – with the MP having too much power and staff don’t feel that they can speak up’.

NSW made a decision in 2013 to shift away from MoP(S) Act employees being employed by the Premier’s Department⁶⁹ to being employed by the parliamentarian.

- The employment framework for MoP(S) Act employees in NSW closely mirrors the Commonwealth equivalent. In NSW, staff are employed by political office-holders on behalf of the State under the *Members of Parliament Staff Act 2013 (NSW)*. The Premier may impose conditions on the employment of staff, and the automatic termination provisions are very similar to those in the Commonwealth legislation. Notable differences between the two frameworks in NSW are:

⁶⁹ Ministerial staff were previously employed by the Director-General of the Premier’s Department as ‘special temporary employees’ under the *Public Sector Employment and Management Act 1993 (NSW)*.

-
- all MoP(S) Act employees are required to comply with a code of conduct (in accordance with a determination by the Premier)
 - presiding officers are empowered to terminate or suspend staff members for misconduct
 - staffing allocations for non-ministerial staff are determined by a Parliamentary Remuneration Tribunal.

3.3.2 Options for improvement

An argument for a centralised employment model where a department or other person is responsible for aspects of employment (like recruitment and termination of staff) include consistency across employment practice and process.

However, even with a centralised employer (such as in NZ and Victoria.) parliamentarians, or senior staff in their office, are engaged in the day-to-day management of employees and continue to have employer responsibilities. Removing employing powers from parliamentarians could also impact on their ability to run functional and successful offices, and to be held to account for employment practices.

While changing the responsibility for recruitment and termination of staff may improve consistency in some respects, it does not reduce complexity in the framework or guarantee different results. There are other options to address inconsistent employment practices, such as coordinating processes through the OPSC and increasing employer accountability.

In practice, the Review considers there is more to gain by building the skills of those making decisions (parliamentarians and their delegates), providing support for improved practices, and considering safeguards like requirements to consult with OPSC and step-in powers for the OPSC when decisions are not consistent with WHS.

Human resource functions

Currently, the MoP(S) Act does not include functions and powers with regard to HR support and accountability, or linkages with WHS obligations. The establishment of the proposed OPSC provides an opportunity to reconsider how these parts of the employment framework will function.⁷⁰

The role of the OPSC will include providing HR support to parliamentarians and MoP(S) Act employees, as well as the provision of strategic HR functions in the areas of policy development, training, advice, and education.

⁷⁰ *Set the Standard* recommended the establishment of the OPSC (Recommendation 11), to provide centralised human resources support to parliamentarians and MoP(S) Act employees - with a focus on policy development, training, advice and support, and education.

Further consideration is given in Section 4.2 on how best to support MoP(S) Act employees who exercise HR delegations and functions, including through the provision of mandatory training as required.

The OPSC is likely to be a 'responsible agency' (for the purposes of the WHS Act) on behalf of the Commonwealth, and will therefore be required to perform certain functions for MoP(S) Act employees under WHS law. Consequently, the OPSC will need to have powers to be able to take steps to manage and or mitigate certain WHS risks.

In response to submissions,⁷¹ the Review considered ways to ensure the OPSC is empowered to manage certain WHS matters, without fundamentally altering the employment relationship with parliamentarians or any of the parliamentarian's WHS obligations.

The Review heard a wide range of views and suggestions from contributors including that:

- many understood that parliamentarians often have no previous people management/HR experience. One contributor suggested that 'follow-up and ongoing support is required but the challenge in this is that it's hard to get people to admit in that environment they don't know something and need support'
- some thought that the parliament should have some power to intervene to protect individual staff members. They felt that parties are not always incentivised to intervene for fear that the parliamentarian quits the party and joins the crossbench. It was proposed that an arms-length body would therefore be better placed to uphold this duty of care
- for WHS purposes, when a parliamentarian refuses to sack a staff member there were suggestions that there needs to be an accountability mechanism to the chamber and that there should be an independent process to determine if there is a problem
- some felt that often ministers may be too busy to take on WHS/conflict management in the office despite being aware of ongoing issues
- there is a need for greater clarity of roles in WHS across the MoP(S) Act framework, noting legislative amendments in early 2022 to clarify the WHS responsibilities of parliamentarians
- there could be more oversight from others outside the parliamentarian's office
- many feel that a lack of accountability (linked to WHS) leads parliamentarians and senior staff to act with impunity.

The Review considers the OPSC should have certain powers to mitigate and manage WHS risks. For example, the OPSC should be able to suspend a MoP(S) Act employee from the workplace in certain circumstances. This would include where there is an imminent WHS risk and/or where the OPSC has notified the parliamentarian of the risk, the parliamentarian has had an opportunity to address the risk, and the parliamentarian has not taken any or sufficient action. This point is discussed in Section 6.4.

⁷¹ Including *Submission 42*, 6.

The mechanism for building in these powers (e.g. within the MoP(S) Act or the OPSC's enabling legislation) will be a matter for consideration as the OPSC is set up. The OPSC's proposed functions (to design and provide training, deliver induction, and provide people management and support) is what will make them a responsible agency under WHS laws in respect of any breach arising out of a failure to perform those functions. If the OPSC is not empowered to mandate training for MoP(S) Act employees or ensure training is undertaken, then it will be harder for the Commonwealth to comply with its WHS duties. For example, where a WHS risk arises due to a failure to undertake training. We note that parliamentarians may also be held responsible for failing to eliminate or minimise such WHS risks.

Conversely, if the OPSC has no power over elements of the employment relationship such as directing staff and managing performance then it could not be the responsible agency if there are WHS failings in that regard.

Delegation and authorisation to exercise employer powers

Currently the MoP(S) Act permits a parliamentarian to, in writing, authorise another person to exercise their powers under the MoP(S) Act⁷² but does not include an express power of delegation or authorisation with regard to the Prime Minister's powers. The MoP(S) Act should be amended to include an express power of delegation in relation to the Prime Minister's powers to ensure a clear and transparent process, and the bounds of any such delegation are understood.

3.3.3 Conclusion

The Review looked at different models and concluded the most effective approach for the Commonwealth at this time is to retain a direct relationship between the parliamentarian and MoP(S) Act employees, but clarify the roles and responsibilities of each party within the employment framework. In practice, the parliamentarian has day-to-day management and decision making in relation to employees. However, the MoP(S) Act employment landscape will shift and operate more like one business with 227 managers supported by a strategic HR department (the OPSC).

Recommendation 2 – Employer duties

The MoP(S) Act should provide greater clarity over employment roles and responsibilities by setting out the specific duties of parliamentarians, the OPSC and the Prime Minister, and include an express power to delegate. The OPSC should have powers to require specified training, and report on the administration of the Act.

⁷² MoP(S) Act, s 32.

3.4 Workplace resourcing (including staffing allocation)

The Review heard about increased workplace pressures on parliamentarians and employees. Contributors identified causes for these pressures, including workload and staffing levels. Contributors also highlighted the impact of workplace pressures on WHS and on their capacity to perform their roles.

These key themes intersect with other themes raised during the Review including the ability for parliamentarians to set up an office for success, effective recruitment, impact on employees with caring responsibilities (see Chapter 4), workplace culture, employee accountability (see Chapter 5), and high turnover of MoP(S) Act employees (see Chapter 6).

This chapter considers staffing numbers and workload, as well as the staffing allocation method. We consider staffing allocation in the broader context of workplace resources because it was raised as part of overall workplace resourcing concerns.

3.4.1 Current situation

The workplace

MoP(S) Act employees work from different office locations across Australia, under different working arrangements, with varying access to resources.

PM&C's 2021 Foster Review acknowledged while there may be similar priorities across offices and opportunities to work collaboratively, parliamentarians and their offices largely operate as self-contained workplaces.⁷³ *Set the Standard* reflected on the geographical dispersion⁷⁴ of MoP(S) Act employees and the pastiche of work locations (from electorate offices, to taxis and airplanes).⁷⁵

The Foster Review also acknowledged the parliamentary workplace is like no other. It is uniquely impacted by high-intensity and heavy workloads, long hours, demanding travel schedules, extended periods away from family and friends, and constant media scrutiny.⁷⁶ *Set the Standard* also identified a high pressure work environment characterised by extreme expectations, long hours, lack of role clarity, small offices, and high levels of responsibility for relatively junior staff.⁷⁷

⁷³ Department of the Prime Minister and Cabinet, *Review of the Parliamentary Workplace: Responding to Serious Incidents* (2021) 21, <https://www.pmc.gov.au/sites/default/files/publications/review-parliamentary-workplace-responding-serious-incidents-final.pdf>, accessed 30 September 2022.

⁷⁴ AHRC, *Set the Standard*, 54.

⁷⁵ *Ibid*, 55.

⁷⁶ PM&C, *Responding to Serious Incidents*, 6, 20, and 81.

⁷⁷ AHRC, *Set the Standard*, 100 and 256.

Work expectation

Roles and working arrangements are not uniform across parliamentarians' offices.⁷⁸ However, under the current EA, the ordinary hours of duty for a full-time MoP(S) Act employee are 38 hours per week, to be worked generally between 8:00 am to 6:00 pm, Monday to Friday.⁷⁹ MoP(S) Act employee remuneration – including salary, allowances and other benefits – reflects the expectation that employees will be required to work reasonable additional hours over and above the ordinary hours.⁸⁰

Resources

Core workplace resources in parliamentary offices are people; technology; systems and processes; information; and facilities. There is a range of entities administering these resources in the MoP(S) Act employment framework (see Figure 5) with the administrative burden of identifying and seeking services having an impact on the ease of office management. To reduce complexity for parliamentarians and MoP(S) Act employees when accessing these resources, the recent *Parliamentary Business Resources Act 2017 and Independent Parliamentary Expenses Authority Act 2017 Review*⁸¹ (PBR/IPEA Review) recommended the administering entities collaborate to offer a single access point: a 'one-stop shop' for their various service delivery arrangements.⁸² The PBR/IPEA Review also made recommendations reflecting issues with current resourcing supports and the management of these, including modernising ICT resources, providing training and guidance around budget systems and processes, and reconsidering of financial support for certain offices.⁸³

⁷⁸ *Submission 42*, Attachment A acknowledges the operation of each office differs particularly in relation to the roles and responsibilities of individual staff.

⁷⁹ Enterprise Agreement, Pt D, cl 30.

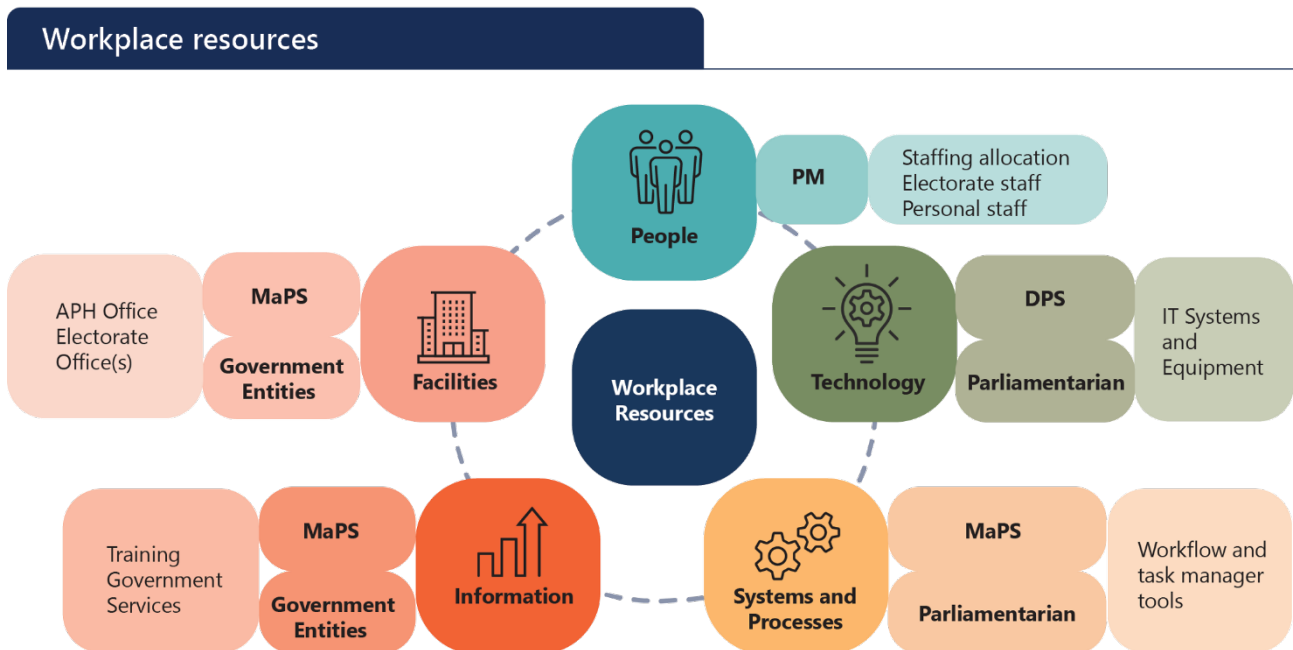
⁸⁰ *Ibid*, cl 31.1, 32 and 33.

⁸¹ K O'Dwyer and K Ellis, *Independent Review of the Parliamentary Business Resources Act 2017 and Independent Parliamentary Expenses Authority Act 2017* (December 2021) <https://www.finance.gov.au/sites/default/files/2022-08/Independent%20Review%20on%20the%20Parliamentary%20Business%20Resources%20Act%202017%20and%20the%20Independent%20Parliamentary%20Expenses%20Authority%20Act%202017.pdf>, accessed 27 September 2022.

⁸² *Ibid*, Recommendation 14; Each administering agency has different delivery arrangements including websites, intranets, help desks, paper and web-based forms.

⁸³ *Ibid*, Recommendations 16, 17, 21, 22, and 28.

Figure 5.



Staffing allocation – method

Under the MoP(S) Act, the Prime Minister has the power to determine the number⁸⁴ of positions a parliamentarian can employ people in, including the position classification levels (discussed also in Section 3.2.1). Before a parliamentarian can exercise their employer powers to engage an employee, the Prime Minister must first allocate the positions. This process is broadly described as 'staffing allocation' and applies to the allocation of both electorate and personal employees to a parliamentarian, or a party. Staffing allocation determinations for electorate offices are published.⁸⁵ Personal staffing allocation determinations are not.⁸⁶ However, details regarding personal staffing allocation are made publicly available by Finance through Senate Estimates hearings.

Electorate office staffing

All parliamentarians have the power to hire electorate staff on behalf of the Commonwealth, subject to the Prime Minister's (or delegate's) staffing allocation determination.⁸⁷

⁸⁴ Note, the number of actual employees versus staffing allocation may differ – for example, if not all allocated positions are filled or if one position is filled by two or more part-time employees.

⁸⁵ The determination instruments do not contain personal information regarding terms of employment.

⁸⁶ The determination instruments contain personal information relating to terms and conditions of employment and is not required to be published; *Legislative Instruments (Exemptions and Other Matters) Regulation 2015 (Cth)*, reg 6, item 10.

⁸⁷ MoP(S) Act, ss 13, 19 and 20.

The number of positions for electorate staff is set uniformly across electorate offices. By determination of the Prime Minister, the number of electorate officer positions has increased incrementally per parliamentarian since the MoP(S) Act commenced:

- 1984: increase from two to three positions for each senator and member (four in larger electorates with second electorate office)⁸⁸
- 2007: increase from three to four⁸⁹ positions for each senator and member (five/six in a second/third electorate office).

The rationale for one additional position in 2007 was to acknowledge the 'greater and more complex' workload of senators and members than in 1984 (when the allocation was previously increased). The advent of email and surge in correspondence, and increased community expectations of government services were contributing factors. These additional pressures impacted on the relief staff budget.⁹⁰

Since the MoP(S) Act commenced, the population has increased and the number of parliamentarians has increased.⁹¹ The average number of electors per member of the House of Representatives has also increased from approximately 75,000 in 1983; 91,000 in 2007; to 114,000 in 2022 (see Figure 6⁹²). However, the base level of four electorate officer positions has not changed for the last 15 years.

⁸⁸ Evidence to Senate Standing Finance and Public Administration Legislation Committee, Parliament of Australia, Canberra, 13 February 2007, 104-109 (Additional Budget Estimates 2007-08).

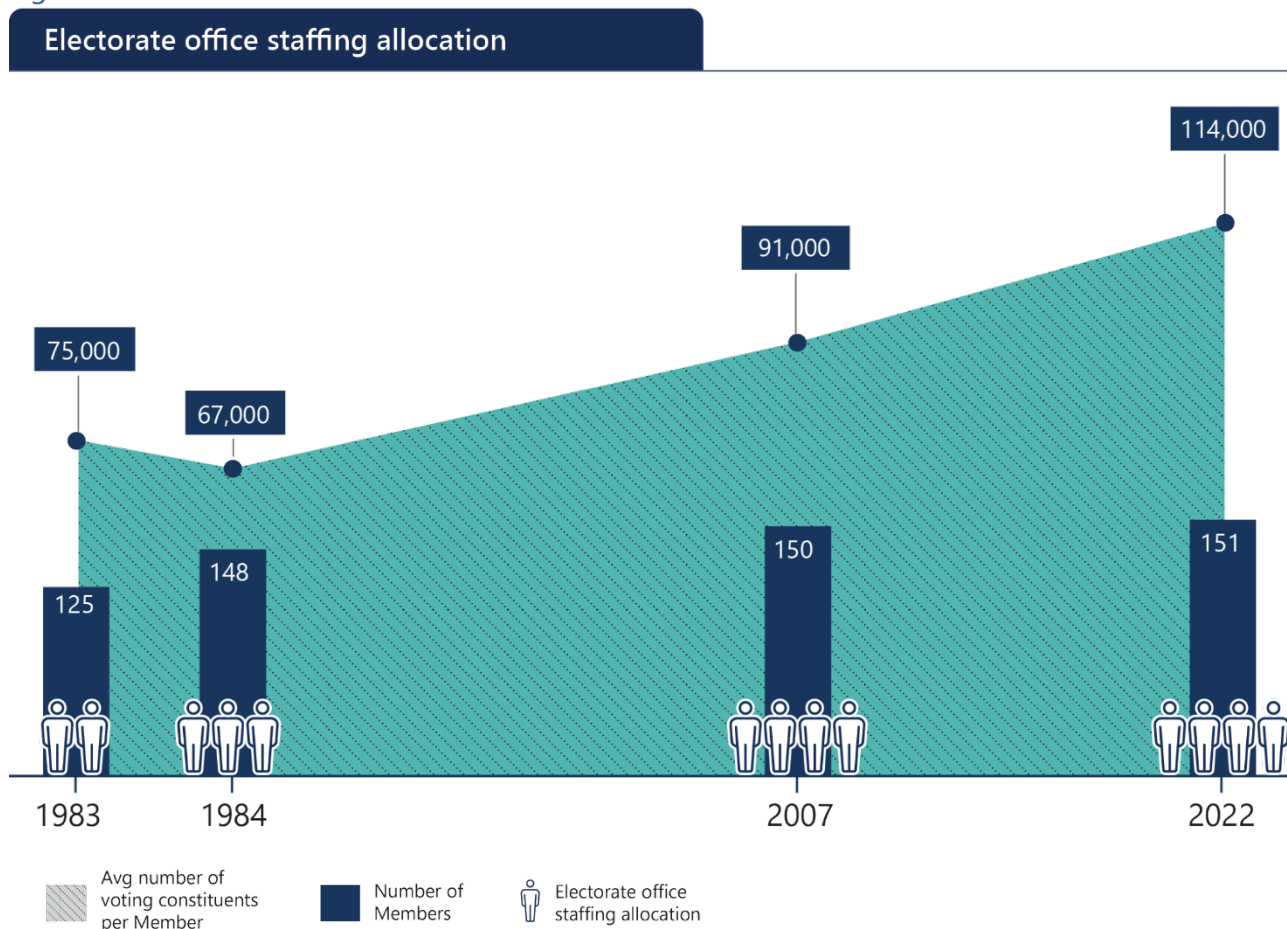
⁸⁹ An additional Electorate Officer A position was provided to all parliamentarians in early 2007.

⁹⁰ Evidence to Senate Standing Finance and Public Administration Legislation Committee, Parliament of Australia, Canberra, 13 February 2007, 104-109 (Additional Budget Estimates 2007-08).

⁹¹ The number of senators increased from 64 to 76 in 1984, and number of members increased from 125 in 1983 to 148 in 1984, 150 in 2001, and 151 in 2022.

⁹² Note, the increase in members in 1984 increased the number of electorates and had a correlating reduction in the average number of voting constituents in each member's electorate: David Elder (ed.), *House of Representatives Practice* (7th edn., Canberra: Department of the House of Representatives, 2018) 89.

Figure 6.



Personal staff allocation

Only parliamentarians who hold particular offices (see Section 3.2.1) may engage personal employees under the MoP(S) Act. The number and type of positions allocated to each office-holder is a matter for the Prime Minister to determine, and is not delegated to the SMOS.⁹³

Traditionally, the major parties have followed a convention for setting staffing ratios such that any increase or decrease in ministerial staffing by the Prime Minister of the day is met with a commensurate (albeit smaller in overall terms) change in Opposition⁹⁴ and minor party⁹⁵ staffing levels.

Independents first received an allocation of one personal staff member in 2007. Between 2007 and 2022, the allocation fluctuated between one and four personal staff members, the reasons for which are not public. Allocations were reduced under the current Government.

⁹³ Submission 42.

⁹⁴ The ratio has been 21 per cent since 1995, see: Henderson, *Review of Government Staffing*, 26.

⁹⁵ Finance has confirmed this is three per cent for the Australian Greens, since acquiring minor party status from 1 July 2008. This is consistent with the percentage allocation to the Australian Democrats when they were a minor party.

The political landscape has changed significantly since the MoP(S) Act commenced, with a dominant two party system being disrupted by greater numbers of minor parties and independents. While key parliamentary roles (such as ministries and shadow ministries) do not rest with the crossbench, independents and parliamentarians belonging to minor parties have had an increasing role in the parliament.

Figure 7.



The total number of personal staff positions has fluctuated since the commencement of the MoP(S) Act, but have generally trended up over time (see Figure 7⁹⁶).

A review into government staffing was conducted in 2009, following a determination of the then Prime Minister to cut MoP(S) Act personal staffing levels by 30 per cent in mid-2007 to 1996 levels (Henderson Review).⁹⁷ The Henderson Review recommended the government personal staffing allocation increase by 42 ministerial staff positions – reflecting high workloads and increased work pressures resulting from a major change program and the demands of modern communication relative to conditions in 1996. There was a concomitant increase in personal staff allocation of seven for the Opposition and one for the Australian Greens.

⁹⁶ Source data provided by Department of Finance.

⁹⁷ Henderson, *Review of Government Staffing*, 20.

What we heard about workplace resourcing

Workload	Staffing allocation
<p><i>'Workload of staff is extraordinary'.</i></p> <p><i>'The amount of overwork in our new office is ridiculous. With limited parliamentary staff the electorate office is suffering badly as electorate positions are being used for parliamentary roles. This has greatly impacted the lives of employees and the workload is not within reasonable expectations'. [combined with recruitment concerns] Both these factors are risks to the health safety and wellbeing of everyone in our office'.</i></p> <p><i>'It is an unusual employment environment. Hours are undefined. Travel to and from Canberra in own time impacts on family and personal life'.</i></p> <p><i>'The pace and hours worked have a big impact on mental health of many employees but is not acknowledged by leadership and goes unreported'.</i></p>	<p><i>'Fair Work Commission or other body to determine staff allocation not the PM who can politicise and weaponise the decision. I am employed as EO staff part -time (due to cuts to parliamentary staff) but do parliamentary advisory work. Despite being only 3 days (due to limited resources) I effectively work full time or more. Already I am on less than half the salary I was on in my corporate career and the work load on part time means I am a victim of severe wage theft. I am overworked, exhausted and it's impacting on my mental and physical health and that of my family....The work doesn't go away. We have a duty to our electorate to serve them and represent them to the standard expected and which they deserve....'</i></p> <p><i>'It's too restrictive on the structure of the office. Staffing/office levels only take into account geographic area, not workload/population'.</i></p> <p><i>'Independent offices don't have the resources of government and shadow ministry, they need the right staffing allocation to understand and influence the decisions that affect their communities'.</i></p>
Resources	Coordinated approach
<p><i>'Electorate offices are under-resourced. Electorates have grown in size, but resourcing has not. The demands placed on staff are unreasonable. Feel burnt out all over again just thinking about it. I'm now paid more, and with a better work life balance. Better standards, position descriptions, performance appraisal and training would all make a positive difference. But the underlying unrealistic workload demands placed on staff means the system will remain inherently broken'.</i></p> <p><i>'It's an all hands on deck role, more like being in a tech start-up than a public service role. The resources are very limited for the amount of work that needs to be done'.</i></p> <p><i>'It would be good if a location allowance was available to staff who work in offices that are in regional and remote locations (like government department staff</i></p>	<p><i>'The Department has to stop thinking about parliamentary offices like they're a bunch of fish and chip shops owned and operated by their MP or Senator. Parliamentary offices are not small businesses. We work for the Commonwealth of Australia. The Commonwealth of Australia should protect us'.</i></p> <p><i>'There should be a procedure which each office follows to ensure that, in the event the MP changes, that the constituents aren't impacted negatively. There was no post-election handover'.</i></p> <p><i>'There is too much discretion for parliamentarians when it comes to how their office is run'.</i></p> <p><i>'All offices run differently. A cohesive office runs from the top down'.</i></p>

Resources	Coordinated approach
<p><i>get). Some of us work in regional and remote areas where the cost of living is so high that we cannot survive on an EO wage alone (again making recruiting hard which results in existing staff members covering for the vacancy and getting burnt out). The region I work in people can get a cleaning or truck driving job for double what I get paid, and without having anyone yelling and abusing them on a daily'.</i></p>	<p><i>'In my experience each politician's office operates as a silo and the individual employee's experience, good or bad, is entirely reliant on how well run their office is'.</i></p> <p><i>'I think there needs to be more oversight from others not within the political office. I feel that unless enforced, the framework is not abided by or promoted to employees by the senator/minister or chief of staff'.</i></p> <p><i>'The whole experience lacked accountability and coordination'.</i></p>
Lack of support	Call to review
<p><i>'Fix the departments and the system, including its governance and management and you'll fix all of the problems we have recently seen.'</i></p> <p><i>'As for HR, everything from the unfriendly software to the failure to respond to request for advice or assistance, I came to see them as Human Resistance'.</i></p>	<p><i>'An independent review would also enable consideration of the complexity of constituent matters received in each MP's office to inform pay scales and staffing levels'.</i></p>

What we heard about workload pressures

Contributors to the Review identified a number of causes of workload pressures.

Work hours

The Review heard, as did *Set the Standard*, about unreasonable work hours, manifesting in:

- many employees working well in excess of the required 38 hours per week
- some part-time employees feeling they were required to undertake a full-time workload
- inadequate compensation for additional hours worked
- allowances for 'reasonable additional hours' not being applied equitably or well understood
- calls for systems to be established to better reflect the hours that MoP(S) Act employees work.⁹⁸

⁹⁸ Submission 30.

Keeping pace with the changing landscape

The Review heard, as did *Set the Standard*, about significant social and technological changes impacting electorate employee's day-to-day workloads, stress levels, and office culture, such as:

- changed constituent demographics and increased electorate populations (including non-citizens)
- higher expectations of the Government within communities⁹⁹
- changes in technology dramatically increasing the volume and pace of email correspondence
- increased toxicity in political debate and the demanding 24hr media cycle
- amplification of abuse delivered to electorate offices via telephone/email/social media,¹⁰⁰ and
- uneven focus on electorates with large geography over those with larger numbers of constituents.

Government services

The Review heard that:

- workload pressures are compounded by an increase in case work and support for individuals navigating Commonwealth government services (e.g., in relation to immigration, NDIS, aged care, Centrelink) and grants application work
- there is a need for a feedback loop between electorate offices and government departments to better track the nature of constituency work linked to government services, and there may be ways for departments to improve the efficiency of this work.

HR support

The Review heard concerns about the HR support available to parliamentarians and employees. Contributors to the Review were generally not inclined to raise issues of excessive work hours or unreasonable expectations with MaPS. *Set the Standard* explored in depth some of the underlying factors that contributed to an environment in which MoP(S) Act employees may not seek assistance or raise issues with a HR body.¹⁰¹ The OPSC, once established, will have an important role in defining reasonable expectations of MoP(S) Act employees and promoting a culture where seeking advice and assistance to resolve HR issues is standard practice. The OPSC will also have a role to play in delivering training to support employees, such as dealing with difficult constituents and ways for staff to support their own health during times of stress.

⁹⁹ Governance Institute of Australia, Submission No E55 to Australian Human Rights Commission, *Independent Review into Commonwealth Parliamentary Workplaces* (29 July 2021).

¹⁰⁰ Patrick Gorman MP, Submission to the *Independent Review into Commonwealth Parliamentary Workplaces*.

¹⁰¹ See: AHRC, *Set the Standard*, Section 4.2(i).

Impacts

Contributors raised concerns about the impact of these workplace pressures on their capacity to do their jobs and on WHS. The impact of workplace pressures is also discussed in Chapter 5 (workplace culture and employee accountability) and Chapter 6 (high turnover of MoP(S) Act employees).

The Review heard:

- in more diverse and socio-economically disadvantaged electorates, workload demands are often higher
- constituent engagement requires significant time and emotional resources
- the ability of constituent views and voices to be heard in parliament is impacted by staffing levels
- smaller parties and independents are not able to rely on party structures, which contributes to greater workload, particularly in the early stages of a term when establishing systems, policies and procedures.

Safe and suitable workplace

We heard about the negative impact workload pressures and high levels of stress have on a parliamentarian's ability to provide a safe and suitable workplace.

The Review heard from a number of stakeholders who were concerned that the number of employees allocated to parliamentarians is insufficient for their workload. Independent parliamentarians told us the decrease in personal staff positions has increased stress levels for employees and could lead to poor behaviours and an unsafe workplace, as staff vie for limited roles. Similar issues were also reported in 2007, following the 30 per cent reduction in ministerial staff,¹⁰² and in 2009.¹⁰³ See also Section 5.3.

Impact on people with caring responsibilities

The expectation for employees to work long hours has had a significant impact on people with caring responsibilities. A number of current and former MoP(S) Act employees – especially women – said that their workloads and work environment were 'wholly incompatible' with any caring responsibilities they had, or planned to have.

Some contributors felt that they could not have a family and continue in their MoP(S) Act employment. The Review heard, in some instances, employees were expressly told that their caring responsibilities precluded them from becoming or remaining a MoP(S) Act employee. The Review notes the detrimental impact that these expectations have on hiring and retaining a diverse workforce. Many women who spoke to the Review felt that because they wanted to have or had a family, their careers as parliamentary

¹⁰² Horne, *MoP(S) Act Framework and Employment Issues*, 8.

¹⁰³ Henderson, *Review of Government Staffing*.

staffers would eventually plateau or come to an end. Section 4.2 discusses how an inflexible workplace and high workloads reduces the diversity and inclusivity of the workforce.

The Review notes changes have recently been made to the House of Representatives¹⁰⁴ and Senate¹⁰⁵ standing orders, which may help to address the long hours required of parliamentarians and their employees during sitting weeks, as recommended in *Set the Standard*.¹⁰⁶ The current sitting calendar was developed to avoid parliament sitting during school holidays, to help make Commonwealth parliamentary workplaces more family friendly.

Workforce alternatives

Many offices have been using workarounds or proposing programs to fill the workforce gaps (e.g. increasing volunteer numbers, creating more roles for part-time staff within the four full-time equivalent allocation and using the electorate support budget to engage lower paid and less experienced staff)¹⁰⁷ which can present separate WHS and accountability issues. Some contributors to the Review proposed self-funding or crowd-funding for personal staff positions.

Some contributors indicated an additional 0.5 FTE electorate staff position would assist to reduce workload pressures. One contributor suggested a program proposal to create a traineeship program, similar to the program used by the South Australian Parliament.

Submissions to *Set the Standard* also called for additional staffing positions in all electorate offices, including a more senior and appropriately remunerated chief of staff position for the offices and appropriately remunerated electorate staff, to reduce issues of retention of experienced staff in electorate offices.¹⁰⁸

We also heard proposals to provide resourcing support for parliamentarians through the Parliamentary Library. Contributors to the Review welcomed the additional resource but queried whether the library resource was an adequate replacement for dedicated personal staff.

What we heard about the method of staffing allocation

The Review heard a range of views from contributors that:

- called for the analysis of the real workload of parliamentarian offices to inform staffing allocations
- suggested workload pressures and already long hours were exacerbated following recent reductions in staffing allocation for independents and minor parties

¹⁰⁴ Parliament of Australia, *Votes and Proceedings*, No. 2, 27 July 2022, 58.

¹⁰⁵ Parliament of Australia, *Senate Journals*, No. 11, 8 September 2022, 263.

¹⁰⁶ AHRC, *Set the Standard*, Recommendation 27.

¹⁰⁷ Bob Bennett, Submission to the *Independent Review into Commonwealth Parliamentary Workplaces*.

¹⁰⁸ Patrick Gorman MP, Submission to the *Independent Review into Commonwealth Parliamentary Workplaces*.

- raised workload pressures within major party electorate offices, particularly those with complex and low socio-economic demographics, which have high need for government services, and suggested a variable formula to calculate the electorate support budget
- some independents and minor parties are said to operate in fear of losing more staffing allocation where staffing allocation decisions remain a discretion of the Prime Minister
- called for additional personal staff for all parliamentarians, as well as the offices of independents and minor parties
- suggested that personal staffing should be determined by legislated ratios, including ratios for independents and minor parties as well as existing ratios for the Opposition and Greens
- greater job insecurity may arise if there is no certainty (e.g. a convention, or a method like a ratio or formula) as to how personal staffing numbers are set for independents and minor parties
- pointed to the different party structures, and said that the parliamentary workload for independents and minor parties cannot be shared or managed between party members' staff or within larger party structures, resulting in workload pressures and stress impacting work health and safety.

A call for transparency

The Review heard about perceived inequity in the discretion of the Prime Minister to allocate staffing positions, and the further discretion of party leaders in distributing positions.¹⁰⁹ Some contributors were critical of the allocation process, considered it could be used for political gain and to secure parliamentary votes, and questioned the lack of review process.

Some contributors to this Review and *Set the Standard*¹¹⁰ call for transparent and independent allocation of staff in the form of a determination by an independent body (for example, the Remuneration Tribunal, OPSC, Parliamentary Budget Office or the Independent Parliamentary Expenses Authority (IPEA)) that is:

- based on a formula, pre-determined assessment criteria, or in accordance with guidelines
- subject to periodic review.

The Review heard alternative calls for the Prime Minister to only have power over ministerial or Government personal staff allocation, with all other staff allocated by an independent person or body. Some contributors from the major parties were of the view that status quo should be maintained.

¹⁰⁹ Personal staff are allocated to the leaders of non-government parties.

¹¹⁰ Anne Tiernan, Submission No E28 to Australian Human Rights Commission, *Independent Review into Commonwealth Parliamentary Workplaces* (30 July 2021).

What others do

Assessing workloads and resources

In NSW, in response to a submission from a member of the Legislative Assembly, the Parliamentary Remuneration Tribunal may take the following into consideration when forming a view on whether additional staffing resources are required:

- workload, including additional responsibilities undertaken by the office-holder and concomitant increases in workload for staff¹¹¹
- the role these offices play in the business of parliament¹¹²
- consistency with resources allocated to other office-holders¹¹³
- for independents – the Tribunal strives to ensure independent members are sufficiently resourced to undertake their role in the parliament, recognising that they ‘do not have access to support from colleagues or the Party support that is otherwise available to Members either in Government or the Opposition’.¹¹⁴

For any positions allocated, the NSW Presiding Officers may undertake a work value assessment of the role to determine the appropriate classification and remuneration in the course of determining terms and conditions of appointment.¹¹⁵

In Queensland, where the Director-General of the Department of the Premier and Cabinet employs ministerial and other personal staff on behalf of the State, members do not have an automatic entitlement to staffing resources. Decisions about employment of staff depends on ‘resources available to the [Director-General] for the purpose’¹¹⁶ and, for any staff of a non-government member, the need for staffing resources includes consideration of ‘whether the member has an increased workload because of the particular composition of the Legislative Assembly’.¹¹⁷

Also in Queensland, where cross bench members do not usually have a personal staffing allocation, within three months of the Legislative Assembly being summoned to commence, the Independent Remuneration Tribunal can determine additional staffing for cross bench members.

¹¹¹ New South Wales Parliamentary Remuneration Tribunal, Annual Report and Determination [online document] (7 July 2020), 22, https://www.remtribunals.nsw.gov.au/sites/default/files/2020-12/2020_annual_determination-prt.pdf, accessed 30 September 2022.

¹¹² Ibid, 25.

¹¹³ Ibid.

¹¹⁴ Ibid, 21.

¹¹⁵ Ibid, 22.

¹¹⁶ *Ministerial and Other Office Holder Staff Act 2010* (Qld), s 9, note 1.

¹¹⁷ Ibid, s 9, note 2.

In making an additional staff member determination, Queensland's Independent Remuneration Tribunal has regard to:¹¹⁸

- parliamentary resources provided to cross bench members and other members of the Assembly
- the composition of the Assembly and how this affects cross bench members
- the workload and duties of the cross bench members for whom the Tribunal is considering to make the determination, and
- whether the cross bench members are members of political parties.¹¹⁹

Other evidence the Tribunal has considered in the past includes:

- existing provisions for establishing a non-government office
- historical considerations regarding the staffing of cross bench members
- current Government and Opposition staffing arrangements
- provision of additional staff (if any) for cross bench members in other jurisdictions
- the composition of the current Legislative Assembly
- the role and responsibilities of a cross bench member
- submissions received from the Clerk and cross bench members/registered political parties.¹²⁰

The Tribunal is also required to consult with and consider the views of the Clerk of the Parliament.¹²¹

In the UK, members have a staffing budget which is set by the Independent Parliamentary Standards Authority (IPSA). In addition to setting the staffing budget each year, IPSA also has the power to initiate broader reviews of budget for staffing allocation. For example, in 2020 in response to anecdotal evidence that staff were struggling to meet demands, and high level of turnover among staff IPSA increased the staffing budget for members by 13-14 per cent.¹²² The increase reflected the following considerations:

- updated job descriptions of staff
- market benchmarking of staff salaries - adjusted, based on the updated job descriptions, based on a fair market rate and reflect cost-of-living increases

¹¹⁸ *Queensland Independent Remuneration Tribunal Act 2013* (Qld), s 31G.

¹¹⁹ Queensland Independent Remuneration Tribunal, *Determination 23/2021 – Additional Staff Member & Remuneration Determination: 2021 Review of the Additional Staffing levels for Cross Bench Members of the 57th Parliament* (24 February 2021), 2.

¹²⁰ *Ibid.*, 3.

¹²¹ *Ibid.*

¹²² Independent Parliamentary Standards Authority (UK), *Policy review: Funding for MPs' staff* [online document], (March 2020), 6, <https://assets.ctfassets.net/nc7h1cs4q6ic/1Qpj1SkPE2oTGgY3HewrsP/29dce53971c38a9f27c3f1cf2d2f54f5/policy-review-funding-for-mps-staff.pdf>, accessed 30 September 2022.

-
- additional staffing budget for each MP to provide additional support for training, wellbeing, health and welfare costs of their staff.¹²³

IPSA conveyed a clear intention behind the changes ‘made with the objective of supporting the recruitment and retention of high-quality staff, as well as of supporting their professional development through training and fair pay to recognise experience and skills’.¹²⁴

Modern workplaces in both the public and private sector routinely review their resourcing needs as part of workforce planning.

Method of allocating staff

There is a range of methods for determining staffing resources. In the Commonwealth MoP(S) Act framework, the power to determine both electorate and personal employee resources for all parliamentarians rests with the Prime Minister.¹²⁵

The Act requires the Prime Minister to ‘have regard to the Parliamentary duties’ of a senator or member, when determining whether the senator or member should be an office-holder and empowered to engage personal employees subject to a staffing allocation.¹²⁶ However, the Act does not require the Prime Minister to consider any other matters when determining staffing allocations. ‘Parliamentary duties’ is not defined in the Act, nor is any guidance available in extrinsic materials such as the explanatory memorandum or the second reading speech.

In comparison, the method of allocating staff in all other state jurisdictions is separated between ministerial staff (and sometimes office-holder staff), and other personal staff and electorate staff. For the most part, ministerial staff allocations are set by the Premier (NSW, Vic and SA) or by the Director-General of the Department of Premier and Cabinet (on the Premier’s recommendation) (Qld). In SA there is a ceiling on ministerial staffing numbers,¹²⁷ and in NZ ministerial staffing levels are set by the Department of Internal Affairs.

Other methods for allocating personal staff and electorate staff include:

- *Statutory formula*: In Victoria, personal staff (parliamentary advisers) are allocated to non-government party leaders in accordance with a statutory formula which sets out a ratio for the number of members and the correlating allocation of staff.¹²⁸

¹²³ Ibid.

¹²⁴ Ibid, 7.

¹²⁵ Electorate staffing allocation powers are usually delegated to the SMOS.

¹²⁶ MoP(S) Act, s 12.

¹²⁷ ‘Must not exceed 1% of all employees in the public service’; *Public Sector Act 2009 (SA)*, s 71.

¹²⁸ For example: only 1 member = 1 adviser; Between 1 < 6 members = 2 advisers (+ extra adviser for each 2 further elected members); Between 5 < 12 members = 1 adviser (+ 1 extra adviser for each 2 further elected member);

- *Independent Remuneration Tribunal:* In NSW, the Parliamentary Remuneration Tribunal determines the number of staff that parliamentarians (other than office-holders) can employ, and the number of additional staff that special office-holders can employ. In Queensland, the Independent Remuneration Tribunal is empowered to make additional staff member determinations for members of cross bench.¹²⁹ The Speaker of the Queensland Parliament is responsible for 'deciding the size and organisation of the parliamentary service', and may establish advisory committees to advise on any issues arising under the Act.¹³⁰
- *Budget allocation:* In ACT, staff resourcing is set by budget, determined in accordance with a formula, and parliamentarians have the flexibility to engage staff within the budget limits. In the UK, Canada, and NZ, members are also allocated a budget rather set numbers of staff.

3.4.2 Options for improvement

Workload pressures

We heard clear messages about the very real impacts that high workload and under-resourcing is having on the health and safety of parliamentarians and MoP(S) Act employees, and on their capacity to perform their roles effectively.

Independent and minor party parliamentarians had a clear view that recent personal staffing allocation reductions have impacted their offices in this way.

More broadly we heard about pressures in relation to both personal staff and electorate office staff. The most consistent message across the span of contributors was in relation to electorate office resourcing.

Electorate office staffing has not increased from the allocated base four positions set 15 years ago. Since then, the average constituent numbers have increased by 25 per cent (or by 23,000 people) per Member; constituent demography has evolved; constituency work linked to government services has increased; and a deluge of emails, social media engagement, and 24/7 media cycle demands have led to a reported proliferation in office workloads.

Despite the calls for increased staffing allocation – both electorate and personal – it is not clear to the Review that adding more staff to a system under stress will change the dynamic. Staffing resources are clearly an issue that needs to be considered further, but there are broader issues that may not be solved with a blunt and isolated fix of simply increasing staff numbers. It is clear that different parliamentarians

More than 11 members = 1 adviser for each 2 members. For independents: 1 Parliamentary adviser is allocated; *Public Administration Act 2004 (Vic)*, s 99.

¹²⁹ *Members of Parliament Staff Act 2013 (NSW)*, s 18; *Queensland Independent Remuneration Tribunal Act 2013 (Qld)*, subdivision 3 of Part 3.

¹³⁰ *Parliamentary Service Act 1988 (Qld)*, ss 6, 8.

have different challenges facing their staffing profile and due consideration needs to be given to the breadth of issues, unique to offices, which this Review is unable to do.

A contributor to the Review said:

'Electorate office work, particularly case work, has become more complex and increased in volume particularly since the beginning of the COVID pandemic. This should be an input into staffing formulas. Can we track the nature of constituency work over time? Can there be a feedback loop to Departments and Government so that they know where to put resources? If we can get this right, it might even negate the need for additional Electorate office staff.'

While we heard persuasive anecdotal information from a sample of current and former parliamentarians and MoP(S) Act employees, the Review does not have the requisite data or evidence to underpin a recommendation for specific changes to workplace resourcing.

Workplace pressures and the adequacy of resources should be addressed in the same way as other modern workplaces – through workforce planning to analyse current and future workplace needs, and strategies to meet these using the best resources reasonably available within the fiscal capacity.

At its simplest, workforce planning is about having the right number of people with the right skills in the right roles at the right time. Part of the workforce planning process involves understanding the current state including workforce profile, identifying current and future workforce needs, reviewing environmental factors that may impact on the workforce, gathering data to analyse gaps, investigating strategies and opportunities to address those gaps, and implementing strategies to align the workforce with future workplace needs.

Method of allocating staff

We heard strong and consistent concerns about the method by which staffing allocation resources are currently determined under the MoP(S) Act framework.

We considered a range of alternative approaches to the Prime Minister determining staffing allocation such as:

- separating out staffing allocation of ministerial employees from other employees;
- embedding a ratio or formula in the Act;
- determination by an independent remuneration tribunal; and
- setting staffing budgets rather than allocating numbers.

From the Review's high-level consideration of the approaches in other jurisdictions – each with their strengths and weaknesses – it is not clear that applying an alternative approach would change the outcomes and address the key issue raised, which is for staffing allocation to be increased. For example: the current statutory ratio for staffing allocation in the Victorian model sets an independent staff allocation at one with no discretion to increase this number. This approach arbitrarily determines

numbers of staff for non-government parties without flexibility to have regard to a member’s parliamentary duties or role in the composition of the parliament. In jurisdictions where there is an independent remuneration tribunal which can determine staffing allocation, there is no guaranteed allocation of staff, and the tribunal (considering all relevant factors) may not make a finding for an increase in staff (or any staffing allocation at all).

Any recommendation to change the method of staffing allocation, irrespective of where that power is vested, would need to have regard to an evidence base for change.

OPSC workplace review

The OPSC, once established, should undertake a review of the factors affecting workloads in all offices, including support systems and processes, and external factors such as the adequacy of government services and electorate composition, to inform an evidence-based consideration of office and staffing resources, in particular for electorate offices.

Factors the OPSC could consider are set out in the table below.

Evidence-gathering by OPSC: Factors affecting staffing	
Electorate Composition	<ul style="list-style-type: none"> increased electorate populations the impact of constituent demography on workloads
Government Services	<ul style="list-style-type: none"> adequacy of government services – including casework load linked to government services (such as Centrelink, aged care, NDIA, immigration services, passports) and grants processes relationships between offices and government service providers
Parliamentarian functions	<ul style="list-style-type: none"> workload and work hours, including functions, additional responsibilities, duties, and associated workload of the parliamentarian and staff composition of parliament and role the parliamentarian plays in the business of parliament
Support systems and processes	<ul style="list-style-type: none"> current systems and processes (e.g.: template correspondence and forms, guidance for grants administration) any administrative burdens on office operations
Technology	<ul style="list-style-type: none"> current ICT resources (e.g.: laptops, email functionality, CRM databases, content management systems, integration of systems across the parliamentary network, software and program offerings, remote working functionality)
Training	<ul style="list-style-type: none"> training needs (e.g.: handling difficult interactions with members of the public; efficient use of IT resources; Bill scrutiny training)
Staffing resources	<ul style="list-style-type: none"> current workforce profile level of shared support (e.g.: from party, or colleagues) and parliamentary resources (e.g.: library, PBO)

Evidence-gathering by OPSC: Factors affecting staffing

- adequacy of staffing levels – particularly for electorate offices, where staffing allocation has not changed for 15 years
- supplementary or alternative labour options – including casuals, part-time employees, and the appropriateness of volunteers or trainees

As part of the review, the OPSC should consider:

- formulas/metrics that can be used to calculate electorate and personal staff resourcing needs
- mapping – existing key systems and processes
- gap analysis – identifying any gaps, under-capacity, or scope for improvement
- costings of any proposed resourcing changes, particularly in relation to staffing allocation
- remuneration levels and impact on attracting and retaining skilled staff.¹³¹

The review should recommend principles to be considered by the Prime Minister in determining staffing allocations.

The OPSC may wish to consider engaging former senior MoP(S) Act employees, representative of the parliament, to undertake this review.

Transparent reporting of staffing allocation

In the context of broader structural reforms which are yet to be implemented, including the recommended OPSC workplace review, and in the absence of a strong alternative approach to delivering effective outcomes in the Commonwealth context, the Review concluded that the existing system of staffing allocation should be retained at this time. However, transparency of staffing allocation is important and the Review recommends this be enhanced through a legislative requirement to report annually on the number of staff allocated to parliamentarian offices.

Transparent reporting, combined with any principles the OPSC recommends the Prime Minister have regard to when making staffing allocation decisions, will strengthen the existing approach.

Periodic reporting

The Review considers the OPSC could also prepare periodic reports, at least every three years, on the MoP(S) Act workforce and workplace resourcing including opportunities to improve systems and performance. Matters the report could consider include:

- an environmental scan of factors impacting the workplace
- current workforce profile and resources available
- outcomes of process and systems mapping

¹³¹ The Review heard a number of calls for increases in salaries for electorate staff. Remuneration is important in the context of the ability to attract suitable staff, and payment to adequately reflect the requirements of the role.

-
- any gaps, under-capacity or scope for improvement
 - formula/metrics that can be used to calculate electorate and personal staff resourcing needs
 - remuneration levels and impact on attracting and retaining skilled staff.

Ideally, timing of such a report would be mid-election cycle, prior to any Enterprise Agreement renegotiations, and could coincide with a PBR independent statutory review.¹³² The report should be tabled or published on the OPSC website.

Interim measures

The Review expects the OPSC will also carry on any work Finance has undertaken in relation to workplace resourcing and support in the intervening period between this report and the establishment of the OPSC. This includes implementing relevant recommendations in the PBR/IPEA Review.

The Parliamentary Library will also be a support resource available for parliamentarians in this period.

3.4.3 Conclusion

Insufficient workplace resources cause workload pressures. These pressures, in turn, impact on the capacity of parliamentarians and their employees to do their jobs, and on work health and safety.

Noting the broader structural reforms underway and the OPSC workplace review focus on identifying data and evidence to support any recommendations for changes to resources, the Review has focused on enhancing transparency. The outcomes of staffing allocation determinations should be transparent by office including tabled and being published in an annual report, and have regard to any principles the OPSC identifies in its report.

Recommendation 3 – Resourcing of parliamentary offices

The OPSC should undertake a review of the factors affecting workloads, particularly in electorate offices, including support systems and processes, and external factors such as the adequacy of government services and electorate composition, to inform an evidence-based consideration of office and staffing resources. The review should recommend principles to be considered by the Prime Minister in determining staffing allocations.

¹³² *Parliamentary Business Resources Act 2017* (Cth) (PBR Act), s 62.

Recommendation 4 – Transparency of staffing allocations

The MoP(S) Act should be amended to require the allocation of staff to be transparent through annual reporting arrangements.

3.5 Modernise the MoP(S) Act

The Review identifies opportunities to modernise the structure and content of the MoP(S) Act.

3.5.1 Objects clause

Currently the MoP(S) Act does not have an objects clause. Objects clauses have been described as ‘a modern-day variant on the use of a preamble to indicate the intended purpose of legislation’.¹³³ Often located at the beginning of an Act, an objects clause outlines the purpose, aims and principles underlying legislation, which can be used as an interpretation tool to resolve uncertainty and ambiguity. An objects provision in the MoP(S) Act might state that the purpose of the MoP(S) Act is to:

- set out a modern employment framework which supports a safe, respectful and accountable workplace for MoP(S) Act employees
- outline certain rights and obligations of MoP(S) Act employees
- define certain powers, functions and responsibilities relating to the MoP(S) Act employment.

3.5.2 Streamline structure and form

As outlined above, the separation of employees between Parts III and IV has created confusion for employees, parliamentarians and Finance alike in the administration of the MoP(S) Act.

One of the more obvious parts of the MoP(S) Act that has not kept pace with modern employment frameworks is the superannuation provisions under Parts II, III and IV (sections 8, 15 and 22). These provisions are, for the most part, functionally inoperative.

Superannuation arrangements for MoP(S) Act employees are the same as for other Commonwealth employees. Superannuation provisions should be redrafted to preserve any residual application to a small number (if any) of the MoP(S) Act employees to whom the provisions are still relevant. Otherwise,

¹³³ Dennis Pearce, *Statutory Interpretation in Australia* (9th edn., Chatswood, New South Wales: LexisNexis Butterworths, 2019), 192.

the MoP(S) Act should redraft the superannuation provisions to reflect contemporary superannuation law.

Although it has not been used since 2006,¹³⁴ there may be value in retaining provisions related to engaging consultants, but reframing these provisions to permit ministers to procure the services of consultants independently of their portfolio departments. Procurement of consultants, rather than engagement of consultants as staff, reflects modern workplace practice.

Recommendation 5 – Modernising the Act

The MoP(S) Act should be modernised by including an objects clause to reflect the purposes of the Act, and amending provisions relating to superannuation and consultants to better reflect contemporary settings.

3.6 Other legislative amendments for clarity and consistency

3.6.1 Determinations

As outlined in Section 2.3, the Prime Minister has powers to determine a number of matters with regard to MoP(S) Act employee engagement and terms and conditions. The Review considers determination instruments relating to terms and conditions should be made publicly available except where they contain personal information¹³⁵. While we understand that Finance currently publishes all determinations relating to terms and conditions on their website,¹³⁶ there is no legislative requirement to do so. This creates a risk that MoP(S) employees and members of the public may not necessarily be provided with a full and accurate picture of the terms and conditions governing MoP(S) Act employment. Including such a requirement in the Act would improve visibility of, and certainty in relation to, employment conditions for MoP(S) Act employees, as well as increasing the transparency of the Prime Minister's (or delegate's) exercise of powers to set terms and conditions.

¹³⁴ Parliament of Australia, *Members of Parliament (Staff) Act 1984: Consultants engaged under section 4 of the Act, Report 2006–2007*, Parliamentary Paper No. 168 of 2007, Canberra (11 September 2007).

¹³⁵ Determination instruments containing personal information relating to terms and conditions of employment are not required to be published; *Legislative Instruments (Exemptions and Other Matters) Regulation 2015 (Cth)*, reg 6, item 10.

¹³⁶ Department of Finance, *Employment instruments and authorisations* [website], [9 August 2022] <https://maps.finance.gov.au/pay-and-employment/mops-act-employment/employment-instruments-and-authorisations>, accessed 30 September 2022.

The Review considers that amending the Act to provide that determinations made under sections 14 and 21 of the Act are notifiable instruments is the most straightforward way to achieve this end. Notifiable instruments are required to be published on the Federal Register of Legislation,¹³⁷ and were introduced as a new category of instrument in 2015 for use when ‘public accessibility is desirable’.¹³⁸ However, notifiable instruments are otherwise functionally the same as the existing instruments made under the determinations power (e.g. disallowance and sunseting regimes will not apply).¹³⁹ The Review recommends that, consistent with modern drafting practices and the public interest in ensuring that the terms and conditions governing MoP(S) employment are transparent, determinations of terms and conditions (that do not contain personal information) should be made as notifiable instruments.

The Review notes some determinations contain arrangements or terms and conditions of employment which have been in place for some time and are unlikely to need change. As such, consideration should be given to lifting discrete parts of the following determinations into the MoP(S) Act:

Determination	Relevant part
2013/12 - Office-holders, senators and members must not employ family members	Condition of employment that the person to be employed is not a member of the office-holder’s, Senator’s or Member’s immediate family ¹⁴⁰
2016/15 - Employment of electorate officers, item 2	Electorate Officers...are employed to assist the Senator or Member to carry out duties as a Member of Parliament, and not for party political purposes.’

3.6.2 Employment and employer powers in vacant seats

The MoP(S) Act should expressly provide for the continuation of employment and employer powers in certain circumstances when a seat becomes vacant. On occasion, when a seat becomes vacant, it is not clear whether MoP(S) Act employment continues (particularly for electorate staff) and who exercises employer powers like hiring, terminating employment, approving leave, managing roles and responsibilities, and ensuring WHS obligations are met. Circumstances when this may arise include death of a parliamentarian, and during an election period between the date of dissolution of parliament until

¹³⁷ Office of Parliamentary Counsel, *Instruments Handbook*, version 3.3 (June 2008).

¹³⁸ Australian Government Solicitor, *Express law No. 244 – Acts and Instruments (Framework Reform) Act 2015 to commence on 5 March* (4 March 2016), <https://www.ags.gov.au/publications/express-law/el244>, last accessed 30 September 2022

¹³⁹ Office of Parliamentary Counsel, *Instruments Handbook*, version 3.3 (June 2008).

¹⁴⁰ In the Australian Capital Territory, the prohibition against parliamentarians employing immediate family members is prescribed in equivalent legislation *Legislative Assembly (Members’ Staff) Act 1989* (ACT), sub-s 5(2).

the polls are declared. The amendments should reflect the arrangement set up by the *Parliamentary Business Resources Act 2017* (Cth) (PBR Act).¹⁴¹ See Section 6.5 for a discussion on the circumstances on when automatic termination is triggered.

3.6.3 Arrangements to backfill personal employees – ‘12 week rule’

The Review heard greater certainty is needed around arrangements for ‘backfilling’ personal employees on leave. The practice is currently not well-defined or consistent across offices. This is in contrast to arrangements for electorate employees, where parliamentarians may use the Electorate Support Budget to cover staff absences – although this is not without issue either (see below). Currently, when a personal employee is on leave for 12 weeks or more, a parliamentarian is generally permitted to employ another person to backfill the position. This long-standing practice is known as the ‘12 week rule’ and is based on guidance issued and endorsed by several governments since 1998. For periods of leave 12 weeks or less, ministers have been able to rely on portfolio department staff to backfill a position. However, this arrangement is not equally available for other parliamentarians. The Review recommends the Prime Minister (or delegate) confirm the current practice to backfill personal staff on leave for 12 weeks or more by determination. Responsibility for the policy and communication of the policy would sit with the OPSC. For periods less than 12 weeks, this Review does not consider it practical to provide formal arrangements for temporary positions, given the time it would take to recruit and on-board new staff.

3.6.4 Travel expenses framework

Authority for MoP(S) Act employees to incur or claim work-related travel expenses is set out in a determination,¹⁴² in the EA and associated workplace guidelines. These are administered by IPEA. Authority for work-related travel expenses for parliamentarians is set out in the PBR Act framework, and administered by IPEA. The OPSC should work with IPEA to align expenses and terminology between the two frameworks, as well as the broader framework matters such as training and support.¹⁴³

¹⁴¹ PBR Act, s 49.

¹⁴² Minister for Finance (Cth), *Determination 2020/15: Staff Travel and Relief Staff Arrangements* (29 June 2020).

¹⁴³ The IPEA submission (*Submission 27*) sets out further details. For example, the MoP(S) Act refers to parliamentarian ‘allowances’ and ‘entitlements’, whereas the PBR Act refers to ‘expenses’; there is no definition for employees travelling on ‘official business’ in the EA; changing the requirement for MoP(S) Act staff to be ‘directed to travel for official business’; and clarifying arrangements for pre and post-employment travel.

3.6.5 Consequential amendments

Consequential amendments will need to be made to other Acts or instruments which refer to any amended parts of the MoP(S) Act (e.g. determinations, EA, contracts).

Recommendation 6 – Increasing transparency for terms and conditions

Transparency of employment arrangements should be enhanced by including in the MoP(S) Act:

- A. a requirement that determinations made under the MoP(S) Act about terms and conditions be published except in circumstances where individuals may reasonably be identified
- B. a provision for the continuity of employment and employer powers when a seat becomes vacant, including between the date of dissolution of parliament and the date a poll is declared.

Findings to inform the work of the OPSC

The Review heard staff are often discouraged from taking leave (e.g. leads to short staffing or a reduction in the Electorate Support Budget). The OPSC should consider monitoring and reporting on leave applications and balances, and communicate to both parliamentarians and staff about the importance of taking leave for employee wellbeing.

4 Setting an office up for success

4.1 Introduction

Parliamentary offices should be professional, high-performing, safe and respectful workplaces. This expectation aligns with contributions to the Review from current and former parliamentarians and MoP(S) Act employees, the express object in the terms of reference for the Review and comparative review of other jurisdictions or sectors.

This chapter identifies building blocks to meet this expectation. These include:

- setting up an office for success, including position descriptions, office structure, performance feedback and diversity
- recruitment, including the application of merit and use of pre-engagement checks and probation
- intermittent labour, including consideration of work, health and safety responsibilities.

The benefits of this approach for parliamentarians include being better supported to carry out their functions. For MoP(S) Act employees, a greater emphasis on expectations and professional development should set the conditions for a successful career experience. The potential benefits to the public include greater assurance that expenditure of Commonwealth funds on staffing is appropriate.

4.2 The parliamentary office

4.2.1 Current situation

The set-up and management of parliamentary offices is largely left to the discretion of parliamentarians and their senior employees. The current arrangements allow parliamentarians flexibility and rely on their existing skills and knowledge to ensure their office is equipped to be effective and to fulfil their obligations under workplace laws.

MaPS provides policy and guidance to assist parliamentarians to recruit employees. The MaPS website includes recruitment resources such as determinations and other employment instruments, duty statement templates, and a step-by-step guide to recruiting staff. It includes guidance that applications for a position 'should be assessed on their merit against the skills and qualifications outlined in the position description.'¹⁴⁴ Parliamentarians, however, are not required to follow the MaPS guidance and, as we heard, are often not aware of its existence.

¹⁴⁴ Department of Finance, *Recruiting Staff* [website], (9 September 2022), <https://maps.finance.gov.au/pay-and-employment/mops-act-employment/recruitment-and-establishing-positions/recruiting-staff>, accessed 16 September 2022.

Some contributors to the Review, including parliamentarians, highlighted the challenge of finding themselves managing MoP(S) Act employees and offices despite having no experience as a people or office manager. There is limited guidance or support currently available to new and returning parliamentarians on staffing composition, management and reporting structure, and whole-of-office consideration of skills and experience. *Set the Standard* indicates some resources and informal peer support initiatives presently exist but, for new parliamentarians in particular, more is needed to set up their office for success and to foster a positive office culture.¹⁴⁵

We heard from contributors that when parliamentary offices are set up well, fewer human resource issues arise. And when those issues do arise in offices set up well, these issues are quickly responded to and more likely to be resolved.

4.2.2 Options for improvement

Office structure

We heard about the importance of selecting the right employees, but also a need for more structured support for parliamentarians and offices to determine what constitutes the right employee for their office. One contributor likened a parliamentary office to functioning like a small business and, as such, there needs to be capabilities in core areas like HR, managing expenses and budgets, and understanding WHS obligations.

The Review considers there are two steps necessary to finding the right people with the right skill sets for a parliamentary office. These are:

- considering what policy, media, administrative and people management skills are required within an office, with the understanding not all staff need to have a particular skill, so long as enough staff have that skill for the office to function
- ensuring someone in the office is assigned to and able to carry out critical office functions, such as people and workflow management.¹⁴⁶

The Review acknowledges some parliamentarians are well placed to assess the skills and experience needed in their office. Others may benefit from OPSC organisational support. This might include information about different office structures, staffing composition, role requirements, reporting structures

¹⁴⁵ AHRC, *Set the Standard*, 191.

¹⁴⁶ The Review considers this two-step articulation aligns with Recommendation 12 of *Set the Standard*, which calls for the establishment of standards and processes to professionalise management practices for MoP(S) Act employees. Recommendation 12 also outlines the need for priority consideration of office composition and staffing, role clarity and expectations, management of misconduct, and best practice respectful workplace behaviours: AHRC, *Set the Standard*, 22.

and tailoring the office to meet specific needs of an electorate (which could include, for example, cultural competency or language skills).¹⁴⁷

Position descriptions

One of the issues identified by contributors is that many MoP(S) Act employees are not provided with a position description or other understanding of a role prior to commencing employment. The Review considers the reported practice of not providing a role outline, like a position description, to a candidate for employment or a new starter can undermine attempts to set up an office – and the individual staff member – for success. Safe Work Australia’s Model Code of Practice identifies lack of role clarity as a psychosocial hazard in the workplace. Lack of role clarity, as described by Safe Work Australia, may involve uncertainty, frequent changes, conflicting roles or ambiguous responsibilities and expectations.¹⁴⁸

We heard position descriptions should be put together in the context of the office as a whole. This provides an opportunity for parliamentarians (or senior staff) to consider the overall office composition and whether critical capabilities are covered or should be incorporated into a new role. The OPSC will support parliamentarians in this process by providing template position descriptions that can be amended by a parliamentarian, their office manager or similar to meet the needs of their individual office. This way, parliamentarians can have flexibility in establishing specialist roles, but draw upon OPSC templates and guidance to ensure the office has all the key skills it needs to operate effectively.

The Review considers a position description also assists the recruitment process by making it easier to assess a candidate’s suitability for the role. It also sets up an employee for the work environment with clear expectations, which are central to the management of probation and performance assessments. The survey responses revealed MoP(S) Act employees had a strong positive response about the potential for clear position descriptions to be effective in improving the accountability of MoP(S) Act employees in terms of conduct and performance.¹⁴⁹

Office manager or assigned responsibilities

Contributors to the Review observed the importance of human resource management responsibilities being assigned to appropriately skilled employees within an office.

Some parliamentarians will choose to retain human resource decision-making responsibilities for their staff, whereas others may delegate these duties. The Review observes the offices considered ‘successful’ by contributors almost always had an ‘office manager’ with experience or training in managing people. This person ensures employees within an office understand their roles and have the skills to perform

¹⁴⁷ Submission 47.

¹⁴⁸ Safe Work Australia, *Model Code of Practice: Managing psychosocial hazards at work* [website], (2022) <https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-psychosocial-hazards-work>, accessed 23 September 2022.

¹⁴⁹ 77 per cent of survey respondents thought position duties/job descriptions would have a positive or substantial positive impact on improving accountability.

them, as well as having other responsibilities within the office. A number of contributors to the Review called for a requirement for an ‘office manager’ role to be established within all parliamentary offices, with defined skills and responsibilities.

The Review considers critical capabilities, like human resourcing and managing the office budget should be attributed to suitable staff in each office. This means critical office capabilities like HR and budgeting should be considered when setting up the structure of each parliamentary office and assigned to specific roles. The Review does not consider that a person designated as ‘office manager’ needs to be mandated for each office, although this should be best practice. The OPSC should provide guidance on a position description for such a role. The Review notes some parliamentary offices may choose to pool critical office functions among themselves or draw from party resources.

The Review heard it can be difficult for parliamentarian’s offices to find time for professional development and training. While acknowledging this difficulty, the Review considers the success of an office rests in large part on employees’ ability to access training and be supported in their role, particularly those employees with responsibilities for critical office functions. This is a high priority where staff holding these responsibilities lack experience.

The Review considers the OPSC, where necessary, should have powers to require specified training. This could, for example, include mandating for a MoP(S) Act employee with delegated human resource or financial authorisations to undertake training within six months of commencing or demonstrating to OPSC their relevant knowledge or experience to undertake the role. The Review concludes this as an appropriate balance to the power of parliamentarians to delegate critical office functions.

Recommendation 2 addresses the conclusions reached here.

Diversity, Equality and Inclusion

The Review heard a significant proportion of recruitment for MoP(S) Act roles occurs through word of mouth or direct approaches within existing networks. This was said to support the need to fill positions quickly, such as during the post-election period, and to reflect the desire for assurance about a candidate’s trustworthiness and their awareness of priorities based on their association with a political party. (For example 44 per cent of survey responses from current and former MoP(S) Act employees indicated they found out about their role through a direct approach, and a further 25 per cent by word of mouth. Only 13 per cent heard of their role through advertisement.)

The Review understands that sometimes swift recruitment decisions are needed. However, focussing on networks for a recruitment can work against the diversity of employees in parliamentary offices. The business case for applying diversity, equality and inclusion recruitment principles is well-researched and

documented.¹⁵⁰ *Set the Standard* also highlights embedding diversity, equality and inclusion principles in HR policies and practices as central to creating the safe, inclusive and respectful behaviour, and a MoP(S) workforce that reflects representative democracy.¹⁵¹

The Review considered how best to include diversity, equality and inclusion practices into an office set up. These include:

- casting a wider net beyond personal networks to get a more diverse candidate pool
- reviewing recruitment practices to uncover and address risks of bias. This could include, for example, having a person external to the office sit in on an interview or consider any demographic patterns in recent recruits
- tapping into support at the party-level and/or through the OPSC to obtain practical guidance on recruitment practices that are bias free and value diversity to learn how to more proactively foster diverse perspectives in the workplace.¹⁵²

The OPSC will be positioned to provide guidance to parliamentarians and their office on these and related matters.

Part of fostering a diverse and inclusive workforce also relates to the ability of staff to balance their work and personal life. The current EA allows for working from home or individual flexibility arrangements to be agreed between the minister and an employee.¹⁵³ Yet both responses to this Review and *Set the Standard* identified barriers for MoP(S) Act employees when seeking to maintain a flexible work-life balance. Contributors in interviews pointed to an overall culture of caring responsibilities being viewed as a personal issue to be solved by the individual staff member rather than one that requires organisational support. The Review heard about employees with caring responsibilities:

- not receiving a job offer based on being a parent and perceived as unreliable and unable to undertake required hours for this reason

¹⁵⁰ There is a strong statistical correlation between the diversity of management teams and innovation and enhanced business performance. See: Rocío Lorenzo, et al, *How Diverse Leadership Teams Boost Innovation*, Boston Consulting Group [website], (23 January 2018), <https://www.bcg.com/publications/2018/how-diverse-leadership-teams-boost-innovation>, accessed 20 September 2022; Glassdoor, *Glassdoor's Diversity and Inclusion Workplace Survey* [website], (29 September 2020) <https://www.glassdoor.com/blog/glassdoors-diversity-and-inclusion-workplace-survey/>, accessed: 20 September 2022; PWC, *18th Annual Global CEO Survey* [website] (January 2015) <https://www.pwc.com/gx/en/ceo-survey/2015/assets/pwc-18th-annual-global-ceo-survey-jan-2015.pdf>, accessed 20 September 2022.

¹⁵¹ AHRC, *Set the Standard*, 162.

¹⁵² See: Diversity Council of Australia, *Inclusive Recruitment* [website], (no date), <https://www.dca.org.au/diversity/inclusive-recruitment>, accessed 20 September 2022; David Windley and Forbes Human Resources Council, 'Recruiting for Diversity – Four Steps to Success', *Forbes* [website], (20 September 2021), <https://www.forbes.com/sites/forbeshumanresourcescouncil/2021/09/20/recruiting-for-diversity-four-steps-to-success/?sh=1118ac9a7fe5>, accessed 20 September 2022.

¹⁵³ Enterprise Agreement, cls 12-13.

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- routinely not being considered for opportunities and career progression
 - perceiving caring responsibilities are issues to be solved at home
 - being unable to access flexible work arrangements, like part-time or job share roles, and
 - leaving the parliamentary workplace due to inability to balance work and home life.

In identifying measures through which to diversify MoP(S) Act employees, *Set the Standard* highlighted the need for political parties, party leadership and office-holders to encourage greater take-up of flexible working arrangements, including remote working and job sharing.¹⁵⁴ Options raised by contributors to this Review reflect the need for more flexible work options. Suggestions include rosters for sitting days, support arrangements for new parents, backfilling positions to cover extended leave requirements, and remote work.

The Review considers there is value in acknowledging the importance of a diverse and inclusive workforce and affirming the fostering of flexible workplaces as part of the employment principles to be developed as part of Recommendation 9.¹⁵⁵ The principles should guide and inform the support and training provided by the OPSC.

Support for skills development

The Review considers setting up an office for success involves parliamentary offices identifying professional development needs of employees. This starts with identifying any skills required for a role, and then ensuring new employees either have those skills or an opportunity to develop them through on-the-job training or formal training programs. Professional development is ongoing and should be revisited at regular intervals.

The Review notes Dr Maley's submission that, because of the relatively high turnover, MoP(S) staff '...needs an ongoing program of training and induction'.¹⁵⁶ The OPSC will be best placed to consider the common training needs across parliamentarians' offices and lead such programs.

4.2.3 Conclusion

A successful parliamentary office is one that can carry out its core tasks effectively and in a way that upholds rather than detracts from a supportive, respectful, and inclusive workplace culture.

While the Review emphasises the centrality of professionalising management practices to setting up parliamentary offices for success. MoP(S) Act employees should have a position description, understand their role (see Recommendation 7) and ideally have support from an 'office manager' function.

¹⁵⁴ AHRC, *Set the Standard*, 172.

¹⁵⁵ This option would align with *Set the Standard* findings and Recommendations 5 and 6, as well as a Recommendations including 9, 12, 17, and 24 which reflect diversity, equality and inclusion principles.

¹⁵⁶ *Submission 10*, 1.

The Review also acknowledges there are limits in terms of what well-organised parliamentary offices can achieve – structural issues can still pose challenges. The Review heard about the impact of issues like long and irregular work hours, misalignment of workloads and staffing numbers, inefficient work practices, inflexible work arrangements, and extensive travel on offices and MoP(S) Act employees. These issues are covered in Section 3.4, which explores workplace resourcing including staff allocations.

Findings to inform the work of OPSC

The OPSC, once established, will be positioned to further consider the following points where they intersect with Recommendations 12, 13 and 14 of *Set the Standard* as well as support the recommendations of this Review to:

- create best practice guidelines on how parliamentary offices can develop an organisational structure that includes guidance on delegating responsibility for critical office functions, such as HR and finance
- promote a shared understanding among parliamentary offices about the appropriate skills and/or qualifications to be an ‘office manager’, HR or financial delegate
- consider targeted training for parliamentarians or MoP(S) Act employees carrying out employment functions to ensure awareness and compliance with applicable employment laws.

In line with Recommendation 11 of *Set the Standard*, OPSC should consider how the provision of HR support and administrative functions could be informed by diversity, equality and inclusion principles. This could include consideration of:

- providing parliamentarians with access to alternate employment pathways, like internship programs that focus on diversity groups, guidance on how to conduct affirmative action recruitment rounds, and connecting parliamentarians with Supply Nation certified recruitment services
- the development of HR support material on managing flexible work to support consistent application among offices
- inclusion of diversity, equality and inclusion principles in its response to Recommendation 13 of *Set the Standard* including practical advice on the day-to-day operation of parliamentary offices, such as how to run inclusive recruitment processes, in the professional development program to be developed by OPSC for MoP(S) Act employees
- membership to peak diversity and inclusion organisations to inform the delivery of Recommendation 14 of *Set the Standard* around best practice training on respectful workplace behaviour and inclusive leadership.

4.3 Recruitment

'Merit' finds its roots in Anglo-French *merite* and Latin *meritum*, meaning what is deserved, earned, a due reward or justification.¹⁵⁷ Merit recruitment is generally understood to involve a process of comparing candidate skills, aptitude and experiences, where the most suitable candidate for the role receives an offer of employment. An assessment of a candidate against criteria is central to a merit process, although there can be various approaches to merit recruitment.

Merit is also contextual as it relates to a particular role, and work environment. Depending on the industry or workplace, different skills, attributes and experiences matter most for a vacant role.

4.3.1 Current situation

MaPS provides website resources and policy and guidance about recruitment as outlined in Section 4.2.1.

The Review heard that MaPS does not proactively engage with the recruitment process, beyond offering support resources on their website. Rather, a parliamentarian or their office reaches out to MaPS for assistance. The voluntary nature of MaPS' guidance and involvement means recruitment practices differ between parliamentary offices. We heard some offices advertise roles, provide job descriptions and conduct interviews and reference checks, whereas others relied heavily on word of mouth recommendations and talent identified within the pool of campaign volunteers.

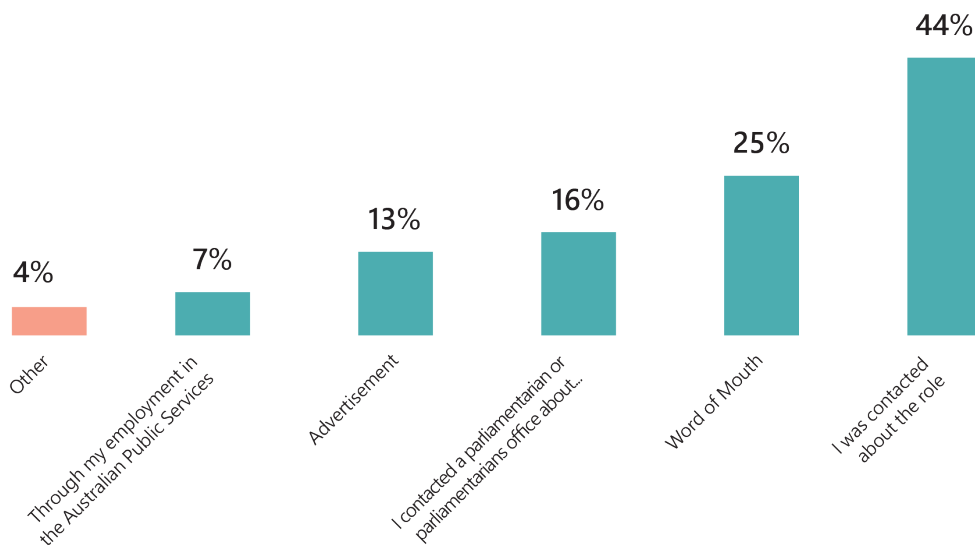
Some contributors told the Review about parliamentarians hiring staff on account of their political connections, as favours to donors, or personal connections. The survey undertaken during the Review suggested that, while respondents with employment powers did recruit MoP(S) Act employees using advertising and via direct approaches to their office, they most often recruited through 'word of mouth' recommendations and contacting people directly about roles.¹⁵⁸ The survey responses from MoP(S) employees are consistent with this, indicating 'word of mouth' and being approached directly are the most common ways they found out about their MoP(S) position.

¹⁵⁷ Macquarie Dictionary Online, *Definition of Merit* [website] (Macquarie Dictionary Publishers, 2016), https://www.macquariedictionary.com.au/features/word/search/?search_word_type=Dictionary&word=merit, accessed 21 September 2022.

¹⁵⁸ The survey allowed respondents to make multiples selections on recruitment methods.

Figure 8.

Survey results: How did you find out about your role?



The survey results also indicate MoP(S) Act employees perceive the capability of their colleagues to support parliamentarians to carry out their functions could be better. Forty per cent of respondents agreed or strongly agreed their co-workers never or only sometimes have/had the necessary skills and expertise to perform their roles effectively. While the importance of factors like training and performance management to develop professional skills should not be overlooked, recruitment practices for MoP(S) Act employees may not consistently support the engagement of suitable staff and high performance.

In addition to any impacts on the suitability of MoP(S) Act employees, the Review notes the *Set the Standard* finding that current recruitment practices impact on perceptions of fairness and transparency among MoP(S) Act employees¹⁵⁹. Current recruitment practices were also identified in *Set the Standard* as a driver and risk factor for workplace bullying, sexual harassment, and sexual assault¹⁶⁰.

What we heard

The Review heard mixed support for introducing a merit recruitment model for MoP(S) Act employees.

We heard frequently from contributors about the need for greater transparency in recruitment processes. We also often heard about the need for MoP(S) recruitment to elevate the weighting given to knowledge, skills, experience and attributes when considering the suitability of an individual for a role.

¹⁵⁹ AHRC, *Set the Standard*, 132.

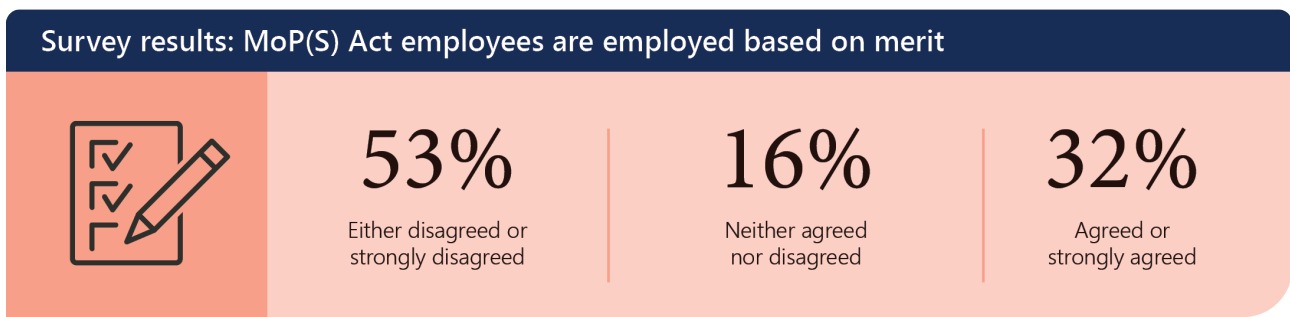
¹⁶⁰ AHRC, *Set the Standard*, 82.

Some contributors expressed particular concerns about:

- ‘politically motivated’ appointments into critical roles and the knock-on impact on office if that person is not suitable for the role
- recruitment of more junior, but more politically influential staff, having greater influence over decision-making than experienced advisers
- relatively inexperienced people being engaged as MoP(S) Act employees (these employees were perceived to be vulnerable when placed in high pressure environments with unclear workplace expectations and a power imbalance with more experienced staff and parliamentarians)¹⁶¹

In the survey conducted by the Review, the following result was reached on the question of whether MoP(S) Act employees are employed on merit:

Figure 9.



In support of a merit requirement, we heard recruitment should be looked at as a main channel for improving the diversity of the MoP(S) Act workforce, and making sure the knowledge and experience base in Commonwealth parliamentary workplaces better reflects the public it ultimately serves.

Contributors to the Review also shared views against the use of merit recruitment on the basis:

- APS-style merit recruitment is inappropriate for MoP(S) Act employment, as these are two distinct operating environments and the employees in each fulfil their roles within different political realities and expectations
- any formalisation of merit in the recruitment process for MoP(S) Act employees needs to be balanced with the need for parliamentarians to exercise discretion on who works in their office
- too much bureaucracy will not be time sensitive to parliamentarians’ operating environment.

We heard about the importance of being able to make fast decisions, including the need to recruit or terminate staff quickly depending on the outcome of an election or ministerial reshuffle. In such

¹⁶¹ Workforce data indicates the percentage of the MoP(S) Act workforce below 30 years is double that of the APS as of June 2022 (29 per cent to 14 per cent). Data on MoP(S) Act staff provided by the Department of Finance. APS employment data is available at: Australian Public Service Commission, *APS Employment Data 30 June 2022* [website], (29 August 2022) <https://www.apsc.gov.au/employment-data/aps-employment-data-30-june-2022>, accessed 2 September 2022.

circumstances, many contributors perceived a merit-based recruitment process to be slow and not fit for purpose. As one contributor noted: ‘someone has to be in the office to answer the phone from day one.’

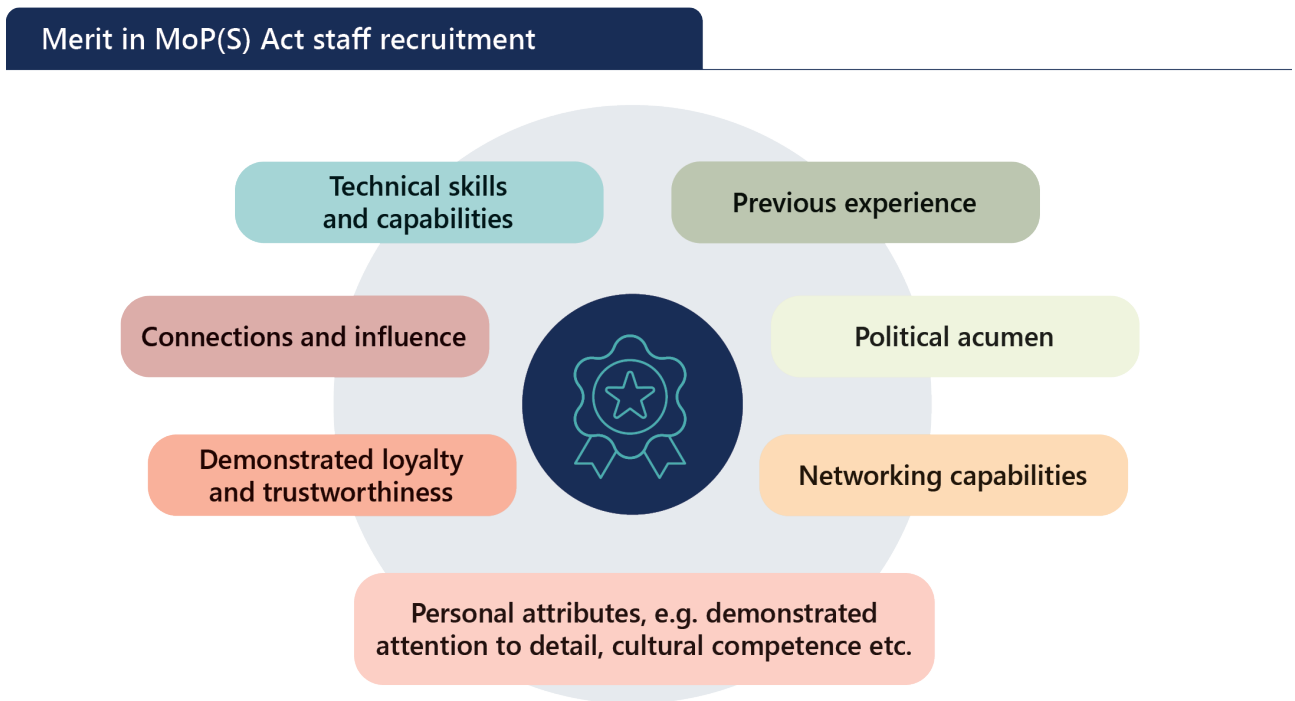
Contributors also spoke about the importance of trust in MoP(S) Act employment, and a concern that a merit process would predominantly focus on a skills-based assessment. Party members who volunteered during election campaigns were observed by several contributors as being an appropriate recruitment stream, as volunteers were considered to have proven their loyalty to a parliamentarian or party. As one contributor put it: ‘Loyalty is the biggest thing you look for.’

The Review considers merit recruitment may not require a rigid process, nor set of criteria for candidates that is incompatible with the day-to-day realities of parliamentary offices.

Merit in the MoP(S) context

The concept of merit in the parliamentary workplace was seen by many contributors as involving a broad range of factors other than skills, experience and attributes. The Review heard from contributors that merit in MoP(S) Act recruitment can encompass a range of attributes, depending on the role and the needs of the office, as demonstrated below:

Figure 10.



These attributes do not appear incompatible with the definitions of merit observed in other jurisdictions and sectors, set out in the table below in Section 4.3.3. The Review considers these attributes could provide a basis for developing a position description or selection process to identify suitable candidates.

A number of contributors pointed to the protective mechanism played by party-run central staffing committees in overseeing the more senior appointments of staff. The Review defers to the OPSC to

consider how best to leverage such mechanisms when considering its response to Recommendation 12 of *Set the Standard*, particularly as it relates to ensuring greater use of merit-based recruitment practices with a focus on improving diversity.

4.3.2 Options for improvement

The Review identifies three main options from the discussion of merit recruitment. These are to:

- maintain the status quo, where parliamentarians have almost complete discretion over recruitment practices and outcomes
- adopt a merit recruitment process, which mirrors public service models
- adopt a merit recruitment process, which is tailored to the circumstances of political offices.

In considering these options, the Review examined approaches to merit recruitment in other jurisdictions and sectors. The table below includes state and territory level public and parliamentary services as well as the higher education sector for a cross-sector comparison.

Examples of Merit Requirements
<p><i>Public Service Act 1999 (Cth)</i></p> <p>Section 10A of the PS Act¹⁶² outlines a decision relating to engagement or promotion is considered to be based on merit when:</p> <ul style="list-style-type: none"> - an assessment is made of the relative suitability of a candidate to perform the duties - this assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required to perform the duties - this assessment is also focused on the relative capacity of the candidates to achieve outcomes related to the relevant duties - all eligible members of the community are given a reasonable opportunity to apply to perform the relevant duties - competitive selection process are used.
<p>Standards for Application of the Victorian Public Sector Employment Principles</p> <p>Section 64 of the <i>Public Administration Act 2004 (Vic)</i> directs the Victorian Public Service Commission to establish and issue standards concerning the application of the public sector employment principles.¹⁶³ These principles consider recruitment decisions are on merit when:</p> <ul style="list-style-type: none"> - an individual candidate's work-related qualities, abilities and potential are assessed against the genuine requirements of the employment opportunity - employees are appointed or promoted on the basis of relative ability - processes are transparent and designed to identify a field of qualified candidates

¹⁶² PS Act, s 10A.

¹⁶³ *Public Administration Act 2004 (Vic)*, s 64.

<p>Examples of Merit Requirements</p> <ul style="list-style-type: none"> - employees are appointed or promoted from a limited field of candidates only where candidates are identified based on objective criteria - employees are assigned duties or transferred to roles at an equivalent level based on an assessment of the employee against the genuine requirements of the duties or role.¹⁶⁴
<p>Australian National University</p> <p>The recruitment policy of the Australian National University mandates minimum standards of merit be applied to all recruitment processes to ensure ‘selection is based only on a person's ability to perform the work...[and that] the best person for the job [is chosen], resulting in a quality workforce.’ The minimum standards are listed as:</p> <ul style="list-style-type: none"> - competition: obtain the best field of applicants through advertising - selection criteria: describe those specific capabilities (knowledge, skills and abilities) needed to do the job - selection committee: a group of people selected to assess candidates for a position. - comparative: assessment rate applicants individually on how well they meet the selection criteria, assessing them, on the best evidence obtainable, on how they would meet the job requirements - equity: design the process to be fair to all members of the community - integrity: select impartially and ethically - choosing the best person: recommend the appointment of the person whose capabilities (knowledge, skills and abilities) best match the job requirement - transparency: decisions can withstand scrutiny and be publicly defensible.¹⁶⁵
<p>United Kingdom Civil Service</p> <p>Section 10 of the Constitutional Reform and Governance Act 2010 requires people selected for appointment to the Civil Service to be ‘on merit on the basis of fair and open competition’.</p> <p>Section 11 requires the Civil Service Commission to produce ‘Recruitment Principles’ to define and interpret merit in appointments.¹⁶⁶ These Principles define merit as ‘the appointment of the best available person judged against the published criteria for the role. No one should be appointed to a role unless they are competent to do it and the appointment must be offered to the person who would do it best.’¹⁶⁷</p>

¹⁶⁴ Victorian Public Sector Commission, *Standards for Application of the Victorian Public Sector Employment Principles* [website], (2017) <https://vpssc.vic.gov.au/ethics-behaviours-culture/employment-principles-and-standards/standards-for-application-of-the-principles/>, accessed 9 September 2022.

¹⁶⁵ Australian National University, *Merit-based selection* [website] (not dated) <https://services.anu.edu.au/human-resources/recruit/merit-based-selection>, accessed 9 September 2022.

¹⁶⁶ *Constitutional Reform and Governance Act 2010* (UK), s 10.

¹⁶⁷ Civil Service Commission (UK), *Recruitment Principles* [website], (April 2018) https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/02a_RECRUITMENT-PRINCIPLES-April-2018-FINAL-.pdf, accessed 10 September 2022.

The status quo provides parliamentarians a high degree of discretion in how they staff their office. Maintaining this situation addresses the concern of some contributors that requirements for recruitment processes could slow down the engagement and create a disproportionate administrative burden for smaller parties or independents. Unlike parliamentarians in major parties, smaller party or independent parliamentarians may not have access to party-based pooling of HR resources and support.

The status quo does not preclude parliamentarians and their offices from using merit recruitment practices but does not require them to do so. The proposed OPSC could advocate for better practice in recruitment, including greater use of merit recruitment processes, and support parliamentarians and MoP(S) Act employees who wish to develop their capabilities in this area. This could lead to improved practices and greater consistency overall.

In considering this option, we note some contributors' observation that a parliamentarian having someone in mind for a specific role does not mean the person has not been hired on merit. Rather, the person may or may not possess the desired combination of proven trustworthiness and the skills, networks, and knowledge needed to suitably perform that role. The Review concurs that being known to a parliamentarian does not equate to the person lacking merit.

The Review notes other state jurisdictions where the parliamentarian is the employer do not impose a merit requirement in legislation.¹⁶⁸ The application of merit in these jurisdictions appears to be left to the discretion of the parliamentarian.

Another option we heard about in the Review is to adopt a merit recruitment process that mirrors public service models. This approach would be beneficial in terms of ensuring greater transparency through the mandatory advertising of positions, clear job descriptions and criteria, and assessment process. It is possible that the qualification and experience level of MoP(S) Act employees would increase under this model, and it would appear more difficult to employ staff without these indicia of merit.

Several contributors expressed reservations on how much a merit-based recruitment framework could tackle embedded practices of patronage and non-merit based recruitment. Some suggested formalised merit-based recruitment could be subverted with workarounds. One contributor pointed to their own experience being denied a role, reportedly due to discriminatory practices. The contributor questioned whether a merit-based recruitment process would have prevented this outcome or merely provided a way to mask the true reason for the decision.

The Review also heard about operational realities associated with this kind of merit recruitment. In particular, the Review heard from a significant number of contributors about the risk of introducing a

¹⁶⁸ See: *Members of Parliament Staff Act 2013* (NSW), Pt 2; *Ministerial and Other Office Holder Staff Act 2010* (Qld). The Review also considered legislation for public servants that include parliamentary staff as a subset but then explicitly exclude them from merit recruitment requirements See: *Public Service Act 2020* (NZ), s 70; *Constitutional Reform and Governance Act 2010* (UK), s 10(3).

bureaucratic process that is neither workable nor time sensitive to parliamentarians' needs. A particular burden was perceived by smaller offices, such as those with only four staff. While supporting merit-based selection, the CPSU emphasised in its submission '... not all APS and PS Act requirements may be appropriate or practical for MOPS Act employees...'.¹⁶⁹

In New Zealand, the recruitment of staff is merit-based and centralised. It is led by Parliamentary Services (for parliamentary staff) and the Department of Internal Affairs (for ministerial staff), in consultation with parliamentarians. Parliamentary Services and the Department are the 'employer' for MoP(S) Act equivalent employees, whereas ministers or parliamentarians are day-to-day managers.¹⁷⁰

In addition, Parliamentary Services in New Zealand maintains a roving pool of deployable permanent Member Support staff. These staff can be deployed where a portfolio is particularly busy, after ministerial reshuffles, and to backfill permanent staff taking leave. The roving pool is engaged, either directly in a parliamentarian's office or within Parliamentary Services. In 2019, the External Independent Review of the New Zealand Parliamentary workplace saw this core of continuing support staff, with or without party affiliation, as key to the further professionalisation of member support as it retains corporate knowledge and a flexible cadre of skilled employees.¹⁷¹

The New Zealand model mitigates the risk of poor and non-merit recruitment decisions associated with direct recruitment. We heard repeatedly in the Review how important it was for parliamentarians to choose the employees in their office. While parliamentarians do choose their staff in the New Zealand model, it is only from a limited pool presented to them as a shortlist.

A third option is to tailor a merit process to the MoP(S) context. This option could introduce a requirement that a candidate must be considered by the parliamentarian to be suitable taking into account their capabilities and attributes, the specified role requirements, and the process undertaken by the parliamentarian or their office. This option requires planning prior to recruitment to identify the skills and attributes required for the role, and an articulation of these in some form of position description. There would be no formal requirements to advertise roles, although this may be considered by the OPSC in any advice it provides about best practice in recruitment processes.

The accountability of parliamentarians for recruitment decisions can be supported by a requirement they attest to the suitability of the chosen candidate for a specified role and outline any recruitment process undertaken. This could be provided in writing to the OPSC for its oversight.

¹⁶⁹ *Submission 30*, 3.

¹⁷⁰ New Zealand Parliament, *Member's Guide: Aratiki Mema* [online document], (2020), <https://www.parliament.nz/media/4351/members-guide-20-sept.pdf>, accessed 27 September 2022, 23.

¹⁷¹ Debbie Francis, *Bullying and Harassment in the New Zealand Parliamentary Workplace* [online document], (May 2019), 78-79, <https://www.parliament.nz/media/5739/independent-external-review-into-bullying-and-harassment-in-the-new-zealand-parliamentary-workplace-final-report.pdf>, accessed 26 September 2022.

The same risks around the impact of this option being subverted and the possibility of workarounds apply to this option.

In the context of MoP(S) Act employees, *Set the Standard* and this Review both recognise the need for some flexibility on what constitutes merit. The Review accepts the notion that it is reasonable for decisions on recruitment for MoP(S) Act employees to rest not only upon the technical ability of an individual but also their political capital and acumen and their track record of trustworthiness to a political party or independent member.

4.3.3 Conclusion

The Review considers the third option presents the greatest potential benefits. It reflects the need for both merit-based recruitment and the contextual requirement for parliamentarians to exercise discretion in the weighting given to the mix of skills, qualities and overall capacity to successfully perform the prescribed role. The Review finds that the exercise of this discretion by the employing parliamentarian needs to be balanced with an accountability counterpoint. This counterpoint is the requirement to recruit staff against specified position descriptions and a process of to assess the candidate's capacity to perform the prescribed role, as identified in Recommendation 7.

The Review considers the preferred mechanism for enacting this option is the inclusion of a requirement in the MoP(S) Act relating to the obligations of parliamentarians as employers. Recommendation 10 achieves this through including the requirement for parliamentarians to make recruitment decisions based on an assessment of capability.

The Review acknowledges a stronger articulation of recruitment process obligations will only go part-way to greater transparency and accountability in the recruitment of MoP(S) Act employees. Broader points, as outlined in the Review findings below, will inform the OPSC on embedding professional recruitment standards in the parliamentary workplace.

Findings to inform the work of OPSC

OPSC could support the above recommendation as part of their broader work in implementing Recommendation 12 of *Set the Standard* by:

- providing advice to parliamentarians on how to conduct recruitment processes that assess capability and help ensure any additional administrative burden of such processes is reasonable
- establishing a process for parliamentarians to demonstrate recruitment decisions are based on an assessment of capability, which may include evidence such as a signed statement to affirm the principles outlined in the MoP(S) Act amendments were applied
- considering how best to leverage political party human resource bodies, like central staffing committees, to help ensuring greater use of best practice recruitment with a focus on improving diversity.

4.4 Pre-engagement checks

Pre-engagement checks are undertaken prior to employment as part of determining a candidate's suitability for a role. Checks can include National Police History Checks, working with vulnerable people/children checks, and referee reports. The outcome of these checks may not always be known before commencement of employment, but employment contracts can make continuing employment conditional on a satisfactory outcome of checks.

Candidates can also be required to make a self-declaration or pre-engagement declaration as part of a recruitment process. This can cover criminal history and/or present criminal investigation, previous findings of misconduct and/or the truthfulness of the information provided during the selection process. Withholding information or providing misleading or false information in a job application may lead to prosecution under the part 7.4 of the *Criminal Code Act 1995 (Cth)*.¹⁷² A preferred candidate with criminal or misconduct history is not automatically precluded from employment.

4.4.1 Current situation

Employing parliamentarians determine whether and which pre-engagement checks are required for candidates. The exception is MoP(S) Act employees of a minister (ongoing and non-ongoing), who are required to obtain and maintain a Negative Vetting Level 2 security clearance as a condition of

¹⁷² *Criminal Code Act 1995 (Cth)*, pt 7.4.

employment.¹⁷³ It is noted security clearances are often finalised after employment has commenced. The contract provided to successful MoP(S) candidates states that an employee must undertake a National Police History Check if required by the employing parliamentarian. The relevant form notes 'the results of this check may be used by your employer, in addition to other factors, to determine your continued suitability for employment.'¹⁷⁴

During induction training provided by Finance, MaPS encourage parliamentarians to make use of National Police History Checks, referee reports, and probation periods.

If a parliamentarian requests a police check, MaPS will only notify where it has returned disclosable court outcomes.¹⁷⁵ These outcomes are released in accordance with Federal, state and territory legislation and include both criminal and traffic matters which go to court. Convictions considered 'spent' under state and federal legislation is only included in a National Police Certificate in limited categories of employment.¹⁷⁶ Finance reported that 154 police checks were undertaken on incoming MoP(S) Act employees in the 12 months to 20 July 2022, with less than five of these returning adverse results.¹⁷⁷

MaPS guidance notes that referee checks can form part of further assessment in the recruitment process once interviews and shortlisting have taken place.¹⁷⁸ Some contributors told us referee checks were not conducted during their time in a parliamentary office while others said these checks are done as a matter of course. The Review notes the mix of responses points to a lack of consistency in the practices across offices, which reflects our observations in other parts of this report.

One contributor to the Review pointed to the use of social media as an additional means to vet candidates and obtain information to confirm employment decisions. These types of checks were reported to be undertaken as a way of assessing any reputational risks and to verify information provided by the candidate on their employment history. The Review notes that such checks are becoming more common in workplaces but should be undertaken with some caution to ensure it is not the sole check undertaken and that the candidate has a right of reply before an employment decision is

¹⁷³ Department of Finance, *Security Clearances for MoP(S) Act Employees* [website], (Undated) <https://maps.finance.gov.au/sites/default/files/2022-06/MOPS-Employee-Security-Clearances.pdf>, accessed 16 September 2022.

¹⁷⁴ Department of Finance, *Form 109: Employing an Ongoing Employee* [website], (August 2021) https://maps.finance.gov.au/sites/default/files/2021-08/form_109_FINAL.pdf, accessed 26 August 2022.

¹⁷⁵ Department of Finance, *National Police Checks* [website], (28 June 2021) <https://maps.finance.gov.au/pay-and-employment/mops-act-employment/recruitment-and-establishing-positions/national-police-checks>, accessed 19 September 2022.

¹⁷⁶ Australian Federal Police, *Frequently Asked Questions* [website], (no date), <https://www.afp.gov.au/what-we-do/services/criminal-records/frequently-asked-questions>, accessed 23 September 2022 (see: 'What will be included on my National Police Certificate?').

¹⁷⁷ The Department of Finance provided the Review with data on MoP(S) Act employees (23 August 2022).

¹⁷⁸ Department of Finance, *Guide to Recruiting* [online document], (undated) <https://maps.finance.gov.au/sites/default/files/2022-06/Guide%20to%20Recruiting.pdf>, accessed 16 September 2022, 3-4 (Part 3(1b)).

made. We note MaPS recruitment guidance, calls for procedural fairness when adverse results are considered.¹⁷⁹

We heard parliamentarians sometimes ask MoP(S) Act employees to obtain working with children, or working with vulnerable people checks in the relevant state or territory jurisdiction.

4.4.2 Options for improvement

The Review considers parliamentarians should make use of self-declarations, checks relevant to the role and probation periods. This will help ensure they have relevant information about candidate suitability. The Review considers options around particular checks below.

Self-declarations

To be eligible to receive an offer of employment within the South Australian public sector, candidates must complete a Pre-Employment Declaration. The form notes employment consideration will only continue with the completion of a self-declaration and agreement to any criminal history or other background history screening or assessment.¹⁸⁰

In Vic, candidates for public service jobs must complete a declaration and consent form in regards to any misconduct history.¹⁸¹

Police checks

The Review considered whether the nature of the workplace and duties to be undertaken by all MoP(S) Act employees mean a National Police History Record Check should be a mandatory requirement. We examined the approach of other jurisdictions and found none of them include such a requirement. At the state level, there are a mix of approaches between allowing parliamentarians or other employing

¹⁷⁹ Ibid, 4 (pt 3 (3)).

¹⁸⁰ South Australian Government, *Pre-Employment Declaration Form* [website], (May 2022), https://www.publicsector.sa.gov.au/_data/assets/pdf_file/0003/214077/Pre-Employment-Declaration_240522.pdf, accessed 28 September 2022.

¹⁸¹ Victorian Public Service Commission, *Pre-Employment Screening of Misconduct in the Victorian Public Service* [website], (14 October 2020), <https://vpvc.vic.gov.au/workforce-capability-leadership-and-management/recruitment-in-the-public-sector/pre-employment-and-misconduct-screening/>, accessed 28 September 2022.

authorities to require a check,¹⁸² and/or request or require self-declarations,¹⁸³ or have discretion to request checks¹⁸⁴ and there be grounds to refuse employment on the basis of failure to consent to a check.¹⁸⁵ Qld also includes provisions which require the police commissioner or prosecuting authorities to inform the chief executive when they are aware charges are laid against a person employed under the *Ministerial and Other Office Holder Staff Act 2010 (Qld)* for a relevant offence.¹⁸⁶

The Australian Human Rights Commission states 'employers should only ask about a criminal record where there is a connection between the inherent requirements of a particular job and a criminal record.'¹⁸⁷ A comparative review of other jurisdictions also provided guidance about how criminal histories can be used in the assessment of suitability for employment.¹⁸⁸ The OPSC may wish to consider referring to this material when formulating guidance on pre-engagement checks.

The Review did not identify a need for a blanket requirement for police checks for all MoP(S) Act employees. Instead, we recommend OPSC undertake a comparative review of other jurisdictions requiring self-declarations to be completed as a condition of employment. OPSC could also provide guidance about the kinds of roles where parliamentarians may wish to consider requiring a police check and how the results of a police check, and any other pre-engagement check, should be considered.

Australian citizenship

There is no requirement for MoP(S) Act employees to be Australian citizens, unless they are employed by a minister or assistant minister as these employees must obtain and maintain a Negative Vetting 2

¹⁸² For example: NSW Premier and Cabinet, Determination by the Premier of the Conditions for Employment for Political Office Holders' Staff, [website], (2022), <https://publications.dpc.nsw.gov.au/ministers-office-handbook/attachments/attachment-a/>, accessed 31 August 2022; South Australian Government, *Directions of the Premier Under Section 10 of the Public Sector Act (SA) (2009)* [website], (24 August 2019), https://www.publicsector.sa.gov.au/_data/assets/pdf_file/0015/214008/20181002-Direction-of-the-Premier-of-South-Australia-Recruitment.pdf, accessed 1 September 2022; *Ministerial and Other Office Holder Staff Act 2010 (Qld)*.

¹⁸³ For example: SA Government, *Pre-Employment Declaration Form*.

¹⁸⁴ For example: NSW, Queensland.

¹⁸⁵ For example: Queensland.

¹⁸⁶ Sub-section 131(7) of the *Ministerial and Other Office Holder Staff Act 2010 (Qld)* defines a relevant offence as an indictable offence or a disqualifying offence that is not an indictable offence.

¹⁸⁷ Australian Human Rights Commission, *On the Record, Guidelines for the prevention of discrimination in employment on the basis of criminal record* (2012), 20 (Section 5.1), https://humanrights.gov.au/sites/default/files/content/human_rights/criminalrecord/on_the_record/download otr_guidelines.pdf, accessed 19 August 2022.

¹⁸⁸ In relation to the APS, the APS Commission advises agencies to undertake police checks where a role requires the handling of public money, access to sensitive information or holding a position of trust, such as working with vulnerable people like children. Australian Public Service Commission, *Conditions of Engagement* [website], (2021) <https://www.apsc.gov.au/working-aps/aps-employees-and-managers/guidance-and-information-recruitment/conditions-engagement>, accessed 5 September 2022.

security clearance,¹⁸⁹ which in turn requires Australian citizenship unless waived by the head of the employing agency.¹⁹⁰ The Review does not make any findings warranting a change to the status quo.

A review of jurisdictions found some require either an eligible visa or permanent residency as the minimum for engagement for general MoP(S) Act equivalent staff.¹⁹¹ NSW and ACT also extend employment eligibility to applicants on temporary visas, with non-ongoing employment offered at a maximum to the end of the visa's work rights validity. The APS is the outlier with a required proof of Australian citizenship as a condition of engagement.¹⁹²

Working with Vulnerable People and Working with Children checks

There is no national legislative approach to working with vulnerable people or working with children checks, however, the shared purpose of these checks is to assess the risk a potential employee or volunteer could pose in a role to the safety and wellbeing of vulnerable people.

MoP(S) Act employees may not perform roles that are clearly captured by these checks, but their work can include interaction with people who are vulnerable. This is particularly true for electorate office staff. The Review heard examples of these officers fielding requests for help accessing support services, seeking ministerial intervention in migration cases, emergency housing, and other government support services. MoP(S) Act employees may also accompany parliamentarians on site visits to places like schools, or residential facilities.

The Review concludes working with vulnerable people/children checks should not be mandatory for MoP(S) Act employees. Instead, parliamentarians should consider whether a check is required or advisable in the relevant electorate according to the particular role and duties of the employee.

4.4.3 Probation

A probationary period for new employees encourages structured discussions between supervisors and new employees about performance and development. It provides an opportunity to normalise these discussions as part of the expected relationship between an employee and supervisor. Probationary

¹⁸⁹ Finance, *Security Clearances for MoP(S) Act Employees*.

¹⁹⁰ Australian Government Security Vetting Agency, *About Security Clearances - the vetting assessment* [website], (no date) <https://www.defence.gov.au/security/clearances/about/vetting-assessment#eligibility>, accessed 27 September 2022.

¹⁹¹ The ACT Legislative Assembly, NSW Parliament, and the WA Parliament all require proof of Australian citizenship, permanent residency or naturalisation as a condition of ongoing engagement.

¹⁹² Australian Public Service Commission, *Citizenship in the APS* [website], (6 May 2021) <https://www.apsc.gov.au/working-aps/aps-employees-and-managers/guidance-and-information-recruitment/citizenship-aps>, accessed 26 August 2022.

processes can also provide for termination if it is demonstrated the employee is unable to perform the required role.

Section 8 of the EA sets out the provisions for probation for ongoing and non-ongoing MoP(S) Act employees. New ongoing employees are appointed on a period of probation of up to three months, which may be waived altogether or extended by up to two months in writing by the employing parliamentarian. Non-ongoing employees may be engaged with a maximum probation period of three months at the discretion of the employing parliamentarian. These clauses are not intended to affect any 'minimum employment period' within the meaning of that phrase set out in s 383 of the FW Act.¹⁹³

Waiving probation without a good reason is a missed opportunity to focus on the early performance of a new employee, communicate expectations, check in on progress against those expectations, and to respond to their development needs. These are all aspects of people management that ideally are undertaken in a timely, proactive and structured way. The waiving of probation was reported to the Review as common practice. The Review considers parliamentarians should be encouraged to retain the probationary period and be deliberate in providing early feedback and setting clear expectations.

The Review heard the understanding of probationary periods, the legal requirements around them, and policies around performance discussions is limited across parliamentary offices. There is some guidance on the MaPS website around probation periods. The OPSC may wish to consider whether it would be helpful to provide further information or support to parliamentarians about probation.

4.4.4 Conclusion

The current state provides parliamentarians with a flexible, quick, and simple recruitment process. However, contributors to the Review indicated these benefits can be outweighed by a parliamentarian potentially employing unsuitable employees or not putting in place probationary processes to provide early guidance and support.

Pre-engagement checks are an important source of information about a person's suitability for MoP(S) Act employment. The Review considers parliamentarians should consider which pre-engagement checks are relevant when putting together a job description for a role, and inform candidates about this. The OPSC should have oversight of pre-engagement check usage as part of on-boarding new employees.

In the usual course, the Review considers it reasonable for parliamentarians to request a self-declaration about criminal history and the information provided during the recruitment process, and to undertake referee checks for suitable candidates. Depending on the particular role, a parliamentarian may also wish to obtain a police check and consider a working with vulnerable people/children check.

¹⁹³ Enterprise Agreement, cl 8.

We expect the OPSC will be well placed to provide guidance to parliamentarians about the checks appropriate to the specific role and duties, and how to respond to adverse information in a manner that is fair and transparent.

Recommendation 7 – Recruitment

The MoP(S) Act should require parliamentarians to recruit staff against specified position descriptions and undertake an assessment of a candidate’s capacity to successfully perform the prescribed role. The OPSC should develop policies and guidance to support this, including consideration of the use of self-declarations and pre-engagement checks.

Findings to inform the work of OPSC

OPSC could consider how best to support pre-engagement checks by:

- providing guidance to parliamentarians about pre-engagement checks, including those appropriate to specific roles and duties
- developing guidance for hiring parliamentarians on how to fairly consider adverse reports from a pre-engagement check
- monitoring the use of pre-engagement checks.

4.5 Intermittent labour

Work, health safety

The Review identified there are workers in parliamentary offices that are not captured by the MoP(S) Act employment framework. This group includes volunteers, work experience participants, interns and others working in unpaid positions in parliamentary workplaces. It does not include visitors.

In the absence of an employment contract, MaPS rely on voluntary reporting from parliamentarian’s offices about the existence of such individuals, despite them having access to parliamentary infrastructure, like electorate offices, Parliament House, IT systems and security passes.

The lack of visibility of these workers is not a desirable situation from a WHS perspective. Under the WHS policy for MoP(S) Act employees, parliamentarians and managers have non-delegable accountabilities to ensure the health, safety and wellbeing of those they supervise.¹⁹⁴

Unless MaPS or the OPSC are aware of every person who is engaged in an office, it is difficult to determine if and how parliamentarians are carrying out their WHS responsibilities. Likewise, it is not possible for MaPS or the OPSC to ensure all individuals considered MoP(S) Act workers for the purposes of the WHS policy are informed of and have access to WHS information and know where to get advice and support if needed.¹⁹⁵

The Review considers the visibility and protection of non-MoP(S) Act workers can be improved by requiring parliamentarians to notify the OPSC of any such worker commencing in their office. This will facilitate a consistent provision of WHS information by the OPSC. Applicable WHS policies and other relevant guidance could also be provided to the parliamentarian and employee by the OPSC. For clarity, the recommendation is not intended to capture visitors to the workplace.

Casual employees

The Review heard there may be some MoP(S) Act employees on successive 28 day contracts for more than a year. Under amendments to the FW Act introduced in 2022, casual employees who have been employed by an employer for 12 months and 21 days or longer have the right to be offered a conversion to permanent employment (full- time or part-time) if they satisfy certain requirements under that Act. The additional requirements relate to having a regular pattern of hours for at least the last 6 months, and the capacity to continue to work those regular hours.¹⁹⁶

Employers do, however, have the right not to offer a permanency conversion if they have reasonable grounds not to do so.¹⁹⁷ The Review notes MaPS has considered the FW Act amendments in the MoP(S) context and we anticipate the OPSC will continue to support consideration of this.

Recommendation 8 – Work health and safety of non-MoP(S) workers

Visibility and protection of non-MoP(S) Act workers should be increased by requiring parliamentarians to notify the OPSC when any person not engaged under the MoP(S) Act commences working in their office (e.g. volunteers and interns).

¹⁹⁴ Department of Finance, *Workplace Health Safety and Wellbeing Policy for Members of Parliament (Staff) Act 1984* [online document], (April 2022) section 2.3, <https://maps.finance.gov.au/sites/default/files/2022-04/Workplace%20Health%20Safety%20and%20Wellbeing%20Policy.pdf>, accessed 16 September 2022.

¹⁹⁵ *Ibid*, Section 4.2.

¹⁹⁶ *Fair Work Act 2009* (Cth) (FW Act), s 66B.

¹⁹⁷ *Ibid*, s 66C.

5 Accountabilities, expectations and responsibilities

5.1 Introduction

This chapter considers the expectations, accountabilities and responsibilities of MoP(S) Act employees and parliamentarians who employ them on behalf of the Commonwealth. The Review identifies legislative, parliamentary and executive mechanisms which contribute to the current framework or have potential to strengthen it.

Many contributors shared with the Review their experiences of a workplace lacking in standards and accountability. We heard about behaviours unconstrained by the norms that apply in other workplaces. One contributor observed that: 'The environment was robust and lawless. It was very *Lord of the Flies*.'

A code of conduct was commonly raised with the Review as a solution to address the perceived absence of accountability of parliamentarians and their employees. The development of codes of conduct falls outside the scope of this Review, given the mandate of the Joint Select Committee on Parliamentary Standards to consider the development of codes of conduct for Commonwealth parliamentary workplaces in accordance with Recommendation 21 of *Set the Standard*, in progress at the time of writing. The Committee is due to report by 1 December 2022.

This chapter covers:

- employment principles
- accountability and responsibilities of MoP(S) Act employees (including the accountability of ministerial staff)
- expectations and obligations
- reporting on the administration of the MoP(S) Act.

5.2 Employment principles

The MoP(S) Act employment framework does not contain any articulation of the values or principles that underpin it.

Employment principles play a role in shaping workplace culture. The legislated employment principles of the APS, for example, articulate the workplace culture the APS aspires to and what APS employees and the public can expect in that workplace. Employment principles can capture how the workplace is intended to function as a whole.

As indicated above, the Joint Select Committee on Parliamentary Standards is inquiring into the development of codes of conduct, which typically address the expected behaviour of an individual in the workplace.

5.2.1 Current situation

Many contributors who engaged with the Review commented on the absence of statements to guide the behaviour of MoP(S) Act employees and reflect the overall standards of a modern, professional workplace. We heard an amended MoP(S) Act could embed cultural change to create a positive workplace environment, and that this would increase parliamentarians' ability to attract and retain high quality employees.¹⁹⁸ A number of stakeholders explicitly told the Review that the MoP(S) Act should include employment principles.¹⁹⁹ We also heard that the MoP(S) Act should include values.²⁰⁰

The Review heard comparable legislative frameworks, like the Parliamentary Business Resources framework, have principles embedded within their framework and that this has assisted in improving clarity and accountability.²⁰¹ We also heard about other comparable legislative frameworks that have principles and values within them. We heard that these values and principles offer important guidance to employees. The Review heard that the *Public Service Act 1999* and the *Parliamentary Service Act 1999* offer examples of legislative frameworks that support a modern and professional workforce.²⁰²

The Review notes there are two codes of conduct currently in operation: the Code of Conduct for Ministers and the Ministerial Staff Code of Conduct. These codes only apply to ministers and their employees (both electorate officers and personal staff). There are no corresponding codes of conduct that apply to other parliamentarians or their employees.²⁰³ The main political parties in parliament have published national party codes of conduct.²⁰⁴ These codes are not specific to, or tailored for, parliamentarians or MoP(S) Act employees.

The Code of Conduct for Ministers contains 'Key Principles', including that ministers will act with due regard for integrity, fairness, accountability, responsibility and the public interest.²⁰⁵ The Ministerial Staff Code does not contain explicit reference to its principles, but does require ministerial staff to 'act at all

¹⁹⁸ *Submission 34, 2.*

¹⁹⁹ *Submission 30, 3; Submission 5.*

²⁰⁰ *Submission 30, 3; Submission 5.*

²⁰¹ *Submission 27.*

²⁰² *Submission 34, 2.*

²⁰³ Deidre McKeown and Michael Sloane, *Parliamentary codes of conduct: a review of recent developments* (Research Paper Series, 2021-22, Parliamentary Library, Parliament of Australia, 30 March 2022), 5, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/ParliamentaryCodesConduct, accessed 26 September 2022.

²⁰⁴ *Ibid*, 8.

²⁰⁵ Australian Government, *Code of Conduct for Ministers* [online document], (June 2022) <https://www.pmc.gov.au/sites/default/files/publications/code-of-conduct-for-ministers.pdf>, accessed 21 September 2022, 4.

times with integrity and observe the highest standards of conduct'.²⁰⁶ However, these statements fall short of articulating the kind of workplace that employees of ministers can expect.

What others do

It is common contemporary practice to include overarching principles in legislation (often in the form of an objects clause – see Recommendation 5). We note state and territory legislation governing public sector employees includes principles and values,²⁰⁷ although these principles and values tend not to extend to MoP(S) Act employee equivalents.²⁰⁸

The APS and Parliamentary Service set out their values, employment principles and a code of conduct in legislation.²⁰⁹ Each of these elements has a different purpose, although they are to some extent mutually reinforcing. The employment principles articulate the desired workplace culture and what it should be like to work in the APS or Parliamentary Service. These employment principles shape the organisational culture of the APS²¹⁰ and Parliamentary Service. The values and codes of conduct guide the behaviour of individuals – the APS and Parliamentary Service Values outline parliament's expectations of public servants in terms of performance and standards of behaviour,²¹¹ whereas the code of conduct regulates the behaviour of employees.

The APS and Parliamentary Service employment principles state that the APS/Parliamentary Service is a career-based service that:

- makes fair employment decisions with a fair system of review
- recognises that the usual basis for engagement is as an ongoing (APS or Parliamentary Service) employee
- makes decisions relating to engagement and promotion that are based on merit
- requires effective performance from each employee
- provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued

²⁰⁶ Special Minister of State, *Ministerial Staff Code of Conduct* [online document], (no date) <https://www.smos.gov.au/ministerial-staff-code-conduct>, accessed 21 September 2022.

²⁰⁷ South Australia: *Public Sector Act 2009* (SA) (Part 3); Victoria: *Public Administration Act 2004* (Vic) (Pt 2); Western Australia: *Public Sector Management Act 1994* (WA) (Pt 2).

²⁰⁸ Queensland's *Ministerial and other Office Holder Staff Act 2010* (Qld) (Pt 3 Div 2) is an exception. It applies principles to particular parliamentary staff (ministers and office holders). s18 provides that these principles and values are intended to guide staff members in their work performance and personal conduct and are not of themselves legally enforceable.

²⁰⁹ ss 10, 10A and 13 respectively in the PS Act and *Parliamentary Service Act 1999* (Cth).

²¹⁰ Australian Public Service Commission, *APS Values, Code of Conduct and Employment Principles* [website], (13 December 2021) <https://www.apsc.gov.au/working-aps/integrity/integrity-resources/aps-values-code-conduct-and-employment-principles>, accessed 22 September 2022.

²¹¹ Ibid.

-
- provides workplaces that are free from discrimination, patronage and favouritism
 - recognises the diversity of the Australian community and fosters diversity in the workplace.²¹²

5.2.2 Options for improvement

Inclusion of employment principles in the MoP(S) Act

Set the Standard envisages a role for the OPSC in developing employment principles, with a view to improving quality, transparency and diversity in recruitment across all political parties.²¹³ See Section 4.3 and Recommendation 7 for a discussion about recruitment.

Incorporating employment principles in the MoP(S) Act will assist in modernising and professionalising the MoP(S) Act framework and will support an accountable workplace culture. Legislating the employment principles – as opposed to recording them in policy documents – provides greater certainty and clarity to parliamentarians, MoP(S) Act employees and the broader Australian public about the kind of work environment the MoP(S) Act framework supports.

Set the Standard referred to employment principles in the context of recruitment, and the Review proposes to require parliamentarians to recruit staff by undertaking an assessment of a candidate's capacity to successfully perform the prescribed role (discussed at 4.3) and to fostering diversity in the employment principles. However, the proposed employment principles would also extend to other elements of organisational culture. Consideration must be given to the unique work environment of Commonwealth parliamentary workplaces when developing its employment principles.

Employment principles are an opportunity to codify, in legislation, the spirit and intention of the recommendations of *Set the Standard* and act as a legislative basis and guidepost for policies and guidance produced under the MoP(S) framework (for example, by the OPSC). The principles could state, for example, that the Commonwealth parliamentary workplace:

- is safe and free of all forms of bullying and harassment (*Set the Standard* Recommendations 4, 12, 25, 26, and 28)
- is free of discrimination (*Set the Standard* Recommendations 9, 17 and 24)
- fosters diversity in the workplace (*Set the Standard* Recommendation 6)
- makes recruitment decisions based on capability (*Set the Standard* Recommendation 12)
- requires effective performance from each employee against expectations defined by their employer (*Set the Standard* Recommendation 12)
- supports the professional development of senior MoP(S) Act employees and managerial responsibilities (*Set the Standard* Recommendations 4 and 14)

²¹² PS Act, s 10A; *Parliamentary Service Act*, s 10A.

²¹³ AHRC, *Set the Standard*, 193.

- supports the training, professionalisation and career development of all employees (*Set the Standard* Recommendations 13 and 14)
- consults with employees about matters that affect their workplace.

We note that, while employment principles and codes of conduct have different purposes and can exist side-by-side, they should not contain conflicting statements. The Review considers the development of the final principles should take into account any codes of conduct that are developed by the Joint Select Committee on Parliamentary Standards.

Consultation with parliamentarians and MoP(S) Act employees can help ensure that the principles are relevant, appropriate and meaningful to those to whom they apply. The OPSC, as the future HR body for MoP(S) Act employees, should lead the development and implementation of the employment principles.

The Review acknowledges the APS and Parliamentary Service frameworks include both values and principles, and there were submissions to this Review that both should be included in the MoP(S) Act. However the Review is not making any recommendations about values. We consider values are closely related to conduct – as opposed to a statement about what employees can expect from their workplace – and are therefore best considered alongside any codes of conduct developed for Commonwealth parliamentary workplaces.

Recommendation 9 – Employment principles

The MoP(S) Act should be amended to include employment principles to professionalise the employment framework and provide legislative support to underpin broader implementation of the recommendations made in *Set the Standard* and this Review.

5.3 Accountability and responsibilities of MoP(S) Act employees

MoP(S) Act employees play an important role in Australian democracy. They assist parliamentarians in working with and on behalf of their constituents, work on policy issues, and help parliamentarians manage their responsibilities to parliament.

5.3.1 Accountability of MoP(S) Act employees

Current situation

Set the Standard highlighted a perception among MoP(S) Act employees that other employees – particularly senior staff members – were not accountable for their actions.²¹⁴ Concerns about accountability that the Review heard fell into two main categories:

- people not being held to account for their unacceptable behaviour (such as bullying, harassment or other unacceptable or unprofessional conduct) within the workplace
- parliamentary staff, especially ministerial advisers, acting beyond their authority without being held to account.

The Review considers both behaviours impair the proper functioning of the Australian Parliament.

Colleagues

The Review heard that while MoP(S) Act employees feel that they are accountable, the same standards of accountability are not necessarily applied to, or upheld by, their co-workers. The survey found that 90 per cent of contributors thought they were either always or often accountable for their conduct at work. Conversely, only 56 per cent per cent of contributors thought their colleagues were always or often accountable (see Figure 11).

Figure 11.



²¹⁴ Ibid, 87: ‘a key concern raised by participants was that people who engaged in misconduct in these workplaces – particularly, but not exclusively, those in senior or ‘high-value roles’ – were rewarded for, or in spite of, engaging in misconduct’.

Contributors told the Review that some MoP(S) Act employees were not held to account for bullying behaviour, and some reported that their colleagues were not accountable for the quantity or the quality of the work they did. For instance, a respondent to the survey told us: *'[S]ome parliamentary staff believe they are above reproach and feel they can do anything they like.'*

We heard about unacceptable behaviour within parliamentary offices, both by MoP(S) Act employees and parliamentarians, which caused considerable harm:

- 'After a while the bullying was so bad. I had to take time off work and self-medicate to get through the day.'
- 'My experience had a profound effect on my self-esteem, confidence and trust in the system.'

Set the Standard details similar experiences.²¹⁵

We also heard that when people left MoP(S) Act employment, they often joined a much more professional and accountable workforce. One contributor told us 'the culture and practice in my new workplace – in terms of professionalism – is poles apart from the electorate office.'

Leadership

Some contributors told the Review about parliamentarians not being held to account for their poor behaviour. We heard consistently that strong leadership is the hallmark of accountable and high-performing offices. Contributors believe leadership by the parliamentarian or office manager is the measure that will most improve accountability of MoP(S) Act employees for their conduct and performance; 84 per cent of survey respondents thought this would have a positive or substantially positive impact (see Figure 12). This reinforces what people told the Review in interviews and submissions. Many contributors also told the Review they worked in excellent offices, where the high-performing and positive work culture was led by capable managers – both senior employees and parliamentarians.

We heard from contributors who had an overwhelmingly positive experience working as a MoP(S) Act employee, and these tended to highlight the quality of the leadership as an important factor.

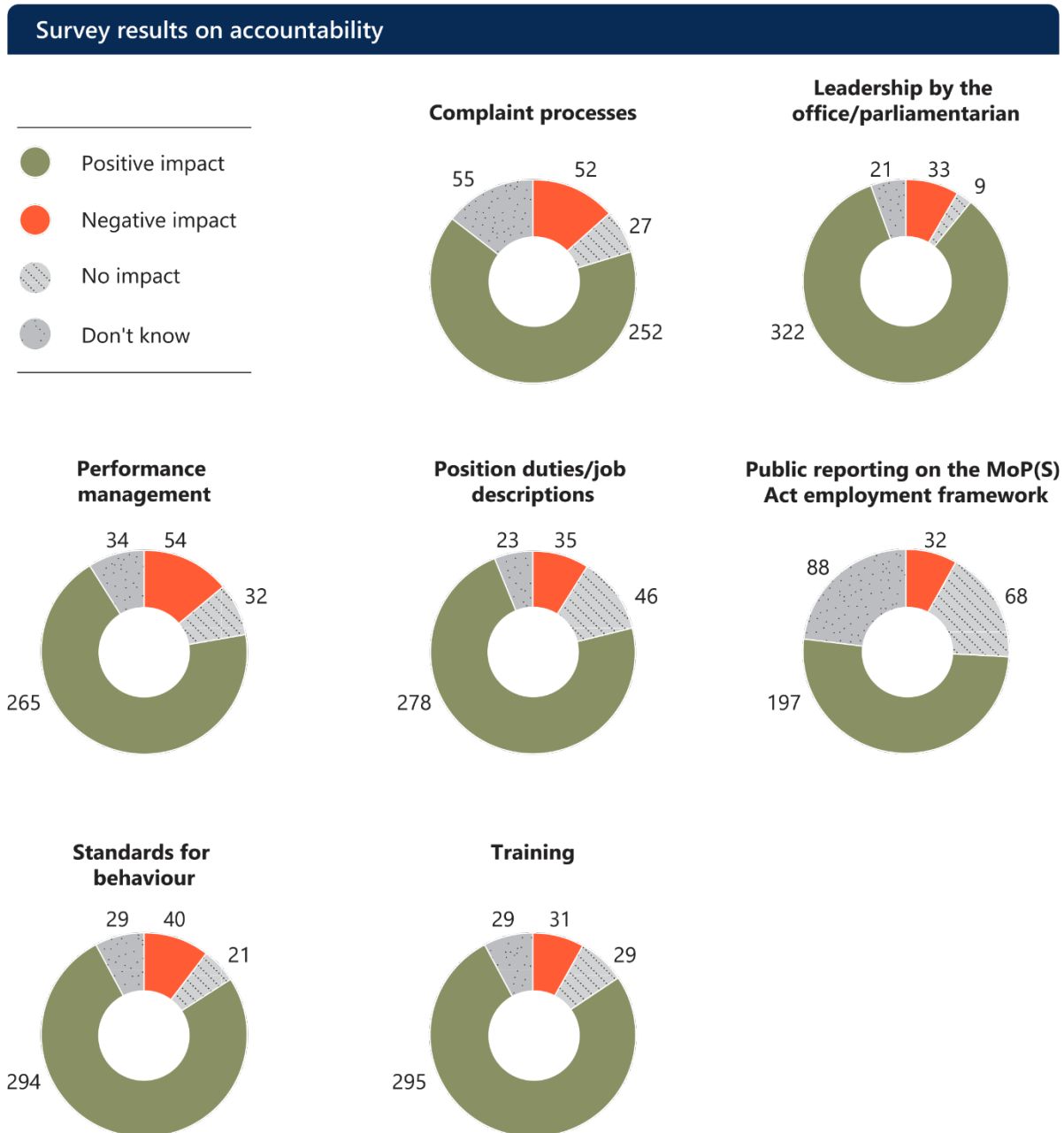
- 'Working as an adviser for a parliamentarian was the most rewarding and enjoyable experience of my career.'
- 'I had a great boss and enjoyed my work with him.'
- 'I've been fortunate to serve in offices with outstanding chiefs of staff and parliamentarians who hold themselves to (the) highest levels, and created safe and supportive environments for staff.'

²¹⁵ Ibid, section 4.2.

Options for improvement

The survey showed strong support for a range of measures – in addition to strong leadership – to improve accountability. These include position descriptions, training and standards of behaviour. As previously noted, the Review recommends that parliamentarians recruit staff against a specified position description (Recommendation 7).

Figure 12.



Other initiatives to improve accountability, being progressed separately to this Review, are set out below.

Improving accountability through the OPSC and IPSC

The proposed OPSC and IPSC, as recommended by *Set the Standard*, will have important and complementary roles that will increase the accountability of MoP(S) Act employees.

OPSC

The OPSC is intended to foster the leadership skills of managers and senior MoP(S) Act employees. People management and inclusive leadership training will be provided to this cohort.²¹⁶

The OPSC will also support parliamentarians and their employees by offering centralised HR resources with a focus on policy development, training, advice and education. The Review expects the OPSC will be able to provide targeted support to parliamentarians and senior MoP(S) Act employees on managing misconduct and performance. The OPSC will also be able to drive workforce improvements through standardised policies, processes and programs in relation to recruitment, induction, performance management, professional development and career pathways.

These reforms were recommended by *Set the Standard*²¹⁷ and are consistent with the measures that MoP(S) Act employees we surveyed identified as having a positive impact on accountability (that is, position descriptions, training, leadership, complaint processes, performance management and standards of behaviour).

The OPSC will also be responsible for providing a transparent account of the MoP(S) Act framework in its annual report, as set out in Recommendation 12 and discussed further at Section 5.5.

IPSC

The Review supports the establishment of the IPSC to operate a fair, independent, confidential and transparent system to receive disclosures and handle informal and formal complaints and appeals about misconduct. The proposed IPSC is linked to the development of codes of conduct. *Set the Standard* proposes that the IPSC would receive all allegations of breaches of the codes of conduct.²¹⁸ The content of the codes, and any recommendations the Joint Select Committee makes as to their enforcement, will inform the Government's consideration of the structure, functions and powers of the IPSC.

Improving accountability through the NACC

In addition to the establishment of the OPSC and IPSC, as recommended by *Set the Standard*, another proposed body to strengthen the accountability of Government is the National Anti-Corruption Commission (NACC). Where MoP(S) Act employees are alleged to have engaged in serious or systemic corruption, the proposed NACC would have an important role in facilitating accountability.

²¹⁶ Ibid, 214, (Recommendation 14).

²¹⁷ Ibid, 214 (Recommendations 12, 13, and 14).

²¹⁸ Ibid, 232.

Codes of Conduct

While the form, content and enforceability of codes of conduct is a matter for the Joint Select Committee, we note that *Set the Standard* recommended that the code for MoP(S) Act employees be legislated in the MoP(S) Act.²¹⁹ The Committee Resolution states the Joint Select Committee is to consider ‘the applicability and enforcement of any proposed code in relation to other legislation’, and recommend options for the enforcement of the code/s.²²⁰ The question of whether the codes should be mandated by, or written into the MoP(S) Act, will be a matter for the Committee to consider.

5.3.2 Accountability of ministerial staff

Ministerial staff are distinct from other MoP(S) Act employees in that they support the executive arm of government and may have considerable influence on matters of national significance.

The fundamental principle underpinning the accountability of ministerial staff is that they are accountable to their employing minister, who in turn is accountable to parliament.²²¹ Yet a number of academics and public commentators have argued this principle is no longer fit for purpose, given the growth in the number and perceived influence of ministerial advisers since the MoP(s) Act commenced.

Current situation

The number of ministerial staff rose by 32 per cent between 2000 and 2019.²²²

The Ministerial Staff Code of Conduct is set by the government of the day, and currently codifies the long-standing principle that ministerial staff are accountable to their employing Minister, while Ministers are responsible to parliament.²²³

Determination 2022/23 requires ministerial staff to comply with the Code, which in turn requires ministerial staff to ‘recognise that [they are] employed in line with Westminster principles and are accountable to their Minister’, as well as to ‘recognise that executive decisions are the preserve of Ministers and public servants and not ministerial staff acting in their own right.’

A number of interviewees voiced concerns about the influence and lack of accountability of ministerial staff. Notwithstanding, opinion was divided on whether or not staff should be compelled to appear before parliamentary committees (a form of direct accountability to parliament), and contributors

²¹⁹ AHRC, *Set the Standard*, 252 (Recommendation 21).

²²⁰ Parliament of Australia, *Journals of the Senate*, No. 2, 27 July 2022, 100-102.

²²¹ Commonwealth, *Parliamentary Debates*, Senate, 7 February 1995, 610 (Senator Bob McMullan).

²²² David Thodey and Department of the Prime Minister and Cabinet, *Our Public Service, Our Future, Independent Review of the Australian Public Service* (2019) 134, <https://www.pmc.gov.au/sites/default/files/publications/independent-review-aps.pdf>, accessed 21 September 2022.

²²³ SMOS, *Ministerial Staff Code of Conduct*, paras 12 and 14.

expressed the view that ministerial staff must remain primarily accountable to their employing minister. Although the accountability of ministerial staff was a central issue in the 2003 Senate Finance and Public Administration References Committee inquiry into Members of Parliament Staff (2003 Senate Inquiry) and has received academic attention, this issue was not widely canvassed in contributions to our Review.

2003 Senate Inquiry

The 2003 Senate Inquiry was tasked with evaluating how ministerial staff should be rendered directly accountable to the parliament, and to the public, in light of the evolution of their role.²²⁴ Among the Inquiry's key recommendations were:

- disciplining of MoP(S) Act employees should not be allowed to detract from ministerial responsibility for staff actions²²⁵
- ministerial staff should appear before parliamentary committees in certain circumstances²²⁶
- the MoP(S) Act should be restructured to define the different categories of MoP(S) Act employment²²⁷ (as discussed at Section 3.2)
- an annual report on MoP(S) Act staffing should be prepared (as discussed at Section 5.5)
- a code of conduct for ministerial staff (and ultimately, also a code for non-ministerial employees) should be developed and implemented (as discussed at Section 5.3.2)

Options for improvement

Appearing before committees

The Review notes the findings of the 2003 Senate Inquiry that there are no legal barriers or other formal rules that prevent a ministerial adviser from appearing before a Senate committee.²²⁸

The 2003 Senate Inquiry recommended that staff should appear in certain circumstances, such as when a minister refuses to appear, when a minister renounces the staff member's action, or when information

²²⁴ Senate FPA Committee, *Staff employed under the MoP(S) Act*, 2.

²²⁵ *Ibid*, 19 (Recommendation 1).

²²⁶ *Ibid*, 40 (Recommendation 2).

²²⁷ *Ibid*, 42 (Recommendation 4).

²²⁸ The Senate is empowered to request any person to appear before parliamentary committees. Executive privilege, public interest immunity or constitutional convention cannot shield ministerial staff from appearing before a committee. Rather, the application of any privileges and immunities is assessed on a case-by-case basis. See: Ian Holland, *Accountability of Ministerial Staff?* (Research Paper No. 19, 2001-02, Parliamentary Library, Parliament of Australia, 18 June 2002) https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0102/02RP19, accessed 23 September 2022; Yee-Fui Ng, *Ministerial Advisers in the Australian System of Responsible Government*, 123 and 125; John McMillan, 'Parliament and Administrative Law' in Geoffrey Lindell and Robert Bennett (eds), *Parliament: The Vision in Hindsight* (Annandale, NSW: Federation Press, 2001) 369-372; Bret Walker SC, *Australian Senate Witnesses – Former Ministers and Ministerial Staff – Opinion to Senate Select Committee of a Certain Maritime Incident*, Australian Senate, *A Certain Maritime Incident* (16 May 2002).

has not originated from, or not been communicated to, the minister. Some of the Review's interviewees made similar suggestions. .

The Review considers that there is no need to recommend the MoP(S) Act employment framework be changed because there are no legislative or other formal impediments to compelling ministerial staff to appear before committees. The Review also notes appearance before committees was not a strong theme arising in contributions, and there is no consensus about the benefits of mandating that staff should appear in particular circumstances.

Strengthening the Ministerial Staff Code of Conduct

Determination 2022/23 renders compliance with the Ministerial Staff Code of Code a condition of employment for ministerial staff. As such, any failure to comply with (for example) a reasonable direction to appear before a Committee, any inappropriate usurpation of a minister's powers, or any failure to hand over information to a minister would be a breach of the ministerial staff member's terms of employment, and grounds for termination. The Determination functions as an accountability mechanism, giving the code "teeth".

However, neither the Ministerial Staff Code of Code nor determination spell out exactly what a ministerial advisor is accountable for; whether the adviser is accountable to parliament in certain circumstances; and what sanctions attach to breaches of the code.²²⁹ The Review also notes both the Ministerial Staff Code of Code and the determination are subject to change. The question of whether such codes should be amended or legislated (and related, whether sanctions for breach should be legislated) is outside the scope of this Review and could be considered by Government after the Joint Select Committee reports.

Restructuring the MoP(S) Act

Creating a separate category of the MoP(S) Act for ministerial staff, discussed at Section 3.2, is a first step towards clearer articulation of the responsibilities (and could pave the way for strengthened accountability) of ministerial staff. We recommend that the personal staff of Ministers should be recognised as a separate category of employee in the Act.

Distinguishing between ministerial staff and other MoP(S) Act employees is reflective of the separation of powers doctrine, which holds that the executive (of which ministers and their employees are a part) and the legislature (of which other parliamentarians and their employees are a part) should be independent of each other, so far as possible, so that each can hold the other to account.

To be clear, this structural change will not, in substance, affect the role and duties of ministerial staff under the Act itself. However, categorising staff of the executive separately from staff serving the

²²⁹ *Submission 42* from the Department of Finance raised the issue of empowering parliamentarians to impose sanctions for failure to meet terms and conditions. While a separate process is underway regarding codes of conduct, the Review has not considered sanctions in this context either.

legislature brings the MoP(S) Act into alignment with the Constitutional Principle, as well as the approach taken in other jurisdictions.

The Review considers that this separation will also signpost that the different categories of staff may be subject to different regulatory treatment (e.g., in formulating codes of conduct, in determinations made under the Act, in policy material, or by future legislators). This proposed amendment to the MoP(S) Act will create a framework that can facilitate the application of additional accountability measures to ministerial staff where such measures are deemed necessary, recognising the fact that ministerial staff may need to be held to higher standards of behaviour.

5.3.3 Responsibilities of MoP(S) Act employees

MoP(S) Act employees are often employed with an incomplete understanding of what the role entails. Many employees reported they were aware of the power imbalance between them and their employing parliamentarian, as well as senior employees within a parliamentarian's office. Many employees also told the Review that there is not a culture of raising issues or complaints. These factors can contribute to an environment in which employees are expected to undertake activities outside of their role.

The key issues the Review identified are that:

- the standard duties of MoP(S) Act employees are not well articulated
- employees are often engaged with little understanding of what they will be required to do
- training is inadequate to educate employees on what they will be doing
- experiences in other jurisdictions, and some submissions to this Review, highlight that MoP(S) Act employees are vulnerable to being directed to do activities they should not.

The first three points are addressed in Section 4.2 on how to set up a parliamentary office for success.

Current situation

The MoP(S) Act framework, via a determination, provides that 'electorate officers work under the sole direction of the employing Senator or Member and are employed to assist the Senator or Member to carry out duties as a Member of Parliament, and not for party political purposes'.²³⁰ The determination does not provide further guidance on what constitutes 'party political purposes'. There is no corresponding instrument that prohibits personal staff from undertaking 'party political' activities.

²³⁰ *Determination 2016/15.*

What we heard

The Review heard from some employees that they were required to undertake activities that were not within the scope of their role, and/or at odds with a publicly funded role. Some academics submitted that a publicly funded role should not be used for partisan or factional activities.²³¹ This was not, however, a strong or consistent theme from contributors to the Review, nor was it a theme that emerged during targeted stakeholder consultations.

We heard that the MoP(S) Act framework does not distinguish between supporting a parliamentarian in their official functions, and supporting their personal, electoral, partisan or factional interests.²³²

We heard from a small number of stakeholders that MoP(S) Act employees should be prohibited from lobbying for a period of time after they leave MoP(S) Act employment.²³³ Currently the Ministerial Staff Code of Conduct and the Lobbying Code of Conduct operate to bar ministerial staff, for a period of 12 months after their ministerial employment ceases, from lobbying on any matter that they had official dealings with during the previous 12 months of employment as a ministerial staffer.²³⁴

For further discussion about the potential positive impact in clarifying responsibilities and position descriptions for MoP(S) Act employees, see Section 4.2.2.

What others do

Victorian legislation was recently amended to prohibit electorate office staff from undertaking party specific activity,²³⁵ which is defined as any activity for the dominant purpose of directing how a person should vote at an election.²³⁶ The Independent Broad-based Anti-corruption Commission and the Victorian Ombudsman recommend that the definition of party specific activities be amended to include 'activities undertaken for the predominant purpose of helping the administration, organisation or management of a political party, including the recruitment and maintenance of party members'.²³⁷

²³¹ *Submission 28*.

²³² *Ibid*.

²³³ *Submission 10*, 8; *Submission 29*, 6.

²³⁴ The Ministerial Staff Code of Conduct requires ministerial staff to also comply with the Lobbying Code of Conduct, which prevents them from engaging in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment as ministerial staff.

²³⁵ *Parliamentary Administration Act 2005* (Vic), s 30(5).

²³⁶ *Ibid*, s 30(6).

²³⁷ Independent Broad Based Anti-Corruption Commission and Victorian Ombudsman, *Operation Watts: Investigation into allegations of misuse of electorate office and ministerial office staff and resources for branch stacking and other party-related activities* (July 2022) 200, https://www.ibac.vic.gov.au/docs/default-source/special-reports/operation-watts-special-report---july-2022.pdf?sfvrsn=ae651f80_2, accessed 28 September 2022, (Recommendation 7).

South Australia’s Ministerial Code of Conduct requires ministers and ministerial staff to avoid, and avoid any appearance of, using government departmental offices for private purposes or party political purposes.²³⁸ The NSW Legislative Council Members’ Guide also stipulates that members must not use their staff to undertake duties of a direct electioneering or political campaigning nature.²³⁹

Options for improvement

The OPSC, once established, will have an important role in shaping the expectations and responsibilities of MoP(S) Act employees, including through induction and training for parliamentarians and employees.²⁴⁰ MoP(S) Act employees will be encouraged to seek advice and guidance from the OPSC if they believe they are being asked to undertake work that they should not. These reforms will help shape a workforce where employees, managers and employers know the boundaries of their respective roles and know where to go to for assistance.

The Review is recommending changes to the recruitment of MoP(S) Act employees to support a framework for accountable recruitment (see Recommendations 7 and 9). These changes will also help parliamentarians and MoP(S) Act employees understanding of what their role entails and the knowledge, skills and expertise they are required to bring to the role.

5.4 Expectations and obligations

The Review heard that parliamentarians and their employees were unclear about what was expected of them in their respective roles as employers and employees.

Set the Standard found, and this Review has confirmed, there is both a misconception Australian workplace laws do not apply to MoP(S) Act employment and a lack of awareness about the obligations and protections they provide.

The Review notes that the *Work Health and Safety Act 2011*, the *Age Discrimination Act 2004* and the *Disability Discrimination Act 1992* have been amended to clarify that these laws apply to MoP(S) Act employees. This was recommended by *Set the Standard* and follows amendments to the *Sex Discrimination Act 1984* clarifying that the *Sex Discrimination Act* extends to parliamentarians and MoP(S)

²³⁸ Government of South Australia, *Ministerial Code of Conduct* [online document] (no date) <https://www.dpc.sa.gov.au/responsibilities/cabinet-and-executive-council/resources-and-publications/Ministerial-Code-of-Conduct.pdf>, accessed 19 September 2022.

²³⁹ New South Wales Legislative Council, *Members’ Guide 2019* [online document], (2019) <https://www.parliament.nsw.gov.au/members/Documents/Members%20Guide%202019.pdf>, accessed 27 September 2022.

²⁴⁰ AHRC, *Set the Standard*, 214 (Recommendation 14).

Act employees.²⁴¹ As part of this same suite of reforms, the MoP(S) Act itself was amended to clarify the application of existing legislative requirements in relation to termination procedures.²⁴²

The Review heard about a lack of understanding about, or disregard for, employer and employee expectations. As one submission told the Review: *'A commonly said phrase by those who work in Parliament House is that the fair work laws stop at Parliament Drive.'*²⁴³ This is particularly acute for respective employee and employer WHS obligations. Contributors told the Review that the expectations should be clearly articulated to both parliamentarians and their employees.

The Review heard that many MoP(S) Act employees are relatively young (see Section 4.3.1) and may not have had much prior experience in the workforce. It is more likely these employees may not have an understanding of reasonable expectations in modern workplaces.

What others do

Most jurisdictions address what is expected of parliamentarians in their codes of conduct. They tend to include general requirements that parliamentarians maintain a high standard of conduct or refer to relevant obligations under workplace or anti-discrimination legislation.^{244 245} The codes of conduct for Queensland and Tasmania are the only codes of conduct that contain explicit requirements in relation to bullying or harassment.²⁴⁶ Some jurisdictions use mechanisms other than codes of conduct to make parliamentarians aware of what is expected of them as employers. For instance the NSW Legislative Council Members' Guide states that *'members as managers of a workplace, are responsible for the health and safety of their employees and the working environment under their control'*.²⁴⁷

²⁴¹ *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth), sch 1, ss 32-37, 40.

²⁴² *Parliamentary Workplace Reform (Set the Standard Measures No. 1) Act 2022*.

²⁴³ *Submission 26*.

²⁴⁴ McKeown and Sloane, *Parliamentary codes of conduct: a review of recent developments*, 12.

²⁴⁵ For instance, the Queensland Code of Ethical standards requires parliamentarians to show 'respect for persons'. The guide to the code provides that *'Parliamentary Service policies and procedures outline the requirements of employers/supervisors in regard to human resource issues, including employment discrimination, sexual harassment, workplace harassment and workplace health and safety.'* (Legislative Assembly of Queensland, *Code of Ethical Standards together with the Guide to the Code of Ethical Standards and Rules Relating to the Conduct of Members* [online document], (June 2018) <https://documents.parliament.qld.gov.au/assembly/procedures/CodeOfEthicalStandards.pdf>, accessed 16 September 2022.) The South Australian Ministerial Code of Conduct requires ministers to comply with all applicable laws, and includes as an Appendix the legislation that applies to Members of Parliament: Government of SA, *Ministerial Code of Conduct*.

²⁴⁶ McKeown and Sloane, *Parliamentary codes of conduct: a review of recent developments*, 12.

²⁴⁷ NSW Legislative Council, *Members Guide 2019*, 66.

5.4.2 Options for improvement

Amend the MoP(S) Act to clarify workplace expectations

While Commonwealth parliamentary workplaces are unique, they are still subject to applicable workplace laws. The Review considers, consistent with other recommendations (for instance, Recommendation 17 of *Set the Standard*), the MoP(S) Act should codify the expectations of both employers and employees.

The Review notes Comcare's submission to the Joint Select Committee on Parliamentary Standards.²⁴⁸ Comcare's experience has demonstrated a need for clear articulation of all duty holders and their respective duties under the WHS Act.²⁴⁹ This echoes what we heard: employers and employees are not clear on the expectations or duties that apply to them. As mentioned, amendments to the MoP(S) Act made earlier this year addressed confusion identified in *Set the Standard* regarding the applicability of protections under the FW Act to MoP(S) Act employees. Based on ongoing uncertainty identified in our Review with regard to WHS and other obligations, the Review sees fit to provide further clarifications in this same vein. The Review considers that articulating expectations and legal obligations in the MoP(S) Act will increase understanding and awareness of what is expected.

Expectations that apply to employees

There are a range of expectations that apply to MoP(S) Act employees. The MoP(S) Act should be amended to clarify the workplace obligations on MoP(S) Act employees. Consideration should be given to including the following obligations:

- adhering to obligations under WHS laws
- acting consistently with any applicable codes of conduct
- exercising delegations in accordance with legal obligations.

Expectations that apply to employers

In their capacity as employers on behalf of the Commonwealth, parliamentarians owe obligations to MoP(S) Act employees. These obligations reflect similar employer obligations in other Australian workplaces. As with MoP(S) Act employees, parliamentarians would benefit from having their obligations clearly articulated.

It is common practice for a parliamentarian to delegate employer powers to a senior MoP(S) Act employee, for instance an office manager or chief of staff (discussed at 3.3.2). This includes the power to recruit employees and to terminate their employment. When a person other than the employing parliamentarian is exercising delegated powers, the expectations of an employer will apply to them.

²⁴⁸ Comcare, Submission No 7 to Joint Select Committee on Parliamentary Standards, Parliament of Australia (no date).

²⁴⁹ *Ibid*, 2.

The MoP(S) Act should be amended to include a statement clarifying the expectations on parliamentarians as employers. Consideration should be given to codifying the following obligations to:

- provide a safe and respectful workplace
- adhere to obligations under anti-discrimination laws
- adhere to obligations under WHS laws
- provide procedural fairness in termination by meeting obligations in the MoP(S) and FW Acts
- make accountable recruitment decisions (see Recommendation 7).

Recruitment processes

As discussed in Chapter 4, the Review is recommending changes to the processes to recruit MoP(S) Act employees. We recommend the MoP(S) Act require recruitment to include an assessment of a candidate's capacity to successfully perform the prescribed role (see Recommendation 7). This process will contribute to a work environment where employees and employers understand the job that they are hired to do and the skills that they need to have and develop.

5.4.3 Conclusion

The Review acknowledges that codes of conduct for all Commonwealth parliamentary workplaces are being considered by the Joint Select Committee. While it is likely that some expectations will be set out in these codes of conduct, what we heard from contributors about the perceived 'lawlessness' of the MoP(S) Act employment landscape suggests that there is merit in amending the Act to clearly signpost the existing legislative obligations that apply to MoP(S) Act employees and parliamentarians. Recommendation 11 is not intended to create new obligations but reinforce existing obligations.

5.4.4 Additional matters to consider

Set the Standard, in the context of case management by the IPSC, suggested all MoP(S) Act employees should have access to legal advice and advocacy referral services.²⁵⁰ The Review also heard views about granting legal assistance to MoP(S) Act employees, who are individually joined as a party to a workplace claim or whose actions in the workplace have led to a claim against the Commonwealth.

The Review could not consider the matter, as it arose late in the Review. However, this issue, including possible mechanisms such as a framework akin to Appendix E of the *Legal Services Directions 2017* (which governs how legal assistance may be granted to ministerial staff in certain circumstances) or articulation

²⁵⁰ AHRC, *Set the Standard*, 236.

in the PBR Act framework could be considered by the OPSC or part of any subsequent review (including the review proposed in Recommendation 15).

Recommendation 10 – Parliamentarian obligations

The MoP(S) Act should list the requirements of a parliamentarian as employer, including to: provide a safe and respectful workplace; make recruitment decisions based on an assessment of capability and provide procedural fairness in termination.

Recommendation 11 – Employee obligations

The MoP(S) Act should list the requirements of an employee including to: contribute to a safe and respectful workplace; act in accordance with any applicable codes of conduct; and exercise delegations in accordance with legal obligations.

5.5 Reporting

5.5.1 Current situation

The MoP(S) Act currently only requires an annual report that relates to the use of ministerial consultants.²⁵¹ The last time a ministerial consultant was engaged was in 2006.²⁵² The Review heard that the only other current reporting relating to the MoP(S) Act is by convention in Senate Estimates and indirectly through Finance’s annual report.²⁵³

Between 2007 and 2013, the then SMOS prepared an annual report which provided detailed information about the MoP(S) Act employee framework, including:

- the total number of MoP(s) Act employees
- data on emerging trends from the previous year (for instance, a comparison of full-time, part-time, ongoing, non-ongoing and casual numbers of employment)
- classification levels

²⁵¹ MoP(S) Act, s 31.

²⁵² Parliament of Australia, *Members of Parliament (Staff) Act 1984: Consultants engaged under section 4 of the Act, Report 2006-2007*, Parliamentary Paper No. 168 of 2007, Canberra (11 September 2007), 4.

²⁵³ *Submission 43*, 8.

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- gender breakdown
 - the number of notifiable incidents under the WHS Act
 - the number of unfair dismissal claims.

Set the Standard recommended the OPSC table an annual report to parliament²⁵⁴ which should include the following information on MoP(S) Act employees:

- diversity characteristics
- analysis by party affiliation (where applicable)
- role
- classification
- pay scale.

Set the Standard also provided that the OPSC should report on employee turnover, compliance data and other indices tracking culture change and safety improvement in CPWs.²⁵⁵

What we heard

The Review heard from some stakeholders that robust reporting is an important accountability measure. Victorian Women Lawyers, for example, expressed support for: ‘appropriate public reporting of the administration of the MoP(S) Act as an essential means of enforcing responsibility and accountability for MoP(S) Act employees. This provides a source of transparency and open government.’²⁵⁶

Some contributors told us the current reporting regime is inadequate. We heard increased public reporting from an independent body (such as the OPSC) is an important reform and that detailed information about the MoP(S) Act framework ought to be made available to the public. For instance, contributors told the Review that data on the number of employees, employee turnover, induction and training completions and disciplinary action should be publicly reported.²⁵⁷ There were one or two calls to make the names of senior MoP(S) Act employees publicly available,²⁵⁸ though transparency as to who is employed was seen as less significant than data about the employment framework.

Some contributors told us that public reporting would support behavioural change within the MoP(S) framework. Contributors told the Review that, as parliamentarians are ultimately accountable to the public via elections, issues of misconduct or poor management within a parliamentarian’s office should be reported to the public. A majority (51 per cent) of survey respondents thought reporting would have a

²⁵⁴ AHRC, *Set the Standard*, 21 (Recommendation 7).

²⁵⁵ *Ibid*, 189 (also see Recommendation 19).

²⁵⁶ *Submission 24*, 12.

²⁵⁷ *Submission 5*; *Submission 10*.

²⁵⁸ *Submission 10*.

positive impact. A minority (8 per cent) thought reporting would have a negative impact. (see Figure 12, Section 5.3.1). We heard that any public reporting about reports to the IPSC need to be de-identified.²⁵⁹

The Review consistently heard about the long hours required of MoP(S) Act employees, and that consideration should be given to reporting on hours of work and uptake of flexible work arrangements.²⁶⁰ Existing reporting arrangements for ministerial consultants were not a focus of Review contributions.

What others do

Many other Australian state and territory jurisdictions do not have a single entity or department that manages the employment of MoP(S) Act employees (or their equivalent).²⁶¹ This has contributed to a patchwork reporting regime; the Review is not aware of a single comprehensive annual report, similar to that provided by previous Commonwealth Special Ministers of State, that addresses MoP(S) Act employees in other jurisdictions. However, Queensland's parliamentary employment framework serves as precedent for mandating annual reporting on MoP(S) Act equivalent legislation. In Queensland, the Director-General of the Department of the Premier and Cabinet must prepare an annual report on the operation of the Act governing ministerial and other office-holder staff,²⁶² and the Speaker prepares an annual report on the operation of the Act governing the staff of other parliamentarians.²⁶³

The Review notes that some jurisdictions publish the names (and pay scales) of ministerial employees.²⁶⁴ The APS has a directory with the names and contact details for all members of its Senior Executive Service (SES).²⁶⁵ While the directory contains the names of all SES employees, it does not function as a list of all SES in the APS but rather as a way to obtain the contact details of a specific person.

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) establishes a system of governance and accountability for public resources. The framework is an instructive illustration of the

²⁵⁹ *Submission 30*, 3.

²⁶⁰ *Ibid*, 3.

²⁶¹ For instance, in NSW, the Department of Parliamentary Services oversees the arrangements for Members' Staff and the Department of Premier and Cabinet support Ministerial Staff. In Victoria Electorate Office staff are employed, via delegation, by the Secretary of the Department of Parliamentary Services and Ministerial office Staff are employed by the Premier.

²⁶² *Ministerial and Other Office Holder Staff Act 2010* (Qld), s 34.

²⁶³ *Parliamentary Service Act 1988* (Qld), s 10.

²⁶⁴ See the report tabled in the Western Australian Parliament (*The Premier's Ministerial Office Staffing as at 20 January 2022* [online document] (2022) [https://www.parliament.wa.gov.au/publications/taledpapers.nsf/displaypaper/4110971a83eb3ad3b261b38c482587f300066644/\\$file/tp+971+\(2022\)+-+ministerial+resourcing+report+as+at+20+january+2022.pdf](https://www.parliament.wa.gov.au/publications/taledpapers.nsf/displaypaper/4110971a83eb3ad3b261b38c482587f300066644/$file/tp+971+(2022)+-+ministerial+resourcing+report+as+at+20+january+2022.pdf), accessed 13 September 2022) and the report published in Ireland (Department of Public Expenditure and Reform, Government of Ireland, *Special Advisers to Ministers and Ministers of State of the 33rd Dáil* [online document], (14 June 2022), <https://assets.gov.ie/226945/95b02ef0-fd6a-4f7c-9c97-314deab1e45d.pdf>, accessed 13 September 2022).

²⁶⁵ Australian Government, *Directory* [website], <https://www.directory.gov.au>, accessed 26 September 2022.

kinds of things that need to be publicly reported to support an adequate accounting of public resources. For instance, the Rule made under the PGPA Act requires the following information to be included in the annual reports of Commonwealth entities:

- information about remuneration for key management personnel²⁶⁶
- statistics on the number of employees, their classification, whether they are full or part-time, gender, location and employees who identify as Indigenous.²⁶⁷

In formulating its annual report, the OPSC should have regard to the requirements within the PGPA Act as it points to the standards of transparency and accountability expected of public institutions.

It is increasingly common practice in the corporate sector to provide publicly available reports on a number of measures. For example, the KPMG transparency report 'Our Impact 2021' includes information on:

- the number of new hires
- the age, classification and whether employees are full-time, part-time or casual
- workforce diversity (including gender, culturally diverse senior employees, Indigenous employees)
- the number of substantiated workplace complaints
- WHS – physical incidents.²⁶⁸

The Workplace Gender Equality Agency (WGEA) is an Australian Government statutory agency charged with promoting and improving gender equality in Australian workplaces. The Act governing WGEA requires non-public sector employers with 100 or more employees to report annually to WGEA on six gender quality indicators.²⁶⁹ The Commonwealth Government committed to require public sector reporting to WGEA by 2022-23.²⁷⁰ The resulting gender equality dataset is considered world-leading.²⁷¹ WGEA publishes a list of organisations that have been assessed as not complying with the Act.²⁷²

²⁶⁶ *Public Governance, Performance and Accountability Rule 2014*, r 17CA.

²⁶⁷ *Ibid*, r 17AG.

²⁶⁸ KPMG, *Our Impact Report 2021* [online document], (2021)

<https://assets.kpmg/content/dam/kpmg/au/pdf/2021/transparency-report-2021.pdf>, accessed 4 August 2022.

²⁶⁹ Department of the Prime Minister and Cabinet, *WGEA Review Report: Review of the Workplace Gender Equality Act 2012, December 2021* (2021) 5, https://www.pmc.gov.au/sites/default/files/publications/wgea-review-report_1.pdf, accessed 27 September 2022.

²⁷⁰ Workplace Gender Equality Agency, *Reporting* [website], [https://www.wgea.gov.au/what-we-do/reporting#:~:text=Profile%20\(payroll%20aligned\)-,Public%20Sector%20Reporting,-Public%20Sector%20reporting](https://www.wgea.gov.au/what-we-do/reporting#:~:text=Profile%20(payroll%20aligned)-,Public%20Sector%20Reporting,-Public%20Sector%20reporting), accessed 27 September 2022.

²⁷¹ PM&C, *Review of the Workplace Gender Equality Act 2012*, 6.

²⁷² See: Workplace Gender Equality Agency, *Annual Report 2019-20* [online document], (2020), 58-61 (Appendix 1: Non-compliant organisations), <https://www.transparency.gov.au/annual-reports/workplace-gender-equality-agency/reporting-year/2019-20-33>, accessed 27 September 2022.

5.5.2 Options for improvement

Annual reports

The Review considers it important to outline the minimum details to be reported on by the OPSC, while also giving the OPSC the flexibility to report on further issues of significance that might arise in the future.

Previous annual reports on the operation of the MoP(S) Act provide an important public record and contribute to a transparent and accountable employment framework. As previous reports note, their utility increases over time, as they provide an ongoing record of staffing data.²⁷³

In the absence of a legislative requirement, the production of an annual report on the MoP(S) Act framework is a matter for the government of the day. The Review believes a legislated reporting regime of the MoP(S) Act is needed that requires an annual report to be tabled in parliament.

The Review considers, in addition to the annual reporting requirements articulated in *Set the Standard*, consideration should be given to reporting on a range of other matters. Previous annual reports on the MoP(S) Act framework offer an instructive guide to the sorts of things that might be reported on.

In preparing a complete and accurate annual report, the OPSC may require additional information from other Commonwealth agencies, such as parliamentary departments. Consideration should be given to a mechanism to facilitate the exchange of information to the OPSC for the purposes of preparing a report.

In light of emerging trends within the workforce, the recommendations of *Set the Standard* and the reporting previously provided under the MoP(S) Act, the Review considers the OPSC could address the following matters in an annual report on the operation of the Act:

- *Staffing numbers and costs*: previous annual reports reported the total number of MoP(S) Act employees by office as well as the costs associated with employing them. The Review notes that IPEA provide quarterly reports that include each parliamentarian's 'employee costs'. Employee costs are domestic and international travel expenses where the travel can be attributed to an employee. This is consistent with Recommendation 4 which would require the allocation of staff to be transparent through annual reporting.
- *Employee turnover*: as recommended by *Set the Standard*²⁷⁴ and by submissions to the Review,²⁷⁵ consideration should be given to including data on the regularity with which people leave MoP(S) Act employment as well as any trends. For instance, whether employee turnover is higher for particular MoP(S) Act cohorts, like any difference between electorate officers and personal staff.

²⁷³ Department of Finance and Deregulation, *Members of Parliament (Staff) Act 1984 – Annual Report 2008-09*, (24 November 2009) 1.

²⁷⁴ AHRC, *Set the Standard*, 189.

²⁷⁵ *Submission 10; Submission 5*.

- *Terminations*: accurate and publicly available data on terminations could inform the OPSC on necessary training or policy related to termination of employment.
- *Number of employment law matters*: such as unfair dismissal, anti-discrimination, and workplace health and safety incidents. Previous annual reports on the MoP(S) Act provided the number of WHS incidents that were notified to Comcare.²⁷⁶
- *Total expenditure* associated with the termination of employment and unfair dismissal claims. Previous MoP(S) annual reports provided this data.²⁷⁷
- *Gender pay gap/gender segregation*: for example, the APSC remuneration report provides data and trends that relate to the gender pay gap of APS employees.²⁷⁸
- *All determinations made under the Act*: as discussed in Section 3.6.1, determinations made under the MoP(S) Act are currently not required to be tabled in parliament or be published. Previous MoP(S) Annual Reports published a list, including a summary, of all determinations made that year. For transparency, consideration should be given to returning to similar publication noting determinations containing personal or identifying information would be exempt.
- *Misconduct and unacceptable behaviour*: de-identified data on complaints, incidents, nature, outcomes. The APS reports on both the number of investigations and breaches related to the APS Code of Conduct.²⁷⁹ Incidents could include reports of bullying, discrimination, sexual harassment and sexual assault.
- *Training and inductions*: the OPSC should consider publishing information about the number and type of training sessions they have provided, and level of attendance. Similar reporting on the number of employees that completed formal inductions should be considered.
- *Results of staff surveys*: *Set the Standard* envisaged that the OPSC may conduct staff surveys.²⁸⁰ It may be appropriate to publicly report the results.

Like all agencies, the ability of the OPSC to report on data metrics (such as those canvassed above) will necessarily be guided by the systems that collect and aggregate HR data. Improvements to HR systems should be progressed to facilitate increasingly sophisticated reporting on the MoP(S) Act framework.

As discussed in Section 3.5 the Review recommends that the provisions related to ministerial consultants should be reframed as a procurement (Recommendation 5). Regardless of how these provisions are

²⁷⁶ Department of Finance and Deregulation, *MoP(S) Act – Annual Report 2008-09*, 43.

²⁷⁷ *Ibid*, 43.

²⁷⁸ Australian Public Service Commission, 'Chapter 8: Remuneration by gender', *Australian Public Service Remuneration Report 2021* [website], (18 August 2021) [https://www.apsc.gov.au/remuneration-reports/australian-public-service-remuneration-report-2021/chapter-8-remuneration-gender#:~:text=In%202021%2C%20the%20average%20Base,since%202017%20\(Figure%208.2\)](https://www.apsc.gov.au/remuneration-reports/australian-public-service-remuneration-report-2021/chapter-8-remuneration-gender#:~:text=In%202021%2C%20the%20average%20Base,since%202017%20(Figure%208.2)), accessed 27 September 2022.

²⁷⁹ Australian Public Service Commission, *State of the Service Report 2020-21 – Reform in the shadow of COVID* [online document] (2021) <https://www.apsc.gov.au/sites/default/files/2021-11/APSC-State-of-the-Service-Report-202021.pdf>, accessed 16 September 2022.

²⁸⁰ AHRC, *Set the Standard*, 187.

framed and where they are located, the requirement to annually report on the use of ministerial consultants should remain in place.

The Review expects that the OPSC will have reporting functions and powers appropriate for a body responsible for monitoring and reporting on workplace standards and driving cultural change within CPWs. The reporting function is critical to enabling it to, among other things: identify emerging trends or systemic cultural issues within CPWs; measure the success of cultural change initiatives; and provide transparency in the exercise of the OPSC's functions.

The Review anticipates that OPSC reporting may include matters relating to its functions or any other significant HR metrics. A broad reporting function is consistent with the proposed functions for the OPSC in *Set the Standard* and is similar to that provided for in a number of other bodies, such as IPEA²⁸¹ and the Commonwealth Ombudsman.²⁸² These reports will offer the OPSC the opportunity to engage proactively with emerging issues and better support CPW participants to address identified issues.

Critical to the OPSC's reporting function is the discretion to publicly report as it sees fit. This is an important accountability and transparency measure, with some stakeholders suggesting that public reporting on certain matters can act as a deterrent to poor practices. As one person told the Review: '*sunlight is the best disinfectant*'. The Review agrees transparency can be a catalyst for behavioural change. The OPSC should be equipped with the means to report on, and therefore influence, behaviour in this manner.

The Review also notes that the OPSC will need to give due regard to the privacy implications inherent in publishing a report about HR metrics in the MoP(S) framework.

Recommendation 12 – Annual reporting

The OPSC should collect the information identified in Recommendations 7 and 19 of *Set the Standard* and any additional data required to provide a transparent account of the MoP(S) Act employment framework in its annual report to Parliament.

²⁸¹ *Independent Parliamentary Expenses Authority Act 2017* (Cth), s 12; *PBR Act*, s 37.

²⁸² *Ombudsman Act 1976* (Cth), div 2.

6 Employment separation

6.1 Introduction

This chapter covers ceasing employment under the MoP(S) Act. The main subjects considered by the Review are:

- the ability of a parliamentarian to terminate the employment of MoP(S) Act employees
- termination process and procedural fairness (including deferral of termination provisions)
- the introduction of suspensions
- automatic termination
- post-employment support.

The Review found that while termination powers are broadly appropriate for the MoP(S) Act context, there are issues with the processes and practical experience of termination by parliamentarians. There are particular issues in relation to the perceptions of parliamentarians' powers of termination, and the provision of appropriate procedural fairness prior to and during termination. Additionally, automatic termination provisions are not well understood and require revision.

6.2 The MoP(S) Act context

The employment environment of MoP(S) Act employees is inherently uncertain due to the nature of the Australian electoral system. In addition to the usual factors of performance, conduct and restructures, a MoP(S) Act employee's tenure in their job is linked to their employing parliamentarian's ability to maintain a seat in parliament and/or ministerial or shadow ministerial position. Survey results conducted by the Review suggest most MoP(S) Act employees accept this as a consequence of working in the parliamentary environment. 86 per cent of respondents thought, in principle, it is reasonable that MoP(S) Act employment terminates when the employing parliamentarian is no longer a senator or member.

In the 2021-22 financial year, a total of 1,907 cessations of employment were reported to Finance.²⁸³

While the numbers of MoP(S) Act employees varies at any one time, we note there were 2,222 MoP(S)

²⁸³ This data, provided by the Department of Finance, is current as of 9 September 2022. These figures are not inclusive of MoP(S) Act employees who are employed on a casual basis, nor those employed by entities that are administered by the Prime Minister and Cabinet portfolio, such as those who work for former Prime Ministers. This period also encapsulates a federal election period, which necessarily raises the number of terminations outside 'usual' circumstances.

Act employees as at 1 June 2021²⁸⁴ and around 1,753 as at 1 August 2022.²⁸⁵ The number of people employed over the course of the 2021-22 financial year is unclear.

Of these cessations:

- 390 were resignations (i.e. termination by the employee's initiative)
- 747 were automatic terminations, including as a result of the death of the employee or the employer (discussed below)²⁸⁶
- 352 were completions of a non-ongoing contract
- 57 were terminations by the parliamentarian due to an office restructure
- 11 were terminations by the parliamentarian on the basis of misconduct or performance issues
- 96 were employees who returned to the APS
- 148 could not be categorised in time for completion of this Review.

Set the Standard made three recommendations in relation to the termination of MoP(S) Act employees,²⁸⁷ two of which propose the OPSC provide forms of support (guidance materials, advice on processes and rectification) in relation to termination of employment.²⁸⁸ The third recommendation led to the PWR Act's enactment in February 2022, which introduced a requirement for termination notices to specify the grounds for termination and made it clear that parliamentarians and their offices are bound by anti-discrimination Acts,²⁸⁹ the FW Act and the WHS Act.²⁹⁰

This Review was tasked by the terms of reference to examine 'Procedural fairness for the terms, conditions, and termination of employees' subject to the MoP(S) Act.

6.3 Termination of employment by parliamentarians

Key themes raised in the Review include whether and in what circumstances parliamentarians should be able to terminate the employment of MoP(S) Act employees.

²⁸⁴ AHRC, *Set the Standard*, 166.

²⁸⁵ Data provided by the Department of Finance.

²⁸⁶ This figure is not inclusive of employees who were automatically terminated but were subsequently re-engaged under the MoP(S) Act.

²⁸⁷ AHRC, *Set the Standard*, 215 (Recommendations 15, 16 and 17).

²⁸⁸ *Ibid* (Recommendations 15 and 16).

²⁸⁹ See: *Age Discrimination Act 2004*; *Disability Discrimination Act 1992*; *Racial Discrimination Act 1975*; *Sex Discrimination Act 1984*.

²⁹⁰ The *Work Health and Safety Act 2011* (Cth) provides that conduct by officers is taken to be conduct of the Commonwealth, and that the Commonwealth is liable for breaches of the Act or contraventions of WHS civil penalty provisions. According to the PWR Act's Explanatory Memorandum, the purpose of the amendments was to reinforce parliamentarians 'have a clear duty to exercise due diligence to ensure the Commonwealth complies with its duties and obligations to MoP(S) Act employees, including to ensure the health and safety of those employees'.

The main issue raised by contributors about termination is that the parliamentarian's power to terminate employees is perceived to be too easy and lacking procedural fairness. This, the Review was told, led to employees being concerned they could be terminated capriciously, for any reason and without notice. For some, this increased work-related stress, feelings of unease and a reluctance to complain about working conditions.

Many Review contributors, including some who expressed the concerns above, also told us parliamentarians should retain the power to select and terminate employees. In particular, they considered parliamentarians needed powers to act quickly to remove an employee from their workplace in certain situations, such as where employees are alleged to have been involved in serious misconduct.

6.3.1 Current situation

As set out in Chapter 3, parliamentarians currently have the power to terminate the employment of MoP(S) Act employees they employ on behalf of the Commonwealth. The relevant provisions are:

- section 16, which provides for the termination of employment of MoP(S) Act employees by office-holders under Part III
- section 23, which provides for the termination of employment of MoP(S) Act employees by senators or members under Part IV.

No other Commonwealth entities or offices (for example, Finance or the Presiding Officers) can terminate the employment of MoP(S) Act employees. Parliamentarians, however, may authorise another person, such as their chief of staff or office manager, to exercise their power to terminate employment.

Grounds for termination

Amendments to the MoP(S) Act made by the PWR Act require the parliamentarian to specify the ground/s for termination in any written termination notice provided to an employee.²⁹¹ However, neither the MoP(S) Act nor any other Act or instrument sets out a list of grounds or reasons for which parliamentarians may terminate MoP(S) Act employment. There are a number of valid grounds for termination, including:

- performance-related issues
- misconduct
- dangerous behaviour
- refusing to follow lawful directions

²⁹¹ AHRC, *Set the Standard*, 23 (Recommendation 17(a)).

- no further requirement for the position (i.e. redundancy or retrenchment).²⁹²

Summary dismissal is also available as a form of termination for MoP(S) Act employees, as provided for by the FW Act and common law. Summary dismissal (that is, termination without either notice or payment in lieu of notice) generally involves serious misconduct by the employee to satisfy the requirements for summary dismissal.²⁹³ 'Serious misconduct' is given its ordinary meaning in the regulations made under the FW Act (FW Regulations), but expressly includes behaviour such as:

- a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment
- b) conduct that causes serious and imminent risk to either the health or safety of a person or the reputation, viability or profitability of the employer and/or the employer's business.²⁹⁴

The FW Regulations also identify situations in the course of employment which constitute serious misconduct, including: theft, fraud, assault, sexual harassment, intoxication, or refusing to carry out a lawful and reasonable direction consistent with the employee's contract of employment.²⁹⁵

The EA states that employees guilty of 'serious misconduct' as defined by the FW Regulations may be terminated without notice and may not be eligible for severance benefits.²⁹⁶

Protections

As employees of the Commonwealth, MoP(S) Act employees are protected as 'national system employees' by the general protections contained in Part 3-1 of the FW Act. Part 3-1 sets out the protections relating to workplace rights, engaging industrial activities, and other protections, including from unlawful discrimination.²⁹⁷ Most relevant to the Review, these provisions prohibit employers from taking adverse action against an employee because:

- the employee has or has not exercised (or proposes to exercise, or not exercise) a workplace right, such as making a complaint or inquiry about their employment²⁹⁸ and/or
- of the employee's race, colour, sex, sexual orientation, age, physical or mental disabilities, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, or national or social origin.²⁹⁹

²⁹² Australian Government, 'End employment', *Business.gov.au* [website], (2022)

<https://business.gov.au/people/employees/end-employment>, accessed 22 September 2022).

²⁹³ Tim Donaghey, *Termination of Employment* (2nd edn., Chatswood NSW: LexisNexis Butterworths, 2013), 188.

²⁹⁴ *Fair Work Regulations 2009* (FW Regulations), reg 1.07(2).

²⁹⁵ FW Regulations, reg 1.07(3).

²⁹⁶ Enterprise Agreement, cls 61.4 and 62.1.

²⁹⁷ FW Act, Pt 3-1, sub-ss 338(1)(a) and (2)(b).

²⁹⁸ FW Act, ss 340 and 341.

²⁹⁹ FW Act, s 351.

Part 3-2 of the FW Act covers unfair dismissal and the Fair Work Commission's jurisdiction over such matters. Unfair dismissal is where an employee is dismissed from their position in a manner which is harsh, unjust, or unreasonable.³⁰⁰ Unfair dismissal does not cover employees who are dismissed due to genuine redundancy.³⁰¹ The framework also does not cover unpaid workplace participants, such as interns or volunteers.³⁰² The concept of dismissal includes situations where an employee is forced to resign due to the 'conduct, or a course of conduct, engaged in by his or her employer'.³⁰³

MoP(S) Act employees can seek redress for unfair dismissal as set out in Part 3-2 if they have worked for at least six months as a MoP(S) Act employee, or if a casual employee, they worked on a regular and systematic basis before dismissal and have a good reason to believe this would continue.³⁰⁴ When considering unfair dismissal cases, the Fair Work Commission takes a range of factors into account, including (but not limited to):

- whether there was a valid reason for the termination regarding the employee's capacity or conduct (including any potential threats to the safety and welfare of others in the workplace)
- whether the employee was told the reason for the termination
- whether the employee was given the opportunity to respond to the reason for termination, or their capacity or conduct
- whether the employee was unreasonably refused the ability to have a support person present at any discussions relating to dismissal
- whether a person dismissed due to performance issues had been warned prior to dismissal
- whether the notice was provided in 'explicit, plain and clear terms'.³⁰⁵

MoP(S) Act employees may also make a complaint to the Australian Human Rights Commission about discrimination or sexual harassment in employment under Commonwealth anti-discrimination laws, including where discrimination is considered to lead to termination of employment. If the matter is not resolved through the Commission's processes, the person making the complaint can take the matter to the Federal Court of Australia.

³⁰⁰ FW Act, s 385.

³⁰¹ FW Act, sub-s 385(d).

³⁰² Fair Work Commission, *Unfair Dismissals Benchbook* [online document], (2021), 31-32, <https://www.fwc.gov.au/documents/documents/benchbookresources/unfairdismissals/unfair-dismissals-benchbook.pdf>, accessed 26 September 2022.

³⁰³ FW Act, sub-s 386(1)(b).

³⁰⁴ Fair Work Ombudsman, *Unfair Dismissals* [website], (no date) <https://www.fairwork.gov.au/ending-employment/unfair-dismissal>, accessed 26 September 2022.

³⁰⁵ Fair Work Commission, *Unfair Dismissals Benchbook*, 131.

Entitlements

The EA contains details about aspects of the termination process for MoP(S) Act employees. These include notice of termination requirements (including payment in lieu of notice) and severance benefits. Notice of termination and payment in lieu of notice requirements generally reflect of the minimum standards for notice currently contained in the FW Act.³⁰⁶

What we heard

Parliamentarians' discretion to terminate employees

The Review heard there is a widespread perception by those in the MoP(S) framework that parliamentarians can terminate the employment of MoP(S) Act employees 'at will' and that protections under the FW Act or anti-discrimination legislation do not apply'.³⁰⁷ Contributors told us it is 'too easy' for parliamentarians to terminate MoP(S) Act employment in practice, and that this power is 'held over the heads' of MoP(S) Act employees. Some contributors reported:

- allegations of parliamentarians or senior employees habitually threatening to terminate employment of junior employees for minor behavioural transgressions or performance issues
- allegations of parliamentarians terminating employment for minor issues, such as disagreeing with the parliamentarian, raising an issue, or refusing to comply with unreasonable demands
- allegations of parliamentarian terminating employment in 'heat of the moment' circumstances.

Similar reports about parliamentary workplaces have been made to reviews of parliamentary workplaces at the Commonwealth and state levels, and in other Westminster countries.³⁰⁸ *Set the Standard* in particular noted a perception among MoP(S) Act employees that parliamentarians could terminate employees 'on a whim'.³⁰⁹

Some Review contributors put the view that the current framework does not provide enough support for MoP(S) Act employees in relation to employment termination. Approximately 37 per cent of respondents to the Review's survey who identified as former or current staff disagreed or strongly disagreed that termination processes for MoP(S) Act employees are fair. Former and current MoP(S) Act employees also expressed the perception in the survey that their employment could easily be terminated, with 66 per

³⁰⁶ FW Act, s 117.

³⁰⁷ *Submission 42*, 6.

³⁰⁸ AHRC, *Set the Standard*, 206; Elizabeth Broderick & Co., *Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022* [online document], (2022), 18-19, <https://www.parliament.nsw.gov.au/about/Documents/Independent%20Broderick%20Report.pdf>, accessed 26 September 2022; Gemma White QC, *Bullying and Harassment of MPs' Parliamentary Staff – Independent Inquiry Report* [online document], (2019) https://www.parliament.uk/globalassets/documents/Conduct-in-Parliament/GWQC-Inquiry-Report-11-July-2019_.pdf, 29, accessed 26 September 2022.

³⁰⁹ AHRC, *Set the Standard*, 206.

cent expressing either agreement or strong agreement with this view. The Community and Public Sector Union (CPSU) stated that 74 per cent of respondents to a survey the CPSU undertook indicated that they felt that the MoP(S) Act 'does not have sufficient protections for employees against dismissal'.³¹⁰ It is unclear, however, whether this survey was conducted prior to the amendments of the MoP(S) Act in February 2022, or what factors prompted this result.

The perceived threat of termination was linked by a number of participants with increased levels of stress, anxiety and fear among employees. This was argued to lead to poor office culture, burnout, bullying, or other harmful behaviours.³¹¹ *Set the Standard* identified that the termination powers had a chilling effect on employees' willingness to make complaints.³¹² It was explained to us by some contributors that making a complaint would thwart their own ambitions, particularly if they were considering pursuing a political career of their own.

We also heard of instances where employees had been encouraged or asked to resign by a parliamentarian or their office, sometimes so that another person could take their place. We heard resigning in this situation could preserve the employee's reputation and perceived loyalty to the parliamentarian, which might limit any damage to their career.

Finally, some participants told us about situations where MoP(S) Act employees should have been disciplined or had their employment terminated, but the employing parliamentarian did not take action. No one else was able to do anything.

It is unclear how often terminations at the initiative of the parliamentarian occur from the statistics received from the Department of Finance. It is also difficult to determine what proportion of resignations are at the behest of the employing parliamentarian, as opposed to those initiated by the employee. However, it is evident to the Review the perceived threat of termination, coupled with the belief parliamentarians have broad powers to carry this out, is significantly widespread among employees consulted in this Review.

The need for a broad discretion to terminate employees

The Review heard from a number of current and former parliamentarians and MoP(S) Act employees that, as 'the employer', parliamentarians should retain the right to recruit and terminate employees. These participants explained that loyalty and trust is central to the employment relationship in the parliamentary context, and interfering with the parliamentarian's ability to let go of employees where those elements were no longer present would be to the detriment.

The Review also heard that parliamentarians need to have the ability to dismiss an employee efficiently in a range of circumstances. For example, an employee who is not suitable for the workplace (there may be

³¹⁰ *Submission 30*, 3.

³¹¹ *Submission 10*, 10.

³¹² AHRC, *Set the Standard*, 16.

a skills mismatch or other incompatibilities) may need to be replaced quickly due to the small size of, and limited staff allocated to, an office. Employees who present a serious WHS concern, pose a threat to others in the workplace, or are suspected of misconduct, we heard, may also need to be dismissed expeditiously. Additionally, as one participant expressed, the jobs of MoP(S) Act employees are inextricably tied to the fate of their employer, and it makes sense that if they could not support the parliamentarian they should be dismissed. In some of these circumstances, the ability to immediately remove an employee from the workplace was considered to be consistent with the parliamentarian's duty of care as an employer under the WHS Act.³¹³

Professor Andrew Podger AO was among the participants who suggested that parliamentarians need to be able to act swiftly in the event that they 'no longer have full confidence' in the employee.³¹⁴ A number of other parliamentary stakeholders recognised that the parliamentarians' need to remove an employee quickly and efficiently from the workplace was critically important.

Terminations as a result of office restructure

There is no doubt that office restructures are in many cases a necessity, particularly in small offices where a change in skills sets may be required, and are not an uncommon occurrence in many workplaces..

A number of MoP(S) Act employees told us they had observed instances where an office restructure was conducted to provide a pretext to terminate an employee. Some former employees stated this had happened to them and was done by changing the level of a position or imposing a requirement for a qualification on a position which the employee did not possess. This issue was also highlighted in *Set the Standard*. Dr Maley argued in her submission to the Review this particular type of termination is often done to avoid managing staffing issues or addressing performance management, while effectively denying employees the ability to address the situation.³¹⁵

This scenario may also be done for the benefit of the employee involved, as it triggers a redundancy payout. The Review also heard reports of parliamentarians using this process in unintended and inappropriate ways, such as terminating an employee during an office restructure, allowing them to access the payout, then rehiring them.

Termination provisions in MoP(S) Act equivalent legislation in other jurisdictions

A table providing a broad outline of the powers in relation to termination in the Commonwealth and state/territory jurisdictions is below. These powers are sourced from a range of instruments, including legislation, relevant EA, Standing Orders and the determinations of office-holders such as the Prime Minister or the jurisdiction's Presiding Officers.

³¹³ *Work Health and Safety Act 2011* (Cth), s 19.

³¹⁴ *Submission 5*, 8.

³¹⁵ *Submission 10*, 12.

Key differences in the approaches taken by different jurisdictions in Australia include:

- the empowerment of Presiding Officers or Clerks of the relevant jurisdiction to take action against employees (see: NSW, Vic, WA and Qld models)
- sources of powers or conditions, varying between legislative provisions, relevant EAs and determinations by Presiding Officers
- the provision of severance pay and the requisite notice periods, in addition to additional conditions in instances involving misconduct.

Jurisdiction	Relevant authority	Powers of termination
New South Wales	<i>Members of Parliament (Staff) Act 2013 (NSW)</i>	Member of Parliament (MP) may terminate an employee at any time. In addition, the relevant Presiding Officer (PO) may terminate employment after consulting the relevant MP if the PO is satisfied that the person has engaged in misconduct and certain procedural fairness steps are taken. Automatic termination applies in certain circumstances.
Australian Capital Territory	<i>Legislative Assembly (Members' Staff) Act 1989</i>	Member of Legislative Council (MLA) may terminate employment at any time by notice in writing (with notice or payment in lieu). Automatic termination applies in certain circumstances.
Queensland	<i>Ministerial and Other Office Holder Staff Act 2010; Parliamentary Service Act 1988</i>	The relevant award permits the MP to terminate employment with notice if justification is provided to Clerk. The Clerk has termination powers to: a) call on an employee to voluntarily retire if they are found to be unfit, or do not have capacity, to discharge duties by reason of mental or physical infirmity. If person does not so retire, the Clerk may dismiss the person from service; and b) order dismissal (appeal process via PO).
Victoria	<i>Public Administration Act 2005</i>	Termination in accordance with EA, by parliamentarian or the POs in consultation with supervising MP. Termination by employer requires certain notice period or payment in lieu, unless termination is due to serious misconduct or a breach of mutual trust and confidence.
Western Australia	<i>Public Sector Management Act 1994; Parliamentary and Electorate Staff (Employment) Act 1992</i>	Presiding Officer has powers to terminate employees as their formal 'employer' under the <i>Parliamentary and Electorate Staff (Employment) Act 1992</i> , which can be delegated to the relevant Clerk. Termination by employer requires four weeks' notice or payment in lieu. The date of termination may be deferred.
Northern Territory	<i>Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006</i>	MLA may terminate employment at any time by notice in writing (plus termination pay).

Comparable international jurisdictions are largely similar in how they manage the termination of employees, with some minor differences:

- Canada: Termination can be carried out with notice. If a Member chooses to give pay in lieu of notice, the first two weeks of this sum will be charged to the Member's Office Budget. Redundancies or lay-offs can be challenged (e.g., on grounds that the lay-off was an abuse of authority), and mediation is available to resolve complaints.³¹⁶
- United Kingdom: Staff of the House can be terminated with notice, or through dismissal. Where dismissal does not involve grounds of gross misconduct, notice periods apply to termination.³¹⁷ Ministerial staff or advisors, however, are not entitled to a notice period.
- New Zealand: Members can no longer terminate an employee's contract on the basis of a breakdown in relationship, which was previously considered as grounds for termination (known as the 'breakdown clause' in the Collective Two agreement) in which either the Member or the employee could invoke a relationship breakdown, based on 'loss of trust and confidence', as a reason for termination. However, this provision has been removed from the agreement.

6.3.2 Options for improvement

The Review heard a range of options to address the issues raised about termination at the initiative of the parliamentarian. Before considering these, one matter should be clear – the power of parliamentarians to terminate MoP(S) Act employment is not unfettered. Parliamentarians are subject to the same laws as any other managers and employers in Australia.

As is set out above, subsections 16(3) and 23(2) of the MoP(S) Act would, prima facie, enable summary dismissal for any reason by employing parliamentarians. However, as confirmed by Finance in its submission, these powers are limited by the FW Act, Commonwealth anti-discrimination laws and common law.³¹⁸ *Set the Standard* similarly observed claims that parliamentarians had unrestricted power to terminate their employees are misconceived, and suggested that the OPSC develop educational material to inform employees and employers under the MoP(S) Act regarding what constituted lawful termination.³¹⁹

³¹⁶ House of Commons Canada, *Members' Allowances and Services*, [online document], (15 May 2018), cl 8.4, <https://www.ourcommons.ca/Content/MAS/mas-e.pdf>, accessed 23 September 2022.

³¹⁷ UK Parliament, *House of Commons Staff Handbook – Chapter 26: Resignation, retirement, or dismissal* [online document] (April 2021), para 3.5, <https://www.parliament.uk/contentassets/375c1cca2849461fb61bf02d9cc980ea/chapter-26-final-pdf-april-2021.pdf>, accessed 23 September 2022.

³¹⁸ *Submission 42*, 3.

³¹⁹ AHRC, *Set the Standard*, 207.

Beyond providing such support, participants to the Review suggested the power to terminate employees should be removed from parliamentarians or otherwise circumscribed. This could require:

- a third party, external to the employer and employee, to be granted the power to terminate employees under the MoP(S) Act
- formal grounds of termination to be incorporated into the Act to more clearly limit the parliamentarian's ability to terminate employees.

The first option would enable a third party, such as the Presiding Officer or Clerk of the relevant House of Parliament, or the OPSC, to exercise termination functions in relation to MoP(S) Act employees. This model has been adopted in other jurisdictions, with Presiding Officers or Clerks in NSW, Victoria, WA and Queensland able to terminate employees in some situations.

In NSW, section 20A of the *Members of Parliament Staff Act 2013 (NSW)* empowers the Presiding Officers of the NSW Parliament to terminate employees of parliamentarians if they have engaged in misconduct. In her submission to the Review, Dr Maley argued that the NSW provision avoids situations where only the employing parliamentarian is empowered to act where employees are suspected of misconduct, which is currently the case under the MoP(S) Act.³²⁰ Another example is in Queensland, where parliamentarians are required to obtain the Clerk's approval prior to effecting a termination.³²¹

The potential benefits of this arrangement include:

- enabling third party intervention where a parliamentarian will not terminate an employee, particularly in situations where the employee poses a risk to the work health and safety of others or security in the workplace
- a check on the termination powers of a parliamentarian, preventing situations where termination is carried out in inappropriate situations, such as where an office restructure is used purely as a means to terminate an employee
- a neutral third party determining whether termination of the employee is the best decision given all the circumstances.

Arguments we heard against this option include:

- an employing parliamentarian may be in the best position to judge whether an employee should be terminated, particularly on the basis of performance
- having a third party undertake all terminations may slow the decision-making on whether to terminate an employee, which may have a negative impact on the operation of the parliamentarian's office

³²⁰ *Submission 10*, 5.

³²¹ *Parliamentary Service Act 1988 (Cth)*, sub-s 42(2).

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- enabling a third party to exercise powers of termination (in tandem with or instead of the parliamentarian exercising that power) would impede a parliamentarian’s ability to carry out their duties.

The Review sees merit in having some third party involvement in termination decisions. We note *Set the Standard* recommends a process to require parliamentarians to consult with the OPSC when proposing to terminate an employee, and to be held to account if the advice about the termination process is not taken.³²² We expect the OPSC’s involvement to support and educate the parliamentarian through the process should help ensure procedural fairness is provided to employees.

The second option suggested by a number of Review participants was to incorporate a list of grounds for termination of MoP(S) Act employment under subsections 16(3) and 23(2). This could provide additional certainty about the permitted grounds for termination. This could help employees ascertain, to some extent, whether they had been validly terminated. Setting out grounds for termination of MoP(S) Act employment in legislation would be consistent with the arrangements for termination of other Commonwealth employees under the PS Act and the *Parliamentary Services Act 1999* (Cth). Both Acts specify that an employee can be terminated on grounds including: excess to requirements; lacking in an essential qualification; under-performing; failing to meet a compulsory condition of employment; or in breach of the APS Code of Conduct.³²³

However, the Review notes there is already a requirement in the MoP(S) Act for parliamentarians to specify the grounds for termination in the termination notice given to an employee, in addition to their obligations under the FW framework to identify lawful grounds for dismissal.

While a large number of contributors were especially concerned by the ability of parliamentarians to terminate MoP(S) Act employment on grounds of ‘loss of trust and confidence’, recent case law establishes that sufficient evidence and reasoning is required to prove ‘loss of trust and confidence’ in an employee prior to termination.³²⁴ The ground of ‘loss of trust and confidence’ is therefore not as broad as some assume. As discussed, the OPSC will provide education and advice on termination to parliamentarians and MoP(S) Act employees (see Recommendation 13). The OPSC should consider tailoring advice or training that addresses the uncertainty surrounding terminations for ‘loss of trust and confidence’.

The Review does not recommend legislating specific grounds for termination.

³²² AHRC, *Set the Standard*, 23 (Recommendation 16).

³²³ PS Act, s 29; *Parliamentary Service Act 1999* (Qld), s 29.

³²⁴ *Mammarella v Department of Parliamentary Services* [2019] FWC 6340 (Harper-Greenwell C, 11 September 2019) para 61.

6.4 Termination processes and procedural fairness

This section examines to what extent procedural fairness is afforded to MoP(S) Act employees when their employment terminates, and whether changes are needed to support the application of these principles.

6.4.1 Current situation

Procedural fairness is defined as ‘the fairness of the procedure by which a decision is made, and not the fairness in a substantive sense of that decision’.³²⁵ The concept therefore relates to the decision-making process prior to a termination, rather than the merits of the decision itself. According to the Fair Work Commission, procedural fairness can contain a number of aspects, such as following appropriate procedures when dismissing an employee, explaining the situation to the employee, and whether an employee has been able to seek advice or have a support person available at the meeting.³²⁶ This principle is relevant in determining whether a dismissal was harsh, unjust or unreasonable in unfair dismissal claims.

The MoP(S) Act itself does not set out all of the procedural requirements for a termination. The Act only requires a MoP(S) Act employee to be given a notice of termination in writing that specifies the ground/s for termination. The EA sets out further procedures, specifying the notice period for different terminations and payments in lieu of notice.

In the usual course, procedural fairness requirements depend on the circumstances and require a flexible approach.³²⁷ Procedural fairness requirements may also need to be considered against other pertinent issues, such as national security or other matters.³²⁸ Traditionally, procedural fairness in decision-making comprises of:

- the fair hearing rule, which requires that a decision-maker provides a person with the opportunity to be heard prior to a decision being made that affects their interests (e.g. prior notice of a decision, disclosure of information pertinent to their interests, and a substantive hearing in either oral or written format and a reasonable opportunity to present a case)
- the rule against bias, which requires that a decision maker is ‘fair-minded and informed of the circumstances’³²⁹ (however, this rule is dependent on the situation to determine the extent to which this is appropriate)

³²⁵ Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachment by Commonwealth Laws*, ALRC Report 129 (2016), para 14.11.

³²⁶ Fair Work Commission, *Unfair dismissals benchbook – Other relevant matters* [website], (no date) <https://www.fwc.gov.au/other-relevant-matters>, accessed 19 September 2022.

³²⁷ ALRC, *Traditional Rights and Freedoms – Encroachment by Commonwealth Laws*, paras 14.18-19.

³²⁸ *Ibid*, paras 14.23-26.

³²⁹ *Ibid*, para 14.21.

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- the evidence rule, which requires that decisions are based on relevant evidence that logically supports the decision.

Procedural fairness requirements are present in a number of other sectors to varying degrees depending on contextual factors. For example, the Australian Public Service Commission (APSC) requires agencies when investigating breaches of the APS Code of Conduct to comply with these three traditional rules where a person's rights or interests may be adversely affected by a decision (generally interpreted to be an employee, rather than witnesses or complainants).³³⁰ The APSC stipulates that investigators should take the following measures to ensure procedural fairness requirements are met when investigating an APS employee for potential APS Code of Conduct breaches:

- collect investigatory material to support the findings
- provide the employee with an opportunity to comment prior to a decision being made.³³¹

What we heard

Former and current MoP(S) Act employees reported the processes that surround termination (particularly termination at the initiative of the parliamentarian) often lack procedural fairness and are often inconsistent with best practice. Participants also identified that current provisions contained in the Act appeared to have limited procedural fairness embedded in the termination process, which was reinforced by the practical operation of termination.

Review participants perceive the protections in the FW Act do not apply to MoP(S) Act employees, and parliamentarians behave as though they are 'above the law' and are not required to uphold procedural fairness during termination. For example, despite procedural fairness requirements for employees to be given an adequate opportunity to respond to concerns about their performance or conduct, we heard these opportunities are often not provided. A number of former MoP(S) Act employees reported being dismissed with no formal communication prior to the termination to indicate there were issues. The lack of warning, or opportunity to address concerns, contribute to the already-present sense of job insecurity MoP(S) Act employees feel, and employees reported that this made the termination process more distressing. Current and former MoP(S) Act employees told us:

- terminations with little or no notice were conducted by some parliamentarians at the end of the day or immediately after a critical piece of work was delivered by the employee, leading to feelings of being taken advantage of, used, or unappreciated

³³⁰ Australian Public Service Commission, *Fact sheet: Procedural fairness in breach decision-making* [online document], (2022) <https://www.apsc.gov.au/fact-sheet/fact-sheet-procedural-fairness-breach-decision-making#:~:text=Procedural%20fairness%20requires%20the%20person,reasonable%20opportunity%20given%20the%20circumstances>, accessed 16 September 2022.

³³¹ Ibid.

- challenging behaviours often accompany termination, either prior to the termination or at termination, such as the parliamentarian refusing to engage or respond to the employee
- common practices, such as performance reviews and formal warnings prior to termination, are uncommon in MoP(S) Act employment
- termination rather than resignation is preferable as termination attracts severance payouts, which some employees pursued as a form of compensation for poor experiences in the workplace
- counselling or other forms of employee support are not often offered
- employees felt they were on their own against their employer and were unlikely to get assistance from the Commonwealth in pursuing any action against the parliamentarian.

Review participants who claimed to have been ‘forced’ or encouraged to resign from positions under the MoP(S) Act highlighted that in their cases – where they had resigned to avoid having their employment terminated – there was less procedural fairness than in usual circumstances, as affected employees felt they had no recourse. This group of participants could not access benefits they would have been entitled to had they been terminated by the parliamentarian.

The view expressed by contributors that MoP(S) termination processes can be improved is supported by cases brought to the Fair Work Commission involving the termination of MoP(S) Act employees.

Common themes in the cases include:

- procedural fairness, including notice provisions and an opportunity for the employee to respond³³²
- grounds for and process of termination, including summary termination³³³
- the connection between an employee making a complaint and later being terminated, and to what extent this engages the general protections of the FW Act or anti-discrimination legislation.³³⁴

6.4.2 Options for improvement

Introducing suspensions

The introduction of suspensions of employment into the MoP(S) Act framework could enable employers to remove an employee from the workplace in situations where there is serious misconduct or a significant threat to workplace health and safety, while also supporting a procedurally fair process to

³³² *Field v Department of Finance* [2022] FWC 1619 (*‘Field’*); *Messenger v Commonwealth of Australia (Represented by the Department of Finance)* [2022] FCA 677 (*‘Messenger’*); *Lindsay v Department of Finance and Deregulation* [2011] FWA 4078 (*‘Lindsay’*); *Andrew Dempster v Commonwealth* [2004] NSWCMC 75 (*‘Dempster’*); *Watkinson v Commonwealth of Australia* [1997] IRCA 8 (*‘Watkinson’*).

³³³ *Field*; *Messenger*; *Ashby v Commonwealth of Australia (No 4)* [2012] FCA 1411; *Lindsay v Department of Finance and Deregulation* [2011] FWA 4078; *Jeffrey Robert Babb v Commonwealth of Australia (Dept of Administrative Services)* [1997] FCA 932; *Cranitch v Commonwealth of Australia* [1996] IRCA 386.

³³⁴ *Messenger*; *Leach v Commonwealth of Australia* [2021] FCA 158.

investigate a matter or consider termination of that employee. There are currently no provisions relating to suspension in the MoP(S) Act, EA or standard employment agreement, though there is a common law right to suspend employees by issuing a lawful and reasonable direction in some circumstances.

In any case, it appears suspensions are not used in parliamentary offices.

The Review notes Presiding Officers (in addition to other officers) may direct the removal or non-entry of a person within the parliamentary precinct in accordance with the *Parliamentary Precincts Act 1988*.³³⁵

This power has been exercised at least once in relation to a MoP(S) Act employee, in circumstances where a MoP(S) Act employee was alleged to have behaved inappropriately towards a senator and their building pass was subsequently revoked.³³⁶ The President of the Senate made it clear, however, that this decision did not affect the person's employment. The Review further notes this power has a relatively narrow scope, including being limited to parliamentary precincts and matters necessary for their control and management of the precincts.

Suspensions or powers to direct the removal of persons are available in a number of other state and territory parliamentary jurisdictions, including:

- NSW, where authorised officers (including Presiding Officers) under the *Parliamentary Precincts Act 1997* (NSW) are able to direct the removal or non-entry of persons³³⁷
- Queensland, where the Clerk is empowered to suspend employees if they are the subject of disciplinary action or if they are suspected of involvement in a situation where 'efficient and proper management of parliamentary service might be prejudiced if the officer's or employee's services are continued'.³³⁸
- Western Australia, where parliamentary employees are captured by the *Public Sector Management Act 1994* (WA)'s powers to suspend public sector employees in a range of circumstances, including where serious misconduct is alleged and where the employee poses a health and safety threat to others in the workplace.³³⁹

This power is also used in comparable jurisdictions overseas. The UK House of Commons, for example, permits a Line Manager (in consultation with a HR Director and the Office of the Speaker's Counsel) to suspend an employee who is subject to an investigation pending the conclusion of the inquiry.³⁴⁰ A

³³⁵ *Parliamentary Precincts Act 1987* (Cth), s 6.

³³⁶ Commonwealth, *Parliamentary Debates*, Senate, 14 February 2019, 397 (Senator Scott Ryan, President of the Senate).

³³⁷ *Parliamentary Precincts Act 1997* (NSW), ss 18-19.

³³⁸ *Parliamentary Service Act 1988* (Qld), s 41.

³³⁹ *Public Sector Management Act 1994* (WA), sub-s 8(1) and 8(2).

³⁴⁰ UK Parliament, *House of Commons Staff Handbook – Chapter 19: Disclosing Malpractice or Impropriety ('Whistleblowing'), Allegations of Dishonesty at Work and Crisis of Conscience* [online document], (April 2021)

manager, however, also may order the suspension of an employee for a specific period with loss of pay in appropriate circumstances. This is considered as a form of a disciplinary sanction, and is dependent on the particular circumstances of each case.³⁴¹

More broadly, suspensions are also used in non-parliamentary workplaces. For example, the PS Act enables the regulations to make provisions regarding the suspensions of APS employees.³⁴² The current *Public Service Regulations 1999* (PS Regulations) provide that agency heads may suspend APS employees from duties if the agency head has reasonable grounds to believe that the employee has breached the APS Code of Conduct, and suspension of the employee is in the public or the Agency's interest.³⁴³ The PS Regulations also provide for suspensions to be with or without remuneration (the latter being subject to time constraints).³⁴⁴ Suspensions must also be reviewed by the agency head at regular intervals, and are revoked when the agency head no longer reasonably believes that the employee has breached, or may breach, the APS Code of Conduct and that their suspension is no longer in the public or the Agency's interest.³⁴⁵ The PS Regulations also require the agency head to have due regard to procedural fairness in the exercise of suspension-related powers unless they are satisfied on reasonable grounds that given the particular circumstances that it would not be appropriate.

Other industries make use of suspensions via a relevant enterprise agreement, contractual agreement, award or statutory right. Suspensions are generally used by employers to enable the employer (or another investigatory body) to investigate alleged misconduct and avoid situations where the employee may be at risk or pose a risk to others while such investigations take place. Suspensions can also avoid situations where the employee may be prejudiced due to their presence in the workplace while an investigation is ongoing.

Suspensions could be used, either with or without pay, while a parliamentarian considers whether termination is warranted, or if there are alternative methods of remedying the situation. The parliamentarian should consult with the OPSC when considering suspension. This can help ensure there is a reasonable time for the employee to respond before a decision is made. Procedural fairness would dictate a fair amount of time be applied to a suspension, depending on the surrounding circumstances. It would also enable the parliamentarian to seek external advice (such as from the OPSC, police or others) on the matter or matters which have prompted the suspension.

para 3.11, <https://www.parliament.uk/contentassets/375c1cca2849461fb61bf02d9cc980ea/chapter-19-final-april-2021.pdf>, accessed 23 September 2022.

³⁴¹ UK Parliament, *House of Commons Staff Handbook – Chapter 20: Disciplinary Procedures* [online document], (March 2021) para 8.13, <https://www.parliament.uk/contentassets/375c1cca2849461fb61bf02d9cc980ea/chapter-20-final-march-2021.pdf>, accessed 23 September 2022.

³⁴² PS Act, s 28.

³⁴³ *Public Service Regulations 1999* (PS Regulations), reg 3.10(1).

³⁴⁴ *Ibid*, reg 3.10(2)-(3).

³⁴⁵ *Ibid*, reg 3.10(4)-(5).

Giving the parliamentarian the ability to suspend may better equip parliamentarians to follow a proper process when considering termination, particularly in instances where the continued work of the employee involves risks to WHS, ongoing investigations or reputation. This would also have the benefit of enabling parliamentarians to fulfil their duties under WHS legislation to minimise any potential risks while investigations are ongoing into the employee's conduct. It would also help to fulfil the parliamentarian's obligations to provide a procedurally fair process for termination, assuming that they also undertake other steps in line with current requirements under case law (e.g. providing warnings to employees if appropriate prior to considering termination and providing an opportunity for employees to respond to concerns prior to termination being considered).

Suspension must be part of the broader landscape of procedural fairness requirements for employees prior to considering termination. Additional oversight of suspension by the OPSC would be beneficial in order to ensure that the powers are being used appropriately.

Ensuring that an employee abides by the conditions of the suspension would require assistance from the DPS to ensure that remote access and building access are immediately restricted upon imposition of a suspension. While restricting access to parliamentary systems and premises can be largely centralised within DPS, restricting access to the electorate office or mobile offices may be more challenging.

Powers of suspension for the OPSC

There are potential situations where the employing parliamentarian may choose not to suspend an employee, but the employee may pose an immediate risk to others, property, security or evidence in any ongoing investigations. In the event that the parliamentarian is not willing to act (either to suspend the employee or take another action to remedy the situation) and it becomes clear that there are immediate risks regarding the employee's conduct, the OPSC could have the power to suspend the employee from the workplace. Such risks could be identified by the OPSC or raised by the IPSC.

One potential risk in this model is that it is unclear what should occur if the OPSC applies a suspension but the parliamentarian still will not act to satisfactorily resolve the situation. Escalation points for the OPSC are a broader issue to be considered in establishment. However, if a parliamentarian is unable to access their full complement of staff due to a suspension, this may prompt them to resolve the issue.

Encouraging responsibility and compliance from parliamentarians

Set the Standard's Recommendation 16 outlines a new process for parliamentarians to undertake when considering termination, involving informing the OPSC of a proposed termination. The rationale for this was to help ensure proposed terminations satisfy legal requirements and are not otherwise deficient.

The Review considers the involvement of the OPSC to be central to improving practices in termination and improving outcomes for employees. For this reason, the Review recommends the MoP(S) Act be

amended to require parliamentarians to consult the OPSC prior to effecting a termination. This consultation would enable the OPSC to provide best practice advice.

This change would support the implementation of *Set the Standard* Recommendation 16(a). Consideration of the rest of Recommendation 16 is a matter for the OPSC.

A number of contributors told us the current framework does not encourage parliamentarians to comply with their legal obligations for termination due to the lack of practical and significant consequences for them. If a former employee brings a case of unfair dismissal against a parliamentarian, it is ultimately the Commonwealth and not the parliamentarian who is liable for any subsequent penalty that may be imposed.

Without any financial penalty on them or their office budget, or any formal reporting mechanisms (aside from what is publicised in the media), we heard that parliamentarians have little incentive to abide by the law. This led to the perception by a number of former MoP(S) Act employees that parliamentarians did not care if they terminated employees because they were easily replaceable, a view that has been similarly expressed in other jurisdictions.³⁴⁶

The Review recognises this is a significant issue which is not easily rectified, and is highly dependent on broader workplace and parliamentary cultural factors to ensure it can be appropriately addressed. A number of mechanisms are currently proposed as part of the implementation of the *Set the Standard* recommendations which may assist to address this situation, including:

- the establishment of the OPSC and the IPSC
- the development of proposed codes of conduct under consideration by the Joint Select Committee on Parliamentary Standards
- additional training provided by Finance to parliamentarians and MoP(S) Act employees on managing employees and offices.³⁴⁷

Given the ongoing implementation of the recommendations in *Set the Standard*, the Review does not recommend further changes. Nonetheless, this issue should be included in any future review of the MoP(S) Act to determine if *Set the Standard* measures are addressing these matters.

³⁴⁶ See: Elizabeth Broderick & Co., *Leading for Change*, 22.

³⁴⁷ Parliamentary Leadership Taskforce *Set the Standard: Implementation Tracker – September 2022* [online document], (12 September 2022) https://www.aph.gov.au/-/media/05_About_Parliament/Parliamentary_Leadership_Taskforce/Implementation_tracker/Implementation_Tracker_-_12_September_2022.pdf?la=en&hash=B307905768EE4BDD507BF43B83D4D7660AD7A301, accessed 22 September 2022.

6.4.3 Conclusion

The Review found while termination powers in the MoP(S) Act do not require major amendment, there is scope for significant improvements in the way parliamentarians terminate MoP(S) Act employment. The establishment of the OPSC and the introduction of a power to suspend employment should help improve practices, including the provision of procedural fairness.

Set the Standard's Recommendation 16 outlines a new process for parliamentarians to undertake when considering termination, involving informing the OPSC of a proposed termination. The rationale for this is to allow for the OPSC to provide support and advice to parliamentarians and better ensure proposed terminations satisfy legal requirements, are procedurally fair, and not otherwise deficient.

The process to provide this support and advice will be a matter for the new OPSC. However, the Review considers it very important to ensure parliamentarians first make contact with the OPSC to facilitate this. Accordingly, the Review recommends introducing a requirement in the MoP(S) Act for parliamentarians to consult the OPSC prior to effecting any termination.

In addition, the Review recommends introducing the power to suspend a MoP(S) Act employee from the workplace. This power could be exercised by parliamentarians, or the OPSC in certain situations where there is an immediate risk, to ensure due process and avoid any potential prejudice to the employee. It will also assist parliamentarians to meet their obligations under work health and safety law by ensuring they can protect other employees in the workplace in situations where there may be immediate risks to the wellbeing and safety of others.

Recommendation 13 – Termination

The MoP(S) Act should be amended to improve the certainty and fairness of termination processes, including provisions that:

- A. a parliamentarian must consult the OPSC on best practice prior to effecting any termination
- B. the employing parliamentarian may suspend the employment of a MoP(S) Act employee
- C. the OPSC may suspend the employment of a MoP(S) Act employee in cases of immediate risk, including on advice from the Independent Parliamentary Standards Commission.

6.5 Automatic termination

A matter raised during the Review relating to the technical operation of the MoP(S) Act was the operation of automatic terminations of employment. MoP(S) Act employment can terminate

'automatically' when the circumstances of an employing parliamentarian change. For example, a MoP(S) Act employee will no longer be employed if their employing parliamentarian loses office.

The Review found automatic terminations are complex, and there is scope to simplify and clarify the application of automatic termination provisions in the Act.

6.5.1 Current situation

Sections 16 and 23 of the Act, which deal with termination of employment, operate to automatically terminate an employee in the following situations:

- where the employing parliamentarian dies³⁴⁸
- where a relevant office-holder³⁴⁹ ceases to hold that office
- where a senator or member loses their seat in parliament
- where a determination made by the Prime Minister under section 12 of the Act in respect of a parliamentarian is revoked.³⁵⁰

Further details of automatic termination triggers are provided in the table below, which sets out situations which may trigger an automatic termination event and which categories of employees may be affected.³⁵¹

Situation	Employing parliamentarian	Trigger?	Employees affected
Parliamentarian dies	All	Yes	Personal and electorate
Parliamentarian resigns	All	Yes	Personal and electorate
Parliamentarian ceases to hold all roles (e.g. no longer holds a Ministry or Shadow Ministry position)	Minister	Yes	Personal and electorate
	Opposition office-holder	Yes	Personal and electorate
	Shadow Minister	Yes	Personal
	Party Whip	Yes	Personal

³⁴⁸ Subsection 16(1) applies to an 'office-holder' (as opposed to a 'relevant office-holder', which is defined by section 3 as either an office-holder, a former Prime Minister or a person in respect of whom a determination by the Prime Minister under section 12 is in force).

³⁴⁹ A 'relevant office-holder' is defined under section 3 of the MoP(S) Act as the office of: a Minister, the Leader of the Opposition in the Senate, the Leader of the Opposition in the House of Representatives, the Deputy Leader of the Opposition in the Senate, the Deputy Leader of the Opposition in the House of Representatives, and the leader or deputy leader in either House of Parliament of a recognised political party.

³⁵⁰ MoP(S) Act, sub-s 16(2)(a)-(c).

³⁵¹ Data provided by the Department of Finance.

Situation	Employing parliamentarian	Trigger?	Employees affected
	Presiding Officer	Yes	Personal
Parliamentarian ceases to hold certain roles (e.g. Minister's commission is revoked for some but not all portfolios)	Minister	Depends on how ministerial commission is structured (i.e. whether combined or distinct) – if combined, yes; if distinct, no	Personal and electorate
	Opposition Office-Holder	No	N/A
	Shadow Minister	Yes, due to the revocation of a section 12 determination which applied to the original role	Personal
Parliamentarian provided with new roles without losing old ones (e.g. a minister is commissioned as Minister for Industry in addition to existing role as Minister for the Arts)	Minister	Dependent on whether a section 12 determination has been made in relation to that office in its former capacity and has since been revoked – if so, yes	Personal
	Opposition Office-Holder	No	N/A
	Shadow Minister	Dependent on whether a section 12 determination has revoked the previous 'bundle' of roles – if so, yes	Personal
Post-election where there is no change in Government	Minister	Yes, occurs at swearing in of new Ministry	Personal and electorate
	Opposition Office-Holder	Dependent on internal party arrangements regarding employees	Personal and/or electorate
	Shadow Minister	Yes, occurs where Leader of the Opposition announces Shadow Ministry	Personal
	Whip	Dependent on internal party arrangements regarding employees	Personal and/or electorate
	Presiding Officer	Yes	Personal
Post-election where there is a change in Government	Minister	Yes, occurs at swearing in of new Ministry	Personal and electorate
	Opposition Office-Holder	Yes, occurs at swearing in of new Ministry	Personal and electorate
	Shadow Minister	Yes, occurs at swearing in of new Ministry	Personal
	Whip	Dependent on internal party arrangements regarding employees	Personal and/or electorate

Situation	Employing parliamentarian	Trigger?	Employees affected
	Presiding Officer	Yes	Personal

The Act also provides for automatic termination to be deferred (see Section 6.6 on 'deferral periods').

The primary justification for the inclusion of automatic termination provisions in the MoP(S) Act is to accommodate for changed circumstances of the employing parliamentarian. For example, where a parliamentarian's role changes (such as becoming a minister, changing ministerial roles, or being appointed a parliamentary role such as a whip), the parliamentarian has the opportunity to restructure their support staff in order to better reflect their current needs. In other situations, such as where a parliamentarian resigns, loses their seat or dies, automatic termination provisions clarify the employment status of the employee.

Operation of automatic terminations in practice

In practice, automatic terminations are common in two situations: the period after an election, and when ministerial arrangements are revised. This is due to the automatic termination triggers primarily being tied to events which affect the role of the employing parliamentarian.

In the 2021-2022 financial year, 737 of a total 1,907 final cessations of employment (i.e. terminations which did not result in re-employment as a MoP(S) Act employee) were the result of an automatic termination event.³⁵² This period of time is inclusive of a federal election and other ministerial responsibility changes. It is important to note, however, that the statistics as reported above do not encapsulate automatic terminations where the employee was subsequently re-engaged, which regularly occurs particularly in relation to ministerial title or portfolio changes. The number of times where automatic terminations are triggered is unknown, as data is not available for automatic terminations that occurred where the employee was subsequently rehired.

What we heard

The Review heard automatic termination under the MoP(S) Act can be applied inconsistently and is poorly understood. The following scenarios illustrate this issue:

- where a minister's responsibilities are revoked for some portfolios but not others, whether all employees (both personal and electorate staff) are automatically terminated depends on how the ministerial commissions are viewed (i.e. whether they are distinct portfolios or a combined bundle). By comparison, an Opposition Office Holder who ceases to hold that relevant office (e.g. Leader of

³⁵² This figure is likely to be higher given that a) the statistics do not count employees who were automatically terminated and then subsequently re-engaged, and b) a number of cessations are yet to be categorised by Finance.

the Opposition in the House of Representatives) but retains a shadow ministry position will not be affected by automatic termination triggers for either personal or electorate staff

- if a parliamentarian is appointed as a whip, their personal staff may be affected by automatic termination, depending on internal party arrangements, but electorate staff remain unaffected.
- when a shadow minister acquires new portfolio responsibilities, the section 12 determination is revoked due to the change in portfolios, and their personal staff are likely to be automatically terminated.

The scenarios demonstrate triggers for automatic termination are context-specific and outcomes are not always predictable.

The survey of former and current MoP(S) Act employees and parliamentarians conducted for this Review indicates that MoP(S) Act employees generally accept the need for automatic terminations, but may be more or less accepting depending on the circumstances and the particular trigger. Certain types of automatic termination, such as the parliamentarian no longer being a member or senator, were considered more reasonable in principle when compared to a change in the parliamentarian's role.

This was reflected in feedback to the Review from both MoP(S) Act employees affected by changes to their parliamentarian's position for minor changes, and some parliamentarians who found it cumbersome to rehire employees where automatic terminations applied but there was, in their view, no need to amend their staffing arrangements. Both employees and parliamentarians also indicated it was unclear and confusing where automatic terminations did or did not apply after a change in role.

Academic observers suggested reducing the number of automatic termination triggers to reduce employment insecurity for employees. Dr Maley recommends personal staff of ministers not be automatically terminated where their parliamentarian merely changes a title.³⁵³ Dr Maley stated that this view stemmed from 'ministerial staff [who] report that the insecurity of their employment is emphasised by the fact it ceases automatically when the minister changes job title, providing many opportunities to not be re-employed if they have made complaints'.³⁵⁴

Conversely, some Review participants stated that automatic terminations stemming from a ministerial title change can offer the opportunity for the minister to revise what is needed from their office, and restructure their staffing accordingly. For example, in situations where a Minister acquires a new portfolio responsibility in an unfamiliar policy area, they may wish to hire a new employee who better suits the new role. However, to do so they would otherwise be required to terminate another employee's employment to remain within their staffing allocation.

³⁵³ *Submission 10*, 11.

³⁵⁴ *Ibid*, 11.

What others do

Most comparable jurisdictions have automatic termination provisions, and often include deferral periods for termination. This reflects suggest automatic terminations are generally accepted as necessary in parliamentary staffing and employment conditions.

The automatic termination powers in Australian state and territory jurisdictions is set out in the table below.

Jurisdiction	Automatic termination powers
New South Wales	<p>Applies if:</p> <ul style="list-style-type: none"> Member of Parliament (MP) or Special Office Holder (SOH) ceases to be MP, or SOH ceases to hold role, or employing MP who is member of Legislative Council becomes a political office-holder, or on the day of the next general election; <p>Unless the relevant Presiding Officer (PO) directs that employment continues for a specified period.</p>
Australian Capital Territory	<p>Applies if Member of the Legislative Assembly (MLA) or Office Holder (OH):</p> <ul style="list-style-type: none"> dies or ceases to hold the relevant office, or Chief Minister (CM) revokes relevant determination and/or MLA no longer is covered by the relevant determination. <p>CM may direct by disallowable instrument that engagement continues until a specified date.</p>
Queensland	<p>Applies with notice as per the relevant Award in certain situations, such as where an MP dies, resigns, retires or is defeated at election. Redeployment is provided for under the relevant EA.</p>
Victoria	<p>Applies if MP dies or ceases to hold office, unless:</p> <ul style="list-style-type: none"> POs jointly extend the employment for a specified period; or Within a period of four weeks (or longer by determination of the POs) the employee is employed to assist another member.
Western Australia	<p>Applies to ministerial officers where:</p> <ul style="list-style-type: none"> the OH dies or ceases to hold the relevant office , or a general election for the Legislative Assembly is conducted (applies from day after return of writ), or <p>at the end of the specified term of the employment contract.</p>
Northern Territory	<p>Applies if MLA ceases to be a Member for any reason.</p>

In comparable overseas jurisdictions, automatic terminations are similarly used. Ministerial staff employed in the UK House of Commons are subject to automatic termination in the event that the appointing minister ceases to hold the relevant office, or on the day after a general election. Canadian ministerial staff and those who are employed by Leaders of the House are made redundant 30 days after their employer loses office, with the option for redeployment.

In New Zealand, events-based termination (that is, automatic termination) was commonplace prior to 2019. The Francis Review, however, recommended fixed-term agreements for employees which provide options for reassignment or redeployment.³⁵⁵ Accordingly, the collective agreement signed in 2020 provides that a general election is no longer an automatic termination event. For most employees, employment now is not broken by a general election.

6.5.2 Options for improvement

Legislative instruments

One way to provide more clarity to automatic terminations is to set out unusual triggers in a legislative instrument. This could be done by:

- retaining the high-level automatic termination triggers currently provided for in the Act, which generally encompass some of the common and predictable situations where automatic terminations apply, such as where a parliamentarian dies or ceases to be a parliamentarian
- creating ad hoc determinations for unusual situations which do not fit easily into the currently existing automatic termination categories, such as for technical changes to a minister's portfolio title which are not covered by a section 12 determination, or where parliamentarians cease to hold a personal staffing allocation (see below).

This system is currently used to some extent, but has critical gaps in relation to specific circumstances, such as where a parliamentarian loses their personal staffing allocation. Using this system could provide clarity in situations which are commonplace and relatively predictable, ensuring that both parliamentarians and employees understand whether the trigger applies in these scenarios. Having an ad hoc determination option also provides the ability to remain flexible and respond to new situations as they arise.

Applying automatic terminations when staffing allocation is reduced

It was suggested to the Review that a new automatic termination trigger should apply to situations where a parliamentarian's personal staffing allocation is reduced or goes to zero. Where a ministerial or special office is lost, or there is a change in a role that affects staffing allocations as provided for under a section 12 determination, this would constitute a reduction in the personal staff allocation, and all personal staff would be automatically terminated.

The Review heard from contributors how, when a section 12 determination was revoked, there was considerable confusion about the employer's responsibilities and duties, and the rights of employees.

³⁵⁵ Francis, *Bullying and Harassment in the New Zealand Parliamentary Workplace*, 92 (Recommendation 40).

Parliamentarians are compelled to terminate employees themselves rather than have them automatically terminated, which created significant anxiety and confusion for both parties.

There are a number of positive aspects to the proposal to introduce a new automatic termination trigger enlivened when section 12 determinations are revoked. The primary benefit is that this reflects the fact that the parliamentarian's ability to hire and retain employees (particularly personal staff) is ultimately subject to their staffing allocation. Other benefits of this approach include:

- ensuring that employees affected by this scenario would not be in a legal 'limbo' where they are uncertain of their rights and entitlements, and employers are not forced to terminate employment themselves
- ensuring that affected employees qualify for severance benefits, which are currently not available if they are terminated by the employer under sections 16(3) or 23(2) of the Act
- equal treatment of all personal staff in relevant automatic termination events, rather than the parliamentarian having to single out one or more employees for dismissal
- improving clarity in situations where section 12 determinations are revoked and/or revised, which is a relatively common occurrence and should be considered as a predictable trigger.

The Review acknowledges adding automatic termination triggers might seem counter to the aims of the Review. However, the Review considers these changes result in better outcomes for individuals where termination is inevitable.

Amend automatic termination for electorate staff currently under Part III of the Act

With electorate officers becoming a new category of employee in a combined Part III and Part IV (see Recommendation 1), there is an opportunity to remove unnecessary automatic termination triggers. Currently, an electorate officer of a minister or an Opposition office-holder is employed under Part III of the Act, meaning that they are automatically terminated when the personal staff in the office are terminated in certain situations (see Section 6.5.1). There are many cases where there is no rationale for this. For example, where a minister changes portfolio there is logic in a minister needing to consider a change in their personal staff who support them in their portfolio, but there is no logical reason for the electorate staff to be terminated as their role is unlikely to change.

We consider there is merit in retaining a termination trigger for electorate office staff in situations where their employing parliamentarian has their personal staffing allocation reduced to zero (i.e. the parliamentarian no longer has a personal staffing allocation). This would address situations where a personal staffing allocation is revoked but the parliamentarian wishes to retain one or more terminated personal staff as an electorate officer. This allows the parliamentarian to retain the option of re-engaging former personal staff in an electorate officer role, but remove unnecessary job insecurity for electorate staff in all other instances.

Recommendation 14 – Automatic termination provisions

The automatic terminations provisions in the MoP(S) Act should be amended to improve job security and increase clarity for staff by:

- A. retaining the existing high level automatic terminations triggers, but allowing for determinations to clarify specific circumstances
- B. providing that automatic termination provisions for electorate staff employed under Part III only apply where the employing parliamentarian ceases to have a personal staffing allocation.

6.6 Deferral periods

A small number of Review contributors raised concerns regarding the inconsistent application of deferral periods when the employment arrangement of MoP(S) Act employees are automatically terminated.

6.6.1 Current situation

Under subsections 16(5) and 23(4) of the MoP(S) Act, the Prime Minister (or delegate) has the capacity to impose a deferral period for employees terminated under those sections. This power operates to defer the termination until a specific date. Deferral periods are most commonly used in situations where automatic terminations apply, such as after an election or during reassignments of ministerial responsibilities. This practice assists in a range of situations:

- where a parliamentarian takes on new responsibilities (such as a new ministerial or parliamentary title) and their entire staff is automatically terminated, but the parliamentarian intends to rehire some or all of the terminated employees as soon as practicable
- where a change of government occurs, and the new Government needs employees immediately
- to ensure employees that are intended to be re-employed do not experience a break in service.

In practice, this deferral power is generally exercised by the SMOS. A standing direction applies a default period of between two and eight weeks, depending on the situation.³⁵⁶ The SMOS can also make separate ad hoc deferral directions for specific events, like changes to ministerial portfolio responsibilities.

What we heard

The Review heard from some contributors that deferral periods under the Act are inconsistently applied and are increasing in duration. No benefit appears to be derived from this increase.

³⁵⁶ *Members of Parliament (Staff) Act 1984 (Cth), Direction 2019/6: Direction to Defer the Termination of Employment* (9 April 2019).

Finance advised the Review that the deferral period for MoP(S) Act employees has significantly increased over the past ten years.³⁵⁷ Traditionally it was two weeks, but now is now currently on average up to eight weeks. Finance submitted that there are a number of negative consequences to long deferral periods, including:

- increased staffing costs to the Commonwealth
- reduced incentive for parliamentarians to sign new employment contracts quickly
- lack of clarity regarding the role and responsibilities of an employee during this period, who the 'employer' is and their capacity to direct employees, and who has responsibilities for work health and safety issues. The current length of deferral periods is longer than is generally mandated by the FW Act for notice periods, which provides that a terminated employee is entitled to a minimum notice of period between 1 and 5 weeks, depending on the number of years of service and whether they are over 45 years of age.³⁵⁸

While most contributors did not raise concerns about deferral periods, we note that former staff may not be aware of inconsistencies in their application.

What others do

Most comparable parliaments in the states and territories have implemented deferral periods for terminated employees. For example, Western Australia provides as part of its *Public Sector Management Act 1984* powers for a ministerial officer to have the date of their termination deferred until a period set by the Minister for Public Sector Management or the Premier.³⁵⁹

6.6.2 Options for improvement

Deferral periods could be limited to a default period of four weeks, which would be consistent with modern employment frameworks. This could improve consistency and transparency in the MoP(S) framework, ensuring that all staff are subject to the same deferral period. It would also recognise the challenges faced by staff experiencing automatic termination, particularly in cases where their employer dies or loses office, and they must adapt to post-parliamentary life very quickly. It would also provide for employees to be retained for transitions after elections or changes to ministerial portfolios, facilitating handovers and additional support to incoming parliamentarians or ministers and their staff.

The current deferral periods provide flexibility and accommodate a range of contextual factors, including:

- allowing for transition periods where staff may be required to assist in setting up new offices or handover to incoming staff, such as after elections or changes in ministerial portfolios, and

³⁵⁷ *Submission 42, 7*; Information provided by Department of Finance.

³⁵⁸ FW Act, sub-s 117(3).

³⁵⁹ *Public Sector Management Act 1994* (WA).

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- allowing for some categories of staff or particular individuals to have longer or shorter deferral periods, rather than a broad application of a set timeframe which may not be sufficient for some staff to complete their tasks, and too long for other staff whose positions are no longer required.

Finance argued in its submission that shortening the deferral period would bring the framework into closer alignment with the notice provisions under the FW Act (currently set at four weeks).³⁶⁰ However, this proposal does not reflect that deferral periods are significantly different to notice periods, which still apply to MoP(S) Act employees regardless of whether deferral periods are applied or not. The policy intent of deferral periods is to provide flexibility in a range of situations, whereas notice periods are primarily to provide employees and employers with notification to prepare both parties for the employee's departure. The two mechanisms are not the same, despite the ostensible similarity.

6.6.3 Conclusion

Despite feedback to the Review that deferral periods are inconsistently applied and could be streamlined, we do not recommend the length of deferral periods be 'set in stone', or that the Prime Minister's power to issue directions about deferral periods should be replaced with an alternative mechanism. The current system provides flexibility and a smoother handover of government and ministerial responsibilities.

Nonetheless, data on the use and purpose of deferral periods would be useful if the issue is considered again in the future. The OPSC should monitor and report on deferral periods in the pursuit of greater transparency.

6.7 Post-employment support

6.7.1 Current situation

While much has been discussed about MoP(S) Act employment from recruitment through to termination in both *Set the Standard* and this Review, there has been less focus on the support offered to MoP(S) Act employees after they leave employment.

Some employees will have come from other careers that they can return to, including in the APS, but there will be a large proportion of employees who do not have an alternative career to MoP(S) Act employment. The recruitment processes for MoP(S) Act employment could mean that many of these staff have not experienced formal interviews, or not for some time. Further, the processes surrounding termination can result in some staff ceasing work abruptly and feeling unsupported after their employment ceased.

³⁶⁰ *Submission 42, 7.*

Effect of Enterprise Agreement

The EA is currently the main source of benefits that apply post-employment. Severance benefits are payable to MoP(S) Act employees who are terminated under Part III or Part IV of the Act.³⁶¹ However, a number of excluded categories apply, including employees who:

- resign
- are employed by the APS, another state or territory public service, or other public sector employer that they are on leave from
- are guilty of serious misconduct in the view of the minister, the threshold being that it 'would be unreasonable to require the employing parliamentarian to continue the employment of the employee';
- are terminated during probationary periods
- are absent from duty without approved leave for 10 days continuously immediately prior to their cessation of employment, and have not provided reasonable cause for this absence to their employer
- are re-employed under the MoP(S) Act without a break in employment (regardless of whether it is with the same or another parliamentarian).³⁶²

Severance benefits are contingent on the length of continuous service under the MoP(S) Act.³⁶³

Recognising the at times precarious employment of MoP(S) Act employees, the EA defines 'continuous service' as a combined period of both prior service³⁶⁴ and ongoing or non-ongoing (but not casual) employment under the MoP(S) Act.³⁶⁵

The EA currently allows for a career transition payment (CTP) which provides for up to \$500 to cover career transition counselling, training or financial advice upon separation.³⁶⁶ Eligibility for the CTP payment is contingent on approval from Finance, and must occur within six months of termination.³⁶⁷

Finance currently provides information on the MaPS website in relation to termination entitlements, in addition to offering opportunities for outgoing MoP(S) Act employees to voluntarily undergo exit

³⁶¹ Enterprise Agreement, cl 62.1.

³⁶² Ibid, cl 62.1.

³⁶³ Ibid, cl 62.2.

³⁶⁴ Clause 51.4 states that employees that were previously employed by a State or Territory parliamentarian on a basis equivalent to ongoing or non-ongoing employment under the MoP(S) Act immediately prior to employment may have that service recognised for the purpose of calculating severance benefits. To utilise this benefit, employees must apply to Finance within one month of commencing employment under the MoP(S) Act to have their service recognised.

³⁶⁵ Enterprise Agreement, cl 62.3.

³⁶⁶ Ibid, cl 64.1.

³⁶⁷ Ibid, cl 64.2.

interviews with MaPS representatives. MaPS also offers to share feedback provided during these interviews with employing parliamentarians on an optional and confidential basis.³⁶⁸

What we heard

We heard from both current and former MoP(S) Act employees that, although parties sometimes assisted with redeployment, there was no formal mechanism for consideration of redeployment opportunities or pathways to other employment like the APS.

A number of Review contributors who had formerly been employed under the MoP(S) Act stated that they felt that they did not have sufficient support after employment ceased.

Feedback received by the Review included the following:

- exit interviews were rarely and inconsistently conducted
- there is a broad lack of awareness regarding the CTP subsidy, and those who did attempt to access it found the process in applying for it extremely difficult and in many cases gave up entirely
- very little support (such as referrals to support services or pastoral support) was offered by the parliamentarian or Finance, and
- participants experiencing a lack of closure from the absence of exit interviews and minimal contact afterwards from colleagues, supervisors or Finance.

For a particular cohort of participants who had experienced termination as a result of staffing allocation changes made under a section 12 determination, they felt that advice on how the determination affected them was not provided in a timely manner. A number of submissions stated that there was a delay in receiving formal advice from Finance upon the determination being made, and were uncertain how it affected them and whether they were eligible for any entitlements.

³⁶⁸ Department of Finance, *Ceasing employment* [website], (3 August 2022) <https://maps.finance.gov.au/pay-and-employment/mops-act-employment/ceasing-employment>, accessed 27 September 2022.

6.7.2 Options for improvement

Consideration of redeployment of staff who separate, particularly following a relationship breakdown as opposed to a lack of suitability, is an option that should be explored by the OPSC once established. While redeployment is considered in some jurisdictions (New Zealand for example), many jurisdictions note that sometimes there is a reluctance by parliamentarians to hire staff of other parliamentarians. However, there are opportunities to explore a framework that could help connect former staff with prospective employers.

Some respondents also suggested that pathways to APS recruitment could be explored. However, within APS recruitment rules, this would likely need to be by the provision of guidance on how they might apply and training to make them more competitive.

Some Review participants suggested that mandatory exit interviews should be conducted with terminated staff, regardless of the reasons for their departure. Exit interviews would be a beneficial addition to the MoP(S) framework because they would:

- provide employees with a sense of closure after their employment has ceased, which some participants told us was important to them
- align with best practice across other industries and jurisdictions in terms of end of employment processes. In the New Zealand parliamentary context, for example, it is now mandatory for exit interviews to be conducted upon the termination of employment³⁶⁹
- if the OPSC conducts exit interviews, it can gain insights into individual offices and broader trends across offices to inform the work of the OPSC.

One element for consideration in introducing mandatory exit interviews is who should participate. Specifically, whether the OPSC should conduct exit interviews, or if parliamentarians should be required or invited to attend. The Review notes this could be considered on a case-by-case basis and with regard to the wellbeing or safety of either party. These are matters which the OPSC could consider in designing any processes around exit interviews.

In addition, improved communication from Finance or other responsible entities were argued to be a key method of improving post-employment support for employees. Participants particularly emphasised that improvement was needed in relation to timely responses to queries from employees and prompt advice in relation to automatic termination.

³⁶⁹ Francis, *Bullying and Harassment in the New Zealand Parliamentary Workplace*, 85 (Recommendation 63).

6.7.3 Conclusion

While it is clear that there are a number of ways in which termination can be better managed, particularly in relation to post-employment support, this Review does not propose making any changes to the Act to address post-employment support. However, the OPSC should provide supports for staff during and after termination, which could include:

- consideration of mechanisms to support potential redeployments
- exploring linkages to opportunities within the APS
- encouraging parliamentarians to conduct exit interviews upon any kind of cessation of employment, which could be conducted with or without an OPSC representative
- conducting separate exit interviews without the parliamentarian to understand the reasons for the cessation of employment
- identifying appropriate support and psychological services for MoP(S) Act employees and parliamentarians
- appropriate record-keeping systems on cessations, and providing public reporting on the types and numbers of terminations to encourage parliamentarians to address excess terminations and identify 'hot spots' in offices with high staff turnover.

7 Conclusion

7.1 Statutory review

The Review heard:

- calls to build in a legislative review of the Act
- the *Set the Standard* implementation review³⁷⁰ should examine the interaction between the MoP(S) Act and the OPSC
- a legislative review should consider whether further reviews are required.

This Review and *Set the Standard* recommend the most substantial changes to the operation of the Act since it commenced.

Implementation will occur at the same time as other changes to the parliamentary workplaces landscape (such as the anticipated commencement of the OPSC, IPSC and codes of conduct) and the impact of the changes are unlikely to be fully recognised until after the 18 month review recommended by *Set the Standard*. It is possible further amendments or other adjustments may be needed to make sure the framework functions as intended. For this reason we recommend the operation and effectiveness of the legislative amendments be reviewed within five years of commencement of the amendments subsequent to this Review.

Recommendation 15 – Five year review

The MoP(S) Act should be reviewed for effectiveness, in the context of broader changes to the parliamentary workplace, within five years of the amendments to the Act.

7.2 Future state

There is momentum to re-design MoP(S) Act employment to better support those who work in parliamentary workplaces, including those employed under the MoP(S) Act. By implementing the Review recommendations we hope that we will move the landscape from the current state presented in Chapter 1 to the framework more like this:

³⁷⁰ AHRC, *Set the Standard*, 19 (Recommendation 3).

Employment Framework

MoP(S) Act Current	MoP(S) Act Amended
<ul style="list-style-type: none"> Act is duplicative and unclear particularly Part III (Staff of office-holders) and Part IV (Staff of Senators and Members) Employment framework unclear or not articulated Individual parliamentarians employ staff on behalf of the Commonwealth PM determines terms and conditions of employment PM decides staffing allocation Some employment terms and conditions lack clarity Outdated superannuation provisions and consultancy arrangements 	<ul style="list-style-type: none"> Parts III and IV merged, removing unnecessary duplication Define three categories of MoP(S) Act employees (electorate staff, ministerial staff, and personal staff - other) Employees remain employed by individual parliamentarians on behalf of the Commonwealth PM determines terms and conditions of employment Amend Act to clarify roles and responsibilities of parliamentarians, OPSC and PM in employment relationship. Act to require transparent reporting of staffing allocations. Staffing allocations to be supported by an OPSC review – identifying principles for Prime Minister’s staffing allocation decisions. Objects clause to reflect the purposes of the Act. Updated provisions relating to superannuation and consultants. Act streamlined to increase transparency for terms and conditions of employment arrangements

Recruitment and Engagement

MoP(S) Act Current	MoP(S) Act Amended
<ul style="list-style-type: none"> The Act refers to power of parliamentarian to recruit MoP(S) Act employees but no responsibility to ensure candidate is capable to do role No obligation to consider office composition to ensure critical functions, like HR and finance, are allocated to a suitable delegate Parliamentarians are not required to notify MaPS of non-MoP(S) workers in their offices, e.g. unpaid interns and volunteers, leading to inconsistent WHS briefing 	<ul style="list-style-type: none"> The Act to require parliamentarians to recruit staff against specified position descriptions and undertake an assessment of candidates’ capacity to successfully perform the role OPSC to provide guidance on office composition and direct training for staff with delegated functions OPSC guidance on self-declarations and pre-engagement checks Parliamentarians required to notify OPSC when non-MoP(S) Act workers start in their office

Accountabilities, Expectations and Responsibilities

MoP(S) Act Current	MoP(S) Act Amended
<ul style="list-style-type: none"> No articulation of desired workplace culture or responsibilities of parliamentarians as employers or MoP(S) employees Only reporting requirements in MoP(S) Act about consultant use 	<ul style="list-style-type: none"> The Act to define Employment Principles to professionalise the employment framework The Act to set out obligations for both parliamentarians as employer and MoP(S) employees, including in relation to a safe and respectful workplace The Act to require an annual report by OPSC to provide a transparent account of the MoP(S) Act employment framework

Employment Separation

MoP(S) Act Current

- Termination procedures unclear and inconsistently applied
- Automatic termination triggers unclear and at times inconsistent.

MoP(S) Act Amended

- The Act to require parliamentarians to consult with OPSC prior to effecting any termination
- The Act to provide for clearer operation of automatic termination triggers, including allowing for determinations to clarify specific circumstances
- Automatic termination for electorate staff currently under Part III only applies when parliamentarian ceases to have a personal staffing allocation
- Suspension of employment available, to support procedural fairness and WHS considerations

8 Appendices

8.1 Glossary

Term	Description
APS	Australian Public Service
APSC	Australian Public Service Commission
CPSU	Community and Public Sector Union
CPW	Commonwealth parliamentary workplace
DPS	Department of Parliamentary Services
EA	Commonwealth MoP(S) Staff Enterprise Agreement 2020-23
ESB	Electorate Support Budget
Finance	Department of Finance
Foster Review	Department of the Prime Minister and Cabinet, <i>Review of the Parliamentary Workplace: Responding to Serious Incidents</i> (2021)
FW Regulations	Fair Work Regulations 2009
FW Act	<i>Fair Work Act 2009 (Cth)</i>
HR	Human Resources
IPEA	Independent Parliamentary Expenses Authority
IPSC	Independent Parliamentary Standards Commission
IPSA	Independent Parliamentary Standards Authority, United Kingdom
MaPS	Ministerial and Parliamentary Services, Department of Finance
MoP(S) Act	<i>Members of Parliament (Staff) Act 1984 (Cth)</i>
NACC	National Anti-Corruption Commission
Official Establishments	The Lodge and Kirribilli House
OPSC	Office of Parliamentarian Staffing and Culture
PM&C	Department of the Prime Minister and Cabinet
PS Act	<i>Public Service Act 1999</i>
PS Regulations	Public Service Regulations 1999
PWSS	Parliamentary Workplace Support Service
<i>Set the Standard</i>	Australian Human Rights Commission, <i>Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces</i> (2021)
SMOS	Special Minister of State

Term	Description
WGEA	Workplace Gender Equality Agency
WHS	Work health and safety
WHS Act	<i>Work Health and Safety Act 2011 (Cth)</i>

8.2 Terms of reference

The terms of reference was provided by the then Government and published on the Department of the Prime Minister and Cabinet website ³⁷¹ and is reproduced below.

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

Terms of Reference

Context

Set the Standard: Report on the Independent Review into Commonwealth Workplaces' (Set the Standard) recommended the Australian Government undertake a comprehensive review of the *Members of Parliament (Staff) Act 1984* (Cth) (MoP(S) Act) employment framework to reduce complexity, increase clarity and ensure consistency with modern employment frameworks.

Objectives of the Review

The Review should:

- 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
 - prevent bullying, harassment, sexual harassment and sexual assault and address its impacts according to best practice.

Scope

The Review should consider the following:

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

³⁷¹ Department of the Prime Minister and Cabinet, *Review of the Members of Parliament (Staff) Act 1984 (Cth) Terms of Reference* (2022), <https://www.pmc.gov.au/government/review-members-parliament-staff-mops-act-1984-0>, 1, accessed 30 September 2022

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- Procedural fairness for the terms, conditions, and termination of employees and employers under the MoP(S) Act
 - The responsibilities, expectations, and accountability of MoP(S) Act employees
 - Appropriate public reporting and accountability of the administration of the MoP(S) Act.

The Review will not consider the terms and conditions of employment that are legislated other than under the MoP(S) Act. For example, the National Employment Standards, the *Fair Work Act 2009*. However, the Review will have regard to these in conducting its work.

Governance, timing and process

The Review will be undertaken by the Department of the Prime Minister and Cabinet. The Department will provide a final written report to the Prime Minister by 30 September 2022. The report of the Review will be made public after government consideration.

Methodology

The Review will draw on a range of sources, including *Set the Standard*, the *Review of the Parliamentary Workplace: Responding to Serious Incidents*, and legislation, policies and arrangements of other relevant jurisdictions, including international equivalents.

The Review will consult with current and former parliamentarians and MoP(S) Act employees, and relevant departments and agencies.

8.3 Methodology

The Review adopted a mixed method approach involving semi-structured interviews, consultations, submissions, a survey and review of relevant reports, articles, texts and other jurisdictions.

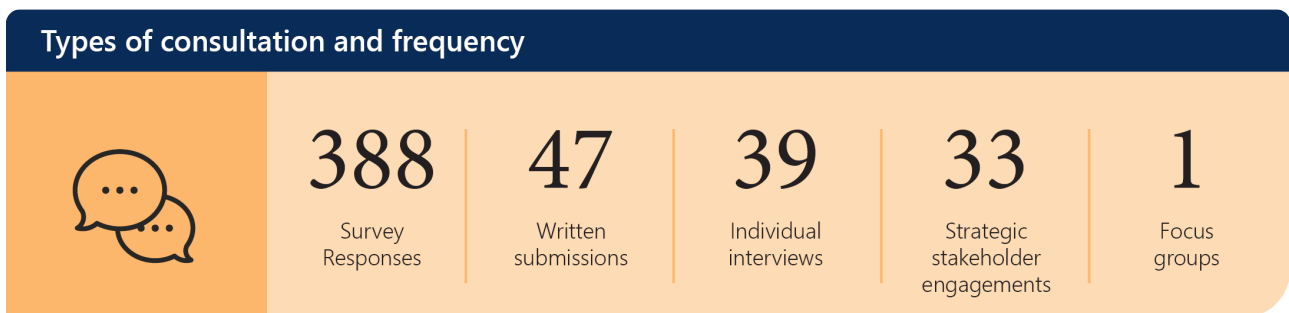
The collection of data from interviews allowed us to draw on the experience of a range of current and former parliamentarians and MoP(S) Act employees about the employment framework and added depth to our consultations with other stakeholders and review of relevant reports and literature.

The Review team wishes to thank every person who contributed their experience, expertise, and insights into the inner workings of the parliamentary workplace. The Review values these contributions and they inform our recommendations.

The data collating phase of the Review ran from 28 February 2022 until late September 2022. The relatively lengthy period of consultation reflects the impact of the 2022 Federal Election on the MoP(S) Act staffing environment.

A breakdown of contributors is outlined below.

Figure 13.



Qualitative data

Submissions

Submissions to the Review opened on 28 February 2022 via the PM&C website. The site included an accessible version of the terms of reference and its stated purpose. The closing date for submissions was extended twice – on 31 March and 8 June – and formally closed on 1 July. The extensions facilitated additional time to account for the timing of the 2022-23 Budget and the 2022 Federal Election. Following the close of submissions, PM&C still accepted email contributions which was made clear on the website.

Although open to the general public, input was particularly encouraged from current and former parliamentarians, MoP(S) Act employees, staff representatives, relevant departments and agencies, and subject matter experts. In an effort to reach the target audience, a link was shared on the MaPS website given it is the central point for HR support and employment guidance for MoP(S) Act employees.

To encourage submissions directly, Finance sent a number of emails on behalf of the Review to current and former MoP(S) Act parliamentarians and employees. The email included a link to the PM&C website and details on the parameters of the Review, noting its context as a response to Recommendation 18 of *Set the Standard*. Submissions were provided directly to PM&C and Finance did not have access to any responses at any stage.

A number of emails were sent to both current and former parliamentarians and MoP(S) Act employees going back a number of years where email addresses were available to Finance. In total we understand that over 9,000 email addresses received an email advising them of their ability to make a submission.

A separate two week targeted advertising campaign was undertaken on LinkedIn to encourage submissions from people who have worked in federal parliamentary workplaces.

Contributors were able to nominate whether their submission would be considered as anonymous or public. Public submissions were collated, de-identified as necessary and are being published on the Review website. Where it was not possible to de-identify and protect the identity of the author and/or third parties, the decision was taken to redact information or not to publish in accordance with the publicly available privacy notice.

The data from all submissions were read by the Review team to capture themes and issues. These were analysed and used to inform the direction of the Review and recommendations.

Interviews

Thirty-nine interviews were conducted with 26 MoP(S) Act employees (current and former) and 13 parliamentarians (current and former) between mid-June and mid-September 2022. The interviewees were comprised of those who had responded to an invitation in a submission email advice, targeted requests of individuals likely to provide useful input and with names identified in earlier interviews. Interviews were conducted both online and face-to-face.

In approaching the interviews, the Review team undertook training on vicarious trauma and how to best support a person who may have experienced difficult, emotional, sensitive or potentially traumatic material and information. This preparation informed the Review's efforts to provide a safe environment for interviewees.

The interviews were mostly conducted remotely, either via videoconference or telephone, given the geographic spread of current and former parliamentarians and MoP(S) Act employees. The interviews were held during a peak in Covid-19 infection rates in the ACT in July 2022. Covid-19 safe efforts were made to accommodate in-person interviews.

Stakeholder Engagement

Targeted stakeholder engagement was carried out with 33 individuals, representative bodies, and other jurisdictions including:

- academics/media
- potentially impacted Commonwealth Departments and agencies
- senior APS with MoP(S) Act experience
- former parliamentarians in relevant roles (e.g. former Special Ministers of State)
- former staff in senior management positions or who have publicly raised MoP(S) Act employment related issues
- relevant state and international jurisdictions.

Most of these engagements were conducted as an interview, either in person or face-to-face, consistent with other interviews.

Information requests

Requests were made throughout the Review process to departments or agencies for information that could assist the Review team to understand how the current MoP(S) Act employment framework currently operates and present statistics for use in this report.

Consideration of other jurisdictions and research

As part of its analysis, the Review researched and considered similar jurisdictions and any legislative or policy responses taken relevant to the terms of reference. Domestically, this involved researching the legislative and policy frameworks around the employment of parliamentary staff across the states and territories. Internationally, the same comparative research was undertaken in countries with similar settings, e.g. the national parliament operations within the Westminster system.

The Review team also researched other sectors with similar workplace dynamics to parliament.

The expertise of academics and former senior public servants who made submissions to the Review also provided a wealth of knowledge on public policy and its interplay with the parliamentary working environment.

Combined, the research component enabled the Review team not only to identify potential solutions from other jurisdictions but also seek any lessons learned in those jurisdictions to help inform its own recommendations.

Small group session

A small group session was held during September 2022 with a mix of electorate and personal staff. Those invited were a representative mix of MoP(S) Act employees working in both chambers and across political parties.

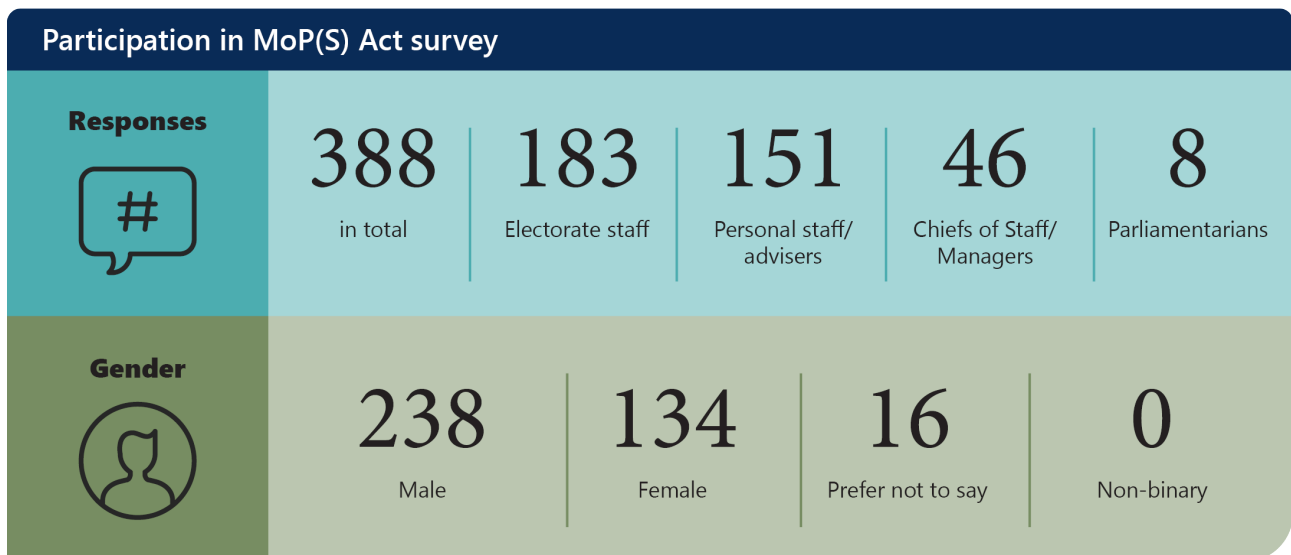
Quantitative data

Survey

The Review conducted an anonymous survey of current and former parliamentarians and MoP(S) Act employees from 22 to 29 August 2022. The survey was designed by the Review team in collaboration with a research team within PM&C. Similar to *Set the Standard*, the Review wished to provide multiple avenues for stakeholders to contribute to the Review and offer opportunities to engage in ways they felt comfortable with. The quantitative nature of a survey also provided a dataset that could affirm or challenge what the Review had been hearing through the qualitative data.

Finance distributed a link to the survey to current and former parliamentarians and MoP(S) Act employees. A summary of responses is below.

Figure 14.



Survey results were presented in aggregate to avoid being able to identify individual respondents and a free text section in the survey was collated. Any identifying details were removed prior to being provided to the Review team to analyse and consider within the Review.

The Review notes that the survey results include both current and former staff, with more respondents from former staff, and that in some cases current practice may have been improved. This was considered where survey data was presented in the Review.

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