

Submission to the Joint Select Committee on Parliamentary Standards

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Introduction

This submission focuses on the Committee's responsibility (terms of reference a) to develop a code or codes of conduct for Commonwealth parliamentarians, parliamentary staff, and parliamentary workplaces to ensure safe and respectful behaviour. It suggests that such a code or codes should sit within a clear framework that clarifies the respective roles and responsibilities of the different public officials, both elected and not elected, working in the parliament drawing on the approach now set out in legislation for the Australian Public Service and the Parliamentary Service. Appreciation of respective roles and responsibilities is an essential prerequisite for respectful behaviour and provides a platform for setting clear standards of personal behaviour including, but not restricted to, requirements not to bully or harass (sexually or otherwise) any person. Articulating those roles and responsibilities would also provide some guidance as to how a code or codes might operate and be enforced.

The submission also canvasses options for administering the code or codes including mechanisms for oversight and enforcement, addressing elements of the Committee's terms of reference b and c.

The submission draws on the Jenkins Review and my submission to it, and on my submission to the Review of the Members of Parliament (Staff) Act being conducted by the Department of Prime Minister and Cabinet. In a supplementary submission to the latter Review, I have strongly suggested that its final report be referred to a parliamentary committee for consideration, this Committee being an obvious option.

Using Values as a Possible Framework for Clarifying Roles and Responsibilities

Both the *Public Service Act 1999* and the *Parliamentary Service Act 1999* use the following approach to clarify respective roles and responsibilities and position their respective codes of conduct:

- A set of Values and a set of Employment Principles²;
- Provisions for Directions or Determinations in support of the Values and Principles;
- Codes of conduct which include the requirement that respective employees behave at all times in a way that upholds the Values and Employment Principles;
- Supplementary guidance from the relevant Commissioner.

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² The distinction between values and employment principles was introduced in the amendments to the legislation in 2013. I was not persuaded at the time that this was advisable, expressing concern in particular that the new approach downgraded the importance of merit, the centrepiece of the Westminster civil service since the 1854 Northcote-Trevelyan Report.

For the most part, the sets of Values and Employment Principles are the same for the APS and the Parliamentary Service, but there are some important differences reflecting the fact that the APS lies within the executive arm of government and the Parliamentary Service lies within the legislature. So, for example, the Value concerning accountability for the APS refers to the framework of ministerial responsibility while the Parliamentary Service equivalent refers to being openly accountable to the Parliament.

I note that the Commonwealth Parliamentary Standards Bill 2020 proposed by Helen Haines MP used a broadly similar approach with a 'Statement of parliamentary values' and a 'Parliamentary code of conduct'.

Recommendation 1: The Committee develop a set or sets of values for Commonwealth parliamentarians, parliamentary staff and parliamentary workplaces that help to frame the code or codes of conduct the Committee is to develop.

Possible Sets of Values

There is a danger that statements of values are only aspirational, more 'motherhood' than substantial, and as relevant to McDonalds staff as to any other worker or workplace. To be meaningful, they need to be 'hardwired' to particular groups and to their particular responsibilities and required behaviours. The approach suggested above would provide real discipline over behaviour if the values statements effectively defined respective roles and responsibilities, not only of APS employees and Parliamentary Service employees, but also those of Ministers and other Members and Senators, and those of the various MOP(S) Act employees. While all are paid by the taxpayers and should behave with the honesty and integrity the Australian public rightly expects, their roles and responsibilities differ significantly and hence the values determining their behaviours must differ in some important respects.

When I was the Public Service Commissioner, I presented the Values then in the PS Act in the following four groups as a way to highlight the unique role of the APS in our democratic system of responsible government, distinguishing it for example from the role of the Parliamentary Service (the values mentioned below under each grouping do not correspond exactly with the Values and Employment Principles now in legislation but bear considerable similarity):

1. Relations with the Government and the Parliament
 - For the APS, the key values here are responsiveness to the elected government, non-partisanship, and accountability through the framework of ministerial responsibility;
 - For the Parliamentary Service, the key values are support for the Parliament and individual MPs, non-partisanship, and accountability to the Parliament via the Presiding Officers;
2. Relations with the Public
 - For both the APS and the Parliamentary Service, the key values are impartiality and a commitment to service;
3. Workplace Relations
 - For both again, the key value is the Westminster merit principle; also professionalism, being in a career service, giving all Australians equal opportunity and showing respect;
4. Personal ethical behaviour

- For both, models and promotes the highest ethical behaviour (including being trustworthy, acting with integrity and abiding by the law) given they are paid by taxpayers and may exercise public power.

It is not hard to see how these four groups could be used similarly to distinguish between the roles and responsibilities of other components of the Commonwealth Government, depending on whether they are part of the executive or the legislature (or the judiciary), whether required to be non-partisan or politically aligned, and how they are appointed or employed.

Drawing on this approach, different sets of values might be articulated for the following different groups of people working in the parliament (in addition to the APS and Parliamentary Service employees):

- Members and Senators;
- Ministers (perhaps in the form of some additional values or slightly varied values to those for Members and Senators);
- MOP(S) Act employees of Members and Senators;
- MOP(S) Act employees who are ministerial advisers (perhaps again in the form of additional values or slightly varied values).

The suggestion here to distinguish between MOP(S) Act employees who are clearly part of the executive and those working to support the legislature was more fully developed in my submission to the Review of the MOP(S) Act ([Attachment A](#)).

Recommendation 2: That the Committee develop distinct but closely related sets of values for Members and Senators, Ministers, MOP(S) Act employees of Members and Senators, and MOP(S) Act employees of Ministers, reflecting their different roles and responsibilities including their primary attachment either to the executive or to the legislature.

The following³ is *illustrative* of what might be included in the sets of values for those where no such set currently exists, drawing on my four groupings:

1. Relations with the Government and the Parliament
 - a. Members and Senators: representative of and accountable to their constituency, serving the Parliament, acting in the public interest
 - b. Ministers: in addition to the above, accountable both individually and collectively (through cabinet) to the Parliament
 - c. MOP(S) Act employees of Members and Senators: loyalty to the Member or Senator, accountable to the Member or Senator, supporting the Parliament
 - d. Ministerial staff: in addition to the above, accountable through the Minister to the Parliament, respectful of the role of the APS
2. Relations with the public
 - a. Members and Senators: committed to service of their constituents and the Australian public, leadership, inclusive, responsive, courteous, and due regard for individuals' opinions, beliefs, rights and responsibilities
 - b. Ministers: in addition to the above, committed to the Minister's departmental responsibilities

³ This builds upon the suggestions Helen Williams and I included in our submission to the Thodey Review of the APS in 2019.

- c. MOP(S) Act employees of Members and Senators: committed to service of the MP's constituents and Australian public, inclusive, responsive, courteous
 - d. Ministerial staff: in addition to the above, committed to the Minister's departmental responsibilities
3. Workplace relations
- a. Members and Senators: respect for each other, their staff, the Parliamentary Service and the APS; free from discrimination, patronage and favouritism
 - b. Ministers: same
 - c. MOP(S) Act employees of Members and Senators: professionalism, respect for MPs, the Parliamentary Service and the APS, free from discrimination, patronage and favouritism
 - d. Ministerial staff: same
4. Personal ethical behaviour
- a. Members and Senators: lawful, trustworthy, acting with integrity, models and promotes the highest ethical behaviour
 - b. Ministers: same
 - c. MOP(S) employees of Senators and Members: same
 - d. Ministerial staff: same.

Bearing in mind the origins of the Committee's role and the work of the Jenkins Review, the values regarding workplace relations and personal ethical behaviour could be strengthened and/or, as suggested further below, firmer words included in the code or codes of conduct.

I do not suggest that the value statements should necessarily be presented exactly in this way, but that this approach (thinking in terms of groups of values based on key relationships and behaviours) would help the articulation of the different sets of value statements. As an *illustrative example*, the values for Members and Senators might be articulated along the following lines:

Members and Senators:

- (a) represent and are accountable to their constituents;
- (b) serve the Parliament;
- (c) act in and promote the public interest;
- (d) are committed to serve their constituents and the Australian public;
- (e) demonstrate leadership in the community;
- (f) are inclusive, responsive and courteous, show respect and have due regard for individuals' opinions, beliefs, rights and responsibilities;
- (g) respect fellow Members and Senators, their employees, Parliamentary Service employees and APS employees;
- (h) provide workplaces that are safe and rewarding, and free from discrimination, patronage or favouritism;
- (i) are lawful and trustworthy, act with integrity, and model and promote the highest ethical standards.

These might generally apply also to Ministers, but with the following modifications to (b) and (d):

Ministers:

- (b) serve the Parliament and are accountable to the Parliament for their ministerial responsibilities;

- (d) are committed to serve their constituents and the Australian public, and are committed to their ministerial responsibilities in serving the Australian public.

In this context, I have in mind the ministerial responsibilities determined by the instrument of appointment and any supporting direction (usually from the Prime Minister) about which of the departmental responsibilities set out in the Administrative Arrangements Order apply.

This general approach might also guide who might provide supplementary directions or guidance (see further below).

I would counsel against having too many values or describing them in too much detail, leaving it open to the relevant authority to issue directions or provide guidance; but I would also counsel against having too few which would risk making them less meaningful (a weakness in my view with the way the APS Values have been articulated since 2013 and their excessive reliance on Directions).

There would be advantage in having the core values for Members and Senators, and for MOP(S) Act employees, in legislation; the additions or variations for Ministers and ministerial staff could either be in legislation or issued by the Prime Minister and tabled in the Parliament.

Recommendation 3: That the Committee draw on the set of Values in the Public Service Act in preparing the sets of values, consider how they would need to be modified to reflect different roles and responsibilities, ensure they are both meaningful and easily understood, and allow for more detailed directions and guidance to be provided separately.

Recommendation 4: That these values be articulated in legislation (for Members and Senators and their staff, the latter in the MOP(S) Act), and either in legislation or in statements by the Prime Minister tabled in the Parliament (for Ministers and their staff) complementing those for Members and Senators and their staff.

Code or Codes of Conduct

Many of the provisions in the PS Act's code of conduct for public servants (s13) could well apply, with minimal variation, to all the different categories of people working in the parliament, including:

- Behaving honestly and with integrity in performing their public duties (s13(1));
- Acting with care and diligence in performing their public duties (s13(2));
- Treating everyone with respect and courtesy, and without harassment (s13(3));
- Complying with all applicable Australian laws (s13(4));
- Taking reasonable steps to avoid any conflict of interest (real or apparent), and disclosing any material personal interest that might be connected to their public duties (s13(7));
- Using Commonwealth resources in a proper manner and for a proper purpose (s13(8));
- Not providing false or misleading information in response to a request made for official purposes (s13(9));
- Not improperly using inside information or the person's duties, status, power or authority (s13(10));
- When overseas, behaving in a way that upholds the good reputation of Australia (s13(12)).

Given the origins of the Committee's role, the third provision above could be strengthened by including the following:

- Harassment, violence and discrimination will not be tolerated, condoned or ignored⁴.

In addition, the following provision, based on the one in the PS Act, could directly link the code or codes to the relevant values statement:

- Behaving at all times in a way that upholds the (relevant) values, and the integrity and good reputation of the Parliament (S13(11)).

The APS code also has another useful catch-all:

- Complying with any other conduct requirement that is prescribed (by the regulations) (s13(13)).

The references to conflict of interest (5th dot point above based on the PSA s13(7)) and improper use of inside information or duties, status, power and authority (8th dot point above based on PSA s13(10)) omit some of the details suggested by Helen Haines in her Bill (e.g. using position for profit, outside employment, and accepting gifts, hospitality or other benefits) because such details would be, in my view, better included in directions or guidance of some sort related to these broader provisions.

Also missing from the above list are the following provisions in the APS code:

- Complying with any lawful and reasonable direction by someone in the person's Department who has authority to give the direction (s13(5)): this would not be appropriate for a Member or Senator (or Minister), but might have some relevance to MOP(S) Act employees who should comply with their employing MP's lawful and reasonable directions;
- Maintaining appropriate confidentiality about dealings with any minister or minister's member of staff (s13(6)): as with the Parliamentary Service, this might be included with suitable adjustment, so that they fit with the responsibilities of Members and Senators, Ministers and MOP(S) employees (according to whether they are ministerial staff or otherwise).

The Jenkins Report recommended three codes: one umbrella one for those working in the parliament, one for Members and Senators and one for parliamentary staff. I suggest the use of a common template but (for the most part, slightly) separate codes for Members and Senators, Ministers, MOP(S) Act employees of Members and Senators and those employees of Ministers. The PS Act code provides a suitable template in my view. In line with the origins of the Committee's work, the codes should strengthen the requirement about treating everyone with respect to outlaw tolerating, condoning or ignoring harassment, violence or discrimination.

Recommendation 5: That the Committee draw heavily on the Code of Conduct in the Public Service Act in preparing codes for Members and Senators and their staff, and that complementary codes apply for Ministers and their staff.

Recommendation 6: That the codes for Members and Senators and their employees be included in legislation and the complementary codes for ministers and their staff either be in legislation or statements by the Prime Minister tabled in the Parliament.

⁴ These words come from Canada - the *Respectful Workplace Policy – Office of the Prime Minister and Ministers Offices* document (Treasury Board Secretariat 2020) which must be signed by all ministerial staffers as a condition of their employment.

Framework for Oversight and Enforcement of the Values and Code of Conduct

Several different models have been suggested for overseeing conduct and promoting an appropriate working culture in the Parliament:

- The Jenkins Report recommended an Office of Parliamentary Staffing and Culture (OPSC) to provide human resources support to MPs and MOP(S) Act employees and an Independent Parliamentary Standards Commission (IPSC) to operate a fair, independent and confidential system to receive disclosures and handle complaints about breaches of the codes of conduct;
- In implementing the Jenkins recommendations, a Parliamentary Leadership Taskforce has been created, supported by the Joint Select Committee on Parliamentary Standards, an Implementation Group (chaired by the Taskforce's secretariat leader and including representatives of the parliamentary departments and the finance department) and linked also to the Presiding Officers;
- The Foster Report recommended strengthening the role of the Parliamentary Service Commissioner to include some oversight of MOP(S) Act employees as well as the Parliamentary Service, reporting to the Presiding Officers;
- Helen Haines MP recommended a Parliamentary Integrity Adviser to provide confidential advice to MPs and MOP(S) Act employees about ethics and integrity issues, to act as registrar of statements of interests and to provide better practice guides etc., and a Parliamentary Standards Commissioner to investigate alleged or suspected contraventions of applicable codes of conduct (separately, Ms Haines proposed a Federal Integrity Commission).

There is no perfect model, but any proposed arrangement should take into account the following considerations:

- The different contexts of those who are our elected representatives and those who are not elected;
- The different lines of accountability of those in the executive arm of government and those in the legislature (notwithstanding the blurring of the two in parliamentary systems);
- The case for distinguishing roles in setting and promoting standards and in investigating allegations of misbehaviour;
- The benefits of building on existing institutions and their corporate experience rather than starting afresh;
- The need for cooperation amongst the relevant regulators to limit overlap in practice and to refer matters to whoever is best able to manage them.

These considerations lead me to suggest there are advantages in the Foster Report's recommendation of extending the role for the Parliamentary Service Commissioner to encompass oversight of MOP(S) Act employees as well as Parliamentary Service employees. This would include adding to the Commissioner's responsibilities the functions of the Jenkins' proposed OPSC, recommending to the Presiding Officers any Determinations regarding MOP(S) Act employees' values and codes of conduct, issuing guidelines, advising MPs on matters relating to the employment of their staff, and reporting each year on MOP(S) Act employment. With these additional responsibilities, the current practice of having the Public Service Commissioner simultaneously being the Parliamentary Service Commissioner should cease.

I also suggest the Parliamentary Service Commissioner have powers to investigate alleged breaches of the MOP(S) Act employees' codes of conduct, but not allegations of breaches of Members and Senators and Ministers' codes. In doing so, the Commissioner would need to demonstrate independence, delegating the task if needed to someone demonstrably independent.

These changes would not require any major change to the nature of the person suited to appointment as the Parliamentary Service Commissioner. Someone with extensive experience in the bureaucracy, either the public service or the parliamentary service, and with proven HRM capability, would most often fit the bill. Such a person, however, might not best suit a role in advising or investigating Members or Senators or Ministers.

I suggest therefore that the Committee consider separate mechanisms for overseeing the values and codes for Members and Senators and Ministers. There is considerable merit in Ms Haines MP's proposal of an integrity adviser and she is correct in suggesting that such a person would not be able to investigate an alleged breach if previously involved in giving advice. Whether that justifies two new institutions (as well as the proposed Federal Integrity Commission) is less clear. The Jenkins model of an IPSC with ability to consider matters arising through several different pathways has obvious advantages in terms of costs and scale.

The person most suited to head an IPSC that advises and investigates MPs is unlikely to be an experienced public servant. More likely, someone with legal qualifications or with experience as a former politician and who has a reputation across the parliament for integrity should be considered.

The framework for implementing the Jenkins recommendations perhaps gives some guidance to how the overall governance and leadership of the Parliament might be enhanced. In a forthcoming ANU Press book, *Parliament: A Question of Management*, Dr Val Barrett reviews the management of the Australian and British parliaments and draws attention to common problems and the case for firmer leadership to restore and nurture the reputation of parliament as the central institution of our democracy. The fact is that the Presiding Officers, particularly in Australia, are not well placed to play this role on their own. There is a strong case for a Parliamentary Commission comprising the main party leaders in both Houses as well as the Presiding Officers to represent the institution and to guide its practices. The Parliamentary Leadership Taskforce is an example of what is needed but on a continuing basis, commissioning work from time to time on particular contemporary issues, supporting the Presiding Officers in exercising their particular responsibilities including over the management of the Parliament. I would not expect such a Parliamentary Commission would require any ongoing secretariat, but rely upon the parliamentary departments and their leaders and use ad hoc teams as needed.

Recommendation 7: That the Parliamentary Service Commissioner be responsible for overseeing the values and code or codes of conduct for MOP(S) Act employees (recommending to the Presiding Officers any Determinations, issuing guidelines, advising MPs on matters relating to the employment of their staff, and reporting each year on MOP(S) Act employment) and have powers to investigate alleged breaches of the code or codes; that the Jenkins proposed OPSC be placed within the office of the Commissioner; and that the current practice of the APS Commissioner simultaneously holding the position of Parliamentary Commissioner cease.

Recommendation 8: That a separate mechanism be established for overseeing the values and code or codes of conduct for Members and Senators and Ministers, possibly through a

Parliamentary Standards Commissioner along the lines of the Jenkins proposed IPSC but focused only on MPs.

Recommendation 9: That the Committee recommend that the Parliament explore the idea of an ongoing Parliamentary Commission, comprising the leaders of the main parties in both Houses as well as the Presiding Officers to represent the institution, nurture its standing and reputation in Australia's democratic system, and guide its practices.

30 August 2022

ATTACHMENT A

**SUBMISSION TO THE REVIEW OF THE
*MEMBERS OF PARLIAMENT (STAFF) ACT 1984***

Andrew Podger AO

This submission focuses on the first objective of the Review, namely to identify legislative, policy or other changes or initiatives necessary to ensure the employment arrangements for the staff of parliamentarians are fit for purpose to support a professional, high-performing, safe and respectful workplace for all parliamentarians and their staff. The suggestions made should also contribute to the second objective, to prevent bullying, harassment, sexual harassment and sexual assault and address its impacts according to best practice.

I am a former Public Service Commissioner and Parliamentary Service Commissioner as well as a former departmental secretary with long experience working with ministers and ministerial staff. Since retiring from the APS in 2005, I have held various appointments at ANU where I am now Honorary Professor of Public Policy in the Research School of Social Sciences.

This submission addresses the four issues identified in the Review's terms of reference under its Scope, but not in the order they appear there. It draws extensively on the submissions I have made in recent years to the Thodey Review of the APS, the Senate Inquiry into the Current Capability of the APS and the Jenkins Review of the Parliamentary Workplace.

I should highlight that this Review of the MOP(S) Act, arising from the Jenkins Review, may need to interact with those working on implementation of other recommendations by Jenkins, particularly in relation to the proposed Office of Parliamentarian Staffing and Culture (OPSC) and Independent Parliamentary Standards Commission (IPSC). My suggestions below include some clarification and modification of those proposed arrangements.

A. Responsibilities, expectations and accountability of MOP(S) Act employees

Before addressing recruitment, it is important first to clarify the roles of different employees under the Act and associated responsibilities, expectations and accountability.

The current legislation distinguishes between ministerial consultants, staff of office-holders and staff of Senators and Members. I do not believe this classification is useful or properly reflects the different roles and lines of accountability of different MOP(S) Act employees. A more appropriate classification would distinguish between two groups:

- Employees of Ministers; and
- Employees of Senators and Members who are not part of the executive arm but represent the core of the legislative arm of government.

While our parliamentary system blurs the boundaries between the executive and the legislature, there remains considerable value in the degree to which the two sets of power are separated including the different lines of accountability that apply. This is recognised in the Public Service Act and the Parliamentary Service Act which have slightly different sets of values and employment principles respectively for APS employees and Parliamentary Service employees; the former, for example, are accountable under the system of ministerial accountability while the latter work within the legislature and come under the oversight of the Presiding Officers.

In practice, I believe the ministerial consultants provisions have rarely been used in recent decades. While they could therefore be deleted without immediate material impact, it is probably preferable to retain them within the category of employees of Ministers as a continued protection against any future pressures for political appointments to the APS (as was Labor Party policy before the Hawke Government instead introduced the MOP(S) Act).

Office-holders are defined in s3 (and s12) of the Act. Apart from Ministers, these are Senators and Members with particular duties in the Parliament and are not part of the executive. Accordingly, their staff may simply be included in the second group above.

I have no strong view as to whether the electoral office staff of ministers should be included in the second category or the first but am inclined to include them within the second category as their role is to support the Senator or Member as a parliamentarian not as a Minister (and their terms of appointment are exactly the same as those of employees of other Senators and Members).

Recommendation 1: The MOP(S) Act be amended to identify two distinct groups of employees, those working for Ministers and therefore in the executive arm of government, and those working for other Senators and Members and therefore in the legislative arm.

Recommendation 2: Provision for ministerial consultants should be retained, but within the category of staff working for Ministers.

The legislation was passed nearly forty years ago, before the reforms to public administration later in the 1980s and 1990s. Today, it should articulate the respective values and employment principles for the two categories drawing on the approach developed in the *Public Service Act 1999* and the *Parliamentary Service Act 1999*, and the amendments to these in 2014. Similarly the legislation should include codes of conduct for the two.

This would help to clarify both the common and the different roles and responsibilities of public servants, Parliamentary Service employees, ministerial staff and staff of other Senators and Members. They should require similar levels of personal integrity for anyone working for the Commonwealth, paid for by taxpayers and expected to be committed to serving the public. But there are important differences that need to be reflected in the statements of values, not only relating to lines of accountability but also to whether non-partisanship is required and the degree to which the merit principle should apply. Such clarification can only help build mutual respect for the different roles and responsibilities of all these Commonwealth employees who must regularly interact with each other.

Recommendation 3: The MOP(S) Act include statements of the values and employment principles, and codes of conduct, for the two sets of staff, drawing on the framework in legislation for the APS and Parliamentary Service.

In the case of the APS, the APS Commissioner gives directions in respect of the relevant values and employment principles; in the case of the Parliamentary Service, its Commissioner does likewise. I believe the Parliamentary Service Commissioner is best placed to give directions or issue guidelines about the values and employment principles for the MOP(S) Act employees working for Senators or Members. It may be that the IPSC being established as recommended by Jenkins is envisaged to play this role. My strong recommendation (further below) is that the IPSC be incorporated within the Parliamentary Service Commission's office, or report to the Joint Standing Committee on

Parliamentary Standards through the Parliamentary Service Commissioner who would give directions and issue guidelines.

Most of the directions and guidance for employees of Senators and Members would apply equally to employees of ministers, and should be incorporated in guidance from the Prime Minister to ministerial staff. That guidance should include additional requirements, for example, highlighting the importance of respect for the APS and the fact that ministerial staff do not have the power to direct.

Both sets of directions and/or guidelines should be tabled in the Parliament.

Recommendation 4: The Parliamentary Service Commissioner be empowered to give directions and issue guidance with respect to the values and code of conduct for staff of Senators and Members, the directions and guidance to be tabled in the Parliament.

Recommendation 5: The Prime Minister be responsible for issuing guidance for ministerial staff which incorporates relevant guidance from the Parliamentary Service Commissioner to other MOP(S) Act employees, such guidance to be tabled in the Parliament.

Accountability for all MOP(S) Act employees should remain, first, to their employing Minister, Senator or Member and then, through them, to the Parliament and public given the public money involved. This needs to be made much more clear in particular to address the apparent accountability gap where a Minister, Senator or Member does not take responsibility for the actions of an employee and the employee is not subject to any external scrutiny. In the past, with small numbers of such staff, it may have been feasible in theory for Ministers in particular to say they accepted all responsibility for the actions of their staff and to do so before any parliamentary forum. That is not the case today and there have been many incidences of 'plausible deniability' where no-one takes full responsibility.

I believe ministerial staff should appear before parliamentary committees in the same way as public servants. In doing so, as with public servants, there would be limits to the information they might be required to provide including exemption from providing information regarding any policy advice given to a Minister. I do not see any need for exemptions beyond those applying to public servants.

In the case of staff of Senators and Members, I think the new complaints system (the proposed IPSC) provides sufficient supplementary support for accountability (ministerial staff will also have access to the new complaints system). I note, however, that the Jenkins proposal does not explicitly place the IPSC under the Parliamentary Service Commissioner as recommended by the Foster Report. I am not convinced that a separate Commission is needed and recommend the complaints organisation come under the Parliamentary Service Commissioner, perhaps within an Office or a Parliamentary Service Commission.

Recommendation 6: MOP(S) Act employees should continue to be held accountable primarily to their employing MP, this arrangement supplemented in the case of ministerial staff by acceptance that they may be required to appear before parliamentary forums and in the case of staff of Senators and Members by the complaints system being established.

Recommendation 7: Instead of a stand-alone IPSC, the new complaints system should come under the Parliamentary Service Commissioner.

B. Recruitment of MOP(S) Act staff

While the emphasis on merit which applies to the APS and the Parliamentary Service (drawing on the 1854 Northcote-Trevelyan Report) may not extend fully to MOP(S) Act employees, it is vital that

the public can be confident of the competence of the employees they pay for and that appointments are not based on nepotism or involve other forms of conflict of interest.

Appointments should remain the prerogative of the employing MP, but should be subject to important constraints. Positions should have clear statements of duties and the skills, qualifications and/or experience required to meet them. These should be consistent with the arrangements established by the Prime Minister (in the case of ministerial staff) or the Parliamentary Service Commissioner (in the case of staff of Senators and Members). The employing MP should be held responsible for ensuring the selected staff meet the relevant selection criteria and are able to perform the relevant duties.

The role I recommend here for the Parliamentary Service Commissioner would involve the Commissioner having responsibility for the Office of Parliamentarian Staffing and Culture proposed by Jenkins. The Jenkins Report has that Office reporting directly to the Presiding Officers: I suggest it would be better placed within an Office of the Commissioner, or a Parliamentary Service Commission. This would avoid the fragmentation of responsibilities I fear the Jenkins proposals would introduce, but without in any way diluting the measures. (Concern about fragmentation and associated inefficiencies was a key focus of my 2003 Report on the Administration of the Parliament that led to the consolidation of responsibilities into three departments.)

The powers of the Commissioner and the Prime Minister respectively to determine recruitment procedures should be included in the legislation, requiring a formal determination to be tabled in the Parliament; in the case of the PM's arrangements, there should be no option not to make such a determination.

In addition, the Prime Minister's arrangements for ministerial staff may include processes for identifying potential recruits who have the requisite skills, providing pre-employment checks and vetting Ministers' preferred appointments to confirm their capacity and ensure their legitimacy. Similarly, the Parliamentary Service Commissioner should provide pre-engagement checks for proposed recruitment by Senators and Members and also offer support regarding appointments including through advertising positions and recommending appointments where Senators or Members seek such support (the Commissioner should not, however, have power to vet appointments). Political parties may, of course, choose to establish additional processes for recruitment of staff for their Senators and Members including staff of shadow ministers.

Recommendation 8: MPs should retain the right, as the employer, to make appointments but should be subject to restraints set out by the Prime Minister's or the Parliamentary Service Commissioner's arrangements aimed to ensure recruits can perform the required duties and appointments are not based on nepotism or involve other forms of conflict of interest.

Recommendation 9: The proposed OPSC should be placed under the Parliamentary Service Commissioner in an Office of the Commissioner or a Parliamentary Service Commission.

Recommendation 10: The powers to determine recruitment procedures by the Commissioner and the Prime Minister respectively should be included in legislation and the determinations tabled in the Parliament.

While the nature of the role of employees of Senators and Members, and of the people involved, does not seem to have shifted greatly over the years, there have been more noticeable changes amongst ministerial staff. Fewer are public servants on secondment, fewer are advisers with

particular policy expertise and more are strongly politically attuned seeing ministerial staff positions as part of their political career. This shift, and the fact that Australia has many more such politically-aligned staff (including at State/Territory level) than New Zealand or the UK, raises a number of questions, and various proposals have been made in recent years in response. The Thodey Report on the APS suggested a return to having more public servants in these positions; others have suggested reducing the number of such staff and reviewing the role of Departmental Liaison Officers.

I am not convinced that the large number of ministerial staff who are effectively apprentice politicians paid for by the taxpayer is in the public interest. Ministers do need support that is not strictly non-partisan, but such support should enhance the quality of government, working collaboratively with the public service to assist Ministers meet their responsibilities. While this might be enhanced by a return to having more public servants on secondment, it is important to manage the risk that such public servants might be seen subsequently to be partisan, inconsistent with APS Values. This risk would best be managed by a formal process when the public servant returns to the APS to demonstrate non-partisanship (this might involve setting limits to the length of such secondments). This, however, might further discourage Ministers from appointing public servants to ministerial staff positions.

My own strong preference, applying the practice I used as a Secretary, is to enhance the role and status of departmental liaison officers by including a senior DLO at SES level. Such enhancement would also add to the case for reducing the number of ministerial staff positions.

In any case, the number of ministerial staff positions should be properly and openly justified, not just left to the Prime Minister.

Recommendation 11: Governments should provide public justification for the number of ministerial staff explaining clearly their roles and contribution.

Recommendation 12: Ministers should be encouraged to draw on the public service for staff on secondment, recognising such staff need to maintain their reputation for non-partisanship on return to the APS.

Recommendation 13: The APS Commission should establish some guidelines and processes for demonstrating non-partisanship of public servants returning after secondment to MOP(S) Act positions.

Recommendation 14: Departmental Secretaries should enhance the role of DLOs including by appointing a senior DLO at SES level.

Recommendation 15: The number of ministerial staff should be significantly reduced.

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

Terms and conditions for MOP(S) Act employees should be set by the Prime Minister's arrangements for ministerial staff and the Parliamentary Service Commissioner's arrangements for staff of Senators and Members. The current bargaining process for setting remuneration should be reviewed if and when changes are made to the way public service remuneration is set (the Incoming Government may, for example, revisit the Thodey Report recommendation in this regard).

Recommendation 15: Terms and conditions for MOP(S) Act employees should be set in the Prime Minister's arrangements for ministerial staff or the Parliamentary Service Commissioner's arrangements for other staff, with the pay-setting process reviewed if and when the process for public servants' pay is varied.

Should an employee have concerns about actual practice regarding terms and conditions, the new complaints handling process under the Parliamentary Service Commissioner should be used.

The Parliamentary Service Commissioner should also offer support to the employing MPs regarding regular two-way feedback between employers and employees including with respect to performance. Such a pro-active approach could draw on the successful strategies of the Independent Parliamentary Expenses Authority.

Under amendments to legislation earlier this year, the fact that MOP(S) Act employees come under the Fair Work Act was highlighted. This provides an avenue for ensuring procedural fairness in the case of terminations of employment. It is important nonetheless for MPs to be able to act quickly in the event of seeking to replace someone with whom they no longer have full confidence. A pro-active role by the Parliamentary Service Commissioner's office, drawing on the efforts of the Finance Department in recent years, to provide advice on assessments and proposed terminations might help in this regard.

Recommendation 17: The Parliamentary Service Commissioner should take a pro-active approach to supporting MPs in their responsibilities as employers, including in respect of proposed terminations.

D. Appropriate public reporting and accountability of the administration of the MOP(S) Act

As indicated above, the Parliamentary Service Commissioner should not only have responsibility for handling complaints by MOP(S) Act employees but have broader responsibilities including to explain and promote the values and employment principles that apply and exercise general oversight of administration of the Act reporting through the Presiding Officers to the Parliament. The Commissioner's responsibilities would relate primarily to staff of Senators and Members, but the Commissioner could also have some reporting responsibility with regard to administration of the Act in respect of ministerial staff. Because, as recommended above (Recommendations 4 and 9), the Prime Minister would be responsible for issuing guidance for ministerial staff and for setting recruitment procedures etc., whoever the Prime Minister delegates those responsibilities to should report on their administration. Such a report could nonetheless be included within the Parliamentary Service Commissioner's overall report on the administration of the Act.

The additional responsibilities proposed for the Commissioner require the establishment of a small office whose staff should be employed under the Parliamentary Service Act. Some staff would work on the Commissioner's responsibilities for the Parliamentary Service while others would work on MOP(S) Act administrative matters (including the complaints mechanism). The Australian Public Service Commissioner should no longer be appointed the Parliamentary Service Commissioner. It may still be possible for the Parliamentary Service Commissioner to undertake the duties involved on a part-time rather than full-time basis. The Parliamentary Service Act should be amended to clarify the additional responsibilities of the Commissioner with details set out in the MOP(S) Act.

Recommendation 18: The Parliamentary Service Commissioner should have responsibility for oversight of administration of the MOP(S) Act reporting to the Parliament through the Presiding Officers; the Commissioner's report should include a report by the Prime

Minister's delegate responsible for guidance and administration in respect of ministerial staff; appropriate amendments should be made to the Parliamentary Service Act and the MOP(S) Act.

Recommendation 19: A small office of the Commissioner should be established and the Commissioner should no longer simultaneously hold the position of Australian Public Service Commissioner.

This arrangement should ensure that, while MOP(S) Act employees may be partisan, their oversight would be independent by officials subject to the values and employment principles in the Parliamentary Service Act, and accountable to the Parliament via the Presiding Officers.

Under the current legislation, only the appointment of ministerial consultants is subject to reporting to the Parliament. In future, the Parliamentary Service Commissioner should report, separately from their report on the state of the Parliamentary Service, on the administration of the MOP(S) Act and, as recommended above (Recommendation 18), such a report should incorporate a distinct report by the delegate of the Prime Minister responsible for administration of ministerial staff. These reports should draw on the experience of reports on the state of the APS and the state of the Parliamentary Service and include:

- The numbers of employees by category and classification;
- Demographic data (gender, age, ethnicity etc.);
- Staff turnover (recruitment, resignation, termination etc.);
- Numbers and nature of complaints;
- The Commissioner's views on capability, culture, performance and any other related issues.

Recommendation 20: The Parliamentary Service Commissioner's annual report on the administration of the MOP(S) Act, incorporating a report on administration of ministerial staff by the Prime Minister's delegate, should include significant detail on the numbers and profiles of the different groups of employees as well as the Commissioner's views on capability, culture and performance.

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