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## Submission to the Joint Select Committee on Parliamentary Standards

### Peter Woolcott AO, Parliamentary Service Commissioner

The Parliamentary Service Commissioner (PSC) welcomes the opportunity to provide a submission to the Joint Select Committee on Parliamentary Standards. The inquiry represents an important component of the work being done to support the reform of Commonwealth Parliamentary Workplaces (CPWs).

The work of the Select Committee to develop a code or codes of conduct will help promote safe and respectful CPWs. It is important that a code or codes of conduct address current legal requirements that prohibit bullying, sexual harassment, racial discrimination, sexual assault and workplace discrimination and reinforce the values and behaviours befitting the seat of Australian democracy.

The PSC is a statutory officer appointed under the *Parliamentary Service Act 1999* by the Presiding Officers of the Parliament. The PSC's functions are to advise the Presiding Officers on the management policies and practices of the Parliamentary Service, and at the request of the Presiding Officers, to inquire into and report on other matters relating to the Parliamentary Service.

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

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

In April 2022, the *Parliamentary Service Amendment (Independent Parliamentary Workplace Complaints Mechanism) Determination 2022 (Attachment A)* expanded the PWSS, in response to recommendation 20 of the *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (Set the Standard report). The PWSS is now the primary support and complaints avenue for *Members of Parliament (Staff) Act 1984* (MOP(S) Act) staff and parliamentarians in relation to workplace conduct issues. The PWSS also works with other CPW participants to build safe and respectful workplaces, provide support and resolve workplace conflict, bullying, racial discrimination, harassment and sexual harassment and assault.

A code, or codes of, conduct for those who work in CPWs will provide clarity as to individual and collective obligations and will establish a shared understanding of expected behaviours for all who work in CPWs.

However, as experienced in the UK and Canadian parliaments, codes of conduct by themselves will not change workplace behaviours. Relevantly during the UK Parliament's debate on the adoption of the code it was noted that behavioural or sexual harassment codes are a statement of principle, they set parameters for behaviour and signal parliament's cultural intent. As such, while the code or codes are important to establish expectations and set appropriate parameters, they need to be accompanied by education, training and proportionate accountability mechanisms – similar to the mechanisms that have been strengthened in CPWs over the last 12-18 months.

The UK's House of Commons Parliamentary Commissioner for Standards (PCS) is an independent officer of the House of Commons. The Commissioner has oversight of investigations conducted under the Independent Complaints and Grievance Scheme (ICGS), which performs a similar function

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to that of the PWSS. Where the Commissioner concludes there has been a breach of the rules, the Committee on Standards can recommend a range of penalties.

The Canadian Parliament has also implemented new workplace policies on workplace harassment and violence prevention. The policies set out the specific duties of employers to investigate, record and report all occurrences of harassment and violence. The policy seeks to strengthen the culture of the Canadian Parliament as it focuses on the prevention of harassment and violence, and the timely and effective processing of complaints, and the support to be provided to affected employees. The Canadian Senate has also introduced a similar code of conduct however, this code does not apply to senator-on-senator abuse.

The Thodey review panel recommended a formal legislated code of conduct, with appropriate enforcement provisions, and better support, induction and professional development for Ministerial advisers. Subsequently, the Set the Standard report recommended a code of conduct for Commonwealth Parliamentarians and a code of conduct for Parliamentarians' staff to assist in developing a positive supportive culture in parliamentary workplaces. The establishment of common standards of conduct for parliamentary precincts for all parliamentarians, staff, contractors, interns and volunteers, members of the Press Gallery and visitors sets an expectation for standards of engagement and participation in the Parliamentary precincts. It also provides the opportunity for individuals to raise concerns and have a conversation about improving CPWs. Further, establishing a code or codes of conduct that specifically addresses conduct between parliamentarians (in addition to the relevant standing orders) provides a strong expectation regarding workplace behaviour and an opportunity to build safer and more respectful CPWs.

The procedures that accompany the code or codes of conduct could outline how to determine appropriate sanctions for breaches of the code. These procedures could build upon the existing PWSS workplace review mechanism and further support effective decision making by continuing to ensure procedural fairness is provided to all parties.

Setting clear standards of conduct is best practise in Australian workplaces and codes of conduct are the most commonly used tool in complex cultural transformations. Systemic 'drivers' and institution-specific 'risk-factors' associated with bullying, racial discrimination, discrimination, workplace conflict, sexual harassment and sexual assault in CPWs include lack of accountability and lack of clear standards of behaviour. There is some evidence that the introduction of agreed standards of conduct, mandatory training and the use of independent complaint and investigation bodies can assist in reducing the occurrence of bullying and harassment and making parliaments more accountable.<sup>1</sup> Any proposed codes supported by purposeful implementation strategies and monitoring mechanisms can strengthen the culture of CPWs.

The review of the MOP(S) Act was established to identify legislative, policy or other changes or initiatives necessary to ensure the employment arrangements of parliamentarians and their staff are fit for purpose. It is important that a code or codes of conduct are aligned with the outcomes of this review and the mechanisms are coherent and comprehensive to ensure a professional, high-performing, safe and respectful workplace for all parliamentarians and their staff.

Peter Woolcott AO

9 September 2022

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<sup>1</sup> Deirdre McKeown and Dr Michael Sloane, *Parliamentary codes of conduct: a review of recent developments*, Research Papers 2021-22, Parliamentary Library, 30 March 2022.



# Parliamentary Service Determination 2013

made under the

*Parliamentary Service Act 1999*

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

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

### **112B Commissioner's functions—independent parliamentary workplace complaints mechanism**

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

**Part 10A** Commissioner

Clause 112B

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***Commonwealth parliamentary workplace participant*** means:

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

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

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

***parliamentarian*** means:

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

***serious incident or misconduct*** means:

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