

Parliamentary Service Commissioner
Report
2019–20

incorporating the Report of the
Parliamentary Service Merit Protection Commissioner

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Canberra ACT 2600

Senator the Hon Scott Ryan
President of the Senate
PO Box 6100
The Senate
Parliament House
Canberra ACT 2600

Dear Mr Speaker and Mr President

PARLIAMENTARY SERVICE COMMISSIONER REPORT 2019–20

In accordance with Section 42(1) of the *Parliamentary Service Act 1999*, I present to you the Parliamentary Service Commissioner Report 2019–20.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Peter Woolcott'.

Peter Woolcott AO

4 January 2021


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Commissioner's overview

The principal functions of the Parliamentary Service Commissioner is to advise the Presiding Officers on the management of policies and practices of the Parliamentary Service and to conduct any inquiries about the Parliamentary Service at the request of the Presiding Officers.

This report presents information covering the four parliamentary departments. Further information about the individual departments can be found in their respective annual reports.

A handwritten signature in blue ink, appearing to read 'Peter Woolcott', followed by a long, horizontal, wavy flourish.

Peter Woolcott AO

Parliamentary Service Commissioner

4 January 2021

Introduction

The Parliamentary Service was established with the commencement of the *Parliamentary Service Act 1999* (the PS Act) on 5 December 1999.

The President of the Senate, Senator the Hon Scott Ryan, and the Speaker of the House of Representatives, the Hon Tony Smith MP, were the Presiding Officers of the Parliament at 30 June 2020.

In addition to their procedural roles in the Chambers, the Presiding Officers are responsible for the provision of services to the Parliament. They have individual responsibility, respectively, for the Department of the Senate and the Department of the House of Representatives, and joint responsibility for the Parliamentary Budget Office (PBO) and the Department of Parliamentary Services (DPS).

The role of the Presiding Officers in relation to the parliamentary departments is similar to the role of a Minister in relation to a department of state.

Mr Peter Woolcott AO is the Parliamentary Service Commissioner (Commissioner). Mr Woolcott commenced as Commissioner on 9 August 2018 and holds the office of the Australian Public Service Commissioner concurrently.

Ms Linda Waugh is the Parliamentary Service Merit Protection Commissioner. Ms Waugh commenced as the Parliamentary Service Merit Protection Commissioner on 25 June 2018 and holds the office of the Australian Public Service Merit Protection Commissioner concurrently.

There are no specific appropriations for the offices of the Parliamentary Service Commissioner or the Parliamentary Service Merit Protection Commissioner.

Administration of the Parliamentary Service

Parliamentary Service Commissioner's role

The PS Act provides for an independent Commissioner appointed by the Presiding Officers. The Commissioner's role is to advise the Presiding Officers on the management of policies and practices of the Parliamentary Service and, if requested by the Presiding Officers, to inquire into and report on Parliamentary Service matters. The Commissioner is not subject to direction by or on behalf of the executive government in the performance of his functions.

The PS Act empowers the Presiding Officers to make determinations on a range of matters affecting the Parliamentary Service. The PS Act also requires the Presiding Officers to consult the Commissioner before making determinations.

Section 42 of the PS Act requires the Commissioner to give a report to the Presiding Officers for presentation to the Parliament on the activities of the Commissioner during the year.

The Parliamentary Service Commissioner chaired the selection panel for the vacated Commonwealth Parliamentary Budget Officer position. The position was advertised in March 2020 and was finalised in October 2020.

Parliamentary Service Merit Protection Commissioner’s role

The role of the Parliamentary Service Merit Protection Commissioner includes inquiring into actions at the request of the Presiding Officers, and into alleged breaches of the Code of Conduct by the Commissioner and functions prescribed in determinations made for the purposes of section 33 of the PS Act.

These functions include reviewing employment actions and promotions, providing recruitment services and inquiring into alleged breaches of the Code of Conduct.

The Parliamentary Service Merit Protection Commissioner’s report is included in this report.

Roles and responsibilities of the individual departments

Four parliamentary departments are established under the PS Act:

The Department of the Senate and the Department of the House of Representatives provide advice and support to the Senate, the House of Representatives, Senators, Members and parliamentary committees.

- DPS provides a range of support for the Parliament and for Parliament House. These include library and research services, information and communication technology services, security services, building, ground and design integrity services, audio visual and Hansard services, art services, visitor services, food and beverage services, retail, health, banking and childcare services.
- The PBO supports the work of parliamentarians by providing independent and non-partisan analysis of the budget impact of policy proposals and by publishing reports on budget issues.

Secretaries

Under the PS Act, the Secretaries of the parliamentary departments have roles and responsibilities similar to those of Australian Public Service agency heads:

- The appointment of the Clerks of the Senate and the House of Representatives are made by the President and Speaker, respectively, after consulting Senators and Members.
- The Secretary of DPS is appointed by the Presiding Officers after receiving a report from the Commissioner.
- The Parliamentary Budget Officer is appointed by the Presiding Officers after obtaining the approval of the Joint Committee of Public Accounts and Audit.

The Secretary of the Department of the Senate is Mr Richard Pye, Clerk of the Senate; and the Secretary of the Department of the House of Representatives is Ms Claressa Surtees, Clerk of the House of Representatives. They are appointed for non-renewable terms of ten years. Mr Pye's appointment is from 9 March 2017, and Ms Surtees' from 12 August 2019.

Ms Jenny Wilkinson was the Parliamentary Budget Officer and Secretary of the PBO until 27 January 2020. Ms Linda Ward has been acting in these roles from 28 January 2020 until a permanent appointment is approved by the Presiding Officers.

Mr Rob Stefanic was appointed to the position of the Secretary of DPS and commenced his five year term on 14 December 2015.

Dr Dianne Heriot holds the office of Parliamentary Librarian. Dr Heriot was reappointed for a second five year term on 10 May 2017.

Legislation

The four parliamentary departments are considering amendments to the Parliamentary Classification Rules 2010 to better align with the *Public Service Classification Rules 2000*. Once any proposed amendments have been agreed, the parliamentary departments will consult further with the Australian Public Service Commission (APSC).

Information and Communications Technology

The Parliamentary Information and Communication Technology Advisory Board (PICTAB) is an advisory body established in 2012. Its role is to provide guidance on the delivery of the Australian Parliament Digital Strategy 2019–2022. PICTAB membership includes parliamentarians and representatives from the parliamentary departments and the Parliamentary Service Commissioner.

PICTAB continues to function as an effective advisory group on ICT strategy and risk, along with advice on a number of programs.

PICTAB met three times in 2019–20. The Parliamentary Service Merit Protection Commissioner, as the Commissioner’s representative, attended all PICTAB meetings during 2019–20.

Liaison between the Australian Public Service Commission and the Parliamentary Service

The Presiding Officers and Secretaries are informed of major initiatives taken by the Australian Public Service Commissioner in relation to employment in the Australian Public Service.

The Commissioner’s annual meeting with the Parliamentary Department Heads was held in September 2019. Representatives of the parliamentary departments and the APSC met throughout the year to discuss employment related issues.

Staffing and financial matters

All details relating to Parliamentary Service staffing and financial matters are provided in the respective departmental annual reports.

Any costs for the Commissioners are included within the overall financial results of the APSC.



Parliamentary Service Merit Protection Commissioner REPORT 2019–20



Mr Peter Woolcott, AO
Parliamentary Service Commissioner
GPO Box 3176
PARKES ACT 2601

Dear Parliamentary Service Commissioner

I am pleased to present the Parliamentary Service Merit Protection Commissioner's Report for the reporting period ending 30 June 2020. As required by section 49 of the *Parliamentary Service Act 1999* my report deals with the activities of the Office of the Parliamentary Service Merit Protection Commissioner and has been given to the Parliamentary Service Commissioner.

Yours sincerely



Linda Waugh
Parliamentary Service Merit Protection Commissioner
8 December 2020

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Parliamentary Service Merit Protection Commissioner's foreword

During 2019–20 we received only one application from a Parliamentary Service employee under the review of actions scheme. This is consistent with the low volume of applications over last two years, where we received no new applications and three respectively.

Like many public service agencies, I deployed my staff to work from home due to the COVID-19 pandemic. The transition to working from home required some adjustments for my staff, however we were remote-working ready and the nature of our work is amenable to these arrangements. This meant we were able to provide uninterrupted services to our stakeholders during this period.

With such uncertainty and change in the workplace it is increasingly important for the Parliamentary Service departments and employees to have access to our services which assist to maintain harmonious workplaces and uphold the Parliamentary Service Values and Employment Principles.

We published summaries of our case work and tip sheets on topics such as managing conflicts of interest and guidance on the importance of getting the basics correct when drafting allegations of misconduct.

This year we commenced a major review and update of our website. We will be modernising our website and completing a significant restructure of content to improve access to locate and search for information.

I met with the Secretary of the Department of Parliamentary Services to explore ways to work together into the future. To this end, we also plan to deliver a series of webinars to Australian Public Service and Parliamentary Service employees about the review of action scheme and employee entitlements.

Oversight of the Australian Parliament Digital Strategy 2019-2022 is overseen by the Parliamentary Information Communications and Technology Advisory Board (PICTAB). In 2019-2020 I represented the Australian Parliamentary Service Commissioner and attended all board meetings, held on 19 September 2019, 4 December 2019 and 26 June 2020.

I am a member of the Integrity Agencies Group, chaired by the Australian Public Service Commissioner, which met once during the reporting year. I am also an independent member of the Audit and Risk Committee for the Office of the Inspector-General of Intelligence and Security.

I look forward to the busy and challenging year ahead.



Linda Waugh

Parliamentary Service Merit Protection Commissioner

Overview

About the Parliamentary Service Merit Protection Commissioner

The Parliamentary Service Merit Protection Commissioner (Parliamentary Service MPC) is an independent statutory office holder established under Part 6 the *Parliamentary Service Act 1999* (the PS Act) who performs a range of statutory functions for the Australian Parliamentary Service. The duties and functions of this role mirror those of the Australian Public Service Merit Protection Commissioner under the *Public Service Act 1999*.

The Parliamentary Service MPC assists Parliamentary Service departments to meet their obligations to provide a fair, flexible, safe and rewarding workplace by providing an independent system of review of employment related actions and decisions. The Parliamentary Service MPC also has a range of other complaint and inquiries functions and can provide recruitment and employment related advice and services.

About the Office of the Parliamentary Service MPC

The staff of the Office of the Parliamentary Service MPC are employees of the Australian Public Service Commission (APSC). Under section 49(2) of the *Public Service Act 1999*, the staff necessary to assist the Parliamentary Service MPC must be engaged under that Act, and made available by the Australian Public Service Commissioner. In this role the employees are accountable to the Parliamentary Service MPC. The APSC provides all corporate support and services to the Parliamentary Service MPC. There is no appropriation for the Parliamentary Service MPC.

The Parliamentary Service MPC is supported by staff located in both the Sydney and Canberra offices of the APSC. The Parliamentary Service MPC is based in Sydney and ordinarily travels to Canberra on a regular basis. This year, due to travel restrictions because of the COVID-19 pandemic, travel to Canberra was less frequent.

Our statutory functions and responsibilities

The statutory functions of the Parliamentary Service MPC are set out in the PS Act and by the *Parliamentary Service Determination 2013*.

Review of action scheme

Parliamentary Service employees are entitled to seek a review of an action or decision that relates to their employment (excluding termination). There are three types of reviews available.

- 1. Review of a promotion decision:** A decision by a Parliamentary Service Secretary to promote a Parliamentary Service employee (to a classification mentioned in Groups 1–6 in Schedule 1 to the Classification Rules), or to engage an ongoing Australian Public Service employee as an ongoing Parliamentary Service employee at a higher classification mentioned in any of the Groups 1–6), can be subject of an application for a merits review of the promotion decision.

- 2. Direct review of a decision or an action (primary review):** The types of decisions or actions about which the Parliamentary Service MPC can directly review are:
 - a. determinations about a breach of the Code of Conduct and resulting sanction decision
 - b. an action or decision where it was not appropriate for the Department to conduct an internal review, such as when the Department was involved, the action is very serious or is alleged to be retribution for having previously applied for review of an action
 - c. a review of action that was taken by a statutory officer who is managing the employee.

- 3. Review of an action following an internal review (secondary review):** A secondary review is when a Parliamentary Service employee is required to seek an internal review by their Department before seeking a review from the Parliamentary Service MPC. Disputes about leave applications, performance reviews and flexible working arrangements mostly fall within this category. An employee can also apply for a secondary review if the Department refuses to conduct an internal review on the grounds their action was not reviewable.

Independent Selection Advisory Committee

If requested to do so, the Parliamentary Service MPC may assist a Parliamentary Service Secretary with a recruitment process by establishing an Independent Selection Advisory Committee (ISAC). An ISAC can perform a staff selection exercise, and make recommendations about the suitability of candidates for engagement or promotion (for classifications mentioned in any Groups 1–6). Any promotion or engagement decision resulting from an ISAC recommendation are not subject to promotion review under the review of actions scheme. The Parliamentary Service MPC will usually charge a fee for this service.

Inquiry and complaint functions

Former Parliamentary Service employees can ask the Parliamentary Service MPC to investigate a complaint about the entitlements received on leaving the service.

The Parliamentary Service MPC may also conduct inquiries into allegations that are:

- public interest disclosures that relate to a breach of the Code of Conduct by employees of the Parliamentary Service
- a breach of the Code of Conduct by the Parliamentary Service Commissioner
- at the request of the Presiding Officer into an action by the Parliamentary Service
- a breach of the Code of Conduct by Parliamentary Service employees.

Performance and outcomes for the year

During 2019–20 we received one application from a Parliamentary Service employee under the review of actions scheme – this was a secondary review application which related to a decision about a performance appraisal. This is consistent with previous years where review numbers from the Parliamentary Service have been generally low. We received no requests to form an ISAC nor any complaints, and did not conduct any inquiries (see Table 1)

Table 1: Number of activities by statutory function over 5 year period

Function	2015/16	2016/17	2017/18	2018/19	2019/20
No. of review of actions applications received – employment related actions (includes Code of Conduct reviews)	3	6	0	0	1
No. of review of promotion and engagement decision applications received	3	0	0	3	0
No. of ISAC's formed	0	0	0	0	0
No. of complaints received / Inquiries conducted	0	1	0	0	0

In 2019–20 we continued our program of engagement and developing resources and publications for our stakeholders. As part of our ongoing stakeholder engagement work we published twelve (12) summaries of our case work and seven (7) tip sheets on issues arising from our review work across the Parliamentary Service and the Australian Public Service. The topics cover managing conflicts of interest, conducting internal reviews of performance management decisions and the challenges facing decision makers when making Code of Conduct decisions.

We are modernising our website and completing a significant restructure of our content to make it easier for our stakeholders to locate and search for information, and to submit applications for reviews. We expect this work to be completed in 2020–21.

We focussed on projects to improve the way we work and how we deliver our services more effectively through:

- introducing an induction program for new staff
- formalising our internal procedures manual to make sure we have the resources available to support our staff work more effectively and efficiently
- developing a site on our intranet providing resources and decision-making support tools for our reviewers on how to make decisions in a diverse and sometimes complex jurisdiction
- implementing a new case prioritisation and triage model
- continuing our work to facilitate the digital exchange of information and documents for Promotion Review Committees.

The Parliamentary Service MPC met with the Secretary of the Department of Parliamentary Services once during the financial year, and attended three meetings of the PICTAB as the representative of the Parliamentary Service Commissioner.

The year ahead

2020–21 will continue to offer unique challenges with COVID-19 continuing to have an impact on working arrangements of the Parliamentary Service and the way the Parliamentary Service MPC will engage with stakeholders. A key priority for 2020–21 will be using technology to continue engaging employees and departments to provide advice and guidance on good practice in decision making and people management. The Parliamentary Service MPC will continue to adapt and provide access to information through:

- publishing tip sheets, case summaries and good practice guidance for decision makers
- reviewing and updating our website to ensure easier navigation for our stakeholders and removing out of date or superseded information
- conducting webinars with key stakeholder groups
- seeking additional stakeholder feedback by broadening our feedback survey to new clients groups.

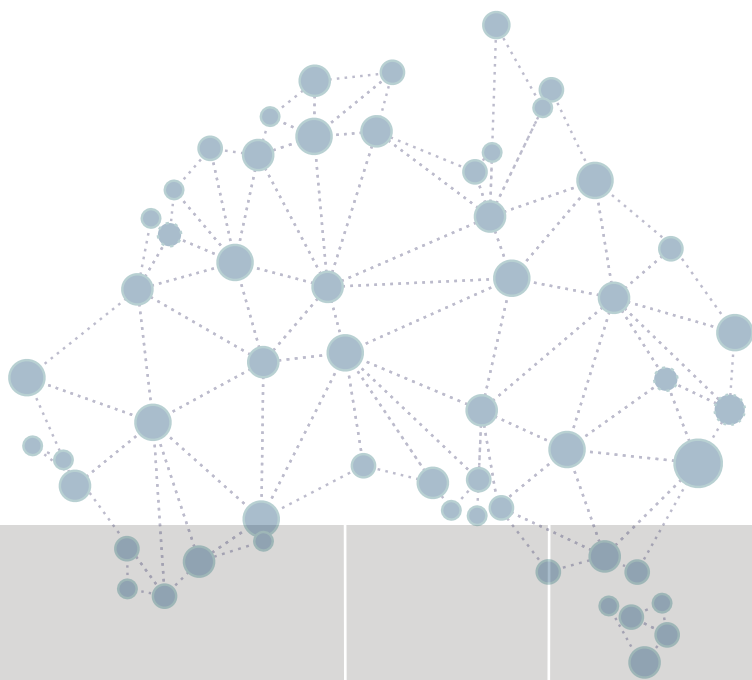
Consistent with previous years, the priorities for 2020–21 also include

- raising the profile of the office with Parliamentary Service employees and departments by implementing a communication and engagement strategy and redeveloping our website
- continuously improving the quality and timeliness of our work
- continuing to implement effective and accountable governance arrangements and risk management processes for the office
- working with the Parliamentary Service on integrity and people management issues and better integrating lessons learned from review work to inform policy development.

Appendix A: The Parliamentary Service Merit Protection Commissioner’s Statutory Functions

Function of the Parliamentary Service MPC	Statutory authority - Parliamentary Service
<p>Review of action scheme – promotion and engagement (includes review of promotion and engagement decisions of certain Parliamentary Service employees)</p>	<p><i>Parliamentary Service Act 1999</i> Sections 33, 48(1)(d) and 48(4) Parliamentary Service Determination Part 9 Division 1, Clauses 71, 72, 73 and 76 Division 2, Clauses 77 – 93</p>
<p>Review of actions scheme – other employment related actions (includes code of conduct, primary reviews of other matters and secondary reviews)</p>	<p><i>Parliamentary Service Act 1999</i> Sections 33, 48(1)(d) and 48(4) Parliamentary Service Determination Part 9 Division 1, Clauses 71-72, 74-75 Division 3, Clauses 94 - 108 Schedule 3 lists actions that are not reviewable</p>
<p>Review of a department 's determination that a former employee breached the Code of Conduct for behaviour engaged in while an employee</p>	<p><i>Parliamentary Service Act 1999</i> Sections 33 and 48(1)(e) Parliamentary Service Determination Part 11 Division 4, Clauses 116-123 (review procedures)</p>
<p>Review of the actions of a statutory office holder who is not a department head that relate to an employee’s Parliamentary Service employment.</p>	<p><i>Parliamentary Service Act 1999</i> Sections 33, 48(1)(d) and 48(4) Parliamentary Service Determination Part 11 Division 1, Clause 113 Division 5, Clause 124</p>
<p>Inquiry into a public interest disclosure alleging a breach of the Code of Conduct</p>	<p><i>Parliamentary Service Act 1999</i> Sections 48(1)(a) and 48(2) Parliamentary Service Determination Part 11 Division 1, Clause 113</p>
<p>Inquiry into an alleged breach of the Code of Conduct by the Australian Parliamentary Service Commissioner</p>	<p><i>Parliamentary Service Act 1999</i> Section 48(1)(b)</p>

Function of the Parliamentary Service MPC	Statutory authority - Parliamentary Service
Inquiry into a Parliamentary Service action at the request of the Presiding Officers of the Australian Parliament	<i>Parliamentary Service Act 1999</i> Sections 48(1)(c), 48(2), 48(4)
Inquiry into whether a current or former Parliamentary Service employee has breached the Code of Conduct	<i>Parliamentary Service Act 1999</i> Sections 48(1)(ca) and 48A Parliamentary Service Determination Part 11 Division 2, Clause 114
Investigate a complaint from a former employee about entitlements	<i>Parliamentary Service Act 1999</i> Subsection 48(1)(e) Parliamentary Service Determination Part 11 Division 1, Clause 113(2) and Clause 115
Independent Selection Advisory Committee (ISAC)	Parliamentary Service Determination Part 8 Clauses 59 to 70



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