

# **SUBMISSION TO THE INDEPENDENT REVIEW INTO COMMONWEALTH PARLIAMENTARY WORKPLACES**

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## **Introduction**

I am currently an Honorary Professor of Public Policy at The Australian National University. I was both the Australian Public Service Commissioner and the Parliamentary Service Commissioner for three years (2002-2004). In the latter role, I prepared a report on the administration of the parliament for the Presiding Officers in 2003 which led to a reorganisation of the parliamentary departments.

I am making this submission as an expert with direct experience in the areas under Review. While I have some expertise in the field of workplace culture including with respect to bullying, sexual harassment and sexual assault (including as the lead author of the 2006 Report of the Learning Culture Inquiry into ADF Schools and Training Establishments), the focus of this submission is on the governance arrangements that might foster a culture that is safe and respectful taking particular account of the roles and responsibilities of those who work in parliamentary workplaces.

I suspect that the current poor public perception of the parliament, and the reality of an at times dysfunctional workplace, is due in part to a lack of understanding of our institutional arrangements and in particular to the weak governance of the legislature and the dominating role of the executive, particularly ministers and ministerial staff.

## **Articulating Values**

Amongst the public sector reforms of the 1980s and 1990s that have been sustained was the shift from detailed rules and processes to clarifying and articulating principles and values that should (and must) guide behaviour. This shift can be seen in the *Public Service Act 1999*, the *Parliamentary Service Act 1999* and the *Public Governance, Performance and Accountability (PGPA) Act 2014* (replacing the 1997 financial management legislation which began the legislative reforms).

Importantly, the values set out in legislation for the public service and the parliamentary service reflect their distinct roles. While many of the values are broadly similar, distinctions reflect the fact that the public service lies within the Executive and the parliamentary service lies within the legislature: one has accountability linked to ministerial responsibility and the other is answerable via the Presiding Officers.

To date there is no legislated set of values for MPs or for those working under the Members of Parliament (Staff) (MOP(S)) Act. Ministers are subject to standards set by the prime minister of the day, and there has been from time to time a 'code of conduct' linked to those standards for ministerial staff. I am not aware of any formal statement of values for MPs generally or for MOP(S) Act employees.

In a submission to the Thodey Review of the APS in April 2019, Helen Williams AC (another former APS Commissioner and Parliamentary Service Commissioner) and I recommended changes to the APS Values that had been revised in 2013 amendments to the PS Act. We favoured a framework that might be applied to all Commonwealth public sector workers with distinctions that reflected different roles and responsibilities such as between the three arms of government and between political workers and apolitical workers. The framework with illustrations of how the values might be

articulated for different groups was set out at Attachment A to our submission. While some values must vary because of different roles and responsibilities, the framework suggests many should be the same reflecting the personal behaviour the Australian public should expect and the requirements of legislation such as the PGPA Act.

Of most relevance to this current Review is the suggestion that the values the Australian public should expect those working in parliamentary workplaces to uphold should be articulated, preferably in legislation. This is already the case for public servants and parliamentary service employees but is not the case for:

- a) Ministers
- b) Other MPs
- c) Ministerial staff
- d) Other staff employed under the MOP(S) Act.

Attachment A to our submission to the Thodey Review (copy attached to this submission) provides only an outline of the values that might be articulated for these groups as the focus of that submission was the APS and our concern that merit – a core attribute of the civil service in Westminster systems since the nineteenth century - was no longer included in the APS Values. With hindsight, it is also clear that the attachment omits important values related to workplace relations which is the focus of this Review, as it focused on the distinct institutional roles and responsibilities of different groups of Commonwealth public sector workers.

This current Review could therefore develop the values and any associated employment principles for these groups who operate in parliamentary workplaces, both to highlight common values particularly around safety and respect in the workplace and to acknowledge distinct values given the different roles and responsibilities of each of the groups. In doing so, the Review might consider the following provisions for the Parliamentary Service set out in the Parliamentary Service Act's Employment Principles (s10A(1)):

- e) provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued; and
- f) provides workplaces that are free from discrimination, patronage and favouritism; and
- g) recognises the diversity of the Australian community and fosters diversity in the workplace.

For ministerial staff and others employed under the MOP(S) Act, the values and/or employment principles could be included in an amendment to that Act. Some distinction would need to be made between ministerial advisers working in the executive arm and other MPs' staff working only in the legislative arm.

**Recommendation 1: The Review develop a statement of the values and/or employment principles which MOP(S) Act employees must uphold reflecting their distinct roles and responsibilities as well as their shared responsibilities for safety and respect in their parliamentary workplaces, and recommend this be incorporated into the legislation.**

Indeed there is a strong case for a broader review of that legislation which, unlike the legislation for the public service and the parliamentary service (and for financial management), has not been reviewed since 1984 when it was enacted. Such a review should address issues of governance and accountability, recruitment and HRM support and oversight as another former senior public servant and I have separately recommended elsewhere (Gourley, P G, 2021, 'Laws can be changed for the

better', *Canberra Times Public Sector Informant*, 1 June 2021; Podger, Andrew, 2021, 'The MOP(S) Act needs a sincere, thorough rethink', *Canberra Times*, 28 February 2021).

**Recommendation 2: The Review recommend a broader review of the MOP(S) Act.**

In the absence of such a broader review, this Review should note that it is not entirely clear under the current legislation who is the employer of the staff, should the Review wish to impose any obligations on the employer. Each MP has hire and fire authority, but the Finance Department is authorised by the prime minister to set employment conditions and it is usual for prime ministers to establish a vetting system to oversee recruitment of ministerial staff; and in the end, the staff are all Commonwealth employees.

Along similar lines to provisions in the public service and parliamentary service legislation, the values and/or employment principles of MOP(S) Act employees could be complemented by a legislated code of conduct.

**Recommendation 3: The Review develop a code of conduct for MOP(S) Act employees and recommend it be incorporated into the legislation.**

Because MPs are directly accountable to their electorates, the case for legislating values and a code of conduct is arguably not as strong as that for Commonwealth employees. I am nonetheless inclined to having a set of values for MPs set out in legislation. The suggestions included in the attachment to this submission might provide some guidance for such a set of values reflecting our democratic framework and MPs' responsibilities as representatives of the people.

**Recommendation 4: The Review develop a statement of Values for MPs and recommend it be incorporated in legislation.**

These might be complemented by additional ministerial standards for those MPs who are ministers, set by the PM and made public. These would reflect ministers' responsibilities within the executive as well as the legislature.

**Recommendation 5: The Review recommend additional, complementary standards for ministers to be set by the prime minister.**

I am not inclined, however, to legislate a code of conduct for MPs. As outlined further below, I would prefer that the Parliament appoint an ethics adviser.

**Governance of Behaviour**

Strengthening the governance of the parliament, the legislative arm of government, is I believe critical not only to improving respectful relations and a safe workplace but also to restoring parliament's public reputation and effectiveness as a key institution of Australia's democratic institutional framework. I suggest in this regard that the Review examine a recent doctoral thesis by a former senior executive in the parliamentary service (Barrett, V., 2019. *Parliamentary administration: what does it mean to manage a parliament effectively?* (Doctoral dissertation, The Australian National University (Australia)).

I was pleased to see that the Government has agreed to the Recommendations of the recent Foster Review, particularly Recommendation 4 to establish an independent complaints mechanism as a function of the Parliamentary Service Commissioner. I believe the Commissioner's role should be taken further to incorporate oversight of MOP(S) Act employees as well as Parliamentary Service

employees. This would also enhance the role of the Presiding Officers to whom the Commissioner reports.

The Commissioner would be responsible for issuing any directions about the (proposed) legislated values and/or employment principles and reviewing alleged breaches of the proposed code of conduct. There might be some additional roles arising from other provisions under the legislation following the broader review of the MOP(S) Act I recommend the Review support.

**Recommendation 6: The role of the Parliamentary Service Commissioner be extended to also oversee the values, employment principles and code of conduct of MOP(S) Act employees.**

Given these extra responsibilities, and the likely problems of having a public servant responsible to a minister exercise such oversight, I suggest the current practice of the APS Commissioner also being appointed Parliamentary Service Commissioner cease.

**Recommendation 7: The Review recommend that the position of Parliamentary Service Commissioner no longer be held by the APS Commissioner.**

At the same time, I also think it unlikely that MPs would welcome the Parliamentary Service Commissioner having a more extensive role than the Foster Review recommended in overseeing MPs' behaviour. For that reason I suggest the Review explore other options to strengthen parliamentary governance including the appointment of a Parliamentary Ethics Officer (perhaps a former minister or former Presiding Officer widely respected for ethical behaviour) to advise MPs on such ethical issues as conflicts of interest and post-separation employment, drawing on Canadian and other overseas practice.

**Recommendation 8: The Review explore the merits of strengthening parliamentary governance, including by establishing a Parliamentary Ethics Officer to advise MPs on ethical issues.**

30 July 2021

## EXCERPT FROM PODGER/WILLIAMS SUBMISSION TO THODEY REVIEW

## AN ILLUSTRATION OF POSSIBLE CORE VALUES AND RELATIONSHIPS FOR DIFFERENT PARTS OF THE COMMONWEALTH PUBLIC SECTOR

	RELATIONS WITH GOVERNMENT AND PARLIAMENT	RELATIONS WITH PUBLIC	RELATIONS IN WORKPLACE	PERSONAL ETHICS AND LEADERSHIP
<b>PUBLIC SERVICE</b>	<p>Non-partisan</p> <p>Loyal to elected government</p> <p>Accountable through system of ministerial responsibility</p>	<p>Impartial</p> <p>Committed to service (inclusive, responsive, courteous)</p> <p>Efficient, effective, economical</p>	<p>Professional</p> <p>Merit principle</p>	<p>Lawful</p> <p>Highly ethical: recognise responsibilities of exercising public power</p>
<b>PARLIAMENTARY SERVICE</b>	<p>Non-partisan</p> <p>Responsive to needs of MPs</p> <p>Accountable through Speaker and/or President</p>	<p>Impartial</p> <p>Committed to service (inclusive, responsive, courteous)</p> <p>Efficient, effective, economical</p>	<p>Professional</p> <p>Merit principle</p>	<p>Lawful</p> <p>Ethical: recognise responsibilities of advising public representatives</p>
<b>MINISTERS</b>	<p>Individually accountable to Parliament</p> <p>Collectively responsible via Cabinet</p>	<p>Committed to service (inclusive, responsive, courteous)</p> <p>Efficient, effective, economical</p> <p>Concern for national public interest</p>	<p>Collegiality within Cabinet, party (?)</p> <p>Respectful oversight of public service</p>	<p>Lawful</p> <p>Highly ethical: recognise responsibilities of exercising public power</p>
<b>Ministerial advisers</b>	<p>Personal loyalty to MP</p> <p>Accountable to MP who</p>	<p>Efficient, effective, economical</p>	<p>Professional</p> <p>Respectful relationship</p>	<p>Lawful</p> <p>Ethical: recognise responsibilities</p>

	accepts responsibility for adviser (?)	Inclusive, responsive, courteous	with public service	of supporting MP's representative role
<b>MEMBERS OF PARLIAMENT</b>	Representative of constituency  Accountable via elections	Committed to service (inclusive, responsive, courteous)  Efficient, effective, economical  Concern for constituents, and national public interest	Collegiality within party, Parliament (?)	Lawful  Ethical: recognise responsibilities of exercising public power
<b>Personal staff of MPs</b>	Personal loyalty to MP  Accountable to MP who accepts responsibility for adviser (?)	Efficient, effective, economical  Inclusive, responsive, courteous	Professional (?)	Lawful  Ethical (?): recognise responsibilities of supporting MP's representative role
<b>Government Business Enterprises</b>	Board members' accountable to ministers for GBE performance  Employees have no relationship to Govt or Part	Values set by board, possibly required by ministers  Efficient, effective, economical (?)  Inclusive, responsive, courteous (?)	Values set by board	Values set by board, possibly required by ministers  Lawful  Ethical
<b>Military, police</b>	Non-partisan  Accountable through system of ministerial responsibility	Efficient, effective, economical  Inclusive, responsive, courteous	Merit principle  Line of command	Lawful  Highly ethical: recognise responsibilities of exercising force  Courageous