

Members of Parliament (Staff) Act: Accountability Issues

The *Members of Parliament (Staff) Act 1984* ([the MoPS Act](#)) governs employment of staff by MPs and ministers (MoPS staff). Although it has served to provide a systematic framework for employment of political staff, questions are emerging about whether the MoPS Act ensures an appropriate level of accountability.

The Origins of MoPS

Until 1984, MPs wanting to employ staff did so using the temporary employment provisions of the *Public Service Act 1922* (PS Act), or private contractual arrangements. Public servants employed in the position of Private Secretary by a minister or by the Leader of the Opposition had different rights to other public servants who took jobs with MPs. Reviews of the Public Service (the APS), such as the Coombs Royal Commission, had recommended that these arrangements needed reform.¹

The 1984 MoPS Act

The MoPS Act had three main Parts, governing employment of:

- ministerial consultants (Part II)
- staff of office-holders (ministers, party leaders in each House, whips, etc.) (Part III), and
- staff of senators and members (Part IV).

The employment provisions are considered in a forthcoming Research Note on employment issues. The Act created no major mechanisms for staff responsibility or reporting. It contained nothing regarding roles and responsibilities of MoPS staff. In short, while formally recognising the existence of

MoPS staff, the Act created no framework for their accountability.

1999 Reforms

In 1999 the PS Act was overhauled. The reforms saw the inclusion in the PS Act of a statement of [Values](#) and a [Code of Conduct](#). They establish a normative framework within which people are legally required to work (the Values), and a set of expectations about behaviour that flow from those Values (the Codes of Conduct).

The 1999 reforms triggered changes in other areas. These included legislating to create the Parliamentary Service (which also acquired values and a code of conduct in their enabling legislation), and the first significant changes of the MoPS Act since 1984. None of these, however, related to accountability issues. None of the changes to the MoPS Act mirrored reforms in the APS and the Parliamentary Service

Problems with MoPS

Under the MoPS Act, 1400 staff are employed,² including some powerful players in the political system. So does the MoPS Act need to be modified to improve accountability measures for political staff?

In 1984 the then Member for Bradfield, Mr Connolly, expressed concern about the potential blurring of roles in the new regime. His words referred particularly to consultants, but they have contemporary resonance:

I see [no] protective device put forward by the government to control the relationship between a ministerial

consultant and officers of the Department.³

Issues about the roles and responsibilities of ministerial staff are raised regularly.⁴ Connolly's remarks resemble those of academic Dr John Uhr who recently raised the possibility of improving 'transparency about the roles and standards to be expected of ministerial advisers'.⁵

The problems may not all lie with the MoPS Act, however. It is up to public servants to ensure they are adhering to the Code of Conduct when dealing with ministerial staff. It is also possible that public servants could make more use of provisions in the PS Act (such as [whistleblower provisions](#)) that allow both Agency Heads and Commissioners to ensure that Codes of Conduct are being complied with.

Mechanisms that contribute to the accountability of MoPS staff are limited but do exist. These include some elements of the Prime Minister's [Guide to Ministerial Responsibility](#). In 1998 a member of Minister for Resources Warwick Parer's staff was sacked for trading shares in breach of the Guide. There is also arguably a convention that ministers take responsibility for their staffers' actions. In practice, however, this seldom happens.

Ministerial staff have resigned because of errors they have reportedly made in their work. High profile examples have included the resignation of two staff from the Prime Minister's office during the 'travel rorts affair' in 1997,⁶ and the sacking in 2001 of staff from the

Deputy Prime Minister's office following the mis-handling of an Australian National Audit Office report on road funding.⁷ The potentially high price MoPS staff may pay for mistakes is likely to provide some measure of accountability, though only in very particular sets of circumstances.

The accountability mechanisms do not include parliamentary scrutiny of MoPS staff as they do in the case of public servants. Those mechanisms that do exist are relevant only to ministerial staff, leaving the majority of MoPS staff untouched.

Possible Reforms

Options for MoPS Act reform include:⁸

- restructuring legislation to distinguish ministerial staff from other MoPS employees
- including in the Act statements about roles and responsibilities of employees, particularly those employed by ministers
- inserting similar material, but through the Certified Agreement and individual employment contracts
- creating Parliamentary accountability by allowing ministerial staff to appear as witnesses before Parliamentary committees
- inserting a code of conduct to parallel those of the Service Acts
- inserting a code of conduct, but framed instead in terms of what staff should *not* do, as in the British [Code for Special Advisers](#)
- creating a Commissioner (who might or might not be located in the [Australian Public Service Commission](#) (APSC)) to investigate breaches of a MoPS Act Code, or
- giving the existing APSC a role in supporting the staff of parliamentarians (separate from any investigatory role).

Currently the Act draws no distinction between employees of

MPs and of the executive (ministers and parliamentary secretaries).

Reform could involve creation of separate legislative frameworks for the two groups. Two Acts would allow clear distinctions to be drawn between staff of the executive and of the legislature, an issue that persists in creating accountability problems in our political system.

Even without creating independent legislative frameworks, however, the roles and accountability of MoPS staff could be clarified. They could operate under values and codes of conduct similar to those under which the APS operates. There are currently no equivalents in the MoPS Act, but there is no reason this should remain the case. Codes in the MoPS Act would, however, need to be different for ministerial staff and MPs' staff, in order to reflect the great differences between serving the executive and the legislature.

There also remain questions about how adherence to such codes of conduct would be detected or addressed. If a binding code of conduct applied to ministerial staff (in the way that public servants are bound to their Code), getting it enforced could become a counter-productive 'hobby' of the Opposition of the day.

It might help if there was institutional support for the administration of accountability provisions in a revised MoPS Act, even if they were not binding legal provisions. The Public Service Commissioner and Merit Protection Commissioner (both working within the APSC) support both the APS and Parliamentary Service. [The Commission's roles](#) include advising the government on APS matters, supporting implementation of the PS Act, and reviewing actions affecting APS employees. Currently, the Commissioners have no role in relation to MoPS staff. Reforms, however, could create a role for a similar supporting body or person,

either in an advisory role, or also with investigatory powers.

There are thus several ways the MoPS Act could be changed to deal with inadequate staff accountability. One thing seems clear: the current framework needs improvement.

Endnotes

1. Royal Commission on Australian Government Administration, 1976, pp. 261, 263–4.
2. Senate Finance and Public Administration Committee, *Estimates Hearings*, 30 May 2002, p. 410.
3. House of Representatives, *Debates*, 30 May 1984, p. 2501.
4. For a discussion of cases, see Ian Holland, [Accountability of Ministerial Staff?](#) *Research Paper no. 19*, Department of the Parliamentary Library, 2001–02.
5. Senate Select Committee on a Certain Maritime Incident, *Hearings*, [18 April 2002](#), p. 1227.
6. Ann Tiernan, 'Problem or Solution? The Role of Ministerial Staff', in Jenny Fleming and Ian Holland (eds), *Motivating Ministers to Morality*, Ashgate, Aldershot, 2001, pp. 91–103.
7. Dennis Shanahan, 'Anderson in the alien corn', *The Australian*, 17 February 2001.
8. Some of these options have been canvassed elsewhere. See Verona Burgess, 'Accountability: an increasingly vexed question', *Canberra Times*, 21 July 2002; Andrew Podger's evidence to the Senate Select Committee, op. cit., 18 April 2002.

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ISSN 1328-8016