



Australian Parliamentary Service Commissioner

Ms Christine McDonald
Secretary
Standing Committee on Finance and Public Administration
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms McDonald

Inquiry into the Parliamentary Service Amendment Bill 2012

Thank you for your invitation to provide a submission to this inquiry.

The attached table compares the provisions of the Parliamentary Service Amendment Bill 2012 and the Public Service Amendment Bill 2012 and notes the differences between the two bills.

The table has been compiled with the assistance of the Department of Parliamentary Services. This Department has prepared the Drafting Instructions in relation to the Parliamentary Service Bill 2012.

I hope this information will be of assistance to the Committee.

Yours sincerely

Stephen Sedgwick AO
17 December 2012



COMPARISON OF PROVISIONS IN THE PARLIAMENTARY SERVICE AMENDMENT BILL 2012 WITH THE PUBLIC SERVICE AMENDMENT BILL 2012

Note: 'Bill' means the Parliamentary Amendment Bill 2012 and 'PS bill' means the Public Service Amendment Bill 2012

Items in Bill	PS bill item	Sections of Act	Detail and comments
1	1	57	<p>This item expands the roles and responsibilities of Secretaries, generally in the same terms as the PS bill but adapted to reflect the principle that parliamentary departments serve the Parliament independently of the Executive Government. Consistent with this principle, there are also some exceptions:</p> <ul style="list-style-type: none"> • role excludes reference to delivering government programs (para 57(1)(b) of Item 1 of PS bill); • functions exclude APS Secretaries' functions relating to portfolio responsibilities (paras 57(2)(e) and (h) of Item 1 of PS bill). <p>The PS bill revises the provisions for the appointment and termination of appointment of Secretaries in the APS to provide a role for the Governor-General. Parliamentary Service Secretaries are appointed and terminated by the Presiding Officers and the provisions in the current Act remain unchanged.</p>
	2		Item 2 of the PS bill provides for an annual review of the performance of a Secretary in the APS. The Bill does not propose to provide for a similar annual review of performance for Secretaries in the Parliamentary Service.
	3-4		Items 3 and 4 of the PS bill provide for a Secretaries Board. The Bill does not propose to provide for a similar body.
2	5	52	Item 2 expands the current responsibilities of Senior Executive Service employees. The changes substantially replicate Item 5 of the PS bill.
3-4	6-7	37	Item 3 clarifies that a Parliamentary Service SES employee may be given a notice to retire whether or not the employee has reached the minimum retiring age. Item 4 is for consistency in terminology. The changes replicate Items 6 and 7 of the PS bill.
5-7		40	These items add to the functions of the Parliamentary Service Commissioner. They include a specific provision for inquiries into whistleblower reports after notifying the Presiding Officers. The requirement to notify the Presiding Officers is consistent with the current provisions which enable the Commissioner to inquire into

			<p>matters relating to the Parliamentary Service only at the request of the Presiding Officers. Other new provisions, that are broadly consistent with similar provisions in the PS bill, allow for functions to be conferred on the Commissioner by the Act, determination or any other law, and to do anything incidental or conducive to the performance of the Parliamentary Service Commissioner's functions.</p> <p>As is currently the case, the functions of the Parliamentary Service Commissioner and the Public Service Commissioner under the amended provisions would not be identical.</p>
8-9	23 and 24	70	<p>Items 8 and 9 introduce powers for the Parliamentary Service Commissioner and Parliamentary Service Merit Protection Commissioner (MPC) to delegate. These are new provisions and are broadly consistent with item 23 of the PS bill in respect of the Public Service Commissioner and with existing provisions in the <i>Public Service Act 1999</i> (PS Act) in respect of the Merit Protection Commissioner.</p>
	8, 9, 13-15, 21 and 22		<p>Items 8, 9, 13 to 15, 21 and 22 of the PS bill add 'Australian' to the title of the Public Service Commissioner. This change is not proposed for the Parliamentary Service Commissioner.</p>
	11,12		<p>Items 11 to 12 of the PS bill are proposed amendments that define a 'special review' and a 'systems review'. These reviews relate to the Public Service Commissioner's functions only and are not replicated in the Bill.</p>
	16		<p>Item 16 of the PS bill specifies revised functions for the Public Service Commissioner. As indicated above the functions of the Parliamentary Service Commissioner and the Public Service Commissioner are not identical.</p>
	17-20		<p>Items 17 to 20 of the PS bill are consequential amendments that relate to the Public Service Commissioner's functions.</p>
	25-26		<p>Items 25 and 26 of the PS bill provide for the appointment and termination of appointment of Special Commissioners and their terms and conditions of appointment. Special Commissioners would assist the Public Service Commissioner with 'systems' reviews and 'special' reviews. As indicated above, these reviews relate to the Public Service Commissioner's functions only and are not replicated in the Bill.</p>
11	27	7	<p>This proposed amendment defines the –Parliamentary Service Employment Principles is consistent with the equivalent provision</p>

			in the PS bill implications.
10, 12-14		7 and 9	Item 14 adds a statement about the role of the Parliamentary Service. A similar statement to this effect is in the current Parliamentary Service Values (paragraph 10(1)(a) which will not be replicated in proposed new Values. Items 10 and 12 are changes consequential to item 14.
15	28	10 and new 10A	<p>Item 15 introduces a revised and shorter set of Parliamentary Service Values and a new set of Parliamentary Service Employment Principles.</p> <p>The revised Values are consistent with the Values proposed in item 28 of the PS bill with variations to suit the parliamentary context. Where considered appropriate by the Presiding Officers consistency has also been maintained with existing Parliamentary Service Values.</p> <p>The proposed Employment Principles replicate the proposed APS Employment Principles.</p>
16	29	11	The proposed amendment is largely aimed at replicating the change to s11 of the Public Service Act which makes Commissioner's directions on each of the Values discretionary, rather than mandatory (item 29 of the PS bill).
	30		Item 30 of the PS bill adds a note cross-referencing to general provisions about the Public Service Commissioner's Directions.
17-21	31-35	Various	These are proposed amendments relating to the revised Parliamentary Values and the Parliamentary Employment Principles which are consequential only. They essentially replicate items 31 to 35 of the PS bill.
22	10	7	Item 22 inserts a definition of a former Parliamentary Service employee and is consistent with item 10 of the PS bill.
	36		Item 36 of the PS bill is not applicable to the Parliamentary Service as it relates to Heads of Mission.
23	37	13	The proposed change replicates item 37 of the PS bill which concerns the Code of Conduct.
24	38	13	. The proposed change is consistent with item 38 of the PS bill which concerns the Code of Conduct and a requirement to uphold the integrity and good reputation of an employee's Department/agency as well as the Parliamentary Service/APS.

25-26	39-40	14	These items substantially replicate items 39 and 40 of the PS bill and concern the application of the Code of Conduct to statutory office holders.
27-29	41-43	15	These provisions partly replicate provisions in the PS bill relating to sanctions in circumstances where the Merit Protection Commissioner or the Public Service Commissioner determine that an employee or former employee has breached the Code of Conduct. They only partly replicate the provisions owing to differences between the functions of the Parliamentary Service Commissioner and the Public Service Commissioner.
30	44	15	This item substantially replicates item 44 of the PS bill and allows action to be taken in relation to Parliamentary Service employees who have, before engagement in the Parliamentary Service, provided false or misleading information, or otherwise failed to act with honesty or integrity in connection with their engagement.
31	45	20	This item is consistent with the PS bill (in respect of agency heads and Ministers) and concerns limitations on the ability of the Presiding Officers to direct Secretaries in respect of Code of Conduct or whistleblowing matters..
32	46	48	Item 32 is consequential on item 33 below and is consistent with the PS bill.
33	47	New s48A	Item 33 proposes a power for the MPC to conduct a Code of Conduct investigation at the request of a Secretary and establishes supporting provisions. This item is consistent with item 47 of the PS bill..
34-36	48-50	16	The proposed amendments replicate the PS bill and concern headings and formatting of the whistleblowing provisions. .
	51		Item 51 of the PS bill rectifies a typographical error which is not required in the Bill.
37	52	16	The proposed amendment substantially replicates item 52 of the PS bill. The provision concerns procedures for whistleblowing reports and stipulates that the regulations may prescribe circumstances in which inquiries may be declined or discontinued. Item 37 also extends the application of s16 to the Parliamentary Librarian as if he or she were a Parliamentary Service employee.
38-39	53-54	48	The proposed amendments substantially replicate the provisions of the PS bill and give the Merit Protection Commissioner equivalent powers to those currently available the Public Service

			Commissioner for investigating whistleblowing reports.
40	55	33	The proposed amendment substantially replicates the equivalent provision in the PS bill and allows the MPC to review a Parliamentary Service action personally. Currently, only a person or a committee nominated by the MPC may conduct such a review.
	56		Item 56 of the PS bill extends the definition of 'APS action' to include an action by the Public Service Commissioner under proposed new PS Act s 41B (item 16 of the PS bill). No equivalent of PS Act s41B is proposed for the Parliamentary Service Commissioner. Thus, no change is required for the definition of 'Parliamentary Service action'
41-43	61-63	22 and 29	These are relatively minor changes replicating changes proposed by items 61 to 63 of the PS bill and concern non-ongoing employment.
	64-69		Items 64 to 69 of the PS bill relate to Machinery of Government provisions under the Public Service Act which have no Parliamentary Service counterparts.
44-45	70-71	New s65AA to s65AE and s68	<p>The proposed amendments are consistent with items 70 and 71 of the PS bill.</p> <p>Item 44 introduces new provisions for the protection of information relating to the Commissioner's and MPC's functions.</p> <p>Item 45 repeals current s68 which is made redundant by item 44.</p>
46	72	New s70A	<p>The proposed amendment is largely consistent with item 72 of the PS bill This item inserts provisions dealing with immunity from civil proceedings.</p> <p>The Bill contains no provisions for immunity from suit for a delegate of the Parliamentary Service Merit Protection Commissioner.</p>
	73		Item 73 of the PS bill amends the definition of the Public Service Commissioner's Directions which is not replicated in the Parliamentary Service Act.
47	74	New 11B and C	This item inserts new sections 11B and 11C dealing with Commissioner's advice and Presiding Officers' determinations about employment matters. The provisions are similar to new sections 11A and 11B of the Public Service Act to be introduced by item 74 of the PS bill. The provisions are framed in a way that is consistent with current provisions of the Act.
	75		Item 75 of the PS bill amends a provision of the Public Service Act

			that has no direct counterpart in the Parliamentary Service Act.
48-49		20	Section 20 (general directions to Secretaries by Presiding Officers) has no direct APS counterpart. Item 48 deletes unnecessary words and item 49 clarifies an aspect of the application of the Legislative Instruments Act. There is no equivalent provision in the PS bill.
50-53	76, 78, 79	20, 23 and 24	These items clarify aspects of the application of the Legislative Instruments Act. They are consistent with related changes in the PS bill (items 76, 78 and 79).
	77		
	80, 81-83		Items 80 and 81 to 83 of the PS bill are not replicated in the Bill. They concern the movement of provisions from regulations to the Public Service Commissioner's Directions.
54-55	84-85	36 and 38	The proposed amendments replicate items 84 and 85 of the PS bill and relate to the determination-making power of the Presiding Officers.
	86		Item 86 of the PS bill relates to the Public Service Commissioner's Directions in relation to the Classification Rules and their status as legislative instruments. There is no equivalent provision in the Bill.
56-67		Various	The proposed amendments deal with appointments to statutory offices in the Parliamentary Service.
68		7	Item 68 extends the definition of 'Parliamentary Service employee' to include persons moved to the Parliamentary Service under s72 of the Public Service Act which deals with Machinery of Government changes. The revised definition is consistent with the existing definition of 'APS employee' in the Public Service Act.
	87		Item 87 of the PS bill deletes an unnecessary reference in the Public Service Act which is not in the Parliamentary Service Act.
69	77, 88	23	Item 69 is to clarify that a Secretary may reduce the classification of an employee in specified circumstances. The proposed amendment substantially replicates item 77 and 88 of the PS bill.
70-75	89-94	Various	These proposed minor amendments largely concern terms and conditions of employees' employment and termination of employment. . They substantially replicate items 89 to 94 of the PS

			bill.
76		31	Item 76 extends to the Parliamentary Librarian the provisions for forfeiture of non-Commonwealth remuneration for performing the duties of a Parliamentary Service employee. The provision rectifies a drafting omission from the Act. As amended, s31 is consistent with s31 of the PS Act.
77-78		38E	The proposed amendments concern the Parliamentary Librarian and are consistent with items 70 to 75 mentioned above.
79	95	40	This item enables the Commissioner to engage consultants. It replicates item 95 of the PS bill.
80, 83		41, 48	These items omit a reference to a repealed section of the <i>Auditor-General Act 1997</i> already deleted from the Public Service Act.
81-82		44	The proposed amendments are consistent with items 70 to 75 and other items mentioned above.
84	96	48	This item enables the Merit Protection Commissioner to engage consultants. It replicates item 96 of the PS bill.
85-88		51, 63	The proposed amendments are consistent with items 70 to 75 and other items mentioned above.
	97		Item 97 of the PS bill corrects a drafting error in the Public Service Act concerning the Merit Protection Commissioner's Annual Report.
89	98	66	This item omits reference to "of more than \$100,000" from the amount of special payments the Presiding Officers may authorise in certain circumstances and replaces it with a reference to the maximum amount payable under the equivalent Public Service Regulation. This item replicates item 98 of the PS bill.
90		71	This item is to confirm that, in accordance with the <i>Legislative Instruments Act 2003</i> , determinations made by the Presiding Officers under s71 are legislative instruments.
91	99	71	This item increases the amount of penalty units for offences against the determinations to be consistent with the usual restriction in accordance with the Criminal Law Guide published by the Attorney-General's Department. It replicates item 99 of the PS bill.
92		71	This item repeals subsection 71(6) as a consequence of item 90 above.