



PARLIAMENT of AUSTRALIA

17 DEC 2012

Ms Christine McDonald
Secretary
Senate Finance and Public Administration Legislation Committee
Parliament House
CANBERRA ACT 2600



Dear Ms McDonald

Thank you for your letters of 30 November 2012 inviting submissions to the committee's inquiry into the Parliamentary Service Amendment Bill 2012.

The attached joint submission provides a brief overview of the bill and a comparison of the provisions in Schedule 1 of the bill with the Public Service Amendment Bill 2012. The bill was jointly developed by the parliamentary departments, with drafting by the Office of Parliamentary Counsel, and with consultation with the Parliamentary Service Commissioner.

We have provided a copy of the submission to our colleague, the Clerk of the Senate, Dr Laing.

Yours sincerely

Bernard Wright
Clerk of the House

Carol Mills
Secretary, Department of
Parliamentary Services

Phil Bowen
Parliamentary Budget Officer

Senate Finance and Public Administration Legislation Committee

Inquiry into the Parliamentary Service Amendment Bill 2012

Submission by the Department of the House of Representatives, the Department of Parliamentary Services and the Parliamentary Budget Officer

Overview of Bill

The Parliamentary Service Amendment Bill 2012 (the Bill) amends the *Parliamentary Service Act 1999* primarily to reflect some proposed changes to the *Public Service Act 1999* contained in the Public Service Amendment Bill 2012 (the PS Bill). The main purpose of the Bill is to ensure that the legislation underpinning the two services continues to be aligned as far as possible. The amendments proposed for the Public Service are generally applied in the Bill except where not applicable, or where modification is required reflecting the differing roles and scale of the two services.

The Bill was jointly developed by the parliamentary departments, with drafting by the Office of Parliamentary Counsel, and with consultation with the Parliamentary Service Commissioner.

The main provisions of the Bill, generally following their sequence in the Bill, are to:

- expand the roles and responsibilities of a Secretary in the Parliamentary Service, including provision for a stewardship role across the Parliamentary Service
- amend the provisions relating to the Senior Executive Service, to include strategic leadership that contributes to an effective and cohesive Parliamentary Service
- add an overarching statement about the purpose of the Parliamentary Service
- amend provisions relating to the Parliamentary Service Commissioner—including to provide for the Commissioner to undertake investigations into whistleblower reports after notifying the Presiding Officers, and to enable the Commissioner to delegate his or her powers in relation to inquiries into whistleblower reports in limited circumstances
- revise the Parliamentary Service Values and introduce a new set of Parliamentary Service Employment Principles
- make a number of amendments relating to the Code of Conduct including amendment of the Parliamentary Merit Protection Commissioner's (MPC's) functions to allow the MPC to determine whether there has been a breach of the Code of Conduct when requested to do so by a Secretary and with the consent of the employee concerned
- establish procedures in the Act for making and dealing with a whistleblower report
- broaden the provisions for the use of 'confidential information' by the Parliamentary Service Commissioner and the MPC, and provide protections for a Secretary, Statutory Office holder or employee who provides information to the Commissioner or the MPC
- move the provisions relating to immunity from suit from delegated legislation to the Act
- amend relevant provisions to reflect the requirements of the *Legislative Instruments Act 2003*.

There are also several additional items providing for the following:

- the MPC to delegate his or her powers to specified Parliamentary Service or Australian Public Service employees
- Presiding Officers' determinations to vary the scope or application of the Parliamentary Service Values and Parliamentary Service Employment Principles
- the updating of references relating to acting appointments to statutory offices under the Act;
- provisions enabling the Parliamentary Service Commissioner and the MPC to engage consultants; and
- a number of miscellaneous amendments to update, clarify and strengthen existing provisions, and remove ambiguity.

Comparison of Provisions in Schedule 1 of the Parliamentary Service Amendment Bill 2012 (the Bill) with the Public Service Amendment Bill 2012 (PS Bill)

Bill item number	PS Bill item number	Section of Parliamentary Service Act	Detail and comments
1	1	57	<p>Item 1 expands the roles and responsibilities of secretaries in the Parliamentary Service, generally in similar terms to the corresponding item in the PS Bill, with the following exceptions:</p> <ul style="list-style-type: none"> • there is not provision for delivering government programs (PS Bill, item 1, proposed paragraph 57(1)(b)); • there is not provision for the APS secretaries' responsibilities in relation to portfolios (PS Bill, item 1, proposed paragraphs 57(2)(e) and (h)). <p>These exceptions reflect the different roles and responsibilities of secretaries in the two services.</p> <p>The PS Bill amends the provisions for the appointment and termination of APS secretaries.</p> <p>The Bill does not change the provisions for the appointment and termination of Parliamentary Service secretaries.</p>
N/A	2	N/A	<p>Item 2 of the PS Bill introduces a new requirement for an annual review of the performance of a Secretary to be conducted in accordance with a framework established by the Secretary of the Department of the Prime Minister and Cabinet (DPMC) and the Public Service Commissioner (PSC) (PS Bill, item 2, proposed section 61A).</p> <p>Similar provision is not proposed for the Parliamentary Service.</p>
N/A	3-4	N/A	<p>Items 3 and 4 of the PS Bill establish a Secretaries Board to replace the existing Management Advisory Committee (item 4). The Secretaries Board would consist of the Secretary of the DPMC as Chair, all other secretaries, the PSC, and others nominated by the Secretary of the DPMC (item 4, proposed subsection 64(2)). It would have a range of APS stewardship, leadership and development functions (item 4, proposed subsection 64 (3)).</p> <p>Similar provision is not proposed for the Parliamentary Service.</p>
2	5	52	<p>Item 2 further defines and expands the current responsibilities of Senior Executive Service employees,</p>

			in similar terms to Item 5 in 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 reflect items 6 and 7 in the PS Bill.
5-7	16	40	<p>Item 16 in the PS Bill strengthens the role of the PSC in relation to the Australian Public Service, adding a number of new functions. These include the power to undertake systems reviews or special reviews, at the direction of the Prime Minister. Much of the new framework for the PSC is not required/ appropriate for the Parliamentary Service Commissioner.</p> <p>Items 5 - 7 propose to provide for the Parliamentary Service Commissioner to inquire into whistleblower reports after notifying the Presiding Officers. The requirement to notify the Presiding Officers is consistent with provisions in the current Act which enable the Commissioner to inquire into matters only at the request of the Presiding Officers.</p> <p>The provisions of item 5 are in similar terms to proposed paragraphs 41 (2) (o), (p), and (r) in item 16 of the PS Bill.</p>
8-9	N/A	70	Items 8 and 9 introduce powers for the Parliamentary Service Commissioner and Parliamentary Service Merit Protection Commissioner (MPC) to delegate certain powers and functions. These are new provisions which are consistent with relevant Public Service Act (PS Act) provisions.
N/A	8, 9, 13-15	N/A	Items 8, 9 and 13 to 15 of the PS Bill add 'Australian' to the title of the Public Service Commissioner. This change is not proposed for the Parliamentary Service Commissioner.
22	10	7	Item 10 of the PS Bill inserts a definition (of <i>former APS employee</i>). Item 22 of the Bill inserts the corresponding definition (of <i>former Parliamentary Service employee</i>).
N/A	11,12	N/A	Items 11 and 12 insert definitions of 'special review' and 'systems review' respectively. This change is consequential on the provision for special and systems reviews in the PS Bill.
N/A	17-22	N/A	Items 17 to 22 of the PS Bill are consequential on

			proposed changes to the Public Service Commissioner's functions and title.
N/A	23, 24	N/A	<p>Items 23 and 24 of the PS Bill enable the Public Service Commissioner to delegate specified powers or functions (under section 38 or proposed paragraph 41(2) (m), (n) or (o)) to former senior officials, as defined.</p> <p>Under section 38 of the Public Service Act, a certificate of the PSC is required for termination of SES employees. It is not proposed that the Parliamentary Service Commissioner be able to delegate this function.</p> <p>Of the other PSC powers listed, the only similar power held by the Parliamentary Service Commissioner is that of inquiry into whistleblower reports. Item 8 of the Parliamentary Service Bill will enable the Parliamentary Service Commissioner to delegate this power to former senior officials, as defined.</p>
N/A	25-26	N/A	Items 25 and 26 of the PS Bill make provision for Special Commissioners appointed by the Governor-General to assist the PSC in undertaking a specified systems review or special review, or a part of such a review. Such reviews are not proposed for the Parliamentary Service.
11	27	7	These items insert definitions of <i>Parliamentary Service Employment Principles</i> and <i>APS Employment Principles</i> , respectively, consequential on the provision for Employment Principles in the bills.
10, 12-14	N/A	7 and 9	Item 14 adds a statement about the role of the Parliamentary Service in serving the Parliament. Items 10, 12 and 13 are consequential changes.
15	28	10 and new 10A	<p>Item 15 revises the Parliamentary Service Values and introduces a set of Parliamentary Service Employment Principles.</p> <p>The revised Values reflect the revised APS Values in item 28 of the PS bill, with some amendment to reflect the different roles of the two services.</p> <p>The Parliamentary Service Employment Principles reflect the proposed APS Employment Principles.</p>
16	29	11 and new 11A	Section 11 of the current Act requires the Presiding Officers to issue determinations in relation to each of the Parliamentary Service Values, having regard to

			<p>advice given by the Parliamentary Service Commissioner. (This differs from section 11 of the Public Service Act which requires the Public Service Commissioner to issue directions on each of the APS Values).</p> <p>Item 16 amends section 11 and introduces a new section 11A to enable (rather than require) the Parliamentary Service Commissioner to give advice to the Presiding Officers on the Values and to enable (rather than require) the Presiding Officers to make determinations on the Values. A current requirement for the Presiding Officers to have the Commissioner's advice tabled, is maintained.</p> <p>The change reflects item 29 in the PS Bill, which proposes to make the Commissioner's directions on the Values discretionary, rather than mandatory. Item 16 will also allow Presiding Officers' determinations to vary the scope or application of the Parliamentary Service Values and Parliamentary Service Employment Principles (eg, to establish streamlined recruitment arrangements for people with disabilities); this change will reflect an existing power of the Public Service Commissioner.</p>
N/A	30	N/A	Item 30 of the PS Bill is a cross-reference not required for the Parliamentary Service Act.
17-21	31-35	Various	These are consequential changes to the proposed changes relating to the Values/ Employment Principles. They reflect items 31 to 35 of the PS Bill.
22	10	7	These items insert definitions of <i>former Parliamentary Service employee</i> and <i>former APS employee</i> , respectively, and are consequential on a proposed change relating to the Code of Conduct.
N/A	36	N/A	Item 36 of the PS bill is not applicable to the Parliamentary Service (it relates to overseas Heads of Mission).
23	37	13	Item 23 amends the Code of Conduct so that the requirements in the first four elements of the Code (in subsections 13 (1) to (4)) apply in 'connection with', rather than in 'the course of', employment. The change reflects item 37 of the PS Bill.
24	38	13	Item 24 amends section 13 to require a Parliamentary Service employee to behave in a way that upholds the integrity and good reputation of his or her

			Department, as well as the Parliamentary Service, as required by the current provision. The change reflects item 38 of the PS Bill.
25-26	39-40	14	These items clarify that statutory office holders are bound by the Code of Conduct, in addition to Secretaries/ Agency Heads, respectively, as currently provided. They reflect items 39 and 40 of the PS Bill.
27-29	41-43	15	These are consequential changes to proposed changes relating to the Code of Conduct.
30	44	15	This item allows action to be taken against a Parliamentary Service employee or a former Parliamentary Service employee who, before engagement, provided false or misleading information, or wilfully failed to disclose relevant information, or otherwise failed to act with honesty or integrity in connection with the person's engagement. It requires procedures to be put into place for determining whether such an employee or former has breached the Code of Conduct. The procedures must comply with basic procedural requirements set out in directions issued by the Commissioner. The item reflects item 44 of the PS Bill.
31	45	20	Item 31 provides that a direction cannot be given to a Secretary in relation to the exercise of powers under section 15 (relating to breaches of the Code of Conduct) and section 16 (relating to whistleblower reports) in relation to particular individuals, in addition to the existing provisions under Part 4 for limitations on Presiding Officer (s) directions. The item reflects item 45 in the PS Bill.
32, 33	46, 47	48, new section 48A	Items 32 and 33 confer a function for the MPC to conduct a Code of Conduct inquiry at the request of a Secretary, if the MPC considers it would be appropriate to do so, and if the Parliamentary Service employee, or former employee, agrees. Item 33 also requires the MPC to establish procedures for inquiry, which must comply with procedural requirements prescribed by the determinations, have due regard to procedural fairness, and be publicly available. The procedures could vary for different categories of Parliamentary Service employees or former employees (proposed subsection 48A(3)). The items reflect items 46 and 47 of the PS Bill.
34-36	48-50	16	These are consequential changes to proposed changes relating to whistleblower reports.

N/A	51	N/A	Item 51 of the PS bill corrects a typographical error.
37 - 39	52 - 54	16 and 48	<p>The Parliamentary Service Act currently provides protection for whistleblowers in the Parliamentary Service (in section 16). Parliamentary Service Determination 2003/2 provides the current framework for handling whistleblower reports.</p> <p>Reflecting item 52 of the PS Bill, items 37 – 39 insert into the Act:</p> <ul style="list-style-type: none"> • elements of the procedural framework in the determinations; and • a determination making power to prescribe procedures for an employee to make a whistleblower report of an alleged breach of the code of conduct to the Parliamentary Service Commissioner or the MPC and for dealing with whistleblower reports, and to allow some discretion for the Commissioner, the MPC or a Secretary to decline to conduct a whistleblower inquiry or to discontinue an inquiry. <p>Item 37 also extends the application of section 16 to the Parliamentary Librarian as if he or she were a Parliamentary Service employee.</p>
40	55	33	This item allows the MPC to review a Parliamentary Service action personally. This will be in addition to current arrangements where only a person or a committee nominated by the MPC may conduct such a review. This item reflects item 55 of the PS Bill.
N/A	56	48	Item 56 of the PS Bill extends the definition of 'APS action' to include action by the Public Service Commissioner under proposed new PS Act section 41B (<i>Inquiry into alleged breach of Code of Conduct by APS employee or former APS employee</i>)(inserted by item 16 of the PS Bill). As no corresponding new function is proposed for the Parliamentary Service Commissioner, no change is required to the definition of 'Parliamentary Service action'.
41-43	61-63 ¹	22 and 29	These are minor technical changes relating to non-ongoing employment. They reflect changes proposed by items 61 to 63 of the PS Bill.
N/A	64-69	N/A	Items 64 to 69 of the PS Bill relate to Machinery of Government provisions under the Public Service Act

¹ Items 57 to 60 of the PS Bill were omitted by amendments made in the House of Representatives.

			which have no Parliamentary Service counterpart.
44-45	70-71	New sections 65AA, AB, AC, AD and AE and section 68	Item 44 introduces new provisions for the protection of information relating to the Parliamentary Service Commissioner's and the MPC's functions. Item 45 repeals current section 68 which is made redundant by item 44. The changes reflect items 70 and 71 of the PS Bill.
46	72	New section 70A	This item moves the immunity from suit provisions from the determinations to the Act, and provides consistency in the functions which attract immunity. It reflects item 72 of the PS Bill.
N/A	73	N/A	Item 73 of the PS Bill makes a definition change (relating to definition of <i>Commissioner's Directions</i>) not required in the Parliamentary Service Act.
47	74	New sections 11B and 11C	This item inserts new sections 11B and 11C relating to the Parliamentary Service Commissioner's advice, and determinations by the Presiding Officers, about employment matters. The provisions are similar in effect to new section 11A of the Public Service Act to be inserted by item 74 of the PS bill, with the exception (mentioned in relation to item 16 above) that the Commissioner's role is to provide advice to the Presiding Officers rather than to issue directions.
N/A	75	N/A	Item 75 of the PS bill provides that a direction issued under subsection 21(1) (general directions in writing by the Prime Minister to Agency heads) is a legislative instrument. There is no direct counterpart in the Parliamentary Service Act.
48-49	N/A	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.
50-53	76, 78, 79	23 and 24	These items clarify aspects of the application of the Legislative Instruments Act. They are technical amendments, consistent with related changes in the PS bill (items 76, 78 and 79)
N/A	80, 81-83	N/A	Items 80 and 81 to 83 of the PS Bill are not relevant to the corresponding Parliamentary Service provisions.
54-55	84-85	36 and 38	These are consequential changes to the proposed introduction of the Parliamentary Service Commissioner's power to provide guidance to the

			Presiding Officers about employment matters, including the SES (item 47). Item 54 repeals section 36 (Commissioner's guidelines on SES matters). Item 55 is consequential on the repeal of section 36 by item 54 and the insertion of proposed section 11C by item 47. It ensures that paragraph 38(a) will continue to refer to the correct instrument setting out requirements about employment matters. The items reflect items 84 and 85 of the PS Bill.
N/A	86	N/A	Item 86 of the PS Bill relates to applications of the PSC's Directions that are not available to the Parliamentary Service Commissioner. The only Parliamentary Service Commissioner's Directions under the Parliamentary Service Act relate to procedural requirements for the determination of breaches of the Code of Conduct.
56-67	N/A	Various	These items update references to acting appointments to statutory offices under the Act. Amendments similar to items 56 to 67 have already be made for the APS.
68	N/A	7	Item 68 extends the definition of 'Parliamentary Service employee' to include persons determined by the PSC under section 72 of the Public Service Act to have ceased to be APS employees. (Section 72 deals with Machinery of Government changes.) The revised definition is consistent with the existing definition of 'APS employee' in the Public Service Act.
N/A	87	N/a	Item 87 of the PS Bill deletes a reference not included in the Parliamentary Service Act.
69	88	23	Item 69 is to clarify that a Secretary may reduce the classification of an employee in specified circumstances. It reflects item 88 of the PS Bill.
70, 71, 72, 73, 77, 78, 81, 82, 85 - 88	89-92	Various	These are minor technical amendments (terminology and reference changes). They reflect items 89 to 92 of the PS Bill.
74, 75	93, 94	29	These items add a Note at the end of subsection 29(1), indicating that determinations made by the Presiding Officers may set out procedures to be followed in terminating the employment of a Parliamentary Service employee. The items reflect items 93 and 94 in the PS Bill.
76	N/A	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, section 31 is consistent with the relevant provisions in the PS Act (section 31).
79	95	40	This item enables the Commissioner to engage consultants. It reflects item 95 of the PS Bill.
80, 83	N/A	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.
84	96	48	This item enables the MPC to engage consultants. It reflects item 96 of the PS Bill.
N/A	97	N/A	Item 97 of the PS Bill corrects a typographical error.
89	98	66	This item omits the reference to 'of more than \$100,000' in existing subsection 66(4) and inserts a reference to the amount prescribed by regulations made for the purposes of subsection 73(4) of the Public Service Act. Existing section 66 allows the Presiding Officers to authorise payments in special circumstances relating to, or arising out of, a person's employment by the Commonwealth. The amendment will ensure that the maximum amount payable under each Act is consistent. The item reflects item 98 of the PS Bill.
90	N/A	71	This item is to confirm that, in accordance with the <i>Legislative Instruments Act 2003</i> , determinations made by the Presiding Officers under section 71 are legislative instruments.
91	99	71	This item increases the maximum number of penalty units for offences against the Presiding Officers' determinations to be consistent with the provisions in the <i>Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers</i> , published by the Attorney-General's Department. It reflects item 99 of the PS Bill.
92	N/A	71	This item repeals subsection 71(6) as a consequence of item 90 above.