





# **Members of Parliament (Staff) Amendment Act 2023**

**No. 71, 2023**

**An Act to amend the *Members of Parliament (Staff) Act 1984*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Members of Parliament (Staff) Amendment Act 2023

No. 71, 2023

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## **An Act to amend the *Members of Parliament (Staff) Act 1984*, and for related purposes**

[Assented to 19 September 2023]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Members of Parliament (Staff) Amendment Act 2023*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	19 September 2023
2. Schedule 1	The 28th day after this Act receives the Royal Assent.	17 October 2023
3. Schedule 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Parliamentary Workplace Support Service Act 2023</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	17 October 2023 (paragraph (a) applies)
4. Schedule 3	The 28th day after this Act receives the Royal Assent.	17 October 2023
5. Schedule 4, Part 1	The 28th day after this Act receives the Royal Assent.	17 October 2023
6. Schedule 4, item 25	The later of: (a) the start of the 28th day after this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>National Reconstruction Fund Corporation Act 2023</i> .	17 October 2023 (paragraph (a) applies)

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Main amendments

### *Members of Parliament (Staff) Act 1984*

#### 1 After section 2

Insert:

##### 2A Objects

The objects of this Act are the following:

- (a) to establish a framework for employing people to assist parliamentarians and office-holders that supports a safe, respectful and accountable workplace;
- (b) to set out certain rights and obligations of employees;
- (c) to set out certain other powers, functions and responsibilities in relation to employment under this Act.

##### 2B Simplified outline of this Act

This Act enables parliamentarians to employ people on behalf of the Commonwealth and deals with certain terms and conditions of employment. All parliamentarians can employ electorate employees. Parliamentarians who occupy certain positions and former Prime Ministers can also employ personal employees.

There are employment principles that set out expectations for the workplace provided to people employed under this Act.

#### 2 Section 3

Insert:

*electorate employee* means a person employed by a parliamentarian under subsection 11(1).

*employing individual*: see section 3AA.

**3 Section 3 (at the end of paragraph (a) of the definition of *office-holder*)**

Add “or”.

**4 Section 3 (paragraphs (aa) and (b) of the definition of *office-holder*)**

Repeal the paragraphs, substitute:

- (b) a person, not being a parliamentarian, who held the office of Prime Minister; or
- (c) a parliamentarian in respect of whom a determination under section 4 is in force.

**5 Section 3**

Insert:

*parliamentarian* means a senator or a member of the House of Representatives.

**6 Section 3 (definition of *pensioner*)**

Repeal the definition.

**7 Section 3**

Insert:

*personal employee* means a personal employee (Ministerial) or a personal employee (non-Ministerial).

*personal employee (Ministerial)* means a person employed by a Minister under subsection 11(2).

*personal employee (non-Ministerial)* means a person employed by an office-holder other than a Minister under subsection 11(3).

**8 Section 3 (at the end of paragraphs (a), (b), (c) and (d) of the definition of *relevant office*)**

Add “or”.

**9 Section 3 (definition of *relevant Secretary*)**

Repeal the definition.

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## 10 Section 3

Insert:

**workplace** means a place where work is carried out by persons employed under this Act and includes any place where an employee goes, or is likely to be, while at work.

## 11 After section 3

Insert:

### 3AA Definition of *employing individual*

- (1) The **employing individual**, for a person employed under this Act, is the parliamentarian or office-holder who, on behalf of the Commonwealth, employed the person under section 11.
- (2) A parliamentarian ceases to be an employing individual if they cease to be a parliamentarian, unless they continue to be an office-holder.
- (3) An office-holder ceases to be an employing individual if they cease to be an office-holder and are not also a parliamentarian.

## 12 At the end of Part I

Add:

### 4 Determination that parliamentarian may employ personal staff

- (1) The Prime Minister may, in writing, determine that, having regard to the parliamentary duties of a parliamentarian, the parliamentarian may employ personal employees under subsection 11(3).

Note: The determination has the effect of making the parliamentarian an office-holder (see paragraph (c) of the definition of **office-holder** in section 3). Office-holders may employ personal employees (non-Ministerial) under subsection 11(3).

- (2) A determination made under subsection (1) is not a legislative instrument.

### **13 Parts II, III and IV**

Repeal the Parts, substitute:

## **Part II—Principles, roles and responsibilities**

### **5 Simplified outline of this Part**

This Part sets out employment principles which establish expectations for the workplace in relation to employment under this Act.

This Part also describes roles and responsibilities in relation to employment under this Act.

With one exception (requiring recruitment to be based on capability), a description in this Part does not create a role or responsibility, but is intended to provide an overview of roles and responsibilities created elsewhere in this Act or by other laws.

### **6 Employment principles**

The workplace for people employed under this Act:

- (a) is safe and free from all forms of bullying and harassment;  
and
- (b) is free from discrimination and fosters diversity; and
- (c) is one in which decisions relating to employment are based on capability; and
- (d) is one in which parliamentarians, office-holders and employees foster a culture of professionalism and integrity;  
and
- (e) requires effective performance from each employee against expectations defined by the parliamentarian or office-holder;  
and
- (f) supports the training and professional development of all employees (including those with managerial responsibilities);  
and

- (g) facilitates consultation with employees about matters that affect the workplace.

## **7 Roles of parliamentarians, office-holders and Prime Minister under this Act**

- (1) This section describes the role of parliamentarians, office-holders and the Prime Minister under this Act.

### *Parliamentarians and office-holders*

- (2) Parliamentarians and office-holders have powers to employ people on behalf of the Commonwealth, to assist them in carrying out their duties (see section 11).
- (3) Parliamentarians and office-holders are responsible for the day-to-day management of their employees. Among other things they:
  - (a) make decisions about who to employ and enter into employment agreements (see section 11); and
  - (b) have powers to terminate or suspend employment (see sections 16 and 18).

### *The Prime Minister*

- (4) The Prime Minister can:
  - (a) make determinations that affect what kind of employees a parliamentarian may employ (see section 4); and
  - (b) approve arrangements and determine conditions that affect how parliamentarians and office-holders can exercise their powers to employ (including determining how many employees parliamentarians and office-holders may have) (see section 12); and
  - (c) make determinations that vary some terms and conditions of employment (see section 13).

## **8 Responsibilities of parliamentarians and office-holders**

- (1) This section:
    - (a) describes certain responsibilities of parliamentarians and office-holders under other laws (see subsection (2)); and
-

- 
- (b) creates a responsibility that parliamentarians and office-holders are required to comply with (see subsection (3)).

*Compliance with workplace laws*

- (2) Parliamentarians and office-holders have obligations under other Australian laws. Some of the key laws that impose obligations are the following:
  - (a) the *Age Discrimination Act 2004*;
  - (b) the *Disability Discrimination Act 1992*;
  - (c) the *Fair Work Act 2009*;
  - (d) the *Racial Discrimination Act 1975*;
  - (e) the *Sex Discrimination Act 1984*;
  - (f) the *Work Health and Safety Act 2011*.

*Recruitment to be based on capability*

- (3) A parliamentarian or office-holder must, before employing a person to perform a particular role, assess whether the person has the capability to perform the role.

## **9 Responsibilities of employees**

- (1) This section describes certain responsibilities of persons employed under this Act.

*Compliance with workplace laws*

- (2) Employees have obligations under other Australian laws. Some of the key laws that impose obligations are the following:
  - (a) the *Age Discrimination Act 2004*;
  - (b) the *Disability Discrimination Act 1992*;
  - (c) the *Fair Work Act 2009*;
  - (d) the *Racial Discrimination Act 1975*;
  - (e) the *Sex Discrimination Act 1984*;
  - (f) the *Work Health and Safety Act 2011*.

*Authorisations*

- (3) When exercising a function or power under an authorisation, employees must comply with any directions given by the person authorising the exercise of the function or power.

Note: See section 31 (powers may be exercised by authorised person).

## Part III—Employment arrangements

### 10 Simplified outline of this Part

Parliamentarians and office-holders can employ people to assist them to carry out their duties.

Parliamentarians and office-holders can suspend and terminate the employment of their employees, and in certain circumstances the termination of employment is automatic.

The power to employ, and the terms and conditions of employment, may be affected by arrangements and determinations made by the Prime Minister under this Part.

### 11 Employment of electorate employees and personal employees

*Electorate employees*

- (1) A parliamentarian may, on behalf of the Commonwealth, employ a person, under a written agreement, as an electorate employee.

Note: The power to employ a person under this subsection is subject to section 12.

*Personal employees (Ministerial)*

- (2) A Minister may, on behalf of the Commonwealth, employ a person, under a written agreement, as a personal employee (Ministerial).

Note 1: The power to employ a person under this subsection is subject to section 12.

Note 2: A person who is both a Minister and a parliamentarian may employ persons under both subsections (1) and (2).

*Personal employees (non-Ministerial)*

- (3) An office-holder other than a Minister may, on behalf of the Commonwealth, employ a person, under a written agreement, as a personal employee (non-Ministerial).

Note 1: The power to employ a person under this subsection is subject to section 12.

Note 2: A person who is both an office-holder other than a Minister and a parliamentarian may employ persons under both subsections (1) and (3).

## **12 Arrangements and conditions affecting power to employ under section 11**

- (1) A power to employ a person under section 11 must be exercised:
- (a) in accordance with any arrangements approved under paragraph (2)(a) of this section; and
  - (b) subject to any conditions determined under paragraph (2)(b) of this section;
- that apply to the parliamentarian or office-holder, and to the power.
- (2) The Prime Minister may, in writing, do either or both of the following:
- (a) approve arrangements in accordance with which a parliamentarian or office-holder is to exercise a power under section 11;
  - (b) determine conditions subject to which a parliamentarian or office-holder is to exercise a power under section 11.
- (3) An instrument made under subsection (2) is not a legislative instrument.

## **13 Terms and conditions of employment**

*Terms and conditions*

- (1) The terms and conditions of employment for a person employed under this Act include the terms and conditions set out in:

- (a) the agreement under which the person is employed; and
- (b) any fair work instruments (within the meaning of the *Fair Work Act 2009*) that apply to the person; and
- (c) any determination made under subsection (2) or (3) that applies to the person.

Note: This Act has effect subject to the *Fair Work Act 2009*: see section 3A of this Act.

*Variation of terms and conditions for all or a class of employees*

- (2) The Prime Minister may, by notifiable instrument, determine that the terms and conditions of employment of either of the following (as specified in the instrument) are varied in accordance with the determination:
  - (a) all persons employed under this Act;
  - (b) all persons included in a specified class or classes of persons employed under this Act.

*Variation of terms and conditions for individual employees*

- (3) The Prime Minister may, in writing, determine that the terms and conditions of employment of a specified person employed under this Act are varied in accordance with the determination.

*Other matters affecting determinations*

- (4) Subsections (2) and (3) do not authorise the making of a determination that varies a matter expressly provided for by section 14, 16 or 17 (termination of employment) or 18 (suspension from duties).
- (5) A determination may vary terms and conditions by varying specified terms and conditions or by including new terms and conditions.
- (6) A determination that applies to a person prevails over the agreement under which the person is employed, to the extent of any inconsistency.

**14 Automatic termination of employment**

- (1) A person's employment under this Act terminates if an event specified in the table occurs and the person is the kind of employee specified for the event.

<b>Events that terminate employment</b>		
<b>Item</b>	<b>Event</b>	<b>Kind of employees whose employment terminates</b>
1	The employing individual dies	Electorate employees and personal employees
2	The employing individual ceases to be a parliamentarian	Electorate employees and personal employees
3	The employing individual ceases to hold a relevant office and on the same day: (a) starts to hold another relevant office; or (b) starts to be covered by a determination made under section 4	Personal employees
4	The employing individual ceases to hold a relevant office and does not do one of the following on the same day: (a) start to hold another relevant office; (b) start to be covered by a determination made under section 4	Electorate employees and personal employees
5	The employing individual ceases to be covered by a determination made under section 4 (whether or not the employing individual starts to be covered on the same day by another such determination)	Personal employees

Note 1: The employing individual is the parliamentarian or office-holder who employed the person on behalf of the Commonwealth (see the definition of *employing individual* in section 3).

Note 2: The effect of this subsection may be altered by a direction under section 15.

- (2) For the purposes of table item 2 in subsection (1), a person is taken not to have ceased to be a parliamentarian at any time while remuneration is to be paid to the person in accordance with section 49 of the *Parliamentary Business Resources Act 2017*.

- (3) For the purposes of table items 3 and 4 in subsection (1), a person ceases to hold the office of Minister at the time the person ceases to be appointed to administer any Departments (even if the person is immediately after that time appointed to administer one or more Departments).

Example: If a person is appointed to administer 2 Departments and then ceases to be appointed to administer one of those Departments, the person will not cease to hold the office of Minister. However, if the person ceases to be appointed to administer both Departments, the person ceases to be a Minister even if the person is immediately appointed to administer another Department.

- (4) For the purposes of the table in subsection (1), the Prime Minister may, by legislative instrument, determine any of the following:
- (a) circumstances, not inconsistent with subsection (2), in which an event specified in table item 2 is taken to occur, or taken not to occur;
  - (b) circumstances, not inconsistent with subsection (3), in which an event specified in table item 3 or 4 is taken to occur, or taken not to occur.

Subsection (1) has effect in accordance with the determination.

- (5) If more than one event specified in the table in subsection (1) occurs at the same time, the event listed first in the table is the only event that is taken to have occurred.

## 15 Directions in relation to automatic termination

### *Direction in relation to class of persons*

- (1) The Prime Minister may, by legislative instrument, direct that the employment of the persons included in a specified class or classes of persons, whose employment would, but for this subsection, be terminated by subsection 14(1), is taken:
- (a) not to have been terminated; and
  - (b) to continue, or to have continued, until a specified date.

### *Direction in relation to specified person*

- (2) The Prime Minister may, in writing, direct that the employment of a specified person whose employment would, but for this subsection, be terminated by subsection 14(1), is taken:

- (a) not to have been terminated; and
  - (b) to continue, or to have continued, until a specified date.
- (3) A direction made under subsection (2) is not a legislative instrument.

*Effect of direction*

- (4) If the Prime Minister gives a direction under subsection (1) or (2), then, despite subsection 14(1), the employment of the persons included in the specified class or classes, or the employment of the specified person, is taken for all purposes to continue, or to have continued, until the specified date.

## **16 Termination by notice**

- (1) The employing individual for a person employed under this Act may at any time, by notice in writing given to the person, terminate the person's employment.

Note: The employing individual is the parliamentarian or office-holder who employed the person on behalf of the Commonwealth (see the definition of *employing individual* in section 3).

- (2) The notice must specify the ground or grounds that are relied on for the termination.

Note 1: The *Fair Work Act 2009* has rules and entitlements that apply to termination of employment. See, for example, Parts 3-1 (general protections) and 3-2 (unfair dismissal) of that Act.

Note 2: Additional rules or procedures to be followed in terminating the employment of a person may be set out in:

- (a) the agreement for the employment of the person; or
- (b) fair work instruments (within the meaning of the *Fair Work Act 2009*); or
- (c) arrangements approved or determinations made under section 12 or subsection 13(2) or (3) of this Act.

Note 3: Termination of employment may be unlawful under anti-discrimination laws in certain circumstances.

## 17 Resignation

A person employed under this Act may at any time, by notice in writing given to the employing individual, terminate the person's employment.

Note: The employing individual is the parliamentarian or office-holder who employed the person on behalf of the Commonwealth (see the definition of *employing individual* in section 3).

## 18 Suspension from duties

### *Suspension*

- (1) The employing individual for a person employed under this Act may suspend the person from duties if the employing individual considers that it is appropriate to do so.

Note 1: The employing individual is the parliamentarian or office-holder who employed the person on behalf of the Commonwealth (see the definition of *employing individual* in section 3).

Note 2: The *Fair Work Act 2009* may limit the circumstances in which an employing individual may lawfully suspend a person from duties. See, for example, Part 3-1 (general protections) of that Act.

Note 3: Additional rules or procedures to be followed in suspending a person from duties may be set out in:

- (a) the agreement for the employment of the person; or
- (b) fair work instruments (within the meaning of the *Fair Work Act 2009*); or
- (c) arrangements approved or determinations made under section 12 or subsection 13(2) or (3) of this Act.

Note 4: Suspension of employment may be unlawful under anti-discrimination laws in certain circumstances.

### *Period of suspension*

- (2) The suspension is for the period determined by the employing individual, which must not exceed 30 days.
- (3) Subsection (2) does not prevent the employing individual from suspending the person again under subsection (1).

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*With pay unless exceptional circumstances*

- (4) The suspension is with pay, unless the employing individual is satisfied that exceptional circumstances exist to justify suspension without pay.

*End of suspension*

- (5) The employing individual may end the suspension at any time before the end of the period determined under subsection (2).

## **14 Sections 31 and 32**

Repeal the sections, substitute:

## **28 Simplified outline of this Part**

<p>This Part deals with miscellaneous matters, such as delegations, regulations, and review of the Act.</p>
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## **30 Delegation by Prime Minister**

- (1) The Prime Minister may, in writing, delegate all or any of the Prime Minister's functions or powers under this Act to:
- (a) any Minister; or
  - (b) an SES employee, or an acting SES employee, in either of the following:
    - (i) the Department administered by the Prime Minister;
    - (ii) the Department administered by the Minister.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Prime Minister.
- (3) To avoid doubt, subsection (1) does not apply in relation to functions or powers conferred on the Prime Minister merely in the capacity of parliamentarian or office-holder.

### **31 Powers may be exercised by authorised person**

- (1) A parliamentarian or office-holder (the *authoriser*) may, in writing, authorise another person to exercise, on the authoriser's behalf, all or any of the authoriser's functions or powers under this Act, if the authoriser is satisfied it is appropriate for the person to perform such functions or exercise such powers.
- (2) In performing the function or exercising the power, the authorised person must comply with any directions of the authoriser.

### **32 Review of operation of this Act**

- (1) The Minister must cause a review of the operation of this Act to be conducted within 5 years after the commencement of this section. The review must not be started before 3 years after that commencement.
- (2) The persons undertaking the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

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## Schedule 2—Amendments relating to the Parliamentary Workplace Support Service Act 2023

### *Members of Parliament (Staff) Act 1984*

#### 1 Section 3

Insert:

**CEO** means the Chief Executive Officer of the Parliamentary Workplace Support Service.

**PWSS** means the Parliamentary Workplace Support Service.

#### 2 At the end of section 7

Add:

Note: The *Parliamentary Workplace Support Service Act 2023* establishes the PWSS, which also has functions in relation to employment under this Act. The PWSS:

- (a) provides human resources support to parliamentarians, office-holders and their employees and has functions in the areas of policy development, training, advice, and education; and
- (b) can exercise the powers of an employer in relation to persons employed under this Act in certain circumstances; and
- (c) has some powers to suspend employees.

#### 3 Section 10 (paragraph beginning “Parliamentarians and office-holders can suspend”)

After “is automatic.”, insert “Parliamentarians and office-holders have obligations to inform and consult the PWSS in relation to decisions to suspend or terminate employment.”.

#### 4 Section 10 (after the paragraph beginning “Parliamentarians and office-holders can suspend”)

Insert:

In certain circumstances, the CEO of the PWSS can suspend employees and, where a parliamentarian or office-holder dies or
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ceases to be a parliamentarian, can step in to exercise most of the powers of an employer.
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**5 Subsection 13(4)**

After “or 18”, insert “or 19”.

**6 At the end of section 15**

Add:

*CEO to act as employer*

(5) If:

- (a) because of a direction given by the Prime Minister under subsection (1) or (2), a person’s employment is taken to continue until a specified date; and
- (b) but for this section, the person’s employment would have terminated because of table item 1 or 2 in subsection 14(1) (the employing individual dies or ceases to be a parliamentarian);

the CEO may exercise the powers of an employer in relation to the person at any time in the period starting when the person’s employment would have terminated and ending at the end of the specified date.

- (6) The powers referred to in subsection (5) do not include the power to terminate the person’s employment.

**7 Subsection 16(1) (note)**

Omit “Note”, substitute “Note 1”.

**8 At the end of subsection 16(1)**

Add:

Note 2: The employing individual must first consult the PWSS (see subsection (3)).

**9 At the end of section 16**

Add:

- (3) Before terminating a person's employment under subsection (1), the employing individual must consult, and have regard to any advice provided by, the PWSS.

Note: If an employing individual fails to consult with the PWSS, the CEO may include details about the failure in a public report.

- (4) A failure to consult with, or to have regard to advice provided by, the PWSS as required by subsection (3) does not affect the validity of the termination of the person's employment.

## 10 Section 17

Repeal the section, substitute:

## 17 Resignation

A person employed under this Act may terminate the person's employment at any time by giving written notice to:

- (a) if paragraph (b) does not apply—the employing individual; or
- (b) if the CEO is exercising the powers of an employer under subsection 15(5) in relation to the person—the CEO.

Note: The employing individual is the parliamentarian or office-holder who employed the person on behalf of the Commonwealth (see the definition of *employing individual* in section 3).

## 11 Subsection 18(3)

Repeal the subsection, substitute:

- (3) Subsection (2) does not prevent:
- (a) the employing individual from suspending the person again under subsection (1); or
  - (b) the CEO from suspending the person under section 19.

## 12 After subsection 18(4)

Insert:

- (4A) Before deciding to suspend without pay, the employing individual must consult the PWSS about whether exceptional circumstances exist.

*Obligation to inform PWSS of suspension*

- (4B) The employing individual must inform the PWSS before, or as soon as practicable after, suspending a person from duties.

**13 At the end of subsection 18(5)**

Add “The employing individual must inform the PWSS if the employing individual does so.”.

**14 At the end of Part III**

Add:

**19 Suspension from duties by CEO**

*Suspension*

- (1) The CEO may suspend a person employed under this Act from duties if:
- (a) the CEO has informed the employing individual of the CEO’s concern that it might be appropriate to suspend the person, in order to mitigate a risk to:
    - (i) work health and safety; or
    - (ii) property; or
    - (iii) security; or
    - (iv) an investigation; and
  - (b) the CEO has sought the employing individual’s views about the CEO’s concern; and
  - (c) taking into account any views the employing individual expressed and any other action the employing individual has taken in relation to the concern, the CEO considers that it is appropriate to suspend the person from duties in order to mitigate a risk mentioned in paragraph (a); and
  - (d) the employing individual agrees to the CEO suspending the person from duties.

Note 1: The employing individual is the parliamentarian or office-holder who employed the person on behalf of the Commonwealth (see the definition of *employing individual* in section 3).

- Note 2: The *Fair Work Act 2009* may limit the circumstances in which the CEO may lawfully suspend a person from duties. See, for example, Part 3-1 (general protections) of that Act.
- Note 3: Additional rules or procedures to be followed in suspending a person from duties may be set out in:
- (a) the agreement for the employment of the person; or
  - (b) fair work instruments (within the meaning of the *Fair Work Act 2009*); or
  - (c) arrangements approved or determinations made under section 12 or subsection 13(2) or (3) of this Act.
- Note 4: Suspension of employment may be unlawful under anti-discrimination laws in certain circumstances.

*Period of suspension*

- (2) The suspension is for the period determined by the CEO, which must not exceed 30 days.
- (3) Subsection (2) does not prevent:
  - (a) the CEO from suspending the person again under subsection (1); or
  - (b) the employing individual from suspending the person under section 18.

*With pay unless exceptional circumstances*

- (4) The suspension is with pay, unless the CEO is satisfied that exceptional circumstances exist to justify suspension without pay.

*End of suspension*

- (5) The CEO may end the suspension at any time before the end of the period determined under subsection (2).

## **15 Before section 30**

Insert:

## **29 Delegation by CEO**

- (1) The CEO may, in writing, delegate the CEO's powers under the following provisions to a member of the staff of the PWSS who is an SES employee or an acting SES employee:

- (a) subsection 15(5) (CEO to act as employer);
- (b) section 19 (suspension from duties by CEO).

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the CEO.

**16 After paragraph 30(1)(b)**

Insert:

- ; or (c) a member of the staff of the PWSS who is an SES employee or an acting SES employee.

## **Schedule 3—Application and transitional provisions**

### **1 Definitions**

In this Schedule:

*amended MOPS Act* means the MOPS Act as amended by Schedule 1 to this Act.

*commencement day* means the day Schedule 1 to this Act commences.

*MOPS Act* means the *Members of Parliament (Staff) Act 1984*.

### **2 Continuation of staff employed under section 13**

- (1) This item applies to a person who was employed by an office-holder under section 13 of the MOPS Act and who is, immediately before the commencement day, a member of the office-holder's staff.
- (2) If the office-holder is a Minister, the person's employment continues, from the commencement day:
  - (a) for a person who was, immediately before the commencement day, classified as an electorate employee—as if the person were an electorate employee employed under subsection 11(1) of the amended MOPS Act; or
  - (b) otherwise—as if the person were a personal employee (Ministerial) employed under subsection 11(2) of the amended MOPS Act.
- (3) If the office-holder is not a Minister, the person's employment continues, from the commencement day:
  - (a) for a person who was, immediately before the commencement day, classified as an electorate employee—as if the person were an electorate employee employed under subsection 11(1) of the amended MOPS Act; or
  - (b) otherwise—as if the person were a personal employee (non-Ministerial) employed under subsection 11(3) of the amended MOPS Act.
- (4) Without limiting subitems (2) and (3):

- (a) the agreement under which the person was employed has effect from the commencement day as if it were an agreement made under subsection 11(1), (2) or (3) (as applicable) of the amended MOPS Act that complies with sections 11 and 12 of the amended MOPS Act; and
- (b) sections 13 to 18 of the amended MOPS Act apply in relation to the person's employment from the commencement day (and repealed sections 14 and 16 do not apply); and
- (c) section 19 of the MOPS Act, as inserted by Schedule 2 to this Act, applies in relation to the person's employment from the day that section commences.

### **3 Continuation of staff employed under section 20**

- (1) This item applies to a person who was employed by a senator or a member of the House of Representatives under section 20 of the MOPS Act and who is, immediately before the commencement day, a member of the staff of the senator or member.
- (2) The person's employment continues, from the commencement day, as if the person were an electorate employee employed under subsection 11(1) of the amended MOPS Act.
- (3) Without limiting subitem (2):
  - (a) the agreement under which the person was employed has effect from the commencement day as if it were an agreement made under subsection 11(1) of the amended MOPS Act that complies with sections 11 and 12 of the amended MOPS Act; and
  - (b) sections 13 to 18 of the amended MOPS Act apply in relation to the person's employment from the commencement day (and repealed sections 21 and 23 do not apply); and
  - (c) section 19 of the MOPS Act, as inserted by Schedule 2 to this Act, applies in relation to the person's employment from the day that section commences.

### **4 Determinations under section 12**

- (1) This item applies to a determination that was in effect under section 12 of the MOPS Act immediately before the commencement day.

- (2) The determination continues in effect from the commencement day:
  - (a) as if it had been made under section 4 of the amended MOPS Act; and
  - (b) as if any reference to employing staff under Part III of the MOPS Act were a reference to employing personal employees under subsection 11(3) of the amended MOPS Act.

### **5 Approvals under subsections 13(2) and 20(2)**

- (1) This item applies to an approval that was in effect under subsection 13(2) or 20(2) of the MOPS Act immediately before the commencement day.
- (2) The approval continues in effect from the commencement day as if it had been given under paragraph 12(2)(a) of the amended MOPS Act.

### **6 Determinations under subsections 13(2) and 20(2)**

- (1) This item applies to a determination that was in effect under subsection 13(2) or 20(2) of the MOPS Act immediately before the commencement day.
- (2) The determination continues in effect from the commencement day as if it had been made under paragraph 12(2)(b) of the amended MOPS Act.

### **7 Determinations under subsections 14(3) and 21(3)**

- (1) This item applies to a determination that was in effect under subsection 14(3) or 21(3) of the MOPS Act immediately before the commencement day.
- (2) The determination continues in effect from the commencement day:
  - (a) for a determination expressed to apply in relation to a specified person—as if it had been made under subsection 13(3) of the amended MOPS Act; or
  - (b) otherwise—as if it had been made under subsection 13(2) of the amended MOPS Act but were not a notifiable instrument.
- (3) The Minister must publish any determination continued in effect under paragraph (2)(b) on the Department's website.

## 8 Directions under subsections 16(5) and 23(4)

- (1) This item applies to a direction that was in effect under subsection 16(5) or 23(4) of the MOPS Act immediately before the commencement day.
- (2) The direction continues in effect from the commencement day:
  - (a) for a direction expressed to apply in relation to a specified person—as if it had been made under subsection 15(2) of the amended MOPS Act; or
  - (b) otherwise—as if it had been made under subsection 15(1) of the amended MOPS Act but were not a legislative instrument.
- (3) The Minister must publish any direction continued in effect under paragraph (2)(b) on the Department’s website.

## 9 Authorisations of persons under section 32

- (1) This item applies to a written authorisation of a person that was in effect under section 32 of the MOPS Act immediately before the commencement day.
- (2) The authorisation continues in effect from the commencement day as if it had been made under section 31 of the amended MOPS Act.

## 10 Enterprise agreement

- (1) This item applies in relation to the *Commonwealth Members of Parliament Staff Enterprise Agreement 2020-23*.
- (2) References in the enterprise agreement have effect, from the commencement day, in accordance with the following table.

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### References in enterprise agreement

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Item	A reference to ...	is taken to be a reference to ...
1	employing a person under section 13 or 20 of the MOPS Act	employing a person under whichever subsection of section 11 of the amended MOPS Act applies to the person (including because of another item of this Schedule)
2	a person employed under Part III	a person employed under the MOPS

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**References in enterprise agreement**

<b>Item</b>	<b>A reference to ...</b>	<b>is taken to be a reference to ...</b>
	or IV, or section 13 or 20, of the MOPS Act	Act, or section 11 of the amended MOPS Act (including a person taken to be so employed because of another item of this Schedule)
3	an agreement being in accordance with section 13 or 20 of the MOPS Act	an agreement being in accordance with sections 11 and 12 of the amended MOPS Act (including an agreement taken to be in accordance with those sections because of another item of this Schedule)
4	a period during which termination of employment is deferred under subsection 16(5) or 23(4) of the MOPS Act	a period during which termination of employment is deferred under section 15 of the amended MOPS Act
5	subsection 16(5) or 23(4) of the MOPS Act	section 15 of the amended MOPS Act
6	a preceding period of employment under Part III or IV of the MOPS Act	a preceding period of employment under the MOPS Act
7	termination of employment under Part III or IV of the MOPS Act	termination of employment under the MOPS Act
8	termination of employment under subsection 16(1) or (2) or 23(1) of the MOPS Act	termination of employment under section 14 of the amended MOPS Act
9	termination or cessation of employment under subsection 16(3) or 23(2) of the MOPS Act	termination of employment under section 16 of the amended MOPS Act
10	an electorate employee	an electorate employee within the meaning of the amended MOPS Act (including a person taken to be such an employee because of another item of this Schedule)
11	a personal employee	a personal employee within the meaning of the amended MOPS Act (including a person taken to be such an employee because of another item of this Schedule)

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**References in enterprise agreement**

<b>Item</b>	<b>A reference to ...</b>	<b>is taken to be a reference to ...</b>
12	arrangements approved under subsection 13(2) or 20(2) of the MOPS Act	arrangements approved under section 12 of the amended MOPS Act (including arrangements taken to be so approved because of another item of this Schedule)

**11 Employment agreements entered into before commencement**

- (1) This item applies in relation to an employment agreement that is in effect under the MOPS Act immediately before the commencement day.
- (2) References in the employment agreement have effect, from the commencement day, in accordance with the following table.

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**References in employment agreements**

<b>Item</b>	<b>A reference to ...</b>	<b>is taken to be a reference to ...</b>
1	employing a person under Part III or IV, or section 13 or 20, of the MOPS Act	employing a person under the MOPS Act, or whichever subsection of section 11 of the amended MOPS Act applies to the person (including because of another item of this Schedule)
2	termination of employment under subsection 16(1) or (2) or 23(1) of the MOPS Act	termination of employment under section 14 of the amended MOPS Act
3	termination of employment under subsection 16(3) or 23(2) of the MOPS Act	termination of employment under section 16 of the amended MOPS Act
4	termination of employment under section 16 or 23 of the MOPS Act	termination of employment under section 14 or 16 of the amended MOPS Act

- (3) Any reference in the employment agreement to a provision of the MOPS Act that is not covered by subitem (2) has effect, from the

commencement day, as if it were a reference to any corresponding provision of the amended MOPS Act.

## **Schedule 4—Consequential amendments**

### **Part 1—Amendments commencing the same time as Schedule 1**

#### *Administrative Decisions (Judicial Review) Act 1977*

##### **1 Paragraph (y) of Schedule 2**

Repeal the paragraph, substitute:

(y) decisions relating to:

(i) employing, or terminating the employment of, persons;

or

(ii) suspending persons from duties;

under the *Members of Parliament (Staff) Act 1984*;

#### *Age Discrimination Act 2004*

##### **2 Section 5 (paragraph (i) of the definition of *administrative office*)**

Omit “or engaged”.

##### **3 Section 5 (paragraph (g) of the definition of *Commonwealth employee*)**

Omit “or engaged”.

#### *Auditor-General Act 1997*

##### **4 Paragraph 17(6)(a)**

Omit “or engaged”.

### ***Clean Energy Regulator Act 2011***

#### **5 Subsection 45(3)**

Omit “, under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff of a Minister referred to in subsection (1) or (2)”, substitute “by a Minister referred to in subsection (1) or (2) under the *Members of Parliament (Staff) Act 1984*”.

### ***Disability Discrimination Act 1992***

#### **6 Subsection 4(1) (paragraph (i) of the definition of *administrative office*)**

Omit “or engaged”.

#### **7 Subsection 4(1) (paragraph (h) of the definition of *Commonwealth employee*)**

Omit “or engaged”.

### ***Foreign Acquisitions and Takeovers Act 1975***

#### **8 Paragraph 122(2)(b)**

Repeal the paragraph, substitute:

(b) an individual who is employed by such a Minister under the *Members of Parliament (Staff) Act 1984*;

### ***Foreign Influence Transparency Scheme Act 2018***

#### **9 Section 10 (paragraph (c) of the definition of *designated position holder*)**

Omit “section 13 or 20 of the *Members of Parliament (Staff) Act 1984* who is a member of the staff of a Minister”, substitute “the *Members of Parliament (Staff) Act 1984* as a personal employee (Ministerial)”.

#### **10 Section 10 (paragraph (b) of the definition of *parliamentary lobbying*)**

Omit “section 13 or 20 of”.

### ***Higher Education Support Act 2003***

#### **11 Paragraph 181-20(b)**

Omit “under section 13 or 20 of the *Members of Parliament (Staff) Act 1984* as a member of staff of the Minister”, substitute “by the Minister under the *Members of Parliament (Staff) Act 1984*”.

### ***Independent Parliamentary Expenses Authority Act 2017***

#### **12 Section 3 (paragraph (c) of the paragraph beginning “The Authority has functions”)**

Omit “Part III or IV of”.

#### **13 Subsection 4(1) (definition of *MOPS staff member*)**

Omit “Part III or IV of”.

#### **14 Section 10 (paragraph (c) of the paragraph beginning “The Authority has functions”)**

Omit “Part III or IV of”.

### ***Industrial Chemicals Act 2019***

#### **15 Paragraph 115(2)(f)**

Omit “section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff”, substitute “the *Members of Parliament (Staff) Act 1984*, as a personal employee”.

### ***Industrial Chemicals Environmental Management (Register) Act 2021***

#### **16 Section 7 (paragraph (i) of the definition of *entrusted person*)**

Omit “section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff”, substitute “the *Members of Parliament (Staff) Act 1984*, as a personal employee”.

***Industry Research and Development Act 1986***

**17 Paragraph 47(2)(aa)**

Omit “as a member of staff of the Minister under section 13 or 20 of”, substitute “by the Minister under”.

***National Anti-Corruption Commission Act 2022***

**18 Paragraph 12(1)(a)**

Repeal the paragraph, substitute:

- (a) in the case of a parliamentary office—an individual who is employed by the parliamentarian under the *Members of Parliament (Staff) Act 1984*;

***Petroleum and Other Fuels Reporting Act 2017***

**19 Paragraph 23(2)(a)**

Omit “under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff of the Minister”, substitute “by the Minister under the *Members of Parliament (Staff) Act 1984*”.

***Public Interest Disclosure Act 2013***

**20 Paragraph 69(4)(d)**

Omit “or engaged”.

**21 Paragraph 70(3A)(d)**

Omit “or engaged”.

***Sex Discrimination Act 1984***

**22 Subsection 4(1) (paragraph (i) of the definition of *Commonwealth administrative office*)**

Omit “or engaged”.

**Schedule 4** Consequential amendments

**Part 1** Amendments commencing the same time as Schedule 1

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**23 Subsection 4(1) (paragraph (h) of the definition of  
*Commonwealth employee*)**

Omit “or engaged”.

***Tertiary Education Quality and Standards Agency Act 2011***

**24 Paragraph 192(1)(b)**

Omit “as a member of staff of the Minister under section 13 or 20 of”,  
substitute “by the Minister under”.

## **Part 2—Other amendments**

### ***National Reconstruction Fund Corporation Act 2023***

#### **25 Subparagraph 85(4)(d)(i)**

Omit “section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff”, substitute “the *Members of Parliament (Staff) Act 1984*, as a personal employee”.

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[*Minister’s second reading speech made in—  
House of Representatives on 10 August 2023  
Senate on 11 September 2023*]

(99/23)

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