

**INQUIRY INTO PROPOSAL FOR A COMPLIANCE
OFFICER FOR THE NSW PARLIAMENT**

Name: Public Service Association of NSW

Date Received: 3 February 2021



Public Service Association of NSW

General Secretary Stewart Little **President** Kylie McKelvie

160 Clarence Street, Sydney NSW 2000 GPO Box 3365, Sydney NSW 2001

☎ 1300 772 679 📠 (02) 9262 1623 ✉ psa@psa.asn.au 🌐 www.psa.asn.au **ABN** 83 717 214 309

In reply please quote: *NP:cr*

3 February 2021

The Hon. Peter Primrose MLC
Chair, Privileges Committee
Legislative Council
Parliament House,
Macquarie Street
SYDNEY NSW 2000

Dear Chair,

The Public Service Association of NSW (PSA) provides the following as its submission regarding the proposal for a Compliance Officer for the NSW Parliament.

In the context of the Terms of Reference (TOR) for the position our strongest focus is on the aspects that impact on employees under the PSA's coverage. Predominantly they will be Members' Staff as covered by the Members of Parliament Staff Act 2013 and the Members' Staff Conditions of Employment, Determination of the Presiding Officers. We anticipate, though, that other staff employed within Parliament and under our industrial coverage could also be impacted.

Background

To provide some background please note that the PSA has previously raised concerns in regard to the limited protections for Members of Parliament Staff as a result of their employment status and relevant legislation.

These employees were previously employed under Part 2.5 Special temporary employees of the Public Sector Employment and Management Act 2002 (PSEM Act) and the Crown Employees (Parliamentary Electorate Officers) Award (subsequently rescinded).

Under the PSEM Act, the staff were special temporary employees of the department of Premier and Cabinet and employed by the relevant Presiding Officers. Under the Grievance and Dispute Handling Procedures of their award, employees had the right to submit matters relating to their conditions of employment to the 'relevant tribunal which may exercise its functions under the Industrial Relations Act 1996.'

The new Act and removal of their award may prevent any appeal to the Industrial Relations Commission under industrial legislation.

The Act distinctly states that the employment of a staff member, or any matter, question or dispute relating to such employment, is not an industrial matter for the purposes of the Industrial Relations Act 1996.

Employment of a staff member refers to

- (a) The engagement of, or failure to engage, a person under this Act, or
- (b) Dispensing with the services of, or other termination of the employment of, a person employed under this Act, or
- (c) Any disciplinary proceedings or action taken against a person employed under this Act, or
- (d) The remuneration or other conditions of employment of a person employed under this Act.

In essence the continued employment of the affected staff member is at the whim of the Member of Parliament. Without appeal rights to an independent tribunal such as the NSW Industrial Relations Commission, a staff member can be dispensed with without test. This opens up the potential for every type of discrimination. Certainly it prevents accusations of discrimination from being clearly dispelled.

It is clear that the above provisions do not and cannot exclude the operation of the Anti Discrimination Act 1977 or the Work Health and Safety Act 2011, but creates difficulties in resolving matters that are of an industrial nature but with non-mutually exclusive elements of work health and safety and discrimination.

These provisions allows the staff member to be bullied, harassed and victimised with reduced provisions to support resolution of the matter. The likelihood of these workers complaining will be diminished as they will be rightfully fearful of retaining their job.

It is with this in mind that the PSA hopes the creation of the new Compliance Officer role will go some way to improving the situation for these staff in terms of their concerns being addressed. Further, we are hopeful that the educative component of the role will prevent many issues arising in the first instance.

Terms of Reference (TOR)

In viewing the TOR the PSA makes the following comments -

(2) Functions of the Position

Of particular interest to the PSA is those aspects of the Compliance Officer role that deal with receiving and investigating complaints; particularly those that come under 2(a)(iii) relating to allegations of bullying, harassment and other types of grievances.

We presume that whilst the Compliance Officer's role appears to focus on the conduct of the Member, the process of investigation may involve employees as complainants, witnesses or those also with allegations against them.

Procedures already exist for employees. It is important to define the boundaries between processes under the jurisdiction of the Compliance Officer role and usual processes that apply to employees. It is essential that processes are undertaken in a way that does not diminish an employee's rights to procedural fairness.

Those who become a part of an investigation should be properly informed of the process in which they are engaged.

Where they are a complainant their complaint should be dealt with respectfully, in a timely manner and they should be protected from actual or potential victimisation. Their matter should be dealt with confidentially. They should be informed throughout in regard to the progression of their matter. They should be properly informed of the outcome of their matter. Consideration should be given to their welfare following the finalisation of the matter.

Where an employee is involved in a matter as the subject of a complaint or a witness they should be provided in advance with relevant information that will enable them to provide a response. Again the entire process, and their rights, should be explained to the staff member.

Throughout the investigative process employees should be able to have a support person in attendance and sufficient time should be allowed for this to be coordinated. Where the person is a member of the union they may seek that their support be a representative of the union.

Notwithstanding our focus on 2(a)(iii) the PSA recognises that investigations into complaints under 2(a)(i), 2(a)(ii) and 2(a)(iv) may impact on other staff members employed within Parliament within the Department of Parliamentary Services, the Legislative Assembly and the Legislative Council.

The points made above are relevant here too; in particular that boundaries between jurisdictions are defined clearly and that there be no diminishment of procedural fairness.

The PSA seeks further discussions to define these processes.

Under 2(b) the Compliance Officer monitors the operation of the Code of Conduct for members. This appears to focus on disclosures and entitlements. If that was to expand to matters relating to dealing with complaints and where that may potentially impact on our members, we would seek the opportunity to be involved in a consultative process.

The educational part of the role 2(c) could well be the key to dealing with issues of grievances, bullying and harassment. Prevention is always preferred to dealing with the outcomes of poor or damaging behaviours. Unfortunately, it is likely that it is those more likely to participate in poor behaviours who are less likely to participate in the valuable educative processes that prevent it. It is the PSA's view that such training should be obligatory.

Whilst that may be considered contentious it is worth considering the obligations of employers under various legislations including the Work Health and Safety Act and the potential impact of breaches. Members of Parliament will come from diverse backgrounds and some will have minimal experience in dealing with employees directly.

It is important to ensure that education covers all relevant aspects impacting on the Member's role and (from the PSA's point of view) particularly those that relate to their working with their employees. It is of significant value that the employees are engaged in the training too which will best ensure all parties are hearing the same message.

Training and educative processes should not be limited to inductions. Updates and reminders should be factored in as well as needs-based training. The latter may at times be one of the resolutions to specific issues that arise.

As the representative agency to parties most likely to be affected by negative behaviours the PSA seeks to be involved in the structure of any educative process being developed. The PSA has endeavoured to work in a positive way with Parliament and we believe our ongoing involvement will be of mutual benefit.

(3) Amendment of the Code of Conduct for Members

Whilst the Anti-Discrimination Act is referred to in terms ensuring a safe workplace it is important that appropriate reference be made to the employers' obligations under the Work Health and Safety Act and that Members are clear that this applies to them and they and NSW Parliament have a duty of care.

(4) Term of Appointment

It states underneath this section that the consent of the President and the Speaker are required for the CEO to dismiss the Compliance Officer. It is essential that the role be able to act independently. Whilst recognising the importance of confidentiality there must be accountability for decisions to dismiss the occupier of the role sufficient to ensure the role, the process creating the role, and Parliament itself, are not undermined by decisions regarding dismissals.

It is equally important that the occupant of the role attains it through a proper merit based process and that there be clearly defined criteria and accountabilities for the role that are met by the occupant.

(5) Complaints Investigations

The PSA seeks the opportunity to meet with the Compliance Officer to discuss the protocols that are to be developed to deal with complaints investigations.

As stated previously there needs to be clarity as to how the process of an investigation into a Member that has the potential to impact on employed staff (whether that be Members' Staff or Parliamentary staff) is dealt with.

If a staff member is implicated in a matter that staff member should be subject to existing policies relating to misconduct and disciplinary proceedings. The staff member's rights should not be impeded upon by a process conducted by the Compliance Officer in regard to a Member.

Points have been made earlier in regard to fair and respectful processes for complainants. In light of the limited rights and inability for Members Staff to access the Industrial Relations Commission it is vitally important that the Compliance Officer be empowered to fully investigate grievances and bullying or harassment complaints and that Parliament fully commit to addressing such matters.

Where the Compliance Officer declines to investigate a matter the complainant should have the opportunity to discuss the matter with the Compliance Officer prior to a final determination.

It is of concern to us that there is not a clear reporting or accountability mechanism for findings made by the Compliance Officer that are not minor breaches of the expenses system. Essentially we ask what power is available to the Compliance officer to provide redress to complainants who bring forward allegations of bullying and harassment?

Additional Points

One of the difficulties in relation to matters of conflict between a Member and their staff is where it may be considered that the relationship has broken down irretrievably. A stronger focus should be placed on corrective measures such as mediation or alternative work arrangements.

The PSA appreciates the opportunity to provide this submission and we are open to further discussions.

Nick Player can be contacted either by email or mobile

Yours faithfully,

Nick Player
for **Stewart Little**
General Secretary

cc Mr Steven Reynolds
By email:
By email: privilege@parliament.nsw.gov.au