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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**PARLIAMENTARY WORKPLACE REFORM (SET THE STANDARD MEASURES  
NO. 1) BILL 2022**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister Assisting the Prime Minister and Cabinet, the Hon  
Ben Morton MP)

# PARLIAMENTARY WORKPLACE REFORM (SET THE STANDARD MEASURES NO. 1) BILL 2022

## OUTLINE

The Parliamentary Workplace Reform (Set the Standard Measures No. 1) Bill 2022 (the Bill) implements recommendations 17 and 24 of *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (the Jenkins Report). The Jenkins Report was prepared by the Sex Discrimination Commissioner, Ms Kate Jenkins, and provided to the Australian Government on 30 November 2021, under section 11 of the *Australian Human Rights Commission Act 1986*.

The Bill will:

- amend the *Members of Parliament (Staff) Act 1984* (MoP(S) Act) to provide that reasons for termination of employment must be given in writing and to clarify that the existing legislative requirements apply to the termination of employment of MoP(S) Act employees (recommendation 17(a) and (b));
- amend the *Work Health and Safety Act 2011* (WHS Act) to clarify the duties parliamentarians owe under that Act (recommendation 17(c)); and
- amend the *Age Discrimination Act 2004* (AD Act) and *Disability Discrimination Act 1992* (DD Act) to clarify that these laws apply to staff employed or engaged under the MoP(S) Act (recommendation 24).

### Amendments to the MoP(S) Act

The Bill will amend the MoP(S) Act to provide for notification of reasons for termination of employment and to clarify that existing legislative requirements apply to the termination of employment of MoP(S) Act employees. This amendment responds to recommendations 17(a) and (b) of the Jenkins Report.

### Amendments to the WHS Act

The Bill will amend the WHS Act to clarify that parliamentarians are ‘officers’ for the purpose of that Act. This amendment responds to recommendation 17(c) of the Jenkins Report which was to clarify the work health and safety duties owed by parliamentarians in relation to their responsibilities engaging and managing staff.

### Anti-discrimination law amendments

The Bill will amend the AD Act and DD Act to clarify that persons employed or engaged under the MoP(S) Act are Commonwealth employees for the purposes of the AD Act and the DD Act. The amendments will clarify that this cohort are protected under federal law from age or disability discrimination in their employment and engagement. This amendment responds to recommendation 24 of the Jenkins Report and brings these Acts in line with amendments made to the *Sex Discrimination Act 1984* (SD Act) by the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* in relation to MoP(S) Act staff.

**Financial impact statement**

The amendments in the Bill have no financial impact.

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### Parliamentary Workplace Reform (Set the Standard Measures No.1) Bill 2022

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Bill

The Parliamentary Workplace Reform (Set the Standard Measures No. 1) Bill 2022 (the Bill) implements recommendations 17 and 24 of *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (the Jenkins Report). The Jenkins Report was prepared by the Sex Discrimination Commissioner, Ms Kate Jenkins, and provided to the Australian Government on 30 November 2021, under section 11 of the *Australian Human Rights Commission Act 1986*.

The Bill:

- amends the *Members of Parliament (Staff) Act 1984* (MoP(S) Act) (recommendation 17(a) and (b)) to provide that reasons for termination of employment must be given in writing and to clarify that the existing legislative requirements apply to the termination of employment of MoP(S) Act employees;
- amends the *Work Health and Safety Act 2011* (WHS Act) to clarify that parliamentarians are officers under that Act (recommendation 17(c)); and
- amends the *Age Discrimination Act 2004* (AD Act) and *Disability Discrimination Act 1992* (DD Act) to clarify that this legislation applies to staff employed by parliamentarians (recommendation 24).

#### Amendments to the MoP(S) Act

The Bill amends the MoP(S) Act to provide for notification of reasons for termination of employment and to clarify that existing legislative requirements apply to the termination of employment of MoP(S) Act employees. This amendment responds to recommendations 17(a) and (b) of the Jenkins Report.

#### Amendments to the WHS Act

The Bill amends the WHS Act to clarify that parliamentarians are ‘officers’ for the purpose of that Act. This amendment responds to recommendation 17(c) of the Jenkins Report to clarify the work health and safety duties owed by parliamentarians in relation to their responsibilities engaging and managing staff.

#### Anti-discrimination law amendments

The Bill amends the AD Act and the DD Act to clarify that these laws apply to staff and consultants employed or engaged under the MoP(S) Act. The Bill does so by including this cohort in the definition of ‘Commonwealth employee’. This amendment responds to recommendation 24 of the Jenkins Report and brings these Acts in line with amendments made to the *Sex Discrimination Act 1984* (SD Act) by the *Sex Discrimination and Fair Work*

*(Respect at Work) Amendment Act 2021* in relation to MoP(S) Act staff. The amendments will clarify that this cohort are protected under federal law from age or disability discrimination in their employment and engagement.

### **Human rights implications**

This Bill engages the following rights:

- Right to work and rights in work contained in articles 6(1) and 7(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 27 of the Convention on the Rights of Persons with Disabilities (CRPD).
- Right to equality and non-discrimination in article 26 of the International Covenant on Civil and Political Rights (ICCPR) and articles 3, 4, 5 and 12 of the CRPD.

#### *Right to work and rights in work*

Article 6(1) and 7 of the ICESCR and article 27 of the CRPD provide the right to work and rights in work, including the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts. It also includes the right to enjoyment of just and favourable conditions of work which ensures safe and healthy working conditions, and the right to protection of health and safety in working conditions. The right also encompasses the right not to be unjustly deprived of work, and to have security against unfair dismissal. The International Labour Organisation's (ILO) Termination of Employment Convention, 1982 (No. 158), relevantly provides that a person's employment shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the business.

The Bill promotes the right to work by providing for notification of reasons for termination of employment and to clarify that existing legislative requirements apply to the termination of employment of MoP(S) Act employees, including the protections of the *Fair Work Act 2009*.

The Bill promotes the right to safe and healthy working conditions by clarifying that parliamentarians are 'officers' under the WHS Act. Parliamentarians would have a clear duty to exercise due diligence to ensure the Commonwealth complies with its duties and obligations to MoP(S) Act employees, including to ensure the health and safety of those employees.

A central tenet of the right to gain a living by work and the enjoyment of just and favourable conditions of work is protection against discrimination in the workplace, including on the grounds of age and disability. The Bill also promotes the right to just and favourable working conditions by clarifying that the AD Act and DD Act are intended to cover persons employed or engaged under the MoP(S) Act. The amendments would have the effect of clarifying that this cohort are protected from discrimination on the grounds of age or disability in their employment or engagement under federal law.

#### *Right to equality and non-discrimination*

Articles 2, 16 and 26 of the ICCPR and articles 3, 4, 5 and 12 of the CRPD protect the right to equality and non-discrimination by providing that all individuals have the same rights and deserve the same level of respect, regardless of their personal attributes such as race, sex, disability, age or colour (among other attributes).

The Bill engages the right to equality and non-discrimination by clarifying that the AD Act and DD Act are intended to cover persons employed or engaged under the MoP(S) Act. This follows similar affirmation in the *Sex Discrimination Fair Work (Respect at Work) Amendment Act 2021* regarding the application of the SD Act. The amendments have the effect of clarifying that this cohort are protected from discrimination on the grounds of age or disability in their employment or engagement under federal law. This legislative affirmation sends a clear and important signal that unlawful discrimination of any kind has no place in Australia's national Parliament.

By clarifying the operation of the AD Act and DA Act to reduce confusion in a complex legislative environment and ensure Commonwealth parliamentary workplaces are safe and respectful, the Bill will promote the right to equality and non-discrimination.

### **Conclusion**

The Bill is compatible with human rights given it promotes a number of human rights.

# PARLIAMENTARY WORKPLACE REFORM (SET THE STANDARD MEASURES No. 1) BILL 2022

## NOTES ON CLAUSES

### Clause 1—Short Title

1. Clause 1 is a formal provision specifying the short title of the Bill.

### Clause 2—Commencement

2. This clause would provide for the commencement of each provision of the Bill, as set out in the table. Item 1 in the table provides that the whole Bill commences on the day after the Bill receives Royal Assent.
3. Subclause 2(2) provides that 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.

### Clause 3—Schedules

4. Clause 3 provides that legislation that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Termination of employment of parliamentarians' staff

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

#### Item 1 At the end of Part I

1. Item 1 would add a new section 3A at the end of Part 1 of the *Members of Parliament (Staff) Act 1984* (MoP(S) Act) that would clarify, for the avoidance of doubt, that the *Fair Work Act 2009* (FW Act) and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* apply to individuals engaged under Part III or IV of the MoP(S) Act. This amendment is intended to address any confusion or misconception regarding the applicability of the protections of the FW Act to MoP(S) Act employees, it does not alter the interaction or relationship between the MoP(S) Act and the FW Act.

#### Item 2 After subsection 16(3)

2. Item 2 would insert a new subsection 16(3A) that would require a notice of termination of employment given under subsection 16(3) of the MoP(S) Act to specify the ground or grounds of the termination. Subsection 16(3) allows an office-holder to terminate the employment of a person employed by the office-holder at any time, by notice in writing given to the employee. An office-holder is defined in section 3 of the MoP(S) Act and includes a former Prime Minister, a Minister, the Leader or Deputy Leader, in each House of Parliament, of the Opposition or of a recognized political party, or a person in respect of whom a determination by the Prime Minister under section 12 of the MoP(S) Act is in force.

3. Failure to notify of the reason for dismissal is a factor that the Fair Work Commission will consider when deciding if a termination of employment is harsh, unjust or unreasonable under section 387 of the FW Act.

4. Note 1 to subsection 16(3A) would inform the reader that the FW Act provides certain rules and entitlements that apply to termination of employment that also apply to termination of employment of a MoP(S) Act employee. These include Parts 3-1 (general protections) and 3-2 (unfair dismissal) of that Act as well as notice of termination provisions such as section 117.

5. Note 2 to subsection 16(3A) would inform the reader that additional rules or procedures are to be followed in terminating the employment of a person under subsection 16(3) of the MoP(S) Act. Additional rules or procedures may be set out in the agreement for the employment of the person, fair work instruments (within the meaning of the FW Act) or determinations made under subsection 13(2) or 14(3) of the MoP(S) Act.

6. Note 3 to subsection 16(3A) would inform the reader that termination of employment may be unlawful under anti-discrimination laws in certain circumstances.

#### Item 3 After subsection 23(2)

7. Item 3 would insert a new subsection 23(2A) in similar terms to the new subsection 16(3A). It would require a notice of termination of employment given under subsection 23(2) of the MoP(S) Act to specify the ground or grounds of the termination. Subsection 23(2) allows a Senator or Member of the House of Representatives to terminate the employment of a person employed by the Senator or Member at any time, by notice in writing given to the employee.

8. Failure to notify of the reason for dismissal is a factor that the Fair Work Commission will consider when deciding if a termination of employment is harsh, unjust or unreasonable under section 387 of the FW Act.

9. Note 1 to subsection 23(2A) would inform the reader that the FW Act provides certain rules and entitlements that apply to termination of employment that also apply to termination of employment of a MoP(S) Act employee. These include Parts 3-1 (general protections) and 3-2 (unfair dismissal) of the FW Act as well as notice of termination provisions such as section 117.

10. Note 2 to subsection 23(2A) would inform the reader that additional rules and procedures are to be followed in terminating the employment of a person under subsection 23(2) of the MoP(S) Act. Additional rules or procedures may be set out in the agreement for the employment of the person, fair work instruments (within the meaning of the FW Act) or determinations made under subsection 20(2) or 21(3) of the MoP(S) Act.

11. Note 3 to subsection 23(2A) would inform the reader that termination of employment may be unlawful under anti-discrimination laws in certain circumstances.

## **Schedule 2—Clarifying work health and safety duties of parliamentarians**

### ***Work Health and Safety Act 2011***



#### Item 1 Section 4

12. Item 1 would insert a new definition of parliamentarian to section 4 of the *Work Health and Safety Act 2011* (WHS Act). The definition covers all individuals that can employ or engage MoP(S) Act employees.

#### Item 2 Subsection 247(2)

13. Item 2 would amend subsection 247(2) to allow for the exception provided in new subsection 247(3), which provides that a Minister is an officer for the purposes of the WHS Act when they are undertaking a role relating to the employment or engagement of MoP(S) Act employees.

#### Item 3 At the end of section 247

14. Item 3 would insert new subsections 247(3) and 247(4).

15. New subsection 247(3) would clarify that parliamentarians can be ‘officers’ for the purpose of the WHS Act and that they owe this duty to the workers who are engaged by them to support their work as a parliamentarian. The new subsection specifies the undertaking which parliamentarians are involved in; this is the business or undertaking of the Commonwealth constituted by the provision by the Commonwealth of support for the functioning of the Parliament.

16. The officer duty requires the person to exercise due diligence to ensure that the relevant person conducting a business or undertaking (e.g. the Commonwealth) complies with their duties under the Act, including the duty to ensure the health and safety of workers so far as is reasonably practicable.

17. New subsection 247(4) would ensure that subsection (3) is not interpreted narrowly. It permits others to be considered ‘officers’ in relation to a business or undertaking of the Commonwealth relating to the business or undertaking of the Commonwealth constituted by the provision by the Commonwealth of support for the functioning of the Parliament. For example, this may include other senior MoP(S) Act employees within a parliamentarian’s office. A parliamentarian may also be an officer for other purposes unconnected to a business or undertaking of the Commonwealth relating to the employment or engagement of MoP(S) Act employees.

### **Schedule 3— Clarifying the operation of anti-discrimination legislation for parliamentarians’ staff**

#### ***Age Discrimination Act 2004***

#### Item 1 Section 5 (at the end of the definition of *administrative office*)

18. Item 1 would add new paragraph (i) to the definition of ‘administrative office’ in section 5 of the *Age Discrimination Act 2004* (AD Act). This new paragraph clarifies that an office of a person employed or engaged under the MoP(S) Act is not an administrative office under the AD Act. The Note clarifies that a person who holds an office of a person employed

or engaged under the MoP(S) Act is instead captured by the definition of ‘Commonwealth employee’, as outlined below.

Item 2 Section 5 (at the end of the definition of *Commonwealth employee*)

19. Item 2 would add new paragraph (g) to the definition of Commonwealth employee in section 5 of the AD Act. This has the effect of clarifying that a person employed or engaged under the MoP(S) Act is protected from discrimination on the ground of age in employment. Employment is defined in section 5 of the AD Act to include work as a Commonwealth employee. Section 18 of the AD Act makes it unlawful to discriminate on the ground of a person’s age in employment.

***Disability Discrimination Act 1992***

Item 3 Subsection 4(1) (at the end of the definition of *administrative office*)

20. Item 3 would add new paragraph (i) to the definition of ‘administrative office’ in section 4 of the *Disability Discrimination Act 2004* (DD Act). This new paragraph clarifies that an office of a person employed or engaged under the MoP(S) Act is not an administrative office under the DD Act. The Note clarifies that a person who holds an office of a person employed or engaged under the MoP(S) Act is instead captured by the definition of ‘Commonwealth employee’, as outlined below.

Item 4 Subsection 4(1) (at the end of the definition of *Commonwealth employee*)

21. Item 4 would add new paragraph (h) to the definition of Commonwealth employee in section 4 of the DD Act. This has the effect of clarifying that a person employed or engaged under the MoP(S) Act is protected from discrimination on the ground of disability in employment (including discrimination involving harassment). ‘Employment’ is defined in section 4 of the DD Act to include work as a Commonwealth employee. Section 15 of the DD Act makes it unlawful to discriminate on the ground of a person’s disability in employment. Section 35 of the DD Act makes it unlawful to harass a person in relation to the disability in employment.

## GLOSSARY

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AD Act

*Age Discrimination Act 2004*

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DD Act

*Disability Discrimination Act 1992*

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FW Act

*Fair Work Act 2009*

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Jenkins Report

*Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*

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MoP(S) Act

*Members of Parliament (Staff) Act 1984*

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MoP(S) Act employee

An employee under Parts III or IV of the MoP(S) Act

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SD Act

*Sex Discrimination Act 1984*

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WHS Act

*Work Health and Safety Act 2011*

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