



# **Parliamentary Workplace Support Service Amendment (Independent Parliamentary Standards Commission) Act 2024**

**No. 86, 2024**

**An Act to amend the *Parliamentary Workplace  
Support Service Act 2023* to establish the  
Independent Parliamentary Standards  
Commission, 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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**An Act to amend the *Parliamentary Workplace  
Support Service Act 2023* to establish the  
Independent Parliamentary Standards  
Commission, and for related purposes**

*[Assented to 17 September 2024]*

**The Parliament of Australia enacts:**

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*No. 86, 2024      Parliamentary Workplace Support Service Amendment (Independent  
Parliamentary Standards Commission) Act 2024*

*1*

1 Short title

This Act is the *Parliamentary Workplace Support Service Amendment (Independent Parliamentary Standards Commission) Act 2024*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	18 September 2024
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	18 September 2024
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	14 October 2024
4. Schedule 2	At the same time as the provisions covered by table item 3.	14 October 2024

Note: This table relates only to the provisions of this Act as originally enacted.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.

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### Part 1—Amendments commencing day after Royal Assent

#### *Parliamentary Workplace Support Service Act 2023*

##### **1 Section 4 (at the end of the paragraph beginning “This Act also establishes”)**

Add:

<p>; and (c) the Parliamentary Joint Committee on Parliamentary Standards, to oversee the work of the IPSC.</p>
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##### **2 Section 5**

Insert:

*Parliamentary Joint Committee* means the Parliamentary Joint Committee on Parliamentary Standards for the time being constituted under Part 6A.

*Privileges Committee* of a House of the Parliament means the committee of that House responsible for inquiring into matters of privilege.

##### **3 After Part 6**

Insert:

### **Part 6A—Parliamentary Joint Committee on Parliamentary Standards**

#### **59A Simplified outline of this Part**

<p>This Part provides for the Parliamentary Joint Committee on Parliamentary Standards.</p>
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The Parliamentary Joint Committee is to be appointed as soon as practicable after the commencement of the first session of each Parliament.

The functions of the Parliamentary Joint Committee include:

- (a) considering proposed recommendations for the appointment of Commissioners; and
- (b) reviewing the operation and effectiveness of each Behaviour Code; and
- (c) monitoring and reviewing the performance by the Commissioners of their functions; and
- (d) reporting to both Houses of the Parliament on any matter connected with the performance of the functions of the IPSC or the Commissioners.

### **59B Parliamentary Joint Committee on Parliamentary Standards**

- (1) As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on Parliamentary Standards, is to be appointed according to the practice of the Parliament.
- (2) The Parliamentary Joint Committee is to consist of 12 members, being:
  - (a) 6 members of the Privileges Committee of the Senate appointed by the Senate; and
  - (b) 6 members of the Privileges Committee of the House of Representatives appointed by that House.
- (3) The 6 members appointed by each of the Senate and the House of Representatives must consist of the following:
  - (a) 3 members of the Government;
  - (b) 2 members of the Opposition;
  - (c) 1 member of the Parliament who is a member of neither the Government nor the Opposition.

## **59C Chair of the Parliamentary Joint Committee**

### *Office of Chair of the Parliamentary Joint Committee*

- (1) There must be a Chair of the Parliamentary Joint Committee, who must be a member of the Government elected by the members of the Parliamentary Joint Committee from time to time.
- (2) The Chair holds office during the pleasure of the Parliamentary Joint Committee.
- (3) A person holding office as Chair ceases to hold the office if the person:
  - (a) ceases to be a member of the Parliamentary Joint Committee; or
  - (b) resigns the office.
- (4) A person holding office as Chair may resign the office by giving a signed notice of resignation to a meeting of the Parliamentary Joint Committee.

### *Votes of the Chair*

- (5) At meetings of the Parliamentary Joint Committee at which the Chair is present, the Chair:
  - (a) has a deliberative vote; and
  - (b) has a casting vote if votes are equal.

## **59CA Deputy Chair of the Parliamentary Joint Committee**

- (1) There must be a Deputy Chair of the Parliamentary Joint Committee, who must be a member of the Opposition elected by the members of the Parliamentary Joint Committee from time to time.
- (2) The Deputy Chair holds office during the pleasure of the Parliamentary Joint Committee.
- (3) A person holding office as Deputy Chair ceases to hold the office if the person:

- (a) ceases to be a member of the Parliamentary Joint Committee;  
or
  - (b) resigns the office.
- (4) A person holding office as Deputy Chair may resign the office by giving a signed notice of resignation to a meeting of the Parliamentary Joint Committee.

**59D Eligibility for appointment as a Parliamentary Joint Committee member**

A member of the Parliament is not eligible for appointment as a member of the Parliamentary Joint Committee if the member is:

- (a) a Minister; or
- (b) the President of the Senate; or
- (c) the Speaker of the House of Representatives; or
- (d) the Deputy President and Chair of Committees of the Senate;  
or
- (e) the Deputy Speaker of the House of Representatives.

**59E Terms of office of Parliamentary Joint Committee members**

- (1) A member of the Parliamentary Joint Committee holds office during the pleasure of the House of the Parliament by which the member was appointed.
- (2) A person ceases to hold office as a member of the Parliamentary Joint Committee if:
  - (a) the House of Representatives expires by the passing of time or is dissolved; or
  - (b) the person becomes the holder of an office specified in any of the paragraphs of section 59D; or
  - (c) the person ceases to be a member of the House of the Parliament by which the person was appointed; or
  - (ca) the person ceases to be a member of the Privileges Committee of the House of the Parliament by which the person was appointed; or

- (d) the person resigns the person's office as provided by subsection (3) of this section.
- (3) A member of the Parliamentary Joint Committee appointed by a House of the Parliament may resign the member's office by giving the Presiding Officer of that House a written resignation.
- (4) A House of the Parliament may appoint a member of its Privileges Committee to fill a vacancy among the members of the Parliamentary Joint Committee appointed by that House.

## **59F Powers and proceedings of the Parliamentary Joint Committee**

All matters relating to the powers and proceedings of the Parliamentary Joint Committee are to be determined by resolution of both Houses of the Parliament.

## **59G Functions of the Parliamentary Joint Committee**

- (1) The Parliamentary Joint Committee has the following functions:
  - (a) to consider, in accordance with section 59H, proposed recommendations for the appointment of Commissioners;
  - (b) to review, in accordance with section 59J, each Behaviour Code;
  - (c) to monitor and review the performance by the Commissioners of their functions;
  - (d) to report to both Houses of the Parliament, with such comments as it thinks fit, on any matter connected with the performance of the functions of the IPSC or the Commissioners that the Parliamentary Joint Committee considers should be directed to the attention of the Parliament;
  - (e) to examine and report to the Parliament on any matter relating to the IPSC appearing in, or arising out of, a report prepared under subsection 22(2);
  - (f) to inquire into any question in connection with the Parliamentary Joint Committee's functions that is referred to it by either House of the Parliament, and to report to that House on that question;

- (g) other functions as are conferred on the Parliamentary Joint Committee by resolution of both Houses of the Parliament.
- (2) Subsection (1) does not authorise the Parliamentary Joint Committee to:
  - (a) direct the activities of the IPSC, a Commissioner or a panel of Commissioners; or
  - (b) investigate a conduct issue; or
  - (c) reconsider a decision made by the decision-maker for a conduct issue; or
  - (d) review an investigation into a conduct issue that has not been completed; or
  - (e) give or seek advice or information about, or in relation to, a particular person or conduct issue.

**59H Parliamentary Joint Committee must approve or reject recommendation for appointment**

- (1) The Parliamentary Joint Committee must approve or reject a proposed recommendation, referred to the Parliamentary Joint Committee by the Minister, for the appointment of a Commissioner.
- (2) The Parliamentary Joint Committee must make the decision on the proposed recommendation within:
  - (a) 14 calendar days after the referral; or
  - (b) if, within the first 14 calendar days after the referral, the Parliamentary Joint Committee notifies the Minister that it requires additional time to consider the referral—44 calendar days after the referral.
- (3) As soon as practicable after making the decision, the Parliamentary Joint Committee must:
  - (a) give the Minister notice of the decision; and
  - (b) report the decision to both Houses of the Parliament.
- (4) The Parliamentary Joint Committee is taken to have approved the proposed recommendation if it does not give notice under

paragraph (3)(a) within the period specified in paragraph 2(a) or (b), as the case requires.

### **59J Review of Behaviour Codes**

- (1) The Parliamentary Joint Committee:
  - (a) must commence a review under this section within one year after the commencement of the first session of each Parliament that commences after the commencement of this section; and
  - (b) may, if the Committee resolves to do so, commence a review under this section at any other time.
- (2) A review under this section must consider the operation and effectiveness of each Behaviour Code.
- (3) The Parliamentary Joint Committee must report the Committee's findings of a review under this section to both Houses of the Parliament as soon as practicable after completing the review.

## **Part 2—Amendments commencing on Proclamation**

### ***Archives Act 1983***

#### **4 Subsection 3(1) (subparagraph (a)(iii) of the definition of *PWSS document*)**

Omit “or”.

#### **5 Subsection 3(1) (at the end of paragraph (a) of the definition of *PWSS document*)**

Add:

- (iv) the Independent Parliamentary Standards Commission;
- or

### ***Freedom of Information Act 1982***

#### **6 At the end of subsection 7(2AAA)**

Add:

- ; (d) the Independent Parliamentary Standards Commission.

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

#### **7 Section 3**

Insert:

*IPSC* means the Independent Parliamentary Standards Commission.

#### **8 Paragraph 7(3)(b)**

Repeal the paragraph, substitute:

- (b) have powers to terminate or suspend employment or take other employment actions (see sections 16, 18 and 20).

#### **9 Subsection 7(4) (note)**

Repeal the note, substitute:

## Schedule 1 Amendments

### Part 2 Amendments commencing on Proclamation

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Note: The *Parliamentary Workplace Support Service Act 2023* establishes the PWSS and the IPSC, which also have 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.

A Commissioner of the IPSC can, in certain circumstances, recommend that a parliamentarian or office-holder:

- (a) terminate or suspend employees; and
- (b) take other employment actions in relation to employees.

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

Insert:

Parliamentarians and office-holders are also required to take certain employment actions in relation to their employees, including termination of employment, on the recommendation of a Commissioner of the IPSC.

#### **11 Subsection 13(4)**

Omit “or 18 or 19 (suspension from duties)”, substitute “, 18 or 19 (suspension from duties) or 20 (employment actions following IPSC recommendation)”.

#### **12 Subsection 15(6)**

Omit “The”, substitute “Subject to subsection 20(3) (about employment actions following an IPSC recommendation), the”.

#### **13 At the end of Part III**

Add:



## **20 Employment actions following IPSC recommendation**

- (1) This section applies if, under the *Parliamentary Workplace Support Service Act 2023*:
- (a) a Commissioner of the IPSC decides to recommend that the employing individual for a person employed under this Act take any of the following actions in relation to the person:
    - (i) give the person a written reprimand;
    - (ii) require the person to undertake training or professional development;
    - (iii) require the person to enter into an agreement with the employing individual about the person's future behaviour;
    - (iv) re-assign the person's duties;
    - (v) deduct from the person's annual salary, by way of fine, an amount not exceeding 2% of that salary;
    - (vi) terminate the person's employment; and
  - (b) the decision is in operation.
- (2) The action must be taken by:
- (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 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: Additional rules or procedures to be followed in taking these actions 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.
- (3) Subsection 15(6) (CEO may not exercise power to terminate) does not apply if:
- (a) the action is to terminate the person's employment; and

- (b) the action must be taken by the CEO because of paragraph (2)(b) of this section.
- (4) To avoid doubt, if the action is to terminate the person's employment, section 16 (termination by notice) does not apply in relation to the termination.
- (5) The employing individual or the CEO must inform the IPSC as soon as practicable after taking an action under subsection (2).
- (6) This section does not limit the actions that an employing individual for a person employed under this Act or the CEO may take in relation to the person's employment.

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

#### **14 After paragraph 15(pa)**

Insert:

- (pb) a Commissioner of the Independent Parliamentary Standards Commission;

### ***Parliamentary Workplace Support Service Act 2023***

#### **15 At the end of section 3**

Add:

- ; and (d) to promote and enforce compliance by Commonwealth parliamentary workplace participants with the Behaviour Codes.

#### **16 Section 4 (paragraph (f) of the paragraph beginning "The functions of the PWSS")**

Repeal the paragraph.

#### **17 Section 4 (after the paragraph beginning "The functions of the PWSS")**

Insert:

The Independent Parliamentary Standards Commission is also established by this Act.

The functions of the IPSC include:

- (a) assisting the Commissioners in the performance of their functions; and
- (b) publishing guidance about its functions and the functions of the Commissioners.

The functions of the Commissioners include:

- (a) dealing with conduct issues in accordance with Divisions 3 to 6 of Part 2A; and
- (b) preparing and publishing IPSC public statements in accordance with Division 7 of Part 2A.

## **18 Section 4 (paragraph beginning “The PWSS has”)**

Repeal the paragraph, substitute:

There is to be a Chief Executive Officer of the PWSS. The CEO is responsible for the management of the PWSS and the IPSC, for ensuring that the PWSS performs its functions and for assisting the IPSC and Commissioners to perform their functions and exercise their powers.

## **19 Section 5**

Insert:

***AFP appointee*** has the same meaning as in the *Australian Federal Police Act 1979*.

***Agency Head*** has the same meaning as in the *Public Service Act 1999*.

***before the IPSC***: for when a conduct issue is ***before the IPSC***, see section 24AD.

***Behaviour Code***: see section 24AC.

**Chair Commissioner** means the Chair Commissioner appointed under section 36E.

**Code commencement day**: see section 24AC.

**Commissioner** means a Commissioner appointed under section 36E and includes the Chair Commissioner.

**complainant** means:

- (a) in relation to a conduct complaint—the person who made the conduct complaint; or
- (b) in relation to a conduct issue referral, if the referrer became aware of the conduct issue because of a complaint made to the referrer—the person who made the complaint to the referrer.

**conduct complaint**: see subsection 24C(3).

**conduct issue**: see subsection 24AA(1).

**conduct issue referral** means a referral of a conduct issue under section 24CA or 24CB.

## 20 Section 5 (after paragraph (c) of the definition of **core participant**)

Insert:

- (ca) the Secretary of a Parliamentary Department; or
- (cb) the Parliamentary Librarian; or
- (cc) an Agency Head whose predominant place of work as an Agency Head is a place covered by paragraph (a) or (b) of the definition of **Commonwealth parliamentary workplace** in this section; or
- (cd) an AFP appointee whose predominant place of work as an AFP appointee is a place covered by paragraph (a) or (b) of the definition of **Commonwealth parliamentary workplace** in this section; or

**21 Section 5 (paragraph (c) of the definition of *designated worker*)**

Repeal the paragraph, substitute:

- (c) is not a person covered by paragraphs (a) to (e) of the definition of *core participant* in this section.

**22 Section 5**

Insert:

*court/tribunal order* has the same meaning as in the *Privacy Act 1988*.

*decision-maker* for a conduct issue: see subsection 24CT(2).

*detriment* includes (without limitation) any of the following:

- (a) dismissal of an employee;
- (b) injury of an employee in their employment;
- (c) alteration of an employee's position to their disadvantage;
- (d) discrimination between an employee and other employees of the same employer;
- (e) harassment or intimidation of a person;
- (f) harm or injury to a person, including psychological harm;
- (g) damage to a person's property;
- (h) damage to a person's reputation;
- (i) damage to a person's business or financial position;
- (j) any other damage to a person.

*employer*, for a respondent, means:

- (a) if the respondent is a MOPS employee—the employing individual (within the meaning of the *Members of Parliament (Staff) Act 1984*) for the respondent; or
- (b) otherwise—the person who employs the respondent in the respondent's capacity as a Commonwealth parliamentary workplace participant.

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

***entrusted person*** means:

- (a) the CEO; or
- (b) a Commissioner; or
- (c) a person referred to in section 40A (persons assisting the IPSC); or
- (d) a person referred to in section 40B (consultants).

***final report*** means a report prepared under section 24CZ.

***identifying information*** means information that identifies, or is likely to enable the identification of, a person.

***investigating Commissioner*** for a conduct issue: see subsection 24CD(2).

***IPSC*** means the Independent Parliamentary Standards Commission established by section 24B.

***IPSC public statement*** means a statement under Division 7 of Part 2A.

***legal practitioner*** means a barrister, a solicitor, a barrister and solicitor or a legal practitioner of the High Court or of the Supreme Court of a State or Territory.

***original decision***: see subsection 24DD(1).

***parliamentarian decision panel*** for a conduct issue: see subsection 24CS(1).

***Parliamentary Department*** means any of the following:

- (a) the Department of the Senate;
- (b) the Department of the House of Representatives;
- (c) the Department of Parliamentary Services;
- (d) the Parliamentary Budget Office.

***parliamentary sanction***, in relation to a member of a House of the Parliament, means:

- (a) the suspension of the member for a period of no more than the maximum period for which a member of that House may be suspended under the standing orders of that House; or

- (b) the discharge of the member from a committee of one or both Houses of the Parliament; or
- (c) a deduction from the member's annual base salary (within the meaning of the *Parliamentary Business Resources Act 2017*), by way of fine, of an amount that is more than 2%, but less than 5%, of that salary.

***post-Code conduct***: see subsection 24AB(2).

***pre-Code conduct***: see subsection 24AB(1).

***Presiding Officer*** means:

- (a) the President of the Senate or a person covered by paragraph 6(1)(d); or
- (b) the Speaker of the House of Representatives or a person covered by paragraph 6(1)(e).

***protected disclosure***: see section 24H.

***referrer***, for a conduct issue referral, means the person who makes the referral.

## **23 Section 5 (definition of *relevant conduct*)**

Repeal the definition, substitute:

***relevant conduct*** means:

- (a) pre-Code conduct; or
- (b) post-Code conduct.

## **24 Section 5**

Insert:

***respondent*** for a conduct issue: see subsection 24AA(2).

***responsible Commissioner or Commissioners***: see section 24AE.

***review decision***: see subsection 24DD(5).

***review panel***: see subsection 24DD(1).

**Secretary**, in relation to a Parliamentary Department, means the Secretary of that Department for the purposes of the *Parliamentary Service Act 1999*.

**sensitive information** means information the disclosure of which:

- (a) could prejudice the security, defence or international relations of Australia; or
- (b) would prejudice relations between:
  - (i) the Commonwealth Government and the Government of a State or Territory; or
  - (ii) the Government of a State or Territory and the Government of another State or Territory; or
- (c) would involve disclosing:
  - (i) deliberations or decisions of the Cabinet, or of any committee of the Cabinet, of the Commonwealth or of a State; or
  - (ii) deliberations or advice of the Federal Executive Council or the Executive Council of a State or the Northern Territory; or
  - (iii) deliberations or decisions of the Australian Capital Territory Executive or of a committee of that Executive; or
- (d) could endanger a person's life or physical safety; or
- (e) could prejudice the protection of public safety; or
- (f) would prejudice the fair trial of any person or the impartial adjudication of a matter; or
- (g) would prejudice the proper enforcement of the law; or
- (h) would involve disclosing information whose disclosure is prohibited (absolutely or subject to qualifications) by or under another law of the Commonwealth; or
- (i) would involve unreasonably disclosing a person's personal information; or
- (j) would involve unreasonably disclosing confidential commercial information.

**serious breach finding**, in relation to the respondent for a conduct issue: see paragraph 24CY(1)(d).



***serious offence*** means:

- (a) an offence against a law of the Commonwealth, a State or a Territory involving assault or sexual assault; or
- (b) any other offence prescribed by the PWSS rules.

***State or Territory law enforcement entity*** means:

- (a) a police force or police service of a State or Territory; or
- (b) any other authority or person responsible for the enforcement of the laws of a State or Territory.

***support person***, for a person, means someone approved as a support person for that person under subsection 24FC(4) or 24FI(2).

***work health and safety law*** means:

- (a) the *Work Health and Safety Act 2011*; or
- (b) a corresponding WHS law (within the meaning of that Act).

**25 Section 11 (paragraph (f) of the paragraph beginning “The functions of the PWSS”)**

Repeal the paragraph.

**26 Section 11 (paragraph beginning “The PWSS”)**

After “functions of the PWSS”, insert “, IPSC”.

**27 Subsection 12(3)**

Repeal the subsection.

**28 Paragraph 13(f)**

Repeal the paragraph.

**29 Paragraph 13(i)**

After “available to”, insert “the IPSC,”.

**30 Subparagraph 14(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) the Behaviour Codes that apply to them;

**31 Subparagraph 14(c)(ii)**

Repeal the subparagraph, substitute:

- (ii) the Behaviour Codes that apply to them;

**32 After subsection 16(2)**

Insert:

(2A) If the first party apologises to the second party for the alleged relevant conduct while the PWSS is providing services under this section to the parties, the making of the apology:

- (a) is not an admission of fault or liability; and
- (b) is not admissible in evidence against the first party in any civil proceedings in respect of the conduct.

(2B) Subsection (2A) does not apply in relation to conduct that would constitute an offence.

**33 Subparagraph 18(1)(a)(i)**

After “the PWSS”, insert “and the IPSC”.

**34 Subparagraph 18(1)(a)(iii)**

Repeal the subparagraph, substitute:

- (iii) the Behaviour Codes; and

**35 Section 19**

Repeal the section.

**36 Subsection 22(1)**

After “functions of the PWSS”, insert “, IPSC”.

**37 At the end of subsection 22(2)**

Add:

; (g) conduct complaints and conduct issue referrals received, and conduct issues dealt with, by the IPSC, including general information about:

- (i) the investigation of conduct issues; and
- (ii) any actions taken as a result of those investigations.

**38 Subsection 22(3)**

Omit “paragraphs (2)(a) to (f)”, substitute “paragraphs (2)(a) to (g)”.

**39 Subsection 22(5)**

Omit all the words after “the PWSS must give”, substitute “each Presiding Officer a copy of the report”.

**40 Paragraph 23(7)(b)**

Omit “could identify”, substitute “identifies, or is likely to enable the identification of,”.

**41 After Part 2**

Insert:

**Part 2A—Independent Parliamentary Standards  
Commission**

**Division 1—Introduction**

**Subdivision A—Simplified outline of this Part**

**24A Simplified outline of this Part**

This Part establishes the Independent Parliamentary Standards Commission.

The IPSC consists of:

- (a) the Commissioners; and
- (b) persons made available by the CEO to assist the IPSC to perform its functions.

The functions of the IPSC include:

- (a) assisting the Commissioners in the performance of their functions; and
- (b) publishing guidance about its functions and the functions of the Commissioners.

The Commissioners are able to investigate conduct issues that arise from a complaint or referral made to the IPSC, or that the Chair Commissioner becomes aware of in any other way.

A conduct issue is an issue of whether a person has engaged in relevant conduct. Relevant conduct means:

- (a) pre-Code conduct, which is certain conduct engaged in by parliamentarians, MOPS employees or non-core participants before the Behaviour Codes have commenced; or
- (b) post-Code conduct, which is conduct in breach of a Behaviour Code that is engaged in by any Commonwealth parliamentary workplace participant.

If a person is found to have engaged in such conduct, the Commissioners may:

- (a) recommend actions to be taken against the person; and
- (b) if the person is a current or former parliamentarian—impose sanctions on the person; and
- (c) if the person is a current member of a House of the Parliament and a serious breach finding is made—refer the finding to the Privileges Committee of that House.

Division 4 provides for internal reviews of decisions made by Commissioners.

Division 5 deals with the process for referring a serious breach finding to the Privileges Committee of a House of the Parliament.

Division 6 deals with information-gathering powers, confidentiality notices, and the circumstances in which an entrusted person may record or disclose information.

Division 7 sets out the Commissioners' power to make public statements about conduct issues that were or are before the IPSC.

Division 8 provides protections and immunities for persons who make complaints about or refer conduct issues, or provide other information, under this Act.

## **Subdivision B—Key concepts for the IPSC**

### **24AA Meanings of *conduct issue* and *respondent***

- (1) A ***conduct issue*** is an issue of whether a person has engaged in, or is engaging in, relevant conduct.

Note: In this Act, ***relevant conduct*** means pre-Code conduct or post-Code conduct (see section 5).

- (2) The person is the ***respondent*** for the conduct issue.

### **24AB Meanings of *pre-Code conduct* and *post-Code conduct***

- (1) ***Pre-Code conduct*** is conduct that:
- (a) is engaged in before the Code commencement day; and
  - (b) consists of any of the following:
    - (i) sexual assault;
    - (ii) assault;
    - (iii) sexual harassment;
    - (iv) harassment;
    - (v) another person being bullied at work (within the meaning of the *Fair Work Act 2009*);
    - (vi) unreasonable behaviour towards another person that creates a risk to work health or safety; and
  - (c) is engaged in by a person (the ***first person***) covered by column 1 of an item of the following table; and
  - (d) affects a person (the ***second person***) covered by column 2 of that item; and
  - (e) meets the requirements in column 3 of that item.

**Schedule 1** Amendments**Part 2** Amendments commencing on Proclamation

<b>Pre-Code conduct—persons and requirements</b>			
<b>Item</b>	<b>Column 1 First person</b>	<b>Column 2 Second person</b>	<b>Column 3 Requirements</b>
1	A parliamentarian or MOPS employee	A parliamentarian, MOPS employee or Parliamentary Service employee	The conduct was engaged in in the course of either the first person or second person performing duties as a parliamentarian, MOPS employee or Parliamentary Service employee (as the case requires)
2	A non-core participant	A parliamentarian, MOPS employee or Parliamentary Service employee	The conduct was engaged in: (a) in the course of either the first person or second person performing duties as a non-core participant, parliamentarian, MOPS employee or Parliamentary Service employee (as the case requires); and (b) at a place in the precincts (within the meaning of the <i>Parliamentary Precincts Act 1988</i> )

(2) **Post-Code conduct** is conduct that:

- (a) is engaged in on or after the Code commencement day; and
- (b) is engaged in by a Commonwealth parliamentary workplace participant; and

- (c) constitutes or involves a breach of a Behaviour Code, as in force at the time of the conduct; and
- (d) either:
  - (i) affects a Commonwealth parliamentary workplace participant; or
  - (ii) does not directly affect another person.

**24AC Meanings of *Behaviour Code* and *Code commencement day***

- (1) Each of the following is a ***Behaviour Code***:
  - (a) a determination, under subsection 13(2) of the *Members of Parliament (Staff) Act 1984*, that a MOPS employee must comply with a code or standard of behaviour (other than the Ministerial Staff Code of Conduct) as a term and condition of employment, as in force from time to time;
  - (b) a code or standard of behaviour for persons in Commonwealth parliamentary workplaces that is approved, from time to time, by a resolution of both Houses of the Parliament.
- (2) The ***Code commencement day*** is the first day on which both of the following are in force:
  - (a) a determination mentioned in paragraph (1)(a);
  - (b) a code or standard mentioned in paragraph (1)(b).

**24AD Meaning of *before the IPSC***

A conduct issue is ***before the IPSC*** if:

- (a) both of the following apply:
  - (i) the issue arises from a conduct complaint or conduct issue referral made to the IPSC;
  - (ii) a Commissioner has not yet been assigned to deal with the issue; or
- (b) the Chair Commissioner has become aware of, and is considering whether to assign themselves to deal with, the issue; or
- (c) any other action is being taken in relation to the issue under this Part.

24AE Meaning of *responsible Commissioner or Commissioners*

- (1) The *responsible Commissioner or Commissioners* for a conduct issue covered by an item of column 1 of the following table are the Commissioners mentioned in column 2 of the item.

Responsible Commissioner or Commissioners for conduct issues		
Item	Column 1 Conduct issue	Column 2 Responsible Commissioner or Commissioners
1	A Commissioner has not yet been assigned to deal with the conduct issue	the Chair Commissioner
2	A Commissioner has been assigned to deal with the conduct issue, and neither table item 3 nor 4 applies	the investigating Commissioner
3	The conduct issue is, or has been, before a parliamentary decision panel and table item 4 does not apply	a majority of the Commissioners on the parliamentary decision panel
4	The conduct issue is, or has been, before a review panel	a majority of the Commissioners on the review panel

- (2) If a Commissioner who would be covered by column 2 of the table in subsection (1) is no longer a Commissioner, the Chair Commissioner is taken to be that Commissioner.

Division 2—Establishment and functions of the IPSC

24B Independent Parliamentary Standards Commission

- (1) The Independent Parliamentary Standards Commission is established by this section.

Note 1: The IPSC does not have a legal identity separate from the Commonwealth.

Note 2: In this Act, *IPSC* means the Independent Parliamentary Standards Commission (see section 5).



- (2) The IPSC consists of:
  - (a) the Commissioners; and
  - (b) the persons referred to in paragraphs 40A(1)(a) and (b).

#### **24BA Functions of the IPSC**

The IPSC has the following functions:

- (a) to assist the Commissioners in the performance of their functions;
- (b) its guidance function (under section 24BB);
- (c) such other functions as are conferred on the IPSC by this Act or by any other law of the Commonwealth;
- (d) to do anything incidental to, or conducive to, the performance of the above functions.

#### **24BB Guidance function**

- (1) The guidance function of the IPSC is to develop and publish guidance about:
  - (a) the functions and powers of the Commissioners; and
  - (b) the functions of the IPSC.
- (2) The guidance must include information about:
  - (a) the importance of early reporting to the police of relevant conduct that may constitute an offence; and
  - (b) the consequences of failing to do so on future investigations and prosecutions of such conduct.

#### **24BC IPSC has privileges and immunities of the Crown**

The IPSC has the privileges and immunities of the Crown in right of the Commonwealth.

## Division 3—How the IPSC deals with conduct issues

### Subdivision A—Complaints and referrals

#### 24C Conduct complaints

- (1) A person may make a complaint to the IPSC if:
  - (a) the complaint is about alleged post-Code conduct; and
  - (b) the person was or is affected by the alleged conduct; and
  - (c) the person was or is a Commonwealth parliamentary workplace participant at the time of the alleged conduct.
- (2) A person may also make a complaint to the IPSC if:
  - (a) the complaint is about alleged pre-Code conduct; and
  - (b) the person was or is affected by the alleged conduct; and
  - (c) the person was or is a parliamentarian, MOPS employee or Parliamentary Service employee at the time of the alleged conduct.
- (3) A complaint made under this section is a *conduct complaint*.
- (4) A conduct complaint must:
  - (a) be made in writing; and
  - (b) include the following:
    - (i) details of the alleged conduct;
    - (ii) any evidence to support the complaint;
    - (iii) the complainant's name and contact details.
- (5) The complainant may amend the complaint with the agreement of:
  - (a) the investigating Commissioner for the conduct issue arising from the complaint; or
  - (b) if there is no investigating Commissioner—the Chair Commissioner.

## **24CA Conduct issue referrals by parliamentarians**

### *Parliamentarians generally*

- (1) A parliamentarian may refer a conduct issue to the IPSC if:
  - (a) the complainant or respondent is employed by the parliamentarian; or
  - (b) the complainant's or respondent's predominant place of work is at an office provided to the parliamentarian:
    - (i) under the *Parliamentary Business Resources Act 2017*; or
    - (ii) at a place in the precincts (within the meaning of the *Parliamentary Precincts Act 1988*).

### *Presiding Officers*

- (2) A Presiding Officer may refer a conduct issue to the IPSC if:
  - (a) either:
    - (i) the Presiding Officer is the President of the Senate or a person covered by paragraph 6(1)(d), and the respondent is a senator; or
    - (ii) the Presiding Officer is the Speaker of the House of Representatives or a person covered by paragraph 6(1)(e), and the respondent is a member of the House of Representatives; and
  - (b) the Presiding Officer is reasonably satisfied that the conduct concerned does not form part of proceedings in Parliament for the purposes of section 16 of the *Parliamentary Privileges Act 1987*.

### *Leaders of Parliamentary parties*

- (3) The Leader of a Parliamentary party may refer a conduct issue to the IPSC if the respondent is or was, at the time of the conduct concerned:
  - (a) a parliamentarian; and
  - (b) a member of that party.

*Application*

- (4) To avoid doubt, subsection (1) is not limited by subsection (2) or (3).

**24CB Conduct issue referrals by the CEO**

- (1) The CEO may refer a conduct issue to the IPSC.
- (2) However, the CEO must not refer a conduct issue to the IPSC if the issue arises from an anonymous statement.
- (3) The CEO may, in writing, delegate the CEO's power under subsection (1) to a member of the staff of the PWSS who is:
  - (a) an SES employee or an acting SES employee; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.

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

- (4) In exercising a power under a delegation under subsection (3), the delegate must comply with any written directions of the CEO.

**24CC Requirements for referrals**

- (1) A conduct issue referral must:
  - (a) be made in writing; and
  - (b) include the following information:
    - (i) details of the conduct issue;
    - (ii) any evidence relevant to the conduct issue;
    - (iii) the name and contact details of the referrer.
- (2) If the referrer became aware of the conduct issue because of a complaint made to the referrer:
  - (a) the referral must not be made unless either:
    - (i) the complainant consents to the referral; or
    - (ii) the referrer is reasonably satisfied that making the referral is necessary to comply with a duty or obligation under a work health and safety law; and

- (b) the referral must also include the name and contact details of the complainant.
- (3) To avoid doubt, this Subdivision does not require a person to refer a conduct issue to the IPSC.

## **Subdivision B—Dealing with conduct issues**

### **24CD Assignment of investigating Commissioner**

- (1) The Chair Commissioner:
  - (a) must assign a Commissioner to deal with a conduct issue arising from a conduct complaint or conduct issue referral; and
  - (b) may, subject to section 24CE (conduct issues arising from anonymous statements), assign themselves to deal with a conduct issue that the Chair Commissioner becomes aware of in any other way.
- (2) The Commissioner assigned to deal with a conduct issue is the *investigating Commissioner* for the conduct issue.
- (3) The Chair Commissioner may vary or revoke an assignment under paragraph (1)(a) at any time.

### **24CE Conduct issues arising from anonymous statements**

- (1) The Chair Commissioner must not deal with a conduct issue if the Chair Commissioner becomes aware of the issue because of an anonymous statement.
- (2) However, the Chair Commissioner must:
  - (a) refer the conduct issue to be dealt with by the PWSS, if the Chair Commissioner is satisfied that the statement:
    - (i) is not frivolous, vexatious, misconceived or lacking in substance; and
    - (ii) was made in good faith; and
  - (b) if the contact details of the person who made the statement are known to the Chair Commissioner—take reasonable steps

to contact the person and advise them of the services provided by the PWSS under section 15 (support function).

#### **24CF How conduct issues may be dealt with**

The investigating Commissioner must deal with a conduct issue by doing any of the following:

- (a) investigating the issue;
- (b) referring the issue under:
  - (i) section 24CI (decision not to investigate—referral to PWSS); or
  - (ii) section 24CJ (decision not to investigate—referral to Agency Head etc.); or
  - (iii) section 24CK (decision not to investigate—referral under another law);
- (c) taking no action, or no further action, in relation to the issue.

#### **24CG Preliminary inquiries**

- (1) The investigating Commissioner may make any preliminary inquiries, of any person, that the Commissioner considers necessary for the purposes of determining how to deal with a conduct issue.
- (2) This section does not limit the information, documents or things to which the investigating Commissioner may have regard in making a decision about how to deal with a conduct issue.

#### **24CH When conduct issue may or may not be investigated**

*When Commissioner may decide to investigate*

- (1) The investigating Commissioner may decide to investigate a conduct issue only if:
    - (a) the Commissioner is satisfied on reasonable grounds that there is sufficient evidence or information to justify doing so; and
    - (b) if the issue arose from a conduct complaint or conduct issue referral—either:
-

- (i) the Commissioner has consent to investigate the issue;  
or
  - (ii) the Commissioner is reasonably satisfied that a serious risk to work health or safety arises, or could arise, from the conduct concerned.
- (2) For the purposes of this section, the investigating Commissioner has ***consent to investigate*** a conduct issue if:
  - (a) the issue arose from a conduct complaint and the complainant has not withdrawn the complaint; or
  - (b) all of the following apply:
    - (i) the issue arose from a conduct issue referral for which there is a complainant;
    - (ii) the referral was made with the consent of the complainant;
    - (iii) the complainant has not withdrawn that consent; or
  - (c) the issue arose from a conduct issue referral for which there is no complainant.

*Commissioner may consult before deciding whether to investigate*

- (3) Before deciding whether to investigate a conduct issue, the investigating Commissioner may consult with any person affected by the conduct concerned as the Commissioner considers appropriate.

*When Commissioner must decide not to investigate etc.*

- (4) The investigating Commissioner must decide not to investigate a conduct issue, or (if the investigation has started) not to investigate a conduct issue further, if:
  - (a) the issue arose from a conduct complaint or conduct issue referral and at the time of the conduct concerned, both the complainant and respondent were non-core participants; or
  - (b) at the time of the conduct concerned, the respondent was:
    - (i) an APS employee who is not a MOPS employee; or
    - (ii) a Parliamentary Service employee; or
    - (iii) an Agency Head; or

- (iv) the Secretary of a Parliamentary Department; or
- (v) the Parliamentary Librarian; or
- (vi) an AFP appointee; or
- (c) the conduct concerned forms part of proceedings in Parliament for the purposes of section 16 of the *Parliamentary Privileges Act 1987*; or
- (d) the conduct concerned may constitute a serious offence against a person and the person does not consent to the investigation.

*When Commissioner may decide not to investigate etc.*

- (5) The investigating Commissioner may decide not to investigate a conduct issue, or (if the investigation has started) not to investigate a conduct issue further, if:
    - (a) if the issue arose from a conduct complaint or conduct issue referral—the Commissioner is satisfied that the complaint or referral is frivolous, vexatious, misconceived or lacking in substance or was not made in good faith; or
    - (b) if the issue arose from a conduct complaint or conduct issue referral and the Commissioner does not have consent to investigate the issue—the Commissioner is satisfied that it is unreasonable to continue the investigation, taking into account the progress of the investigation and fairness between the persons affected by the investigation; or
    - (c) the Commissioner is satisfied that the conduct concerned:
      - (i) would be more appropriately dealt with through a service provided under section 16 (complaint resolution function), or under another law of the Commonwealth or a law of a State or Territory; or
      - (ii) is being dealt with through a service provided under section 16 (complaint resolution function); or
      - (iii) is being dealt with under another law of the Commonwealth or a law of a State or Territory and it would be inappropriate to conduct an investigation under this Act at the same time; or
      - (iv) has already been dealt with under this Part, another law of the Commonwealth or a law of a State or Territory
-



- and there are no further matters concerning the conduct that warrant investigation; or
- (d) the conduct concerned is, or has been, the subject of criminal or civil proceedings (including any preliminary investigations or action that might lead to criminal or civil proceedings); or
  - (e) if the respondent is a non-core participant—the Commissioner is satisfied that the issue would be more appropriately dealt with by the respondent’s employer; or
  - (f) the Commissioner is satisfied it is inappropriate or impracticable for the issue to be investigated for any other reason.

#### **24CI Decision not to investigate—referral to PWSS**

- (1) This section applies if the investigating Commissioner:
  - (a) decides not to investigate a conduct issue, or not to investigate a conduct issue further; and
  - (b) does so because:
    - (i) the issue arose from a conduct complaint or conduct issue referral and at the time of the conduct concerned, both the complainant and respondent were non-core participants; or
    - (ii) the Commissioner is satisfied that the conduct concerned would be more appropriately dealt with through a service provided under section 16 (complaint resolution function).
- (2) This section also applies if the investigating Commissioner:
  - (a) decides not to investigate a conduct issue; and
  - (b) does so because:
    - (i) the issue arose from a conduct issue referral for which there is a complainant; and
    - (ii) the Commissioner does not have consent to investigate the issue (within the meaning of subsection 24CH(2)); and
    - (iii) the Commissioner is not satisfied as required by subparagraph 24CH(1)(b)(ii) (which deals with serious risks to work health or safety).

- (3) The investigating Commissioner must, as soon as reasonably practicable, take reasonable steps to refer the conduct issue to be dealt with by the PWSS.
- (4) However, if the conduct issue arose from a conduct complaint or a conduct issue referral for which there is a complainant, the investigating Commissioner must not refer the issue under this section unless the complainant consents to the referral.

**24CJ Decision not to investigate—referral to Agency Head etc.**

- (1) This section applies if the investigating Commissioner:
  - (a) decides not to investigate a conduct issue, or not to investigate a conduct issue further; and
  - (b) does so because, at the time of the conduct concerned, the respondent was:
    - (i) an APS employee who is not a MOPS employee; or
    - (ii) a Parliamentary Service employee; or
    - (iii) an Agency Head; or
    - (iv) the Secretary of a Parliamentary Department; or
    - (v) the Parliamentary Librarian; or
    - (vi) an AFP appointee.
- (2) The investigating Commissioner must, as soon as reasonably practicable, take reasonable steps to refer the conduct issue to be dealt with by:
  - (a) if the respondent is an APS employee of an Agency (within the meaning of the *Public Service Act 1999*)—the Agency Head of that Agency; or
  - (b) if the respondent is a Parliamentary Service employee of a Parliamentary Department—the Secretary of that Department; or
  - (c) if the respondent is an Agency Head—the Australian Public Service Commissioner; or
  - (d) if the respondent is the Secretary of a Parliamentary Department—each Presiding Officer; or
  - (e) if the respondent is the Parliamentary Librarian—the Secretary of the Department of Parliamentary Services; or

- (f) if the respondent is an AFP appointee—the Commissioner of Police (within the meaning of the *Australian Federal Police Act 1979*).
- (3) However, if the conduct issue arose from a conduct complaint or a conduct issue referral for which there is a complainant, the investigating Commissioner must not refer the issue under this section unless the complainant consents to the referral.

**24CK Decision not to investigate—referral under another law**

- (1) This section applies if:
  - (a) the investigating Commissioner:
    - (i) decides not to investigate a conduct issue, or not to investigate a conduct issue further; and
    - (ii) does so because the Commissioner is satisfied that the conduct concerned would be more appropriately dealt with under another law of the Commonwealth or a law of a State or Territory; and
  - (b) section 24CJ (decision not to investigate—referral to Agency Head etc.) does not apply.
- (2) The investigating Commissioner must, as soon as reasonably practicable, take reasonable steps to refer the conduct issue to be dealt with under the other law.
- (3) However, if the conduct concerned may constitute a serious offence against a person, the investigating Commissioner must not refer the issue under this section to the Australian Federal Police or the police force or police service of a State or Territory unless:
  - (a) the person consents to the referral; or
  - (b) the Commissioner is required to do so by or under a law of the Commonwealth, a State or a Territory, or a court/tribunal order.

## 24CL Notice of decision about investigating conduct issue

### *Decision to investigate*

- (1) The investigating Commissioner must take reasonable steps to give written notice of a decision to investigate a conduct issue to the following:
  - (a) the respondent;
  - (b) if any of the following applies—the respondent’s employer:
    - (i) the issue did not arise from a conduct complaint or conduct issue referral;
    - (ii) the issue arose from a conduct complaint or conduct issue referral and the complainant consents to the giving of the notice;
    - (iii) the issue arose from a conduct issue referral for which there is no complainant;
    - (iv) the Commissioner is reasonably satisfied that the issue is relevant to a duty or obligation of the employer under a work health and safety law;
  - (c) if the issue arose from a conduct complaint or conduct issue referral—the complainant;
  - (d) if the issue arose from a conduct issue referral—the referrer.
- (2) A notice under subsection (1) must set out:
  - (a) the reasons for the decision; and
  - (b) details of the conduct issue concerned; and
  - (c) the effect of section 24CP (requirement to cooperate); and
  - (d) if the notice is given to the respondent or complainant—information about the services provided by the PWSS under section 15 (support function).

### *Decision not to investigate*

- (3) The investigating Commissioner must take reasonable steps to give written notice of a decision not to investigate a conduct issue, or not to investigate a conduct issue further, to the following:

- (a) if the Commissioner has previously made the respondent aware of a matter relating to the issue (whether by giving a notice under this Act or otherwise)—the respondent;
  - (b) any other person to whom the Commissioner has previously given a notice under this Act in relation to the issue;
  - (c) if the issue arose from a conduct complaint or conduct issue referral—the complainant;
  - (d) if the issue arose from a conduct issue referral—the referrer.
- (4) A notice under subsection (3) must set out the reasons for the decision.

#### **24CM Notice of amended complaint**

- (1) This section applies if:
- (a) the investigating Commissioner gives notice of a decision to investigate a conduct issue to the respondent; and
  - (b) the issue arose from a conduct complaint; and
  - (c) the complainant amends the complaint after the notice is given.
- (2) The investigating Commissioner must, as soon as practicable, give written notice of the amended complaint to the respondent.

#### **Subdivision C—Investigating conduct issues**

##### **24CN Application of Subdivision**

This Subdivision applies if the investigating Commissioner decides to investigate a conduct issue.

##### **24CO Conduct of investigations**

- (1) The investigating Commissioner may investigate the conduct issue in such manner as the Commissioner thinks fit.
- (2) The investigating Commissioner must:

- (a) complete the investigation as quickly as the requirements of this Act and a proper consideration of the conduct issue permits; and
  - (b) observe the requirements of procedural fairness when conducting the investigation.
- (3) Conduct issues may be investigated together.

#### **24CP Requirement to cooperate**

- (1) This section applies if the respondent is:
  - (a) a person covered by paragraph 6(1)(a) or (b); or
  - (b) a MOPS employee.
- (2) The respondent must cooperate with any person who is performing functions, or exercising powers, under this Act in relation to the investigation.

Note: A failure to comply with this subsection may constitute a breach of a Behaviour Code.

#### **24CQ Commissioner may recommend suspension for non-parliamentarians during investigation**

- (1) This section applies if the respondent is not a parliamentarian.
- (2) The investigating Commissioner may recommend that the respondent's employer suspend the respondent from duties:
  - (a) if the Commissioner is reasonably satisfied that the employer should do so to comply with a duty or obligation under a work health and safety law; and
  - (b) for a specified period of no longer than 30 days.
- (3) The investigating Commissioner must consult the respondent's employer in determining:
  - (a) whether to make the recommendation, if a recommendation has previously been made under this section in relation to the respondent; and
  - (b) the period to be specified.

## **Subdivision D—Report of investigation into conduct issue**

### **24CR Application of Subdivision**

This Subdivision applies after an investigation into a conduct issue is completed.

### **24CS Parliamentary decision panel**

- (1) If the respondent is a current or former parliamentarian, the Chair Commissioner must, as soon as practicable, constitute a panel (the *parliamentarian decision panel*) for the conduct issue.
- (2) The parliamentary decision panel must consist of:
  - (a) the investigating Commissioner; and
  - (b) 2 other Commissioners.
- (3) The Chair Commissioner may reconstitute the parliamentary decision panel at any time.
- (4) Anything done by the parliamentary decision panel must be agreed to by a majority of the panel's members.

### **24CT Draft report on investigation**

- (1) The decision-maker must prepare a draft report on the investigation.
- (2) The *decision-maker* for the conduct issue is:
  - (a) if the respondent is a current or former parliamentarian—the parliamentary decision panel for the issue; or
  - (b) otherwise—the investigating Commissioner.
- (3) If the decision-maker is a parliamentary decision panel:
  - (a) the investigating Commissioner must provide to the panel relevant evidence and other material gathered during the investigation; and
  - (b) the panel may request the investigating Commissioner to obtain such other evidence or material about the conduct issue as the panel requires; and

- (c) the panel must consider the evidence and other material in preparing the draft report.

## **24CU Contents of draft report**

The draft report must set out:

- (a) the decision-maker's preliminary findings on the conduct issue, including whether the respondent has engaged in relevant conduct; and
- (b) a summary of the evidence and other material on which those preliminary findings are based; and
- (c) if there is a preliminary finding that the respondent has engaged in relevant conduct—any recommendations that the decision-maker proposes to make in relation to the respondent; and
- (d) if there is a preliminary finding that the respondent has engaged in relevant conduct and the respondent is a current or former parliamentarian—any sanctions that the decision-maker proposes to impose on the respondent; and
- (e) if:
  - (i) there is a preliminary serious breach finding in relation to the respondent; and
  - (ii) the respondent is a current member of a House of the Parliament; and
  - (iii) there is a preliminary finding that it is appropriate for a parliamentary sanction to be imposed on the respondent; whether the decision-maker proposes to refer the preliminary serious breach finding to the Privileges Committee of that House.

Note: The decision-maker is not required to propose a recommendation, sanction or referral, even if there is a preliminary finding that the respondent has engaged in relevant conduct.

## **24CV Opportunity to respond to preliminary findings and proposed sanctions etc.**

- (1) This section applies if the draft report sets out:



- (a) a preliminary finding that is critical (either expressly or impliedly) of a person; or
  - (b) a proposed recommendation to take an action in relation to a person; or
  - (c) a proposed sanction to be imposed on a person; or
  - (d) a proposed referral of a serious breach finding in relation to a person to the Privileges Committee of a House of the Parliament.
- (2) The decision-maker must give the person:
- (a) a statement setting out the preliminary finding or proposal; and
  - (b) a reasonable opportunity to respond to the preliminary finding or proposal.

#### **24CW Draft report may be given to respondent or complainant**

- (1) The decision-maker may, if the decision-maker considers it appropriate to do so, give a copy of the draft report to either or both of the following:
- (a) the respondent;
  - (b) if the conduct issue arose from a conduct complaint or conduct issue referral—the complainant.
- (2) The decision-maker must exclude from the copy any information that the decision-maker is satisfied is sensitive information.

#### **24CX Apologies by the respondent**

- (1) This section applies if:
- (a) before the draft report is prepared, the investigating Commissioner is satisfied as mentioned in subsection (2); or
  - (b) after the draft report is prepared and before a decision is made under section 24CY, the decision-maker is satisfied as mentioned in subsection (2) of this section.
- (2) For the purposes of paragraphs (1)(a) and (b), the investigating Commissioner or decision-maker must be satisfied that:

- (a) it would be appropriate in the circumstances, taking into account the seriousness of the conduct concerned, for the respondent to apologise to a person affected by the conduct concerned; and
  - (b) the conduct concerned would not constitute an offence.
- (3) The investigating Commissioner or decision-maker may facilitate, in such manner as they see fit, the making of the apology if:
  - (a) the respondent consents to making the apology; and
  - (b) the person consents to receiving the apology.
- (4) The making of the apology:
  - (a) is not an admission of fault or liability; and
  - (b) is not admissible in evidence against the respondent in any civil proceedings in respect of the conduct concerned.
- (5) The decision-maker may take the apology into account in making a decision under section 24CY.

## **24CY Decision on conduct issue**

### *Decision on conduct issue*

- (1) After considering the responses (if any) given on the draft report, the decision-maker must decide:
  - (a) whether the decision-maker is satisfied, on the balance of probabilities, that the respondent has engaged in relevant conduct; and
  - (b) if the decision-maker is satisfied that the respondent has engaged in relevant conduct—whether to make any recommendations in relation to the respondent; and
  - (c) if the decision-maker is satisfied that the respondent has engaged in relevant conduct, and the respondent is a current or former parliamentarian—whether to impose any sanctions on the respondent; and
  - (d) if:
    - (i) the decision-maker is satisfied that the respondent has engaged in relevant conduct that is serious; and

- (ii) the respondent is a current member of a House of the Parliament; and
- (iii) the decision-maker is satisfied that it is appropriate for a parliamentary sanction to be imposed on the respondent; whether to refer the finding (the *serious breach finding*) that the respondent has engaged in the relevant conduct to the Privileges Committee of that House.

- Note 1: To avoid doubt, a finding by the decision-maker that the respondent has engaged in relevant conduct is not a finding of guilt in relation to an offence against a law of the Commonwealth, a State or a Territory.
- Note 2: The decision-maker is not required to make a recommendation, impose a sanction or make a referral, even if the decision-maker is satisfied that the respondent has engaged in relevant conduct.
- Note 3: The decision-maker may, in making a decision under this section, take into account any apology made by the respondent that was facilitated by a Commissioner (see subsection 24CX(5)).

- (2) The decision-maker may decide to make a recommendation, impose a sanction or refer a serious breach finding only if the decision-maker is satisfied that doing so is necessary to promote appropriate conduct in Commonwealth parliamentary workplaces.
- (3) A decision made by the decision-maker comes into operation on:
  - (a) if an application under section 24DA for review of the decision has been made within the period specified in that section—the day after the application is finally determined; or
  - (b) if an application under section 24DA for review of the decision has not been made within the period specified in that section—the day after the end of that period.

- Note: If a review panel varies or substitutes the decision, the decision as varied or the substituted decision is taken to be the decision of the decision-maker (see subsection 24DD(6)).

*Recommendations that may be made*

- (4) For the purposes of paragraph (1)(b), the following recommendations may be made:

- (a) if the respondent is a MOPS employee—a recommendation for the respondent’s employer to take any of the following actions within a specified period:
  - (i) give the respondent a written reprimand;
  - (ii) require the respondent to undertake training or professional development;
  - (iii) require the respondent to enter into an agreement with the employer about the respondent’s future behaviour;
  - (iv) re-assign the respondent’s duties, if it is reasonably practicable to do so;
  - (v) deduct from the respondent’s annual salary, by way of fine, an amount not exceeding 2% of that salary;
  - (vi) terminate the respondent’s employment;
- (b) if the respondent is a non-core participant—a recommendation for a Presiding Officer to restrict or remove the respondent’s access to the precincts (within the meaning of the *Parliamentary Precincts Act 1988*) for a specified period;
- (c) if the respondent is a former MOPS employee—a recommendation for the respondent’s former employer to give the respondent a written reprimand;
- (d) if the respondent is neither a parliamentarian nor a MOPS employee—a recommendation for the respondent’s employer to take, within a specified period, any action that the decision-maker considers appropriate, taking into account the seriousness of the conduct concerned.

*Sanctions that may be imposed*

- (5) For the purposes of paragraph (1)(c), the following sanctions may be imposed:
  - (a) a written reprimand;
  - (b) a requirement that the respondent undertake training or professional development within a specified period;
  - (c) a requirement that the respondent enter into an agreement with the IPSC about the respondent’s future behaviour.

*Deduction of amounts from salary*

- (6) If the decision-maker recommends that an amount be deducted from the respondent's salary by way of fine:
  - (a) the fine may be deducted from a payment of salary made to the respondent; or
  - (b) 2 or more amounts that in total equal the fine may be deducted from 2 or more payments of salary made to the respondent.

**24CZ Final report on investigation**

- (1) The decision-maker must prepare a final report on the investigation that sets out:
  - (a) the decisions made by the decision-maker; and
  - (b) any other findings on the conduct issue that the decision-maker thinks fit to make; and
  - (c) a summary of the evidence and other material on which those decisions and findings are based.
- (2) The decision-maker must, as soon as practicable after preparing the final report, give a copy of the report to:
  - (a) the respondent; and
  - (b) if the conduct issue arose from a conduct complaint or conduct issue referral—the complainant; and
  - (c) if the respondent is a MOPS employee—the respondent's employer.
- (3) If an application under section 24DA for review of a decision set out in the report has not been made within the period specified in that section, or has been made and dismissed, the decision-maker must give a copy of the report to:
  - (a) if the conduct issue arose from a conduct issue referral—the referrer; and
  - (b) if the report contains a decision to recommend that a Presiding Officer take an action—that Presiding Officer; and
  - (c) if both of the following apply—the Prime Minister:

- (i) the respondent is a Minister (whether or not the respondent was a Minister at the time of the conduct concerned);
  - (ii) the report contains a finding that the respondent has engaged in relevant conduct; and
- (d) if the respondent is a member of a Parliamentary party and both of the following apply—the Leader of that Parliamentary party:
  - (i) the respondent is a Presiding Officer;
  - (ii) the report contains a decision to refer a serious breach finding in relation to the respondent to the Privileges Committee of a House of the Parliament; and
- (e) if both of the following apply—the respondent’s employer:
  - (i) the respondent is not a MOPS employee;
  - (ii) the report contains a decision to recommend that the employer take an action; and
- (f) if all of the following apply—the respondent’s former employer:
  - (i) the respondent is a former MOPS employee;
  - (ii) the report contains a decision to recommend that the respondent’s former employer give the respondent a written reprimand;
  - (iii) it is reasonably practicable to do so.

**Note:** If an application for review has been made and has not been dismissed, a copy of the final report may be given to some of the persons mentioned in this subsection after the review is completed (see subsection 24DE(4)).

- (4) If the respondent is a parliamentarian or MOPS employee, the decision-maker may give a copy of the report to the CEO for purposes connected with the performance or exercise of the CEO’s functions or powers.
- (5) The decision-maker must exclude from a copy of a report given under this section any information that the decision-maker is satisfied is sensitive information.

## **Division 4—Review**

### **24D Application of Division**

This Division applies in relation to a decision made under section 24CY by the decision-maker for a conduct issue.

#### **24DA Applying for internal review**

*Who can apply*

- (1) The respondent for the conduct issue may apply to the IPSC for review of the following decisions:
  - (a) a decision to make a finding that the respondent has engaged in relevant conduct;
  - (b) if the respondent is a core participant—any or all of the following:
    - (i) a decision to make one or more recommendations in relation to the respondent;
    - (ii) a decision to make a particular recommendation in relation to the respondent;
    - (iii) a decision to impose one or more sanctions on the respondent;
    - (iv) a decision to impose a particular sanction on the respondent;
    - (v) a decision to refer a serious breach finding in relation to the respondent to the Privileges Committee of a House of the Parliament.
- (2) If the conduct issue arose from a conduct complaint or conduct issue referral, the complainant may apply to the IPSC for review of the following decisions:
  - (a) a decision to make a finding that the respondent has not engaged in relevant conduct;
  - (b) if the respondent is a core participant—any or all of the following:
    - (i) a decision to make one or more recommendations in relation to the respondent;

- (ii) a decision to make a particular recommendation in relation to the respondent;
    - (iii) a decision to impose one or more sanctions on the respondent;
    - (iv) a decision to impose a particular sanction on the respondent;
    - (v) a decision to refer a serious breach finding in relation to the respondent to the Privileges Committee of a House of the Parliament;
  - (c) if a finding is made that the respondent has engaged in relevant conduct—either or both of the following:
    - (i) a decision not to make a recommendation in relation to the respondent;
    - (ii) a decision not to impose a sanction on the respondent;
  - (d) if a serious breach finding is made in relation to the respondent—a decision not to refer the finding to the Privileges Committee of a House of the Parliament.
- (3) If the respondent for the conduct issue is a MOPS employee, the respondent’s employer may apply to the IPSC for review of a decision to make a recommendation for the employer to take an action in relation to the respondent.

*Requirements for application*

- (4) An application for review of a decision must:
- (a) be made in writing; and
  - (b) set out the reasons for making the application; and
  - (c) be made within:
    - (i) 28 days after the applicant is given, under section 24CZ, a copy of the final report that sets out the decision; or
    - (ii) if the period within which the application may be made is extended under section 24DB—the extended period.

**24DB Extension of period for applying for review**

- (1) A person may apply to the Chair Commissioner to extend the period during which the person may apply for review of a decision.
-



- (2) The application must:
  - (a) be made in writing; and
  - (b) set out the reasons for making the application; and
  - (c) be made within 28 days after the person is given, under section 24CZ, a copy of the final report that sets out the decision.
- (3) The Chair Commissioner may extend the period if the Chair Commissioner considers that there are reasonable grounds to do so.

#### **24DC Notice of application**

- (1) The Chair Commissioner must give written notice of an application made under section 24DA to:
  - (a) the respondent for the conduct issue concerned; and
  - (b) if the conduct issue concerned arose from a conduct complaint or conduct issue referral—the complainant; and
  - (c) if the respondent is a MOPS employee—the respondent’s employer.
- (2) The notice must set out the effect of section 24DG (requirement to cooperate).

#### **24DD Internal review**

##### *Review panel*

- (1) The Chair Commissioner must, as soon as practicable after an application for review of a decision (the *original decision*) is made under section 24DA, constitute a panel (the *review panel*) to deal with the application.
- (2) The review panel must consist of 3 Commissioners, which must not include any Commissioner who made, or was involved in making, the original decision.
- (3) The Chair Commissioner may reconstitute the review panel at any time.

*Review panel may dismiss application*

- (4) The review panel may, at any time, dismiss the application if satisfied that the application:
- (a) is frivolous, vexatious, misconceived or lacking in substance or was not made in good faith; or
  - (b) has no reasonable prospects of success; or
  - (c) is otherwise an abuse of the process of the IPSC.

*Process for review*

- (5) After reviewing the original decision, the review panel must make a decision (the **review decision**):
- (a) affirming the original decision; or
  - (b) varying the original decision; or
  - (c) setting aside, and making a decision in substitution for, the original decision.
- (6) If the review panel makes a review decision mentioned in paragraph (5)(b) or (c), the original decision as varied, or the decision made in substitution for the original decision, is taken to be a decision of the Commissioner or parliamentary decision panel that made the original decision.

**24DE Notice of review decision etc.**

*Notice of review decision*

- (1) The review panel must, as soon as practicable after the review decision is made, give written notice of the decision and the reasons for the decision to:
- (a) the applicant for the review; and
  - (b) if the conduct issue concerned arose from a conduct complaint or conduct issue referral—the complainant; and
  - (c) if the conduct issue concerned arose from a conduct issue referral—the referrer; and
  - (d) the respondent for the conduct issue concerned; and
  - (e) if both of the following apply—the Prime Minister:

- (i) the respondent for the conduct issue concerned is a Minister (whether or not the respondent was a Minister at the time of the conduct);
    - (ii) the review decision is to make, or affirm the original decision to make, a finding that the respondent has engaged in relevant conduct; and
  - (f) if the respondent for the conduct issue concerned is a MOPS employee—the respondent’s employer; and
  - (g) if the review decision is to make, or affirm the original decision to make, a recommendation for a person to take an action—that person.
- (2) The notice under subsection (1) must also be given to the Leader of a Parliamentary party if:
- (a) the respondent for the conduct issue concerned is a Presiding Officer who is a member of that party; and
  - (b) the review decision is to refer, or affirm the original decision to refer, a serious breach finding in relation to the respondent to the Privileges Committee of a House of the Parliament.
- (3) If the respondent for the conduct issue concerned is a parliamentarian or MOPS employee, the notice under subsection (1) may be given to the CEO for purposes connected with the performance or exercise of the CEO’s functions or powers.

*Copy of final report*

- (4) The review panel must also give a copy of the final report that sets out the original decision to:
- (a) if the conduct issue concerned arose from a conduct issue referral—the referrer; and
  - (b) if the original decision was to make a recommendation for a Presiding Officer to take an action and the review decision affirms the original decision—that Presiding Officer; and
  - (c) if all of the following apply—the Prime Minister:
    - (i) the respondent for the conduct issue concerned is a Minister (whether or not the respondent was a Minister at the time of the conduct);

- (ii) the original decision was to make a finding that the respondent has engaged in relevant conduct;
- (iii) the review decision affirms the original decision; and
- (d) if the respondent for the conduct issue concerned is a member of a Parliamentary party and all of the following apply—the Leader of that Parliamentary party:
  - (i) the respondent is a Presiding Officer;
  - (ii) the original decision was to refer a serious breach finding in relation to the respondent to the Privileges Committee of a House of the Parliament;
  - (iii) the review decision affirms the original decision; and
- (e) if all of the following apply—the employer of the respondent for the conduct issue concerned:
  - (i) the respondent is not a MOPS employee;
  - (ii) the original decision was to make a recommendation for the employer to take an action;
  - (iii) the review decision affirms the original decision.

*Sensitive information*

- (5) The review panel must exclude any information that the panel is satisfied is sensitive information from:
  - (a) a notice given under subsection (1); and
  - (b) a copy of a report given under subsection (4).

**24DF Conduct of reviews etc.**

- (1) A review panel may review a decision in such manner as the members of the panel think fit.
- (2) The review panel must:
  - (a) complete the review as quickly as the requirements of this Act and a proper consideration of the matters before the panel permits; and
  - (b) observe the requirements of procedural fairness when conducting the review.

- (3) Anything done by the review panel must be agreed to by a majority of the panel's members.

#### **24DG Requirement to cooperate**

- (1) This section applies in relation to a review of a decision on a conduct issue if the respondent for the issue is:
- (a) a person covered by paragraph 6(1)(a) or (b); or
  - (b) a MOPS employee.
- (2) The respondent must cooperate with any person who is performing functions, or exercising powers, under this Act in relation to the review.

Note: A failure to comply with this subsection may constitute a breach of a Behaviour Code.

### **Division 5—Referral of serious breach findings to Parliament**

#### **24E Application of Division**

This Division applies if:

- (a) both of the following apply:
- (i) the decision-maker for a conduct issue decides to refer a serious breach finding in relation to the respondent to the Privileges Committee of a House of the Parliament;
  - (ii) an application under section 24DA for review of a decision has not been made within the period specified in that section, or has been made and dismissed; or
- (b) a review panel makes a review decision to refer, or affirm the original decision to refer, a serious breach finding in relation to the respondent for a conduct issue to the Privileges Committee of a House of the Parliament.

#### **24EA Referral to Privileges Committee**

- (1) The decision-maker or review panel must, as soon as practicable:

- (a) refer the serious breach finding to the Privileges Committee; and
- (b) give a statement to the Committee that sets out such information as the decision-maker or review panel considers necessary to assist the Committee to understand the reasons for the decision.

*Notice of proposal to include identifying information—other than for respondent parliamentarians*

- (2) Before including identifying information in the statement, the decision-maker or review panel must give the person concerned a written notice stating that they are proposing to include the information in the statement.
- (3) Subsection (2) does not apply if the identifying information relates to the respondent.

*Requirement to consult on proposal to include identifying information*

- (4) The written notice must also invite the person to:
  - (a) make submissions to the decision-maker or review panel in relation to the proposal; and
  - (b) do so within the period specified in the notice, which must be a reasonable period.
- (5) If the person makes the submissions, the decision-maker or review panel must:
  - (a) have regard to the submissions in deciding whether or not to include the identifying information; and
  - (b) give the person written notice of their decision.

## **24EB Privileges Committee to make recommendations to House**

- (1) The Privileges Committee must:
  - (a) decide whether to recommend that the House impose on the respondent:
    - (i) any parliamentary sanctions; and

- (ii) any other sanctions that the Committee considers necessary to promote appropriate conduct in Commonwealth parliamentary workplaces; and
- (b) report the Committee's decision to the House.

Note: The Committee may decide not to recommend that the House impose any sanction on the respondent.

- (2) The Privileges Committee must make the decision within:
  - (a) 60 calendar days after the referral of the serious breach finding; or
  - (b) if the Committee requires additional time to make the decision—such longer period after the referral as the Committee resolves.

## **24EC House may resolve to impose sanctions**

- (1) At any time after the Privileges Committee reports its decision to recommend that the House impose a sanction on the respondent, the House may resolve to impose:
  - (a) that sanction; and
  - (b) any other sanction that the House considers necessary to promote appropriate conduct in Commonwealth parliamentary workplaces.

### *Deduction of fines*

- (2) If the House resolves to deduct an amount from the respondent's salary by way of fine, the relevant Secretary may:
  - (a) deduct the fine from a payment of salary made to the respondent; or
  - (b) deduct 2 or more amounts that in total equal the fine from 2 or more payments of salary made to the respondent.
- (3) For the purposes of subsection (2), the **relevant Secretary** is:
  - (a) if the House is the House of Representatives—the Secretary of the Department of the House of Representatives; or
  - (b) if the House is the Senate—the Secretary of the Department of the Senate.

## **24ED Powers of Houses not limited**

To avoid doubt, this Division does not limit the power of a House of the Parliament to suspend, or take any other action in relation to, a member of that House, whether or not the member is the subject of a serious breach finding.

## **Division 6—Information management**

### **Subdivision A—Requiring information and documents etc.**

#### **24F Notice to give information etc.**

##### *Application*

- (1) This section applies if:
  - (a) the investigating Commissioner for a conduct issue has reasonable grounds to believe that a person has information, or a document or thing, that is relevant to:
    - (i) a preliminary inquiry mentioned in section 24CG in relation to the issue; or
    - (ii) the investigation of the issue under Subdivision C of Division 3; or
    - (iii) the preparation of a report under Subdivision D of Division 3 on the issue; or
  - (b) a review panel dealing with an application for review under Division 4 has reasonable grounds to believe that a person has information, or a document or thing, that is relevant to the review.

##### *Notice to give information etc.*

- (2) The Commissioner or panel may, by written notice given to the person, require the person to:
  - (a) give any such information to the Commissioner or panel; or
  - (b) produce any such document or thing to the Commissioner or panel; or



- (c) attend an interview with the Commissioner or panel, including to make a statement or answer questions.

Note: This does not affect the law relating to parliamentary privileges and immunities (see section 67).

(3) The notice must:

- (a) if the notice requires the person to give information or produce a document or thing—specify:
  - (i) the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice; and
  - (ii) the manner in which the person is required to comply with the notice; and
- (b) if the notice requires the person to attend an interview—specify:
  - (i) a time and place at which the person is to attend; and
  - (ii) the nature of the matter to which the interview will relate; and
- (c) in any case—state the effect of sections 24FA (when compliance with notice is not required) and 24FB (offence—failure to comply with notice to give information etc.) of this Act, and sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

*Person may notify Commissioner or panel if unable to attend interview*

(4) If:

- (a) the notice requires the person to attend an interview; and
- (b) there is a reason why it is not reasonably practicable for the person to do so;

the person may, within 7 days after receiving the notice, notify the Commissioner or panel of the reason.

Note: A person commits an offence if the person fails to comply with a requirement of a notice under this section unless it is not reasonably practicable for the person to do so (see section 24FB).

**24FA When compliance with notice is not required**

- (1) A person (the **recipient**) is not required to comply with a requirement of a notice given to the recipient under section 24F if subsection (2) or (3) of this section applies.

*Information etc. relating to support services*

- (2) This subsection applies if the requirement relates to information, a document or a thing obtained or brought into existence in the course of, or for the purposes of, providing a service under section 15 (support function).

*Information etc. relating to informant's identity*

- (3) This subsection applies if:
- (a) the requirement relates to information, a document or a thing given by a person (the **informant**), whether directly or indirectly:
    - (i) to another person who works in a professional capacity as a journalist; and
    - (ii) in the normal course of the journalist's work as a journalist; and
  - (b) the journalist reasonably believes that the informant has provided the information on the express or implied understanding that the informant's identity would not be disclosed; and
  - (c) compliance with the requirement would disclose the identity of the informant or enable that identity to be ascertained; and
  - (d) the recipient is:
    - (i) the journalist; or
    - (ii) the journalist's employer; or
    - (iii) assisting the journalist and employed or engaged by the journalist's employer; or
    - (iv) assisting the journalist in the recipient's professional capacity.

- (4) If the journalist is a staff member of a Commonwealth entity, the reference in subsection (3) to the journalist's employer is taken to include a reference to:
  - (a) if the accountable authority (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the entity is a single person—that person; or
  - (b) if the accountable authority (within the meaning of that Act) of the entity is a governing body or other group of persons:
    - (i) the chief executive officer (however described) of the entity (unless subparagraph (ii) applies); or
    - (ii) if the PWSS rules prescribe another person as the head of the entity—that other person.
- (5) For the purposes of subsection (4), the following are **staff members** of a Commonwealth entity:
  - (a) an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the entity;
  - (b) an individual who is employed by, or engaged in assisting:
    - (i) the entity; or
    - (ii) a staff member of the entity on behalf of the entity or the Commonwealth.

**24FB Offence—failure to comply with notice to give information etc.**

- (1) A person commits an offence if:
  - (a) the person is required to give information, produce a document or thing or attend an interview in accordance with a notice given to the person under section 24F; and
  - (b) the person fails to comply with the requirement.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if it is not reasonably practicable for the person to comply with the requirement.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## 24FC Interviews

### *Conduct of interview*

- (1) If a person (the **interviewee**) is required under section 24F to attend an interview with an investigating Commissioner or review panel, the interview must take place in private.
- (2) The Commissioner or panel may conduct the interview in such manner as the Commissioner or panel thinks fit.
- (3) Subject to subsection (8), the following are entitled to be present at the interview:
  - (a) a support person for the interviewee;
  - (b) a legal practitioner engaged by the interviewee.

Note: A **support person** for the interviewee may be approved under subsection (4) of this section or subsection 24FI(2) (see the definition of that term in section 5).

### *Support persons*

- (4) On application by the interviewee, the Commissioner or panel must, in writing, approve a person as a support person for the interviewee if satisfied that the presence of the person at the interview would not prejudice any process, or any action, taken in accordance with Division 3 or 4.
- (5) An approval under subsection (4) is not a legislative instrument.

### *Legal practitioners*

- (6) If a legal practitioner engaged by the interviewee is present during the interview, the Commissioner or panel must:
  - (a) allow the interviewee to consult with the legal practitioner in private and provide reasonable facilities for that consultation; and
  - (b) allow the legal practitioner to give advice to the interviewee.

*Directions about conduct that unreasonably interferes with interview*

- (7) If:
- (a) a person mentioned in subsection (3) is present during the interview; and
  - (b) the Commissioner or panel is of the opinion that the person is engaging in conduct that unreasonably interferes with the interview;
- the Commissioner or panel may direct the person to cease engaging in the conduct.
- (8) A person who fails to comply with a direction under subsection (7) is no longer entitled to be present during the interview.

**24FD Retaining documents and things**

- (1) This section applies if a document or thing is produced to an investigating Commissioner or review panel under section 24F.
- (2) The Commissioner or panel:
  - (a) may make copies of the document or thing, or take extracts from the document; and
  - (b) may retain possession of the document or thing for such period as is necessary for the purposes of the performance of the Commissioner's or panel's functions.
- (3) While the Commissioner or panel retains the document or thing, the Commissioner or panel must allow a person who would otherwise be entitled to inspect the document or view the thing:
  - (a) to do so at all reasonable times; and
  - (b) to copy the document or thing.
- (4) Subsection (3) does not apply if:
  - (a) possession of the document or thing by the person could constitute an offence; or
  - (b) inspecting or copying the document or thing (as the case requires) would compromise or damage the document or thing; or

- (c) the Commissioner or panel is satisfied that allowing the person to inspect the document or view the thing would prejudice the performance of the Commissioner's or panel's functions.

**24FE When documents and things must be returned**

- (1) This section applies if an investigating Commissioner or review panel is satisfied that a document or thing produced to the Commissioner or panel under section 24F is not required (or is no longer required) for the purposes of the performance of the Commissioner's or panel's functions.
- (2) The Commissioner or panel must take reasonable steps to return the document or thing to the person from whom it was received, or to the owner if that person is not entitled to possess it.
- (3) However, the Commissioner or panel does not have to take those steps if:
  - (a) possession of the document or thing by the person could constitute an offence; or
  - (b) the document or thing may otherwise be retained, destroyed or disposed of under a law of the Commonwealth or a State or a Territory, or a court/tribunal order; or
  - (c) the document or thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

**24FF Privilege against self-incrimination and legal professional privilege not abrogated**

*Self-incrimination*

- (1) Nothing in this Subdivision affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information or the production of the document might tend to incriminate the person.

*Legal professional privilege*

- (2) Nothing in this Subdivision affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:
- (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
  - (b) the document would be privileged from being produced on the ground of legal professional privilege.

*Other legislation not affected*

- (3) The fact that this section is included in this Subdivision does not imply that the privilege against self-incrimination or legal professional privilege is abrogated in:
- (a) any other provision of this Act; or
  - (b) any other Act.

## **Subdivision B—Confidentiality notices**

### **24FG Application of Subdivision**

This Subdivision applies to information that:

- (a) relates to any process, or any action, taken in accordance with Division 3, 4 or 5 in relation to a conduct issue that was or is before the IPSC; and
- (b) has not been lawfully made available to the public.

### **24FH Confidentiality notices**

*Confidentiality notices*

- (1) The responsible Commissioner or Commissioners may, by written notice given to a person (the **recipient**), impose such conditions on:
- (a) the making of a record of the information by the recipient or other persons; and
  - (b) the disclosure of the information by the recipient or other persons;

as the responsible Commissioner or Commissioners considers appropriate to do any or all of the following:

- (c) prevent prejudice to:
    - (i) any process, or any action, taken in accordance with Division 3, 4 or 5; or
    - (ii) the fair trial of any person or the impartial adjudication of a matter; or
    - (iii) the proper enforcement of the law;
  - (d) protect the identity of:
    - (i) a complainant, respondent or any other person affected by the conduct issue; or
    - (ii) any person who has given, or who the responsible Commissioner or Commissioners reasonably believe may give, information to the responsible Commissioner or Commissioners in connection with the conduct issue;
  - (e) prevent unreasonable detriment to a complainant, respondent or any other person affected by the conduct issue;
  - (f) prevent the publication of sensitive information.
- (2) A notice under subsection (1) must:
- (a) set out the effect of sections 24FI (disclosures etc. to which confidentiality notices do not apply) and 24FJ (offence—failure to comply with confidentiality notice); and
  - (b) specify the period for which a condition is in force.

*Period of notice*

- (3) The period specified in the notice must end:
- (a) if paragraph (b) does not apply—no later than the end of the day on which the conduct issue is concluded; or
  - (b) if the responsible Commissioner or Commissioners are satisfied that it is appropriate for the period to end at a later time in order to do any or all of the things mentioned in paragraphs (1)(c) to (f)—that later time.
- (4) For the purposes of paragraph (3)(a), a conduct issue is **concluded**:
- (a) if a decision on the issue is made under section 24CY and an application under section 24DA for review of the decision is



- made within the period specified in paragraph 24DA(4)(c)—when that application is finally determined; or
- (b) if a decision on the issue is made under section 24CY and an application under section 24DA for review of the decision is not made within the period specified in paragraph 24DA(4)(c)—when that period ends; or
- (c) otherwise—when the issue is dealt with in accordance with section 24CF.

**24FI Disclosures etc. to which confidentiality notices do not apply**

- (1) A condition imposed on a person (the *recipient*) under subsection 24FH(1) does not apply to:
- (a) the making of a record or disclosure:
- (i) that is required or authorised by or under this Act, another law of the Commonwealth, a law of a State or Territory or a court/tribunal order; or
- (ii) that is required by or under, or for the purpose of obtaining advice in relation to, a contract of insurance; or
- (iii) that is required by or under, or for the purpose of obtaining advice in relation to, a policy of insurance issued by the Commonwealth; or
- (iv) to protect life or safety; or
- (b) the making of a disclosure:
- (i) to the PWSS for the purpose of a service provided under section 15 (support function) to the recipient; or
- (ii) by the recipient to the recipient's employer, or to a person who supervises or manages the recipient, if the disclosure is of information that does not reveal the conduct issue; or
- (iii) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to a conduct issue, or a process or action taken in accordance with Division 3, 4 or 5; or

- (iv) to a medical practitioner or psychologist for the purpose of obtaining medical or psychiatric care, treatment or counselling (including psychological counselling); or
- (v) by the recipient to a support person for the recipient.

Note: A **support person** for the recipient may be approved under subsection 24FC(4) or subsection (2) of this section (see the definition of that term in section 5).

- (2) On application by the recipient, the responsible Commissioner or Commissioners must, in writing, approve a person as a support person for the recipient if satisfied that:
  - (a) the recipient intends to make the disclosure to the person for the purpose of seeking support from the person; and
  - (b) the making of the disclosure to the person would not prejudice any process, or any action, taken in accordance with Division 3, 4 or 5.
- (3) An approval under subsection (2) is not a legislative instrument.

#### **24FJ Offence—failure to comply with confidentiality notice**

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the person's conduct breaches a condition under subsection 24FH(1).

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

#### **Subdivision C—Secrecy of information**

##### **24FK Unauthorised disclosure of information**

- (1) A person who is or was an entrusted person commits an offence if:
    - (a) the person (whether directly or indirectly and whether while, or after ceasing to be, an entrusted person):
      - (i) makes a record of any information; or
      - (ii) discloses any information; and
    - (b) the person obtained the information in the course of or for the purposes of:
-

- (i) performing functions or duties, or exercising powers, under this Part; or
- (ii) assisting another person to perform functions or duties, or exercise powers, under this Part.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (2) Subsection (1) does not apply if the making of the record, or the disclosing of the information, is authorised by sections 24FL to 24FR.

#### **24FL Disclosure etc. for purposes connected with functions and powers**

The person may make a record of, or disclose, information (including personal information) if:

- (a) the person makes the record, or discloses the information, for purposes connected with the performance or exercise of functions or powers under this Act or another Act; and
- (b) the information does not relate to a conduct issue involving conduct that may constitute a serious offence against another person.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*).

#### **24FM Disclosure etc. of information relating to serious offences**

- (1) This section applies if the information relates to a conduct issue involving conduct that may constitute a serious offence against another person (the *potential victim*).
- (2) The person may make a record of the information (including personal information) for purposes connected with the performance or exercise of functions or powers under this Act or another Act.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) The person may disclose the information (including personal information) if the disclosure is:

- (a) other than to the Australian Federal Police or the police force or police service of a State or Territory; and
- (b) for purposes connected with the performance or exercise of functions or powers under this Act or another Act.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (4) The person may disclose the information (including personal information) to the Australian Federal Police, or the police force or police service of a State or Territory, if any of the following applies:
  - (a) the potential victim consents to the disclosure;
  - (b) the disclosure is for the purposes of deciding how to deal with the conduct issue;
  - (c) the disclosure is required by or under another law of the Commonwealth, a law of a State or a Territory, or a court/tribunal order.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

#### **24FN Disclosure etc. required or authorised by law**

- (1) The person may make a record of, or disclose, information (including personal information) if the making of the record or the disclosure is required or authorised under this Act or another Act.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (2) To avoid doubt, and without limiting subsection (1), the disclosure of information is authorised under this Act if:
  - (a) the investigating Commissioner refers a conduct issue to another person in accordance with this Act; and
  - (b) the information is disclosed as part of the referral; and
  - (c) the investigating Commissioner is satisfied that the disclosure is necessary to enable the other person to take appropriate action in relation to the issue.

## **24FO Disclosure etc. to protect life, health or safety**

The person may make a record of, or disclose, information (including personal information) if the person reasonably believes that it is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*).

## **24FP Disclosure etc. of publicly available information**

The person may make a record of, or disclose, information (including personal information) if the information has already been lawfully made available to the public.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*).

## **24FQ Disclosure etc. to comply with requirement to produce**

The person may make a record of, or disclose, information (including personal information) to a court, tribunal, authority or person that has the power to require the production of documents or the answering of questions.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*).

## **24FR Disclosure to employers**

### *Disclosure with consent*

- (1) The person may disclose information (including personal information) that relates to a conduct complaint or conduct issue referral if:
  - (a) the disclosure is to the employer of:
    - (i) the complainant; or
    - (ii) the respondent for the conduct issue concerned; and
  - (b) the complainant has consented to the disclosure; and
  - (c) the disclosure is in accordance with that consent.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*Disclosure for work health and safety reasons*

- (2) The person may disclose information (including personal information) that relates to a conduct complaint or conduct issue referral if:
- (a) the disclosure is to the employer of:
    - (i) the complainant; or
    - (ii) the respondent for the conduct issue concerned; and
  - (b) the person is satisfied that the information is relevant to a duty or obligation of the employer under a work health and safety law.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

## **Division 7—Public statements**

### **24G Public statements to afford fairness**

- (1) This section applies if:
- (a) a conduct issue was or is before the IPSC; and
  - (b) any matter relating to the issue is already publicly available.
- (2) The responsible Commissioner or Commissioners may publish a statement containing information about the conduct issue if they are satisfied that doing so:
- (a) would afford fairness to any person; or
  - (b) is otherwise necessary to correct erroneous reporting.
- (3) This section has effect subject to section 24GC (requirements for including identifying information in IPSC public statements).

### **24GA Public statements about parliamentarians**

- (1) This section applies if, in relation to a conduct issue that was or is before the IPSC:

- (a) a parliamentary decision panel imposes a sanction on a parliamentary, and another parliamentary decision panel has previously made a finding that the parliamentary has engaged in relevant conduct; or
  - (b) a parliamentary decision panel imposes a sanction on a parliamentary and the parliamentary fails to comply with the sanction.
- (2) The responsible Commissioner or Commissioners may publish a statement containing information about the conduct issue, which must include the identity of the parliamentary.
- (3) However, before doing so, the responsible Commissioner or Commissioners must give the parliamentary a written notice stating that they are proposing to publish the statement.
- (4) This section has effect subject to section 24GC (requirements for including identifying information in IPSC public statements).

#### **24GB Content and detail in IPSC public statements**

The content and level of detail to be included in an IPSC public statement are to be determined by the responsible Commissioner or Commissioners concerned.

#### **24GC Requirements for including identifying information in IPSC public statements**

*Notice of proposal to include identifying information—other than for respondent parliamentarians*

- (1) Before including identifying information in an IPSC public statement, the responsible Commissioner or Commissioners must give the person concerned a written notice stating that they are proposing to include the information in the statement.
- (2) Subsection (1) does not apply if:
  - (a) the statement is published under section 24GA (public statements about parliamentarians); and

- (b) the identifying information relates to the parliamentarian whose conduct is the subject of the statement.

*Requirement to consult on proposal to include identifying information*

- (3) The written notice must also invite the person to:
  - (a) make submissions to the responsible Commissioner or Commissioners in relation to the proposal; and
  - (b) do so within the period specified in the notice, which must be a reasonable period.
- (4) If the person makes the submissions, the responsible Commissioner or Commissioners must:
  - (a) have regard to the submissions in deciding whether or not to include the identifying information; and
  - (b) give the person written notice of their decision.

## Division 8—Protections and immunities

### 24H Meaning of protected disclosure

A person makes a *protected disclosure* if:

- (a) the person makes a conduct complaint; or
- (b) the person makes a conduct issue referral; or
- (c) the person gives information about a conduct issue to the IPSC, a Commissioner or the CEO; or
- (d) the person gives information to a parliamentarian and either:
  - (i) the parliamentarian uses the information to make a conduct issue referral; or
  - (ii) the person does so with the intention that the parliamentarian will use the information to make a conduct issue referral (whether or not the conduct issue referral is actually made); or
- (e) the person gives information, or produces a document or thing, to a Commissioner or review panel:
  - (i) under section 24F; or



- (ii) in compliance with a request made by the Commissioner or panel.

## **24HA Offences—causing detriment in relation to protected disclosures**

### *Causing detriment to another person*

- (1) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
  - (a) the first person engages in conduct; and
  - (b) engaging in the conduct results in detriment to the second person; and
  - (c) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a protected disclosure; or
    - (ii) may have made a protected disclosure; or
    - (iii) proposes to make a protected disclosure; or
    - (iv) could make a protected disclosure; and
  - (d) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

### *Threatening to cause detriment to another person*

- (2) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
  - (a) the first person engages in conduct; and
  - (b) engaging in the conduct consists of, or results in, a threat to cause detriment to the second person; and
  - (c) the first person is reckless as to whether the second person fears that the threat will be carried out; and
  - (d) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
    - (i) has made a protected disclosure; or
    - (ii) may have made a protected disclosure; or
    - (iii) proposes to make a protected disclosure; or

- (iv) could make a protected disclosure; and
- (e) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Subsection (2) applies whether or not the threat mentioned in paragraph (2)(b) is:
  - (a) express or implied; or
  - (b) conditional or unconditional.

*Exception—reasonable administrative action*

- (4) Subsections (1) and (2) do not apply if the conduct engaged in by the first person is administrative action that is reasonable to protect the second person from detriment.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*No requirement to prove matters related to protected disclosure*

- (5) In a prosecution for an offence against this section, it is not necessary to prove that any person:
  - (a) has made a protected disclosure; or
  - (b) may have made a protected disclosure; or
  - (c) proposes to make a protected disclosure; or
  - (d) could make a protected disclosure.

Note 1: For actions that constitute *detriment*, see the definition of that term in section 5.

Note 2: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness (see subsection 5.4(4) of the *Criminal Code*).

## **24HB Immunity from liability for protected disclosures**

- (1) If a person makes a protected disclosure:
  - (a) the person is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and

- (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.
- (2) Without limiting subsection (1):
  - (a) the person has absolute privilege in proceedings for defamation in respect of the disclosure; and
  - (b) a contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Subsection (1) does not prevent the making of the disclosure from giving rise to a conduct issue.

#### **24HC Liability for false or misleading disclosures unaffected**

- (1) Section 24HB does not apply to civil, criminal or administrative liability (including disciplinary action) for knowingly making a disclosure that is false or misleading.
- (2) Without limiting subsection (1), section 24HB does not apply to liability for:
  - (a) an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) that relates to the disclosure; or
  - (b) an offence against section 144.1 or 145.1 of the *Criminal Code* (about forgery) that relates to the disclosure.

#### **24HD Person's liability for own conduct not affected**

To avoid doubt, whether a person's disclosure of their own conduct is a protected disclosure does not affect the person's liability for the conduct.

#### **24HE Claims for protection**

- (1) If, in civil or criminal proceedings (the *primary proceedings*) instituted against a person in a court, the person makes a claim (relevant to the proceedings) that, because of section 24HB, the

person is not subject to any civil, criminal or administrative liability for making a particular disclosure:

- (a) the person bears the onus of adducing or pointing to evidence that suggests a reasonable possibility that the claim is made out; and
  - (b) if the person discharges that onus—the party instituting the primary proceedings against the person bears the onus of proving that the claim is not made out; and
  - (c) the court must deal with the claim in separate proceedings; and
  - (d) the court must adjourn the primary proceedings until the claim has been dealt with; and
  - (e) none of the following:
    - (i) any admission made by the person in the separate proceedings;
    - (ii) any information given by the person in the separate proceedings;
    - (iii) any other evidence adduced by the person in the separate proceedings;is admissible in evidence against the person except in proceedings in respect of the falsity of the admission, information or evidence; and
  - (f) if the person or another person gives evidence in the separate proceedings in support of the claim—giving that evidence does not amount to a waiver of privilege for the purposes of the primary proceedings or any other proceedings.
- (2) To avoid doubt, a right under section 126K of the *Evidence Act 1995* not to be compelled to give evidence is a privilege for the purposes of paragraph (1)(f) of this section.

## **24HF Protection has effect despite other Commonwealth laws**

Section 24HB has effect despite any other provision of a law of the Commonwealth, unless:

- (a) the provision is enacted after the commencement of this section; and

- (b) the provision is expressed to have effect despite this Division or section 24HB.

## **Part 2B—Application of the finance law**

### **24J Simplified outline of this Part**

This Part deals with the application of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

### **24K Application of the finance law**

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following combination of bodies is a listed entity:
  - (i) the PWSS;
  - (ii) the IPSC; and
- (b) the listed entity is to be known as the Parliamentary Workplace Support Service; and
- (c) the CEO is the accountable authority of the listed entity; and
- (d) the following persons are officials of the listed entity:
  - (i) the CEO;
  - (ii) the Commissioners;
  - (iii) the staff of the PWSS referred to in section 38;
  - (iv) persons whose services are made available to the PWSS under section 39; and
- (e) the purposes of the listed entity include:
  - (i) the functions of the PWSS referred to in section 13; and
  - (ii) the functions of the IPSC referred to in section 24BA; and
  - (iii) the functions of the CEO referred to in section 27; and
  - (iv) the functions of the Commissioners referred to in section 36C.

**42 Section 25 (paragraph beginning “The CEO’s functions”)**

Repeal the paragraph, substitute:

The CEO’s functions are:

- (a) to manage the affairs of the PWSS and IPSC; and
- (b) to ensure the PWSS performs its functions; and
- (c) to assist the IPSC and the Commissioners to perform their functions and exercise their powers.

**43 Paragraph 27(a)**

After “the PWSS”, insert “and IPSC”.

**44 After paragraph 27(b)**

Insert:

- (ba) to assist the IPSC and the Commissioners to perform their functions and exercise their powers; and

**45 After Part 3**

Insert:

**Part 3A—Commissioners of the IPSC**

**Division 1—Introduction**

**36A Simplified outline of this Part**

There is to be:

- (a) a Chair Commissioner of the IPSC; and
- (b) at least 6, and not more than 8, other Commissioners of the IPSC.

The Commissioners’ functions include:

- (a) dealing with conduct issues in accordance with Divisions 3 to 6 of Part 2A; and

- (b) preparing and publishing IPSC public statements in accordance with Division 7 of Part 2A.

Commissioners are to be appointed by the Governor-General.

## **Division 2—Establishment and functions of Commissioners**

### **36B Commissioners**

- (1) There is to be:
  - (a) a Chair Commissioner of the IPSC; and
  - (b) at least 6, and not more than 8, other Commissioners of the IPSC.
- (2) At least 4 Commissioners must be women.

### **36C Functions of the Commissioners**

A Commissioner has the following functions:

- (a) to deal with conduct issues in accordance with Divisions 3 to 6 of Part 2A;
- (b) to prepare and publish IPSC public statements in accordance with Division 7 of Part 2A;
- (c) such other functions as are conferred on a Commissioner by this Act or by any other law of the Commonwealth;
- (d) to do anything incidental to, or conducive to, the performance of the above functions.

### **36D Independence of the Commissioners**

Subject to this Act and other laws of the Commonwealth, a Commissioner:

- (a) has discretion in the performance or exercise of the functions or powers of a Commissioner; and
- (b) is not subject to direction by any person in relation to the performance or exercise of those functions or powers.

## Division 3—Appointment of Commissioners

### 36E Appointment of Commissioners

#### *Appointment by Governor-General*

- (1) A Commissioner (including the Chair Commissioner) is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

#### *Qualification for appointment*

- (2) A person must not be appointed as a Commissioner unless the Minister is satisfied that:
- (a) the selection of the person for the appointment is the result of a process that:
    - (i) was merit-based; and
    - (ii) included public advertising of the position; and
  - (b) one or more of the following apply:
    - (i) the person is enrolled as a legal practitioner and has been so enrolled for a period of 5 years;
    - (ii) the person is a former Commonwealth judicial officer;
    - (iii) the person is a former judge of the Supreme Court of a State or Territory;
    - (iv) the person has skills, knowledge or experience in investigating workplace misconduct.
- (3) Before the Minister makes a recommendation to the Governor-General:
- (a) the Minister must have referred the proposed recommendation to the Parliamentary Joint Committee under section 59H; and
  - (b) one of the following must have occurred:
    - (i) the Parliamentary Joint Committee is taken to have approved the proposed recommendation under subsection 59H(4);



- (ii) the Parliamentary Joint Committee has notified the Minister that it has decided to approve the proposed recommendation.
- (4) A person must not be appointed as a Commissioner (including as the Chair Commissioner) if the person has previously been appointed as the Chair Commissioner.

*Period of appointment*

- (5) A Commissioner (including the Chair Commissioner) holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (6) A Commissioner (other than the Chair Commissioner) may be reappointed (other than as the Chair Commissioner) on one occasion after the Commissioner's first appointment.
- (7) A Commissioner (other than the Chair Commissioner) may be reappointed as the Chair Commissioner.

*Basis of appointment*

- (8) A Commissioner (including the Chair Commissioner) holds office on a part-time basis.

### **36F Acting Commissioners**

- (1) The Minister may, by written instrument, appoint a person to act as a Commissioner:
  - (a) during a vacancy in the office of a Commissioner (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when a Commissioner:
    - (i) is absent from duty or Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

- (2) A person must not be appointed to act as a Commissioner unless the Minister is satisfied that the person is qualified, as mentioned under paragraph 36E(2)(b), to be appointed as a Commissioner.
- (3) Despite subsections 36E(4), (6) and (7), a person may be appointed to act as a Commissioner (including as the Chair Commissioner) if the person has previously been appointed as a Commissioner (including as the Chair Commissioner).

## **Division 4—Terms and conditions for Commissioners**

### **36G Training requirements**

- (1) Subject to subsection (2), a Commissioner must, as soon as practicable after being appointed as a Commissioner, complete:
  - (a) a course of training relating to trauma awareness; and
  - (b) a course of training relating to gender-based violence; and
  - (c) any other courses of training prescribed by the PWSS rules.
- (2) Subsection (1) does not apply to an acting Commissioner who has completed the courses of training mentioned in that subsection within the period of 2 years before their appointment as an acting Commissioner.

### **36H Remuneration of Commissioners**

- (1) A Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a Commissioner is to be paid the remuneration that is prescribed by the PWSS rules.
- (2) A Commissioner is to be paid the allowances that are prescribed by the PWSS rules.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

### **36J Leave of absence**

- (1) The Minister may grant leave of absence to the Chair Commissioner on the terms and conditions that the Minister determines.
- (2) The Chair Commissioner may grant leave of absence to another Commissioner on the terms and conditions that the Chair Commissioner determines.

### **36K Resignation**

- (1) A Commissioner may resign the Commissioner's appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

### **36L Termination of appointment**

- (1) The Governor-General may terminate the appointment of a Commissioner if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Commissioner on one of the following grounds:
  - (a) misbehaviour;
  - (b) the Commissioner is unable to perform the duties of the Commissioner's office because of physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of a Commissioner if the Commissioner:
  - (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with the Commissioner's creditors; or
  - (d) makes an assignment of the Commissioner's remuneration for the benefit of the Commissioner's creditors.

**46 Part 4 (heading)**

After “PWSS”, insert “and IPSC”.

**47 Before section 37**

Insert:

**Division 1—Introduction**

**48 Section 37 (paragraph beginning “The CEO may”)**

After “consultants”, insert “to assist the PWSS”.

**49 Section 37 (after the paragraph beginning “The CEO may”)**

Insert:

The CEO must make available staff of the PWSS, and other persons assisting the PWSS, to assist the IPSC as required by the Chair Commissioner.

The Commissioners may engage consultants.

PWSS and IPSC officials are not liable to civil proceedings for things done in good faith in the performance or exercise of functions, powers or duties under this Act.

**50 Before section 38**

Insert:

**Division 2—Staff of the PWSS etc.**

**51 At the end of Part 4**

Add:

## **Division 3—Staff of the IPSC etc.**

### **40A Persons assisting the IPSC**

- (1) The CEO must, to such extent as the Chair Commissioner reasonably requires, make available the following persons to assist the IPSC to perform its functions:
  - (a) the staff of the PWSS;
  - (b) persons whose services are made available to the PWSS under section 39;
  - (c) consultants engaged under section 40.
- (2) A person made available to assist the IPSC is subject to the directions of the Chair Commissioner in relation to that assistance.

### **40B Consultants**

#### *Assisting the IPSC*

- (1) The Chair Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the IPSC's functions.
- (2) A consultant engaged under subsection (1) to assist the IPSC is subject to the directions of the Chair Commissioner in relation to that assistance.

#### *Assisting a Commissioner*

- (3) A Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the functions of that Commissioner.
- (4) A consultant engaged under subsection (3) to assist a Commissioner is subject to the directions of that Commissioner in relation to that assistance.

## Division 4—Immunity from liability

### 40C Immunity from liability for PWSS and IPSC officials

- (1) This section applies to the following persons (the *protected persons*):
  - (a) the CEO;
  - (b) the Commissioners;
  - (c) the staff of the PWSS;
  - (d) persons whose services are made available to the PWSS under section 39;
  - (e) consultants engaged under section 40;
  - (f) persons made available under section 40A to assist the IPSC;
  - (g) consultants engaged under section 40B.
- (2) A protected person is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the protected person’s functions, powers or duties under this Act.

### 52 Section 60 (paragraph beginning “This Part enables”)

Repeal the paragraph, substitute:

This Part enables:

- (a) the PWSS or IPSC to disclose information to certain entities and persons; and
- (b) certain entities and persons to disclose information to the PWSS or IPSC; and
- (c) the PWSS to disclose information to the IPSC; and
- (d) the IPSC to disclose information to the PWSS.

### 53 Section 60 (paragraph beginning “However”)

Omit “the entity or the individual”, substitute “IPSC, entity or person”.

**54 Section 60 (paragraph beginning “The PWSS may request some”)**

After “entities”, insert “or persons”.

**55 Section 60 (paragraph beginning “The CEO”)**

Repeal the paragraph, substitute:

The CEO and the Chair Commissioner may enter into arrangements with certain entities and persons relating to the disclosure and use of information.
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**56 Division 2 of Part 7 (heading)**

Omit “and other Commonwealth entities etc.”, substitute “, IPSC and other entities and persons”.

**57 Section 61 (heading)**

Omit “and other Commonwealth entities etc.”, substitute “, IPSC and other entities and persons”.

**58 Subsection 61(1) (heading)**

At the end of the heading, add “—*to and by various entities and persons*”.

**59 Subsection 61(1)**

After “PWSS”, insert “or IPSC”.

**60 After paragraph 61(1)(b)**

Insert:  
or (ba) a Presiding Officer;

**61 Subsection 61(1)**

Omit “entity or individual” (wherever occurring), substitute “entity, individual or Presiding Officer”.

**62 After subsection 61(1)**

Insert:

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- (1A) The IPSC may also disclose information (including personal information) to a State or Territory law enforcement entity if the disclosure is reasonably necessary to assist the entity to:
- (a) perform any of the functions or activities of the entity; or
  - (b) exercise any of the powers of the entity.

**63 Subsection 61(2)**

Omit “or an individual who holds any office or appointment under a law of the Commonwealth, may disclose information (including personal information) to the PWSS”, substitute “an individual who holds any office or appointment under a law of the Commonwealth, or a Presiding Officer may disclose information (including personal information) to the PWSS or IPSC”.

**64 Paragraph 61(2)(a)**

After “PWSS”, insert “or IPSC”.

**65 At the end of subsection 61(2)**

Add:

- ; or (c) a Commissioner to perform any of the Commissioner’s functions or exercise any of the Commissioner’s powers.

**66 After subsection 61(2)**

Insert:

*Authorisation to disclose information—between PWSS and IPSC*

- (2A) The PWSS may disclose information (including personal information) to the IPSC if the disclosure is reasonably necessary to assist:
- (a) the IPSC to perform any of its functions or exercise any of its powers; or
  - (b) a Commissioner to perform any of the Commissioner’s functions or exercise any of the Commissioner’s powers.
- (2B) The IPSC may disclose information (including personal information) to the PWSS if the disclosure is reasonably necessary to assist:



- (a) the PWSS to perform any of its functions or exercise any of its powers; or
- (b) the CEO to perform any of the CEO's functions or exercise any of the CEO's powers.

*Parliamentarians not taken to be office-holders etc.*

**67 Subsection 61(4)**

Repeal the subsection, substitute:

*Rules applying to disclosures*

- (4) Information may be disclosed under subsection (1), (1A), (2), (2A) or (2B) on the initiative, or at the request, of the PWSS, IPSC, Commonwealth entity, individual, Presiding Officer, or State or Territory law enforcement entity (as the case requires).

**68 Subsection 61(5)**

Omit "Subsections (1) and (2)", substitute "Subsections (1) to (2B)".

**69 After subsection 61(5)**

Insert:

- (5A) Subsection (1) does not apply to a disclosure of information by the IPSC to a person or entity if:
  - (a) the information relates to a conduct complaint or a conduct issue referral; and
  - (b) the person or entity is the employer of:
    - (i) the complainant; or
    - (ii) the respondent for the conduct issue concerned; and
  - (c) the complainant does not consent to the disclosure.
- (5B) Subsections (1) and (1A) do not apply to a disclosure of information by the IPSC to the Australian Federal Police, or the police force or police service of a State or Territory, if the information relates to a conduct issue involving conduct that may constitute a serious offence against a person, unless:
  - (a) the person consents to the disclosure; or

- (b) the disclosure is for the purposes of deciding how to deal with the issue; or
- (c) the disclosure is required by or under another law of the Commonwealth, a law of a State or a Territory, or a court/tribunal order.

**70 Subsection 61(6)**

After “section 19”, insert “(as in force immediately before the repeal of that section by the *Parliamentary Workplace Support Service Amendment (Independent Parliamentary Standards Commission) Act 2024*)”.

**71 Subsection 61(7)**

Repeal the subsection, substitute:

*Authorisation to use information*

- (7) Information disclosed to a person or entity under subsection (1), (1A), (2), (2A) or (2B) may be used by the person or entity for the purposes of performing the functions, or exercising the powers, of the person or entity.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

**72 After paragraph 62(2)(a)**

Insert:

- (aa) the Chair Commissioner;

**73 Paragraph 62(2)(b)**

Repeal the paragraph, substitute:

- (b) a Secretary of a Parliamentary Department;

**74 Section 63 (heading)**

At the end of the heading, add “**with or by the PWSS**”.

**75 Before paragraph 63(1)(a)**

Insert:

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(aa) the Chair Commissioner; or

**76 After paragraph 63(1)(b)**

Insert:

or (ba) a Presiding Officer;

**77 Paragraph 63(1)(c)**

Omit “subsection 61(1) or (2)”, substitute “subsection 61(1), (2), (2A) or (2B)”.

**78 Paragraph 63(1)(d)**

Omit “the PWSS, the other Commonwealth entity or individual”, substitute “the PWSS, IPSC, other Commonwealth entity, individual, or Presiding Officer”.

**79 Paragraph 63(5)(a)**

Omit “subsection 61(1) or (2)”, substitute “subsection 61(1), (2), (2A) or (2B)”.

**80 At the end of Division 2 of Part 7**

Add:

**63A Chair Commissioner may make arrangements for sharing information with or by the IPSC**

- (1) The Chair Commissioner may make an arrangement, in writing, with:
- (a) the Head (however described) of a Commonwealth entity; or
  - (b) an individual who holds any office or appointment under a law of the Commonwealth; or
  - (c) a Presiding Officer; or
  - (d) a State or Territory law enforcement entity;
- relating to:
- (e) the disclosure of information to, or by, the IPSC under subsection 61(1), (1A), (2), (2A) or (2B); or
  - (f) the use by the PWSS, IPSC, Commonwealth entity, individual, Presiding Officer, or State or Territory law

enforcement entity of information disclosed under any of those subsections.

- (2) Without limiting subsection (1), an arrangement made under that subsection may make provision for the confidentiality of information disclosed in accordance with the arrangement.
- (3) The IPSC must ensure that an arrangement made under subsection (1) is published on its website.
- (4) An arrangement made under subsection (1) is not a legislative instrument.
- (5) If an arrangement under subsection (1) is in force, then:
  - (a) the disclosure to, or by, the IPSC or the Chair Commissioner of information to which the arrangement applies is not authorised under subsection 61(1), (1A), (2), (2A) or (2B); and
  - (b) the use of information to which the arrangement applies is not authorised under subsection 61(7);if the disclosure or use of the information would contravene the arrangement.

***Parliamentary Workplace Support Service (Consequential Amendments and Transitional Provisions) Act 2023***

**81 Subsection 2(1) (table item 3)**

Repeal the item.

**82 Schedule 3**

Repeal the Schedule.

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## Schedule 2—Application and transitional provisions

### 1 Definitions

In this Part:

**commencement time** means the time when Part 2 of Schedule 1 to this Act commences.

**new law** means the *Parliamentary Workplace Support Service Act 2023* as in force from time to time after the commencement time.

**old law** means the *Parliamentary Workplace Support Service Act 2023* as in force immediately before the commencement time.

**review** means a review under section 19 of the old law.

### 2 Transitional—complaints under review before commencement

- (1) This item applies if, before the commencement time:
  - (a) a complaint is made to the PWSS; and
  - (b) the PWSS has commenced a review of the complaint.
- (2) The PWSS must finish the review.
- (3) The old law continues to apply in relation to the review and in relation to the complaint for the purposes of the review.

### 3 Transitional—complaints not dealt with before commencement

- (1) This item applies if:
  - (a) a complaint is made to the PWSS before the commencement time; and
  - (b) at the commencement time, the PWSS has not commenced a review of the complaint; and
  - (c) the CEO is satisfied that it would not be appropriate for the complaint to be dealt with through a service provided under section 16 of the new law.

- (2) The CEO must refer the conduct issue arising from the complaint to the IPSC if:
    - (a) the complainant consents to the referral; or
    - (b) the CEO is reasonably satisfied that making the referral is necessary to comply with a duty or obligation under a work health and safety law.
  - (3) A referral under subitem (2) must:
    - (a) be made in writing; and
    - (b) include the following information:
      - (i) details of the conduct issue;
      - (ii) any evidence relevant to the conduct issue.
  - (4) The new law applies in relation to a referral under subitem (2) as if it were a conduct issue referral under section 24CB of the new law.
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*[Minister's second reading speech made in—  
House of Representatives on 21 August 2024  
Senate on 12 September 2024]*

(102/24)

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