

Report by the Commissioner for Parliamentary Standards

For the year ending 31 December 2023

1. Introduction

The position of Commissioner for Parliamentary Standards (CPS) was established on 1 July 2022 and my appointment commenced on 1 January 2023. In the Protocol for the Commissioner for Parliamentary Standards (Protocol) that established the position it states that the CPS must “As soon as possible after the end of each calendar year prepare an annual report on the performance of the functions of the Commissioner throughout that year”. This is the first annual report of the Commissioner for Parliamentary Standards.

2. Behavioural Statements/Protocol for Commissioner for Parliamentary Standards

2.1 The Behavioural Statements for the Parliamentary Workplace

The statements were published on 24 June 2020. The document begins “These statements set Parliament’s expectations of how we behave towards each other, while still allowing for free speech in Parliament and freedom of press, which are essential for a functioning democracy.” Then follow seven expectations:

- Show that bullying and harassment, including sexual harassment, are unacceptable
- Act respectfully and professionally
- Foster an environment where people feel safe and valued
- Encourage diverse perspectives, and the free and frank expression of view
- Behave fairly and genuinely, treating others the way we would like to be treated
- Use our position of power or influence to help others, and avoid harm
- Speak up if we observe unacceptable behaviour

In my opinion these expectations are sensible and most New Zealanders would expect nothing less from their Members of Parliament (MPs) and the people who work with them.

This document provides clear guidance to everyone working in the Parliament precinct or any Electorate and Community Office and is the foundation of the Protocol that establishes the CPS role.

2.2 Protocol for the Commissioner for Parliamentary Standards

The five-page Protocol is available on the Parliamentary website. I will not repeat the detail in that document, suffice to say it covers: purpose; appointment; access to specialist advice and support; functions; inquiries; independence and the annual report. There are two sections I will highlight, namely section 6 and 9.

Section 6 establishes the functions of the Commissioner. Subsection 6.1 sets out “The primary function of the Commissioner is to inquire into, and if possible, facilitate the resolution of, complaints about members’ conduct that is alleged to be inconsistent with the principles set out in the Behavioural Statements for the Parliamentary Workplace, where

those complaints have not been resolved using any applicable complaints procedures provided by the complainant's employer".

I highlight this section as it demonstrates that this role does not replace the employer or Whip/Musterer processes and the primary accountability to those organisations. The CPS role is in the nature of a reserve power. Many people I have spoken to within Parliament and across New Zealand expect me to be "very busy, given everything that is happening". While it may be true that the mere presence of the CPS role has encouraged employers and parties to deal with issues that arise in a more timely and transparent fashion, you will see in sections 3 and 4 of this report that I am not involved in all behavioural matters, nor should I be.

Section 9.1 states "The Commissioner must act independently in performing their functions and duties, and exercising their powers under this protocol". Over the course of my career, I have held a number of roles requiring independence and I wish to emphasise the personal importance I assign to being independent in this role. I believe I have maintained my independence in 2023.

2.3 Changes to the Protocol agreed in 2023

The Protocol is new and, as I carried out my activities (see section 3 below), two omissions became apparent.

Firstly, those who developed the Protocol understood it would apply to a Member of Parliament complaining about another Member of Parliament. This intention was not clear in the Protocol, so the Parliamentary Culture Committee agreed to change section 7.1 by adding "(including members)".

Secondly, based on my experience of inquiries and investigations, I know it is useful to have a discussion with the complainant before they formalise their complaint. Sometimes the matter can be resolved in a way that doesn't require a lengthy investigation. At other times advice provided by the Commissioner could facilitate resolution. To allow these sensible steps, the Parliamentary Culture Committee agreed to add to section 6.1 "The Commissioner may listen to concerns prior to receiving a formal complaint. These concerns will not be official and therefore not reported on." And added to section 6.2 (b) "to listen to concerns prior to receiving a formal complaint".

I expect there will be further changes as we work through the practicality of the Protocol over the next year or so. I have flagged some observations in section 5 of this report that need resolution and may or may not affect the Protocol.

3. Activities

3.1 Overview

My first year as CPS was devoted to introducing the broad range of stakeholders to the role by way of group briefings, understanding the Protocol, and providing advice as requested.

The briefings generally started with the Behavioural Statements for the Parliamentary Workplace and then moved to a summary of the Protocol. I pointed to four principles that I think are particularly important:

- Independence (covered in 2.3 above)
- Natural justice – essential to ensure you are treated fairly and decisions affecting your rights are made using fair process
- Fairness – to all involved in the process
- Due process – protecting individual rights to a proper process

3.2 Briefings

Much of my time was devoted to preparing for and briefing various stakeholders. Those meetings were held with:

- The Speaker
- Parliament's Culture Committee
- Whips/Musterers
- Caucuses
- Chief executives and senior managers in Parliamentary Service, the Office of the Clerk, and Department of Internal Affairs
- Parliamentary Service staff, including Electorate and Community Office staff (online)
- Office of the Clerk staff
- Ministerial Services staff
- Senior Private Secretaries and Ministerial Resourcing Team
- PSA
- Registrar of Pecuniary and Other Specified Interests
- Senior people in the public and private sector with expertise in these matters

I am grateful for the attentiveness and very good questions that characterised these briefings. I also appreciate the willing sharing of knowledge and thoughts by experts in this field.

3.3 Election

On 19 October 2023 I briefed new members at the New MP induction programme. My objectives were to:

- Introduce the Commissioner for Parliamentary Standards

- Outline the behaviours expected of MPs and staff and how the Commissioner for Parliamentary Standards can assist in maintaining good behaviour.

There was good attendance and discussion at the session and informally.

3.4 Advice

The overwhelming sense I gleaned from the above interactions is that a lot of good people are trying their best to do the right thing in the right way. But, like any workplace, things do go wrong. It is those events that the majority of New Zealanders hear about. Obviously, we all want to minimise such events and, if they occur, deal with them appropriately and as quickly as possible.

I am pleased to see Whips/Musterers and departmental staff in 2023 have generally dealt promptly with issues as they have arisen. Balancing all the interests is not, and never will be, easy, but addressing issues is definitely much better than ignoring them. Undoubtedly there remain issues that have not been addressed and I trust they will be overtime.

Some advice has been sought from me and I have and will continue to provide advice and support where I can.

4. Investigations

4.1 Section 10.2

The annual report must include, in relation to the year in question:

- (a) the number of complaints made to the Commissioner – *none*
- (b) the number of complaints that the Commissioner declined or ceased to investigate for the reasons set out in clause 7.3 – *not applicable*
- (c) the number of investigations completed by the Commissioner and the number of reports where the Commissioner reached the conclusion that the conduct complained about was and was not consistent with the principles specified in the Behavioural Statements for the Parliamentary Workplace – *not applicable*
- (d) the number of complaints withdrawn by the complainant and the stage at which they were withdrawn – *none*

5. Observations going forward

There are a few matters that deserve further consideration. They are gnarly issues and are unlikely to have easy answers. I will try and progress them in 2024.

5.1 Secrecy

Given the imbalance of power for staff in Parliament and the tripartite relationship between members, staff, and employing departments, there is a desire from some to be able to provide the Commissioner with information in secret. Finding the courage to make a

complaint against your manager is hard, against a MP even harder. So, people are naturally reluctant to come forward and they suffer and those around them suffer. This is not desirable.

The Protocol is established on the basis of transparency and accountability as well as the principles set out in section 3.1 of this report.

In 2023 I sought legal advice on the matter of secrecy. The advice confirmed that “an employee facing allegations of wrongdoing and potentially adverse consequences is entitled to know who their accusers are in accordance with both common law and statutory principles”. There are “limited circumstances where an employee can still fairly respond to allegations without knowing the identities of complainants, or where the reasons for withholding the identity outweigh the accused employee’s right to know”.

As expected the Protocol accords with the law.

The change to the Protocol set out in section 2.3 of this report for the CPS “to listen to concerns prior to receiving a formal complaint” allows people to bring forward their issue “without prejudice”. I am hopeful it will encourage people to come and talk to me. How to make people feel safe to come forward with valid issues deserves ongoing consideration.

5.2 Scope of the role

The Purpose section of the Protocol defines the scope of the CPS’s role as applying to “any person who works within the Parliamentary precinct or any Electoral and Community Office”. On face value this seems sensible and covers all MPs and staff. However, there are many and varied people who work on the precinct and associated offices. Other public servants, official visitors, contractors, consultants, media, security etc. are all working within the precinct.

Exploring the scope and intention behind the words “any person” is one of my objectives for 2024 and I will include progress on this matter in next year’s report.

6. Appreciation

I wish to thank Andie Lindsay Executive Assistant; Rafael Gonzalez-Montero Chief Executive, Parliamentary Service; and David Wilson, the Clerk of the House for the administrative support and resources provided in the 2023 year. Ministerial Services, a branch of the Department of Internal Affairs, has engaged with me positively, which I appreciate.

I also express my appreciation for the positive manner in which the Members of Parliament and staff have interacted with me during this set up period.

Lyn Provost
Commissioner for Parliamentary Standards
29 February 2024