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# Submission to the *Independent Review into Commonwealth Parliamentary Workplaces*

Philip Gaetjens, Secretary  
Department of the Prime Minister and Cabinet

Dear Commissioner Jenkins,

Thank you for the opportunity to make a submission to your Review (referred to throughout this submission as the 'Jenkins Review'). Parliamentarians and their staff take immense pride in their service to the Australian people, recognising that the opportunity to do so is a significant privilege that carries equally significant responsibility. The Parliament is a highly symbolic workplace and as such, it is important that it set the highest standards in relation to safe and respectful workplace behaviour. Misconduct in parliamentary workplaces undermines the trust of the Australian people and the legitimacy of the Parliament, and can have deeply distressing and ongoing impacts for the individuals involved. Our democratic system is strengthened by the ability to recruit and retain high-quality staff and it is critical that parliamentary workplaces are able to attract individuals who are passionate and committed to making a difference to the Australian community. The interaction between the Australian Public Service and MoP(S) Act employees also contributes significantly to the functioning of government and ensures the provision of high quality advice and sound decision-making. Such exchange of ideas and advice must be able to occur in a mutually respectful and productive way.

As you are aware, Deputy Secretary Stephanie Foster PSM undertook a review ('the Foster Review') into processes and procedures for responding to serious incidents in the course of parliamentary employment. The Foster Review focused on immediate, concrete steps that could be taken to remedy the most critical gaps in existing processes and procedures for responding to, and reporting, serious incidents in the parliamentary workplace.

The review found three key areas for reform: readily accessible, timely, independent, trauma-informed services and response mechanisms; a trusted, independent complaints mechanism able to deliver proportionate consequences for misconduct, and tailored, face to face education and support for parliamentarians and their staff in preventing, identifying and responding to serious incidents in the workplace.

The Foster Review recommended that an independent complaints handling mechanism, the Serious Incident Team (SIT) be established as a function of the Parliamentary Service Commissioner to ensure its independence from employers and the executive government. The SIT will adopt a trauma-informed approach in supporting staff and parliamentarians who come forward with reports of a serious incident and assist them to make informed choices about their preferred outcomes. The SIT will focus on the wellbeing of the person coming forward while providing support to all and following principles of procedural fairness in order to safeguard the integrity of the process. The SIT will be able to provide a variety of graduated approaches to resolution – including the option to proceed to a formal workplace review – and will ensure consequences for misconduct are proportionate and appropriate. The process for ensuring accountability respects the principle of the sovereignty of parliament and preserves the necessary ability of parliamentarians to manage their offices and staff, while recognising they have a duty to ensure their workplaces are safe and take action to meet their legal and ethical obligations.

The parliamentary environment is complex, with unique employment arrangements and unique demands and pressures. Many of these matters were beyond the scope of the Foster Review. I consider that your Review may be better placed to examine these issues.

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# Issues for consideration by the Jenkins Review

## Scope

The Foster Review focused on processes and procedures for parliamentarians and staff employed under the *Members of Parliament (Staff) (MoP(S)) Act 1984* (Cth) as personal staff or electorate office staff. Arrangements for other people working in Parliament House did not fall within the scope of the Foster Review.

The Serious Incident Team (SIT) will be able to receive reports from other building occupants and support them to access the processes available to them (for example, in the case of a Departmental Liaison Officer, their departmental processes). However, it will not be able to handle complaints from those individuals, even if made against a parliamentarian or MoP(S) Act employee.

There would be a benefit to the Jenkins Review considering the complaints handling and support arrangements available to all people working in parliament house, press gallery, cleaners, Department of Parliamentary Services (DPS), House of Representatives and Senate, APS employees and the private licensees that operate the post office, bank and café.) The Jenkins Review could consider the interactions these people have in the parliamentary workplace and what support might be made available to them.

## Historical complaints

The SIT will investigate complaints relating to incidents that have occurred during the current term of Parliament (i.e. since the 2019 election, including periods when either House is dissolved). The Foster Review recommended that staff and parliamentarians should be able to access the mechanism after they leave MoP(S) Act employment or office, so long as the party who is the subject of the complaint remains in parliament or in parliamentary employment. In addition, parliamentarians and their staff will also be able to access support and counselling from the SIT and from 1800 APH SPT, regardless of when the incident occurred.

The remit of the SIT was designed this way to allow the new mechanism to be tested against and respond to current or recent issues without having to manage the complexity associated with historical reports, particularly where they relate to offices that no longer exist.

Under the arrangements set out in the Foster Review, the Department of Finance (Finance) will remain responsible for historical complaints. However, the Foster Review heard concerns relating to perceptions of Finance's independence and its capacity to respond to serious incidents; this is alongside concerns regarding the complexity of having multiple systems to deal with workplace incidents.

Best practice approaches show that a reporting and complaints mechanism should be able to receive historical complaints, given that individuals carry the impacts of an incident with them for a long time but may take time to come forward. Addressing past trauma, especially if the unacceptable behaviour occurred in the workplace, is essential to fostering a safe and secure workplace for everyone. This may be something the Jenkins Review wishes to consider.

## Less serious incidents

The remit of the SIT is confined to 'serious incidents', which are an 'incident or pattern of behaviour that causes serious harm to someone'. The Foster Review lists incidents that could cause serious harm to a person, depending on the circumstances of the conduct, as rape and sexual assault, sexual harassment, assault, stalking or intimidation, and serious and systemic bullying and harassment.

Under the arrangements set out in the Foster Review, the Department of Finance (Finance) will remain responsible for dealing with less serious incidents. Finance and the SIT will work collaboratively to develop procedures around the triaging of incidents and on information sharing protocols to minimise duplication and gaps in coverage.

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Having multiple avenues for responding to incidents in the workplace can be confusing for complainants. Where there are multiple complaint pathways, best practice approaches focus on ensuring there is no wrong door, with the referrals to other pathways being seamless, to ensure the person only needs to tell their story once. The Jenkins Review could consider how the system should operate as a whole in respect of incidents in parliamentary workplaces, to ensure consistency and accessibility.

## Operation of the MoP(S) Act

The MoP(S) Act is designed to give parliamentarians a high level of discretion and flexibility over their staff. However, the Foster Review found that this discretion and the real and perceived insecurity of tenure of MoP(S) Act staff can impact on staff's willingness to raise complaints. This relates in particular to the termination provisions in the MoP(S) Act,<sup>1</sup> but also applies to the high level of discretion exercised by parliamentarians in relation to other employment conditions.

The Foster Review focused on immediate actions that could be taken to strengthen parliamentary processes and procedures.

The Jenkins Review's Terms of Reference explicitly provide the scope for examining legislative and other barriers to reporting incidents in the parliamentary workplace and the extent to which the MoP(S) Act promotes or impedes safe and respectful workplaces.

## Appropriateness of current Human Resources (HR) systems

It was beyond the scope of the Foster Review to consider the appropriateness of current HR services provided by the Department of Finance, though it recommended Finance update its policies, procedures and resources to support the Review's expectations of parliamentarians and staff.

Reviews in other jurisdictions have identified an independent or centralised HR function for political staff as best practice – the Scottish Parliament for example; such a function is also recommended by Debbie Francis in her Independent Review into Bullying and Harassment in the New Zealand Parliamentary Workplace.

The Jenkins Review could consider reviewing the entire approach to providing HR support to parliamentary staff, including best practice approaches in other jurisdictions.

## Access to legal assistance for workplace reviews by the SIT

In the context of a workplace review conducted by the SIT, the Foster Review did not comprehensively consider or assess parties' access to appropriate and fair legal assistance. The Review noted that a current or former Minister may be eligible to receive assistance in meeting legal costs under the *Parliamentary Business Resources Regulations 2017*, where costs arise out of their ministerial duties, with the decision to grant assistance generally made by the Attorney-General.

In relation to staff, the Legal Services Directions provide that a MoP(S) Act employee who is employed by a Minister can apply for financial assistance in relation to inquiries and other legal proceedings, such as reviews by the SIT. The decision to grant assistance is a matter for the Minister for Finance. MoP(S) Act staff who are not employed by a Minister may be able to access other financial support, for example through the Special Circumstances Scheme or an *ex gratia* payment from the Department of Finance.

Equity of access to legal assistance in the context of a workplace review remains an important issue for consideration.

## Measures for mitigating the risks of serious incidents at Australian Parliament House

The Foster Review made recommendations towards mitigating the risk of serious incidents occurring, specifically identifying instances of after-hours access by staff be reported to chiefs of staff/office managers to deter non-work related access (with

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<sup>1</sup> S 16(3) of the MoP(S) Act provides, in respect of staff of office-holders, that an office-holder may at any time, by notice in writing given to a person employed by the office-holder under this Part, terminate the person's employment. S 23(2) of the Act provides for an identical condition in respect of staff of Senators and Members.

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parliamentarians able to choose not to receive such reports, pending the resolution of issues concerning parliamentary privilege). The recommendation effectively makes information already collected by DPS available to offices to increase visibility over after-hours access. The reporting should also be underpinned by a clear policy that after-hours access must be for work related or for a legitimate purpose. The Foster Review also recommended that areas of Parliament House accessed after hours should be subject to additional patrols by Parliamentary Security Service officers. These recommendations are not intended to impinge on work-related activities but are designed to respond to behaviours that are not related to, or acceptable in, the workplace. They are also immediately implementable.

More stringent measures (for example, a register of staff authorised to access the building after-hours or a process to authorise access at the time it is required, and the ability to deny access to staff under certain circumstances such as if they are intoxicated) would need careful consideration and consultation, and could be considered by the Jenkins Review.

## 1800 APH SPT

The Parliamentary Support Line 1800 APH SPT was established in early March. Since then it has continued to see a small but steady stream of calls. The service will be evaluated regularly to ensure it is providing a high-quality service. The contract for the service is currently managed by Finance but the Jenkins Review could consider whether the service is most appropriately managed by the SIT. The Foster Review has also recommended that the service itself, and its relationship with any long-term complaints mechanism, be evaluated as part of the Jenkins Review.

# Best practice approaches

The Foster Review undertook consultation and produced a significant body of work relating to best practice in terms of supporting victims, complaints handling and education and training to support safe and respectful workplaces. The Review focused its consultation and desktop review on organisations with established frameworks for responding to serious incidents, including within the private sector, sporting sector, government agencies and other parliamentary environments, as well as leading academics, advocates and service providers with experience supporting individuals impacted by serious incidents.

The Review considered how sectors with similar challenges to the parliamentary workplace – such as power imbalances, intense and constant media scrutiny, high workloads and pressure – have sought to implement best practice principles into their workplaces.

I outline below key insights of the Foster Review that may provide useful to the Jenkins Review, and provide as an appendix literature considered by the Review in researching best practice.

## Wraparound, trauma-informed support after a serious incident

First contact is critical, and support must continue

Trauma-informed support at all stages of a response to a serious incident was consistently identified by the Foster Review as best practice in meeting the needs of impacted individuals. Trauma-informed approaches recognise the diverse, significant and ongoing impacts a serious incident can have on individuals, and are based on the principle of doing no further harm. The literature and consultations conducted by the Foster Review with relevant service delivery and victim/survivor groups identified trauma-informed support as including:

- Listening to the person without judgement;
- Enhancing safety, discussing options and respecting the ideas and preferences of the person;
- Asking about their needs and concerns;
- Acknowledging their story; and

- Helping them connect to culturally appropriate and relevant information, services and support.<sup>2</sup>

Experts consulted by the Foster Review stressed that the first contact is critical, but that ongoing, wrap-around support should continue throughout the process. Victim/survivor groups related how the quality of the first response following an incident could have a significant impact on the individual's experience going forward. Mishandling of first responses can compound harm and trauma, sometimes severely, and reduce confidence in the reporting and complaints process.<sup>3</sup> Consultations stressed the importance of integrating skilled, trauma-informed support into all stages of a response. In practice this means making support services, particularly crisis counselling, available 24/7, and ensuring a holistic, properly integrated response that avoids a person having to contact multiple services or retell their story multiple times. The Foster Review considered in particular how the Australian Federal Police's (AFP) Safe Place and the Department of Defence's Sexual Misconduct Prevention and Response Office (SeMPRO) offer trauma-informed support and case management.

#### All parties are empowered

Feedback received by the Foster Review indicated that ensuring all parties to a complaints process are empowered to understand the process, how they can access support and make informed decisions in respect of their options is critical to the integrity of the process and assists in achieving better outcomes.

The Foster Review considered the importance of individuals being able to disclose serious incidents without making a formal complaint, and to do so anonymously. Best practice approaches – such as that outlined in the Victorian Equal Opportunity and Human Rights Commission's *Guidelines on Workplace Sexual Harassment*<sup>4</sup> - allow for anonymous reports as doing so gives choice to complainants and encourages greater reporting of incidents, providing individuals the opportunity to share their experience while being assured it will be treated confidentially. The Foster Review recommended that the SIT adopt such an approach.

Finally, the Foster Review found that empowerment within a complaints process includes informing the parties that they can have the assistance of a support person through the process – an approach I understand is currently adopted by the Australian Human Rights Commission (AHRC).<sup>5</sup> In practice this would be a friend, family member, partner or a professional support worker (for example, an advocate or counsellor). A support person could also be a union representative or legal professional.

## A complaint system that is independent, confidential, transparent and fair, with a range of potential proportionate outcomes

The Foster Review heard consistently in consultation the importance of confidence in any mechanism for receiving and responding to reports of serious incidents. Independence from the employer, absolute confidentiality in the first instance and the availability of proportionate outcomes are elements that assist in achieving confidence in such a mechanism.

The Foster Review considered in particular how the complaint handling processes of the Office of the Commonwealth Ombudsman, the AHRC and the Australian Border Force Safe Speak promote the principles of independence, confidentiality, transparency and fairness.

#### Confidentiality and transparency

During consultations the Foster Review heard that, within the parliamentary context, a key concern relates to losing control of the response to a serious incident because confidentiality was not observed, and the ensuing damage to the individuals involved. Experts consulted by the Review stressed that confidentiality is a critical element of a complaints process that centres on the person coming forward and is fair, safe and supportive. The Review noted a number of other benefits of

<sup>2</sup> Consultation with Our Watch; consultation with Multicultural Program Coordinator, ACT Human Rights Commission.

<sup>3</sup> For example, submissions to the Australian Human Rights Commission (AHRC) (2020) *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* ('Respect@Work Report') identify that in some cases, individuals' experience of reporting can be more damaging than the serious incident itself (see p 20).

<sup>4</sup> Victorian Equal Opportunity and Human Rights Commission (2020) *Guideline: Preventing and Responding to Workplace Sexual Harassment*

<sup>5</sup> See e.g. *ibid*, p 77.



confidentiality and transparency to a complaints process, including that they instil confidence in the fairness and legitimacy of the process, protect the privacy of the parties, and encourage meaningful participation and can promote better outcomes. Confidentiality also distinguishes complaint handling and alternative dispute resolution processes from other processes such as litigation and criminal processes.<sup>6</sup>

While a complaints process must prioritise and protect the wellbeing and identity of the person coming forward, confidentiality must extend to the subject of the complaint in accordance with principles of natural justice.

The Foster Review found that, practically, complaint handling runs more smoothly when it is not conducted under the scrutiny of other employees or the media. Issues playing out publicly can also result in additional trauma for complainants.<sup>7</sup> Within the parliamentary context these concerns can be even more pronounced, and their impacts more significant.

#### Use of non-disclosure agreements

The Foster Review considered the issue of non-disclosure agreements (NDAs), which create a binding agreement of confidentiality between parties. The use of NDAs in the context of serious incidents such as sexual harassment and assault has been criticised on the basis that they might operate to silence a victim and protect a perpetrator. The recent review by the South Australian Equal Opportunity Commissioner of the South Australian Parliament noted that responding to instances of harassment by enforcing silence ‘does little to address deeper systemic or governance issues, can allow the harasser to continue their behaviour, and can impact on the wellbeing of victims’.<sup>8</sup>

However, the Foster Review considered instances in which NDAs may benefit victims by helping to ensure their privacy. NDAs can protect against the distressing and traumatising impact to victims of having instances of harassment play out in the media, and can ‘provide an element of certainty, finality and closure to victims who do not wish to risk protracted and public litigation over which they lack control’.<sup>9</sup>

The Foster Review identified the use of a good faith confidentiality agreement as a best practice approach. Such an agreement requires both parties to agree to maintain confidentiality, with a breach of that agreement potentially resulting in a loss of access to the complaint mechanism. The Review considered a number of appropriate responses that might occur in the parliamentary context following a breach of a confidentiality agreement, including potential sanction through an appropriate parliamentary process if determined by the Parliament. A good faith confidentiality agreement should enable parties to seek appropriate support while ensuring their commitment to the integrity of the process.

An effective complaints process should be transparent about its confidentiality settings. As you are aware, the Respect@Work Report, noted that complainants should be provided with a thorough explanation of the complaints process, including timeframes and possible or likely outcomes, and this should include at the earliest opportunity information about confidentiality policies and expectations.<sup>10</sup> Complainants should be informed upfront of any exceptions to confidentiality, for example an obligation to report because of an imminent threat of self-harm. This should similarly be reflected in confidentiality policies for a complaints process. SeMPRO highlighted the importance of being clear up front, prior to any disclosures, what categories of behaviour are ‘notifiable’ conduct for their service and will trigger an obligation to share information with senior staff (for example, allegations involving someone under 18 or where there is an immediate risk to the person or to others).

#### Accountability in the Parliamentary context

<sup>6</sup> Australian Dispute Resolution Advisory Council (1 November 2016), *Confidentiality*, [online document] accessed 24 April 2021.

<sup>7</sup> Male Champions of Change (2020) *Disrupting the System: Preventing and Responding to Sexual Harassment in the Workplace* (‘Disrupting the System’), pp 41-2.

<sup>8</sup> South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australia Parliament Workplace*, p 105. See also the Male Champions of Change (2020) *Disrupting the System* p 40, and the South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australian Legal Profession*, p 177.

<sup>9</sup> South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australian Legal Profession*, p 178.

<sup>10</sup> AHRC, *Respect@Work Report*, p 11.

The Foster Review considered how other parliaments have been able to set behavioural expectations and achieve accountability where those expectations are not met, considering the unique challenges of the parliamentary environment including complex employment arrangements and the need to respect parliamentary sovereignty. The United Kingdom, Canada and Scotland have codes of conduct for parliamentary employees that explicitly include expectations about bullying, harassment and sexual harassment, and have independent complaint channels that are able to investigate complaints and implement appropriate sanctions. In Australia, all States and Territories have existing codes of conduct for elected members in some form aside from South Australia, with those in New South Wales, Tasmania, Victoria and the Northern Territory provided in legislation. The recent reviews of the South Australian and New Zealand parliamentary workforces each recommended that a code be introduced in these jurisdictions.<sup>11</sup>

The Foster Review found that explicitly classifying serious incidents as workplace health and safety issues – and responding to them accordingly – was for many parliaments and similar organisations a fundamental shift towards increasing managers’ accountability for these issues.

#### Historical reports

The Foster Review heard in consultations that a reporting and complaints mechanism should be able to receive historical reports. As noted in the Respect@Work report people who experience sexual harassment in the workplace can carry the burden of that experience through their entire working lives.<sup>12</sup> Addressing this past trauma, especially if the harassment occurred in the workplace, is essential to fostering a safe and secure workplace for everyone. It is also important to ensure that people are not turned away due to unnecessary limits on what can be considered – noting that recent data released by the ABS shows that 73% of sexual assaults were reported to police within one year compared with at least 93% for other offence types.<sup>13</sup>

The UK Parliament introduced its Independent Complaints and Grievance Scheme (ICGS) in July 2018. Initially the scheme was only available to complaints that occurred from the commencement of the 2017 Parliament. A review was conducted after the ICGS had been in place for 6 months and in 2019, the scheme was expanded to include historic cases within the scope of the scheme. The complaints process for the Canadian Parliament provides that allegations involving other staff and members can be reported by current staff, or former staff within 3 months of their departure. This time period can be extended in exceptional circumstances. Complaints are discontinued if the Member of Parliament ceases to be in the Parliament.

As I note above, the Foster Review has had to reconcile best practice approaches towards historical reports with the reality of what is immediately implementable in the short-term. However, the Jenkins Review could consider the approaches of other parliaments and the capacity of any new mechanism to receive and investigate historical complaints.

#### Vexatious reports

The Foster Review heard concerns during consultation regarding vexatious or malicious reports being used as a way to cause political damage to a parliamentarian, party or staff member. Research shows that the rate of false allegations of sexual harassment and sexual offences is very low.<sup>14</sup> The experience of other parliamentary jurisdictions under review<sup>15</sup> also noted that false accusations concerning serious incidents are rare, but that setting clear expectations in policy and procedures about how vexatious reports will be handled, including taking disciplinary action, is important to maintain the integrity of the complaints system. The Foster Review found that doing so can mitigate concerns around vexatious reports. In particular, it

<sup>11</sup> Francis D (2019) *Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace*, p 67; South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australia Parliament Workplace*, p 110.

<sup>12</sup> AHRC, *Respect@Work Report*, see especially pp 257-278.

<sup>13</sup> Australian Bureau of Statistics (2019) *Victims of sexual assault: time to report and age at incident*.

<sup>14</sup> Australian Institute of Family Studies, *Challenging Misconceptions About Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners* (2017); Cortina L, Sojo V and Köhler T (2020), *Busting The Myths About Sexual Harassment*, Pursuit, The University of Melbourne.

<sup>15</sup> Scottish Parliament (2021) *Sexual Harassment Policy*; Canadian House of Commons (2015) *Appendix II Code of Conduct for Members of the House of Commons: Sexual Harassment between Members*.

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considered the Canadian Parliament’s Respectful Workplace Policy and Code of Conduct – Sexual Harassment, both of which contemplate the possibility of complaints being brought in bad faith.

#### Sanctions

As noted above, instilling confidence in a complaints mechanism relies in part on the availability of appropriate sanctions to ensure that misconduct cannot continue with impunity. Making available a range of proportionate and flexible outcomes will encourage reporting and ensure staff feel supported and empowered to seek a resolution when they have been affected by a serious incident. However, in a Westminster system, there are limits to the sanctions that can be applied to parliamentarians. Consideration needs to be given to what kind of consequences are appropriate and proportionate, who would have the authority to enforce them and how this might interact with parliamentary privilege. Such consideration is partly reflected in the process recommended by the Foster Review for the SIT.

In particular, the Foster Review considered the approach of the UK Parliament and the way it has been able to balance parliamentary sovereignty with the need to hold parliamentarians accountable for misconduct.

#### Interaction with criminal conduct and processes

The approach to complaints that relate to possible criminal conduct is a challenging area. Organisations consulted by the Foster Review, including the AFP, recognised the importance of the agency of the impacted person in deciding whether to refer matters to police. You have similarly acknowledged publicly that ‘it should be the individual’s decision...has always been the position across the board’ and should never be taken out of the hands of the person who has come forward. In response to a question from Senator Keneally during Senate Estimates on 22 March 2021 the AFP Commissioner confirmed there is no mandatory reporting requirement for parliamentarians and their staff, and that the wishes of the victim are paramount, ‘[s]o if the victim says, “I don’t want this to go any further”, then it doesn’t go any further. ...At any point in time they may withdraw that or there may be no action that is taken.’

Best practice approaches facilitate and encourage referral of criminal matters to police but, unless a mandatory disclosure obligation exists, emphasise the impacted person’s control and autonomy at every stage of the process. A system that requires referral to police may result in fewer people accessing support, as a forced referral may be re-traumatising and detract from safety and confidence in the process.

The Foster Review considered the approach of the NRL, which in 2019 introduced a no-fault stand down rule for players charged with serious criminal offences.

#### Independence

Those consulted by the Foster Review commented consistently on the importance of a mechanism for receiving and responding to a complaint about a serious incident being independent from the employer. Independence ensures parties’ confidence in an investigation or review process and addresses concerns about partiality and potential adverse impacts of making a complaint.

Conflicts of interest may arise where investigations or reviews are conducted by individuals within an organisation or with a stake in the employment relationship, and the resulting actual or perceived lack of independence in the process becomes a barrier to reporting misconduct.<sup>16</sup> Engaging specialist independent reviewers can mitigate the risk of such conflicts and can engender trust in an investigation process.<sup>17</sup>

In particular, the Foster Review looked at the approaches of the UK Parliament and the Canadian Parliament in achieving independence in their complaint handling processes for Members and Members’ staff, noting the unusual difficulty within the parliamentary context of identifying individuals with legal authority who can take employment action while being perceived as sufficiently impartial.

#### Commitment from leadership

The Foster Review heard in consultations the importance of leadership in creating an enabling environment where staff feel safe and supported to report serious incidents, and demonstrating zero tolerance for unacceptable behaviour in the workplace. Leaders must communicate a commitment to prioritise and foster a safe and respectful workplace culture.

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<sup>16</sup> ARHC (2021) *Change the Routine: Report on the Independent Review into Gymnastics in Australia*, p 79.

<sup>17</sup> AHRC, *Respect@Work Report*, p 704.



Embedding expectations of behavioural standards in an organisation's statement of values and its code of conduct can be an important steps towards achieving this.

The Foster Review considered the example of leaders in one organisation who were visible in the delivery of training to different groups within their workforce, providing opening remarks and actively contributing to discussions about workplace behaviour.

## Effective, targeted, timely and ongoing education and support

### Education

In consultations the Foster Review heard the need to provide a holistic approach to prevention, which includes education tailored to the workplace context. Tailored education and support, along with other awareness raising tools, is seen as an essential step in the short and longer term to build understanding of work, health and safety responsibilities, set clear behavioural expectations and a consistent understanding of what these look like in practice, and to build knowledge of the different options and supports available when serious incidents occur. This is in addition to, as the Respect@Work Report notes, using simple WHS approaches to normalise workplace conversations about safe behaviours, which helps foster a positive workplace culture and aids harm prevention.<sup>18</sup>

Consultations with private and public sector organisations – some with experience of delivering training externally, as well as implementing it within their own organisations – pointed to the effectiveness of interactive, scenario-based training to engage staff and create an environment conducive to discussion and contest of ideas. The Foster Review heard that using a balance of different approaches, such as online bite-sized modules, workshops and direct one-on-one sessions, with a mix of regular and ad hoc options, is seen as the best approach to maximise the effectiveness of support. There is value in mandating some education as the best way of ensuring a baseline competency and consistency in understanding and awareness. Making education sessions optional is not seen as ideal as those who most need the support may refrain from it. One-off education programs also need to be complemented by a longer-term program to shift attitudes, knowledge and behaviours, and to avoid a superficial 'tick and flick' compliance-based approach. In particular, the Foster Review considered the approaches taken by BHP and the University of New South Wales to rolling out tailored, regular training in their organisations.

Several organisations noted the need for education to be tailored to its audience and their workplace and for it to be delivered by someone the participants trusted and could relate to. Education providers with an understanding of the pressures associated with the particular workplace context are more likely to be seen as credible. The Foster Review heard anecdotally as part of the review of the New Zealand parliamentary workforce that Members noted a preference for targeted one-on-one support with a suitably senior counterpart, to create a 'safe place' for them to talk about challenges they were facing. The Foster Review considered that this experience indicates a similar approach – direct education with an experienced provider – may also be the most effective approach to support Australian parliamentarians.

### Reporting

Regular reporting on serious incident reporting rates and trends, both internally within an organisation and externally, is part of leaders holding the workplace to account and driving positive workplace culture.<sup>19</sup> Best practice approaches towards prevention emphasise the need for transparency by organisations about the prevalence of bullying and harassment and sexual harassment in their workplace and progress towards eliminating it.

Several stakeholders noted the importance of providing accurate and robust data to senior leadership about complaint rates and trends, while prioritising the confidentiality and privacy of staff. Reporting in an anonymised and sensitive way helps to build trust in reporting processes and to reinforce that unsafe behaviours are unacceptable.

<sup>18</sup> AHRC, *Respect@Work Report*, p 668.

<sup>19</sup> Male Champions of Change, *Disrupting the System*, p 98.

# Appendix

## References

- Australian Bureau of Statistics (2019) *Victims of sexual assault: time to report and age at incident*.
- Australian Dispute Resolution Advisory Council (1 November 2016), Confidentiality, [online document] accessed 24 April 2021.
- Australian Human Rights Commission (AHRC) (2020) *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*.
- Australian Institute of Family Studies, *Challenging Misconceptions About Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners* (2017).
- Canadian House of Commons (2015) *Appendix II Code of Conduct for Members of the House of Commons: Sexual Harassment between Members*.
- Cortina L, Sojo V and Köhler T (2020), *Busting The Myths About Sexual Harassment*, Pursuit, The University of Melbourne.
- Francis D (2019) *Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace*.
- Male Champions of Change (2020) *Disrupting the System: Preventing and Responding to Sexual Harassment in the Workplace*.
- Victorian Equal Opportunity and Human Rights Commission (2020) *Guideline: Preventing and Responding to Workplace Sexual Harassment*.
- Scottish Parliament (2021) *Sexual Harassment Policy*.
- South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australian Legal Profession*.
- South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australia Parliament Workplace*.

## Other resources

- ANROWS (2017) *National Community Attitudes Towards Violence Against Women Survey*.
- Australian Institute of Health and Welfare (August 2020) *Sexual Assault in Australia*.
- Blue Knot Foundation, *Organisational Guidelines for Trauma-Informed Service Delivery* (2020).
- Clark C, Classen C C, Fourt A and Shetty M (2015) *Treating the Trauma Survivor: An Essential Guide to Trauma-Informed Care*, Routledge.
- Commonwealth Ombudsman (2009) *Better Practice Complaint Handling Guide*.
- Ellenbogen QC N (2019) *An Independent Inquiry into Bullying and Harassment in the House of Lords*.
- Goward, The Hon. P (April 2021) *Review of Policies and Procedures for Ministerial offices – Bullying, Harassment, and Sexual Misconduct*, NSW Department of Premier & Cabinet.
- High Court of Australia (2020) *Supplementary HR Policy for Chambers Staff*.
- McDonald P (2012) 'Workplace Sexual Harassment 30 Years On: A Review of the Literature', *International Journal of Management Reviews* 14(1):1-17
- McDonald P, Charlesworth S and Graham T (2014) 'Developing a framework of effective prevention and response strategies in workplace sexual harassment', *Asia Pacific Journal of Human Resources* 53(1):41-58

- McDonald P, Charlesworth S and Graham T (2016) 'Action or Inaction: Bystander Intervention in Workplace Sexual Harassment', *The International Journal of Human Resource Management* 27(5):548-566
- McDonald P (2016) 'Men are targets of sexual harassment at work far more commonly than we assume', *LSE Business Review* [online document] accessed 1 March 2020.
- Mitra-Kahn, T, Newbiggin, C, and Hardefeldt, S (2016) *Invisible Women, Invisible Violence: Understanding and Improving Data on the Experiences of Domestic and Family Violence and Sexual Assault for Diverse Groups of Women: State of Knowledge* ANROWS.
- New South Wales Ombudsman (2017) *Effective Complaint Handling Guidelines* (3<sup>rd</sup> edition).
- Office of the High Commissioner for Human Rights (2011) *Guiding Principles on Business and Human Rights*, United Nations.
- Operation Honour, Canadian Armed Forces (2020) *DAOD 9005-1, Sexual Misconduct Response* [online document] accessed 18 March 2021.
- OurWatch, ANROWS (Australia's National Research Organisation for Women's Safety) and VicHealth (2015) *Change the Story: A Shared Framework for the Primary Prevention of Violence Against Women and their Children in Australia*, Our Watch.
- Parliamentary and Health Service Ombudsman (UK), *Principles of good complaint handling* (2009).
- Potter R, Dollard M and Tuckey M (2016) *Bullying & Harassment in Australian Workplaces: Results from the Australian Workplace Barometer Project 2014/15*, Safe Work Australia.
- Safe Work Australia (2016) *Guide for Preventing and Responding to Workplace Bullying*.
- Safe Work Australia (2021) *Preventing Workplace Sexual Harassment: National Guidance Material*.
- Safe Work Australia (2021) *Preventing Workplace Violence and Aggression: National Guidance Material*.
- Safe Work Australia (2021) *Work-related Psychological Health and Safety: A Systematic Approach to Meeting Your Duties*.
- Senate Finance and Public Administration References Committee (2003) *Staff Employed Under the Members of Parliament (Staff) Act 1984*, Commonwealth of Australia.
- Stanley CBE FCIP A (2021) *Independent Complaints and Grievance Scheme 18-Month Review*.
- Supreme Court of New South Wales (2020) *Policy on Inappropriate Workplace Conduct*.
- The Hon Susan Kiefel AC (2020) *Statement by the Hon Susan Kiefel AC, Chief Justice of the High Court of Australia*, High Court of Australia.
- Tertiary Education Quality and Standards Agency (2020) *Good Practice Note: preventing and responding to sexual assault and sexual harassment in the Australian higher education sector*.
- The Australasian Institute of Judicial Administration (2020) *Guide to Judicial Conduct* (3<sup>rd</sup> edition).
- Tiernan A (2007) *Power Without Responsibility: Ministerial Staffers in Australian Governments from Whitlam to Howard*, University of New South Wales Press.
- Universities Australia (2018) *Guidelines for University Responses to Sexual Assault and Sexual Harassment*.
- Ussher JM, Hawkey A, Perz J, Liamputtong P, Marjadi B, Schmied V, Dune T, Seka, JA, Ryan S, Charter R, Thepsourinthone J, Noack-Lundberg K, and Brook E (2020) *Crossing the Line: Lived Experience of Sexual Violence among Trans Women of Colour from Culturally and Linguistically Diverse (CALD) Backgrounds in Australia*, ANROWS.
- Victorian Ombudsman (2016) *Complaints: Good Practice Guide for Public Sector Agencies*.
- VicHealth (2018) *(En)countering Resistance: Strategies to Respond to Resistance to Gender Equity Initiatives*.
- Victorian Legal Services Board and Commissioner (2019) *Sexual Harassment in the Victorian Legal Sector: Report of Findings*.

Watt A (15 February 2021) [Balancing transparency and confidentiality key to managing workplace sexual harassment](#), [online document] MinterEllison, accessed 24 April 2021.

White QC G (2019) *Independent Inquiry Report: Bullying and Harassment of MPs' Parliamentary Staff*.

WorkSafe New Zealand (2018) *Model Sexual Harassment Policy*.