



Australian Government

Department of the Prime Minister and Cabinet

# Review of the Parliamentary Workplace: Responding to Serious Incidents

consultation copy



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# Review of the Parliamentary Workplace: Responding to Serious Incidents

## Summary

On 16 February 2021, the Prime Minister, the Hon Scott Morrison MP, tasked a review of the procedures and processes involved in identifying, reporting and responding to serious incidents that occur during parliamentary employment. This was triggered by deeply distressing reports of an alleged sexual assault in a Ministerial office in March 2019 made public the previous day. The Prime Minister asked that the review be conducted by Stephanie Foster PSM, Deputy Secretary of the Department of the Prime Minister and Cabinet, and that it provide recommendations on how to ensure independence from the employer in such processes, empowerment to victims, and timely, effective and ongoing services and support. The Prime Minister asked that Deputy Secretary Foster consider best practice in other sectors for addressing these issues, with particular reference to advice from the Sex Discrimination Commissioner and from other jurisdictions.

For the purposes of this review, the term ‘serious incident’ is interpreted as an incident or pattern of behaviour that causes serious harm to someone and includes assault, sexual assault, sexual harassment and serious and systemic bullying or harassment.

The review found that the current procedures and processes are not designed or able to respond appropriately to serious incidents in the parliamentary workplace, particularly to sexual assault. The most significant gap is the absence of readily accessible, timely, independent, trauma-informed services and response mechanisms, now partially remedied with the introduction of a dedicated 24/7 support line, 1800 APH SPT. The review found two other critical areas requiring immediate action: 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. Coupled with a clearly articulated leadership commitment and actions in relation to promoting a safe and respectful workplace, these findings form the basis for the recommendations in the review. These recommendations, and the suggestions provided for their implementation, have been specifically crafted in the context of the parliamentary workplace.

The review acknowledges the strong sense of pride felt by parliamentary staff as part of the parliamentary workforce, and their commitment to making a difference to Australia and for Australians. Similarly, all stakeholder groups consulted recognised the critical role played by our parliamentarians and their staff, and the unique environment they operate in. The review also heard a strong case for change – most particularly around creating a safe environment for people to call out unacceptable behaviour or report serious incidents. It is a watershed moment for the Parliament, and an opportunity to change the way it balances its pressured, complex, inherently insecure and intensely political environment with its legal and ethical obligations to provide a safe and respectful workplace. Unacceptable behaviour, whether by parliamentarians or staff, inflicts damage on everyone and undermines the legitimacy and authority of the Parliament, and its ability to attract and retain high quality staff.

Recent reviews into other parliamentary workplaces identify factors common across these workplaces that are driven by culture, workplace structure and employment arrangements, including high levels of intensity, constant and intense media and public scrutiny, power dynamics, historical conventions that persist despite advances in modern workplace policy, lack of accountability mechanisms for parliamentarians engaging in unacceptable behaviour, concerns about employment security creating unwillingness to complain, and reluctance to challenge unacceptable behaviour of ‘high value’ staff and parliamentarians.

While the review has, as requested, considered best practice in other sectors, this is a workplace like no other, with its unique industrial arrangements, its pace, intensity and complexity, and the fundamentally political nature of its business. The review acknowledges that this complexity will require a comprehensive and nuanced response over time, and the Jenkins’ Review will address longer term cultural and systemic issues. Therefore this review has consciously focused the recommendations on things that can be done in the short term to meet the most immediate needs, in advance of Commissioner Jenkins’ report. The review has engaged closely with Commissioner Jenkins to ensure that, where appropriate, the measures proposed can be evaluated and built upon by the Jenkins Review as lessons are learnt during their implementation.

The review consulted as widely as possible with other jurisdictions, experts in the field of women’s safety, trauma-informed support and complaints handling bodies, public and private sector organisations with best practice approaches, victim support organisations, relevant parliamentary offices and relevant government agencies. The review also spoke with a number of current and former *Members of Parliament (Staff) Act 1984* (Cth) (MoP(S) Act) staff. The review was conducted in close consultation with the Department of Finance (Finance), in light of their role in providing HR services and managing workplace risks for parliamentary employees. It was clear from the consultations undertaken that the current processes in place have not kept pace with best practice in other organisations.

In order to develop practical, implementable recommendations quickly, this review focuses on the processes and procedures relating specifically to parliamentarians and MoP(S) Act staff in all parliamentary workplaces. While other building occupants in Parliament House form part of the same ecosystem, they operate under different employment frameworks and support systems, provided for by their employers. To the extent practicable, the measures have sought to provide appropriate support to make a complaint to the appropriate body or employer. There will be an opportunity during the more comprehensive Jenkins Review for the intersections between different employment groups to be considered.

# Improving the processes and procedures involved in identifying and reporting a serious incident

Under the current system, staff are employed directly by the parliamentarian they work for under the MoP(S) Act, with ‘back office’ human resource functions provided by Finance (such as administration of payroll). Subject to the *Fair Work Act 2009* (Cth) (the Fair Work Act) and other relevant legislation and conditions of employment (such as security clearances), parliamentarians have control over most staffing decisions, with work health and safety (WHS) duties shared between employing parliamentarians, MoP(S) Act staff and Finance.

Finance provides support including: maintaining the MoP(S) Workplace Bullying and Harassment Policy and administering reports and complaints; case management support, guidance and training for parliamentarians and MoP(S) Act staff; facilitation of workers compensation claims and incident reports; maintaining the Staff Assistance Officer network, Health and Safety Representatives and WHS Committee; and contracting the Employee Assistance Program (EAP) provider. These supports and services are detailed in Chapter 2.

The existing processes are tailored to responding to less serious workplace incidents and are typically only effective where parties are in broad agreement as to outcomes. However, they are not fit for purpose when it comes to dealing with a serious incident. Key issues identified through the review include:

- The need for processes to handle complex trauma, respond effectively in a crisis, and to operate with a high level of sensitivity and confidentiality regarding allegations of a serious nature;
- The need for processes to be independent from the employer, and to instil trust and confidence so that staff feel safe coming forward;
- The need to re-align processes and procedures with current understandings of best practice;
- The need for greater accountability and transparency to demonstrate that action will be taken when expectations of appropriate workplace behaviour are not met; and
- Structural impediments to the satisfactory resolution of incidents, including disconnection between the handling of complaints (by Finance) and the ability to take action when they are substantiated (which rests with the employing parliamentarian), and the lack of possible consequences if the offender is a parliamentarian.

Although reporting rates are typically low, research indicates that sexual harassment and other serious issues are prevalent in most workplaces. Of the 33% of people surveyed for the Australian Human Rights Commission’s (AHRC) 2018 Fourth National Survey on Sexual Harassment in Australian Workplaces who said they had experienced sexual harassment, fewer than one in five (17%) had formally reported it.<sup>1</sup> Two-thirds of those who witnessed sexual harassment said they took no action.<sup>2</sup> The Australian Bureau of Statistics’ 2016 Personal Safety Survey estimated that 1 in 6 women (17%, or 1.6 million) and 1 in 25

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1 Australian Human Rights Commission (AHRC) (2018) *Everyone’s Business: Fourth National Survey on Sexual Harassment in Australian Workplaces*, p 67.

2 Ibid, p 95.

men (4.3%, or 385,000) have experienced at least one sexual assault since the age of 15.<sup>3</sup> Therefore, a key priority is to create an environment where staff feel supported and safe to report a serious incident. Greater support for managers and bystanders to recognise a serious incident and respond appropriately is also important and considered in detail in Chapter 4.

The review proposes establishing a new framework for reporting and responding to serious incidents that includes timely, effective and confidential support and an independent and confidential complaints mechanism, supported by a tailored education program. A Serious Incident Team would be established with a presence in Parliament House and would provide an avenue for staff to come forward, ensure their immediate safety, and access initial and ongoing trauma-informed wrap-around support and care. The Serious Incident Team would provide advice, support, and debriefing services in relation to incidents, provide support and referrals to relevant services, and where appropriate, facilitate local resolution of incidents. It would provide support and advice to all involved in an incident, as well as to managers and bystanders.

The review proposes that the Serious Incident Team be trauma-informed, client-centric, confidential, independent and impartial. It must provide services to all directly impacted individuals, regardless of whether they choose to identify themselves. It must ensure safety and agency for the person reporting, and provide a range of proportionate options to respond to the incident.

## Ensuring independence from the employer

A consistent theme in consultations was the importance of independence – from the employer, political parties and the executive government. Best practice models considered by the review found ways to ‘insulate’ reports of a serious incident in order to ensure complete confidentiality and focus on the wellbeing of the person coming forward. As the fear of being seen as a ‘troublemaker’ can be a barrier to reporting – particularly in the parliamentary context where employment can be terminated at any time, subject to the Fair Work Act, and media and political cycles are front-of-mind – independence is particularly important.

The review envisages that the Serious Incident Team would accept reports from any parliamentary staff and parliamentarians who have experienced, witnessed, been accused of or are supporting someone in relation to a serious incident involving a MoP(S) Act staff or parliamentarian. In its initial phase, it is recommended the process apply to incidents or patterns of behaviour relating to the current term of Parliament (since the 2019 election), where the parties remain in Parliament or MoP(S) Act employment (including periods when either House is dissolved). Depending on the nature of the incident and the outcome desired by the individual, the Serious Incident Team could assist the parties to achieve a local resolution, for example through a facilitated discussion. For less serious and routine workplace management issues, the Serious Incident Team would facilitate a referral to Finance.

In relation to incidents where a local resolution is not possible or appropriate, the review proposes accessing independent experts to review serious incidents and advise on appropriate response. The independent reviewers would have expertise in employment and administrative law, sexual violence and harassment and workplace conduct, and good knowledge of the parliamentary workplace.

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3 Australian Bureau of Statistics (ABS) (2017) *Personal Safety, Australia*



The review envisages that the Serious Incident Team could draw on these independent experts to conduct reviews on an ad hoc basis, depending on the incident and their relevant expertise. The independent expert would conduct a workplace review that is independent, objective and fair to all involved in the review. The reviewer would prepare a report on any findings from their review, including recommendations on appropriate responses and timeframes for implementation. Findings would be made on the balance of probabilities, and would follow best practice in administrative decision-making.

Workplace reviews would also be conducted in line with best practice complaints handling principles, considered in detail at 3.2. In particular, the Serious Incident Team would provide clarity to all parties about the process, confidentiality and timeframes for a review, and follow up regularly to update them on the progress of the review.

Independence can also promote accountability and transparency. One of the challenges consistently highlighted in consultations is the perception that a serious incident will be ‘swept under the rug’ and that there are no clear consequences for parliamentarians who tolerate, or contribute to, serious incidents in the workplace. While parliamentarians should retain the primary responsibility for resolving issues within their workplace, supported by the Serious Incident Team and enhanced support, training and education measures, confidence in the system relies on the ability to hold parliamentarians accountable where they do not meet their obligations with respect to providing a safe and respectful workplace.

To ensure independence, the review proposes that the Serious Incident Team be established as a function of the Parliamentary Service Commissioner (PSC) under the *Parliamentary Service Act 1999* (Cth). The PSC would not engage in the day-to-day operation of the mechanism and would not have access to information provided in confidence. Rather, the PSC would provide quality assurance to ensure the independent complaints mechanism is operating in a timely, effective and reasonable way.

The PSC would also have a role to receive reports made by the independent reviewers (through the Serious Incident Team) and monitor action taken. In cases where a parliamentarian is unwilling to engage in a review process, or fails to act on recommendations from a reviewer, the review proposes that the PSC would provide reports to the Presiding Officers who would be required to take necessary action as determined by the Parliament. It is envisaged that these processes and actions would be formally recognised by a resolution of each House of Parliament. Further detail on proposed administrative and governance arrangements is set out at 4.3.8.

## Providing empowerment to victims

Another consistent theme from consultations is the need for a trauma-informed approach at every stage of the response to a serious incident in order to avoid doing further harm.

The key elements of a trauma-informed approach, considered in more detail in Chapter 3, include: ensuring safety, listening without judgment, avoiding the need for the person to re-tell their story, and helping the person understand their options. Giving the person a range of options and placing them at the centre of the response, with control over their own decisions, is seen as critical by experts. Best practice models considered by the review provide skilled support to empower people coming forward to understand and decide between the available options. Under this type of model, the focus is the creation of a ‘safe place’ where the person does not bear the burden of their experience alone, while

retaining control over the next steps.

Noting the issues are sensitive and complex, the Australian Federal Police (AFP) Commissioner has highlighted the importance of referring criminal matters to the police without delay, taking into account the rights and privacy of the victim.<sup>4</sup> The Commissioner has further clarified that this in no way creates a mandatory reporting requirement, and the right of the staff member to determine whether an issue is reported to the police is paramount in any decision. The review heard that individuals already in a vulnerable position may be subjected to further harm if their wishes are overridden or privacy breached. In addition, several private sector organisations told the review that providing agency to the person gives them confidence that their experience will be treated seriously and reduces their desire to look elsewhere for help, resulting in a decrease in issues being played out in the media. The review envisages that the Serious Incident Team case coordinators would provide skilled support and warm referrals to police or specialist services, such as a Rape Crisis Centre, in the event of criminal allegations, but would also respect the rights and privacy of the person coming forward should they decide not to formally report the incident. This is consistent with other best practice approaches considered by the review, including AFP Safe Place.

Noting such matters are appropriately dealt with by police, an independent workplace review would not be conducted into criminal allegations.

## Ensuring timely, ongoing, holistic and effective services and support

Early in this review, it became apparent there was an immediate need for an independent, confidential support mechanism for parliamentary staff. On 2 March 2021, a Parliamentary Support Line was established. The Parliamentary Support Line – 1800 APH SPT – operates nationally and is staffed 24/7 by professionals with training in trauma-informed care, who can provide information, counselling, supported referrals, and assistance in determining pathways to progress complaints.

The Parliamentary Support Line provides effective and timely initial support. The proposed Serious Incident Team will be able to provide ongoing support, including face to face, from a dedicated and skilled case coordinator. This support extends beyond managing immediate mental health impacts to actively assisting with the resolution of the issue within the workplace. Although independent, the Serious Incident Team would be integrated with the parliamentary system. Staff would have intimate knowledge of the parliamentary context and close working relationships with Finance, police and parliamentarians. This integration would enable a strategic response, not only to individual issues, but to the overall picture of risks, hotspots and trends built up over time. The Serious Incident Team could also facilitate an independent, confidential workplace review. Over time, the review envisages that confidence in the pathways to resolve issues more effectively, including the prospect of consequences for poor behaviour, would result in more staff coming forward, rather than feeling as though their only option was to leave or to engage with the media.

Further detail on how the Serious Incident Team can provide effective and ongoing support, including the

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<sup>4</sup> Letter to the Prime Minister from the AFP Commissioner, dated 24 February 2021.

mix of skills required, principles and operating model, is included in Chapter 4. Chapter 4 also considers the intersection with existing mechanisms, including the Parliamentary Support Line, Finance and the role of parliamentarians.

While the terms of reference refer to services and support for the victim, the review also identifies the need for timely, effective and ongoing support to those involved in serious incidents in other ways, such as managers, bystanders, and people who are the subject of a complaint. The review proposes that the Serious Incident Team provide such support.

## Implementation

The review focuses on practical actions that are immediately achievable while the Jenkins Review is in progress. Implementation will be key. Critical elements to its establishment and effective operation will likely include:

1. A determination from the Presiding Officers under section 71 of the *Parliamentary Service Act 1999* (Cth), conferring relevant functions on the Parliamentary Service Commissioner (PSC) consistent with section 40(1)(d).
2. A letter from the Minister for Finance to parliamentarians about the new mechanism that establishes expectations for parliamentarians and staff in relation to serious incidents and the need to support staff.
3. Operating procedures for the Serious Incident Team and protocols with Finance, 1800 APH SPT and police.
4. Engagement of case coordinators, workplace reviewers (particularly given the high levels of skills and credibility required) and trainers and educators.
5. Funding to implement the recommendations.
6. A detailed communications strategy.

The review proposes that a small implementation team be established within the Department of the Prime Minister and Cabinet to support implementation of the review recommendations, in close consultation with the PSC, Finance and the Sex Discrimination Commissioner (given intersections with the Jenkins Review).

# Recommendations

## Recommendation 1

To achieve meaningful change in the management of serious incidents and to restore the trust and confidence of staff and the wider public, parliamentary leaders must commit to reform of the current system for reporting and responding to serious incidents. All parliamentarians should clearly articulate that assault, sexual assault, sexual harassment, and serious or systemic bullying and harassment are unacceptable in their workplaces, and act to support that commitment where necessary. The Statement of Ministerial Standards and Statement of Standards for Ministerial Staff should be amended to align with this.

## Recommendation 2

A new framework for reporting and responding to serious incidents should be established comprising three core interconnected elements: trauma-informed support services; an independent, confidential complaints mechanism; and tailored education and support for all staff, managers and parliamentarians. The framework should be underpinned by clear expectations of appropriate workplace behaviour.

## Recommendation 3

The support system should be timely, independent, confidential, and trauma-informed, available to all parliamentary staff and parliamentarians who experience, witness, are accused of or are supporting someone in relation to a serious incident related to the parliamentary workplace. It must be victim centric and empower individuals who have experienced a serious incident. Support should be provided through a combination of the continuation of the 1800 APH SPT Parliamentary support line for immediate, 24/7 counselling and referral services, and the ongoing wrap-around case management support within the independent complaints mechanism.

## Recommendation 4

An independent complaints mechanism should be established under the *Parliamentary Service Act 1999* (Cth) as a function of the Parliamentary Service Commissioner (PSC), with oversight by the Presiding Officers of the House of Representatives and the Senate, to ensure independence from the Executive and the employer and to enable proportionate consequences for complaints that are upheld.

In its initial phase it should:

- Apply to serious incidents or patterns of behaviour causing serious harm, including reports of assault, sexual assault, sexual harassment, and serious and systemic bullying or harassment.
- Cover complaints that relate to the current term of parliament (i.e. since the 2019 election, including periods when either House is dissolved) where the parties remain in parliament or MoP(S) Act employment.
- Apply to all MoP(S) Act staff and parliamentarians, and support referral of reports from other building occupants to their own complaints mechanisms.
- Include a Serious Incident Team (SIT) comprising a group of highly skilled case officers with a mixture of expertise, for example, in trauma-informed support and administrative and employment law to:
  - Receive reports of serious incidents or patterns of behaviour
  - Provide immediate and ongoing trauma-informed support, and advice on options
  - Triage according to the client's needs and preferences, within a graduated system of escalation
  - Facilitate the resolution of issues at the local level
  - Appoint independent experts, to be engaged as required, to review reports of serious incidents and advise on appropriate responses
  - Provide referrals to police, an independent reviewer, the Department of Finance (for administrative and less serious issues), or specialised support services.

## Recommendation 5

To promote cultural change, ensure the expectations of parliamentarians and their staff are well understood, and support the operation of the proposed support and reporting system, a comprehensive awareness raising and education program should be implemented. As an immediate response, this should begin with targeted, personalised, face to face training for all parliamentarians and staff, including those in electorate offices. It should be designed to equip parliamentarians, managers and staff to understand their workplace health and safety responsibilities, to provide them with the tools to promote safe and respectful workplaces and to respond appropriately to instances of unacceptable behaviour.

## Recommendation 6

Where Department of Parliamentary Services (DPS) Protective Security Service (PSS) officers or local AFP officers are the first to identify or respond to a serious incident within Parliament House, they should provide advice on avenues for assistance, including the 1800 APH SPT line and the complaints mechanism contact channels, in addition to any emergency response action and upward reporting required under their standard operating procedures. A report on the incident should be provided to the SIT so that a case manager can make follow up contact with the individual and provide trauma-informed wraparound support, should it be required.

## Recommendation 7

To mitigate the risk of serious incidents occurring within Parliament House, measures to control after-hours access should be introduced. As a first step, all after-hours access should be logged and reported promptly to office managers to deter non-work related access, and areas accessed after hours should be subject to additional patrols. These measures should be underpinned by a clear expectation from parliamentarians to their staff that after-hours access must be work related or for a legitimate purpose.

## Recommendation 8

The Department of Finance should remain responsible for underpinning Human Resources and WHS processes, including managing:

- Workplace reports that are not serious incidents, including less serious reports of bullying and harassment
- Workers compensation claims
- Existing complaints on foot at the time the complaints mechanism is implemented
- Historical reports that do not fall within the scope of the independent complaints mechanism
- HR and other shared services
- Overall policies, general training and resources

## Recommendation 9

A small taskforce should be established in the Department of the Prime Minister and Cabinet to implement these recommendations. The taskforce should work closely with the Prime Minister, the Minister for Finance, the Presiding Officers, the Parliamentary Service Commissioner, and the Departments of Finance and Parliamentary Services in doing so.

## Recommendation 10

The framework for reporting and responding to serious incidents and the implementation taskforce should be funded until the end of the 2021-22 financial year.

# 1 Introduction

## 1.1 Context

This review was initiated by the Prime Minister, following allegations made public on 15 February 2021 of a sexual assault in Parliament House in March 2019. Shortly after commencing the review, the media reported further allegations by current and former parliamentary employees of incidents of sexual assault and harassment.<sup>5</sup>

The Prime Minister requested this review consider whether more could be done to support parliamentary employees involved in a serious incident in the workplace. The terms of reference for the review are:

- a) The processes and procedures involved in identifying and reporting a serious incident that occurs as part of parliamentary employment;
- b) Steps that can be taken to ensure the processes of reporting and responses to serious incidents are able to be made independent from the employer;
- c) Recommendations on how to ensure that all reporting and responses to serious incidents are driven by a principle of providing empowerment to the victims; and
- d) Recommendations on how to ensure that the services and support that are provided to the victim are timely, effective and ongoing.

The Prime Minister also requested the review consider best practice in other sectors for addressing these issues with respect to advice that may be applicable from the Sex Discrimination Commissioner and other jurisdictions; and to work with the Special Minister of State, the Department of Finance, the Prime Minister's Office and other relevant agencies. The Prime Minister's letter is at [Attachment A](#).

The review occurred over the period 16 February to 24 May 2021.

Separate to this, the Prime Minister tasked Senator the Hon Simon Birmingham, Minister for Finance, to consult across Parliament and to set up an independent review of the workplace culture in Parliament House. The Independent Review of Commonwealth Parliamentary Workplaces (the Jenkins Review) commenced on 5 March 2021 and is being led by the Sex Discrimination Commissioner, Kate Jenkins. It will report its findings by November 2021.<sup>6</sup>

The Prime Minister also announced that Ms Celia Hammond MP, Member for Curtin, would conduct a review into the culture in the Liberal Party. In consultation with Ms Hammond, the Prime Minister later decided this process would be best conducted through the Jenkins Review.<sup>7</sup>

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5 See e.g. Maley J and Curtis K (17 February 2021) [“Suck it up: Parliament staff claim bullying is rife and complaints ignored”](#), Sydney Morning Herald, accessed 17 February 2021; Whyte S and McCulloch D (23 March 2021) [“Disgusting and sickening”: Staffer sacked over APH lewd sext act](#), The Canberra Times, accessed 23 March 2021; Curtis K (7 March 2021) [“Canberra bubble burst: once silent survivors now ‘making some noise.’](#) Sydney Morning Herald, accessed 7 March 2021.

6 Australian Human Rights Commission (5 March 2021) [Independent Review into Commonwealth Parliamentary Workplaces](#) [media release], accessed 5 March 2021.

7 Australian House of Representatives (2021) *Debates* 8512:29

## 1.2 Key Focus

This review focuses on immediate, practical steps to ensure parliamentary staff who experience serious incidents during their employment receive timely, effective and ongoing support, and the mechanisms to respond to such incidents are independent, confidential and effective.

As the Jenkins Review will consider workplace culture issues in greater depth, the recommendations in this review focus on concrete actions that can be taken while the Jenkins Review is underway. This review has regularly consulted with the Sex Discrimination Commissioner to ensure that, should the Jenkins Review seek to build on the recommendations, they are appropriately aligned.

## 1.3 Scope

The above considerations informed decisions about the scope of this review, and the definition of ‘a serious incident that occurs as part of parliamentary employment’.

For ‘parliamentary employment,’ the review focuses on staff employed under the *Members of Parliament (Staff) Act 1984* (Cth) (MoP(S) Act) as personal staff or electorate office staff, regardless of where they work in Australia, and on their employing parliamentarians. This focus recognises that the most critical gaps in relation to responding to serious incidents are those affecting MoP(S) Act staff. This derives from the unique employment framework and complex working environment that apply to these staff, by comparison with other building occupants. These issues are covered in Chapter 2.

Other occupants of Parliament House, such as those in the press gallery, cleaners, the Department of Parliamentary Services (DPS) including security guards, the House of Representatives and Senate staff and the private licensees that operate the post office, bank and cafes, also face shared and specific risks to their safety and wellbeing owing to the unique context of their working environment. Their employment frameworks, however, do not share the same complexities as those of MoP(S) staff. The Jenkins Review may have the opportunity to consider the broader parliamentary workplace and its occupants and their intersections with parliamentarians and MoP(S) Act staff.

This review recommends actions that can operate within the current employment framework, with its inherent tension between the need for a high level of discretion and flexibility for parliamentarians, and the impact of this discretion on staff’s confidence and willingness to raise concerns or complaints. This is particularly pertinent to the termination provisions in the MoP(S) Act, but applies also to the high levels of discretion around employment decisions exercised by each individual employer in relation to other conditions.

Consideration of how to strike the appropriate balance between the important reasons the framework is structured in this way and the impact it can have by discouraging people to report serious incidents requires careful consultation and consideration. This falls within the terms of reference for the Jenkins Review – specifically, legislative and other barriers to reporting incidents in parliamentary workplaces and the extent to which the MoP(S) Act promotes or impedes safe and respectful workplaces – and is therefore not covered in this review.



The term 'serious incident' is interpreted as an incident or pattern of behaviour that causes serious harm to someone. This framing places the impacted person at the centre of the response and trusts them to best understand their experience of harm, consistent with the terms of reference. The following incidents are considered likely to cause serious harm to a person:

**Rape and sexual assault**, as defined in the criminal offences for each Australian state and territory (depending on the location of the incident), generally means any unwanted sexual act.

**Sexual harassment**, as defined in section 28 of the *Sex Discrimination Act 1984* (Cth), is where a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature in relation to the person harassed. This conduct must occur in circumstances in which a reasonable person, having regards to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. Sexual harassment can include, for example, unwelcome touching, hugging, cornering or kissing, indecent phone calls or text messages, intrusive questions about private life or physical appearance, sexual gestures, indecent exposure or inappropriate display of the body, sexually explicit pictures, posters, or gifts, requests or pressure for sex or other sexual acts, sharing and disclosing details of sexual activities or asking a person to facilitate or procure a sexual activity on their behalf.

**Assault**, as defined in the criminal offences for each Australian state and territory (depending on the location of the incident), generally means any act which is intended to cause a non-fatal injury or harm to another person.

**Stalking or intimidation**, as defined in the criminal offences in each Australian state and territory (depending on the location of the incident). For example, following a person, unwanted contact, monitoring a person's use of the internet, loitering or threatening a person.

**Serious and systemic bullying**, as defined in section 789FD of the *Fair Work Act 2009* (Cth) occurs when a person or a group of people repeatedly behave unreasonably towards a worker, or group of workers at work and the behaviour creates a serious risk to health and safety. For example, aggressive and intimidating behaviour, deliberately isolating an individual, continuous and pervasive insulting, undermining or derogatory behaviour.

**Serious and systemic harassment**, consistent with federal and state and territory discrimination laws, is generally defined as treating a person less favourably on the basis of a particular protected attribute, such as a person's sex, race, disability, marital status, sexual orientation, pregnancy, or political opinion.

## 1.4 Methodology and process

The review draws on quantitative and qualitative research, as well as consultations with a range of stakeholders. It has worked closely with Finance as the current provider of workplace support services for parliamentary employees. Stakeholders consulted include:

- The Sex Discrimination Commissioner, as well as former Sex Discrimination Commissioners;
- The Minister for Finance in his role as Special Minister of State;
- The Presiding Officers of Parliament;
- Relevant Commonwealth agencies, including the Office for Women, Department of Parliamentary Services (DPS), Australian Federal Police (AFP) and Parliamentary Service Commissioner (PSC);
- Current and former MoP(S) staff members with direct experience of the existing support, education and complaint systems;
- Academics and eminent persons with experience and expertise in relevant fields of law and policy, including employment law, workplace bullying and harassment, women's safety, intersectional perspectives on supporting survivors of sexual assault and harassment, politics and government, and the MoP(S) Act;
- Non-Government Organisations (NGOs) with responsibility for delivery of support services to people who have experienced violence, sexual assault, harassment and other serious incidents, including those with expertise providing trauma-informed support and care;
- Unions with coverage of MoP(S) Act employees, specifically the Commonwealth Public Sector Union, the United Services Union and the Australian Council of Trade Unions;
- Private sector organisations with experience in responding to serious incidents in their workplaces, including the Australian Football League (AFL), National Rugby League (NRL), BHP, and Fortescue Metals; and
- Other jurisdictions and sectors which recently conducted reviews or commenced reforms in relation to responding to serious incidents in the workplace, including parliaments overseas and within Australia, federal and state courts, and universities.

A list of those consulted is at [Attachment B](#). The generosity of those consulted in sharing their time and expertise is wholeheartedly appreciated, and their perspectives have contributed significantly to the development of the review's recommendations.

## 2 The parliamentary workplace

This chapter considers the first element of the terms of reference – the procedures and processes involved in identifying and reporting a serious incident, such as assault, sexual assault, sexual harassment, and serious and systemic bullying or harassment that occurs during parliamentary employment. It examines the workplace context, the risk factors and prevalence of serious incidents, and the current processes and procedures.

Serving as a parliamentarian or member of their staff is a significant privilege, and the opportunity to participate in the democratic and law-making process brings with it immense satisfaction and pride. The associated responsibility means that parliamentary work often involves high-intensity and demanding workloads, heavy travel schedules, long separations from family and friends, and tensions associated with constant media scrutiny. In recent years, reviews into parliamentary complaints mechanisms for serious workplace incidents in Canada (2014), Scotland (2018), the United Kingdom (UK) (2018), New Zealand (2019), South Australia (2020) and NSW (2021) have identified similar cultural and contextual challenges.

For MoP(S) staff, the ability to actively contribute to matters of national importance and work alongside leaders who are able to inspire and impart a strong sense of purpose is exciting and rewarding and draws individuals who are passionate, committed and genuinely want to make a difference to the lives of Australians. The immense responsibility that MoP(S) staff and parliamentarians carry in their daily work can generate additional pressures and demands that, coupled with the unique employment arrangements for MoP(S) staff, mean WHS obligations have not always been prioritised and existing processes have not kept pace with evolving practices in other sectors.

Recent events have generated a genuine desire to make positive changes to the Commonwealth parliamentary workplace environment so it meets the expectations of Australians to observe the highest standards of professional conduct. As Minister Birmingham observed at Senate Estimates on 22 March 2021, parliamentary staff are ‘overwhelmingly hardworking individuals here for the right reasons... it is a shocking thing, not only that these actions occur but that they tragically reflect upon others doing the right thing.’<sup>8</sup> Providing confidence that the workplace is safe and respectful will help ensure the best and brightest continue to pursue careers in parliament.

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8 Senate Finance and Public Administration Legislation Committee (22 March 2021) *Estimates*, Commonwealth of Australia.

## 2.1 Employment arrangements

Currently, a total of approximately 2,020 staff are employed under the MoP(S) Act according to Finance data<sup>9</sup>. Staff are dispersed across Australia, with only 351 (17%) based in Canberra. 674 (33%) are personal staff. The majority (68%) work in electorate offices. Ministerial staff tend to be relatively young with almost half (47%) below the age of 35. 57% of staff are female.<sup>10</sup>

MoP(S) Act staff are diverse in experience and background. Aboriginal and Torres Strait Islander people and people from non-English speaking backgrounds (such as Greek, Vietnamese and Chinese speakers) are represented in MoP(S) staff, as are individuals from the LGBTIQ+ community. There is also diversity in terms of age, education level, individuals from rural and urban communities, and contracted versus casual staff.

As discussed at 1.3, MoP(S) Act staff operate under unusual and complex employment arrangements and under terms and conditions at the discretion of their employing parliamentarian. Under the MoP(S) Act, parliamentarians employ their own staff, with the approval of the Prime Minister under certain circumstances, having regard to the duties the parliamentarian performs as a Senator or as a Member of the House of Representatives.<sup>11</sup> Subject to the Fair Work Act, parliamentarians are empowered under the MoP(S) Act to terminate their staff at any time.<sup>12</sup> While staff are employed by the parliamentarian they work for, human resource functions are largely provided by the Ministerial and Parliamentary Services (MaPS) team in Finance.

The number of staff working in offices can vary considerably, with many offices having staff working from different locations, including electorate offices, offices at Parliament House, privately leased offices, and mobile offices. Parliamentarians are responsible for directing the day-to-day work of their employees. While at times there may be similar priorities across offices and opportunities to work collaboratively, each of the 227 parliamentary offices operates independently and as its own self-contained workplace.

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9 As at 12 March 2021.

10 Data provided by the Department of Finance.

11 *Members of Parliament (Staff) Act 1984* (Cth) ss 4, 13, 20.

12 *Ibid*, sub-ss 9(2).

## 2.2 Risk factors for serious incidents

There are known factors that contribute to the prevalence of serious incidents in a workplace, some of which are identifiable in the parliamentary workplace. Recent reviews into other parliamentary workplaces identify factors common across these workplaces that are driven by culture, workplace structure and employment arrangements, including<sup>13</sup>:

- A high intensity culture;
- Operating under intense and constant media and public scrutiny;
- Unusual and complex employment arrangements for staff;
- Power dynamics that play out in workplace interactions, behaviours and expectations;
- Heightened concerns about reputation and the presence of ‘bad faith’ or politically motivated actions;
- Historical conventions that persist despite advances in modern workplace policy;
- Operational rather than strategic workforce management;
- A culture of minimising, normalising and keeping quiet instances of unacceptable behaviour;
- Lack of accountability mechanisms for parliamentarians engaging in unacceptable behaviour;
- Employment decisions for staff that may lack transparency, including decisions on advancement;
- Reluctance to challenge unacceptable behaviour of ‘high value’ staff and parliamentarians; and
- Decision-makers in some sections of the workplace who are reticent to change entrenched approaches and processes.

Consultations during this review identified many of the same features in the Commonwealth parliamentary workplace that exist regardless of political party affiliation. Many of these features are also identifiable as risk factors in workplaces more generally.

In its *Guide for Preventing and Responding to Workplace Bullying*, Safe Work Australia identifies several factors which may increase the risk of workplace bullying, including:<sup>14</sup>

- Work stressors such as high job demands, limited job control and ambiguity, high levels of job insecurity and an acceptance of unreasonable workplace behaviours;
- Leadership styles such as autocratic behaviour that does not allow workers to be involved in decision making, providing little or no guidance to workers, and abusive and demeaning behaviour;
- A lack of resources and training and unreasonable performance measures and timeframes; and
- Workers who are more at risk of bullying, including young people, minority groups, casual and new workers, and volunteers and interns.

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13 Goward, The Hon. P (April 2021) *Review of Policies and Procedures for Ministerial offices – Bullying, Harassment, and Sexual Misconduct*, NSW Department of Premier & Cabinet; South Australian Equal Opportunity Commission (February 2021); *Review of Harassment in the South Australian Parliament Workplace*; Francis D *Bullying and Harassment in the New Zealand Parliamentary Workplace* (May 2019).

14 p. 11-12

Safe Work Australia's new national guidance material *Preventing Workplace Sexual Harassment* identifies factors that can increase the likelihood of sexual harassment occurring in the workplace, including:

- Less diverse workforces which are dominated by one gender, age group, race or culture;
- Power imbalances, where one group holds more of the decision-making positions;
- Hierarchical structures;
- Cultures which tolerate or minimise the impact of sexual harassment; and
- Use of alcohol in a work context, overnight travel, and attendance at conferences and social events.<sup>15</sup>

## 2.2.1 Prevalence of Serious Incidents in the Workplace

The prevalence of bullying, harassment and sexual assault in workplaces supports the need to introduce stronger preventative, support and complaints mechanisms in all workplaces.

The 2014-15 *Australian Workplace Barometer Project* found that nearly 1 in 10 Australian employees experienced bullying in their workplace.<sup>16</sup> Of the bullied workers, 12% were bullied daily, 33% were bullied at least once a week, and 28% experienced bullying at least once a month.<sup>17</sup>

The Australian Human Rights Commission's 2018 *Fourth National Survey on Sexual Harassment in Australian Workplaces* found that 39% of women and 26% of men in the workforce in the past five years reported experiencing sexual harassment.<sup>18</sup> Similar levels have been found in reviews of parliamentary workplaces: the Review of Harassment in the South Australian Parliament Workplace found that, of 199 survey respondents, 27.1% had experienced sexual harassment<sup>19</sup>, while the Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace found that, of more than 1000 survey respondents, 29% had experienced some form of bullying or harassment from a Member or manager and 30% from peers.<sup>20</sup>

Workers may be more likely to experience sexual harassment if they are part of a minority group, and are at further risk of harm when they face multiple forms of discrimination.<sup>21</sup> The AHRC identified that reporting rates of sexual harassment in the workplace are generally low, with fewer than 1 in 5 people (17%) who experienced sexual harassment in the workplace making a formal report or complaint.<sup>22</sup> Of those who made a formal complaint, almost half (45%) said nothing changed at their workplace as a

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15 Safe Work Australia (2021) *Preventing Workplace Sexual Harassment, National Guidance Material*

16 Potter R et al (2016) *Bullying & Harassment in Australian Workplaces: Results from the Australian Workplace Barometer Project 2014/15*, Safe Work Australia.

17 Ibid.

18 AHRC (2018) *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces*, p 8.

19 South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australia Parliament Workplace*, p. 23

20 Francis D (2019) *Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace*, p. 37

21 Ibid; AHRC (2020) *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* ('Respect@Work Report') p 19; Safe Work Australia (2021) *Preventing Workplace Sexual Harassment: National Guidance Material*, p 6.

22 AHRC (2018) *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces*, p 9.

result. Two thirds of the people who reported witnessing sexual harassment in the last five years said they took no action.

Research suggests that incidents of sexual assault are also significantly under-reported. The 2016 Australian Bureau of Statistics Personal Safety Survey estimated that 1 in 6 women (17%, or 1.6 million) and 1 in 25 men (4%, or 385,000) have experienced at least one sexual assault since the age of 15<sup>23</sup>. The survey reports that for women who experienced sexual assault by a man in the last 10 years, 9 out of 10 did not contact the police.<sup>24</sup> Barriers to reporting sexual offences include confusion, guilt or shock about the offence, fear of the perpetrator or that they will not be believed, and self-blame.<sup>25</sup>

## 2.3 Existing Finance policy and processes

### 2.3.1 Current WHS processes and supports

Under the MoP(S) Act framework, duties and responsibilities under the *Work Health and Safety Act 2011* (Cth) are shared. Employing parliamentarians are responsible for managing risks within the workplace and Finance is responsible for the overall WHS policies and procedures relating to MoP(S) Act staff. Although the precise division of responsibilities in practice can be confusing and not well understood by parliamentarians and staff, Finance works closely with employing parliamentarians and their staff to ensure their WHS obligations are met. This happens in a number of ways including providing WHS guidance, training and education, a Workplace Bullying and Harassment Policy, a Staff Assistance Officer Network and other support options such as EAP and the WHS Committee.

There is not currently a stand-alone policy or process for sexual harassment in the parliamentary workplace, nor for preventing and responding to serious incidents such as sexual assault and assault that can occur in the workplace. Under the Workplace Bullying and Harassment Policy these are treated as criminal matters, with case management support provided. Opportunities to develop new policies for preventing and responding to serious incidents are set out at 4.6.

Data from Finance indicates that training for MoP(S) Act staff related to preventing bullying and harassment in the workplace has a greater take-up than other training provided. This is because each office is required to have a work health and safety and emergency officer who are paid an allowance and are required to undertake annual training. However, the number of MoP(S) Act staff who completed this training does not represent a majority of staff (approximately 17% in the 20-21 financial year).<sup>26</sup> Further, the training was moved to online modules in response to the COVID-19 pandemic, which research

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23 Australian Bureau of Statistics (ABS) (2017) *Personal Safety, Australia*; Australian Institute of Health and Welfare (2020) *Sexual Assault in Australia*.

24 ABS (2017) *Personal Safety, Australia*.

25 Australian Institute of Family Studies, *Challenging Misconceptions About Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners* (2017).

26 Data provided by Finance on 22 April 2021

indicates is typically less effective and not engaging enough to challenge existing views and ultimately lead to behavioural change. Previous face to face training also had low attendance.

Opportunities to provide more tailored and effective education and training for MoP(S) Act staff and parliamentarians are set out at 4.4.

## 2.3.2 Current complaints process

The MoP(S) Workplace Bullying and Harassment Policy ('the Policy'), which is administered by Finance, outlines three avenues to resolve workplace bullying and harassment issues: self-management, mediation and making a report of workplace bullying or harassment to Finance. Self-management may be unassisted, assisted or represented. If the person complains to the MaPS team at Finance, a case manager in the MaPS team provides the person with information about available support services and options to resolve the situation. This may include advice on difficult conversations, conflict resolution strategies and other self-management tools. However, in the wake of a serious incident, it is currently not the practice of the MaPS team to provide the complainant with a trauma-informed response in the first instance, though they can facilitate contact with appropriately skilled counsellors and psychologists (discussed in Chapter 3).

Subject to the person's wishes and in appropriate circumstances, a MaPS case manager may facilitate mediation between the parties involved (including the parliamentarian, where appropriate) or contract a workplace investigation by a specialist independent provider. Following an investigation, a report is provided to the MaPS team. If a complaint is substantiated, a MaPS case manager uses the findings to discuss options for action with the parliamentarian. However, the MaPS case manager has no authority to take action against either a parliamentarian or a MoP(S) Act employee, as Finance is not the employer. For a MoP(S) Act employee who is the subject of a substantiated investigation, only their employing parliamentarian has the power to take action. For parliamentarians, there are no effective consequences. Where the parliamentarian does not take action, the policy states that the complainant can raise the matter through external channels, such as with Comcare, the Fair Work Commission or the AHRC.

Finance advises that during an investigation process an assigned case manager provides updates to all parties involved. A decision is made on a case by case basis as to what information is provided to all parties at the end of the process. A complainant is offered supports throughout the process including a case manager and counselling available either through EAP or an individualised support service. This was not always borne out by experiences reported to the review which typically indicated a lack of ongoing information and support.

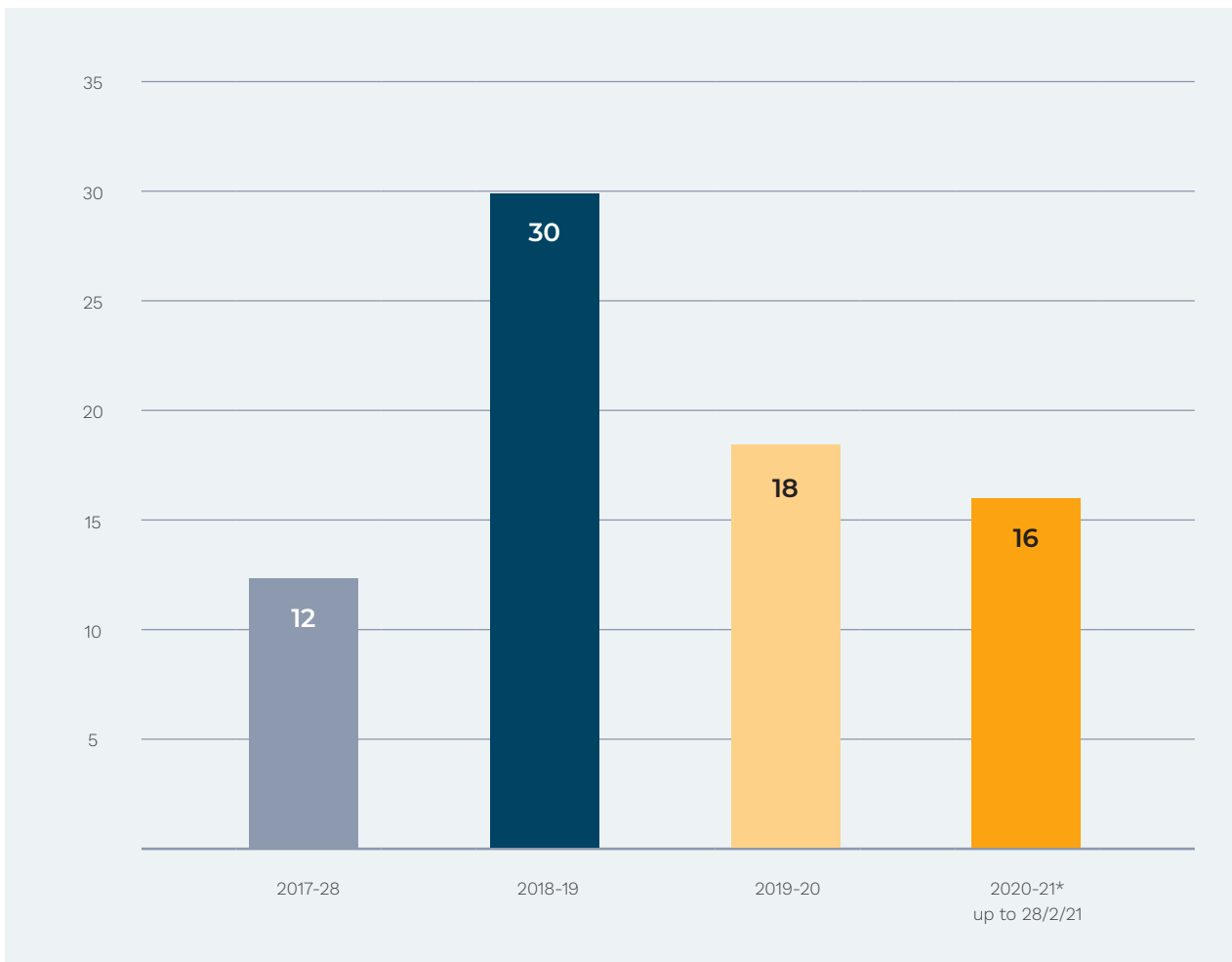
An overview of the current MaPS complaints process is at [Attachment E](#).



## Finance complaints data

Information provided by Finance shows that, since 1 July 2017, 76 complaints were reported to the MaPS team.<sup>27</sup> The review understands that 5 of those complaints related to sexual harassment. Half of the total matters (38) reported to the MaPS team related to the conduct of a parliamentarian.

### Complaints reported to the MaPS team



<sup>27</sup> Data provided by Finance on 19 March 2021.

Of the 76 matters reported since 1 July 2017:<sup>28</sup>

- 57 were progressed through informal actions. Informal actions may include advice and support, self-management and/or facilitated discussions, or cultural diagnostics that provide a picture of the office's operating culture including the behaviours that staff believe are expected or implicitly required;
- 19 were progressed through formal actions. Formal action may include a formal complaint under the Policy using mediation or if necessary an independent investigation or use of an external mechanism (e.g. a workers compensation claim or a referral to Comcare);
- 7 of the 19 were referred to an external investigation.

In the current financial year (2020-21), the MaPS team has facilitated 3 mediations and 2 external investigations.

The data collected by Finance is not able to be easily analysed to determine trends or highlight areas of focus, nor does it provide an assessment of whether the complaint was resolved satisfactorily. Data is also not available on likely reporting rates. Assuming that reporting rates within the parliamentary workplace are similar to reporting rates for the general population (see 2.2.1), we would expect that rates are similarly low and there may be people who have experienced a workplace issue but have not made a complaint to Finance.

## 2.4 Effectiveness of the current systems

While these processes may work for responding to less serious workplace complaints, there are structural issues that compromise the effectiveness of the current system, particularly in respect of serious incidents.

First, the current processes within Finance are not directed at responding to the types of serious incidents that are the focus of this review, such as the recent allegation of sexual assault at Parliament House, which is examined in more detail below. The role of the MaPS team, as communicated to MoP(S) Act staff, is a HR helpdesk, providing assistance with payroll and entitlements and providing support for WHS issues, including bullying and harassment. It is not an obvious place for a staff member who has experienced something traumatic to seek support from, nor is it equipped to provide specialist support to managers dealing with a serious incident in the workplace.

Relatedly, the MaPS team processes are operational rather than strategic. They are directed towards logging reports of workplace incidents and seeking a resolution to the specific issue at hand from a WHS perspective. The MaPS team does not have the IT systems to collect and analyse data to inform strategic workforce management such as identifying trends in bullying and harassment in parliamentary offices and identifying systemic issues to be addressed. The review understands that Finance has commenced improvements to provide more strategic workforce analysis and further enhance case management support, including for staff who make a formal complaint.

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<sup>28</sup> Further data provided by Finance on 30 March 2021.

Second, best practice has changed since the policy was last updated in 2018, particularly for preventing and responding to sexual harassment. The policy and associated MaPS team processes and supports do not yet align with Safe Work Australia's *Guide to Preventing and Responding to Workplace Sexual Harassment*.<sup>29</sup> While the policy includes examples of bullying and harassment and outlines the complaints process, it does not clearly state that such behaviour is not tolerated. The policy also emphasises individual employee responsibilities over those of others, and self-management as the preferred approach to addressing issues. The review understands Finance is reviewing the policy to align with the Safe Work Australia guidance and is developing a stand-alone Sexual Harassment Policy for discussion and agreement by the WHS Committee.

Third, during consultation, concerns were consistently raised about Finance's independence when responding to complaints. While the MaPS processes allow a MoP(S) Act employee to engage independently of their employer, a lack of trust in these processes may be one reason that uptake is low. This lack of confidence is compounded by the fact that it is the parliamentarian alone who is able to take action within their office when a complaint is substantiated. There is less incentive to make a complaint when it is known the consequences may be limited. Further, anecdotal reports from consultation suggest that Finance is perceived to preference self-managed resolution of complaints (by the complainant) over more hands on assistance from Finance. Finally, the unusual structure of the MoP(S) Act employment framework, while not dissimilar to other parliamentary systems, can pose challenges in effectively managing WHS risks. These include: a disconnect between the handling of complaints and the ability to influence or control the workplace environment; uncertainty (at times) about where specific responsibilities lie, including low levels of awareness of management responsibilities; and the lack of a centralised structure to ensure that risks are managed holistically and that all staff receive an appropriate level of support regardless of where they work.

## 2.4.1 Systemic weaknesses when responding to serious incidents

The existing processes and practices do not adequately equip staff, managers and security personnel to respond to serious incidents in the parliamentary workplace. The inadequacies in each individual process are compounded by the lack of a clearly accountable office to coordinate all necessary responses and support to the parties involved in a serious incident.

These system issues include:

- An absence of procedures and oversight to manage out of hours access to the building;
- Limited take up of training (and therefore limited awareness) by managers and staff of their rights and responsibilities under relevant legislation;
- Inadequate understanding of the importance of trauma-informed responses to serious incidents; and
- Inadequate access to specialised, ongoing support.

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29 Safe Work Australia *Guide to Preventing and Responding to Workplace Sexual Harassment* (January 2021)

In the absence of a formal complaint or report, there are no processes to guide how support should be provided to the subject of a serious incident. Best practice with respect to providing support is detailed at 3.1.

As noted above, there are many factors which can inhibit reporting of such incidents, particularly where sexual harassment or violence is present. In the context of MoP(S) Act staff, these are compounded by the vulnerability staff reportedly feel due to the employer's ability to terminate their employment at any time, subject to the Fair Work Act. These provisions are similar in other parliamentary systems and reflect the need for flexibility in the composition of staff and skills in parliamentary offices. However, this inherent insecurity of parliamentary employment, driven by the electoral cycle, coupled with changing priorities and the requirement for high levels of trust and confidence, can serve to discourage individuals from reporting misconduct, for fear of termination of employment. As noted above, the review expects these issues will be further considered as part of the Jenkins Review.

# 3 Consideration of best practice

In line with the terms of reference, the review considered best practice in other sectors through consultation and literature research. Consultations focused on organisations with established frameworks for responding to serious incidents, including within the private sector, sporting sectors, government agencies, and other parliamentary environments, as well as leading academics, advocates and service providers. The recommendations of the report are underpinned by the following best practice principles:

1. Wraparound, trauma-informed support must be available after a serious incident;
  - the first contact is critical, and support must be available and continue throughout the response;
  - all parties involved in a serious incident should be empowered by receiving advice on options and potential outcomes and be protected by confidentiality;
2. A complaint system must be independent, confidential, transparent and fair, with a range of potential proportionate outcomes; and
3. Effective, targeted, timely and ongoing education and support is critical.

This chapter considers how other sectors with similar challenges to the parliamentary workplace – such as power imbalances, intense and constant media scrutiny, high intensity and competition – have attempted to apply these principles. Chapter 4 then applies the principles to the parliamentary context in suggesting a proposed model that is practical, readily implementable and can be tailored to suit the needs of the individual and the workplace.

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

Trauma-informed support provided by appropriately trained staff and accessible at all stages of a response is consistently identified as best practice in meeting the needs of individuals who experience a serious incident.

A serious incident can have diverse and significant impacts on individuals. These include impacts on health and wellbeing, trauma, mental health issues like anxiety and depression, as well as negative employment, financial, family and social consequences. Trauma can cause confusion and difficulty problem solving, which can make efforts to engage with reporting and complaints processes difficult. Individuals' experience of an incident, and what support they need, may be influenced by a variety of factors. These include personal factors (age, gender, abilities, ethnicity, culture, social networks, sexual orientation and previous experiences), the type and seriousness of the incident, the relationship

the person had with the offender, and their previous experiences using complaint systems and the availability of support. Seemingly low-level incidents can have serious impacts when they are repeated or ongoing.<sup>30</sup>

Trauma-informed support helps to avoid further harm from re-traumatisation and should include:

- Listening to the person without judgement;
- Enhancing safety, discussing options, 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>31</sup>

### 3.1.1 First contact is critical, and support must continue

Experts and organisations who provide support to victims stressed that both initial and ongoing support is critical. The quality of the first response following an incident, wherever that occurs, will have a significant impact on the individual's experiences from this point onwards. Mishandling of first responses can compound harm and trauma, sometimes severely, and reduce confidence in the reporting and complaints process.<sup>32</sup> Consultations indicated that, in order to build trust, skilled support should be available, and ideally integrated, at all stages of the response.

Experts noted the importance of support services, particularly crisis counselling, being available at any time of day or night, and of holistic and integrated approaches where a person only needs to attend or call one place to access or be referred to any type of support. This helps to reduce the need for person to re-tell their story multiple times. Victims' support services also noted the value of providing multiple options for individuals to access services, for example through online messaging, over the phone or in person, depending on what makes them most comfortable.

The following case studies demonstrate how support from the outset works in practice.

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30 For example, the *Respect@Work* report notes that seemingly mild or 'low level' sexual harassment – for example, sexually suggestive comments or jokes – can have a serious impact when it is repeated or ongoing (see p 261).

31 Consultation with Our Watch; consultation with Multicultural Program Coordinator, ACT Human Rights Commission.

32 For example, submissions to the *Respect@Work* report identify that in some cases, individuals' experience of reporting can be more damaging than the serious incident itself (see p. 20).

*How it has been done*

## **Australian Federal Police**

The Australian Federal Police (AFP) Safe Place is an example of trauma-informed support. At the time of its establishment, Safe Place was a specialised, independent office set up to provide support to complainants (being both current and former AFP members) and to investigate and address sexual harassment and sexual abuse.

Safe Place continues to provide a dedicated and confidential office space for people to make reports and access support, including referrals to other services to avoid, as much as possible, clients having to recount their story multiple times. Initial referral to Safe Place can be made by email, through a dedicated hotline, clients presenting at the Safe Place office, and through referrals from other AFP or external support services.

Case managers provide holistic support to clients and provide regular updates on the status of complaints. Depending on the incident and the preferences of the client, case managers can assist with advice on a range of resolution options including mediation and (in collaboration with other areas) a range of early intervention strategies. Case managers can also facilitate referral of serious incidents to the Professional Standards Unit for investigation. Clients can access support, including counselling, irrespective of whether they wish to pursue a formal investigation and/or are willing to name the alleged perpetrator.

Confidentiality and the protection of information are key to the continued success of Safe Place.

*How it has been done*

## **Department of Defence**

The Department of Defence's Sexual Misconduct Prevention and Response Office (SeMPRO) is an example of a trauma-informed support and case management service.

SeMPRO provides a 24/7 response and advice service to Defence personnel. It offers confidential case management and support services for Defence personnel and can provide warm handovers to other services. SeMPRO staff responding to disclosures are qualified in social work or psychology, with experience in responding to sexual misconduct and trauma.

SeMPRO's confidential support, case management and advice services are accessible to all clients without making a report to Defence, the military police, or civilian police. Clients determine the amount of information they share. All callers may choose to remain anonymous if they wish. The case management team can assist with strategies, such as help to support a friend or approach a difficult conversation, to promoting the wellbeing of everyone involved. They can also help clients to navigate Defence and civilian healthcare and support services.

## 3.1.2 All parties are empowered

Trauma-informed support focuses on giving the person autonomy and choice. Models that provide information about the potential consequences of different options, and empower and support the person to make their own decisions, are regarded as best practice. This is particularly important where the person may feel violated or disempowered, for example in cases of sexual harassment or assault.

All parties to a complaint process should be empowered to understand the process, how they can access support and make informed decisions going forward. Ensuring that support and advice is provided to all parties is critical to the integrity of the process.

In addition, as noted in the Victorian Equal Opportunity and Human Rights Commission's *Guidelines on Workplace Sexual Harassment*<sup>33</sup>, some people will want to disclose a serious incident without making a formal complaint – to remain anonymous while sharing their experience and to have their disclosure treated confidentially. Best practice allows for anonymous reports as it gives choice to complainants and can support greater reporting of incidents. The Respect@Work report documents numerous organisations who have implemented mechanisms for anonymous reporting including universities, legal services and unions. Allowing anonymous reporting of sexual harassment and assault is particularly useful to remove barriers to reporting, allows for reporting where there are power imbalances in the workplace, provides a tool to link victims with support services, develops a case should someone choose to report an incident formally at a later date and identifies the prevalence within an organisation. It supports preventative measures and gives an opportunity for the organisation to respond at a systemic or broader level.

Empowerment also includes ensuring all parties to a complaint process are informed that they can have the assistance of a support person throughout the complaints process<sup>34</sup>. In practice, a support person 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 a legal professional.

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33 Victorian Equal Opportunity and Human Rights Commission (2020) *Guideline: Preventing and Responding to Workplace Sexual Harassment*

34 *Ibid*, p.77.



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

A consistent theme during consultation was the importance of confidence in the mechanism for receiving and responding to reports of serious incidents. Confidence can be achieved by ensuring the mechanism is independent from the employer, absolutely confidential in the first instance, and provides proportionate outcomes.

The Victorian Ombudsman's *Good Practice Guide for Complaints Management*<sup>35</sup> (the Guide) identifies that well-handled complaints can lead to better outcomes for individuals, support organisation-wide improvements and restore trust when things have gone wrong. According to the Guide, good complaints handling systems:

- Acknowledge and deal with complaints in a timely way;
- Provide transparent information about how complaints are handled;
- Protect the privacy of information as far as possible;
- Treat everyone involved in a way that is objective, respectful and fair; and
- Promote accountability for decisions.

The Guide relates to complaints handling generally, but the principles also apply to complaints mechanisms for serious incidents. The following case studies demonstrate different complaints mechanisms and how the principles of independence, confidentiality, transparency and fairness work in practice.

*How it has been done*

### **Office of the Commonwealth Ombudsman**

The Commonwealth Ombudsman is an independent statutory office that exists to receive, investigate and resolve complaints about Commonwealth Government Departments and Agencies, on the basis that actions taken may have been wrong, unjust, unlawful, discriminatory or unfair. The Ombudsman seeks remedies for those affected by administrative deficiency.

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35 Victorian Ombudsman (2016) *Complaints: Good Practice Guide for Public Sector Agencies*, p 14.

Anyone can make a complaint to the Ombudsman. The Ombudsman's Service Charter sets out that complainants will receive: *'Professional and courteous attention, and an independent, impartial assessment of your complaint, and advice about the options available. We will undertake confidential, free and prompt investigations if appropriate, using procedures that are fair to everyone concerned. We will provide clear explanations about what we can and cannot do and for any decision we make. We will keep you informed of the progress of your complaint.'*<sup>36</sup> Individuals can consent to another person making a complaint on their behalf, for example their legal representative or support person.

Complaints made to the Ombudsman are subject to secrecy provisions in legislation, which require staff to ensure information is only disclosed in very limited circumstances. Complainants' information is only disclosed to the agency they are complaining about with their consent, for the purpose of investigating and resolving their complaint. Complainants can also choose to make confidential or anonymous complaints to the Ombudsman, however this can limit options for resolution.

The Ombudsman provides complainants and agencies with opportunities for procedural fairness when assessing or investigating complaints. This includes clarifying the issues complained about and outcomes sought when a complaint is made, and providing the opportunity to respond to preliminary findings and provide additional information if necessary.

Where a complainant disagrees with a decision made about their complaint, they can request an internal review. Internal reviews are conducted by internal independent decision makers who have no previous involvement in the complaint and are more senior than the original decision maker.

Where the Ombudsman finds a complaint is justified, the conclusions are reported to the complainant and to the agency involved. The Ombudsman provides recommendations on actions to be taken by the agency.

*How it has been done*

## **Australian Human Rights Commission**

The Australian Human Rights Commission (AHRC) is an independent body that investigates complaints about discrimination and human rights breaches. Individuals can make complaints about experiencing alleged discrimination on the basis of disability, sex, race and age. A person can make a complaint from anywhere in Australia by submitting a written complaint (either online or by post).

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36 Commonwealth Ombudsman (Office of the Commonwealth Ombudsman), [Frequently Asked Questions](#) [online document], Commonwealth Ombudsman, accessed 21 April 2021.

Once the AHRC accepts a complaint it contacts the complainant to discuss the matter and will provide a copy of the complaint to the respondent. The respondent may be asked to provide specific information or a written response. Using alternative dispute resolution principles, the process generally proceeds on the basis that parties participate voluntarily.

Where appropriate, the AHRC resolves complaints through a conciliation process. Conciliation is designed to be an informal, flexible approach to resolving complaints.

Outcomes of the conciliation process must be agreed to by the parties and may include an apology, reinstatement to a position, compensation for lost wages, changes to a policy or developing and promoting anti-discrimination principles.

Complainants who are unable to reach a resolution through conciliation may apply to have their matter heard in the Federal Court or the Federal Circuit Court of Australia.

*How it has been done*

## **Australian Border Force**

The Australian Border Force (ABF) Speak Safe program was established in 2019 and is modelled on the AFP Safe Place program. Speak Safe similarly provides a forum for staff to speak openly about bullying, harassment, sexual harassment or other harmful behaviours connected to their workplace in a confidential and supportive environment.

Speak Safe does not perform an investigative function but acts as a conduit for providing initial support, including advice or referral to Health Services, Integrity and Professional Standards, Legal or People and Culture Divisions. Officers of Speak Safe emphasised the value of having someone relatable for staff to report to, who understands the organisational context in which they operate.

Speak Safe manages a variety of calls ranging from alleged incidents of workplace behaviour to management practices. ABF noted the importance of early intervention through management action and the effect repeated incidents of seemingly lower-level workplace behaviour incidents could have on people. Often in these cases, a local resolution is achievable through facilitated dialogue between staff or, in some instances, Speak Safe will work with de-identified information to raise the issue with the most senior person in the work area (where appropriate) to facilitate a way forward. These cases also highlighted the importance of education that sets clear markers about behavioural expectations to promote a consistent understanding of what is appropriate in the workplace.

## 3.2.1 Confidentiality and transparency

Within the parliamentary context, a key concern raised during consultations was about losing control of the response to a serious incident because confidentiality was not observed, and the ensuing damage to the individuals involved. Experts consulted stressed that confidentiality is critical to ensuring that any complaints process centres on the person coming forward and is fair, safe and supportive. Maintaining confidentiality and transparency is essential to ensure confidence in the fairness and legitimacy of the process and to ensure privacy is protected for all parties.

Confidentiality is a key factor that distinguishes complaint handling and alternative dispute resolution mechanisms from other processes, such as litigation and criminal processes.<sup>37</sup> Maintaining confidentiality encourages meaningful participation and can promote good outcomes.

While the wellbeing and identity of the person who makes a complaint must be prioritised and protected, acknowledging the impact on the person subject to a complaint is critical to preserving the integrity of the process.<sup>38</sup> Confidentiality is an important element of natural justice that must be afforded to the subject of the complaint, and breaching confidentiality can undermine trust and hamper the success of an outcome.

Practically, complaint handling runs more smoothly when it is not conducted under the scrutiny of other employees or the media.<sup>39</sup> Within the parliamentary context it is difficult to ensure fairness and protect the wellbeing of all involved in a complaint when their identity is known and the matter is being played out in the public domain.<sup>40</sup>

Several consultations pointed out that the best guard against complaints reaching the media is to have a complaints process that works well and supports everyone involved.

## Use of non-disclosure agreements

One way to maintain confidentiality is by using non-disclosure agreements (NDAs). NDAs create a binding agreement of confidentiality between parties. However, the use of NDAs in the context of serious incidents such as sexual harassment and assault has been criticised on the basis that such agreements may operate to silence a victim and protect a perpetrator. For example, the South Australian Equal Opportunity Commission's review 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>41</sup>

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37 Australian Dispute Resolution Advisory Council (1 November 2016), [Confidentiality](#), [online document] accessed 24 April 2021.

38 Male Champions of Change (2020) *Disrupting the System: Preventing and Responding to Sexual Harassment in the Workplace* ('Disrupting the System'), p 41.

39 Ibid.

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

41 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: Preventing and Responding to Sexual Harassment in the Workplace*, p.40, and the South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australian Legal Profession*, p 177.

However, NDAs can benefit victims by helping to ensure their privacy.<sup>42</sup> Having instances of harassment play out in the media can be distressing and traumatising for victims, and NDAs or similar agreements can protect against this. NDAs can also ‘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>43</sup>

Best practice encourages that any use of an NDA or other confidentiality clause must prioritise the wishes of the victim, and should empower them by giving them choice.<sup>44</sup> Entering into an NDA should not be a condition of using a complaints process.

A best practice approach for confidentiality is the use of a good faith confidentiality agreement. This kind of agreement requires both parties to agree to maintain confidentiality and, where a party breaches that agreement, they may lose access to the complaints mechanism. In the parliamentary context, there are a range of appropriate responses for failing to comply with good faith confidentiality that should be clearly communicated to parties. These consequences could include losing access to the complaints handling process, potential defamation action, and potential sanction through an appropriate parliamentary process if determined by the Parliament.

Good faith confidentiality will enable parties to seek appropriate support, while ensuring all parties are committed to the integrity of the process.

## Transparency about confidentiality settings

An effective complaints process must be transparent about how complaints will be handled. To achieve transparency and ensure the complainant knows what to expect, the complainant should be provided with a thorough explanation of the complaints process, including timing and possible or likely outcomes,<sup>45</sup> and this explanation should also include information about confidentiality policies and expectations.

Where there are exceptions to confidentiality, for example where there is an obligation to report because of an imminent threat of self-harm, complainants should be informed of those exceptions upfront. Similarly, policies relating to confidentiality should make clear any exceptions to maintaining confidentiality. For example, the Department of Defence Sexual Misconduct Prevention and Response Office (SeMPRO) highlighted the importance of being very clear up front, prior to any disclosures, about what categories of behaviour are categorised as ‘notifiable’ conduct for their service where confidentiality cannot be maintained. When a disclosure is about notifiable conduct this triggers an obligation for SeMPRO 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).

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42 Male Champions of Change (2020) *Disrupting the System: Preventing and Responding to Sexual Harassment in the Workplace* (‘Disrupting the System’), p 42.

43 South Australian Equal Opportunity Commission (2021) *Review of Harassment in the South Australian Legal Profession*, p 178.

44 Ibid, p 179 and AHRC, *Respect@Work* Report, p 564.

45 *Respect@Work* Report, p 11.

## 3.2.2 Accountability in the Parliamentary context

In other parliamentary settings, the UK, Canada and Scotland have codes of conduct for all parliamentary employees that explicitly include expectations about bullying, harassment and sexual harassment. In Australia, all States and Territories have an existing code 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>46</sup>

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

This approach was implemented in Canada, through updates to the Canadian House of Commons workplace harassment and violence prevention policy.<sup>47</sup> The policy applies to current and former employees and extends to any location where work-related activities occur, including while travelling, attending conferences and Member-sponsored social events. Identification and assessment of risk factors in the workplace is encouraged by Members and health and safety representatives, with preventative measures to mitigate the risks to be in place within six months. The policy places a positive obligation on Members and health and safety representatives to regularly monitor the workplace risks and adopt changes to the preventative measures as necessary.

Other parliaments have also grappled with the challenge of establishing complaints mechanisms in a structure where the complexity of employment arrangements and the need to respect parliamentary sovereignty can make it difficult to implement a range of proportionate consequences that lead to meaningful accountability.

The table below represents the review's understanding of the approach taken by different jurisdictions within Australia and internationally to regulating and responding to misconduct in the parliamentary workplace.

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46 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.

47 Canadian House of Commons (28 January 2021) *Workplace Harassment and Violence Prevention Policy*.

Jurisdiction	Clearly articulated standards of behaviour		Clearly articulated standards of behaviour		Independent complaints mechanism	Accountability
	Ministers	Ministerial Staff	Members	Members' staff		
Commonwealth (existing)	●	●	●	●	●	●
Commonwealth (proposed)	●	●	●	●	●	●
NSW	●	●	●	●	●	●
VIC	●	●	●	●	●	●
QLD	●	●	●	●	●	●
SA	●	●	●	●	●	●
WA	●	●	●	●	●	●
NT	●	●	●	●	●	●
ACT	●	●	●	●	●	●
TAS	●	●	●	●	●	●
New Zealand	●	●	●	●	●	●
United Kingdom	●	●	●	●	●	●
Canada	●	●	●	●	●	●
Scotland	●	●	●	●	●	●
Key						
●	Yes					
●	Yes but does not adequately cover bullying, harassment and sexual harassment					
●	No					
●	Unable to identify					

### 3.2.3 Historical reports

The review heard in consultations that a reporting and complaints mechanism should be able to receive historical reports. As the Respect@Work report notes, people who experience sexual harassment in the workplace can carry the burden of that experience through their entire working lives.<sup>48</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>49</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.

### 3.2.4 Vexatious reports

Concerns were raised during consultation about the risk of vexatious or malicious reports being used as a way to cause political damage to a parliamentarian, a staff member, or a party. Research shows that the rate of false allegations of sexual harassment and sexual offences is very low.<sup>50</sup> The experience of other parliamentary jurisdictions under review<sup>51</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.

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48 AHRC, *Respect@Work Report*, see especially pp 257-278.

49 ABS (2019) *Victims of sexual assault: time to report and age at incident*.

50 Australian Institute of Family Studies, *Challenging Misconceptions About Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners* (2017); Professor Lilia Cortina, Dr Victor Sojo and Associate Professor Tine Köhler, *Busting The Myths About Sexual Harassment* (2020).

51 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*.



*How it has been done*

## **Canadian Parliament**

The Canadian Parliament's Respectful Workplace Policy (which applies to the office of the Prime Minister and Ministers' Offices) provides that complaints or notification of incidents made in bad faith will themselves constitute incidents of harassment and violence under the policy and will be investigated.<sup>52</sup> The standard for establishing bad faith is high and must be more than poor judgment or negligence: bad faith will be established where, for example, a complaint is made intentionally for the purpose of vexing, annoying or embarrassing a person, was calculated not to lead to any practical result, or constitutes an abuse of process. If a person is found to have made a complaint that was intentionally false or malicious, disciplinary action – including possible dismissal – will result. An unfounded complaint brought in good faith will not result in disciplinary action.

Separately, the Canadian Parliament's Code of Conduct – Sexual Harassment contemplates the possibility of complaints being brought in bad faith by requiring that the final report from the independent investigation include one of three conclusions, the third being that 'on a balance of probabilities, the respondent did not engage in sexual harassment, and the complaint was vexatious or made in bad faith.'<sup>53</sup> The person against whom the complaint was made then has an avenue to notify the Chief Human Resources Officer if they believe the matter warrants further action, which will then be investigated.

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52 Parliament of Canada (2020), *Respectful Workplace Policy* [online document] accessed 29 April 2021.

53 Parliament of Canada (2021) *Standing Orders of the House of Commons* app 2 cl 66.

## 3.2.5 Sanctions

A further challenge considered by other parliamentary jurisdictions is the availability of disciplinary actions against parliamentarians. As discussed above, some form of consequence is essential to instil confidence in any complaints mechanism and ensure that misconduct cannot continue with impunity. The availability of a range of proportionate solutions is also important, and confidence in a flexible and proportionate complaints mechanism will encourage reporting and ensure staff feel supported to seek a resolution where they have been affected by a serious incident. However, there are limitations on the sanctions that can be applied to parliamentarians in a Westminster system. 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.

In cases of non-criminal sexual harassment and serious bullying, a local resolution can be more desirable to the complainant than other sanctions, and may sometimes be achieved, for example, through facilitated engagement between the complainant and the person subject of an allegation. Often, people who report sexual harassment simply want the behaviour to stop, or for it not to occur to anyone else. In other cases, where the allegation is against another employee, appropriate measures may include a reprimand, deductions from or a reduction in salary or classification, re-assignment of duties, or, in very serious cases, termination of employment.

*How it has been done*

### **UK Parliament**

For alleged breaches of codes of conduct by parliamentarians in the UK, the Parliamentary Commissioner for Standards is appointed to conduct an investigation. The Commissioner may impose a range of possible sanctions. These include informal resolution, informal or formal words of advice, a requirement to attend training or enter into a behaviour agreement, a written apology to the complainant, a written or verbal apology to the House, and the withdrawal of services, facilities or other personal restrictions including travel, but not involving participation in proceedings. Where necessary, the Commissioner may refer cases to the recently established Independent Expert Panel, which will hear appeals against the Commissioner's conclusions in cases involving parliamentarians and can recommend more serious sanctions to the House of Commons, with the final decision resting with the House. These sanctions may include dismissal from a select committee, the withholding of salary or allowances without suspension, suspension and expulsion from the House.

## 3.2.6 Interaction with criminal conduct and processes

The approach to complaints that relate to possible criminal conduct is a challenging area. Organisations consulted by the review, including the AFP, recognised the importance of the agency of the impacted person in deciding whether to refer matters to police. Appearing on *Insiders* on 7 March 2021, the Sex Discrimination Commissioner acknowledged that ‘it should be the individual’s decision...has always been the position across the board’ and should never be taken out of their hands. 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.

*How it has been done*

### **NRL**

In 2019 the Australian Rugby League Commission introduced a no-fault stand down rule for players charged with serious criminal offences (serious offences with a maximum jail term of 11 years or more). The rule also allows for a residual discretion to stand down a player charged with any criminal offence, with a presumption that this discretion will be exercised where the offence involves an offence against a woman or child. Under this rule, where an NRL player is charged with a serious criminal offence he/she is automatically stood-down from playing duties. No determination is made about the guilt or innocence of the player and no breach process is commenced. A player subject to a no-fault stand down continues to be paid by their Club, and may still attend training and access the support services of their club, such as wellbeing services, but cannot play in the professional competition. The no-fault stand down operates until the criminal proceedings are concluded.

## 3.2.7 Independence

Those consulted consistently commented on the importance of the mechanism for receiving and responding to a complaint about a serious incident being independent from the employer. Independence ensures that participants can have confidence in an investigation or review process and addresses concerns about partiality and potential adverse impacts.

Possible conflicts of interests arise where investigations or reviews are conducted by individuals within an organisation, and the resulting actual or perceived lack of independence in the process becomes a barrier to reporting misconduct.<sup>54</sup> Conflicts of interest can be reduced by engaging specialist independent reviewers, which can help to engender trust in an investigation process and often result in a fairer process with better outcomes for workplaces.<sup>55</sup>

The challenge of establishing complaints mechanisms in a structure where achieving practical and perceived independence can be difficult is an issue that other Parliaments have also grappled with. The unusual employment structure and the political nature of the parliamentary environment can make it difficult to identify officers with legal authority to take employment actions who are perceived as being sufficiently impartial.

*How it has been done*

### **UK Parliament**

In the United Kingdom, the Independent Complaints and Grievance Scheme (ICGS) was established in July 2018 to provide an avenue for complaints from staff regarding their employing Member of Parliament. The ICGS is completely independent of the UK Parliament. The ICGS uses independent external experts to undertake investigations for alleged breaches of the Behaviour Code (which is incorporated into the Code of Conduct for both Houses) and a Bullying and Harassment Policy and Sexual Misconduct Policy that apply to parliamentarians and their staff.

The Commissioners for Standards – independent officers in both Houses responsible for advice, oversight and investigation of the conduct of their respective Members – assess and action the findings of independent investigations regarding parliamentarians and have the power to impose sanctions. Where more serious sanctions are necessary the Commissioner for Standards will refer matters to the Independent Expert Panel, which has the power to determine serious sanctions and hear appeals by parliamentarians in ICGS matters.

54 ARHC (2021) *Change the Routine: Report on the Independent Review into Gymnastics in Australia*, p 79.

55 *Respect@Work Report*, p 704.

*How it has been done*

## **Canadian Parliament**

Canada took a similar approach to the United Kingdom to creating independence in their system for reporting allegations of breaches of the Canadian Code of Conduct for Members of the House of Commons. Allegations must be reported within one year of the occurrence to the Chief Human Resources Officer of the House of Commons Administration or the Caucus whip, who will facilitate mediation processes. Local resolution of incidents via mediation is encouraged where possible. If mediation is not agreed to or resolved to the complainant's satisfaction a formal complaint may be made in writing for a preliminary review by an independent investigator. The matter can be escalated to the Standing Committee on Procedure and House Affairs, who will render a decision. The anonymity of the accuser and the accused are maintained in accordance with the terms of the resolution of any complaint.

### **3.2.8 Commitment from leadership**

Consultations highlighted the importance of leadership in creating an enabling environment where staff are safe and supported to report serious incidents, and in demonstrating that unacceptable behaviour is not tolerated in the workplace. Leaders must clearly communicate to their workforce a commitment to prioritise workplace safety and foster a healthy culture. Embedding expectations of behavioural standards in an organisation's statement of its values or principles and its codes of conduct was identified as an important step towards achieving this.

Different organisations highlighted a range of models to demonstrate leadership commitment to preventing and responding to serious incidents. In large professional service firms in Australia and the UK for example, CEOs issued a number of 'all-staff' direct communications after investigation or dismissal of senior partners for alleged sexual harassment.<sup>56</sup> In another example, leaders were active and visible in delivery of relevant training to different groups in an organisation, providing opening remarks and contributing to discussions about workplace behaviour.

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56 *Respect@Work* Report, p 656.

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

### 3.3.1 Education

Consultations raised 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 using simple WHS approaches to normalise workplace conversations about safe behaviours, which helps foster a positive workplace culture and aids harm prevention.<sup>57</sup>

Consultations with private and public sector organisations pointed to the effectiveness of interactive, scenario-based training to engage staff and create an environment conducive to discussion and contest of ideas. 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 this 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.

Several organisations noted the need for education to be adapted to the workplace and audience 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.

As part of the review of the New Zealand parliamentary workforce, 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. This experience indicates that direct education with an experienced provider may also be the most effective approach to support Australian parliamentarians.

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57 *Respect@Work* Report, p 668.

*How it has been done*

## **BHP**

BHP incorporates training on sexual harassment and respectful relationships into its annual mandatory code of conduct training. The code of conduct training deals with sexual harassment specifically and assists staff and contractors to understand basic expectations around their behavior in the workplace.

BHP has also developed and deployed a training module ‘Spectrum of Conduct’ that looks to create a shared understanding amongst staff of what constitutes unacceptable behaviour in the workplace, from micro behaviours to serious misconduct. This has been an effective exercise in generating discussion amongst colleagues and focusing attention on the potential impact to victims of a range of behaviours, in turn encouraging staff and contractors to reflect on and take responsibility for their actions in the workplace. Equally, giving everyone a shared language to talk about unacceptable conduct in the workplace assists bystanders to recognise and name a variety of unacceptable behaviours.

BHP has also focused on ensuring managers know how to respond if they receive a disclosure from a victim, for example, by providing managers with a step-by-step list of how to respond.

These efforts are intended to lead to increased reporting of incidents so that they can identify organisational lessons and causes and improve preventative efforts across all of their sites.

*How it has been done*

## **University of New South Wales**

In response to the Australian Human Rights Commission’s 2017 *Respect. Now. Always* report on sexual harassment and sexual assault in Australian universities, the University of New South Wales (UNSW) committed to introducing an enhanced program of education and training for students and staff. The program comprises behavioural change training to address attitudes that are the drivers of sexual harassment and sexual assault and training staff to be ‘first responders’ to disclosures of sexual assault/misconduct. Specifically, this has included some of the following measures:

- ‘Respect@UNSW’: mandatory online consent training for all first-year students as a condition of enrolment
- Additional consent training for students of residential colleges that addresses the unique risk factors of the college environment, administered by UNSW in partnership with the Gendered Violence Research Network

- Recognising the importance of peer-to-peer education, UNSW has worked in partnership with student representatives to create education materials such as the ‘Respect. Now. Always: Let’s talk sex and consent’ video and ‘Be a Better Human’ campaign
- The university regularly updates its codes of conduct for staff and students to make its policies and procedures in relation to sexual misconduct more visible and accessible.

Consultation with UNSW highlighted that the success of their education and training program relies on its delivery through a variety of mediums (e.g. face to face and online) and regular reminders to staff and students of the university’s conduct expectations.

### 3.3.2 Reporting

Driving a positive safety culture in the workplace also requires leaders to hold the workplace to account through regular reporting on serious incident reporting rates and trends, both internally and externally.<sup>58</sup> Best practice regarding prevention requires transparency by organisations about the prevalence of bullying and harassment and sexual harassment in their workplace and their progress towards eliminating it. Providing information on what steps are taken to resolve incidents and how long the process took,<sup>59</sup> as well as being honest about mistakes and having a plan to improve, was viewed as being essential to building transparency and trust.

Reporting in an anonymised and sensitive way is preferable to having speculation play out in the media. 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 workers. This helps to build trust in reporting processes and to reinforce that unsafe behaviours are unacceptable. Finance has advised it currently provides de-identified data on reported hazards and incidents to its WHS Committee for review, but no other regular reporting on data is provided.

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58 Male Champions of Change, *Disrupting the System*, p 98.

59 *Respect@Work* Report, p 637.



# 4 The way forward

An effective response to serious incidents in any workplace must be holistic, flexible to meet different needs, and anchored to the workplace context. It must also have regard to the broader cultural, structural and legislative characteristics of parliament as a workplace, and the barriers to reporting and responding to incidents that exist in that environment. How to effectively address these broader aspects in the longer-term will be considered by the Jenkins Review.

This chapter sets out immediate, practical steps to address the most pressing needs in improving responses to staff who experience serious incidents in the course of parliamentary employment. The proposed model has been developed in line with best practice models (outlined in Chapter 3), and to respond to the principles in the terms of reference: how processes for reporting and responding to serious incidents can be made independent of the employer, driven by the principle of empowering victims, and how to ensure that services and supports provided are timely, effective and ongoing. The model is designed to be implemented without legislative change to facilitate timely implementation.

It covers three core, interconnected elements:

1. Timely, effective and confidential initial and ongoing support – with initial support provided by the Parliamentary Support Line, and ongoing support and advice managed by the Serious Incident Team (SIT);
2. An independent, transparent and confidential complaints mechanism – comprising the SIT, and independent workplace reviewers; and
3. A mandatory education program for all staff that covers rights and responsibilities in relation to workplace health and safety, sex discrimination and fair work legislation, how to recognise and respond to serious incidents in the workplace, and how to promote a safe and respectful workplace.

For these to be effective, they must be underpinned by clearly articulated expectations, and leadership commitment and actions, in relation to promoting a safe and respectful workplace.

The proposed model is designed to:

- Support all parties to respond appropriately to serious incidents;
- Encourage complainants to come forward by building trust and confidence in the system; and
- Provide appropriate levels of support to all parties involved in a serious incident.

The steps proposed in this chapter can assist parliamentarians to deal with serious incidents and take action to ensure safety, prevent recurrence and meet their WHS obligations, while maintaining the autonomy of parliamentarians to direct their own offices.<sup>60</sup>

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<sup>60</sup> Further detail on the role of parliamentarians is at 4.3.7.

## 4.1 Expectations on parliamentarians and MoP(S) Act staff

As discussed at 3.2.8, leadership has a central role to play in prioritising workplace safety and fostering a healthy reporting culture.

The Statement of Ministerial Standards provides that Ministers must ensure their conduct in a private capacity upholds the laws of Australia and demonstrates appropriately high standards of personal integrity; and that they shall ensure their personal conduct is consistent with the dignity, reputation and integrity of the Parliament.

The Statement of Standards for Ministerial Staff directs staff to behave with integrity in the course of their employment; to treat with respect and courtesy all those with whom they have contact in the course of their employment; and to comply with the law and all applicable codes of conduct.

There is currently no clearly articulated standard of conduct for parliamentarians or MoP(S) Act staff who are not Ministers or Ministerial staff.

Neither the Presiding Officers nor the Parliamentary Services Commissioner (PSC) currently have a formal role in relation to the MoP(S) Act, which is administered by the Prime Minister and Minister for Finance. The Presiding Officers can confer functions on the PSC under the *Parliamentary Service Act 1999 (Cth)*. For the purposes of the complaints handling mechanism, the Presiding Officers should make a determination to confer oversight of the complaints handling mechanism to the PSC, with reference to the type of conduct within the remit of the mechanism. The determination would be a legislative instrument and would define the function, for example, by reference to the arrangements established by the Minister for Finance for complaints.

The MoP(S) Act provides that parliamentarians may employ a number of staff as allocated by the Prime Minister, and on such conditions as the parliamentarian determines. It also gives the Prime Minister power to prescribe terms and conditions for MoP(S) Act staff and their employing parliamentarians in writing.

The strongest legal basis for establishing the complaints handling mechanism and its remit would be for the Minister for Finance to prescribe in writing terms and conditions for all staff and their employing parliamentarians under the MoP(S) Act<sup>61</sup>. Options to do this include:

- A statement referencing the relevant legislation and policies;
- A statement referencing extracts of specific provisions from the relevant legislation and policies; or
- A Code of Conduct for MoP(S) Act staff and their employing parliamentarians.

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<sup>61</sup> The *Member of Parliament (Staff) Act 1984* provides for the Prime Minister (or Minister for Finance) to set terms and conditions for Members or Senators who employ staff under the Act, and their staff.

In order to establish the complaints handling mechanism as quickly as possible, a statement referencing the relevant legislation and policies and outlining the role of the mechanism is preferred. It is the most straightforward way to make clear the standards to which MoP(s) Act staff and employing parliamentarians will be held and the process that will apply where the standards are breached and would require no consultation or resolutions in both Houses to implement. The determination conferring the functions on the PSC should also reference this process.

The written terms and conditions should:

- Outline the expectation that MoP(S) staff and their employing parliamentarians act in accordance with community expectations in relation to assault, sexual assault, sexual harassment or other serious incidents in the workplace, including by complying with the relevant legislation and policies, and holding themselves to a high standard as is commensurate with the significance of the Parliament as an institution of our democracy;
- Describe the new complaints mechanism, its functions, who may access it and how;
- Outline the possible consequences of failing to uphold community expectations, including disciplinary action;
- Reinforce existing protections from reprisal action for making reports in relation to serious incidents under the Fair Work Act; and
- Outline the expectation that MoP(S) Act staff and parliamentarians cooperate with any workplace reviews undertaken by the complaints mechanism.

The setting of a clear expectation from the leaders of parliamentary parties and all parliamentarians would help reinforce the cultural change process currently underway. It would send a strong and clear message that the Parliament is taking a different approach to serious incidents. This message should be reinforced in the education support and communications which will be discussed at 4.4. The Statement of Ministerial Standards and Statement of Standards for Ministerial Staff should be aligned with the expectations outlined in the letter regarding sexual violence, assault, sexual harassment or other serious incidents in the workplace.

## **Recommendation 1**

To achieve meaningful change in the management of serious incidents and to restore the trust and confidence of staff and the wider public, parliamentary leaders must commit to reform of the current system for reporting and responding to serious incidents. All parliamentarians should clearly articulate that assault, sexual assault, sexual harassment, and serious or systemic bullying and harassment are unacceptable in their workplaces, and act to support that commitment where necessary. The Statement of Ministerial Standards and Statement of Standards for Ministerial Staff should be amended to align with this.

## Recommendation 2

A new framework for reporting and responding to serious incidents should be established comprising three core interconnected elements: trauma-informed support services; an independent, confidential complaints mechanism; and tailored education and support for all staff, managers and parliamentarians. The framework should be underpinned by clear expectations of appropriate workplace behaviour.

## 4.2 Timely, effective and confidential support

As noted at 3.1.1, the first experience of a person seeking support is critical. Therefore, both the 24/7 Parliamentary Support Line and the SIT must be tailored to provide trauma-informed support and response.

### 4.2.1 Parliamentary Support Line – 1800 APH SPT

The review recommends the continuation of 1800 APH SPT, the Parliamentary Support Line that was established on 2 March 2021. The Parliamentary Support Line was set up after it became apparent early in this review that there was an immediate need for an independent, confidential support mechanism for parliamentary staff.

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*At a glance*

#### **The Parliamentary Support Line – 1800 APH SPT**

The Parliamentary Support Line – 1800 APH SPT – operates nationally and is staffed 24/7 by professionals with training in trauma-informed care, who can provide information, counselling, supported referrals, and assistance in determining pathways to progress complaints. It is a specific and immediate service, which is completely confidential, developed as one option in addition to the range of services already publicly available.

The service is provided by the 1800 RESPECT contracted service provider, Medibank Health Solutions. It is a single touch point for individuals and provides trauma response and referral services. The trauma response services include psychological first aid support and referrals to specialised providers such as rape crisis centres. Support is available for individuals directly impacted by incidents, and for impacted managers, family and colleagues.

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The review is closely monitoring the progress of the support line. In its initial weeks, the support line received a small but steady stream of calls, with over 80% answered within 20 seconds, which has tapered off in the weeks since. The review recommends the Parliamentary Support Line, and its relationship with any long term complaints mechanism, be considered as part of the Jenkins Review.

The Parliamentary Support Line is not designed to provide ongoing support, including through the complaints process. That role will be performed by the SIT, the second avenue for seeking support, discussed at 4.3.1.

### **Recommendation 3**

The support system should be timely, independent, confidential and trauma-informed, available to all parliamentary staff and parliamentarians who experience, witness, are accused of or are supporting someone in relation to a serious incident related to the parliamentary workplace. It must be victim centric and empower individuals who have experienced a serious incident. Support should be provided through a combination of the continuation of the 1800 APH SPT Parliamentary support line for immediate, 24/7 counselling and referral services, and the ongoing wrap-around case management support within the independent complaints mechanism.

## **4.3 A new complaints mechanism**

Consistent with the principles outlined at 3.2, the review proposes the introduction of an independent complaints mechanism with the following features:

- It should be established under the *Parliamentary Service Act 1999* (Cth) as a function of the PSC, to ensure parliamentarians and staff can access the process with confidence that it is independent of the employer.
- For the protection of all parties and to safeguard the integrity of the system, it is critical that the process be treated as confidential.
- It provides for a variety of approaches to resolve a complaint, and a graduated system of escalation, ensuring outcomes are proportionate and appropriate.

An outline of the proposed roles and responsibilities under the new mechanism is provided at [Attachment C](#). An overview of the decision making process for the new mechanism is provided at [Attachment D](#).

## 4.3.1 The Serious Incident Team

The review recommends setting up a Serious Incident Team (SIT) to provide support and resolution options to those impacted by a serious incident. A serious incident is defined as an incident or pattern of behaviour that causes serious harm to someone and includes assault, sexual assault, sexual harassment, and serious and systemic bullying or harassment. The SIT's focus will be on providing ongoing, wraparound support in the wake of an incident and providing an avenue for making and responding to reports of serious incidents, including guiding and supporting individuals through the complaint process, should they choose to do so.

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*At a glance*

### **The Serious Incident Team**

The SIT should be a small multi-disciplinary team of case coordinators. The case coordinators should have a relevant mix of skills, knowledge and training. This includes expertise in providing trauma-informed care, and relevant qualifications such as social work and psychology. Case coordinators should have a mixture of expertise, for example an understanding of the criminal justice process, relevant legal and policy frameworks for parliamentary employment, such as employment law and public law, or MaPS frameworks and policies. Best practice models examples, such as the AFP Safe Place, emphasise the importance of the team understanding the specific workplace context, ideally using staff who work, or have worked, in the organisation.

Having independence from the Executive is necessary for confidence in such frameworks. To allow for this independence, the SIT should be set up as a function of the PSC under the *Parliamentary Service Act 1999* (Cth).

The SIT will be designed with an explicit commitment to protect the safety and privacy of those impacted, and the integrity of the process. The use, storage and sharing of personal information provided to the SIT will be regulated by the *Privacy Act 1988* (Cth) and the Australian Privacy Principles. Personal information cannot be released to a third party unless there is explicit consent, it is stated in the privacy policy or it would be reasonable to expect it to be shared in line with the primary purpose for which it was collected, for the SIT to perform its functions. Under the existing legal framework, the information obtained by the SIT as part of its work will be subject to the *Freedom of Information Act 1982* (Cth). A person can request access to their own information, however information held by the SIT relates to personnel matters and would be exempt from release to a third party.

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The SIT will provide ongoing advice and support to any MoP(S) Act staff or parliamentarian who has experienced, witnessed, been accused of or are managing or supporting someone in relation to a serious incident, depending on their needs and preferences.

The support provided by the SIT will be available through the life of any complaints process, to ensure that individuals feel safe and secure in their workplace and empowered to make informed decisions for their specific circumstances. To provide continuity of care and reduce the need for individuals to retell their story, they should be matched with a specific case coordinator. When an individual feels they have been supported through and by the process, they are less likely to be re-traumatised or feel a need to go public in order to have their experiences acknowledged.

### 4.3.2 Scope of the complaints mechanism

The review proposes the complaints mechanism cover serious incidents involving parliamentarians or MoP(S) Act staff within the current term of parliament (i.e. since the 2019 election, including periods when either House is dissolved), where the parties remain in Parliament or MoP(S) Act employment. As noted above, serious incidents include reports of assault, sexual assault, sexual harassment, serious and systemic bullying or harassment.

The complaints mechanism should also cover serious incidents involving other occupants of Parliament House. Where a serious workplace incident involves other building occupants, the complainant will receive appropriate support from the SIT, including support to make a complaint to the appropriate body or employer.

### Historical reports

The complaints mechanism should initially focus on incidents that occur within the current term of parliament and where a link to the workplace remains. For example, if the person who is the subject of the allegation no longer works in Parliament, a workplace review by the complaints mechanism would not occur. This will 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 that will likely relate to offices that no longer exist. However, an individual who has experienced a serious incident outside the remit of the SIT will still be able to come forward to access support and counselling, including from the Parliamentary Support Line.

A workplace review should only review allegations of incidents which occurred within the workplace between colleagues. Reports of incidents outside the remit of the SIT can be referred to Finance, or the police if criminal, subject to the wishes of the complainant. This approach may result in reports being made about conduct that has already been the subject of complaints under the current MaPS team processes and procedures. There is a range of reasons why issues may not have been resolved, including the current inability to compel parliamentarians to adopt the outcomes of a complaint investigation. It is proposed that such reports could be subject to a workplace review by the new complaints mechanism. In such circumstances, the workplace review would be conducted 'on the papers' in the first instance.

## Anonymous reports

The review proposes the complaints mechanism accept anonymous reports to foster confidence in the mechanism, and provide choice to individuals in coming forward.

When a person indicates to a SIT case coordinator that they want to make an anonymous report, the SIT case coordinator will record the report in a de-identified way and ensure the person is made aware that their report may be used by the SIT to respond to WHS risks. This can include general education campaigns reminding staff and parliamentarians of the expectations for behaviour, targeted education about preventing serious incidents, monitoring the workplace and intervening, for example by initiating a workplace review discussed at 4.3.7, and if new reports are made and the complainant wishes to take them forward.

It will be necessary for the SIT case coordinators to manage the expectations of the person making an anonymous report as the behaviours they are reporting may not change straight away, or at all. Also, the person should be made aware that their desire to remain anonymous will impact what action can be taken, as procedural fairness requires that the person who is the subject of a report be told of the allegation and given the opportunity to respond.

## Whistleblowers

The complaints mechanism is not designed to receive whistleblower disclosures. MoP(S) Act staff are not covered by the *Public Interest Disclosure Act 2013* (Cth) and whistleblowers will not attract formal protections if they make a disclosure to the SIT. The SIT should be upfront in its communication that it is not an avenue for making whistleblower disclosures, and that it does not have the capacity to offer any formal protection from adverse action. There may be some protection for MoP(S) Act staff whistleblowers under the Fair Work Act. The Fair Work Act provides protections for employees from adverse actions where an employee has exercised a workplace right, such as making a complaint in relation to their employment.



## Recommendation 4

An independent complaints mechanism should be established under the *Parliamentary Service Act 1999* (Cth) as a function of the Parliamentary Service Commissioner (PSC), with oversight by the Presiding Officers of the House of Representatives and the Senate, to ensure independence from the Executive and the employer and to enable proportionate consequences for complaints that are upheld. In its initial phase it should:

- Apply to serious incidents or patterns of behaviour causing serious harm, including reports of assault, sexual assault, sexual harassment, and serious and systemic bullying or harassment.
- Cover complaints that relate to the current term of parliament (i.e. since the 2019 election, including periods when either House is dissolved) where the parties remain in parliament or MoP(S) Act employment.
- Apply to all MoP(S) Act staff and parliamentarians, and support referral of reports from other building occupants to their own complaints mechanisms.
- Include a Serious Incident Team (SIT) comprising a group of highly skilled case officers with a mixture of expertise, for example, in trauma-informed support and administrative and employment law to:
  - Receive reports of serious incidents or patterns of behaviour
  - Provide immediate and ongoing trauma-informed support, and advice on options
  - Triage according to the client's needs and preferences, within a graduated system of escalation
  - Facilitate the resolution of issues at the local level
  - Appoint independent experts, to be engaged as required, to review reports of serious incidents and advise on appropriate responses
  - Support referrals to police, an independent reviewer, the Department of Finance (for administrative and less serious issues), or specialised support services.

### 4.3.3 Making a report

Under the proposed model, individuals who are involved in a serious incident in the course of parliamentary employment can choose to make a report by lodging it directly with the SIT, or can be referred to the SIT by contacting the Parliamentary Support Line. Other options could include an online portal or sending a text message to a dedicated mobile number for the SIT which could trigger follow-up contact. Complainants can be assured that both avenues are independent of the Executive and the workplace, that they will keep their report confidential, and will be supported by a trauma-informed approach which gives them choice.

## Making a report to the Parliamentary Support Line

Callers to the Parliamentary Support Line wanting to make a report will receive immediate support, advice on available pathways, and assistance to decide which system they wish to engage with. In line with trauma-informed best practice, they would be supported with a warm referral to pursue other appropriate reporting pathways, while only having to tell their story once. The Parliamentary Support Line currently offers this service in relation to police, specialist services including rape crisis centres, and Finance. This service will be expanded to include warm referrals to the SIT, where the issue is within its remit.

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*What would this look like in practice?*

### Scenario 1

#### **Allegation of sexual harassment referred from 1800 APH SPT to SIT to provide case management and support**

Karla works in the electorate office of an MP. A colleague asks her out for a drink after work on several occasions and she declines each time. The colleague is becoming increasingly insistent and starts making comments openly in the office alluding to her being promiscuous and questioning why she won't accept his invitation for a drink when he has seen her socialising with other people.

On one occasion while standing in the printing room, the colleague approaches Karla, brushes up against her and whispers something inappropriate in her ear. Not knowing what to do, Karla freezes and does not mention the incident to anyone.

Karla has seen material advertising the 1800 APH SPT line around the office. She calls the line after work and is connected with a counsellor who offers immediate support. The counsellor also discusses Karla's options and suggests that what she is experiencing is within the remit of the SIT, who will be able to offer Karla ongoing support and seek a resolution.

With Karla's consent, the counsellor facilitates a warm handover to the SIT, explaining what has happened to her and what the two have discussed. The SIT case coordinator assures Karla that she is able to provide her with continued support and that there are a number of options she can pursue to resolve the issue. From that point, the SIT case coordinator liaises with Karla to ensure she is receiving adequate support while she continues to work in the electorate office and work through her options for seeking a resolution to the behaviour.

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## Making a report to the SIT

Reports can also be made directly to the SIT. An individual can contact the SIT directly to make a report or to seek advice regarding a serious workplace incident. Once an individual contacts the SIT and it is determined that the report relates to a serious incident, the SIT will provide support and information

about the likely process, and assist the complainant to determine whether or not to make a formal complaint, and possibly proceed to a workplace review. At this point, and once consent to proceed is obtained and the other party has been notified, the report is formalised and becomes a complaint. As noted at 3.1.2, parties to a complaint process are empowered when they understand the process, how they can access support and make informed decisions going forward.

### *Confidentiality*

The complaints mechanism will have an explicit commitment to protect the safety and privacy of those impacted. It should be committed to maintaining confidentiality of, and by, all the individuals involved in a serious incident and to preserve the confidentiality of the process. A nuanced approach will be adopted, one that balances the competing considerations of doing no further harm to complainants and giving them choice and control over the process, providing procedural fairness for the person subject of an allegation, and allowing for the workplace to respond to and prevent serious incidents.

Expectations around maintaining confidentiality and the consequences if confidentiality is breached should be set out in the complaints mechanism policies and procedures. These consequences could include losing access to the complaints handling process, potential defamation action, and potential sanction through an appropriate parliamentary process if determined by the Parliament.

Those making a complaint to the SIT will be notified at the outset that:

- There is an expectation the process be kept confidential to help preserve the integrity of the complaints mechanism and to provide fairness for everyone involved, including witnesses and other impacted team members. Parties will be asked to sign a good faith confidentiality agreement at the commencement and upon resolution of a workplace review. This agreement relates to the specific allegations and extends to not using, disclosing or publishing the content of discussions during the process except where agreed to by everyone involved. It would not prevent the person receiving support from an external service such as obtaining legal and financial advice or external counselling;
- The SIT case coordinators and workplace reviewers are also bound by confidentiality and will not share information without consent except where absolutely necessary. This could include, for example, where there is an imminent threat to physical or psychological safety, or where disclosure is required by law (during criminal investigations and court proceedings); and
- The workplace may need to take action to reduce WHS risks posed by the incident and to support organisational learning and behaviour change. This will occur using de-identified information about the nature of the incident and the consequences.

### *Support person*

In keeping with the trauma-informed principles outlined at 3.1, staff who experience a serious incident should be given the choice to bring a support person with them to their initial and any subsequent meetings with the SIT, and also to consent to a report being made on their behalf by another individual. A support person for someone who contacts the SIT could 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 a legal professional. A SIT case coordinator may support any of the parties including as a personal support person to one of the parties; such support will focus on navigating the process and promoting systemic fairness and integrity but will not extend to advocacy on the person's behalf.

## 4.3.4 Triage of reports

Where an individual comes to the SIT with a report of a serious incident, or where they are referred to the SIT by the Parliamentary Support Line or Finance, a SIT case coordinator will triage their issue and work with them to understand their needs and desired outcomes. The process will be designed to minimise associated trauma to the extent possible for those involved, and give staff who have experienced a serious incident control over the process. At this time, the complainant will also be informed of the expectations as to the confidentiality of the process.

The complaints mechanism provides a variety of approaches to resolve a report, to account for differences in conduct and the preferences of the complainant. Options that may be canvassed as part of the triage process include:

- Report only, including the making of a confidential report (see above) and access to confidential counselling support
- Facilitation of a local resolution within the workplace
- Referral to Finance for less serious workplace issues
- Undertaking a workplace review (see 4.3.7)
- Warm referrals to other services as appropriate, including to police and specialist support services, such as a rape crisis counselling centre (see 4.3.6 for further detail on the management of criminal matters)

Support should also be given to assist the individual in understanding what the different options would mean for them in terms of process, and possible outcomes. Regardless of whether the individual chooses to engage with a process administered by the SIT or another body or organisation, they should continue to have access to support from their dedicated case coordinator.

Incidents have different impacts on people depending on a range of factors, and some may engage with the complaints mechanism for issues outside its scope. The SIT should operate on a no wrong door policy, ensuring that where an individual's needs are better met by Finance, referral to Finance is seamless. This will require robust protocols between the SIT and the MaPS team, discussed at 4.6.

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*What would this look like in practice?*

### **Scenario 2**

#### **Allegation of bullying taken to the SIT and found to be reasonable administrative action**

Charlie was recruited to an electorate office team about 9 months ago, and has demonstrated an aspiration to advance in her career to a role with more responsibility. Her supervisor has provided balanced feedback about her work throughout the 9 months, pointing out her strengths as well as areas for improvement. Recently Charlie has become impatient and wants to progress quickly. After receiving some positive feedback, Charlie asks for a promotion and pay rise.

Charlie's supervisor tells her that while she did well on the last project, he would like to see her develop in other areas before considering a pay rise. The supervisor tells Charlie that while a pay rise may be something she could work toward, now is not the time, and assures her that they will have further discussions about her performance over the coming months. Charlie disagrees that she has areas for further development and grows frustrated during the conversation, because she feels that she is more competent than others in the office and is being held back in her career. During the conversation Charlie begins to raise her voice.

The next day, when Charlie is speaking with other staff she claims that her supervisor bullied her when she asked for a promotion. She is concerned they will tell other officers about her request and she is now worried about reprisals, such as limited career mobility.

Over the next few weeks Charlie asks her supervisor about the promotion nearly every day. One day, Charlie raises the issue during a particularly busy period, and the tone of the conversation escalates quickly. Her supervisor asks her to 'give it a rest', to which Charlie responds 'you bullies can't hold women back for ever'. Later that day, her supervisor apologises to Charlie for his tone but Charlie still feels upset.

Charlie decides to call the SIT that afternoon. She explains what has happened to a case coordinator and says she feels bullied by her supervisor. The case coordinator spends time with Charlie on the phone to understand what has occurred and determines that the supervisor has taken reasonable management action. The case coordinator gently explains that she understands Charlie's frustration but that what has occurred is not bullying, setting out the kind of behaviours that would have to be present for that to be the case.

The case coordinator works with Charlie on how she might approach a subsequent conversation with her supervisor to make it more constructive. She tests the reality of Charlie's thinking to lend perspective to her behaviour and, while acknowledging the importance of the promotion to Charlie, encourages her to reframe her approach. The case coordinator suggests Charlie could contact the MaPS team at Finance about training and coaching she could access to give her further tools and skills for managing challenging interactions and positioning for promotion. Charlie thanks her for this advice.

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## Transparency

Regardless of the option for resolution favoured by the complainant, the complaints mechanism should ensure transparency about how a report will be handled and details of the incident or its investigation. It should provide timely, clear and transparent information about the process for handling complaints and commit to timeframes for resolution. The complainant has a right to be provided with information related to the incident they experienced. A lack of transparency can contribute to feelings of frustration and unresolved trauma, and in such circumstances, complainants may be more likely to try to resolve the issue in other ways, such as approaching the media or another external body, or filing multiple reports in relation to the same issue.

The SIT will also build into its operating procedures a follow-up function, to enable the case coordinators to keep complainants updated on the status of their matter. This would also enable them to check in on the wellbeing of the complainant and organise any further supports they require. Doing this supports the objective of trauma-informed and procedurally fair responses.

## Vexatious reports

As outlined at 3.2.4, it is rare for false or vexatious complaints to be made. Nevertheless, the review suggests, drawing on the approach of other parliamentary environments, that the initial assessment or review of an allegation by the SIT have regard to<sup>62</sup>:

- Whether this is the first time this issue has been raised or if it has been raised previously, this may include checking with Finance if the allegation has been raised previously and what action was taken;
- If the complainant's behaviour and their demands are proportionate to the harm they have suffered;
- Whether the complainant has the health, linguistic, intellectual, financial and social resources needed to cooperate with existing complaints processes; and
- If there other risk factors influencing the complainant.

During initial engagements with the complainant, the SIT case coordinators should manage expectations about the process, timeframes, how the allegation will be dealt with, the likely outcomes, their responsibilities to participate in the process in good faith and adhere to confidentiality requirements, and that it will be necessary for the SIT and Finance to work closely together to manage these situations should they arise.

If, after assessment, a report is found to be vexatious, the SIT would finalise the report with a recommendation to the employing parliamentarian to take action ranging from counselling to a formal warning. An unfounded complaint brought in good faith will not result in disciplinary action.

### 4.3.5 Facilitation of resolution at the local level

There will be some circumstances where the most effective way of addressing incidents will be at the local level. This may include where:

- The complainant simply wants the behaviour to stop;
- The incident is less serious;
- The person who is the subject of the allegation is unaware of the impact of their behaviour and receptive to change; or
- There is no significant power imbalance between the person who is the subject of the allegation and the complainant.

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62 Commonwealth Ombudsman (2012) *Better practice guide to managing unreasonable complainant conduct* [online document] accessed 25 March 2021

A local resolution may include an apology, undertakings in relation to improved behaviour, management action such as a warning, or changes to workplace arrangements to alleviate the issue. Case coordinators will work with the person to ensure that options are appropriate for their specific circumstances and the nature of the report.

Local resolution will look different depending on the circumstances and the preferences of the parties involved, and will exist on a spectrum. At one end it may include giving someone the skills and support to resolve an issue themselves, either as the person directly impacted or as a manager or bystander. At the other, it may involve a member of the SIT meeting with the parties and management.

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*What would this look like in practice?*

### **Scenario 3**

#### **Alleged sexual harassment by a staffer identified by a bystander reported to the SIT and local resolution supported**

Jake is a Chief of Staff in a frontbencher's office. He notices that one of the male staff in his office is regularly calling particular female staffers in the office 'honey' and 'sweetie', and making suggestive comments on their physical appearance, such as 'ooh, you look sexy in those shoes'. The staffer also often touches the women's arms or the small of their backs when he speaks with them, and stands very close to them. Jake notices the female staffers seem uncomfortable during these occasions. For example, he has seen them back away and fold their arms, laugh nervously, turn red, and avoid instances where they might be alone with the staffer.

Jake reaches out to the SIT for advice, identifying that he thinks that this unwelcome touching and use of suggestive language is sexual harassment. Jake speaks with a SIT case coordinator who is a trained counsellor. He tells the coordinator about the behaviour he has observed and the women's reactions. He wants to raise the issue with the staffer to ask him to cease the behaviour, and asks for advice on how to best approach the conversation.

The SIT case coordinator agrees that the behaviour described is sexual harassment, and that a direct conversation with the staffer would be a good way to initially broach the issue and see if a local resolution is possible. The coordinator helps to workshop strategies with Jake on how best to approach the conversation. The case coordinator also provides Jake with advice on the supports he could recommend to the staffer, including relevant guidance sources, training courses and materials, and the availability of trained counsellors through the SIT or 1800 APH SPT. The SIT case coordinator also provides advice on potential next steps and the implications of different scenarios, depending on the staffer's reaction.

Supported by the SIT, Jake feels equipped to have a constructive discussion with the staffer. The staffer indicates that he is surprised and saddened by the feedback, and that he hadn't noticed that the women seemed uncomfortable, or understood that the behaviour was unwelcome. The staffer agrees to alter his behaviour to stop the unwelcome physical contact and use more neutral and respectful language.

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*What would this look like in practice?*

## **Scenario 4**

### **Alleged sexual harassment reported to the SIT and resolved through mediation**

Eddie, an adviser in a parliamentarian's office, contacts the SIT for advice. Eddie reports that the parliamentarian he works for has sent him a number of text messages that started off purely friendly, but have grown gradually more suggestive over the course of a few months. They include a number of compliments on his appearance and how athletic he is. The parliamentarian is also very affectionate with Eddie, often standing very close to him, hugging him, and finding excuses to touch his arm, back or shoulders unnecessarily in conversation. Eddie feels uncomfortable about the unwanted touching and the personal nature of the text messages.

Eddie notes that he is gay and the parliamentarian identifies as a straight married man with children, so the behaviour is unexpected. Eddie is unsure about saying anything and whether the behaviour might be inappropriate or if it is just normal office banter and friendliness, and that he might be overthinking it. Eddie also questions if there is something that he did that might have encouraged the unwelcome advances, and whether people would believe him.

At recent staff drinks, the behaviour escalates. Eddie notices that the parliamentarian makes a series of efforts to be alone with him, including offering to drop him home and suggesting they kick on together for a nightcap, while encouraging others to leave because they have early starts. When they were alone, the parliamentarian asks Eddie a lot of very personal questions about his private life, including about his sex life. At the time, Eddie thinks the questions are a bit intrusive, but puts them down to the parliamentarian having a bit too much to drink. The more he thinks about it afterwards, the more uneasy he feels about the questions.

Eddie reaches out reluctantly for help. He wants to keep the matter confidential and seek advice on how to make the behaviour stop, without jeopardising his job. He is particularly nervous about the story becoming public, noting that he has only shared his sexual identity publicly with friends and co-workers progressively over the last year, and he wants to maintain his privacy as a priority.

The SIT case coordinator ensures that Eddie is aware of the range of supports available to him, including counselling and services that specifically provide support to people who identify as LGBTIQ+. The SIT case coordinator reaffirms Eddie's feeling that the behaviour is unacceptable and agrees that the behaviour described is sexual harassment, and acknowledges that the anxiety and trauma associated with the experience for Eddie is compounded by it coinciding with the timing where he is opening up to people about his sexual identity for the first time.

Eddie initially does not want to access support services, and is focused on how the SIT can help him put a stop to the behaviour. He does not want to proceed down the path of a workplace review, and would prefer not to broach the initial discussion with the parliamentarian himself.

The SIT case coordinator works through some options with Eddie. Eddie agrees that the Head of the SIT office will have a conversation with the parliamentarian in the first instance. Following this, the SIT case coordinator will arrange a mediation with the parliamentarian and Eddie



through a combination of face to face and shuttle conferencing. The SIT case coordinator also provides Eddie with advice on potential next steps and the implications of different scenarios, depending on the parliamentarian's response. The SIT case coordinator advises Eddie that he can nominate to have a support person to attend the mediation with him if he would like to. A separate SIT case coordinator is also assigned to liaise with and support the parliamentarian.

The mediation takes place and the parliamentarian acknowledges the impact of his behaviour on Eddie and apologises to him. The parliamentarian also agrees to undertake targeted training about sexual harassment. Eddie is satisfied with this outcome, and retains his role in the parliamentarian's office. He changes his mind about accessing support, and the SIT provides a warm referral for him to access counselling sessions to help him process the impact of the incident on him. The SIT coordinator logs a confidential record of Eddie's report and the resolution process.

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## 4.3.6 Management of criminal allegations

### Reporting an allegation to the police

While the proposed complaints mechanism responds to serious incidents in the workplace, it is not an avenue for investigating or resolving criminal allegations. For individuals directly impacted by a serious incident that is of a criminal nature, the SIT case coordinators should provide highly skilled support as well as advice on options and pathways, to enable the person to make an informed decision on next steps. This includes providing details of what they should expect as part of a criminal investigation, including the timeframes and potential outcomes.

SIT case coordinators would encourage the complainant to report the incident to police, while ultimately respecting their wishes. Noting the sensitivity and complexity of these and the advice of the AFP Commissioner discussed at 3.2.6, if the victim does not wish to make a formal report to the police, they should be encouraged to make an initial statement, which would not start in motion a criminal investigation but would preserve the option of one if they later decided to pursue the matter by making a formal report.

The review acknowledges the fact that knowledge within the workplace of criminal allegations without referral to police is discomfiting, particularly if those involved are still employed. However, in order for a complainant to feel supported and in control, it is critical that decisions are made based on their wishes. An exception to this is that, should SIT staff become aware of any conduct which places a person or persons at imminent risk, or increases a risk of danger to the health or safety of one or more persons, a disclosure in the public interest should be made to relevant authorities such as police or mental health services.

## Impact of criminal investigation process

Different organisations consulted by the review have taken different approaches to the issue of whether, and how, a workplace review can be undertaken alongside (or after) a police investigation. In this instance, the review does not recommend that the SIT should investigate criminal allegations such as assault or sexual assault; where a workplace review has commenced but it becomes clear that the allegation is criminal in nature, the workplace review into that activity will cease.

However, it may be appropriate to consider undertaking a workplace review where the conduct in question is clearly a workplace matter (that is, there are strong connections to the person's employment), or should there be a need to identify what reasonable management action should be taken where there is a risk to the safety of staff members. Such a review would not be an investigation into the criminal allegation, it would only consider whether the person has breached a workplace policy or the statement of expectations and what action is necessary to protect the safety of other staff.

The review envisages a strong working relationship between the SIT and the AFP to ensure that criminal matters can proceed appropriately and that, if the person who comes forward does not presently wish to make a formal police report, any workplace action taken, including a review, does not inadvertently compromise a future police investigation.

SIT case coordinators will also provide specific supports to managers to enable them to manage allegations of criminal conduct in their workplaces, including ensuring safety and recommendations on appropriate ways to manage staff who are subject to a criminal allegation. There may, for example, be a need to ensure the person impacted by the serious incident is appropriately safe and supported within the workplace, and that they are not subject to repercussions as a result of making the report.

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*What would this look like in practice?*

## **Scenario 5**

### **Alleged sexual assault reported to the SIT and referred to the police**

Lizzie, a parliamentary staff member, contacts the SIT and asks if she can meet with someone in person in Canberra. The SIT case coordinator offers to meet with Lizzie at the SIT offices. Lizzie tells the SIT case coordinator that she was raped by another staff member currently working in a parliamentarian's office. Lizzie says the incident happened late one evening in the toilets of a restaurant following a party fundraiser. The adviser told Lizzie he would destroy her career if she told anyone. Lizzie says she's been trying to forget what happened but keeps thinking about it and it's starting to impact her health and wellbeing.

The SIT case coordinator assesses that the report comprises a serious incident of alleged sexual assault. As a priority, the SIT case coordinator focuses on Lizzie's wellbeing and the ongoing support available to her, including access to counselling sessions. They also take Lizzie through her options for next steps, including making a confidential report to the SIT that does not go further at this stage or reporting the alleged incident to the Police and what that would entail, including who would need to be informed if a police report is made.

Lizzie decides she wants a police investigation. The SIT case coordinator provides a warm referral for Lizzie to officers from the Sexual Assault and Child Abuse Team at ACT Policing, attending meetings with her to provide support and minimise the number of times she needs to retell her story. The police commence an investigation into the matter. The SIT case coordinator also provides a warm referral to an ACT Rape Crisis Centre.

With Lizzie's consent, the SIT case coordinator meets with the parliamentarian to inform them that a report has been made against a current staff member and is being pursued with the police. The SIT case coordinator offers advice and support to the parliamentarian to assist them to meet their WHS duties in respect of their other staff. On the advice of the case coordinator and a MaPS Advice and Support Director to ensure consistency with the Fair Work Act, the parliamentarian decides it is appropriate to temporarily stand aside the adviser. At this stage, the Head of the SIT also advises the PSC.

The police conduct their investigation and the advisor is charged with the offence of sexual assault, and a trial is initiated. The adviser is convicted and their employment is terminated.

Throughout the investigation, the SIT case coordinators regularly check in with all parties involved, including Lizzie, the parliamentarian and the adviser. The coordinators use these check-ins to provide information updates as they are available, conduct welfare check-ins, and assess and advise all parties on how to meet ongoing support needs.

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*What would this look like in practice?*

## **Scenario 6**

### **Alleged sexual assault reported to the SIT where impacted person accesses support but does not want to report to police**

Hannah, an electorate staffer, contacts the SIT for advice. Hannah advises that the parliamentarian she previously worked for sexually assaulted her at an electorate office function 18 months ago. At the time, she did not want to report the issue, but she has been struggling to forget it and needs someone she trusts to speak to about it. The parliamentarian is still in office.

The SIT case coordinator assesses this report is a serious incident alleging criminal conduct and discusses with Hannah whether she would like to make a confidential report to the SIT that does not go further at this stage, or to progress with a report to the police. The SIT case coordinator ensures Hannah has all the information she needs to understand the implications of her options. Hannah advises that she wants the report to be recorded, but to remain confidential and does not want to make a report to the police.

The SIT case coordinator provides Hannah with advice on support options available to her on an ongoing basis, and provides her with a reference number in case she changes her mind and wants to proceed with a police report in the future. At this stage, Hannah just wants to access counselling sessions, and the SIT case coordinator makes a warm referral to a local service provider that Hannah can access.

The SIT coordinator logs a confidential record of Hannah's report and follows up with Hannah at regular intervals to ensure her ongoing wellbeing.

While an anonymous report, the SIT works with Finance to issue a general reminder to all parliamentarians and staff of the expectations regarding conduct and the support options available.

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## 4.3.7 Workplace review

A number of independent reviewers should be contracted to conduct workplace reviews of allegations of serious incidents that cannot, or should not, be resolved at the local level. In order to build faith in the system and its management of complaints, policy and procedure, and frameworks should be developed to ensure a workplace review is conducted in a robust manner in accordance with procedural fairness, and that appropriate review pathways are in place.

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*At a glance*

### Workplace reviews

A number of reviewers should be engaged to conduct independent reviews of reports of sexual harassment, serious and systemic bullying or harassment in the workplace, as directed by the SIT. The reviewers should be experts with relevant experience in workplace harassment and misconduct, including sexual harassment, employment law and public law, and with a good understanding of the parliamentary workplace.

Findings made by a workplace reviewer relate only to compliance with workplace obligations and as such would be made on the balance of probabilities. Reviews would be conducted in accordance with procedural fairness and would follow best practice in administrative decision making, including:

- The reviewer must make reasonable inquiries and gather relevant material before making a finding
  - The findings must take account of relevant considerations and ignore irrelevant ones
  - The findings must not be unreasonable
  - The reviewer must take account of relevant policies in making a finding but must not apply that policy inflexibly and fail to take account of other relevant factors
  - The reviewer is exercising independent discretion and must not act under dictation or at the direction of another officer, and
  - The reviewer must act in good faith when undertaking the review.
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Workplace reviews should be conducted in line with principles of best practice complaints handling outlined at 3.2. In particular, processes should be transparent and fair. The person who is the subject of the allegation must be given an opportunity to put their side of the story and to respond to any proposed adverse findings. There should be written procedures for the conduct of reviews, including timeframes.

Confidentiality must be respected at all times. At the commencement of a workplace review the parties will be asked to sign a good faith agreement that they will keep the substance of the complaint and the process of any review confidential. As noted at 3.2.1, while the use of NDAs and other confidentiality agreements can work to silence victims, it can also be an important tool in protecting privacy of all involved, to provide closure and to protect the integrity of the process. The good faith agreement will not limit the victim's right to report the issue to other complaint bodies or seek specialist support.

Where a review is undertaken, the relevant SIT case coordinator should support the complainant throughout the process, including providing regular updates on progress, reminders of the confidential nature of the process, and any outcomes from the review process. Such support would also be available to anyone subject to a review.

The Jenkins Review should consider whether the parties are aware of how to gain appropriate and fair access to legal assistance when involved in reviews undertaken by the SIT. 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. The decision to grant assistance is generally made by the Attorney-General. In relation to staff, the Legal Services Directions provides 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.

To assure the complainant that their complaint has been taken seriously and appropriate action has occurred, once a review has occurred, the complainant should be advised of the process and what has been or will be done to address their complaint. This should occur regardless of whether the complaint is substantiated or not. This approach is supported by business, private, sporting and other complaint handling organisations, as well as parliaments in overseas jurisdictions, as outlined at 3.2.1. The level of detail provided to affected parties will vary dependant on the nature of the problem, and will take account of any personal information about an individual (which is typically not disclosed to others).

The reviewer will also report to the SIT and all parties. This report will contain a summary of the complaint, an outline of the process, and any findings made, including recommendations on appropriate responses and timeframes for implementation. Reports will also be provided to the PSC for oversight purposes (see 4.3.8).

## Outcomes of a workplace Review - MoP(S) Act staff

In circumstances where a workplace review is conducted into the behaviour of a staff member, the complainant, the person subject of the allegation and the employing parliamentarian will be provided with a report upon completion of the review. As noted above, this report includes a summary of the complaint, an outline of the review process, and the high level outcomes. Where a complaint is upheld, the report would include recommended consequences, along with a timeframe for such actions. Possible consequences for MoP(S) Act staff include all those available under employment law provisions including counselling, demotion, remuneration penalties and termination.

The report would be provided to the employing parliamentarian with the expectation that they would implement the recommended consequences as the employer of the staff member involved. Once this occurs, the parliamentarian would provide advice of completion to the head of the SIT.

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*At a glance*

## **The role of parliamentarians**

Noting their existing powers under the MoP(S) Act and the principle of parliamentary sovereignty, the proposed mechanism will preserve parliamentarians' ability to manage their offices and terminate staff. The proposed mechanism would not alter the role that parliamentarians have in ensuring a safe work environment and responding to serious incidents within the workplace. Rather, the mechanism would assist parliamentarians to deal with serious incidents and, where appropriate, take action to ensure safety and prevent recurrence. In doing so it strikes a balance between incorporating best practice approaches required at a whole-of-organisation level, and maintaining the autonomy of parliamentarians to direct their own offices.

At every stage of a complaint or review parliamentarians will preserve their ability to implement a local solution if appropriate to do so.

The proposed mechanism would strike this balance in a number of ways:

- Parliamentarians will be informed of the setup of the mechanism and the services it can provide
- Tailored education would be provided to all parliamentarians to support them in preventing and responding to serious incidents within the workplace
- Where an issue is appropriate for local resolution, the proposed mechanism could support the parliamentarian to work with affected parties on a resolution
- The employing parliamentarian would be informed of the initiation of any workplace review impacting their office and could access support from the mechanism to manage any associated workplace issues, and
- The SIT would also provide advice to parliamentarians on appropriate actions where their staff are subject to criminal investigations or charges.

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Consistent with the discussion of vexatious reports at 4.3.4 above, and with the general process for finalisation of workplace reviews, if the complaint proceeds to a workplace review and is subsequently found to be vexatious, the reporting would follow the process outlined above – the complainant and subject of the complaint should be provided with a report outlining the process and outcome of the review. Where a complaint is found to be vexatious, it may be appropriate to provide additional detail, particularly to the complainant, to ensure transparency and to provide the complainant with procedural fairness. The report may also include recommendations as to sanctions against the complainant. The reviewer will also report to the SIT and all the parties, as well as providing a report to the PSC for oversight.

## Outcomes of a workplace review - Parliamentarians

Where a workplace review concerns the conduct of a parliamentarian, the report by the reviewer would be provided to the parliamentarian that is the subject of the complaint, the complainant, and the PSC, as is the case for all reviews. If the complaint has been upheld, the report may recommend remedial action, such as an apology, training or counselling, undertakings in relation to future conduct, or remedial action (for example, if the complainant has been terminated as a result of making a complaint, the review might recommend they be reinstated). As with reports relating to staff, the parliamentarian would be given the first opportunity to act on the recommendations of the review. As is the case for complaints about staff, it is expected the parliamentarian would implement recommendations made in any report relating to their own conduct.

## Procedural fairness and review rights

All parties should have an opportunity to engage in the process, to provide information to the review, to respond to any reports made about them, and to seek internal review where they do not have confidence in an outcome. Parties will be given the opportunity to comment on any adverse findings before they are finalised, consistent with the principles of procedural fairness.

Parties will also be given the opportunity to seek a second review of the findings and recommendations, where they disagree. This would be conducted on the papers, though leaving open the possibility for further interviews, by another reviewer with no previous involvement in the complaint. The second review would consider the process undertaken by the initial review and would determine whether the most appropriate conclusion was reached.

## Unresolvable situations

Chapter 3 outlines a number of best practice approaches towards complaint resolution. These features give the complainant and those subject to a complaint increased confidence in the processes and reduces perception of bias and conflict of interest. Confidence in the process is more likely to lead to good engagement and effective resolution of complaints.

Even with strong preventative measures within a workplace and an independent, proactive and supportive mechanism in place, some complaints, grievances and disputes may remain unresolved for one or both parties. In this situation the complaints mechanism can support the parties to resolve the matter until a suitable outcome is reached. This could include providing education and support, mediation between the parties or mechanisms in the workplace that separate or protect both parties and minimise further impacts or escalation. In the event a complainant remains unhappy with the outcome, external pathways to the Fair Work Commission remain available.



## Oversight of response by parliamentarians

There is currently no capacity to enforce action by a parliamentarian in relation to a workplace review, either in relation to their own behaviour or in management of their staff. Expectations for conduct of parliamentarians are rightly governed by the Parliament itself, and as such the Parliament is the appropriate body to impose any consequences on parliamentarians in these circumstances. As such, the review proposes a new process, should an issue require escalation, to facilitate consideration by Parliament through the PSC and Presiding Officers.

### 4.3.8 Governance arrangements and Parliamentary response following a workplace review

#### Involvement of the Parliamentary Service Commissioner

As noted above, on completion of a workplace review, the employing parliamentarian will be provided with a report which includes a summary of the complaint, an outline of the review process, the high level outcomes, and, where a complaint is upheld, recommended consequences, along with a timeframe for such actions. In circumstances where the parliamentarian does not act in accordance with the recommendations and timeframe outlined by the independent reviewer, the SIT will notify the PSC.

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*At a glance*

#### **Oversight by the Parliamentary Service Commissioner**

As noted above, to allow for the independence of the SIT, it should be established as a function of the PSC under the *Parliamentary Service Act 1999* (Cth).

Under section 40(1)(d) of the *Parliamentary Service Act 1999* (Cth), the Presiding Officers can confer additional functions on the PSC by issuing a determination, which is a legislative instrument, under s 71 of the Act. This determination could outline the parameters of the PSC's role. The Act does not confer the ability to engage staff or delegate functions under s 40(1)(d).<sup>63</sup> Therefore, SIT case coordinators should be employed by an existing Commonwealth department or agency and seconded to the PSC and under its direction and operational control. The appropriate employing body should be considered as part of implementation. Options include Finance, Australian Public Service Commission, and the Department of Parliamentary Services. The employing body would have no role in the operation of the SIT.

In recognition of the sovereignty of the Parliament, consequences for parliamentarians will be determined by the Parliament. The Presiding Officers would be required to take necessary action as determined by the Parliament. It is envisaged this process would be acknowledged by both chambers in order for this final stage of accountability to be formalised and enacted.

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63 *Parliamentary Service Act 1999* (Cth) s 70(1AA).

The PSC's functions will include:

- Providing oversight and a quality assurance role over the SIT organisational processes
- Receiving reports from a workplace review and monitoring advice about action taken
- Engaging with parliamentarians on appropriate action, should the SIT notify the PSC that the parliamentarian has not acted in accordance with the recommendations from a workplace review
- Escalating instances of inaction by parliamentarians to the relevant Presiding Officer, to take the necessary action

The PSC should not engage in the day-to-day operations of the SIT, nor should they receive raw data or confidential information collected in the course of reviews, other than that required to discharge their statutory functions.

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Where the SIT provides advice to the PSC that a parliamentarian has not implemented the recommendations of a workplace review, the PSC will engage with the relevant parliamentarian on appropriate action. As part of this engagement, the PSC will provide the parliamentarian with the opportunity to reconsider their approach and to take the recommended action.

The PSC has no power to compel or sanction parliamentarians in relation to their staffing decisions. Therefore, the review proposes creating a pathway to appropriate parliamentary responses that reflect the sovereignty of the Parliament where a parliamentarian is unwilling to engage with the PSC in the implementation of recommendations made in an independent review report. This pathway is outlined below. Should the PSC consider taking this action, the parliamentarian must be notified.

## Escalation to the relevant Presiding Officer

The Presiding Officers are the most appropriate avenue to facilitate an appropriate parliamentary response when reports are escalated to them. In certain circumstances it will be appropriate for the PSC to escalate a report to the relevant Presiding Officer who would be required to take necessary action as determined by the Parliament. It is envisaged this process would be acknowledged by both chambers in order for this final stage of accountability to be formalised and enacted.

The circumstances in which a report should be escalated to the relevant Presiding Officer is a matter that should be considered in the implementation of the complaints mechanism, but is likely to include:

- Where a parliamentarian is unwilling to engage in the process
- Where a parliamentarian has not acted on recommendations made by the workplace review in relation to staff
- Where a report substantiates allegations against a parliamentarian and the parliamentarian has not acted on the recommendations made

Should the PSC escalate a report to the relevant Presiding Officer, the party leader will be notified. Given the response to conduct of a parliamentarian rightly rests with the Parliament itself, once a report is referred to the Presiding Officers, it will be a matter for the Parliament to decide how that issue is most appropriately managed.

It will be critical to ensure the complainant consents to the public release of any information concerning their case to either forum. The implementation team should work with the Presiding Officers and the Clerks to determine approaches to manage direct parliamentary involvement in the resolution of serious incidents.

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*What would this look like in practice?*

## **Scenario 7**

### **Alleged sexual harassment reported to the SIT and reviewed by a member of the Workplace Review Panel**

Jill is a 24-year old junior staffer who has moved from working in an electorate office to a role in Parliament House. Jill calls the SIT angry and humiliated. She reports that the previous evening she sat next to her employing parliamentarian at a private function and he made numerous derogatory jokes relating to her ethnicity, and asked invasive and highly personal questions about her background. This was not the first time that the parliamentarian has made similar comments, but this time Jill felt that she was being singled out by the parliamentarian and intentionally humiliated.

The SIT case coordinator assesses that the behaviour outlined by Jill is harassment that is contrary to the expectations of behaviour. The SIT case coordinator talks Jill through the options available to her and their potential outcomes.

Jill is highly concerned about confidentiality. She is embarrassed and doesn't want anyone to know about what has been happening to her. She is also concerned about jeopardising her job, as well as the potential for negative media impacts for her party if the case is made public. After discussing her options with the SIT case coordinator, she decides that at this stage, she just wants the incident to be recorded without any action being taken. The SIT case coordinator lets her know that the report will be treated confidentially, and provides Jill with information about counselling support available, as well as a reference number in case she wants to contact the SIT about the incident again.

Two months later, Jill calls the SIT and provides her reference number. She is connected with the same case coordinator as previously, and reports that, during a Christmas function at a local restaurant the previous evening, Jill was given a Secret Santa gift. She was encouraged to open the gift in front of her colleagues and the parliamentarian, and on opening the gift finds an item which is insulting to her ethnicity. The parliamentarian leans over and laughingly says "I saw this at the markets and thought of you!" Jill is mortified and makes an excuse to leave the function early.

Jill tells the SIT case coordinator that she would like some advice on how she could approach the issue with the parliamentarian to stop the behaviour. The SIT case coordinator talks through possible approaches, and Jill decides to raise the behaviour and how it is making her feel with the Chief of Staff. The Chief of Staff meets with the parliamentarian and reports back to Jill that the parliamentarian thinks Jill is being over-sensitive, that the previous comments and gift weren't racially motivated and that everyone in the office is being treated the same.

Jill calls the SIT and reports back on the outcome of the meetings, noting that the behaviour has intensified since she raised it with the Chief of Staff. Jill asks for further advice, including on whether there are more formal approaches that can be made to the parliamentarian. The SIT case coordinator steps Jill through what a workplace review would involve, including who will need to be informed, and what all the possible outcomes could be. The SIT case coordinator notes that if a workplace review is conducted, for procedural fairness, the parliamentarian will be made aware of the allegation and provided with an opportunity to respond formally. The coordinator also emphasises the importance of maintaining the confidentiality of the process. Jill advises SIT case coordinator that she would like to progress with a formal complaint and have it reviewed.

The head of the SIT notifies the PSC of the complaint, and arranges a workplace review.

The review occurs in line with procedural fairness, with the reviewer contacting the parliamentarian to let him know about the allegation, the review process, timeframes, confidentiality requirements and potential outcomes. The parliamentarian requests, and is provided with, a SIT case coordinator to support him and provide advice on his options within the process. The reviewer arranges to take a statement from the parliamentarian at a convenient time.

The review is completed and finds the evidence gathered substantiates Jill's allegation. The reviewer provides a report to the Head of the SIT, recommending the parliamentarian undertake counselling in regard to his behaviour, apologises to Jill and gives her an undertaking that he will not repeat the behaviour. Both the parliamentarian and Jill receive the report findings. The parliamentarian appreciates the gravity of the report and the fact the Presiding Officers may facilitate appropriate parliamentary action if he fails to act in accordance with the recommendations. The parliamentarian accepts, and acts on, all the panel member's recommendations, within the timeframes specified.

The SIT case coordinator, who has kept Jill updated on progress, informs her of the outcome. This includes giving her options about ongoing services available to her for support. The SIT case coordinator continues to check in with Jill at regular intervals to ensure she remains safe in the workplace. Jill reports that the behaviour has stopped.

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*What would this look like in practice?*

## **Scenario 8**

### **Alleged serious bullying and violence reported to the SIT and reviewed by a member of the Workplace Review Panel**

Joel works in the office of a newly elected Senator. Recently, the Senator has been working late into the night and drinking heavily. He is verbally abusive towards Joel and flies off the handle unreasonably at minor issues (such as getting his coffee order wrong). On one occasion Joel comes into work to find him still drunk from the night before. When Joel gently suggests that he book a car to take the Senator home, the Senator uses obscene language and is physically intimidating.

Joel makes an appointment to speak with the SIT, and meets with a case coordinator to tell his story. Joel has experienced panic attacks since the incident and loss of sleep, and it's beginning to affect Joel's work.

Joel feels better that he has told someone, but does not wish to make a formal complaint. He is worried about his job security and thinks that he "should be able to hack it". The SIT case coordinator notes his wishes and explains that the SIT can organise for a general reminder about acceptable behaviour in the workplace to be issued while treating his contact with the SIT as an anonymous report. Joel agrees with this approach.

Given the seriousness of the behaviour Joel spoke about and the potential risks to health and safety, the SIT organises for a general reminder to be sent to all parliamentary offices which covers the expectations of behaviour, how to ensure a safe and respectful workplace, protections under the general law against reprisals for making complaints and the role of the SIT.

Following the reminder, a second staff member, Lucy, makes an appointment with the SIT. She reports very similar behaviour and impacts to those reported by Joel. After discussing her options with the SIT case coordinator, Lucy decides to make a formal complaint.

Given the information available to the SIT case coordinator that this represents a pattern of behaviour, they arrange a workplace review using a reviewer with experience in workplace bullying and harassment. Before that review is undertaken, the SIT case coordinator makes an appointment to meet with Joel to let him know that a review into the Senator's behaviour is going to take place. They ask Joel if he would like any support during that process, and whether he would like to have his complaint reviewed at the same time. Joel still does not want to make a formal complaint. The SIT case coordinator reassures him that he will have access to support through the SIT whenever he needs it throughout the process.

The workplace review substantiates the allegations of serious bullying of Lucy by the Senator, and provides a report to Lucy, the PSC and the Senator recommending the Senator undergo training on appropriate workplace behaviour and alcohol use and respond to an impact statement from Lucy. The PSC meets with the Senator to discuss the report and its findings, noting that he is required to notify the President of the Senate if the Senator does not action the report's findings. The Senator says there is nothing wrong with the way he runs his office, and his staff just need to harden up and get on with their work. He refuses to undergo any training or respond to Lucy's impact statement.

The PSC refers the report to the President of the Senate who is required to take the necessary action as determined by the Parliament. Nothing in the report identifies that it was Lucy who made the complaint.

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## 4.4 Education

It is important that education for staff and parliamentarians is delivered in a way that genuinely supports them to understand their rights and responsibilities in the workplace, what constitutes unacceptable behaviour and how to respond to serious incidents when they occur. In line with best practice principles identified in Chapter 3, the review proposes an education and training program that is tailored to the needs of parliamentarians and their offices, demonstrates an attentiveness to the parliamentary environment, and is delivered in an ongoing way.

### 4.4.1 Tailored education program

To respond to an immediate, critical need for education and practical support, the review has recommended a tailored education program for MoP(S) Act staff to be delivered face to face in parliamentary and electorate offices. The program will address three core elements in order to properly equip staff and parliamentarians to understand their obligations, feel supported to respond to serious incidents and promote a respectful workplace culture:

- Parliamentarians and staff understand their rights and responsibilities under relevant laws, including workplace health and safety, sex discrimination and fair work legislation;
- Parliamentarians and staff are able to recognise, identify and respond to serious incidents in the workplace, including understanding how to provide appropriate support for a staff member who has been impacted by such behaviours
- Parliamentarians and staff are equipped with practical tools and guidance on creating a safe, respectful and productive work environment.

During the review, it was noted that observers of unsafe behaviours in the workplace are often unsure of

what they can or should do if they see or hear of an incident. The education program will include what to do as a bystander. This will assist staff and managers to know what to do if they witness unacceptable behaviours, how to keep themselves safe and how to communicate with an impacted staff member in a supportive way that does no further harm. Better management of incidents when they first occur will achieve the best outcome for all involved and can prevent escalation of the unsafe behaviour and the need for formal workplace actions.

## Education and support for parliamentarians

Providing tailored support to parliamentarians (and their senior staff) is also recommended. Parliamentarians will be offered education during the program on a voluntary basis. It will be conducted by providing one-on-one sessions with parliamentarians, and/or their staff. During consultations, organisations noted that managers and senior staff often report feeling uncertain how to respond to reports of serious incidents by staff. The targeted education will assist parliamentarians and senior staff to develop confidence and competence in handling reports.

These sessions will be delivered by highly skilled and credible experts offering clear, practical guidance – focused on the Parliamentary context – on how to meet WHS obligations to prevent and respond to serious incidents, and will allow senior staff and parliamentarians to actively discuss the issues in a way that best suits them. It could also involve discussions on effective communication and listening skills, including how to respond to a staff member who discloses sexual harassment, bullying and violence and the language to be used to do no further harm and best support them.

### **Recommendation 5**

To promote cultural change, ensure the expectations of parliamentarians and their staff are well understood, and support the operation of the proposed support and reporting system, a comprehensive awareness raising and education program should be implemented. As an immediate response, this should begin with targeted, personalised, face to face training for all parliamentarians and staff, including those in electorate offices. It should be designed to equip parliamentarians, managers and staff to understand their workplace health and safety responsibilities, to provide them with the tools to promote safe and respectful workplaces and to respond appropriately to instances of unacceptable behaviour.

## 4.4.2 Ongoing education and support for parliamentarians and staff

### Effective, targeted, timely and ongoing education

Finance is in the process of updating its broader suite of training to respond to the need for more comprehensive education and support in the parliamentary workplace. The review recommends training with respect to responding appropriately to serious incidents and promoting a safe and respectful workplace be provided as part of this existing broad package; this includes at induction (for new staff) and then at regular intervals. Integrating this guidance as part of the ongoing training package will help to embed continual learning and development as part of the workplace culture.

Ongoing training should incorporate lessons and feedback from the initial education program, and should be responsive to requests from parliamentarians and their offices for specific training in order to provide targeted support and information. Training should be delivered through a variety of mediums in order to ensure engagement, including online modules, face to face facilitated sessions and direct one-on-one sessions.

As part of the existing induction training offered by Finance, new parliamentarians and staff should be supported to understand the Minister for Finance's standards and expectations for workplace behaviour at the commencement of their employment. The review recommends these sessions set the tone for a safe and respectful workplace by including:

- A statement connecting the values and collective objectives of the Parliament with the importance of building a safe and high performing workplace, and expectations around behaviour
- What behaviours constitute sexual harassment, bullying and workplace violence, to promote a sound understanding of the variety of behaviours that are unacceptable in the workplace, including understanding consent
- The drivers and risks within the workplace for sexual harassment, bullying and violence including power imbalance, hierarchical structures, high pressure and long hours, intense and constant media scrutiny, use of alcohol, isolated workplaces, travel, restricted access to information and supports, lack of flexibility in working arrangements and unconscious bias
- The impacts on victims, the accused, and the workplace of sexual harassment, bullying and violence and the consequences. This could include scenarios that reflect lived experiences
- The WHS responsibilities of parliamentarians, managers and staff and how to complete a risk assessment and put control measures in place to eliminate harm, and
- The workplace policies on sexual harassment, bullying and violence, expectations on behaviour, how to report and the support available.

Beyond induction, training should be run periodically by Finance, including in response to specific requests from offices in order to ensure that staff and managers feel continually supported to recognise and respond to serious incidents.



### 4.4.3 Reporting on serious incidents

Consistent with the discussion at 3.3.2, transparency about the prevalence of assault, sexual assault, sexual harassment, and serious and systemic bullying or harassment in the parliamentary workplace and the progress towards eliminating it can assist in the prevention of incidents. The reporting of statistics which prioritises the confidentiality and privacy of those involved will help build trust in reporting processes and reinforce that unsafe behaviours are unacceptable.

Such reporting would also help inform further action the parliamentary workplace can take to mitigate safety risks and create a safe and positive workplace culture. Initially, the SIT should capture and analyse data of reported incidents to determine the appropriateness of further aggregated and de-identified reporting.

## 4.5 Parliament House procedures and the Department of Parliamentary Services

### 4.5.1 Procedures for responding to serious incidents in Parliament House

Despite there being well-established protocols for how Department of Parliamentary Services (DPS) Protective Security Services (PSS) responds to emergency situations in Parliamentary House, including interaction with the AFP and other emergency services, they do not recognise or provide for an appropriate response to serious incidents that do not represent a clear emergency.

Where PSS officers or local AFP officers respond to an emergency situation, or find someone in a secure area they should not be in, regardless of where in the precinct it occurs, they contact the AFP and emergency services as appropriate, and log a report of the incident. The review recommends that process should be mirrored where AFP or PSS officers are the first to identify a serious incident. Factors which could suggest a serious incident has occurred include unusual behaviour occurring after-hours, for example where a person appears intoxicated, or distressed, is in a state of undress, or is engaging in sexual or illicit behaviour. If a person's behaviour departs from what one would expect at a workplace, the PSS officers should report it as an incident.

In addition to these usual emergency response and reporting procedures, should a PSS officer come across a person within the precinct who appears to have experienced a serious incident, the PSS officer should provide the person with an information card which outlines contact details for the 1800 APH SPT support line and the SIT, as well as contacting the AFP and emergency services if required. Providing this contact information will give the person the option to access available support either through the 1800 APH SPT line or the SIT, including counselling and facilitated referrals to other services, including the police.

Standard procedure is that a range of minor issues (for example, misplaced items) as well as incidents (where follow-up action is required, for example, requests for first aid assistance or the discovery of unattended or suspect items) are recorded and used for risk identification and assessment purposes. PSS officers should log a brief report of any incident which prompts them to hand out an information card, including the person's name. Details of these reports will be provided to the SIT. Following an incident of this nature, a SIT case coordinator will make contact with the person. This will provide an opportunity for the person to speak with a trained counsellor and to access assistance, should it be required.

These arrangements will be refined during implementation of the complaints mechanism and should be formalised in updated or new protocols which govern how the various organisations – DPS and PSS, the AFP, and the SIT – will work together.

## **Recommendation 6**

Where Department of Parliamentary Services (DPS) Protective Security Service (PSS) officers or local AFP officers are the first to identify or respond to a serious incident within Parliament House, they should provide advice on avenues for assistance, including the 1800 APH SPT line and the complaints mechanism contact channels, in addition to any emergency response action and upward reporting required under their standard operating procedures. A report on the incident should be provided to the SIT so that a case manager can make follow up contact with the individual and provide trauma-informed wraparound support, should it be required.

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*What would this look like in practice?*

## **Scenario 9**

### **Alleged incident involving a staffer identified by a Parliament House security guard and recorded**

Julie is a staffer in a parliamentary office at Parliament House. At 11pm one night a security guard, on starting their shift patrolling the offices, notices the door to Julie's parliamentarian's office is open and the light is on. As it is a non-sitting week this is somewhat unusual and so the security guard checks the office. On entering the room, the security guard sees Julie laying unmoving on the floor of the office.

It is not immediately apparent to the security guard whether Julie is okay. The security guard attempts to rouse Julie and in response she opens her eyes and speaks, but her words are slurred. The security guard immediately contacts the Parliament House security incident team so an ambulance can be dispatched.

The security guard stays with Julie until emergency services arrives, and before she departs provides her with an information card which explains how she can contact 1800 APH SPT or the SIT, if needed.

The security guard logs an brief incident report, including Julie's name and the circumstances surrounding how she was found. This report is provided to the SIT.

The day after the incident, a SIT case coordinator contacts Julie, checking in to see if she needs any support following the incident the night before. Julie discloses to the SIT case coordinator that she was treated at the hospital for an assault and was encouraged to report the incident to the SIT and the police. The SIT case coordinator listens to Julie and speaks to her about her options, including the making a police report. At all times the process is informed by Julie's wishes.

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## 4.5.2 Mitigating the risk of serious incidents at Parliament House

The review found there is a need for not only better responses when serious incidents occur within the Parliament House precinct, but also a renewed focus on mitigating the risk of serious incidents occurring within Parliament House in the first place. This should include policies and procedures which foster greater visibility of staff entering Parliament House after-hours, confirm that access is work-related, and enable action to be taken where necessary.

In the short term, the review recommends that all after-hours access be logged and reported promptly to chiefs of staff or office managers, and that areas accessed after-hours be subject to additional patrols. If staff access areas other than those advised upon on entry this should also be reported to the office manager. These measures should act as a deterrent to inappropriate access. They should be underpinned by a clear policy that after-hours access must be work related or for a legitimate purpose, reinforced by all parliamentarians clearly articulating this expectation to their staff. This will complement the broader responsibilities, at a systemic level and for parliamentarians individually, for setting expectations to support safe and respectful workplaces outlined at 4.1. Aggregate data for each political party should also be provided to the relevant chief of staff to allow consideration of further policy responses.

The above measures seek to manage inappropriate access after-hours by policy and deterrence, and should be able to be implemented quickly and with relative ease. More stringent measures, should they be necessary, would need careful consideration and consultation. Such measures could include a register of staff authorised to access the building after-hours, or a process to authorise access at the time it is required. Both of these would be administratively burdensome and could potentially delay critical work. Further, it would be possible to deny access to staff under specified circumstances, for example when a staff member is clearly intoxicated, but such a policy would need to be considered in the context of a broader discussion around managing the use of alcohol within the workplace. The review considers this would best be done as part of the Jenkins Review, which could also look at the efficacy of the recommended actions above.

The measures recommended for immediate implementation 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. Any aggression towards officers implementing the new arrangements is unacceptable and should also be logged as an incident and reported immediately to the relevant chief of staff or officer manager and DPS.

## Recommendation 7

To mitigate the risk of serious incidents occurring within Parliament House, measures to control after-hours access should be introduced. As a first step, all after-hours access should be logged and reported promptly to office managers to deter non-work related access, and areas accessed after hours should be subject to additional patrols. These measures should be underpinned by a clear expectation from parliamentarians to their staff that after-hours access must be work related or for a legitimate purpose.

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*What would this look like in practice?*

### Scenario 10

#### Building access controls

Ben and Lis are staffers in a parliamentary office at Parliament House. After an official party at another location they return to Parliament House at 10.30 pm.

On entry to Parliament House Ben and Lis advise the security guard that they need access to their offices to complete some work that is required for their parliamentarian the next morning. The security guard tells Ben and Lis they will log and report their access to their chief of staff as required by the building access policy. The security guards then make regular patrols to the relevant area until Ben and Lis leave Parliament House. The information from the after-hours log is provided to Ben and Lis' chief of staff the following day.

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## 4.6 Updated policies and procedures, and interaction with Finance

Policies, procedures and resources should be updated to support these expectations and to reflect the implementation of the complaints mechanism and other reforms proposed in response to this review, and the Jenkins Review. This would also provide an opportunity to review the existing policies and procedures administered by Finance to align with new understandings of best practice. Finance is currently developing a stand-alone sexual harassment policy, which is best practice. The policy should be standalone, easily accessible and clearly articulate obligations, timeframes and consequences; that compulsory training is provided; and that there are strong statements from leaders that sexual harassment will not be tolerated in the workplace.<sup>64</sup>

With the exception of the specific procedures that are within the responsibility of the SIT, Finance would retain ownership of the overall policies and procedures relating to WHS for MoP(S) Act staff and the Workplace Bullying and Harassment Policy.

Finance would retain the responsibility to carry out the Commonwealth's duties in relation to some aspects of work undertaken by MoP(S) Act employees. Relevantly, Finance must ensure, so far as reasonably practicable, that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

### Recommendation 8

The Department of Finance should remain responsible for underpinning Human Resources and WHS processes, including managing:

- Workplace reports that are not serious incidents, including less serious reports of bullying and harassment
- Workers compensation claims
- Existing complaints on foot at the time the complaints mechanism is implemented
- Historical reports that do not fall within the scope of the independent complaints mechanism
- HR and other shared services
- Overall policies, general training and resources

<sup>64</sup> Safe Work Australia (2021) *Preventing Workplace Sexual Harassment: National Guidance Material*; AHRC (2008) *Effectively Preventing and Responding to Sexual Harassment: a Code of Practice for Employers*.

As more minor conduct has the potential to escalate it is important that linkages remain between responses to non-serious and serious incidents and that the SIT and Finance work closely together. Strong working relationships would be established between the head of the SIT and the senior executive with responsibility for MaPS. Clear roles and responsibilities between the SIT and Finance will be need to be developed, including process hand-off points to ensure complainants have a seamless experience.

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*What would this look like in practice?*

## **Scenario 11**

### **Alleged bullying and harassment reported to the SIT and referred to Finance**

Patrick, a parliamentary staff member, contacts the SIT and tells the case coordinator that he experienced bullying from his former parliamentarian. Patrick says the bullying involved being left out of team meetings, not given information to do his job, hurtful comments from the parliamentarian and being yelled at about his work on one occasion. Patrick worked in the parliamentarian's office for five months but ended up transferring to another office 12 months ago because he felt he had no other choice. Patrick didn't report what was happening at the time, and wants help and to know what he can do next.

Having assessed this report is out of jurisdiction for the SIT, the case coordinator works with Patrick on the support options available to him. The SIT counsellor explains the remit of the SIT and gives Patrick options, including counselling and/or offering a warm handover to Finance case management team. The counsellor also talk through the confidentiality protections.

Patrick decides he wants to access counselling, and also decides to accept a referral by the SIT to Finance. Patrick tells the counsellor that in coming forward he wants to ensure this won't happen to other staff in the parliamentarian's office. Patrick thanks the counsellor and the call ends.

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## 4.7 Implementation of the new serious incident framework

Implementing the recommendations and other changes detailed in this report will be an important first step in restoring confidence that there is available timely, effective and confidential support and an independent, transparent and confidential complaints mechanism for responding to serious incidents. A small taskforce that draws on the expertise and stakeholder relationships developed during this review should be established within the Department of the Prime Minister and Cabinet to undertake or support the implementation of the recommendations.

Successful implementation will require the taskforce to work closely with Finance, the PSC and the AFP to stand up the SIT and develop its process and procedures. Engagement with the Sex Discrimination Commissioner will also need to occur to ensure implementation aligns with and feeds into the Jenkins Review. Anonymised data should be collected on the complaints mechanism's functions, uptake and efficacy to help inform any longer term recommendations.

Training and education should be a priority for implementation, and rolled out as soon as possible. However, as this training may give rise to a surge in reporting of serious incidents, the complaints mechanism should ideally be stood up soon afterward, operating in tandem with the Parliamentary Support Line to provide an integrated response to serious incidents in the workplace.

As a minimum, the taskforce will need to consider the following aspects in implementing the framework outlined in the report:

- The legislative basis under which the complaints mechanism is to operate, including the determination from the Presiding Officers under section 71 of the *Parliamentary Service Act 1999* (Cth), conferring relevant functions on the PSC consistent with section 40(1)(d), and the letter from the Prime Minister to parliamentarians mentioned at 4.1;
- The resolution to be moved by the Presiding Officers in both houses of Parliament to recognise the independent complaints handling process and enable referrals of a failure to act by a parliamentarian to the appropriate parliamentary body;
- Protocols between the Parliamentary Support Line and SIT case coordinators for triage, information sharing and integrated, seamless support for people involved in serious incidents in the workplace;
- Protocols between Finance, the SIT and the AFP for information sharing and integrated, seamless support and referral;
- The governance framework for the SIT including business rules, operating procedures and processes, resourcing approach to managing case volumes, and workflows. Particular attention will need to be given to defining the roles of the PSC and the Presiding Officers, in consultation with those individuals and the Clerks;
- Engagement of case coordinators, educators and workplace reviewers, given the high level skills and expertise required for these roles;
- Training and wellbeing supports for staff of the SIT to manage vicarious trauma risks;
- Office space to allow for in-person support;



- Case management and record keeping systems, website and other corporate support arrangements for the SIT (e.g. Human Resources, IT, Communications);
- Reporting and other preventive approaches to support individual and organisational learning including communication and awareness raising activities, and further enhancements to the tailored education program; and
- Detailed communication strategy to promote the framework.

In addition, it will be important that the operation of the framework is evaluated to ensure continuous improvement and refinement so it continues to offer timely, effective and confidential support and independent and confidential complaint handling. Other jurisdictions and sectors consulted emphasised the importance of regular evaluation to ensure the approach can continue to evolve. Monitoring and evaluation mechanisms should be developed during the implementation stage.

## **Recommendation 9**

A small taskforce should be established in the Department of the Prime Minister and Cabinet to implement these recommendations. The taskforce should work closely with the Prime Minister, the Minister for Finance, the Presiding Officers, the Parliamentary Service Commissioner, and the Departments of Finance and Parliamentary Services in doing so.

## **Recommendation 10**

The framework for reporting and responding to serious incidents and the implementation taskforce should be funded until the end of the 2021-22 financial year.

# Glossary

**1800 APH SPT (Parliamentary Support Line):** a 24/7 phone line staffed by professionals with training in trauma-informed care who provide information, direct counselling, supported referrals and assistance in determining pathways to progress complaints, to MoP(S) Act staff, their family, friends and colleagues.

**Independent Review into Commonwealth Parliamentary Workplaces (Jenkins Review):** the review announced by Minister Birmingham on 5 March 2021, led by the Commonwealth Sex Discrimination Commissioner Kate Jenkins. The Jenkins Review will consider recommendations to ensure that the people who work in parliamentary workplaces are treated with dignity and respect and have clear and effective mechanisms to prevent and address bullying, sexual harassment and sexual assault. The Jenkins Review's full terms of reference can be found [here](#).

**Members of Parliament (Staff) Act 1984 (Cth):** the Act under which staff of Ministers, Members and Senators are employed.

**Parliamentary Service Commissioner:** the Parliamentary Service Commissioner (PSC) is a statutory officer appointed under the *Parliamentary Service Act 1999* (Cth) by the Presiding Officers of the Parliament. The PSC's functions are to advise the Presiding Officers on the management, policies and practices of the Parliamentary Service and, at the request of the Presiding Officers, to inquire into and report on other matters relating to the Parliamentary Service. The PSC also holds the office of the Public Service Commissioner.

**Presiding Officers:** the Speaker of the House of Representatives and the President of the Senate are together known as the Parliament's Presiding Officers. The Speaker is the House's representative or spokesperson and chairs its meetings. They are elected from among the Members of the House and are usually a person of considerable parliamentary experience. The Speaker ensures that Members obey the standing orders of the House and follow the correct procedures. Similarly, the President of the Senate is the spokesperson for the Senate in dealings with the Governor-General, the executive government and the House of Representatives. The President is also elected by the members of the Senate, usually with some years of experience. The President's main roles are to guide and regulate proceedings in the chamber in compliance with the standing orders and oversee administration of the Department of the Senate. Together the Presiding Officers also have responsibility for the provision of services to the Parliament by the Department of Parliamentary Services.

**Respect@Work: Sexual Harassment National Inquiry Report (2020):** the National Inquiry undertaken by the Commonwealth Sex Discrimination Commissioner Kate Jenkins into sexual harassment in Australian workplaces. The report was tabled in the Australian Parliament on 5 March 2020. The report made 55 recommendations outlining actions to be taken by the federal and state governments and by business to improve existing systems for preventing and addressing sexual harassment, and improve access to legal and personal support for those who experience sexual harassment.

**Safe Place:** the Australian Federal Police's specialised independent office set up to provide support to current and former AFP members and to investigate and address sexual harassment and assault.

**Safe Speak:** the Australian Border Force's program, modelled on AFP's Safe Speak, which provides a forum for officers to speak openly about bullying, sexual harassment and other harmful behaviours in the workplace. Safe Speak provides initial support for matters requiring advice or referrals but does not perform an investigative function.

**Sexual Misconduct Prevention and Response Office (SeMPRO):** the Department of Defence's support and case management service for Defence personnel impacted by sexual misconduct. SeMPRO provides confidential advice and warm referrals and coordinates the care requirements of personnel who come forward, but does not investigate alleged incidents.

**Serious incident:** a 'serious incident' has been interpreted by the review as an incident or pattern of behaviour that causes serious harm to someone. Categories that are considered likely to cause serious harm to a person include assault, sexual assault, sexual harassment and serious and systemic bullying or harassment.

**Serious Incident Team (SIT):** a proposed multi-disciplinary team of case coordinators with relevant expertise in providing trauma-informed care, the criminal justice process and relevant legal and policy frameworks for parliamentary employment. The SIT would provide ongoing advice and support to any parliamentarian or MoP(S) employee who has experienced, witnessed, been accused of, or is managing or supporting someone in relation to a serious incident. Where an individual comes to the SIT with a complaint of a serious incident, a case coordinator would work with them to understand and progress their desired outcomes from the process, including counselling support, local resolution, external referral and referral to a member of the Workplace Review Panel.

**Staff Assistance Officers:** the network of MoP(S) staff maintained by the Department of Finance, trained to provide other employees with information and support regarding bullying and harassment in the workplace.

**Statement of Ministerial Standards:** the Statement of Ministerial Standards set by the Prime Minister provides a list of principles governing the conduct of Ministers and Assistant Ministers.

**Statement of Standards for Ministerial Staff:** the Statement of Standards for Ministerial Staff (applying to MoP(S) Act staff) sets out the standards of conduct that Ministerial staff are expected to meet in the performance of their duties.

**Trauma-informed:** trauma-informed approaches incorporate an understanding of the impacts of trauma on people's lives and service needs in order to avoid re-traumatisation as individuals are supported through a given process. Interactions with trauma survivors are based on the core principles of safety, trustworthiness, choice, collaboration and empowerment.

**Work Health and Safety Committee:** the Committee, maintained by the Department of Finance, facilitates consultation with MoP(S) Act employees on a range of WHS issues, including the development of WHS policies.

**Workplace Review Panel:** a proposed independent panel of individuals with expertise in workplace harassment and misconduct, including sexual harassment, employment law and public law, and with a good understanding of the parliamentary workplace. The Panel would be drawn on by the SIT to conduct workplace reviews on an ad hoc basis as needed.

# Legislation

*Fair Work Act 2009 (Cth)*

*Freedom of Information Act 1982 (Cth)*

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

*Parliamentary Service Act 1999 (Cth)*

*Privacy Act 1988 (Cth)*

*Public Interest Disclosure Act 2013 (Cth)*

*Sex Discrimination Act 1984 (Cth)*

*Work Health and Safety Act 2011 (Cth)*

# Attachments

- A Prime Minister's tasking letter
- B List of stakeholders consulted
- C Roles and responsibilities of key bodies and individuals
- D Process map for proposed mechanism
- E Existing Finance (MaPS) complaint processes
- F References

# A. Prime Minister's tasking letter



PRIME MINISTER

16 FEB 2021

Mr Philip Gaetjens  
Secretary, Department of the Prime Minister & Cabinet  
1 National Circuit  
Barton ACT 2600

Dear Secretary,

I am writing to you in relation to recent reports regarding an alleged sexual assault in Parliament House. These reports are deeply distressing.

While I understand that support was provided at the time, I am concerned as to whether we could do more to support vulnerable staff who have been part of a serious incident in our workplace.

As a result, I ask that Deputy Secretary Stephanie Foster PSM prepare a report to me regarding;

1. The procedures and processes involved in identifying and reporting a serious incident, particularly assault or sexual assault, that occurs as part of parliamentary employment;
2. Steps that can be taken to ensure the processes of reporting and responses to serious incidents are able to be made independent from the employer;
3. Recommendations on how to ensure that all reporting and responses to serious incidents are driven by a principle of providing empowerment to the victims; and
4. Recommendations on how to ensure that the services and support that are provided to a victim are timely, effective, and ongoing.

I would ask that Ms Foster consider best practice in other sectors for addressing these issues, with particular reference to advice that can may be applicable from the Australian Sexual Discrimination Commissioner and from other jurisdictions.

In preparing this report, it is my expectation that Ms Foster work with the Special Minister of State, the Department of Finance, the Department of Parliamentary Services, the Prime Minister's office and any other relevant agency.

I ask that this report to be provided to me no later than the 22<sup>nd</sup> of March for the consideration of Cabinet

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Morrison', written over a light grey background.

SCOTT MORRISON

## B. List of stakeholders consulted

Elizabeth Broderick, former Sex Discrimination Commissioner
Department of Finance
Department of Parliamentary Services
Dr Vivienne Thom AM
South Australian Office for Women
Melissa Donnelly, National Secretary, Community and Public Sector Union (CPSU), and APH Health and Safety Representatives, CPSU
Kate Jenkins, Sex Discrimination Commissioner
Medibank Private
Padma Raman, CEO, Australian Human Rights Commission
Rape and Domestic Violence Services Australia
Natasha Stott Despoja, Former Australian politician, diplomat and founding Chair of the Board of our Watch
Pru Goward, former federal Sex Discrimination Commissioner, former NSW Minister for Families and Community Safety
United Services Union
Associate Professor Darren Saunders, University of New South Wales/ Senior Adviser to Elizabeth Broderick
Michele O’Neil, President, Australian Council of Trade Unions (ACTU)
Fortescue Metals Group Ltd
Professor Anne Tiernan, Dean (Engagement) Griffith University
National Association of Services Against Sexual Violence
BHP
Professor Paula McDonald, Professor of Work and Organisation, Queensland University of Technology (QUT)
Professor Kelsey Hegarty, Dr Katie Lamb and Dr Rhian Parker, Women and children who have Experienced Abuse and Violence: advisors and Researchers (WEAVERS)
Prime Minister’s Office
Debbie Francis, author of Independent Review into Bullying and Harassment in the New Zealand Parliamentary Workplace
National Suicide Prevention Taskforce
Emma Purdue and Derek Humphrey-Smith, Lander & Rogers

Blue Knot Foundation – National Centre of Excellence for Complex Trauma
Parliamentary Policy, UK Cabinet Office
Comcare
Australian Federal Police (AFP)
Emily Strickland, Deputy Ombudsman (SA), formerly SA Acting Equal Opportunity Commissioner
Tanya Hosch, Executive General Manager - Inclusion and Social Policy, Australian Football League (AFL)
National Rugby League (NRL)
Associate Professor Karen O’Connell, University of Technology Sydney, expert in discrimination law
Current and former MoP(S) Act staff members
Karen Willis, former EO at Rape & Domestic Violence Services Australia
Attorney-General’s Department
AFP Safe Space
Range of Victims of Crime/Victims of Sexual Assault support organisations (national, and each state and territory)
Our Watch
Professor Eileen Baldry, Deputy Vice-Chancellor, Inclusion and Diversity, University of New South Wales (UNSW)
Liam Elphick, Associate Lecturer, Faculty of Law, University of Melbourne
Australian Border Force (ABF) Safe Speak
Multicultural Program Officer, Victim Support ACT
Professor Kim Rubenstein and Trish Bergin, Co-Directors 50/50 by 2030 Foundation, University of Canberra
Defence Sexual Misconduct Prevention & Response Office
Alison Stanley CBE FCIPD, author, 18-month review of the Independent Complaints and Grievance Scheme (UK)
Sandy Hollway AO, former Chief of Staff to Bob Hawke, and an APS Secretary from 1993-96
Office for Women, Department of the Prime Minister & Cabinet
Human Rights Law Centre
State and territory parliamentary contacts





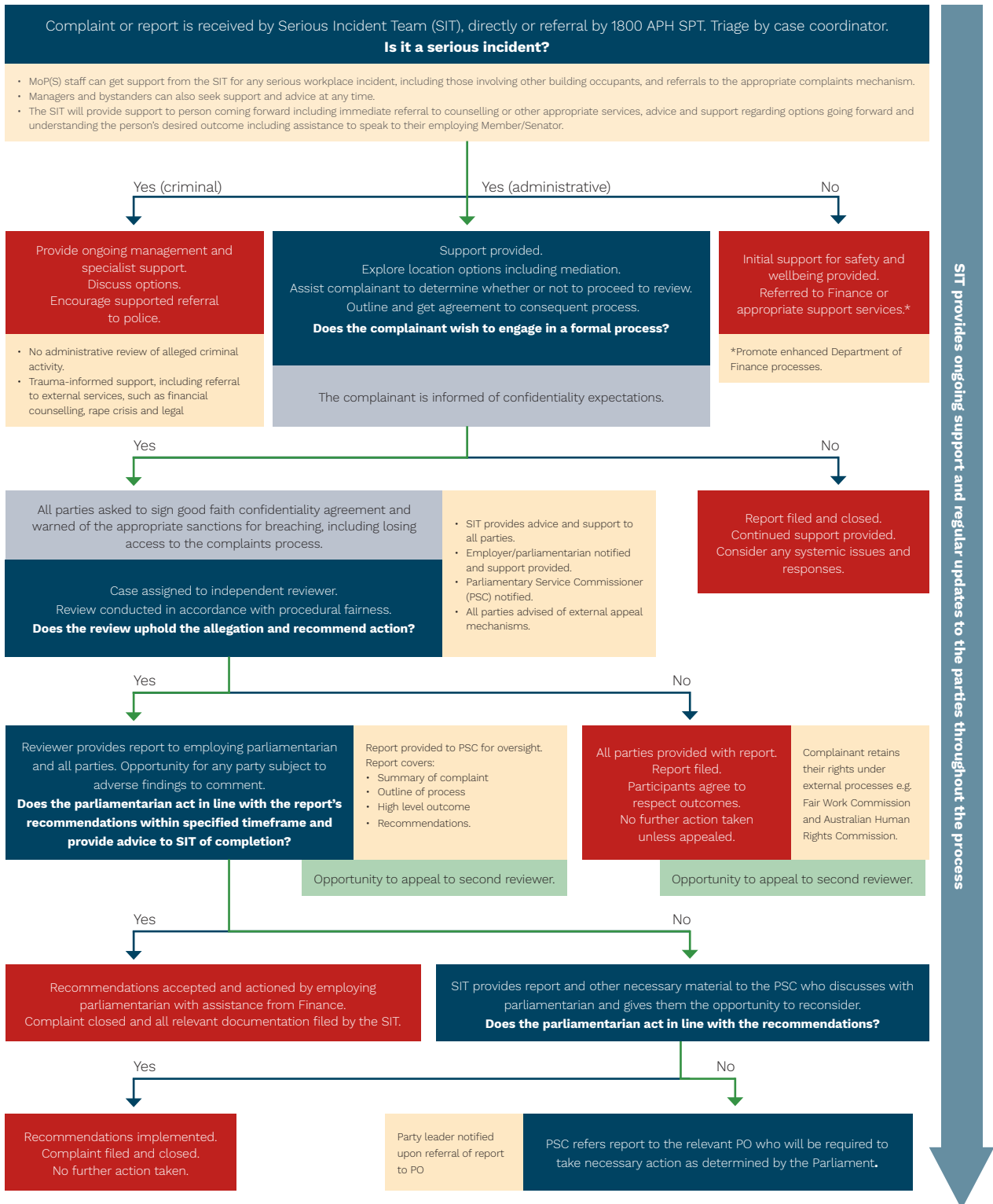
# D. Process map for proposed mechanism

## Independent Complaints Mechanism for Serious Incidents in the Parliamentary Workplace (the Serious Incident Team)

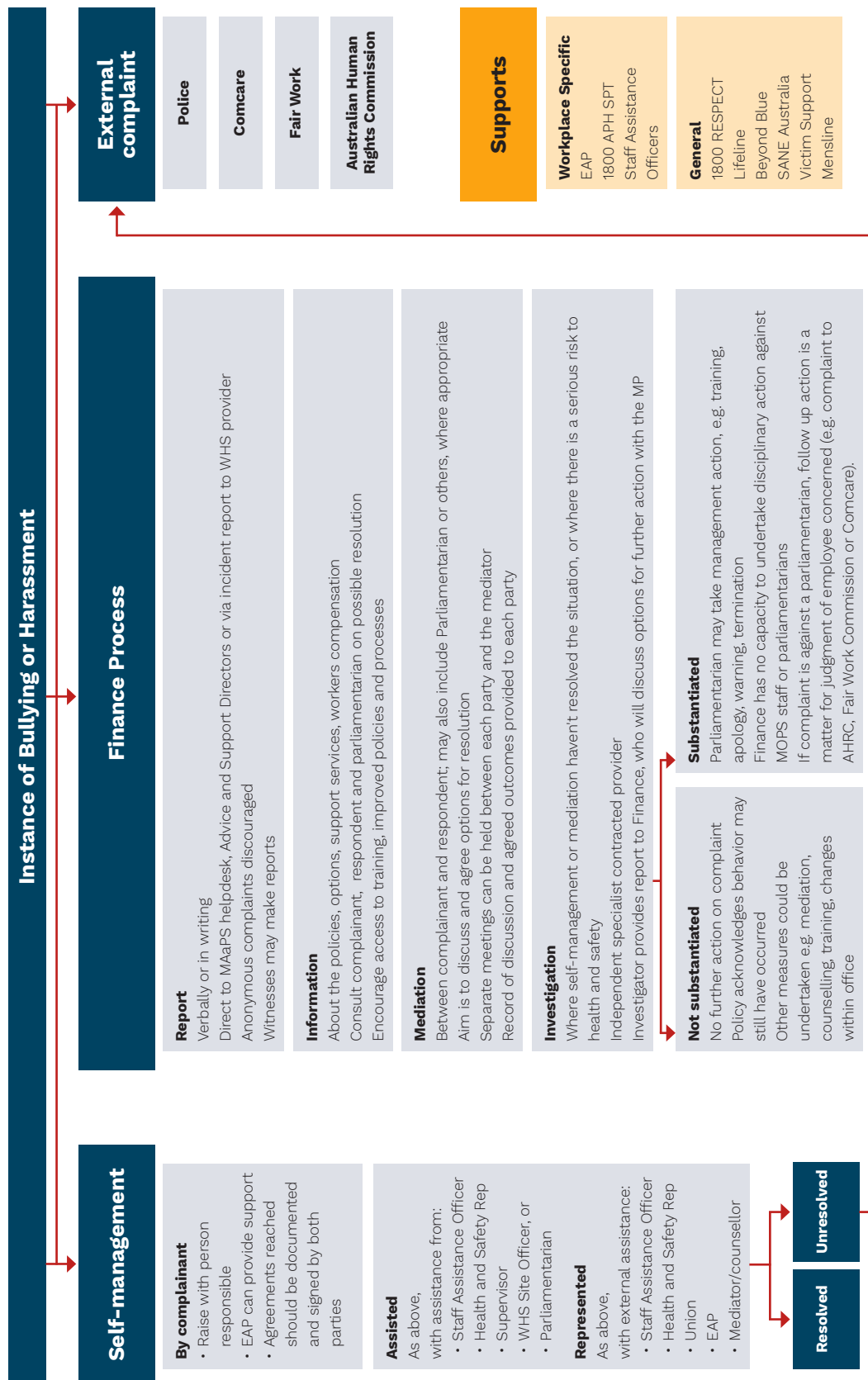
**Who is it for:** All MoP(S) staff and parliamentarians.

**What does it cover:** Reports and complaints of assault, sexual assault, sexual harassment, serious and systemic bullying or harassment.

**When does it apply:** For incidents during the current term of parliament, where the parties remain in parliament or MoP(S) Act employment.



# E. Existing Finance (MaPS) complaint processes



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