



Review of Harassment in the South Australian Parliament Workplace

Report by the Equal Opportunity Commission to the Houses of
the South Australian Parliament

February 2021



Government of South Australia
Equal Opportunity Commission

To:

**The Honourable John Dawkins MLC
President of the Legislative Council
Parliament of South Australia**

and

**The Honourable Josh Teague MP
Speaker of the House of Assembly
Parliament of South Australia**

I present this report on harassment in the South Australian parliamentary workplace, as requested by both Houses of Parliament on 12 November 2020.

I note your agreement to cause copies of this report to be laid before each House of Parliament.

A handwritten signature in black ink, appearing to read 'E Strickland', written in a cursive style.

Emily Strickland
Acting Equal Opportunity Commissioner

26 February 2021

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From the Acting Commissioner

The terms of reference for the Review of Harassment in the South Australian Parliament Workplace (**the Review**) acknowledge the prevalence of harassment and its impact on individuals and culture in the parliamentary workplace. This Report illustrates that harassment is indeed prevalent in this workplace and that the problem and its solutions sit at an organisational and cultural level. This is not an issue unique to the South Australian parliament. Sexual harassment is recognised to be pervasive in workplaces around Australia and is evidenced in research including the 2020 *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces (Respect@Work)*.¹ International reports also indicate that harassing behaviours are common in parliamentary workplaces in New Zealand, the UK, Canada, the USA, and Europe and that the structures and cultures of parliamentary environments enable the prevalence of those behaviours.

The fact that political institutions are far from immune from unacceptable, unlawful behaviours is disturbing. However, they are also the places that can and should lead change in this area. The South Australian parliament is to be commended for taking the important step of asking a light to be shone on this workplace and asking how it can 'do better'. That leadership must continue – the people who work in the South Australian Parliament and the public will be looking to the creation of a safe, respectful and inclusive parliamentary workplace to serve as an exemplar for workplaces across the South Australian community.

I have made 16 recommendations that are aimed at the prevention, and appropriate handling, of sexual and discriminatory harassment in the parliamentary workplace. There are some fundamental gaps in policy, training and complaints practices that, if addressed, will make a significant difference in preventing and responding to harassment. However, sexual and discriminatory harassment will only be eliminated through concerted efforts to create cultural change. In that regard, strong leadership in driving workplace standards and an emphasis on systems that shift responsibility away from victims and place the onus on leaders to respond effectively is crucial.

I thank the Presiding Officers of the Houses for agreeing to my request for funding in the amount of \$60,000 for the Review. This enabled additional staff (0.9 FTE) to be employed by the Equal Opportunity Commission and ensured the Review could be finalised in a timely fashion. I also express gratitude to Mr Martyn Campbell,

¹ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Final Report, January 2020) ('*Respect@Work*').

Executive Director SafeWork SA, for providing me with a member of his staff to assist with the Review.

The Review Team has comprised, from December 2020 to February 2021, Melody Stanford (0.8 FTE), Matthew Sanderson (0.6 FTE) and Colin Marsh (seconded from SafeWork SA). They have brought curiosity, expertise and dedication to the Review and I thank them for that. I would also like to thank the rest of the Equal Opportunity Commission Team who are committed to the important work of the Commission and have provided support and assistance to this Review. Finally, the Office for Data Analytics in the Department of the Premier and Cabinet provided valuable expert assistance in analysing the survey data; thank you to those staff.

Executive Summary

The Review was requested by both Houses of the South Australian Parliament. The terms of reference noted the prevalence, nature and impact of harassment in the parliamentary workplace and asked the Commissioner for Equal Opportunity (**the Commission**) to consider the reporting and handling of harassment complaints and make recommendations to enhance protection against, and ensure appropriate responses to, harassment.

For the purposes of this Review, harassment is defined as sexual harassment or discriminatory harassment (being harassment on the basis of one of the protected attributes in the *Equal Opportunity Act 1984* (SA) (**Equal Opportunity Act**) – i.e. age, race, disability, sex, gender identity, sexual orientation, or caring responsibilities). Bullying was not in scope although the Commission heard that uncivil behaviour is also prevalent in the parliamentary workplace (and in itself is a contributing factor to the prevalence of sexual and discriminatory harassment). The ‘parliamentary workplace’ was defined to include Parliament House, ministers’ offices and electorate offices.

The Review’s methodology included a survey of those currently working in the parliamentary workplace, which had a response rate of nearly 25%, interviews (16 participants were interviewed), and written submissions (16 were received). In addition, workplace policies, procedures and documentation recording complaints made internally and to external bodies were examined. A literature review considered the national Respect@Work report and seven international reports into harassment in parliamentary environments. This research revealed similar themes to those that emerged from the Commission’s consultation within the South Australian parliamentary workplace.

The Review confirmed that sexual and discriminatory harassment is prevalent in the parliamentary workplace. 27.1% of survey respondents reported they had experienced sexual harassment in the parliamentary workplace. Six interview participants and two participants who made written submissions described being victims of sexual harassment in the last five years, and all of those alleged incidents involved either Members of Parliament or staff of Members of Parliament as perpetrators. Allegations of harassment ranged in seriousness and included sexually suggestive and unwelcome comments, indecent exposure, and physical assault.

31.6% of survey respondents reported having experienced offensive comments or jokes made about a personal attribute protected by equal opportunity legislation.

Almost half of these discriminatory harassment incidents were identified as a pattern of behaviour that had been ongoing for more than 12 months. Survey results also suggested that unfavourable treatment on the basis of a protected attribute was not uncommon. Interview participants reported disrespectful remarks based on race and age, and sexist attitudes that are reflected in work practices.

Participants reported the impact of these behaviours which included harm to personal and work relationships, careers and physical and psychological health. The Report also documents research about the effect that harassment has on workplaces.

The Commission is of the view that a number of features of the parliamentary workplace present as drivers of harassment, in particular:

- power dynamics unique to this workplace play out in workplace interactions, behaviours and expectations
- decision-makers in some sections of the workplace are reticent to change entrenched approaches and processes
- historical conventions persist in place of modern workplace policy
- employees and elected members are not always adequately trained to perform aspects of their responsibilities
- a culture exists of minimising, normalising and keeping quiet instances of harassment
- there is a lack of effective accountability mechanisms for Members of Parliament engaging in harassing behaviours.

These cultural and structural aspects of the workplace also entrench the barriers to reporting harassment. The Review found that there were very low rates of reporting complaints of harassment in the parliamentary workplace (for example 77.8% of survey participants who reported experiencing sexual harassment did not report the harassment). A number of reasons for this were identified including: a lack of understanding and trust in complaint processes, fear of repercussions on career and work life, and a culture where victims are blamed and or not believed.

Low reporting rates are unsurprising given that complaint handling procedures in the parliamentary workplace are almost non-existent and that complaints management is not consistent with modern workplace standards. There is an absence of clear and consistent policy that speaks to behavioural standards required in the parliamentary workplace; in particular there is no code of conduct that applies across the workplace

or policy regarding sexual and discriminatory harassment. The Commission considers these must be implemented to underpin procedures for responding to complaints of harassment and that those procedures must be supported by robust sanctions.

In the Commission's view, where complaints were made, they were marred by poor communication, processes did not provide procedural fairness or sufficient levels of independence, and responses and outcomes were unsatisfactory for the victims. Participants reported that inadequate support was provided to them – some reported feeling like politics was prioritised over their welfare.

Complaints made against Members of Parliament were handled particularly poorly. The Review found that complaint procedures applying to our politicians are unsatisfactory, unlikely to be utilised and do not provide for the imposition of appropriate sanctions. Whilst the accountability of Members of Parliament is for the most part left to constituents at election time, the Commission notes that Members do have obligations to conduct themselves in a respectful way in the workplace and to ensure they provide a safe workplace for others; in particular the Commission refers to the application of the Equal Opportunity Act, *Work Health and Safety Act 2012 (SA) (WHS Act)* and *Independent Commissioner Against Corruption Act 2012 (SA) (ICAC Act)*.

The Commission acknowledges that the parliamentary workplace presents unique challenges – its employment structure is disparate, constitutional structures and protections must be guarded and, of course, politics influences decision-making and interactions. That said, there is clearly change that can and should be made that will improve culture and practice in the parliamentary workplace without impinging on the sovereignty of Parliament. In this regard, the Commission has made 16 recommendations aimed at the prevention of and improved response to sexual and discriminatory harassment.

The first of these is that a centralised human resources function (**the People and Culture Section**) is formed to provide services across the parliamentary workplace to support consistent policy and practice. It is further recommended that the People and Culture Section develop a number of strategies, policies, procedures and training programs including: a behavioural code with application across the workforce that includes sanctions for breaching it, a robust complaints procedure, a strategy to increase diversity and inclusivity, a gender equity and family friendly workforce strategy, sexual harassment and discriminatory harassment policies,

training and induction about harassment and complaints processes, and WHS policies, procedures and training.

The Commission recommends a Code of Conduct for Members with robust processes and sanctions attached. The Commission considers the existing framework provided in the ICAC Act, which would allow investigation of harassment by, for the most part, the Ombudsman on referral from the ICAC should support the enforcement of the Code and its sanctions. Sanctions should be imposed by the relevant House on completion of an investigation where findings of misconduct are made. The Commission also recommends amendments to the Equal Opportunity Act to simplify that complaint avenue as it applies to allegations made against Members of Parliament.

Work, health and safety laws apply to the parliamentary workplace and create obligations on duty holders to manage risk relating to sexual and discriminatory harassment. The Commission recommends that, as a matter of priority, the parliamentary workplace ensure these obligations are being met, and that the Houses support a compliance audit by SafeWork SA with a focus on harassment within two years of the date of this Report. The Commission considers the effective implementation of the WHS framework, by shifting the obligation from victims reporting harassment to employers managing risk, is key to the prevention of workplace harassment.

In addition, the Commission suggests consideration be given to creating a positive duty on employers to prevent sexual and discriminatory harassment within the Equal Opportunity Act and to provide the Equal Opportunity Commissioner with associated compliance powers.

Imperative to achieving cultural change is effective and consistent leadership on sexual and discriminatory harassment. The Commission accordingly calls on the Houses to implement a number of recommendations including reviewing standing orders to allow breast and bottling feeding in the Chamber, adopting a motion declaring that sexual and discriminatory harassment is not tolerated in the parliamentary workplace and implementing a formal cultural change framework for gender equality, such as Our Watch's Workplace Equality and Respect Standards or seeking White Ribbon Australia Workplace Accreditation.

Prompt and comprehensive implementation of all of the recommendations in this Report will demonstrate that leadership across the parliamentary workplace is committed to a safe, respectful and inclusive environment for all.

1. Background

1.1. How the Review came about

This Review was initiated by both Houses of the South Australian Parliament. On 12 November 2020 the Attorney General, the Honourable Vicki Chapman MP, moved a motion in the House of Assembly requesting the Equal Opportunity Commissioner conduct a review of harassment in the parliamentary workplace. The motion was passed by both Houses on the same day.

Preceding this, Members of Parliament had expressed concerns about the occurrence and responses to specific incidents of alleged harassment in the parliamentary workplace.² In particular, throughout 2020 there had been concerns expressed in the Houses about alleged incidents of sexual harassment by a Member of Parliament at a 2019 Christmas party at Parliament House.

Those allegations highlighted the fact that the law as it stood then did not allow a complaint alleging sexual harassment by a Member of Parliament to be made under the Equal Opportunity Act. In October 2020 Parliament passed the Equal Opportunity (Parliament) Amendment Bill 2020 which amended the Equal Opportunity Act to make it unlawful for a Member of Parliament to sexually harass another Member of Parliament.

In initiating the Review, the South Australian Parliament did not request an investigation of particular allegations of harassment. Rather, the terms of reference make it clear it is intended to be a systemic review of the culture and processes pertaining to harassment in the parliamentary workplace with a view to preventing harassment and, where it is alleged to have occurred, ensuring the response to it is appropriate and effective.

Consultation for the Review commenced at the beginning of December 2020 and, partly because many participants were on leave over the Christmas and new year period, continued into February 2021. The timeframe for completion of the report has meant that it has not been possible to pursue access to some information and data. Despite this, the Commission considers the participation of individuals and the material collected has provided a clear picture of the parliamentary workplace as it relates to harassment. The Commission is also confident that the Review reveals a

² South Australia, *Parliamentary Debates*, Legislative Council, 8 July 1997, 1709-1714 (Carolyn Pickles, Leader of the Opposition); 29 November 2017, 8743-8749; 4 June 2020, 979-980 (Mark Parnell); 30 June 2020, 1166-1169 (Tammy Franks).

clear way forward for improvement; that pathway is reflected in the recommendations made in this Report.

1.2. Terms of reference

The terms of reference of the Review comprise the motion passed by both Houses of the South Australian Parliament on 12 November 2020; that is, that each House:

1. *Notes the prevalence and nature of harassment in the parliamentary workplace, including the perception of workplace culture, the impact of any harassment on individuals and the workplace culture, and any contributing factors to the prevalence of harassment.*
2. *Requests that the equal opportunity commissioner consider the reporting of harassment in the parliamentary workplace, including existing complaint mechanisms and any cultural and structural barriers, include potential victimisation, to reporting.*
3. *Requests that the commissioner undertakes a Review into the response to complaints made about harassment in the parliamentary workplace, including legal and policy mechanisms in place governing responses, any sanctions available where harassment is confirmed and the way incidents of harassment have been handled by the parliamentary workplace in the recent past.*
4. *Requests that the commissioner provides recommendations as to—*
 - (a) any action that should be taken to increase awareness as to the impact of harassment and improve culture, including training and the role of leadership in promoting a culture that prevents workplace harassment;*
 - (b) any legislative, regulatory, administrative, legal or policy gaps that should be addressed in the interests of enhancing protection against and providing appropriate responses to harassment; and*
 - (c) other action necessary to address harassment in the parliamentary workplace.*

1.3. Scope and definitions

From the beginning of the Review, the Commission sought to make the scope of the Review clear to participants through defining some key phrases used in the terms of reference. These, along with other terminology used in this report, are set out below.

1.3.1. *Parliamentary workplace*

The parliamentary workplace has a complex organisational structure that for historical, legal and practical reasons comprises a number of staffing groups, employment arrangements and physical locations beyond Parliament House itself. The organisational structure is described in more detail below.

For the purposes of the Review, the **parliamentary workplace** includes the people working (in whatever capacity) in or for Parliament House, electorate offices and Ministers' offices, and includes work related travel and events.

1.3.2. *Harassment*

For the purposes of the Review, **harassment** has been taken to include:

- sexual harassment; and
- unfavourable, discriminatory or offensive behaviour on the basis of age, sex, disability, race, gender identity, sexual orientation, caring responsibilities, and pregnancy (**discriminatory harassment**).

In this report the term 'harassment' should be taken to mean sexual or discriminatory harassment, unless otherwise specified.

The terms of reference refer to 'harassment' rather than any particular form of harassment, however the scope of the Review has been limited to harassment which has at its basis a discriminatory element protected by the Equal Opportunity Act. This was to ensure the Review's content matched the expertise and role of the Equal Opportunity Commissioner and to distinguish from issues of general bullying (noting that the Houses of Parliament did not request the Commission to look into matters related to bullying).³

Under the Equal Opportunity Act, and for the purposes of the Review, unlawful **sexual harassment** is any unwelcome conduct of a sexual nature, in circumstances where it is reasonable to expect that the other person would be offended, afraid or humiliated by that conduct. Sexual harassment is determined from the point of view of the person feeling harassed – it does not matter how the behaviour was intended.

³ That said, examples of allegations of bullying have been drawn upon to assist in understanding how complaint mechanisms in the parliamentary workplace work in practice.

1.3.3. Members of Parliament

Throughout this report, 'Members of Parliament' is used as a collective term encompassing both House of Assembly Members and Members of the Legislative Council, unless otherwise specified.

1.3.4. Presiding Officers

Throughout this report, 'Presiding Officer' is used to refer to the Speaker of the House of Assembly and the President of the Legislative Council. Collectively, they are referred to as 'the Presiding Officers'.

1.3.5. Review participants

Consultation was actively pursued with all those currently working within the parliamentary workplace. Additionally, the Equal Opportunity Commission website had a dedicated page for the Review that provided general information and invited anyone formerly employed within the parliamentary workplace or who otherwise believed they had relevant expertise to contribute their experiences to the Review should they wish to do so. Two people came forward to offer their views on aspects of the terms of reference. This report refers to all those persons as **participants**.

1.3.6. The Equal Opportunity Commission, South Australia

The Equal Opportunity Commission is referred to as 'the Commission' throughout this report.

1.3.7. Parties to alleged conduct

For the purposes of describing parties to an alleged incident of harassment, the terminology used by the Australian Human Rights Commission in *Respect@Work* has been adopted. As the current leading research publication on workplace sexual harassment in Australia and internationally, the Review considers the Australian Human Rights Commission's rationale for adopting the terminology of '**victims**' and '**harassers**' is sound.⁴ As did the Australian Human Rights Commission, the Review intends the term 'victim' to be inclusive of both victims and survivors.

1.3.8. Individual complaints

As explained above, the Review looked at systemic issues. Review participants were advised from the outset via the Participant Information Statement and the EOC website that, while instances of individual complaints would be used to inform the Review, they would not be acted on as part of the Review process. Review participants were advised that should they want to make a report or complaint about

⁴ *Respect@Work* (n 1) 59-60.

any alleged incidences of harassment, the Review team could support this by identifying an appropriate complaint handling body.

1.3.9. Acronyms

The following acronyms are used in the report:

DTF – Department of Treasury and Finance

FTE – Full Time Equivalent

HR – Human Resources

ICAC – Independent Commissioner Against Corruption

PCBU – Persons Conducting a Business or Undertaking

WHS – Work, Health and Safety

1.4. Methodology

The Review comprised six key methods: a literature review; a review of existing policies and procedures; a survey; an invitation for submissions; interviews; and analysis of complaint data from a variety of sources.

Over 850 people were identified to be in scope for the Review. From early December 2020 these people received introductory information about the Review via their employer group.⁵ This information advised participants of the Review, its timeframe, methods by which they could participate and where further information was available.

1.4.1. Literature Review

The literature review has provided an important reference point for understanding harassment in the workplace including its prevalence and drivers and how it might be prevented. In particular, the Review has drawn from the comprehensive Respect@Work report into sexual harassment in Australian workplaces.

While this Review is unprecedented in the Australian parliamentary context, a number of international jurisdictions have undertaken reviews of parliamentary workplace culture with respect to harassment and sexual harassment, albeit with variations in scope and approach.

⁵ Due to delays accessing Police Security Officer contact addresses this group received information about the Review on 21 December 2020.

Consideration of these other reviews has assisted the Commission in contextualising and interpreting the data and information gathered for this Review. While there is some variation between the focus areas and parliamentary systems across the research, the Review considers many of the principles and findings to be applicable to the terms of reference of this Review. In particular, the workplace risk factors (explored further in Part 2.5) for uncivil behaviours which speak to the culture in legislatures is consistent across the majority of the parliamentary reviews, including this Review.

Research from other jurisdictions considered by the Review include the research below. For an overview of the objectives and approach of each research report see Appendix B.

- *U.S. Select Task Force of Harassment in the Workplace* (U.S. Equal Employment Opportunity Commission 2016) (**the US Workplace Harassment report**)
- *External Independent Review: Bullying and Harassment in the New Zealand Parliamentary Workplace* (Debbie Francis 2019) (**the NZ House of Representatives Review**)
- *Sexism, harassment and violence against women in parliaments in Europe issues paper* (Inter-Parliamentary Union and Parliamentary Assembly of the Council of Europe 2018) (**the EU parliamentary issues paper**)
- *Report of the Joint Working Group on Sexual Harassment* (2018) (**the Scottish Parliament report**)
- *The Bullying and Harassment of House of Commons Staff, Independent Inquiry Report* (Dame Laura Cox DBE 2018) (**the UK House of Commons report**)
- *The Standing Committee on Procedure and House Affairs, Thirty-Eighth Report* (2014) (**the Canadian House of Commons report**)
- *A Transformational approach to Legislative workplace culture: Analysis and Evaluation of the Colorado General Assembly's culture, policies and procedures as they relate to workplace harassment* (Investigations Law Group 2018) (**the Colorado General Assembly report**)

1.4.2. Policy and procedures Review

Parliamentary workplace policies and procedures were identified and assessed for the purpose of identifying documented processes to prevent or respond to

harassment. This included work contracts, enterprise agreements, codes of conduct, policies and procedures.

Additionally relevant policies and procedures were requested from the state Labor and Liberal parties.

1.4.3. Survey

The survey was a key element of the methodology to ensure that all people in the scope of the Review were given the opportunity to contribute, anonymously, their experiences of harassment. Access to the online survey was by an anonymous link that was distributed via email to 854 participants. The survey was open from Monday 7 December 2020 to Tuesday 31 December 2020.

The survey sought to identify direct experiences of harassment in the workplace by type (e.g. sexual or racial) and by form (e.g. verbal or physical). It also sought to understand participants' perceptions of the prevalence and nature of harassment occurring and whether the workplace is regarded as safe and inclusive.

For people who identified that they had experienced harassment (as a victim or witness), the survey sought information on whether they reported the incident/s and, if not, what prevented them from doing so. Where participants reported lodging a complaint, data was collected as to the response and what the participants' satisfaction and confidence in that process was. The survey also sought to understand how those who had harassment reported to them responded to those reports.

The survey aimed primarily to collect data, however it provided participants with two opportunities to respond with free text up to 500 words. Take up of the free text option was high. Excluding 'no' 'nil' and 'N/A' responses, a total of 83 comments were left in response to 'Is there anything you think could be introduced to improve the culture and reporting processes associated with harassment in the parliamentary workplace?' and 58 comments in response to 'Is there anything else you would like to share with the Review team about your experiences and/or reporting of harassment in the parliamentary workplace?'. People wanting to submit longer text were encouraged to use the Review submission process.

219 surveys were completed, representing a response rate of about 25%. This is understood to be a satisfactory completion rate for surveys. It is the Commission's view, particularly given this survey was open for a short time over the Christmas period, that the completion rate indicates a strong interest in the Review.

Survey results are presented in relevant sections throughout this report. Appendix A provides further information about accessing the survey questions, answer options, and display and skip logic.

1.4.4. Submissions

Written submissions were invited from any person with relevant experiences or expertise via the EOC web page, and an invitation was extended via email to all those working in the parliamentary workplace as at December 2020. The Commission also wrote to all Members of Parliament encouraging them to make submissions addressing key aspects of the terms of reference.

In total 16 submissions were received. Of these 13 were from Members of Parliament. Submission content covered a wide range of matters and is incorporated in relevant sections throughout this report.

1.4.5. Interviews

All participants were provided with the opportunity to request a confidential interview,⁶ in particular to share any experiences of harassment and provide their views on workplace reform to prevent or respond to incidents of harassment. This included a specific written invitation to all Members of Parliament. The Acting Commissioner conducted eight interviews with staff in the parliamentary workplace and six with Members of Parliament.

In addition, the Acting Commissioner spoke to several key stakeholders who are not employed in the parliamentary workplace but who were identified as having relevant expertise and critical insights into aspects of the terms of reference, including the Honourable Ann Vanstone QC, Independent Commissioner Against Corruption and Mr Martyn Campbell, the Executive Director of SafeWork SA.

1.4.6. Complaint data collection

The Review requested details (including de-identified documentation) of complaints related to harassment received by employer groups and relevant external bodies over the past five years. Information relating to both formal and informal complaints was sought, as well as any Return to Work matters in which harassment was alleged.

⁶ All Members of Parliament and employees identified as being within the scope of the Review were provided with information via email about the consultation methods being undertaken by the Review and the contact details for the Review team to request an interview. This information was also publicly available on the Equal Opportunity Commission's website for the duration of the Review, and was provided in the concluding text of the Survey.

Due to the diverse nature of the parliamentary workplace, complaints can currently be directed to a variety of responsible persons and bodies. Accordingly, complaint data was requested from Members of Parliament, Ministerial Chiefs of Staff, Parliamentary Clerks, managers in the Joint Parliamentary Service, the Electorate Services section of the Department for Treasury and Finance,⁷ SA Government departments,⁸ the Independent Commission Against Corruption, the Public Service Association and the Australian Human Rights Commission. The Commission also searched for complaints made to the Equal Opportunity Commission that were within scope of the Review.

The information provided was used to assess the nature and prevalence of harassment complaints raised across the workplace settings, and to inform the Review as to how complaints are dealt with in practice.

The information collected is discussed in more detail in Part 5 of this report.

1.4.7. Some observations about the information collected by the Review

The Commissioner for Equal Opportunity does not have systemic investigative powers and has no power to require production of documents or information. This has limited the Review to using the information voluntarily made available by participants.

Not all requests for information by the Commission in undertaking the Review resulted in the provision of that information in relation to the Review. For example, one Member of Parliament replied to correspondence by stating they had no interest in participating in the Review and should be removed from the Review's mailing list. Several responses to requests for complaint data did not match other information provided to the Review (that is, complaint data was not provided in relation to matters that the Review heard from other participants were reported as complaints). The timeframe for the Review did not allow the Commission to interrogate the reasons for the discrepancies in information provided (there could be any number of reasons ranging from a lack of understanding about what constitutes harassment or a 'complaint', to an unwillingness to disclose information about complaints to the Review).

⁷ Electorate Services provides HR support to staff working for members of parliament in electorate offices and the Legislative Council.

⁸ As staff from SA departments work in Ministers' offices.

Whilst these issues raise questions as to whether the Review has been provided all relevant information requested, as mentioned above, the Commission is confident that it has collected sufficient information to address the terms of reference.

Confidentiality was an important element of the Review's methodology given the sensitive nature of the issues being considered. The Commission has endeavoured to protect participants' confidentiality at all stages, including when enquiring about individual matters. This has meant that the veracity of some of the information provided by participants could not be tested.

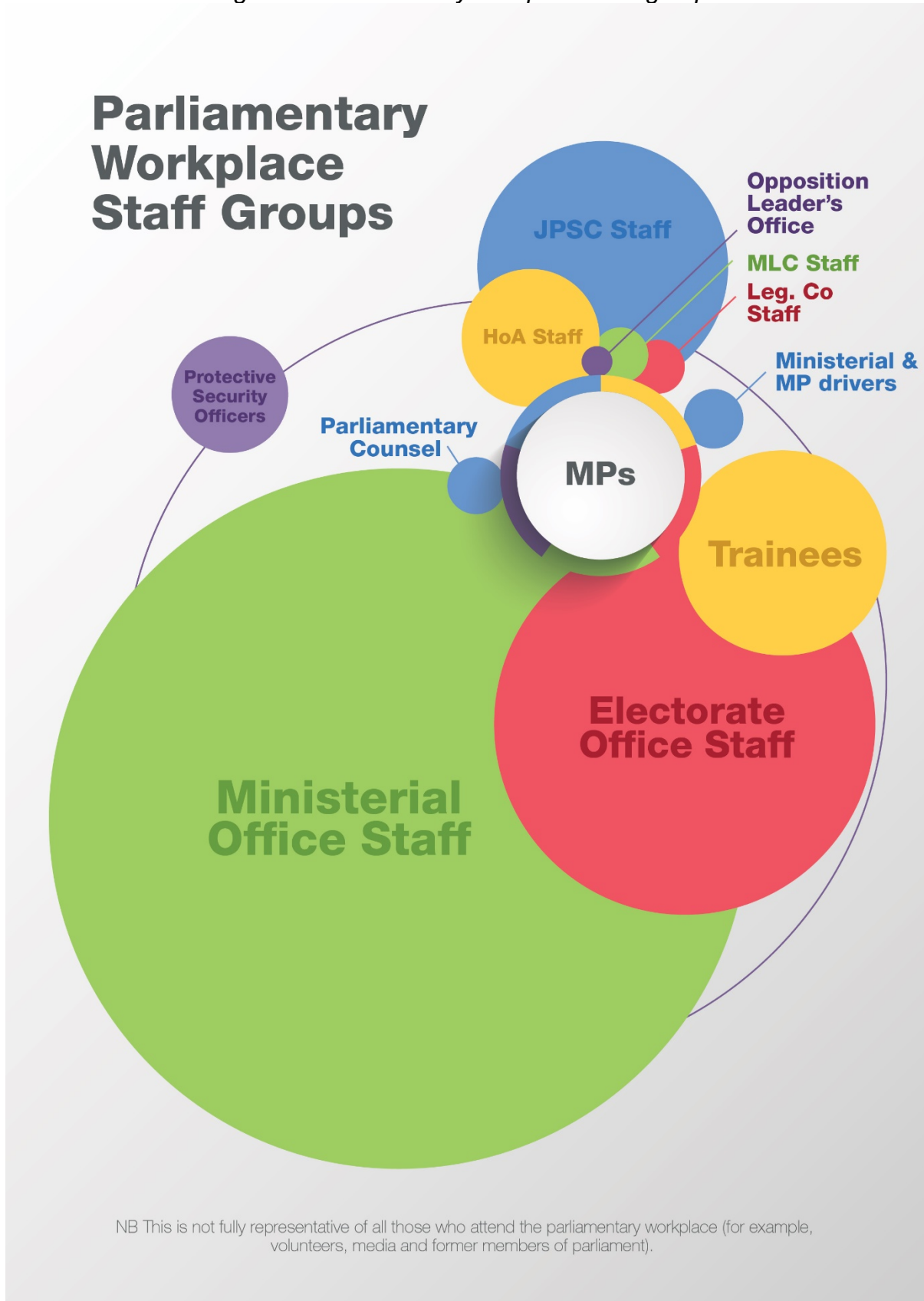
That said, the Review has not set out to make findings of fact regarding individual incidents. Rather, the methodology has been designed to enable the Commission to identify and provide analysis of themes regarding harassment, complaint handling practice and cultural aspects of the parliamentary workplace.

The timeframe and nature of the Review has also limited the extent to which stakeholders have been consulted in relation to the views expressed and recommendations made in this Report. Recommendations directed to or impacting on stakeholders were provided to those people for comment: in particular, the Attorney-General, the Executive Director of SafeWork SA and the Independent Commissioner Against Corruption. In the few cases where further consideration about options for and specifics of implementation is required, those recommendations are necessarily high-level.

1.5. Parliamentary workplace staffing groups

For the purposes of this Review the parliamentary workplace includes the Parliament House precinct, electorate offices and Ministerial offices, and, as reflected in Figure 1 below, the people working in that environment who belong to a number of workgroups. Each workgroup has its own employment conditions operating under a number of legislative frameworks. This contributes to a complex setting in regard to procedures, responsibility and accountability, in particular when employment matters (including harassment allegations) cross over workgroups.

Figure 1: Parliamentary workplace staff groups



Overlaps between groups represent primary interfaces, however staff will likely interact with other workgroups in the course of their duties.

1.5.1. Members of Parliament

There are 69 Members of Parliament who hold their offices pursuant to the *Constitution Act 1934 (SA)* (**Constitution Act**) and by virtue of being voted to hold those offices by the electorate.⁹ Apart from being voted out, there are very limited circumstances (for example being found guilty of an indictable offence) in which a Member of Parliament can be removed;¹⁰ they are accountable to the public every four years, or in the case of Legislative Council members, every eight years. That level of accountability is fundamental to our democracy and the principles, such as the separation of powers, that underpin it.

When viewed through a workplace lens however, the accountability of Members of Parliament at election time becomes less satisfactory. Members of Parliament are part of the parliamentary workplace. They are managers, they have responsibilities under WHS legislation and they are subject to anti-discrimination and sexual harassment laws. At the same time they are not employees or employers, few of the mechanisms to resolve workplace disputes apply to them, and there is limited 'oversight' of their conduct. The political nature of the workplace and the power imbalance that necessarily favours Members of Parliament over staff brings more complexity to this issue.

It is in this context that the Commission has asked how to bring more accountability to Members of Parliament for their behaviour in the parliamentary workplace. No suggestion has been made to the Review that Members of Parliament should not be held to account for their behaviour when it amounts to sexual or discriminatory conduct,¹¹ rather the question is whether more accountability is possible.

1.5.2. Staff employed in the parliamentary workplace

Staff working in the parliamentary workplace broadly fall into three categories.

- 1. Members of Parliament staff and Protective Security Officers.** The former are public sector staff employed under sections 71 and 72 of the Public Sector Act. These positions include but are not limited to electorate office staff, Members of the Legislative Council staff and staff of Ministers. Protective Security Officers are assigned to the Parliamentary precinct to provide security services.

⁹ 'Member Details', *Parliament South Australia* (Web Page) <<https://www.parliament.sa.gov.au/en/Members/Member-Details>>.

¹⁰ *Constitution Act 1934 (SA)* ss 17, 31 ('*Constitution Act*').

¹¹ Although several statements were made to the Review suggesting that victims of sexual harassment in this workplace should just tell their harassers to stop the behaviour.

2. **Public Service staff** include Parliamentary Counsel, line agency staff located in ministerial offices and Trainees.
3. **Staff working in Parliament House** include House of Assembly staff, Legislative Council staff, Joint Parliamentary Services staff and Clerks.

Members of Parliament staff and Protective Security Officers

The Member of Parliament staff and Protective Security Officers are not public service employees but are part of the public sector. As such they are not subject to the full provisions of the Public Sector Act.

Parliamentary workplace staff employed under section 72 of the Public Sector Act employment contract is with the Treasurer (as the Minister responsible) to support the work of Members of Parliament. House of Assembly positions include office managers and research officers primarily based in the electorate office. Legislative Council staff are based in Parliament House. Additional staff allocations are available to certain Members based on their roles, for example if they are Independents, Minor Parties, Whips, Premier, Leader of Opposition, Presiding Officers, Deputy Speaker and if they are large regional electorates. Additional staff may include extra office managers, assistants, and research officers. There are 106 FTEs in electorate offices and about 30 FTEs in Members of the Legislative Council staff. DTF Electorate Services delivers employer responsibilities, including but not limited to, human resource and payroll assistance.

A further 19 FTEs (plus some casuals) are employed as Ministerial Chauffeurs who service Ministers and assigned positions in Parliament such as Presiding Officers, Leader and Deputy Leader of Opposition in the House of Assembly and Leader of the Opposition in Legislative Council.

The Office of the Opposition Leader is based in Parliament House and has 10 FTEs.

Staff employed to work for Ministers (such as chiefs of staff and policy and media advisors) are employed under section 71 of the Public Sector Act; their employment contract is with the Premier. There are 222 FTEs assigned to ministerial offices.

Protective Security Officers staff are appointed under the *Protective Security Act 2007* (SA). The Public Sector Act section 25 excludes Protective Security Officers from the public service.

Public Service staff

The following positions in the parliamentary workplace are held by public service staff:

- Trainees employed through DTF and Department of Industry and Skills to work in Members offices in both Houses of Parliament. DTF Electorate Services provide HR and employer responsibilities to these employees. There are 69 trainee positions.
- Ministerial staff that are seconded into the relevant Minister's office from the public service agency, such as Ministerial Liaison Officers.
- Staff of the Parliamentary Counsel (currently 19 FTE).

Parliament House staff

The following workgroups are staff in Parliament House:

- Clerks
The Clerks of each of the Houses are appointed by the Governor to public office pursuant to the Constitution Act 1934. Clerks can only be removed from office by resolution of the relevant House.¹² Authority over the Clerks is vested in the relevant House. As a matter of practice and convention, that power and authority has been delegated to the respective Presiding Officers.
- Parliamentary Officers, employees of the House of Assembly and Legislative Council
Parliamentary Officers are engaged by the respective Houses as employees of the Crown acting in its legislative capacity. This engagement is effected by the relevant Presiding Officer on behalf of the House. There are two unregistered enterprise agreements applying to the staff of each House and which govern their employment conditions. The House of Assembly comprises 30.5 FTEs, and the Legislative Council 18.0 FTEs, including the Clerks.
- Joint Parliament Services staff
Parliamentary Library, Parliamentary Catering, Parliamentary reporting (Hansard) and Joint Services staff working in Parliament House are engaged under the *Parliament (Joint Services) Act 1985* (SA) (**Parliament (Joint Services) Act**). Whilst these staff are employees of the Crown, the Joint Parliamentary Service Committee has power over matters relating to their

¹² *Constitution Act* (n 10) s 58(2).

employment conditions. The *Staff Employed Under the Parliament (Joint Services) Act 1985 Enterprise Agreement 2018*, approved by resolution of the Committee, currently governs the employment conditions of these employees, and is registered with the South Australian Employment Tribunal. In the 2019-20 financial year there were 84 FTE in the Joint Parliamentary Service.¹³

1.5.3. The disparate nature of the employment structure

The parliamentary workplace is by its nature complex in terms of employment arrangements. The employment structure is dictated by several factors including the separation of powers and multiple legislative frameworks. The arrangements however do create confusion and inconsistency across the workforce on standards, policy, procedures and accountability. This plays out in very practical terms which are detailed further in this report.

¹³ Joint Parliamentary Service Committee, *32nd Annual Report 2019-20 on the Administration of the Joint Parliamentary Service* (Report No 32, 22 September 2020) 36-37.

2. Insights into harassment in the parliamentary workplace

While the Review's terms of reference noted the prevalence and nature of harassment in the parliamentary workplace, the Commission considered it necessary to seek further insight into the prevalence, nature, impacts and drivers of sexual and discriminatory harassment in the parliamentary workplace in order to arrive at an appropriate, proportionate and comprehensive set of recommendations.

The primary source of information regarding the nature and prevalence of harassment in the parliamentary workplace was data obtained from the survey. The results of the survey indicate similarities between the South Australian Parliament, other Australian workplaces and overseas parliamentary workplaces with regard to the prevalence and nature of sexual and other forms of workplace harassment. The key findings of the survey were also consistent with themes identified in verbal and written submissions to the Review, as outlined below.

Analysis of the survey data provided below was prepared with the assistance of the Office for Data Analytics, Department of the Premier and Cabinet.

2.1. Prevalence of sexual and discriminatory harassment

2.1.1. Sexual harassment

Experiences of sexual harassment

18.6% (37) of 199 survey participants reported experiencing sexual harassment at least once during their time working in a parliamentary workplace¹⁴ (see Table 1).

¹⁴ Q30 - "During your time working in the parliamentary workplace, have you ever been sexually harassed?"

Table 1: Experiences of sexual harassment

During your time working in the parliamentary workplace, have you ever been sexually harassed?	Count (n)	Percentage of total (%)
No	153	76.9
Yes	37	18.6
Yes, once	25	12.6
Yes, more than once	12	6.0
Prefer not to say / not sure	9	4.5
Total Q30 survey responses	199	100.0

Source: EOC Independent Review into harassment survey 2020/21, Q30

In addition to these 37 individuals, a further 17 respondents responded ‘Yes’ when asked if they had experienced specific types of unwelcome sexually harassing behaviours in the parliamentary workplace.¹⁵ Overall, a total of 27.1% (54 respondents) reported experiencing at least one form of sexual harassment in the parliamentary workplace. Of these 54 respondents, 38 were women.

It is notable that almost one-third of the people who reported experiencing sexually harassing behaviours in the parliamentary workplace did not define it as ‘sexual harassment’.

The survey results found that the two most common places where sexual harassment behaviours were experienced in the parliamentary workplaces were:

- in Parliament House (but not in the chamber of either House) (41 respondents), and
- at a work-related event or celebration (26 respondents).

The Review also heard directly from victims of alleged sexual harassment during the submission and interview stages of the Review. A total of eight participants (comprising of six interview participants and two participants who wrote to the Commission) reported being sexually harassed in the last five years. Five out of a total of seven female interview participants reported experiencing sexual harassment

¹⁵ Q31, Q35 and Q38 – “Have you experienced any of the following behaviours in a way that was unwelcome in the parliamentary workplace?”

in the parliamentary workplace. All of the alleged incidents described either Members of Parliament or staff of Members of Parliament as being the perpetrators.

These results, while alarming, are consistent with other survey findings relating to reported sexual harassment. Respect@Work documented findings from the Australian Human Rights Commission's 2018 *Everyone's business: Fourth national survey on sexual harassment in Australian Workplaces (2018 National Survey)*. Results of this survey indicate that workplace sexual harassment is a common experience, with one in three people (33%) reporting they had experienced sexual harassment at work in the last five years.¹⁶

The literature specific to parliamentary workplaces similarly found that sexual harassment is a common workplace experience, although prevalence rates varied.¹⁷

- The survey conducted in the Scottish Parliament reported that 30% of female workers and 6% of male workers had experienced sexual harassment.
- The EU parliamentary issues paper reported 41% of female staff surveyed reported having experienced sexual harassment at work.
- More than 25% of respondents to the survey informing the Colorado General Assembly report reported having observed or experienced sexual harassment in the legislative workplace.

Gendered experiences of sexual assault

The gendered nature of workplace sexual harassment is demonstrated across multiple secondary sources.

Sexual harassment is overwhelmingly experienced by women. However Respect@Work reported that while women are more likely to experience workplace sexual harassment, men also experience sexual harassment at work (39% of women and 26% of men surveyed reported experiencing sexual harassment at work).¹⁸ The Review heard an historic example from one male interview participant who relayed:

if I got in the lift with a certain female MP, I would plant my backside up against the wall of the lift so that I didn't get my backside pinched.

¹⁶ Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (2018) 26 ('*Everyone's Business*').

¹⁷ Differing methodologies between studies may account for this in part – for example the EU issues paper having been informed by in-person conversations with individual workers, the UK report being informed by both in-person conversations and written submissions, and the NZ and Scottish rates being derived from an online survey issued to MPs and staff.

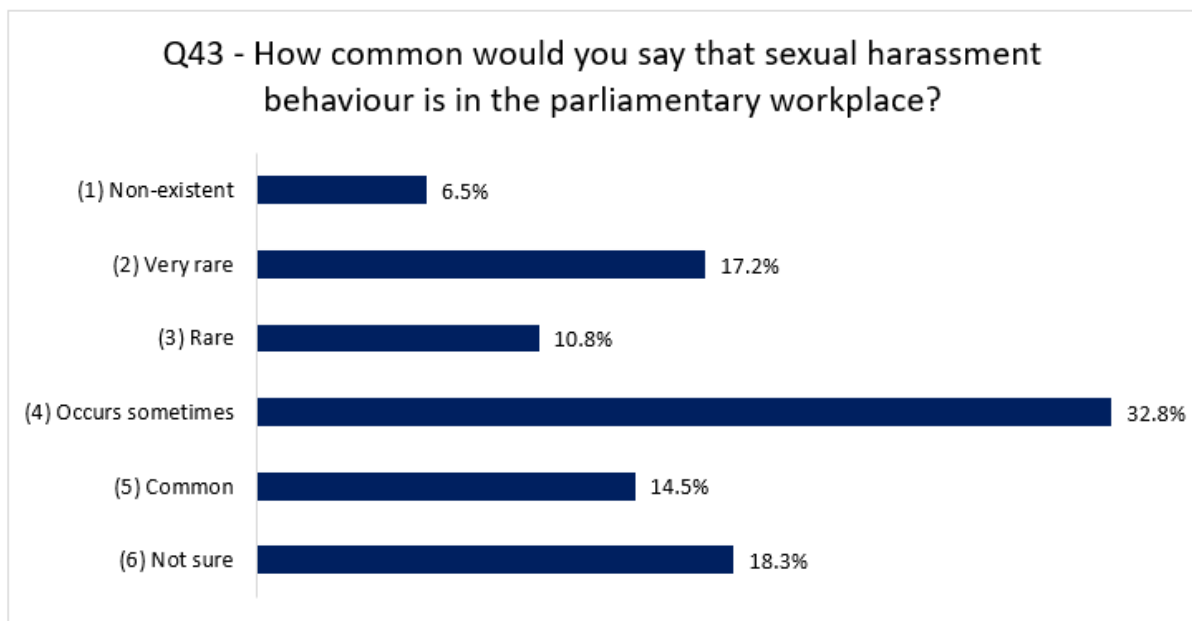
¹⁸ *Everyone's Business* (n 16) 26.

Irrespective of the sex of the victim, the overwhelming majority of harassers involved in workplace sexual harassment are men (79% of people who reported experiencing sexual harassment in the 2018 National Survey reported they were harassed by a male).¹⁹ The evidence was similar from international parliamentary reports: all allegations of sexual harassment contributed to the UK House of Commons report involved male harassers,²⁰ and the EU parliamentary issues paper reported that 69% of those who reported being sexually harassed said their harasser was male.

Perceptions about the prevalence of sexual harassment

The survey also measured participants' perceptions of how prevalent sexual harassment is in the parliamentary workplace. Figure 2 below shows responses for 'how common sexual harassment behaviour is in the workplace', with 61 respondents (or 32.8%) stating it 'occurs sometimes' and a further 29 respondents (14.5%) stating it is common.

Figure 2: Perceived prevalence of sexual harassment in the parliamentary workplace



Source: EOC Independent Review into harassment survey 2020/21, Q43

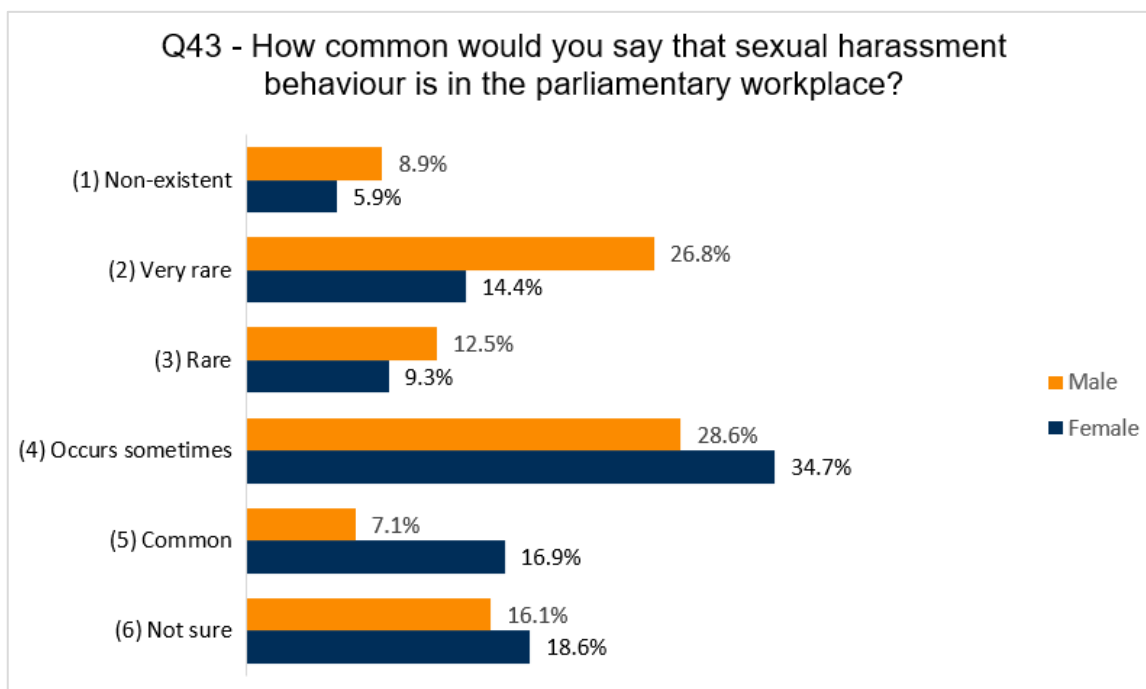
When Q43 survey responses are viewed by gender (see Figure 3), it is apparent that a participant's gender may influence their perception of how common sexual harassment is. 34.7% of women responded that sexual harassment 'occurs sometimes', compared with 28.6% of men who responded to this question, and more

¹⁹ Ibid 8.

²⁰ Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report* (Report, 15 October 2018) 76 [191].

men than women thought sexual harassment behaviour in the parliamentary workplace was ‘very rare’, ‘rare’ or ‘non-existent’.

Figure 3: Perceived prevalence of sexual harassment in the parliamentary workplace, by gender



Source: EOC Independent Review into harassment survey 2020/21, Q43

Verbal submissions to the Review also indicated there is a perception that sexual harassment is not uncommon. One interview participant stated:

When it came out that there was the initial article that said someone had sexually harassed someone, I could name three people that I thought it was.

2.1.2. Discriminatory harassment

The survey indicated that discriminatory harassment in the parliamentary workplace is also commonplace.

Of the 192 respondents who answered Q63,²¹ 31.8% (61 respondents) reported having experienced offensive comments or jokes made about a personal attribute protected by equal opportunity legislation, including but not limited to:

- age (33 respondents)
- marital status (23 respondents)
- sex (23 respondents)

²¹ ‘At any time since you started working in the parliamentary workplace have you had offensive comments or jokes made about any of the following?’

- caring responsibilities (16 respondents)
- race (12 respondents)
- sexual orientation (12 respondents).

Of these, 27 incidences of offensive comments or jokes were 'once-off remarks' and 28 incidences were part of a pattern of ongoing behaviour. Half of the incidences reported as being part of a pattern of behaviour had been ongoing for more than 12 months (14 respondents).

Of the 190 survey participants who answered Q69:²²

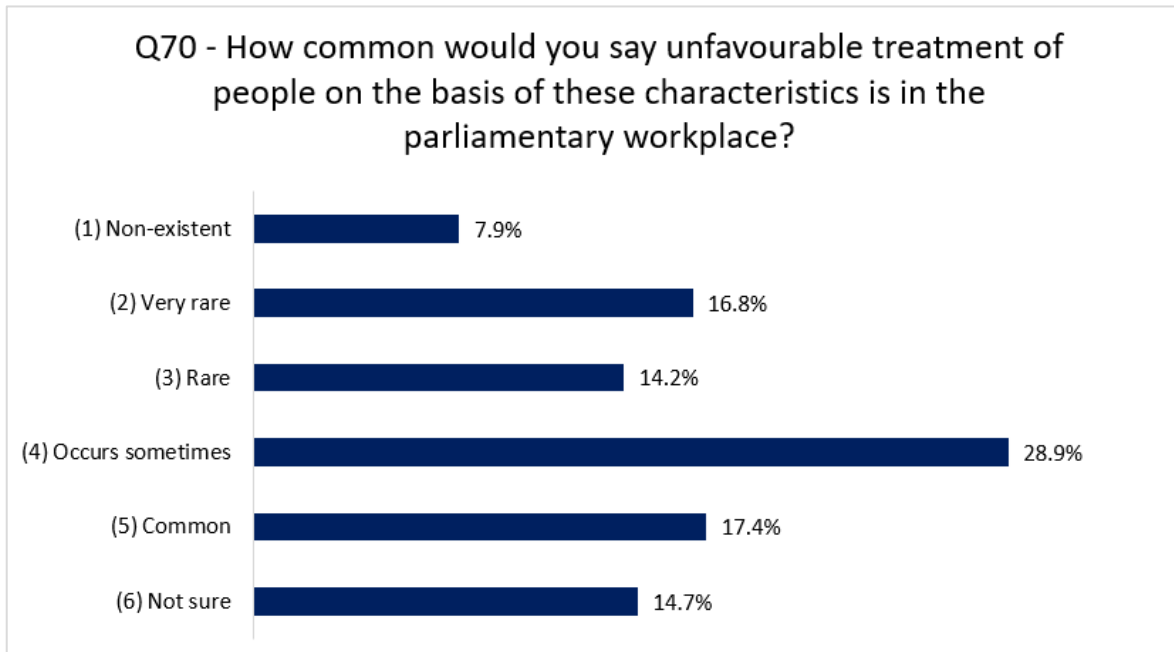
- 25 respondents (13.2%) reported having been treated unfavourably on the basis of their sex
- 23 respondents (12.18%) reported having been treated unfavourably on the basis of their age
- 17 respondents (9.3%) reported having been treated unfavourably on the basis of their caring responsibilities.

The survey also measured the perceived frequency of discriminatory harassment in the parliamentary workplace. Of the 190 respondents who answered Q70,²³ 55 survey participants (28.9%) reported unfavourable treatment of people on the basis of personal characteristics protected under anti-discrimination law 'occurs sometimes' and 33 (17.4%) reported it is 'common'.

²² 'At any time since you started working in the parliamentary workplace do you think you have been treated unfavourably on the basis of any of the below [personal attributes]?'

²³ Q70 – 'How common would you say unfavourable treatment of people on the basis of these characteristics is in the parliamentary workplace?' These characteristics were sexual orientation, gender identity, age, caring responsibilities, marital status, race, sex, spouse or partners identity.

Figure 4: Perceived prevalence of harassment in the parliamentary workplace



Source: EOC Independent Review into harassment survey 2020/21, Q70

Verbal submissions to the Review also identified that discriminatory harassment occurs sometimes, with interview participants stating:

There's definitely, unfortunately, a bit of an antisocial culture of just kind of derogatory female jokes, that kind of stuff

and

I have experienced racism. I have experienced sexism.

and

Women are just second class citizens at parliament.

Several of the international studies of parliamentary workplaces also documented the presence of discriminatory harassment. For example, the UK House of Commons report noted the existence of a culture that supports discriminatory harassment and similarly provided examples related to sexism and racism.

The survey issued as part of the Colorado General Assembly Report found that despite respondents describing the legislative workplace in generally positive terms, 86% of respondents had seen or experienced harassing behaviours on the basis of

sex, 46% on the basis of sexual orientation, 36% on the basis of age, 31% on the basis of race and 12% on the basis of disability.²⁴

2.1.3. Bullying and harassment

Instances of bullying and harassment of a general nature that fall outside the scope of this Review were frequently raised throughout all consultation phases of the Review. In the view of one interview participant who contributed to the Review:

The more common workplace bullying and harassment causes way more trouble and causes way more issues in the workplace than, you know, harassment on the basis of gender and all the rest of it; age.

Participants of this Review reported bullying by and towards both staff and Members of Parliament, including bullying of staff and members by female Members of Parliament. One interview participant stated:

It's a place where that kind of behaviour isn't necessarily top down, it's across to cross, it's bottom up as well. There's a lot of dysfunctional working relationships.

Four participants to the Review reported instances of bullying behaviours by female Members of Parliament. This is consistent with the NZ House of Representatives Review, which heard sentiments to this effect including, '[s]ome of the worst bullies are women, trying to out Alpha the guys.'²⁵ Bullying was specifically considered in the New Zealand House of Representatives report and the UK House of Commons report because of the perceived or actual prevalence of bullying in those parliamentary environments.

While bullying falls outside the Review's terms of reference, research suggests that 'patterns of unprofessional behaviour may often co-occur with sexual harassment in the workplace'.²⁶ Respect@Work found that 'general incivility in a workplace is associated with higher rates of workplace sexual harassment'.²⁷ Hence, efforts to change workplace culture around sexual harassment and establish a safe working environment should target all types of uncivil behaviour. The impacts of, and

²⁴ Other bases for harassment were also reported on, however were excluded here as these are not protected attributes under SA's Equal Opportunity Act: Investigations Law Group, LLC, *General Assembly 2.0: A Transformational Approach to Legislative Workplace Culture* (Report, 2 April 2018) 47 ('Colorado Report').

²⁵ Debbie Francis, *External Independent Review: Bullying and Harassment in the New Zealand Parliamentary Workplace* (Final Report, May 2019) 57.

²⁶ Jodie L Hertzog, David Wright and Debra Beat, 'There's a Policy For That: A Comparison of the Organisational Culture of Workplaces Reporting Incidents of Sexual Harassment' (2008) 17(2) *Behaviour and Social Issues* 169, 175.

²⁷ *Respect@Work* (n 1) 157.

obligations to prevent, psychological harm to workers apply not only to sexual and discriminatory harassment (see Part 5.7 for further discussion about duties pertaining to psychological harm) but also to bullying.

The Commission considers the prevalence of bullying in the parliamentary workplace, particularly by people in positions of power, is a significant concern warranting further consideration by the workplace.

2.1.4. Other views about parliamentary workplace culture

The Review was also told, via the free text sections of the survey, that sexual and discriminatory harassment are *not* issues in the parliamentary workplace. That the parliamentary workplace has improved in terms of culture and growing unacceptability of these behaviours as compared to times past was a sentiment also expressed to varying degrees by several interview participants.

Survey responses to this effect included:

I don't think the workplace culture here should be overstated. Apart from a recent well publicised incident I don't believe the culture here is any worse than any number of workplaces I have worked in, in fact I would say it is better and more respectful. If you were to ask me the same question ... years ago I might have given a different answer, but Parliament has moved with community expectations with regard to workplace behaviour.

and

It is generally pretty good. Workplace attitudes have changed and introducing another layer of bureaucracy won't help change attitudes or culture. I have found MPs to be supportive, respectful and found that most harassment ... to be between colleagues at the same level.

and

In my experience, the culture at Parliament House has been excellent.

Concern was raised by one respondent that the Review came about only for political purposes:

I have worked in politics and in Parliament House for a long time and it is generally a good place to work (as evidenced by the number of staff who have stayed there for long periods of time). As with all things in politics, there are a number of people who will use anything to advance their own careers and

diminish the careers of others, which is what has given way to this enquiry.

Sexual harassment is not systemic or widespread at Parliament House.

Concerns about the potential misuse of complaints processes for political purposes were raised in a written submission and this is discussed in Part 5.2.

The Commission acknowledges that many people in the parliamentary workplace would not have experienced or witnessed firsthand harassment. Primary data collected by the Review does not quantify in any exact terms the prevalence of harassment in the workplace.²⁸ As is the case with any voluntary survey, the results reflect the views of those who participated in it.

That said, in the Commission's view, the primary data does indicate that harassment in the parliamentary workplace is too prevalent. It appears to occur at a rate similar to workplaces across Australia and to international parliamentary workplaces, and the risk factors associated with the workplace's culture and systems also point to a problem that needs to be addressed. The information collected by the Review as to the nature and harmful impacts of harassment in the parliamentary workplace described below reinforces that harassment needs to be addressed.

2.2. The nature of sexual and discriminatory harassment

Harassment manifests in multiple forms. There is a spectrum of behaviours ranging from once off, mildly offensive comments to sexual assault.

2.2.1. Sexual harassment

Secondary research sources indicate that the most common forms of workplace sexual harassment are:²⁹

- verbal forms of sexual harassment (such as sexually suggestive comments or jokes, intrusive questions about private life or physical appearance, repeated invitations to go on dates, or requests or pressure for sex)
- sexually explicit pictures, posters or gifts
- intimidating or threatening behaviours (such as inappropriate staring or leering, sexual gestures, indecent exposure, or being followed, watched or someone loitering nearby)

²⁸ The reasons for this are many, including that reporting of harassment is commonly under-reported, and the self-selection of participants in partaking in the data collection process (the Commission notes however that selection bias is an element in any study that involves the collection of data through non-compulsory means such as a voluntary staff survey).

²⁹ *Respect@Work* (n 1) 123.

- inappropriate physical contact (such as unwelcome touching, hugging, cornering or kissing, or actual or attempted rape or sexual assault)
- sexual harassment involving the use of technology (including sexually explicit emails, text messages or social media, indecent phone calls, repeated or inappropriate advances online, or sharing or threatening to share intimate images or film without consent).

Survey participants to the Review reported that the two most common types of unwelcome sexual behaviour were 'sexually suggestive comments or jokes that made them feel offended, humiliated or intimidated' (25.1% of survey respondents), followed by behaviour such as 'inappropriate staring, leering or repeated physical proximity that made them feel uncomfortable or intimidated' (18.1%).

By way of example, one interview participant recounted:

I've seen male MPs from the other side cross the chamber and sit next to female MPs in the chamber with their legs up against them several times but in a jokey kind of way that you really couldn't say anything about it.

and

I've seen it at social events where, you know, [young female staff] are not comfortable that they have got a male, usually MP, lurking over them.

Another interview participant reported overhearing inappropriate comments made by Members of Parliament a number of times about women, including 'Oh, they have got their tits out' and 'Oh, they're always really wearing a bit skanky outfits'.

For the 50 survey participants who reported experiencing 'sexually suggestive comments or jokes that made them feel offended, humiliated or intimidated', those working in the Parliament House or for a Member of Parliament received the most comments and/or jokes.³⁰ Examples of this conduct raised by interview participants ranged from a senior colleague making an unwelcome advance, to a male in a position of power making explicit his sexual desires to colleagues.

23 survey respondents responded 'yes' in Q31 that they had experienced 'unwelcome touching such as hugging, kissing or placing a hand on your knee'.³¹ In free text sections of the survey, respondents reported feeling uncomfortable in various situations at work, including while a colleague rubbed their back, being

³⁰ Specifically: 14 respondents who indicated 'I work in Parliament House (but not for a MP)', and 13 respondents who marked 'I work for a Member of Parliament.'

³¹ 'Have you experienced any of the following behaviours in a way that was unwelcome in the parliamentary workplace?'

kissed as a greeting and having their 'back sides' touched. One respondent commented generally on behaviour 'being more friendly than you would expect your employer to be'.

Two survey participants reported via free text that they had experienced sexual gestures in the workplace, including other people in the workplace 'grabbing at themselves' and 'indecent[ly] touching themselves'. The Review also heard of an instance of a male exposing himself in front of co-workers.

The existence of behaviours in the parliamentary workplace at the more severe end of the spectrum of sexual harassment was evident through the interview process, with six separate alleged incidents of sexual harassment which might otherwise be considered assault being reported to the Review.³²

Overall, technology-facilitated forms of sexual harassment were reported as less prevalent than other forms of sexual harassment in the parliamentary workplace.³³

Sexual harassment at events and during travel

The Review was told by interview participants about female staff feeling vulnerable to advances from male Members of Parliament, including when travelling for work or attending work events, leading female staff and their supporters to self-manage their movements and attendances to avoid interactions with certain Members, or avoid potentially compromising situations, and ensure their safety.

After witnessing sexual harassment at a work-related event, another female worker told the Review she had become more conscious being around male Members of Parliament. Another interview participant observed:

In terms of comments at social events, where there's excessive alcohol consumption ... people say things they shouldn't say, touch people in ways they shouldn't touch people. That happens.

Six examples of sexual harassment in environments with alcohol were shared by participants in the review. These involved both Members of Parliament and staff as harassers. Interview participants stated:

you don't want to be sitting next to him when he has had some drinks. And I

³² For clarity, the Review was not told about any instances of alleged rape in the parliamentary workplace.

³³ Of the 195 respondents who answered Q38, 4.6% (9 respondents) experienced 'repeated or inappropriate advances on email, social networking websites or internet chat rooms'; and 3.1% (6 respondents) have experienced 'sexually explicit comments made in emails, SMS messages or on social media'.

learnt that one, never again... he put his hand up my skirt, really far up my skirt.

And, regarding a separate incident:

at an after work kind of thing ... Someone said "can you see, like, where his hand is?" ... I just kind of got [the victim] out of the situation.

In addition, the following survey responses spoke to the interaction of alcohol and inappropriate behaviour:

Sexual Harassment by a Member was reported to me by a co-worker. The incidents occurred after alcohol consumption by the Member. ... Our plan was for me to support the staff member and accompany her to ensure that she was not at any time alone with the Member especially in situations where alcohol was being consumed. This was an effective strategy as the behaviour was not repeated when other people were present.

and

Parliament works late and long days, tolerates the use of alcohol, and routinely creates situations where staff are isolated. I think these types of features (none of which are necessary for Parliament to do its job, and most of which are prohibited in other workplaces) create situations where the risk of misconduct is heightened.

The following survey responses further point to alcohol consumption being of relevance to instances of sexual harassment:

Some policy limits around alcohol consumption would be helpful

and

Improved systems for transparency and accountability around alcohol consumption including the identification and management of risks when consuming alcohol within the parliamentary precinct and also while travelling off site with members would also assist.

It is important to note that the research is clear that alcohol does not cause violence against women, including sexual harassment. Rather, alcohol is a 'reinforcing factor' that may interact with gender inequality to increase the frequency or severity of such behaviours.³⁴

³⁴ Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth, *Change the Story: A Shared Framework for the Primary Prevention of Violence Against Women and their Children in Australia* (2015) 26-27. ('Change the Story').

2.2.2. Discriminatory harassment

Interview and survey participants provided examples of harassing or discriminatory behaviours in the parliamentary workplace on the basis of age, race, gender identity, sexual orientation and sex. Most forms of discriminatory harassment reported to the review were verbal forms of harassment.

Discrimination on the basis of age

33 of 59 respondents who reported they had been subjected to discriminatory harassment said its basis was age.

The Review heard of instances of age discrimination against both older and younger workers. One interview participant reported experiences of negative attitudes towards young, female trainees (intersectionality is discussed in Part 2.5). The person reported having been told by their manager that:

Because of my age, I was not worth the amount I was paid and that meant I had to work harder than everyone else.

Another younger worker expressed concern in their survey response that they would face discrimination as a woman of 'childbearing age', based on observations of how others have been treated.

An interview participant reported having witnessed a Member of Parliament making disparaging remarks about an older co-worker and assigning tasks based on an assumption about their ability to use technology.

The Review heard conflicting information about ageism with respect to Members of Parliament. One interview participant reported that:

[people in leadership positions] don't like younger members. They openly treat them poorer as well, male or female, because they are used to the older members.

While another interview participant stated:

I mean they cleared, both parties cleared out anybody who was older than 55 last parliament. ... So, that's been a really obvious thing for me to look at in parliament, they have actually got rid of the older people.

Discrimination on the basis of race

One interview participant reported having witnessed workers talking in an accent to mock the race or ethnicity of others within earshot, while another interview

participant noted instances of blatant racism they had been the recipient of over a period of time, with terminology such as 'Nip' and 'you and your people' used in reference to their heritage.

Another interview participant recounted:

I've heard MPs yell at other MPs from non-English speaking backgrounds about that fact, across the chamber. ... I'm not sure if they ever made it to Hansard or not.

Discrimination on the basis of gender and sex

One survey respondent reported that their manager has referred to their physical appearance using derogatory slang related to gender identity.

Sexism was raised as a particularly significant issue, with examples provided including that women are less prevalent in senior positions and are excluded from decision-making and a woman having children is considered 'career suicide'. This view is reinforced by the limited arrangements currently in place to support employees with family caring responsibilities, including flexible working arrangements, carer's leave and breastfeeding facilities. The need for systemic changes to reduce barriers for employees with family caring responsibilities is addressed further in Part 4.2. One interview participant stated that 'sexism by MPs is endemic'.

Another interview participant was told that they won their position because they had a partner. Their manager informed them that, because they had a partner, the manager would not have to worry about them having sex with a colleague.

Survey respondents reported:

While there has been incremental improvements, systemic sexism continues to make the parliamentary workplace, and politics in general, largely, a men's club.

and

I have experienced harassment due to my sex (female) which is subtle but ever present. I doubt that the MP even realises what he is doing is discriminatory. It relates to valuing the contribution or advice of a male person over myself as a female, even when what is being presented is the same advice.

and

addressing the high incidence of indirect harassment such as bias against women who may wish to progress in their careers, but have caring responsibilities. ... I am worried there is a black mark against my name.

and, in reference to a male manager:

He is disproportionately effusive in his praise of and kindness to younger male staff members.

A female interview participant stated:

I had people ... continuously trying to bypass me and go to my (male) colleague or assume that they should go to my (male) colleague in relation to negotiations that we were undertaking.

Unconscious bias is a well-documented phenomenon, and secondary research sources suggest gendered unconscious bias persists in many workplaces, particularly those that are male dominated.³⁵

Sexism, amongst other forms of discriminatory harassment, was consistently noted in other parliamentary workplaces. The UK House of Commons report cited several incidences of workplace sexism and racism in verbal form.³⁶ Harassment on the basis of sex and sexual orientation are specifically noted in the NZ House of Representatives Review as being prevalent forms of workplace harassment, and it was found by the Colorado General Assembly Report that '[c]omments about a woman's looks, weight, clothing, dress length, crude jokes and devaluing in nature occur frequently.'³⁷

2.3. Impacts of sexual and discriminatory harassment

2.3.1. Impacts on victims

The five most common impacts of workplace sexual harassment reported by the 62 survey participants who were asked Q56 were:³⁸

- I feel less safe at work (15 respondents)

³⁵ See for example Chief Executive Women and Male Champions of Change, *In The Eye Of The Beholder: Avoiding The Merit Trap* (2016), regarding gendered unconscious bias in the workplace, <<https://championsofchangecoalition.org/wp-content/uploads/2016/08/MCC-CEW-Merit-Paper-FINAL.pdf>>.

³⁶ For example, some women described being humiliated in front of colleagues by comments about why they needed to work or have a career if they had a husband, or "why do we need another woman in here, we already have two".

³⁷ *Colorado Report* (n 24) 49.

³⁸ 'Has your experience of workplace sexual harassment impacted you in any of the following ways?'

- My relationships at work have been affected (13 respondents)
- My self-esteem and confidence has been impacted (12 respondents)
- My performance at work has been negatively impacted (11 respondents)
- My health has been negatively impacted (11 respondents).

Of the 72 respondents who were asked Q84 about the impacts of discriminatory harassment,³⁹ the most common impacts reported were:

- My self-esteem and confidence has been impacted (28 respondents)
- My relationships at work have been affected (27 respondents)
- My performance at work has been negatively impacted (18 respondents)
- I have sought support from a counsellor or psychologist (17 respondents)
- My health has been negatively impacted (17 respondents)
- My career pathway has been inhibited (17 respondents).

One survey participant confirmed aspects of these findings in their free text response, stating:

The culture of accepting bullying and harassment has led to significant health issues (stress, mental health, anxiety, etc) for many staff and contributes to absenteeism, need for regular staff counselling, high staff turnover.

With reference to sexual harassment, one interview participant described:

I would say it has impacted probably my performance because when I was so anxious and stressed and just that kind of consumes you, not working at your usual capacity and, you know, my career prospects

And in a written submission the Review was informed:

Sexual harassment is corrosive to the victim's well-being and self-esteem. As someone who has had some, but limited experience of sexual harassment, it has the effect of objectifying the victim as a sexual object and diminishing the victim's agency.

Documents obtained by the Review contain statements from victims about the impact of workplace harassment including:

I dread coming into work... I feel as though this distrust is eating away at my personal and career development

and

³⁹ 'Has your experience of workplace [discriminatory] harassment impacted you in any of the following ways?'

There are days where I haven't been able to eat or sleep when I get home

As part of the process of collecting complaint documentation (see Part 1.4), the Commission has viewed paperwork from a medical professional about symptoms being exhibited by their patient as a result of alleged workplace harassment. This paperwork demonstrates the link between the psychological toll of harassment and both psychological and physical symptoms, listing the employee's symptoms as:

- physical: heart palpitations, fatigue, sleep disturbance, insomnia, headaches, muscular aches and pains, high blood pressure
- psychological: worry, fear, anger, tearfulness, irritability, anxiety, helplessness, difficulties with concentration or memory, or feeling overwhelmed.

Secondary research sources similarly confirm a range of health, wellbeing, and performance-related impacts of workplace harassment on victims. The literature identifies that the existence and/or severity of these impacts vary for individuals, depending on a range of contributing factors relevant to the harassment and the victim's personal circumstances and characteristics.⁴⁰

With respect to sexual harassment, victims who made contributions to the Respect@Work inquiry 'repeatedly' reported they 'felt uncomfortable, stressed and unhappy after they had been sexually harassed, and that the incident affected their confidence and sense of self-worth'.⁴¹ Owing to the personal and inherent nature of characteristics targeted by discriminatory harassment, it is arguable that the same is true for victims of discriminatory harassment.

Emotional 'breakdowns' were reported to be a common experience of victims by the NZ House of Representatives Review, with one respondent explaining:

I believed I was a strong-minded woman, but I was crushed completely and came away shattered and with no self-worth. It took me six months to get out of bed after I left.⁴²

Stress, anxiety, depression and post-traumatic stress disorder are also common for victims of harassment. The literature identifies that mental health impacts can be exacerbated as a result of a victim continuing to encounter their harasser in the

⁴⁰ Factors influencing the impacts of harassment may include the nature, duration and frequency of sexual harassment, whether the victim discloses, reports and seeks support for their experiences, and the victim's characteristics and experiences.

⁴¹ *Respect@Work* (n 1) 265.

⁴² Francis (n 25) 56.

workplace or where a victim feels victimised, disbelieved or unsupported during or as a result of a reporting process.⁴³

Emotional and psychological effects of harassment can manifest in physical health conditions, including headaches, hair loss, teeth grinding, gastrointestinal or respiratory problems, sleep deprivation, exhaustion, nausea and musculoskeletal pain.⁴⁴

Physical and mental health impacts may lead to increased absences of leave (absenteeism) and/or lesser concentration and productivity while at work (presenteeism).

Research has found that being victim to workplace sexual harassment can be damaging to job satisfaction and career success. Respect@Work reported, for example, that:

*some workers described avoiding situations and areas of their workplace where they would encounter the harasser, or where they might be subjected to further sexual harassment. For some women, adjusting their behaviour in this way meant they missed out on networking or work opportunities.*⁴⁵

Externally focused behavioural strategies such as self-managing movements and interactions in the workplace is one means by which victims attempt to cope with the psychological impacts of workplace sexual harassment.⁴⁶ This can increase the risk of perceived or actual ostracism and isolation.

Financial impacts on victims of harassment include costs in accessing health and justice systems in relation to their experiences,⁴⁷ and the financial impact of taking unpaid leave.

⁴³ Respect@Work (n 1) 267.

⁴⁴ Lilia M Cortina and Jennifer L Berdahl, 'Sexual Harassment in Organizations: A Decade of Research in Review' in Julian Barling and Cary L Cooper (eds), *The SAGE Handbook of Organizational Behaviour: Volume I - Micro Approaches* (SAGE Publications, 2008); Vicki J Magley et al, 'Outcomes of Self-Labeling Sexual Harassment' (1999) 84(3) *Journal of Applied Psychology* 390; Stans de Haas, Greetje Timmerman and Mechtild Höing, 'Sexual Harassment and Health Among Male and Female Police Officers' (2009) 14(4) *Journal of Occupational Health Psychology* 390, cited in Respect@Work (n 1) 268; Hélène LeBlanc, *A Study on Sexual Harassment in the Federal Workplace: Report of the Standing Committee on the Status of Women* (Report No 2, February 2014) 5.

⁴⁵ Respect@Work (n 1) 269.

⁴⁶ Barbara MacQuarrie et al., *Workplace Harassment and Violence Report* (Report, 2004) 86.

⁴⁷ The Respect@Work report incorporated findings of world-first economic modelling aimed at quantifying the cost of sexual harassment across all sectors of the Australian economy. It was estimated that in 2018 victims of workplace sexual harassment in Australia spent \$103.5 million in accessing the health and justice systems. Respect@Work (n 1) 81; Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace* (Final Report, February 2019) 38-42.

2.3.2. Secondary victims

Similar impacts to those outlined above have been found to affect bystanders to sexual harassment,⁴⁸ particularly where they have witnessed the harassment firsthand. For victims and bystanders alike, being privy to a culture that supports harassment can be devaluing. The US Workplace Harassment report documented the mental and physical harm suffered by employees who observe mistreatment in their workplace, stemming from a range of sources including feeling there is a lack of fairness in their workplace, fear of becoming the next target, and empathy and worry for the victim.⁴⁹

A victim's interpersonal relationships can also be negatively impacted by workplace harassment, particularly where a victim's self-esteem, self-confidence and ability to trust others are impacted as a result of the experience. Respect@Work found in relation to sexual harassment that:

Not only can partners, family and friends be affected by learning about the sexual harassment, but they often have to cope with the ongoing negative impacts of the harassment on the victim, such as mental health issues, social dislocation and erosion of trust and intimacy.⁵⁰

In relation to sexual harassment, one interview participant confirmed exactly this, stating, 'the cost to your family can't be overstated'.

2.3.3. Workplace impacts

The impacts on workplaces associated with the harassment of staff are well documented in secondary research sources. These higher-level impacts were not raised during consultation by participants to the Review, although may well exist and provide further context for the need to address sexual and discriminatory harassment in the parliamentary workplace.

Workplace harassment can affect workplaces and employer organisations in the following ways:

- reduced productivity of victims, bystanders and harassers
- increased staff absenteeism
- higher staff turnover
- increased workers compensation premiums

⁴⁸ Respect@Work (n 1) 275.

⁴⁹ Chai R Feldblum and Victoria A Lipnic, *Select Task Force on the Study of Harassment in the Workplace* (Report, June 2016) 13.

⁵⁰ Respect@Work (n 1) 278.

- impacted workplace culture
- reputational damage.

Specific to the parliamentary workplace, harassment of Members of Parliament can restrict the visibility and influence of victims.

The EU issues paper found that the targeting of female politicians by media, the public and fellow politicians led to a number of female politicians “being more guarded” in what they said and in the stances they took, becoming “more cautious and more watchful” and seeking to be “a little less visible”.⁵¹ This was thought to have a ‘chilling effect’ on women entering or remaining in politics, ‘thereby harm[ing] democratic decision-making as well as the integrity and vitality of democracy’.⁵²

In the broader context of workplace bullying and harassment, the NZ House of Representatives Review also cited concerns about a ‘chilling effect’, documenting concerns raised that media coverage of both female Members behaving poorly or being badly treated have adverse impacts on the participation and engagement of women in ‘the work of democracy’ at all levels.⁵³

Reputational harm for the institution of Parliament and parliamentarians was emphasised in both the EU parliamentary issues paper and the NZ House of Representatives Review as a detrimental impact of a parliamentary culture which permits harassment.

2.4. Diversity and inclusion in the parliamentary workplace

Diverse workforce profiles coupled with policies and practices that promote inclusivity can operate as a protective factor against a workplace culture that accepts and condones sexual and discriminatory harassment. The Diversity Council of Australia has found that workers in inclusive teams are seven times less likely to experience harassment and discrimination than workers in non-inclusive teams.⁵⁴

The Review was provided with some information regarding the diversity of the parliamentary workforce via the survey, interviews and Joint Parliamentary Services Committee Annual Report. Whilst the information obtained is not conclusive, it

⁵¹ Inter-Parliamentary Union and Parliamentary Assembly of the Council of Europe, *Sexism, harassment and violence against women in parliaments in Europe* (Issues Brief, October 2018) 10 (*‘EU Issues Brief’*).

⁵² *Ibid* 11.

⁵³ Francis (n 25) 57.

⁵⁴ J O’Leary and A Legg, Diversity Council Australia, *DCA-Suncorp Inclusion@Work Index 2017-2018: Mapping the State of Inclusion in the Australian Workforce* (2017) 2.

suggested limited workforce diversity and inclusionary practices in the parliamentary workplace.

The below table (Table 2) outlines some key characteristics of people in the parliamentary workplace who took part in the survey. Although representative of approximately 25% of the total workforce, these figures point to an underrepresentation of First Nations employees, employees from non-English speaking backgrounds and employees with a disability in the parliamentary workforce.

Table 2: Number of respondents (in-scope) by key characteristics

Characteristic	Response	Count (n)
Gender	Male	56
	Female	118
	Prefer not to say	12
	Not stated	33
Age group	18-30	54
	31-45	46
	46-60	49
	60+	17
	Prefer not to say	20
	Not stated	33
First Nations status	Aboriginal and/or Torres Strait Islander	Less than 5
	Non-Indigenous	177
	Prefer not to say	7
	Not stated	34
Disability status	With a disability/ disabilities	5
	Without a disability	169
	Prefer not to say	12
	Not stated	33
Sexual orientation	Straight or Heterosexual	157
	Bisexual	6
	Gay	5
	Lesbian	Less than 5
	Pansexual	Less than 5
	Queer	Less than 5
	Prefer not to say	14
	Not stated	33
Main language spoken at home	English	173
	Cantonese	Less than 5
	Greek	Less than 5
	Other	Less than 5
	Prefer not to say	7
	Not stated	33

Source: EOC Independent Review into harassment survey 2020/21, Q4, Q7, Q91, Q92, Q93, Q94, Q96

The Review also considered the 2019-20 Annual Report of the Joint Parliamentary Services Committee which includes Human Resource Statistics regarding the corporate services, Hansard, library and catering divisions within Parliament House. This identified very low levels of diversity other than gender mix with more females (37 FTE) than males (29 FTE) employed in JPSC. The report recorded 0 against the categories of employees with disability and Aboriginal or Torres Strait Islander employees. Culturally and linguistically diverse data is not reported.

The Commission understands that outside of the recruitment process being merit-based, employment practices within Parliament House are not proactively tailored towards attracting a more diverse workforce.⁵⁵ The Review was informed that this is an area management have identified as an issue and plan to address.

While the terminology of 'diversity' and 'inclusion' are often used interchangeably, the issue of inclusion goes beyond the existence of diversity in a workplace.

Inclusive workplaces provide:

*equal opportunity for members of socially marginalized groups to participate and contribute while concurrently providing opportunities for members of non-marginalized groups, and support employees in their efforts to be fully engaged at all levels of the organisation and to be authentically themselves.*⁵⁶

Research has shown that diversity in and of its own, in the absence of inclusionary workplace practices, can in fact increase conflict and turnover and negatively impact cohesion and productivity.⁵⁷ Rather, the benefits of diversity are realised only in inclusive conditions.

While equal opportunity legislation, such as the Equal Opportunity Act, make certain types of discrimination in employment unlawful (see Part 5.5 for further discussion of equal opportunity laws), such legislation is arguably most effective at addressing overt forms of discrimination, as opposed to more subtle and often pervasive forms of discrimination that may affect the prospects of employees once in the workplace.

⁵⁵ With the exception of recruitment of the Officer for the Aboriginal Lands Parliamentary Standing Committee, where Aboriginal and Torres Strait Islander people are encouraged to apply.

⁵⁶ Lynn M Shore, Jeanette N Cleveland and Diana Sanchez, 'Inclusive workplaces: A review and model' (2018) 28(2) *Human Resource Management Review* 176, 177.

⁵⁷ Susan E Jackson and Aparna Joshi, 'Work Team Diversity' in Sheldon Zedeck (ed), *APA handbook of industrial and organizational psychology* (American Psychological Association, 2011); Elizabeth Mannix and Margaret A Neale, 'What Differences Make a Difference?: The Promise and Reality of Diverse Teams in Organizations' (2005) 6(2) *Psychological Science in the Public Interest* 31, cited in Shore, Cleveland and Sanchez (n 56) 177.

Inclusive workplaces also promote a sense of psychological safety for employees (psychological harm and duties under WHS legislation are explored further in Part 5.7).

Inclusive workplaces are characterised by the below themes:⁵⁸

1. Feeling safe – employees have a sense of psychological and physical safety to share different opinions and views from others
2. Involvement in the workgroup – employees feel like an insider and have access to critical information and resources
3. Feeling respected and valued – employees are treated as appreciated and esteemed members of the group and organisation
4. Influence on decision-making – employees believe that their ideas and perspectives are influential and that they are listened to
5. Authenticity – the organisation supports transparency and sharing of the valued identities of its employees
6. Recognising, honouring and advancing of diversity – employees are subject to fair treatment, employee differences are shared for mutual learning and growth, and top management demonstrate their value for diversity through words and actions.

The Commission considers the parliamentary workplace would benefit from taking active steps to increase diversity across its workforce and to create a culture that values inclusivity. In particular, the Commission considers a more diverse and inclusive parliamentary workplace will act as a protective measure against sexual and discriminatory harassment.

In this regard, the Commission makes Recommendation 2 (see Part 4.1).

2.5. Risk factors and drivers for sexual and discriminatory harassment

Understanding the risk factors for and drivers of harassment in the parliamentary workplace is key to understanding how to prevent and effectively respond to these behaviours.

2.5.1. Structural drivers and risk factors for certain population groups

Broadly understood, structural inequality which perpetuates power imbalances is a key issue driving workplace harassment.

⁵⁸ Shore, Cleveland and Sanchez (n 56) 182, 185.

Gender inequality is a core driver of sexual harassment. Our Watch, Australia's leading agency for the primary prevention of violence against women and their children, explains:

*[p]laced in a social context, sexual harassment (whether in the workplace or elsewhere) can be understood not simply as individual behaviour, but as a social problem—part of a broader pattern of gendered violence that has complex drivers located at multiple levels.*⁵⁹

Our Watch's national framework for the prevention of violence against women, 'Change the story', sets out in detail these gendered drivers, including 'gender discriminatory institutional, social and economic structures, social and cultural norms, and organisational, community, family and relationship practices'.⁶⁰

Taking this view and in acknowledging that the balance of power in society lies with men, workplace sexual harassment is 'not necessarily about sex or sexual attraction' but rather 'expresses and reinforces inequalities of power'.⁶¹

The gendered dimensions of sexual harassment include that women experience sexual harassment more often than men and most harassers are men (see Part 2.1). This does not discount the significant percentage of men who experience sexual harassment, most commonly by other men.⁶²

Power disparities in society related to other forms of social discrimination and disadvantage also drive sexual harassment when these forms of disadvantage intersect with gender inequality. Respect@Work explains:

*an intersectional understanding of sexual harassment acknowledges that while gender inequality underpins sexual harassment, it is not the only factor in every context. It may intersect with other relevant factors, such as race, age, disability, sexual orientation or class, for example.*⁶³

Through extensive consultation, Respect@Work found that the below characteristics, circumstances and conditions combine to increase the risk of workplace sexual harassment for some people:

⁵⁹ OurWatch submission to Respect@Work Sexual Harassment Inquiry, quoted in *Respect@Work* (n 1) 138.

⁶⁰ *Change the Story* (n 34) 23.

⁶¹ Purna Sen et al, *Towards an End to Sexual Harassment: The Urgency and Nature of Change in the Era of #MeToo* (UN Women, November 2018) 10, cited in *Respect@Work* (n 1) 139.

⁶² In the 2018 national survey on sexual harassment in Australian workplaces, 79% of respondents reporting an experience of sexual harassment at work within the last 5 years said that one or more of their harassers was male: *Respect@Work* (n 1) 20.

⁶³ *Respect@Work* (n 1) 153.

- sex (women are more likely than men to have experienced workplace sexual harassment)
- age (young workers are more likely to be sexually harassed at work than older workers)⁶⁴
- sexual orientation, gender identity or intersex status (people who identify as gay or lesbian (47%), bisexual (57%) or with another sexual orientation (55%) were significantly more likely than people who identify as straight or heterosexual (31%) to be sexually harassed in the workplace in the last five years)⁶⁵
- Aboriginal or Torres Strait Islander status (more than half of Aboriginal and Torres Strait Islander workers said they had experienced workplace sexual harassment in the last five years, compared with one-third for the general population)⁶⁶
- disability (44% of people with disability said they had been sexually harassed in the workplace in the last five years, compared to 32% of people without disability)⁶⁷
- culturally or linguistically diverse background (while the 2018 National Survey found that overall there was no significant difference in the prevalence of workplace harassment based on main language spoken at home, the 2018 University of Sydney Women and the Future of Work report found that women born in Asia—and more broadly, women of CALD backgrounds— reported experiencing sexual harassment at twice the rate of the surveyed population)⁶⁸
- insecure work status (some Australian research has found that people were more likely to experience unwanted sexual advances in the context of precarious employment arrangements—compared to people in full-time, permanent employment— and that young women were disproportionately affected).⁶⁹

Intersectionality was highlighted in the context of discriminatory harassment by the US Workplace Harassment report:

⁶⁴ Ibid 165.

⁶⁵ Ibid 174.

⁶⁶ Ibid 170.

⁶⁷ Ibid 179.

⁶⁸ Ibid 183.

⁶⁹ Ibid 194.

There is increasing evidence that targets of harassment often experience mistreatment in multiple forms, such as because of one's race and gender, or ethnicity and religion.⁷⁰

One interview participant characterised the intersectionality she has experienced with regard to discriminatory harassment in the parliamentary workplace as being a 'double whammy'.

2.5.2. Risk factors making harassment more likely in some work environments

Similarly to the Review, the 2016 US Workplace Harassment report looked at forms of harassment which had at their basis personal characteristics protected under anti-discrimination (also known as, equal opportunity) legislation. This study identified several factors or conditions which may increase the likelihood of discriminatory harassment occurring in a workplace. Of relevance here, these included:

- Homogenous workforces – harassment is more likely to occur where there is a lack of diversity in the workplace
- Workplaces with 'high value' employees – workforces in which some employees are perceived to be particularly valuable, as senior management may be reluctant to challenge the behaviour of high value employees, and the high value employees themselves may believe that the general rules of the workplace do not apply to them
- Isolated workspaces – harassment is also more likely to occur in isolated workspaces, where the workers are physically isolated or have few opportunities to work with others
- Workplace cultures that tolerate or encourage alcohol consumption – as alcohol reduces social inhibitions and impairs judgment, workplace cultures that tolerate alcohol consumption during and around work hours provide a greater opportunity for harassment
- Decentralized workplaces – decentralized workplaces, marked by limited communication between organizational levels, may foster a climate in which harassment may go unchecked
- Workplaces with significant power disparities – low-status workers may be particularly susceptible to harassment, as high-status workers may feel emboldened to exploit them. See Part 2.5.3 for discussion of this factor in the context of the South Australian parliamentary workplace.

⁷⁰ Feldblum and Lipnic (n 49) 10.

Regarding sexual harassment specifically, industries and workplaces that are male dominated have higher rates of workplace sexual harassment. Respect@Work found that women were substantially more likely than men to be sexually harassed in some industries where the workforce was predominantly male.⁷¹ Respect@Work reported that 'hierarchical organisational structures contributed to the risk of sexual harassment and barriers to reporting it'.⁷²

In addition to the conditions above, a workplace climate which permits 'incivility' may be a driver for harassment,⁷³ particularly and including sexual harassment. Similarly, where harassing behaviours are modelled by leaders within an organisation, this can contribute to a culture where harassment is permitted.⁷⁴

Specific to the parliamentary workplace, the EU issues paper and New Zealand reports identified that the following features of those environments may increase the risk of harassment:

- the intensive, high-stress and long work hours involved
- Committee involvements and associated travel
- 'familiarity specific to the parliament workplace' which blurs the profession and personal boundaries
- the power that comes with public election.

2.5.3. Cultural factors reinforcing sexual and discriminatory harassment

Despite harassment and sexual harassment occurring in the parliamentary workplace, responses from survey participants were weighted towards a positive perception about the how inclusive and supportive the parliamentary workplace is.

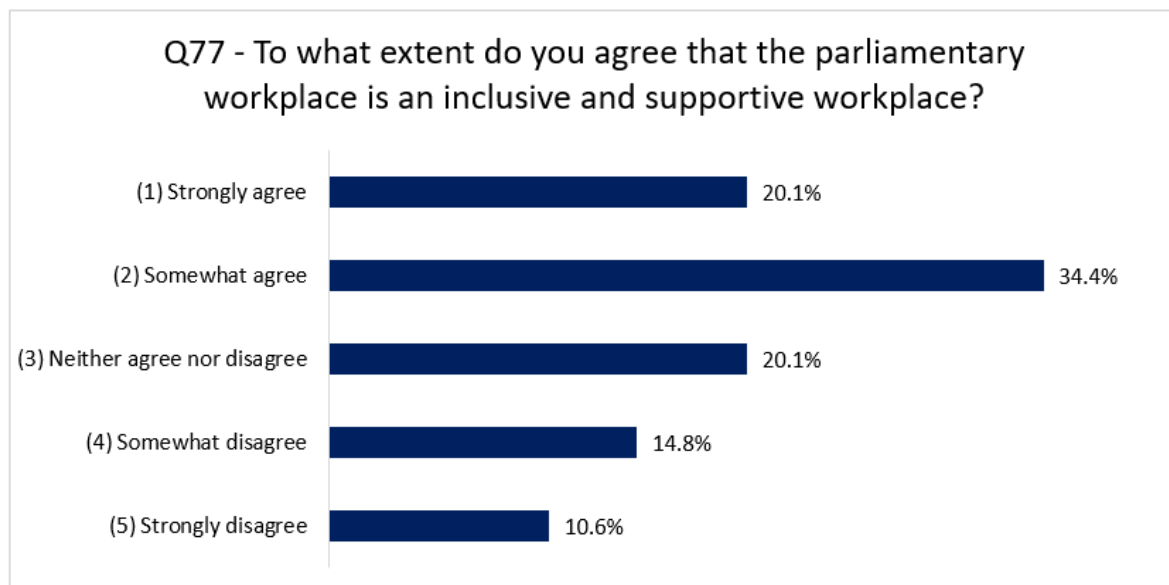
⁷¹ *Respect@Work* (n 1) 228.

⁷² *Ibid* 241.

⁷³ Incivility is defined as 'rude or discourteous behaviour that conveys disrespect towards others but lacks clear intent to harm' in *Respect@Work* (n 1) 157.

⁷⁴ Paula A Johnson, Sheila E Widnall, and Frazier F Benya (eds), *Sexual Harassment of Women: Climate, Culture and Consequences in Academic Sciences, Engineering, and Medicine* (Committee on the Impacts of Sexual Harassment in Academia and Committee on Women in Science, Engineering, and Medicine, Policy and Global Affairs, The National Academies of Sciences, Engineering and Medicine, 2018) 47, cited in *Respect@Work* (n 1) 155.

Figure 5: Perceptions of the inclusivity and supportiveness in the parliamentary workplace



Source: EOC Independent Review into harassment survey 2020/21, Q77

Interviews and survey text, however, pointed to concerns about the workplace culture. For example, one interview participant stated:

I thought some of the [previous employers] I were at were pretty bad in terms of culture, and then I walked into Parliament House and it is so much worse. So much worse in terms, in terms of what is acceptable, what people won't call out. Sexual harassment, sexual comments.

Analysis of the survey's free text responses to Q89 ('Is there anything you think could be introduced to improve the culture and reporting processes associated with harassment in the parliamentary workplace?') and Q90 ('Is there anything else you would like to share with the Review team about your experiences and/or reporting of harassment in the parliamentary workplace?'), identified a number of key aspects of culture within the parliamentary workplace that likely contribute to the prevalence of harassment. These cultural themes are supported by the submissions to the Review. The Commission is of the view that these exist as drivers of harassment in this workplace in tandem with or in addition to the risk factors identified above. They are set out below:

- Power dynamics unique to this workplace play out in workplace interactions, behaviours and expectations

- Decision-makers in some sections of the workplace are reticent to change entrenched approaches and processes
- Historical conventions persist in place of modern workplace policy
- Employees and elected members are not always adequately trained to perform aspects of their responsibilities
- A culture exists of minimising, normalising and keeping quiet instances of harassment
- There is a lack of effective accountability mechanisms for Members of Parliament engaging in harassing behaviours.

Power dynamics unique to this workplace play out in workplace interactions, behaviours and expectations

A number of contributors to the Review commented on the hierarchical nature of the workplace and the corresponding expectation that staff ‘down the chain’ must tolerate behaviours not accepted in other workplaces. This theme is linked to the lack of effective accountability mechanisms for the behaviour of Members of Parliament. One interview participant stated:

one of the things which promotes these sorts of behaviours is the imbalance of power or the perception of the power imbalance.

Survey responses included:

The culture is rotten. There is a hierarchical view of management from the Political, to the staff, to the staffers of parliamentarians. The culture says if you want to advance you have to just put up with behaviour that wouldn't be tolerated anywhere else.

and

I have worked in many other workplaces prior to parliament - and it is the worst. I have seen staff be directly harassed, physically assaulted, and treated like “property”.

and

The parliamentary workplace is a toxic environment as most of the power sits with the MPs and staff will harass other staff as part of a way to get ahead and be viewed better by the party and the member.

and

The powerful will remain powerful. I appreciate your efforts, but I doubt you will be able to change anything.

In submissions, the Review was also told about the long-standing perception amongst staff in the parliamentary workplace that they are there to 'serve' a democratic institution, rather than perceiving themselves as part of a 'workplace'. The implication of this was stated to be that, 'therefore you're willing to absorb a lot more than you would out in the community'.

Decision-makers in some sections of the workplace are reticent to change entrenched approaches and processes

One interview participant told the Review that they are commonly told, in response to questions about why things are done in a particular way, 'because that's the way it's always been done'. Another two interview participants made statements to the effect that there is a strong culture of 'this is the way it's done', 'this is the way it's always been done'.

Survey responses alluded to a culture where people in the parliamentary workplace come up 'through the ranks' and perpetuate the same culture and ways of doing things, including:

The culture of "do nothing" or "it's always been like this" is common. People don't do anything in the hopes it will mean they advance later. Usually because they then do.

Historical conventions persist in place of modern workplace policy

Convention appears to play a large part in the way things are done in parts of the parliamentary workplace, presenting a barrier to aligning with modern workplace culture and standards of policy and management.

The Review was told, for example, that female staff have been informed they are required to wear skirts in the chambers of the Houses of Parliament, although this is not written policy. Under South Australian law such a requirement for women is likely to constitute unlawful discrimination (see Part 5.5).

One interview participant spoke of an understanding that staff are not to take leave during sitting weeks at Parliament. While reasons were cited for not approving extended periods of recreational leave during these times, an unwritten extension of this rule was said to apply in practice to sick or carer's leave, despite the workplace having capacity to cover workloads and duties for ad hoc staff absences.

The perception that sections of the parliamentary workplace operate according to standards of a different era was cited by this survey respondent:

Attitudes and culture in Parliament House and some of the associated offices (EOs, Ministerial Offices, Electorate Services) are a couple of decades behind when it comes to contemporary workplace practice - it's a very traditional, 'white bread' environment.

Similarly a written submission to the Review expressed, '[o]ur processes are utterly archaic as are a number of other aspects of our workplace' and an interview participant stated:

Parliament House, you know, there's ways that things have been done there for decades and it is, it's the old establishment, it's the boys' club, and you don't disrupt that.

and

A lot of what happens in parliament is... well, where's the rule for that. That's the way it's always been done, it's tradition and there are standing orders that never get changed and there's just a lot of things that have been there for, you know, 100 years and we just don't touch. That's just the way we do things. And getting things changed in Parliament House is frustratingly difficult.

The effect of staff trying to navigate unwritten convention was cited by this interview participant:

...And then it's like you've violated this thing that you didn't know about because nothing is written down.

Part 5 explores in more detail the absence of written policy and guidance on workplace issues in sections of the parliamentary workplace which may contribute to a culture that continues to perpetuate outdated standards and workplace norms.

Employees and elected members are not always adequately trained to perform aspects of their responsibilities

Multiple contributors to the Review noted the diversity of professional backgrounds, qualifications and work experiences of people in the parliamentary workplace as compared with their job specifications.

As a result of electorate office staff being employed under section 72 of the Public Sector Act, employees are nominated by Members of Parliament and appointed rather than hired through a merit-based process as standard procedure. The Review

heard this leaves open the possibility that the skills and experiences of those staff may not match the job specification, for example Office Managers may not have people management experience. This style of hiring staff was affirmed by survey respondents, for example:

There is also nepotism in the workplace with jobs being offered to personal friends/relatives, etc, again so that the manager has more power and control.

Similarly the Review heard that Members of Parliament come from a range of backgrounds, some without direct people management experience or training. The Review was told this situation can result in poor management of behavioural and performance issues.

Electorate Services at the Department of Treasury and Finance have produced online training modules on specific topics that are available to staff in electorate offices,⁷⁵ however outside of this, the Review was not made aware of any comprehensive professional development programs aimed at enhancing HR capabilities of leaders in the parliamentary workplace. A further issue was highlighted by one interview participant that staff must be 'released' from their Member of Parliament in order to attend training offered by Electorate Services and that, dependent on the individual Member of Parliament, such a request may be denied.

The Commission considers that underdeveloped management skills amongst some leaders in the parliamentary workplace may contribute to a culture that permits, and in some cases perpetuates, sexual and discriminatory harassment in that inappropriate behaviours may not be adequately identified, responded to and disincentivised by those leaders.

A culture exists of minimising, normalising and keeping quiet instances of harassment

The Review was told of several instances where staff had been discouraged from raising issues of harassment, for example being told by more senior staff that if they put up with the behaviour they would be 'rewarded' for it later.

Survey respondents commented:

Nothing is done because people think that you have to put up with it.

⁷⁵ As at January 2021 training modules in a PDF'd PowerPoint format available to electorate office staff included cultural awareness, mental health in the workplace and work health and safety obligations.

and

Often there is little support for victims, and there is a culture of 'put up and shut up'.

One female interview participant was dismissive of repeated instances of behaviour from Members of Parliament that the Review considers unlawful sexual harassment. The normalisation of sexual harassment in typically masculine work environments is not uncommon. Research has shown that women in such environments can avoid defining their experiences as sexual harassment as a psychological strategy to cope with the behaviour,⁷⁶ or so to be 'part of the team' or be considered competent, thus:

work cultures that are permissive towards degrading and sexual behaviours have been found to institutionalize such behaviour as a normal component of work, therefore those behaviours are not seen as harassment.⁷⁷

One written complaint obtained by the Review included the statement:

In trying to cope and deal with the situation myself I became so desensitised to the behaviour that it became normalised.

Another interview participant reported that in response to a concern they raised with a senior leader about the promotion of a staffer who had actively shutdown the reporting of (and not addressed) an instance of sexual harassment, the senior leader dismissed the staffer's actions as 'school yard behaviour'.

Another interview participant stated:

I'm surprised how much people put up with and how much it's okay.

The Review also received information that characterised an instance of sexual harassment as something that the victim and other bystanders had a responsibility to address, rather than the alleged harasser having a responsibility to not engage in such behaviours. The Review was also told that the actions of a harasser were foolish, rather than offensive and illegal.

Our Watch has highlighted how the broad cultural tendency to trivialise and normalise gendered violence, including sexual harassment, serves to reinforce the dynamics of power that underpin these behaviours.⁷⁸

⁷⁶ MacQuarrie et al (n 46) 86.

⁷⁷ Hertzog, Wright and Beat (n 26) 171.

⁷⁸ *Change the Story* (n 34) 23-24.

A culture of keeping quiet instances of sexual or discriminatory harassment was further observed by the Review when constrained responses were received to the Commissions requests to leaders in the parliamentary workplace to produce de-identified information about informal or formal reports made to them about sexual and discriminatory harassment. In some instances data was not provided or what was provided did not match other data obtained by the Review (see Part 1.4).

There is a lack of effective accountability mechanisms for MPs engaging in harassing behaviours

A significant theme to emerge from consultation was the absence of accountability for engaging in workplace sexual harassment or discriminatory behaviours, particularly on the part of Members of Parliament. Numerous survey participants made comments to this effect, including:

All that said - the problem is there are never any consequences and no one in a position to enforce them.

and

If the public shame that comes with the media exposing sexual harassment claims isn't enough of a deterrent for members of parliament then I'm not sure what will. There needs to be a culture change on how women are perceived. If this was in the private sector, there would be absolutely no hesitation in firing workers for some actions I have heard about in here, yet members and staff in parliament are for some reason not held to the same standards.

and

Currently, it feels as though sitting MPs are untouchable and it is impossible to hold them accountable for their actions.

and

I don't think there will be a meaningful change in culture without a meaningful change in consequences for perpetrators.

One interview participant stated:

I don't think people can be that stupid as to not know [that their conduct is not acceptable] but, again, there's no consequences.

That this perception of 'untouchability' may in effect support a culture of harassment was identified by this survey participant:

I think Parliamentarians are no more likely to want to assault or harass than any other person. The difference is they work in an environment where those who would choose to engage in that type of behaviour can have confidence they'll probably not be investigated over it and, if that does happen, probably won't be punished in a severe manner (e.g. lose their job). I think this can't help but embolden bad behaviour and discourage victim/survivors from speaking out. I think it's tempting for poor conduct to be swept under the rug to avoid bad media coverage or build political favour.

Existing and recommended accountability mechanisms for staff and Members of Parliament who engage in sexual or discriminatory harassment are explored in Part 5.

Multiple interview participants indicated that the lack of accountability was attributable to a system whereby Members of Parliament are left with the responsibility to investigate discriminatory harassment of peers. They support the need for independence in complaint handling:

There needs to be an independent body because clearly having your mate investigate a complaint that some little underling is making would not pass any audit at all. Like there is no transparency.

3. Barriers to reporting sexual and discriminatory harassment

One Member of Parliament submitted to the Review that, 'I remain concerned that there is a lack of reporting' and another submitted that in the parliamentary workplace, 'reporting and complaint mechanisms are very poorly engaged with'. Similar views were expressed by an interview participant:

I think that's the biggest problem we've got at the moment in all, particularly in parliament. People don't make complaints. People don't make complaints.

The underreporting of workplace sexual harassment, in particular, is well-documented. It follows that low complaint numbers are not necessarily indicative of sexual harassment not occurring in a workplace.

Of the survey participants who had experienced one or more unwelcome sexual harassment behaviours in the parliamentary workplace, 77.8% did not report the harassment (either formally or informally).

Of the survey participants who had experienced a form of discriminatory harassment (other than sexual harassment) in the workplace, 70.8% (51 respondents) did not report the harassment (either formally or informally).

Low rates of reporting are consistent with other parliamentary jurisdictions. The survey informing the Scottish Parliament report found that 'while knowledge of the different reporting procedures was high, the percentage of those actually reporting anything was low.'⁷⁹ The Colorado General Assembly report found that of the staff surveyed who had observed or experienced harassing behaviours, only 13% reported it.⁸⁰

The top four most common reasons (multiple choice) cited by participants to the survey for not wanting to report sexual harassment (Q55) in the South Australian parliamentary workplace were:

1. I was concerned about damaging my career prospects (21 respondents)
2. I thought it would make my work environment more difficult (20 respondents)
3. I didn't think the behaviour was serious enough (20 respondents)
4. It was easier to keep quiet (20 respondents).

⁷⁹ Scottish Parliament, *Report of the Joint Working Group on Sexual Harassment* (Report, December 2018) 8 ('*Scottish Report*').

⁸⁰ *Colorado Report* (n 24) 50.

The most common reasons (multiple choice) for people not wanting to formally or informally report discriminatory harassment in the parliamentary workplace (Q82) were:

1. I thought it would not change things (26 respondents)
2. I thought it would make my work environment more difficult (23 respondents)
3. I was concerned about damaging my career prospects (21 respondents)
4. I didn't think the behaviour was serious enough (20 respondents).

Cultural and structural aspects of the parliamentary workplace entrench these barriers. In particular, the existence of pronounced power disparities in the parliamentary workplace and a culture of normalisation and silence around harassment (as explored in Part 2.5 above) support a number of the barriers described below.

3.1. Confusion about reporting pathways

In a written submission to the Review, one Member of Parliament proposed that underreporting of sexual harassment in the parliamentary workplace may be:

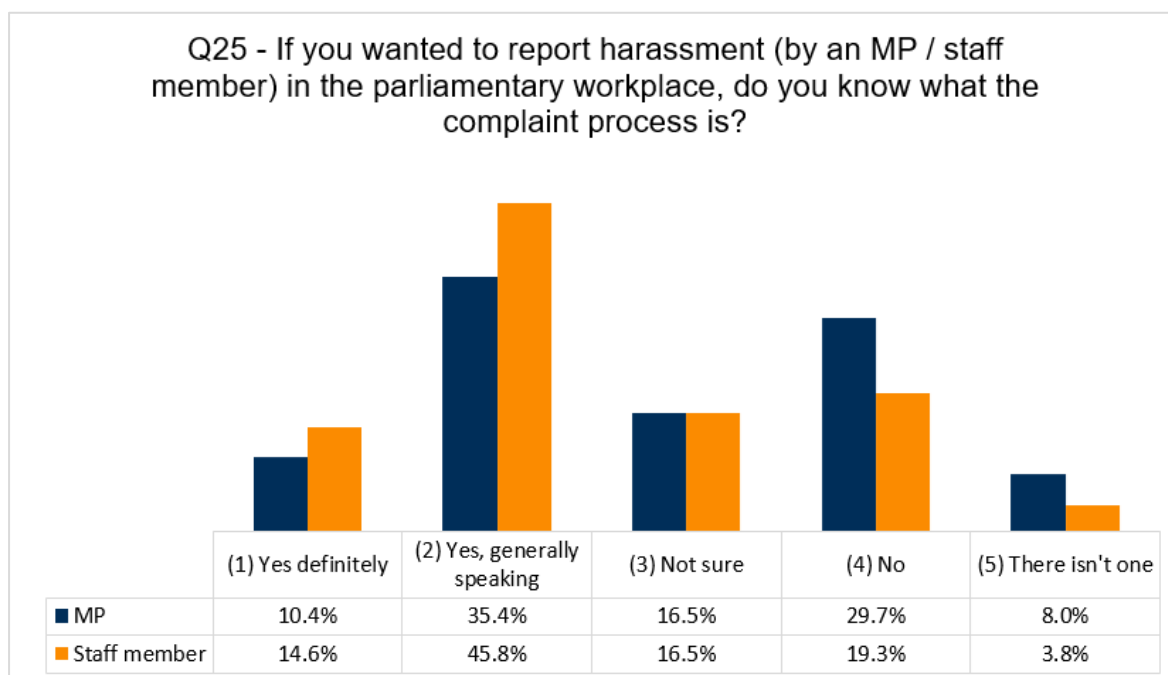
because there is little assistance to define what is sexual harassment, who to report it to, and what services are available.

An interview participant reported:

When that Christmas event happened, it was abundantly clear that nobody knew what to do. Across the board, nobody knew what to do... They don't have processes in place or protocols to deal with these sorts of [issues].

Figure 6 (below) shows that the majority of survey respondents said 'Yes, generally speaking' they knew what the complaint process is for reporting harassment in the parliamentary workplace. However, almost 30% (63 respondents) reported not knowing the process if they wanted to report a Member of Parliament for harassment, an additional 16.5% (35 respondents) were 'not sure' of the process and a further 8.0% (17 respondents) stated that there isn't a complaint process.

Figure 6 Knowledge of complaint process



Source: EOC Independent Review into harassment survey 2020/21, Q25

The uncertainty about the complaint process shown in Figure 6, is also reflected in content analysis of text-based responses in the survey. One survey participant stated:

Have an easier process to identify the process for filing a harassment complaint. Before taking this survey I tried to locate where the process was and it was difficult to find because I did not find it.

It would be good to have clear communication about how and when to report incidents of harassment - including examples of what kind of harassment can be reported.

Another survey participant submitted:

I just had a look in the 'Important Notices' folder and the WHS policies and procedures provided by Electorate Services, and could not easily find any information about a reporting procedure for sexual harassment. I think it is important for this information (such as an easy to follow flowchart with contact points/recommendations on how to respond to an incident or report of harassment) to be easily accessible and that this is especially needed for managers. If someone reporting to me told me of an incident, I would want to check what the most appropriate action/procedure is quickly and confidentially

A submission to the Review identified the need for clarity, stating:

Ensuring that staff and Members have increased clarity about reporting pathways and responsible persons could only be helpful.

Research confirms the need for multiple pathways to be available to victims of workplace harassment. Respect@Work explains:

For workers, flexibility fosters trust in a reporting system, by allowing victims to choose how to proceed according to their own needs and expectations. ... It also allows for flexibility in responses to be proportionate to the conduct and harm. Victims may also be more likely to 'find someone with whom they are comfortable speaking if multiple routes are open to them'.⁸¹

While there are a limited number of reporting pathways that do presently exist, the Review found that knowledge about these pathways was generally low amongst participants to the Review. For example, one interview participant reported:

I probably found maybe six months in that maybe that [lodging a complaint with the Equal Opportunity Commission] was an option.

3.2. Damaging career prospects and making the work environment more difficult

Concerns about adverse impacts on a victim's work environment and career prospects, including victimisation, were also cited in the free text sections of the survey. Comments included:

There is a strong sense in the workplace that reporting will not do anything except impede your own career progress. This is a sentiment that is frequently discussed in the workplace.

and

Staff are actively discouraged from reporting bullying and harassment due to the negative consequences that have arisen (i.e. more bullying and harassment) against those reporting bullying and harassment.

and

I would likely not speak up and make a complaint if a MP harassed me in a way worth reporting as I would not want the publicity that came with it or the potential career suicide.

⁸¹ Respect@Work (n 1) 697.

One interview participant stated:

I've spoken to people who were impacted by behaviour, worse than the behaviour I would say than I had, and they've said to me "If I do anything, everybody is going to know in a heartbeat, and I'm never going to work in Adelaide again". And that's the bottom line for them.

Another stated:

I think part of the nervousness around staff making complaints about members is that if their member finds out ... Because, particularly those who are, those workers who are quite ambitious and see themselves having a long and productive career in politics, then they don't want to have this on their CV.

An interview participant commented:

People may think 'I better not get involved in this' for various reasons, which comes back to the power imbalance, potential impact of what could happen to them, irrespective if they're proven to be correct at all.

The US Workplace Harassment report cited research that suggests 'retaliation' and 'reprisals' were common experiences of people who report both mistreatment and sexual harassment in the workplace.⁸² In the parliamentary context, fear of victimisation for reporting harassment was 'a striking feature' of the contributions by parliamentary staff to the UK House of Commons report and was cited as one of the main barriers to reporting.⁸³

In the current context, speaking in Parliament about her experiences seven months after the alleged incident, the victim to the highly reported incident of late 2019 reported she felt many Members of Parliament treated her as being at fault for a range of circumstances related to the incident:

*[they] treated me like I was to blame for everything that had happened... In fact, it was worse than that: they just ignored me, and many of them continue to do so today. This is victimising 101.*⁸⁴

Concerns about employment and career prospects are particularly pronounced for people with lesser power in the workplace, such as those on short term contracts, who are employed casually or are starting their careers. One interview participant

⁸² Feldblum and Lipnic (n 49) 11.

⁸³ Cox (n 20) 93 [240].

⁸⁴ South Australia, *Parliamentary Debates*, Legislative Council, 2 July 2020, 1263 (Connie Bonaros). ('*Parliamentary Debates* 2 July 2020').

recounted an incident where a fellow trainee was groped by a Member of Parliament at a social event:

for the vast majority of us it was our first job, and I understand exactly why she didn't report because it's why I haven't reported things, so. ... She just didn't want to turn it into a big deal.

Respect@Work found that employees on contract, casual or non-ongoing work arrangements were reluctant to complain about sexual harassment to avoid adverse action such as being subject to a reduction of work hours or not having their contracts renewed.⁸⁵ To this effect, one survey participant commented:

Staff on short term contracts are unlikely to feel able to report bullying or harassment by management when management gets to decide whether to renew their contracts.

3.3. Unwanted media attention

The prospect of media attention, again with an element of concern about victimisation, was cited by participants to the Review as a barrier to reporting harassment, particularly sexual harassment.

One interview participant relayed their experience of a staff member reporting an incident of harassment, but that due to the media's coverage of similar issues the staffer lost confidence in the process and did not want to take the complaint further. Issues around confidentiality are discussed in the next section.

The circumstances surrounding the Christmas party in late 2019 illustrate the adverse impact media can have on an individual alleging sexual harassment. One interview participant stated that many people in the parliamentary workplace have 'taken note' that the subject of that media attention has 'gone through hell', both in terms of her treatment by people in Parliament House and the media pressure she has felt. The Member herself spoke publicly in Parliament about the impacts of the media attention, stating:⁸⁶

I did not ask for this matter to be made public. I did not ask for my face to be strewn across the page of the paper on the day that the story broke, with no mention of any other member involved, but that is what transpired.

⁸⁵ Respect@Work (n 1) 75.

⁸⁶ *Parliamentary Debates* 2 July 2020 (n 83) 1263 (Bonaros).

and

There was absolutely no regard for the fact that day in and day out for weeks on end my husband, my father, my siblings, my family, my four-year-old son got to see my face splashed across their TV and papers and social media headlines for all the wrong reasons in what became a media frenzy.

and

There was no regard for the fact that those same people got to read the comments of keyboard warriors and social media trolls; although, overwhelmingly, members of the community were very supportive. There was no regard for what I or we or others in this place impacted may have been going through personally in our lives that that time. There was no regard for the fact that attending functions to which I was invited in my capacity as a member of this place became absolutely impossible for the very same reasons.

A written submission stated:

Women should not be silenced from speaking out, but unfortunately, the focus ends up on the victim and not the perpetrator.

On this matter survey respondents wrote:

Calling out bad behaviour is a good start. But we have to be careful that political parties don't pre-empt reports of sexual harassment by leaking to the media and demonising the victim for reporting.

and

Public exposure is the only current remedy of sorts and that usually is just as bad for the victim. That probably needs to end too.

The tensions and intersections of concepts including confidentiality, transparency, silencing victims and misusing processes for political purposes are discussed further in Part 5.2.

The Review heard a limited number of opposing views that media coverage of harassment by Members of Parliament is a positive element of the existing system, with one interview participant indicating they thought the threat of media coverage was a good means by which Members of Parliament in particular can be held accountable for their actions. However, as highlighted above this mechanism is not victim-centred, and its efficacy in curbing behaviour is doubtful. Another interview participant expressed the view that:

People aren't going to necessarily dob on each other. They are not going to go to the media about it, because if you do then I'll do it about you and vice versa, and it just seems to be stuck in this little pool.

The fact that the parliamentary workplace is subject to a particular level of media scrutiny cannot be ignored. In this context the Commission notes the importance of media reporting being done in a responsible, victim-centred manner, and that Respect@Work made the following recommendation:⁸⁷

The Workplace Sexual Harassment Council (as recommended in Recommendation 14) work with the Australian Communications and Media Authority, the Australian Press Council and Our Watch to promote and support best practice reporting on sexual harassment by the media, including through:

- a. guidelines that promote the safe, responsible, victim-centred and gender-responsive reporting of sexual harassment*
- b. practical measures that build the knowledge, skills and capacity of media professionals to implement best practice reporting on sexual harassment.*

3.4. Victim-blaming and not being believed

The existence of a limited number of workplace norms from yesteryear (see Part 2.5) and a culture that is not fully inclusive of women (see Parts 2.2 and 4.2) provide fertile ground for another potential barrier to reporting; namely, shifting blame to the victim. On this, survey participants submitted:

Another worrying thing about it is the potential for victim-blaming in this sort of situation; e.g. it was the alcohol, the female was wearing a sexy dress, etc., instead of laying the blame with the perpetrator.

and

The culture in the parliamentary workplace is to blame the victim and to harass and bully anyone who raises issues of harassment or bullying.

and

it eats at me that when I told someone about [sexual harassment] it was suggested to have occurred because I was too polite.

⁸⁷ Respect@Work (n 1) 421.

Condoning sexual harassment – by shifting blame from the perpetrator to the victim or excusing violence by ‘attributing it to external factors or proposing that men cannot be held fully responsible’⁸⁸ – may present as a barrier to reporting either by the victim absorbing this blame and not contemplating a complaint, or as fear of further harm if they report the conduct and are subjected to blame.

Respect@Work documents in this context that the use of alcohol specifically can act as a barrier to reporting:

One worker told the [Australian Human Rights] Commission she was groped and sexually assaulted by a co-worker at the office Christmas party: “When I arrived at work the following Monday, we both pretended like nothing happened and he had no consequences for his actions. I felt that I had no power in the workplace ... due to the stigma of ‘well, she had been drinking’.”⁸⁹

Two male Members of Parliament, in referring to the allegations of sexual harassment at the 2019 Christmas party, expressed views that attempted to shift blame and responsibility onto the alleged victim. Sentiments that reflect the social norm of condoning violence against women (including sexual harassment) were expressed during interviews, with statements made such as ‘it takes two to tango’, the victim should have spoken up at the time, and a delay in reporting must mean there was an ulterior motive to reporting.

The fear of not being believed, which is perpetuated by a culture of victim blaming, presents a related barrier to reporting. The EU parliamentary issues paper found that:

Some [interview participants] emphasized that the tendency of their entourage to find them at fault, insinuating that they were being untruthful or had provoked the harassment or violence, had put them off reporting these acts.⁹⁰

One interview participant to the Review noted that it was already such a personal matter, yet:

you are making yourself so much more vulnerable by reporting that sort of stuff, especially against people in positions of power because you don't think that anyone is going to believe you.

⁸⁸ *Change the Story* (n 34) 23.

⁸⁹ *Respect@Work* (n 1) 160.

⁹⁰ *EU Issues Brief* (n 51) 9.

In another matter it was reported to the Review that in the process of reporting and seeking advice from a senior leader the victim left feeling the person:

was kind of telling me she thinks I should leave politics and just go into the public sector, and I didn't like the way that that came across.

Two other interview participants separately reported to the Review that their reports of sexual harassment were treated as 'he said, she said' scenarios by the relevant leaders. In both cases the Review was told that the leader found in favour of the alleged harasser on the basis of the claim not being substantiated, despite there being corroborative evidence available that was not pursued or accessed prior to making a decision (see Part 5.4).

Without having received information regarding these investigations from the leaders involved (as requested), and in light of the terms of reference and methodology of the Review, the Review does not purport to make findings on what occurred or what the investigation actually entailed. Nevertheless, the fact that some victims *perceive* that the investigatory process lacks integrity may act as a deterrent to reporting, and feeds into the next barrier to reporting harassment in the parliamentary workplace.

A victim-centred approach to how complaints are received and dealt with will be crucial to overcoming this barrier to reporting (see Part 5.4).

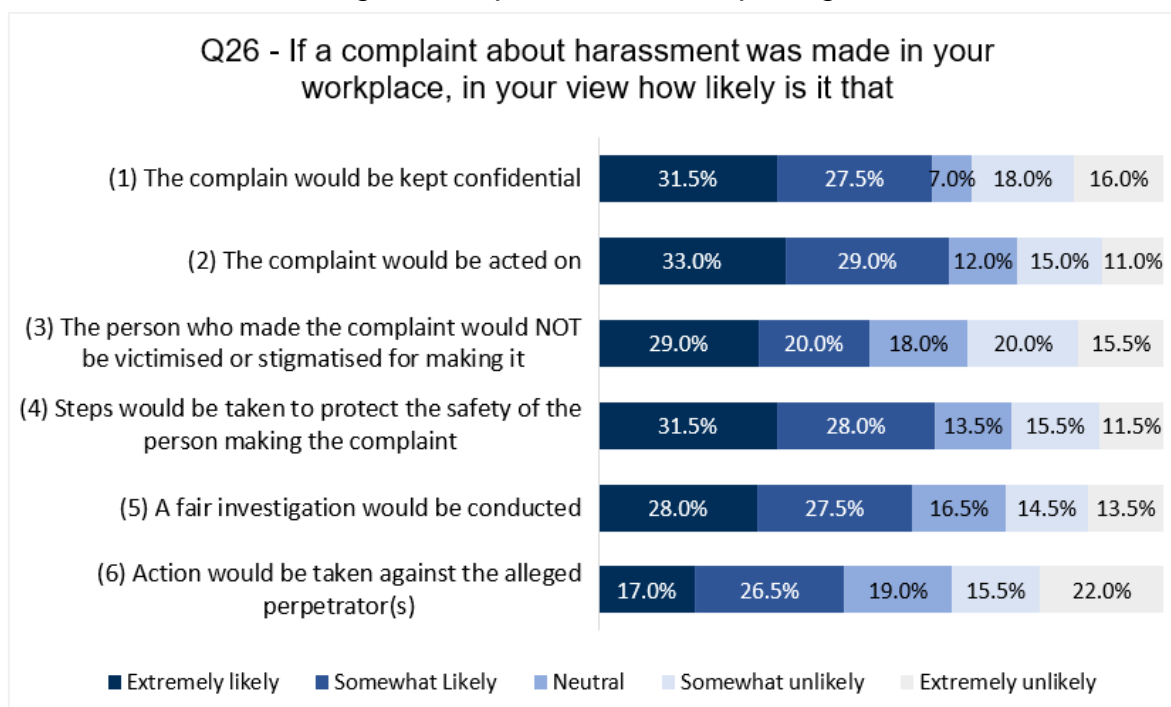
3.5. A lack of confidence in the process

As explored in Part 2.5.3, the Commission has learned of a sense in the parliamentary workplace of the 'untouchability' of people in positions of power. The Commission notes that this concept has been expressed by participants in reference to a number of positions of power within the workplace, not just Members of Parliament. This is undoubtedly a deterrent for anyone considering reporting workplace harassment against someone in a leadership position.

The Commission considers that a lack of confidence in the process also acts as a deterrent to reporting sexual and discriminatory harassment in the parliamentary workplace.

Figure 7 below illustrates the level of confidence of survey participants regarding aspects of the complaints process. Overall confidence levels are considered to be low across all aspects.

Figure 7 Repercussions of reporting



Source: EOC Independent Review into harassment survey 2020/21, Q26

The lack of independence or the need for independence in the complaints process was raised by several survey participants:

The people who we officially report harassment to in Parliament House are the President (for LC staff) or the Speaker (for HA staff) - this is terrible as they are both party members and often the alleged perpetrators are members of that same party, so they won't take any action

and

Independent body to report to that is not aligned to a department - if there are relationships between the harrasser and HR staff for example, a victim may not feel comfortable or confident that their claim will be actioned appropriately.

and

There needs to be an independent body to which staff can confidentially report and discuss bullying and harassment. This independent body needs powers to investigate bullying and harassment complaints against Members and staff and to develop appropriate solutions that will not disadvantage victims and discourage reporting.

and

there needs to be processes established including reporting mechanisms, independent investigation which is confidential, supportive and timely and outcomes which result in changed behaviors.

and

Ideally [a new complaints process] would be independent of Electorate Services (ES). ES has a small number of staff, who electorate offices make contact with on a regular basis. I believe people would have more confidence in reporting incidents if the process was independent of ES.

and

an independent person/body (ie not jps, a clerk or a presiding member) to report to in the first instance seems prudent

and

An independent person outside of Parliament who incidents can be reported to and investigated confidentially would help

Uncertainty amongst victims about the authority or expertise of leaders to appropriately manage a disclosure and investigation process may also factor in choosing not to report. In regards to the investigation process commissioned by the former Speaker of the House of Assembly, the Review was told:

when I called the investigator he advised me that he couldn't talk to me until he had permission from the Speaker. Everyone that spoke to the investigator had to go to the Speaker first and say they wanted to participate. I assume this means the Speaker could deny someone access to participating in the investigation.

This approach presents barriers in and of itself to participation in the process by primary and secondary victims.

The additional psychological harm to victims which can occur where they continue to encounter their harasser is discussed in Part 2.3. This was seen to play out in the matter which attracted media attention in early 2020, with the victim levelling the following criticisms about the way in which the workplace leaders handled the matter.⁹¹

⁹¹ *Parliamentary Debates* 2 July 2020 (n 83) 1263 (Bonaros).

- the leader with (some) authority over the alleged harasser did not speak with the victim directly regarding the conduct of the harasser after it became public – *‘He has spoken about me, but he has not spoken to me’*
- the leader made a decision that would impact the victim (regarding the physical location of the alleged harasser’s office) without due consideration of the impacts and without consulting the victim – *‘[we] now have to walk past that member’s office each and every day not once but several times a day to get our offices, to get to our meetings, to get to our lunch breaks, to get to our cars’*
- the leaders involved did not notify the victim that the alleged harasser’s office had been moved, in circumstances where the victim was of the understanding that the alleged harasser would not be present in the workplace at all (at that point in time).

3.6. Other possible barriers

The EU parliamentary issues paper and the NZ House of Representatives Review both identified concern amongst staff in the parliamentary workplace that reporting harassment against a Member of Parliament from the same political party might be detrimental to the prospects of the party. Although not identified specifically in consultation by the Review, this is likely to intersect in the current context with the culture of minimising and keeping quiet instances of harassment as discussed in Part 2.5.3.

The NZ House of Representatives Review also identified an intrinsic barrier for some staff, who thought that to make a complaint is to look ‘feeble’ in an environment where people are expected to be tough.⁹² This was particularly so for Ministers who reported that making a complaint could be viewed by colleagues as ‘a sign of vulnerability and inability to take the heat of the parliamentary environment.’⁹³ It is noted again that the emphasis of these sentiments places the burden of responsibility on the victim to handle the treatment in a particular way rather than placing focus on the alleged harasser’s responsibility not to engage in such behaviour.

⁹² Francis (n 25) 32.

⁹³ Ibid 33.

4. Preventative mechanisms

[T]here are broader things we can do with culture, little things that if you add them all together, I think will actually help.

– Interview participant to the Review

Workplace culture is critical to the prevention of workplace harassment. The US Workplace Harassment report concluded that, '[w]orkplace culture has the greatest impact on allowing harassment to flourish, or conversely, in preventing harassment'.⁹⁴ Similarly Respect@Work documented, 'diverse and inclusive, gender-equal workplaces that had cultures of respect, integrity and trust were most effective at preventing and responding to sexual harassment'.⁹⁵

Having targeted preventative mechanisms in place for sexual harassment may also assist in preventing employers from being held vicariously liable for sexual harassment perpetrated by an employee.

Workplace policies are widely considered a 'minimum benchmark' in the prevention of workplace harassment. Other often relied upon mechanisms to influence awareness and culture about harassment within organisations are training and complaint handling procedures. However, Respect@Work concluded that the uptake of these conventional mechanisms by organisations has failed to reduce the prevalence of workplace sexual harassment. Instead it is argued that 'improving prevention and response to workplace sexual harassment requires a more holistic approach ... that recognises that sexual harassment is primarily driven by gender inequality and power imbalance'.⁹⁶

Respect@Work outlines that a holistic approach to the prevention of workplace sexual harassment may include the levers below.⁹⁷ The Commission considers these mechanisms are equally applicable to addressing discriminatory harassment in the parliamentary workplace.

- building leadership capability and engagement around organisational values, gender equality and diversity

⁹⁴ Feldblum and Lipnic (n 49) 4.

⁹⁵ *Respect@Work* (n 1) 644.

⁹⁶ *Ibid* 621.

⁹⁷ *Ibid* 662.

- engaging workers through education, interaction, performance management and remuneration systems
- recognising and rewarding positive behaviour, and acting on aberrant conduct
- supporting a speak-up culture.

4.1. The need for a centrally administered approach

The foundations for the current structure of the parliamentary workplace are steeped in history and employment arrangements have been adapted and added to over time. This has resulted in a workplace with disparate reporting relationships and policies and procedures, and the absence of a cohesive coordinated approach to human resource management. The Commission is of the view that the latter presents a fundamental barrier to preventing and appropriately responding to sexual and discriminatory harassment.

Indeed, parts of the parliamentary workplace have no HR function attached to them at all; staff and managers of the Houses and the Joint Parliamentary Service in fact have no access to HR support. Where there is a HR function (for instance that offered by Electorate Services), it does not have reach across work areas.

The Review has heard that this results in:

- a lack of understanding as to where to seek assistance
- inconsistencies across the workplace in terms of policy and practice
- inadequate support being provided to assist managers in meeting their legal obligations
- inadequate professional development and training for Members of Parliament and staff
- disparate and inadequate complaint or grievance mechanisms
- the absence of escalation options.

The need for centralised HR support was raised directly and indirectly by survey respondents, including:

the divisions of Parliament should be overseen by one CEO or department. There is no consistency in business practice across the divisions. Currently each division operates as an individual business with disparate policies, contracts, pay grades, etc. ... It is difficult to imagine this being efficient, and furthermore, the divisional mentality lends itself to an atmosphere where bullying and harassment thrive.

and

There are too many reporting lines and too much ambiguity in workplace policies in the parliamentary workplace.

and

There is no one to report harassment to if its your bosses doing the harassment

and, in the context of providing suggestions about the way forward:

Parliament lacks an HR department, so the introduction of such a resource would be beneficial, providing a third-party avenue to deal with any issues.

and

Someone responsible to speak to rather than people you answer to. The complaint may be about them, and then there is no-one senior to speak to.

and

Some form of HR, foremost. There is no mechanism whatsoever for dealing with any form of difficulty that any person in the precinct may encounter, be it harassment or bullying or the mental health issues arising due to either of those things occurring. There is no one to report anything to aside from line managers, and because there is no HR framework to guide them, they are at ... worst actively perpetuating harm themselves.

and

Human Resources Department Whole of Parliament Policies & Procedures

and

For staff employed by the parliament itself the establishment of a Joint Services structure (as exists in other jurisdictions) with a professional HR commitment to develop and evaluate appropriate policies, processes, training and support systems for staff ... would provide much needed consistent practices and policies across the Parliament.

and

An internal HR department.

and

Have a HR department based at Parliament House.

and

Have an independent support person available for victims of sexual harassment/HR system.

and

An independent position, not aligned with either House of Parliament, or the JPSC. There is no "HR" in parliament as such, therefore it is often left to the people who might bear responsibility to police their own actions.

and

External HR processes. Apporporiately qualified staff. Actual Governance with accountability and consequence (real consequences, not 'having a word'.

The value of expert HR support in the context of dealing with a complaint was identified by a senior leader who was interviewed, who stated,

A mechanism that gave extra advice to myself and my [second in charge] would have been appreciated.

The Review understands that to varying degrees, centralised HR support within parliamentary workplaces exists in other jurisdictions, for example the Scottish Parliament.

The Review received a submission in the form of a draft Bill that provides for the provision and administration of services for the Parliament of South Australia. The proposal provides for a single parliamentary service comprising all staff in Parliament House. Without further evidence and examination of this and alternate models, the Commission does not have a view on the value of this approach.

Nevertheless, the Commission confirms the need for centralised and human resource management to oversee model policies and behavioural standards, provide guidance on meeting WHS obligations, and providing a framework and awareness raising around the prevention of and responses to harassment.

The Commission has not devised the specifics of a governance model but is steadfast in its position that a central human resource function is critical and must have influence across the workplace.

For these reasons the Commission recommends:

RECOMMENDATION 1

That the South Australian Government form a centralised human resources function (the People and Culture Section) to provide services across the parliamentary workplace including:

- the development of a workplace training program
- a performance management framework
- the development of human resource policies and practices
- induction and exit practices
- a wellbeing framework that includes supporting staff in electorate offices
- other functions as recommended by the Review.

Further, to address the issues identified as to diversity and inclusion in the parliamentary workplace at Part 2.4, the Commission recommends:

RECOMMENDATION 2

That the People and Culture Section develop a strategy to increase diversity across the parliamentary workforce and to create a culture that values inclusivity.

4.2. Workplace policies and education

4.2.1. Workplace policies

Parliamentary Counsel staff, staff seconded from State Government Departments to Ministerial Offices and trainees employed in Members of Parliament offices – all considered people working in the parliamentary workplace for the purposes of the review – are subject to the comprehensive legislative and policy mechanisms that apply to public service employees. These include the Code of Ethics, the Commissioner for Public Sector Employment’s determinations and guidelines and a range of agency-specific policies and training relevant to this Review.

Further, the Commission acknowledges that the South Australian Police, the employer of Protective Security Officers, has and continues to undertake a significant body of work to implement recommendations made by this Office in 2016

to combat sex discrimination, sexual harassment and predatory behaviour in the workplace.⁹⁸

The Review did not seek to consider the efficacy of the policies and training available to these workgroups. No relevant information was received regarding these policies and training, and analysis of the policies which apply to these groups was beyond the scope of the Review's terms of reference. For these reasons public service employee groups and Protective Security Officers are excluded from the discussion below (with the exception of comments made in relation to the Code of Ethics).

In regard to staff working in electorate offices, the Review was provided with evidence of substantial documentation in addition to a limited number of online training modules relevant to aspects of harassment available to staff employed through Electorate Services at DTF. These are by and large from a WHS perspective and are discussed in more detail below.

Within Parliament House, the Review received information suggesting the various work groups operate under varying policies, or in some cases no policies at all, regarding matters related to sexual and discriminatory harassment.

The Commission acknowledges it is standard practice in most work settings that discrete employers assume responsibility for the development of policy, procedures and associated training for its staff. However, as discussed in Part 1.5, in the parliamentary workplace this creates particular challenges as these work groups work in close proximity to one another and, unlike other workplaces, there is no overarching body to administer or coordinate policies.

The Commission considers this to be a key factor in participant's observations and comments that they experience difficulty in identifying and understanding policy related to behaviour standards and complaint avenues. One interview participant noted:

staff are unaware of policies that might assist them with inappropriate behaviour, and in turn, they have been exposed to the behaviour for so long they don't realise how inappropriate it is.

Confusion and uncertainty of process is exacerbated if a matter arises concerning two or more people across different workgroups. Areas that have developed policies

⁹⁸ See Equal Opportunity Commission, *Sex Discrimination, Sexual Harassment and Predatory Behaviour in South Australia Police Independent Review* (November, 2016) <https://eoc.sa.gov.au/sites/default/files/inline-files/SAPOL_Review_2016_Final.pdf> and monitoring progress reports at <<https://eoc.sa.gov.au/index.php/initiatives/sapol-monitoring-project>>.

and training and supports have limited impact on their own staff when the broader workplace is operating in a policy and training vacuum.

The Commission considers it necessary that there be harmonisation of policies and processes with regards to sexual and discriminatory harassment, and centralised provision of education and training resources, across the parliamentary workplace.

Relevant to the current context, targeted, evidence-based policies are likely to support a change in attitudes and behaviour more so than mere reliance on the existence of legal protections.⁹⁹

Codes setting behavioural standards

The South Australian Public Sector Code of Ethics applies to all public sector employees by force of statute.¹⁰⁰ This includes all public service employees¹⁰¹ and staff employed under sections 25(h) and 71(2) and 72(2) of Public Sector Act¹⁰² (although obligations regarding political neutrality do not apply to the staff of Members of Parliament).¹⁰³

The Code of Ethics does not specifically address sexual or discriminatory harassment but, in the Commission's view, the following provisions cover such behaviours:

...Public sector employees will not at any time act in a manner that a reasonable person would view as bringing them, the agency in which they work, the public sector, or Government into disrepute; or that is otherwise improper or disgraceful...

Public sector employees will at all times treat other persons with respect and courtesy...

Allegations of a breach of these provisions can result in disciplinary action (see further discussion at Part 5.3).

By agreement in their employment contracts, staff of the House of Assembly are bound by a House of Assembly Code of Conduct.¹⁰⁴ This covers a range of areas

⁹⁹ Prof P McDonald and Prof S Charlesworth, Submission 170, *Sexual Harassment Inquiry*, 26, cited in *Respect@Work* (n 1) 656.

¹⁰⁰ *Public Sector Act 2009* (SA) s 6 ('*Public Sector Act*').

¹⁰¹ Parliamentary Counsel staff, trainees and Ministerial staff employed by the relevant government department.

¹⁰² Electorate office staff, staff employed in the offices of Members of the Legislative Council, Ministerial Staff and Protective Security Officers.

¹⁰³ This exception is given effect in the terms and conditions of employment of those staff.

¹⁰⁴ Parliament of South Australia, 'Code of Conduct of the Staff of The House of Assembly' (December 2018).

similar to the public sector Code of Ethics and includes reference to ‘not bullying or harassing another employee’.

There is no code of conduct or similar, that applies to Legislative Council staff or Clerk, nor staff appointed under the Joint Parliamentary Services Committee.

The Review notes an absence of behavioural expectations about ‘calling out’ bad behaviour across the parliamentary workplace.¹⁰⁵ From a preventative perspective regarding sexual harassment, disrespect towards women is an underlying driver of high levels of violence, including sexual harassment, against women. The concept of a ‘call it out’ culture draws on theories about social psychology and the impact of norms on individual behaviour, and such a culture can shape norms and behaviours exhibited in the workplace.¹⁰⁶

Sexual and discriminatory harassment policies

With the exception of the House of Assembly code of conduct, the Review was not made aware of any established internal policies for staff that specifically addresses sexual or discriminatory harassment in the parliamentary workplace. While the WHS policies administered by Electorate Services can be thought of as extending to cover such conduct, the Review considers that the connection is not overt enough to be clear to staff. The Review was informed that the Legislative Council has commenced the development of a sexual harassment policy for its staff.

The Commission notes that the House of Assembly Members Handbook (Dec 2020) has a section dedicated to ‘Sexual Harassment by Members of Parliament’. Although not a policy per se, this section confirms the law around sexual harassment in relation to the Equal Opportunity Act. Specifically, the section outlines the definition of sexual harassment, the limitations on the Commissioner’s powers vis-à-vis matters of parliamentary privilege, the process outlined where a complaint is received by the Commission against a Member of Parliament and the contact details for the Commission. It is noted however that the content does not capture the

¹⁰⁵ Bystander actions can be found for example in: VicHealth, *Take Action: Empowering Bystanders to Act on Sexist and Sexually Harassing Behaviours* (October 2019) <https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/PVAW/Take-Action-Bystander_Oct2019.pdf?la=en&hash=D3150832DDE6E645A0B854AC2CD57B119E03BD22>.

¹⁰⁶ See for example Our Watch’s ‘Doing Nothing Does Harm’ campaign <<https://www.doingnothingdoesharm.org.au/>> and Women’s Health Victoria’s *Working With Workplaces: Challenges And Opportunities For Workplace Violence Prevention And Bystander Programs* (Knowledge Paper Issue 1, May 2018) <[https://womenshealthvic.com.au/resources/WHV_Publications/Knowledge-Paper_2018.05.31_Working-with-workplaces_May-2018_\(Fulltext\).pdf](https://womenshealthvic.com.au/resources/WHV_Publications/Knowledge-Paper_2018.05.31_Working-with-workplaces_May-2018_(Fulltext).pdf)> for more information about bystander interventions as a primary prevention strategy for violence against women.

provisions of ICAC Act that apply to sexual harassment by a Member of Parliament (see Part 5.6).

The Review has been informed that the two major parties have sexual harassment policies applicable to their membership. The Review was only able to access one party's internal documentation and found these to be a sound policy suite. This included an endorsed code of conduct for party members that references harassment and sexual harassment as prohibited and not tolerated. The code identifies the process for a complaint against the code, further set out in the party's Complaints and Dispute Resolution Policy. Possible sanctions identified are counselling, formal apology, changed work arrangements, termination of employment, censure, suspension and expulsion. The complaint procedure provides multiple channels such as a formal or informal processes based mostly on the preference of the complainant.

The Commission understands that there are no policies in operation in the parliamentary workplace regarding the disclosure of relationships between superiors and subordinates. While sexual, romantic or intimate relationships that are reciprocal and freely entered into with full consent do not constitute sexual harassment, the Commission considers that the unique power dynamics present between people in positions of seniority, including Members of Parliament, and other staff in the parliamentary workplace presents the possibility of sexual harassment arising if one party no longer reciprocates the intimate behaviour. Such circumstances have been reported in another parliamentary jurisdiction in Australia.¹⁰⁷

Where relationships of this nature are kept secret the power disparity involved may mean that the person with lesser power loses agency to make decisions regarding their continued involvement in the relationship. Such relationships can also give rise to an actual or perceived conflict of interest. For these reasons, *Disrupting the System: Preventing and responding to sexual harassment in the workplace* recommends that:

*Full and early disclosure of these relationships to the relevant manager is required so that any implications can be understood and parties can work together on any action that may be required to resolve any actual or potential conflict.*¹⁰⁸

¹⁰⁷ See for example 'Inside the Canberra Bubble', *Four Corners* (Australian Broadcasting Corporation, 2020) <<https://www.abc.net.au/4corners/inside-the-canberra-bubble/12864676>>.

¹⁰⁸ Male Champions of Change, *Disrupting the System: Preventing and Responding to Sexual Harassment in the Workplace* (Report, 2020) 87 ('*Disrupting the System*').

A further policy gap identified by the Commission concerns records management and the preservation of corroborative evidence where harassment has been alleged. One interview participant reported to the Review that closed-circuit television from within Parliament House was not preserved after a known alleged incident. The Commission notes that there are legitimate reasons why victims of sexual harassment may not report harassment immediately after an alleged incident.¹⁰⁹

The Commission further notes an absence of file notes detailing informal reports of alleged incidents. The Commission considers that a policy, supported by training for leaders, addressing records management in relation to sexual and discriminatory harassment is required to support the fidelity of any subsequent investigation and to enhance staff confidence in the process (see Recommendation 4).

Work health and safety policies

Workplace harassment poses a risk to the psychological safety of workers and the legislative framework governing WHS, requires workplaces to manage those risks. In particular, the *Work Health and Safety Act 2012 (SA)* (**WHS Act**) prescribes duties to 'Persons Conducting a Business or Undertaking' (PCBUs), 'officers' and workers to manage workplace risks including psychosocial risks (see Part 5.7).¹¹⁰

WHS policies demonstrate a commitment to workplace safety and provide guidance to those with responsibilities under the WHS Act as to how to meet their obligations.¹¹¹ In the Commission's view, robust WHS policies that are implemented effectively constitute an important preventative mechanism for harassment in the workplace. An examination of policies currently available in the parliamentary workplace indicates they are limited in scope and reach.

The Review was provided a copy of the *Parliament of South Australia Occupational Health, Safety and Welfare Policy*, dated 28 May 2009 which applies to staff working in Parliament House. This document is now over 10 years old, references repealed legislation and does not specifically address psychological risk.

The Review was provided with access to a number of WHS policies applicable to section 72 of the Public Sector Act employees engaged by the Electorate Services

¹⁰⁹ Reasons for delayed reporting may include for example, the mental impact of the harassment, the emotional impact (and time needed to process events and feelings), lack of awareness as to reporting options, and fear of victimisation if the incident becomes known.

¹¹⁰ *Work Health and Safety Act 2012 (SA)* pt 2 div 3. ('WHS Act').

¹¹¹ SafeWork SA's *Code of Practice on How to Manage Work Health and Safety Risks* states that 'effective risk management starts with a commitment to health and safety from those who operate or manage the business or undertaking' (June 2020) 7.

division within DTF, and was advised that health and safety inspections are conducted at electorate offices by Electorate Services.

The suite of relevant WHS policies and procedures established by Electorate Services are focused on electorate office staff but have application as appropriate to section 72 Public Sector Act staff employed through DTF and located in Parliament House. These policies include:

- An Electorate Office Work Health and Safety and Injury Management (WHS&IM) Policy.¹¹²
- An Incident Reporting and Investigation procedure is in place for Electorate Services staff.¹¹³

Of relevance here, the form only mentions psychological hazards through the term *mental stress*. This is considered to limit the interpretation of psychological health and its application to harassment.

- a Psychological Health Policy.¹¹⁴

In comparison to the content of the online training course available to workers in electorate offices, the policy is not as forward in identifying harassment and discrimination as forms of psychological risk.

- An Alcohol and Other Drugs Policy.¹¹⁵

The application of relevant policies that apply to ministerial staff employed under section 71 of the Public Sector Act, is not clear. Line agency policies may apply noting that these employees are excluded from Part 7 of the Public Sector Act,

¹¹² The policy includes extracts of the PCBU's duties, as well as simple to understand statements of what the discharge of these duties will look like in the context of Electorate Offices. In this context, Electorate Services (representatives of the Crown) and Members of Parliament (as the manager of the Electorate Office) are considered PCBUs, whilst Office Managers are considered Officers under the law.

¹¹³ The procedure places responsibility on Office Managers to identify and report safety issues. Electorate Services have responsibility for investigating safety matters that are reported and to provide assistance to Office Managers and Members of parliament to manage the risks. The procedure is supported by an incident report form that requires the reporter to select the type of hazard involved. This includes psychological hazards, prompting the reporter to at least consider psychological risks or injuries that could result from activities in the workplace. The Electorate Services General Risk Assessment Form guides workers in what hazards to consider in the workplace.

¹¹⁴ Workers located in Parliament House but reporting to Electorate Services are also able to use the policy taking into consideration local processes implemented by Presiding Officers. Psychological wellbeing and support mechanisms are communicated within the policy, as are the responsibilities of various parties within the workplace.

¹¹⁵ The policy identifies the expectations of duty holders under the WHS Act. The policy acknowledges the increased risks of alcohol and drugs on worker performance. Physical assault, verbal abuse, harassment and inappropriate behaviour are specifically mentioned, as well as the increased risk of incidents and injuries to the worker and others in the workplace.

meaning sanctions for breach are limited to those contained in their employment contracts.

The Commission considers that policies and procedures should be implemented across the parliamentary workplace to ensure clarity is provided with respect to the following:

- sexual and discriminatory harassment presents a psychological risk that must be managed under WHS legislation
- PCBU's and Officers should be clearly identified and their responsibilities in managing psychosocial risk enunciated
- the requirement that psychosocial hazards should be reported to PCBU's should be clearly set out.

Policies and practices that promote and support gender equity

The Review heard evidence from several participants that the parliamentary workplace had improved in terms of gender equity in the last fifteen years, in particular in terms of moving towards a more 'family friendly' environment.

Interview participant contributions included:

I think certainly the culture has changed to some degree in terms of mirroring community expectations

and

I think with the family-friendly approach, people are a bit more mindful of well you're here to do a job, that's not saying they didn't do the job previously, but a bit more, I suppose, economical and efficient in what they're doing, get on with the task and then because they get out the chamber, and go and do some other work, and then they're finishing at a reasonable hour

Several participants referred to previous practice where it was not unusual for Parliament to sit late into the night or early the next morning, and that in the House of Assembly in particular the implementation of an earlier start time (11am) has contributed to a more family-friendly environment. Participants noted that for the most part neither House sits in the school holidays.

One Member of Parliament expressed a view that long hours are part of the job and that further changes to sitting hours would not mean his workload would be reduced.

One interview participant expressed the difficulty involved in managing sitting hours:

The environment isn't family friendly because of the hours that we work and you don't know whether we are going to be sitting and we don't have control over those things. So, it isn't family friendly and it's very hard to manage.

On the other hand, participants observed that considerable improvements are possible and needed for the parliamentary workplace to be more family friendly and thereby better accommodate women.

However other participants suggested there are means available to Parliament to assist. One written submission received by the Review stated:

we need to explore the possibility of enshrining in legislation and/or standing orders clear provisions about parliamentarians and their access to parental leave, carers' leave, etc. Similarly, whilst parliamentarians expect to sit late, the fact that there is never adequate notice about late sittings in order to ensure parliamentarians can organise appropriate child care, etc, is problematic and could potentially be addressed through legislative or standing order changes.

Another interview participant spoke of action needed to enhance the family friendliness of the workplace for those involved with the sitting of Parliament:

The culture is, for females particularly, it's either act like a man or get out.

There are things that we can do ... 10 pm cut-off times for sitting.

We've now seen through COVID that we can do things online in some jurisdictions. ... I think there can be a cultural shift to say we can do things online, we can vote by pressing a button or, you know, we can do things that improve workplace flexibility. ... That make it acceptable to, you know, be a mum, be a carer.

Although it is noted that flexibility and parttime options are written into some enterprise agreements and policies (in the case of the House of Assembly), contrary to views offered by some senior leaders in the Parliamentary workplace, the Review heard from participants that there was no, or inadequate, provision for flexible working arrangements in some parts of the workplace. An interview participant stated:

When I was pregnant it was made very clear to me that if I do not return after [the duration of offered maternity leave] as full-time I'd be shunted off to [lower status work]. Now that is like just being sent to the badlands and you'll never return ... so, I came back full-time after [the prescribed period].

The Joint Committee on the 125th Anniversary of Women's Suffrage found in its 2018 Interim Report (**the Interim Report**) that:

Parliament has an obligation to ensuring that women do not face impediments to participating in political life and to continually Review its Standing Orders and physical space to ensure it remains a family-friendly environment.

The Interim Report suggested Parliament could be made more family-friendly by way of the provision of places for nursing, mothers to feed and/or express breast milk, family dining experiences and changing babies nappies. It also suggested that unconscious bias training could be offered to all Members and staff.

In this regard, the Committee recommended (Recommendation 16) that the:

a. JPSC, in collaboration with the Clerks carries out an audit, and reports back to the Houses, of ways in which Parliament could become more family-friendly for visitors, staff and Members; and

b. Standing Orders Committee, in collaboration with the Clerks, undertakes, and reports to the Houses, a Review of the Standing Orders for gender neutrality and to ensure the Orders do not impede women entering political life.

The Review was informed that an audit in accordance with Recommendation 16a of the Interim Report has not yet been carried out. Whilst there are now baby change tables in two locations within Parliament House, the Review was informed that no dedicated breast or bottle feeding area is currently available in Parliament House; the Review was advised that senior Parliamentary staff in Parliament House are 'investigating options to find a suitable space/ area dedicated to breast/ bottle feeding and it is a goal for the parliament to become breastfeeding accredited'.

The Commission acknowledges that space is extremely limited within Parliament House. Equally the Commission considers informal arrangements requiring an employee to negotiate or find a private space places an unfair burden on that employee rather than the relevant leadership. A safe and designated space would demonstrate a clear commitment to creating an inclusive working culture.

The Commission considers that a strategy to gender equity should be to collect, report on and monitor workforce data relating to diversity. It is noted the Commonwealth Workplace Gender Equality Agency promotes the use of data to increase gender equality in organisations; in particular the Voluntary Reporting Program:

*enables public sector organisations to better understand and track their progress against key metrics of workplace gender equality over time and benchmark their performance against other organisations in their industry. The process can also help [workplaces] identify gender equality issues and put action plans in place.*¹¹⁶

The Commission is of the view there appears to be a lack of clarity and consistency across the parliamentary workplace with regards to flexible work policies and carer's and parental leave entitlements. A cultural shift which signals leadership's acceptance of these types of entitlements is also clearly needed. Additionally, it is important that systemic changes to create a more family-friendly parliamentary workplace are not viewed as an accommodation only for women. Flexible working and other arrangements must be normalised for employees with family caring responsibilities, regardless of gender and level of seniority. The Commission also notes that flexible working arrangements are crucial for inclusivity, particularly for people living with disability.

Any changes to the parliamentary workplace which seek to make it more family friendly must be accompanied, in the Commission's view, by changes to the Standing Orders. Again, as structural gender equality is a driver of sexual harassment, addressing barriers to equality is a necessary preventative mechanism. The Review was advised that the Standing Orders Committee has an ongoing brief to review standing orders in relation to Recommendation 16b of the Interim Report. Despite this, there is currently no provision allowing breast or bottle feeding of infants in the Chambers of the Houses. The Commission notes that in this respect South Australia is not in step with other jurisdictions,¹¹⁷ and that it has been raised by at least one Member of Parliament publicly since the Interim Report.¹¹⁸

¹¹⁶ 'What is the voluntary reporting program?', *Workplace Gender Equality Agency* (Web Page) <<https://client-portal.wgea.gov.au/s/article/What-is-the-voluntary-reporting-program>>.

¹¹⁷ For example, both Houses of the Commonwealth Parliament permit breastfeeding in the chamber, the Lower House since 2016, the Upper House since 2003. Both make provisions for infants to be cared for in the chamber: Parliament of Australia, *House of Representatives Standing Orders* (13 September 2016)

<<https://www.aph.gov.au/->

[/media/05_About_Parliament/53_HoR/532_PPP/Standing_Orders/SO_13Sept16_Full.pdf?la=en&has h=CE0415261D0F9B72FFA38923EDD5EB23919C7CA1](https://www.aph.gov.au/-/media/05_About_Parliament/53_HoR/532_PPP/Standing_Orders/SO_13Sept16_Full.pdf?la=en&has h=CE0415261D0F9B72FFA38923EDD5EB23919C7CA1)>; Parliament of Australia, *Annotated Standing Orders of the Australian Senate* (2009) s 175

<https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/aso/so175>.

¹¹⁸ The Commission notes that Ms Connie Bonaros raised this in the Legislative Council on 26 November 2019: South Australia, *Parliamentary Debates*, Legislative Council, 26 November 2019, 5093-5094 (Connie Bonaros).

The Commission recommends:

RECOMMENDATION 3

That to ensure flexible work practices that support inclusivity operate across the parliamentary workplace:

- (a) The Houses as a matter of priority amend the Standing Orders to allow for women to breast or bottle feed infants in the Houses.
- (b) The Standing Orders Committee, in accordance with recommendation 6a of the Interim Report of the Joint Committee on the 125th Anniversary of Women's Suffrage 'in collaboration with the Clerks, undertakes, and reports to the Houses, a review of the Standing Orders for gender neutrality and to ensure the Orders do not impede women entering political life'.
- (c) The People and Culture Section work with the parliamentary workgroups to develop a gender equity and a family friendly workforce strategy for the parliamentary workplace which includes a review of policies and practices regarding flexible hours, parental and carer's leave and breast and bottle feeding of infants.

Good practice and the implementation of policies

A written submission received by the Review argued that:

If we are to develop confidence in the parliamentary workplace about engaging with policies and processes when needed, work must be done to ensure that they are a known and important function of the parliamentary workplace and that they work well.

That there is room for improvement to systems was identified by this survey participant:

I have not seen or heard any incidents of harassment, but the training and support framework could be improved. Policies do exist, but procedures could be further developed to make the requirements around any form of bullying or harassment clear for existing and new staff.

The importance of policies being user-friendly and enforced in order to be meaningful was mentioned by survey and interview participants, including,

nothing is written down, but then you have the House of Assembly, ... they have policies, but they are just words on paper...they don't apply them.

and

I think we have these big policies that are all written up, which are actually not very easy to interpret for your average Joe.

After analysing Australian and international good practice Respect@Work concluded that sexual harassment policies should include the following core content:¹¹⁹

- recognition that sexual harassment is unlawful and unacceptable
- a clear definition of sexual harassment (that includes digital technology-facilitated sexual harassment), with practical examples that include diverse groups of workers
- recognition that sexual harassment is driven by gender inequality
- application to workers at all levels, including leaders and managers, as well as others in the workplace such as customers, clients and contractors
- identification of the responsibilities of management and workers
- clear assurance that people who report sexual harassment will be protected against retaliation
- a clearly described and robust complaint process, investigation process, and range of sanctions that may be taken against harassers
- external reporting and support channels available to victims.

The final two dot points above are addressed in Part 5 of this report.

In acknowledging the additional harm victims can suffer as a result of poor complaint handling, policies and processes should be designed in accordance with victim-centred principles. Victim-centred approaches prioritise the wellbeing, safety and agency of the victim (see Part 5.4.3). This is key to minimising harm, but also can also reduce barriers to reporting. Respect@Work explains that,

*By designing and operating systems and processes that are more supportive of and focused on victims, employers can make it easier and more likely for victims to report.*¹²⁰

¹¹⁹ Respect@Work (n 1) 656-7.

¹²⁰ Respect@Work (n 1) 678.

In light of the above, the Commission recommends:

RECOMMENDATION 4

That the People and Culture Section develop sexual and discriminatory harassment policies to apply across the parliamentary workplace which:

- are victim-centred
- recognise that workers have a right to a safe and respectful workplace
- provide clarity around acceptable and unacceptable conduct, and foreshadows a spectrum of consequences where a complaint is substantiated
- make reference to accompanying complaint handling procedures, including work health and safety procedures
- support training and awareness of behaviour standards and complaint processes
- provide that relationships between Members of Parliament and staff in the parliamentary workplace must be disclosed
- require that records about complaints, including informal reports, about harassment in the parliamentary workplace are made and retained
- require the People and Culture Section to monitor complaint data to identify trends and take appropriate pro-active action.

4.2.2. Workplace education and induction

A common response received via the free text responses to the survey was the need for education regarding several aspects of workplace discriminatory and sexual harassment. As discussed in Part 3.4, the Commission also notes a lack of awareness of issues around these forms of harassment which indicates a need for further training. Key suggestions from survey participants included what constitutes harassment, the presence and impact of unconscious bias, what the workplace expectations are around harassing behaviours, and the availability of complaint avenues. Workplace education includes both induction processes and materials for new employees and Members of Parliament, as well as training for all.

Survey responses to this effect included:

The culture of parliament has improved in SA greatly in the last 20 years. However, there are still pockets of some who don't understand, because it's never happened to them or to someone close to them.

and

New arrivals in the workplace should be better inducted in relation to acceptable behaviour and complaint processes. I arrived here long ago and such things were never raised on induction. In fact, there is NO induction at all for newly elected MPs other than some advice on Parliamentary processes.

and

I think that all MPs/Ministers, all of their [electorate office] and Ministerial staff and administrative (non-political) staff in Parliament House could do with compulsory training (8 hours at least) each electoral cycle (in the weeks after Declaration of the Poll each quadrennial state election) on diversity and inclusion in the workplace.

and

Off site formal training for all staff (not just on a workplace computer.

and

There needs to be an overhaul of the culture and how women are perceived generally and in the workplace - this takes time but needs to be addressed with training for all.

and

I believe that all MPs should undertake compulsory unintended bias training, to assist with an ongoing and limited number don't appreciate that they should be more circumspect in their own blokey jokey "humour" and how corrosive the impact of sexual harassment is

and

I would feel less vulnerable if I was sure that everyone had undergone sexual harassment training and it was clear what the reporting procedures were and that there were consequences to the perpetrators of such an incident.

and

Attitudes and culture in Parliament House and some of the associated offices (EOs, Ministerial Offices, Electorate Services) are a couple of decades behind.... I think every employee, whether they're a Ministerial driver, Minister, new MP, catering staff member, librarian, building attendant or a political staffer would be better equipped for their job if they had training to understand real-

world examples of inclusion, and the diversity of our community, whether that be race, ability, faith, sexuality or gender identity. I also think cross-sectional participation in this training would enhance its positive impact; ie. cross-party, cross-role, cross-employment level.

and

Sensitivity or ally training could also be helpful in training staff in order to provide an inclusive workplace regardless of race, disability, gender identity, sexual orientation or minority religion.

and

The mandatory training for employees regarding harassment so that they know to whom complaints can be made.

and

maybe more awareness among the staff in relation to the contact information and mandatory training resources for every 6 months.

Regarding the specifics of processes, content about the availability and suggested reforms of reporting avenues are explored in Part 5.

One interview participant, who had dealt with a range of issues both as a worker and manager, noted the importance of training and awareness of processes in achieving positive outcomes:

Yeah, is I think if there had been more training provided I think I would have been more informed in how I was making decisions, and I think also is it would be easier navigating when there are issues because I think we would have been somewhere where it's made really clear about what the expectations are.

Reinforcing views expressed in the survey, written submissions outlined:

Education and clarity around the need for leadership, procedures, support, roles and responsibilities in eliminating harassment and around creating a positive workplace culture are desperately needed. I also believe that education around what constitutes harassment, gendered discrimination and unconscious bias would assist in improving basic understanding about how particular behaviours and thinking impacts particular people – basic understanding that I think needs to be developed in order for improvements in behaviour to occur and in order for any process that is developed to be successful.

and

Members and employees should have induction processes which ensure that they are provided with information regarding supports and mechanisms for people experiencing harassment.

...

Those who have not personally experienced sexual harassment can struggle to understand the psychological impact. It is therefore worth the parliament implementing programs which are aimed at improving primary prevention, such as unconscious bias training and the Government's Workplace Equality and Respect Project.

...

It would be worthwhile ensuring that intersectional issues are included in any training package for other cohorts such as people who identify as LGBTIQ+, disabled people and Aboriginal and Torres Strait Islander peoples.

It is noted that the 2018 Interim Report of the Joint Committee on the 125th Anniversary of Women's Suffrage suggested that Parliament should offer unconscious bias training to all Members and staff. The Review understands this has not been implemented.

Further to the aspects of training outlined above, the Review considers that additional tailored training is required for people in leadership positions in the parliamentary workplace. One survey respondent highlighted this issue, writing:

MPs should be having HR/People and Culture training to understand their responsibilities as managers.

The uptake of training around appropriate responses to disclosures, and how to follow process in dealing with a complaint, could assist in building staff confidence about reporting instances of sexual and discriminatory harassment.

Training for everyone occupying a leadership position is particularly needed in the current context, as the Review has heard from several participants that there is great diversity in management experience amongst leadership in Parliament House (including but not limited to Members of Parliament), Electorate offices and Ministerial Offices (see Part 2.5.3).

One interview participant shared a view that:

I think you get a bunch of MPs who don't know how to manage people. There's no HR training. There's nothing to tell them what is acceptable and not acceptable, and they don't all have the background of having that skill set before they come in. So, I think it needs to be front in preventative to tell them they are now the boss of people, they are now leaders of these people, and they need to understand some basic HR principles.

One Member of Parliament submitted to the Review that:

Increased training (whether voluntary or mandatory) of any Members of Parliament or staff who have supervisory responsibility over other staff could only be helpful, notwithstanding the busy nature of our jobs.

Research shows that educating employees about harassment can assist in both demonstrating an employer's commitment to addressing harassment and in initiating change by 'developing a collective understanding of expected workplace behaviours and processes'.¹²¹

As was demonstrated in the UK House of Commons context, uptake of voluntary training can be poor. This is particularly so in a high-paced, high workload environment, or where training is deprioritised because of perceptions around its relevance or resistance to change. Following the UK House of Commons report, voluntary 'Valuing Everyone' training was offered to all Members, however only 34 out of 650 (5.2%) attended.

In the parliamentary workplace, where there are currently no mechanisms to mandate training for Members of Parliament, the influence of leadership and the active management of resistance will be key to ensuring uptake (see Part 4.3). Mandatory training for all other workers in the parliamentary workplace is suggested as one mechanism to ensure cultural norms around acceptable behaviour are established.

Of note, one-off training is less effective in facilitating meaningful and lasting behavioural changes. As noted above, training is also likely to have greatest effect when part of a suite of preventative measures aimed at influencing workplace culture. In recognising that, 'addressing sexual harassment cannot be done just by revising policies and procedures', and that it 'requires a change in behaviour and a recognition of the impact that harassment and sexist behaviour can have on

¹²¹ *Respect@Work* (n 1) 662.

individuals and on the organisation's overall culture', the Scottish Parliament report established a 'programme of education and awareness raising'.¹²²

This programme involved a round of workshops for all Members of Parliament, staff of Members of Parliament, parliament staff and contractors, with further workshops being held periodically. The training materials from those workshops are made available to all staff on the Scottish Parliament website. A training programme tailored for managers, focussing on addressing issues and influence culture change, is currently underway. The Scottish Parliament has further developed a number of visual resources for people in the parliamentary workplace, including a poster outlining the 'zero tolerance' stance on sexual harassment and options for seeking advice for people who have experienced sexual harassment.

The information before the Review indicates that there is a lack of awareness as to the drivers and impacts of sexual harassment and discriminatory harassment and that this contributes to a culture that tolerates these behaviours and workplace responses that are often inadequate and can be damaging to victims.

¹²² *Scottish Report* (n 79) 10.

Accordingly, the Commission recommends:

RECOMMENDATION 5

That the People and Culture Section develops:

- (a) training for all Members of Parliament and staff in the parliamentary workplace aimed at increasing participants' awareness of sexual harassment and discriminatory harassment including but not limited to:
- diversity, inclusion, and respectful behaviours
 - the role of unconscious bias
 - recognition that sexual harassment is driven by gender inequality and is a form of gender-based violence
 - the social, economic and psychological impacts of sexual and discriminatory harassment
 - practical means by which bystanders can take action
 - relevant policies, procedures and complaint processes
 - for managers:
 - how to respond to a report or complaint of harassment in a victim-centred way
 - management responsibilities in promoting and maintaining an inclusive workplace.

and

- (b) induction materials for all newly commencing Members of Parliament and staff in the parliamentary workplace covering off on relevant policies, procedures and complaint processes related to sexual and discriminatory harassment.

4.3. The role of leadership

4.3.1. Leadership across the workplace

Several Members of Parliament have expressed their understanding of and support for the critical role leadership must play in preventing and appropriately responding to workplace sexual and discriminatory harassment. The Review notes that both male and female Members of Parliament, as well as Ministers/Shadow Ministers from both major parties, acknowledge the role leadership must play.

One submission received outlined:

leadership is incredibly important in any workplace in encouraging the reporting and positive handling of complaints and in improving workplace culture. All Members of Parliament are (or should be) leaders in their communities and each major Party is lead by their respective leaders; every one of us has a role to play in improving workplace culture.

A leadership void in relation to issues of this type afford no confidence to potential complainants.

Submissions from three Government Ministers stated:

In responding to any formal or informal reports of harassment in the parliamentary workplace, I believe it is the responsibility of leadership to advocate for arrangements under which such claims can be heard confidentially and investigated thoroughly and independently.

Another submission stated:

I believe that it is the role of leadership within the parliamentary workplace to promote a workplace culture which is respectful and safe, and to ensure that processes are in place to receive and deal with complaints.

And recognising leadership in implementing changes another submission stated:

I believe everyone has a right to work in a safe environment and reviews, such as yours, provide insight into areas that we can strengthen to ensure the workplace is safe and respectable for all staff.

At an individual behaviour level, leaders modelling harassing behaviours can contribute to a culture where harassment is permitted.¹²³ Conversely, leadership modelling expected behaviours ('walking the talk') can positively influence workplace norms and culture. The Review has heard that not all leaders in the parliamentary workplace contribute positively to a respectful culture. The implementation of a training program across the workplace as recommended above is an important step that will go some way to address this.

Beyond this, there is a responsibility on leadership to collectively take active steps in creating a culture that does not permit workplace harassment. The Respect@Work report recognised this in the context of sexual harassment, reporting that:

¹²³ Johnson, Widnall and Benya (n 74) 47 cited in *Respect@Work* (n 1) 155.

*Consensus is forming internationally that tackling sexual harassment requires leadership and organisation-wide approaches to break the culture of silence and drive cultural change.*¹²⁴

In 2020 the Australian coalition of male Chief Executive Officers, Male Champions of Change,¹²⁵ released a resource for workplace leaders aimed at ending workplace sexual harassment. *Disrupting the System: Preventing and responding to sexual harassment in the workplace* advocates that male leaders must ‘step up beside women in creating more effective approaches to preventing and responding to sexual harassment in the workplace’.¹²⁶ The unique position of leadership in influencing culture is addressed in the report, as is the responsibility incumbent on leaders for developing safe, respectful and inclusive cultures.¹²⁷

Three contributors to the Review suggested seeking White Ribbon Australia Workplace Accreditation would be a positive preventative step for the parliamentary workplace. Seeking to implement a formal cultural change framework such as implementing Our Watch’s Workplace Equality and Respect Standards or seeking White Ribbon Workplace Accreditation would be a clear demonstration of leadership in relation to sexual harassment and sex discrimination.

In a demonstration of leadership’s expectation of an institution-wide commitment to eradicating sexual harassment and sexist behaviour, the Scottish Parliament Working Group established a Zero Tolerance statement. This statement is a clear expression of expectation and approach, stating:

We’re adopting a zero tolerance approach to sexist behaviour as well as sexual harassment because such behaviour can create a culture where people feel undermined and not respected.

The statement further sets out the definitions of sexist and sexual harassment behaviours and principles that underpin the work of the parliament in eradicating these behaviours in the workplace. See Appendix C for a copy of the statement.

The US Workplace Harassment report argues that the role of leadership in creating effective preventative mechanisms for discriminatory harassment ‘cannot be overstated’. This report also speaks to different dimensions of leadership required,

¹²⁴ *Respect@Work* (n 1) 90.

¹²⁵ Now branded Champions of Change Coalition.

¹²⁶ *Disrupting the System* (n 108) 10.

¹²⁷ *Ibid* 9.

including that ‘leadership means ensuring that anti-harassment efforts are given the necessary time and resources to be effective’.¹²⁸

In the context of implementing gender equality or diversity measures, elements of resistance and backlash are inevitable and leadership engagement in identifying opportunities to address concerns will be crucial to the success of those measures. To this end, Male Champions of Change and Victoria Health have produced guides for leadership on responding to these challenges.¹²⁹

As stated above, the fact that the South Australian Parliament has commissioned this Review is demonstrative of a willingness by the Houses to lead change in this area. This report however illustrates there is further work to do. The Commission also considers that the display of leadership by the parliamentary workplace in relation to harassment is important in creating cultural shifts in the broader community.

The Commission recommends:

RECOMMENDATION 6

That the Houses commit to leading cultural change within the parliamentary workplace, in particular through:

- (a) promptly declaring support for the recommendations made in this Report and taking decisive action to implement all of those made to the Houses
- (b) adopting a motion declaring that sexual and discriminatory harassment will not be tolerated in the parliamentary workplace
- (c) seeking for the parliamentary workplace to be accredited as a White Ribbon workplace or implement Our Watch’s Workplace Equality and Respect Standards.

4.3.2. Party leadership

Two interview participants and one written submission expressed the view that there is a greater role for the major political parties and/or party leaders to demonstrate

¹²⁸ Feldblum and Lipnic (n 49) 4.

¹²⁹ Male Champions of Change, *Backlash & Buy-in: Responding to the Challenges in Achieving Gender Equality* (Report, June 2018); VicHealth, *(En)countering Resistance: Strategies to Respond to Resistance to Gender Equality Initiatives* (March 2018).

leadership where a member of their party engages in sexual harassment. One interview participant stated:

the parties themselves, I think, need to take it seriously... Until they take it seriously enough, nothing is going to change.

The Review heard from several victims of alleged harassment that it was their preference that the party deal with the matter and assume some responsibility for setting standards and responding to matters raised regarding conduct. A participant shared with the Review that a complaint raised with the party was not managed in a manner that was victim-centred and the complainant was left wondering what (if any) action was being taken. As discussed above, the Review understands that both major political parties have some form of policy regarding harassment.

It is acknowledged that there are practical and legal barriers to parties (and party leaders) sanctioning a party member once they have become an elected Member of Parliament. The Review heard that there are additional political barriers which may act to prevent a party leader from taking action against a Member of Parliament within their party. The Commission nevertheless notes that other than Members of Parliament there are party members in the workplace and considers that parties and party leaders have access to mechanisms to incentivise desired behaviours (for Members of Parliament and others).

The Commission considers that the party is well-placed to influence expectations and norms around the behaviour of its members and as appropriate, take action to investigate and apply sanctions. Whilst the Review has not considered specifically what party procedures or sanctions should be in place, the Commission notes that any complaint handling procedures adopted by parties should reflect the principles of complaint management which are outlined in Part 5 of this report.

The Commission recommends:

RECOMMENDATION 7

That each political party implement and actively promote internal policies regarding sexual and discriminatory harassment which set behavioural expectations of party members and provide robust procedures and sanctions to respond to complaints of harassment.

5. Complaint avenues and sanctions in the parliamentary workplace

Information made available to the Review regarding complaints of sexual and discriminatory harassment within the parliamentary workplace was not extensive: there were few recorded complaints provided, survey results about complaints were low and complaint handling policies and procedures were sparse. The Commission considers this illustrates and is reflective of the fact that there are few formalised processes and that, during the five years preceding the Review, there were low numbers of complaints of harassment made by victims.

The Review requested information about formal and informal complaints from management and leadership across the parliamentary workplace and from external complaint handling bodies. Of the over 100 sources (individuals and organisations) of complaint data contacted by the Review, 63 responses were received and amongst these, 17 in-scope complaints were identified as being raised formally or informally over the past five years. Of the 17 complaints identified five were received by DTF and seven by the ICAC.

When considered alongside the information obtained regarding the prevalence of harassment, this is clearly indicative of a low level of reporting of incidents of harassment (even taking into consideration that it appears not all complaint information requested was provided).¹³⁰

The Review found that there are few, and in some parts of the workplace no, procedures setting out internal complaint handling avenues. Where harassment victims sought to lodge complaints within the parliamentary workplace, the processes adopted did not reflect good complaint handling practice and the outcomes reached were viewed by the complainants as being unsatisfactory. None of the complaints processes the Review was informed about led to an outcome the Commission would consider an appropriate outcome or to a finding of harassment with sanctions. This is despite the fact that in least some of matters examined it appears likely that harassment had occurred.

There are avenues for lodging complaints outside of the parliamentary workplace, but participants did not always understand these options and utilisation of them was low. External complaint avenues available to parliamentary workplace staff and

¹³⁰ See Part 1.4 for observations regarding the complaint data provided.

Members of Parliament are the Equal Opportunity Commission, the Office for Public Integrity,¹³¹ SafeWork SA, and the police.

Sexual harassment and discriminatory harassment comprise a spectrum of behaviours ranging in seriousness, and the avenues available for victims should reflect this. Informal conversations between the victim and harasser might be adequate to deal with an inappropriate comment; laying a complaint with the police provides an avenue for victims of sexual or discriminatory harassment who allege, for example, assault, indecent assault, rape or an unlawful threat. The Review was not provided with information specific to experiences of this reporting pathway.

5.1. Complaint outcomes and satisfaction levels

The survey, interview and submission process sought to understand outcomes from and satisfaction levels for reporting processes in the parliamentary workplace.

According to survey participants, the most common outcome for the alleged perpetrator of sexual harassment following a report being made about them was 'there were no consequences for that person' (7 responses of 13 total). Along similar lines, Respect@Work reported a 'sense that many harassers faced no consequences for their misconduct', and that where sexual harassment had been reported, in one in five cases 'there were no consequences for the harasser'.¹³² The Review was told about one instance where a staffer who allegedly engaged in sexual harassment was promoted to a higher position despite the hiring manager being aware of the allegations.

Of the 11 respondents who made a report about sexual harassment, 63.6% (7 respondents) reported being 'somewhat dissatisfied' or 'extremely dissatisfied' with the overall experience of the reporting process.

Of the 21 survey respondents who made a report about an incident of discriminatory harassment, 46.7% (7 respondents) reported there were no consequences for the alleged perpetrator. Sixty percent (9 respondents) reported they were 'extremely dissatisfied' with the overall experience of the reporting process.

While these findings are generic across what is acknowledged to be a disparate workplace with different processes in operation, the data suggests a lack of

¹³¹ The Office for Public Integrity assesses misconduct complaints and refers them to other bodies for action - see Part 5.6. for further discussion as to the processes.

¹³² *Respect@Work* (n 1) 706.

meaningful outcomes from, and significant levels of dissatisfaction with current processes. These findings were corroborated by information received during interviews with participants who have experienced, and attempted to report, instances of workplace sexual and discriminatory harassment.

The Review was told that a common outcome for people who report sexual or discriminatory harassment in the parliamentary workplace is that they leave their role. In reference to an incident that was reported, one interview participant stated:

inevitably, from my observation, people just leave [the particular] office rather than anything being done, ... it feels like there's nothing that can be done about it.

...

In the end the person leaves. I haven't seen anything being resolved successfully.

Similarly, one survey respondent reported:

Presently the only way to escape bullying and harassment in the parliamentary workplace is for victims of harassment to resign from the organisation.

The Review was informed by another interview participant that on the rare occasion that someone makes a complaint it is often because they're 'fed up' as the discriminatory harassment has been going on for 'some time', sometimes years. In this participant's view, at this point the 'problem's almost unfixable'.

See Part 5.4.1 for further discussion about complaint outcomes.

5.2. Issues of confidentiality and parliamentary privilege

5.2.1. Confidentiality

The issue of confidentiality during complaints processes featured in all aspects of the Review's consultation.

Concern about complaints being kept confidential once reported was raised by some participants, mostly staff members in the parliamentary workplace. The Review was informed by one interview participant who had made a complaint that their complaint was shared between leaders in the parliamentary workplace without their consent. In reference to the issue of confidentiality, another interview participant stated:

...the grapevine in this, it's a very, I don't like using the word, it's a very incestuous environment

and

The jungle drums of parliament beat loudly.

The need for a confidential service to be available to people in the parliamentary workplace was identified by 10 survey participants and was linked to themes such as ensuring the process is victim-centred and supportive, and removing a possible impediment to reporting. Comments about system improvements which referenced confidentiality included:

MPs and staff should have access to a confidential but safe and supportive reporting system where they can report harassment and ensure that it will not affect them negatively.

and

Ensure that each staff member including casual staff are made fully aware of the reporting process and know that the people they report to will keep this confidential. Knowing that there are avenues to make a complaint that are private. ... Having proof of actual consequences for the perpetrators and protection and justice for the victims, including confidentiality.

and

There needs to be an independent body to which staff can confidentially report and discuss bullying and harassment.

and

there needs to be processes established including reporting mechanisms, independent investigation which is confidential, supportive and timely and outcomes which result in changed behaviors

and

An independent person outside of Parliament who incidents can be reported to and investigated confidentially would help

and

protection for junior/casual staff (career protection, income protection and true confidentiality)

and

Ensuring confidentiality.

The issue of confidentiality was also raised from the perspective of misuse of process, and that Members of Parliament may be vulnerable to complaints against them 'being leaked' for political purposes. One written submission to the Review stated:

The risk in a political environment of complaints against breaches of a Code of Conduct being used as a political tool by a Member's (or their staff's) opponents, within or without a Party, is a real one that would need to be taken seriously in any consideration of its potential introduction. ...while I believe every complaint of harassment needs to be taken seriously, investigated, and dealt with appropriately, it must be noted that the nature of political employment and the rewards for the well timed exposure of criticism of any given Member provide incentives for abuse of any public-facing complaints process that do not exist in other workplaces.

As highlighted above and as is common HR practice, the making of a report and any subsequent investigation of that complaint must be kept confidential in so far as is possible so to ensure confidence in the process for both victims and alleged harassers. While the Review acknowledges that regulating confidentiality in a political work environment presents unique challenges, such issues have been considered in other jurisdictions.

The Canadian *Code of Conduct – Sexual Harassment* contemplates the exposure of confidential information during the resolution process in violation of the code, and establishes a mechanism whereby that violation can be referred to a Standing Committee to be dealt with in any manner that the committee deems appropriate.¹³³ The code further contemplates misuse of the complaints system in 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.'¹³⁴ The person against whom the complaint was made then has an avenue available to

¹³³ Parliament of Canada, *Standing Orders of the House of Commons* (January 1, 2021) app 2 cl 66 <<https://www.ourcommons.ca/About/StandingOrders/appa2-e.htm>>.

¹³⁴ *Ibid* cl 38(1)(c).

notify the Chief Human Resources Officer if they believe the matter warrants further action.¹³⁵

The issue of maintaining confidentiality once a determination has been made was addressed in *Disrupting the System: Preventing and responding to sexual harassment in the workplace*. The use of non-disclosure agreements to legally enforce secrecy has been used by organisations to manage reputational damage and minimise future litigation. However, it is increasingly acknowledged that responding to instances of harassment in this way 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. Male Champions of Change explain:

*[Organisations prioritising legal responses] can have the perverse outcome of protecting and/or emboldening higher-status employees at the expense of complainants, their co-workers and the broader interests of the organisation and the community in naming and tackling sexual harassment. Commercial settlements and non-disclosure agreements often reinforce this view and ensure issues are kept out of the public domain and opportunities to learn from cases are diminished.*¹³⁶

One written submission to the Review stated:

Confidentiality clauses gag victims from being able to speak about their experience which helps breed a complicit culture on bullying/harassment. ...

Victims are denied the right to their own story. They are denied the right to defend themselves should the perpetrator, who is often not subject to a confidentiality clause given the unique employment arrangement, slander the victim. Perpetrators are not held to account because matters are kept confidential.

An interview participant explained in relation to potentially reporting an alleged instance of sexual harassment:

The other thing that then didn't sit well with me was the NDA... it was kind of like if you do this process, then you can't tell anyone else that it's happened, and because I was still trying to process everything that had happened, ... it's like if you go through that process then you can't have those conversations. And so, I just really, in the end, decided not to go ahead with it.

¹³⁵ Ibid cl 43(1).

¹³⁶ *Disrupting the System* (n 108) 40.

Equally, for some victims legally enforceable confidentiality may be an important tool for protecting their privacy, including from media coverage, and providing closure. In line with a victim-centred response, any use of non-disclosure agreements or confidentiality clauses must prioritise the wishes of the victim.

The Commission is of the view that policies and procedures should provide that confidentiality must be maintained during the complaints process. Whether confidentiality is to be maintained at the end of the process will be determined by the complaint outcome (for example, a finding of misconduct under the ICAC Act may be published where there is a public interest to do so).¹³⁷ The Commission notes that complaints made under the ICAC Act are subject to strict statutory confidentiality provisions (see Part 5.6 for further discussion).¹³⁸

5.2.2. Parliamentary privilege

Of the 40 survey participants who answered Q55 (multiple choice),¹³⁹ 9 (22.5%) selected 'Nothing would be done because parliamentary privilege precludes any action being taken'.

Three participants to the Review expressed concern about the application of parliamentary privilege in the parliamentary workplace. Survey comments included:

When challenged on workplace actions for example that would be considered inappropriate or illegal in any other context the ... standard response is to claim "Privilege" which they interpret to mean an ability to do anything that they choose.

and

Making sure that parliamentary privilege does not mean MPs are above the law when it comes to harassment. Parliamentary privilege is an issue. While necessary of course for the functioning of a Legislature ...you are at the whim of the Presiding Member/Clerk to make that call

Another participant to the Review stated that the concept of parliamentary privilege is 'a beast in Parliament', and expressed a view that privilege has gone from a civil protection so that Members of Parliament can perform their duties to a protection from partisan conduct.

¹³⁷ *Ombudsman Act 1972 (SA)* s 26(3).

¹³⁸ *Independent Commissioner Against Corruption Act 2012 (SA)* s 54 ('ICAC Act').

¹³⁹ 'Which, if any, of the following were reasons why you did not report sexual harassment? (select all that apply)'.

An interview participant stated that parliamentary privilege was ‘one of the first things raised’ after an incident of alleged sexual harassment they experienced that occurred in Parliament House (but not in the chamber of either House).

Parliamentary privilege was discussed extensively in the UK House of Commons report, which identified a possible misapprehension as to the reach of parliamentary privilege in the context of sexual harassment, bullying and harassment in the House of Commons context. Dame Laura Cox DBE clarified that:

*Where the conduct of an MP does not relate to “proceedings in Parliament”, even if it takes place within Parliament’s physical premises, it is within the jurisdiction of the courts and the law will apply to them in the same way as it does to anyone else.*¹⁴⁰

The reach of parliamentary privilege in relation to sexual harassment was raised during debate in the Legislative Council regarding the *Equal Opportunity (Amendment) Bill 2020*. Ms Connie Bonaros MLC spoke to and tabled a letter from the Attorney-General Ms Vicki Chapman providing views as to whether parliamentary privilege would apply to a number of harassment scenarios. Those views suggest that verbal harassment or inappropriate physical touching that occurs outside of the chamber of either House would not be considered to have occurred in relation to ‘parliamentary proceedings’ for the purposes of considering whether parliamentary privilege applied to that conduct.¹⁴¹

The Commission agrees with that position and considers that clear messaging around parliamentary privilege may assist in overcoming this potential impediment to making or pursuing a complaint. For this reason, Recommendation 9 states that harassment policies and procedures should provide guidance on the circumstances which might impinge on parliamentary privilege.

5.3. Behavioural frameworks

Behavioural frameworks, or codes of conduct, which are accompanied by clear processes for responding to possible breaches and available sanctions can be effective mechanisms to set behavioural expectations and to provide a mechanism for responding to allegations of harassment.

¹⁴⁰ Cox (n 20) 143 [384].

¹⁴¹ South Australia, *Parliamentary Debates*, Legislative Council, 13 October 2020, 1882 (Connie Bonaros).

Behavioural frameworks and the sanctions that follow a breach can also encompass a range of behaviours in the harassment spectrum. Whilst action on alleged breaches of codes might be triggered by a complaint from a victim, responding to a breach does not necessarily rely on a victim driving the process; the workplace is responsible for ensuring appropriate action is taken against the perpetrator where allegations are made and where those allegations are established.

5.3.1. Public Sector staff and the Code of Ethics

As discussed in Part 4.2, the Code of Ethics issued under the Public Sector Act applies to all employees in the parliamentary workplace who are employed under the Public Sector Act, including those employed under sections 71 and 72 of the Act. A breach of a disciplinary provision of the Code (which includes those provisions which would, in the Commission's view, capture harassment) comprises misconduct.

Where allegations of a breach of the Code are made against public service employees¹⁴² there are robust policies and procedures at a government and agency level which govern the subsequent process. There is also a range of disciplinary action that can be taken where misconduct is substantiated, including a reprimand, suspension from duties without remuneration, reduction in remuneration, transfer to other employment and termination. The Commission notes this framework provides a means for complaints to be made and dealt with transparently, takes into account that behaviours can range in seriousness and provides for sanctions that can respond to that range of behaviours. It also places an obligation on the workplace to take action against staff who do not comply with the Code.

Section 71 and 72 employees and PSOs, whilst bound by the Code of Ethics, are not subject to the same the legislative and policy mechanisms including sanctions that govern alleged breaches by public service employees.¹⁴³ There is not a documented process for responding to complaints of a breach of the Code (or other matter). The complaint process for section 72 staff employed through DTF is discussed in more detail at 5.4.2.

The sanctions for misconduct set out in section 71 and 72 and PSOs employment contracts do not reflect the broad range of behaviours that might comprise misconduct in line with the Code of Ethics; the disciplinary provisions are limited to a warning, suspension from duty or termination.

¹⁴² Parliamentary counsel staff, trainees and Ministerial office staff assigned from agencies.

¹⁴³ That said, Part 7 of the Public Sector Act may be extended to apply to public sector employees (in a modified or unmodified form) by variation to regulations - *Public Sector Act* (n 100) s 41; *Public Sector Regulations 2010* (SA) reg 13.

Legislative Council staff and Staff of the Joint Parliamentary Services Committee contracts of employment make no reference to behavioural standards. The contracts do specify 'general Public Service conditions apply', however this is unclear as to if, or how, the Code of Ethics may on this basis have any application to this staff group.

For House of Assembly, Legislative Council and Joint Parliamentary Services Committee staff, the respective Enterprise Agreements state that 'the parties will have regard to Commissioner for Public Sector Employment Guidelines in relation to the elimination of workplace harassment and bullying'. The Commission is not aware of any sanction or complaint procedure that enables this reference.

As previously noted, staff of the House of Assembly are subject to their own code of conduct which specifically addresses harassment. The House of Assembly code of conduct states 'any breach may result in disciplinary action or prosecution if behaviour is unlawful' and refers to the grievance and dispute settling procedure for the appeal process. There is no guidance provided in the employment contract (or elsewhere) for these staff as to what that disciplinary action might be.

Whilst there is no code that applies to those employed in the Joint Parliamentary Service, section 16(1)(g) of the Parliament (Joint Services) Act provides that an officer who 'behaves in a disgraceful, improper or unbecoming manner that reflects upon the joint parliamentary service' will be subject to disciplinary action. A range of disciplinary actions are set out in subsequent provisions of the Act, but again there are no documented procedures for dealing with allegations of breaches. It is also noted that disciplinary action must be imposed by the Joint Parliamentary Services Committee.

The Commission is of the view that all staff in the parliamentary workplace should be subject to a shared code of conduct that sets clear expectations that behaviours amounting to harassment are not acceptable, that is accompanied by processes for dealing with allegations of a breach and that specify a range of possible sanctions. The Commission considers the framework for public service employees should be as far as possible adopted for other areas of the parliamentary workplace, to provide consistency.

Accordingly, the Commission recommends:

RECOMMENDATION 8

That the People and Culture Section prepare a framework to be implemented across the parliamentary workplace which includes:

- a behavioural code requiring all staff in the parliamentary workplace act in a respectful and safe manner
- associated processes to govern allegations of breaches of the code
- a range of sanctions where a breach is established.

5.3.2. A Code of Conduct for Members of Parliament

The South Australian Parliament does not have a code of conduct for its Members, although this has been considered by Parliament and its committees several times. The current guiding framework for Members of Parliament is the South Australian Parliament Statement of Principles. This has been passed by both Houses of Parliament and applies to all Members of Parliament, who are required to sign the statement acknowledging they have read and accept the Statement of Principles. The Statement of Principles addresses members' behaviours with other persons with:

*11. Members of parliament should act with civility in their dealings with the public, minister and other members of parliament and the Public Service.*¹⁴⁴

The Statement of Principles does not equate to a code of conduct.¹⁴⁵ It does not set a clear standard or threshold of acceptable behaviour or values. This is reflected in the repeated use of the word 'should' in describing a behaviour of elected members. It does not provide any mechanism or process to enable an apparent breach of the principles to be addressed and provides no accountability mechanism. As such it has been described by the former Independent Commissioner Against Corruption as an 'aspirational statement'.¹⁴⁶

During consultation doubt was cast over the applicability of the resolution containing the Statement of Principles on any Parliament preceding the one which carried it,

¹⁴⁴ South Australia, *Parliamentary Debates*, Legislative Council, 23 February 2016, 3057.

¹⁴⁵ *ICAC Act* (n 138) s 5(6).

¹⁴⁶ Bruce Lander, Independent Commissioner Against Corruption, *Looking Back* (Report, 27 August 2020) 15. ('*Looking Back*').

and the Review has been informed that not all current Members of Parliament have signed the Statement.¹⁴⁷

The Commission notes that every Australian State and Territory other than South Australia has a code of conduct for elected members in some form. Of these, New South Wales, Victoria, Tasmania and Northern Territory codes are provided in legislation. The Australian Parliament does not have a code of conduct. The most recent consideration of a Commonwealth Code of Conduct is the *Commonwealth Parliamentary Standards Bill 2020* introduced in October 2020, which remains before Parliament.¹⁴⁸

The Victorian Code of Conduct is considered to be the most robust code of conduct amongst Australian jurisdictions, although it does not address the topic of harassment specifically. The Victorian code of conduct is legislated in the *Members of Parliament (Standards) Act 1978*.¹⁴⁹ The code is provided in Part 3 and provides (amongst other things) that a:

Member must ... treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities (s6(d)).

and

A Member must ensure that their conduct as a Member does not bring discredit upon the Parliament (s13).

The Act includes a process for considering and determining any reported breach of conduct by referral of the Presiding Officer to a Privileges Committee. Sanctions are provided in the Act and may range from an apology to Parliament through to declaration of the Members seat as vacant.¹⁵⁰

Support for a code of conduct for Members of Parliament was expressed to the Review by some staff and elected members.

Members of Parliament commented:

¹⁴⁷ The resolution which passed in 2016 containing the Statement of Principles provided that 'upon election and re-election to parliament, within 14 days of taking and subscribing the oath or making and subscribing an affirmation as a member of parliament, each member must sign an acknowledgement to confirm they have read and accept the statement of principles'.

¹⁴⁸ The Bill provides for statutory codes of conduct for Members of Parliament and their staff, establishes a Parliamentary Integrity Adviser who provides advice and guidance about the code of conduct and establishes a Parliamentary Standards Commissioner who can assist in investigations and resolutions of breaches of codes of conduct.

¹⁴⁹ *Members of Parliament (Standards) Act 1978* (Vic) pt 3.

¹⁵⁰ *Ibid* s 31.

A Code of Conduct for all members of the South Australian parliament is also needed. How this is developed and how future Members of Parliament are given the opportunity to engage with this Code on entering Parliament will be crucial to increasing understanding and changing culture.

and

I think a code of conduct for MPs is critical.

and

... there needs to be a code of conduct for MPs

One interview participant stated:

I think [a Code] would help. Anything, in any document regarding behaviours that you can get 69 members of parliament to put their name to would be a very useful thing. What it would be watered down to get that agreement would be, would make it fairly ineffectual in my personal view.

Support from staff for a Code of Conduct for Members of Parliament included:

... Linked to this could be a Code of Conduct for MPs/MLCs. I believe they should be held to the same standard as public servants.

and

I absolutely think that there should be a code ... for it to have an effect, it needs to be, there needs to be sanctions that the staff or at least a process that the staff are going to be confident enough in that they're willing to make a complaint.

Alternatively, a Member of Parliament expressed doubt as to the value of a code of conduct stating:

I note that the Local Government sector has a Code of Conduct as part of its framework. My observation is that this mechanism provides limited remedy for victims and is not considered a useful tool in the sector. I therefore have no reason to believe it would be effective if implemented at the state level.

Survey respondents expressed support for a code of conduct for Members of Parliament. The need for greater accountability for Members of Parliament was referenced 13 times by respondents and support for a code of conduct for Members of Parliament was referenced seven times. Including:

The system should be changed to have a code of conduct for MPs

and

there should be a Parliamentary Code of Conduct and a Parliamentary Conduct Commissioner with independent oversight of MPs conduct

and

If members had a code of conduct, that if breached seriously, would lead to consequences it would improve culture and reporting

and

the biggest problem is the unaccountability of the Parliament, no one has jurisdiction to hear a complaint or take action

and

Accountability for everyone including MP investigation process which is transparent and compulsory

and

Personal accountability for MPs if they are found to harass people Actual consequences for bad behaviour and the ability to enforce this

Five interview participants made suggestions to the Review around appropriate sanctions for breaches of a code of conduct for Members of Parliament, including financial penalties and reduced access to privileges associated with the role.

The absence of a code of conduct is problematic in the context of complaints made under the ICAC Act alleging misconduct by Members of Parliament. The Independent Commissioner Against Corruption, the Honourable Ann Vanstone QC, advised the Review that a total of six matters alleging harassment or bullying related by Members of Parliament had been reported to the Office for Public Integrity over the 2019 and 2020 calendar years. Of these, three were not pursued, in part at least, because there was no code of conduct for Members of Parliament.¹⁵¹ Further discussion of the ICAC Act as a framework for dealing with harassment by Members of Parliament is provided at Part 5.6 below.

Commissioner Vanstone has stated publicly (although not in the context of harassment allegations) that she considers 'it's essential that the parliament

¹⁵¹ It is noted that the definition of 'misconduct' includes a breach of a disciplinary provision of a code of conduct or 'other misconduct'.

implement a code of conduct'.¹⁵² Her predecessor, the Honourable Bruce Lander QC, also stated that a Code was needed and that the absence of one presents an impediment to the ICAC investigating misconduct by Members of Parliament.¹⁵³

In 2020 the Crime and Public Integrity Policy Committee recommended to the Houses that

*...consideration be given to the implementation of a code of conduct for members of the Parliament of South Australia. Conduct in breach may constitute misconduct for the purposes of the [Independent Commissioner Against Corruption] Act, subject to the privileges, immunities and powers of the Parliament (including its committees and members).*¹⁵⁴

The Commission considers this Review adds further weight to these calls for a Code of Conduct for Members of Parliament. Whilst our political representatives are accountable to their electorate, the Commission is of the view that, where a Member engages in conduct that does not meet community expectations, particularly conduct that in any other workplace would be unacceptable and subject to disciplinary action, the Member should be held accountable in a timely manner. A code linked to robust processes and sanctions, in the Commission's view, would provide a level of accountability that is currently missing. The fact that this Review has heard of a number of instances of Members of Parliament engaging in harassing behaviours speaks to the necessity of this added mechanism. Further discussion about the processes and sanctions that should apply for a breach of a code for Members, and a recommendation regarding a code (Recommendation 12), are provided at Part 5.6.

Ministerial Code of Conduct

South Australia has a code of conduct for elected members holding Ministerial portfolios in government. The Ministerial Code of Conduct was endorsed by Cabinet in 2002 and updated in 2016. The Ministerial Code continues to apply to Ministers.

The code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold the highest standards and avoid conflicts of interest. The code makes clear Ministers are accountable to the Premier who has responsibility to deal with Ministers conduct in a manner that retains the confidence of the public'.

¹⁵² Transcript of Evidence of the Independent Commissioner Against Corruption to the Crime and Public Integrity Policy Committee, Hansard, 10 December 2020, Hansard, [3879] (Ann Vanstone).

¹⁵³ *Looking Back* (n 145) 15-16.

¹⁵⁴ Crime and Public Integrity Policy Committee, Parliament of South Australia, *Fifth Report: Inquiry into Matters of Public Integrity in South Australia* (Report No 5, December 2020) 20-1.

This includes specifying actions that may be taken by the Premier at his or her discretion.

The Ministerial Code of Conduct does not provide any specific guidance on conduct regarding harassment although it does require:

Ministers must ensure that their personal conduct is consistent with the dignity, reputation and integrity of Parliament. Ministers are responsible to Parliament for their actions and the actions of the departments and agencies within their portfolio.

and goes on to say:

Ministers are required to ensure that their decisions, directions and conduct in office do not encourage or induce other public officials, including public servants, to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity.

In regard to sanctions it states:

If a Minister engages in conduct which prima facie constitutes a breach of this Code, or a Minister is charged with an offence, the Premier shall decide, in his or her discretion, the course of action that should be taken. A Minister may, among other things, be asked to apologize, be reprimanded or be asked to stand aside or resign.

Before making a decision, the Premier may refer the matter to an appropriate independent authority for investigation and/or advice.

The Commission notes the continuance of the Ministerial Code of Conduct over multiple Government terms. There are several parts to the ministerial code that could be expected to apply to any Member of Parliament regarding honesty, decision making and information management.

The Review was not provided with any information as to whether this Code has been considered in the context of allegations of sexual or discriminatory harassment. That said, the Commission considers it appropriate that Ministers are subject to a Code which allows immediate action – including the withdrawal of the harasser's Ministerial portfolio - where harassment is established. It is the Commission's view that it would be useful if the Code made specific reference to sexual and discriminatory harassment to indicate provide clarity that this type of behaviour by Ministers will not be tolerated.

5.4. Internal complaints processes

Good practice complaint handling processes provide an internal complaint process as well as referring potential complainants to available external complaint avenues.¹⁵⁵ Indeed, there will be circumstances where victims might prefer their complaint to be dealt with internally (for example, where the alleged conduct is at the less serious end of the spectrum victim might seek an informal resolution of their complaint). This was reflected in information provided to the Review; the Commission heard from several participants that their preference was that their complaints be dealt by the parliamentary workplace.

Processes internal to organisations should offer a range of resolution methods: informal as well as formal processes and resolution by agreement between the parties or via an investigation process which may result in sanctions being imposed by the workplace. Respect@Work documented views that good practice systems for reporting sexual harassment:

*are characterised by supportive, victim-centred, flexible mechanisms that accommodate the needs of workers and offer workers a range of reporting options and multiple entry points.*¹⁵⁶

Reporting processes should be clear, transparent, and accessible to all employees. Investigatory processes should follow natural justice principles, be undertaken in a victim-centred and timely manner and be conducted by people with expertise and understanding of the 'gendered drivers of sexual harassment, the way it manifests and its impacts on different groups of workers'.¹⁵⁷

5.4.1. Complaints procedures and processes

Effective complaints processes begin with clear and shared understanding of behavioural expectations. This provides the foundation to enable an assessment of the appropriateness of behaviours and the making of a complaint. Part 5.3.1 above speaks to the need for a shared behavioural framework for Staff and Part 5.3.2 speak to the need for a behavioural code for Members of Parliament. Enlivening such codes requires clear policy and procedure for complaints.

¹⁵⁵ For example the Complaint Handling Model Policy created by Ombudsman SA, which talks to informing people of any internal and external review options available to them: Ombudsman SA, 'Complaint Management Framework' (March 2016) 30 [4.7]
<https://www.ombudsman.sa.gov.au/wp-content/uploads/Complaint_Management_Framework.pdf>.

¹⁵⁶ *Respect@Work* (n 1) 696.

¹⁵⁷ *Ibid* 711.

The information provided to the Review indicates that complaint handling policies and procedures in the parliamentary workplace are far from comprehensive; indeed, most of the workplace is lacking in procedures entirely. The exception to this is public service employees who have comprehensive complaint procedures applying to them.

The Review was provided with copies of Enterprise Agreements in place for section 71 staff, Joint Parliamentary Services staff, House of Assembly staff and Legislative Council staff. These Agreements contain grievance clauses which provide a mechanism to appeal disciplinary decisions made by the employer; they are not designed to apply to harassment complaints. The Commission does not consider these to be suitable as a complaint procedure in matters of sexual or discriminatory harassment.

The House of Assembly 'Grievance Policy and Guideline' has wider application and arguably covers situations involving a House staff member alleging harassment by another House staff member. The guideline's stated aim is to 'provide a timely, fair and mutually satisfactory settlement of differences of points of view between all employees' and defines a grievance as 'any matter of concern to an employee arising directly or indirectly from their employment in the House of Assembly'. It provides a process for informal and formal grievance with the latter including that 'mediation processes may be initiated by the Clerk' and 'Any party may request the referral of the matter for resolution by the Speaker'. Despite this, in the Commission's view, the policy is lacking in the following respects:

- it does not provide a clear formal process; in particular it is noted that the Management Team 'will determine a process of resolution'
- it is limited in scope: it is unlikely that this policy has any application where the harasser is not a staff member of the House of Assembly
- it is not victim-centred and likely not appropriate to deal with a matter of harassment in mind. For example, it does not empower a victim of harassment to report harassment, does not provide a process that provides support for the parties involved and does not provide any provision for independence or managing conflict of interest.

The Review was not provided with any other policies or procedures pertaining to internal complaint handling processes that apply to the parliamentary workplace. Recommendation 9 seeks to address this gap.

The Commission notes that complaints policies and procedures should apply across the parliamentary workplace; this will provide clarity of process even where alleged harassment involves more than one workgroup.

5.4.2. Complaints management in practice

The Review received information as to the complaint processes that apply in practice where a section 72 employee lodges a complaint. It is understood that the process is guided by DTF's agency-specific complaints process. Documents received by the Review indicate that the process is communicated to staff verbally or in email (no specific policy/procedure was provided to the Review):

1. As an initial point of contact for staff experiencing difficulties in their workplace, Electorate Services provide HR support, advice, information on, and referral to, other services such as EAP in an effort to address the needs of the staff member.
2. Formal lodgement of a complaint is requested before an intervention is initiated.
3. A person about whom a complaint is made is provided with details of the complaint so that they have an opportunity to respond to the complaint made against them.
4. The course of action varies according to the circumstances – these are not set out in full to victims, but in practice appear to involve one or more of the below:
 - meeting with the victim to discuss the complaint lodged and the process
 - meeting with the alleged harasser and victim separately, before attempting to bring them together if agreeable
 - mediation by an external mediator
 - meeting with the victim, the victim's delegate (in the case of a trainee) and the Member of Parliament of the particular electorate office to discuss management of the issues going forward
 - requesting, with the victim's consent, further information from the victim's medical practitioner about the impacts of the behaviour and appropriate workplace adjustments and management of those impacts.

Of the three complaints the Commission assessed within the scope of the Review's terms of reference, the outcomes were (1) the victim changed office, (2) the victim withdrew their complaint and (3) the victim resigned. The Review notes the absence

of an investigation process in these three cases and the reliance on mutually agreed solutions.

The Review was advised that where Electorate Services receives a complaint from a section 72 employee concerning alleged conduct of a Member of Parliament, if other means of resolving the issue as outlined above are unsuccessful, the complaint may be referred by the Chief Executive, DTF to the relevant Presiding Officer.

The Commission understands this approach has been adopted because Electorate Services do not have any jurisdiction to deal with matters involving Members of Parliament. Similar to the above process this complaints pathway exists in practice but is not documented policy or procedure.

Through the collection of de-identified complaints documentation the Review received copies of documentation relating to one instance of this process being utilised in the past five years, regarding a matter involving elements of both discriminatory harassment and bullying.

The documentation provided does not make clear whether the victim was consulted as part of this referral process.

The response letter from the Presiding Officer confirms that they convened a meeting between the accused Member of Parliament and the victim, and that during this meeting the issues contained in the complaint were discussed. The parties were provided until 'early the following week' to report back with suggestions for possible ways forward.

Through this process the Presiding Officer formed the opinion that there 'is no real way forward', and that in the absence of any other material or evidence (no process was outlined as to whether these had been proactively sought by that Member), they were unable to come to the view that the accused Member of Parliament had engaged in the alleged conduct.

While bringing the parties together appears to have been done in good faith and with intention to reach a mutually agreed outcome, the Commission observes that the process was not victim-centric and did not provide a real or perceived level of independence. Inadequate consideration was given to the potential or actual biases or conflict of interest of the decision-maker or the power imbalances involved in the relationships in question.

Further, the Commission notes that the decision-maker in this instance was not guided by any established policy or process on dealing with complaints and does not

have access to expert human resource advice as would be the case in other workplaces including the public service. On this, one interview participant stated,

the capability for Presiding Officers to be investigated adequately is something that needs to be addressed, either through policy or process or procedure or third party. They ... certainly need some direction because not all are trained and you wouldn't expect them to be.

The Commission notes with concern that had the Presiding Officer formed a view that there was sufficient evidence that the alleged conduct had occurred, they have no power to resolve the matter (outside of an informal agreement). The only circumstances in which Presiding Officers can take action against another Member are where there has been a breach of the Standing Orders.¹⁵⁸

A written submission to the Review also expressed dissatisfaction with the manner in which their complaint was dealt with by a Presiding Officer, stating:

I have documented details of inappropriate treatment by a fellow Member of Parliament to the [Presiding Officer] however I have had no response whatsoever to my correspondence.

The Commission considers the above illustrates that the referral of a complaint of harassment about a Member of Parliament to a Presiding Officer is not an effective means of dealing with such a matter; at the very least it will raise issues of perceived bias, the Presiding Officer is unlikely to have the expertise or resources to manage the complaint and in any event they have no powers to compel adherence to a process or impose sanctions.

The Review was also advised of two instances where allegations of sexual harassment were dealt with by management within the parliamentary workplace – ostensibly via an ‘investigation’.

¹⁵⁸ In the case of a breach of standing orders, in general terms, and dependent on the conduct, a Member who has breached the respective Standing Orders of the relevant House, whether in the chamber or during Committee, may (in the case of House of Assembly Members) be directed by the Speaker to leave the chamber for a short period, or (in the case of all Members) on being reported by the relevant Presiding Officer, be suspended from the House for the rest of the day or for up to one month following the passing of a motion by the House. In the case of very grave disorder the Presiding Officer may suspend sitting for a time: Parliament of South Australia, *Standing Orders for Regulating the Public Business of the House of Assembly together with the Joint Standing Orders of the Houses* (2018) ss 137-137A, 138-9 <<https://www.parliament.sa.gov.au/en/House-of-Assembly/Orders>>; Parliament of South Australia, *The Standing Orders of the Legislative Council relating to Public Business together with the Joint Standing Orders agreed to by Both Houses* (1999) ss 208-218 <<https://www.parliament.sa.gov.au/en/Legislative-Council/Standing-Orders#ChapterXVIII>>.

In one instance, the victim reported the behaviour informally to a leader for advice and support. On the available information, the Commission understands this matter was dealt with by another leader in the workplace who spoke with the alleged harasser (who denied the conduct) and another person not present at the time of the incident (who could not confirm the incident). The Review was told that witnesses were not approached. The claim was found to be unsubstantiated.

In another case, similarly, so far as the victim was aware the 'investigation' involved simply talking with the alleged harasser. The Review was told witnesses were not consulted and, despite having offered documentation to illustrate aspects of the complaint, the victim was not asked to produce this evidence for consideration. The Review was told it was concluded that there was no evidence of bullying or harassment.

Based on documentation and information provided during interviews, the Commission considers that the lack of documented process and lack of independence and robustness of these internal 'investigatory processes' fall short of modern workplace standards.

Sexual harassment complaint case study

The Review was told by a victim about multiple alleged matters involving sexual harassment and assault.

The alleged incidents occurred at a work social function. One matter involved alleged (low level) sexual harassment by two Members of Parliament that then escalated to alleged sexual assault by one Member of Parliament. Separately, another incident of alleged sexual harassment occurred that was conducted by a staff member towards the victim (and others).

The alleged incidents were reported by the victim to several sources. This included immediately or soon after the incident. The Review was told that the victim reported the matter to colleagues, then over the following weeks and months to senior leadership of the political party, the relevant Presiding Officer, and two leadership positions in the public service.

The Review was told that the response to the victim from colleagues was "you'll be a rat if you say anything" and "you don't report MPs", interpreted by the victim to mean put up with it and don't stir up trouble. The response from the party was to present the option of reporting to police and offer strategies to

avoid contact with the harasser. The victim felt the party otherwise sought to manage it within a closed circle with minimal information shared with the victim. This was perceived by the victim as a focus on managing the matter to prevent fall out or minimise disruption to the party and political process.

The response from DTF was to provide advice about the victim keeping separated from the harasser, and if the complaint was to be made formal that they would refer the matter back to the Presiding Officer. This was interpreted by the victim to mean that DTF had no authority to take action. The victim considered all these responses as inappropriate and absent of any process.

Through these discussions the victim reported that it was six months before she was alerted to external reporting options other than reporting to police.

The victim described long term impacts of the alleged harassment and assault. The Review was told that this resulted from feeling that the matter was left to fester, that there was no credible investigation of the alleged incidents, that she felt compelled to independently seek corroborating evidence of the incidents and that there was injustice in there being no repercussions for the harassers whereas she continued to experience ongoing impacts. The victim stated:

I had very high anxiety levels. I wasn't functioning very well.

The victim described that the distress of dealing with the experience was exacerbated by concern about the impact on her career.

Fear about the matter becoming public and having to then cope with the pressure of public scrutiny, including explaining to family and friends the position she found herself in, was identified as a major pressure and factor in her decision-making.

In raising the incidents, the victim wanted an internal investigation process that acknowledged what had occurred and the impacts on her, management/ investigation with a level of independence, protection of her integrity, career and privacy and that appropriate consequences be applied to the harassers. The victim reported to the Review that none of these outcomes were achieved.

5.4.3. Victim-centred approaches to complaints handling

Two interview participants separately reported to the Review that, on them reporting an alleged incident of sexual harassment, managing reputational risks and political

interests were prioritised over and above their wellbeing as a victim. The further harm that can be caused to victims where reporting processes or administrative arrangements after the alleged incident are poorly handled were outlined in Part 2.3.

In the 2019 publication, *What will it take? Promoting cultural change to end sexual harassment*, UN Women identified nine core elements of a victim-survivor focus in addressing sexual harassment.¹⁵⁹ These were summarised as below in *Respect@Work*:¹⁶⁰

1. Give control to the victim, to make or not make a report. If they do choose to report, allow them to do so at a time and in a manner appropriate for them.
2. Clarify issues of privacy and confidentiality as soon as possible and preferably before details are shared, so that victims are aware of how their report will be treated.
3. Ask and listen without judgement and show sympathy.
4. Keep the victim informed throughout any process and before any action is taken.
5. Ensure wellbeing, protection and safety of the victim, including understanding the trauma that victims can experience and how and when symptoms of that trauma may present.
6. Ensure timeliness in communications and investigations (if conducted).
7. Ensure equal treatment of the victim and the alleged harasser in any process, including investigation, including access to support, leave with pay, information and rights to appeal.
8. Offer the victim a range of administrative adjustments, should they wish, such as paid time off work or the option to temporarily work in another location away from the alleged harasser.
9. Make no assumptions about the truth or otherwise of the report. Convey an openness about what may have happened, which should include the possibility that the report is accurate. Importantly do not adopt the criminal justice system approach of beginning from an assumption of innocence of the accused.

Further, the Commission notes that a victim-centred approach requires that a reporting and complaints procedure must allow for different reporting and response options. As explained in *Disrupting the System: Preventing and responding to sexual*

¹⁵⁹ Purna Sen, *What Will It Take? Promoting Cultural Change to End Sexual Harassment* (Discussion Paper, UN Women, September 2019) 29-33.

¹⁶⁰ *Respect@Work* (n 1) 679-80.

harassment in the workplace, 'this will support complainants to come forward by giving them flexibility choose the pathway that is right for them.'¹⁶¹

The Commission considers that the core content for victim-centred mechanisms outlined above can be adapted to encompass discriminatory harassment and should be considered and adhered to so far as is possible in the establishment of centralised approach to the prevention and response to sexual and discriminatory harassment in the parliamentary workplace.

Accordingly, the Commission recommends:

RECOMMENDATION 9

That the People and Culture Section develop complaint procedures to apply across the parliamentary workplace in relation to sexual harassment and discriminatory harassment which:

- are victim-centred
- establish robust internal complaint processes for responding to harassment within the parliamentary workplace
- provide internal options for dealing with complaints, including conciliation and investigation
- ensures internal complaints are handled by an independent and qualified person
- provide protections for victims against retribution and victimisation
- clarify issues of privacy and confidentiality, including that confidentiality is to be maintained throughout the complaint handling process
- provide for appropriate and proportionate sanctions to be imposed where harassment is found to have occurred and/or where confidentiality is breached
- provide guidance on parliamentary privilege
- clearly set out the external complaint avenues available to staff and Members of Parliament
- establish a process for the disclosure of relationships between Members of Parliament and staff in the parliamentary workplace
- provide guidance on record keeping and matters related to preservation of evidence where a formal or informal report is made.

¹⁶¹ *Disrupting the System* (n 108) 105.

5.4.4. Available supports

The harmful psychological effects of sexual harassment and discrimination are widely recognised, and the Review heard from participants about the impact of being a victim of harassment in the parliamentary workplace. The prospect or reality that public exposure by speaking up could be career-ending heightens the stress of victims in this particular workplace.

All employees in the parliamentary workplace have access to an Employee Assistance Program provider.¹⁶² While an important resource for staff, the services offered by an Employee Assistance Program are limited in terms of expertise (particularly regarding advice on reporting pathways) and duration in the current context.¹⁶³

One interview participant endorsed a Recommendation made by the previous Independent Commissioner Against Corruption, the Hon. Bruce Lander QC, following the investigation into sexual harassment claims at The University of Adelaide', suggesting:¹⁶⁴

Assigning an independent support person to any staff member who reports unwanted sexual contact or sexual harassment that is substantiated. The support should not cease at the end of an investigation, but be made available to a victim beyond the resolution of the matter and for as long as necessary.

... I believe it would have been helpful in my situation. I spend [considerable time] trying to work out everything myself, but would have been assisted if I would have had someone to support me through the process.

Similarly, a submission received by the Review suggested:

It is crucial that any policy includes access to trusted, educated contact people to whom people can initially and confidentially speak with to talk through options for making, progressing and resolving complaints.

This approach was adopted by the Scottish Parliament, which established a single point of contact for everyone in the parliamentary workplace regarding workplace sexual harassment. Beyond its function in handling complaints, this centralised

¹⁶² The Review understands that casual employees do not have direct access however may be considered eligible on a case-by-case basis if needed.

¹⁶³ Access to an EAP is generally limited to three sessions, and only extended on approval by management, which has implications for confidentiality for the victim.

¹⁶⁴ Bruce Lander, Independent Commissioner Against Corruption, *Statement About an Investigation: Misconduct by the Vice-Chancellor of the University of Adelaide* (26 August 2020) ('Statement about an Investigation').

service provides confidential advice, support and advocacy to people who have witnessed or experienced workplace sexual harassment or sexist behaviour. The support provided can be ongoing, irrespective of whether or not the person accessing the service has submitted a formal complaint. The service is independent of the Parliament and the political parties and, notably, is in addition to the Employee Assistance provider.¹⁶⁵

The Commission considers it important that the parliamentary workplace provides in-house points of contact for victims to speak to in relation to their options, as well as access to expert counselling supports.

Accordingly, the Commission recommends:

RECOMMENDATION 10

That the People and Culture Section:

- establishes Contact Officers across the parliamentary workplace, suitably trained to provide confidential support and information on reporting options to employees experiencing or witnessing harassment
- ensures victims of harassment are aware of and have access to ongoing counselling services with the expertise appropriate to the type of harassment experienced.

5.5. Equal opportunity legislation

5.5.1. South Australian law

Unlawful sexual harassment in employment

The Equal Opportunity Act makes it unlawful for a person to sexually harass another person, in certain areas of public life, including in a person's employment.¹⁶⁶ These provisions cover the conduct of everyone in the parliamentary workplace, including Members of Parliament.

The definition of sexual harassment provided in the Equal Opportunity Act is broad; a person sexually harasses another where:

¹⁶⁵ 'Independent Support Service', *The Scottish Parliament* (Web Page) <<https://www.parliament.scot/abouttheparliament/108343.aspx>>.

¹⁶⁶ *Equal Opportunity Act 1984* (SA) s 87. ('EO Act')

- (i) the person makes an **unwelcome sexual advance**, or an **unwelcome request for sexual favours**, to the person harassed; or
 - (ii) engages in other unwelcome **conduct of a sexual nature** in relation to the person harassed,
- in circumstances in which a **reasonable person**, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.¹⁶⁷

This is an inclusive, rather than exhaustive, list of what constitutes conduct of a sexual nature.¹⁶⁸ It is a broad definition, and anything from a few brief words through to rape can meet this definition.¹⁶⁹ Whether conduct is of a 'sexual nature' is an objective test and consideration is given to the facts and context. The recounting of a sexual experience to another person, and a workplace hug have been found to be of a sexual nature in Australian case law.¹⁷⁰

A victim must prove on the balance of probabilities that they were subjected to conduct which constitutes sexual harassment (having regard to the discussion above) *and* that the conduct would have offended, humiliated or intimidated the 'reasonable person'.¹⁷¹

The Equal Opportunity Act regulates the conduct of employees while at their workplace or where the employee/s attend in connection with their work.¹⁷² Employer organised functions (even those occurring on weekends) and after-hours parties/drinks have been found to be extensions of the workplace,¹⁷³ and technology-facilitated forms of workplace communication are also likely to be captured.¹⁷⁴

Employers have a positive obligation to set standards of behaviour and manage a complaint of an alleged breach of the Equal Opportunity Act.¹⁷⁵ An employer may be held vicariously liable for the impropriety of an employee, unless the employer can

¹⁶⁷ Ibid.

¹⁶⁸ Ibid s 87(9)(b).

¹⁶⁹ *Evans v Pasadena Foodland and Crugnale* [2019] SAET 222, 222 [1] ('*Evans v Pasadena*').

¹⁷⁰ *Sammut v Distinctive Options Limited* [2010] VCAT 1735.

¹⁷¹ This is objective assessed on the evidence, namely 'the perspective of a reasonable person in the role of a hypothetical observer'.

¹⁷² *EO Act* (n 166) s 87(9)(e).

¹⁷³ *Lee v Smith* [2007] FMCA 59.

¹⁷⁴ The use of work email, messaging systems, use of work phones, may all be factors that come to bear on whether a person has been sexually harassed within their 'workplace'.

¹⁷⁵ *EO Act* (n 165) s 91(3).

demonstrate they had an appropriate policy in place for the prevention of such an act *and* they had taken all reasonable steps to implement and enforce the policy.¹⁷⁶

In a 2019 case an employer was found vicariously liable for sexual harassment in the workplace by *not* taking reasonable steps to implement and enforce an existing policy; specifically by:¹⁷⁷

- failing to provide adequate training (the victim did not have the procedures explained to her clearly and was not aware of the complaint handling processes)
- failing to conduct a thorough, timely investigation
- failing to put precise allegations to the perpetrator
- allowing closed-circuit television evidence to be deleted automatically
- failing to report back to the relevant parties the outcome of the investigation.

Other unlawful discrimination and acts in employment

The Equal Opportunity Act makes it unlawful to discriminate against a person in an employment context because of their:

- Sex, sexual orientation, gender identity or intersex status (Part 3)
- Race (Part 4)
- Disability (Part 5)
- Age (Part 5A)
- Marital or relationship status, spouse's or domestic partner's identity, caring responsibilities, religious appearance or dress, or because they are pregnant or might become pregnant or have caring responsibilities (including because they are breastfeeding) (Part 5B).

Discrimination under the Equal Opportunity Act can be understood as unfavourable treatment fully or substantially on the basis of the protected attribute. In the case of employment, unfavourable treatment may be in relation to:

- the terms and conditions of employment
- denying or limiting access to opportunities for promotion, transfer or training, or to other benefits connected with employment
- dismissing the employee or
- subjecting the employee to other detriment (defined as including humiliation or denigration).

¹⁷⁶ Ibid s 91.

¹⁷⁷ *Evans v Pasadena* (n 169).

Both direct and indirect unfavourable treatment are unlawful under the Equal Opportunity Act.¹⁷⁸

Victimisation is also unlawful under the Equal Opportunity Act. A person will have committed an act of victimisation if they treat a person unfavourably on the basis that that person has commenced, given information in relation to or reasonably asserted someone's right to bring proceedings under the Equal Opportunity Act.¹⁷⁹ In the same way outlined above, an employer can be found vicariously liable for unlawful discrimination and/or victimisation in the workplace.

Complaint processes under the Equal Opportunity Act

The below provides an overview of the Commission's processes for managing a complaint. More details are provided in Appendix D.

A complaint to the Commission must be in writing and be from or on behalf of a person who has been the subject of alleged discrimination or sexual harassment.

Where the Commissioner determines they have jurisdiction to consider the complaint,¹⁸⁰ and the complaint is not subject to criminal investigation,¹⁸¹ a copy of the complaint will be sent to the alleged harasser and a written response will be requested.

If deemed appropriate for the particular matter, the Commission will attempt to resolve the matter through a conciliation conference. As a matter of practice, in the employment context respondents are often accompanied or represented by their employer during the conciliation process. Victims can also be accompanied by a support person or representation.

If the parties reach a mutual agreement during the conciliation conference, an agreement will be drawn up and signed by the parties. As the terms of a resolution are reached through mutual agreement, a range of outcomes are possible from conciliation. Agreements have in the past included provisions that:

¹⁷⁸ Indirect discrimination occurs where a rule or policy applies to everyone but has the effect of disadvantaging some people because of characteristics associated with an attribute listed above.

¹⁷⁹ *EO Act* (n 165) s 86.

¹⁸⁰ *Ibid* ss 93(2), 93(2a) - (2b). Generally, complaints that relate to incidents that occurred more than 12 months prior to the date of lodgement of the complaint will be considered to be out of time, although the Act provides the Commissioner may extend time for lodgement in certain circumstances.

¹⁸¹ *Ibid* s 93(4). Where the subject matter of the complaint is under criminal investigation or the respondent has been or is to be charged with a criminal offence in relation to the matter, the Commissioner may not proceed with dealing with a complaint until the criminal investigation has been completed or the proceedings for the offence have been disposed of, withdrawn or permanently stayed.: see *EO Act* (n 165) s 93(4).

- the respondent/their employer change policies and procedures to prevent discrimination
- the respondent undertake equal opportunity training
- the respondent have adjustments made to their hours, pay or conditions
- the complainant be reinstated in their role, transferred or retrained
- the complainant receive compensation for economic loss, damages or injury for hurt or humiliation
- the respondent/respondent's employer issue a private or public apology
- that the respondent/respondent's employer provide the complainant with a reference to assist with finding future work.

Where both parties agree, agreements may include a confidentiality clause, a breach of which the other party could seek to remedy by instituting proceedings for breach of contract. Further, the Equal Opportunity Act provides that anything said or done as part of proceedings with the Commission is inadmissible as evidence in proceedings under any other Act or law.¹⁸²

If a matter is unable to be resolved at the conference, the matter may be declined or referred to the South Australian Civil and Administrative Tribunal or the South Australian Employment Tribunal.¹⁸³

The Commission has received one formal complaints and three enquiries in the past five years about sexual harassment or discrimination in employment from an employee in the parliamentary workplace.

Application of provisions where sexual harassment is alleged by Members of Parliament

The Review was informed during consultation of a publicised incident of alleged sexual harassment by a Member of Parliament against two female Members of Parliament in 2017.¹⁸⁴ This incident resulted in a complaint being filed with the Equal Opportunity Commission that was ultimately deemed to be out of jurisdiction, owing to the sexual harassment provisions of the Equal Opportunity Act not applying to conduct between two Members of Parliament at that time.

¹⁸² Ibid s 95(9).

¹⁸³ Ibid s 95B. Most matters proceed to the SACAT. Where the complainant has another matter on foot with the SAET, for example, a complaint made under the *Return to Work Act 2014*, the Commissioner may determine to refer the Equal Opportunity matter to the SAET for case management efficiency.

¹⁸⁴ South Australia, *Parliamentary Debates*, Legislative Council, 29 November 2017, 8743-8749.

In providing written submissions to the Review, multiple Members of Parliament referenced the 2020 amendments to the Equal Opportunity Act. The Equal Opportunity (Parliament) Amendment Bill 2020 amended the Equal Opportunity Act so to make explicit that sexual harassment perpetrated by a Member of Parliament towards another Member of Parliament is unlawful.¹⁸⁵ All submissions received referencing the amendments considered that they are a positive step in addressing the issues being examined by the Review, and some noted that these legislative changes now bring SA's sexual harassment laws in line with community expectations. The Commission considers the passing of these amendments is a demonstration of commitment amongst Members of Parliament to addressing sexual harassment in their workplace.

The process provided for in the Equal Opportunity Act for dealing with complaints about Members of Parliament differs from the usual complaints process. On receiving a complaint alleging sexual harassment by a Member of Parliament, the Commissioner must refer the complaint to the 'appropriate authority' (being a Presiding Officer of the relevant House of Parliament).

If the Presiding Officer is of the opinion that parliamentary privilege could be impinged on if the Commissioner were to deal with the complaint, the Presiding Officer must investigate and deal with the matter as they think fit. If the Presiding Officer is of the opinion that dealing with the complaint will not impinge on parliamentary privilege, the Commissioner may proceed to deal with the complaint (and would do so according to the process outlined above).¹⁸⁶

However, the Review was told during consultation that the act of referring a complaint to the relevant Presiding Officer is a potential deterrent to utilising this complaint avenue. One survey respondent observed:

The current provisions of the Equal Opportunity Act that require the Commissioner to refer the matter back to the Speaker or President to assess impingement on parliamentary privilege may preclude staff from making a complaint in the first place. The independence of the Presiding Member may be called into question if not in practice then in perception.

In providing comment on this process, one interview participant stated:

¹⁸⁵ The 2020 amendments extended existing provisions which make sexual harassment by a Member of Parliament towards a member of his or her staff, a member of the staff of another Member of Parliament, an officer or a member of the staff of the parliament, or any other person who in the course of employment performs duties at Parliament House unlawful.

¹⁸⁶ EO Act (n 165) s 93AA.

your immediate concern is it's going to go back to the speaker or the president. That's not an apolitical process.

Two interview participants expressed concern over the appropriateness of the Presiding Officers 'investigating and dealing with the matter as they think fit' as a complaint handling process, stating:

So no [Presiding Officer] is going to support one of those claims when they need ... you know, when they need that person's vote on the floor.

and

I know they are supposed to be impartial, if they were best friends with the person you were accusing they can just say "No, I don't think this is worthy of investigating", and that would be the end of it.

The Commission recognises that questions of parliamentary privilege may arise in the context of a complaint about a Member of Parliament made under the Equal Opportunity Act. However, the current provisions in place to address this, in the Commission's view, do not adequately recognise the following factors:

- there will be circumstances where it is quite clear that parliamentary privilege will not impinge on the process
- the respondent Member of Parliament may not make a claim of privilege
- a victim may not wish a matter to proceed if privilege is claimed due to concerns about confidentiality or that the member will not enter into conciliation in good faith
- the law as it currently stands requires the Commission to inform the relevant Presiding Officer upon receiving a complaint (whether or not a claim of privilege is made or likely to be made out); this may act as a deterrent to victims making complaints to the Commission
- for the reasons outlined above in this Report (that is, concerns regarding a lack of independence, expertise and powers), it is the Commission's view that it is not appropriate that a sexual harassment complaint involving a Member of Parliament is 'dealt with' by the Presiding Officer.

It is noted that where parliamentary privilege is claimed or established in relation to a complaint made to the Equal Opportunity Commission, the victim will nevertheless be entitled to pursue a complaint by approaching the ICAC.

Accordingly, the Commission recommends:

RECOMMENDATION 11

That the Attorney General consider amendments to the *Equal Opportunity Act 1984* to:

- (a) provide that a complaint alleging sexual harassment by a Member of Parliament is only referred to the Presiding Officer where the Member of Parliament claims parliamentary privilege and the complainant consents to the referral at that point
- (b) remove provisions allowing the Presiding Officer to investigate and deal with complaints against Members of Parliament where the Presiding Officer is of the opinion that dealing with the complaint could impinge on parliamentary privilege.

5.5.2. Federal law

Commonwealth legislation also makes sexual harassment and discrimination on the grounds covered by the Equal Opportunity Act unlawful in an employment context.¹⁸⁷ This means that, for the most part, complainants alleging sexual harassment or unlawful discrimination can choose whether they wish to lodge a complaint with the Australian Human Rights Commission under Commonwealth legislation or with the Equal Opportunity Commission under SA law. Complaints to the Australian Human Rights Commission are, like complaints to the state Commission, primarily dealt with by way of a conciliation process.

However, it is the Commission's view that the Australian Human Rights Commission is not an avenue available for those alleging sexual harassment in the parliamentary workplace. The sexual harassment and discrimination provisions of the *Sex Discrimination Act 1984* (Cth) (**Sex Discrimination Act**) which relate to employment do not apply to state government employees and instrumentalities.¹⁸⁸ Whilst the breadth of this exemption from the Commonwealth Act has not been tested, it appears that employees in the parliamentary workplace who allege sexual harassment are prevented from lodging a complaint at the Australian Human Rights Commission. Further, it is unlikely that Members of Parliament would be considered

¹⁸⁷ *Sex Discrimination Act 1984* (Cth); *Racial Discrimination Act 1975* (Cth); *Disability Discrimination Act 1992* (Cth) *Age Discrimination Act 2004* (Cth).

¹⁸⁸ *Sex Discrimination Act 1984* (Cth) s 13.

'employees' under the Sex Discrimination Act meaning that it would not apply to allegations of sexual harassment by a Member of Parliament in the workplace.

It is noted that Respect@Work recommended the Sex Discrimination Act be amended to widen the scope of the sexual harassment in employment provisions; Recommendation 16 provides that the Sex Discrimination Act should be amended so that:

...

(d) the definition of 'workplace participant' and 'workplace' covers all persons in the world of work, including paid and unpaid workers, and those who are self-employed

(e) the current exemption of state public servants is removed.

The Commission supports these recommendations for the same reasons given in Respect@Work.¹⁸⁹ This Review highlights that the state parliamentary workplace is not immune from sexual harassment or discrimination, and the Commission considers there is no good reason that it is excluded from the Commonwealth jurisdiction (unlike other workplaces).

5.6. The Independent Commissioner Against Corruption Act

A victim of sexual or discriminatory harassment in the parliamentary workplace may make a complaint of 'misconduct' in public administration to the Office for Public Integrity under the ICAC Act. Misconduct is defined as:

(a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or

(b) other misconduct of a public officer while acting in his or her capacity as a public officer.¹⁹⁰

The Commission notes that, as sexual harassment and discrimination are unlawful, it is likely that they meet the definition of misconduct. Whilst the second part of the definition ('other misconduct') suggests a code of conduct is not required, as discussed above at Part 5.3, it is clear that establishing misconduct will be more straightforward where a code which addresses that type of behaviour is in force.

¹⁸⁹ Respect@Work (n 1) 515-18.

¹⁹⁰ ICAC Act (n 138) s 5.

Further discussion on this point regarding a code for Members of Parliament is provided below.

All staff in the parliamentary workplace and Members of Parliament are public officers and are subject to the ICAC Act.

If the Office for Public Integrity assesses a complaint as raising a potential issue of 'misconduct' in public administration, then the matter must be dealt with in one of the following ways:

- it may be referred to a 'public authority' and directions and guidance may be issued to the authority in respect of the matter.¹⁹¹ Public authorities are listed in Schedule 1 of the ICAC Act
- it may be referred to an 'inquiry agency' (the Ombudsman) for investigation¹⁹²
- if the matter is assessed as raising a potential issue of serious or systemic misconduct, the ICAC may exercise the powers of the Ombudsman to investigate the matter if satisfied that the matter must be dealt with in connection with a corruption or maladministration investigation.

It was in exercising the latter jurisdiction that the ICAC found that the former Vice-Chancellor of the University of Adelaide, in sexually harassing two colleagues, had committed serious misconduct in public administration. It is worth noting, given the context of this Report, that it appears that the power imbalance that existed between the former Vice Chancellor and his victims was a significant factor in determining that the conduct amounted to *serious* misconduct:

*In my opinion his conduct, having regard to the serious power imbalance between him and the victims, amounted to serious misconduct for the purposes of the Independent Commissioner Against Corruption Act 2012.*¹⁹³

Whilst the ICAC and the Ombudsman may not immediately come to mind as possible complaint handlers in relation to sexual and discriminatory conduct, the Commission notes that this particular avenue provides an entirely independent investigation process. As mentioned above, it also comes with strict statutory confidentiality provisions. Some submissions made to the Review suggest that an independent body should be established to investigate sexual and discriminatory conduct in the parliamentary workplace. The Commission suggests that this is not

¹⁹¹ Ibid s 24(2)(d).

¹⁹² Ibid s 24(2)(a).

¹⁹³ *Statement about an Investigation* (n 164) 5.

necessary given the mechanism provided for in the ICAC Act. In particular, the Commission considers that the referral of a sexual or discriminatory harassment complaint from the ICAC to the Ombudsman under the ICAC Act would provide for an independent investigation of the matter.

Further, the Commission is of the view that this complaint pathway might be particularly suitable where allegations are made against Members of Parliament. In this context, an entirely independent process that provides for confidentiality and is investigatory in nature might be more appealing to victims than attempting an informal resolution or conciliation under the Equal Opportunity Act.

That said, in the Commission's view clarification in relation to three aspects of the process as it currently stands in relation to Members of Parliament is required.

The first of these relates to the provision in the ICAC Act that allows a matter raising a possible issue of misconduct to be referred to a relevant 'public authority'. Where a complaint is made about a Member of Parliament the public authority is the relevant House. It is not clear what the process would be if potential misconduct comprising sexual or discriminatory harassment was referred to the relevant House. Further, based on information gathered through the Review, in the event that there was some kind of investigation process put in place, it is unlikely that victims would seek to have their allegations dealt with in this way; the process would not be viewed as sufficiently independent or confidential. For this reason, the Commission is of the view that the ICAC should not as a matter of practice refer these types of matters to the relevant House. The Commission understands that the Independent Commissioner Against Corruption tends to agree.

The second issue, discussed above, is that in the absence of a code of conduct for Members of Parliament, it might be difficult for the Ombudsman or the ICAC to make a finding of misconduct. Whilst the definition in the ICAC Act of 'misconduct' includes 'other misconduct' (in addition to a breach of a code of conduct), there is no guidance in the legislation as to what this might comprise. The previous Independent Commissioner Against Corruption has stated that:

The definition of 'misconduct' in the [Independent Commissioner Against Corruption] Act means 'a contravention of a Code of Conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer, or other misconduct of a public officer while acting in his or her capacity as a public officer'. Members of Parliament are public officers for the purpose of the [Independent Commissioner Against

Corruption] Act. However, the absence of a Code of Conduct applying to Members of Parliament means that a member can only be guilty of “other misconduct” which is not better defined in the [Independent Commissioner Against Corruption] Act.¹⁹⁴

The Commission surmises that the absence of a Code may have created uncertainty in the minds of potential complainants as to whether ICAC Act creates a complaint pathway for incidents or behaviour of this type.

Thirdly, the Commission is of the view that a Code of Conduct must provide a mechanism for the imposition of sanctions for a breach. Information provided to the Review indicates that some victims chose not to pursue matters via the ICAC Act pathway because, as the law currently stands, an investigation would not result in consequences for the Member of Parliament. The Commission considers that where findings are made against a Member of Parliament by the investigating body (the ICAC or the Ombudsman) a report should be furnished to the relevant House for consideration as to what sanctions should be imposed; it is the relevant House that should determine and impose the sanction. The Review has not considered in any detail what those sanctions might be but notes that the Code should provide for a range of possible penalties. Sanctions might include, as suggested by participants to the Review, a reprimand, financial penalties and reduced access to privileges.

For completeness, it is noted that this Review received as a submission a draft Bill proposing Parliamentary standards reflecting a code of conduct for Members of Parliament. Complaints about a Member of Parliament by any person would be assessed by an independent ‘Ethics Counsel’ against the Bill’s standards and investigation findings and recommended sanctions would be made to the relevant House for consideration. The Ethics Counsel would report to the Presiding Officers of both houses and be overseen by an Ethics Panel made up of Members of Parliament. This framework is modelled on the Code of Ethical Standards and associated Guide and Rules relating to Members of the Legislative Assembly of Queensland.

As stated above, the Commission is of the view that there is no need to create a separate body to consider potential breaches of a code of conduct for Members of Parliament as the ICAC Act provides an existing investigations mechanism.

¹⁹⁴ *Looking Back* (n 146) 15-16.

Finally, the Commission considers that, in the event the Ombudsman (or the ICAC where the matter is connected to possible corruption or maladministration) is required to consider a complaint of sexual or discriminatory harassment, the matter should be handled by those bodies with sensitivity as to the impact of the process on the victim.

The Commission recommends:

RECOMMENDATION 12

That the Houses introduce a Code of Conduct for Members of Parliament which:

- (a) amongst other standards, provides that Members of Parliament must not engage in sexual harassment or other forms of discriminatory behaviour
- (b) provides for a process whereby, following an investigation pursuant to the *Independent Commissioner Against Corruption Act 2012* and findings of misconduct being made against a Member of Parliament, a report is furnished to the relevant House to consider and, if appropriate, make recommendations that the Member of Parliament is sanctioned for the misconduct
- (c) sets out a range of sanctions which may be imposed for a breach of the Code including a reprimand, a financial penalty and reduction of privileges.

5.7. The work health and safety framework

Sexual and discriminatory harassment in the workplace, or related to the workplace, are WHS issues. Psychological injury is just as relevant to health and safety as physical injury. The WHS legislative framework comprises the WHS Act, the *Work Health and Safety Regulations 2012 (SA)* and various codes of practice (the framework). The national WHS policy body (Safe Work Australia) and the state regulators (eg. SafeWork SA) also produce guidelines to assist workplaces to comply with the WHS laws. The framework requires that employers and others in the workplace take reasonably practicable steps to prevent psychosocial risk (which includes risks associated with harassment) to workers. Failure to do so can result in enforcement action, including prosecution.

Whilst greater awareness is needed in relation to harassment being a WHS issue (including in the parliamentary workplaces), it is increasingly being recognised as

such by policy makers, regulators, and courts. The Commission strongly supports a shift away from harassment being viewed as an individual human resource problem. Viewing harassment through the lens of the WHS framework places obligations on organisations and embraces a model based on prevention; it is the Commission's view that this shift is an essential ingredient in creating cultural change in workplaces.

5.7.1. Harassment as a WHS issue

South Australia's WHS laws are based on model legislation which is currently adopted in all states and territories except Victoria. The national WHS policy body (Safe Work Australia) and the state regulators (eg. SafeWork SA) also produce guidelines to assist workplaces to comply with the WHS laws.

The WHS legislative framework establishes positive duties on various duty holders to eliminate or minimise risks in the workplace. The primary duty of care rests with 'Persons Conducting a Business or Undertaking' (PCBUs) to eliminate risks to the health and safety of workers as far as is reasonably practicable, and where they cannot be eliminated, to implement control measures to minimise the risks as far as is reasonably practicable.¹⁹⁵ The duties of PCBUs are limited by the extent to which they have control or influence over the conduct of the business or undertaking.¹⁹⁶

'Officers' of a PCBU have a duty to exercise 'due diligence' to ensure a PCBU complies with their duties. These are persons who have influence over decisions that affect the business or undertaking. For the purposes of the Crown and public authorities, the WHS Act defines 'officers' as persons who make, or participate in making, decisions that affect the whole, or a substantial part, of a business or undertaking.¹⁹⁷

Workers must take reasonable care towards the health and safety of themselves and others, comply with reasonable instructions and cooperate with policies and procedures set out by the PBCU to meet its duties.¹⁹⁸

The duties of PCBUs to manage risks to health and safety in the workplace extends to managing the risk of sexual and discriminatory harassment. This is because the definition of health in the WHS Act includes psychological health¹⁹⁹ and sexual harassment and other forms of harassment are known to cause psychological harm.

¹⁹⁵ *WHS Act* (n 110) s 18.

¹⁹⁶ *Ibid* s 16.

¹⁹⁷ *Ibid* ss 247, 252.

¹⁹⁸ *Ibid* pt 2 div 3.

¹⁹⁹ *Ibid* s 4.

Failure of a duty under the WHS law can result in a range of compliance and enforcement actions by WHS regulators, including inspections, the issuing of enforcement notices and expiations, and prosecuting duty holders.

These actions may be triggered by a complaint made to SafeWork SA or may arise out of the regulator's proactive compliance program. The Commission notes that compliance audits are a useful mechanism to assist in the prevention of workplace harassment.

5.7.2. The WHS framework in the parliamentary workplace

The parliamentary workplace is not exempt from WHS laws. Given the range of employment relationships currently existing in the parliamentary workplace, this Report will not seek to identify all of the PCBUs and officers that have responsibilities under the WHS Act. By way of example, however, Members of Parliament and the Department for Treasury and Finance are both PCBUs in respect of workers employed under section 72 of the Public Sector Act, and office managers in Electorate offices hold duties of 'officers' in this context.

As described in Part 4, the Commission is of the view that the parliamentary workplace does not have WHS policies and procedures in place that are consistent and complete. In addition, the Review's consultation strongly suggests there is a lack of awareness within the parliamentary workplace that the WHS framework applies to workplace harassment: no survey participants who had been subjected to sexual or discriminatory harassment indicated they had contacted SafeWork SA. This is not surprising: the Respect@Work report recognised there is a lack of awareness in workplaces generally that sexual harassment is a WHS issue.²⁰⁰

Nevertheless, a lack of policies, procedures and awareness, coupled with the prevalence of sexual and discriminatory behaviour in the parliamentary workplace revealed by this Review, suggests duty holders in the parliamentary workplace may not be adequately identifying and managing the risks associated with workplace harassment.

5.7.3. WHS and workplace harassment: an emerging issue

There are increasing calls for the WHS framework to be more actively utilised and to be strengthened in relation to sexual harassment and other behaviours which cause psychosocial harm to workers.

²⁰⁰ *Respect@Work* (n 1) 602.

The WHS Act is reviewed every five years by Safe Work Australia. The *Review of the Model Work Health and Safety Laws (Final Report December 2018)* (**the 2018 WHS Act Review**) recommended that the model WHS Regulations be amended to ‘deal with how to identify the psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks’. Such an amendment requires the support of the Workplace Relations Ministers Council. The Commission understands that amendments to the model WHS Regulations are being considered by Workplace Relations Ministers, including the South Australian Minister, in early 2021. The Commission supports the amendments suggested by the 2018 WHS Act Review.

The Respect@Work Inquiry heard submissions in support of the 2018 WHS Act Review recommendation and other measures to increase awareness as to how to prevent sexual harassment in the workplace and to strengthen the ability for WHS regulators to respond to sexual harassment.²⁰¹ Recommendation 35 of Respect@Work suggested:

*WHS ministers agree to amend the model WHS Regulation to deal with psychological health, as recommended by the [2018 WHS Act Review], and develop guidelines on sexual harassment with a view to informing the development of a Code of Practice on sexual harassment. Sexual harassment should be defined in accordance with the Sex Discrimination Act’.*²⁰²

In January 2021 Safe Work Australia released a national guideline regarding sexual harassment. ‘Preventing workplace sexual harassment’ provides guidance for workplaces, including PCBUs, as to how to manage the risk of and prevent sexual harassment and how to respond to reports of sexual harassment. It states that PCBUs ‘must do all that you reasonably can to manage the risk of sexual harassment occurring in the workplace’.²⁰³

The Commission considers this will be a useful resource for duty holders in the parliamentary workplace and should assist in the development of policies and training relating to WHS and harassment.

SafeWork SA recognises that harassment is an emerging issue in the WHS space. In addition to collaborating and endorsing the national guidance material regarding sexual harassment, SafeWork SA successfully prosecuted a workplace after one of

²⁰¹ Ibid 599-601.

²⁰² Ibid 47.

²⁰³ Safe Work Australia, *Preventing Workplace Sexual Harassment: National Guidance Material* (January 2021) 8.

its female employees was sexually assaulted by a client. Minda Incorporated was convicted in the South Australian Employment Tribunal and fined \$42,000 (reduced from \$60,000 due to a 40% reduction due to an early guilty plea) due to a number of failings, including that the client was not adequately supervised, the employee was not provided adequate information about the risks and the employee was not informed of requirements for visiting the client's premises.²⁰⁴

During consultation with the Commission as part of this Review, SafeWork SA also agreed to work with the Commission to implement a training program for SafeWork SA staff on the nature, drivers and impacts of sexual harassment and other discriminatory behaviours to inform its work. This in effect means South Australia will deliver on Recommendation 36 of Respect@Work which recognised that regulators themselves may not have the necessary skills and expertise to appropriately handle matters involving psychosocial harm given this is an emerging field.

5.7.4. The value of the WHS framework

It is clear that the WHS framework applies in the context of sexual and discriminatory behaviours, and that the regulator will be increasingly active in responding to complaints and undertaking proactive compliance work in this area.

The Commission supports a greater utilisation of the WHS framework in the harassment context by workplaces and SafeWork SA. A number of submissions made to the Respect@Work Inquiry argued that the WHS framework provides an opportunity to drive cultural change at an organisational level. For example, one submission set out in the Report stated:

*Looking at the issue of sexual harassment through the prism of WHS has the advantage of promoting behavioural change at an organisational level, by focusing on risk management and prevention.*²⁰⁵

The Commission agrees; the positive duty on employers to provide a safe and respectful workplace shifts the responsibility away from victims taking action once harassment has occurred and promotes a preventative approach.

5.7.5. Summary and recommendations regarding WHS

The Commission is of the view that the parliamentary workplace does not appear to be identifying or managing the risk of sexual and discriminatory harassment

²⁰⁴ 'Recent Convictions 2020', SafeWork SA (Web Page, 16 December 2020) <<https://www.safework.sa.gov.au/enforcement/prosecutions>>.

²⁰⁵ *Respect@Work* (n 1) 539. Quote from the Australian Government Department of Jobs and Small Business.

adequately from a WHS perspective. Further, the Commission considers more fulsome risk management and awareness raising in this regard will likely result in measures that will go to the prevention of harassment and promote a safe and respectful workplace culture. For these reasons, the Commission recommends the parliamentary workplace take active steps to develop, implement and monitor WHS safe systems of work as they relate to psychosocial risks.

The Commission notes that a gendered lens on WHS processes is a feature of key relevant workplace cultural change frameworks: Our Watch's Workplace Equality and Respect Standards and White Ribbon workplace accreditation. This encompasses the requirement that organisations undertake a WHS risk assessment with a focus on preventing work-related gendered violence, including gender-based and sexual harassment.

The Commission recommends:

RECOMMENDATION 13

That the People and Culture Section develop work health and safety policies, procedures and training to assist Persons Conducting a Business Undertaking (PCBUs) and other duty holders in the parliamentary workplace to meet their work health and safety duties in relation to psychological hazards arising from sexual and discriminatory harassment.

and

RECOMMENDATION 14

That the Houses of Parliament support a compliance audit by SafeWork SA across the parliamentary workplace, to be conducted within two years of the date of this report, with a focus on the health and safety risks arising from psychological hazards including those arising from sexual and discriminatory harassment.

5.8. Redress avenues that remove the onus on victims

Respect@Work highlighted the limitations of the current system in addressing workplace sexual harassment, as it places the onus on victims – the party with relatively less power in most cases as compared with the alleged harasser – to make

complaints in order for action to be taken. Inevitably to some degree this will always support the underreporting of sexual, and by extension discriminatory, harassment.

To some extent the WHS framework shifts this onus away from an individual victim. It creates positive obligations on duty holders to provide a safe environment for workers, provides a range of compliance functions to be undertaken by the regulator which do not rely on victims lodging complaints (including an audit function), and allows for the prosecution of duty holders. The Commission notes however, that the WHS framework as it applies to psychosocial risk, is an emerging area. The Commission also notes that the criminal standard of proof applies to prosecutions and that this standard may be difficult to meet in harassment matters.

For this reason the Commission has considered whether a positive duty on employers could be enforced through the equal opportunity framework (see below). For completeness, the Commission also notes that *Disrupting the system: Preventing and responding to sexual harassment in the workplace* lists a number of actions available to organisations where anonymous reports about sexual harassment are received and the reporter does not want to make a complaint.²⁰⁶

5.8.1. A positive duty on employers under Equal Opportunity legislation

The Commission concurs with the views expressed in Respect@Work that a response system which relies on victims making complaints is not adequate.²⁰⁷ This is particularly apposite to the parliamentary workplace where the barriers to making complaints and the consequences for speaking up are extremely challenging.

For the most part, the Equal Opportunity Act relies on the complainant enabling the process; in other words the burden is placed on the victim initiating action to remedy the harm. In these circumstances, as described above, the Commissioner may conciliate the matter or refer it to the Tribunal for resolution. The Commission's investigation powers are limited to investigating for the purpose of determining whether to take action on the complaint (as opposed to investigating to make findings on the alleged conduct).

Where there is no 'aggrieved person' or where the complainant does not wish to pursue the matter the action that can be taken by the Commissioner is limited. With the approval of the Attorney General, the Commissioner may apply to the Tribunal for authority to investigate the alleged conduct. In that event, the Commission the

²⁰⁶ *Disrupting the System* (n 108) 107.

²⁰⁷ *Respect@Work* (n 1) 518-529.

investigation is only undertaken for the purpose of determining whether the matter should be referred to the Tribunal.²⁰⁸ The Commission notes this provision has never been utilised.

Employers have a positive duty to eliminate discrimination, sexual harassment and victimisation under the *Equal Opportunity Act 2010* (Vic), and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) can investigate contraventions of that duty. In 2019 the VEOHRC used these powers to investigate discrimination in the travel insurance industry. It was found that three main travel insurance companies failed to meet their positive duty to eliminate discrimination,²⁰⁹ and as a result the issues are being addressed by those companies, with ripple effects across the broader industry.

However, in submissions to the Respect@Work Inquiry, VEOHRC noted that while imposing a positive duty is beneficial, it is also important to have sufficient enforcement mechanisms in place to enhance its effectiveness and achieve significant systemic change.²¹⁰

Respect@Work recommended that the federal legislation be amended to provide that employers have a positive obligation to prevent sexual harassment, that the Sex Discrimination Commissioner can take enforcement action against employers and that the Australian Human Rights Commission be given powers to inquire into systemic unlawful discrimination, including systemic sexual harassment.²¹¹

The Commission is of the view that the application of these recommendations to the South Australian jurisdiction should be further explored.

²⁰⁸ *EO Act* (n 166) s 93A.

²⁰⁹ Victorian Equal Opportunity & Human Rights Commission, *Fair-Minded Cover: Investigation into Discrimination in the Travel Insurance Industry* (Report, June 2019).

²¹⁰ *Respect@Work* (n 1) 476.

²¹¹ *Ibid* 44. Recommendations 17-19 of the Respect@Work Report: at 481-7.

Accordingly, the Commission recommends:

RECOMMENDATION 15

That the Attorney General consider a referral to the South Australian Law Reform Institute to review the benefits of amending the *Equal Opportunity Act 1984* to provide that employers have a positive obligation to prevent workplace sexual harassment and unlawful harassment and that the Equal Opportunity Commissioner is provided with powers to enforce that obligation and investigate systemic unlawful discrimination, including systemic sexual harassment.

5.9. Summary

Amongst the matters of harassment reported to the Review, the Commission found the majority were not responded to in a manner that:

- resolved the concerns of the complainant
- mitigated risk of re victimisation
- gave the complainant confidence the matter was to be treated with appropriate seriousness or in a timely manner
- addressed the behaviour of the alleged perpetrator.

The consequence of this systems failure is that victims are often left to develop their own protective strategies in the workplace, such as adjusting their work arrangements, attempting to control their movements in the workplace, seeking out informal support persons and avoiding particular work settings. None of these approaches in the Commission's view yielded satisfactory results and in some cases left the victim feeling isolated and vulnerable with continuing health impacts.

A key foundation for enabling a complaints process (and as a preventative strategy) is for there to be clear standards on acceptable workplace behaviours. For public sector staff the existing reference is the Code of Ethics for the South Australian Public Sector. The Commission recommends that a code apply to all staff in the parliamentary workplace, and considers that the absence of a code of conduct for Members of Parliament is a significant gap in setting standards, enabling a complaints process, providing accountability and supporting a safe workplace.

A sound and independent complaint pathway offering internal and external process options to a victim was identified through the Review as critical for both the robustness of the resolution process and the perceived fairness and trust in the

process. Processes applied in the parliamentary workplace need to be clear in relation to options and procedures, and flexible so as to be proportionate to where the matter sits on the spectrum of harassment. External complaint avenues available for victims should include resolution by agreement and investigation pathways and should protect parties' confidentiality as far as possible.

Harassment in the workplace is increasingly recognised a WHS issue. The Commission is of the view that duty holders in the parliamentary workplace are not managing the risks of sexual and discriminatory harassment in accordance with the WHS legislative framework. The Commission considers the parliamentary workplace should act as a matter of priority to ensure WHS obligations in respect of harassment are being met.

Effective risk management in accordance with WHS framework acts as a preventative mechanism and shifts obligations from victims to those with capacity to create a safe workplace. The Commission suggests mechanisms that focus on employers managing risk are the only complaints frameworks that will lead to cultural change in workplaces. For this reason, it is recommended that consideration be given to create an additional positive duty on employers to prevent sexual and discriminatory harassment, alongside compliance action provisions, in the Equal Opportunity Act.

6. Conclusion and consolidated recommendations

6.1. Conclusion and Recommendation 16

Throughout the Review process, the Commission was informed about instances of discriminatory harassment on the basis of age, sex, race, gender identity, sexual orientation, caring responsibilities and marital status in addition to a spectrum of alleged behaviours constituting sexual harassment in the parliamentary workplace.

The Commission is grateful for the personal stories shared as part of the Review and acknowledges the impacts, many ongoing, on victims of this alleged behaviour. The Commission has highlighted the increased risk of harm to the wellbeing of victims where allegations of sexual or discriminatory harassment are not responded to adequately or appropriately.

The Commission notes the complexity of the working relationships particular to this workplace, as well as the intensity of the work environment, which present challenges to addressing the issues identified as well as act to reinforce and normalise unacceptable workplace behaviours.

On the information provided, the Commission has concluded there is an absence of coherent, documented and applied policy, procedure and process addressing sexual and discriminatory behaviour applicable across the key workgroups in the parliamentary workplace.

The Commission has further observed a lack of HR expertise and capacity in key sections of the workplace, and insufficient focus on and investment in modernising the workplace culture around issues of sexual and discriminatory harassment.

The Commission has gained insights into several significant barriers to reporting instances of alleged discriminatory and sexual harassment in the parliamentary workplace, some structural and others cultural. These include the existence of significant power disparities, the reliance of redress systems on victims making complaints, confusion about reporting pathways, concerns about adverse impacts on career prospects, the prospect of unwanted media attention, fear of victim-blaming and a lack of confidence in the available processes.

The Commission acknowledges that power disparity is a key element driving sexual and discriminatory harassment and notes the presence of unique and prevalent power dynamics in the parliamentary workplace. The Commission has identified the need for increased clarity and options for reporting or otherwise addressing sexual

and discriminatory harassment, and increased focus on workforce diversity and inclusion as a protective factor against the same.

These observations and conclusions have led the Commission to make a total of 16 recommendations in line with the terms of reference of the Review, found throughout this report and consolidated in Part 6.2 below.

Critically, the Commission considers it is important that Parliament and the parliamentary workplace review progress in implementing recommendations and their effect for the purpose of making meaningful and lasting change.

Accordingly, the Commission recommends:

RECOMMENDATION 16

That within three years of the date of this report the Houses initiate a review on the implementation of recommendations made in this Report and their effect on culture and practice in relation to sexual harassment and discriminatory harassment.

6.2. Consolidated recommendations

The Commission recommends:

RECOMMENDATION 1

That the South Australian Government form a centralised human resources function (the People and Culture Section) to provide services across the parliamentary workplace including:

- the development of a workplace training program
- a performance management framework
- the development of human resource policies and practices
- induction and exit practices
- a wellbeing framework that includes supporting staff in electorate offices
- other functions as recommended by the Review.

RECOMMENDATION 2

That the People and Culture Section develop a strategy to increase diversity across the parliamentary workforce and to create a culture that values inclusivity.

RECOMMENDATION 3

That to ensure flexible work practices that support inclusivity operate across the parliamentary workplace:

- (a) The Houses as a matter of priority amend the Standing Orders to allow for women to breast or bottle feed infants in the Houses.
- (b) The Standing Orders Committee, in accordance with recommendation 6a of the Interim Report of the Joint Committee on the 125th Anniversary of Women's Suffrage 'in collaboration with the Clerks, undertakes, and reports to the Houses, a review of the Standing Orders for gender neutrality and to ensure the Orders do not impede women entering political life'.
- (c) The People and Culture Section work with the parliamentary workgroups to develop a gender equity and a family friendly workforce strategy for the parliamentary workplace which includes a review of policies and practices regarding flexible hours, parental and carer's leave and breast and bottle feeding of infants.

RECOMMENDATION 4

That the People and Culture Section develop sexual and discriminatory harassment policies to apply across the parliamentary workplace which:

- are victim-centred
- recognise that workers have a right to a safe and respectful workplace
- provide clarity around acceptable and unacceptable conduct, and foreshadows a spectrum of consequences where a complaint is substantiated
- make reference to accompanying complaint handling procedures, including work health and safety procedures
- support training and awareness of behaviour standards and complaint processes
- provide that relationships between Members of Parliament and staff in the parliamentary workplace must be disclosed

- require that records about complaints, including informal reports, about harassment in the parliamentary workplace are made and retained
- require the People and Culture Section to monitor complaint data to identify trends and take appropriate pro-active action.

RECOMMENDATION 5

That the People and Culture Section develops:

- (a) training for all Members of Parliament and staff in the parliamentary workplace aimed at increasing participants' awareness of sexual harassment and discriminatory harassment including but not limited to:
- diversity, inclusion, and respectful behaviours
 - the role of unconscious bias
 - recognition that sexual harassment is driven by gender inequality and is a form of gender-based violence
 - the social, economic and psychological impacts of sexual and discriminatory harassment
 - practical means by which bystanders can take action
 - relevant policies, procedures and complaint processes
 - for managers:
 - how to respond to a report or complaint of harassment in a victim-centred way
 - management responsibilities in promoting and maintaining an inclusive workplace.

and

- (b) induction materials for all newly commencing Members of Parliament and staff in the parliamentary workplace covering off on relevant policies, procedures and complaint processes related to sexual and discriminatory harassment.

RECOMMENDATION 6

That the Houses commit to leading cultural change within the parliamentary workplace, in particular through:

- (a) promptly declaring support for the recommendations made in this Report and taking decisive action to implement all of those made to the Houses

- (b) adopting a motion declaring that sexual and discriminatory harassment will not be tolerated in the parliamentary workplace
- (c) seeking for the parliamentary workplace to be accredited as a White Ribbon workplace or implement Our Watch's Workplace Equality and Respect Standards.

RECOMMENDATION 7

That each political party implement and actively promote internal policies regarding sexual and discriminatory harassment which set behavioural expectations of party members and provide robust procedures and sanctions to respond to complaints of harassment.

RECOMMENDATION 8

That the People and Culture Section prepare a framework to be implemented across the parliamentary workplace which includes:

- a behavioural code requiring all staff in the parliamentary workplace act in a respectful and safe manner
- associated processes to govern allegations of breaches of the code
- a range of sanctions where a breach is established.

RECOMMENDATION 9

That the People and Culture Section develop complaint procedures to apply across the parliamentary workplace in relation to sexual harassment and discriminatory harassment which:

- are victim-centred
- establish robust internal complaint processes for responding to harassment within the parliamentary workplace
- provide internal options for dealing with complaints, including conciliation and investigation
- ensures internal complaints are handled by an independent and qualified person
- provide protections for victims against retribution and victimisation
- clarify issues of privacy and confidentiality, including that confidentiality is to be maintained throughout the complaint handling process

- provide for appropriate and proportionate sanctions to be imposed where harassment is found to have occurred and/or where confidentiality is breached
- provide guidance on parliamentary privilege
- clearly set out the external complaint avenues available to staff and Members of Parliament
- establish a process for the disclosure of relationships between Members of Parliament and staff in the parliamentary workplace
- provide guidance on record keeping and matters related to preservation of evidence where a formal or informal report is made.

RECOMMENDATION 10

That the People and Culture Section:

- establishes Contact Officers across the parliamentary workplace, suitably trained to provide confidential support and information on reporting options to employees experiencing or witnessing harassment
- ensures victims of harassment are aware of and have access to ongoing counselling services with the expertise appropriate to the type of harassment experienced.

RECOMMENDATION 11

That the Attorney General consider amendments to the *Equal Opportunity Act 1984* to:

- (a) provide that a complaint alleging sexual harassment by a Member of Parliament is only referred to the Presiding Officer where the Member of Parliament claims parliamentary privilege and the complainant consents to the referral at that point
- (b) remove provisions allowing the Presiding Officer to investigate and deal with complaints against Members of Parliament where the Presiding Officer is of the opinion that dealing with the complaint could impinge on parliamentary privilege.

RECOMMENDATION 12

That the Houses introduce a Code of Conduct for Members of Parliament which:

- (a) amongst other standards, provides that Members of Parliament must not engage in sexual harassment or other forms of discriminatory behaviour
- (b) provides for a process whereby, following an investigation pursuant to the *Independent Commissioner Against Corruption Act 2012* and findings of misconduct being made against a Member of Parliament, a report is furnished to the relevant House to consider and, if appropriate, make recommendations that the Member of Parliament is sanctioned for the misconduct
- (c) sets out a range of sanctions which may be imposed for a breach of the Code including a reprimand, a financial penalty and reduction of privileges.

RECOMMENDATION 13

That the People and Culture Section develop work health and safety policies, procedures and training to assist Persons Conducting a Business Undertaking (PCBUs) and other duty holders in the parliamentary workplace to meet their work health and safety duties in relation to psychological hazards arising from sexual and discriminatory harassment.

RECOMMENDATION 14

That the Houses of Parliament support a compliance audit by SafeWork SA across the parliamentary workplace, to be conducted within two years of the date of this report, with a focus on the health and safety risks arising from psychological hazards including those arising from sexual and discriminatory harassment.

RECOMMENDATION 15

That the Attorney General consider a referral to the South Australian Law Reform Institute to review the benefits of amending the *Equal Opportunity Act 1984* to provide that employers have a positive obligation to prevent workplace sexual harassment and unlawful harassment and that the Equal Opportunity Commissioner is provided with powers to enforce that obligation and investigate systemic unlawful discrimination, including systemic sexual harassment.

RECOMMENDATION 16

That within three years of the date of this report the Houses initiate a review on the implementation of recommendations made in this Report and their effect on culture and practice in relation to sexual harassment and discriminatory harassment.

7. Appendices

A. Survey questions

The questions, answer options and display logic for the survey are available on the Equal Opportunity Commission website (<https://eoc.sa.gov.au/>) or otherwise available on request from the Equal Opportunity Commission.

B. Summary of secondary resources

SEXUAL AND DISCRIMINATORY HARASSMENT REPORTS	
TITLE	OVERVIEW OF OBJECTIVES AND APPROACH
<p>Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, Australian Human Rights Commission (2020)</p>	<p>In 2020 the Australian Human Rights Commission published the landmark report <i>Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces</i> after extensive national consultations, independent economic modelling and literature Review conducted over a two-year period.</p> <p>Respect@Work examined the nature, prevalence and drivers of sexual harassment in Australian workplaces and highlighted the urgency of action needed to address workplace sexual harassment. The report, produced by the federal Sex Discrimination Commissioner, Kate Jenkins, detailed 55 recommendations for a whole-of-community response to address and prevent sexual harassment.</p> <p>In consultation with the Sex Discrimination Commissioner, the Australian coalition of male Chiefs Executive Officers, known then as Male Champions of Change (now Champions of Change Coalition), produced a resource <i>Disrupting the System: Preventing and responding to sexual harassment in the workplace</i> (Disrupting the System resource) following the release of Respect@Work. The Disrupting the System resource was developed to provide practical guidance to organisational leaders about immediately addressing and managing workplace sexual harassment.</p>
<p>U.S. Select Task Force of Harassment in the Workplace, U.S. Equal</p>	<p>The report produced by the U.S. Select Task Force of Harassment in the Workplace considers unwelcome or offensive conduct based on a protected characteristic under US employment anti-discrimination law.</p>

Employment Opportunity Commission (2014)	<p>The select task force comprised a select group of 16 outside experts across a number of relevant fields and disciplines. Over 14 months the task force held a series of meetings amongst themselves or involving members of the public, and received testimony from 30 witnesses.</p> <p>The report aims to be part of a ‘reboot’ of workplace harassment prevention efforts, by identifying the causes, effects and what can be done to better prevent workplace harassment.</p>
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PARLIAMENTARY WORKPLACE REPORTS		
TITLE	JURISDICTION	OVERVIEW OF OBJECTIVES AND APPROACH
<p><i>External Independent Review: Bullying and Harassment in the New Zealand Parliamentary Workplace, Debbie Francis (2019)</i></p>	<p>New Zealand House of Representatives</p>	<p>The Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace was commissioned in 2018 and sponsored by the Speaker of the New Zealand House of Representatives.</p> <p>The NZ House of Representatives Review involved written submissions, an online survey, interviews at the request of participants and focus groups. Current and former Parliament staff, Ministers, Members of Parliament and Party officials contributed to the Review via these consultation processes. The independent Reviewer consulted with an External Reference Group set up for the purposes of guiding the Review.</p>

		<p>The Reviewer made 85 wide ranging recommendations to address and respond to systemic bullying and harassment in the New Zealand parliamentary workplace.</p>
<p><i>Sexism, harassment and violence against women in parliaments in Europe issues paper, Inter-Parliamentary Union and Parliamentary Assembly of the Council of Europe (2018)</i></p>	<p>European parliaments</p>	<p>The regionally specific Sexism, harassment and violence against women in parliaments in Europe issues paper built on a global study by the Inter-Parliamentary Union that identified sexism, harassment and violence against female parliamentarians was widespread.²¹² The study looked at sexist behaviours experienced by female politicians and parliamentary staffers both within the workplace and from external sources including members of the public and media outlets.</p> <p>The findings of the EU parliamentary issues paper derived from one-on-one conversations with Members of Parliament and parliamentary staff from 45 European countries. The paper examined the prevalence and nature of the behaviours, factors particular to MPs as compared with parliamentary staff, rates of reporting, and impacts of the behaviours. The report made several recommendations to respond to and eliminate sexism, harassment and violence against women in EU parliaments.</p> <p>Later, a Resolution was adopted by the European Parliament on Measures to prevent and combat mobbing and sexual harassment at workplace, in public</p>

²¹² Inter-Parliamentary Union, *Sexism, Harassment and Violence Against Women Parliamentarians* (Issues Brief, October 2016), <<https://www.ipu.org/resources/publications/issue-briefs/2016-10/sexism-harassment-and-violence-against-women-parliamentarians>>.

		spaces, and political life in the EU (the 2018 EU Resolution) which included eight recommendations specific to addressing violence against women in political life for Member States to consider.
<i>Report of the Joint Working Group on Sexual Harassment (2018)</i>	Scottish Parliament	<p>The Joint Working Group that produced the Report of the Joint Working Group on Sexual Harassment (the Scottish Parliament report) was established as part of a series of measures to deal with harassment in the Parliament, including a comprehensive survey for people working in and for the Parliament.</p> <p>The Joint Working Group comprised senior Parliament officials, representatives from each political party and an external expert, and had remit ‘to consider and agree any actions that need to be taken on a joint or individual basis between the Parliament and political parties in light of the survey on sexual harassment and sexist behaviour’.</p> <p>The report outlines principles and actions arising from a zero-tolerance approach to sexual harassment and sexist behaviour for everyone who works in and for the Parliament.</p>
<i>The Bullying and Harassment of House of Commons Staff, Independent Inquiry</i>	United Kingdom House of Commons	The House of Commons Commission commissioned an independent inquiry into workplace bullying, harassment and sexual harassment in the House of Commons in 2018 after serious allegations of such behaviour were made public by media reports.

<p>Report, Dame Laura Cox DBE (2018)</p>		<p>The Bullying and Harassment of House of Commons Staff, Independent Inquiry Report examined and made recommendations about the nature and extent of bullying and harassment, the procedures available to address these behaviours and the general culture of the House of Commons as a place of work. The focus of the UK House of Commons report was experiences of harassment of staff by both Members and other House staff.</p>
<p>The Standing Committee on Procedure and House Affairs, Thirty-Eighth Report (2014)</p>	<p>Canadian House of Commons</p>	<p>The thirty-eighth report of the Canadian House of Commons' Standing Committee on Procedure and House Affairs makes recommendations to address sexual harassment between Members in the Canadian House of Commons, including policy options for addressing complaints, recommendations relating to a Member's Code of Conduct and recommendations relating to training and education initiatives to comply with the code.</p> <p>The Canadian House of Commons report was produced following a study by the Standing Committee on the Status of Women earlier in 2014 which made recommendations about addressing sexual harassment in the Federal Workplace more broadly, after media reports of sexual harassment in both the Canadian Armed Forces and Mounted Police. The Canadian House of Commons report resulted in the adoption of a Code of Conduct for Members of the House of Commons: Sexual Harassment the following year.</p>

<p><i>A Transformational approach to Legislative workplace culture: Analysis and Evaluation of the Colorado General Assembly's culture, policies and procedures as they relate to workplace harassment, Investigations Law Group (2018)</i></p>	<p>Colorado General Assembly, United States of America</p>	<p>A Transformational approach to Legislative workplace culture: Analysis and Evaluation of the Colorado General Assembly's culture, policies and procedures as they relate to workplace harassment was initiated at the request of the Colorado's General Assembly's leadership, following media exposure of harassment issues in the legislative workplace.</p> <p>The Colorado General Assembly report was researched and produced by an external consultancy and looked to provide options for a safer and more effective workplace culture and set of policies regarding discrimination and harassment.</p>
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C. Scottish Parliament's zero-tolerance statement

Report of the Joint Working Group on Sexual Harassment
December 2018

ANNEX B

Zero Tolerance Statement

Fostering a culture of respect

Zero Tolerance of Sexist Behaviour and Sexual Harassment

Every person has the right to work in an environment that promotes respect, fairness, equality, and dignity and enables them to make their best contribution. Sexist behaviour and sexual harassment do not belong in the Parliament and we are committed to creating the shared understanding of appropriate behaviours, culture, and accountability mechanisms that will eradicate them.

Sexual harassment occurs when an individual engages in unwanted behaviour of a sexual nature which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It can be an isolated incident or persistent behaviour and is essentially about the effect on the recipient, not about what was intended.

Sexist behaviour is any behaviour which is, or is perceived to be, motivated by prejudice or discrimination based on sex, including behaviour or attitudes that stereotype individuals on the basis of gender.

We're adopting a zero tolerance approach to sexist behaviour as well as sexual harassment because such behaviour can create a culture where people feel undermined and not respected.

This means that we will:

- Take steps to prevent sexism and sexual harassment from occurring and support culture and behaviour change through information and education.
- Take complaints seriously ensuring we deal with them promptly and sensitively.
- Have policies and processes which are transparent, easily accessible, and understood by those who need to use them.
- Ensure principles around confidentiality within the complaints process are clear.
- Respond in a manner which is consistent, fair and proportionate.
- Ensure that there are consequences for sexist behaviours and sexual harassment.

D. Equal Opportunity Commission's investigation and complaint management process

A 'person aggrieved', that is, a person who has been the subject of alleged discrimination, may make a complaint to the Equal Opportunity Commission. Complaints must be made in writing.²¹³ Parties to this process are called 'complainants' and 'respondents'.

A person may be represented by an advocate or a lawyer if they choose, however if they choose to be represented by a lawyer they will need the Equal Opportunity Commissioner's (the Commissioner) permission to participate in the conciliation conference process.²¹⁴ As a matter of practice, in the employment context respondents are often accompanied or represented by their employer during the conciliation process.

Once a complaint is lodged, the Commissioner will assess the complaint to ensure the Commission has jurisdiction to deal with it. The Commission will have jurisdiction where the complaint enlivens a ground protected by the Act²¹⁵ and where the alleged discrimination occurred in an 'area' of public life, including but not limited to in employment.²¹⁶

If the Commissioner determines they have jurisdiction to consider the complaint,²¹⁷ in the case where the subject matter of the complaint is under criminal investigation or the respondent has been or is to be charged with a criminal offence in relation to the matter, the Commissioner may not proceed with dealing with a complaint until the criminal investigation has been completed or the proceedings for the offence have been disposed of, withdrawn or permanently stayed.²¹⁸

If the Commissioner determines they have jurisdiction to consider the complaint and the complaint is not subject to criminal investigation, a copy of the complaint will be

²¹³ A person who cannot complain in writing is welcome to contact the Commission and accessible options can be offered.

²¹⁴ *EO Act* (n 166) s 95(6).

²¹⁵ 'Information on all grounds', *Equal Opportunity Commission* (Web Page)

<<https://eoc.sa.gov.au/index.php/what-discrimination/types-discrimination/information-all-grounds>>.

²¹⁶ 'Places of Discrimination', *Equal Opportunity Commission* (Web Page)

<<https://eoc.sa.gov.au/index.php/what-discrimination/places-discrimination>>.

²¹⁷ *EO Act* (n 166) ss 93(2)(a)-(b)). Complaints involving acts that occurred in another State or relate to a Commonwealth Department or Agency will not be within the Commission's jurisdiction, however the Australian Human Rights Commission may be able to consider the complaint. Generally, complaints that relate to incidents that occurred more than 12 months prior to the date of lodgement of the complaint may be out of time, and the Commission may not have jurisdiction to consider such a complaint (Complainants would be encouraged to speak with the Commission about their particular complaint if it is older than 12 months, we may have jurisdiction to consider the complaint depending on the circumstances).

²¹⁸ *Ibid* s 93(4).

sent directly to the respondent and a written response will be requested. If the Commission deems that a conciliation conference may be suitable to assist in resolving the matter, a conference may also be scheduled at the same time the response is requested.

The conciliation conference is the alternative dispute resolution mechanism used by the Commission to assist parties to try and resolve their complaint. In essence, it involves the complainant speaking directly (or through the Conciliator) with the respondent, in an informal setting, which is mediated by a Conciliator at the Commission.

Conciliators control the procedural aspects of the conference, assist to uncover issues in dispute and help the parties explore potential resolutions. Conciliators at the Commission can provide the parties with an opinion about what they think the outcome of the matter might be should it proceed to the South Australian Civil and Administrative Tribunal or the South Australian Employment Tribunal²¹⁹ (collectively, the Tribunal).

If a matter resolves at the conciliation conference, the Conciliator will assist the parties to draw up an agreement and will oversee any amendments to the agreement and ensure its execution. Notably, the terms of the agreement are dictated by mutual agreement by the parties. Therefore a range of outcomes are possible from conciliation, and agreements have in the past included provisions that:

- The respondent/their employer change policies and procedures to prevent discrimination
- The respondent undertake equal opportunity training
- The respondent have adjustments made to their hours, pay or conditions
- The complainant be reinstated in their role, transferred or retrained
- The complainant receive compensation for economic loss, damages or injury for hurt or humiliation
- The respondent/respondent's employer issue a private or public apology
- That the respondent/respondent's employer provide the complainant with a reference to assist with finding future work

In cases where both parties agree, agreements may include a confidentiality clause, a breach of which the other party could seek to remedy by instituting proceedings for

²¹⁹ Ibid s 95B. Most matters proceed to the SACAT. Where the complainant has another matter on foot with the SAET, for example, a complaint made under the *Return to Work Act 2014*, the Commissioner may determine to refer the Equal Opportunity matter to the SAET for case management efficiency.

breach of contract. Further, the Equal Opportunity Act provides that anything said or done as part of proceedings with the Commission is inadmissible as evidence in proceedings under any other Act or law.²²⁰

If a matter is unable to be resolved at the conference, the Conciliator will prepare a recommendation for the Commissioner about whether the matter should be declined under the Equal Opportunity Act or referred to the Tribunal.

The Commission aims to have matters dealt within 3-6 months from lodgement. If a matter proceeds to the Tribunal, it may take anywhere from 3-12 months to resolve/determine, depending on the complexity of the case, the efficiency of the parties, and the Tribunal process.

²²⁰ Ibid s 95(9).