

# **Review of policies and procedures for Ministerial offices – bullying, harassment, and sexual misconduct**

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The Hon. Pru Goward

19 April 2021

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## Foreword

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This review of the current processes for receiving and handling complaints about bullying, harassment, and sexual misconduct concerning Ministerial staff in New South Wales (**NSW**) comes at a time when there is intense scrutiny of the conduct of our parliaments and elected governments. In this broader context, the findings and recommendations of this review are important.

My review has examined the process for Ministerial staff to make a complaint, and best practice procedures for receiving and handling complaints about bullying, harassment, and sexual misconduct. The review has also considered the circumstances for investigating allegations of bullying, harassment, or sexual misconduct which may also constitute criminal conduct.

Similar reviews have been conducted by the South Australian Parliament, the New Zealand Parliament, and the Parliament of the United Kingdom. Those earlier reviews have also examined the unique features of Ministerial and parliamentary workplaces, and how they might affect the incidence and nature of bullying, harassment, and sexual misconduct. They have led to the development of policy and complaints handling models and made recommendations for workplace changes that are relevant to this review.

This review has concluded that the protections and processes available to Ministerial staff are unclear, ineffective and inadequate. This finding is not unique; other parliamentary reviews have drawn similar conclusions and, as the UK experience shows, parliaments have been unwilling to implement effective reform to address similar conclusions.

Ministerial offices should have a respectful workplace culture supported by policy and procedures, as are other workplaces in NSW. This review however, looks beyond appropriate policy and related processes to opportunities for leadership and the modelling of respectful behaviour by Ministers and Chiefs of Staff, as well as early intervention and prevention activities which would contribute to a safe and respectful culture. The earlier reviews referred to above also identified the importance of a positive and respectful culture in Ministerial and parliamentary workplaces.

The public, quite rightly, expects Government leaders, particularly Ministers, to model respectful conduct and set the standard for the rest of the NSW workforce and wider society. This is particularly so given the role of Ministers in administering laws. Any failure on their part to uphold the necessary standards and laws will inevitably contribute to a decline in public trust in the institution of government.

The review is an essential first step in identifying opportunities to deal more effectively with unacceptable workplace conduct through development of well-defined policies and procedures for NSW Ministerial offices. The investigation and handling of allegations of bullying, harassment, and sexual misconduct which may also constitute criminal conduct have been considered under the review's terms of reference, in recognition of the ethical dilemmas so often associated with responding to such allegations.

The review has not been tasked with identifying the extent of bullying, harassment, and sexual misconduct in NSW Ministerial offices, although such analysis has occurred in other jurisdictions and fora, or responding to or reporting on individual complaints. Nor has it been tasked with reviewing the policies and procedures applying to Parliamentary staff, including the electorate staff of Members of Parliament and of the Presiding Officers; these are matters for the Parliament, not the Premier.

My determination in this review is to provide constructive advice on a pathway to a best practice and respectful workplace policy. Ministerial workplaces should become, and importantly be seen to be, models of respectful and safe workplaces that the people of NSW expect of their elected governments.

A handwritten signature in black ink, reading "Pru Goward". The signature is written in a cursive style with a large, looped initial "P" and a long, sweeping underline.

Pru Goward

## Acknowledgements

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Firstly, I would like to thank the Premier for her invitation to conduct this review and the confidence she has expressed. It has been an honour to perform this task and I trust her confidence has not been misplaced.

I would also like to thank the Premier's Office for their personal reflections on the management of the existing policy and the senior executive and Presiding Officers of the Parliament, who generously shared their years of experience and the complexities they have encountered. Several Ministers, Chiefs of Staff and staff members spoke informally to me and I am most grateful for what were often deeply personal accounts and observations which helped inform my conclusions and drew attention to aspects of working in Ministerial offices only they could do.

I would like to acknowledge those many people who have assisted in the preparation of this review, particularly the staff of the Department of Premier and Cabinet's Office of General Counsel, particularly Sarah Wyatt and Isabelle Gebicki, for their ongoing assistance and their invaluable legal guidance.

The views expressed in this review, the conclusions drawn, and the recommendations made are, of course, entirely my own.

# Methodology and Terms of Reference

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## Methodology

The research methodology for this review has involved:

- review of selected<sup>1</sup> and/or publicly available policies and procedures of the NSW Department of Premier and Cabinet (**DPC**), NSW Parliament, other jurisdictions, selected universities, and private sector entities with similar challenges to those of the Ministerial workplace. This review has not undertaken an exhaustive examination of publicly available policies and procedures and the report does not suggest that the examples referred to are the only available or relevant examples or models that may be considered
- consideration of the Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report* (January 2020)
- targeted consultation in line with the Terms of Reference, including consultation with the Presiding Officers and Clerks of NSW Parliament as well as the Department of Parliamentary Services and a relevant expert practitioner in complaints management of this kind
- informal consultation with current and former staff.

The above desktop review and consultations have been directed to:

- examining the current process for managing complaints and identifying any gaps in that process
- identifying elements of an effective policy with a view to enhancing the current process
- examining the approach to investigating complaints, including where a matter complained about may constitute criminal conduct and who is best placed to investigate a complaint.

The scope of this review is limited to the Terms of Reference. Further opportunities to enhance and promote a respectful workplace culture may arise that are currently outside the scope of this review, for example, developing the detail of any subsequent policy and guidance for managing personal or intimate relationships between workplace colleagues, including Ministers with their staff.

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<sup>1</sup> Some of the policies and procedures considered in this report were referred to in the Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report* (January 2020). Key institutions in the community including judicial and tertiary have been considered in this review.



## Terms of Reference

Under the Terms of Reference, a review is to be conducted into the adequacy of policies and procedures concerning bullying, harassment, and sexual misconduct in Ministerial offices.

The review is to consider the adequacy of the policies and procedures that apply to staff employed by political office holders under Part 2 of the *Members of Parliament Staff Act 2013* (NSW) (**MOPS Act**).

As part of the review, consideration has been given to:

- a) the process by which staff may make a complaint about bullying, harassment, or sexual misconduct in the workplace, including who may be best placed to receive any such complaint
- b) best practice procedures for receiving and handling complaints about bullying, harassment, or sexual misconduct in the workplace
- c) the circumstances in which it may be appropriate to conduct an internal investigation into allegations of bullying, harassment, or sexual misconduct which may also constitute criminal conduct, and the appropriate person or body to conduct any such internal investigation.

The review is to make any recommendations considered appropriate for improving policies and procedures concerning bullying, harassment, and sexual misconduct in Ministerial offices.

Consultation is also permitted under the Terms of Reference with relevant persons or bodies with expertise in addressing bullying, harassment, or sexual misconduct in the workplace, as considered appropriate by the reviewer.

Under the Terms of Reference, the review may also include consultation with the NSW Parliament Presiding Officers and the Department of Parliamentary Services in relation to practices currently in place to manage allegations of bullying, harassment, or sexual misconduct concerning staff employed under Part 3 of the MOPS Act.

## Executive summary

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### Background

This review was requested by the Premier of NSW and tasked with examining the adequacy of the existing policy and procedures for the prevention and management of bullying, harassment, and sexual misconduct for Ministerial staff. The review was also to consider the management of allegations of misconduct which could constitute criminal behaviour. The review's overall purpose was to provide the Premier with guidance on best practice policy and procedures that would ensure the safety and welfare of Ministerial staff.

The review has drawn on the existing sources of guidance for NSW Ministers and their staff concerning bullying, harassment, and sexual misconduct and critically considered their adequacy in equipping Ministers and Chiefs of Staff to manage complaints of misconduct. It has also considered the implications of the *Anti-Discrimination Act 1977 (NSW)* (**AD Act**) and the *Work Health and Safety Act 2011 (NSW)* (**WHS Act**) for the implementation of policy and procedures. It is noted that there may be legal recourse under these Acts separate to complaints handling under any policy or procedure. Further legal options including employment consequences such as termination may arise following management of a complaint under the policy and procedures. It is also frequently the case that recourse to legal proceedings is often not the complainant's preferred option, despite what may be unlawful or criminal conduct.

The MOPS Act has been drafted to ensure that Ministerial offices are responsive to the challenges of the day. Accordingly, Ministerial staff may be hired without a formal merit-based process and dismissed without having recourse to unfair dismissal provisions. The tenuous nature of their position results in a power imbalance for Ministerial staffers. Staff are nonetheless entitled to the legislative protections of the WHS Act and the AD Act, which should be explicitly referred to in the policy.

The review has drawn on the evidence and insights of several parliamentary inquiries including:

- Bullying and Harassment in the New Zealand Parliamentary Workplace (May 2019)
- Review of Harassment in the South Australian Parliament Workplace (February 2021)
- The Bullying and Harassment of House of Commons Staff, Independent Inquiry Report (October 2018) and follow-up inquiries
- Australian Human Rights Commission's Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces Report (January 2020).

The review has not involved a broader literature review or a survey of staff, although staff have informally provided feedback and shared their experiences on a confidential basis.

### Incidence of bullying, harassment, and sexual misconduct in parliamentary workplaces

Various inquiries and reviews have found consistent levels of sexual harassment in the workplace, which has been measured at 33% by the Australian Human Rights Commission and 27.1% by the South Australian Parliamentary Inquiry. The New Zealand Parliament Inquiry found that 29% of respondents surveyed experienced some form of bullying and harassment (see Section 1, Chapter 1).

It is unlikely that the NSW Parliament and associated entities such as Ministerial offices would be significantly different in their experience of this misconduct, although there is no record of Ministerial staff members pursuing legal redress for bullying, harassment, and sexual misconduct in NSW and there is no record of complaints made, under the policy, to Chiefs of Staff that have been brought to the attention of this review.

The review also recognises the possible impact of the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) and the powers of the Upper House to call for papers held by the Executive. While similar concerns were not referred to in other parliamentary inquiries, this review considers that the means for accessing government information in NSW might create a further barrier to reporting. As a result, the review draws attention to the importance of ensuring the confidentiality of victims of bullying, harassment, and sexual misconduct both in any further phases of policy development in the management of misconduct, and in any complaints procedure itself.

## The Ministerial office as a unique workplace

In the background to this report (Section 1, Chapter 1) the review reflects on the unique nature of Ministerial workplaces. These features are readily identified:

- they operate under intense public scrutiny
- the employment protections for Ministers are vastly greater than those of their staff
- the political ambitions of some staff and their frequent involvement in party-political activities, further complicate a staff member's readiness to complain
- merit is difficult to define and subjectively applied to staff appointments
- management structures are flat, and supervision is informal. Staff management and training is a low priority for Chiefs of Staff, who instead are required to focus on protecting their Minister, policies, and politics
- the value placed on loyalty to the Minister, the government and the political party may conflict with considerations about the duty of care to the welfare of staff.

Other parliamentary inquiries have provided further analysis of these unique features, referred to in detail in Chapter 1. There is no doubt that any policy for the management of bullying, harassment, or sexual misconduct in Ministerial offices will need to account for them.

Obvious examples of other industries and workplaces with some, if not all, of these features include the entertainment industry, barristers' chambers, law courts and parliaments or other legislative bodies.

By contrast, decades of evolving management practice, supported and often required by legislation, have been effective in promoting respectful workplaces and addressing the risks of unacceptable behaviour in most Australian workplaces. In Ministerial offices, however, the current policy and procedure fails to address these increased risks of misconduct. Consistent with the findings of several parliamentary inquiries it also fails to provide even those standard procedures and policies existing in other workplaces. It should be noted, for example, that the NZ, SA, and UK inquiries have mostly occurred in the past five years. The absence of even standard procedures perhaps confirms the underlying attitudes and cultures which make these places high-risk.

In addition, the Parliaments, as lawmaking bodies of democratically elected members, have a unique, almost sanctified, independence. Parliamentary privilege bestows Parliament, and its associated entities such as Cabinets, with many exemptions from the rules applying elsewhere in society. The history of these, and their importance, is well understood and supported. That should not justify tolerance or normalisation, as observed in other parliamentary inquiries, of bullying, harassment, and sexual misconduct.

The Executive arm of government, that is the public service and the Cabinet, is directly accountable to the Parliament, which would distinguish any framework applying to Ministerial staff policy and procedures from that applying to the staff of Parliament itself.

## The current policy and procedure

Under the part (a) of the Terms of Reference, the review has examined the existing policy and procedures (Section 1, Chapter 2).

The existing policy and its related procedure is referred to briefly in the *NSW Ministers' Office Handbook*<sup>2</sup> (the **Handbook**):

*Ministers' offices need to be workplaces free from bullying, harassment and discrimination, and need to provide processes for resolution of issues as quickly and as close to the source as possible. The Chief of Staff needs to deal with workplace behaviour issues in a proactive manner so that minor issues are not escalated. All parties to a grievance or dispute are expected to exercise goodwill and cooperate in resolving the matter.*

Further detail is provided in Attachment L to the Handbook.

This policy, informal as it is, places enormous responsibility on Ministerial Chiefs of Staff (and the Premier's Chief of Staff) without proper guidance or procedures for them to follow. It also fails to recognise the complications of working in a Ministerial office and is, on several levels, inadequate for the protection of Ministerial staff safety.

The review makes seven findings about the shortcomings of the existing policy:

- the current policy and procedure for managing complaints of bullying, harassment, and sexual misconduct under the Handbook requires updating to achieve contemporary standards and systems (see **Appendix A**)
- Ministers and their staff do not currently receive routine, audited training about what constitutes bullying, harassment, and sexual misconduct and how to manage a complaint of bullying, harassment, or sexual misconduct
- Ministers and their staff should be provided routine, audited training about their legal obligations under the WHS Act, AD Act and the MOPS Act
- Chiefs of Staff, as initial points of contacts for complainants and bearers of delegated Ministerial authority, particularly require regular formal training about how to manage a grievance under the Handbook
- the Handbook provides no mechanism to formally investigate complaints of bullying, harassment, and sexual misconduct
- there is currently inadequate written guidance to Ministerial staff on how to manage a complaint that may constitute criminal conduct
- there are currently inadequate systems and procedures for prevention and early intervention in respect of complaints of bullying, harassment, and sexual misconduct.

Those absent features are standard to relevant workplace policies in the NSW Public Sector and more broadly. They reflect not only changing community and staff expectations, but developments deriving from case law over many years; forty-four years in the case of anti-discrimination legislation.

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<sup>2</sup> <https://publications.dpc.nsw.gov.au/ministers-office-handbook/introduction/>.

## Best practice features of policies applying in other organisations

Within the terms of reference, the review has sought examples of policies and procedures applying in organisations with similar power imbalances, workplace intensity and accountabilities (Section 1, Chapter 3). These clearly reflect other attempts to grapple with those features that make a more standard approach difficult to apply.

Victimisation (that is, retribution against a complainant) is especially difficult to manage in situations where a potential complainant has no employment security, as is usual in Ministerial offices, and for this reason anonymous reporting and tracking of complaints is often favoured. The tracking, usually by an independent person, can be made available to a senior person such as a Premier, Chief Justice or Vice-Chancellor to assist in identifying concerning trends or individual patterns of behaviour. It is not ideal, because the victim, while supported, may still not succeed in having the unwelcome behaviour cease, at least immediately. It is likely to have the benefit of encouraging use and confidence in the policy. An independent person who manages similar complaints elsewhere observed to the review that it means the victim is more likely to continue to seek advice and comfort and eventually make a formal and identifiable complaint about this behaviour, if it continues to occur.

It should be noted that there was limited evidence of the effectiveness of best practice strategies, activities, and procedures available to the review. For many of these organisations, such as the Supreme Court and the universities, policies have been introduced only recently and the potential for evaluation may lie in the future. St Vincent's Ethos program is undergoing evaluation presently.

This absence of evaluation will make identifying suitable procedures and prevention activities for Ministerial offices, such as suitable bystander training programs, difficult but is no reason to exclude them.

It would be sensible for the development of any future policy and procedures to reflect the experience and best practice of other organisations, especially those facing similar challenges. Evaluations of the effectiveness of any potential activities (such as training programs) or procedures should also be sought.

Section 2 considers the incorporation of best practice into a new, standalone Respectful Workplace Policy.

Acknowledging the limitations of evidence about the effectiveness of such a policy and its associated activities and procedures, the review has identified the principles that should apply to the future development of any such policy. These are contained in Recommendation 1:

- an overarching statement setting out the policy's intent and a summary of its features
- definitions of what is included in the policy and the conditions under which it applies
- measures to assist with the prevention of unacceptable conduct
- formal and informal grievance procedures should complaints of policy breaches occur, including the option to make an anonymous report as part of the informal grievance procedures
- remedies for substantiated breaches of the policy
- anonymous reporting channels should also be available to those who do not wish to raise a grievance but instead seek support and advice. Anonymous reporting can also be used to identify patterns of conduct and other systemic issues
- transparent monitoring of the policy's effectiveness to ensure it achieves its purpose and to assist in identifying appropriate modifications if it is not.

The review has concluded that the existence of a reliable monitoring mechanism, or mechanisms, such as annual anonymous surveys and evidence from staff exit-interviews,

will be powerful means of ensuring the policy builds and retains the confidence of staff and areas for improvement can be identified.

The review has also listened to the concerns of those who believe any such workplace policy will not adequately support those other staff who are connected to the Ministerial and parliamentary workplaces but would not be covered by a Ministerial office policy. This is, necessarily, a limitation of any policy of this kind but its shortcomings are more apparent in the parliamentary precinct, which several groups identify as their workplace, but are covered by different policies and procedures. The frequency of interaction between these groups, for example, electorate officers or staff of a Presiding Officer with a Ministerial staff member, makes this limitation very real for staff. This is explored in more detail in Chapter 10, but the review encourages the leadership of these independently governed bodies to explore possible bridges between them.

The review is very much a first stage in the development of a policy and procedures suited to the conditions of NSW Ministerial staff. Acceptance of any such policy and its procedures will hinge on staff confidence and accordingly, the review has proposed a co-design process for the development of the policy in detail. Staff and Ministerial participation is more likely to produce a policy and procedures that reflect the conditions of work in a Minister's office.

Staff are likely to be realistic about the limitations of policy and procedures applying in their unique workplace, which they appreciate are part of the workings of a parliamentary democracy such as ours. They gladly work long and hard hours of enormous stress and in my experience, have a deep commitment to the Government they serve. They will welcome the Premier's ambition to provide NSW Ministerial staff with a policy that not only seeks to improve their safety at work, but also demonstrates dedication to the safety and welfare of the people of NSW.

## Recommendations

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### Recommendation 1

A best practice Respectful Workplace Policy, including investigative and reporting procedures, should be developed to address bullying, harassment, and sexual misconduct in Ministerial offices to enhance the safety and security of staff in the workplace. The key elements of that policy should include:

- an overarching statement setting out the policy's intent and a summary of its features
- definitions of what is included in the policy and the conditions under which it applies
- measures to assist with the prevention of unacceptable conduct
- formal and informal grievance procedures should complaints of policy breaches occur, including the option to make an anonymous report as part of the informal grievance procedures
- remedies for substantiated breaches of the policy
- anonymous reporting channels should also be available to those who do not wish to raise a grievance but instead seek support and advice. Anonymous reporting can also be used to identify patterns of conduct and other systemic issues
- transparent monitoring of the policy's effectiveness to ensure it achieves its purpose and to assist in identifying appropriate modifications if it is not.

### Recommendation 2

That DPC should continue its role of providing procedural advice to Ministerial offices regarding unacceptable conduct under any new policy to ensure the policy is understood consistently across the Ministry.

### Recommendation 3

Training should be provided to Ministers and their staff about what constitutes bullying, harassment, and sexual misconduct and how to manage a complaint of bullying, harassment, or sexual misconduct. Chiefs of Staff should be provided with additional training and support. This training should be available at induction and as part of an ongoing program of annual refresher training.

### Recommendation 4

That Ministers, as employers of staff under the *Members of Parliament Staff Act 2013* (NSW), be aware of their obligations under that Act and also the *Work Health and Safety Act 2011* (NSW) and *Anti-Discrimination Act 1977* (NSW). Ministers should be required to undertake training to ensure strong understanding of their responsibilities as employers under these laws and the consequences of failure to meet their obligations. This training should be available at induction and as part of an ongoing program of annual refresher training.

### Recommendation 5

That Ministers and staff be required to apply and adhere to the Respectful Workplace Policy.

## Recommendation 6

The review suggests the following principles apply to receiving and handling complaints:

- a well-defined and transparent process for all parties involved in a complaint
- complaints are managed promptly, with clear timeframes communicated to the parties
- complaints can be made by current and former Ministerial staff
- a victim-centred approach to handling complaints to ensure complainants are supported and informed during the process and their experience and concerns listened to
- complainants are protected from retaliation and victimisation
- confidentiality and procedural fairness for the parties to the complaint is maintained
- supports are provided to the parties to a complaint – including a support person, and access to counselling
- complainants are provided with informal (anonymous) and formal reporting channels
- an independent process for those unwilling to have their complaint handled within a Ministerial office. The independent process may include formal or informal procedures.

## Recommendation 7

Complaints of misconduct from Ministerial staff should be received by an independent person, in accordance with the elements of a best-practice policy identified in Recommendation 1. The independent person may conduct investigations of complaints, and will have the following capabilities:

- experience and training in conducting investigations about bullying, harassment, and sexual misconduct
- experience and training in interviewing witnesses and, where required, gathering evidence to a legal standard
- experience and training in maintaining confidentiality, treating information with sensitivity, and managing records and information acquired during the investigation
- experience and training in supporting victims who seek to make disclosures

Ministers and staff should be acquainted with the independent person and encouraged to seek their assistance with matters of this kind.

## Recommendation 8

The policy and procedures developed for managing bullying, harassment, and sexual misconduct should make clear how the investigation is to be managed where the conduct investigated may constitute criminal conduct.

## Recommendation 9

Where a matter raised or investigated may also be a serious criminal offence, the following principles should apply:

- the complainant is notified of the requirement to report the offence to the NSW Police Force and the complainant's wishes about making the report must be obtained
- the complainant is provided with support – a support person, counselling assistance and the opportunity to raise concerns and wishes with the investigator about the report to police
- where reported to the NSW Police Force, consultation should be undertaken with the NSW Police Force about the continuation of the workplace investigation – this is directed to ensuring any criminal investigation is not prejudiced, but that the workplace investigation and any employment consequences can still be pursued



- regular well-being check-ups by the independent person should be undertaken during which the complainant is able to review their decision about reporting the matter to the NSW Police Force
- the Minister should consider the work health and safety of the complainant and other staff in these circumstances and appropriate employment arrangements during any inquiry stage.

### **Recommendation 10**

That an anonymous survey be conducted of all Ministers and their staff to establish a base line for the subsequent impact of the Respectful Workplace Policy on staff health and safety. Following this, an annual and anonymous survey of all staff and Ministers be conducted to assess ongoing confidence in the Respectful Workplace Policy and identify any patterns of misconduct. Further, that the results of the survey be provided to the independent person, Ministers, staff and the Premier, who may seek further advice for their consideration and review.

### **Recommendation 11**

That exit interviews be conducted by DPC with all departing Ministerial staff to identify potential concerns and areas for improvement in the application of the Respectful Workplace Policy. The information is to be provided regularly, in de-identified form, to the Premier's office and to the independent person, to guide future work.

### **Recommendation 12**

That the independent person report regularly to the Premier on emerging trends and proposals to improve the Respectful Workplace Policy and to provide the Premier with guidance on any necessary further reform.

### **Recommendation 13**

That the Premier consider consultation with all Ministers and their staff to guide the development of the Respectful Workplace Policy in such a way that Ministers and Ministerial staff have confidence that the Respectful Workplace Policy and its procedures are fair, appropriate, and relevant to their working conditions.

It is open to the Premier to explore, with the Presiding Officers of the Parliament, opportunities for linkages between the policies applying to different sections of the parliamentary workforce.

# Section 1 – Policies currently applying to NSW Ministerial Offices and similar organisations

## Chapter 1 – Background

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### Ministerial offices are a workplace

Ministerial offices are a unique workplace.<sup>3</sup> While all workplaces are unique, Ministerial offices have certain features which make them at greater risk of experiencing and poorly managing unacceptable conduct such as bullying, harassment, and sexual misconduct. They are not alone: other organisations such as law courts and universities, also carry greater risk. Any efforts to design policy and procedures which are fit for Ministerial offices will need to account for these characteristics.

### Power imbalance

The MOPS Act allows the dismissal of a staff member without recourse to unfair dismissal legislation and other industrial protections applying to people employed elsewhere in the workforce. The purpose of the Act is to enable both Members of Parliament and Ministerial offices to be nimble and responsive. It also reflects the complexity of the demands on Ministers, the political relationships elected officials need to manage as well as the requirements of policy development. The uncertain tenure of their own positions also necessitates uncertainty for their staff since Ministers serve at the pleasure of the Premier and in any case, only for the term of the government.

This feature of elected Executive Governments has necessitated similar legislation to the MOPS Act in other parliamentary settings.<sup>4</sup>

Chiefs of Staff, who, in NSW, are usually delegated to assign salaries and duties within an allocated office budget, also have significant staff management responsibilities, referred to generally in the MOPS Act. The Handbook is their primary source of guidance, however as this review has found, the policy contained within it does not fully capture the legal requirements concerning the health and safety of staff (see Chapter 4).

From this arrangement derives an uncertainty for staff with respect to unacceptable conduct; the risk that they will be victimised for making a complaint of bullying or harassment. Since Ministers should always be able to appoint and build their specialist and highly cohesive teams, in the absence of any formalised meritorious process for staff selection, there is the

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<sup>3</sup> A 'workplace' is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work: section 8, WHS Act. [Vergara v Ewin \[2014\] FCAFC 100](#) is authority for the proposition that the definition of 'workplace' is not confined solely to a person's physical place of work, and that behaviour outside of work may still be covered by workplace laws and policies.

<sup>4</sup> Debbie Francis, *Bullying and Harassment in the New Zealand Parliamentary Workplace* (Report, May 2019) 15-21.

additional prospect that some staff will be treated more favourably than others if a complaint is made.

## Accountability

As Members of Parliament, Ministers can only be dismissed from Parliament for significant breaches of the law (*Constitution Act 1902* (NSW), sections 13 and 13A). Where Ministerial conduct falls short of breaching criminal or civil law, any sanctions for their poor conduct are a matter for the Premier. The high level of public scrutiny may impose an additional reputational risk should the misconduct be revealed. In NSW, sanctions for Ministers who perpetrate misconduct or who fail to intervene to prevent it, are not referred to in the Handbook. However, under the WHS Act and the AD Act, Ministers have responsibilities for their staff, which require Ministers, as well as all staff members, to understand their responsibilities and understand how to respond appropriately to a complaint.

Consistently, the evidence of other parliamentary inquiries demonstrates that in the absence of consequences for Ministers in particular, the likelihood of a target of misconduct seeking redress in these circumstances is low.<sup>5</sup>

As other parliamentary inquiries have established, staff frequently explain their reluctance to report with ‘[i]f you report it, you’re not going to be supported. You’re going to lose, so why bother?’<sup>6</sup>

## High intensity and competitive workplaces

In my former experience as a Minister, men and women join a Ministerial staff for many reasons, most conscious of the great importance of the work as well as the expected pressure and public scrutiny. While almost all staff will have a commitment to public policy or to their political party of choice, there is no doubt that personal political or corporate ambitions may figure in the motivations of some.

In these circumstances, they are likely to expect some departure from the behavioural standards of other workplaces and many, as other inquiries into parliamentary behaviour have revealed, consider they must tolerate whatever behaviour is meted out in order to succeed.<sup>7</sup> Their unwillingness to report or complain for reasons of this kind, is another common finding of parliamentary inquiries.<sup>8</sup>

## High prestige workplaces without transparent methods of rewarding merit

Current arrangements governing the employment, assignment of tasks and promotion of staff in Ministerial offices in NSW lack transparency. The Minister is the employer of his or her staff and these arrangements and how they are managed are set out in **Appendix A**. Meritorious process is not required in the Handbook or in the MOPS Act. Accordingly, each staff member is recruited, serves, and is promoted at the grace and favour of the Minister, often on the advice of the Chief of Staff. While this practice has been maintained for decades

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<sup>5</sup> Francis, above n 4, 41-42, and South Australian Equal Opportunity Commission, *Review of Harassment in the South Australian Parliament Workplace* (Report, February 2021) 57-58.

<sup>6</sup> Francis, above n 4, 61.

<sup>7</sup> South Australian Equal Opportunity Commission, above n 5, 53.

<sup>8</sup> *Ibid.*

and reflects the complex nature of political office, it may also contribute to a climate where staff are not only vulnerable but unwilling to complain or report.

## **Informal and unsystematic management structures**

Partly arising from a concern not to be seen to be investing in themselves, governments have in my experience traditionally minimised the amount of training and management arrangements applying in Ministerial offices. While annual performance reviews, management training for supervisors and ongoing professional development, including knowledge and understanding of workplace best practice, are almost always part of life in a professional office, they are not routinely present in Ministerial offices. The intensely busy nature of stretched Ministerial teams contributes to the absence of staff training and support for managers and Ministers, and heightens the risk of overlooking the importance of investing in staff.

In my experience, Ministers have been forced to rely on the camaraderie and shared purpose inherent in small teams working for great causes, to ensure their workplaces are safe and healthy.

The dedication of Ministerial staff to their party or their Minister may have traditionally meant staff have not complained, for fear of causing embarrassment and distraction. Many of them are also young, with little experience of other professional offices, and consequently not aware of the possibility of more adequate management support. Again, this experience is reflected by parliamentary inquiries elsewhere.<sup>9</sup> Similarly, Ministers may not have prior managerial experience to alert them to the absence of structure and support and the important role they could play in improving the welfare and output of their staff team.

As the public sector has increasingly lifted its management standards over the years, the gap between the policy and processes for complaint handling available to public servants and those for Ministerial staff members has become more apparent, and expectations that Ministerial offices should be professionally managed have also risen, inevitably forcing the case for change.

Recent inquiries into parliamentary misconduct in South Australia and New Zealand have made similar findings about their unique nature as workplaces and associated shortcomings.

## **Findings from other parliamentary inquiries**

The unique features of political workplaces have been identified in other jurisdictions. The report by the South Australian Equal Opportunity Commission highlighted the following unique features of the parliamentary workplace as drivers of harassment:

- power dynamics unique to the 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.<sup>10</sup>

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<sup>9</sup> Francis, above n 4, 23.

<sup>10</sup>South Australian Equal Opportunity Commission, above n 5, 4.

The report regarding bullying and harassment in the New Zealand Parliament also noted the following risk factors for poor conduct, including bullying and harassment in the parliamentary workplace:

- a high-intensity culture
- lack of investment in leadership development
- unusual and complex employment arrangements
- largely tactical, rather than strategic workforce management
- health, safety and wellbeing policies and systems that are not yet fully mature
- barriers to making complaints
- inadequate pastoral care.<sup>11</sup>

Anecdotal evidence from various staff of Ministerial offices who engaged with this review confidentially and informally identified many of the same features outlined above that are applicable to Ministerial offices in NSW. It is also important to note that Ministers and their staff work across different work environments that may be subject to different policies and procedures. For example, Ministers as Members of Parliament work with their staff in the Parliament, which is its own workplace and subject to workplace policies applicable to Parliament (see for example the NSW Parliament policies referred to in **Appendix A**). Department Liaison Officers (**DLOs**) also support the work of Ministerial offices but are not members of the Minister's staff and are subject to their departmental policies and guidelines.<sup>12</sup>

This review recognises the unique workplace of a Ministerial office and in doing so sees it as a factor that can contribute to unacceptable behaviours, but it is not an excuse for those behaviours.

Policy and processes which address unacceptable conduct in Ministerial offices should be designed so that they address the unique workplace features of a Ministerial office. An unacceptable conduct (bullying, harassment, and sexual misconduct) policy with procedures best suited to a Ministerial office environment and in which both staff and Ministers can have confidence, will require the adaptation of what is considered to be best practice policy and procedures so that they are fit for purpose in a Ministerial office.

## The prevalence of sexual harassment

The Australian Human Rights Commission report: *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* surveyed more than 10,000 people in 2018 and found that 33% of people who had been in the workforce in the previous five years said they had experienced workplace sexual harassment.<sup>13</sup>

Reports from parliaments in other jurisdictions have indicated similar levels of sexual harassment and discrimination. For example, the report from the South Australian Equal Opportunity Commission regarding harassment in the parliamentary workplace found 27.1% of people surveyed had experienced sexual harassment, and 31.6% of people surveyed reported discriminatory harassment.<sup>14</sup>

The report regarding bullying and harassment in the New Zealand Parliament also found that 29% of survey respondents had experienced some form of bullying or harassment from

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<sup>11</sup> Debbie Francis, above n 4, 10.

<sup>12</sup> C2021-07 *Departmental Liaison Officers*.

<sup>13</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, January 2020) 96.

<sup>14</sup> South Australian Equal Opportunity Commission, above n 5, 3.

either a Member or a manager, 30% from peers and 24% had experienced bullying or harassment from a member of the public.<sup>15</sup>

According to the report by the South Australian Equal Opportunity Commission, reports in other jurisdictions such as the UK, Canada, the United States of America, and Europe indicate that harassing behaviours are common in these parliamentary workplaces.<sup>16</sup>

With these statistics and contextual matters in mind, the importance of this review is clear.

There is nothing to suggest that the prevalence of bullying, harassment, or sexual misconduct in Ministerial offices in NSW would not be consistent with these indicators elsewhere.

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<sup>15</sup> Debbie Francis, above n 4, 37.

<sup>16</sup> South Australian Equal Opportunity Commission, above n 5, 1.

## Chapter 2 – Current policy and procedures applying in NSW Ministerial offices

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### Introduction

This chapter considers the first element of the Terms of Reference concerning:

- (a) *the process by which staff may make a complaint about bullying, harassment, or sexual misconduct in the workplace, including who may be best placed to receive any such complaint*

This chapter will identify what the current process is for Ministerial staff to make a complaint about bullying, harassment, and sexual misconduct and protections and remedies available to complainants. Section 2 of this report considers ways that the current process may be enhanced.

### Options for making a complaint

Attachment L to the Handbook deals with bullying, harassment, and discrimination. The process for managing a grievance requires:

- the grievance to be raised in the first instance with the Chief of Staff
- if the grievance concerns the Chief of Staff or it cannot be resolved at the local office level it needs to be raised, in the case of Government Office Holder staff, with the Premier's office, and in the case of other Office Holder staff with DPC Corporate Services
- if a grievance relates to alleged corrupt conduct, possible maladministration or serious or substantial waste of public money, the provisions of the *Public Interest Disclosures Act 1994* (NSW) may apply.

A grievance is defined as:

*...a clear statement, oral or written, by a staff member of a work related problem, concern or complaint, including those involving bullying, harassment, communication problems, interpersonal conflicts and discriminatory behaviour.*

Raising a grievance is the only option for making a complaint about bullying, harassment, (including sexual harassment) or discrimination in the Handbook.

The Handbook sets out definitions of 'bullying', 'harassment' and 'discrimination' and what are not those things (**Appendix A**). These definitions enable Ministerial staff to identify the conduct which may be complained about by way of raising a grievance.

However, the Handbook does not provide informal options for making a complaint and for managing a complaint of bullying, harassment, or sexual misconduct; raising a grievance is considered to be a formal option under the existing policy.

### Protections and remedies for complainants

Advice for complainants is not provided in the Handbook, for example, whether their complaint will be treated confidentially, whether any steps may be taken to make workplace adjustments or temporarily assign Ministerial staff to a different role under section 9 of the MOPS Act (so as to separate the complainant from the perpetrator). Counselling support is available from the Employee Assistance Program, but I understand is limited to only a few sessions.

Protecting the confidentiality of complaints is important as assurance of confidentiality may facilitate disclosures. It is noted that there is a risk that complaints made and provided on a confidential basis may become publicly available through requests for government information via Parliamentary orders for papers under Standing Order 52 and/or requests under the GIPA Act. The risk of public disclosure of confidential complaints via these means may impact the willingness of complainants to raise a grievance under the available policy.

There is a clear statement in Attachment L of the Handbook that:

*Staff members should not be bullied, harassed or discriminated against on the grounds of sex, pregnancy, marital status, carer's responsibilities, race, religion, disability or illness, age, sexual preference (actual or presumed), transgender status (actual or presumed), political opinion/affiliation, union involvement/non-involvement and irrelevant criminal record.*

While this statement is important it does not point to protections, remedies or supports for complainants who complain about bullying, harassment, or sexual misconduct. There is a need for such protections to encourage complainants to come forward and to build an environment of trust and support for them.



## Findings

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### Finding 1

The current policy and procedure for managing complaints of bullying, harassment, and sexual misconduct under the *NSW Ministers' Office Handbook* requires updating to achieve contemporary standards and systems (see **Appendix A**).

### Finding 2

Ministers and their staff do not currently receive routine, audited training about what constitutes bullying, harassment, and sexual misconduct and how to manage a complaint of bullying, harassment, or sexual misconduct.

### Finding 3

Ministers and their staff are not provided with routine, audited training about their legal obligations under the *Work Health and Safety Act 2011* (NSW), *Anti-Discrimination Act 1977* (NSW) and the *Members of Parliament Staff Act 2013* (NSW).

### Finding 4

Chiefs of Staff, who are so often the initial point of contact for a complainant and bear delegated Ministerial authority, particularly require regular formal training about how to manage a grievance under the *NSW Ministers' Office Handbook*.

### Finding 5

The *NSW Ministers' Office Handbook* provides no mechanism to formally investigate complaints of bullying, harassment, and sexual misconduct which are independent of the Ministerial office.

### Finding 6

There is currently inadequate written guidance to Ministerial staff on how to manage a complaint that may constitute criminal conduct.

### Finding 7

There are currently inadequate systems and procedures for prevention and early intervention in respect of complaints of bullying, harassment, and sexual misconduct.

## Chapter 3 – Features of best practice policy and procedures for the prevention of workplace bullying, harassment, and sexual misconduct

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### Introduction

This chapter considers the second element of the Terms of Reference concerning:

- (b) best practice procedures for receiving and handling complaints about bullying, harassment, or sexual misconduct in the workplace*

In addition to the DPC and NSW Parliament policies for receiving and handling complaints about bullying, harassment, or sexual misconduct in the workplace, this review has examined other jurisdictions (**Appendix B**), as well as, university and private sector policies in the consideration of best practice.

### Essential features of policy and procedures

Consideration of other jurisdictions, universities, and the private sector discussed below show that an effective approach to receiving and handling complaints about bullying, harassment, and sexual misconduct should include:

- various options for making and handling a complaint
- protections for complainants who utilise complaint handling procedures, including protecting them from retaliation, providing procedural fairness and confidentiality
- a mechanism to monitor reports made so that targeted or proactive action can be taken to address patterns of behaviour or problem areas.

The review supports including informal and formal mechanisms for making a complaint and receiving and dealing with a complaint. The review has identified a number of principles that should apply to a best practice model of complaint handling for bullying, harassment, and sexual misconduct:

- an overarching statement setting out the policy's intent and a summary of its features
- definitions of what is included in the policy and the conditions under which it applies
- measures to assist with the prevention of unacceptable conduct
- formal and informal grievance procedures should complaints of policy breaches occur, including the option to make an anonymous report as part of the informal grievance procedures
- remedies for substantiated breaches of the policy
- anonymous reporting channels should also be available to those who do not wish to raise a grievance but instead seek support and advice. Anonymous reporting can also be used to identify patterns of conduct and other systemic issues
- transparent monitoring of the policy's effectiveness to ensure it achieves its purpose and to assist in identifying appropriate modifications if it is not.

The key elements/principles of an effective complaints handling, or grievance procedure are:

- a well-defined and transparent process for all parties involved in a complaint
- complaints are managed promptly, with clear timeframes communicated to the parties
- complaints can be made by current and former Ministerial staff
- a victim-centred approach to handling complaints to ensure complainants are supported and informed during the process and their experience and concerns listened to
- complainants are protected from retaliation and victimisation
- confidentiality and procedural fairness for the parties to the complaint is maintained

- supports are provided to the parties to a complaint – including a support person, and access to counselling
- complainants are provided with informal (anonymous) and formal reporting channels
- an independent process for those unwilling to have their complaint handled within a Ministerial office. The independent process may include formal or informal procedures.

## Best practice examples drawn from other parliamentary workplaces

The review has undertaken an assessment of the policy landscape of Australian jurisdictions, New Zealand, UK, and Canada. The results of that assessment are at **Appendix B**. The information in **Appendix B** is based on an online desktop review. There may be policies in the jurisdictions surveyed that are not publicly available online.

The jurisdictional survey shows that:

- the Commonwealth and NSW have policies for Ministerial staff – the adequacy of the NSW policy has already been discussed in this report
- the Australian Capital Territory (**ACT**), NSW and the UK have policies for staff of parliament
- most jurisdictions do not have publicly available policies and procedures on bullying, harassment, sexual misconduct, and complaint handling for staff of Ministers, or staff of Members of Parliament.

Some examples from this jurisdictional survey<sup>17</sup> of how complaints about bullying, harassment, or sexual misconduct in the workplace are received and handled are extracted below.

### Commonwealth

The Commonwealth *Workplace Bullying and Harassment Policy* applies to Parliamentarians and all staff employed under the *Members of Parliament (Staff) Act 1984 (MOP(S) Act)*. The key elements of the policy are:

- providing a definition and examples of workplace bullying and what is not workplace bullying
- providing a definition of discrimination and harassment (including sexual harassment)
- setting out the responsibilities of Parliamentarians and staff employed under the MOP(S) Act referable to work, health and safety duties and responsibilities
- providing an issues resolution procedure
- explaining the unique characteristics of MOP(S) Act employment.

The issues resolution process includes informal and formal options for managing workplace bullying and harassment. These options are:

- self-management by the complainant – the complainant speaks to the person the subject of the complaint and addresses the issue
- assisted self-management – the complainant seeks support and assistance from a colleague to raise the issue with the person the subject of the complaint. The approach should be confidential and non-confrontational
- represented self-management – the complainant seeks assistance from a person outside the workplace who has knowledge of managing workplace harassment and bullying
- reporting of workplace bullying and harassment can be made to the Department of Finance who will review the complaint and may facilitate professional mediation services or arrange a workplace investigation. A substantiated complaint that has been investigated may result in disciplinary action.

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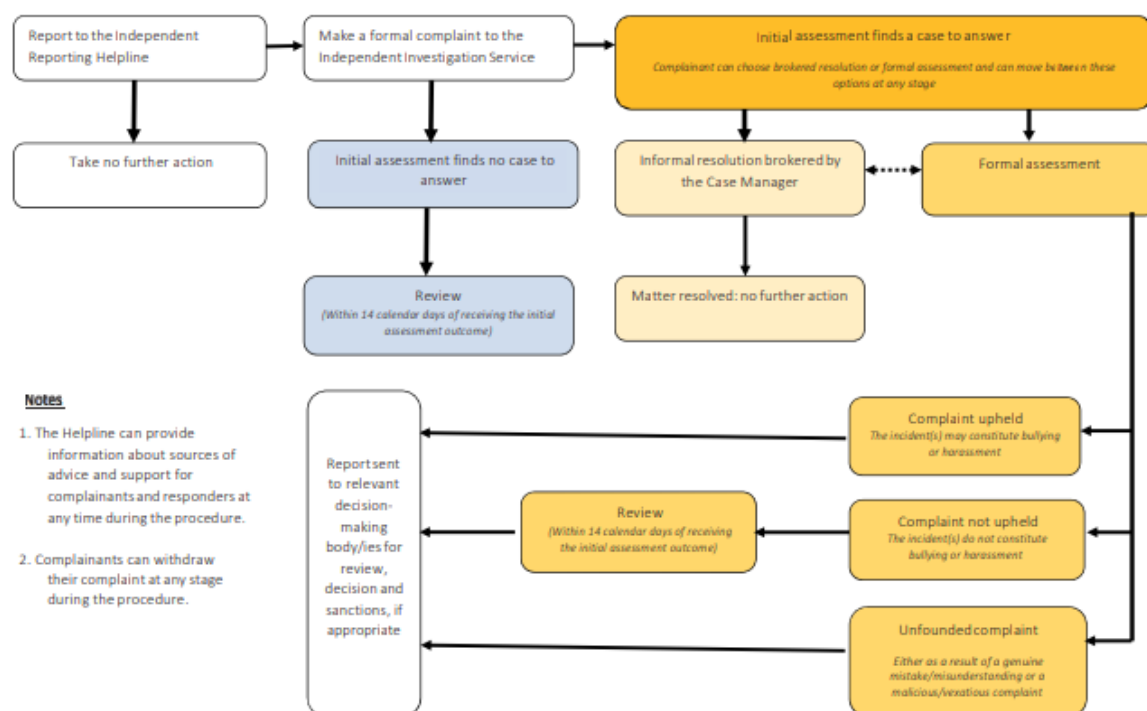
<sup>17</sup> See Appendix B for links to relevant policies and procedures.

## UK

The UK Parliament has an *Independent Complaints and Grievance Scheme (ICGS)* that consists of a *Behaviour Code*, *Bullying and Harassment Policy* and a *Sexual Misconduct Policy*. The *Behaviour Code* 'makes clear the standards of behaviour expected of everyone in the parliamentary community, past or present. There is 'zero tolerance for abuse or harassment.' The ICGS was recently subject to a six-month review.

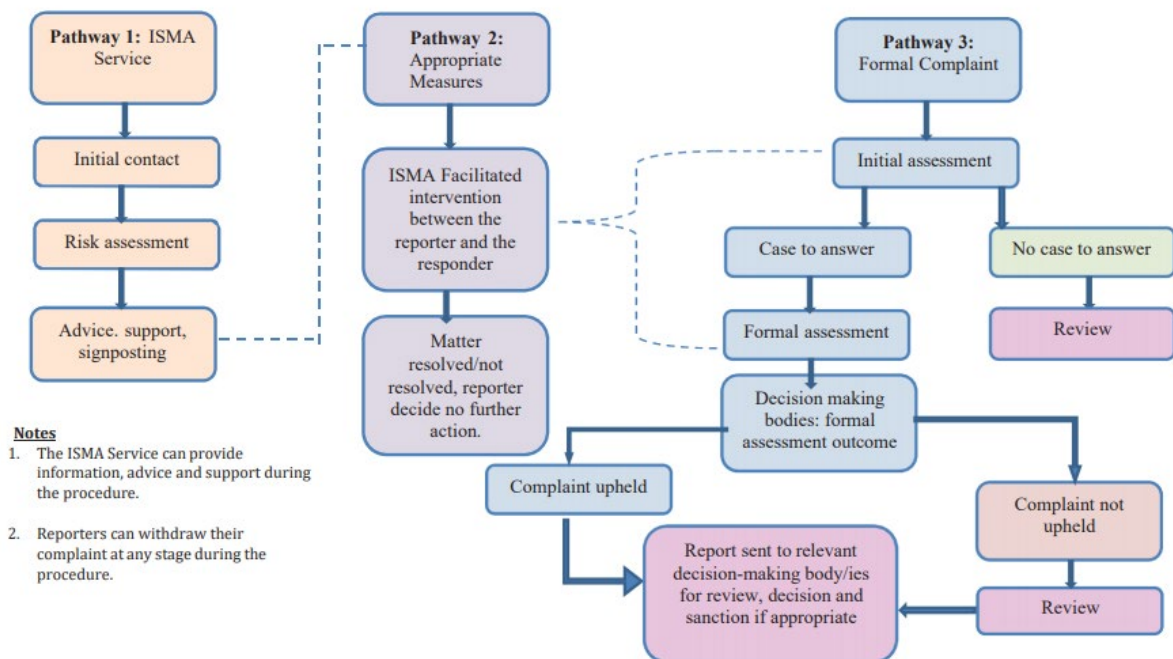
The independent complaints and grievance procedure is set out below, with informal and formal management options.

Independent Complaints and Grievance procedure for bullying and harassment: flowchart



The *Sexual Misconduct Policy* is divided into the policy and procedures. The key elements are:

- defining sexual misconduct and applicable legislation
- defining behaviours and consent
- setting out ways of reporting sexual misconduct – to police, an employment tribunal, their employer, a political party, or the relevant Commissioner for Standards
- confidentiality requirements
- provision of support through the Independent Sexual Misconduct Advisory Service (**ISMA Service**), which provides confidential, independent, specialist and trained support in relation to sexual misconduct. The ISMA Service is staffed by accredited and experienced Independent Sexual Violence Advisors (**ISVAs**) who provide specialist support, advice, advocacy.
- three pathways for dealing with sexual misconduct via the ISMA Service; appropriate measures (e.g. a face to face meeting between the parties facilitated by ISMA Service) and formal complaint, which will be investigated. These pathways are set out below:



## ACT

The ACT Legislative Assembly has a *Policy and procedures for dealing with workplace discrimination, harassment and bullying*. The key elements of the policy are:

- defining discrimination (including direct and indirect discrimination)
- defining harassment (including sexual harassment)
- defining bullying (including what is not bullying)
- circumstances relevant to discrimination, bullying and harassment (including who are at risk, what are the effects and why instances are not reported)
- responsibilities of Members, management, and staff in dealing with discrimination, bullying and harassment
- vicarious liability - under the anti-discrimination legislation the Legislative Assembly is generally liable for the conduct of its employees unless it can be established that all reasonable steps were taken to prevent the discriminatory, bullying, or harassing conduct
- the role of the Respect, Equity and Diversity Contact Officer
- options for dealing with discrimination, bullying and harassment (including informal and formal options)
- victimisation
- questions and answers that are directed to applying the policy and procedures to various scenarios.

The role of the Respect, Equity and Diversity Contact Officer is not to resolve discrimination, bullying or harassment grievances. Their role is to:

- provide information to staff, supervisors, managers, and Members on processes available to resolve complaints
- to support complainants in the resolution of complaints informally
- raise awareness that views on acceptable behaviour can differ between individuals
- disseminate in the workplace information relating to discrimination, bullying and harassment prevention

- raise awareness of counselling options available to Members, managers, and staff through the Assembly's Employee Assistance Program.

## Best practice examples drawn from non-parliamentary organisations

This review has examined the policies applying in universities and private sector organisations as well as other government entities which have similar structures and power imbalances between staff and management, such as the Courts. Examples of best practice procedures for receiving and handling complaints about bullying, harassment, or sexual misconduct in the workplace are provided.

### NSW Supreme Court

The NSW Supreme Court has a *Supreme Court Policy on Inappropriate Workplace Conduct*,<sup>18</sup> which sets out the standards of behaviour expected in the Supreme Court and provides a safe and secure method for any person to raise a concern about the breach of the policy.

The Supreme Court's policy notes that it is intended to be complementary to the relevant Department of Communities and Justice Guidelines. Key elements of the policy are:

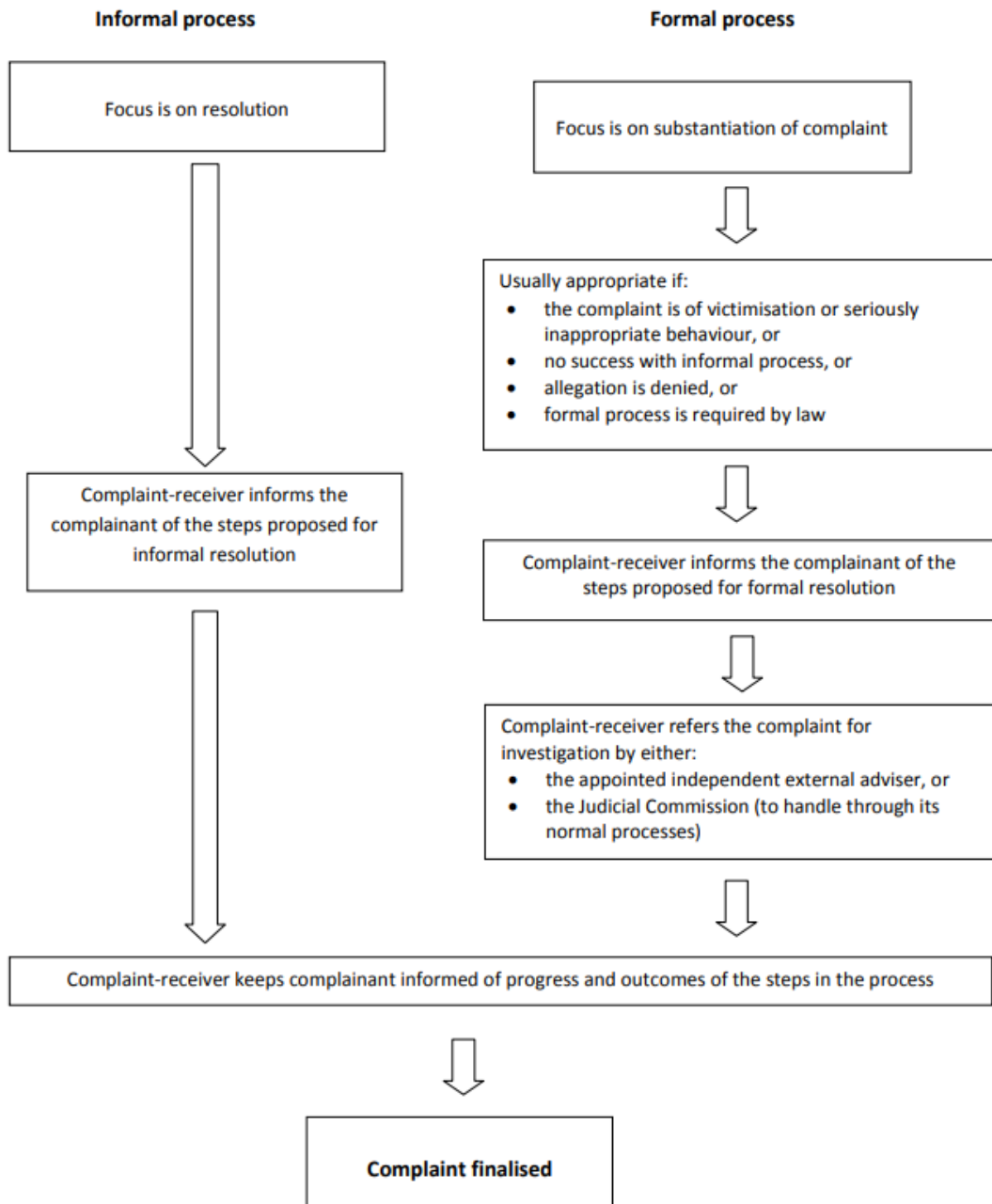
- providing an overarching statement about the importance of fairness, dignity and respect and a zero-tolerance statement about inappropriate workplace behaviour
- establishing who the policy applies to, namely, judges and judicial staff
- defining discrimination, bullying, harassment/sexual misconduct, victimisation, and vilification
- providing a procedure for raising concerns, which includes offering complainants anonymity, confidentiality and support without adverse repercussions, as well as different complaint handling avenues depending on if the complainant is a judicial staff member or a judge. Complaints are dealt with subject to principles of procedural fairness
- providing for an external consultant who provides advice and support to the complainant about steps to take in relation to his or her complaint, and the resources available. If the complainant wishes the external consultant to do so (or if the external consultant considers this necessary) the matter can be anonymously and confidentially raised by the external consultant with the Chief Justice
- investigation of complaints at a formal level will be conducted by an independent external adviser to be appointed by the Chief Justice or, where appropriate, referred to the Judicial Commission of NSW
- judicial staff can seek advice and support, on a confidential basis, from the external consultant and/or the Executive Director. All staff also have access to the Employee Assistance Program.

The informal and formal resolution pathways are:

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<sup>18</sup><https://www.supremecourt.justice.nsw.gov.au/Documents/Practice%20and%20Procedure/Unacceptable%20Workplace%20Conduct%20Policy,%2014%20October%202020.pdf>

**Flowchart C – Informal and formal resolution paths**



**St Vincent’s Hospital**

St Vincent’s Hospital has an *Ethos Program*<sup>19</sup> which is:

*a peer led early intervention program designed to recognise staff who exhibit positive behaviour and/or are exceptional role models, remove barriers to speaking up about behaviour that undermines patient and staff safety, and respond quickly, fairly and*

<sup>19</sup> < <https://www.svhs.org.au/ArticleDocuments/1242/Ethos%20program%20FAQs.pdf.aspx?embed=y>>

*transparently to all staff. The Ethos program encourages a culture of speaking up and feedback. As part of the program, staff receive training about how to 'speak up', and there is an online reporting tool for staff to submit reports about observed positive or negative behaviour.*

Under the program, staff members can enter a positive or negative comment on the Ethos reporting tool. Where a negative comment is made (that is not serious enough to warrant disciplinary action) the staff member will receive feedback about how their behaviour was perceived in the form of an Ethos message. The feedback is delivered in a confidential and respectful manner by a trained Ethos Messenger. The aims of an Ethos message are to inform an individual about how their behaviour has been perceived by another staff member and to offer an opportunity to reflect and think about ways they may behave differently next time.

The Ethos program does not replace the disciplinary process but supplements it with informal intervention. Serious complaints such as sexual harassment will be referred to Human Resources. The program:

*recognises that early intervention can achieve positive behavioural outcomes and provides staff with an opportunity for behavioural change, to avoid future complaints and/or avoid a formal complaints process or disciplinary procedure. Evidence indicates that workplace conflicts or minor inappropriate behaviours can easily escalate into more serious behaviours such as bullying or harassment if left unchecked. Early intervention can prevent this.*

Under the Ethos Program, the person who submitted the report does not find out about the outcome of the report made and the Ethos message is confidential and not documented anywhere. There is also a mechanism to make an anonymous report and reporters are protected from retaliation through available disciplinary processes.

Reports made to the Ethos reporting tool are kept for three years and then deleted. Reports are kept for three years because, if an individual receives more than three level 1 negative reports within a three-year period then this triggers a level 2 conversation. One of the underlying principles of the Ethos program is to be able to identify staff members whose behaviour is consistently less than that expected by their peers and St Vincent's values. This mechanism enables monitoring of behaviours.

## University of Sydney

The University of Sydney has a *Bullying, Harassment and Discrimination Prevention Policy and Procedures* (2015). The policy sets out the definitions of bullying (including what is not bullying), discrimination and harassment (including sexual harassment). The policy also makes clear what is not unlawful harassment, sexual harassment, and discrimination.

Key elements of the procedures are:

- various contact points for advice are provided – including HR, Workplace Relations and the 'Harassment and Discrimination Support Officer'
- informal resolution – encouraging parties to resolve matters informally and/or with support/involvement of relevant manager
- making a complaint – via Workplace Relations or using the University's online hazard and reporting system. Complaints can be made by the individual complainant, the Student Affairs Unit (where the student complains about a staff member), and where a person receives a complaint from a member of the public
- preliminary assessment of the complaint by Workplace Relations and assisted resolution of the complaint. A decision can also be made that assisted resolution is not suitable
- investigation of more serious complaints



- vexatious complaints
- record-keeping and monitoring.

The University also has a *Staff Sexual Misconduct Response Procedures* (2020) which includes various ways to report sexual misconduct. The key elements are:

- a current or former staff member can make a disclosure to the University's Safer Communities Office. This disclosure can be made anonymously. If the University determines to investigate the disclosure, the Safer Communities Office or a Workplace Relations Advisor may contact the person who made the disclosure to ask whether they would be prepared to make a complaint or to participate in an investigation process
- a complaint can be made by a current or former staff member online or via email or telephone to the University's Safer Communities Office which are referred to the Workplace Relations. The staff member can be supported by a counsellor or support person
- support is provided to staff and affiliates and guidance to staff is provided about how to support and communicate with a complainant. Support is also available to a staff member accused of sexual misconduct
- there is a preliminary assessment of complaint procedure; assisted resolution and investigation of the complaint procedures. The procedures refer to circumstances where the conduct may amount to criminal conduct – in the preliminary assessment phase this can be escalated to the Director Workplaces or General Counsel
- an appeals process is provided for complainant and the person responding to the complaint.

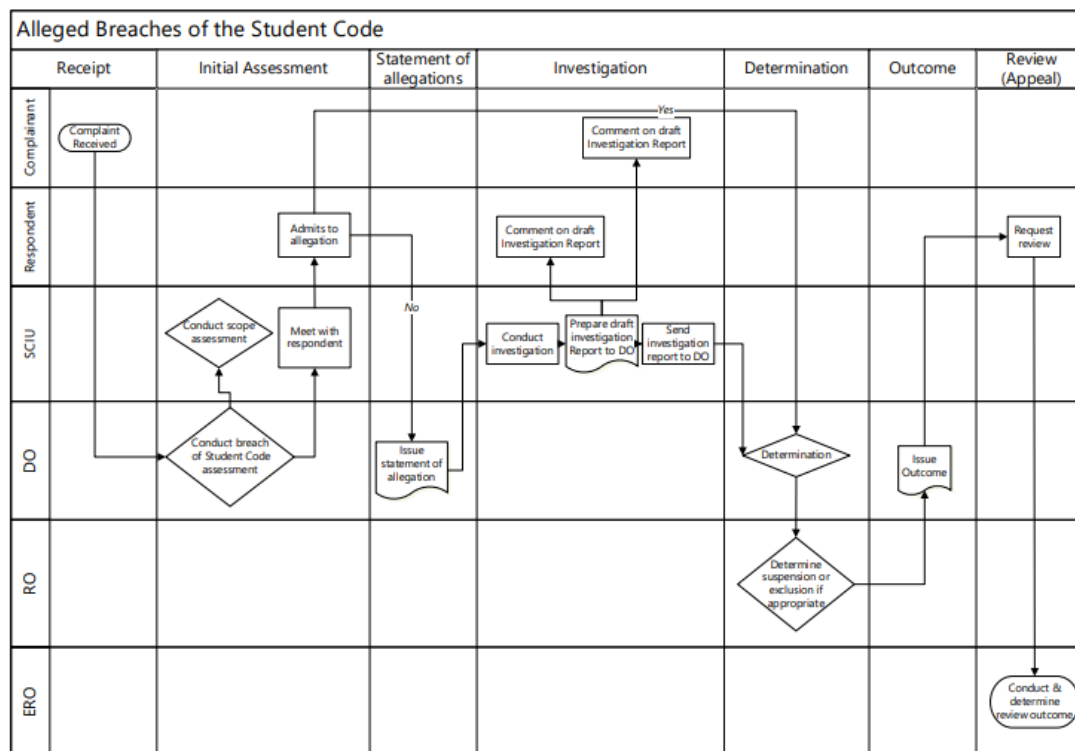
### University of NSW

The University of NSW (**UNSW**) has a *Sexual Misconduct Preventions and Response Policy* which sets out the principles for preventing and responding to incidents of sexual misconduct occurring at or connected with UNSW. The key elements of this policy are:

- it applies to all sexual misconduct, whether it is on the UNSW campus, in virtual spaces or at other premises with a sufficient connection to UNSW. Support is also offered with respect to sexual misconduct which is outside the scope of the policy, for example at a private venue or an occasion unconnected with UNSW
- there is a Sexual Misconduct Implementation Working Group which leads efforts to prevent and respond to sexual misconduct connected with UNSW, including policy development and review of processes
- there are various methods to report incidents of sexual misconduct, however anyone who receives a report must submit a report to the University's Sexual Misconduct Reporting Portal. Anonymous reports of sexual misconduct can be made via the portal.
- there is no time limit for reporting sexual misconduct, however UNSW may decide that its investigative and disciplinary processes will not be available where the report relates to an incident more than 12 months old
- UNSW may investigate a report of sexual misconduct in accordance with its *Student Misconduct Procedure*. If there is an investigation conducted, the policy states that the purpose of that investigation is to make findings of fact to determine whether a breach of the Student Code has occurred.

An overview of the complaint handling process is set out below:

**APPENDIX A: Overview of the complaint handling process**



**Macquarie University**

Macquarie University has a *Discrimination, Bullying and Harassment Prevention Policy*. The policy outlines the rights and responsibilities of the Macquarie University community for the achievement of a diverse, equitable, inclusive and safe campus environment, free from unlawful discrimination, bullying and harassment. Key elements of the policy are:

- a recognition that unlawful discrimination, bullying, and harassment is unacceptable and will not be tolerated
- it applies to students, staff, sub-contractors, visitors and associates of the University and people external to the University with whom students or staff interact as part of their study or work (e.g. employers supervising student placements)
- it encourages members of the University community to raise their concerns with an appropriate authority within the University
- unlawful discrimination, bullying and harassment may be classified as misconduct, and any misconduct may be subject to disciplinary action by the University under the *Student Discipline Rules*.

Macquarie University also has a *Student Sexual Assault and Sexual Harassment Policy*, and *Student Sexual Assault and Sexual Harassment Procedure*. The key elements of the policy are:

- a statement about the scope of the policy, noting that it applies to a variety of activities connected with Macquarie University
- specific responsibilities for the University, which include providing mandatory education and training, providing support to students who have experienced sexual misconduct, providing students with ways to report behaviour to the University, assessing reports of

sexual misconduct, ensuring procedural fairness, confidentiality and privacy and impose sanctions or disciplinary action

- there are also specific responsibilities for students, including not sexually harassing or assaulting other members of the Macquarie University community, and requiring them to undertake training and education relating to sexual misconduct
- an ability for interim measures against a student to be put in place while and investigation into an allegation of sexual misconduct is ongoing.

### Australian Football League

The Australian Football League (**AFL**) *Respect and Responsibility Policy*<sup>20</sup> promotes equality, a safe and inclusive environment and expresses a commitment that ‘individuals who have been subjected to disrespectful conduct, sexual harassment, assault or threatening behaviour within our industry are supported by best practice services focused on their individual needs’. The AFL policy sets out the process for managing complaints, which includes:

- all complaints must be notified to the AFL Head of Integrity
- all complainants must be offered an AFL approved external support service
- the AFL Head of Integrity makes the decision as to the investigation process (triage.)
- the AFL Head of Integrity may instigate an investigation without knowledge of a Club, or personnel involved
- during a police investigation, only the AFL Head of Integrity or nominee of the AFL Head of Integrity and the alleged perpetrator (and any representative of them) may be in contact with the relevant police
- the AFL Head of Integrity can take action at its own initiative where it believes there has been conduct that breaches the terms of the policy and where there is an absence of a complaint.

### BHP

BHP’s Code of Conduct covers issues relating to bullying and harassment. Key elements of this part of the Code are:

- a recognition that unlawful discrimination is prohibited
- a clear definition of harassment and bullying
- a variety of ways to raise concerns about breaches of the Code of Conduct, including an online portal
- an expectation that employees are inclusive, collaborative, and supportive, and that employees speak up if they are experiencing or witnessing harassment or bullying.
- an expectation that other parties who work with BHP respect that BHP values a diverse and inclusive workplace
- the Code of Conduct includes a statement of zero tolerance for retaliation, and notes that any concerns raised will be dealt with confidentially
- breaches of the Code Conduct may result in disciplinary action which could include verbal counselling with a manager, verbal warning, written warnings, or termination of employment

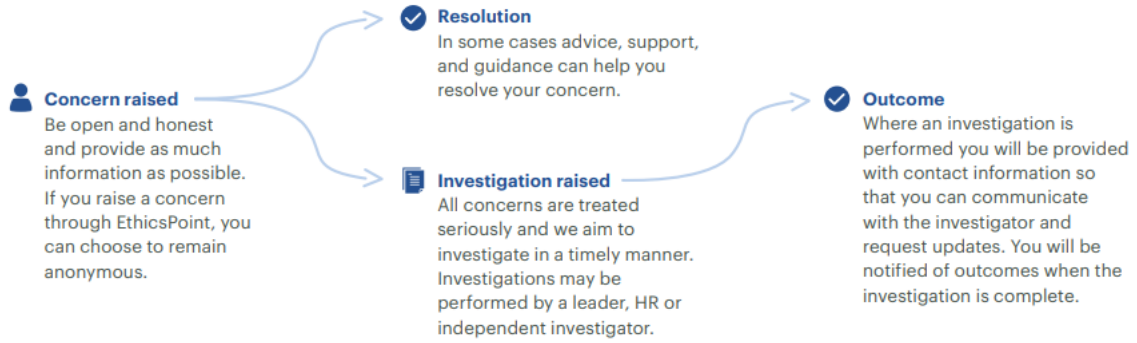
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<sup>20</sup> <https://resources.afl.com.au/afl/document/2019/12/04/0c9d67b8-55fc-43f9-bfd4-1b48afd92a88/AFL-Respect-and-Responsibility-Policy.pdf>

The process for raising concerns relating to BHP's Code of Conduct is set out below:

### What happens when you speak up?

All concerns will be treated seriously and respectfully, and we aim to respond to these in a timely manner.



# Section 2 – Incorporating best practice into NSW Ministerial offices’ policy and procedures

## Chapter 4 – A best practice policy

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The current policy and associated procedures available to address bullying, harassment, and sexual misconduct in NSW Ministerial offices inadequately protect the health and safety of staff. The Handbook contains the existing policy and procedure as follows:

*Ministers’ offices need to be workplaces free from bullying, harassment and discrimination, and need to provide processes for resolution of issues as quickly and as close to the source as possible. The Chief of Staff needs to deal with workplace behaviour issues in a proactive manner so that minor issues are not escalated. All parties to a grievance or dispute are expected to exercise goodwill and cooperate in resolving the matter.<sup>21</sup>*

Attachments B and L provide further detail but overall, there is little guidance on and options for managing bullying, harassment, and sexual misconduct; nor do they address the unique workplace features of Ministerial offices described in Chapter 1. A Respectful Workplace Policy should ensure reprisals and victimisation of complainants are not tolerated and there are avenues to deal with allegations of reprisal or victimisation and support for complainants.

### Enhancing the current policy

It is recommended that the current policy and processes be replaced with a standalone policy, readily available to Ministers and Ministerial staff.

The following aspects of the current process set out in the Handbook could be changed or enhanced:

- an overarching statement of the policy’s intent, including a summary of its features and key definitions. Parliamentary inquiries noted in this review found that without clear definitions, accompanied by a range of relevant examples, there is confusion about whether unacceptable conduct has occurred and if further action on the part of the victim, or rapid remediation by the perpetrator, is necessary
- a clear statement of zero tolerance for bullying, harassment, and sexual misconduct in the workplace and that Ministerial staff have a right to a safe and respectful workplace
- unacceptable conduct is unwelcome and most victims of it want the behaviour to stop, preferably to have never commenced. For this reason, a policy to address bullying, harassment, or sexual misconduct in the workplace should include a plan for activities that prevent these behaviours or address them early before the behaviours either escalate or become more widespread in an office. These activities usually take the form of training for, in this case, Ministers, Chiefs of Staff and Ministerial staff
- the definition of ‘bullying’ could include further detail about what ‘repeated behaviour’ and ‘unreasonable behaviour’ means. Examples of workplace bullying and what is not workplace bullying could also be provided – see for example the DPC *Bullying and Harassment Free Workplace Policy*

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<sup>21</sup> The Handbook, 8.

- reference to relevant discrimination laws could be made where discrimination is defined. The definition of discrimination could also refer to discrimination laws prohibiting vilification and racial hatred
- the definition of ‘harassment’ could include examples of unlawful harassment – see for example the DPC *Bullying and Harassment Free Workplace Policy*
- sexual misconduct and sexual harassment should be defined. The DPC *Bullying and Harassment Free Workplace Policy* provides a definition of ‘sexual harassment’ that identifies the conduct and provides examples of unlawful sexual harassment. Importantly the DPC policy makes clear that forms of sexual harassment also constitute criminal offences, for example, sexual assault. ‘Sexual harassment’ is also defined in the NSW Parliament *Harassment Free Workplace Policy*
- the definition of ‘grievance’ would benefit from an explanation that staff should not make complaints or raise grievances without cause or that are vexatious. The NSW Parliament *Grievance Policy* provides an example of such an explanation
- remedies for breaches of the policy should be explicitly referred to in policy documents
- transparent and regular monitoring and review of the policy’s impact and effectiveness to ensure it remains fit for purpose and has the confidence of Ministers and their staff. An annual and anonymous Ministerial staff survey could support monitoring of the policy’s effectiveness by gathering information about incident rates for bullying, harassment, and sexual misconduct and the level of non-reporting, which is may be an indicator of staff confidence in a policy.

It is important that Ministers and staff are trained to recognise what constitutes bullying, harassment, and sexual misconduct and how to manage a grievance or complaint. This includes the importance of maintaining confidentiality, providing procedural fairness and keeping full and accurate records in respect of the complaint. Training makes common cause with transparency. It builds commitment to the underlying principles and values of the policy; confidence in applying both the policy and its procedures; awareness of its existence and familiarity with its processes.

With training, the Chief of Staff is likely to be confident enough to receive a complaint and support the handling of the complaint informally. It is not suggested the Chief of Staff investigate complaints (see discussion below). Chiefs of Staff should be able to guide and support staff in the early stages of making a complaint and it is essential that they are trained about applying the Respectful Workplace Policy. Chiefs of Staff should be provided with additional training and be required to demonstrate their understanding of the policy, as part of their on-boarding process and regularly thereafter.

Staff members may also choose not to take a complaint to the Chief of Staff, in which case it is open to them to informally resolve it within the office or to seek the advice and support of the independent person.

## Conclusions

While there is policy guidance in the Handbook about dealing with bullying, harassment, and discrimination, it is suggested that a standalone policy applicable to Ministers and their staff is developed that clearly defines bullying, harassment, and sexual misconduct and provides a clear procedure for dealing with complaints about bullying, harassment, and sexual misconduct (including the circumstances for conducting an investigation of the complaint). Current examples from the NSW Parliament and DPC (referred to in **Appendix A**) may serve as a useful model for policy development in this regard.

The legal and policy landscape (set out in **Appendix A**) makes clear that a Ministerial office is a workplace and Ministerial staff have a legal entitlement to a safe and secure workplace.

The Minister as employer has a duty to ensure a safe workplace under the WHS Act and it is an offence under the WHS Act to act contrary to that duty of care.

Ministers and staff must understand their obligations under legislation and in policy if they are to comply in practice. Section One of this report has observed that the Handbook provides little information on Ministerial obligations to staff, despite their serious nature. Indeed, it might have been open for Ministers to have assumed they had no liability for staff welfare from a cursory reading of the Handbook.

The legal requirements for Ministers are set out in **Appendix A**. Training should be provided to Ministers and their staff about the legal obligations under the WHS Act, the MOPS Act, and the AD Act. Training should also be provided about what constitutes bullying, harassment, and sexual misconduct and how to manage a complaint of bullying, harassment, and sexual misconduct.

Training for Ministers and staff about legal and policy requirements should be available at induction and as part of an ongoing program of annual refresher training.

## **Recommendation 1**

A best practice Respectful Workplace Policy, including investigative and reporting procedures, should be developed to address bullying, harassment, and sexual misconduct in Ministerial offices to enhance the safety and security of staff in the workplace. The key elements of that policy should include:

- an overarching statement setting out the policy's intent and a summary of its features
- definitions of what is included in the policy and the conditions under which it applies
- measures to assist with the prevention of unacceptable conduct
- formal and informal grievance procedures should complaints of policy breaches occur, including the option to make an anonymous report as part of the informal grievance procedures
- remedies for substantiated breaches of the policy
- anonymous reporting channels should also be available to those who do not wish to raise a grievance but instead seek support and advice. Anonymous reporting can also be used to identify patterns of conduct and other systemic issues
- transparent monitoring of the policy's effectiveness to ensure it achieves its purpose and to assist in identifying appropriate modifications if it is not.

## **Recommendation 2**

That DPC should continue its role of providing procedural advice to Ministerial offices regarding unacceptable conduct under any new policy to ensure the policy is understood consistently across the Ministry.

## **Recommendation 3**

Training should be provided to Ministers and their staff about what constitutes bullying, harassment, and sexual misconduct and how to manage a complaint of bullying, harassment, or sexual misconduct. Chiefs of Staff should be provided with additional training and support. This training should be available at induction and as part of an ongoing program of annual refresher training.

## Chapter 5 – Prevention and early intervention

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### Prevention and early intervention activities

Early intervention and prevention activities are a vital part of any policy to promote respect in the workplace and address misconduct. They largely rely on the modelling of respectful behaviour by the leadership, regular referencing to relevant issues in staff meetings and by encouraging staff to be aware of the avenues open to them should they have concerns about bullying or harassment. Staff should also feel able to call out these unacceptable behaviours if they experience or witness them; some will need guidance on how best to do so.

Prevention and early intervention may involve staff being openly encouraged to bring any concerns about bullying or harassment in the office to their Chief of Staff or Minister. Staff are also encouraged to call out unacceptable behaviour of their colleagues, especially when they witness it. These activities while, for the most part, informal, drive a respectful workplace culture. Training should include prevention and early intervention activities for staff, such as bystander training. Training programs should be evidence based and where necessary, adapted to reflect the circumstances of Ministerial workplaces.

In order for Ministers and Chiefs of Staff to ensure a respectful workplace culture, they need to be aware of the importance of work, health and safety requirements; understand what discriminatory behaviour entails; and be able to identify and manage instances of bullying, harassment, and sexual misconduct. They also need to set a zero-tolerance standard for these behaviours.

In conducting this review as in other reviews of this kind it is evident that, expected standards of behaviour, unstated shared values, levels of tolerance of poor behaviours and the nature of informal remediation of poor behaviour, play an enormous role in determining the health and safety of staff.

Changing an office or organisational culture is never an easy task, yet organisational reform rests heavily upon it. In the case of bullying, harassment, and sexual misconduct, prevention and early intervention activity are unlikely to succeed if the office's leadership rejects them and there is no willingness to even consider change.

One means of rapidly changing a culture is, as noted by Dame Laura Cox, identifying those leaders who are unwilling to accept or incorporate more respectful behaviours and supportive staff arrangements, and exhorting them to move on. Dame Laura Cox's report entitled, *Independent Inquiry Report on The Bullying and Harassment of House of Commons Staff* (2018) observed the difficulty of changing attitudes and providing greater support for the targets, or victims, of bullying or harassment with the current administrative leadership:

*When reading this report, some people may privately recognise their own behaviours in some of the alleged abusive conduct I have described.....I would hope that a process of reflection leads them to consider what, if anything, they should now do in the best interests of the house.<sup>22</sup>*

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<sup>22</sup> Dame Laura Cox DBE, *The Bullying and Harassment of House of Commons Staff, Independent Inquiry Report* (Report, October 2018) 153, [417].



In her report, Dame Laura Cox also referred to several anonymous contributors who said meaningful change would take ‘several generations.’<sup>23</sup> Dame Laura Cox goes on to observe that:

*On this basis, I find it difficult to envisage how the necessary changes can be successfully delivered, and the confidence of the staff restored, under the current senior house administration.*<sup>24</sup>

This review has not been tasked with investigating complaints or investigating the circumstances of any office but notes that Dame Laura Cox’s suggestion reflects general corporate practice, whereby expectations and standards of behaviour can be rapidly reset, either by changing the leadership or the mix of people employed in an office.

It is appropriate that staff recruited by Ministers and Chiefs of Staff support and adhere to a respectful workplace culture. In other words, the leadership in Ministerial offices can promote a respectful workplace culture through recruitment practices and should be able to seek the guidance of the Premier’s office in ensuring a staff mix that supports respect.

#### **Recommendation 4**

That Ministers, as employers of staff under the *Members of Parliament Staff Act 2013* (NSW), be aware of their obligations under that Act and also the *Work Health and Safety Act 2011* (NSW) and *Anti-Discrimination Act 1977* (NSW). Ministers should be required to undertake training to ensure strong understanding of their responsibilities as employers under these laws and the consequences of failure to meet their obligations. This training should be available at induction and as part of an ongoing program of annual refresher training.

#### **Recommendation 5**

That Ministers and staff be required to apply and adhere to the Respectful Workplace Policy.

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<sup>23</sup> Ibid 152, [413].

<sup>24</sup> Ibid 152-153, [414].

## Chapter 6 – Procedures for making a complaint

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### Enhancing the current process for making a complaint

The following aspects of the current process for making a complaint set out in the Handbook could be changed or enhanced as follows:

- the way to make a complaint under the current process is to ‘raise it with the Chief of Staff’. The process would benefit from making clear the alternate ways of making a complaint in writing, verbally, or by way of a meeting and how anonymity of the complainant can be managed. There should be various options available for making a complaint
- the process for managing a grievance would benefit from including more options (informal and formal) for handling the complaint, including referral of the complaint or complainant to external agencies such as the Anti-Discrimination Board or the NSW Police Force
- currently responsibility for managing a grievance rests with the Chief of Staff. The Chief of Staff is not trained to manage grievances (see **Appendix A** on training provided to Ministerial staff) and in the absence of a clear process for managing grievances, the Chief of Staff does not have adequate guidance about how to manage a complaint of bullying, harassment, and sexual misconduct. This situation can be contrasted to the DPC and NSW Parliament policies (**Appendix A**) which set out, in general, the following grievance processes:
  - Informal process – (a) complainant raises the matter with the person the subject of the complaint with a view to resolving the matter informally; (b) a supervisor/manager is appointed to manage the complaint – they will speak to the complainant and the person the subject of the complaint and seek to resolve the matter. The NSW Parliament refers to the process of mediation by an independent person as an alternative to a manager conducting informal complaint management
  - Formal process – involves investigation of the complaint and may involve appointment of an investigator. The complainant and the person subject of the complaint and any other witnesses will be interviewed; findings will be made, and the parties advised of these and given opportunity to respond/ make submissions. A decision will be made, and the outcome communicated to the parties. The outcome may include disciplinary action
- a grievance policy should allow for escalation in the handling of the grievance, which the above-noted informal and formal approaches show. In addition, the grievance process should include options for handling the grievance internally within the workplace and externally with an independent person as mediator, or an investigator, or via an external authority, such as, the NSW Police Force. Any escalation model would need to take account of the organisational structure in Ministerial offices
- a grievance process for Ministerial staff would benefit from provision of supports to the parties, including provision of a support person, access to the Employee Assistance Program (**EAP**) as occurs in the existing policy, and a clear statement to the parties that confidentiality and procedural fairness will be maintained and provided
- a grievance process for Ministerial staff would also benefit from clear guidance about how the grievance and its management is to be recorded – see for example the NSW Parliament *Grievance Policy*
- As Dame Laura Cox observed in her 2018 House of Commons report, fairness dictates that former as well as current staff should be able to make a complaint under any new policy. A necessary proviso is that the alleged perpetrator, past or present, is employed in a Ministerial office.

## Recommendation 6

The review suggests the following principles apply to receiving and handling complaints:

- a well-defined and transparent process for all parties involved in a complaint
- complaints are managed promptly, with clear timeframes communicated to the parties
- complaints can be made by current and former Ministerial staff
- a victim-centred approach to handling complaints to ensure complainants are supported and informed during the process and their experience and concerns listened to
- complainants are protected from retaliation and victimisation
- confidentiality and procedural fairness for the parties to the complaint is maintained
- supports are provided to the parties to a complaint – including a support person, and access to counselling
- complainants are provided with informal (anonymous) and formal reporting channels
- an independent process for those unwilling to have their complaint handled within a Ministerial office. The independent process may include formal or informal procedures.

## Chapter 7 – Investigation of complaints

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### Introduction

This chapter considers the third element of the Terms of Reference concerning:

- (c) the circumstances in which it may be appropriate to conduct an internal investigation into allegations of bullying, harassment, or sexual misconduct which may also constitute criminal conduct, and the appropriate person or body to conduct any such internal investigation.*

This chapter considers when to conduct an internal investigation of allegations which may also constitute criminal conduct, and who is the appropriate person to conduct the investigation.

### When to conduct an internal investigation

As this review has shown, the investigation of a complaint is:

- part of an escalation model for managing complaints and is usually undertaken when informal steps to address the complaint have been unsuccessful
- undertaken when the complainant makes a formal complaint, usually in writing
- conducted by an independent person or entity external to the workplace.

Investigation of a complaint ordinarily involves formal procedural elements, including:

- advising the complainant and the person the subject of the complaint about the investigation and the key steps in conducting the investigation in which they will both be identified
- providing the person, the subject of the complaint with the substance of the allegations and giving them the opportunity to respond to the allegations – known as ‘procedural fairness’
- interviewing the complainant, the subject of the complaint and any witnesses, and taking a formal record of interview
- making findings of fact – that is, whether the complaint is substantiated or not, or whether the complainant is vexatious.
- applying relevant legal and policy frameworks to findings of fact, for example, whether because of substantiated conduct, the subject of the complaint has breached the Code of Conduct
- making recommendations about how a substantiated complaint can be handled, for example, disciplinary action, implementation of training.

It is appropriate for an internal investigation to be conducted as part of a formal complaint handling process where informal complaint handling was not a suitable approach to handle the complaint or was exhausted or ineffective.

### The appropriate person to conduct the internal investigation

The person conducting the investigation should be independent and external to the Minister’s office. This is because:

- the independent person will have the requisite investigative skills and training
- the person is separate and independent from office power dynamics and politics
- the person will have the time and capacity to conduct an independent investigation (contrasted with the limited time and expertise of the Minister or Chief of Staff)

- the person will have experience in interviewing witnesses and gathering evidence to a legal standard (for example, the balance of probabilities, which is the non-criminal standard)
- the person will have experience maintaining confidentiality, treating information with sensitivity, and managing records and information acquired during the investigation.

## Conclusions

It is appropriate for an internal investigation to be conducted as part of a formal complaint handling process where informal complaint handling was not suitable or effective. This is part of an escalation model for managing complaints that is apparent in other policies examined in this review.

An investigation of sexual misconduct should occur under the relevant policy as a workplace matter. Where it is apparent either before or during the investigation that the matter may constitute a criminal offence, this must be reported to the NSW Police Force, if the complainant agrees.<sup>25</sup> While mandatory reporting provisions make clear the obligations of others to report knowledge of a crime, without the cooperation of the victim this becomes difficult in practice. This is acknowledged in section 316(1A) of the *Crimes Act 1900 (NSW)* and examined further in the following section.

Experience elsewhere has found that regular, informal welfare checks with the complainant will not only provide support and reassure the complainant that his or her wishes are respected, but may also give the complainant greater confidence to make a formal complaint at a later stage.

The person conducting the investigation should be independent and external to the Minister's office because they will have the requisite investigative skills and training and will be separate and independent from office power dynamics and politics.

## Recommendation 7

Complaints of misconduct from Ministerial staff should be received by an independent person, in accordance with the elements of a best-practice policy identified in Recommendation 1. The independent person may conduct investigations of complaints, and will have the following capabilities:

- experience and training in conducting investigations about bullying, harassment, and sexual misconduct
- experience and training in interviewing witnesses and, where required, gathering evidence to a legal standard
- experience and training in maintaining confidentiality, treating information with sensitivity, and managing records and information acquired during the investigation
- experience and training in supporting victims who seek to make disclosures

Ministers and staff should be acquainted with the independent person and encouraged to seek their assistance with matters of this kind.

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<sup>25</sup>Under section 316 of the *Crimes Act 1900 (NSW)*, it is an offence to conceal a serious indictable offence (i.e., an offence punishable by imprisonment for a term of 5 years or more). However, under section 316(1A) of the *Crimes Act 1900 (NSW)*, it is a reasonable excuse to fail to bring information to the attention of the NSW Police Force if the alleged victim does not wish to do so. See discussion below.

## Chapter 8 – Complaints about a possible criminal offence

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### When an investigated complaint is also a criminal offence

Sexual misconduct may constitute a criminal offence, for example, sexual assault, stalking and 'revenge pornography'. A policy that deals with sexual misconduct and the investigation of formal complaints is different to a criminal process. As the UK *Sexual Misconduct Policy* says, the policy 'is a disciplinary matter...based upon an allegation that an individual has breached the Sexual Misconduct Policy and Procedure' (**Appendix B**).

The UK policy goes on to say:

*Where someone has reported an alleged criminal offence to the police and has made a complaint under this Policy and Procedure, the circumstances of the case will be considered, to determine whether it is appropriate to investigate the matter under this Procedure at the same time, or whether action under this Procedure should be paused until the criminal investigation is complete.*

The UK policy also refers to referral to the police under the formal complaint pathway:

*...an investigator will also escalate a case if they believe the complaint of sexual misconduct might amount to a major criminal offence. In that case, the Scheme will share anonymised information with the police under a protocol that is designed to make sure that our internal investigation does not inadvertently prejudice a criminal investigation. The police will be responsible for deciding whether they need to investigate the matter further, and this may include asking for identifying information. Decision-makers may also have information sharing requirements under their own policies.*

Importantly in NSW 'concealing a serious indictable offence' is a crime in certain circumstances: section 316 of the *Crimes Act 1900* (NSW). A 'serious indictable offence' is punishable by imprisonment for life or for a term of 5 years or more. Sexual assault is a serious indictable offence with liability for imprisonment up to 14 years: section 61I, *Crimes Act*.

Section 316(1A) of the *Crimes Act* provides:

*For the purposes of subsection (1), a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force or other appropriate authority if—*

*(a) the information relates to a sexual offence or a domestic violence offence against a person (the alleged victim), and*

*(b) the alleged victim was an adult at the time the information was obtained by the person, and*

*(c) the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to police or another appropriate authority.*

Where it is apparent either before or during the investigation that the matter may constitute a criminal offence, this must be reported to the NSW Police Force. However, the complainant's wishes are important and where he or she does not want the matter reported to police this may constitute an appropriate reason for not reporting the matter.

A formal investigation of sexual or other misconduct that could constitute a criminal offence should occur under the relevant policy as it is a workplace matter. In dealing with the matter

as a workplace matter, it is open to the Minister, as the employer, to consider employment arrangements which would maintain the work, health and safety of the complainant and other staff. Those employment options may include suspension from duties of the staff member who is the subject of the complaint.

Where an investigated matter may also constitute a criminal offence, the following steps are recommended:

- the complainant is notified of the requirement to report the offence to the NSW Police Force and the complainant's wishes about making the report must be obtained
- the complainant is provided with support – a support person, EAP assistance, the opportunity to raise concerns and wishes with the investigator about the report to police and the investigation
- where reported to the NSW Police Force, consultation should be undertaken with the NSW Police Force about the continuation of the workplace investigation – this is directed to ensuring any criminal investigation is not prejudiced, but that the workplace investigation and any employment consequences can still be pursued
- where the complainant does not wish the matter to be reported to the NSW Police Force, regular check-ups should be undertaken as to the complainant's well-being and whether he or she may wish to change their mind about reporting the matter to the NSW Police Force
- The Minister should consider the work health and safety of the complainant and other staff in these circumstances and make appropriate employment arrangements during any inquiry stage.

## **Recommendation 8**

The policy and procedures developed for managing bullying, harassment, and sexual misconduct should make clear how the investigation is to be managed where the conduct investigated may constitute criminal conduct.

## **Recommendation 9**

Where a matter raised or investigated may also be a serious criminal offence, the following principles should apply:

- the complainant is notified of the requirement to report the offence to the NSW Police Force and the complainant's wishes about making the report must be obtained
- the complainant is provided with support – a support person, counselling assistance and the opportunity to raise concerns and wishes with the investigator about the report to police
- where reported to the NSW Police Force, consultation should be undertaken with the NSW Police Force about the continuation of the workplace investigation – this is directed to ensuring any criminal investigation is not prejudiced, but that the workplace investigation and any employment consequences can still be pursued
- regular well-being check-ups by the independent person should be undertaken during which the complainant is able to review their decision about reporting the matter to the NSW Police Force
- the Minister should consider the work health and safety of the complainant and other staff in these circumstances and appropriate employment arrangements during any inquiry stage.

## Chapter 9 – Monitoring, review, and continuous improvement of the policy

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### Monitoring

There is currently no mechanism for monitoring the number or nature of complaints made or how they are handled and resolved. This means that:

- there is no transparency around how complaints are managed, which can impact staff confidence that complaints will be dealt with fairly and appropriately
- there is no opportunity based on data and collated information to take a proactive approach to managing behaviours in Ministerial offices so that the number and frequency of complaints may be reduced
- there is no practical accountability possible which would ensure that the complaints handling process is being adhered to and is effective
- there is no opportunity to identify trends in complaints (for example, if they arise in particular offices, or concern particular types of behaviour) from which targeted actions can be taken such as training or personnel changes.

The review supports the establishment of a review mechanism to monitor complaints made for the reasons noted above.

Monitoring the effectiveness of a policy depends upon feedback from those to whom it applies. Anonymised surveys are a widely accepted means of tracking culture change and the effectiveness of work policies. Primarily, since this policy is intended to prevent and reduce the incidence of bullying, harassment, and sexual misconduct in the Ministerial workplace, an annual survey of Ministerial staff and Ministers, should be conducted. The survey should be anonymous, should ask questions about whether the respondent has experienced these behaviours in the past twelve months, what they did about them and their level of satisfaction with the results, among other questions. Such a survey establishes, in the first year, a base line of the extent of these behaviours in Ministerial offices and the willingness of staff to seek redress and resolution. It should also invite all staff to respond to questions about the tolerance of these behaviours in their office, confidence in the training provided and in the office leadership.

Over time, an annual survey such as this will inform the Premier, Ministry and the independent person of the impact the policy is having on the workplace. It will also enable the identification of weaknesses in the policy or areas where it may be improved.

Exit interviews with staff members who have left their employment in Ministerial offices are another means of receiving immediate feedback on circumstances within an office. The departing staff member may choose to provide their feedback anonymously.

The role of the independent person, who will be in confidential contact with staff members, especially if they seek advice, assistance, or ongoing support, is critical to improving the policy. Since the independent person may also conduct investigations and would be able to approach Chiefs of Staff with the permission of a person targeted by misconduct, their sense of the policy's impact and overall effectiveness would prove a valuable source of advice to the Premier on revisions to the policy.

### Recommendation 10

That an anonymous survey be conducted of all Ministers and their staff to establish a base line for the subsequent impact of the Respectful Workplace Policy on staff health and safety.



Following this, an annual and anonymous survey of all staff and Ministers be conducted to assess ongoing confidence in the Respectful Workplace Policy and identify any patterns of misconduct. Further, that the results of the survey be provided to the independent person, Ministers, staff and the Premier, who may seek further advice for their consideration and review.

### **Recommendation 11**

That exit interviews be conducted by DPC with all departing Ministerial staff to identify potential concerns and areas for improvement in the application of the Respectful Workplace Policy. The information is to be provided regularly, in de-identified form, to the Premier's office and to the independent person, to guide future work.

### **Recommendation 12**

That the independent person report regularly to the Premier on emerging trends and proposals to improve the Respectful Workplace Policy and to provide the Premier with guidance on any necessary further reform.

## Chapter 10 – Building the process with staff: Next steps

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The findings and recommendations of this review are aligned to the scope of the Terms of Reference. While the findings of parliamentary reviews in other jurisdictions provided valuable insights into the challenge of developing an effective policy, they were no substitute for local knowledge.

The next steps in the process of developing a policy and procedures which will prevent or reduce the incidence of bullying, harassment, and sexual misconduct and reflect the unique circumstances of NSW Ministerial offices should include comprehensive consultation with Ministers and their staff, separately. The results of these consultations, which may be one-on-one, written, anonymous, survey based and drawn from focus groups, will furnish the Premier with suggestions informed by staff, as well as Ministers' perspective and experience. It is noted that formal, anonymous surveys were conducted by other jurisdictions when examining workplace culture in parliaments. The development of policies of this kind is inevitably enriched by the contribution of those expected to use them and assists in the building of confidence in the policy, as well as trust that it is fair, proportionate and relevant to their circumstances.

Ministerial staff in NSW also share their workplace with DLOs provided by government departments to assist in workflows and policy development. While they enjoy the provisions of public sector unacceptable conduct policies, they are not able to be part of any policy or procedure applying to Ministerial staff, and vice versa.

Similarly, the staff of Members of Parliament or of the Presiding Officers, would also be excluded from the Ministerial office policy and procedures, despite also sharing the workplace with them and frequently interacting with them on work matters (the same also applies to members of the Press Gallery, who also work in Parliament House).

The current design of policy and procedures in any workplace is that they only apply to staff working under the same organisational arrangements. This means, in the case of a Ministerial staff policy, that it would be unable to accommodate the considerable overlaps between Ministerial staff and parliamentary staff in their shared workplace, the Parliament. Accordingly, it limits the capacity of any one policy to provide staff with alternatives to litigation in the situation where unacceptable conduct may occur between members of the Ministerial staff and other staff in the Parliamentary precinct. The effectiveness of all workplace policies for the management of bullying, harassment, and sexual misconduct would be significantly improved if there were additional arrangements which addressed these gaps for those who work together in the NSW parliamentary precinct.

### Recommendation 13

That the Premier consider consultation with all Ministers and their staff to guide the development of the Respectful Workplace Policy in such a way that Ministers and Ministerial staff have confidence that the Respectful Workplace Policy and its procedures are fair, appropriate, and relevant to their working conditions.

It is open to the Premier to explore, with the Presiding Officers of the Parliament, opportunities for linkages between the policies applying to different sections of the parliamentary workforce.

## Appendix A – Overview of laws and policies on workplace bullying, harassment, and sexual misconduct

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Appendix A provides an overview of the NSW legislative and policy environment that governs how bullying, harassment, and sexual misconduct is managed in the workplace.

### Work, health and safety requirements in NSW

Employers or businesses, or anyone who falls under the definition of a 'person conducting a business or undertaking' (a **PCBU**), has legal obligations under work health and safety laws.

A 'person conducting a business or undertaking' is a broad term used throughout work health and safety legislation to describe all forms of modern working arrangements. In relation to Ministerial Offices, the person conducting the business or undertaking is the Crown in right of the State of NSW.

The WHS Act applies to Ministers and Members of Parliament. Section 19 provides for a primary duty of care for PCBUs to ensure the health and safety of workers engaged by the person. They must ensure the provision and maintenance of safe systems of work and a work environment without risks to health and safety. In addition, there must be provided:

- adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities
- any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.

For the purposes of the WHS Act, the Crown in right of the State of NSW is the relevant PCBU for Ministerial offices and would be liable for any breaches of the WHS Act. Chiefs of Staff are officers for the purpose of the WHS Act, and therefore have additional duties under section 27 of the WHS Act to exercise due diligence to ensure that the PCBU complies with that duty or obligation.

Ministers, Chiefs of Staff, and all other Ministerial staffers have duties as 'persons at a workplace', including to

- take reasonable care for their own health and safety
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as the person is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the WHS Act: section 29.

Failure to comply with these duties may expose Ministers and their staff to personal liability under the WHS Act.

### Anti-discrimination requirements in NSW

Grounds for discrimination under the AD Act include discrimination on the basis of race, including colour, nationality, descent and ethnic, ethno-religious or national origin, sex, including pregnancy and breastfeeding, marital or domestic status, disability, homosexuality, age, transgender status, and carer responsibilities.

Sexual harassment and vilification because of race, homosexuality, transgender status or HIV/AIDS status are also prohibited under the AD Act. Discrimination in the workplace is prohibited under the AD Act.

The Anti-Discrimination Board (**ADB**) deals with complaints made about discrimination, sexual harassment, and vilification under the AD Act. The President of the ADB may investigate and conciliate complaints and can also refer complaints to the NSW Civil and Administrative Tribunal. The Tribunal has the power to award damages by way of compensation up to \$100,000 if the complaint is substantiated: section 108, AD Act.

## MOPS Act requirements

The MOPS Act provides for the employment of staff by Ministers and Members of Parliament. Ministers are 'political office holders' under the MOPS Act and can employ staff under Part 2.

The following key provisions of the MOPS Act relate to the employment of Ministerial staff:

- Ministers may employ staff (referred to as 'Ministerial staff') under a written agreement. That written agreement must be in terms of the model agreement for the employment of Ministerial staff approved by the Premier: sections 5 and 6.
- The power of Ministers to employ Ministerial staff may be exercised only in accordance with arrangements approved by the Premier and subject to conditions determined by the Premier; section 5(3).
- The Premier may determine the number of Ministerial staff that a Minister may employ and may determine from time to time conditions of employment of Ministerial staff: sections 5(4) and 7.
- The circumstances in which the employment of Ministerial staff may be terminated is set out in section 8. A Minister may terminate Ministerial staff at any time: section 8(3). Any employment dispute (including termination) is not subject to industrial proceedings under the *Industrial Relations Act 1996* (NSW): section 26.
- Ministerial staff can be temporarily assigned to another Minister: section 9.
- The Secretary of DPC is to provide administrative and other support services (including information technology services) for Ministers and their staff: section 10.
- The Premier and Ministers may delegate their employer functions under Part 2 of the MOPS Act; sections 11 and 12. This means, for example, that the Minister may delegate to his or her Chief of Staff the function to employ Ministerial staff.
- The Premier can delegate the expenditure of money to Ministerial staff: section 13.

Part 3 of the MOPS Act deals with the employment of staff of Members of Parliament and provides that Members of Parliament can employ staff. Section 23 provides that Part 3 extends to a Member of Parliament who is a Minister. This means that the following provisions in Part 3 relevantly apply to Ministers:

- The Presiding Officers are vicariously liable for a tort committed by a Member of Parliament in relation to a person employed by a member and in the course of or incidental to exercising the Member's functions: section 24.
- Any liability of a Member of Parliament as employer under the MOPS Act is taken to be liability of the relevant Presiding Officer. The section does not affect liability of the Member that has not arisen as a result of his or her role as employer under the MOPS Act: section 25.

## Policies and procedures in NSW

### The Handbook

Staff in Ministerial offices must comply with the Handbook. Attachment B of the Handbook is the *NSW Office Holder's Staff Code of Conduct* (the **Staff Code**), which sets the ethical

conduct standards required of Ministerial staff, and Attachment L sets out the process for raising a grievance.

The following key requirements are identified in the Handbook:

- criminal records checks and security clearances are required of Ministerial staff: pages 6 and 35
- everyone working in a Minister's office, including staff, contractors, and visitors, must comply with the WHS Act: page 7
- Ministers' offices need to be 'workplaces free from bullying, harassment, and discrimination, and need to provide processes for the resolution of issues as quickly and as close to the source as possible': page 8
- 'The Chief of Staff needs to deal with workplace behaviour issues in a proactive manner so that minor issues are not escalated. All parties to a grievance or dispute are expected to exercise goodwill and cooperate in resolving the matter': page 8
- the Minister's office is the principal place of work for Ministerial staff, but the staff member may be required to work in other locations in Sydney and NSW, interstate and overseas in the course of duty: page 35
- under the Staff Code 'Office holders' (Ministers) have obligations to treat individuals with respect and courtesy and not make improper use of their position gain or seek to gain a benefit or advantage for themselves or another: page 53
- Attachment L to the Handbook deals with bullying, harassment, and discrimination and defines these terms
- Attachment L sets out the process for raising a grievance and provides that in the 'first instance it should be managed by the Chief of Staff'. If the grievance involves the Chief of Staff or cannot be resolved locally it needs to be raised with the Premier's Office or with DPC corporate services: page 75
- Attachment L deals with victimisation in the context of managing a grievance. The staff member handling the grievance, must ensure that the complainant does not experience any repercussions and is not victimised or disadvantaged. Where the matter involves unlawful discrimination, the complainant must be advised of their right to make a complaint to the ADB or the Australian Human Rights Commission: page 76.

Bullying is defined in the Handbook as:

*... the repeated, unreasonable behaviour directed towards a staff member or a group of staff members, that creates a risk to health and safety.*

Harassment is defined in the Handbook as:

*... a form of unlawful discrimination. It is behaviour that the other staff member does not want, and offends, embarrasses, intimidates, threatens, humiliates or insults the other staff member, and based on the available information, a reasonable person would consider it to be offensive, embarrassing, intimidating, threatening, humiliating or insulting. Harassment may include physical threats and sexual harassment, which may lead to criminal charges.*

Discrimination is defined in the handbook as:

*... either direct or indirect. Direct discrimination is when a staff member is treated less favourably compared with another staff member in the same or similar circumstances due to their attributes or characteristics. Indirect discrimination is when a requirement (or rule) that is the same for all staff members has an unfair effect or result on a particular staff member or a group of staff members.*

Also included in Attachment L is an explanation of what is not bullying, harassment, or discrimination:

- *Express a difference of opinion or provide constructive feedback in a courteous manner*
- *Carry out legitimate management decisions, such as transfer, reallocation of work, recruitment decisions or termination of a staff member*
- *Give legitimate instructions and expect them to be carried out*
- *Set realistic standards of performance, and discuss and guide work performance improvements*
- *Counsel regarding work performance*

### Other relevant policies and procedures

Ministers are subject to the NSW Ministerial Code of Conduct, which is an Appendix to the *Independent Commission Against Corruption Regulation 2017* (NSW). The Ministerial Code does not deal with bullying, harassment, and sexual misconduct. It is directed to avoiding conflicts of interests, managing and disclosing private interests, and receipt of gifts among other things.

Although not applicable to Ministerial Staff, DPC has the following relevant policies and procedures:

- Code of Conduct (July 2019)
- Bullying and Harassment Free Workplace Policy (March 2019)
- Complaints and Investigation Policy (June 2019)

The NSW Parliament also has the following relevant policies and procedures applicable to staff of the Parliament and Members of Parliament staff, in some circumstances:

- Anti-Bullying Policy (March 2018)
- Grievance Policy (March 2018)
- Harassment Free Workplace Policy (February 2021)<sup>26</sup>

These policies are instructive to this review as they provide a model for how bullying, harassment, and sexual misconduct may be managed, including complaint handling.

### Training

DPC provides training and support to Ministerial staff through induction of new staff. This includes:

- **eLearning Modules** – as a condition of employment, Ministerial staff are required to complete a series of eLearning modules within the first month of employment and then in March of each year (unless already completed in that calendar year). The modules include Code of Conduct, lobbyists, personal interest declarations and publishing Ministerial diaries.
- **Ministers' Office Handbook** – advising new staff of the availability of the Handbook on the DPC Website
- **Access to the Ministers' Office Web Portal** – The Portal is a one stop shop for information on People & Employment, ICT Services, Transport, Finance and Travel Bookings, Security and Media Monitoring. The portal contains contact information, forms, and guides.

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<sup>26</sup> DPC and NSW Parliament Policies are available on the intranet of these agencies and have been shared with this review.

## Appendix B – Jurisdictional analysis

	CTH <sup>27</sup>	ACT <sup>28</sup>	NSW <sup>29</sup>	QLD <sup>30</sup>	VIC <sup>31</sup>	WA <sup>32</sup>	NT <sup>33</sup>	SA <sup>34</sup>	TAS <sup>35</sup>	NZ <sup>36</sup>	UK <sup>37</sup>	CAN <sup>38</sup>
Policy for staff of Ministers	✓	X	✓	X	X	X	X	X	X	X	X	X
Policy for staff of Parliament <sup>39</sup>	X	✓	✓	X	X	X	X	X	X	X	✓	X

- The table shows whether there are existing policies on bullying, harassment, sexual misconduct, and complaint handling
- The information in the table is based on an online desktop review. There may be policies in the jurisdictions surveyed that are not publicly available online.

<sup>27</sup> [Workplace bullying and harassment policy applies to MOPS Act employees and Parliamentarians - refers to sexual harassment. See section 2.24 of the Statement of Ministerial Standards. See \[7\] and \[17\] of the Statement of Standards for Ministerial Staff.](#)

<sup>28</sup> [Workplace Injury Prevention Policy Statement](#) incl. *Policy and procedures for dealing with Workplace Discrimination, Harassment and Bullying*. See also [Office of Legislative Assembly Code of Conduct](#). ACT has codes of Conduct for [Ministers](#) and for [staff](#). The ACT LA also has an [ethics and integrity adviser](#). The [Standing Orders](#) contain a Code of Conduct for LA members

<sup>29</sup> Attachment B to the [Minister's Office Handbook](#) is the code for Ministerial staff. See page 8 and attachment L about managing bullying and harassment. NSW Parliament has provided DPC with its bullying, harassment, and grievance policies. NSW has a [Parliamentary Ethics Adviser](#)

<sup>30</sup> Page 34 [Legislative Assembly of Queensland Code of Ethical Standards](#). See [Ministerial Code of Conduct](#) and [staff code](#) – refers to [Discrimination and Harassment Workplace Policy](#) (link broken). See also [Code of conduct for Opposition staff members and Opposition Handbook](#).

<sup>31</sup> [Code of Conduct for Victorian Parliamentary Officers; Ministers Code of Conduct](#) refers to the staff code, which is not online. MP Code is in the *Members of Parliament (Standards) Act 1978* (Vic)

<sup>32</sup> See [Ministerial Code of Conduct](#) and [Working at Parliament of Western Australia](#) and [Code of Conduct for LA members](#)

<sup>33</sup> See [Schedule](#) to the *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*

<sup>34</sup> Section 2.2 of [Ministerial Code of Conduct](#); see [SA Parliament Independent Review of Harassment](#)

<sup>35</sup> The Integrity Commission prepared a report on [Codes of Conduct for MPs, Ministers and their staff \(June 2011\)](#). The Parliament does not appear to have a finalised [code](#). See [Code of Conduct for Ministers](#) – deals with giving and receiving gifts.

<sup>36</sup> See [Code of Conduct for Ministerial Staff](#). NZ is in the process of agreeing to a [Code of Conduct](#) for Parliament. NZ Parliament engaged an [Independent review of bullying and harassment](#)

<sup>37</sup> Section 1.1 of [Ministerial Code](#); section III [Code of Conduct for MPs](#). UK Parliament has [a behaviour code, bullying and harassment policy and sexual misconduct policy](#) and an independent complaints and grievance scheme.

<sup>38</sup> [House of Commons Procedure and Practice](#) provides for harassment prevention and complaint resolution. See [Code of Conduct for members of the House of Commons: sexual harassment between members](#) – it applies to allegations of non-criminal sexual harassment between members. There is a [Senate Code of Ethics](#) and [principles for open and accountable government](#)

<sup>39</sup> See [codes of conduct in Australian and selected overseas parliaments](#)