



CPSU Submission to the Independent Review into Commonwealth Parliamentary Workplaces

**Australian Federal Police Protective Service Officers
Comcar (Division of Department of Finance)
Department of Parliamentary Services
Department of the House of Representatives
Department of the Senate**

**Community and Public Sector Union (PSU Group)
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Contents

- Executive summary 3**
- Recommendations 4**
- 1. Australian Human Rights Commission *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* 7**
- 2. Parliamentary departments 9**
 - Department of Parliamentary Services 9
 - Department of the House of Representatives 10
 - Department of the Senate 10
 - Experience of workplace sexual harassment and bullying in Parliamentary Departments 11
 - Systemic weakness and risk factors for workplace bullying and sexual harassment in Parliamentary Departments 12
 - Preventing workplace bullying and sexual harassment in Parliamentary Departments 15
- 3. AFP Protective Service Officers 25**
 - Experience of workplace sexual harassment and bullying for AFP PSOs 25
 - Systemic weakness and risk factors for workplace bullying and sexual harassment for AFP PSOs 26
 - Preventing workplace sexual harassment and bullying for AFP PSOs 27
- 4. Comcar (Division of Department of Finance) 28**
 - Experience of workplace sexual harassment and bullying in Comcar 28
 - Systemic weakness and risk factors for workplace bullying and sexual harassment in Comcar 29
 - Preventing workplace sexual harassment and bullying in Comcar 30

Executive summary

The Community and Public Sector Union (CPSU) is the major union for Commonwealth Government employees. We are committed to providing a strong voice for our members on work health and safety and industrial matters, and key public policy and political debates.

The CPSU welcomes the opportunity to make a submission to *the Independent Review into Commonwealth Parliamentary Workplaces* (Independent Review). There is an urgent need for action to better prevent and respond to the systemic sexual harassment and assault, bullying, harassment and discrimination which permeate Commonwealth Parliament workplaces. The CPSU supports all real and meaningful action to achieve these ends and seeks to be a collaborative player in building these safe workplaces.

CPSU members are proud of their work to support the functioning of the Commonwealth Parliament and the work of parliamentarians. There are four parliamentary departments supporting the Commonwealth Parliament: Department of Parliamentary Services (DPS), Department of the House of Representatives (DHR), Department of the Senate (DS), and the Parliamentary Budget Office. The CPSU's submission examines the experiences and expectations of workers in the preceding three parliamentary departments, in addition to those of AFP Protective Security Officers (AFP PSO) and Comcar drivers working within a division of the Department of Finance.

The public's impression of the Commonwealth Parliament is largely built through media representations of the chambers and media interactions with parliamentarians. There has been significant public discussion about issues of workplace sexual harassment and bullying as it impacts parliamentarians and their staff. These are significant matters that require urgent attention. However, there are over 4,000 additional Commonwealth workers who work in and frequent the Australian Parliament House in Canberra, as well as in other cities and regional areas, interacting with parliamentarians and their staff on a regular and irregular basis who are impacted by the culture of the institution as it relates to their workplaces. It is crucial that the experiences of these workers are captured and considered by the Independent Review with suitable measures recommended to ensure the Commonwealth Parliament and all workers that support its function are all ensured safe and respectful places of work.

The CPSU's submission provides an insight to the experiences of workers in each of the distinct workplaces that are DPS, DHR, DS, Comcar and AFP PSO. The paper discusses some of the structural and cultural risk factors and systemic weaknesses relevant to the prevention of workplace bullying, sexual harassment, sex-based harassment and assault, and worker-led solutions and recommendations to address these serious harms. The paper also draws on current best practices measures to prevent workplace bullying and sexual harassment.

Recommendations

RECOMMENDATION 1: The Government must adopt all 55 recommendations of the Australian Human Rights Commission's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, in particular Respect@Work recommendations 15, 17, 18, 19, 23, 25 and 28.

Parliamentary Departments

RECOMMENDATION 2: All Parliamentary Departments should adopt a proactive, holistic and victim-centric approach as recommended by the AHRC. The CPSU supports the adoption of the AHRC's recommended framework structured on the seven domains of leadership, risk assessment and transparency, culture, knowledge, support, reporting and measuring. Employees and their union must be consulted in the development and implementation of such a framework.

RECOMMENDATION 3: There is a genuine commitment by all Parliamentary Departments to the development and implementation of a sexual harassment policy in consultation with workers and the union that is based on current best practice including policy content, development, communication and implementation.

RECOMMENDATION 4: Parliamentary Departments must commit to a collaborative risk mitigation approach which actively engages workers to prevent and respond to workplace sexual harassment and bullying, including risk mitigation for work-related travel. A variety of information sources should be used to broaden each department's understanding of the nature and drivers of sexual harassment and bullying, such as APS Census data, exit interviews, EAP trend reports. De-identified data should be shared with health and safety representatives, harassment contact officers and the union for the purpose of better understanding and mitigating sexual harassment and bullying harms.

RECOMMENDATION 5: The Foster Review recognises the urgent need for prioritising the victim-survivor so they are at the centre of any approach to preventing and responding to workplace sexual harassment. The Foster Review's proposed support system should be extended to all Commonwealth employees who work in the APH precinct and parliamentary workplaces including Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

RECOMMENDATION 6: The Foster Review identifies important role of first responders including DPS Parliamentary Security Service (PSS) Officers and AFP PSOs. It is critical PSS Officers and AFP PSOs are provided appropriate awareness training of the Serious Incident Team and its functions, as well as how best to support a victim of sexual harassment, assault or bullying as a first responder, as well as relevant standard operating procedures. This should be reflected in the reporting system and guidance for DPS PSS Officers and other first-responders.

RECOMMENDATION 7: The Foster Review's proposed model provides an independent, accountable, transparent, confidential investigation solution for victim-survivors of serious incidents. The proposed independent complaints mechanism should be extended to all Commonwealth employees who work in the APH precinct and who regularly work alongside parliamentarians including all Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

RECOMMENDATION 8: Parliamentary Departments must better recognise and support union delegates in undertaking their representative roles and responsibilities in workplaces. They must commit to the implementation of agreed and enforceable union delegate facilities such as reasonable paid time to discuss employment and WHS matters with workers and to seek union advice, access to reasonable paid time to acquire knowledge and competencies in industrial relations, and meet with new employees as part of on-boarding and induction.

RECOMMENDATION 9: The CPSU supports the development and implementation of a Department of Parliamentary Services Gender Equality Action Plan and Diversity Equality Action Plan to assist in improving gender and diversity equality and preventing sexual harassment. Plans must be consulted with employees, the union and workplace diversity networks.

AFP Protective Security Officers

RECOMMENDATION 10: The Foster Review identifies the important role of first responders including DPS PSS Officers and AFP PSOs. It is critical PSS Officers and AFP PSOs are provided appropriate awareness training of the Serious Incident Team and its functions, as well as how best to support a victim of sexual harassment, assault or bullying as a first responder, as well as relevant standard operating procedures. This should be reflected in the reporting system and guidance for DPS PSS officers and AFP PSOs. Additional guidance and training on AFP PSO rights and obligations for reporting incidents, including in situations where they have witnessed inappropriate behaviour and misconduct by parliamentarians.

Comcar (Division of Department of Finance)

RECOMMENDATION 11: Comcar should adopt a pro-active, holistic and victim-centric approach as recommended by the AHRC. The CPSU supports the adoption of the AHRC's recommended framework structured on the seven domains of leadership, risk assessment and transparency, culture, knowledge, support, reporting and measuring. Employees and their union must be consulted in the development and implementation of such a framework.

RECOMMENDATION 12: Comcar (Division of Department of Finance) commit to a joint review of the Comcar workforce and the overuse of casual and labour hire workers to fulfill an essential function for the proper working of our parliament. The joint review should be undertaken within 12 months of the Independent Review having handed down its recommendations and directly involve workers and their union.

RECOMMENDATION 13: Comcar (Division of Department of Finance) commit to a collaborative review process with workers and the union for better preventing and responding to workplace bullying in accordance with Safe Work Australia Guidelines and Comcare Guidelines to mitigate such workplace harms. The review should include an update of current policies and procedures to reflect best practice, including training and awareness raising.

CONSISTENT WITH RECOMMENDATION 5 ABOVE: The Foster Review recognises the urgent need for prioritising the victim-survivor so they are at the centre of any approach to preventing and responding to workplace sexual harassment. The Foster Review's proposed support system should be extended to all Commonwealth employees who work in the APH precinct and parliamentary workplaces including Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

CONSISTENT WITH RECOMMENDATION 7 ABOVE: The Foster Review's proposed model provides an independent, accountable, transparent, confidential investigation solution for victim-survivors of serious incidents. The proposed independent complaints mechanism should be extended to all Commonwealth employees who work in the APH precinct and who regularly work alongside parliamentarians including all Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

RECOMMENDATION 14: The CPSU supports the development and implementation of a Comcar Gender Equality Action Plan to assist in improving gender and diversity equality and preventing sexual harassment. Plans must be consulted with employees, the union and workplace diversity networks.

1. Australian Human Rights Commission *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*

Sexual harassment is a serious workplace issue causing physical, psychological, sexual and economic harm to Australian workers, in particular women. Recent findings by the Australian Human Rights Commission (AHRC) suggest many Australian employers are failing their workers for their lack of regard and action in respect of this critical issue. Notably, the Respect@Work Report found Australia's legal framework for preventing and addressing workplace sexual harassment was 'simply no longer fit for purpose', recommending sweeping changes to anti-discrimination, work health and safety and Fair Work legislation.¹

The Respect@Work Report recommends a new model to 'improve coordination, consistency and clarity' between anti-discrimination, employment and work health and safety legislative schemes. The new model and reforms take into account the 'complementary and mutually reinforcing nature of the three schemes' and their distinctive features.²

Moreover, the report recommends the legal and regulatory framework must shift from the current reactive model which burdens the individual, to a proactive model requiring positive and preventative measures by employers.³

Given the prevalence of sexual harassment in Australian workplaces, the Respect@Work Report importantly recognised the current shortcomings of the Fair Work Act and the lack of an express prohibition on sexual harassment which 'does not clearly or specifically provide an enforceable right for victims of sexual harassment in the workplace'.⁴

On 8 April 2021, the Government released its response to the Respect@Work Report in '*A Roadmap to Respect*'.⁵ The Government's 'Roadmap' to deal with sexual harassment does not comprehensively deliver the Respect@Work Report's key recommendations and has been labelled by individuals and groups experienced in women's rights and gender equity as a missed opportunity for meaningful and effective change.

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

2 Respect@Work Report, 10 and 442.

3 Ibid.

4 Ibid, 517.

5 Attorney General's Department, *Roadmap for Respect: Preventing and Addressing Sexual Harassment in Australian Workplaces* (April 2021).

On 24 June 2021, the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021 (the Bill) was introduced to Senate. The Bill implements the Government's 'Roadmap' with amendments to Sex Discrimination Act and Fair Work Act. The Bill fails to adopt some of the Respect@Work Report's most critical recommendations that would place positive obligations on employers to take reasonable steps to prevent sexual harassment and simplify complaints processes, including:

- Amendments to the Fair Work Act to expressly prohibit sexual harassment (**Respect@Work Recommendation 28**)
- Ratification of the International Labour Organization's Convention on the Elimination of Violence and Harassment at Work 2019 (C.190) (**Respect@Work Recommendation 15**)
- Amendment to the Sex Discrimination Act to include a positive duty on employers to take reasonable measures to eliminate sex discrimination, sexual harassment and victimisation (**Respect@Work Recommendation 17**)
- Amendment to the Australian Human Rights Commission Act to allow public interest actions to be brought to court by representative bodies such as unions (**Respect@Work Recommendation 23**)
- Amendment to the Sex Discrimination Act to give the Sex Discrimination Commissioner the power to undertake systemic investigations and undertake compliance monitoring to ensure that industries, organisations or sectors are complying with a new positive duty (**Respect@Work Recommendation 18 and 19**)
- Amendment to the Australian Human Rights Commission Act to ensure costs may only be ordered against a party if the proceedings are vexatious or unreasonable (**Respect@Work Recommendation 25**)

Without the adoption of these important reforms, the Government continues to place the burden on the individual worker to initiate what are often complex and lengthy complaints processes at their own cost and risk.

RECOMMENDATION 1: The Government must adopt all 55 recommendations of the Australian Human Rights Commission's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, in particular Respect @Work recommendations 15, 17, 18, 19, 23, 25 and 28.

2. Parliamentary departments

There are four parliamentary departments supporting the Commonwealth Parliament namely the Department of Parliamentary Services (DPS), Department of the Senate (DS), Department of the House of Representatives (DHR), and the Parliamentary Budget Office.

Together these four departments work to provide and facilitate a range of services and products to support the function of the Commonwealth Parliament and the work of our parliamentarians, as well as services for the visitors to the Australian Parliament House (APH) including the public, constituent groups and dignitaries.

The CPSU's submission examines the experiences of workers in Department of Parliamentary Services, Department of the Senate and Department of the House of Representatives.

Department of Parliamentary Services

Department of Parliamentary Services (DPS) reports to the Presiding Officers, the President of the Senate and Speaker of the House of Representatives. DPS provides and facilitates the following services: library and research; security; building, ground and design integrity services; audio visual and Hansard Services; art services; visitor services; food and beverage services; retail, health, childcare services; and corporate, administrative and strategic services for DPS.

The CPSU key areas of memberships and functions are provided below.

- **Parliamentary Security Services:** Parliamentary Security Service Officers (PSS Officers) secure the entry and exit of all individuals, control access point entries, including loading docks by rotating through approximately a dozen teams on a 24-hour roster every day of the calendar year. Each team rotates through different duties including geographic points as part of the roster rotation.
- **Hansard Services:** Hansard Services provide all transcriptions for the Senate and House of Representatives, Senate Estimates, hearings and inquiries. The work is detail oriented and intense with long concentrated hours particularly when the chambers are sitting and Senate Estimates.
- **Visitor Services:** Visitor Services interacts directly with public and guests to the House of Representatives and Senate. These services include visitor tour guides and enquiries, management of the Parliament House Shop and cloaking of guests to Parliament's chambers.

- **Broadcasting Services:** Broadcasting Services provide all APH website audio and visual broadcasting, control live feed and provide support for remote inquiry hearings and press conferences.
- **Parliamentary Library, Research, Collection and Databases:** The Parliamentary Library supports parliamentarians through provision of requested research, documents and archived information on a spectrum of matters. There is a significant workload demand and tight timeframes to deliver based on the ratio of librarians to parliamentarians and their requests.
- **Corporate, Administrative, Financial:** Maintain the administrative operational requirements and managerial structures of the department.
- **ICT:** Provide physical and technical support to DPS, Senate, Reps and politician offices and administrations within the building. Maintain and update secure ICT services both physically and through software updates.

Department of the House of Representatives

Department of the House of Representatives (DHR) provides services to support the efficient workings of the House of Representatives, its committees and certain joint committees and other facilities for Members in Parliament House.

Clerk support to the chambers and associated positions:

- **Table:** programming, procedural and legislative support to the Chambers
- **Procedure:** provide procedural research, publications and services detailing the role of the institution.
- **Committees:** provide an extensive range of support to committees such as research, administration, procedure, analysis and data.

Department of the Senate

Department of the Senate (DS) provides the Senate and its committees, the President of the Senate and Senators with advisory and support services related to the exercise of the Commonwealth's legislative powers. Clerk support to the chambers and associated positions are similar to those related above for the DHR.

Experience of workplace sexual harassment and bullying in Parliamentary Departments

In March 2021, the CPSU surveyed members across our public sector and private sector areas of coverage, including Commonwealth Public Service, ACTPS, NTPS, AusPost, CSIRO, Telstra and ABC.⁶ We asked workers about their experience of workplace sexual harassment and of their concerns of existing workplace arrangements including policies, training, reporting, communication, culture and leadership. Over four weeks, more than 3200 workers respond to our survey on ensuring safe and respectful workplaces. Of the respondents 67% identified as female, 31% identified as male and 0.6% identified as non-binary.

Sexual harassment is evident in public sector and private sector workplaces. Consistent with broader research, our survey findings reveal sexual harassment disproportionately, but not exclusively, affects female employees, with 18 per cent of female respondents and 11 per cent of male respondents having experienced sexual harassment in their current workplace, and 16% of total respondents having experienced sexual harassment. Other groups to experience sexual harassment at higher rates include people who identify as LGBTQIA and people with a disability. The survey identifies other vulnerable groups including people who identify as non-binary, Aboriginal Torres Strait Islander peoples, people who identify from culturally and linguistically diverse backgrounds and younger age groups, and insecure workers however due to small sample sizes it is difficult to fully appreciate their experiences based on quantitative data alone.

The CPSU does not have access to APS Census data on the incidence of bullying, harassment and/or discrimination in Parliamentary Departments, or other sources of information to understand trends.

From CPSU member accounts in DPS, some members in PSS branch have reported to the CPSU that they experienced bullying in the form of demeaning behaviours, shouting, intimidation. This behaviour is most experienced from manager to worker. However, the behaviour often goes unreported to management due to a perception that the issue will not be resolved, and the individual reporting will be labelled as a 'troublemaker'.

Members from the Broadcasting branch within DPS and the Committee workers from DHR and DS often travel remotely to provide support for committees, inquiries or press conferences. There is a prevailing sentiment and awareness of the vulnerability of young workers, particularly young women when travelling to assist in such work.

When travelling and providing support to parliamentarians in remote communities or small regional areas, these workers are exposed to a unique asymmetric power imbalance. In such situations, Committee workers report directly to parliamentarians. Committee workers and parliamentarians will work and stay in proximity, often in the same hotel, and in remote areas where dining options are limited, dine at the same restaurants. It is not uncommon for parliamentarians to have access to direct mobile numbers for individual workers, and for parliamentarians to contact workers beyond normal work hours which can lead to them working excessive hours to finalise

⁶ Community and Public Sector Union (CPSU), *Ensuring Safe and Respectful Workplaces: Report on Workplace Sexual Harassment* (March 2021).

arrangements ahead of hearings. Together, the asymmetric power imbalance, proximity and lack of defined work hours when travelling, leaves Committee workers vulnerable to increased risk of unreasonable work expectations, bullying and sexual harassment.

Systemic weakness and risk factors for workplace bullying and sexual harassment in Parliamentary Departments

There are several risk factors members and the union have identified that are potentially relevant to understanding the likely incidence of workplace bullying and sexual harassment.

Barriers to reporting across the Parliamentary Departments (DPS, DHR and DS)

Working within the APH precinct and corridors of the House with regular interactions with parliamentarians necessitates a high degree of discretion and confidentiality by all DPS, DS and DHR employees. Recent reports of sexual harassment and assault within the building put into focus DPS, DS and DHR shared obligations and duty of care to all stakeholders who work and visit the APH and other parliamentary workplaces.

In DPS, some DPS employees, particularly PSS Officers have expressed concerns about DPS handling of such work health and safety incidents including communications by senior management to warn employees from talking to the media. Some PSS Officers have expressed their personal feelings of vulnerability in logging work health and safety incidents including their own experiences of workplace bullying. The CPSU understands some PSS Officers do not feel their reports would be treated impartially and would 'put a target on their back'. It is not acceptable for PSS Officers to feel they cannot report serious incidents that impact themselves personally or have witnessed without fear of retribution.

Similar sentiments are echoed by groups of CPSU members in the DS and DHR. Without an independent and transparent process for complaints, one that is free of influence of the presiding officers, workers are often concerned that their complaints will not be impartially treated or that there will be repercussions.

Parliamentary Departments' employees' proximity to parliament, their daily interaction with parliamentarians, the power imbalance inherent to those relationships and expectations to exercise discretion and confidentiality in their interactions exposes these workers to potentially increased risk of workplace bullying and sexual harassment. In this context, Parliamentary Department employees face significant barriers to reporting. It is a risk factor which must be addressed to ensure APH is a safe and respectful workplace for all workers and visitors.

Hierarchical structures and top-down managerial style

In DPS, the PSS branch structure has been described by some members as being hierarchical with a management style that is heavily 'top down' and authoritative. Some PSS Officers, both male and female, describe the branch as a 'boys club'. Broader

research indicates gender and diversity inequity is a key driver of workplace sexual harassment and inappropriate behaviours. There is significant gender imbalance in the branch with no female team leaders, and a handful of female employees in managerial level positions.

The CPSU notes within the PSS Branch there is a level of discontent and low morale amongst some PSS Officers. Additionally, there have been reports by some workers of workplace bullying in the form of demeaning behaviours, shouting, intimidation and threats of adverse action which is a significant concern to the union. The CPSU has raised worker concerns with DPS. However, there is a view within DPS the concerns are not reflective of the workforce only a disgruntled few. The CPSU believes there is an urgent need for a plan to better engage with this group of workers and their union to better understand worker experiences and address any potentially serious harms to worker well-being.

Poor or absent worker engagement in DPS

The DPS Consultative Forum is the peak forum for management and worker consultation on work related matters. In previous years, regular quarterly meetings were scheduled with reasonable time for discussion and engagement on a range of workplace related matters, including forthcoming management projects and initiatives and any collective matters requiring resolution. There has been a much lower prioritisation and recognition of the Consultative Forums' important role as a function of worker engagement from both employer and employee. The Department has made improvements engaging certain work groups such as the PSS by bringing back the Open Forum initiative this year, however improvements could be made regarding the high level DPS Consultative Forum. CPSU members are calling for further improvements that reflects a best practice approach to worker consultation and engagement.

Lack of awareness of workplace bullying and sexual harassment across the Parliamentary Departments (DPS, DS, DHR)

The CPSU's survey on workplace sexual harassment reveals more needs to be achieved in terms of policies, training and awareness.

Qualitative data indicates many workplaces in the public sector do not have a specific policy on workplace sexual harassment and instead seek to address related concerns through a broader work health and safety or bullying and harassment policy.

Of those organisations that do have a specific workplace sexual harassment policy, findings reveal most are not widely promulgated by the organisation and only a minority have been developed in consultation with workers. There is a significant appetite amongst worker respondents for a 'refresh' and 'review' of existing policies and procedures.

- 70 per cent of respondents know who to talk to about sexual harassment in the workplace
- 52 per cent of respondents' workplaces have made staff aware of what behaviour constitutes sexual harassment

- 45 per cent of respondents' workplaces have made staff aware that sexual harassment must be reported including by third parties
- 26 per cent of respondents strongly agree/agree their manager talks to them about relevant policies and expected behaviours
- 17 per cent of respondents strongly agree/agree workers are involved in developing policies to prevent sexual harassment

A significant number of respondents indicated a lack of workplace sexual harassment training, rather issues were addressed as part of Code of Conduct and broader bullying and harassment sessions. Where limited online training was available it was considered by workers to be inadequate with calls for face-to-face tailored training.

There is a need for specific training on what behaviours constitute sexual harassment, how to report should a worker be personally affected or witness an incident, what are the complaint handling/reporting procedures and outcomes, what to expect from the organisation in terms of support. Additionally, workers have raised the need for by-stander training and specific training for managers on how to better respond to workplace sexual harassment.

- 45 per cent of respondents strongly agree/agree sexual harassment training is a high priority by senior leaders
- 46 per cent of respondents said expectations about related behaviour was covered in induction
- 26 per cent of respondents have attended training on sexual harassment in their current workplace
- 22 per cent of respondents are aware of existing by-stander training/ education
- 21 per cent of respondents are aware of additional training for managers on preventing and responding to sexual harassment

These findings indicate there is more work to be done to better prevent and address workplace sexual harassment across the Commonwealth Public Service, including in Parliamentary Departments.

Selective reporting of APS Census results in DPS

In DPS, there is a distinct lack of transparency regarding the availability of APS Census results both to staff and the union. Many departments, including DS and DHR post their APS Census results on the department website and intranet. DPS does not provide this access, rather APS Census results are selectively reported which limits the workforce's understanding of the Department's true performance year to year, and relative to other comparable APS agencies. The CPSU notes that DPS results are not reported in the APS State of the Service Report. There is a need to change this culture of 'command and control' and bring workers into the fold to build a better culture of trust and collaboration.

Preventing workplace bullying and sexual harassment in Parliamentary Departments

Implementation of AHRC's Respect@Work Framework to prevent workplace sexual harassment in all Parliamentary Departments (DPS, DS, DHR)

Sexual harassment is a cultural and work health and safety issue pervading our workplaces.

The AHRC Respect@Work Inquiry found current approaches to preventing and responding to workplace sexual harassment are inadequate. Typically relying on complainants coming forward and reporting sexual harassment, thereby contributing to their ongoing stress.

Instead, the AHRC recommends a new approach that is victim-centric, practical, adaptable and designed to minimise harm to workers. The new framework is structured around seven domains. It recognises that improving workplace prevention and responses requires a more holistic approach, looking beyond policies, training and procedures.

To better **prevent** workplace sexual harassment, the AHRC recommends action in the following domains:

- **Leadership:** Leaders have a crucial role in creating safe and respectful workplaces. They should be visible and proactive in their efforts to address and challenge inappropriate conduct and cultures.
- **Risk assessment and transparency:** Using a WHS focus, the process of identifying and assessing risk and developing control measures should be transparent and involve workers. Organisation should learn from past experience and be transparent including sharing de-identified data to better mitigate risk and educate workers. Risk assessment and transparency helps improve understanding of these issues and encourages continuous improvement.
- **Culture:** Building a culture of trust and respect, minimises the risk of sexual harassment occurring, and where it does occur, ensures incidences are handled in a way that minimises worker harm. This includes use of human resources practices and policies in setting organisational cultures.
- **Knowledge:** Developing new and better approaches to education and training, to demonstrate a commitment to addressing sexual harassment and initiating change by developing a collective understanding of expected workplace behaviours and processes. This includes consulting workers about training, special training for managers, leaders, training on gender equity, bystander intervention training.

To better **respond** to workplace sexual harassment, the AHRC recommends action in the following domains:

- **Support:** Prioritise worker well-being and the provision of support before they make a report, after they report and during any requisite processes.
- **Reporting:** Effective reporting systems are supportive, victim centred, flexible with a range of reporting options, and address barriers to reporting. Reporting options must be accessible to all workers and culturally appropriate. There should be

multiple ways for the organisation to intervene to address sexual harassment i.e. informal, formal investigation.

- **Measuring:** Collect data to help improve understanding of the scope and nature of workplace sexual harassment. This includes understanding prevalence, nature and impacts of workplace sexual harassment, as well as the effectiveness of workplace initiatives designed to address it.

The CPSU endorses the adoption of a pro-active, holistic and victim-centric approach as recommended by the AHRC in all APS workplaces including the Parliamentary Departments. Employees and their union must be consulted in the development and implementation of such a framework.

RECOMMENDATION 2: All Parliamentary Departments should adopt a pro-active, holistic and victim-centric approach as recommended by the AHRC. The CPSU supports the adoption of the AHRC's recommended framework structured on the seven domains of leadership, risk assessment and transparency, culture, knowledge, support, reporting and measuring. Employees and their union must be consulted in the development and implementation of such a framework.

Comprehensive Sexual Harassment and Bullying Policy for all Parliamentary Departments (DPS, DS, DHR)

While a sexual harassment policy in-and-of-itself will not prevent sexual harassment, it is a critical element in any sexual harassment prevention and response effort. There are three key factors for policy effectiveness - content, development, communication and implementation.

Policy content

The Victorian Equal Opportunity Human Rights Commission (VEOHRC), US EEOC, International Barristers Association, AHRC and McDonald et recommend:⁷

A clear explanation of prohibited conduct, including practical examples that are relevant to diverse groups of workers. The policy should recognise that sexual harassment is unlawful and unacceptable and include a clear definition of sexual harassment, which includes online sexual harassment through digital technology. It is recommended the

⁷ AHRC Respect@Work; VEOHRC; Chai Feldblum and Victoria Lipnic, Equal Employment Opportunity Commission (US), *Select Task Force on the Study of Harassment in the Workplace* (June, 2016); Kieran Pender (International Bar Association), *Us Too? Bullying and Sexual Harassment in the Legal Profession* (2019); Paula McDonald, Sara Charlesworth, Tina Graham, 'Developing a framework of effective prevention and response strategies in workplace sexual harassment', 53 *Asia Pacific Journal of Human Resources* (2015) cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 57.

explanation of prohibited conduct be framed broadly, rather than being constrained by strict legal definitions, or it risks failing to address lower unethical conduct that still has adverse individual and workplace consequences. Workplaces should respond to all 'behaviours that undermine a culture of civility and respect'.⁸

- Clear identification of responsibilities of the organisation, management and workers – with confirmation that the policy applies to workers at all levels, as well as others in the workplace such as customers, constituents and contractors. Reference should be made to relevant laws, with a statement of the employer's commitment to providing a safe working environment.
- A commitment to achieving gender equality, including a commitment to specific goals and recognition that sexual harassment is driven by gender inequality. Sexual harassment policies should be framed in gender-specific terms and acknowledge power differentials.
- Clear articulation of how and where to report sexual harassment. There should be a clear description of the available options, processes and potential outcomes. There should be multiple, accessible avenues of complaint, including anonymous reporting and the option of informal advice to ensure employee confidence in and uptake of grievance procedures. The independent complaint process, including investigation and sanction should also be clearly described, and should be prompt, thorough, and impartial.
- A clear statement that the organisation's priority is the safety and wellbeing of the person disclosing or formally reporting sexual harassment and information about support services that can provide victims of sexual harassment advice, information, counselling and other assistance. This should include a reminder that people who experience sexual assault can report their experience to the police.
- A range of sanctions that may be taken against harassers and transparency about penalties, which can be achieved by including 'a statement of intent to enforce seriously and promptly, and a clear specification of the penalties for violation'.⁹ McDonald et al note 'certainty of punishment may provide more effective prevention than severity of punishment'.
- Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible, and that those who make complaints or provide information related to complaints, including witnesses and others who participate in the investigation, will be protected against retaliation.

8 Kieran Pender (International Bar Association), *Us Too? Bullying and Sexual Harassment in the Legal Profession* (2019), 100 cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 57.

9 Paula McDonald, Sara Charlesworth, Tina Graham, 'Developing a framework of effective prevention and response strategies in workplace sexual harassment', 53 *Asia Pacific Journal of Human Resources* (2015) cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 58.

Policy development

Sexual harassment policies should be developed in consultation with workers and their union. Co-designing of the policy can increase policy engagement through a sense of ownership and familiarity which is important given duties invested to workers under the WHS Act, as well as result in a better policy. It can also be an opportunity to shift social norms or initiate a larger conversation about gender equality, although the benefit of doing so will depend on the organisation's readiness and existing norms.

Policy communication and implementation

Sexual harassment policies must be visible by being widely disseminated, with the message that sexual and sex-based harassment will not be tolerated. Departments and managers must promote the policy, communicate that sexual harassment is an organisational issue, not just an individual grievance and emphasise their commitment to preventing sexual and sex-based harassment. Managers should discuss the policy with workers regularly to raise awareness and demonstrate that they understand and value the policy, which may encourage workers to raise concerns. Workplace training is essential in the implementation of sexual harassment policies and response systems and must be part of a broader strategy aimed at creating cultural change.¹⁰

RECOMMENDATION 3: There is a genuine commitment by all Parliamentary Departments to the development and implementation of a sexual harassment policy in consultation with workers and the union that is based on current best practice including policy content, development, communication and implementation.

Worker-led risk mitigation of workplace sexual harassment and bullying in all Parliamentary Departments (DPS, DS, DHR)

Sexual harassment and bullying are serious work health and safety hazards known to cause psychological and physical harm.

The WHS Act sets a positive duty on employers to eliminate work health and safety harms as far as reasonably practicable. Accordingly, employers must actively identify, assess and control hazards including sexual harassment and bullying which may affect the physical or psychological health and safety of workers.

Consultation with workers and health and safety representatives is a critical part of identifying sexual harassment and bullying harms and relevant risk indicators, including identifying specific situations when such harms are more likely to occur. Workers are best placed to assess risks given their understanding of the impacts of workplace harms on their colleagues, the likelihood of the harm occurring and appropriate measures to control those risks.

¹⁰ AHRC Respect@Work, 730.

Not only is consultation a fundamental aspect of the WHS regulatory framework, but it also enables a more effective identification of hazards and design responses and promotes substantive equality by elevating voices of those workers at higher risk of experiencing sexual harassment.¹¹

The CPSU endorses a worker-led risk mitigation approach for preventing and responding to workplace sexual harassment and bullying in accordance with Safe Work Australia Guidelines, Comcare Guidelines, and US EEOC Chart of Risk Factors and Responses.¹²

To broaden the departments' understanding of the nature and drivers of sexual harassment and bullying, they must look to relevant sources of information include, APS census data, complaints data, EAP trend reports. De-identified data collated for the purpose of better understanding and mitigating sexual harassment and bullying issues should be shared with health and safety representatives, harassment contact officers and the union.

CPSU members have raised the need for a single risk register or consolidated risk and incident reporting for APH precinct that includes wellbeing risks, mitigation and/or actions, and need for joined-up analysis on trends and emerging risks relevant to Commonwealth and other workers based and/or frequenting the APH precinct. CPSU members have called for a Whole-of-Parliament or Joint Parliament Work Health and Safety Committee with worker and union representation.

RECOMMENDATION 4: Parliamentary Departments must commit to a collaborative risk mitigation approach which actively engages workers to prevent and respond to workplace sexual harassment and bullying, including risk mitigation for work-related travel. A variety of information sources should be used to broaden each department's understanding of the nature and drivers of sexual harassment and bullying, such as APS Census data, exit interviews, EAP trend reports. De-identified data should be shared with health and safety representatives, harassment contact officers and the union for the purpose of better understanding and mitigating sexual harassment and bullying harms.

11 Belinda Smith, Melanie Schleiger and Liam Elphick, 'Preventing Sexual Harassment at Work: Exploring the Promise of Work Health and Safety Laws', 32 *Australian Journal of Labour Law* 218 (2019), 224 cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 52.

12 Chai Feldblum and Victoria Lipnic, Equal Employment Opportunity Commission (US), *Select Task Force on the Study of Harassment in the Workplace* (June, 2016), Appendix C cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 51.

Extension of Foster Review's proposed support and independent complaint mechanism to all Parliamentary Department employees (DPS, DS, DHR)

The recent *Department of Prime Minister and Cabinet Review of the Parliamentary Workplace: Responding to Serious Incidents* (Foster Review) found an urgent need for the implementation of accessible, timely, independent trauma informed services and an independent complaints mechanism to better respond to serious incidents of sexual harassment, assault and bullying in parliamentary workplaces. In the CPSU's submission to the Independent Review concerning Members of Parliament Staff, we have detailed specific concerns with the Foster Review's proposed model and recommendations. Thus, we refer to the Independent Review to that submission regarding specific changes to the model itself. Here, we propose that the support system and independent complaints mechanism proposed in the Foster Review is extended to all Parliamentary Department workers.

Support

Specifically, on support the Foster Review recommends:

Recommendation 3: The support system should be timely, independent, confidential and trauma informed, available to all parliamentary staff and parliamentarians who experience, witness, or are accused of or are supporting someone in relation to a serious incident related to the parliamentary workplace. It must be victim centric and empower individuals who have experienced a serious incident. Support should be provided through a combination of the continuation of the 1800 Parliamentary Support Line for immediate 24/7 counselling and referral services, and the ongoing wrap around case management support within the independent complaints mechanism.

The CPSU commends the Foster Review for recognising the urgent need for prioritising the victim-survivor so they are at the centre of any approach to preventing and responding to workplace sexual harassment.

The CPSU submits the proposed support system be extended to all Commonwealth employees who work in the APH precinct including Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

DPS PSS Officers as first responders

Specifically, in relation to DPS PSS Officers, the Foster Review also recommends:

Recommendation 6: Where Department of Parliamentary Services Protective Security Services officers or AFP officers are the first to identify or respond to a serious incident within Parliament House, they should provide advice on avenues of assistance, including 1800 APH SPT line and the complaints mechanism contact channels. In addition any emergency response action and upward reporting required under their standard operating procedures. A report on the incident should be provide to the SIT so that a case manager can

make follow up contact with the individual and provide trauma informed wrap around support should it be required.

The CPSU reiterates the importance for individuals receiving reports to be aware of and understand what support services are available to affected workers and ensure that, as a 'first responder', the first step is to provide that support information to the worker. It is critical PSS Officers are provided appropriate awareness training of the SIT and its functions and how best to support a victim of sexual harassment or assault as a first responder, as well as relevant standard operating procedures. This should be reflected in the reporting system and guidance for DPS PSS officers and other first-responders.

Independent complaints mechanism

The Foster Review identifies independence from the employer and executive government as a critical factor in ensuring complete confidentiality and a focus on the well-being of the victim-survivor. It recommends:

Recommendation 4: An independent complaints mechanism should be established under the *Parliamentary Service Act 1999* (Cth) as a function of the PSC, with oversight by the Presiding Officers of the House of Representatives and the Senate, to ensure independence from the Executive and the employer and to enable proportionate consequences for complaints that are upheld. In its initial phase it should:

- Apply to serious incidents or patterns of behaviour causing serious harm
- Cover complaints that relate to the current term of parliament where the parties remain in parliament or MoP(S) Act employment
- Apply to all MoP(S) Act staff and parliamentarians and support referral of reports from other building occupants to their own complaints mechanisms
- Include a Serious Incident Team (SIT) comprising a group of highly skilled case officers with a mix of expertise, e.g., trauma-informed support, administrative and employment law to:
 - Receive reports from parliamentary staff and parliamentarians who have experienced witnessed been accused or a supporting one in at some relation to a serious incident involving MoP(S) Act staff or parliamentarian.
 - Provide immediate and on-going trauma informed support and advice on options
 - Triage according to individual's need and preferences, within a graduated system of escalation
 - Facilitate resolution of issues at local level
 - Appoint independent experts to be engaged as required to review reports of serious incidents and advise on appropriate responses and timeframes for implementation
 - Support referrals to police, an independent reviewer, MaP(S) (for administrative and less serious issues) or specialised support services

The Foster Review's proposed model provides an independent, accountable, transparent, confidential investigation solution for victim-survivors of serious incidents.

The CPSU submits the proposed independent complaints mechanism be extended to all Commonwealth employees who work in the APH precinct including Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

RECOMMENDATION 5: The Foster Review recognises the urgent need for prioritising the victim-survivor so they are at the centre of any approach to preventing and responding to workplace sexual harassment. The Foster Review's proposed support system should be extended to all Commonwealth employees who work in the APH precinct and parliamentary workplaces including Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

RECOMMENDATION 6: The Foster Review identifies important role of first responders including DPS PSS Officers and AFP PSOs. It is critical PSS Officers and AFP PS Officers are provided appropriate awareness training of the Serious Incident Team and its functions, as well as how best to support a victim of sexual harassment, assault or bullying as a first responder, as well as relevant standard operating procedures. This should be reflected in the reporting system and guidance for DPS PSS officers and other first-responders.

RECOMMENDATION 7: The Foster Review's proposed model provides an independent, accountable, transparent, confidential investigation solution for victim-survivors of serious incidents. The proposed independent complaints mechanism should be extended to all Commonwealth employees who work in the APH precinct and who regularly work alongside parliamentarians including all Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

Best practice worker engagement and union consultation

There is an urgent need to improve worker engagement and consultation between Parliamentary Departments, particularly DPS, workers and their union, as well as union delegate representational rights. As discussed, the DPS Consultative Forum is the peak consultative forum for DPS employees however the role of employee representatives is not respected, and input is largely disregarded. Strengthening union delegates rights and better recognition of the Consultative Forum's role is critical to changing workplace culture and improving employee morale.

RECOMMENDATION 8: Parliamentary Departments must better recognise and support union delegates in undertaking their representative roles and responsibilities in workplaces. They must commit to the implementation of agreed and enforceable union delegate facilities such as reasonable paid time to discuss employment and WHS matters with workers and to seek union advice, access to reasonable paid time to acquire knowledge and competencies in industrial relations, and meet with new employees as part of on-boarding and induction.

Gender and diversity equity in DPS

Within DPS, in the PSS Branch there is a recognised gender imbalance.

The Respect@Work Report highlights diverse and inclusive, gender-equal workplaces with cultures of respect, integrity and trust were most effective at preventing and responding to sexual harassment.¹³

In Victoria it is a legal requirement for public sector organisations under the *Gender Equality Act 2020* (Vic) to develop a Gender Equality Action Plan every four years and complete workplace gender audits and progress reports.

The CPSU supports the development and implementation of a DPS Gender Equality Action Plan and Diversity Equality Action Plan to assist in improving gender equality and preventing sexual harassment. Such plans should be developed in consultation with employees and their union, and importantly draw on the experience of relevant diversity networks. The CPSU endorses frameworks, strategies and tools by the VEOHRC, Our Watch, WGEA and Victorian Public Sector Commission.

13 AHRC Respect@Work, 702, citing Paula McDonald, 'Workplace Sexual Harassment 30 Years on: A Review of the Literature' (2012) 14(1) *International Journal of Management Reviews* 1, 6.

Negative responses to gender and diversity reforms

There is research to suggest initiatives to address discrimination and violence against women can be met with hostility or passive resistance within workplaces. Thus, it is important for the organisation to anticipate resistance and consider how to cultivate support including by bringing all parliamentarians and employees into the conversation by opening and normalising conversations about sexual harassment. Additionally, DPS and managers should communicate how gender equality and diversity goals benefit all workers, for example improving overall performance and retention of talent.

RECOMMENDATION 9: The CPSU supports the development and implementation of a Department of Parliamentary Services Gender Equality Action Plan and Diversity Equality Action Plan to assist in improving gender and diversity equality and preventing sexual harassment. Plans must be consulted with employees, the union and workplace diversity networks.

3. AFP Protective Service Officers

Australian Federal Police Protective Service Officers (PSOs) provide highly visible security for Parliament House and other key locations such as Embassies. At Parliament House, PSOs are responsible for national protective security and first-response operations, deterring, detecting and responding to criminal activity and the reporting and collating of data from operational purposes.

PSOs are not sworn officers but have had extensive training including firearms training. In the ACT, there are 295 PSOs working across a number of different locations, with Parliament House being one of the largest.¹⁴ PSOs come from a range of backgrounds and ages, although it remains a male dominated workforce.

Due to the nature of their role, PSOs are constantly interacting with Parliamentarians, MoP(S) Act staff and the public. Part of their role involves interacting with people who may be suffering from mental health problems who attempt to access Parliament House. PSOs patrol the grounds of Parliament House, not the internal building.

Experience of workplace sexual harassment and bullying for AFP PSOs

In preparation for this submission, the CPSU invited PSOs to participate in a short survey to provide their own experiences and views on the issues of sexual harassment and bullying at Parliament House. In this survey, PSOs were asked about their experiences with inappropriate workplace behaviour, the perpetrators of this behaviour, the current AFP complaint system, and anything else they wished to share. Respondents were also asked if they had witnessed this behaviour being experienced by others. In addition to this survey, this submission also contains general feedback given to the CPSU by PSO members.

Bullying

There have been reports of behaviour that can constitute bullying, including intimidating behaviour such as shouting, belittling or abuse, and interference with personal belongings or work equipment.

14 As of 2019 afp.gov.au/news-media/facts-and-stats/afp-staff-statistics/statistics-afp-staff-act/statistics-afp-national

Sexual Harassment

PSOs indicated they had experienced or witnessed racial or gender discrimination. The respondents to the CPSU survey skewed male, but they reported witnessing sexual harassment within the past 18 months.

There were also reports of witnessing or experiencing these inappropriate behaviours from senior staff (PSOs), Parliamentarians and Members of Parliament Staff.

More broadly, PSO CPSU members raised issues of not feeling respected or valued for their contributions and work and not feeling comfortable raising issues.

Systemic weakness and risk factors for workplace bullying and sexual harassment for AFP PSOs

PSOs operate within the AFP. In practice, this structure has strengths and weaknesses in relation to workplace bullying and sexual harassment.

Strengths

The Workplace Relations/ Human Resources area within the AFP is more established and has extensive policies in place in comparison to the ad hoc policy situation evidenced in MoP(S) and other parliamentary workplaces. The AFP has put effort into improving their policies and encouraging positive changes through this. For example, the Workplace Bullying and Discrimination Policy contains “Safe Place” which is available to AFP workers who are dealing with “unreasonable workplace behaviour” including bullying and sexual harassment a “victim-focused framework” with early-intervention and resolution options.

Additionally, the AFP’s policy provides its staff with numerous avenues to seek help or advice, both internal and external to the AFP, including AFP Confidant Network, EAP, Organisational Health (for Psychological, Chaplaincy, Welfare Office Network (WON), and Work, Health, and Safety, and Rehabilitation Services), Professional Standards, Workforce Diversity and Union representation through the CPSU or the AFPA.

Weaknesses

This current structure also contains weaknesses. Some PSOs report a disconnect between them and the broader AFP. PSOs have reported that they do not feel they receive enough support to carry out their roles from the AFP.

Additionally, PSOs have had issues with the complaint processes available to them, including with their treatment when making a complaint and the outcome of the complaints process.

Preventing workplace sexual harassment and bullying for AFP PSOs

Some PSOs felt they would benefit from additional training and guidance on their rights and responsibilities relating to a number of issues in their role. In particular, additional training on what to do if a PSO is a first responder to a sexual assault and what to do if a PSO witnesses excessive drunken behavior at Parliament House. Whilst not felt as strongly, additional training in relation to witnessing inappropriate behaviour from parliamentarians or staff or in making complaints about bullying were supported.

There was also support for an additional independent contact person, dealing with issues for all workers at Parliament House. This would help address issues involving not just PSOs but other workers as well.

RECOMMENDATION 10: The Foster Review identifies important role of first responders including DPS PSS Officers and AFP PSOs. It is critical PSS Officers and AFP PS Officers are provided appropriate awareness training of the Serious Incident Team and its functions, as well as how best to support a victim of sexual harassment, assault or bullying as a first responder, as well as relevant standard operating procedures. This should be reflected in the reporting system and guidance for DPS PSS officers and AFP PS Officers. Additional guidance and training on AFP PSO rights and obligations for reporting incidents, including in situations where they have witnessed inappropriate behaviour and misconduct by parliamentarians.

4. Comcar (Division of Department of Finance)

Comcar workers are proud of their work and speak passionately about the opportunity to support the function of the Commonwealth Parliament and the work of our parliamentarians. This is particularly true of the Comcar drivers who make up over 80% of the organisation (i.e., approximately 300 drivers in drivers pool).

Comcar is a somewhat ill-fitting function within the Department of Finance. The Division comprises drivers situated in Canberra and throughout major cities and regions (APS 2), a team of Allocations and Reservation staff based in Canberra (between APS 3 and 4), State Managers (APS 5 and 6), State Capital Vehicle Depot Managers (APS 4) and Human Resources Team (APS 5 to EL 2) and other senior leaders (EL 1 to SES Band 1). Each state and territory has a vehicle depot and local drivers are attached to the depot, while reservations and bookings are handled centrally through Canberra.

The drivers are a predominantly male and older workforce, with many former APS workers. Most significantly of the approximately 300 drivers only two are now permanent, ongoing and the remainder (298 plus) are engaged as insecure, casual or labour hire workers. Historically, drivers were employed as permanent ongoing, however the casualisation of the workforce is now entrenched. We address the issue of insecure work as a key risk factor for workplace bullying and sexual harassment below.

Comcar drivers are the Commonwealth chauffeur drivers for mainly Commonwealth parliamentarians, but also State Premiers, Chief Justices, Commissioners, Diplomatic High Commissioners, Consul General, Heads of State, Governor General, visiting dignitaries and senior defence personnel. The work is not often 'day-to-day' and varies in accordance with the parliamentarian's schedule. Thus, sitting week in Canberra will be busy for Canberra based drivers and less so for major city and regional drivers, while non-sitting weeks will reverse the workload for major cities and regions.

There has been no real change to the nature of Comcar driver work over the years. The only notable change relates to the CARS booking system and a larger Canberra based HR team to handle employment related matters previously handled by State Managers.

Experience of workplace sexual harassment and bullying in Comcar

As discussed above in the section on Parliamentary Departments, the CPSU's understanding of workplace sexual harassment in public sector and private sector workplaces is informed by our recent survey *Ensuring Safe and Respectful Workplaces* and discussions with members, delegates and health and safety representatives.¹⁵

15 Community and Public Sector Union, *Ensuring Safe and Respectful Workplaces: Report into Workplace Sexual Harassment* (2021).

We note this CPSU survey did not ask specific questions about worker experiences of workplace bullying.

From CPSU member accounts, some Comcar drivers have experienced workplace bullying. While workplace bullying is more likely to be from manager to worker, there are also instances of bullying conduct from client to worker, that is, parliamentarian to worker and parliamentarian staff to worker. From CPSU member accounts, some Comcar drivers have experienced bullying in form of threatening punitive conduct by managers, and demeaning and aggressive behaviours by parliamentarians and staff, as well as witnessing demeaning and intimidatory behaviours by parliamentarians towards their staff.

Systemic weakness and risk factors for workplace bullying and sexual harassment in Comcar

Casualisation of Comcar Driver Workforce

As outlined above, Comcar drivers are generally a predominantly male, older (many former APS employees) workforce. Most significantly of the approximately 300 drivers only two are now permanent, ongoing and the remainder 298 plus are engaged on casual basis or as labour hire workers. Historically, drivers were permanent ongoing, however casualisation of the workforce is firmly entrenched. This is despite the function being necessary to support the work of parliamentarians and their ability to engage with their constituents effectively, efficiently, and securely in their electorates.

The casual and/or labour hire status of Comcar drivers leaves them vulnerable when reporting inappropriate conduct both by parliamentarians, parliamentary staff and their own managers to Comcar management. Comcar management have an inordinate amount of control of the Comcar workforce such as which drivers are rostered, when, with whom, for how long. Comcar drivers are wary that any slight misstep and/or complaint including concerns about work health and safety directly associated with driver duties may result in reduced and/or no work. This is not an acceptable situation for workers who perform an essential function for the proper working of our parliament.

The power imbalance is further accentuated by the organisation's hierarchical structure. Comcar drivers are classified at the APS 2 level and their immediate supervisors at APS 4 or APS 5 level, and State Managers at APS 5 or APS 6 level.

Ineffective complaints mechanism

As discussed above, the precarious nature of Comcar driver's employment means drivers are very unlikely to report inappropriate behaviours and incivility whether by parliamentarians, parliamentarians' staff or Comcar management.

Where a Comcar driver raises an issue with their State Manager about a parliamentarian's behaviour, the complaint is provided to Comcar management in Canberra to be 'dealt with'. There is no further information provided to the complainant as to the handling of the issue, that is, whether it is being looked at or the outcome of any process. On this basis, there is no transparency and thus its perceived that there is no accountability for poor or inappropriate conduct.

Gender imbalance

Comcar's December 2020 organisational chart reveals around one third of managerial positions are held by female employees. Further, while the CPSU does not have access to actual gender breakdown of the driver network, it is known there are a substantially lower number of female drivers in the network.

Preventing workplace sexual harassment and bullying in Comcar

Implementation of AHRC's Respect@Work Framework to prevent workplace sexual harassment in Comcar

Sexual harassment is a cultural and work health and safety issue pervading our workplaces.

The AHRC Respect@Work Inquiry found current approaches to preventing and responding to workplace sexual harassment are inadequate. Typically relying on complainants coming forward and reporting sexual harassment, thereby contributing to their ongoing stress.

Instead, the AHRC recommends a new approach that is victim-centric, practical, adaptable for all organisations and industries and designed to minimise harm to workers. The new framework is structured around seven domains. It recognises that improving workplace prevention and responses requires a more holistic approach, looking beyond policies, training and procedures.

See detailed discussion in Section 3 Preventing workplace bullying and sexual harassment in Parliamentary Departments above.

RECOMMENDATION 11: Comcar should adopt a pro-active, holistic and victim-centric approach as recommended by the AHRC. The CPSU supports the adoption of the AHRC's recommended framework structured on the seven domains of leadership, risk assessment and transparency, culture, knowledge, support, reporting and measuring. Employees and their union must be consulted in the development and implementation of such a framework.

Review of Comcar workforce and use of casual and labour hire arrangements

The insecure nature of Comcar drivers employment makes them vulnerable when reporting inappropriate conduct both by parliamentarians, parliamentary staff and their own managers. Comcar management have an inordinate amount of control of the Comcar workforce such as which drivers are rostered, when, with whom, for how long. Comcar drivers are wary that any slight misstep and/or complaint including concerns

about work health and safety directly associated with driver duties may result in reduced and/or no work. This is not an acceptable situation for workers who perform an essential function for the proper working of our parliament.

The CPSU recommends a joint review of the Comcar workforce and the overuse of casual and labour hire workers to fulfill what is an essential function for the proper working of our parliament. Such a review must involve workers and their union, with the terms of reference agreed by the parties.

RECOMMENDATION 12: Comcar (Division of Department of Finance) commit to a joint review of the Comcar workforce and the overuse of casual and labour hire workers to fulfill an essential function for the proper working of our parliament. The joint review should be undertaken within 12 months of the Independent Review having handed down its recommendations and involve workers and their union.

Raising awareness and training of workplace bullying

From CPSU member accounts, there is an equivalent (or greater) need to address workplace bullying for Comcar workers as much as there is a need to address workplace sexual harassment. This includes a review of existing policies and procedures including policy implementation, awareness raising and training.

The CPSU endorses a collaborative review process involving the Department, workers and the union for preventing and responding to workplace bullying in accordance with Safe Work Australia Guidelines and Comcare Guidelines.

RECOMMENDATION 13: The Department of Finance (Comcar Division) commit to a collaborative review process with workers and the union for better preventing and responding to workplace bullying in accordance with Safe Work Australia Guidelines and Comcare Guidelines to mitigate such workplace harms. The review should include an update of current policies and procedures to reflect best practice, including training and awareness raising.

Extension of Foster Review's proposed support and independent complaint mechanism to Comcar Drivers

The precarious nature of Comcar driver's employment means drivers are very unlikely to use current complaint mechanisms to report inappropriate behaviours and incivility whether by parliamentarians or parliamentarians' staff. Further, current complaint mechanisms are not transparent, nor do they instil any confidence of accountability.

Accordingly, the CPSU supports the extension of the Foster Review's proposed support and independent complaint mechanism to Comcar drivers, as well as employees working in Parliamentary Departments. See detailed discussion in 'Section 3: Preventing Workplace Bullying and Sexual Harassment in Parliamentary Departments' above.

RECOMMENDATION 5: The Foster Review recognises the urgent need for prioritising the victim-survivor so they are at the centre of any approach to preventing and responding to workplace sexual harassment. The Foster Review's proposed support system should be extended to all Commonwealth employees who work in the APH precinct and parliamentary workplaces including Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

RECOMMENDATION 7: The Foster Review's proposed model provides an independent, accountable, transparent, confidential investigation solution for victim-survivors of serious incidents. The proposed independent complaints mechanism should be extended to all Commonwealth employees who work in the APH precinct and who regularly work alongside parliamentarians including all Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

Gender imbalance

The Respect@Work Report highlights diverse and inclusive, gender-equal workplaces with cultures of respect, integrity and trust were most effective at preventing and responding to sexual harassment.¹⁶

¹⁶ AHRC Respect@Work, 702, citing Paula McDonald, 'Workplace Sexual Harassment 30 Years on: A Review of the Literature' (2012) 14(1) *International Journal of Management Reviews* 1, 6.

The CPSU supports the development and implementation of a DPS Gender Equality Action Plan to assist in improving gender equality. Such plans should be developed in consultation with employees and their union, and importantly draw on the experience of relevant diversity networks. The CPSU endorses frameworks, strategies and tools by the VEOHRC, Our Watch, WGEA and Victorian Public Sector Commission.

RECOMMENDATION 14: The CPSU supports the development and implementation of a Comcar Gender Equality Action Plan to assist in improving gender and diversity equality and preventing sexual harassment. Plans must be consulted with employees, the union and workplace diversity networks.



Submission to the Independent Review into Commonwealth Parliamentary Workplaces.

MEMBERS OF PARLIAMENT STAFF

Part Two

Community and Public Sector Union (PSU Group)

July 2021

Contents

Executive Summary	3
Recommendations	4
I. Australian Human Rights Commission’s (AHRC) Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces	8
II. Preventing workplace sexual harassment and bullying	9
What is a ‘good parliament’?	9
Engaged leadership to drive change	11
A positive and proactive workplace culture	12
Diversity and gender equity	20
III. Improving support and reporting for victim-survivor	22
Victim-survivor centred support, confidential, accountable and independent reporting mechanism	22
IV. Raising awareness of workplace sexual harassment and bullying	29
Knowledge and capability	29
V. Ensuring accountability	32
Effective monitoring and evaluation	32

Executive Summary

The Community and Public Sector Union (CPSU) is the major union for Commonwealth employees including Members of Parliament (Staff) Act (MoP(S) Act) employees. We are committed to providing a strong voice for our members on work health and safety and industrial matters and key public policy and political debates.

Parliamentarians and their staff play a critical role in our democracy. MoP(S) Act employees hold a strong commitment and sense of pride regarding their public service, working alongside our nation's leaders and endeavouring to make our country a better place for all. Parliament governs and sets the legislation that applies to all Australian workplaces. It is vital that parliamentary workplaces are themselves an exemplar and set the standard for the rest of the nation.

The CPSU welcomes the opportunity to make a submission to the *Independent Review into Commonwealth Parliamentary Workplaces* (Independent Review). There is an urgent need for action to better prevent and respond to the systemic sexual harassment and assault, bullying, harassment and discrimination which permeate the Commonwealth Parliament and MoP(S) Act workplaces. The CPSU supports all real and meaningful action to achieve these ends and seeks to be a collaborative player in building these safe workplaces.

The CPSU will provide two submissions to the Independent Review concerning Members of Parliament Staff. Our first submission provides the Review with an understanding of workers' experience and identifies key cultural and other risk factors that drive systemic harms of bullying and sexual harassment. The submission identifies the MoP(S) workplace as high risk and subject to gender inequality, abuse of power, permissive cultures and intersectional discrimination.¹ Cultural and structural drivers include unusual and complex employment arrangements, a high intensity culture and exposure to constant media and social media scrutiny, asymmetric power imbalances, lack of leadership skills amongst some parliamentarians, diversity and gender imbalances and lack of family-friendly arrangements that further limits attraction of women with parental responsibilities to MoP(S). The submission also identifies current systemic weaknesses that leave workers, particularly young women and those from 'intersectional' groups, vulnerable to sexual harassment, assault and bullying. These systemic weaknesses include poor WHS issues; inadequate training and induction; poor or absent support for victim-survivors of harm; barriers to reporting; poor or absent worker consultation; and safety and security and Australian Parliament House (APH).

In this, our second submission, we provide recommendations for preventing and better responding to the issues of sexual harassment and workplace bullying and harassment based on worker feedback and current best practice measures including worker-led risk mitigation, which evidence from other workplaces indicates works.

1 Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (2020) (AHRC *Respect@Work*).

Consistent with the Respect@Work Report's findings, a workplace approach reliant on (lacklustre) policies, training and complaint handling have failed to prevent sexual harassment and bullying for MoP(S) employees. Rather victim-survivors have borne the burden, coming forward to report, contributing to their ongoing harm.

The CPSU agrees there needs to be a shift of focus to emphasise the employer's positive obligations to take proactive and reasonable steps to prevent harm. The Independent Review offers an opportunity for transformational change. But such change can only come about through a committed and holistic approach that is victim-centric and designed to minimise harm to workers. As recommended by the Respect@Work Report, this submission examines seven key areas for action: values and leadership; culture; risk management; knowledge and awareness raising; support; accountable reporting; measurement and evaluation.

CPSU delegate, HSR, and member feedback indicates that the current structures, systems and culture of MoP(S) workplaces do not protect workers from bullying, sexual harassment and assault. This paper recommends measures to create meaningful change and set positive cultural standards. This submission's recommendations are based on CPSU member views; reference to AHRC's Respect@Work recommendations; strategies adopted by comparable Westminster parliaments, in particular the UK, NZ and Scottish Parliaments; and best practice and strategies including those by the Inter-Parliamentary Union.

Recommendations

Recommendation 1: The Government must adopt and immediately implement all 55 recommendations of the Australian Human Rights Commission's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, in particular Respect@Work recommendations 15, 17, 18, 19, 23, 25 and 28.

Recommendation 2: The Government commit to undertake a holistic inquiry of the workings of the Commonwealth Parliament, examining what a transparent, representative, accessible and accountable parliament is in the context of the modern Australian society. This should include a focus on the nexus between a good parliament and a good workplace within 18 months of the Independent Review's findings being handed down. The Government must draw on the lessons of the UK Parliament, including The Good Parliament Report and its 43 recommendations to improve representativeness and inclusiveness and to better enable parliamentarians to be more effective in their work individually and collectively.

Recommendation 3: Given the systemic nature of bullying, sexual harassment and assault in Parliamentary workplaces, the Government must set behavioural norms, declaring such conduct unacceptable, and raise awareness of the individual and institutional impacts and consequences for perpetrators. Change and renewal require an acknowledgement of Parliament's historical failure to effectively address and prevent sexual harassment and bullying. Asymmetric power imbalance is a recognised key driver

of workplace sexual harassment and bullying and must be addressed in a risk mitigation plan developed in collaboration with workers and their union.

Recommendation 4: The CPSU recommends the development and implementation of a behavioural code of conduct for all parliamentarians. It must explicitly set out appropriate workplace behaviours and prohibit sexual harassment and sex-based harassment, bullying and harassment and discrimination. Parliament should establish a joint select committee to develop a Code of Conduct for parliamentarians and that process should allow all parliamentarians the opportunity to input, contributing to the cultural change. Additionally, the joint select committee should seek broader input by calling for submissions from the public, including current and former staff who have worked in Parliament.

Accountability is critical to instil employee and public confidence in the system, culture and leadership. Alleged breaches of the code must be subject to independent investigation and sanction procedures separate from any political influence or impartiality. A range of appropriate sanctions must be imposed for breaches of the code including restriction of staffing entitlements, travel privileges, committee membership and suspension.

Recommendation 5: An enforceable sexual harassment policy must be developed and implemented in consultation with workers and the union that is based on current best practice including policy content, development, communication and implementation.

Recommendation 6: Parliamentarians and MaPS must commit to a collaborative risk mitigation approach which actively engages workers and their union to prevent and respond to workplace sexual harassment and bullying. This must include a plan to address risks associated with media and social media scrutiny and alcohol in work-related functions. Measures, such as an annual anonymous employee engagement survey, exit interviews, EAP and SIT trend reports, should be implemented. There should be coded line reporting on sexual harassment and bullying as well as other forms of workplace violence. De-identified data should be shared with health and safety representatives, harassment contact officers and the union for the purpose of better understanding and mitigating sexual harassment and bullying harms. Success of such an approach is dependent on the employer placing a high level of importance on workplace health and safety.

Recommendation 7: The Government must establish an independent human resources body responsible for overseeing employment practices in parliamentarian offices and better supporting MoP(S) Act employees. The independent human resources body must be properly resourced and with appropriate authority to manage, and hold parliamentarians accountable to, the implementation of good employment practices including through restrictions on parliamentarian entitlements as appropriate.

Recommendation 8: The Government must better recognise and support union delegates in undertaking their representative roles and responsibilities in MoP(S) workplaces. It must commit to the implementation of agreed and enforceable union delegate facilities such as reasonable paid time to discuss employment and WHS matters with workers and to seek union advice; access to reasonable paid time to

acquire knowledge and competencies in industrial relations; and access to notice boards in prominent locations in all MoP(S) workplaces to share union information including on WHS matters.

Recommendation 9: The Government must commit resources to better recognise and develop the capability and professionalisation of the MoP(S) workforce. The current lack of clarity of job requirements, tailored career pathways and low accessibility and transparency regarding professional development opportunities must be addressed in partnership with workers and their union.

Recommendation 10: The CPSU supports the development and implementation of a MoP(S) Gender Equality Action Plan and Diversity Equality Action Plan to assist in improving gender and diversity equality and preventing sexual harassment. Plans must be consulted with employees, the union and workplace diversity networks.

Recommendation 11: The CPSU endorses the implementation of the Parliamentary Support 24/7 Line staffed by professional trained in trauma-informed care to support staff and parliamentarians. The Support Line must be adaptive to needs as it is a new and emerging measure. A review of the effectiveness of the Parliamentary Support 24/7 line should be conducted 6 months after its commencement and seek direct feedback from employees.

Recommendation 12: The CPSU commends the Foster Review for its recognition of the need for an independent mechanism for reporting of sexual and sex-based harassment, sexual assault and bullying incidents. It is critical the mechanism is not labelled and/or limited to 'serious incidents' as this may exclude a large number of complaints from being made. The independent mechanism must be extended to cover former employees beyond the current parliament and to other Commonwealth employees working in APH precinct and parliamentary workplaces, such as Department of Parliamentary Services, Department of the Senate, Department of the House of Representatives and Comcar.

Recommendation 13: The CPSU does not consider the Foster Review's proposed sanction model in which Presiding Officers are given sole oversight as being completely independent of the Government. Rather there must be opportunity for multi-party involvement in the sanction process as it relates to parliamentarians. The CPSU recommends Presiding Officers work with the Privileges Committee where confidentiality is ensured and there is multi-party representation.

Recommendation 14: The CPSU endorses the victim-centric and trauma-informed approach adopted by the Foster Review. The model must be adaptive to needs with a view to continuous improvement informed by best practice. The CPSU recommends closer oversight and 'check ins' with complainants in relation to their experience of victimisation including changes to work arrangements to limit contact with alleged perpetrator where appropriate.

Recommendation 15: There must be implementation of mandatory, regular, face to face education and training on sexual harassment and discrimination for all parliamentarians, MoP(S) Act senior staff, and staff. The education and training program must be delivered by independent experts consistent with best practice measures advocated by the AHRC, VEOHRC and other leading authorities. Not only must this

training be mandatory, it must also be comprehensive and deal with these serious matters in appropriate depth. Parliamentarians, senior staff and managers must be provided with additional education and training with respect to inclusive leadership and their role in embedding a culture to prevent workplace sexual harassment and sex-based harassment and discrimination. They must be equipped with the skills necessary to support staff impacted by these harms.

Recommendation 16: There must be sufficient resources for the appointment of individual(s) with specific expertise in diversity and equity and prevention of sexual harassment with responsibilities to also report on relevant priority measures and progress, and identify areas for further action.

Recommendation 17: The CPSU recommends the development and implementation of an annual anonymous survey to understand the experiences of MoP(S) Act employees and monitor progress on prevention of workplace sexual harassment, sex-based harassment and bullying. The full findings must be available to all MoP(S) employees subject to confidentiality and privacy requirements.

Recommendation 18: To better understand the nature of workplace sexual harassment and inform the development and implementation of sexual harassment prevention and response initiatives information must be gathered using a variety of methods. Recommended options include informal discussions with workers; exit interviews; employment metrics such as rates of staff attrition and absenteeism, EAP and SIT counselling service trends; anonymous and annual staff engagement surveys; independent complaints mechanism. There must also be measurement and evaluation for reporting, and the under reporting of incidents against national averages.

Recommendation 19: The Independent Review should feed into any review of the Foster Review's proposed independent complaint mechanism. There must be a review of the mechanism at 6-, 12- and 18-month intervals while it is being bedded down. There must be an audit of the Independent Inquiry's recommendations and the effectiveness of measures implemented within 2 years of the Independent Review being handed down. The audit report must be available to the public.

I. Australian Human Rights Commission's (AHRC) Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces

Sexual harassment is a serious workplace issue causing physical, psychological, sexual and economic harm to Australian workers, in particular women. Recent findings by the Australian Human Rights Commission (AHRC) suggest many Australian employers are failing their workers for their lack of regard and action in respect of this critical issue. Notably, the Respect@Work Report found Australia's legal framework for preventing and addressing workplace sexual harassment was 'simply no longer fit for purpose', recommending sweeping changes to anti-discrimination, work health and safety and Fair Work legislation.²

The Respect@Work Report recommends a new model to 'improve coordination, consistency and clarity' between anti-discrimination, employment and work health and safety legislative schemes. The new model and reforms take into account the 'complementary and mutually reinforcing nature of the three schemes' and their distinctive features.³

Moreover, the Report recommends the legal and regulatory framework must shift from the current reactive model which burdens the individual, to a proactive model requiring positive and preventative measures by employers.⁴

Given the prevalence of sexual harassment in Australian workplaces, the Report importantly recognised the current shortcomings of the Fair Work Act and the lack of an express prohibition on sexual harassment which 'does not clearly or specifically provide an enforceable right for victims of sexual harassment in the workplace'.⁵

On 8 April 2021, the Government released its response to the Respect@Work Report in 'A Roadmap to Respect'.⁶ The Government's 'Roadmap' to deal with sexual harassment does not comprehensively deliver the Respect@Work Report's key recommendations and has been labelled by individuals and groups experienced in women's rights and gender equity as a missed opportunity for meaningful and effective change.

On 24 June 2021, *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* (the Bill) was introduced to Senate. The Bill implements the Government's 'Road Map' with amendments to *Sex Discrimination Act* and *Fair Work Act*. The Bill fails to adopt some of the Respect@Work Report's most critical recommendations that would place positive

2 Australian Human Rights Commission, 'Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces' (2020) (AHRC 2020).

3 Respect@Work Report, 10 and 442.

4 Ibid.

5 Ibid, 517.

6 Attorney General's Department, 'A Roadmap for Respect: Preventing and Addressing Sexual Harassment in Australian Workplaces' (April 2021).

obligations on employers to take reasonable steps to prevent sexual harassment and simplify complaints processes, including:

- Amendments to the Fair Work Act to expressly prohibit sexual harassment (**Recommendation 28**)
- Ratification of the International Labour Organization's Convention on the Elimination of Violence and Harassment at Work 2019 (C.190) (**Recommendation 15**)
- Amendment to the Sex Discrimination Act to include a positive duty on employers to take reasonable measures to eliminate sex discrimination, sexual harassment and victimisation (**Recommendation 17**)
- Amendment to the Australian Human Rights Commission Act to allow public interest actions to be brought to court by representative bodies such as unions (**Recommendation 23**)
- Amendment to the Sex Discrimination Act to give the Sex Discrimination Commissioner the power to undertake systemic investigations and undertake compliance monitoring to ensure that industries, organisations or sectors are complying with a new positive duty (**Recommendation 18 and 19**)
- Amendment to the Australian Human Rights Commission Act to ensure costs may only be ordered against a party if the proceedings are vexatious or unreasonable (**Recommendation 25**)

Without the adoption of these important reforms, the Government continues to place the burden on the individual worker to initiate what are often complex and lengthy complaints processes at their own cost and risk.

Recommendation 1: The Government must adopt and immediately implement all 55 recommendations of the Australian Human Rights Commission's *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, in particular Respect@Work recommendations 15, 17, 18, 19, 23, 25 and 28.

II. Preventing workplace sexual harassment and bullying

What is a 'good parliament'?

A good parliament is a cornerstone of our democracy and essential to our nation's social, economic, and civic development. A good parliament is representative of its people, delivers progressive reforms to benefit our communities and holds government to account. The Inter-Parliamentary Union provides a more exact definition, a 'good'

parliament is one that is 'truly representative, transparent, accessible, accountable and effective'.⁷

These are each significant attributes both relevant to the Commonwealth Parliament as a crucial democratic institution and as a workplace to the approximately 5,000 workers who know the Australian Parliament House (APH) precinct as their place of work. Beyond the APH precinct in Canberra, the functions of Parliament are supported by hundreds more including in the various regional and electorate offices. The culture set at APH and the workings of Parliament have significant flow on effects for all these workers, particularly MoP(S) Act employees.

Recent media attention regarding the prevalence of sexual harassment, sex-based harassment, assault and other inappropriate behaviours at APH and MoP(S) workplaces has shone a light on the Commonwealth Parliament's toxic culture that is in urgent need of redress. This has led to a quick succession of inquiries and promises of remedial action. However, the systemic nature of sexual harassment and bullying in Parliament and MoP(S) workplaces requires a deeper response. The Commonwealth Parliament must take a holistic look at its workings and functions and assess whether it is a 'good' parliament that is truly representative, inclusive, transparent, accessible and accountable.

The CPSU draws the Review's attention to the 2016 report, *The Good Parliament* by Professor Sarah Childs. This work was specifically referenced in the Dame Laura Cox DBE report, *The Bullying and Harassment of House of Commons Staff Independent Inquiry*, noting the significant role of diversity and inclusion in addressing systemic issues of bullying and sexual harassment.

The Good Parliament Report identified the House of Commons as unrepresentative with its membership disproportionately male, white and elite and lacking institutional will to address issues of inclusion and representation. The Commons Reference Group on Representation and Inclusion defined a 'good' House as:

- Truly representative: Members, staff and visitors would reflect the major social characteristics of those the House represents. Barriers to participation have been removed; political parties have put in place mechanisms to ensure MPs are diverse. The House's activities and structure including staff are representative. Interactions are of the highest standard of professionalism.
- Transparent: Members, staff and visitors are confident in their knowledge of work of MPs and the institution. Procedures, practices and norms are clear and straightforward.
- Accessible: There is a strong sense of belonging and efficacy amongst all who work in or attend the House. Technology enables greater engagement. Children are welcome. Physical needs of all who work or come in are met.
- Accountable and effective: Greater certainty of scheduling of parliamentary business, and 'core business hours' allows more control and flexibility in how MPs do their job, with improvements in work life balance for MPs and staff.

⁷ Inter-Parliamentary Union (IPU), *Parliament and Democracy in the Twenty-First Century, A Guide to Good Practice* (2006), referenced in Sarah Childs, *A hand on the knee and other parliamentary problems*, (2018), IPPR Progressive Review, 24(4)

Recommendation 2: The Government commit to undertake a holistic inquiry of the workings of the Commonwealth Parliament, examining what a transparent, representative, accessible and accountable parliament is in the context of the modern Australian society. This should include a focus on the nexus between a good parliament and a good workplace within 18 months of the Independent Review's findings being handed down. The Government must draw on the lessons of the UK Parliament, including The Good Parliament Report and its 43 recommendations to improve representativeness and inclusiveness and to better enable parliamentarians to be more effective in their work individually and collectively.

Engaged leadership to drive change

For several years, the CPSU has raised concerns of workplace violence and unsafe systems of work, focussed mainly on workplace sexual harassment and bullying with the Department of Finance (Ministerial and Parliamentary Services) (MaPS). However, there has been little acknowledgement or meaningful engagement by MaPS, Government and Parliamentarians more generally, to address the broad nature of these issues and their prevention, including the high intensity environment, power imbalance, poor diversity and gender equity, and systemic weaknesses. Together, these factors with a workplace culture that tolerates or permits disrespectful behaviours means addressing bullying and sexual harassment is complex and challenging, and requires a proactive approach led by an engaged leadership.

The US Equal Employment Opportunity Commission (US EEOC) and AHRC have identified measures for leaders who want to create meaningful organisational change to prevent sexual harassment, including:⁸

- Establish a sense of urgency about preventing harassment. Visibly state the importance of a diverse and inclusive workplace free from harassment and set the foundation for change within the organisation.
- Remind all office-holders and employees that sexual harassment is unacceptable and such behaviour does not meet the expectations of the organisation.
- Take proactive steps to address known risk factors
- Be transparent about mistakes and shortcomings, and how the organisation plans to address them, including by making a public statement.
- Hold leaders at all levels to account for their own behaviour, for creating a positive work culture, and for responding to incidents that arise. It is critical that everyone in a workplace is subject to the same processes for investigation and discipline, irrespective of rank, and that complainants are not simply 'moved on' as a response.
- Efforts be backed up by money and time for employees to believe that the efforts of leaders are authentic. This means money in the budget for implementation of an independent complaint mechanism with investigative powers, recruitment of

⁸ AHRC Respect @Work, 684; Chai Feldblum and Victoria Lipnic, Equal Employment Opportunity Commission (US), 'Select Task Force on the Study of Harassment in the Workplace' (June 2016), cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 17.

staff with relevant expertise, training and awareness raising, time scheduled in calendars for training.

- Any team that is leading the effort to stop sexual harassment must have the power and authority to make change happen.

An engaged and committed leadership is essential to cultural change and ensuring Commonwealth Parliament and relevant workplaces are safe and respectful. Consistent with the AHRC and US EEOC recommendations, all parliamentarians have a responsibility to ensure their interactions with MoP(S) Act staff and other parliamentary workers are always respectful. Leaders at all levels of the organisation must clearly communicate the standard of expected behaviours and values.

The Government must recognise the systemic nature of bullying, sexual harassment and assault within the Commonwealth Parliament. It has a responsibility to declare bullying, sexual and sex-based harassment and assault as unacceptable and raise awareness of the individual and institutional impacts, and consequences for perpetrators. Importantly, change and renewal requires an acknowledgement of Parliament's historical failure to effectively address and prevent sexual harassment and bullying.

The CPSU draws the Review's attention to the Expert Independent Review into Bullying and Harassment in the New Zealand Parliamentary workplace recommendation that there be established a specialist advisory board, including external experts, to oversee the transformation of Parliament's culture as proposed in the review recommendations. The CPSU supports a similar approach.

Recommendation 3: Given the systemic nature of bullying, sexual harassment and assault in Parliamentary workplaces, the Government must set behavioural norms, declaring such conduct unacceptable, and raise awareness of the individual and institutional impacts and consequences for perpetrators. Change and renewal require an acknowledgement of Parliament's historical failure to effectively address and prevent sexual harassment and bullying. Asymmetric power imbalance is a recognised key driver of workplace sexual harassment and bullying and must be addressed in a risk mitigation plan developed in collaboration with workers and their union.

A positive and proactive workplace culture

Workplaces have numerous levers to control risk factors that contribute to bullying, discrimination and sexual and sex-based harassment. Leadership, cultural and structural reforms such as changes to employment arrangements, procedures and support for those who experience violence are potential areas of change to create a more respectful, professional, transparent, equitable and inclusive workplace climate. The CPSU has identified several specific measures to achieve these stated goals.

A code of conduct for all parliamentarians

The Commonwealth Parliament has been widely criticised for the absence of a behavioural code of conduct that covers all Parliamentarians, thereby providing no remedy to address inappropriate behaviours and misconduct. The CPSU notes the current Ministerial Code of Conduct is limited to Ministers only, the enforcement of which is solely determined by the Prime Minister. The UK, Scotland, Canada and New Zealand each have codes of conduct clearly stating expectations about bullying, harassment, and sexual harassment. Within Australia, numerous states have an existing code of conduct for elected members with some provided in legislation.

The CPSU draws the Review's attention to the UK Parliament's Behavioural Code (incorporated into House of Commons and Ministerial Code of Conduct), Scottish Parliament Code of Conduct and New Zealand Parliamentary Code of Conduct as potential models for the Commonwealth Parliament.

The CPSU supports a code of conduct for all parliamentarians, not just Ministers. It must explicitly prohibit sexual and sex-based harassment, bullying and harassment and discrimination. It must articulate behavioural expectations when interacting in the workplace and participating in parliamentary business, including in committee hearings and other proceedings. Parliament is a workplace and there are flow on effects of modelled behaviour into parliamentary offices and for staff. While some political parties may have their own distinct codes, enforceability is left to the party itself which does not necessarily lead to accountability and transparency.

Parliament should establish a joint select committee to develop a Code of Conduct for parliamentarians and that process should allow all parliamentarians the opportunity to input, contributing to the cultural change. Additionally, the joint select committee should seek broader input by calling for submissions from the public.

Accountability is critical to instil confidence in system, culture and leadership. It is critical that alleged breaches of the code should be subject to independent investigation and sanction procedures separate from any political influence or impartiality. Further a range of appropriate sanctions must be imposed for breaches of any code. These independent processes and enforceable sanctions are discussed below.

The CPSU notes the recent review of the New Zealand parliamentary workplace recommended a Parliamentary Workplace Code of Conduct as 'a basic requirement' to reset culture and behavioural expectations. The review envisaged the Code to extend beyond parliamentarians (including staff and press gallery) and called for joint development of the Code with worker and union engagement. If a Code of Conduct of broader application was to be considered, involving those covered by the Code in design and implementation is critical.

Recommendation 4: The CPSU recommends the development and implementation of a behavioural code of conduct for all parliamentarians. It must explicitly set out appropriate workplace behaviours and prohibit sexual harassment and sex-based harassment, bullying and harassment and discrimination. Parliament should establish a joint select committee to develop a Code of Conduct for parliamentarians and that process should allow all parliamentarians the opportunity to input, contributing to the

cultural change. Additionally, the joint select committee should seek broader input by calling for submissions from the public, including current and former staff who have worked in Parliament.

Accountability is critical to instil employee and public confidence in the system, culture and leadership. Alleged breaches of the code must be subject to independent investigation and sanction procedures separate from any political influence or impartiality. A range of appropriate sanctions must be imposed for breaches of the code including restriction of staffing entitlements, travel privileges, committee membership and suspension.

Comprehensive and enforceable sexual harassment policy

While a sexual harassment policy in-and-of-itself will not prevent sexual harassment, it is a critical element in any sexual harassment prevention and response effort. There are three key factors for policy effectiveness - content, development, and communication and implementation.

Policy content

The Victorian Equal Opportunity Human Rights Commission (VEOHRC), US EEOC, International Barristers Association, AHRC and McDonald et recommend:⁹

- A clear explanation of prohibited conduct, including practical examples that are relevant to diverse groups of workers. The policy should recognise that sexual harassment is unlawful and unacceptable and include a clear definition of sexual harassment, which includes online sexual harassment through digital technology. It is recommended the explanation of prohibited conduct be framed broadly, rather than being constrained by strict legal definitions, or it risks failing to address lower unethical conduct that still has adverse individual and workplace consequences. Workplaces should respond to all 'behaviours that undermine a culture of civility and respect'.¹⁰
- Clear identification of responsibilities of the organisation, management and workers; with confirmation that the policy applies to workers at all levels, including managers, senior staff and parliamentarians, as well as others in the workplace such as customers, constituents and contractors. Reference should be made to relevant laws, with a statement of the employer's commitment to providing a safe working environment.

9 AHRC Respect@Work; VEOHRC; Chai Feldblum and Victoria Lipnic, Equal Employment Opportunity Commission (US), 'Select Task Force on the Study of Harassment in the Workplace' (June, 2016); Kieran Pender (International Bar Association), 'Us Too? Bullying and Sexual Harassment in the Legal Profession' (2019); Paula McDonald, Sara Charlesworth, Tina Graham, 'Developing a framework of effective prevention and response strategies in workplace sexual harassment', 53 *Asia Pacific Journal of Human Resources* (2015) cited in *Review of Sexual Harassment in Victorian Courts and VCAT*, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 57.

10 Kieran Pender (International Bar Association), 'Us Too? Bullying and Sexual Harassment in the Legal Profession' (2019), 100 cited in *Review of Sexual Harassment in Victorian Courts and VCAT*, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 57)

- A commitment to achieving gender equality, including a commitment to specific goals and recognition that sexual harassment is driven by gender inequality. Sexual harassment policies should be framed in gender-specific terms and acknowledge power differentials.
- Clear articulation of how and where to report sexual harassment. There should be a clear description of the available options, processes and potential outcomes. There should be multiple, accessible avenues of complaint, including anonymous reporting and the option of informal advice to ensure employee confidence in, and uptake of, grievance procedures. The independent complaint process, including investigation and sanction should also be clearly described, and should be prompt, thorough, and impartial.
- A clear statement that the organisation's priority is the safety and wellbeing of the person disclosing or formally reporting sexual harassment, and information about support services that can provide victims of sexual harassment advice, information, counselling and other assistance. This should include a reminder that people who experience sexual assault can report their experience to the police.
- A range of sanctions that may be taken against harassers and transparency about penalties, which can be achieved by including 'a statement of intent to enforce seriously and promptly, and a clear specification of the penalties for violation'.¹¹ McDonald et al note 'certainty of punishment may provide more effective prevention than severity of punishment'.
- Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible, and that those who make complaints or provide information related to complaints, including witnesses and others who participate in the investigation, will be protected against retaliation.

Policy development

Sexual harassment policies should be developed in consultation with workers and their union. Co-designing of the policy can increase policy engagement through a sense of ownership and familiarity, which is important given duties invested to workers under the WHS Act, as well as result in a better policy. It can also be an opportunity to shift social norms or initiate a larger conversation about gender equality, although the benefit of doing so will depend on the organisation's readiness and existing norms.

Policy communication and implementation

Sexual harassment policies must be visible by being widely disseminated, with the message that sexual and sex-based harassment will not be tolerated. Parliamentarians and senior staff must promote the policy, communicate that sexual harassment is an organisational issue, not just an individual grievance and emphasise their commitment to preventing sexual and sex-based harassment. Managers should discuss the policy with workers regularly to raise awareness and demonstrate that they understand and value the policy, which may encourage workers to raise concerns. Workplace training is

¹¹ Paula McDonald, Sara Charlesworth, Tina Graham, 'Developing a framework of effective prevention and response strategies in workplace sexual harassment', 53 *Asia Pacific Journal of Human Resources* (2015) cited in *Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts*, 58).

essential in the implementation of sexual harassment policies and response systems and must be part of a broader strategy aimed at creating cultural change.¹² It is essential the policy is readily available on the staff intranet together with other relevant employment policies. There should be clarity for staff about how the sexual harassment policy interacts with those developed by relevant political parties.

The CPSU supports the development of a Whole-of-Parliament policy on this important issue, referencing relevant agencies, such as Department of Parliamentary Services, Department of the Senate and Department of the House of Representatives.

The CPSU continues to advocate for Gendered Violence and Sexual Harassment mitigation provisions to be included in Enterprise Agreements covering MoP(S) Act employees and other public sector employees. This could be achieved through a variation of the enterprise agreement.

Recommendation 5: An enforceable sexual harassment policy must be developed and implemented in consultation with workers and the union that is based on current best practice including policy content, development, communication and implementation.

Worker-led risk mitigation of workplace sexual harassment and bullying

Sexual harassment and bullying are serious work health and safety hazards known to cause psychological and physical harm.

The WHS Act sets a positive duty on employers to eliminate work health and safety harms as far as reasonably practicable. Accordingly, employers must actively identify, assess and control hazards including sexual harassment and bullying which may affect the physical or psychological health and safety of workers.

Consultation with workers and health and safety representatives is a critical part of identifying sexual harassment and bullying harms and relevant risk indicators, including identifying specific situations when such harms are more likely to occur. Workers are best placed to assess risks given their understanding of the impacts of workplace harms on their colleagues, the likelihood of the harm occurring and appropriate measures to control those risks.

Not only is consultation a fundamental aspect of the WHS regulatory framework, but it also enables a more effective identification of hazards and design responses and promotes substantive equality by elevating voices of those workers at higher risk of experiencing sexual harassment.¹³

12 AHRC Respect@Work, 730.

13 Belinda Smith, Melanie Schleiger and Liam Elphick, 'Preventing Sexual Harassment at Work: Exploring the Promise of Work Health and Safety Laws', 32 Australian Journal of Labour Law 218 (2019), 224 cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 52.

The CPSU endorses a worker-led risk mitigation approach for preventing and responding to workplace sexual harassment and bullying in accordance with Safe Work Australia Guidelines, Comcare Guidelines, and US EEOC Chart of Risk Factors and Responses.¹⁴

The CPSU supports the development of an annual employee engagement survey and implementation of staff exit interviews to broaden the organisation's understanding of the nature and drivers of sexual harassment and bullying. Further sources of information include complaints data, EAP and SIT trend reports. Deidentified data collated for the purpose of better understanding and mitigating sexual harassment and bullying issues should be shared with health and safety representatives, harassment contact officers and the union.

CPSU members have previously raised and support:

- the need for a single risk register or consolidated risk and incident reporting for APH precinct that includes well-being risks, mitigation and/or actions;
- joined-up analysis on trends and emerging risks relevant to Commonwealth and other workers based and/or frequenting the APH precinct;
- Whole-of-Parliament or Joint Parliament Work Health and Safety Committee with worker and union representation.

Recommendation 6: Parliamentarians and MaPS must commit to a collaborative risk mitigation approach which actively engages workers and their union to prevent and respond to workplace sexual harassment and bullying. This must include a plan to address risks associated with media and social media scrutiny and alcohol in work-related functions. Measures, such as an annual anonymous employee engagement survey, exit interviews, EAP and SIT trend reports, should be implemented. There should be coded line reporting on sexual harassment and bullying as well as other forms of workplace violence. De-identified data should be shared with health and safety representatives, harassment contact officers and the union for the purpose of better understanding and mitigating sexual harassment and bullying harms. Success of such an approach is dependent on the employer placing a high level of importance on workplace health and safety.

An independent HR body to better support MoP(S) Act staff and parliamentarians

As discussed in the CPSU's first submission to the Independent Review, MoP(S) Act employees operate under unusual and complex employment arrangements, distinct from most Australian workplaces.

Under the MoP(S) Act, parliamentarians employ their own staff in accordance with the staffing allocation determined by the Prime Minister having regard to the parliamentarian's duties as a Senator or Member of the House of Representatives, and consideration of whether the parliamentarian is a member of the Government,

¹⁴ Chai Feldblum and Victoria Lipnic, Equal Employment Opportunity Commission (US), 'Select Task Force on the Study of Harassment in the Workplace' (June, 2016), Appendix C cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 51.

Opposition or Minor party. The MoP(S) Act provides the parliamentarian a high degree of control on staffing including to determine the staffing configuration of their office, day to day duties of staff and ability to terminate staff at any time subject to the Fair Work Act. While MoP(S) Act staff are engaged by the parliamentarian, it is MaPS that provides the 'back office' human resource functions and shares duties in relation to work health and safety.

Most MoP(S) employees consider each of the 227 parliamentary offices to operate as autonomous, self-contained workplaces. The lack of human resources oversight and consistency of employment practices across parliamentary offices due to MaPS disconnect from the day-to-day realities of MoP(S) employees leaves staff largely unsupported.

MoP(S) employees are left on their own to grapple with issues such as unreasonable workloads, non-transparent employment and administrative decisions, ambiguity in role descriptions and a non-existent performance appraisal system. There has been a distinct lack of effort, capacity and/or capability by MaPS to better understand the collective experiences of the 227 parliamentary offices and their workers and offer better solutions. Further, MaPS is not empowered to enforce good employment practices on parliamentarians.

Whilst there are good and continuing reasons for recruitment decisions resting with Parliamentarians, there is an urgent need for a properly resourced, proactive and independent human resources (HR) body responsible for overseeing employment practices in parliamentarian offices. An independent HR body with appropriate authority will be able to improve employment practices and/or hold accountable those parliamentarians who choose not to comply and continue to flout the 'rules', including through restrictions on parliamentarian entitlements as appropriate. This includes restrictions to parliamentarians staffing entitlements, travel privileges, committee membership and suspension for serious breaches.

The CPSU endorses the development of clear and comprehensive employment procedures by the independent HR body to ensure consistency across the 227 parliamentary offices that constitute the MoPS workplace. Key procedures and policies for development and implementation in consultation with workers and their union should include recruitment procedures underpinned by principles of transparency and fairness including implementation of open recruitment processes with diverse panels; clear and enforceable performance management procedures and policy; overtime and additional hours (includes TOIL) procedures and policy; probation procedures; and implementation of accessible flexible work arrangements. These procedures and policies should be developed in line with best practice after a wide environmental scan of what occurs in both private and public sectors.

Other important priorities include development of clear job descriptions; comprehensive induction and on-boarding; exit interviews; oversight of more rigorous termination processes, reassignment and redeployment; and more rigorous and consultative WHS consultative arrangements. The independent HR body should also be required to collate, monitor and analyse important employment metrics including gender and diversity;

turnover; absenteeism and implement processes to gather information about employee experiences and insights such as annual employee survey.

In setting up the independent HR body, its functions and responsibilities must be clearly prescribed and easily understood by all parties. The roles and responsibilities of parliamentarians and those of the HR body must be clearly delineated and referenced on the staff intranet and in policies.

There is an urgent need to improve worker engagement and consultation both between parliamentarians and current HR, MaPS, as well as union delegate representational rights. The Employee Consultative Group is the peak consultative forum for MoP(S) employees, however the role of employee representatives is not respected, and input is largely disregarded. Strengthening union delegates' rights and better recognition of the Employee Consultative Group's role is critical to changing workplace culture and improving employee morale.

Recommendation 7: The Government must establish an independent human resources body responsible for overseeing employment practices in parliamentarian offices and better supporting MoP(S) Act employees. The independent human resources body must be properly resourced and with appropriate authority to manage, and hold parliamentarians accountable to, the implementation of good employment practices including through restrictions on parliamentarian entitlements as appropriate.

Recommendation 8: The Government must better recognise and support union delegates in undertaking their representative roles and responsibilities in MoP(S) workplaces. It must commit to the implementation of agreed and enforceable union delegate facilities such as reasonable paid time to discuss employment and WHS matters with workers and to seek union advice; access to reasonable paid time to acquire knowledge and competencies in industrial relations; and access to notice boards in prominent locations in all MoP(S) workplaces to share union information including on WHS matters.

Better recognition of the professionalisation of MoP(S) workforce

The MoP(S) Act workforce comprises highly capable and professional individuals who are committed to serving their communities and the parliamentarians they are employed by. MoP(S) Act employees are important talent for Parliament and the public sector and should be better recognised and supported in their career and professional development.

The CPSU recommends development of clear job descriptions. There is a significant need to address current ambiguity of roles and provide a greater consistency in position descriptions. CPSU members appreciate job descriptions should not be 'set in stone' with allowance for a degree of flexibility in duties performed. However, the current lack of clarity of duties and expectations leave workers extremely vulnerable. Staff should not be required to perform menial, intimate, or domestic tasks for parliamentarians. This clarity is essential for purposes of competency assessments for performance appraisals and accessing grievance processes.

All employees, electorate officers and personal staff must be provided with access to structured professional development opportunities and support. Professional development is currently ad-hoc, non-transparent and inequitable. While some MoP(S) staff in the major parties and those in larger offices may have access to some professional development, including through their own political networks, often those in small offices and minor parties do not have the same access. Professional development opportunities must be available and accessible to all MoP(S) employees regardless of the office they occupy. Part of ensuring accessibility is having adequate staffing levels to cover other workers who are attending training and professional development.

The current low accessibility to professional development must be addressed through engagement with workers and their union.

There must be greater effort and resources directed to the development of job descriptions, tailored career pathways and professional development opportunities, including more formalised coaching and mentoring.

Recommendation 9: The Government must commit resources to better recognise and develop the capability and professionalisation of the MoP(S) workforce. The current lack of clarity of job requirements, tailored career pathways and low accessibility and transparency regarding professional development opportunities must be addressed in partnership with workers and their union.

Diversity and gender equity

The Respect@Work Report highlights that diverse and inclusive, gender-equal workplaces with cultures of respect, integrity and trust, were most effective at preventing and responding to sexual harassment.¹⁵

With gender inequality being a key driver of sexual harassment in MoP(S) workplaces, the development and implementation effective gender equality strategies to meaningfully prevent sexual harassment is critical.

In Victoria this a legal requirement for public sector organisations, which are required under the Gender Equality Act 2020 (Vic) to develop a Gender Equality Action Plan every four years and complete workplace gender audits and progress reports.

The CPSU supports the development and implementation of a MoP(S) Gender Equality Action Plan and Diversity Equality Action Plan to assist in improving gender equality and preventing sexual harassment. Such plans should be developed in consultation with employees and their union, and importantly draw on the experience of relevant diversity networks. The CPSU endorses frameworks, strategies and tools by the VEOHRC, Our Watch, WGEA and the Victorian Public Sector Commission.

15 AHRC Respect@Work, 702, citing Paula McDonald, 'Workplace Sexual Harassment 30 Years on: A Review of the Literature' (2012) 14(1) International Journal of Management Reviews 1, 6.

We also draw the Review's attention to the *Inter-Parliamentary Union's Plan of action for Gender-sensitive Parliaments* which provides specific recommendations to improve representation, workplace culture and infrastructure in the parliamentary context.¹⁶

Five key strategies identified by the Inter-Parliamentary Union include:

- Systematically including women in all parliamentary positions of authority and policy areas.
- Creating a parliamentary mandate to promote gender equality, monitoring and evaluation frameworks.
- Establishing mechanisms to promote and monitor parliament's contributions to gender equality.
- Ensuring parliamentary culture prioritises respect for women in parliament and staff through elimination of violence against women.

In addition, the *Plan of action* recommends measures to enhance gender sensitivity of, and gender equality among parliamentary staff through:

- Developing and implementing anti-discrimination and anti-harassment policies applicable to all parliamentary staff, including establishment of an independent complaints body.
- Assessing the number and seniority of women in parliamentary staff.
- Providing gender awareness training seminar for all parliamentary staff to explain principles of gender equality and why gender sensitive parliament benefits everyone.
- Building capacity of parliamentary staff to conduct gender-based analyses of legislation, budgets and policies.
- Adopting relevant affirmative action policies to address gender inequality.

Building support for gender and diversity reforms

There is research to suggest initiatives to address discrimination and violence against women can be met with hostility or passive resistance within workplaces. Thus, it is important for the organisation to anticipate resistance and consider how to cultivate support including by bringing all parliamentarians and employees into the conversation by opening and normalising conversations about sexual harassment. Additionally, parliamentarians and senior staff should communicate how gender equality and diversity goals benefit all workers, for example improving overall performance and retention of talent.

Recommendation 10: The CPSU supports the development and implementation of a MoP(S) Gender Equality Action Plan and Diversity Equality Action Plan to assist in improving gender and diversity equality and preventing sexual harassment. Plans must be consulted with employees, the union and workplace diversity networks.

¹⁶ Sonia Palmieri, *Parliaments as Gendered Workplaces* in Marian Sawyer et al. (eds.) *How Gender Can Transform the Social Sciences : Innovation and Impact*, (Springer International, 2020) 52.

III. Improving support and reporting for victim-survivor

Victim-survivor centred support, confidential, accountable and independent reporting mechanism

In December 2020, the CPSU conducted a survey of MoP(S) employees to better understand their experiences of workplace bullying and sexual harassment. The survey revealed 14% of respondents had experienced sexual harassment in the previous 12 months and 40% of respondents had experienced workplace bullying. Of this group, less than 20% reported their experience.

Consistent with broader research, MoP(S) employees have cited multiple reasons for not reporting, including fear that nothing will change, complaining will damage one's relationships, reputation and career, and the workplace response is unsupportive of victims. We also note that reporting experiences can be more traumatising and disempowering for victims than the experience of sexual harassment itself.¹⁷

The Respect@Work Report provides that a victim-survivor centred response to sexual harassment encourages the reporting of incidents and minimises subsequent trauma. The CPSU supports the adoption of such an approach in MoP(S) workplaces.

The recent *Department of Prime Minister and Cabinet Review of the Parliamentary Workplace: Responding to Serious Incidents* (Foster Review) found current procedures and processes are not designed or able to respond appropriately to serious incidents in parliamentary workplaces, particularly in regard to sexual assault, and have not kept pace with best practice.¹⁸ The absence of readily accessible, timely, independent trauma informed services and response mechanisms was identified as a significant gap. Other key gaps include an independent complaints mechanism to deliver consequences for misconduct and face-to-face education and support for parliamentarians and staff in preventing, identifying and responding to serious incidents.¹⁹

The CPSU has focused relevant recommendations on our understanding of the Foster Review's proposed wrap-around trauma-informed support arrangements and independent complaints mechanism as discussed in the Foster Review Consultation Paper. The CPSU notes there has been no direct engagement to date with the union and workers about the proposed model and its implementation which is contrary to WHS legislation and best practice.

17 AHRC Respect@Work, 744.

18 Foster Review, 5-6.

19 Ibid 5.

A victim-survivor centred approach

CPSU members have been calling for access to tailored welfare and mental health services including specialised psychological counselling and support for several years. The EAP services were not adequate for supporting victims of sexual harassment and assault.

In March 2021, MaP(S) implemented a national Parliamentary Support 24/7 Line staffed by professional trained in trauma-informed care. Arguably these important measures were only introduced following the media reports of sexual assault allegations in APH, not in response to worker calls.

The Foster Review recommends:

Recommendation 3: The support system should be timely, independent, confidential and trauma informed, available to all parliamentary staff and parliamentarians who experience, witness, or are accused of or are supporting someone in relation to a serious incident related to the parliamentary workplace. It must be victim centric and empower individuals who have experienced a serious incident. Support should be provided through a combination of the continuation of the 1800 Parliamentary Support Line for immediate 24/7 counselling and referral services, and the ongoing wrap around case management support within the independent complaints mechanism.

The CPSU commends the Foster Review for recognising the urgent need for prioritising the victim-survivor so they are at the centre of any approach to preventing and responding to workplace sexual harassment. The measures are also to be commended as a positive first step in the Parliamentary and MoP(S) workplace. However, further support options must be explored including access to in face support; choice of practitioner and ensuring such supports are not confined to 'serious incidents'.

There is a danger in labelling the support system as relevant and available only in relation to 'serious' incidents. A 'serious incident' is perceived subjectively, whereas the use of explicit and objective terms 'sexual harassment', 'sexual assault' and 'bullying' are clearer and not subject to misinterpretation. There is also a danger that less obvious instances of sexual harassment and bullying, or micro-aggressions, will not be considered by some individuals as 'serious enough' for support under the system.

The CPSU submits the proposed support system be extended to all Commonwealth employees who work in the APH precinct including Department of Parliamentary Services, Comcar drivers, Department of the Senate and Department of the House of Representative workers.

The Foster Review also recommends:

Recommendation 6: Where Department of Parliamentary Services Protective Security Services officers or AFP officers are the first to identify or respond to a serious incident within Parliament House, they should provide advice on avenues of assistance, including 1800 APH SPT line and the complaints mechanism contact channels. In addition any emergency response action

and upward reporting required under their standard operating procedures. A report on the incident should be provided to the SIT so that a case manager can make follow up contact with the individual and provide trauma informed wrap around support should it be required.

The CPSU reiterates the importance for individuals receiving reports to be aware of and understand what support services are available to affected workers and ensure that, as a 'first responder', the first step is to provide that support information to the worker. In the Commonwealth Parliament context, first responders may include Department of Parliamentary Services staff, in particular Parliamentary Security Services officers. It is critical these officers are provided appropriate awareness training of the SIT and its functions and how best to support a victim of sexual harassment or assault as a first responder, as well as relevant standard operating procedures. This should be reflected in the reporting system and guidance for DPS PSS officers and other first-responders.

Recommendation 11: The CPSU endorses the implementation of the Parliamentary Support 24/7 Line staffed by professional trained in trauma-informed care to support staff and parliamentarians. The Support Line must be adaptive to needs as it is a new and emerging measure. A review of the effectiveness of the Parliamentary Support 24/7 line should be conducted 6 months after its commencement and seek direct feedback from employees.

Independent reporting mechanism

For several years CPSU members have raised concerns about barriers in reporting incidents of harassment, bullying and other workplace violence. Increasingly members have called for an independent, trauma informed, complaints mechanism. For any complaints mechanism to be independent it would need to be entirely free of input or influence from parliamentarians and MaP(S).

Workplaces with strong and demonstrable accountability for misconduct instil a sense of confidence and justice, creating a positive cycle that can lead to a reduction of instances of harm in the workplace - accountability also reduces organisational risk.²⁰ This requires workplaces to:²¹

- Ensure investigations and corrective actions are undertaken promptly and fairly, and investigators are suitably qualified.
- Hold perpetrators accountable by imposing prompt and proportionate sanctions.
- Apply the same processes and sanctions to all employees, including high-ranking or high-value individuals.
- Hold mid-level managers and supervisors accountable for monitoring and stopping harassment by those they supervise and manage and stopping any retaliation.
- Have processes clearly articulated and accessible.

20 Chai Feldblum and Victoria Lipnic, Equal Employment Opportunity Commission (US), 'Select Task Force on the Study of Harassment in the Workplace' (June, 2016), Appendix C cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 108.

21 Ibid.

- Promote accountability as part of the values of the workplace.

A complainant who perceives a complaint process is fair and effective is more likely to be satisfied with their experience overall, even if they do not agree with the outcome.²² This sense of justice can best be promoted if there is a clearly defined process with attached timelines and expectations.

The Foster Review identifies independence from the employer, political parties and executive government as a critical factor in ensuring complete confidentiality and a focus on the well-being of the victim-survivor. It recommends:

Recommendation 4: An independent complaints mechanism should be established under the Parliamentary Service Act 1999 (Cth) as a function of the PSC, with oversight by the Presiding Officers of the House of Representatives and the Senate, to ensure independence from the Executive and the employer and to enable proportionate consequences for complaints that are upheld. In its initial phase it should:

- Apply to serious incidents or patterns of behaviour causing serious harm
- Cover complaints that relate to the current term of parliament where the parties remain in parliament or MoP(S) Act employment
- Apply to all MoP(S) Act staff and parliamentarians and support referral of reports from other building occupants to their own complaints mechanisms
- Include a Serious Incident Team (SIT) comprising a group of highly skilled case officers with a mix of expertise, e.g., trauma-informed support, administrative and employment law to:
 - » Receive reports from parliamentary staff and parliamentarians who have experienced witnessed been accused or a supporting one in at some relation to a serious incident involving MoP(S) Act staff or parliamentarian.
 - » Provide immediate and on-going trauma informed support and advice on options
 - » Triage according to individual's need and preferences, within a graduated system of escalation
 - » Facilitate resolution of issues at local level
 - » Appoint independent experts to be engaged as required to review reports of serious incidents and advise on appropriate responses and timeframes for implementation
 - » Support referrals to police, an independent reviewer, MaP(S) (for administrative and less serious issues) or specialised support services

22 Paula McDonald, Sara Charlesworth, Tina Graham, 'Developing a framework of effective prevention and response strategies in workplace sexual harassment', 53 *Asia Pacific Journal of Human Resources* (2015), 45 cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 111.

Further the Foster Review envisages:

- SIT to be established as a function of the Parliamentary Service Commissioner (PSC) under the Parliamentary Service Act (1999).
- Independent reviewers would have expertise in employment and administrative law, sexual violence, harassment and workplace conduct, and good knowledge of the parliamentary workplace.
- PSC to provide quality assurance to ensure the independent complaints mechanism is operating in a timely, effective and reasonable way. PSC have a role to receive reports made by independent reviewers through the serious incident team and monitor action taken.

The CPSU commends the Foster Review for its recognition of the need for an independent complaints mechanism for serious incidents that is entirely separate from the influence and input of parliamentarians and MaP(S). The Foster Review's proposed model provides an independent, accountable, transparent, confidential investigation solution for victim-survivors of serious incidents. There are, however, aspects of the proposal that are of concern.

The CPSU notes the scope of the independent complaints mechanism is limited to covering complaints relating to the current term of parliament where the parties remain in parliament or MoP(S) Act employment. In practice this would exclude a large number of complaints from being made and may act as an incentive to fire or end the employment of a potential complainant in order to limit them from making a complaint.

We recommend the independent mechanism must be extended to employees who have experienced any form of sexual harassment, assault and/or bullying beyond the current term of parliament and must be accessible to former MoP(S) Act staff and to any MoP(S) Act staff where they subsequently leave employment or are terminated.

Recommendation 12: The CPSU commends the Foster Review for its recognition of the need for an independent mechanism for reporting of sexual and sex-based harassment, sexual assault and bullying incidents. However, it is critical the mechanism is not labelled and/or limited to 'serious incidents' as this may exclude a large number of complaints from being made. The independent mechanism must be extended to cover former employees beyond the current parliament and to other Commonwealth employees working in APH precinct and parliamentary workplaces, such as Department of Parliamentary Services, Department of the Senate, Department of the House of Representatives and Comcar.

Enforceable sanctions

The Respect@Work Report recommends prompt action be taken where there is a finding of sexual harassment. Where sanctions are imposed, they should be proportionate to the conduct and consistent with previous cases to ensure fair and equal treatment of harassers. Examples of remedial measures includes requiring an apology; ongoing monitoring or coaching; awareness raising and educational activities; verbal or written warnings; foregoing a scheduled pay rise or bonus; demotion; suspension or dismissal.

In the parliamentary context, the imposition of sanctions against parliamentarians or very senior staff found to have bullied or sexually harassed a MoP(S) Act employee has been highly problematic. Parliamentarians are not subject to the same rules as ordinary workers and cannot be dismissed for misconduct.

However, compliance can be built through the implementation of an independent complaints mechanism and a code of conduct scheme for parliamentarians, with both schemes including enforceable sanctions. Enforceable sanctions should include potential demotion, suspension and expulsion.

The Foster Review recommends:

Recommendation 4: An independent complaints mechanism should be established under the Parliamentary Service Act 1999 (Cth) as a function of the PSC, with oversight by the Presiding Officers of the House of Representatives and the Senate, to ensure independence from the Executive and the employer and to enable proportionate consequences for complaints that are upheld ...

- Where parliamentarian is unwilling to engage in a review process or fails to act on recommendations, PSC would provide report to the Presiding Officers who would be required to take necessary action as determined by the parliament. Processes and actions would be formally recognised by a resolution of each House of parliament.

The CPSU is concerned the proposed sanction model in its current form does not provide sufficient independence from Government. Presiding Officers are appointed by the government of the day and therefore should not have sole oversight of this process. There must be opportunity for multi-party involvement. The CPSU recommends a model that allows for multi-party representation whilst maintaining importance of confidentiality. This may involve the Presiding Officers working in concert with an appropriate committee, like the Privileges Committee.

Additionally, the Respect@Work Report emphasises a need for measures that support behavioural change and not just punishment.²³ Corrective action should also include making systemic changes to address the risk factors that contributed to the incident, such as changes to job design or organisational systems. Employers are encouraged to use reports and investigation findings as an opportunity to learn more about risks and issues in their businesses and inform their practice and approaches moving forward.²⁴ The CPSU endorses the use of corrective actions where appropriate.

Recommendation 13: The CPSU does not consider the Foster Review's proposed sanction model in which Presiding Officers are given sole oversight as being completely independent of the Government. Rather there must be opportunity for multi-party involvement in the sanction process as it relates to parliamentarians. The CPSU recommends Presiding Officers work with the Privileges Committee where confidentiality is ensured and there is multi-party representation.

²³ AHRC Respect@Work, 765-6.

²⁴ Ibid.

Preventing victimisation

Workers who report sexual harassment often experience victimisation.²⁵ Reporting also adversely correlates with performance ratings, promotion and attendance rates, and higher rates of resignation. Workers must be provided clear information of available supports and protections from victimisation, including disclosure expectations and requirements of private and confidential information. Protection measures may include changing work arrangements or reassignment to limit contact with the alleged perpetrator. These changes should occur in consultation with the affected worker. Access to victim support services is also important.

To stop victimisation, the Respect@Work Report recommends:²⁶

- Providing the worker with a nominated contact person, with whom they can discuss any concerns or report victimisation.
- Regularly monitoring the workplace to observe the way their co-workers are interacting with them.
- Continuing to ‘check in’ and communicate with workers at regular intervals after they have made or been involved in a report, to ask whether they are experiencing any victimisation.
- Looking for other signs that may indicate evidence of victimisation—for example workers having high levels of absenteeism or personal leave, or reduced performance—and discussing these with the workers involved.
- Reminding harassers and the workforce generally that victimisation is prohibited and sanctions will apply for those who engage in it.
- Disciplining any staff found to be engaging in victimisation and communicating appropriately with the workforce about this.

The Foster Review provides the SIT will provide any ongoing support to any MoP(S) Act staff and parliamentarian who has experienced or witnessed, been accused, or are managing or supporting someone in relation to a serious incident. It states that support will be available through the life of the complaint process. While the SIT process provides comprehensive wrap-around support, further clarification is required in relation to its role in prevention of victimisation and whether additional measures per the AHRC recommendations are required.

Recommendation 14: The CPSU endorses the victim-centric and trauma-informed approach adopted by the Foster Review. The model must be adaptive to needs with a view to continuous improvement informed by best practice. The CPSU recommends closer oversight and ‘check ins’ with complainants in relation to their experience of victimisation including changes to work arrangements to limit contact with alleged perpetrator where appropriate.

²⁵ Ibid.

²⁶ AHRC Respect@Work, 766.

IV. Raising awareness of workplace sexual harassment and bullying

Knowledge and capability

The Commonwealth Parliament and MoP(S) workplaces' capacity to effectively prevent and address bullying, sexual harassment and assault is dependent on a workplace wide understanding of the nature and impact of these behaviours, and the knowledge and skills to effectively identify, respond to and report these behaviours.

The CPSU endorses an approach to training based on best practice, including:

Unacceptable behaviours

- Training should clarify what does and does not constitute sexual harassment, including clarifying any misconceptions and reinforcing expected behavioural norms, including a discussion of 'grey areas'.²⁷ It is suggested that training requires modelling and rehearsal, such as by role-playing case studies to allow participants to practice interpersonal skills in challenging situations. This can increase both resolution handling skills and sensitivity to potentially sexually harassing behaviour.²⁸
- The US EEOC advises that sexual harassment training should also cover problematic yet lawful behaviours that could escalate to sexual harassment if left unchecked, as opposed to trying to teach participants the specific legal standards that make conduct 'illegal'.

Rights, responsibilities and response options

- Training must educate workers about their rights and responsibilities, including avenues for reporting sexual harassment or seeking assistance, the processes involved, and the potential outcomes, including possible corrective actions. Workers should also be informed about the level of confidentiality and support available.

Risk factors

- Sexual harassment training should address specific risks, particularly situational risks, and strategies to eliminate or minimise these risks. This should include training on specific ways in which trainees can respond to ethically questionable decisions or practices. This should further include a frank appraisal of the unique risks and hazards present in Parliamentary workplaces.

²⁷ Paula McDonald, Sara Charlesworth, Tina Graham, 'Developing a framework of effective prevention and response strategies in workplace sexual harassment', 53 *Asia Pacific Journal of Human Resources* (2015) cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 77.

²⁸ Ibid.

Gender equality and sensitivity

- Training should challenge gendered cultures by explicitly addressing gender-related cultural issues and reflecting on attitudes and social norms within the workplace that permit gender-related misconduct to occur.

Bystander training

- Bystander intervention training can change social norms by creating awareness, a sense of collective responsibility, a sense of empowerment and by giving people the necessary knowledge and skills to intervene. Bystander training is discussed below.

Skills for leaders, managers and supervisors

- Staff with supervisory responsibilities should receive additional training, including conflict management skills, communication and emotional skills to ensure managers can respond to complaints with empathy and actively listen rather than become defensive or dismissive.
- Training for leaders, managers and supervisors should develop practical skills to enable managers to identify problem behaviour and signs of harassment early and respond to different types of offensive behaviour.
- Training should also equip workers with a solid understanding of the available support services for staff and how to respond to complaints of sexual harassment in a fair and victim centred manner.
- Managers must understand how to report harassment up the chain of command and be reminded of their obligation to address sexual harassment even in the absence of a complaint.

Training attendance and engagement

Training must be compulsory and regular for all parliamentarians and staff, as well as in orientation programs.²⁹

Training should be interactive, tailored and use realistic case studies, employ a variety of styles (such as presentation of information followed by discussion of case-studies), and include content on gender equality. Training should be conducted by highly qualified and experienced trainers who are experts in the topic and can create a safe and respectful training environment. The capacity to prioritise training needs to be considered, and an environment fostered where training is prioritised.

²⁹ Paula McDonald, Sara Charlesworth, Tina Graham, 'Developing a framework of effective prevention and response strategies in workplace sexual harassment', 53 *Asia Pacific Journal of Human Resources* (2015), 45 cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 80.

Bystander interventions

Bystander interventions have been shown to emotionally support the person targeted, discourage the perpetrator from harassing in future and support a culture that condemns sexist behaviours and sexual harassment.³⁰

The AHRC is also positive about bystander initiatives, recognising research that bystander intervention can effectively prevent and reduce harm to victims and contribute to a more respectful culture.³¹ However, the AHRC also cautions about bystander intervention challenges and drawbacks. One challenge is the risk of retaliation in response to bystander action, with the AHRC's 2018 National Survey finding one in ten bystanders who took action after witnessing sexual harassment were ostracised, victimised or ignored by colleagues, while nine per cent were labelled as troublemakers and six per cent resigned after taking bystander action. The risk of retaliation may be exacerbated in occupations that are highly hierarchical and rely heavily on patronage and tightknit networks, such as in the parliamentary context.³² For these reasons, parliamentarians and senior staff must vocally support bystander interventions.³³

Recommendation 15: There must be implementation of mandatory, regular, face to face education and training on sexual harassment and discrimination for all parliamentarians, MoP(S) Act senior staff and staff. The education and training program must be delivered by independent experts consistent with best practice measures advocated by the AHRC, VEOHRC and other leading authorities. Not only must this training be mandatory, it must also be comprehensive and deal with these serious matters in appropriate depth. Parliamentarians, senior staff and managers must be provided with additional education and training with respect to inclusive leadership and their role in embedding a culture to prevent workplace sexual harassment and sex-based harassment and discrimination. They must be equipped with the skills necessary to support staff impacted by these harms.

30 VicHealth and Behavioural Insights Team, *Take Action: Empowering bystanders to act on sexist and sexually harassing behaviours*, Victorian Health Promotion Foundation, Melbourne (2019), 2 cited in Review of Sexual Harassment in Victorian Courts and VCAT, Appendix 1 Summary of interventions to prevent and respond to sexual harassment in courts, 84.

31 AHRC Respect@Work, 748

32 Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (2018) 97 as cited in AHRC, Respect@Work, 749.

33 AHRC Respect@Work, 750 citing VicHealth.

V. Ensuring accountability

Effective monitoring and evaluation

The transformational change needed to address systemic bullying, sexual harassment and assault in an ongoing manner requires resourcing, including specialist expertise, dedicated staff and time. It requires on-going monitoring and evaluation of the effectiveness of measures to prevent and respond to bullying, sexual harassment and assault. Monitoring and evaluation must include worker and union feedback. Monitoring and evaluation must be done in accordance with recommendations of regulators, the human rights commission and other key stakeholders.

To better understand the nature of workplace sexual harassment and inform the development and implementation of sexual harassment prevention and response initiatives, the organisation must gather information using a variety of methods. It is also important to monitor and evaluate initiatives to determine their effectiveness, identify any unintended consequences and inform changes to existing initiatives or the design of new ones.

Given the significant under-reporting of workplace sexual harassment and bullying, the organisation must look beyond the number of reported sexual harassment incidents to understand the prevalence of the issue. This may be obtained through informal discussions with workers; exit interviews; employment metrics such as rates of staff attrition and absenteeism, EAP and SIT counselling service trends; anonymous and annual staff engagement surveys; independent complaints mechanism. The organisation must also develop measurement and evaluation for reporting, and the under reporting of incidents (against national averages) should be treated in and of itself as a risk.

In addition, procedures need to be established for collecting and maintaining the data required to evaluate the performance of the complaint process.

Recommendation 16: Appointment of individual(s) with specific expertise in diversity and equity and prevention of sexual harassment with responsibilities to also report on relevant priority measures and progress, and identify areas for further action.

Recommendation 17: Development and implementation of an annual anonymous survey to understand the experiences of MoP(S) Act employees and monitor progress on prevention of workplace sexual harassment, sex-based harassment and bullying. The full findings must be available to all MoP(S) subject to confidentiality and privacy requirements.

Recommendation 18: To better understand the nature of workplace sexual harassment and inform the development and implementation of sexual harassment prevention and response initiatives information must be gathered using a variety of methods. Recommended options include informal discussions with workers; exit interviews; employment metrics such as rates of staff attrition and absenteeism, EAP and SIT counselling service trends; anonymous and annual staff engagement surveys;

independent complaints mechanism. There must also be measurement and evaluation for reporting, and the under reporting of incidents against national averages.

Recommendation 19: The Independent Review should feed into any review of the Foster Review's proposed independent complaint mechanism. There must be a review of the mechanism at 6-, 12- and 18-month intervals while it is being bedded down. There must be an audit of the Independent Inquiry's recommendations and the effectiveness of measures implemented within 2 years of the Independent Review being handed down. The audit report must be available to the public.