



Submission to the Independent Review into Commonwealth Parliament Workplaces

Overview

Immediation welcomes the opportunity to contribute to Australia's Sex Discrimination Commissioner's review into Commonwealth Parliament Workplaces.

Immediation's work is centred around a philosophy of prevention above litigation for the cost in time, cost and most importantly, human trauma the latter produces. To this end we are a collection of solution architects, experts in the legal field, workplace governance and technical engineers who design early dispute resolution systems.

This submission will contain three parts: (1) who we are; (2) lessons from the work we have done; and (3) how these can be applied to the Australian Commonwealth Parliamentary Workplaces in order for these offices to lead a future direction toward human centred design and equality in order to prevent bullying, sexual harassment and sexual assault.

In doing so it is our intention to inform the following objects of the Independent Review:

- Consider best practice in the enabling of safe and respectful parliamentary workplaces, including national and international approaches;
- In the context of workplace bullying, sexual harassment and sexual assault, consider:
 - drivers in parliamentary workplaces, including the workplace culture, characteristics and practices that may increase the risk;
 - legislative, cultural, structural or other barriers to reporting incidents in parliamentary workplaces; and
 - current response and reporting mechanisms in parliamentary workplaces;¹

Ultimately this submission will conclude that a dispute resolution system which affords transparency, accountability, independence and anonymity be procured at the conclusion of this review.

Who we are

As was articulated by Tanya Plibersek in relation to the topic of this review on *7:30 Report* (22 March 2021), current justice pathways deter victims from coming forward. This is because they rarely meet the victim's justice needs; defined by the Centre for Innovative Justice as 'voice; validation; information; accountability; relationships; prevention; and resolution.'²

Immediation Pty Ltd was founded in 2017 with a mission to use technology to facilitate justice, alleviate pressure on public institutions and create real avenues of resolution for complaints by aiming to resolve disputes in a more meaningful and efficient way.

The Immediation team holds collective expertise in the provision of unique solutions for access to justice, dispute resolution and technology particularly at government level and of a sensitive nature.

The Immediation Team

The Immediation management includes:

- **Laura Keily, Founder and Managing Director** - Laura is a member of the Victorian Bar with 20 years' legal experience as a top-tier corporate lawyer including at Blake Dawson Waldron (Melbourne) and Slaughter and May (London), qualified company director, in-house counsel, barrister and arbitrator. Laura started Immediation on the

¹ Independent Review into the workplaces of Parliamentarians and their staff, 'Terms of Reference' accessed at <https://humanrights.gov.au/sites/default/files/2021-03/Independent%20Review%20into%20workplaces%20of%20Parliamentarians%20and%20their%20Staff%20-%20Terms%20of%20Reference.pdf>

² Centre for Innovative Justice, *Submission to the Victorian Law Reform Commission's Inquiry into Improving the Response of the Justice System to Sexual Offences* (Victoria, January 2021, access at <https://cij.org.au/cms/wp-content/uploads/2018/11/cij-submission-to-vlrc-january-2021.pdf>) p6-7. For further information please see the enclosed short document that provides a definition of restorative justice and processes which may be relevant to the Independent Review.

ethos of technology being able to level the uneven playing field of dispute resolution, with a particular passion for women people able to succeed in leadership roles. Making this particular Independent Review of keen interest. Laura has won multiple awards for her innovation including the 2021 Australasian Lawyer 'Most Influential Lawyer' Award in the Changemaker category and an award from the Womens' Barristers Association for her work in pioneering online mediation.

- **Michael Heron QC, Chairman of Immediation New Zealand** - Michael Heron QC, a barrister and the former Solicitor-General of New Zealand, is Chairman of Immediation New Zealand.
- **Nick Northcott, Executive Director, Chief Strategy Officer** - Formerly of KPMG in Europe and Australia, Nick is an experienced commercial director who has worked across a range of industries and technology companies. Nick is a qualified workplace mediator and an organisational change specialist with over 20 years' experience across Australasia, US, UK and Europe.
- **Rebecca Ross, Justice Partnerships Lead** - Rebecca is a lawyer with substantial criminal law and court administration experience; most recently the Principal Registrar of the Northern Territory Local Court. Rebecca has extensive experience in Access to Justice and public service delivery models; particularly in sensitive and complex matters in courts, tribunals and government complaints.
- **Mike Schuman, Chief Information Security Officer (CISO) and Acting CTO** - Mike has experience in a wide variety of environments including large corporates such as BHP, Rio Tinto, Woodside, Government and the WA Police.
- **Kelly Hughes, Head of Legal Innovation** - Kelly has more than 15 years of experience as a commercial litigator. Kelly designs dispute resolution systems and then assists our dispute resolution organisations to successfully on-board the Immediation technology.

Components of our Dispute Resolution Systems

We specialise in the creation of streamlined digital environments which bring dispute resolution online, with three key features:

1. Secure Dispute Resolution Platform

Immediation has created a confidential online dispute resolution Platform, providing specialised virtual negotiation, mediation and hearing technology to dispute resolution institutions, courts, tribunals and lawyers.

At the core of the offering is a specialised video-conferencing Platform, with advanced tools designed by dispute resolution experts specifically for industry purposes (including tools to

assist negotiation, mediation and arbitration, which include, for example co-drafting tools, advanced documentary capabilities and an exclusive blind-bidding tool for financial disputes).

All data on the Immediation Platform remains in Australia, subject to advanced security measures. The database and all uploaded documents are encrypted at rest.

2. System Design: customised workflow solutions

We utilise our expertise as barristers, arbitrators, mediators, solicitors, court administrators and in-house counsel to bring together specialist offerings in complaint and dispute resolution system design.

The complaint and dispute resolution system may include data intake, questionnaires, claims and counter-claims, documentation upload etc.

Our expertise extends to designing systems for (and executing) triage, early facilitated resolution, mediation and arbitration. Once designed we implement the system in a customised workflow solution on the Platform.

As noted above, we have recently been contracted to design and provide specialised workflow solutions for two major New Zealand Government Ministries (one for landlord/tenant disputes and for sports complaints).

3. Panel Members

Immediation also offers dispute resolution services, using a Panel of industry experts who provide mediations, expert determinations and arbitrations on the Platform. With the New Zealand contracts, for example, once we have set up the customised system we also implement the dispute resolution services, including providing the specialist mediators and arbitrators when required in a particular field.

The Immediation Panel of independent practitioners comprises over 100 best-in-class mediators, legal experts and arbitrators, including 6 former Australian judges (among them former Chief Justice of Victoria, The Hon. Marilyn Warren AC, and former Chief Justice of Western Australia, The Hon. Wayne Martin AC QC).

Commentary on best practice in enabling safe and respectful workplaces and their barriers, drivers and mechanisms using current examples:

Lessons Learnt From Our Work

Case Study: Sports and Recreation Complaints and Mediation Service

Immediation specialises in architecting new and innovative solutions which assist complainants to bring forward concerns to an independent body, to have them sensitively handled and, if possible, resolved using culturally appropriate and safe methods.

A comparable case study design to the Commonwealth Parliamentary workplaces is that of SRCMS for the New Zealand Government. We were commissioned to create an independent complaints and mediation service for Sports NZ³, whereby any member of the public can bring forward an issue relating to sport or active recreation in New Zealand (at all levels from high performance/elite sport through to community).

It was critical that the service was authorised by, but *independent* from, the New Zealand Government. This includes that the service was not operated by the New Zealand Government or a government agency, so that participants could have faith in the independence, credibility and safety of the system.

The vision for this service is to enhance integrity in public trust in sport and recreational activities in New Zealand to ensure greater participation and representation. We have launched the service in New Zealand, leveraging our technology and our expertise, and are receiving and handling significant numbers of complaints.

Complaints can be made anonymously either by technology or by phone, or alternatively full details can be provided for the purposes of resolution. All calls are received by lawyers from our team or by independent private former detectives who are trained to receive whistleblowing calls. Complaints are handled in accordance with carefully defined protocols and taken through a process flow of triage.

We do not provide information or data about disputes to Sports NZ other than at a very high and de-identified level.

In terms of the SRCMS, experience of the service has shown that if sporting bodies do not have robust and effective policies and systems to respond to inappropriate behaviour, it is more than likely that participants in those sports will feel unsafe and unsupported, which will ultimately

³ Can be accessed at <https://www.sportsmediationservice.org.nz/>

lead to negative sporting experiences. Our Service has been able to provide a safe, independent and trusted reporting line for participants who do have negative experiences. It is vital that they have this avenue to appropriately voice their concerns and find some remedy/redress.

How these can be applied to the Australian Commonwealth Parliamentary Workplaces

As illustrated by the case study above our work has led us to discover that there are three pillars to removing the barriers to safe and respectful workplaces:

- Understanding where to lodge the complaint
- True independence and accessibility of the complaint body from both government and the organisation
- Ability to afford anonymity

These can also be observed in the commentary from the whistleblowers of the Parliamentary Workplaces in the public domain, with phrases such as 'not knowing who to tell' or 'everyone knowing about it' as well as grave concerns for career development and the like if they did come forward.

These three pillars are the drivers of silence when it comes to lodging complaints and in our experience once they are removed people feel much more willing to come forward when needed.

We have addressed these in our work though:

- providing publicly accessible landing pages hosted by Immediation as the independent body with FAQs and factsheets to assure people as to the processes that will be undertaken;
- an integration with Whispli whistleblowing platform tackling encrypted and absolute anonymity; and
- the integration of a dedicated phone line and possibility for wholly online alternative dispute resolution for appropriate cases.

In our experience people may visit the landing page a number of times before lodging a complaint and the availability of this information gives people the comfort of doing this a number of times before reaching out.

Of particular importance in providing these services to governments we have found that people reaching our services did not feel comfortable making a complaint to a government body given the optics of government being a homogenised service.

We note a number of our government clients raise concerns about providing an anonymous option for fear that it will lead to an influx in vexatious complaints. We have not found this to be the case in any case study to date.

Further best practice experience has been the operation of the telephone line with trained dispute resolution practitioners and having sufficient referral partnerships in place to ensure no one accessing the service is made to feel they reached a dead end. To this end we establish partnerships with specialists in child abuse, investigation, restorative practice and domestic violence based on the situation at hand. This would also be best practice for Commonwealth Parliamentary workplaces.

Recommendation:

A dispute resolution system which affords transparency, accountability, independence and anonymity be procured at the conclusion of this review.

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July 2021

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