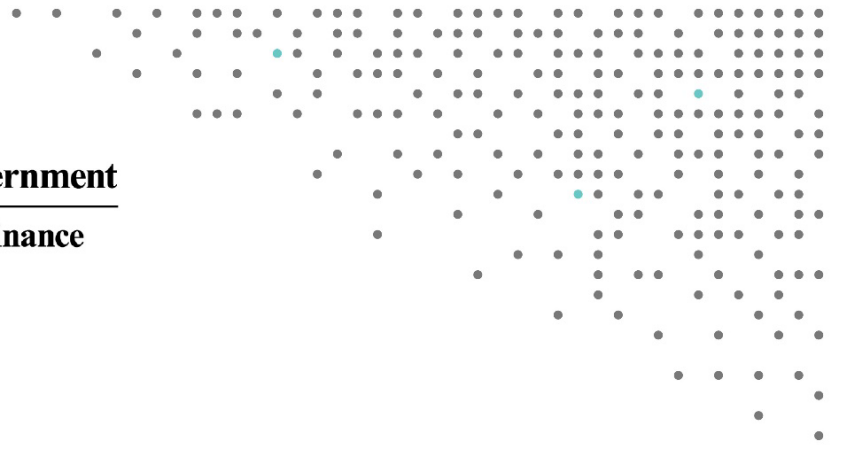




Australian Government
Department of Finance



Submission to the Independent Review into Commonwealth Parliamentary Workplaces

2021



1 – Introduction

The Department of Finance (Finance) welcomes the Independent Review into Commonwealth Parliamentary Workplaces (the Review).

The Review is an important opportunity to ensure Commonwealth parliamentary workplaces are safe places to work for all individuals, including current and future parliamentarians and *Members of Parliament (Staff) Act 1984* (MOP(S) Act) employees.

In this submission, Finance draws on our roles, responsibilities and experiences that are of particular relevance to the focus of the Review on:

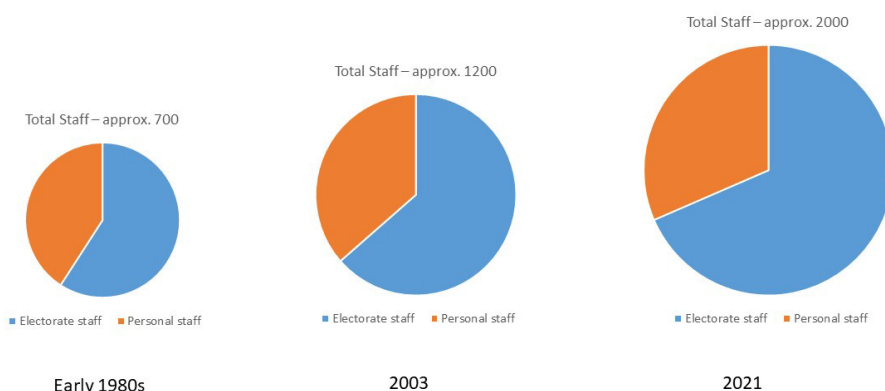
- best practice in the enabling of safe and respectful parliamentary workplaces, including national and international approaches
- the adequacy of current supports available to enable a safe and respectful workplace, in particular preventing and responding to workplace bullying, sexual harassment and sexual assault
- legislative, cultural, structural or other barriers to reporting incidents in parliamentary workplaces and current response and reporting mechanisms
- the extent to which current legislation, policies, processes and practices promote or impede safe and respectful workplaces, including the operation of the MOP(S) Act.

Finance is committed to working with the Australian Human Rights Commission (AHRC), parliamentarians, MOP(S) Act employees and other stakeholders to identify, develop and implement legislative, policy and process enhancements to ensure parliamentary workplaces are safe and respectful.

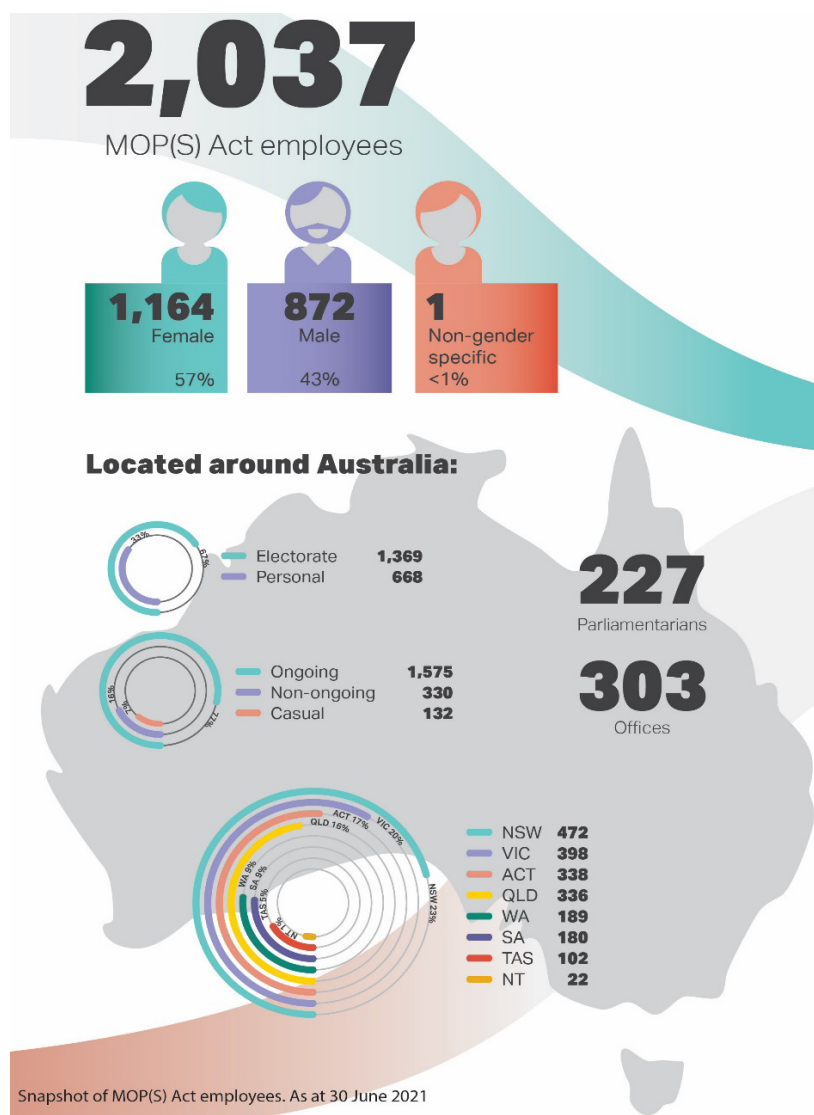
Since the Government's announcement of the Review, Finance has implemented or commenced a number of policy and process enhancements to services and supports offered to parliamentarians and MOP(S) Act employees. These are set out in the Appendix to this submission.

2 – Context and demographics

Over the last 50 years, the Commonwealth parliamentary workforce has grown steadily. Today there are 227 parliamentarians who employ approximately 2,000 employees under the MOP(S) Act.¹ The number of comparable employees was approximately 700 in the early 1980s and almost 1,200 in 2003.²



Parliamentarians and their employees are geographically dispersed working across Australia, including electorate, office-holder, satellite and privately funded offices, as well as in the Australian Parliament House. Below is a snapshot of the workforce.



¹ Figures do not include former Prime Ministers or their MOP(S) Act employees.

² Senate Finance and Public Administration References Committee, Parliament of Australia, *Staff employed under the Members of Parliament (Staff Act) 1984* (2003).

Some key factors about the workforce are:

- The majority of MOP(S) Act employees work in offices outside Canberra, including in regional and rural locations. Service delivery takes this into account.
- The workforce includes staff who are predominantly based in electorate offices and those who spend time between offices, including travelling interstate to work at Australian Parliament House.
- While a majority of MOP(S) Act employees are women (57 per cent) they are more likely to be employed in lower classifications.
 - For example, in the classifications equivalent to the Senior Executive Service in the APS, men occupy around 70 per cent of these positions.
- The number of employees working in offices can vary considerably – from one employee to many.
 - This depends on factors such as the role of the employing parliamentarian (a Minister or other office holder may receive additional staff), the number of Commonwealth-funded offices provided to the parliamentarian (geographically large electorates may have more than one electorate office) and the location of offices.

While the overarching frameworks for offices are the same (refer to section 3), the structure and management of each office is a matter for each parliamentarian, and in some instances their senior staff, and reflect the particular circumstances of that office.

As outlined in the *Review of the Parliamentary Workplace: Responding to Serious Incidents* (Foster Review), the responsibilities of parliamentarians and their employees can result in a fast-paced, high-intensity culture with demanding workloads, significant amounts of travel, extended periods away from friends and family, and persistent media scrutiny.

Recent reviews of parliamentary workplaces across domestic and international jurisdictions (including South Australia, New South Wales, New Zealand and the United Kingdom) have identified a range of common themes:

- Parliamentary workplaces are unique with a high-intensity culture and the type of work and power-dynamics that are risk factors for bullying and harassment.
- There can be significant barriers to making complaints, particularly due to political loyalties, trust in the complaints process and the potential real or perceived negative career impacts resulting from making a complaint.
- There can be a culture of minimising, normalising and keeping quiet instances of bullying and harassment.
- There can be a lack of accountability and enforcement mechanisms where inappropriate behaviour occurs, particularly for parliamentarians.

3 – Regulatory Frameworks

A range of legislation applies to employment of parliamentarians' staff. This includes the MOP(S) Act, the *Fair Work Act 2009* (FW Act), the *Work Health and Safety Act 2011* (WHS Act), and the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

The interaction of these laws can be confusing for parliamentarians and MOP(S) Act employees and may not be the most conducive to operating a modern workplace. In the context of inappropriate behaviour, such as bullying and harassment, the current frameworks separate human resources policy, advice and support from decisions about employment, or can impose obligations or duties without corollary powers to discharge those duties.

MOP(S) Act

The MOP(S) Act is the legislative framework for parliamentarians and office holders to employ staff on behalf of the Commonwealth, with employees directly accountable to their employing parliamentarian. Under the Act:

- the Prime Minister can determine arrangements under which parliamentarians may employ staff (including the allocation of electorate officer and personal employee positions), and their terms and conditions of employment
- there is a standing determination allocating four electorate officer positions to each parliamentarian (with additional positions allocated to members of the House of Representatives in larger electorates that qualify for additional Commonwealth-funded offices)
- the Prime Minister allocates all personal employee positions to parliamentarians with additional positions dependent on the parliamentarian's role, for example to assist a Minister carry out their Ministerial duties.

Each parliamentarian determines who they employ, the roles and functions of employees and employment cessation of staff.

Parliamentarians are responsible for setting the workplace culture and employment practices (including WHS) alongside other duty holders, directing the day-to-day work of employees and dealing with staffing issues as they arise. This includes:

- ensuring that positions are filled in accordance with office allocations
- managing office structures (i.e. staffing levels, reporting lines, and hierarchy)
- managing performance.

As noted above, this means that each office may operate differently, particularly in relation to determining the roles and responsibilities of individual staff.

WHS Act

The WHS Act imposes duties and obligations on 'persons conducting a business or undertaking' to take all reasonable steps to eliminate or minimise WHS risks, including workplace bullying and harassment.

Parliamentarians, MOP(S) Act employees and others who work in Commonwealth parliamentary offices, have a duty to take reasonable care that their behaviour does not affect their own health and safety, or that of other persons.

This means both Finance and the employing parliamentarian have WHS responsibilities.

Operating context

As the employer, each parliamentarian is responsible for all employment decisions including the day-to-day work of employees and ensuring appropriate employment practices. Finance provides a range of human resources functions, such as payroll services, employment advice and guidance on WHS issues (refer to Section 4).

While Finance represents the Commonwealth in all MOP(S) Act employment related legal proceeding, parliamentarians set workplace culture and exercise employment powers such as engagement, direction of duties or termination of MOP(S) Act employees. Although Finance can and does make recommendations concerning the conduct of employees (e.g. to undertake training or adjust workplace behaviour), ultimately only the employing parliamentarian can make decisions about their staff.

This interaction can result in MOP(S) Act employees being unclear as to whether Finance or their parliamentarian is their employer and whether Finance has powers to take action regarding employment matters.

In addition, there is a perception that parliamentarians can terminate the employment of staff at will and that protections under the FW Act or anti-discrimination legislation do not apply – this is not the case. MOP(S) Act employees have the same range of protection mechanisms available to them under the FW Act as employees in other industries, including unfair dismissal or general protection claims, and claims for stop bullying orders. However, there may be cultural or other barriers to reporting incidents of inappropriate behaviour.

The MOP(S) Act has now operated for 37 years with minimal change. During this time there has been new public service legislation, significant reforms to industrial relations and work health and safety law, and anti-discrimination law. There is opportunity for the Review to consider whether the MOP(S) Act remains fit for purpose to underpin the operation of a modern parliamentary workplace.

The existing WHS framework creates shared and overlapping obligations and duties in parliamentary workplaces. This can result in confusion regarding who can or should take action to address WHS risks and/or who has the power to take such action. This lack of clarity, including the potential for different duty holders having conflicting views about how to address a particular WHS risk, may work to impede building a safe and respectful workplace.

In developing this submission, Finance met with a number of state governments to better understand other employment and WHS frameworks which govern the employment of state-based electorate and parliamentary staff. It is clear that there is no consistent approach across jurisdictions, nor necessarily a perfect system that prevents all WHS incidents. However, several jurisdictions have mandatory training for staff, have established codes of conduct for parliamentarians and/or staff, or have empowered an entity other than individual parliamentarians to employ staff or otherwise take action in response to misconduct by employees.

Opportunity

The interaction of the current MOP(S) Act employment and WHS legislative frameworks may act as a barrier to building safe and respectful parliamentary workplaces.

There is scope to more clearly identify and differentiate the roles of administrators, parliamentarians and senior MOP(S) Act employees who supervise staff to enable a best practice approach to prevent and respond to WHS risks.

Legislative frameworks could be examined to ensure that they promote modern workplace practices, and that any individual or entity with legislative obligations has the powers necessary to discharge those obligations.

4 – Administration of the parliamentary workplace

There are a number of agencies that have responsibilities for, and are operating within, parliamentary workplaces.

Human resources for MOP(S) Act employees

MaPS administers the provision of non-travel related work expenses and services to parliamentarians and MOP(S) Act employees. It also administers the employment framework for staff of parliamentarians and provides a number of HR and support services, including:

- payroll and associated services for approximately 2,000 MOP(S) Act employees
- human resources policy, including advice on the employment framework and employment matters to both parliamentarians and MOP(S) Act employees
- induction training for new parliamentarians and information and resources for new ongoing employees
- education and training, including the Professional Development Program for MOP(S) Act employees and ad-hoc training including on the request of a parliamentarian or MOP(S) Act employees.

Human resources for parliamentarians

The Department of the House of Representatives and the Department of the Senate administer remuneration (including payroll), training and support to parliamentarians.

Travel

The Independent Parliamentary Expenses Authority administers travel-related work expenses by parliamentarians and MOP(S) Act employees, and reporting and auditing of both travel and non-travel related work expenses.

Information and communications technology

The Department of Parliamentary Services provides information and communications technology (ICT) equipment and services in Australian Parliament House and in parliamentarians' Commonwealth-funded offices.

Security at Australian Parliament House

The Presiding Officers have allocated overarching responsibility for security policy and management of Australian Parliament House to the Department of Parliamentary Services.

Portfolio assistance

Portfolio departments may provide certain ICT equipment and services for the staff of Ministers, Assistant Ministers and Presiding Officers (including computers, laptops, mobile phones and tablets), and ad-hoc training for personal employees of Ministers and Assistant Ministers.

Workplace injury, rehabilitation and workers' compensation claims

Comcare, as the national authority for work health and safety and workers' compensation, administers compensation and rehabilitation claims by parliamentarians and MOP(S) Act employees, including under the SRC Act.

WHS services and support provided by MaPS

MaPS oversees broader WHS system administration (e.g. the WHS Committee, WHS roles in each parliamentary office and the Staff Assistance Officer Network³) and provides a range of services to parliamentarians and MOP(S) Act employees, such as:

- the MaPS Help Desk, which is the first point of contact for most MOP(S) Act employees and parliamentarians for advice on HR and WHS matters
- administration of the *Workplace Bullying and Harassment Policy*, including complaints handling and issues resolution
- case management, including access to early intervention to prevent workplace injuries and illness, and service referrals
- facilitation of workers compensation claims and workplace rehabilitation services
- the Employee Assistance Program (EAP) and the NewAccess Workplaces program (a mental health coaching service)
- the Parliamentary Support Line (1800 APH SPT) – a free, independent and confidential service to provide information, counselling and referrals to support current and former MOP(S) Act staff, and those who have experienced a serious incident in a Commonwealth parliamentary workplace
- other supports for parliamentary offices, including assistance to improve how offices function (e.g. role and responsibilities, reporting lines and workflow).

The division of functions between MaPS and the other entities has generally developed in response to particular issues or sensitivities, or otherwise reflects long-standing arrangements.

Despite the potential complexities of the regulatory and administrative frameworks, the various agencies work well together to ensure the current system supports parliamentarians and their staff. However, the number of entities providing services and support in parliamentary workplaces, including in some instances for similar functions, can result in service fragmentation and work against a seamless, efficient, client-focused delivery of services.

Finance continues to work with relevant agencies and to review its processes to minimise service delivery risks and support individual parliamentarians or employees identify the most appropriate channel to seek assistance or raise concerns.

Opportunity

Given the number of agencies operating in parliamentary workplaces it may not always be clear to parliamentarians and MOP(S) Act employees where they should seek assistance or raise concerns. Simplifying the functional split of responsibilities across agencies has the potential to significantly improve service delivery to clients.

³ Staff Assistance Officers are MOP(S) Act employees trained to provide information and support to other employees regarding bullying and harassment in the workplace.

5 – Policy and processes for responding to inappropriate behaviour in the workplace

For over three decades, Finance (or its predecessor agencies) has supported parliamentarians and MOP(S) Act employees in relation to HR and WHS issues. Each year the MaPS HR Help Desk responds to approximately 5,000 calls ranging from payroll and employment contracts to complex HR or WHS advice.

The *Workplace Bullying and Harassment Policy*⁴ guides and assists parliamentarians and MOP(S) Act employees understand their obligations, which are underpinned by the WHS Act, and the processes to prevent and respond to bullying and harassment. It also informs Finance’s response to inappropriate workplace behaviour spanning prevention, response and support.

In most cases, issues of inappropriate workplace behaviour are resolved at the local level through self-management, facilitated discussions or mediation and with all parties having a clear sense of agreed outcomes and actions without the need for an independent investigation. In each case Finance offers support to the complainant and the other parties involved.

While an incident of bullying and harassment may involve a range of parties, including constituents and external stakeholders, the policy framework is primarily focussed on incidents where the alleged perpetrator is either a parliamentarian or a MOP(S) Act employee.

Prevention

Parliamentarians, MOP(S) Act employees and Finance share responsibility for providing a safe and healthy workplace and for supporting employees to access training. Effective induction and ongoing education and training supports parliamentarians and MOP(S) Act employees understand how they can prevent and respond appropriately to bullying and harassment.

Induction training provided by Finance to new parliamentarians includes information on their role and responsibilities as an employer, their WHS obligations, the role of Finance and the range of support services available.

Recruitment and induction processes reinforce behavioural values, including that bullying and harassment will not be tolerated and that swift action will be taken to address inappropriate behaviour.

As the employer, each parliamentarians is responsible for inducting new MOP(S) Act employees with support from WHS officers. To assist, Finance contacts ongoing employees as part of on-boarding processes, and outlines how to access information or seek advice, including about safe and respectful workplaces.

Finance also provides a range of education and training programs, including specific training on bullying and harassment. Around 17 per cent of MOP(S) Act employees completed bullying and harassment training in 2020-21. Less than 5 per cent of parliamentarians completed bullying and harassment training over the last two years.

Since the onset of the COVID-19 pandemic, training through the online MOP(S) Learning Platform has been emphasised, including eLearning, online workshops and face-to-face virtual training. All parliamentarians and MOP(S) Act employees can access the platform.

⁴ Refer to the Appendix for information on updates to the Policy.

The overarching goal has been to make training available to be completed by parliamentarians and MOP(S) Act employees when it is convenient for them. Finance also provides training to MOP(S) Act employees who perform specific roles (e.g. WHS officers and Staff Assistance Officers).

As recommended by the Foster Review, Finance is implementing a safe and respectful workplaces education program for parliamentarians and MOP(S) Act employees. The program will provide:

- practical advice on responsibilities and rights in relation to workplace health and safety, sex discrimination and Fair Work legislation
- guidance on how to recognise and respond to bullying and harassment in the workplace, in particular serious incidents, including sexual assault, sexual harassment and serious and systemic bullying and harassment, whether as managers, staff or bystanders
- strategies to promote a safe and respectful workplace.

The Government recently announced that the safe and respectful workplaces education program will be mandatory for all Government Ministers and staff and that it is expected that all parliamentarians and their staff will undertake the training when it is available.

Finance also continues to work to enhance and tailor induction, training and guidance to better meet the needs of different offices and to further embed the safe and respectful workplaces education program. A range of enhancements are outlined in the Appendix, including a new Safe and Respectful Workplace Policy and standalone Sexual Harassment Policy and the development of a new education and learning framework.

Opportunity

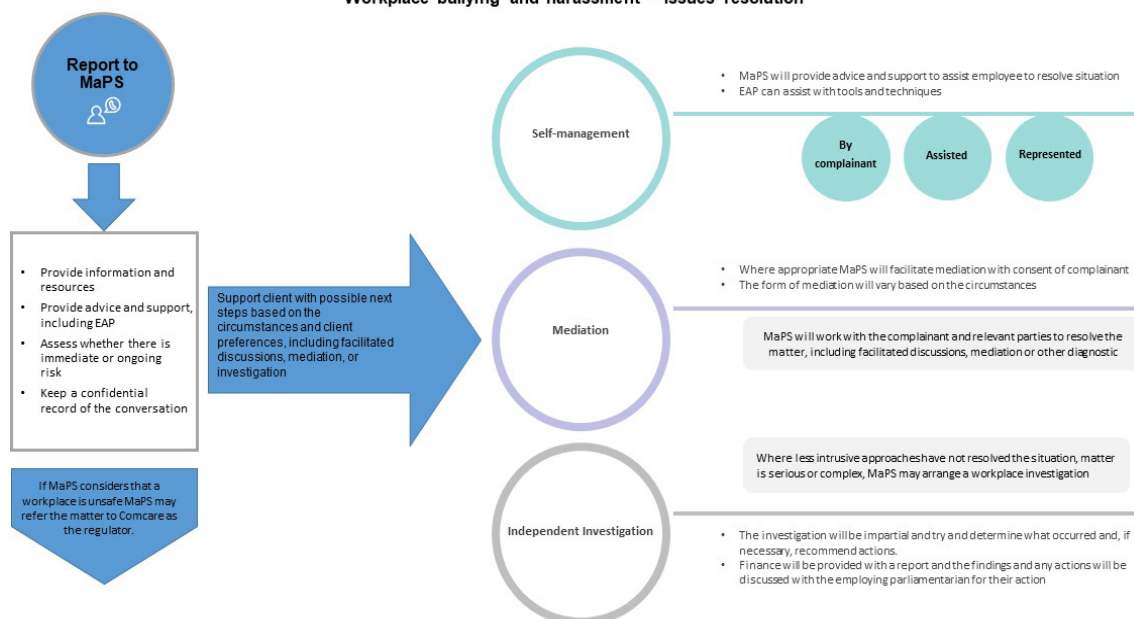
The Review may wish to examine best practice with regard to education and training, including how to drive greater engagement with training and whether certain programs should be mandated to deliver lasting cultural change and improvements in workplace practices.

Responding and Support

Where there are allegations of inappropriate behaviour in the workplace, the *Workplace Bullying and Harassment Policy* provides options for resolution. The underpinning objective of the Policy is, wherever possible, to preserve the employment relationship, while providing support to all parties. As noted above, wherever possible, Finance works with the complainant to resolve issues at the local level through practical measures.

Finance case managers provide confidential advice and tailored support on the management of workplace grievances and complaints. Every effort is made to support the complainant and resolve the issue in the manner they choose, whilst according procedural fairness to other parties. The diagram below sets out resolution options under the Policy.

Workplace bullying and harassment – issues resolution



Under the current framework, only employing parliamentarians have the authority to take action against a MOP(S) Act employee in response to inappropriate workplace behaviour, with Finance able to provide support, advice, suggestions or recommendations.

In relation to the matters that are brought to Finance’s attention, this approach has proven able to resolve the majority of matters. However, Finance is aware that some MOP(S) Act employees are hesitant to raise complaints with Finance for a range of reasons or that some are frustrated that Finance cannot take direct action. This is challenging in a parliamentary environment, where parliamentarians are elected representatives.

Finance is working with the Department of the Prime Minister and Cabinet to implement a new independent complaints body for ‘serious incidents’. One of the objectives is to ensure that clients experience a ‘no wrong door’ approach and are provided with seamless and trauma-informed care and support.

In addition to dedicated case management and conflict resolution processes, Finance provides a range of support, irrespective of the complaint process an employee wishes to pursue. This includes early intervention, ongoing counselling and other wellbeing supports, referrals to other appropriate agencies and rehabilitation and workers’ compensation processes. These supports are available regardless of the alleged perpetrator, including where the subject of a complaint is a constituent.

Finance is examining how it can improve case management and support. Initiatives under development are set out in the Appendix.

Opportunity

The proposed independent complaints body for ‘serious incidents’ will strengthen the response to complaints of inappropriate behaviour.

The Review may wish to examine the success of other jurisdictions within Australia and internationally in adopting formal standards of behaviour for all parliamentarians or all MOP(S) Act employees, including proportionate consequences in the case of breaches.

Conclusion

Building a safe and respectful workplace culture is fundamental to preventing workplace bullying or harassment.

There is scope to improve the complex legislation, policy and service delivery frameworks that operate in relation to parliamentary workplaces.

As Finance progresses a range of policy and service enhancements, it looks forward to the Review identifying other legislative, policy or service improvements to enable a best practice approach to prevent and respond to workplace bullying, sexual harassment and sexual assault.

Building and maintaining safe and respectful parliamentary workplaces will require leaders to set expectations and communicate and model respectful behaviours, supported by a sustained and collaborative effort between parliamentarians, MOP(S) Act employees, Finance and other administrators, political parties, unions, and others who work in those settings.

Appendix: Recent policy and service enhancements

Over the last two years Finance has implemented a number of improvements to WHS services. This includes increasing the number of case managers and expanding supports such as the early intervention and the NewAccess Workplaces programs.

In 2021 Finance has implemented or commenced a number of further initiatives to improve services and supports to parliamentarians and MOP(S) Act employees.

A summary of these initiatives are set out below.

Implemented

Parliamentary Support Line

A free, independent and confidential 24/7 Parliamentary Support Line 1800 APH SPT (1800 274 778) provides current and former MOP(S) Act employees, and those who have experienced a serious incident in a Commonwealth parliamentary workplace, access to trauma-informed counsellors.

The service provides information, counselling and referrals in response to sexual violence, assault, sexual harassment or serious incidents in the workplace.

Employee Assistance Program

Additional face-to-face counselling services is provided at Australian Parliament House during sitting weeks (where possible due to COVID-19).

New MaPS website

A new MaPS website provides dedicated information on safe and respectful workplace cultures.

The site provides practical information, guidance and tools for managers and employees regarding inappropriate behaviour in the workplace, including action that can be taken, how to access supports, early intervention and the services and supports that can be provided by case managers.

Continuing work

New Safe and Respectful Workplace Policy and standalone Sexual Harassment Policy

A new Safe and Respectful Workplace Policy and support materials for MOP(S) Act employees will replace the existing *Workplace Bullying and Harassment Policy*. This will have a greater focus on how to build and embed a positive workplace culture where staff feel safe to raise issues of concerns.

A standalone Sexual Harassment Policy and support materials for MOP(S) Act employees will ensure stronger visibility of what is unacceptable behaviour within a workplace, how individuals can access support, report complaints and how bystanders can take action.

Simplified pathways for support

New simplified pathways for support are being developed to reduce the number of entry points for parliamentarians and MOP(S) Act employees to seek advice.

Enhanced case management

An enhanced case management model will improve engagement and support to clients seeking assistance. In addition to expanding the number of case managers, new best practice processes will provide better client supported, with more proactive engagement with parliamentary offices and reach out to other staff members. This will include a more structured follow-up process to address WHS risks.

Safe and respectful workplaces education program

A new safe and respectful workplaces education program is being finalised. An approach to market for a suitable organisation(s) to deliver the education program is underway. The training is expected to commence in September 2021.

Review of existing training and education programs and the development of a new education and learning framework

A review of existing training and education programs, including the types and modes of delivery for induction, training and education will be completed in the coming months.

In consultation with parliamentarians and MOP(S) Act employees, Finance will design a new education and learning framework to ensure their training and education needs are met. The new framework will include regular evaluations and seek feedback from parliamentarians and MOP(S) Act employees.

Additional guidance and toolkits

Additional guidance and toolkits are being developed to assist parliamentarians and MOP(S) Act employees. This may include a series of fact sheets with case studies to assist in building a safe and respectful culture, manage performance issues and a toolkit on how to address complaints within the office.

Finance is also examining how it can work more closely with political parties around common WHS areas of interest to promote greater consistency.