

**Submission  
No 6**

## **INQUIRY INTO REVIEW OF INDEPENDENT COMPLAINTS OFFICER SYSTEM (2023)**

**Organisation:** Department of Parliamentary Services, NSW Parliament

**Date Received:** 12 April 2024

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D24/017249

Date: 11 April 2024

# Review of the Independent Complaints Officer System

## Introduction

Thank you for the opportunity to make a submission into the review of the Independent Complaints Officer system.

While the genesis of the independent complaints officer arose from the Privileges Committees of the Houses, the timing of its introduction largely aligned with Elizabeth Broderick's review into bullying, harassment and sexual harassment in the NSW Parliament (the Broderick Review).

Outlined in this submission are some general comments regarding the recommendations of the Broderick review, and their alignment with the goals of an independent complaints mechanism regarding Members of Parliament for the consideration of the Committee in analysing the current system in place. I will also directly refer to the inquiry terms of reference where appropriate, including a status update on the various implementation plan items that relate to an independent complaints mechanism for members of the NSW Parliament.

## Overview

In July 2021 the NSW Parliamentary Executive Group (PEG) engaged the former Sex Discrimination Commissioner Elizabeth Broderick to explore the extent to which parliamentary workplaces are safe and inclusive and identify where additional focus is required.

In August 2022, the Independent Review on Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022 (the Review) was publicly released.

The Review determined bullying is a significant issue across NSW parliamentary workplaces, and sexual harassment and everyday sexism occur at unacceptable rates. Specifically the Review found confidence in the reporting systems in NSW Parliamentary workplaces is currently extremely low. Some of this is due to variable knowledge and confusion about the existing reporting pathways. More fundamental, however, is the concern about lack of confidentiality and associated retribution for making a report. Concerns like this were seen to be undermining the value of roles such as the recently created position of Independent Complaints Officer.



The Review contained 31 recommendations in a Framework for Action covering:

1. Leadership
2. Culture
3. Policy
4. Training
5. Safe Reporting
6. Transparent monitoring

Of these, Section 5.3 of the Framework for Action (Chapter 7) provided the following recommendations specifically in relation to the operation of the Independent Complaints Officer:

**5.3 Scope and resourcing of the Independent Complaints Officer function**

*The House Departments should work with PAG to develop strategies to reduce barriers to accessing the Independent Complaints Officer, particularly to ensure political independence and to ensure that the function has access to the resources required to meet its responsibilities; and the Independent Complaints Officer should be enabled to address any impediments in the scope of the resolution.*

*PEG should review the number and nature of complaints made to the Independent Complaints Officer in the first year, in order to assess whether the function is being accessed for complaints relating to bullying, sexual harassment and sexual assault, and support the Independent Complaints Officer to make any adaptations needed to improve confidence in and access to the Independent Complaints Officer.*

*The House Departments, in consultation with the PAG and the Independent Complaints Officer, should jointly develop principles and protocols regarding external investigations, including ensuring:*

- *that investigators are suitably skilled; use a trauma-informed approach to investigations; and work appropriately with the other support people engaging complainants, respondents and witnesses*
- *that investigators are politically independent*
- *that there are transparent expectations regarding timeframes for investigation and reporting*
- *that there are increased opportunities for the participation of survivors in the investigation (including consulting with survivors about who is to be interviewed and sharing the final report with survivors).*

**5.4 Update and expand pathways to reporting**

*PEG In consultation with PAG, should redesign reporting pathways, ensuring that people experiencing bullying, sexual harassment or sexual misconduct have access to formal, informal and anonymous reporting options that are human-centric and provide support from the first disclosure. The reporting pathways should emphasise the agency of the individual in choosing the pathway that is most appropriate for them and the value of seeking advice and/or reporting early (that is, seeking advice regarding early intervention options).*

**5.5 Protection from retribution – Note direct recommendation for Committee**

*Parliamentary Privilege and Ethics Committee, and Privileges Committee, should ensure that revisions to Codes of Conduct include provisions that protect survivors and witnesses from retribution for making a report.*

In addition to the Broderick review, recent legislative developments in both the federal and state jurisdictions have introduced additional responsibilities for persons conducting a business or undertaking (PSBU's).

Under the *Sex Discrimination Act 1984* (Cth) PCBU's now have a positive duty to eliminate, as far as possible, the following unlawful behaviour from occurring:

- discrimination on the grounds of sex in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct creating a workplace environment that is hostile on the grounds of sex

In July 2022, SafeWork Australia amended the Model Regulations to impose a positive duty on a PCBU to manage psychosocial risks and implement control measures to eliminate the risks so far as is reasonably practicable, or if not reasonably practicable to do so, minimise the risks so far as is reasonably practicable. Psychosocial hazards at work are aspects of work and situations that may cause a stress response which in turn can lead to psychological or physical harm. These stem from:

- the way the tasks or job are designed, organised, managed and supervised
- tasks or jobs where there are inherent psychosocial hazards and risks
- the equipment, working environment or requirements to undertake duties in physically hazardous environments, and
- social factors at work, workplace relationships and social interactions, including bullying, harassment and sexual harassment.

As part of the Parliament's implementation of trauma informed complaints handling, Parliament has established a 'no wrong door' policy for the making of complaints. While the resolution of the Houses establishes the jurisdiction of the ICO to consider complaints made regarding members of Parliament, should a person make any other type of complaint to the ICO (such as a complaint about a staff member for example), processes have been established that the complaint can be received by the ICO, and immediate support or referrals offered. Should the person wish the complaint to formally proceed, consent will be obtained to hand over, or "warm refer" the issue to the person or area with the ability to progress the matter. The same occurs in reverse, where for example the Workplace Relations and Support team initially received a complaint about a member.

## **Submissions in relation to specific terms of reference**

### **a) the confidentiality provisions applying in respect of complaints and investigations under the system**

The Broderick Review recommendations do not make an explicit reference to confidentiality provisions, however recommendations 5.3 in relation to removing barriers to the making of complaints, as well as 5.10 in relation to information campaigns imply perhaps that confidentiality be a feature of considerations of the implementation of these actions.

### **b) the timeliness of complaints assessments and investigations conducted under the system, and**

While DPS can't comment on the handling of matters by the ICO, the ICO and the Department can both receive complaints as part of the Parliament's 'no wrong door' process in relation to complaints handling – which means that a person making a complaint within the jurisdiction of the ICO directly to the department (usually the Workplace Relations and Support team) will be provided trauma-informed support, and an opportunity to tell their story if they want to discuss the issue with someone immediately. With the consent of the complainant this details of the complaint can then be 'warm referred' to the ICO so the complainant doesn't have to relive, and re-tell their story unless they want to.

DPS has received and 'warm referred' 3 complaints to the ICO since July 2023.

### **c) the provisions applying with respect to standing for complaints and retrospectivity under the system.**

The Broderick Review made no reference to the investigation of historical complaints or allegations.

## **(2) That, in undertaking the review:**

### **(a) the committee consider the recommendations of the Independent Review of Bullying, Sexual Harassment and Sexual Misconduct at NSW Parliament Workplaces, commonly referred to as the Broderick Review, in relation to the role of the Independent Complaints Officer, the Code of Conduct for Members, training for members and any other related matter**

See Appendix A – status of independents complaints resolution related Broderick recommendations.

### **(b) in accordance with Standing Order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and**

No comment is made by the Department of Parliamentary Services regarding this issue.

- (c) the committee consult the President, the Clerk and other key stakeholders as appropriate.**

The Department of Parliamentary Services draws the Committee's attention to the interrelationship and requirement for consultation as set out in the implementation plan.

Once again I thank you for the opportunity to make a submission to the enquiry. For further information on the Broderick Review, and in particular the status of implementation plan items please contact Bruce Pope, Senior Manager Governance Planning and Performance. For further information on the Department's workplace support and complaints handling processes please contact Andrew Kiejda, Senior Manager Workplace Relations and Support on

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