

Workplace Review Policy

Parliamentary Workplace Support Service

1 Introduction

The Parliamentary Workplace Support Service (PWSS) provides an independent workplace review mechanism for *Members of Parliament (Staff) Act 1984* (MOP(S) Act) employees and parliamentarians who make a complaint relating to a serious incident or misconduct or workplace conflict that amounts to a work health and safety risk in the course of parliamentary employment.

The PWSS workplace review mechanism is intended to:

- Provide an independent review of a serious incident or misconduct including workplace conflict that amounts to a work health and safety risk that cannot, or should not, be resolved at the local level.
- Give clarity on the issues, gather information, make findings about alleged conduct (on the balance of probabilities) and make recommendations for appropriate action.
- Promote a safe and respectful workplace through a trauma-informed, independent and trusted process to handle complaints.

1.1 The PWSS is trauma informed

A trauma informed approach is central to the service offer of the PWSS. Being trauma-informed underpins the support the PWSS provides at every stage, and to the extent possible, the PWSS adopts a trauma-aware approach to undertaking workplace reviews.

A trauma informed approach centres on the needs of the person, both complainant and respondent, and empowers them to make decisions. It acknowledges the diverse and significant impacts unreasonable workplace conflict or being accused can have on individuals.

1.2 Scope of the workplace review mechanism

The PWSS workplace review mechanism is available (where appropriate) to current and former MOP(S) Act employees and parliamentarians, in relation to complaints against another MOP(S) Act employee or parliamentarian.

This means that the workplace review function is not available to all Commonwealth parliamentary workplace participants.

All Commonwealth parliamentary workplace participants may [access support, early intervention and local resolution from the PWSS at any time.](#)

1.3 Interaction with the criminal process

The PWSS will refer allegations of criminal conduct to the AFP, with the consent of the person making the complaint. If a workplace review has been initiated into conduct and part-way through the review it becomes clear that there is an allegation of criminal conduct, the PWSS will refer the allegation to the AFP for investigation (if the complainant consents).

A workplace review may still be considered (or proceed) where the alleged conduct is clearly a workplace matter with strong connections to employment. Such a review would not make findings that a person has engaged in criminal conduct. The review would consider whether the person has breached a workplace policy or the duties and responsibilities of parliamentarians and their staff employed under the MOP(S) Act, and what action is necessary to protect the safety of other employees.

Process map for a workplace review

Current and former MOPS Act employees and parliamentarians can receive trauma-informed support, including early intervention and local resolution from the PWSS at any time

Preparing for a workplace review

- Assess if matter may be within scope for a workplace review
- Brief Head or Assistant Head of PWSS on matter
- Decision by Head or Assistant Head of the PWSS

If **yes**, commission workplace review

If **no**, provide complainant a statement of reasons. Complainant may seek review within 28 days.

Commissioning a workplace review

- Engage with the Parliamentary Service Commissioner
- Inform the complainant and the respondent
- Commission a reviewer
- The parties enter into a good faith confidentiality agreement

If the respondent does not agree to sign the good faith confidentiality agreement, the workplace review will still proceed. The respondent will be given an opportunity to comment on any potential adverse findings or recommendations from the review.

Conduct of a workplace review

- Process is trauma-informed and procedurally fair
- Reviewer gathers relevant evidence and conducts interviews
- Reviewer considers the information and makes a preliminary finding on the balance of probabilities
- Reviewer may make recommendations for action, where appropriate

Workplace review report

- Reviewer prepares draft report
- The complainant and respondent have an opportunity to comment on the draft report
- Reviewer prepares final report
- Head of the PWSS, Parliamentary Service Commissioner, complainant and respondent and respondent's employing parliamentarian (if any) receive final report

Secondary review

- Request for secondary review
- Assessment and decision whether secondary review is available by Head of the PWSS (in consultation with the Parliamentary Service Commissioner (PSC))
- Panel, up to three reviewers (excluding the original reviewer) conducts the secondary review on the papers
- Parties, Head of the PWSS, PSC and respondent's employing parliamentarian (if any) receive final secondary review report

Taking action on review outcomes

- Report recommendations are implemented
- If not implemented:
 - Referral to the Parliamentary Service Commissioner
 - Referral to the relevant Presiding Officer
 - Referral to Privileges Committee

2 Early intervention and local resolution

2.1 The PWSS may be able to provide early intervention services

The PWSS recognises that earlier intervention in workplace conflict can often result in better outcomes for all parties. Engaging in early intervention can assist in de-escalation and resolution of a complaint at the earliest opportunity.

On receipt of a complaint, and if appropriate, the PWSS will consider and discuss a range of early intervention options with the parties, including the provision of information and trauma-informed support to enable the parties to resolve workplace conflict.

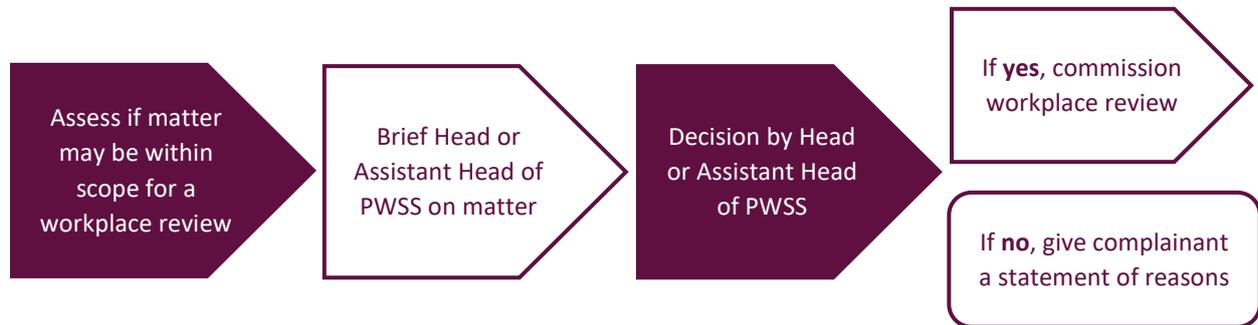
2.2 The PWSS will encourage and attempt to facilitate resolution at a local level

If a complaint can be resolved between the parties, this will be encouraged.

In some cases, the parties to a complaint may prefer to resolve the issue between themselves. If one or more of the parties requests that the PWSS facilitate a local resolution, the PWSS can do so with the consent of all parties.

Where a workplace review has been commissioned, the parties can still choose to pause or withdraw from the process to explore options for a local resolution.

3 Preparing for a workplace review



3.1 Is the matter within scope for a workplace review?

A workplace review may be available for MOP(S) Act employees or parliamentarians

In circumstances where local resolution options have been explored and are either inappropriate or unsuccessful, and the complainant wishes to do so, the PWSS may consider whether a workplace review should be commissioned.

A PWSS workplace review may be commissioned if:

- The complainant is or was a MOP(S) Act employee or parliamentarian at the time of the alleged conduct; and
- The subject of the complaint is or was a MOP(S) Act employee or parliamentarian at the time of the alleged conduct; and
- The complainant alleges they have experienced a serious incident or misconduct in the course of their work. This includes:
 - Sexual assault or assault;
 - Harassment or sexual harassment;
 - Bullying, within the meaning of the *Fair Work Act 2009*; and
 - An instance of a person behaving unreasonably towards another person in a way that creates a risk to work health and safety.

More information about the relevant considerations in deciding whether a workplace review should be commissioned is outlined in the factsheet [Will a Workplace Review be commissioned?](#)

When does 'behaving unreasonably' create a risk to work health and safety?

Unreasonable behaviour creates a risk to work health and safety where the person (the subject of the complaint) behaves unreasonably towards a complainant, or a group of people that includes the complainant, and that behaviour creates a risk of harm to the complainant or to another person in the workplace.

There must be a *real* possibility of physical or psychological harm to a person, having regard to the likelihood and consequence of harm occurring.

Whether the person (the subject of the complaint) behaved unreasonably will be considered objectively. That is, whether a reasonable person, having regard to the circumstances, would see the person's behaviour as unreasonable.

In addition, there must be a link between the person behaving unreasonably and the risk, when viewed in a common sense and practical way.

Anonymous complaints are not eligible for workplace review

It is necessary for the identity of the complainant to be known to provide the respondent and the reviewer with the information required to assess and respond to the allegations and to ensure procedural fairness requirements are met.

Workplace review may be available for historical complaints

Where warranted, the Head or Assistant Head of the PWSS may commission a workplace review into alleged conduct by a person who is no longer a MOP(S) Act employee or parliamentarian, where the alleged conduct was engaged in while the person was a MOP(S) Act employee or parliamentarian and occurred in the course of the person's work.

The circumstances of historical complaints will vary significantly, including the time that has passed since the alleged conduct and the potential outcomes available as a result of a review. This means that the review of a historical matter may not always be possible or reasonable.

The Head (or Assistant Head) of the PWSS will assess whether a workplace review should be commissioned.

In limited circumstances, the PSC will make the decision whether a workplace review should be commissioned. This might occur where the Head of the PWSS has declared a conflict of interest or is unavailable for a period of time.

For more information see the **Role of the Parliamentary Service Commissioner** factsheet.

3.2 Preparing a workplace complaint form

A complainant is required to submit information about their complaint using a workplace complaint form.

The workplace complaint form will be completed by a case coordinator and endorsed by the complainant. It will incorporate a summary of events including:

- A summary of the allegations being made by the complainant. This summary should include relevant times, dates and details of interactions to the extent possible.
- Any contemporaneous evidence such as emails, text messages or other documents. The absence of documentary evidence will not preclude a workplace review from being commissioned.
- Any additional material such as information about or from potential witnesses.
- A summary of steps taken (if any) in attempting to resolve the matter or information why local resolution is not appropriate.

- Any other information that may give context to the allegation.

With the complainant's consent, the Case Coordinator may also request information from the Department of Finance in relation to human resource matters, work health and safety matters, previous involvement in the matter or other employment details.

If a workplace review is commissioned, the workplace complaint form and attached content will be provided to the reviewer.

3.3 A complainant can request internal review of a decision not to commission a workplace review

Where a decision is made not to commission a workplace review, the complainant will be notified of the decision and the reasons for the decision.

A complainant who is dissatisfied with a decision not to commission a workplace review may request internal review of the decision. The review will be undertaken by either the Head of the PWSS or the Parliamentary Service Commissioner (PSC) (depending on who made the original decision).

The purpose of an internal review is to ensure the decision whether to commission a workplace review is reasonable and fair in the circumstances.

A complainant may request an internal review in writing within 28 days of receiving the reasons for the decision. A complainant should direct the request to support@pwss.gov.au. A request must include the reason or reasons for the request, and any supporting information.

For more information about requesting an internal review see the **Review of decisions** factsheet.

4 Commissioning a workplace review



4.1 The parties will enter into a good faith confidentiality agreement

The complainant, respondent, any Nominated Support Persons and any witnesses will be asked to sign a good faith confidentiality agreement at the commencement of the review.

More information about the purpose and scope of the good faith confidentiality agreement is contained in the **Good faith confidentiality agreement** and will be discussed with all parties by a Case Coordinator.

Independent reviewers

As part of their contract, all reviewers must sign a confidentiality deed and agree to keep information made available to them as part of their role confidential. The obligation for reviewers to keep information confidential continues beyond the conclusion of a review.

5 Conduct of a workplace review



5.1 The workplace review process will be guided by procedural fairness principles

The reviewer manages the review and has discretion to conduct a workplace review as they consider appropriate. This means the steps followed in a workplace review may vary.

The reviewer will seek to determine whether, on the balance of probabilities, the evidence is sufficient to conclude a breach or breaches of one or more of the following:

- A **workplace policy** (including the Department of Finance’s Safe and Respectful Workplace Policy and Sexual Harassment Policy, or any relevant policy in force at the time of the alleged conduct); or
- The workplace duties and responsibilities of parliamentarians and their staff employed under the MOP(S) Act (**duties and responsibilities**).

The workplace review process will be guided by procedural fairness principles

- The complainant and the respondent can be accompanied by a support person (e.g. Nominated Support Persons) throughout the review process.
- The reviewer will take all necessary precautions to ensure that the review process is carried out with due diligence and sensitivity, and respects all confidentiality requirements.
- The reviewer will make reasonable inquiries and gather relevant material.
- The reviewer must give the complainant and the respondent the opportunity to comment on a draft version of the report and consider any comments received before finalising the report.

Interviews will be fair and impartial

The reviewer will provide the complainant, the respondent and any witnesses with the opportunity to be heard and will conduct all interviews in a fair and impartial manner. Interviews will be conducted in person where possible.

All interviews will be recorded and transcribed. The complainant, the respondent and any witnesses will be asked to sign and date statements or records of interviews once they have been given the opportunity to review the interview notes to confirm their accuracy.

5.2 Information will be managed securely

Any records, information or material gathered during the review process will be stored, transmitted and accessed securely by the reviewer and the PWSS.

At the conclusion of a review, any material gathered or produced during the review will be provided to the PWSS. The reviewer must destroy any copies of records that they hold.

6 Workplace review report



6.1 The report will explain the review process and outcomes

The purpose of the report is to provide the complainant and the respondent to a complaint (the parties), and the employing parliamentarian (if any), with information about the review process and the outcomes of the review.

Personally identifying information will be removed from the report as much as practicable.

The report will contain:

- A summary of the complaint.
- An outline of the process undertaken during the review.
- A summary of the evidence provided by the parties and other participants.
- An assessment of the evidence provided by the parties and other participants.
- Comments on the level of participation of the parties and if relevant, attempts to facilitate a greater level of participation by one or both parties.
- Where there is a conflict in the evidence, the report should contain an explanation why the reviewer preferred one account over another.
- Any findings of fact.

The report may include recommendations on appropriate response(s) to any findings, and timeframes for action. Recommended responses must be proportionate to the findings.

MOP(S) Act employee

Possible consequences for MOP(S) Act employees include all those available under employment law provisions. This could include:

- Counselling.
- Training.
- Demotion.
- Remuneration penalties.
- Termination.

Timeframes for action must also be reasonable and give the employing parliamentarian sufficient time to obtain advice, balanced against the need to provide certainty and closure for the review participants.

Parliamentarian

Recommended responses for parliamentarians are distinct from those available for MOP(S) Act employees, given that parliamentarians are not employees but are elected directly by their constituents. Possible consequences for parliamentarians could include:

- Remedial action e.g. an apology, training or counselling.
- Undertakings in relation to future conduct.
- Remedial action in respect of the complainant e.g. if the complainant has been terminated in relation to the making of a complaint, the review might recommend reinstatement.

6.2 The parties will have an opportunity to comment on the draft report

To ensure the complainant and the respondent are afforded procedural fairness, the reviewer will provide the draft report, including any proposed adverse findings, to the Head of the PWSS, who will provide it to both parties and give them an opportunity and **7 days** to provide any comment.

When the draft report is provided, the complainant and the respondent will have the opportunity to suggest further de-identification is undertaken if they have concerns.

6.3 The reviewer will prepare the final report

Following an opportunity to comment on the draft report and receipt of the complainant's and respondent's comments (if any), the reviewer will consider any comments and produce a final report.

The reviewer will deliver the final report to the Head of the PWSS, who will ensure the report is distributed to the complainant, the respondent, the employing parliamentarian (if any) and the PSC.

The process has been designed this way to ensure the parties receive appropriate support at the time they receive the report.

The PWSS will not publish workplace review reports.

A party (complainant or respondent) to a workplace review may, in some circumstances, ask the PWSS for a secondary review. For more information see the **Review of decisions** factsheet.

7 Timeframes

Every workplace review is different and for a variety of reasons a review may take additional time. Below is an indicative timeframe:

(1) Informing complainant and respondent	<ul style="list-style-type: none">• Within 14 days of being notified that a workplace review is to take place, the parties will be given details of how the review is to proceed and what is required of them.
(2) Conduct of review	<ul style="list-style-type: none">• Reviewers will aim to complete a review within 4 weeks. This may require adjustment depending on the complexity of the complaint. At the outset of the review, once the reviewer has had the opportunity to form a view on the time required, they should give the parties an indicative timeframe.
(3) Draft review report	<ul style="list-style-type: none">• Within 7 days of the completion of the review, the reviewer will prepare a draft report and provide it to the Head of the PWSS, who will ensure the report is distributed to the parties. The parties will have the opportunity to comment on any proposed findings made against them.
(4) Comment on findings	<ul style="list-style-type: none">• Within 7 days of being provided with the draft review report the parties must provide their written comments to the reviewer. The reviewer may follow up with the parties to seek further clarification.
(5) Final review report	<ul style="list-style-type: none">• Following receipt of both parties' comments or the expiry of the 7-day period for providing comments (whichever is earliest), the reviewer will finalise their report and provide it to the Head of the PWSS, who will ensure the report is distributed to the parties, the employing parliamentarian and the PSC.
(6) Application for secondary review	<ul style="list-style-type: none">• Within 14 days of receiving the reviewer's final report the respondent or complainant may contact the Head of the PWSS requesting secondary review of the decision.