



Modernising Parliamentary Workplaces: Safety, Diversity and Representation

Creating a modern parliamentary workplace: a personal reflection on the NSW experience

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Parliaments as workplaces

Parliaments are complex institutions and workplaces. In addition to their primary role of making laws, representing the electorate and holding the executive government to account, Parliaments are the location of continuous competition for political power. That power is unequally distributed and authority within the institution is diffuse. Political party leaders have leadership responsibilities and authority in relation to their respective Members, but their hold on power depends upon the ongoing support of their MPs and party factions. Parliaments and political parties are the site of constant democratic rotation and renewal.

Presiding Officers and the parliamentary executive

The Presiding Officers (Speaker of the Legislative Assembly and President of the Legislative Council) have the responsibility and authority to maintain order in their chambers. They also represent the Parliament and are administratively responsible for the parliamentary precinct. The Clerks of the two Houses, and, where there is a Department of Parliamentary Services (DPS), its Secretary,¹ are the heads of their respective parliamentary departments and employers of the staff in those departments. Together with the Presiding Officers, who can be conceived of as the Ministerial equivalents for the Parliament, the Clerks and Secretary of DPS jointly form the parliamentary executive² with responsibility for parliamentary administration. The nature and extent of the parliamentary executive's authority in relation to Members (and their staff) in respect of workplace matters is complex.³

Members

There are 135 Members of the New South Wales Parliament: 93 Members of the Legislative Assembly, each representing an Electorate), and 42 Members of the Legislative Council (each representing the entire state).⁴

Members' staff

Most Members of the Legislative Assembly are supported by three Electorate Office staff. Members of the Legislative Council have either one or two staff.⁵ Members' staff are employed under the provisions of the *Members of Parliament Staff Act 2013*.⁶ Members are the employers of their staff, with the power to "hire and fire", although they and their staff receive administrative support from the Parliament in relation to employment matters.

¹ Known as the Chief Executive of the Department of Parliamentary Services in New South Wales (NSW).

² Formalised as the Parliamentary Executive Group (PEG) in NSW.

³ Although in NSW the Presiding Officers set the terms and conditions for the employment of Members' staff, they have no authority to direct or discipline a Member in relation to their conduct as employer of their staff.

⁴ The current NSW Cabinet consists of 23 Ministers – 17 Members of the Legislative Assembly and six Members of the Legislative Council.

⁵ A total of 352 positions. This does not include ministerial staff.

⁶ Ministerial staff are also employed under the provisions of the *Members of Parliament Staff Act* but are administratively supported by the Premiers' Department.

Parliamentary departments

There are three parliamentary departments in NSW. The Departments of the Legislative Council and Legislative Assembly support the sittings of their respective Houses, the work of their parliamentary committees, and community engagement and inter-parliamentary relations. The Department of Parliamentary Services has responsibility for joint parliamentary services, ranging from security and information technology, to Hansard, catering, library and building services. Parliamentary departmental staff are employed under the provisions of section 47B of the *Constitution Act 1902*. The department heads have direct responsibility and authority for all matters in relation to the employment of their respective staff, and joint responsibility for the policy framework applying to staff across the three Departments.⁷ The department heads have the authority to discipline staff in their respective departments and to terminate the employment of a person who has engaged in serious misconduct but have no such authority in relation to Members or Members' staff.⁸

Department of the Legislative Council

The parliamentary departments in NSW are by any measure high functioning, professional and harmonious workplaces. Feedback from Members during parliamentary debates (such as debates to take note of committee reports and seasonal felicitations at the end of each calendar year) is very positive. Employee engagement is exceptionally high. In 2023 the engagement rate for staff in the Department of the Legislative Council, as measured in the annual *People Matter: NSW Public Sector Employee Survey results*, was 83%.⁹ This compares with an average of 64% across the NSW public sector, and reported scores well below 50% in many private sector organisations.¹⁰ Other scores over many years have been equally high and well above public sector and industry averages. These include job purpose and enrichment, teamwork and collaboration, senior managers, decision making and accountability, employee voice, and inclusion and diversity. Areas with low scores emerging in recent years have included fairness of pay and burn out.¹¹ The latter is likely related to the extremely high workload created by the extraordinary work of Members of the Legislative Council during the

⁷ There are 467 positions in total across the three parliamentary departments.

⁸ The Chief Executive of the Department of Parliamentary Services, generally in conjunction with the relevant Clerk, may initiate a disciplinary inquiry in relation to the conduct of a Member's staffer. But, subject to section 20A of the Members of Parliament Staff Act, it is a matter for the employing Member to determine how to respond to any finding of misconduct.

⁹ The NSW People Matter Employee Survey methodology uses the answers to five questions (I would recommend my organisation as a great place to work; I am proud to tell others I work for my organisation; I feel a strong personal commitment to my organisation; My organisation motivates me to help achieve its goals; My organisation inspires me to do the best in my job) – with a score assigned to the selected response (e.g. 100 for “strongly agree;” 75 to “agree;” 50 to “neither agree or disagree;” 25 to “disagree;” 0 to “strongly disagree”) to calculate the average over the five scores for teams and organisations.

¹⁰ In 2018 the engagement rate was 92% but this was with a smaller participation rate than the 100% participation rate in 2023.

¹¹ The issue of dealing with under-performing staff has also been a recurring issue, which is curious for management as there are very few staff who would meet this definition. See also, for example, *Department of the NSW Legislative Council Annual Report 2023*, p 64, for a full discussion of questions with lower scores than previous years.

57th Parliament (2019-2023).¹² Staff take a great deal of pride in their workplace and role,¹³ and turnover is low. This sort of highly functioning workplace is not created by accident – it is a result of intentional leadership, clear communication and role modelling of expectations, and compassionate staff management by the entire leadership team of the Department, who devote a significant proportion of their time and energy to encouraging and developing their staff.

The Cox Report

From the vantage point of 2024, where many parliaments in Australia and overseas have been the subject of reviews of the incidence of bullying and sexual harassment and parliamentary culture,¹⁴ I would like to take us back to the first of those review reports in 2018. In November 2018, I was in Westminster, on a trip with the former President of the Legislative Council related to the Commonwealth Parliamentary Association and the centenary of the Armistice at the end of World War I, and had the opportunity to spend time with a number of clerky colleagues and was able to engage in some extremely frank discussions. A couple of weeks prior, a report, *The Bullying and Harassment of House of Commons Staff* by Dame Laura Cox DBE, had been tabled and debated in the House of Commons.¹⁵ Following news reports of serious allegations of bullying and sexual harassment of House staff by some MPs, the House of Commons Commission appointed Cox to conduct an independent inquiry to establish the nature and extent of bullying and harassment of past and present House staff. The Cox Report makes for difficult reading and was quite devastating in its findings. It described disturbing levels of seriously abusive conduct. When I visited in the wake of the report's tabling and debate in the House about it, senior clerks were deeply moved and concerned. (It is pleasing that in the immediate aftermath and in the years since, the clerks and senior managers at Westminster have taken decisive steps to address the matters raised in the report.)

The Cox report had a profound impact on my own thinking about these important issues. That is because it is focussed specifically on the bullying and harassment of parliamentary departmental staff (rather than Members themselves or their own staff which have been the focus of other reports). But most importantly it is a result of the pointed criticisms Cox made about organisational culture. She referred to misconduct having been able to thrive and become entrenched due to “an excessively hierarchical, command and control and deferential

¹² See chapters 18-21. Prior to the 57th Parliament the volume of parliamentary committee inquiries and orders for the production of State papers, for examples, would tend to plateau as Members reached the limits of their own capacities. For some reason that self-limiting process did not occur during the previous parliamentary term, although there has been some correction back towards more sustainable levels in the current 58th Parliament. As a result, and with the benefit of increased funding, staffing levels in the Department of the Legislative Council increased markedly during the 57th Parliament.

¹³ In 2023, 94% of staff in the Department of the Legislative Council indicated they were “proud to tell others I work for my organisation.”

¹⁴ For reports from national parliaments, see for instance: New Zealand Parliament – *Bullying and Harassment in the New Zealand Parliamentary Workplace: External Independent Review*, Debbie Francis, May 2019; Parliament of Australia, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*, Australian Human Rights Commission, November 2021 (also referred to as the Jenkins report). Scottish Parliament, *Report of the Joint Working Group on Sexual Harassment*, December 2018. Other reviews have dealt with Tasmanian Parliament and the South Australian Parliament.

¹⁵ Dame Laura Cox CBE, *The Bullying and Harassment of House of Commons Staff: Independent Inquiry Report*, 15/10/2018.

culture.”¹⁶ She referred to a culture of “deference, subservience, acquiescence and silence.”¹⁷ She quoted staff talking about a culture of taking the “path of least resistance”,¹⁸ MPs not being held to account for bullying behaviour and an “unhealthy level of servility.”¹⁹ She quoted staff describing a “master and servant” dynamic “regardless of the seniority or status of the member of staff,”²⁰ and a culture in which “we accept that some Members will be over-demanding, difficult or just plain rude and unpleasant.”²¹

As someone who has worked in a parliamentary environment for many years, and has always been very conscious of the distinction between elected members and appointed staff,²² the Cox report gave me significant pause for thought and careful reflection. I felt compelled to respond in my own work context and wanted to get out in front on an issue that was likely to be coming our way soon.

Personal response to the Cox report

There were three elements to my personal response to the Cox report.

Firstly, noting that the behaviour identified in the report was not only said to have been perpetrated by MPs but occasionally by parliamentary staff, I redoubled my efforts to ensure the Department of the Legislative Council is a best practice modern workplace. This meant continuing to ensure that the very best staff are employed, managers are equipped to be positive leaders, and staff are treated with kindness and respect. I hoped, and continue to hope, that the extraordinarily collaborative and engaged culture within the Department of the Legislative Council is also noticed by our Members and that it serves as a role model for them as employers.

Secondly, I looked for opportunities to renew my long standing calls for the establishment of a mechanism for the handling of minor, low level complaints about Members²³ and for the inclusion of bullying and harassment within the jurisdiction of such a body. The eventual establishment of such a body in 2022 is discussed below.

Thirdly, I carefully reflected on the message that I wanted to convey to newly elected Members during their induction program in 2019 and to new staff. In my presentation I indicated that “if one thing is most likely to prematurely end or at least taint your parliamentary career, or at the very least divert you from your real interests, it is an allegation of bullying or sexual harassment.” I stated that “there is no place for sexual harassment in parliament” and referred to some legislative provisions that are outlined below. I indicated that whilst politics could sometimes be brutal, in the Legislative Council they could expect Members to treat one another with “a fair degree of courtesy and consideration.” I told the new Members to “treat

¹⁶ *The Bullying and Harassment of House of Commons Staff*, p 17.

¹⁷ *Ibid*, p 4.

¹⁸ *Ibid*, p 34.

¹⁹ *Ibid*, p 61.

²⁰ *Ibid*, p 62.

²¹ *Ibid*, p 65.

²² In the case of parliamentary department staff, appointed following merit recruitment.

²³ See chapter 34. That essay was first delivered as a conference paper entitled “A Parliamentary Commissioner for Standards for New South Wales?” at the Presiding officers and Clerks Conference, in Canberra, in 2013.

the staff of the Department of the Legislative Council with courtesy and respect. Any Member who does not do so soon stands out.” I emphasised that neither the Chief Executive of DPS or myself “want to hear about ... parliamentary staff being spoken to disrespectfully.” I added that whilst this is exceedingly rare for staff of the Department of the Legislative Council to experience, Members should always treat the staff of DPS with that same courtesy and respect. I concluded: “The most important advice I can give you, though, is to never bully or harass your staff and never act in a way that could even be remotely interpreted as bullying or harassment.” Essentially, I sought to be both direct and clear, but also to appeal to the new Members’ “better angels,” and to remind them it was in their best interests not to bully or harass anyone in the parliamentary workplace.

At every induction program since for new parliamentary department staff and for new Members’ staff I have been at pains to state that respect is two-way, and that all staff should therefore expect to be treated with respect at all times by Members (and other staff). I advised that if ever they were treated disrespectfully by a Member, they politely tell them to desist, and then inform someone senior (such as myself or one of the other department heads). And in the rare instances when I find myself treated disrespectfully by a Member, I try to do the same.

The Broderick Review

Following media reporting in early 2021 about an alleged sexual assault in the Australian Parliament building in 2019 and other inappropriate conduct, questions as to the prevalence of sexual harassment and sexual misconduct in the NSW Parliament were raised at a budget estimates hearing. The Parliamentary Executive Group (PEG) had already been considering the establishment of an advisory body to bring together Members, parliamentary staff and Members’ staff with an interest and expertise in this area. The establishment of the Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct, soon followed.

Upon the election of a new President of the Legislative Council in May 2021, PEG gave consideration to further initiatives that should be taken in this area. Consequently, PEG appointed Elizabeth Broderick & Co to undertake an independent review of bullying, sexual harassment and sexual misconduct in NSW parliamentary workplaces.²⁴ The Broderick team was asked to: explore the nature and extent of bullying, harassment and serious misconduct; establish best practice in preventing and responding to these behaviours; examine the legal and policy framework; and determine a “roadmap” for possible reform and action by both the Presiding Officers and other parliamentary leaders. An online survey was developed by Broderick and the Social Research Centre (affiliated with ANU); 447 respondents participated in the confidential survey, a statistically valid 27.7% of workplace participants. The survey asked about the incidence of bullying, sexual harassment and serious misconduct over the previous five-year period. There were also 109 confidential interviews, seven confidential group listening sessions, and 58 confidential written submissions received.²⁵

²⁴ Elizabeth Broderick & Co, *Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022*, August 2022.

²⁵ *Ibid*, pp 12-15.

It is noteworthy that unlike some of the other reviews of parliamentary workplaces in recent years,²⁶ the Broderick review was not imposed from outside the NSW Parliament, but rather was initiated and commissioned by the Parliamentary Executive Group. The PEG and the Parliamentary Advisory Group (PAG) were regularly consulted during the course of the review. Although the review was independent and there was no capacity to influence the findings in respect of the incidence of bullying, sexual harassment and sexual misconduct, and limited opportunity to influence the recommendations, there was useful dialogue about how the findings might best be presented. Crucially, the Clerk of the Legislative Assembly and I had received helpful advice from colleagues in other jurisdictions where reviews had recently reported findings about the parliamentary workplace as if they were homogenous (usually concluding that they were “toxic” workplaces), notwithstanding that the reviewers confidentially acknowledged the data gathered actually revealed very different experiences of workers in the different settings. We therefore insisted that, where the NSW data allowed, Broderick’s report would distinguish between the experiences of Members, Members’ staff, Ministerial staff and parliamentary Departmental staff. Although not required to do so, the review also included quotes from Department staff which make clear the positive culture in the parliamentary Departments and the commitment of the Department heads to achieve best practice workplace cultures (although the same quotes noted staff acknowledging that the Department heads have limited authority in relation to Members’ behaviour).²⁷

The review reported that 28% of respondents had experienced or witnessed bullying over the previous five-year period. Beneath this headline figure, the report distinguishes the experience of the different groups of parliamentary workplace participants as follows:

- Members – 47%
- Members’ staff – 26%
- Ministerial staff - 37%
- Department staff – 19%²⁸

The review reported that 20% of respondents had experienced sexual harassment over the previous five-year period. The report then goes on to outline the experience of the following different group of workplace participants as follows:

- Members – 34 %
- Members’ staff – 19 %
- Ministerial staff – 27 %
- Department staff – 9 %.²⁹

The results in respect of sexual harassment are further reported by gender, age and sexuality - with women, young people and people with diverse sexualities reporting a markedly worse experience.³⁰ Probably the most unexpected finding was the lived experience reported by

²⁶ See footnote 11.

²⁷ *Leading for Change*, pp 20-21, 40.

²⁸ *Ibid*, p 33.

²⁹ *Ibid*, p 42.

³⁰ *Ibid*. 38% of those identifying with diverse sexualities or genders indicated that they had experienced sexual harassment, in contrast with 17% of those identifying as straight.

Members themselves, who are generally perceived as the group within the parliamentary environment with more power than either their own staff or department staff.

The real strength of the Broderick review is the robust data which it reported, providing clarity around the extent of the problem and identifying the cohorts or workers most at risk. The review also included an extensive set of recommendations for change. The recommendations covered: leadership responsibilities for change; cultural change; policy development; training; safe reporting; and transparent monitoring. There were 31 recommendations, consisting of at least 115 separate actions. As an independent review, the recommendations are those of the review team. Some recommendations were more practicable than others. Some were clearly influenced by particular stakeholders.

Implementation of the Broderick review recommendations

Following the release of the Broderick review report, both Presiding Officers gave statements in their respective Houses acknowledging the harm to so many workplace participants revealed in the report. They thanked everyone who had participated in the review, welcomed the review report and committed the Parliamentary Executive Group to taking all measures necessary to address the issues raised.³¹ The current PEG (the Presiding Officers having changed after the March 2023 election) has made a similar commitment.

Whilst implementation of Broderick review recommendations was delayed by the election period, significant achievements have taken place. The position descriptions for all leadership positions within the three parliamentary departments now includes the following requirement: “Champion and maintain a safe and respectful workplace culture, ensure Parliament has the appropriate measures in place to manage any incidents or reports of harmful behaviour, and hold managers and staff accountable for their behaviour.”

A new consolidated Prevention of Bullying, Harassment and Sexual Harassment Policy has been developed and is in the process of being rolled out. This follows extensive consultation and legal advice. A training program titled RISE (Respectful Inclusive Safe Effective) has been offered to Members, Members’ staff and parliamentary department staff. Further extension training in a trauma-informed complaint handling process has been developed for leaders. Funding has been obtained to enhance human resource support services from the Department of Parliamentary Services.

The Parliamentary Advisory Group on Bullying, Sexual Harassment and Serious Misconduct (PAG) has been re-established. The PAG brings together Members from across most of the political parties represented in the Parliament, Members’ staff (including ministerial staff) and parliamentary Department staff representatives. The terms of reference of the PAG are to be “advocates, advisors and facilitators for respectful and safe Parliamentary workplaces.” The new PAG now has an independent Chair, Dr Juliet Bourke, selected by the PEG. Dr Bourke’s background includes as a Deloitte partner leading its national diversity practice, a legal career specialising in human rights, and academic positions at the University of New South Wales and the University of Sydney in the school of Management and Governance. She has been

³¹ See for instance *LC Minutes* 15/11/2022, p 3877, and *NSWPD (Hansard)* 15/11/2022, p 7193.

tasked by the PEG with ensuring all participant groups and participants in the PAG have an equal opportunity to contribute, i.e. an equal voice.

A second advisory group has also recently been established. The LGBTQIA+ taskforce likewise brings together Members, Members' staff and parliamentary Department staff. The role of the taskforce is to examine the specific drivers of vulnerability for sexuality and gender diverse people within the NSW Parliament, and to develop and resource a tailored strategy to reduce risk for LGBTQIA+ people and improve their access to appropriate levels of reporting and support.

Challenges in relation to implementing the Broderick review recommendations and effecting cultural change

Although much work has been done and is currently underway, there are a number of challenges in addressing the issues raised in the Broderick review report. Engagement levels from both Members and Members' staff in the RISE training offered has been disappointing.

Some of the findings and recommendations of the Broderick review report remain fundamentally difficult to address. Significant cultural change requires commitment from Members and their political party leaders, who have other concerns which take their attention. The employment arrangements for Members' staff are also seen as a barrier to change. Members are able to "dispense with the services of a person employed" by them³² and industrial proceedings are precluded in relation to any such decision.³³ Whilst there are solid policy reasons for these provisions,³⁴ they do entrench a fundamental power imbalance between Members and their staff, and likely inhibit some reporting of inappropriate behaviour by Members' staff. We are watching to see how these complexities are addressed in other jurisdictions with similar employment arrangements.

There is also a small proportion of the Members of the NSW Parliament who are not convinced that there is a problem to be addressed or that the Broderick review recommendations should be implemented. Some of these Members are opposed to some of the current trends in human resource management, such as Inclusion and Diversity initiatives. For those Members, these matters remain politically contested and they are adamant they are representing the views of those who have elected them. This presents particular challenges for parliamentary department staff, who are required to support all members impartially, regardless of their political views. Clerks and senior House department staff need to maintain the confidence of all Members in relation to the reliability of their procedural advice and assistance, while also discharging legal responsibilities and creating modern workplaces that are safe for all participants.

Finally, the unique governance arrangements in the NSW Parliament, which brings together elected Presiding Officers and appointed department heads as the PEG, but which collectively

³² *Members of Parliament Staff Act 2013*, section 20.

³³ *Ibid*, section 26.

³⁴ For instance, the rapid changes in the roles of members as they are promoted or demoted and the consequent rapid changes in their support requirements. Also the problems that arise from the absence of merit recruitment.

has limited authority over Members and Members staff, brings its own challenges. PEG generally adopts a consensus model of decision making, with veto points on major reforms if consensus cannot be reached. It is an environment where influence is more apparent than direct authority, and where relationship-building and maintenance is essential to effecting change.

Regulation of the conduct of Members of Parliament

The conduct of Members of Parliament in NSW is regulated in a number of ways relevant to the modernisation of parliamentary workplaces: legislation, a Code of Conduct, and Standing Orders. This suite of measures has been supplemented recently by the appointment of an Independent Complaints Officer with responsibility, amongst other things, for receiving and dealing with complaints about bullying and harassment.

Legislative provisions

The conduct of Members of Parliament in NSW is subject to a range of legislation, such as the *Independent Commission Against Corruption Act 1988*. However, in relation to modernising parliamentary workplaces there are two key legislative provisions.

Anti-Discrimination Act

Following a particularly egregious case of sexual harassment by a Member in the early 1990s, the *Anti-Discrimination Act 1977 (NSW)* was amended to include express provisions to make it unlawful for a Member of Parliament to sexually harass a workplace participant or another Member of Parliament in their workplace.³⁵ In the event of a complaint about sexual harassment being lodged with the Anti-Discrimination Board (ADB), the ADB would seek to conciliate the matter between the parties. If conciliation is not successful, the complainant may take the matter to the Administrative Decisions Tribunal, which may impose a fine of up to \$110,000 (for which the Member of Parliament would be personally liable!) The attention of new Members is specifically drawn to this provision on day one of their induction program.

Work Health and Safety Act and Regulation

As employers, Members, Presiding Officers and the parliamentary Department heads have legal responsibilities under the *Work Health and Safety Act 2011 (WHS Act)* to protect workers from harm by, as far as practicable, and to the extent that they can influence and control, eliminating or minimising risks. Failure to protect an employee from bullying, harassment or sexual harassment may be a criminal offence.³⁶

Amendments to the *Work Health and Safety Regulation* in 2022 impose additional specific requirements for employers, including Members, the Presiding Officers and parliamentary Department heads, to implement control measures to, as far as practicable, eliminate or minimise psychosocial hazards and risks.³⁷ The relevant Code of Practice clearly brings

³⁵ *Anti-Discrimination Act 1977*, section 22B (7).

³⁶ *Work Health and Safety Act (NSW) 2011*, sections 32 & 33.

³⁷ *Work Health and Safety Regulation 2017*, clause 55D.

bullying, sexual and other forms of harassment, conflict and poor workplace relationships within the scope of psychosocial hazards. Control measures to mitigate the risk of such hazards includes “changing... workplace interactions to ensure respectful behaviours and relationships” and reducing the presence of other harmful behaviours.³⁸

While the WHS responsibilities of Presiding Officers, Members and parliamentary department heads are clear in their roles as employers, the question of who is the PCBU (Person Controlling the Business Unit) in respect of interactions within a parliamentary chamber, or decisions, for instance, to keep a House of Parliament sitting past midnight or through the night, is not so clear. This is where the degree of influence or control of various political leaders comes into play.

Code of Conduct for Members

The Codes of Conduct for Members of the Legislative Council and for Members of the Legislative Assembly in NSW have important legal consequences. As “applicable Codes” under the *Independent Commission Against Corruption Act*, a substantial breach of the Code may, if other conditions are met, amount to corrupt conduct under the Act. Not surprisingly then, the Codes focus upon things such as conflicts of interest, bribery, gifts and the use of resources.

Until 2022 the Codes were identical. However, in March 2022, in the context of the establishment by the two Houses of the position of Independent Complaints Officer, the Code of Conduct for Members of the Legislative Council was amended in relation to the behaviour of members. Consequently, the Code applying to MLCs now requires that:

A Member must treat their staff and each other and all those working for Parliament in the course of their parliamentary duties and activities with dignity, courtesy and respect, and free from any behaviour that amounts to bullying, harassment or sexual harassment.³⁹

The fact that the Code of Conduct for Members of the Legislative Assembly was not also amended to include the same provision has been the subject of adverse comment and recommendations for change in the Broderick review report.⁴⁰ But, as yet, there has been no change to that Code.

Independent Complaints Officer

In 2013, I gave a conference paper calling for consideration to be given to the establishment of a position of Parliamentary Commissioner for Standards in NSW.⁴¹ The ICAC took up the matter in a corruption prevention report⁴² following a series of investigations into the conduct

³⁸ Safe Work Australia, *Managing Psychosocial hazards at work: Code of Practice*, July 2022, pp 17-18, 21, 24 & 48.

³⁹ *Code of Conduct for Members of the Legislative Council*, paragraph 10, as amended on 22/3/2022. See LC Minutes, 22/3/2022, item 40, pp 3039-3045.

⁴⁰ *Leading for Change*, p 77.

⁴¹ See chapter 34.

⁴² ICAC, *Reducing the opportunities and incentives for corruption in the State’s management of coal resources*, October 2013.

of a number of former Ministers and Members in the Legislative Council, largely in respect of their conduct in the granting of mining licences. The Legislative Council Privileges Committee subsequently conducted an inquiry into, amongst other matters, the merits of the NSW Parliament appointing a Commissioner for Standards or “parliamentary investigator.” In June 2014 the Committee recommended the appointment of a Commissioner for Standards in NSW, for the following reasons:

- It would provide a mechanism for investigation of less serious allegations of misconduct against members, given the limited capacity of the ICAC, and the focus of the ICAC on large-scale corruption.
- It would allow allegations against members to be investigated and dealt with more speedily than through the current ICAC processes.
- It would allow more ready resolution of less serious allegations of misconduct against members, including through mechanisms such as ‘rectification’ and ‘reimbursement’.
- It would increase the transparency with which the Parliament deals with complaints against members, with appropriate information on investigations made public.
- It would provide an independent mechanism for assessing possible misconduct by members, removing concerns that direct investigation by specially appointed committees would be politicised.
- It would ensure that matters in which issues of parliamentary privilege were raised could be appropriately investigated.⁴³

The Legislative Assembly Standing Committee on Privileges and Ethics, having inquired into the same matters, recommended the appointment of an Ethics Commissioner.⁴⁴

At the time of tabling of the two committee reports the media reported that then Premier, Mike Baird, was supportive of the proposal, but with two different models and a perceived lack of sufficient support from members of both Houses no action was taken prior to the 2015 election. The proposal was revived on 1 June 2016 when Premier Baird wrote to the then Presiding Officers, President Don Harwin and Speaker Shelley Hancock. Baird advised that the Government agreed in principle with the recommendations of the respective committees but noted some differences in those recommendations and requested that an agreed position be prepared. The Presiding Officers responded, advising that they would be pleased to assist in relation to this matter, as well as identifying a number of related matters that should be progressed to further enhance the integrity, transparency and operations of the Parliament. The Presiding Officers and senior officers of the parliamentary departments worked on

⁴³ Report 70, *Recommendations of the ICAC regarding aspects of the Code of Conduct for Members, the interest disclosure regime and a parliamentary investigator*, June 2014.

⁴⁴ *Inquiry into matters arising from the ICAC report entitled “Reducing the opportunities and incentives for corruption in the State’s management of coal resources”* Report 2/55, July 2014

developing a package of responses but there was difficulty in reaching an agreed position between the two Houses, and little progress was made after 2017.

Finally, the pressure for renewed interest in the position came in 2020 when an incident prompted a recognition by members from several parties that there were no current mechanisms to address allegations of bullying behaviour by Members. Various Members and officers continued to be troubled by the “jurisdictional gap” and absence of a body authorised to expeditiously resolve minor misconduct matters. In August 2020, the Clerk of the Legislative Assembly and I received correspondence from 23 Members across both Houses requesting the development of a mechanism or process to handle complaints about the conduct of Members, including alleged bullying or inappropriate behaviour.

The Presiding Officers subsequently requested both Clerks and the Chief Executive of DPS to prepare a jointly agreed proposal to establish a position of “compliance officer”. Drawing upon the 2016-2017 research referred to above, the three Department heads provided a joint submission to the Presiding Officers, attaching a draft resolution for the establishment by both Houses of the position and a draft protocol for the investigation of complaints by the Compliance Officer. The draft resolution included a proposed amendment to the Code of Conduct to include a requirement that Members treat “staff, each other and all those visiting or working for or with Parliament with dignity, courtesy and respect” thereby bringing bullying and harassment within the framework of the Code of Conduct and the jurisdiction of the Compliance officer. The joint proposal was submitted by the Presiding Officers to the Leaders of both Houses in October. The Leaders made amendments to the resolution and took these to their respective Houses. The draft resolution was referred to the two Privileges Committees in late 2020.

Both the Legislative Council Privileges Committee and the Legislative Assembly Privilege and Ethics Committee subsequently recommended the appointment of an “Independent Complaints Officer.”⁴⁵ Resolutions providing for the establishment of a position of Independent Complaints Officer were agreed to in both the Legislative Council and Legislative Assembly in March 2022. The first Independent Complaints Officer (ICO) was appointed in August 2022.⁴⁶

The role of the ICO is to receive and investigate complaints about alleged minor breaches of the Members’ Code of Conduct regarding the use of allowances and entitlements and minor breaches of the pecuniary interests disclosure scheme. The ICO can also receive and investigate allegations of bullying, harassment, and inappropriate behaviour by members. The ICO is expected to seek to resolve complaints as expeditiously and confidentially as possible, with matters escalated to the relevant Privileges Committee only where the Members declines to take any remedial action recommended. The ICO is constrained from examining complaints in respect of conduct occurring within the parliamentary chamber or parliamentary committees (i.e. during proceedings in parliament) or historic matters.

⁴⁵ Legislative Council Privileges Committee, Report 83, *Proposal for a Compliance Officer for NSW Parliament*, May 2021. Legislative Assembly, Standing Committee on Privileges and Ethics, *Review of Proposed Resolution for the Establishment of a Parliamentary Compliance Officer*, July 2021.

⁴⁶ The first ICO is Rose Webb, a former Chief Executive of WorkSafe NSW and former public service department head.

The Legislative Council and Legislative Assembly Privileges Committees are currently conducting reviews of the ICO.

Standing Orders and the use of racist and sexist language

The recently published Commonwealth Parliamentary Association (CPA) *Standards for Codes of Conduct for Members of Parliament and the Parliamentary Workplace*, designed to facilitate best practice in Codes of Conduct across the Commonwealth, includes a thoughtful discussion of the intertwined issues of parliamentary privilege, parliamentary speech and cultural change:

The parliamentary sittings in the chamber and formal committee meetings constitute 'proceedings of parliament' that attract parliamentary privilege, most importantly, freedom of speech. A code of conduct should not override parliamentary privilege. Nevertheless, acknowledging that the chamber and committees are part of the workplace, it is reasonable that a code of conduct requires Members to exercise their freedom of speech and privilege responsibly. This does not diminish the presiding officer's role in applying normal standing orders and practice to the content and tone of debate, but it may contribute to the overall culture of a safer and more respectful workplace for Members.

These matters were recently considered by the NSW Legislative Council Procedure Committee in an inquiry into updating the Standing Orders to require respectful behaviour in the chamber, particularly as they relate to racism and sexism.⁴⁷ Noting the legal framework and Code of Conduct provisions relevant to the behaviour of Members as outlined above, the Committee focussed on the Standing Orders dealing with the use of language in the chamber. The Committee noted the critical importance of the absolute freedom of speech in debate, but also noted that the House itself places limits on the manner in which Members exercise that freedom of speech. With the benefit of contributions from parliamentary clerks around Australia, New Zealand, the United Kingdom and Canada, and after careful consideration and discussion of how to best reflect community standards, the Committee ultimately made two key recommendations. Firstly, that Standing Order 96 (3) be amended to include two additional words, "or discriminatory", so that the Standing Order as amended will read:

A member may not use offensive or discriminatory words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

Secondly, the Committee recommended that President's rulings dealing with offensive or discriminatory words in the chamber "place a greater emphasis on the context in which the

⁴⁷ Procedure Committee, *Inquiry into Updating the Standing Orders to require respectful behaviour in the Chamber, particularly as they relate to racism and sexism*, Report no 20, July 2024.

words are used, including the tone, manner and intent of the member speaking, as well as the effect of the comments in the Chamber.”⁴⁸

Conclusion

Parliamentary workplaces are not homogenous. There are at least three distinct group of workplace participants, with different lived experiences. Parliamentary departments are modern workplaces, with highly professional and highly engaged staff. This is also the experience for some but not all Members’ staff. Data from the Broderick review suggests that Members themselves and their staff (particularly Ministerial staff) have experienced an unacceptable level of bullying and sexual harassment.

There are two unique features of the NSW Parliament’s response to these matters. Firstly, in recognition of the different groups of participants in the parliamentary workplace, two advisory groups have been established which bring together Members, Members’ staff and parliamentary department staff, in an environment where representatives of each have an equal voice. Secondly, the complaint handling body eventually established, after a long and at times disappointingly tortuous path, has been created by resolutions of the two Houses, as a non-statutory body, currently subject to review. It is hoped that these initiatives will, over time, and with the commitment of the parliamentary executive, be effective in influencing lasting cultural change, so that all participants in the parliamentary workplace, including Members and Members’ staff, can ultimately enjoy a safe and rewarding workplace experience.

⁴⁸ Ibid, pp viii, 29-30. A sessional order to amend Standing Order 96 (3) was accordingly adopted by the Legislative Council on 14 August 2024, and the President made a statement on 15 August 2024 about how he would rule on such matters in future: *LC Minutes*, 14/8/2024, p 1416, 15/8/2024, p 1455.