

Issues paper – Sexual harassment by members of Parliament

The Commission will consider whether the protections from sexual harassment should specifically prohibit members of the Western Australian Parliament from sexually harassing their staff, another member of Parliament or their staff, or other persons that carry out duties at Parliament House. Currently, the Act requires that sexual harassment must occur, relevantly, in an employment context, although the complainant employee does not have to be an employee of the harasser. There is usually no direct employment relationship between members of Parliament and their staff or other staff at Parliament House, and there is no employment relationship between members of Parliament. Consequently, in those situations the elements of the sexual harassment provisions are difficult to prove. This may change if the requirement for the victim to prove disadvantage was removed.

The Australian Government has recently introduced a Bill to amend the *Sex Discrimination Act 1983* (Cth) (SDA) to provide a general prohibition on sexual harassment in any setting or circumstance. If enacted it will extend the operation of the SDA to Federal, State and Territory judicial officers and members of Parliament, State employees (including public servants), public authorities and administrative offices of a State, amongst other amendments. This raises the issue as to whether it will then be necessary for such prohibitions to be contained in the Act.

An argument in favour of specific provisions is that there is currently the anomalous situation of Parliament passing laws and communicating a strong message that sexual harassment in the workplace is unacceptable while the Parliament itself is not clearly subject to those laws.

Against this position, there may be some objection to extending the laws on the basis that they could impact parliamentary privilege. Parliamentary privilege is an important principle, as it ensures that members of Parliament are not inhibited from raising issues, debating and legislating in the interests of people, principally, in parliamentary debates and proceedings. Therefore, there is an argument to be made any extension of the protections should not purport to apply to anything said or done by a member of Parliament in the course of Parliamentary proceedings.

Another argument against extending the laws may be that any complaints made under the laws would attract great public interest and media attention, which in turn could cause undue damage to the member of Parliament concerned and also the person harassed. This damage could be alleviated, if there is a mechanism that deals with the complaints on a confidential basis.

In South Australia, for example, complaints must be referred to the 'appropriate authority' (defined to include the Speaker of the House of Assembly or the President of the Legislative Council). If the appropriate authority is of the opinion that dealing with the complaint under the South Australian Act could impinge on parliamentary privilege, the appropriate authority is to give the SA Commissioner written notice of that and no further action can be taken under the Act. Conversely, if the appropriate authority gives the SA Commissioner written notice that a complaint will not be dealt with by the authority, the SA Commission may proceed to deal with the complaint under the Act and conduct an investigation.

The Commission invites submissions on whether the Act should be amended to protect those employed to work or carry out duties at Parliament House in WA from being sexually harassed by members of Parliament and, if so, whether there should be any conditions on or exceptions to those protections (for example, to preserve parliamentary privilege or confidentiality).

A full discussion of these issues is in the Discussion Paper at pages 140-42 [6.4.4].