

# **Managing Misconduct: A principled response to behavioural misconduct in constitutionally significant workplaces**

**November 2022**

**Gabrielle Appleby, Rosalind Dixon  
and Prabha Nandagopal**  
Research Assistance provided by Kate Jackson



# Introduction and Executive Summary

Sexual harassment, bullying and discrimination are unlawful and harmful in a variety of ways. They impose significant harms on the physical and psychological security of those subject to the conduct. And they undermine the equality and inclusive nature of workplaces.

In 'constitutionally significant workplaces', such as courts, tribunals and parliaments, this behaviour is especially troubling: it means that public power is exercised in a less representative way, and in ways less likely to promote and retain public confidence.

Numerous reviews into these workplaces have highlighted the high prevalence of behavioural misconduct in these spaces, and the key barriers as to why this misconduct goes under reported.

As these reviews have highlighted, preventing and responding to misconduct in these workplaces raises distinctive institutional challenges. There are constitutional functions and responsibilities that might be seen to limit the scope for ordinary workplace norms to apply. They are often especially small and close working environments with rigid hierarchies, a young entry-level workforce, high staff turnover, and unique employment status.

This report explores these distinctive challenges, with a view to providing guidance on the design of reporting and response processes in these workplaces. Our focus in this report is on reporting and response processes, that is, accountability mechanisms, which, when combined with robust preventative strategies are critical to the cultural shifts that are necessary to ensure all workplaces are safe and respectful.

The principles we outline in this report draw on best practice principles and standards set out in recent reports into a number of constitutionally unique workplaces in Australia. These include the Australian Human Rights Commission's Independent Review into Commonwealth Parliamentary Workplaces, the *Set the Standard Report* ('*Set the Standard Report*')<sup>1</sup>, the Independent Review into Bullying, Harassment and Sexual Misconduct in NSW Parliament ('*Broderick Review*')<sup>2</sup>, the South Australian Equal Opportunity Commission's *Review of Harassment in the South Australian Parliament Workplace* ('*South Australian Parliament Review*')<sup>3</sup> and the Review of Sexual Harassment in Victorian Courts and VCAT ('*Victorian Courts Review*').<sup>4</sup> In addition to drawing on the reports of these recent Australian reviews, the report identifies its principles in global understandings of best practices surrounding reporting of behavioural misconduct.<sup>5</sup>

These principles have been designed by reference to **five key aims**:

- Promotion of public confidence in the reputation and authority of the public institution;
- Promotion of a safe reporting environment for behavioural misconduct;
- Reduction in behavioural misconduct, and protection of employees from misconduct;
- Restitution and repair for victims of behavioural misconduct;
- Proportionate accountability for perpetrators of behavioural misconduct.

<sup>1</sup> Kate Jenkins, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (Report, Australian Human Rights Commission, November 2021) ('*Set the Standard*').

<sup>2</sup> Elizabeth Broderick, *Leading for Change: Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022* (Report, August 2022).

<sup>3</sup> Equal Opportunity Commission to the Houses, *Review of Harassment in the South Australian Parliament Workplace* (Report, February 2021).

<sup>4</sup> Helen Szoke, *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT: Report and Recommendations* (Final Report, March 2021).

<sup>5</sup> See, eg, Kieran Pender, *Beyond Us Too? Bullying and Sexual Harassment in the Legal Profession* (Report, International Bar Association, 2022) ('*Beyond Us Too?*'); Global Judicial Integrity Network, *Gender-Related Judicial Integrity Issues* (Research Paper, United Nations Office on Drugs and Crime, 2019).

The six principles of design are as follows:

- **Clarity of expected standards of behaviour** as well as likely consequences, and reporting procedures.
- **Ensuring a person-centred and trauma informed approach**, including in relation to how reports of misconduct are pursued, and confidentiality is approached.
- **Providing a range of informal and formal reporting options and multiple entry points**, including
  - › informal internal channels;
  - › formal internal channels; and
  - › external channels.
- All channels are designed to ensure **fairness** to all parties, including through procedural fairness, and a transparent and efficient process for sorting reports to determine which warrant further investigation.
- All channels find a carefully balanced position between **confidentiality and transparency of processes**, principles and outcomes.
- Bodies established to receive formal and informal reports of misbehaviour must be constituted in accordance with the principles of **independence and authoritative composition**, with the power to impose **enforceable, proportionate sanctions**.

These principles require adaptation to specific contexts and workplaces. In particular, procedures must be designed to take into account the particular risk factors that may be present as well as barriers to reporting that some groups of workers may face. We suggest, however, that they provide a useful common framework that are workable in all constitutionally significant workplaces.

The advantages of a common framework of this kind are several: it can increase dialogue and learning across different constitutionally significant workplaces. It can promote increased knowledge of appropriate and available options on the part of both victims, and responsible decision-makers. It can provide a normative yardstick against which reporting and response processes can be assessed.

The report does not consider prevention strategies that are equally important in elimination of workplace misconduct. Effective prevention strategies are comprehensively set out in the Australian Human Rights Commission's 2020 *Respect@Work* Report.<sup>6</sup>

<sup>6</sup> Kate Jenkins, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, Australian Human Rights Commission, 2020) (*Respect@Work*).



# Design principles for reporting and response procedures

Under work, health and safety laws all organisations have a positive duty to eliminate risks to health and safety of workers and other persons so far as is reasonably practicable. This includes obligations on employers to protect employees from psychological health risks from sexual harassment, bullying and discrimination (what we refer to as behavioural misconduct). This extends to workers and officeholders at all levels.

Organisations now also have a positive duty under the Sex Discrimination Act 1984 (Cth) to take reasonable and proportionate measures to eliminate, as far as possible, their employees from engaging in certain discriminatory conduct including sex discrimination, sexual harassment, sex-based harassment, and acts of victimisation in the workplace. This would cover Commonwealth employees, which includes public servants, members of parliament and judicial officers.

An effective way to discharge this duty, we suggest in this part, is by designing a reporting and response system that adheres to six key principles.

The Global Judicial Integrity Network paper on *Gender-related Judicial Integrity Issues* sets out numerous obstacles to effective prevention and redress of workplace misconduct, including:

- Lack of information about or access to effective complaint mechanisms.
- Shame and fear of negative repercussions, including a fear of social or professional retaliation that is not unfounded, given the often poor organisational response to sexual harassment and the potential power imbalance between perpetrator and victim.
- Lack of support services, including access to legal, medical and psychological services.
- Lack of confidence in the complaint process and institutional responses, including a fear of not being believed or that corrective action will not be taken.
- Confusion about the scope of confidentiality provisions and whether reporting misconduct breaches the confidentiality ordinarily required of judges, law clerks and court employees<sup>7</sup>.

The principles we set out below also help address each of these obstacles.<sup>8</sup>

7 Jenkins, *Set the Standard* (n 1) 25.

8 Global Judicial Integrity Network (n 5) 51–52.



## Principle 1: Clarity of expected standards of behaviour, likely consequences and reporting procedures

The first step in developing reporting and response procedures is to ensure that there are clear and consistent written standards of conduct. Everyone in the organisation must understand what behaviour is and is not acceptable in the workplace, what the likely consequences are for that type of behaviour, and how to report inappropriate behaviour.

Policies, guidelines and standards must be widely disseminated throughout the workforce by for example:

- integrating the policy into new staff inductions and new responsibilities to those that are promoted to management positions
- displaying the policy on the intranet, office noticeboards and in induction manuals for new staff members
- ensuring that the policy is accessible to employees from different cultural backgrounds, employees with disabilities or those working in remote areas.

This principle is articulated throughout the Australian reviews of constitutionally unique workplaces:

- The *Set the Standard Report*, Recommendation 21 that says the Commonwealth Parliament should establish clear and consistent Codes of Conduct for Parliamentarians, Parliamentarians' Staff and Parliamentary Precincts.
- The *Broderick Review*, Recommendation 3, that calls for the creation of an 'enabling policy environment' characterised by strengthened Codes of Conduct for parliamentarians, explicit protections for political staffers in the *Members of Parliament Staff Act* (2013), and a stand-alone policy on bullying, sexual harassment and sexual misconduct.<sup>9</sup>
- The *South Australian Parliament Review*, Recommendation 4, that recommends the development of sexual and discriminatory harassment policies to apply across the parliamentary workplace which 'provide clarity around acceptable, and unacceptable conduct, and foreshadows a spectrum of consequences where a complaint is substantiated'.<sup>10</sup> Recommendation 8 of the *South Australian Parliament Review* similarly calls for the People and Culture Section to prepare and implement a behavioural code requiring all staff in the parliamentary workplace to act in a safe and respectful manner,<sup>11</sup> and Recommendation 12, that calls for the introduction of a Code of Conduct for Members of Parliament.<sup>12</sup>

9 Broderick (n 2) 77–78.

10 Equal Opportunity Commission to the Houses (n 3) 89.

11 Ibid 110.

12 Ibid 138.



- The *Victorian Courts Review*, Recommendation 2, that says that Victorian courts and VCAT should develop, promote and implement a sexual harassment policy covering all staff and contractors and 'sets out clear standards for behaviour'.<sup>13</sup>
- The *Respect@Work Report*, Recommendation 26, that the Australian Government work with state and territory governments to establish consistent sexual harassment laws,<sup>14</sup> and Recommendation 28 that says that the Fair Work system should 'be reviewed to ensure and clarify that sexual harassment using the definition in the Sex Discrimination Act, is expressly prohibited'.<sup>15</sup>

Internationally, this principle finds support in the Global Judiciary Network's paper *Gender-related Judicial Integrity Issues* which recommends the adoption of clear standards of judicial conduct,<sup>16</sup> and in the International Bar Association's Report 'Us Too? Bullying and Sexual Harassment in the Legal Profession' (*Us Too Report*), recommendation that the International Bar Association and the profession alike implement and revise policies and standards which articulate clear standards of workplace conduct.<sup>17</sup>

13 Szoke (n 4) 64.  
14 Jenkins, *Respect@Work* (n 6) 510.  
15 Ibid 522.  
16 Global Judiciary Integrity Network (n 5) 64.  
17 Pender, *Beyond Us Too?* (n 5) 100–101.

## Principle 2: Ensuring a person-centred and trauma informed approach

A reporting and response process is both about protecting the public and public confidence in constitutional institutions, as well as ensuring justice for those reporting inappropriate behaviour. For those individuals, justice in behavioural misconduct cases can involve several things. First it will involve a sense of being heard. And second, it will involve a sense of appropriate redress. What redress is considered appropriate, however, will vary for each individual – depending on their own distinctive circumstances and experiences.

Providing justice to those who report misconduct, therefore, also involves empowering them to decide what redress to pursue, including whether that redress should be formal or informal in nature. It may also involve giving them a say in whether protection or punishment is the overarching principle guiding resolution of a particular case. Further, it should involve the victim having a say in whether their report must be kept confidential.

The voice and agency of those who report misconduct are not the only consideration in this context. Prevention of future misconduct, and the protection of others, is also important. But responsible decision-makers should still seek to maximize the voice and agency of those individuals in the reporting and response process – by seeking their input into appropriate remedies, as well as preferred processes and confidentiality.

This is often referred to as requiring a person-centred and trauma informed approach. This includes:

- ensuring the safety, privacy and wellbeing of the person impacted are prioritised;
- listening to the person impacted in a compassionate, non-judgmental and sensitive manner; and
- ensuring that all processes are designed to minimise harm.



By adopting this approach organisations can reduce the risk of re-traumatising individuals who have suffered harm while also increasing confidence of people to make reports.<sup>18</sup> Notably, the Australian Human Rights Commission considers that a person-centred approach is **not only organisational best practice, but a legal obligation**:

Given the significant impacts and harm caused by sexual harassment, and the further harm that workers can experience from reporting it, the Commission's view is that, consistent with their obligations under WHS laws, an employer's first priority on receiving a report should be to ensure the safety and welfare of the worker who has made the report, by providing them with suitable support.<sup>19</sup>

These principles find expression in a range of leading reports on workplace misconduct:

- The *Set the Standard Report*, Recommendation 22 calls for the Commonwealth Parliament to establish an Independent Parliamentary Standards Commission' (IPSC),<sup>20</sup> and for such a commission to be guided by a person-centred approach, and provide trauma-informed ongoing support, and protection against victimisation are key elements required to support participants reporting breaches of Codes of Conduct.<sup>21</sup>
- The *Broderick Review*, Recommendation 5, that says the Parliament should create a safe reporting environment that is human-centric and trauma-informed.<sup>22</sup>
- The *South Australian Parliament Review*, Recommendation 9, that says the People and Culture Section should develop complaint procedures to apply across the parliamentary workplace which are victim-centred.<sup>23</sup>
- The *Victorian Courts Review*, Recommendation 9, that calls for the adoption of victim-survivor-centred responses to gender-related misconduct that prioritise the safety and wellbeing of the victim-survivor, and provide multiple channels and support for reporting gender-related misconduct.<sup>24</sup>
- *The Respect@Work Report*, Section 7 (Recommendation 49 – 52), the AHRC calls for the Australian government to adopt a holistic approach to support, advice and advocacy<sup>25</sup> by strengthening victim support services and specialist hotlines.<sup>26</sup>

18 Jenkins, *Set the Standard* (n 1) 238.

19 Jenkins, *Respect@Work* (n 6) 682.

20 Jenkins, *Set the Standard* (n 1) 253.

21 Ibid 224–226.

22 Broderick (n 2) 80.

23 Equal Opportunity Commission to the Houses (n 3) 124.

24 Szoke (n 4) 70.

25 Jenkins, *Respect@Work* (n 6) 762.

26 Ibid 766.

Global understandings of best practices also offer support for this principle. This is evidenced in the *Gender-related Judicial Integrity Issues* paper which recommends the lowering or removal of barriers to reporting misconduct within the courts,<sup>27</sup> and in the International Bar Association's Report 'Beyond Us Too? Regulatory Responses to Bullying and Sexual Harassment in the Legal Profession' ('Beyond Us Too Report') call for regulatory and disciplinary bodies to focus on innovative and supportive reporting channels to ensure that victim-survivors of inappropriate behaviour are empowered to report such conduct.<sup>28</sup>

27 Global Judicial Integrity Network (n 5) 64.

28 Pender, *Beyond Us Too?* (n 5) 47.



### Principle 3: Providing a range of informal and formal reporting options and multiple entry points

To provide those who want to make a report control over the process, and to reflect the range in severity of behaviours that may constitute misconduct, organisations should provide a range of informal and formal reporting options. The availability of formal channels, and the potential imposition of formal (and enforceable) penalties, can increase the likelihood that individuals will use, and have confidence, in informal channels.

Individuals should also be able to report through multiple entry points so that they can choose one that meets their specific needs. This should include the emerging best practice in the use of anonymous reporting to encourage workers to raise concerns without fear of victimisation. For employers anonymous reporting may provide a warning about misconduct that is happening to enable early intervention, and drive better prevention. Ensuring that people are able to access referrals to support through anonymous reporting is essential. Examples of anonymous reporting channels include:

- inviting anonymous reports delivered as a note or letter to a secure mailbox or email account
- digital reporting technology, such as a staff intranet or app-based reporting tools

Informal reporting channels can themselves also take several overlapping forms. Independent bodies will have responsibility for investigating formal reports (which we address in more detail in principle 6) should also have the function of responding to informal reporting of misconduct. In addition, there should be pathways for advice and dispute resolution involving individuals in the workplace. Workplaces should create additional roles that are clearly identified to all staff as able to provide confidential, informal advice on reporting. This is especially important for constitutionally significant workplaces, where the distinctive nature of the work and workplace can make advice about how to manage the reporting process especially valuable. Of course, any such avenue would not be a pre-requisite for approaching – either informally or formally – an independent body.

This could involve the designation of the head of a constitutionally significant body (e.g., the Chief Justice, President of a Tribunal, Speaker of the House) as willing and able to provide informal, confidential advice to those thinking of reporting inappropriate behaviour prior to the bringing of a formal report. Or it could involve creating a special panel of officers within the institution designated as available to provide informal advice of this kind. To be effective, a panel of this kind would need to be diverse (on the grounds of gender, cultural composition and in political contexts, partisan membership). Members would also need to be clearly designated and introduced through appropriate informational and/or social events to relevant employees and office-holders. For these informal processes to work, trust will be critical. And there can be no trust informal advisors without knowledge of who they are, or even some pre-existing introduction, connection or relationship.

Finally, internal channels – both informal and formal – must be presented and understood as complementing external channels that would be available for individuals seeking to report conduct, such as through the application of anti-discrimination regimes.

Support for this principle is evidenced across the reports into constitutionally unique workplaces in Australia.

- The *Set the Standard Report*. As noted above, the Report recommends the establishment of the IPSC,<sup>29</sup> and outlines that it should provide three pathways for reporting and complaints about potential breaches of the proposed Codes of Conduct which offer support, informal complaint and resolution, and formal complaint and independent investigation mechanisms.<sup>30</sup>
- The *Broderick Review*, Recommendation 5.4 that calls on the NSW Parliament to update and expand pathways to reporting which ‘emphasise the agency of the individual’.<sup>31</sup>
- The *South Australian Parliament Review*, Recommendation 9 that says that the complaint procedures developed to apply across the parliamentary workplace in relation to sexual harassment and discriminatory harassment which provide ‘internal options for dealing with complaints, including conciliation and investigation’, and ‘clearly set out the external complaint avenues available to staff and Members of Parliament’.<sup>32</sup>
- The *Victorian Courts Review*, Recommendation 9, that stipulates that victim-survivors should be provided with multiple channels for reporting misconduct including informal peer support officers, formal internal complaint mechanisms, and the provision of support and protection should an external complaint be made.<sup>33</sup>

<sup>29</sup> Jenkins, *Set the Standard* (n 1) 253.

<sup>30</sup> *Ibid* 227–228.

<sup>31</sup> Broderick (n 2) 81.

<sup>32</sup> Equal Opportunity Commission to the Houses (n 3) 124.

<sup>33</sup> Szoke (n 4) 70.

Furthermore, this principle accords with understandings of global best practice where the *Gender-related Judicial Integrity Issues* paper acknowledges that the achievement of its recommendation to 'take steps to lower or remove barriers to reporting misconduct within the courts' requires that people have 'access to multiple channels for reporting misconduct so that they can select the one with which they are most comfortable'.<sup>34</sup> This is similarly evidenced in the *Beyond Us Too Report*, through its recommendation that the profession explores flexible reporting models for victim-survivors of bullying and sexual harassment.<sup>35</sup>

34 Global Judicial Integrity Network (n 5) 64.  
35 Pender, *Beyond Us Too?* (n 5) 106.

#### Principle 4: Fairness

Fairness is an overarching principle that must guide any reporting and response process. It requires the ordinary norms of procedural fairness, including an unbiased decision-maker and opportunity to know and answer any allegations against one. Fairness requires that, even if an individual cannot know all aspects of how a report of misconduct is being handled, they are entitled to know the general procedures by which they are dealt with, and the principles guiding how their report will be dealt with. They are also entitled to have any findings at the conclusion of the process that the conduct that they have reported has been made out disclosed to them.

Support for this principle is evidenced in the *Set the Standard Report*, that accompanies its recommendation for the establishment of an IPSC<sup>36</sup> with a call for the IPSC to abide by requirements of procedural fairness in the conduct of investigations, sanctions and appeals.<sup>37</sup> Similarly, the *Gender-related Judicial Integrity Issues* paper in recommending the establishment of an independent disciplinary body to hear cases of judicial misconduct, recommended the establishment of a complaints process that was prompt, thorough and impartial.<sup>38</sup> It further noted that a person-centred approach applied to both complainants and accused perpetrators, and required:

- ensuring that all participants in the process have clear information about the process and how procedural fairness will be provided; and
- ensuring responses are conducted in a timely manner.

36 Jenkins, *Set the Standard* (n 1) 253.  
37 Ibid 244.  
38 Global Judicial Integrity Network (n 5) 65.





## Principle 5: Confidentiality and transparency

A related principle is that reports of misconduct – and the details of them – must be kept confidential, until a determination is made as to their basis, and this principle of confidentiality is “understood and maintained” (*Gender-related Judicial Integrity Issues paper*).

This does not mean that information cannot be shared with appropriate internal or law enforcement officers. Nor is it an absolute principle that trumps all other principles of justice. It is, however, an important presumption in all cases of alleged misconduct, which should be displaced based on compelling reasons, and only after considering the interests of both the individual reporting misconduct and accused in maintaining confidentiality.

The system, however, needs to achieve transparency. This includes, as we indicate above in relation to fairness, that individuals who may seek to report misconduct know the general procedures by which they are dealt with, and the principles guiding reporting and response, as well as any final determinations of the process. This is not just a matter of fairness to the individual: transparency fosters more general public confidence in the system.

This principle is evidenced in across the Australia reports:

- The *Set the Standard Report*, that outlines best practice in providing fair and effective accountability mechanisms requires, amongst other principles, confidentiality, fairness and transparency.<sup>39</sup>
- The *Broderick Review*, Recommendation 5.9 that recommends that the NSW Parliament develop new principles of confidentiality and transparency.<sup>40</sup>
- The *South Australian Parliament Review*, Recommendation 9 that says that the Parliament should clarify issues of privacy and confidentiality, ‘including that confidentiality is to be maintained throughout the complaint handling process’ in parliamentary complaint procedures.<sup>41</sup>
- The *Victorian Courts Review*, Recommendation 10 that says the Judicial Commission of Victoria should be empowered to issue confidentiality notices in appropriate circumstances to strengthen sexual harassment complaint and investigation processes.<sup>42</sup>

39 Jenkins, *Set the Standard* (n 1) 227–228.

40 Broderick (n 2) 82.

41 Equal Opportunity Commission to the Houses (n 3) 124.

42 Szoke (n 4) 71.

- *The Respect@Work Report*, Recommendation 38, that says the AHRC and the Workplace Sexual Harassment Council should develop best practice principles for the use of non-disclosure agreements in the workplace,<sup>43</sup> and Recommendation 39, that calls upon the Councils of Attorneys-General to consider how best to protect alleged victims of sexual harassment who are witnesses in civil proceedings, particularly where concerns of privacy and confidentiality may prohibit reporting of misconduct.<sup>44</sup>

Internationally, this principle also finds favour. This is demonstrated in the *Gender-related Judicial Integrity Issues paper* which notes that complaint processes should ‘protect the confidentiality of the investigation, but provide transparency with respect to the disposition of the case’.<sup>45</sup> Similarly, in the *Beyond Us Too Report*, that says the International Bar Association and the legal profession should gather data and improve transparency to clarify trends of bullying and sexual harassment.<sup>46</sup>

43 Jenkins, *Respect@Work* (n 6) 564.

44 Ibid 573.

45 Global Judicial Integrity Network (n 5) 65.

46 Pender, *Beyond Us Too?* (n 5) 104–105.

## Principle 6: Independence and authoritative composition, and power to impose enforceable, proportionate sanctions.

Bodies that are set up within the institution to receive formal reports, as well as respond to informal reports, must be established in accordance with robust design principles. If not, they risk being subject to criticism of capture and ineffectiveness.

These principles include, first, **independence**: as far as possible, the formal body charged with receiving, investigating and responding to reports of misconduct must be, as far as possible within the constitutional context, independent from the institution itself. This will be particularly important in relation to the appointment of members of that body, and the proper funding and resourcing of the body, as well as whether it is subject to direction or overruling by the institution.

Second, is **authoritative composition**: the body must not be seen as 'captured' by the institution, and should be carefully composed so as to include relevant voices.

Finally, is the importance of independent authority to impose **enforceable, proportionate sanctions**: the body must have the authority to impose sanctions, which drive reform of behaviour through education and deterrence. Sanctions must also be proportionate. This ensures fairness to those subject to complaints, as well as assisting to encourage the reporting of misconduct, by reassuring those making a report that both they and an accused can expect fair rather than disproportionate treatment.

This principle is evidenced across the Australian reports:

- The *Set the Standard Report*, where it calls for the proposed Independent Parliamentary Standards Commission to be characterised by independence, transparent merit-based appointment processes,<sup>47</sup> and the power to impose proportionate sanctions for behavioural misconduct. of appointment.<sup>48</sup>

47 Jenkins, *Set the Standard* (n 1) 230–231.

48 Ibid 244.

- The *South Australian Parliament Review*, Recommendation 8, that says the People and Culture Section of the South Australian Parliament should prepare a framework to be implemented across parliamentary workplaces which includes a range of sanctions where a breach of the behavioural code is established',<sup>49</sup> and Recommendation 9 that calls for the provision of appropriate and proportionate sanctions for harassment and/or where confidentiality is breached.<sup>50</sup> Similarly, Recommendation 12, that recommends that the Houses of Parliament introduce a Code of Conduct for parliamentarians which 'sets out a range of sanctions which may be imposed for a breach of the Code including a reprimand, a financial penalty and reduction of privileges'.<sup>51</sup>
- The *Respect@Work Report*, Recommendation 18 and Recommendation 19, which respectively call for the AHRC to be given the function of assessing workplace compliance with the *Sex Discrimination Act 1984* (Cth), and a broad inquiry function which includes the power to apply penalties for non-compliance with inquiries.<sup>52</sup>

Internationally, this principle finds support in the *Gender-related Judicial Integrity Issues* paper, that recommends the establishment of an independent disciplinary body to hear cases of judicial misconduct, which holds a broad range of corrective action to deal proportionately with the seriousness of misconduct.<sup>53</sup> Similarly, in the *Beyond Us Too Report*, that says that disciplinary bodies in the legal profession should '[get] disciplinary processes and sanctions right' through the development of proportionate sanctions.<sup>54</sup>

49 Equal Opportunity Commission to the Houses (n 3) 110.

50 Ibid 124.

51 Ibid 138.

52 Jenkins, *Respect@Work* (n 6) 428–485.

53 Global Judicial Integrity Network (n 5) 65.

54 Pender, *Beyond Us Too?* (n 5) 47–48.





**UNSW**  
SYDNEY

*Professor Gabrielle Appleby is the Director of The Judiciary Project, Gilbert + Tobin Centre of Public Law at UNSW Law & Justice, with expertise in the roles, powers, and accountability of the Executive; parliamentary law and practice; the role of government lawyers; the integrity of the judiciary and First Nations constitutional recognition.*

*Rosalind Dixon is a Professor of Law and Director of the Gilbert+Tobin Centre of Public Law at UNSW Sydney, and Director of the Pathways to Politics Program for Women NSW. She is a graduate of UNSW and Harvard Law, and has served as an assistant professor at the University of Chicago Law School, and a visiting professor at the University of Chicago, Columbia Law School, Harvard Law School and the National University of Singapore. She is immediate past co-president of the International Society of Public Law. She is a Fellow of the Australian Academy of Law and Australian Academy of Social Sciences, and ARC Future Fellow working on Constitutions and Democratic Resilience.*

*Prabha Nandagopal is a human rights lawyer and independent consultant specialising in organisational cultural reform and prevention and response strategies to sexual harassment, discrimination and bullying.*

**Gilbert + Tobin Centre of Public Law**

UNSW Law  
UNSW Sydney NSW 2052

Phone: +61 2 9348 0723

Email: [gtcentre@unsw.edu.au](mailto:gtcentre@unsw.edu.au)