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Will a Workplace Review Be Commissioned?

In considering whether a workplace review should be commissioned, the PWSS will keep in mind the purpose of a workplace review and whether it can be achieved in a particular case. The purpose of a workplace review is to assess allegations on the balance of probabilities and make recommendations to resolve the issues and benefit one or both parties.

The workplace review will also provide clarity on the issues and closure, where possible. Where other investigations have been undertaken in relation to the same (or other relevant) issues consideration will be given to the appropriateness or reasonableness of undertaking another inquiry into the matter, including a consideration of natural justice principles and the desirability of finality for the parties.

Is the matter within scope for a workplace review?

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

A PWSS workplace review may be commissioned if:

- The subject of the complaint is or was a MOP(S) Act employee or parliamentarian at the time of the alleged conduct; and
- In the course of the parties' work they are alleged to have engaged in:
 - Sexual assault or assault;
 - Harassment or sexual harassment;
 - Bullying, within the meaning of the Fair Work Act 2009; or/and
 - Unreasonable behaviour towards another person that creates a risk to work health and safety.

Preliminary assessment

The PWSS will undertake a preliminary assessment. During the preliminary assessment the PWSS will consider all material available which may include:

- A summary of the events and timeline.
- Any evidence such as emails, text messages or other documents. The absence of documentary evidence will not preclude a workplace review from being commissioned.
- Any information from potential witnesses.
- Any information available in relation to human resources matters, previous involvement in the matter or other employment details.

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If the material demonstrates that conduct within the scope of the PWSS may have occurred, in deciding whether a workplace review is commissioned, the PWSS, will consider other factors including:

- The severity and circumstances of the allegations.
- Whether the respondent is aware of, or has had an opportunity to respond to, the allegation and, if not, why not.
- Whether the matter would be best resolved through an alternate process, including a local resolution process, subject to the agreement/consent of those parties involved.
- Whether the matter was subject to an unsuccessful/incomplete local resolution process, and the PWSS involvement in such a process.
- The length of time since the alleged conduct and the impact, if any, that will have on evidence gathering.
- What other action has been taken in relation to the alleged conduct, including previous investigations, reviews or proceedings before a court.
- Whether procedural fairness can be provided to both parties.
- Possible outcome(s) and their effectiveness in all the circumstances.
- Whether the allegation concerns criminal conduct, and any risk to a criminal investigation or prosecution.
- Whether the allegation is vexatious, frivolous or unreasonable.
- The wishes of the complainant and any other person affected by the conduct.