



# SAPOL Restorative Engagement Program Protocol

## between the South Australian Equal Opportunity Commission and South Australia Police

### ***Overview of Protocol***

This protocol records the arrangements reached by the Equal Opportunity Commission and South Australia Police for the implementation of the Restorative Engagement Program (REP).

The model of Restorative Engagement adopted by the South Australian Equal Opportunity Commission (EOC) specifically for South Australia Police (SAPOL) draws from the approaches developed by:

- The Truth and Reconciliation Commission of South Africa; and
- The Defence Abuse Response Taskforce (DART) response to institutional abuse for the Australian Defence Force (ADF); and
- A number of abuse redress facilitation models for religious institutions<sup>1</sup>.

The SAPOL Restorative Engagement Program (REP) model is underpinned by the values of restorative practice<sup>2</sup>, transformative<sup>3</sup> and narrative<sup>4</sup> mediation practice. These practices have been recognised for their innovative way of responding to, and addressing, alleged wrongs in a complainant-centric way.

The REP operates from within the EOC. Its' processes are separate from the EOC's legislatively mandated complaint mechanisms.

The EOC has established a team to work on the REP and they are referred to in this process as the Restorative Engagement Team (RET).

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<sup>1</sup> The South Australian 'Towards Healing' process for the Catholic Church and the 'Healing Steps' process for the Anglican church for their respective Adelaide archdioceses and the Goodwood Orphanage redress scheme.

<sup>2</sup> Restorative practice differs from the principles of Restorative Justice in that it does not involve any attempt at reconciliation between the alleged perpetrator and the victim. It solely relates to reconciliation between SAPOL as an institution and the complainant of the discrimination and/or harassment.

<sup>3</sup> The transformative approach to mediation does not seek resolution of the immediate problem, but rather, seeks the empowerment and mutual recognition of the parties involved (Joseph P Folger and Robert A Barush Bush).

<sup>4</sup> The narrative approach to mediation encourages parties to tell their personal story of the conflict and reach agreement through an understanding of the other's story (Michael White and David Epton). See: 'The Profound Apology' at <http://gregrooney.com.au/wp-content/uploads/2016/04/The-Profound-Apology-1.pdf>



This protocol records the arrangements between SAPOL, the EOC and the RET, for the implementation of the SAPOL REP. This protocol is a guideline for the implementation of the SAPOL REP. This protocol is not legally binding on SAPOL, the EOC or the RET.

## **1. Commencement and Term**

1.1 This Protocol comes into effect immediately and continues in its' implementation stage until 30 September 2017, and thereafter by mutual agreement between SAPOL and EOC.

## **2. Background**

2.1 The *Independent Review into Sex Discrimination, Sexual Harassment and Predatory Behaviour in South Australia Police* (the Independent Review) by the EOC, was released in December 2016 and found evidence of institutional sex discrimination, sexual harassment and predatory behaviour. It also found evidence of underreporting due to mistrust of the complaints system, victimisation of those who do complain and a belief that there are few consequences for perpetrators.

2.2 One of the 38 recommendations made by the EOC, and accepted by SAPOL, was to establish a Restorative Engagement Program, whereby those who have been previously harmed can safely and confidentially tell their story to specially-trained and selected SAPOL leaders (SAPOL representatives), and seek acknowledgement and an apology should this be sought by the complainant.

## **3. Purpose**

3.1 The purpose of the REP is to provide a safe, confidential and private facilitative space for restorative engagement to take place.

## **4. Program Objectives**

4.1 To provide complainants with an opportunity to share their personal accounts of sex discrimination, sexual harassment and/or predatory behaviour and, its effect on their lives, and provide specially-selected and trained SAPOL leaders with the opportunity to acknowledge the harm and respond meaningfully.

4.2 To ensure the primary beneficiaries of the REP will be the complainants. Drawing from outcomes achieved in the DART and other abuse redress facilitation models for religious institutions, it is hoped that the SAPOL REP will deliver the following primary objectives:

To provide an opportunity for;

- complainants to be heard, with respect and dignity, by the SAPOL representative;
- the harm to complainants to be accepted and acknowledged by SAPOL;
- the SAPOL representative to offer a formal apology to the complainant, if appropriate and requested by a complainant;
- complainants to move forward with their lives by helping create or recreate a positive environment for their ongoing personal and professional development;
- complainant empowerment, by the RET maintaining an appropriate and sensitive balance between the principles of recognition and empowerment and the 'do no harm' principle.



4.3 The secondary objective of the REP is to initiate a cultural shift within SAPOL through:

- the experience gained by the SAPOL representative in meeting with, witnessing and observing the physical and emotional effects of sex discrimination, sexual harassment and/or predatory behaviour on serving and former members of SAPOL;
- a deeper personal understanding by SAPOL representatives, of the cultural effects of sex discrimination, sexual harassment and/or predatory behaviour;
- the selection and training of a cross section of specially-trained and selected SAPOL leaders in enhanced reflective communication and interpersonal skills;
- an opportunity for SAPOL as an organisation to benefit from elements of the restorative engagement approach, by bringing together the complainant and SAPOL representatives, to repair the relationships destroyed by sex discrimination, sexual harassment, and/or predatory behaviour in the workplace.

## **5. Guiding Principles**

5.1 The core principles of restorative engagement, that will guide all interactions and processes include:

- any action taken under the REP must have regard for the principle that no further harm is to be caused to complainants;
- informed consent must be obtained from participants prior to their participation in the REP, and any participant can withdraw from the program at any time;
- participation must be voluntary;
- confidentiality, privacy, safety and wellbeing of complainants must be paramount throughout the entirety of the program<sup>5</sup>;
- confidentiality, privacy, safety and well-being of SAPOL representatives is also critical<sup>6</sup>;
- consideration of the cultural sensitivity of all participants, in particular complainants, to ensure culturally appropriate options are provided;
- SAPOL representatives must acknowledge the importance of their role in demonstrating an effective and enduring response to complainants by addressing their concerns in the most appropriate manner, acknowledging the harm and responding meaningfully.

5.2 A trauma-informed care model based on principles which support a complainant-centric framework also guides the REP, with a strong focus on:

- physical and emotional safety of complainants and all participants during the REP;
- building trust by transparency and consistency in interactions;
- empowering complainants by ensuring clarity and safety in process;

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<sup>5</sup> Refer to Section 8

<sup>6</sup> Ibid



- giving complainants options where possible, for example about selection of representatives and locations;
- respect and dignity in interactions and relationships.

5.3 The REP is not a dispute resolution or mediation process but rather it is a facilitated conference process designed to specifically respond to the harm resulting from the sex discrimination, sexual harassment and/or predatory behaviour and its ongoing implications.

## **6. The Scope of the Restorative Engagement Program**

6.1 The RET will not engage with, or investigate, the alleged perpetrators of sex discrimination, sexual harassment and/or predatory behaviour. The alleged perpetrators take no part in the restorative engagement program. The restorative engagement is conducted solely between the complainant and the SAPOL representative.

6.2 The RET will independently review all REP complaint applications<sup>7</sup> to ensure they are eligible for participation in this process, which includes meeting the terms of reference and criteria for participation in the REP.

6.3 The terms of reference for the REP require the complaint application to fit within the definition of sex discrimination, sexual harassment and/or predatory behaviour as defined in the Independent Review and as per the Sex Discrimination Act (Cth) (1984) and Equal Opportunity Act (SA) (1984);

- Sex discrimination - sex discrimination occurs when a person is treated less favourably because of their gender. This can also occur when there is a rule or policy that is the same for everyone but has an unfair effect on people of a particular sex. Sex discrimination includes all forms of gender based discrimination (e.g. discrimination based on pregnancy, parental responsibilities, breastfeeding, sexual orientation, gender identity, inter-sex status, caring responsibilities which can include part time status and access to flexible working arrangements).
- Sexual harassment - sexual harassment is defined as any unwelcome conduct of a sexual nature where it is reasonable to expect that the other person would be offended, afraid or humiliated. The behaviour does not have to be repetitive to be considered sexual harassment; a single incident is enough. People of all genders can sexually harass and be harassed. Sexual harassment can be:
  - comments about a person's private life or about the way they look including asking about a person's sexual history or sexual activities;
  - sexualised comments, jokes or name-calling;
  - sexually suggestive behaviour including leering and staring, sexual gestures and indecent exposure;
  - repeated direct or implied propositions or requests for dates;
  - unwelcome touching, including kissing, hugging, or cornering a person;

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<sup>7</sup> Complaint application is the adopted RET term for complainants' submitted personal accounts and request to participate in the REP. It is not a complaint made to the EOC or another other body, for any other purpose.



- sexual pictures, objects, emails, text message or literature;
  - requests or pressure for sex or other sexual acts;
  - stalking;
  - sexual assault;
  - rape.
- Predatory behaviour - predatory behaviour is defined as the misuse of authority or influence with the intention of exploiting others for sexual or other personal gratification<sup>8</sup>.

6.4 The complaint application must have the appearance of being 'plausible'<sup>9</sup>. The term 'plausible' is assessed as the appearance of reasonableness within the context, findings and principles of the independent review<sup>10</sup>.

6.5 The presenting issue for the complainant must be of sex discrimination, sexual harassment and/or predatory behaviour that falls within the criteria as outlined in 6.3 and 6.4. Other forms of discrimination and bullying without a sex discrimination or sexual harassment element are beyond the scope of this program.

6.6 The REP is available to current employees of SAPOL over the age of 18, including sworn and public service employees, protective security and volunteers. The REP is also available to former employees who have left SAPOL in the last 10 years.

6.7 The REP is designed to address allegations of sex discrimination, sexual harassment and/or predatory behaviour within SAPOL. To be eligible, current and former employees must:

- have been in employment with SAPOL for any period from 1 December 2006<sup>11</sup>; and
- the incident(s) of the alleged sex discrimination, sexual harassment and/or predatory behaviour must have occurred between 1 December 2006 and prior to 31 December 2016.

Applications that fall outside the time limits as set out in this paragraph will be considered on a case-by-case basis at the discretion of SAPOL and the RET.

6.8 The REP is not intended to be a replacement for established internal complaint processes within SAPOL and/or other external complaint processes for current complaints.

6.9 The REP is not available to the public. It is only for employees or past employees of SAPOL.

6.10 The REP is open to current employees and former employees regardless of their sex, gender identity or sexual orientation.

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<sup>8</sup> Definition of predatory behaviour originally sourced from Victorian Police Independent Review.

<sup>9</sup> This is less than an assessment on the balance of probabilities and far less than beyond reasonable doubt. For this reason, the RET will deliberately use the terms '*alleged*' when referring to incidents.

<sup>10</sup> The Honourable Len Roberts-Smith RFD QC, Chair of the DART, 'Address to the Institute of Arbitrators & Mediators Australia Conference', Canberra, 3 May 2014, accessed 25 June 2015, has explained the rationale for this lower plausibility test in these terms: "*The application of legal standards of proof (the balance of probabilities or beyond reasonable doubt), with the complainants having the onus of proving the truth of their allegation, would be an insurmountable obstacle. It is against this background that the Taskforce is required to accept an allegation of abuse as true, if satisfied on all the material available, that it is plausible*"

<sup>11</sup> The RET will seek confirmation of prior employment at SAPOL by sighting documentation such as a payslip, contract, superannuation or by contacting SAPOL's Human Resources Department.



6.11 The complaint application must be submitted in writing<sup>12</sup>.

6.12 At all times the complainant's physical, mental and emotional health is paramount and will be assessed and monitored by the RET to ensure they are physically and emotionally ready to participate in the REP. Referrals to support agencies, including SAFE SPACE, will be made as required.

6.13 The 'do no harm' principle applies to, and underpins, all stages of the REP.

6.14 If a complaint application does not fit within the eligibility criteria, as outlined in 6.3-6.7, the complainant will be advised that the complaint application is not within the terms of reference for participation in the REP, and will be provided with alternative referral options.

6.15 The acceptance of a complaint by the RET does not provide the basis for civil or criminal proceedings.

6.16 If a complainant has signed a prior confidentiality agreement with SAPOL this may not preclude their participation in the REP. A waiver may be assessed on a case by case basis<sup>13</sup>.

6.17 The REP is separate from the legislatively prescribed Equal Opportunity Commission complaint process. Subject to 6.17, complainants are free to lodge a formal complaint of discrimination or sexual harassment with the EOC or any other tribunal or judicial body and are not precluded because of their prior participation in the REP.

6.18 If the complainant chooses to, or is currently engaged in any comparable action against SAPOL either through a tribunal, the courts, or through the EOC, then the REP process will be suspended until the completion of that alternative action.

## **7. Arrangements for Restorative Engagement Program**

### **7.1 REP Assessment Process**

7.1.1 The complainant will make contact with the RET to express interest in participating in the REP.

7.1.2 Initial contact with the RET will be handled with care to ensure that the complainant has the proper support mechanisms and psychological assistance to safely proceed with their complaint application.

7.1.3 If the complainant appears to fit within the eligibility set out in Section 6 above and appears to be emotionally ready to proceed to the next stage, the RET will provide the complainant with an information pack and a Personal Account Form (PAF) via post or email.

7.1.4 Once the complaint application is received by the RET it will be assessed specifically against the eligibility criteria in 6.3-6.7 inclusive. If assessed as meeting the eligibility criteria,

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<sup>12</sup> If a complainant needs assistance with writing their complaint, the RET will ensure that the complainant is provided with appropriate information and referrals to support and assist them. The RET will not write complaints for complainants.

<sup>13</sup> If a complainant is granted a waiver to a prior confidentiality agreement so they can participate in the REP the sole purpose of the waiver is for participation in the REP and to support the complainant's healing. The agreement remains valid for all other purposes.



the complainant will be advised and allocated a REP facilitator to guide them through the REP.

7.1.5 If the complaint application is assessed as not meeting the eligibility criteria, the complainant will be advised and given the opportunity to provide further information. If the eligibility criteria are still not met then the complainant will be given information on alternative options, including support processes.

7.1.6 If a complaint application to participate in the REP is declined by the RET the complainant will have 28 days to lodge an application to review that decision. The review will be undertaken by the Commissioner for Equal Opportunity (Commissioner for EO). The Commissioner for EO will respond to the complainant in writing with a final decision, within 21 days from the date of receipt of the request for review.

7.1.7 When the RET assess that the complaint application meets the eligibility criteria as per 6.3 and 6.5, the SAPOL representative participating in the conference, will accept, to that standard, the allegations for the purpose of the REP. The allegations will not be disputed.

7.1.8 Once allocated to a REP facilitator, a case summary will be developed by the REP facilitator, through consultation with the complainant, from the personal account form provided by the complainant.

## 7.2 Support persons

7.2.1 Complainants will be encouraged to bring a support person to the REP conference.

7.2.2 The role of the support person is to participate in a supporting role to help with the empowerment and recognition of the complainant through the process. The support person is not there as an advocate for the complainant.

## 7.3 Counselling services

7.3.1 The RET will provide referrals for counselling support to complainants if required.

7.3.2 The support to be provided to SAPOL representatives who attend the REP conferences is to be provided by SAPOL or SAPOL-brokered support or counselling services.

## 7.4 Participation of SAPOL Representatives

7.4.1 SAPOL Assistant Commissioner will be responsible for selecting a suitable pool of senior police officers and senior public service employees to participate in the REP as representatives of SAPOL (SAPOL representatives).

7.4.2 SAPOL Assistant Commissioner may consult with the RET when selecting a suitable pool.



7.4.3 All SAPOL representatives selected to participate in the REP will attend training and briefing sessions to be developed and delivered by the RET prior to their participation in any conferences<sup>14</sup>.

7.4.4 The RET will consult the complainant in relation to his or her preference about the SAPOL representative who may participate in their matter.

7.4.5 There will be no automatic access by a complainant to a particular SAPOL representative.

7.4.6 The RET will consult with SAPOL's Assistant Commissioner on the most suitable, available representative within the pool, taking the complainant's preferences into account.

7.4.7 Complainants and SAPOL's representatives will have an opportunity to declare any conflict of interest.

7.4.8 Prior to participation in the REP conference the RET will provide the SAPOL representative with a written brief, which will include information in relation to the complainant's matter in the form of a case summary and the possible outcomes the complainant has identified.

#### 7.5 Outcomes:

7.5.1 Under the REP, the conference is considered the outcome, which includes appropriate expressions of regret, apology or other tangible or symbolic action.

7.5.2 Additional outcomes, at the discretion of SAPOL might be of assistance to the complainant's healing and will be decided on a case by case basis.

7.5.3 Any additional outcomes agreed to at the conference are solely for the purpose of furthering the complainants' healing and/or to effect cultural change and are not an admission of liability in any forum.

#### 7.6 REP Pre-conference Details

7.6.1 Prior to the REP conference, the facilitator will conduct separate REP pre-conference meetings with the complainant, and with the SAPOL representative, in relation to his or her preparation for the restorative engagement conference.

7.6.2 At the REP pre-conference meeting the facilitator will ensure that the complainant and the SAPOL representative have a clear understanding of their role and a realistic appreciation of possible outcomes from the restorative engagement conference.

7.6.3 At the REP pre-conference meeting the facilitator will consult with the complainant about location for the restorative engagement conference and will take into account their preferences.

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<sup>14</sup> All SAPOL representatives who participate in the training will be asked to complete an evaluation form following the training.



7.6.4 At the REP pre-conference meeting, the facilitator will provide the parties with the Agreement to Participate form setting out the terms of the restorative engagement conference and, in particular, confidentiality provisions, for their signature. Support persons will also be required to sign the consent form.

## 7.7 REP Conferences Parameters and Expectations

7.7.1 Conferences will be facilitated by specially trained mediators who will be referred to as 'facilitators' for the purpose of this program. Various theoretical approaches drawn from mediation and restorative justice practices will inform how facilitators manage each conference, in a complainant-centric manner. Conferences will be tailored to meet the specific needs of each complainant.

7.7.2 Most conferences between complainants and SAPOL representatives are expected to take place at a face-to-face meeting in a neutrally appropriate location. The decision about location will be made in consultation with the complainant and will take into account their preferences. In cases where a complainant's capacity to attend a face-to-face conference is not in their best emotional or psychological interest, the conference may be conducted by other means as agreed between the complainant and the SAPOL representative.

7.7.3 The role of the SAPOL representative in the conference is to hear and acknowledge the complainant's personal experience of sex discrimination, sexual harassment and/or predatory behaviour and to respond through appropriate expressions of regret, apology and/or other tangible or symbolic gestures as requested or informed by the complainants wishes and needs.

7.7.4 A sworn SAPOL representative participating in a conference will wear uniform unless requested not to do so.

7.7.5 The conference will be confined to the matter(s) contained in the case summary. If the complainant seeks to raise any new matter(s) the facilitator will adjourn the conference for that new claim to be assessed in accordance with chapter 6 above. It is anticipated, that other than in exceptional circumstances, there will only be one conference for each complainant.

7.7.6 Any follow up actions or outcomes that are agreed to will be recorded clearly and accurately, by the facilitator, at the end of the REP conference.

7.7.7 It is not the facilitator's role in the REP conference to suggest further follow-up actions or outcomes.

## 7.8 REP Conference Confidentiality Requirements<sup>15</sup>

7.8.1 SAPOL will not keep, store, or copy, any written information in relation to the complainant or complaint except as outlined in 7.8.2. All documentation relating to the complainant and the complaint will be kept securely within the REP office<sup>16</sup>.

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<sup>15</sup> Refer Section 8.



7.8.2 The SAPOL representative will ensure that case summary is kept securely and confidentially. All documentation will be returned to the RET at the end of the process<sup>17</sup>. No records are to be made during a conference other than any agreed follow up actions.

7.8.3 The SAPOL representative will ensure that the case summary provided to him/her prior to the conference by the RET, will not be copied, scanned, shared or viewed by anyone else and that it will be returned to the facilitator at the end of the conference<sup>18</sup>.

7.8.4 Neither the SAPOL representative, the complainant or support person, will make any recording (including handwritten, taped or electronic) of the restorative engagement conference. Only the facilitator will prepare a written record of the agreed outcomes at the conclusion of the REP conference.

7.8.5 SAPOL acknowledge and support that complainants may wish to seek support from trusted family and friends and debrief about their conference experience following the conference.

7.8.6 The RET, the EOC and SAPOL will maintain confidentiality of the information provided by the complainant, unless, and then only to the extent that the disclosure is required or authorised by or under law<sup>19</sup> (See Section 8).

## 7.9 REP Post-conference follow up

7.9.1 The Assistant Commissioner Human Resources will be responsible for implementing any agreed follow-up actions or outcomes and to liaise directly with the complainant.

7.9.2 It is important for the emotional wellbeing of the complainant that any agreed follow-up actions are reasonably able to be complied with by SAPOL.

7.9.3 Any follow-up actions that are outside the control of the SAPOL representative who attends the REP conference will remain subject to, and conditional upon, approval from the Assistant Commissioner Human Resources.

7.9.4 The facilitator will conduct a post-conference debrief with the complainant within three days of the REP conference to check their emotional and physical safety and wellbeing. This will include the offer of referrals to support services and/or complaint processes as appropriate.

7.9.5 The facilitator will conduct a post conference de-brief with the SAPOL representative within three days of the REP conference.

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<sup>16</sup> This will be recorded in the Agreement to Participate signed prior to the REP conference.

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> The RET, EOC and SAPOL are required to comply with all laws including but not limited to the Freedom of Information Act 1991, the Children's Protection Act, 1993, and Independent Commissioner Against Corruption Act 2012. The RET will comply with the Information Privacy Principles, SA, 2016. The RET will adopt the Attorney General's Information Sharing Guidelines for practice.



7.9.6 To ensure the integrity and governance of the program, the complainant, SAPOL representative and any support persons will be issued with a feedback form regarding the process. This feedback will inform the overall evaluation of the effectiveness of the program. As appropriate, specific feedback will be used iteratively to inform REP processes, conduct and methodologies.

## **8. General REP Documentation, Confidentiality and Reporting**

8.1 The RET will abide by the requirements outlined in the Information Privacy Principles (IPPS), South Australia, 2016. Section 10c of the IPPS outlines that information may be disclosed if the 'person disclosing the information believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious threat to the life, health or safety of the record-subject or of some other person'.

8.2 The RET will not communicate the complainant's information with anyone outside of the RET except for the purposes of the REP conference unless required as per the IPPS.

8.3 After each REP conference the REP facilitator will prepare a report for the Commissioner for Equal Opportunity. These reports will remain confidential unless required or authorised by or under law and will be kept securely within the confines of the RET.

Signed:

Grant Stevens  
Commissioner, South Australian Police

Signed:

Dr. Niki Vincent  
Commissioner, Equal Opportunity Commission