



## Australian Women Lawyers

# Seven Strategies for Addressing Sexual Harassment in the Legal Profession

This document is presented to the Law Council of Australia, the Australian Bar Association, Law Societies, Bar Associations, Legal Professional Conduct Commissions, Law Firms, Legal Employers, and other relevant people in the Australian Legal Industry. It is an invitation to engage Australian Women Lawyers and our constituent bodies in the conversation around addressing sexual harassment in our profession. We offer our guidance, assistance and support to all who want to be part of this conversation.

### Background

Australian Women Lawyers Ltd (AWL), along with most of our constituent bodies wrote submissions to the National Inquiry into Sexual Harassment in Australian workplaces being run by the Australian Human Rights Commission.<sup>1</sup> We are looking forward to seeing the outcome of that Inquiry in relation to addressing the issue at a whole of workforce level. However, following the recent International Bar Association (IBA) Report released on 15 May 2019 '*Us Too? Bullying and Sexual Harassment in the Legal Profession*'<sup>2</sup>, we have decided that there is no time to waste addressing the issues in our own profession.

The IBA research included a survey of almost 7000 lawyers from 135 countries and provides quantitative confirmation that bullying and sexual harassment are endemic in the legal profession. 67% of the respondents were female and **1 in 3** of the female respondents reported that they had been sexually harassed at work, with 1 in 2 bullied. **75%** of these incidents of sexual harassment and 57% of bullying cases were **never reported** and respondents cited the status of the perpetrator, fear of repercussions, and the incident being endemic of workplace culture, being the reasons for this gross underreporting. Australia's survey responses demonstrated levels of sexual harassment and bullying which were among the highest across

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<sup>1</sup> <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/national-inquiry-sexual-harassment-australian-workplaces>

<sup>2</sup> <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>

the globe. This is appalling. As officers of the court and as professionals, we are obliged to act ethically and legally in all of our dealings, including with each other. It is time for actions tailored to the needs of our profession; to this end we are proposing a series of strategies for the broader profession to facilitate this long overdue cultural change. AWL have known sexual harassment to be endemic across the legal profession for some time and have already had numerous surveys and reports demonstrating this, including the Law Council of Australia's National Attrition and Re-engagement Study five years ago.<sup>3</sup>

AWL held a national policy meeting on action on this on 29 May 2019 with women lawyers from across the country dialling in to discuss the responses that we believe will be most effective. Following this meeting, and further work from the Board of AWL, this document has been produced. We present it as a starting point in conversations and consultations with law societies, bar associations, the Law Council of Australia, law firms, government legal teams, university law schools, and others in the sector and offer ourselves as being an asset to facilitate change.

### **The need to address broader gender discrimination and intersections of discrimination**

There is general agreement between AWL members that a large part of what sexual harassment is, is the manifestation of the wider problem of gender discrimination in the workplace. While men are also victims, the large majority of the victims are women, and the context in which sexual harassment often occurs is within a wider scenario of more broad gender discrimination. Unequal wages, pregnancy discrimination and other issues around gender bias are part of an environment where women are devalued and treated as less worthy than men. An extreme end of this inequity is sexual harassment, sexual assault, and other forms of violence against women.

Because of this, any approach to addressing sexual harassment on a systematic level, in our opinion, must address the underlying biases and discrimination based on sex and gender, as well as intersectional biases such as those of race, religion, sexuality, disability, and class. We therefore encourage broader systematic changes to address this gender discrimination, such as addressing gender pay-gap (including enabling pay transparency), eliminating unconscious bias from recruitment processes (for example by blind recruiting), signing up to equitable briefing and other affirmative action measures. We also suggest a few simple and direct actions which could be taken specifically to address the issue of sexual harassment more directly. These are listed below.

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<sup>3</sup> <https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/equal-opportunities-in-the-law/national-report-on-attrition-and-re-engagement>

## Key ideas for change

### 1. Compulsory Continuing Professional Development point / compulsory training

Recommendation 3 of the IBA's report states that '*Survey respondents at workplaces with training were significantly less likely to have been bullied or sexually harassed within the past year*' [p101]. We strongly support mandated training in this area for practitioners across Australia. We consider that the training must be also part of the Practical Legal Training courses, and any specialist training, or mandatory training course completed by practitioners, including barristers and judicial officers. Broadly speaking, the education program should be designed to provide participants with information regarding best practice in achieving an equitable workplace free of discrimination, bullying, harassment and victimisation. We consider that the training must have the following elements in order to be effective:

- a. It must be mandatory or free, or both; and
- b. Must be in place for at least 5 years with a review to follow, however we suggest 10 years as this change will take time; and
- c. The training must include training on actions that can and should be taken by bystanders as a vital part of the mix; and
- d. The training must be broader than simply restating the law, understanding in particular the context of gender discriminations and biases at play.

### 2. Reporting

We strongly support a range of reporting options enabling monitoring of progress and keeping the issue at the forefront of mind for the profession and individual workplaces. Reporting would cover, the number of complaints made, the general nature of those complaints, and how (if) complaints were resolved. We are happy to discuss these models and assist in developing them. We believe that reporting, in particular, must be completely de-identified and collation completed by an independent and separate body. It is clear that fear of professional consequences is a factor limiting the number of complaints made; particularly in smaller jurisdictions, where complainants fear being identified from the context of a complaint and facing further harassment because of this.<sup>4</sup>

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<sup>4</sup> See further IBA Recommendation 7

### **3. Model guidance of workplace policies**

We would like to work with the Law Council of Australia/ or other peak bodies to provide some guidance on minimum standards regarding the content of workplace policies. Where these are being worked on already AWL (and/or our relevant constituent body in each jurisdiction) seeks to be consulted in the development of such policies.<sup>5</sup>

### **4. Enable a process of confidential complaints**

Linked to our recommendation above, we see a strong need to create and encourage implementation of grievance policies that allow confidential complaints. This may be done however at a higher level than at a workplace, and ideally by a national peak body. An example we provide is the Victorian Bar's 'Policy against Sexual Harassment' which has Human Rights Commission trained conciliators. We are also encouraged by the recent process initiated by the Office of the Legal Services Commissioner in enabling anonymous complaints to be raised in relation to sexual harassment and bullying in the workplace.<sup>6</sup>

### **5. Extending time limits for complaints under the conduct rules to at least 6 years with discretion to open up for historical cases**

This recommendation is particular to organisations which receive complaints under conduct rules.

### **6. Individual lawyers annually undertake that they understand their obligations**

We suggest practitioners tick a box on their practising certificate renewal stating: *I am aware of my obligations under the [insert list of applicable sexual harassment, discrimination and anti-bullying policies and rules for the State/Territory] policies and have sought to comply with them throughout the year.*

This recommendation is particular to those organisations who ensure the renewal of practising certificates, however could be adopted by individual firms in performance reviews or at other times. This would keep the issue front of mind and reinforce the weightiness of the obligations for lawyers to comply with their professional obligations in this area. Similarly, to the suggested mandatory CPD point, the need for this could be reviewed after 5 or 10 years.

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<sup>5</sup> See further IBA Recommendations 2 and 4

<sup>6</sup> See <http://www.olsc.nsw.gov.au/Pages/inappropriate-personal-conduct.aspx>

**7. Support your local Women Lawyers and Barristers Associations, join them, pay for staff to be part of them, and engage them in consultations**

Women lawyers' associations provide a vital support network, and continue the work of lobbying for greater gender equity within the profession. We provide a safe space for women to discuss incidents of discrimination that they face at work, from the bench, from clients, or from others in the profession.

AWL is considering either producing, or working with others to produce more extensive policy papers on each of these suggested actions, and/or working with the Law Council of Australia to do so. We are here and ready to be used as a resource. As an organisation which has been talking about this issue for over 20 years, we are ideally placed to lead discussions in this area.

AWL seeks your cooperation in progressing effective and meaningful measures to address sexual harassment across all sectors of the legal profession. We are at a cross roads and need to move forward on this issue now. The whole profession needs to be proactive in addressing this problem, to ensure that it is a safe place for all its participants. I ask that you agree to meet with representatives of the AWL as soon as possible, whether in person or by telephone, to discuss ways to work together and progress the above measures. Please contact us at [austwomenlawyers@gmail.com](mailto:austwomenlawyers@gmail.com) by the end of July 2019 to arrange a suitable time.

For further information, contact AWL President, Adrienne Morton at:

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Australian Women Lawyers represents:



<https://australianwomenlawyers.com.au/>