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## POLICY

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# POLICY AGAINST DISCRIMINATION

1. Discrimination is unacceptable and contrary to law. The Victorian Bar is committed to a working environment free from discrimination for barristers and those who come into contact with barristers in connection with their profession.

### **Objectives of the policy**

2. This policy has the following objectives:
  - (i) Creating a respectful working environment for barristers and those who work with barristers which is free from discrimination.
  - (ii) Providing those who have experienced or observed discrimination with avenues of support and/or complaint that are, to the extent possible, confidential, timely, fair and with protection from reprisal.
  - (iii) Empowering individuals to take action with respect to discrimination.
  - (iv) Promoting active leadership within the Victorian Bar of zero tolerance of discrimination.
  - (v) Providing those who are concerned that their conduct may constitute discrimination with guidance as to avenues to assist in redressing their conduct and prevent its reoccurrence.

### **Who can make use of this policy?**

3. All barristers and anyone who considers that they have experienced, or observed, discrimination by a barrister can use the procedures under this policy including:
  - (i) barristers' employees and contractors;
  - (ii) readers;

- (iii) the Victorian Bar's employees;
- (iv) Barristers Chambers Limited's employees;
- (v) clerks and their employees;
- (vi) solicitors and their employees;
- (vii) court staff;
- (viii) students who work with barristers;
- (ix) volunteers who work with barristers;
- (x) clients; and
- (xi) visitors to premises or events connected with barristers' professional practice.

**What is discrimination?**

1. For the purposes of this policy, discrimination means discrimination means direct or indirect discrimination.
2. Direct discrimination occurs where a person treats, or proposes to treat, another person unfavourably because they have an attribute falling with s 6 of the *Equal Opportunity Act 2010* (Vic).
3. Indirect discrimination occurs where a person imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with an attribute falling within s 6 of the *Equal Opportunity Act 2010* (Vic), and that is not reasonable.
4. The following are (non- exhaustive) attributes or personal characteristics by reason of which a person may be subject to discrimination:
  - (i) age;
  - (ii) breastfeeding;
  - (iii) disability;
  - (iv) employment activity;
  - (v) gender identity;
  - (vi) industrial activity;

- (vii) marital status;
  - (viii) parental or carer status;
  - (ix) political beliefs;
  - (x) pregnancy;
  - (xi) race;
  - (xii) religious belief;
  - (xiii) sexual orientation.
5. Discrimination is expressly prohibited by rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* ('the Conduct Rules'). It may also constitute conduct which is likely to diminish public confidence in the legal profession or bring the legal profession into disrepute, in contravention of rule 8 of the Conduct Rules. It may constitute professional misconduct or unsatisfactory professional conduct.
6. Victorian and federal legislation also makes discrimination unlawful in a range of work related and public contexts. These include discrimination in employment, in education and training and in the provision of services.

**Where can discrimination happen?**

7. Discrimination can occur anywhere in the course of, and in connection with, a barrister's professional practice. This includes, for example, in chambers, in court, in clerk's offices, at the Essoign club, at networking events, or at social gatherings connected with the Bar. It can happen online, by telephone, by text or email. It can happen out of hours as well as during them.

**What options do you have if you have experienced or observed, discrimination by a barrister?**

8. If you have experienced, or observed, discrimination by a barrister you may:
- (i) Where appropriate, attempt to resolve your concern directly with the barrister;
  - (ii) Seek informal support from a colleague;
  - (iii) Seek support from a Peer Support Barrister;
  - (iv) Seek support from the President and/or Vice Presidents of the Bar Council;
  - (v) Seek support from the Executive Director of the Bar Office;

- (vi) Seek support from your employer e.g. the Bar Office, Barristers' Chambers Limited or Clerk;
  - (vii) Raise a grievance with the Ethics Committee under the Grievance Protocol; or
  - (viii) Make a formal complaint to the Victorian Legal Services Commissioner.
9. If you have experienced, or observed, discrimination by a judicial officer, you may also be able to make a complaint to the Judicial Commission of Victoria or head of jurisdiction.
10. If you are an employee, you may also be able to make a complaint to the Australian Human Rights Commission, the Victorian Equal Opportunity and Human Rights Commission, WorkSafe, or the Fair Work Commission.

## **SUPPORT AND GUIDANCE**

### **Seeking informal support**

11. If you have concerns about conduct of a barrister which may constitute discrimination and would prefer to discuss them informally, consider speaking to:
- (i) a mentor or other senior member of counsel;
  - (ii) a member of your chambers;
  - (iii) the other barrister's mentor;
  - (iv) your clerk;
  - (v) the other barrister's clerk;
  - (vi) any Peer Support Barrister;
  - (vii) the President and/or the Vice-Presidents of the Bar; or
  - (viii) the Executive Director of the Bar Office.
12. Without in any way limiting the possible outcomes or resolutions, the above persons may:
- (i) Provide informal peer support to help you decide what, if any, further action you may wish to take;

- (ii) Provide guidance as to options which are available to you to make informal or formal complaints;
  - (iii) Where appropriate and with your consent, discuss the concern with the other barrister and ask them to redress their behaviour;
  - (iv) Where appropriate and with your consent, discuss the concern with any of the other above persons.
13. All discussions with Peer Support Barristers, the President or Vice-Presidents or the Executive Director will be kept confidential and will not be disclosed to any other person without your consent.
14. However, if the conduct disclosed may constitute an indictable offence, the President, Vice-Presidents, members of the Bar Council and/or the Executive Director may be obliged to report it to the Police under s 465 of the *Legal Profession Uniform Law*.

#### **Peer Support Barristers**

15. Peer Support Barristers are barristers who have volunteered to be contacted by, and provide support to, those who have experienced, or observed, discrimination.
16. A Peer Support Barrister can:
- (i) Provide informal peer support to help you decide what, if any, further action you may wish to take;
  - (ii) Help you understand your options to make an internal or formal complaint;
  - (iii) Help you raise a grievance or make a formal complaint.
17. The Peer Support Barrister is a support person and not a complaint mechanism. Your interactions with a Peer Support Barrister will be confidential. The Peer Support Barrister will not take any action or disclose any information about you or the conduct without your consent. The Peer Support Barrister will not undertake any investigation.

#### **What options do you have if you are concerned that your conduct may constitute discrimination?**

18. All barristers are required to adhere to the Conduct Rules at all times. The Victorian Bar expects all barristers to comply with their obligations and be mindful of their interactions with others in connection with their practice.
19. If you have concerns that you have engaged in discrimination, or that your conduct or

manner may have offended, humiliated or intimidated any person to whom this policy applies, you should consider:

- (i) Apologising for your conduct;
- (ii) Reflecting on the reasons for your conduct and how you might avoid repeating it; and
- (iii) Seeking guidance from a Peer Support Barrister.

20. Peer Support Barristers can provide informal assistance and guidance to help you:

- (i) Improve your understanding of discrimination; and
- (ii) Access help to change your behaviour.

21. Discussions with Peer Support Barristers are confidential. The Victorian Bar encourages members to seek assistance to better understand and manage their behaviour.

22. If you are concerned about your behaviour and would like assistance to change it, you can also access psychological support from the following independent counselling services:

- (i) Re-Vision Group: 03 96505540
- (ii) Converge International: 13000 687 327

23. The Bar funds five free sessions with either of these services for barristers and their family members.

#### **External sources of support**

24. Professional support is available to anyone who has experienced or observed discrimination.

25. You can access psychological support from the following independent counselling services:

- (i) Re-Vision Group: 03 96505540
- (ii) Converge International: 13000 687 327

26. The Bar funds five free sessions with either of these services for barristers and their family members.

27. Beyond Blue provides mental health support and can be contacted on 1300 22 46 36 or <https://www.beyondblue.org.au/>.
28. The Australian Human Rights Commission website has information about discrimination and making a complaint under federal legislation:  
<https://humanrights.gov.au/>
29. The Victorian Equal Opportunity and Human Rights Commission has information about discrimination and making a complaint under Victorian legislation:  
<https://www.humanrights.vic.gov.au/>
30. If you are an employee, the Fair Work Commission website has information about discrimination by an employer: <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/workplace-discrimination>

## **COMPLAINTS**

### **Raising a grievance with the Ethics Committee**

31. The Grievance Protocol is the Victorian Bar's informal grievance process. A copy of the Grievance Protocol is attached to this Policy. The following is a summary of key aspects of the Grievance Protocol and so you should read and consider the entire Grievance Protocol before raising a grievance.
32. You can raise a grievance by contacting any member of the Ethics Committee or sending an email to [ethics@vicbar.com.au](mailto:ethics@vicbar.com.au).
33. A grievance under the Grievance Protocol will result in the Ethics Committee undertaking an informal investigation.
34. The Ethics Committee may attempt to resolve the grievance by taking a number of actions which include:
  - (i) encouraging or facilitating resolution by agreement.
  - (ii) recommending an apology or training; or
  - (iii) recommending changes to a barrister's practices or behaviour.
35. If the Ethics Committee concludes that the conduct complained of could amount to a breach of the Conduct Rules, it may request the President of the Victorian Bar to convey its recommendations to the barrister who is the subject of the grievance.
36. In conducting the investigation, the Ethics Committee will not, where possible, disclose the identities of the persons involved and information they provide to any

person not involved in the investigation. The identity of the person raising the grievance will be disclosed to the barrister who is the subject of the grievance. In some circumstances, information and identities relating to a grievance may be disclosed to the President and the Bar Council or the Victorian Legal Services Commissioner. These are described in the Grievance Protocol and you should consider them before deciding to raise a grievance.

#### **Formal complaint to the Victorian Legal Services Commissioner**

37. A formal complaint can be made to the Victorian Legal Services Commissioner under the *Legal Profession Uniform Law*.
38. A formal complaint may result in a finding of unsatisfactory professional conduct or professional misconduct. The Victorian Legal Services Commissioner may impose disciplinary sanctions.
39. Information about how to make a complaint is on the Victorian Legal Services Commissioner's [website](#).

#### **Complaints to the Judicial Commission of Victoria or head of jurisdiction**

40. Discrimination by a judicial officer can be reported to the Judicial Commission of Victoria. Information about making a complaint is on the [website](#).
41. The Victorian Bar also has protocols with some courts under which the President can raise concerns with the relevant head of jurisdiction about conduct of judicial officers or court staff. You can discuss raising a complaint in this manner by contacting the President of the Victorian Bar or Executive Director.

#### **Complaints to the Victorian Equal Opportunity & Human Rights Commission, VCAT or the Australian Human Rights Commission**

42. If you believe that the conduct contravenes the *Equal Opportunity Act 2010* (Vic), or the *Racial and Religious Tolerance Act 2001* (Vic), you can use the conciliation service at the Victorian Equal Opportunity & Human Rights Commission. Information is available at: <https://www.humanrights.vic.gov.au/dispute-resolution/about/>
43. You may also be able to make a complaint about conduct contravening the Victorian legislation at VCAT: <https://www.vcat.vic.gov.au/equal-opportunity/resolve-a-dispute-about-unlawful-discrimination-sexual>
44. If you believe that the conduct contravenes federal discrimination legislation you can make a complaint to the Australian Human Rights Commission. Information is available at: <https://humanrights.gov.au/complaints#main-content>

Approved by Bar Council on  
27 February 2018

Last revised 19 August 2021