



## POLICY

# POLICY AGAINST SEXUAL HARASSMENT

1. Sexual harassment is unacceptable and contrary to law. The Victorian Bar is committed to a working environment free from sexual harassment 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 sexual harassment.
  - (ii) Providing those who have experienced or observed sexual harassment 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 sexual harassment.
  - (iv) Promoting active leadership within the Victorian Bar of zero tolerance of sexual harassment.
  - (v) Providing those who are concerned that their conduct may constitute sexual harassment 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, sexual harassment by a barrister can use the procedures under this policy including:
  - (i) barristers' employees and contractors;

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 1 of 10		

- (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 sexual harassment?**

4. For the purposes of this policy, sexual harassment is unwelcome conduct of a sexual nature that would cause a reasonable person, having regard to all of the circumstances, to feel offended, humiliated or intimidated. It includes:

- (i) an unwelcome sexual advance;
- (ii) an unwelcome request for sexual favours; or
- (iii) any other unwelcome conduct of a sexual nature.

5. Sexual harassment can be physical, verbal or written. It may include:

- (i) comments about someone's private life or the way they look;
- (ii) sexually suggestive behaviour, such as leering or staring;
- (iii) brushing up against someone, touching, fondling or hugging;
- (iv) sexually suggestive comments, jokes or behaviour;
- (v) displaying offensive images or objects;
- (vi) repeated requests to go out;

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 2 of 10		

- (vii) requests for sex or other forms of sexual intimacy;
  - (viii) sexually explicit emails, text messages or posts on social media;
  - (ix) comments or actions concerning a person's sexual orientation or gender identity/gender expression;
  - (x) persistent personal questioning; and
  - (xi) sexual assault.
6. Interactions that are consensual or welcome are not behaviour that is sexual harassment.
7. Sexual harassment 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 unsatisfactory professional conduct or professional misconduct.

#### **Where can sexual harassment happen?**

8. Sexual harassment can occur anywhere in the course of practice or in connection with a barrister's profession. This includes, but is not limited to, conduct at social functions connected with the Bar or the legal profession and interactions with a person with whom a barrister has, or has had, a professional relationship. Examples include conduct 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, sexual harassment by a barrister?**

9. If you have experienced, or observed, sexual harassment 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;

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 3 of 10		

- (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;
  - (viii) Make a formal complaint to the Victorian Legal Services Commissioner;  
or
  - (ix) Report the conduct to Victoria Police.
10. If you have experienced, or observed, sexual harassment by a judicial officer, you may also be able to make a complaint to the Judicial Commission of Victoria or head of jurisdiction.
11. 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**

12. If you have concerns about conduct of a barrister which may constitute sexual harassment 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

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 4 of 10		

- (viii) the Executive Director of the Bar Office.
13. 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.
14. 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.
15. 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**

16. Peer Support Barristers are barristers who have volunteered to be contacted by, and provide support to, those who have experienced, or observed, sexual harassment. They have undertaken training to support those affected by sexual harassment.
17. 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.
18. The Peer Support Barrister is a support person and not a complaint mechanism. Your interactions with a Peer Support Barrister will be

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 5 of 10		

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 sexual harassment?**

19. 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.
20. If you have concerns that you have engaged in sexual harassment, 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.
21. Peer Support Barristers can provide informal assistance and guidance to help you:
  - (i) Improve your understanding of sexual harassment; and
  - (ii) Access help to change your behaviour.
22. Discussions with Peer Support Barristers are confidential. The Victorian Bar encourages members to seek assistance to better understand and manage their behaviour.
23. 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
24. The Bar funds five free sessions with either of these services for barristers and their family members.

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 6 of 10		

## External sources of support

25. Professional support is available to anyone who has experienced or observed sexual harassment.
26. You can access psychological support from the following independent counselling services:
  - (i) Re-Vision Group: 03 96505540
  - (ii) Converge International: 13000 687 327
27. The Bar funds five free sessions with either of these services for barristers and their family members.
28. The National Sexual Assault and Domestic Family Violence Counselling Service provides confidential information, counselling and support services. You can contact it by calling 1800RESPECT or visiting its website at <https://www.1800respect.org.au/>.
29. Beyond Blue provides mental health support and can be contacted on 1300 22 46 36 or <https://www.beyondblue.org.au/>.
30. Other agencies provide information about sexual harassment and avenues of redress which are particularly relevant to employees. These include:
  - (i) The Victorian Equal Opportunity and Human Rights Commission;
  - (ii) The Australian Human Rights Commission;
  - (iii) The Fair Work Commission; and
  - (iv) WorkSafe.
31. Information is available on these agencies' websites.

## COMPLAINTS

### Raising a grievance with the Ethics Committee

32. 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.

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 7 of 10		

33. 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).
34. A grievance under the Grievance Protocol will result in the Ethics Committee undertaking an informal investigation.
35. The Ethics Committee may then:
- (i) Attempt to resolve the grievance with the consent of the parties involved;
  - (ii) Conclude that the conduct complained of would not amount to a breach of the Conduct Rules; or
  - (iii) Conclude that the conduct complained of could amount to a breach of the Conduct Rules.
36. The Ethics Committee does not have power to impose any disciplinary consequences or make findings of unsatisfactory professional conduct or professional misconduct. If you wish to pursue disciplinary consequences, you will need to make a formal complaint to the Victorian Legal Services Commissioner.
37. 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.
38. 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.
39. 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

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 8 of 10		



Protocol and you should consider them before deciding to raise a grievance.

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

40. A formal complaint can be made to the Victorian Legal Services Commissioner under the *Legal Profession Uniform Law*.
41. A formal complaint may result in a finding of unsatisfactory professional conduct or professional misconduct. The Victorian Legal Services Commissioner may impose disciplinary sanctions.
42. Information about how to make a complaint is on the Victorian Legal Services Commissioner's [website](#).
43. The Victorian Legal Services Commissioner has a specialist team that deals with complaints relating to sexual harassment. If you wish to make a complaint about sexual harassment to the Victorian Legal Services Commissioner, ask to speak to a member of the Sexual Harassment Complaints Team when you call, or email [harassmentcomplaints@lsbc.vic.gov.au](mailto:harassmentcomplaints@lsbc.vic.gov.au).

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

44. The Judicial Commission of Victoria has published a guideline about sexual harassment following consultation with the Victorian legal and court sector. The guideline can be accessed below:
  - [Judicial Conduct Guideline – Sexual Harassment](#)
45. Sexual harassment by a Victorian judicial officer can be reported to the Judicial Commission of Victoria. Information about making a complaint is on the [website](#).
46. Sexual harassment by a Commonwealth judicial officer can be reported to the head of jurisdiction under legislative complaints procedures. These are described on the Federal Court of Australia [website](#) and the Federal Circuit Court of Australia [website](#).
47. 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. Information about these protocols is on the Victorian Bar [website](#). You can discuss raising a complaint in this manner by contacting the President of the Victorian Bar or Executive Director.

Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 9 of 10		

## Police report

48. If you believe that a criminal offence has been committed, you can report it to the police. Victoria Police has dedicated sexual offence investigation teams whose contact details are on the Victoria Police [website](#).

## Complaints to other statutory bodies

49. If you believe that the conduct contravenes the *Equal Opportunity Act 2010* (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/>
50. 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>
51. 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>
52. [If you are an employee, you may also be able to make a complaint to WorkSafe or the Fair Work Commission.](#)

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Policy Name:	Policy Against Sexual Harassment	Date Approved: 27 February 2018
Approved By:	Victorian Bar Council	Date Last Reviewed: 22 June 2023
Page 10 of 10		