



THE VICTORIAN BAR INCORPORATED  
**SUBMISSION TO THE LAW  
COUNCIL OF AUSTRALIA**

RESPONSE TO DISCUSSION PAPER INTO  
SEXUAL HARASSMENT IN THE LEGAL  
PROFESSION

## INTRODUCTION

1. The Victorian Bar (**the Bar**) welcomes the opportunity to provide a response to the Law Council of Australia (**the Law Council**) in respect of the Discussion Paper into Addressing Sexual Harassment in the Australian Legal Profession. The Equality and Diversity Committee of the Bar has drafted this brief response, with input from its Gender Equality Working Group.
2. The Bar acknowledges the comprehensive review undertaken by the Law Council for the purposes of the Discussion Paper, and notes that the Bar has previously made contributions to the Law Council in respect of sexual harassment,<sup>1</sup> as well as conducting surveys involving sexual harassment, as referenced in the Discussion Paper.
3. In particular, in 2018 the Bar's *Quality of Working Life Survey*<sup>2</sup> revealed that of the respondents to the survey, 2% of male barristers and 16% of female barristers experienced sexual harassment.
4. The Bar also notes and acknowledges the findings reported in the International Bar Association (IBA) report released on 15 May 2019, '*Us Too? Bullying and Sexual Harassment in the Legal Profession*,' which revealed (in respect of Australian based respondents) that 47% of female lawyers and 13% of male lawyers have experienced sexual harassment (**the IBA report**).<sup>3</sup> The Bar acknowledges the significance of the IBA report. The Bar hosted a CPD in respect of the IBA report findings in August 2019, chaired by Jenny Firkin QC, the Chair of the Equality and Diversity Committee.
5. The Bar acknowledges and accepts that sexual harassment affects men and women, but that women are disproportionately affected as victims. This entrenches gender inequity in the legal profession. The Bar acknowledges that victims of sexual harassment may face further intersectional disadvantage due to racial or cultural background, disability, and sexuality. The Equality and Diversity Committee has working groups that feed intersectional concerns to the committee. The Bar welcomes feedback and input from its members about process, support and information gaps, either through committee contact, or through Bar Council members.

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<sup>1</sup> November 2018, Victorian Bar Submission to the Law Council in response to the *AHRC National Inquiry into Sexual Harassment in Australian Workplaces*.

<sup>2</sup> Victorian Bar, October 2018 *Quality of Working Life Survey*, (University of Portsmouth) <https://www.vicbar.com.au/sites/default/files/Wellbeing%20of%20the%20Victorian%20Bar%20report%20final%20Oct%202018.pdf>

<sup>3</sup> International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (2019), 87.

## RESPONSE TO DISCUSSION PAPER

6. In short, the Bar supports all measures that would effectively address sexual harassment in the legal profession.
7. The Bar considers that the Law Council, as the national peak body, should be the primary advocate in addressing sexual harassment across the legal profession.
8. The Law Council is encouraged to take into account the diverse range of views of its constituent bodies. The Bar notes that processes that might be suited to a law firm or employee-based environment might be unsuitable or inappropriate in the context of the workplaces of independent barristers.
9. The Bar considers that the principal role of the Law Council should be to advocate for a nationally consistent approach against sexual harassment in the legal profession. Further, the Law Council is well placed to act as a referral service in publishing and providing current and comprehensive information to all lawyers, across all jurisdictions to assist them with accessing support or making a formal or informal complaint in that jurisdiction.
10. The Bar has a conduct and internal grievance process and has appointed a number of AHRC trained conciliators who are available to all members of the Bar. These processes have already been referred to in the Bar's submission to the Law Council in November 2018 for the purposes of contributing to the Law Council's response to the *AHRC National Inquiry into Sexual Harassment in Australian Workplaces*.
11. Notwithstanding the Bar's own current grievance processes, and the formal processes that exist through the Victorian Legal Services Board, the Victorian Equal Opportunity and Human Rights Commission, WorkSafe Victoria, and the Australian Human Rights Commission, it apprehends that the conciliators at the Bar are not always utilised. Therefore, the Bar supports the Law Council providing an independent mechanism or pathway for supporting victims of sexual harassment to make a (formal or informal) complaint, and/or access support.
12. A more independent and distanced complaint process may be of more value in the context of barristers and chambers settings, where there may be perceptions about cultural barriers to reporting and responding to sexual harassment internally. In supporting measures by the Law Council, the Bar does not seek to dilute, shirk, or circumvent its own progress and measures to combat sexual harassment; rather, it is acknowledged that there may be additional supports that can be facilitated by and through the Law Council, which would be of benefit to all practitioners, including members of the Bar.

13. In proposing, designing or supporting any complaint system or measures that address sexual harassment in the profession, the Law Council ought to factor in special regard for the working environments of barristers to ensure that such systems or measures appropriately capture the experience of barristers, who operate as sole practitioners. It is noted that for barristers in Victoria the structure of chambers and the clerking system differs slightly from other states such as NSW, in that most chambers are rented through Barristers' Chambers Limited and clerks concurrently service barristers across various chambers. This may impact the systems or measures appropriate for Victorian barristers.
14. While the Bar encourages regulatory oversight, the Bar welcomes consultation about the nature and extent of any regulation contemplated.
15. The Bar considers that education is a critical tool in the battle against sexual harassment. To that end, the Bar supports the introduction of a mandatory CPD element for all lawyers, including barristers, that addresses sexual harassment. The Bar looks to the Law Council to set the standard and structure of a model CPD session.
16. The Bar looks forward to continuing to contribute to the LCA's approach with respect to sexual harassment. Members of the Equality and Diversity Committee (Jenny Firkin QC – Chair, and Astrid Haban-Beer – Vice-Chair) are available to discuss this response as appropriate.