



Law Council
OF AUSTRALIA

Office of the President

16 May 2025

The Rt Hon Baroness Harriet Harman KC
Chair
Independent Review of Bullying and Harassment at the Bar of England and Wales
289–293 High Holborn
London WC1V 7HZ
UNITED KINGDOM

By email: BHreview@barcouncil.org.uk

Dear Baroness Harman

Independent Review into Bullying, Harassment and Sexual Harassment at the Bar of England and Wales

Thank you for your letter dated 11 April 2025. The Law Council welcomes the opportunity to contribute to the *Independent Review into Bullying, Harassment and Sexual Harassment at the Bar of England and Wales (Independent Review)*.

The Law Council represents the Australian legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law. The Law Council's Constituent Bodies are 16 Australian state and territory law societies and bar associations, and Law Firms Australia.

Due to the response timeframe, the Law Council has not had opportunity to undertake consultation with its Constituent Bodies about the questions asked. The response provided draws from the Law Council's previous and ongoing work on bullying and harassment—including sexual harassment—in Australia's legal profession.

The Law Council hopes that this contribution is of assistance to the Independent Review.

If you have any questions about the matters discussed, please contact Ms Charlotte Stubbs, Head, International, at charlotte.stubbs@lawcouncil.au or phone +61 2 6246 3753.

Yours sincerely

Juliana Warner
President

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Law Council
OF AUSTRALIA

Independent Review into Bullying, Harassment and Sexual Harassment at the Bar of England and Wales

Responses to questions

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About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 107,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2025 are:

- Ms Juliana Warner, President
- Ms Tania Wolff, President-elect
- Ms Elizabeth Shearer, Treasurer
- Mr Lachlan Molesworth, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Introduction

1. The Law Council welcomes the opportunity to contribute to the Independent Review into Bullying, Harassment and Sexual Harassment at the Bar of England and Wales (**Independent Review**).
2. The Law Council represents the Australian legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law. The Law Council's Constituent Bodies are 16 Australian state and territory law societies and bar associations, and Law Firms Australia.
3. Due to the response timeframe, the Law Council has not had opportunity to undertake consultation with its Constituent Bodies about the questions provided. The response provided draws from the Law Council's previous and ongoing work on bullying and harassment—including sexual harassment—in Australia's legal profession.
4. The Law Council is committed to addressing bullying and harassment in all its forms in the legal profession. On 8 July 2020, the Law Council convened a national roundtable of experts to review and make recommendations about the legal profession's policy responses to sexual harassment (**National Roundtable**).¹ Following the National Roundtable, the Law Council developed its National Action Plan (**NAP**) to Reduce Sexual Harassment in the Legal Profession, which contains actions ranging from advocating for federal law reform and the harmonisation of federal, state and territory discrimination laws to driving cultural change in the legal profession.² The NAP has prompted the Law Council's successful advocacy of legislative reform, amendments to professional conduct rules, and the development of guidance such as the Law Council's Model Framework on addressing sexual harassment in the legal profession, and its public leadership statement on sexual harassment and discrimination.
5. The NAP and other Law Council policies and initiatives on bullying and harassment recognise the importance of addressing both regulatory and cultural change factors to facilitate better experiences for legal professionals.³ The Law Council's work in this area is constantly evolving, in response to changes in legislation governing workplaces in Australia, and research and findings on best practices for workplaces. Through its work, the Law Council aims to promote national consistency and best practice across Australian jurisdictions.
6. The Law Council hopes that this contribution is of assistance to the Independent Review.

¹ See Law Council of Australia, 'Statement on the outcomes of a national Roundtable into sexual harassment in the legal profession from Law Council President, Pauline Wright' ([Media Release](#), 9 July 2020).

² See Law Council of Australia, [National Action Plan to Reduce Sexual Harassment in the Legal Profession](#) (23 December 2020).

³ See e.g. Law Council of Australia, [Public Leadership Statement on Sexual Harassment and Discrimination](#) (2024); Law Council of Australia, [Submission to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces](#) (2019); Law Council of Australia, [Bullying and Harassment in the Workplace](#) (web page); Law Council of Australia, [National Model Framework Addressing Sexual Harassment for the Australian Legal Profession](#) (Policy Statement, 2021).

Responses to questions

Question 1: To what extent, if any, is bullying and harassment a problem in the legal profession in your jurisdiction?

7. Studies have consistently indicated that bullying and harassment within the Australian legal profession remains a prevalent problem.
8. In 2013, the Law Council published the *National Attrition and Re-engagement Study (the NARS Report)*. A survey conducted as part of the NARS Report revealed that 50 per cent of female respondents and 38 per cent of male respondents had experienced bullying or intimidation in the workplace, while 24 per cent of female respondents and 8 per cent of male respondents had experienced sexual harassment in the workplace.⁴
9. In 2019, the International Bar Association published *Us Too? Bullying and Sexual Harassment in the Legal Profession (the IBA Report)*. The IBA Report revealed that levels of bullying and sexual harassment in legal workplaces in Australia were 'significantly higher' than global averages. According to the IBA Report, almost 30 per cent of Australian respondents to the IBA's global survey of 7,000 lawyers reported they had been sexually harassed at work, while 60 per cent said they had been bullied. The global averages were 22 per cent and 43 per cent. However, the IBA Report also noted that policies targeted at bullying and sexual harassment are more widely used in Australian legal workplaces than globally, with 66 per cent of Australian respondents reporting that their workplace had relevant policies compared with an international average of 53 per cent.⁵
10. In 2020, the Law Council published its *National Action Plan for Addressing Sexual Harassment in the Legal Profession (NAP)*. The NAP noted that 'all available statistics, as well as anecdotal evidence, suggest that sexual harassment within the Australian legal profession is a prevalent and persistent problem'.⁶
11. More recent studies on workplace conduct in the legal profession in specific states include the *2024 Review of Harassment in the Legal Profession in South Australia*, published by Equal Opportunity South Australia (**SA Review**),⁷ and a report on *Lawyer Wellbeing, Workplace Experiences and Ethics* focussing on the three Uniform Law jurisdictions (New South Wales, Victoria and Western Australia) published by the Australian National University and the University of Melbourne.⁸

⁴ Law Council of Australia, [National Attrition and Re-engagement Study \(NARS\) Report](#) (2014), p.32.

⁵ International Bar Association, [Us Too? Bullying and Sexual Harassment in the Legal Profession](#) (2019), p.86.

⁶ Law Council of Australia, [National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession](#) (2020), p.9.

⁷ Equal Opportunity South Australia, [2024 Review of Harassment in the South Australian Legal Profession](#) (December 2024).

⁸ Vivien Holmes, Julian Webb, Dr Stephen Tang, Susan Ainsworth and Tony Foley, [Lawyer Wellbeing, Workplace Experiences and Ethics: A Research Report](#) (2025).

Question 2: Please could you share with us a copy of the relevant provisions in your Code of Conduct which deal with bullying and harassment? In your view, are the standards of behaviour required of barristers as set out in the Code clear and sufficiently robust?

Solicitors

12. In Australia, solicitor conduct is governed by the *Australian Solicitors Conduct Rules (ASCR)*. The ASCR were developed by the Law Council in collaboration with the state and territory law societies.
13. Following the July 2020 National Roundtable and subsequent consultations informing the Law Council's NAP, the Law Council consulted with its Constituent Bodies and undertook public consultations⁹ to revise Rule 42 (Anti-Discrimination and Harassment) of the ASCR.
14. The purpose of the revision was to:
 - clarify that Rule 42 applies to conduct that occurs in any setting connected with legal practice or the legal profession;
 - ensure that professional disciplinary bodies can appropriately respond to matters concerning sexual harassment as either unsatisfactory professional conduct or professional misconduct; and
 - express the profession's collective view that discrimination and harassment (and, in particular, sexual harassment) is unacceptable conduct when occurring in any situation connected to legal practice or the legal profession.
15. Rule 42 of the ASCR now states that 'a solicitor must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes discrimination, sexual harassment, any other form of unlawful harassment, or workplace bullying.'¹⁰
16. In addition, the Glossary definition of 'sexual harassment' was updated to mean "an unwelcome sexual advance, request for sexual favours, or otherwise engaging in other unwelcome conduct of a sexual nature to the person harassed in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated."
17. These reforms are explained in further detail in the Law Council's Commentary on the ASCR.¹¹

Barristers

18. The *Legal Profession Uniform Conduct (Barristers) Rules 2015* (the **Barrister Rules**) were developed by the Australian Bar Association.
19. Rule 123 (1) of the Barrister Rules provides that a barrister must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes discrimination, sexual harassment or bullying.

⁹ Law Council of Australia, [Public Consultation on further revisions to Rule 42](#) (April 2021)

¹⁰ Law Council of Australia, [Australian Solicitor Conduct Rules](#) (2021).

¹¹ See Law Council of Australia, Australian Solicitors' Conduct Rules 2022 ([Commentary](#), March 2024) p.135.

20. Rule 123 (2) provides that for the purposes of subrule (1), conduct in connection with a barrister's profession includes but is not limited to:
 - (a) conduct at social functions connected with the bar or the legal profession; and
 - (b) interactions with a person with whom the barrister has, or has had, a professional relationship.
21. Under the Barrister Rules, 'bullying' is defined as unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate or cause serious offence to a person.¹² The terms 'sexual harassment' and 'discrimination' adopt the definitions under the applicable state, territory or federal anti-discrimination or human rights legislation.¹³

Question 3: Do lawyers in your jurisdictions undertake any training on bullying and harassment? If so:

- (a) Is this training voluntary or mandatory?**
- (b) In your view, is this training effective?**
- (c) Please could you share copies of any relevant materials with us?**

Continuing Professional Development

22. Legal practitioners in Australia are required to undertake a minimum amount of Continuing Professional Development (**CPD**) each year as a prerequisite to their practising certificate being renewed.
23. CPD, together with professional conduct rules and legal practice rules, fall within the areas of legal profession regulation reserved for developed by the legal profession, rather by governments.
24. The model CPD framework endorsed by the Law Council in 2007 is based on CPD as an exercise in adult learning (in contrast to, for example, regulator-directed prescription). The 2007 model framework identified three 'competency' areas: practical legal ethics, practice management and business skills, and professional skills. A fourth competency area—substantive law—has been added. A legal practitioner must undertake a CPD program each year that addresses each of these 'Tier 1' competency areas.
25. The model CPD framework has been given binding effect by being prescribed in the local legal profession rules and regulations in each Australian state and territory
26. The Law Council developed the *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (Uniform CPD Rules)* that apply in jurisdictions that have adopted the *Legal Profession Uniform Law*—currently New South Wales (**NSW**), Victoria and Western Australia). The Uniform CPD Rules stipulate four compulsory competency areas, and of the required 10 CPD units a solicitor is required to complete each year, the solicitor must complete at least one CPD unit in each competency area:
 - Ethics and professional responsibility;

¹² Legal Profession Uniform Conduct (Barristers) Rules (2015).

¹³ Ibid r 125.

- Practice management and business skills;
 - Professional skills; and
 - Substantive law.
27. For barristers in the Uniform Law jurisdictions the categories in the Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015¹⁴ are:
- Ethics and Professional Responsibility,
 - Practice Management and Business Skills,
 - Substantive Law, Practice and Procedure, and Evidence,
 - Barristers' Skills.
28. Australian jurisdictions that are not part of the Uniform Law framework also apply the model CPD framework endorsed by the Law Council, but with some slight variations in some jurisdictions. For example, in the CPD rules of the Northern Territory and South Australia, there is a separate (Tier 1) competency on bullying and harassment¹⁵ Other jurisdictions have not seen fit to identify this as a separate Tier 1 'competency' but instead consider it an aspect of existing competency areas such as ethics and professional responsibility or practice management skills.
29. Sitting below the Tier 1 competency areas is a range of specific CPD learning 'units' or modules that are offered by CPD providers (predominantly law societies and bar associations).
30. As mentioned, CPD in Australia is conceived as an exercise in adult learning. On this basis each legal practitioner is expected to make their own decisions about what individual CPD topics or 'units' (at Tier 2) they will undertake across the prescribed Tier 1 competencies, based on their own needs and legal practice circumstances.
31. A summary of current training and development opportunities offered by the law societies in each Australian state and territory is attached (see **Appendix A**) to illustrate the range of equality and wellbeing training and education resources currently available to solicitors.
32. An issue that frequently arises in Australia is whether particular issues should be made compulsory CPD, either as a specific 'competency' (Tier 1) or as specific training modules or units (Tier 2). While the Law Council recognises the critical importance of the subject matter and strongly encourages practitioners to undertake training in this area, it does not support these calls. While new and emerging issues, including family safety, diversity and inclusion, cultural awareness, equality and well-being and technology and cyber risks, are important issues, the Law Council's position is that CPD should remain an exercise in self-directed learning rather than becoming a fixed or prescribed curriculum of annual CPD topics for all solicitors.

¹⁴ See [Legal Profession Uniform Continuing Professional Development \(Barristers\) Rules 2015](#).

¹⁵ See, Law Society of the Northern Territory, [Non-exhaustive list of core competency topics](#) (web page); Law Society of South Australia, [Mandatory Continuing Professional Development](#) (web page).

Education and Training under the Model Framework Addressing Sexual Harassment for the Australian Legal Profession

33. The Law Council developed its National Model Framework Addressing Sexual Harassment for the Australian Legal Profession (**Model Framework**) pursuant to its National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession (**NAP**).¹⁶
34. The Model Framework was developed in 2021 as guidance for the legal profession to proactively prevent and respond to sexual harassment.
35. Against the background of significant changes to the law and best practice guidelines, the Law Council conducted a review of the Model Framework in 2024. Updates to the Model Framework were finalised in February 2025 and published on 15 May 2025 (**Appendix B**).
36. The Model Framework is directed at legal organisations, workplaces, legal practices, chambers, and regulators or other disciplinary or external complaints bodies. Organisations can either:
 - (a) adopt the Model Framework in its entirety as that organisation's own sexual harassment policy; or
 - (b) use the Model Framework to develop, augment or refine their existing sexual harassment policies.
37. Paragraph 8.9 of the Model Framework provides that a Model Framework Adopter (**MFA**) will ensure that all persons at the MFA have had or will receive sexual harassment education or training that covers:
 - awareness of and access to the Model Framework, including the expected standards for acceptable and appropriate behaviour set by the Model Framework, its terms and appendices;
 - the behaviours that amount to sexual harassment;
 - the consequences of engaging in sexual harassment;
 - the relevant legislation, regulations and ethical obligations;
 - the risk factors for sexual harassment;
 - the impact of sexual harassment;
 - how to appropriately respond to sexual harassment if it occurs;
 - the available complaints mechanisms both within and external to the MFA; and
 - the support available for persons harassed, complainants and bystanders.
38. Paragraph 8.10 of the Model Framework provides that the MFA is committed to delivering this education or training, including awareness of the Model Framework and its terms on a compulsory basis, at a level commensurate to a person's roles and responsibilities with the MFA, and within a reasonable time:
 - of orientation/induction and/or prior to commencement of membership or practice;
 - of the assumption of management responsibilities for other staff;
 - following a relevant change in legislation or regulation;

¹⁶ Law Council of Australia, [*National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession*](#) (23 December 2020).

- at the request of a staff member or complaints handler or investigator;
- of being appointed as a board member, Director, Committee or related Chair;
- following any circumstances in which complaints handling procedures have not been adequately implemented; and/or
- otherwise at least once every two calendar years.

Question 4: Are law firms regulated entities in your jurisdiction?

39. The basic approach taken in Australia is to prescribe the types of structures that legal practitioners may permissibly utilise as business entities for legal practice. These are:
- sole practitioner (barristers in Australia must only practise as sole practitioners);
 - law firm (a partnership of Australian legal practitioners, or Australian legal practitioners and Australian-registered foreign lawyers);
 - incorporated legal practice (a company which may have legal practitioner and non-legal practitioner shareholders, and may provide both legal and non-legal services, but which must have at least one Australian legal practitioner director); and
 - unincorporated legal practice/multidisciplinary partnership (a partnership which may have legal practitioner and non-legal practitioner partners, and which provides both legal and non-legal services).
40. The legal profession regulatory emphasis in Australia is not on the entity or business structure per se, but on the responsibilities, liability and accountability of the principals of the law practice for complying with the legal profession laws and professional responsibilities, and for ensuring their legal practitioner employees or associates comply with their individual obligations and professional responsibilities.¹⁷
41. Law practices will also be regulated under specific entity laws (for example, an incorporated legal practice is also regulated as a company under Australia's corporations laws) and are also subject to other laws such as federal, state and territory industrial relations laws and work, health and safety (**WHS**) requirements that apply generally to businesses, including in relation to bullying and sexual harassment (see Question 5 below).

¹⁷ See, e.g. [Legal Profession Uniform Law](#) ss 32-35.

Question 5: What obligations, if any, do law firms have to prevent and/or respond to incidents of bullying and harassment?

42. Under the *Model Work Health and Safety Act*,¹⁸ which has been adopted by the Commonwealth and all state and territory jurisdictions except Victoria, an employer or person conducting a business or undertaking (**PCBU**) has a primary duty of care to eliminate, or otherwise minimise, risks to physical and psychological health and safety in the workplace, so far as is reasonable.¹⁹ This includes risks from psychosocial hazards such as bullying and sexual harassment.
43. In addition to state and territory laws prohibiting sexual harassment in workplaces,²⁰ at the federal level, the *Sex Discrimination Act 1984* (Cth) places a positive obligation on an employer or PCBU to take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment in circumstances involving work, as well as related acts of victimisation (referred to as the **positive duty**).²¹ This reform (which came into force in December 2023) was strongly supported by the Law Council,²² and is in addition to the broader existing prohibitions on sexual harassment, including in workplaces, in the Act.²³ The positive duty also extends to unlawful conduct other than sexual harassment, including: sex discrimination, harassment on the ground of sex, hostile work environments, and related acts of victimisation. The Australian Human Rights Commission has the power to enforce compliance by organisations and businesses with the positive duty.²⁴ In determining compliance of an individual law firm, the AHRC is required to take into account the size, circumstances and resources of the firm.²⁵
44. Importantly, the positive duty also applies to barristers personally, barristers' clerks and barristers' chambers.²⁶

¹⁸ The Model Work Health and Safety (**WHS**) Act has been developed for implementation by all Australian jurisdictions (i.e. the Commonwealth, states and territories), and apply in a jurisdiction only where the jurisdiction has separately taken action to implement the laws as their own WHS laws. Some jurisdictions that have adopted the model laws have made substantial variations to the Model WHS Act. Safe Work Australia has published a [cross-comparison table](#) which summarises the similarities and differences between the Model WHS Act and the WHS Acts of the jurisdictions that have adopted the Model WHS Act. See Safe Work Australia, [Sexual and gender-based harassment](#) (web page).

¹⁹ Model Work Health and Safety Act (2023) ss 17, 19. The *Occupational Health and Safety Act 2004* (Vic) contains an equivalent duty to eliminate or minimise risks (s 20(1)) and duty to employees (ss 21, 23, 24).

²⁰ See *Discrimination Act 1991* (ACT) s 59, *Anti-Discrimination Act 1977* (NSW) s 22B, *Anti-Discrimination Act 1992* (NT) s 22, *Anti-Discrimination Act 1991* (Qld) s 118, *Equal Opportunity Act 1984* (SA) s 87, *Anti-Discrimination Act 1998* (Tas) s 17, *Equal Opportunity Act 1984* (WA) s 24, *Equal Opportunity Act 2010* (Vic) s 93-94.

²¹ *Sex Discrimination Act 1984* (Cth) s 47C.

²² See, e.g. Law Council of Australia, [National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession](#) (23 December 2020) pp.26-28, Submission to Attorney-General's Department '[Consultation Paper: Respect@Work – Options to progress further legislative recommendations](#)' (23 March 2022) pp.14-18; Law Council of Australia Submission to Legal and Constitutional Affairs Legislation Committee '[Anti-Discrimination and Human Rights Legislation Amendment \(Respect at Work\) Bill 2022](#)' (14 October 2022) pp.17-18.

²³ *Sex Discrimination Act 1984* (Cth) Part II Div 3 (see ss 28A – 28M). These prohibitions on sexual harassment have also been reformed in recent years following the Respect@Work Report and resulting reforms.

²⁴ *Australian Human Rights Commission Act 1986* (Cth) Part II Division 4A.

²⁵ *Sex Discrimination Act 1984* (Cth) s 47C(6).

²⁶ Previously, the *Sex Discrimination Act 1984* (Cth) had limited operation or application in relation to barristers, since barristers at the private Bar are not permitted to be employees, work in law firms or form any business association or partnership: see Law Council of Australia, submission to the Australian Human Rights Commission '[National Inquiry into Sexual Harassment in Australian Workplaces](#)' (26 February 2019). The [Sex Discrimination and Fair Work \(Respect at Work\) Amendment Act 2021](#) (Cth) amended the *Sex Discrimination*

45. Under the *Sex Discrimination Act 1984* (Cth) employers and principals can be vicariously liable where their employees and agents, in connection with their employment and duties, perpetrate sexual harassment (unless they can show they took all reasonable steps to prevent the sexual harassment from occurring).²⁷
46. The Law Council has also welcomed amendments to the *Fair Work Act 2009* (Cth) which make it unlawful for a person to be sexually harassed in connection with being or seeking to become a worker in a business or undertaking, or in connection with conducting a business or undertaking.²⁸ The Fair Work Commission is empowered to deal with such disputes including by making a stop sexual harassment order.²⁹ If the Fair Work Commission is satisfied that the worker has been sexually harassed by one or more persons in contravention of Division 2 of the Act, and that there is a risk that the worker will continue to be sexually harassed by the individual or group, it may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being sexually harassed by the person or persons.³⁰
47. Similarly, the *Fair Work Act 2009* (Cth) allows a worker who has been bullied at work to apply to the Fair Work Commission for an order to stop the bullying.³¹
48. Failure by a law practice or barristers who employ support staff to meet these responsibilities can additionally lead to disciplinary and other consequences under legal profession laws for the principals of the law practice or the legal practitioner employees or associates.

Question 6: What informal and formal reporting mechanisms are available to lawyers who have experienced or witnessed bullying and harassment?

49. The response below outlines the reporting mechanisms available in the Australian states and territories for individuals to report instances of misconduct of lawyers, which includes lawyers who have experienced or witnessed bullying and harassment by other lawyers. State, territory and federal laws workplace laws apply, including the *Sex Discrimination Act 1984* (Cth) and *Fair Work Act 2009* (Cth), as well as reporting and complaints mechanisms (see Question 8). An overview of the mechanisms for reporting instances of misconduct by judges is provided in the response to Question 12.
50. The mechanisms across Australian jurisdictions are broadly similar in that formal complaints cannot be made anonymously, and only formal complaints can progress to a formal investigation of an individual's conduct.³² In addition, legal profession

Act 1984 (Cth) to adopt the terms 'worker' and 'person conducting a business or undertaking' (PCBU) instead of 'employee' and 'employer'.

²⁷ *Sex Discrimination Act 1984* (Cth) s 106.

²⁸ *Fair Work Act 2009* (Cth) s 527D.

²⁹ *Fair Work Act 2009* (Cth) ss 527F and 527J.

³⁰ *Fair Work Act 2009* (Cth) s 527J.

³¹ *Fair Work Act 2009* (Cth) s 789FF.

³² See, e.g., Office of the Legal Services Commissioner, [Speak Safely](#) (web page); New South Wales Bar Association, [What can I do if I am subject to or witness unacceptable conduct by a barrister or member of the judiciary in NSW?](#) (web page); Victorian Legal Services Board + Commission, [Making a complaint to VLSB+C about sexual harassment](#) (web page); Legal Services Commission Queensland, [Speak safely](#) (web page); Legal Practice Board of Western Australia, [Speak safely](#) (web page); Legal Profession Conduct Commission, [Speak safely](#) (web page); Legal Profession Board of Tasmania, [Report sexual harassment](#) (web page); Australian Capital Territory Law Society, [Discrimination, harassment & bullying](#) (web page).

regulatory authorities can initiate 'own motion' complaints where a disciplinary matter is involved.

51. Informal reporting mechanisms have been introduced to combat a reluctance to report instances of misconduct. Generally, persons making informal complaints will receive information about support services and referrals to services that can provide ongoing support. Importantly, after making an anonymous report a person can then decide to submit a formal complaint.
52. The informal reporting mechanisms also provide organisations an opportunity to monitor trends and understand instances of inappropriate conduct within the legal profession. For example, in NSW, if the Office of the NSW Legal Services Commissioner (**OLSC**) considers there are reasonable grounds to believe that a law practice or barristers' chambers is failing to address a culture of inappropriate personal conduct, the OLSC can take the following action:
 - For law practices, the OLSC may undertake a targeted compliance audit to ensure the practice has appropriate policies and procedures to address inappropriate behaviour and encourage early reporting.
 - Whilst the OLSC does not have powers to audit barristers' chambers, the OLSC is able to assist clerks and Heads of Chambers to review and develop appropriate policies and procedures to address inappropriate behaviour.³³
 - As mentioned above, the OLSC has the power to initiate a complaint where a disciplinary matter is involved.³⁴

Question 7: Have you identified any barriers to reporting incidents or bullying or harassment? If so:

(a) What are these barriers?

(b) What efforts are being made to overcome these barriers and how effective have these efforts been?

53. In relation to the reporting of inappropriate personal conduct, the OLSC Annual Report 2023–24 states that:

Reporting is not an easy decision to make and, following analysis of data, it appears instances of underreporting may be due to several factors: not wanting to hinder internal job promotions, career progressions and opportunities and concerns around the potential repercussions such as a defamation claim. It is also a complex decision to make while being under workplace scrutiny. These are some of the reasons that have been relayed to the Personal Conduct Team by reporters for not wanting to proceed with formal complaints. This is verified by the figures for informal reports lodged through the Elker platform, with 45% of informal reports abandoned at the preliminary stage.

Many reporters would like an investigation to be conducted and disciplinary action taken, and for the alleged perpetrator to be held accountable while maintaining anonymity. However, this must be balanced against the requirement to accord procedural fairness to a lawyer the subject of a disciplinary investigation.³⁵

³³ Office of the New South Wales Legal Services Commissioner, [Informal Reporting](#) (web page).

³⁴ Legal Profession Uniform Law, section 266.

³⁵ Office of the New South Wales Legal Services Commissioner [Annual Report 2023-24](#) p.17.

54. In the 2024 Review of Harassment in the South Australian Legal Profession, **(the SA Review)** just over 5 per cent of respondents said they made a complaint of bullying or discrimination to an external complaint body in the previous three years.³⁶ This fell to 1 per cent for sexual harassment. The figures were even lower for witnesses.
55. However, when the survey participants were asked what they would do if they witnessed or experienced harassment in the future, almost half (45.6 per cent) said they would make an official report in their organisation, and nearly 30 per cent said they would report it to an external body. The SA Review noted that this significant turnaround suggests that 'awareness raising efforts may be bearing fruit'.³⁷
56. However, other respondents remained resolute about not taking any future action or making an internal or external report. Respondents' reasons for not reporting future action included concern about repercussions, doubt about action being taken, processes not allowing for anonymity, lack of trust in both internal and external bodies, and concern about media attention.³⁸
57. The SA Review noted that comments received about internal reporting avenues suggest that many legal workplaces may not have best practice complaint and reporting systems in place and that '[t]his is concerning given extensive good practice guidance is readily available through the Commonwealth Ombudsman and the Australian Human Rights Commission (**AHRC**) and is central to meeting the positive duty in relation to sexual harassment'.³⁹
58. Furthermore, the SA Report noted that perpetrators of harassment in the legal profession are often more senior than their victims and that this power imbalance makes reporting difficult. Therefore, it is essential that all legal workplaces:
 - Establish clear behavioural expectations for staff at all levels including those with management and supervisory responsibilities and communicate these regularly to staff; and
 - Ensure their complaint regime includes a clear and effective process for making and handling reports about senior leaders that has been developed in consultation with workers.
59. In addition, the behavioural expectations should ensure that, as well as managing their own conduct, senior leaders are expected to:
 - Actively support a safe, respectful and inclusive workplace that values diversity and gender equality;
 - Role model respectful behaviour and set clear expectations for others;
 - Hold people to account for their conduct;
 - Ensure people who engage in misconduct, including 'high value' clients, are not protected, rewarded or promoted;
 - Encourage and support other workers to routinely call out disrespectful comments and behaviours.⁴⁰

³⁶ Equal Opportunity South Australia, [2024 Review of Harassment in the South Australian Legal Profession](#) p.82.

³⁷ Ibid, p.82.

³⁸ Ibid, p.83.

³⁹ Ibid, p.95. See, e.g. Australian Human Rights Commission [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023).

⁴⁰ Ibid, p.97.

60. In November 2024, the Law Council issued a positive duty leadership statement, co-badged with all of its Constituent Bodies, affirming the commitment of the Australian legal profession to eliminating sexual harassment and discrimination. Among the commitments set out in the statement, the Law Council and its Constituent Bodies committed to:
- develop elimination strategies that address the traditional and structural features of the Australian legal profession and promote innovative approaches to overcoming them;
 - support the provision of sexual harassment education and training to raise awareness and understanding of legal and professional obligations and ethics, underlying causes and potential risk factors, and best practice prevention and response frameworks; and
 - periodically review strategies in implementing the positive duty to measure progress, share review outcomes publicly to promote transparency, and adopt best practice approaches.
61. The Law Council's National Model Framework Addressing Sexual Harassment for the Australian Legal Profession was developed with the aim of, among other things, providing for best practice complaints procedures for complaints of sexual harassment.

Question 8: What is the threshold for triggering regulatory action in cases of bullying or harassment?

Personal action under legislation

62. Conduct must meet the definition of sexual harassment or bullying in relevant federal, state or territory legislation in order to engage the employer responsibilities and complaints mechanisms contained therein.
63. For example, sexual harassment must meet the definition under section 28A⁴¹ of the *Sex Discrimination Act 1984* (Cth) in order to engage the prohibitions contained in Part II Division 3 of the Act and the powers of the Australian Human Rights Commission (**AHRC**). Similarly, conduct must meet the definition of sexual harassment or bullying under the *Fair Work Act 2009* (Cth) in order to engage the prohibitions outlined in Part 3-5A of the Act, including the Commission's powers to issue orders to stop sexual harassment or bullying and its other powers to deal with disputes.⁴²
64. The threshold to satisfy the positive duty under the *Sex Discrimination Act 1984* (Cth) is that an employer or PCBU has taken 'reasonable and proportionate measures' to eliminate sexual harassment. The AHRC is empowered to investigate and enforce compliance with the positive duty, and can commence an inquiry when it 'reasonably suspects' non-compliance, and without the consent of the employer or PCBU.⁴³ Guidance produced by the AHRC indicates that an employer or PCBU will

⁴¹ For example, under s 28A(1) a person sexually harasses another person if: (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed, in circumstances in which a reasonable person, having regard to all of the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

⁴² *Fair Work Act 2009* (Cth) ss 527D, 527F, 789C, 789FD, 789FF. The *Fair Work Act 2009* (Cth) adopts the definition of sexual harassment in the *Sex Discrimination Act 1984* (Cth) (s 28A).

⁴³ *Sex Discrimination Act 1984* (Cth) s 47C(6).

be expected to meet each of the seven Standards developed by the AHRC (or at least aspects of the Standards which are applicable to them).⁴⁴

65. The process and requirements for regulatory action depend on the body and type of action.
66. For example, if a person makes a complaint to the AHRC alleging sexual harassment in violation of the *Sex Discrimination Act 1984* (Cth), the complaint must be in writing, and it must be 'reasonably arguable' that the conduct constitutes sexual harassment. The complaint must also include sufficient details including what happened, when and where it happened, and who was involved. The AHRC President can investigate the complaint and try to resolve it by conciliation (the Commission is not a court and cannot determine that sexual harassment has happened), and can terminate the complaint for reasons including that the complaint has no merit or has already been dealt with by another agency. If the complaint is not resolved (e.g. following investigation, conciliation or termination by the AHRC), the complainant may be able to take the complaint to the Federal Court of Australia or Federal Circuit Court of Australia (and may require leave to do so).
67. The process and requirements for an application to the Fair Work Commission to deal with a sexual harassment dispute, including an application for a stop sexual harassment order, are outlined in Part 3-5A Division 2 of the *Fair Work Act 2009* (Cth). It should be noted that as a stop sexual harassment order may not be an appropriate avenue for redress in all cases, as it requires the Fair Work Commission to be satisfied:
 - (a) that the worker has been sexually harassed in contravention of Part 3-5A Division 2 by a person or persons; and
 - (b) that there is a risk that a worker will continue to be sexually harassed by the person or persons.
68. Similarly, the Fair Work Commission's power to make a stop bullying order requires it to be satisfied that the worker has been bullied at work by a person or persons, and that there is a risk that the worker will continue to be bullied at work by the person or persons.⁴⁵
69. There are also provisions which limit the ability to make an application or complaint in respect of the same conduct to the Fair Work Commission, a court, or the AHRC, except where the application or complaint has been withdrawn or failed for want of jurisdiction.⁴⁶

Regulatory action under legal profession conduct rules

70. Conduct by a lawyer that amounts to discrimination, harassment (including sexual harassment) or workplace bullying is a breach of professional rules⁴⁷ and will attract disciplinary actions and responses, in addition to any taken under other legislation.

⁴⁴ Australian Human Rights Commission, '[Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#)' (August 2023) p.26.

⁴⁵ *Fair Work Act 2009* (Cth) ss 789FC-789FF.

⁴⁶ *Fair Work Act 2009* (Cth) ss 734A-734B.

⁴⁷ For solicitors, the Australian Solicitors Conduct Rules r 42; for barristers, Legal Profession Uniform Conduct (Barristers) Rules 2015 r 123. See also: See [Australian Solicitors Conduct Rules](#) Glossary of Terms (p.29).

71. Complaints and discipline of lawyers is dealt with under the legal profession laws of each State and Territory.⁴⁸ Complaints about the professional conduct of legal practitioners are lodged with and managed by legal profession regulatory authorities:

Jurisdiction	Legal profession regulatory authority receiving complaints
Australian Capital Territory	ACT Law Society and ACT Bar Association ,
New South Wales	Office of the NSW Legal Services Commissioner
Northern Territory	Law Society of the Northern Territory
Queensland	Legal Services Commission (Qld)
South Australia	Legal Profession Conduct Commissioner (SA)
Tasmania	Legal Profession Board of Tasmania
Victoria	Victorian Legal Services Board and Commissioner
Western Australia	Legal Practice Board of Western Australia .

72. The process for dealing with disciplinary complaints differs between jurisdictions, however the core components of complaints and discipline schemes are:⁴⁹
- assessment and investigation of complaints;
 - resolution of complaints by regulatory authorities and tribunals;
 - mechanisms for alternative dispute resolution;
 - remedies for consumers including compensation orders; and
 - disciplinary sanctions for unprofessional conduct.
73. Generally, a local regulatory authority will conduct a preliminary assessment of the complaint, which determines whether to proceed with an investigation, or close the complaint with no further action for reasons including that the complaint is vexatious, frivolous, or lacking in substance. During or following an investigation, a complaint may be dismissed if the regulatory authority is satisfied that there is no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct, or if it is in the public interest to do so.
74. Following an investigation, the local regulatory authority may find that the lawyer has engaged in unsatisfactory professional conduct, or determine that the conduct may amount to professional misconduct.
75. If it finds that a lawyer has engaged in unsatisfactory professional conduct, the regulatory authority may make orders including a reprimand, or requiring an apology, that the lawyer pay a fine, undertake training, education or counselling, or be subject to a condition on their practising certificate.
76. If it considers that the lawyer may have engaged in professional misconduct, the regulatory authority may initiate and prosecute proceedings against the lawyer in a designated tribunal.
77. If local regulatory authority initiates proceedings, the court or tribunal will deal with the matter in accordance with its procedures, bound by the rules of procedural fairness. If the court or tribunal finds that the lawyer is guilty of unsatisfactory professional conduct or professional misconduct, it may make any orders that it

⁴⁸ [Legal Profession Uniform Law 2015](#), [Legal Profession Act 2006](#) (ACT), [Legal Profession Act 2006](#) (NT), [Legal Profession Act 2007](#) (Qld), [Legal Practitioners Act 1981](#) (SA), [Legal Profession Act 2007](#) (Tas).

⁴⁹ See, [Legal Profession Uniform Law 2015](#) Chapter 5, [Legal Profession Act 2006](#) (ACT) Chapter 4, [Legal Profession Act 2006](#) (NT) Chapter 4, [Legal Profession Act 2007](#) (Qld) Chapter 4, [Legal Practitioners Act 1981](#) (SA) Part 6, [Legal Profession Act 2007](#) (Tas) Chapter 4.

thinks fit, including ordering the lawyer to pay a fine, ordering the imposition of a condition on the lawyer's practising certificate, or the suspension or cancellation of that practising certificate, or recommending that a lawyer's name be removed from the roll of practitioners.

78. Australian jurisdictions maintain public registers, which include details of disciplinary actions taken against lawyers,⁵⁰ and the case of *Council of the New South Wales Bar Association v EFA* [2021] NSWCA 339 provides an example of where regulatory action has been taken in relation to sexual harassment by a lawyer in the course of or in connection with legal practice.

Question 9: Are lawyers under a duty to report certain misconduct to the regulator? If so:

(a) When is this duty triggered?

(b) Is this an effective mechanism?

79. A solicitor can make a complaint about another legal practitioner's conduct provided they adhere to ASCR Rule 32.1:

A solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.

80. The Law Society of NSW has issued guidance about complaints by solicitors about solicitors.⁵¹
81. Except in relation to trust account irregularities, there is no statutory obligation or any rule unique to solicitors requiring a solicitor to report concerns about the professional conduct of another solicitor.⁵²
82. The Law Council has previously opposed the introduction of a mandatory requirement that lawyers report suspected misconduct of other lawyers, due to concerns regarding the inherent risks posed by a mandatory reporting obligation, and expressed the view that it is not an effective tool for achieving overall improvement of the profession.

Question 11. In particularly sensitive cases concerning sexual misconduct, are there any bespoke mechanism in place to support complainants?

83. Specialist support services are available at some organisations. For example, at the NSW Bar Association, the Sexual Harassment Officer (**SHO**) provides a dedicated, confidential support function to anyone who has experienced or witnessed discrimination, bullying and/or sexual harassment. The role is completely independent of the NSW Bar Association.⁵³

⁵⁰ See, e.g.: NSW Office of the Legal Services Commissioner, [Register of Disciplinary Action](#) (web page).

⁵¹ Law Society of New South Wales, 'Complaints by Solicitors about Solicitors' ([Fact sheet](#), May 2023) pp.3-5.

⁵² See Law Society of New South Wales, [Ethics FAQs](#) (web page).

⁵³ New South Wales Bar Association, [Sexual Harassment, Discrimination and Workplace Bullying](#) (web page).

Question 12: Is there a problem with judicial bullying in your jurisdiction? If so:

- (a) How has this problem been identified?**
- (b) What mechanisms are in place for lawyers to report judicial misconduct?**
- (c) To what extent are these mechanisms used?**
- (d) In your view, are these mechanisms effective?**
- (e) What sanctions are available in response to a finding of judicial bullying and are these sanctions sufficiently robust?**

A. How has this problem been identified?

84. Several studies in Australia indicate that judicial bullying exists in the legal profession.
85. In 2017, the NSW Bar Association conducted a survey of practising certificate holders on the wellbeing of barristers and the quality of their working life.⁵⁴ Of the 947 responses to the survey, 66 per cent said they had experienced judicial bullying. Judicial bullying was reported by barristers at all levels of seniority, including those with less than five years standing through to and including those with more than 20 years standing. The survey also indicated that the prevalence of judicial bullying appeared to be higher in the District and Supreme Courts than the Federal Court.
86. In 2018, the Victorian Bar published the results of the *Wellbeing of the Victorian Bar* survey.⁵⁵ The survey attracted 854 valid responses, representing 40 per cent of Victorian practising counsel. According to the survey, Victorian barristers reported high degrees of satisfaction with the overall quality of their working lives (73 per cent). However, when asked how their quality of working life could be improved, one-in-six respondents referred to better judicial behaviour. 59 per cent of respondents reported that they had experienced judicial bullying in the course of their working lives.
87. In 2024, researchers from the University of Newcastle (Australia) published the results of a study on the experience of judicial bullying for lawyers providing publicly-funded criminal defence.⁵⁶ The study was based on 32 interviews conducted throughout 2023 in five jurisdictions, and found that judicial bullying was consistently raised by participants as a significant factor affecting their own or a colleague's wellbeing. Furthermore, interviewees highlighted that the experience of judicial bullying frequently led to otherwise competent and devoted lawyers permanently leaving the profession. An important theme that emerged from this research was that judicial bullying was experienced by many lawyers, but perpetrated by a few, easily identified judicial officers.⁵⁷
88. The 2024 Review of Harassment in the South Australian Legal Profession found that although judicial officers represent a small proportion of the legal profession in South Australia, 22 per cent of survey respondents who said they had been bullied, and who chose to specify the perpetrator, identified a judicial officer as the

⁵⁴ New South Wales Bar Association, *Quality of Life Survey*, 2018.

⁵⁵ Victorian Bar, [Survey finds life at the Bar is good, with room for improvement](#) (2018) (web page).

⁵⁶ Rick Nickson and Alice Neikirk, '[Getting slapped and kicked: the experience of judicial bullying for lawyers providing publicly funded criminal defence](#)' (2004) 31(3) *Psychiatry, Psychology and Law* (2024), p.401.

⁵⁷ *Ibid* p.402.

perpetrator.⁵⁸ In addition, 10 per cent of those who reported experiencing discrimination and 9 per cent of those who reported experiencing harassment said that the perpetrator was a judicial officer.⁵⁹

89. The Australasian Institute of Judicial Administration (**AIJA**) has published a Guide to judicial conduct, which was most recently updated in February 2023. In 2020, a paragraph was added to the Guide:

Judges must conform to the standard of conduct required by law and expected by the community. They must treat others with civility and respect in their public life, social life and working relationships. It goes without saying that Judges must not engage in discrimination or harassment (including sexual harassment) or bullying. In relation to these matters, Judges must be particularly conscious of the effect of the imbalance of power as between themselves and others, especially their Chambers staff, Court staff and junior lawyers.⁶⁰

B. What mechanisms are in place for lawyers to report judicial misconduct?

State courts and tribunals

State and territory judicial commissions

90. Five State and Territory jurisdictions (the Australian Capital Territory, New South Wales, the Northern Territory, South Australia and Victoria) have established judicial commissions, with substantially similar composition, functions and powers.⁶¹

Jurisdiction	Judicial Commission	Relevant legislation
Australian Capital Territory	ACT Judicial Council	<i>Judicial Commissions Act 1994</i> (ACT)
New South Wales	NSW Judicial Commission	<i>Judicial Officers Act 1986</i> (NSW)
Northern Territory	NT Judicial Commission	<i>Judicial Commission Act 2020</i> (NT)
South Australia	Judicial Conduct Commissioner	<i>Judicial Conduct Commissioner Act 2015</i> (SA)
Victoria	Judicial Commission of Victoria	<i>Judicial Commission of Victoria Act 2016</i> (Vic)

91. These bodies may only investigate complaints about the conduct, capacity, ability or behaviour of sitting judicial officers, and cannot investigate complaints about the correctness of a decision made by a judicial officer. They also cannot investigate or deal with a complaint unless it meets a threshold level of seriousness, which generally means that a complaint must be dismissed unless the subject matter of the complaint could, if substantiated:
- amount to proved misbehaviour or incapacity that would warrant the removal of the officer from office;
 - affect the performance of the officer's functions and duties; or
 - infringe the standard of conduct expected.

⁵⁸ Equal Opportunity South Australia, [2024 Review of Harassment in the South Australian Legal Profession](#) (2024), pp.76-77.

⁵⁹ Ibid.

⁶⁰ Australasian Institute of Judicial Administration (**AIJA**), [Guide to Judicial Conduct](#) (3rd ed) p.9.

⁶¹ Australian Law Reform Commission 'Without Fear or Favour: Judicial Impartiality and the Law on Bias' (Report No. 138, December 2021) (**ALRC Judicial Impartiality Final Report**) p.322.

92. Complaint bodies have the power to conduct a preliminary investigation into the complaint, and then may:
 - dismiss the complaint if they deem it does not warrant further action;
 - refer the complaint to the relevant head of jurisdiction to take action; or
 - establish, and refer the complaint to, an ad hoc investigatory body (commonly referred to as a panel or division) for investigation and report.
93. In most jurisdictions, if the complaint body considers that a complaint is wholly or partly substantiated, it must provide the relevant head of jurisdiction with a report setting out its findings and recommendations regarding steps that might be taken to deal with the complaint.⁶² There are also provisions requiring that the complainant be advised of the steps recommended or taken.⁶³
94. Investigatory bodies are generally composed of two judicial members and one non-judicial member, and have broad powers to investigate a complaint, including the ability to hold a full hearing and issue subpoenas. Following investigation, the body may dismiss the complaint, refer it to the head of jurisdiction, or, if it forms an opinion that the matter could justify removal of the judicial officer from office, it must present a report setting out these findings to the Governor or Attorney-General (except in Victoria, where this is at the discretion of the investigatory body).⁶⁴
95. Except in South Australia, there are provisions that enable the suspension of a judicial officer while an investigation is underway.⁶⁵
96. The former Chief Justice of Victoria, as Chair of the Judicial Commission of Victoria, initiated a consultation process with the Victorian legal sector to identify the causes and impacts of judicial bullying, and inform the development of a Judicial Conduct Guideline on judicial bullying.⁶⁶ Amongst other things, the resultant Guideline defines and provides examples of judicial bullying, outlines the standards expected of judicial officers, and notes avenues for reporting or making a complaint about judicial bullying.⁶⁷ The Judicial Commission of Victoria has also published a guideline for judicial officers on sexual harassment.⁶⁸

⁶² ALRC Judicial Impartiality Final Report, p.324. See: *Judicial Officers Act 1986* (NSW) s 28(2); *Judicial Commission Act 2020* (NT) ss 56–57; *Judicial Conduct Commissioner Act 2015* (SA) s 18; *Judicial Commission of Victoria Act 2016* (Vic) ss 19(3), 44.

⁶³ *Judicial Commissions Act 1994* (ACT) ss 17(2)(a), 35B(3); *Judicial Commission Act 2020* (NT) ss 46(1)(a), 48; *Judicial Conduct Commissioner Act 2015* (SA) ss 13(7)(a), 16(4)(a), 17(3)(a), 18(5), 19(4), 20(3); *Judicial Commission of Victoria Act 2016* (Vic) ss 23; Judicial Commission of NSW, [Guidelines for Complaints against Judicial Officers](#) [9.4], [10.4].

⁶⁴ ALRC Judicial Impartiality Final Report, p.324. See: *Judicial Commissions Act 1994* (ACT) s 22(1)(b); *Judicial Officers Act 1986* (NSW) s 29; *Judicial Commission Act 2020* (NT) s 57; *Judicial Conduct Commissioner Act 2015* (SA) s 25; *Judicial Commission of Victoria Act 2016* (Vic) s 34(4).

⁶⁵ ALRC Judicial Impartiality Final Report, p.324. See: *Judicial Commissions Act 1994* (ACT) s 19(1); *Judicial Officers Act 1986* (NSW) s 40(1); *Judicial Commission Act 2020* (NT) s 59; *Judicial Commission of Victoria Act 2016* (Vic) s 98(1).

⁶⁶ Judicial Commission of Victoria, [Judicial Bullying Guideline](#) (24 May 2023). See also Judicial Commission of Victoria, [Judicial Bullying Summary Paper: Consultation and Recommendations](#) (May 2023).

⁶⁷ *Ibid.*

⁶⁸ Judicial Commission of Victoria, [Sexual Harassment Guideline](#) (22 February 2022).

Reporting through State bar associations

97. A number of bar associations have established additional reporting mechanisms to report inappropriate judicial conduct or other concerns about members of the judiciary.
98. In Victoria, the Victorian Bar has a Reporting Form for reporting occurrences of inappropriate judicial conduct. The Reporting Form is intended to enable generalised information to be provided periodically to the Victorian Bar and courts and tribunals about the prevalence and nature of allegations of inappropriate judicial conduct. Any information derived from reports provided to the Victorian Bar, or to courts or tribunals, will be anonymised. All information is treated confidentially and no identifying information will be provided for any external reporting processes.
99. The Victorian Bar also has Judicial Conduct Advisers who can be confidentially consulted by members about inappropriate judicial conduct that they have or may have experienced or witnessed.⁶⁹
100. The NSW Bar Association has protocols in place with the Supreme Court of NSW, the District Court of NSW and Heads of federal jurisdictions to facilitate the raising of concerns about members of the judiciary.
101. Per the NSW Bar Association's Protocols with the Supreme Court of NSW and the District Court of NSW, a barrister, or clerk on behalf of a barrister, may contact the President of the NSW Bar Association or an independent contact person nominated by the Executive of the Bar Council (known as a 'Judicial Conduct Liaison Officer') to raise concerns about the conduct of a judicial officer.⁷⁰

Federal courts and tribunals

102. There is currently no independent commission to receive complaints about federal judges. For this reason, the Law Council has advocated for the establishment of an independent commission to provide a structured framework to fairly and punctually address complaints about federal judicial officers, and thereby promote public trust and integrity in the complaint-handling process.⁷¹
103. The Federal Court of Australia and Federal Circuit and Family Court of Australia have developed and implemented their own complaint procedures, which are summarised below.
104. There is no formal mechanism for addressing complaints about misbehaviour or misconduct by a judge of the High Court of Australia, beyond those that may be serious enough to warrant removal.
105. In 2020, the High Court was advised of allegations of sexual harassment by a former High Court Judge Dyson Heydon. The Chief Justice commissioned an independent investigation, which found that the former Justice had sexually harassed six young female associates who had worked for him during his tenure on the Court.⁷² The investigation made six recommendations to the Court, all of which were adopted. In 2022, the High Court issued a Justices' Policy on Workplace Conduct, which defines standards of appropriate conduct, outlines a secure method

⁶⁹ Victorian Bar, [Reporting inappropriate judicial conduct](#) (web page).

⁷⁰ New South Wales Bar Association, [New South Wales Bar Association Judicial Conduct Liaison Officers](#) (web page).

⁷¹ Law Council of Australia, [Principles underpinning a Federal Judicial Commission](#), (2020; updated 2023).

⁷² High Court of Australia, [Statement by the Hon Susan Kiefel AC](#) (June 2020)

by which any officer, employee, contractor or service provider can raise a concern or make a complaint, and to set out a broad framework for such concerns or complaints to be addressed.⁷³

Federal Court of Australia

106. A complaint about the conduct of a judicial officer of the Federal Court must be made by letter addressed to the Chief Justice. It must identify the complainant, the judge about whom the complaint is made and the judicial conduct about which the complaint is made. Complaints should be verified by statutory declaration.
107. The Chief Justice will not handle a complaint (other than to summarily dismiss it) unless he/she believes that:
 - (a) Circumstances giving rise to the complaint may, if substantiated, justify consideration of removal of a judge in accordance with paragraph 72(ii) of the Constitution; or
 - (b) Circumstances giving rise to the complaint may, if substantiated, adversely affect performance of judicial or official duties by the judge, or have capacity adversely to affect the reputation of the Court of which the judge is a member.
108. On receiving a complaint, the Chief Justice will make a preliminary assessment of the complaint and decide whether to:
 - Summarily dismiss the complaint;
 - Deal with the complaint in consultation with the judge concerned, without establishing a Conduct Committee;
 - Establish a Conduct Committee; or
 - Refer the complaint to the Attorney-General.⁷⁴

Federal Circuit and Family Court of Australia

109. According to the Federal Circuit and Family Court of Australia (**FCFCA**) Judicial Workplace Conduct Policy, the FCFCA adopts a 'no wrong door' policy on complaint handling, meaning that 'any concern or complaint will be treated seriously and addressed in a timely manner'.⁷⁵ While the Court recommends that concerns or complaints are raised with the Chief Justice, the Chief Justice's Executive Assistant, the Chief Executive Officer of the Court, or the Deputy Principal Registrar of the Court, complaints may also be made anonymously—and such complaints addressed as the Chief Justice considers appropriate.⁷⁶
110. The Chief Justice must deal with a complaint about another judge in accordance with the *Federal Circuit and Family Court of Australia Act 2021*,⁷⁷ and will be guided by the *Judicial Complaints Procedure* and the *Judicial Workplace Conduct Policy* with respect to how all participants will be treated in the process.

⁷³ High Court of Australia, [Justices' Policy on Workplace Conduct](#) (March 2022).

⁷⁴ Federal Court of Australia, [Judicial Complaints Procedure](#) (web page).

⁷⁵ Federal Circuit and Family Court of Australia, [Judicial Workplace Conduct Policy](#) (1 September 2021).

⁷⁶ *Ibid.*

⁷⁷ See *Federal Circuit and Family Court of Australia Act 2021* (Cth) ss 47(2)(d), 48, 144(2)(d), 145.

111. In determining how a complaint may be dealt with, the Chief Justice (or a person authorised by the Chief Justice to be a complaint handler) must consider whether one or more of the circumstances that gave rise to the complaint may, if substantiated:
- justify consideration of the removal of the judge in accordance with s 72(ii) of the Constitution;
 - adversely affect, or have adversely affected, the performance of judicial or official duties by the judge; or
 - have the capacity to adversely affect, or have adversely affected, the reputation of the Court.
112. These considerations will inform how the complaint will be handled and how the Judicial Complaints Procedure will apply, with options including dealing with the complaint directly with the judge, establishing a Conduct Committee to investigate the complaint and report to the Chief Justice, and referring the complaint to the Attorney-General.

Australian Bar Association protocols for complaints

113. The Australian Bar Association has developed protocols for barristers to raise concerns about the conduct of federal judges and members of federal tribunals.⁷⁸ These enable barristers to raise concerns about the conduct of federal judges or members of federal tribunals with the President of the Bar Association of which they are a member, or the President of the Australian Bar Association. The protocol to raise concerns about the conduct of federal judges sits alongside federal formal procedures in relation to complaints about judicial officers,⁷⁹ and provide a less formal mechanism for barristers to raise complaints.

C. To what extent are these mechanisms used?

114. According to statistics published by the Judicial Commission of NSW, in 2022–23, 109 complaints were received, of which 71 were examined and dismissed and 3 were referred to the head of jurisdiction. No complaints were referred to the Conduct Division.⁸⁰
115. The Judicial Commission of Victoria has published statistics indicating that since the introduction of the *Judicial Conduct Guideline on Judicial Bullying*, only 6 complaints alleging judicial bullying have been lodged (3 in 2022–23 and 3 in 2023–24).⁸¹
116. In its 2023–24 Annual Report, the ACT Judicial Council noted that it had received 12 complaints from 10 individual complainants in the reporting period, and 4 open complaints were carried over from the previous financial year.⁸² Consistent with previous years, most complaints were received from self-represented litigants facing difficulties navigating court processes. The report noted that complaints included allegations of bias, failure to give a fair hearing, discourtesy, incorrect application of the law, bullying and intimidation, but does not specify how many reports were made for each type of misconduct.

⁷⁸ See Australian Bar Association, [Protocol for concern about conduct of members of the AAT](#) (2020) and Australian Bar Association, [Protocol for concern about Commonwealth judges](#) (2020).

⁷⁹ See, e.g. [Federal Circuit and Family Court of Australia Judicial Complaints Procedure](#) (web page).

⁸⁰ Judicial Commission of New South Wales, [Complaint statistics](#) (web page).

⁸¹ Judicial Commission of Victoria, [Statistics](#) (web page).

⁸² ACT Judicial Council, [2023-24 Annual Report](#), p.5.

117. Following a preliminary examination of the complaints, the ACT Judicial Council dismissed 9 complaints (including the 4 complaints carried over from the previous reporting period). One new complaint did not proceed to preliminary examination as the judicial officer the subject of the complaint was no longer a judicial officer. At 30 June 2024, the Council had 6 open complaints.⁸³
118. In South Australia, the 2023–24 Annual Report for the Judicial Conduct Commissioner reported that 63 complaints were received during the reporting period. The Judicial Conduct Commissioner noted that most of the complaints he received were dismissed: ‘As in the case of previous years, many of the complaints related to judicial decisions, which are not within my jurisdiction ... Many complaints continue to misunderstand the role of the Judicial Conduct Commission, with them largely perceiving my role as being analogous to an avenue of appeal.’⁸⁴
119. The Federal Court does not publish complaint statistics.⁸⁵
120. The FCFCA Annual Report 2023–24 reported that the numbers of formal complaints received about the conduct of judges or registrars in 2023–24 were.⁸⁶

FCFCA Division	Complaint	Number received
Division 1	Conduct of Judge	4
	Conduct of Registrar	1
	Total number of complaints	72
Division 2	Conduct of Judge	8
	Conduct of Registrar	28
	Total number of complaints	238

D. In your view are these mechanisms effective?

121. The data presented by the state judicial commissions suggests that the formal complaint mechanisms are not widely used for the reporting of judicial misconduct. No observations can be made about the effectiveness of the Federal Court of Australia complaint mechanism due to the lack of published data on complaints.
122. The low number of formal complaints lodged, in contrast to the high prevalence of judicial bullying reported in studies (see part (a) above), suggests that formal complaint mechanisms are not commonly viewed as effective avenues of redress by the legal profession.
123. Kate Eastman SC notes that, ‘[t]he reality is that a legal practitioner is unlikely to make a complaint to the NSW Judicial Commission or the relevant Chief Justice. Such an avenue is likely to be the “last resort option” where everything else has failed and generally if the impact of the bullying disadvantaged clients or a trial process. Consequently, legal practitioners put up with behaviours that would in any other environment or interaction be unacceptable.’⁸⁷
124. Although complaint mechanisms are an important component of ensuring courts and tribunals are safe and respectful workplaces, they function alongside continued training and education of court staff and less formal workplace management.

⁸³ Ibid.

⁸⁴ Judicial Conduct Commission (South Australia), [2023-24 Annual Report](#), p.5.

⁸⁵ Federal Court of Australia, [Annual Report 2023-24](#), pp.95-96.

⁸⁶ Federal Circuit and Family Court of Australia, [Annual Report 2023-24](#), pp.182-183.

⁸⁷ Kate Eastman SC, [Judicial Bullying: Sticks and Stones](#), Legal Aid Criminal Law Conference (4 August 2023), p.16.

Increased support for legal practitioners to manage the unique challenges and stresses of the courtroom is also essential.⁸⁸

E. What sanctions are available?

125. State and territory judicial commissions and federal court complaint mechanisms do not themselves have the power to sanction or discipline a judicial officer.⁸⁹ The Federal Court complaints procedure notes that '[the procedure] does not, and cannot, provide a mechanism for disciplining a judge ... however offer[s] a process by which complaints by a member of the public about judicial conduct can be brought to the attention of the Chief Justice and the judge concerned, and it provides an opportunity for the complaint to be dealt with in an appropriate manner'.⁹⁰
126. Although these complaints procedures acknowledge that the removal of a judge is a possible outcome,⁹¹ they make clear that this is only in extreme cases due to the protection of judicial tenure—a core component of judicial independence.⁹² Judicial officers may only be removed following the passing of a resolution of both of the relevant jurisdiction's houses of parliament.
127. There are examples in which judges have resigned following an adverse finding resulting from informal or ad hoc processes, rather than risk the matter being referred to Parliament.⁹³
128. Cognisant of Constitutional constraints and the need to avoid Executive interference with judicial independence and integrity, the Law Council has endorsed the establishment of a federal judicial commission that is protective rather than disciplinary, with the powers to discipline or remove judicial officers appropriately remaining with the head of jurisdiction and the Australian Parliament, respectively.⁹⁴

⁸⁸ Ibid, pp.16-18.

⁸⁹ ALRC Judicial Impartiality p.324. Judicial Commissions in NSW and Victoria may make recommendations in relation to complaints when they refer them to the relevant head of jurisdiction.

⁹⁰ Federal Court of Australia, [Judicial complaints procedure](#) (web page).

⁹¹ See, e.g. ACT Judicial Council [Complaints about ACT judges or magistrates](#) (web page); NSW Judicial Council [How the complaints process works](#) (Fact sheet, 2022).

⁹² Federal Court of Australia, [Judicial complaints procedure](#) (web page).

⁹³ Ibid, p.54.

⁹⁴ Law Council of Australia, [Scoping the establishment of a federal judicial commission](#) (8 March 2023) para 34.

Appendix A

DISCRIMINATION, HARASSMENT AND WELL-BEING RELATED TOPICS AND MODULES IN CPD PROGRAMS AND OTHER TRAINING, DEVELOPMENT AND SUPPORT RESOURCES

TASMANIA

CPD COMPETENCY AREAS

1. Practical Legal Ethics
2. Practice management or business skills
3. Professional skills
4. Substantive law
5. Equality and wellbeing

SUGGESTED CPD TOPICS

Competency 2: Practice management or business skills (includes):

- Staff welfare (including WH&S, staff wellbeing and the law relating to discrimination, harassment, and bullying)
- Staff management (including employment law; developing an appropriate level and balance of employee skills and expertise within the firm/department; identifying and drawing upon resources within and outside the firm/department)

Competency 5: Equality and wellbeing:

- Staff welfare (including WHS, staff wellbeing and the law relating to discrimination, harassment, and bullying)
- Awareness training
- Family safety and family violence
- Unconscious bias
- Bystander training
- Sexual harassment
- Bullying
- Mental health
- Working with people from culturally and linguistically diverse backgrounds
- Sex, gender and diversity and the law
- Indigenous issues

SELECTION OF ADVERTISED CPD AND OTHER RESOURCES AVAILABLE TO TASMANIAN SOLICITORS

1. Equality and wellbeing CPD products (as advised by Law Society Tasmania)
 - The Interplay Between Criminal and Employment Law Matters
 - Trauma Informed Leadership With Dr Polly McGee
 - Vicarious Trauma in the Legal Profession
 - Working With Youth Justice: What You Need To Know When Acting For Young Offenders
 - Treating Offenders Seriously: The Case For Therapeutic Jurisprudence

- Working with Interpreters: A Guide for All Lawyers
- Judicial Bullying
- Sexual Harassment Complaints: Best Practice Processes and Responses
- Burnout: Strategies and Recovery Strategies
- The World Has Changed: Let's Sort It Out
- What the Blues Teach About Bias and Inclusion
- Unconscious Bias and Microinequities at Work
- Fitness to Stand Trial: What is The Impairment Threshold?
- NWYL - Tackling Ethical Issues: Clients With Disabilities
- Family Violence Perpetuated by Adolescents
- SYL - Mental Health Informed Practice in the Magistrates Court
- Wellbeing and Resilience in the Face of Change
- When Family Business Transactions Go Wrong: Have You Protected Your Clients and Yourself
- Mental Illness and Those Who Fake It
- The Champagne Treatment: Sexual Harassment and Ethics in the Legal Profession
- NWYL - Practical Strategies and techniques to Monitor and Intervene With Your Mental Health
- Keeping You and Your Teams Motivated, Engaged and Connected in a Virtual World (COVID19 Response Series)
- Remote Working: How to Keep Happy and Productive (COVID19 Response Series)
- Managing Matters and Staff in a Virtual World (COVID19 Response Series)
- Family Violence and Behavioural Management
- Cultural Diversity: A Guide For Lawyers

2. Events

- WHS Act – Your positive duty: How to be an Active Bystander
- Protection from Psychological Injury in the Legal Profession
- Coercive Control and How To Manage it in the Court Process
- Delving Deeper: Protection from psychological injury
- 2024 Employment Law Conference (includes racism, ageism and disability discrimination in the workplace)
- Dealing with Alleged FV Offenders as Defence Lawyers

NORTHERN TERRITORY

CPD COMPETENCY AREAS

1. Professional Ethics and Responsibility
2. Practice Management and Business Skills
3. Professional Skills in Legal Practice
4. Skills relating to identifying, addressing and preventing bullying, discrimination and harassment in the workplace

SUGGESTED CPD TOPICS

Competency 4: Skills relating to identifying, addressing and preventing bullying, discrimination and harassment in the workplace:

- Bystander training
- Reporting requirements
- Counselling skills
- Reacting to observing bullying, discrimination and harassment

Competency 3: Professional skills in legal practice (includes):

- Effective communication skills
- Cross cultural awareness
- Issues in cross-cultural communication
- Client interviewing – principles and techniques
- Interview and the use of interpreters
- Giving oral advice – how to break bad news
- Giving advice – identifying options
- Plain English advice
- How can I be sure my client understands me?
- Lawyer’s roles in mediation
- Conducting a mediation
- Career and personal development

Competency 2: Practice Management and business skills (includes):

- Work-life balance
- Employment related equal opportunity
- Employment related discrimination law
- Occupational health and safety law
- Staff management and human resources

SELECTION OF ADVERTISED CPD AND OTHER RESOURCES AVAILABLE TO NORTHERN TERRITORY SOLICITORS

1. Law Society NT CPD Recordings
2. Law Society of South Australia CPD and conference webinars
3. Other providers
 - LawCPD - premium online legal CPD
 - Legalwise - online and interstate CPD
 - Clayton Utz training - online, on-demand and in-person
 - Wolters Kluwer - e-learning and events
 - The College of Law CPD - short programs for skills development
 - CPD Interactive - offers CPDs and a range of subscriptions
 - Law Council of Australia - upcoming conferences and events
 - University of Technology, Sydney - online ‘microcredentials’ and short courses
 - Lawyers Weekly Knowledge Centre - podcasts, webcasts, magazines and educational conference videos
4. Law Society NT *CPD Recordings* include:
 - Panel Discussion: Sexual Harassment in the Legal Profession – NTWLA & LSNT

- Legal responsibilities when communicating with ESL clients
 - Family Law – Dealing with High Conflict & Difficult Personalities
 - Burnout: What is it and how to prevent it
 - Panel: Psych injury claims, workers comp and liability under the Return to Work Act
 - Civility & Professional Courtesy
 - Update on Historical Abuse Claims
 - Arbitration as an Alternative in family law
 - The Australian Workplace and the Duty of Care
-

SOUTH AUSTRALIA

CPD COMPETENCY AREAS

1. Practical legal ethics
2. Practice management or business skills
3. Professional skills
4. Bullying, discrimination and harassment.

SUGGESTED TOPICS

Competency 2: Practice management and business skills (includes):

- Risk management
- Human Resources/staff management/wellbeing
- OH&S requirements
- Business policies and procedures

Competency 3: Professional skills (includes):

- Interviewing skills
- Effective communication techniques with clients/client management
- Effective use of interpreters.

Competency 4: Bullying, discrimination and harassment:

- How to respond to and deal with BDH either as a witness or personally
- Reporting BDH - what to do when either experiencing or witnessing
- Providing support to someone experiencing BDH
- Setting up systems to combat BDH and create safe reporting environments
- Education on appropriate workplace conduct
- Writing or substantively editing articles for publishing in legal or non-legal publications
- R U Okay day activities

SELECTION OF ADVERTISED CPD AND OTHER RESOURCES AVAILABLE TO SOUTH AUSTRALIAN SOLICITORS

- Mental Health Act
- LIFEtime Management

- MCPD Bootcamp Session 3 “An Overview of Workplace Bullying” – distinct jurisdictions under *The Fair Work Act 2009* (Cth) to deal with sexual harassment and with workplace bullying.
- Intervention Orders – *Intervention Orders (Prevention of Abuse) Act 2009*
- Bullying and harassment in the Law
- Discrimination and General Protection Orders
- Elder Abuse
- Bullying, Discrimination and Harassment and Victim Support
- Mental Health First Aid Training
- Winter Wellbeing Boost with Sprout
- Law Practice Management Course (includes component for HR Workplace Relations)
- Building Your Workplace Wellbeing (Workshop)
- LawCare Counselling Service
- Professional Advice Service
- Young Lawyers’ Support Service
- Women Lawyers Mentoring Program

QUEENSLAND

CPD CORE AREAS

1. Practical legal ethics
2. Practice management or business skills
3. Professional skills

SUGGESTED TOPICS

Core Area 3: Professional skills

- Communication and interpersonal skills
- Client interviewing
- Plain English drafting
- Negotiation and mediation skills
- Career and personal development
- Advocacy
- Legal research
- Family violence and safety

SELECTION OF ADVERTISED CPD AND OTHER RESOURCES AVAILABLE TO QUEENSLAND SOLICITORS

- QLS Domestic and Family Violence Portal
- QLS Domestic and Family Violence Best Practice Guidelines
- Domestic and Family Violence – Best Practice in the Legal Assistance Sector (Video)
- How Domestic and Family Violence Can Impact the Workplace (Video)
- Minds Count Lecture 2023 (Mental health in the legal profession)
- Being resilient throughout your career (Personal wellbeing)

- Self-care Planning: Working towards wellbeing
- Dealing with panic attacks
- Emotional consent to vent
- Promoting and protecting mental health in the legal profession
- Cultural Competency
- Introduction to Family Law (includes Dealing with matters involving domestic and family violence)
- In-house Training Package – Changing Workplace Culture Series:
 - Module 1 Sexual harassment
 - Module 2 Being an active by-stander
 - Mental Health First Aid Course
 - Family and Criminal Law Conference
- External links include:
 - Fair Work’s Employer guide to family and domestic violence
 - eSafety Commissioner learning and professional development program
 - Community Legal Centres Queensland webinar – Understanding and responding to coercive control
 - ANROWS (Australia’s National Research Organisation for Women’s Safety) webinar program
 - LawCare health and wellbeing service

AUSTRALIAN CAPITAL TERRITORY

CPD CORE AREAS

1. Legal ethics and professional responsibility
2. Practice management and business skills
3. Professional skills
4. Substantive law and procedural law

SUGGESTED TOPICS

Core Area 2: Practice management and business skills include

- Staff welfare (including OH&S, staff wellbeing and the law relating to discrimination, harassment and bullying)
- Staff management (including employment law; developing an appropriate level and balance of employee skills and expertise within the firm/department; identifying and drawing upon resources within and outside the firm/department)
- Mentoring/advising other practitioners in order to improve the operations of the firm/department

SELECTION OF ADVERTISED CPD AND OTHER RESOURCES AVAILABLE TO ACT SOLICITORS

- Sexual Harassment: Changing workplace culture workshop
- 2024 Intensive: How mental health can affect legal professionals

- 2024 Intensive: Keynote address – Insights into Mental Wellness
 - 2024 Intensive: Psychosocial Risk in the Workplace
 - 2024 Intensive: Keynote address – Survival of the kindest
 - 2024 Intensive: Mastering communication – Strategies for compliant mitigation
 - Becoming a better lawyer: applying trauma informed principles to improve client relationships
 - Introduction to the Human Rights Act
-

NEW SOUTH WALES

MANDATORY CORE AREAS

1. Ethics and professional responsibility
2. Practice management and business skills
3. Professional skills
4. Substantive law

SELECTION OF ADVERTISED CPD AND OTHER RESOURCES AVAILABLE TO NSW SOLICITORS

- Deepening your knowledge of Domestic and Family Violence: Mastering a trauma informed approach to practice – on-demand recording
- Key knowledge and skills for family lawyers
- SBS Inclusion Programs:
 - Appropriate workplace behaviour
 - LGBTIQ+
 - Gender equity
 - Generational diversity
 - Cultural diversity
 - Core inclusion
 - First Nations
 - Wellbeing in hybrid workplaces
- Managing team relationships in a hybrid workplace
- Best practice drafting in parenting matters
- Blurred lines: The convergence of family law and child protection
- Confidentiality considerations in elder law, estate planning and estate litigation matters
- Disability and employment
- Family law fundamentals
- Family violence and family law: Some current issues
- Family violence essentials
- Handling clients' emotions in family law
- Understanding the new NSW criminal offence of coercive control
- Interpersonal effectiveness
- Managing challenging working relationships and building skills in difficult conversations
- Mental Health First Aid (MHFA) for the Australian Legal Profession
- Criminalising coercive control
- Lawyers, children and the legal system – a guide to best practice
- Managing your mental health in the legal profession and best practice for employers

- The new positive duty to prevent workplace sexual harassment
- Sexual Harassment: Changing workplace culture
- The cognitive mechanics of elder abuse
- The Kennon Principle: Family Violence and its nexus to property settlements in family law
- Solicitor Outreach Services
- Staying well in the law – Health assessments: Why you need to put yourself first
- Staying well in the law – Designing safety in the workplace
- Staying well in the law – How to flourish: Feeling good and functioning well in the law
- Staying well in the law – How to navigate the journey of elder care
- Staying well in the law – Lawyer wellbeing and resilience in the law
- Mental health and wellness in the law: How to remain clam during change
- Optimal habits: Sustaining wellbeing in high performance culture
- Creating a mental health and wellbeing culture in the workplace
- The role of mental wellbeing in work and life

VICTORIA

CPD CORE AREAS

1. Ethics and professional responsibility
2. Practice management and business skills
3. Professional skills
4. Substantive law

SELECTION OF ADVERTISED CPD AND OTHER RESOURCES AVAILABLE TO VICTORIAN SOLICITORS

- LIV Wellbeing Hub
 - Positive duties to prevent workplace sexual harassment
 - Psychosocial safety in the workplace: Its all about workplace culture
 - Conscious leadership for mindful lawyers
 - Turning blind determination into limitless resilience
 - Ethics for young lawyers
 - Family violence panel discussion: Elder abuse
 - Giving a voice to aboriginal justice
 - Leaders in practice: Reflect, review and reset
 - Encountering family violence in migration
 - Human rights and civil liberties in Victoria
 - Mistreatment of older people and the law
 - Magistrates Court of Victoria, Courts & Programs Learning Hub
 - Sexual harassment and bullying: Changing workplace culture (in-house training program)
 - The mindful lawyer (in-house training program)
 - Deepening your understanding of family violence (LIV and Federal Circuit and Family Court of Australia CPD webinar)
-

WESTERN AUSTRALIA

CPD CORE AREAS

1. Ethics and professional responsibility
2. Practice management and business skills
3. Professional skills
4. Substantive law

ALLOCATED TOPICS

Core area 1: *Ethics and professional responsibility (includes):*

- Lawyer's responsibilities as set out in the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* or the *Legal Profession Uniform Conduct (Barristers) Rules 2015*
- How to identify an ethical issue
- Conflicts of Interest
- Professional conduct (including unlawful conduct)
- Professional courtesy

Core area 2: *Practice management and business skills (Includes)*

- Risk management
- Organisational culture and leadership
- Staff management and human resources
- Supervision
- OH&S (occupational health and safety)
- Workplace behaviour (equal employment opportunity, bullying, harassment, discrimination)
- Gender equity and diversity
- Self-management, including mental health and wellbeing
- Statutory and regulatory obligations of a law practice

SELECTION OF ADVERTISED CPD AND OTHER RESOURCES AVAILABLE TO WA SOLICITORS

- The culture of high impact & high demand work: Individual and collective wellbeing
- Mindfulness based stress management
- How to manage stress and anxiety in navigating your way within the legal profession
- Difficult clients and colleagues: How to identify and manage the issues
- Legal profession ethics and First Nations people
- The impact of culture on ethical behaviour
- Dispute resolution in Family Law
- Work Health and Safety laws: one year on
- Time for Change: Addressing Sexual Harassment
- Towards a Better Legal Profession for Everyone: Addressing Workplace Bullying and Sexual Harassment
- Ethical Guidance Panel
- Fair, safe and Inclusive Legal Workplaces: Guidelines for the employment of Law Clerks, Graduates and Lawyers
- Protocols for Lawyers with Aboriginal or Torres Strait Islander Clients in Western Australia

The Legal Practice Board of Western Australia maintains lists of accredited and non-accredited CPD providers for WA legal practitioners to identify and undertake CPD and other training programs.

LAW COUNCIL OF AUSTRALIA

SELECTION OF RESOURCES

- Time for change: Addressing Sexual Harassment Portal– (with links to Commonwealth, State and Territory agency and legal profession association resources)
 - Model Definition of Family Violence – National Roundtable on Family Violence: Awareness, Education and Training
 - Mental Health and Wellbeing in the Legal Profession Information Hub – (with links to legal profession association resources and national information and support services)
 - Equal Opportunities in the Law – resources and links covering issues such as: Making your law practice LGBTI+ friendly; Bullying and harassment in the workplace; Sexual harassment in the workplace; Diversity & Equality Charter (terms and conditions).
-

Law Council of Australia

National Model Framework Addressing Sexual Harassment for the Australian Legal Profession

Policy Statement

First published: December 2021

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Law Council
OF AUSTRALIA

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1. About this Model Framework

- 1.1. This *National Model Framework Addressing Sexual Harassment for the Australian Legal Profession* (**Model Framework**) was developed by the Law Council pursuant to its *National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession* (**NAP**).¹
- 1.2. The Model Framework was developed in 2021 in consultation with the Law Council's Constituent Bodies, its Equal Opportunity Committee and key stakeholders as a guidance material to assist the legal profession to proactively prevent and respond to sexual harassment. It was developed by reference to the law at the time and best practice.
- 1.3. The Model Framework is directed at legal organisations, workplaces, legal practices, chambers, and regulators or other disciplinary or external complaints bodies. Organisations can either:
 - (a) adopt the Model Framework in its entirety as that organisation's own sexual harassment policy; or
 - (b) use the Model Framework to develop, augment or refine their existing sexual harassment policies.
- 1.4. Following the Australian Human Rights Commission's *Respect@Work Report* in 2020,² there were a number of significant changes in the law addressing workplace sexual harassment and new obligations imposed on employers, partnerships and individuals.
- 1.5. Following a period of consultation in 2024, updates to the Model Framework were finalised in February 2025. Revisions to the Model Framework are made against the background of recent significant changes in the law and best practice guidelines. For example:
 - (a) the introduction of a positive duty requiring employers, partnerships and individuals to take reasonable and proportionate measures to 'eliminate, as far as possible,' specific discriminatory conduct including sexual harassment from occurring in their workplaces;
 - (b) new pathways for seeking redress for workplace sexual harassment, including under the *Fair Work Act 2009* (Cth); and
 - (c) research on the use of confidentiality settlement terms and non-disclosure agreements.³
- 1.6. The Model Framework is not intended to provide legal advice nor outline all recent legislative, policy and regulatory developments.
- 1.7. The appendices to the Model Framework are best practice recommendations for complaints procedures, directed toward:

¹ Law Council of Australia, [National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession](#) (23 December 2020).

² Australian Human Rights Commission, [Respect@Work: Sexual Harassment National Inquiry Report](#) (March 2020).

³ Regina Featherstone and Sharmilla Bargon, [Let's talk about confidentiality: NDA use in sexual harassment settlements since the Respect@Work Report](#) (University of Sydney, March 2024).

- (a) organisations taking external complaints about sexual harassment—for example, disciplinary bodies (**Appendix A**);⁴
- (b) organisations dealing with internal complaints—such as workplaces (**Appendix B**); and
- (c) an auditing tool/checklist, which enables organisations to identify any gaps in their existing policies. To the extent that any such gaps are identified, organisations can then use the paragraphs of the Model Framework, as desired, to address those gaps (**Appendix C**).

1.8. The Model Framework aims to:

- (a) promote the creation and maintenance of a profession free from sexual harassment;
- (b) engender commitment to professional environments free from sexual harassment;
- (c) set appropriate standards of conduct consistent with Australian law on sexual harassment and the applicable professional conduct rules;
- (d) facilitate the reporting of conduct that may be sexual harassment;
- (e) guard against the victimisation of people who make complaints of sexual harassment;
- (f) explain the consequences for people who engage in sexual harassment; and
- (g) provide for best practice complaints procedures for complaints of sexual harassment.

1.9. This document is drafted in such a way as to encompass the wide range of contexts in which the Australian legal profession operates and the particular considerations of each Australian jurisdiction. In doing so, this Model Framework aims to promote national consistency and best practice across jurisdictions.

1.10. Adopters of this Model Framework are accordingly encouraged to use this document as a foundation upon which to build their own policy, taking into account any relevant local discrimination laws; work, health and safety legislation; and any other regulatory regimes that are applicable in the relevant jurisdiction.

1.11. The Model Framework is supported by additional resources that are available via the Law Council's [*Time for Change: Addressing Sexual Harassment*](#) portal.

⁴ The Law Council notes that the document in Appendix A has been drafted a general guide, primarily directed towards legal profession complaints-taking bodies, to facilitate best practice and national consistency where possible. However, it is noted that the statutory functions and powers of complaints-taking agencies in general vary considerably, and this should be considered when making a complaint.

2. Definitions

2.1 For the purposes of this Model Framework:

- (a) **Between people who have a specific working relationship** means between:
- an **Employer** and an **Employee** or prospective Employee;
 - an **Employee** and a fellow **Employee** or prospective Employee;
 - a **Person conducting a business or undertaking (PCBU)** and a **Worker** or prospective Worker; or
 - a **Worker** and a fellow **Worker** or prospective Worker.
- (b) **Bystander** means a person who:
- has directly witnessed sexual harassment, even if not the focus of the conduct; and/or
 - has direct knowledge of the sexual harassment, such as Human Resources personnel, managers or other persons who have been told about the conduct by the Complainant or Person Affected.
- (c) **Complainant** means the person making a complaint in respect of sexual harassment. In respect of this Framework, this person may be the **Person Affected**, or a **Bystander**.
- (d) **Complaints Handlers** collectively refer to persons, whether employed or contracted, who are responsible for receiving, assessing and/or investigating complaints in accordance with this Model Framework and the Best Practice Complaints Procedures at **Appendix A** (for organisations taking external complaints) and **Appendix B** (for organisations addressing internal complaints).
- (e) **Conduct of a sexual nature** includes, for the purposes of this Framework:
- making statements or communications of a sexual nature about a person, to a person, or in the presence of a person, whether the statement is made orally or in writing;
 - any gestures of a sexual nature; or
 - making or attempting physical interactions of a sexual nature.
- For examples of this conduct, please see paragraph 1.6.8 below.
- (f) **Employer** includes a person who:
- employs another person, including by way of part-time or temporary employment;
 - engages another person to perform work under a contract for services;

- engages another person to perform work as a Commonwealth or State/Territory employee.⁵
- (g) **Employee** includes a person who is:
- employed, including by way of part time or temporary employment;
 - engaged to perform work under a contract for services;
 - a Commonwealth or State/Territory employee.⁶
- (h) **In connection with work** means in connection with an Employer being an Employer, a PCBU being a PCBU, an Employee being an Employee, or a Worker being a Worker.
- (i) **Model Framework** means this *National Model Framework Addressing Sexual Harassment for the Australian Legal Profession*, developed by the Law Council of Australia.
- (j) **Model Framework Adopter (MFA)** means the organisation, workplace, law firm, chambers, regulator and/or any other disciplinary or other bodies who take external complaints, who have agreed to adopt the terms of this Framework. This may include, as relevant:
- staff, including permanent, part-time, independent contractors, temporary and volunteer staff, sub-contractors, apprentices, interns and job candidates;
 - barristers, members or licensees of the chambers, all employees, volunteers, students and independent contractors engaged by them;
 - board members, partners and directors; and
 - members, barristers and/or readers who are members of MFA committees.
- (k) **MFA associates** means clients, visitors and other associates of the MFA, including as relevant:
- visitors, including clients and members, and associates of clients and members, to the premises of the MFA;
 - all barristers engaged by a MFA,
 - barristers and court/tribunal staff, and other people present at work-related functions (social or otherwise); and
 - participants in any courses, seminars, events, or functions, whether educational, networking and/or social in nature.
- (l) **Organisations taking external complaints**—as addressed in **Appendix A**—includes regulators, disciplinary bodies and any other organisations who

⁵ See *Sex Discrimination Act 1984* (Cth) s 4 (definition of ‘employment’, ‘Commonwealth employee’, ‘State employee’, ‘State’, ‘services’).

⁶ Ibid.

take, conciliate, or otherwise have a role in resolving complaints external to the organisation.

- (m) **Organisations addressing internal complaints**—as addressed in **Appendix B**—includes, for example, workplaces or chambers.
- (n) **Person Affected** refers to the person who received the conduct alleged to be sexual harassment,⁷ who for the purposes of this Model Framework may or may not also be a Complainant.
- (o) **Person conducting a business or undertaking (PCBU)** is a broad concept that includes modern working arrangements and structures beyond the traditional employer/employee relationship.⁸ A person conducts a business or undertaking whether they do it alone or with others, and whether or not it is for profit or gain.⁹
 - PCBUs include: public and private companies, unincorporated bodies or associations, partners in a partnership, government departments and authorities, local government councils, franchisors and franchisees, owners and operators of business, principal contractors and head contractors, not-for-profit organisations that engage and pay administrative staff, sole traders and self-employed people.¹⁰
 - PCBUs do not include: persons engaged solely as workers or officers (who are acting in that capacity alone), elected members of a local authority (who are acting in that capacity alone), or volunteer associations (unless one or more volunteers employs a person to carry out work for the volunteer association).¹¹

For the purposes of this Model Framework, **PCBU** includes an **Employer**.

- (p) **Person carrying out work in any capacity for the MFA** includes:
 - a **PCBU**;
 - an **Employer**;
 - a **Worker**;
 - an **Employee**.
- (q) **Person conducting the MFA** includes:
 - a **PCBU**;
 - an **Employer**.

⁷ See *Sex Discrimination Act 1984* (Cth) s 28A.

⁸ Safe Work Australia, [Model Work Health and Safety Act](#) (24 November 2023) s 5 ('Meaning of person conducting a business or undertaking'). See Australian Human Rights Commission, [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023) 15; Safe Work Australia, [Glossary](#) ('PCBU').

⁹ Safe Work Australia, [Model Work Health and Safety Act](#) (24 November 2023) s 5 ('Meaning of person conducting a business or undertaking').

¹⁰ Australian Human Rights Commission, [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023) 15.

¹¹ *Model Work Health and Safety Act*, s 5 ('Meaning of person conducting a business or undertaking').

- (r) **Respondent** refers to the person alleged to have engaged in sexual harassment.
- (s) **'Sexual harassment'** means:
- An unwelcome sexual advance, or an unwelcome request for sexual favours, to another person (the **Person Affected**), or other unwelcome conduct of a sexual nature in relation to the Person Affected, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the Person Affected would be offended, humiliated or intimidated.¹²
 - For the purpose of this Model Framework, sexual harassment is intended to include 'sexual harassment' as otherwise defined and made unlawful under the applicable state, territory or federal anti-discrimination, workplace or human rights legislation.

For examples of this conduct, please see paragraph 1.6.8 below.

- (t) **Sexual harassment in circumstances involving work** means sexual harassment that occurs:
- **Between people who have a specific working relationship;** or
 - **In connection with work.**

For examples of this conduct, please see paragraph 1.6.13 below.

- (u) **Unlawful conduct** means conduct that is made unlawful under a Commonwealth, State or Territory law of Australia.
- (v) **Worker** means a person who carries out work in any capacity for a person conducting a business or undertaking, including work as: an employee, a contractor or subcontractor, an employee of a contractor or subcontractor, an employee of a labour hire company, an outworker, an apprentice or trainee, a student, or a volunteer.¹³

For the purposes of this Model Framework, **Worker** includes an **Employee**.

3. Introduction

- 3.1 Sexual harassment is unlawful, unethical and unacceptable. It is inconsistent with the inherent values of the Australian legal profession, the principles informing the administration of justice, and the pursuit of integrity, fairness and equality before the law. Public trust in the legal profession is eroded when our members are the perpetrators of sexual harassment, or when we are not accountable for a safe, respectful and inclusive professional culture.
- 3.2 Sexual harassment is prohibited at the federal level under the *Sex Discrimination Act 1984* (Cth) and the *Fair Work Act 2009* (Cth), as well as under corresponding state and territory anti-discrimination laws. Individuals who perpetrate sexual harassment may face disciplinary action from their workplace, including

¹² See *Sex Discrimination Act 1984* (Cth) s 28A.

¹³ Safe Work Australia, [Model Work Health and Safety Act](#) (24 November 2023) s 7 ('Meaning of worker').

suspension or termination, as well as civil, and in some cases criminal, legal action.

- 3.3 In addition, sexual harassment may give rise to disciplinary action against a solicitor or barrister by the relevant legal regulatory authority as a breach of the *Australian Solicitors' Conduct Rules* or the *Barristers' Rules* in participating states and territories.
- 3.4 While sexual harassment can happen to anyone, and in any work context, gender discrimination and inequality,¹⁴ power imbalances,¹⁵ hierarchical, competitive and commercial workplace cultures,¹⁶ and high alcohol consumption in professional settings (amongst other factors) contribute to a higher risk of sexual harassment.^{17,18} The harm of sexual harassment can be long lasting. Sexual harassment impairs the dignity of those who experience it, disrespects their safety and autonomy, and can have both physical and psychological consequences. It drives people away from participating in the workplace and society, and limits their opportunities in the process. For organisations it may have adverse legal, financial and reputational outcomes.
- 3.5 From December 2023, the positive duty under the *Sex Discrimination Act 1984* (Cth) requires PCBUs to take reasonable and proportionate measures to eliminate sexual harassment as far as possible.¹⁹ This new approach introduces more focussed obligations for the legal profession to actively address sexual harassment. It requires proactive and meaningful action from law firms, legal practices, sole practitioners, barristers, chambers, and legal professional organisations to target the root causes of sexual harassment.
- 3.6 Sexual harassment is also a work health and safety issue. All PCBUs have a duty to ensure, so far as is reasonably practicable, the health and safety of workers.²⁰ This includes managing the risk of sexual harassment.²¹

¹⁴ Sexual harassment is consistently associated with workplaces that have strongly embedded masculine norms, including those that are male dominated, have an over-representation of men at senior management levels, have a masculine workplace culture, and/or have rigid adherence to gender roles or stereotyped understandings of masculinity and femininity.

¹⁵ Common power imbalances include: the actual or perceived ability of the Respondent to influence the career prospects or job security of the Person Affected; the position, age or experience of the Respondent compared to the Person Affected; and the intersectional advantages of the Respondent compared to the intersectional disadvantages of the Person Affected.

¹⁶ Commercialism and managerialism have been shown to drive organisations to prioritise commercial goals over individual wellbeing and promote an acceptance of problematic behaviours so long as the primary focus on profits, productivity, efficiency and client satisfaction are met.

¹⁷ While this Model Framework is directed toward sexual harassment, the factors that contribute to sexual harassment are complex. Organisations should consider whether they have other key policies in place, that support and promote gender equality and equitable practices. This may include policies addressing inclusion and diversity, promotions, flexible work arrangements and pay equality. Particular attention should be paid to the intersection between gender inequality and other forms of political and social disadvantage and discrimination (see footnote below).

¹⁸ Persons most likely to experience sexual harassment include women, persons who identify as LGBTQIA+, Aboriginal or Torres Strait Islander persons, persons with a disability, persons from culturally and linguistically diverse backgrounds, migrants and/or persons holding temporary visas, workers who have insecure working arrangements, young persons, persons early in their career, or persons who occupy junior positions, and people who experience multiple forms of social or political disadvantage (intersectional disadvantage).

¹⁹ The positive duty under section 47C of the *Sex Discrimination Act 1984* (Cth) also extends to unlawful conduct other than sexual harassment, including: sex discrimination; harassment on the ground of sex; hostile work environments; and related acts of victimisation. This Model Framework, however, focuses specifically on sexual harassment.

²⁰ Safe Work Australia, [Model Work Health and Safety Act](#) (24 November 2023) ss 17 and 19.

²¹ See Safe Work Australia, [Sexual and gender-based harassment](#) (Web Page).

- 3.7 Organisations that breach their duties to eliminate sexual harassment and to ensure the health and safety of workers will be subject to the suite of enforcement mechanisms available to the relevant regulator. The Australian Human Rights Commission, for example, has the power to conduct investigations, issue compliance notices, and enter into enforceable undertakings against organisations that do not comply with section 47C of the *Sex Discrimination Act 1984* (Cth). Organisations may also be held vicariously liable for sexual harassment perpetrated by their employees and agents, which can attract significant amounts in court ordered damages.
- 3.8 The MFA is committed to a safe, respectful and inclusive legal profession, free from sexual harassment. The MFA does not tolerate sexual harassment under any circumstances.

4. Objectives

- 4.1 The purpose of this Model Framework is the elimination of sexual harassment within the Australian legal profession and the promotion of diversity, equality, respect and inclusion. This purpose is consistent with the principles of justice, integrity, equity and the pursuit of excellence upon which the profession is founded.
- 4.2 In making the commitments in paragraph 4.1 above, the MFA aims to:
- (a) prevent the development and/or maintenance of a culture that allows for sexual harassment and other gender-based discrimination; and
 - (b) ensure, when sexual harassment does occur, an environment that supports persons to utilise complaints mechanisms that will fairly, efficiently and appropriately investigate their complaint while minimising, as far as possible, re-traumatisation of the Person Affected.

5. Guiding Principles

- 5.1 This Model Framework is guided by the following principles:²²
- (a) **Consultation**—actions taken to eliminate sexual harassment should reflect the perspective of workers, including the voices of people from marginalised and underrepresented groups;
 - (b) **Gender equality**—actions taken to eliminate sexual harassment should contribute to achieving substantive gender equality, meaning that people of all genders have equal outcomes, rights, rewards, opportunities and resources;
 - (c) **Intersectionality**—actions taken to eliminate sexual harassment should recognise the ways in which people's social identities and contexts combine to create intersecting forms of privilege or oppression, meaning a person's risk and experience of sexual harassment may be compounded by the different inequalities they face;

²² These principles purposefully reflect those published by the Australian Human Rights Commission, the body empowered to enforce compliance with the positive duty in section 47C of the *Sex Discrimination Act 1984* (Cth). See Australian Human Rights Commission, [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023) 21.

- (d) **Person-centred and trauma-informed**—actions taken to eliminate sexual harassment, particularly workplace systems, policies, procedures and practices, should—to the extent possible having regard to Australian law including mandatory reporting and procedural fairness obligations—affirm the safety and dignity of the people who encounter them.²³

6. Australian Law Prohibiting Sexual Harassment

Legislative and Regulatory Framework

6.1 Sexual harassment is prohibited under various legal and regulatory frameworks in Australia.

- (a) The **Sex Discrimination Act 1984 (Cth)** makes sexual harassment, along with other types of conduct,²⁴ unlawful in certain circumstances. It is unlawful for a person to sexually harass another in any of the circumstances proscribed in sections 28B-28L of the *Sex Discrimination Act 1984 (Cth)*.²⁵ This includes in circumstances involving work.²⁶
- Employees and principals can be **vicariously liable** where their employees and agents, in connection with their employment and duties, perpetrate sexual harassment (unless they can show they took all reasonable steps to prevent the sexual harassment from occurring).²⁷
 - It is also unlawful for a person to commit an act of **victimisation** against another person, either because they know or believe that person has made or proposes to make a complaint or allegation of sexual harassment, or take any other action described in section 47A of the *Sex Discrimination Act 1984 (Cth)*.²⁸
 - Each State and Territory of Australia also has its own anti-discrimination laws that apply to prohibit sexual harassment.
- (b) In addition, section 47C of the *Sex Discrimination Act 1984 (Cth)* places a positive obligation on an **Employer** or a **PCBU** to take reasonable and

²³ For further information on the meaning of 'person-centred and trauma-informed', see Australian Human Rights Commission, [Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces](#) (Factsheet, August 2023) in [Factsheet Series: Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023). The Australian Human Rights Commission notes that: 'Being person-centred and trauma-informed does not always means doing what the person requests. It means genuinely considering their wishes and the impact that decisions may have on them.' (Ibid 4). Organisations will sometimes have legal obligations to act on a report of sexual harassment, even where the Person Affected does not desire such action to be taken (such as under work health and safety laws and regulations, or under government sector employment laws and regulations). This is not inconsistent with a person-centred and trauma-informed approach, which requires that the Person Affected is supported, consulted and kept informed throughout the complaints process, and protected from victimisation.

²⁴ Other types of conduct made unlawful by the *Sex Discrimination Act 1984 (Cth)* include sex discrimination; harassment on the ground of sex; subjecting a person to a hostile work environment; and related acts of victimisation.

²⁵ *Sex Discrimination Act 1984 (Cth)* ss 28B-28L.

²⁶ Ibid s 28B.

²⁷ Ibid s 106.

²⁸ Ibid s 47A.

proportionate measures to eliminate, as far as possible, sexual harassment in circumstances involving work, as well as related acts of victimisation.²⁹

- (c) A PCBU also has a primary duty of care, under **model work health and safety laws**, to eliminate, or otherwise minimise, risks to physical and psychological health and safety in a workplace, so far as is reasonably practicable.³⁰ This includes risks from psychosocial hazards such as sexual harassment.³¹
- (d) The **Fair Work Act 2009 (Cth)** makes it unlawful for a person to be sexually harassed in connection with being or seeking to become a worker in a business or undertaking or in connection with conducting a business or undertaking.³² The Fair Work Commission is empowered to deal with such disputes including by making a stop sexual harassment order.³³
- (e) Solicitors and Barristers are also bound by the **Australian Solicitors' Conduct Rules** and the **Barristers' Rules**, as implemented in each participating state and territory.³⁴
- (f) Where sexual harassment reaches the threshold of a criminal offence, such as stalking or sexual assault, the **criminal law** will also apply to the relevant conduct.

Meaning of Sexual Harassment

6.2 The *Sex Discrimination Act 1984* (Cth) defines sexual harassment as unwelcome conduct of a sexual nature that occurs in circumstances in which a reasonable person, aware of those circumstances, would anticipate that the Person Affected would be offended, humiliated or intimidated.³⁵ This definition of 'sexual harassment' requires consideration of the following elements:

- (a) The *subjective* test of whether:
 - the conduct was unwelcome.
- (b) The *objective* tests of whether:
 - the conduct was of a sexual nature; and
 - a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the Person Affected would be offended, humiliated or intimidated.

²⁹ The positive duty under section 47C of the *Sex Discrimination Act 1984* (Cth) also extends to unlawful conduct other than sexual harassment, including: sex discrimination; harassment on the ground of sex; hostile work environments; and related acts of victimisation.

³⁰ Safe Work Australia, [Model Work Health and Safety Act](#) (24 November 2023) ss 17 and 19.

³¹ See Safe Work Australia, [Sexual and gender-based harassment](#) (Web Page).

³² *Fair Work Act 2009* (Cth) s 527D.

³³ *Ibid* ss 527F and 527J.

³⁴ For example, Rule 42.1.2 of the *Australian Solicitors' Conduct Rules* states that 'a solicitor must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes sexual harassment'. Section 123(1)(b) of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* provides the same rule in relation to a barrister. See Law Council of Australia, [Australian Solicitors' Conduct Rules](#) (Web Page). For a list of all the state and territory bar associations in Australia and their respective webpages containing their respective *Barristers' Rules*, see Australian Bar Association, [State Bars](#) (Web Page).

³⁵ *Sex Discrimination Act 1984* (Cth) s 28A.

Unwelcome Conduct

- 6.3 Whether the conduct is unwelcome is a subjective question from the perspective of the Person Affected, meaning the person who received the conduct alleged to be sexual harassment.
- 6.4 Conduct will be ‘unwelcome’ if it is uninvited, unwanted and is regarded as undesirable or offensive by the person who experiences the conduct at the time.³⁶ Some conduct by its nature will be inherently unwelcome. This subjective test looks to the reaction (whether articulated or not) of the individual who has been subjected to the conduct and whether the conduct is disagreeable to that person.³⁷
- 6.5 Conduct may be unwelcome even where:
- the Respondent did not intend their conduct to be sexual harassment, or to offend, humiliate or intimidate;³⁸
 - other people may not have found the conduct unwelcome, or may have accepted or tolerated the conduct;
 - the Person Affected had welcomed the conduct in the past;
 - the Person Affected did not expressly address, reject or object to the conduct;
 - the Person Affected was not forced to participate in the conduct.
- 6.6 Interactions of a sexual nature that are genuinely ‘welcome’, meaning invited, desired or agreeable to the person receiving them, will not be sexual harassment. However, it is wrong to think that conduct of a sexual nature will be welcome in the absence of express objection or rejection. It is not a requirement for the Person Affected to have told the Respondent that the conduct was unwelcome. Conduct may be tolerated by the Person Affected, but still be unwelcome, in the sense that it is undesirable or disagreeable to the Person Affected and was not invited or solicited.

Conduct of a Sexual Nature

- 6.7 Conduct does not have to be sexually explicit to be ‘of a sexual nature’. Conduct of a sexual nature may arise by innuendo, insinuation, implication, overtone, undertone, horseplay, a hint, a wink or a nod. These are all devices capable of being deployed to sexualise conduct in ways that may be unwelcome.³⁹

³⁶ *Ford v Inghams Enterprises Pty Ltd (No 3)* [2020] FCA 1784, [712] citing *Aldridge v Booth* (1988) 80 ALR 1, 5.

³⁷ *Ewin v Vergara (No 3)* [2013] FCA 1311, [27]; *Kraus v Menzie* [2012] FCA 3, [22] (affirmed on appeal in *Krause v Menzie* [2012] FCAFC 144, [7]); *De Domenico v Marshall* [1999] FCA 1305, [88].

³⁸ Under the *Sex Discrimination Act 1984* (Cth), the Respondent’s intention or reason for engaging in sexual conduct is irrelevant to determining whether the conduct is unwelcome. It is noted that some jurisdictions, such as Queensland, have different or additional thresholds in the definition of sexual harassment. For example, Queensland includes an additional test element relevant to the person engaging in the conduct; namely whether the conduct is done with the *intention* to offend, humiliate or intimidate the person. As this Model Framework aims to set a nationally consistent standard befitting the legal profession, in some respects it will set a higher standard than is reflected in some individual state and territory jurisdictions.

³⁹ *Vitality Works Australia Pty Ltd v Yelda (No 2)* [2021] NSWCA 147 (19 July 2021), [125].

- 6.8 Examples of conduct of a sexual nature include, but need not be limited to:⁴⁰
- (a) making or attempting physical contact;
 - (b) requests or pressure for sex or sexual acts;
 - (c) sexual acts, gestures or exhibitions, indecent exposure or inappropriate display of the body;
 - (d) sexualised objects, gifts, images, audio or video, whether distributed or displayed;
 - (e) comments or communications in person, online or in writing, whether sexually explicit or sexually suggestive, such as jokes, or innuendo, and whether flattery or ridicule, such as derisive comments;
 - (f) inappropriate or indecent text, digital or social media messages, phone calls or emails, including the use of images or emojis with sexual connotations;
 - (g) staring or leering;
 - (h) repeated or inappropriate invitations for social engagements, or invitations that are in the circumstances inappropriate—such as refusing to respect declined requests for a date;
 - (i) stalking;
 - (j) intrusive or invasive personal questions; and
 - (k) invading personal space or maintaining unnecessarily close physical proximity.
- 6.9 Sexual harassment does not have to be repeated to be ‘harassment’. A single incident or interaction can amount to sexual harassment.
- 6.10 Whether the conduct is sexual in nature is an objective question, and the intention of the Respondent is not relevant. It is not necessary for the Respondent to know or intend that their conduct is sexual, or to have a sexual interest in the Person Affected.⁴¹ Conduct of a sexual nature may be conduct that occurs in the presence of a person, rather than conduct that is necessarily directed or targeted at a person.

Reasonably Offend, Humiliate or Intimidate

- 6.11 The threshold for whether unwelcome conduct of a sexual nature amounts to sexual harassment is whether a reasonable person aware of the circumstances would have anticipated the possibility that the Person Affected would be offended, humiliated or intimidated. The reasonable person is a neutral and unbiased observer, but must take account of all the circumstances including the personal qualities of the Person Affected. This includes:

⁴⁰ Australian Human Rights Commission, [Information Guide on the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023) 15.

⁴¹ Ibid 16.

- (a) the sex, age, sexual orientation, gender identity, variations in sex characteristics,⁴² marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the Person Affected;
- (b) the relationship between the Person Affected and the Respondent;
- (c) any disability of the Person Affected;
- (d) any other relevant circumstance.

Proscribed Circumstances

- 6.12 As noted above at paragraph 6.1, it is unlawful for a person to sexually harass another in any of the circumstances proscribed under Australian law. This includes in circumstances involving work.
- 6.13 There are two main ways that sexual harassment in circumstances involving work is prohibited under the *Sex Discrimination Act 1984* (Cth).⁴³
- (a) Firstly, if the sexual harassment occurs **between people who have a specific working relationship**, regardless of whether or not the sexual harassment occurs at work or in connection with work.
- 6.14 It is unlawful for:
- a PCBU to sexually harass a Worker, or a prospective Worker;⁴⁴
 - a Worker to sexually harass a fellow Worker or a prospective fellow Worker.⁴⁵
 - (b) Secondly, if the sexual harassment occurs **in connection with work**, i.e. in connection with a person being a PCBU, or Worker.
- 6.15 Sexual harassment perpetrated either by or against a PCBU or Worker—provided it occurs ‘in connection with’ their role as a PCBU or Worker—is unlawful.⁴⁶
- 6.16 This takes into account circumstances involving work where the other party to the sexual harassment is a client, service user, patron, supplier, visitor, member of the public, etc.
- 6.17 The PCBU or Worker is not necessarily required to be at their workplace or performing their work duties when the sexual harassment occurs. However, the term ‘in connection with’ does require the PCBU or Worker to be engaged in some form of conduct or activity, or to be visiting a particular place, as a result of being a PCBU or Worker.⁴⁷

⁴² The Law Council has adopted the terminology of the [Darlington Statement](#) (March 2017).

⁴³ *Sex Discrimination Act 1984* (Cth) s 28B. For the purposes of this Model Framework, a PCBU includes an Employer, and a Worker includes an Employee. See Definitions above.

⁴⁴ *Sex Discrimination Act 1984* (Cth) ss 28B(1), 28B(3).

⁴⁵ *Ibid* ss 28B(2), 28B(4).

⁴⁶ *Ibid* ss 28B(5)-(8).

⁴⁷ Australian Human Rights Commission, [Information Guide on the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023) 18.

6.18 Examples of sexual harassment occurring in connection with work may include, but are not limited to:⁴⁸

- where a Worker is working remotely, including at home, a client's home, or a client's workplace;
- in a virtual workplace or online via the use of technology and social media;
- at social functions in connection with a workplace or at after-parties to work events;
- in a vehicle used to travel to work, a conference or meeting, or to meet clients;
- in accommodation associated with, or provided by, a PCBU;
- where a Worker remains at a workplace or returns to a workplace outside their working hours but because of a connection with work.

Positive Duty

6.19 From December 2023, the *Sex Discrimination Act 1984* (Cth) requires all PCBUs⁴⁹ to take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment that is perpetrated by:

- (a) themselves against their current or prospective Workers;
- (b) themselves against third parties—provided the sexual harassment occurs in connection with work;
- (c) their Workers against current or prospective fellow Workers;
- (d) their Workers against third parties—provided the sexual harassment occurs in connection with work;
- (e) third parties against their Workers—provided the sexual harassment occurs in connection with work;
- (f) their agents against themselves or their Workers—provided the sexual harassment occurs in connection with work.

6.20 Whether a PCBU has taken reasonable and proportionate measures to eliminate, as far as possible, sexual harassment in these circumstances will depend on the following matters:

- (a) the size, nature and circumstances of their business or undertaking;
- (b) their resources, whether financial or otherwise;
- (c) the practicability and the cost of measures to eliminate sexual harassment;
- (d) any other relevant matter.

⁴⁸ Ibid 19.

⁴⁹ For the purposes of this Model Framework, a PCBU includes an Employer, and a Worker includes an Employee. See Definitions above.

- 6.21 The Australian Human Rights Commission has the power to investigate and enforce compliance with the positive duty. It can commence an inquiry when it 'reasonably suspects' non-compliance, and without the consent of the PCBU.⁵⁰
- 6.22 This Model Framework focuses on the specific unlawful conduct that is sexual harassment. However, PCBUs should also be aware that their positive duty extends to unlawful conduct other than sexual harassment, including: sex discrimination; harassment on the ground of sex; hostile work environments; and related acts of victimisation.⁵¹ Obligations under the *Fair Work Act 2009* (Cth) and the *Model Work Health and Safety Act* similarly apply to prohibit or prevent conduct broader than sexual harassment, such as discrimination and bullying, as do the *Australian Solicitors' Conduct Rules* and the *Barristers' Rules*, depending on the state/territory.

7. Scope

- 7.1 This Model Framework is concerned with prevention and response in relation to sexual harassment.
- 7.2 This Model Framework applies to the MFA, which includes all persons conducting the MFA or carrying out work in any capacity for the MFA.
- 7.3 This Model Framework applies:
- (a) in all interactions between persons conducting the MFA and/or carrying out work in any capacity for the MFA; and
 - (b) in all circumstances connected with the activities of the MFA, including as relevant:
 - at the primary or any associated premises of the MFA;
 - at any venue, premises or location where any courses, seminars, events, or functions, or the like, are hosted or convened by, or in connection with, the MFA;
 - in connection with the services provided by the MFA, members, staff, directors, barristers and/or readers, including any representations of those services to members of the public;
 - in connection with employment and recruitment, including work performed both on and off-site, online or with the use of technology, including phone, email, social media, and corporate messaging platforms, in courts and tribunals, in private mediation or arbitration, within and outside ordinary working hours, and including work-related functions, including social and networking functions and conferences;
 - in connection with all facets of the provision, preparation and delivery of advice and advocacy, including interactions with clients, staff, and other legal professionals; and
 - in both formal and informal interactions:

⁵⁰ *Australian Human Rights Commission Act 1986* (Cth) s 35B.

⁵¹ *Sex Discrimination Act 1984* (Cth) s 47C.

- within the MFA;
- between the MFA and MFA associates; and
- between the MFA and the public.

8. Obligations

- 8.1 The MFA is committed to taking reasonable and proportionate measures to eliminate, as far as possible, sexual harassment.
- 8.2 All persons conducting the MFA or carrying out work in any capacity for the MFA have a responsibility to ensure these commitments are adopted and implemented.
- 8.3 Persons carrying out work in any capacity for the MFA must:
- (a) not engage in sexual harassment;
 - (b) not condone sexual harassment;
 - (c) not engage in victimisation;
 - (d) take reasonable care for their own work health and safety and not adversely affect the work health and safety of others;
 - (e) read, acknowledge and comply with this Model Framework;
 - (f) demonstrate high levels of conduct consistent with this Model Framework and, as applicable, the Australian Solicitors' Conduct Rules or the Barristers' Rules;
 - (g) seek assistance when unsure how to implement this Model Framework;
 - (h) undertake sexual harassment education and training, as mandated, provided or arranged by the MFA in accordance with this Model Framework; and
 - (i) be encouraged to report sexual harassment in accordance with this Model Framework (Appendix A or B, as applicable).
- 8.4 In addition, persons conducting the MFA recognise the following commitments (paragraphs 8.5 to 8.19 below) as demonstrating compliance with the positive duty under section 47C of the *Sex Discrimination Act 1984* (Cth).⁵² They agree to uphold each commitment to the extent that is reasonable and proportionate to:
- (a) the size, nature and circumstances of the MFA;
 - (b) their resources, whether financial or otherwise;
 - (c) the practicability and the cost of measures to eliminate sexual harassment;
 - (d) any other reasonable circumstance.

⁵² These commitments purposefully reflect the standards published by the Australian Human Rights Commission, the body empowered to enforce compliance with the positive duty in section 47C of the *Sex Discrimination Act 1984* (Cth). See Australian Human Rights Commission, [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023) 23.

Culture and Expectations

- 8.5 As part of its commitment to the elimination of sexual harassment within the Australian legal profession the MFA is committed to ensuring as far as it is reasonably practicable that interactions both within and in connection to the MFA will:⁵³
- (a) be free from sexual harassment and all forms of discrimination;
 - (b) treat all individuals with courtesy, dignity and respect, regardless of their relationship to the MFA; and
 - (c) address each and every complaint fairly and consistently, in a timely manner, without reprisal and, where appropriate to do so per **Appendices A or B** (as applicable), confidentially and in a person-centred and trauma-informed manner.
- 8.6 The MFA is committed to ensuring that as far as is reasonably practicable all persons within the MFA and MFA associates are advised of and acknowledge:
- (a) the existence of, and obligations under, this Model Framework; and
 - (b) the expected standards for acceptable and appropriate behaviour set by this Model Framework.⁵⁴
- 8.7 These standards referred to in paragraph 8.6 above should include that:
- (a) sexual harassment is unacceptable, in any context;
 - (b) sexual harassment is unlawful and unethical, and is a disciplinary matter that may raise questions about one's fitness to practise;
 - (c) every complaint about sexual harassment will be treated seriously;
 - (d) Persons Harassed will be supported and consulted over the progression of the complaint as appropriate;
 - (e) Complainants and Persons Harassed will be supported and will be appropriately consulted in respect of how their private and/or confidential information is used;
 - (f) any retaliatory actions, adverse actions and/or victimisation of the Person Affected, the Complainant, Bystanders, or supporters of the Person Affected are unacceptable and will, in and of itself, be regarded as a disciplinary matter that raises queries about one's fitness to practice and/or suitability for continued employment;
 - (g) investigations into complaints will be fair, clear, impartial, timely and, as far as is possible in the circumstances, confidential; and
 - (h) all persons at the MFA, regardless of their role or seniority, are expected to abide by the terms of this Model Framework.

⁵³ Emma Ryan and Naomi Neilson citing Maureen Kyne, '[Why stamping out sexual harassment starts at the recruitment process](#)', *Lawyers Weekly*, (online, 6 May 2021).

⁵⁴ For example, through terms in contracts of engagement or codes of conduct.

Leadership

- 8.8 The MFA is committed to ensuring that all leaders, managers or equivalent senior representatives of the MFA:
- (a) are appropriately trained and aware of their obligations under this Model Framework, as well as the applicable federal, and state/territory legislation, and legal profession regulations as they pertain to sexual harassment, and regularly keep this knowledge up to date;
 - (b) clearly communicate, promote and maintain the expected standards for acceptable and appropriate behaviour to which the MFA and all MFA associates are expected to comply, in all circumstances connected with the activities of the MFA;
 - (c) monitor the MFA to ensure compliance with this Model Framework, in accordance with its terms;
 - (d) take any disciplinary action, as appropriate in the circumstances, in response to breaches of this Model Framework, in accordance with the terms of this Model Framework;
 - (e) treat all complaints seriously and take appropriate action in response to complaints in accordance with this Model Framework; and
 - (f) model the expected standards of behaviour to which the MFA has committed itself, as set out in this Model Framework.

Knowledge, Awareness and Training

- 8.9 As part of its commitment to the elimination of sexual harassment within the Australian legal profession, the MFA will ensure that all persons at the MFA have had or will receive sexual harassment education or training that covers:
- (a) awareness of and access to this Model Framework, including the expected standards for acceptable and appropriate behaviour set by this Model Framework, its terms and appendices;
 - (b) the behaviours that amount to sexual harassment;
 - (c) the consequences of engaging in sexual harassment;
 - (d) the relevant legislation, regulations and ethical obligations;
 - (e) the risk factors for sexual harassment;
 - (f) the impact of sexual harassment;
 - (g) how to appropriately respond to sexual harassment if it occurs;
 - (h) the available complaints mechanisms both within and external to the MFA (including an explanation of the processes and procedures that will be followed if a complaint is made—see **Appendix A or B** as applicable); and
 - (i) the support available for Persons Harassed , Complainants and Bystanders.

- 8.10 The MFA is committed to delivering this education or training, including awareness of this Model Framework and its terms on a compulsory basis, at a level commensurate to a person's roles and responsibilities with the MFA, and within a reasonable time:
- (a) of orientation/induction and/or prior to commencement of membership or practice;
 - (b) of the assumption of management responsibilities for other staff;
 - (c) following a relevant change in legislation or regulation;
 - (d) at the request of a staff member or complaints handler or investigator;
 - (e) of being appointed as a board member, Director, Committee or related Chair;
 - (f) following any circumstances in which complaints handling procedures, as outlined in **Appendices A or B**, as applicable, have not been adequately implemented; and/or
 - (g) otherwise at least once every two calendar years.

Bystander intervention

- 8.11 As part of its commitment under this Model Framework, the MFA acknowledges, and will ensure as far as reasonably practicable that its associates will acknowledge:
- (a) that Bystanders are vital to driving cultural change and reinforcing the values and principles addressed in this Model Framework;
 - (b) however, any complaints or action initiated by Bystanders should be conducted by the MFA in a person-centred and trauma-informed manner taking into account the views of the Person Affected and their circumstances.
- 8.12 As part of its commitment under this Framework, the MFA agrees to take appropriate steps directed to ensuring that:
- (a) staff are trained and aware of the importance of Bystander intervention;
 - (b) staff Bystander intervention will be supported by the MFA; and
 - (c) Bystander intervention will be managed in accordance with the **Best Practice Complaints Procedures at Appendix A** (for organisations taking external complaints)⁵⁵ and **Appendix B** (for organisations addressing internal complaints).⁵⁶

Risk Management

- 8.13 As part of its commitment to promoting the elimination of sexual harassment within the Australian legal profession, the MFA will ensure as far as it is reasonably practicable that it will:

⁵⁵ Such as regulators, disciplinary bodies and any other organisations who take, conciliate or otherwise have a role in resolving complaints external to the organisation.

⁵⁶ For example, workplaces or chambers.

- (a) Conduct audits of its sexual harassment policies on at least an annual basis, such as by utilising the **Checklist of Key Elements** at **Appendix C**.
- (b) Conduct Sexual Harassment risk assessments on a regular basis, including:⁵⁷
 - a consideration of the risk factors and vulnerabilities for sexual harassment;
 - assessment of the relevant physical and online spaces;
 - conducting ‘workplace culture checks’ to review the effectiveness of training and policies, and identify opportunities to re-communicate the values of the MFA; and
 - direct feedback from the MFA or MFA associates as appropriate, such as via exit interviews, consultations or surveys.
- (c) Address and manage any risks identified in a Sexual Harassment risk assessment in a timely manner, including: ⁵⁸
 - devising and implementing control measures that respond to the identified risk factors;
 - seeking feedback on the control measures from the MFA and MFA associates, and otherwise reviewing control measures to determine whether they remain effective and appropriate in controlling identified risks;
 - keeping up to date records of risk assessments and control measures; and
 - making control measures available to MFA associates.⁵⁹

Recruitment and performance appraisals

8.14 As part of its commitment to the elimination of sexual harassment within the Australian legal profession, to the extent that the MFA recruit staff or contractors, the MFA will ensure as far as it is reasonably practicable that:⁶⁰

- (a) all persons responsible for recruiting staff must receive training in respect of sexual harassment, as outlined from paragraph 8.9 above;
- (b) risk assessments are conducted in respect of all new employees and contractors, including for example:
 - in-depth interviews as appropriate;
 - thorough referee checking, as appropriate; and

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ For example, prevention plans, risk frameworks, and risk registers could be made available on the MFA's website.

⁶⁰ Emma Ryan and Naomi Neilson citing Maureen Kyne, [‘Why stamping out sexual harassment starts at the recruitment process’](#), *Lawyers Weekly*, (online, 6 May 2021).

- social media screening.
- (c) recruitment techniques should include practical assessments designed to test the values and personality of candidates in terms of their commitment to eliminating sexual harassment and discrimination and supporting equitable workplace practices;
 - (d) confidential feedback during probationary periods should be sought from multiple sources in addition to the direct supervisor, including from those of lower seniority to the new recruit where possible.
- 8.15 The MFA should encourage regular conversations between managers and staff on workplace matters, noting that more frequent 'check-ins' are more effective in reinforcing desired behaviours and assessing personalities within the workplace.

Reporting and Response

- 8.16 As part of its commitment under this Model Framework, the MFA agrees that any complaint will be managed and investigated in accordance with the Best Practice Complaints Procedures at **Appendix A and/or B**.

Support

- 8.17 As part of its commitment under this Model Framework, the MFA will ensure as far as is reasonably practicable that:
- (a) it identifies Contact, Support and/or Complaints Handlers, and clearly communicates how and when they can be contacted;
 - (b) Contact, Support and/or Complaints Handlers are properly trained in accordance with the Best Practice Complaints Procedures at **Appendix A and/or B**; and
 - (c) information on external support options, including any Employee Assistance Program (EAP), relevant crisis hotlines/centres, counselling, and legal advice services, is available Person Affected, and it is made clear that these external supports can be accessed in the first instance without disclosure to the MFA and regardless of whether a complaint is made.

Monitoring, Evaluation and Transparency

- 8.18 The MFA acknowledges that for their policies to remain up to date and effective, they must be periodically reviewed and updated.
- 8.19 As part of its commitment to the elimination of sexual harassment within the Australian legal profession, the MFA will ensure as far as reasonably practicable that:
- (a) it reviews its iteration of this Model Framework and its terms on an annual basis;
 - (b) it collects data⁶¹—in an appropriate and de-identified manner—in order to understand the nature, risk and extent of sexual harassment concerning its

⁶¹ For example, staff feedback, workforce demographics, numbers and nature of complaints, reports from Complaints Handlers, and/or results from surveys, exit interviews and industry research.

workforce, and uses this data to regularly assess and improve workplace culture, policies and risk management frameworks; and

- (c) it communicates lessons learned from its monitoring and evaluation to leaders, managers, workers and associates, as appropriate.

- 8.20 To assist the MFA with this obligation the Law Council will periodically review this Model Framework, having regard to developments in legislation, regulator guidance materials, and legal profession regulation and professional conduct rules.
- 8.21 A copy of the Model Framework will remain available on the Law Council's website.

APPENDIX A

BEST PRACTICE COMPLAINTS PROCEDURES FOR ORGANISATIONS TAKING EXTERNAL COMPLAINTS⁶²

RECOMMENDATIONS AND GUIDANCE

The terms used in this document are consistent with the definitions in the *Model Sexual Harassment Framework for the Legal Profession (Framework)*.

1. Complaints Handlers, Assessors and Investigators

- 1.1. The persons who act as the points of contact for:
 - (a) those making complaints (**Complainants**); and
 - (b) the persons targeted by the sexual harassment (**Person Affected**);are vital to the effectiveness of any complaints process.
- 1.2. Further to paragraph 1.1, above, this document provides for complaints by Bystanders, so the Complainant and the Person Affected may not necessarily be the same person. The Complainant and the Person Affected are accordingly addressed separately in this document.
- 1.3. Persons, whether employed or contracted, who are responsible for receiving, assessing and/or investigating complaints (**Complaints Handlers**) should be appropriately trained in responding to persons who report sexual harassment. A Complaints Handler's training should include:
 - (a) the matters addressed in the Framework;
 - (b) trauma-informed techniques for interviewing and investigation;
 - (c) an understanding about the impact of shame and fear of retribution;
 - (d) an understanding about the practical application of procedural fairness in investigations;
 - (e) obligations around privacy and reporting to other agencies such as Police; and
 - (f) how to respond to complaints in a timely manner consistent with this document.
- 1.4. A Complaints Handler should refresh their training within a reasonable time:
 - (a) following a relevant change in legislation or regulation;

⁶² The Law Council notes that this document has been drafted a general guide, primarily directed towards legal profession complaints-taking bodies, to facilitate best practice and consistency where possible. However, it is noted that the statutory functions and powers of complaints-taking agencies in general vary considerably, and this should be taken into account when making a complaint.

- (b) at the request of a staff member or another complaints handler or investigator;
 - (c) following any circumstances in which complaints handling procedures, as outlined in this Appendix, have not been adequately implemented; and/or
 - (d) otherwise at least once every two calendar years.
- 1.5. Complaints Handlers should also be provided with appropriate guidance and support, to maintain a high quality of claims management for Complainants and Persons Harassed, and the well-being and resilience of the Complaints Handlers. This should include:
- (a) the professional guidance of a senior colleague or manager;
 - (b) the availability of counselling services such as the Employee Assistance Program;
 - (c) clear procedures for dealing with complaints and the use of information that are reinforced and consistent with what is required in-practice;
 - (d) clear mechanisms for the escalating of complex complaints as appropriate;
 - (e) clear reporting and grievance mechanisms in the case of alleged mismanagement or conduct; and
 - (f) ongoing training as outlined in paragraphs **1.3** and **1.4**.
- 1.6. Organisations who receive external complaints (for ease of reference, **Organisations**), should ensure there is no 'wrong door' for Complainants. They should endeavour to triage complaints so that complaints about sexual harassment are directed to the Complaints Handlers that are suitably trained. This could be achieved, for example, through a dedicated phone and/or email service, or training 'first contact' staff to triage complaints, including:
- (a) explaining, in a trauma-informed, sensitive and impartial manner, the 'triaging' step; and
 - (b) only seeking as much information as necessary so as to redirect the Complainant to an appropriate complaints staff member.
- 1.7. Subject to the 'triaging' step addressed in paragraph **1.6** above, Organisations should also facilitate, as far as reasonably possible, for the initial complaints handler to remain the consistent 'contact person' for each Complainant and Person Affected, to avoid unnecessary repetition of detail and re-traumatisation.
- 1.8. It is crucial that Complaints Handlers ensure that communications with Complainants and Persons Harassed be:
- (a) calm;
 - (b) clear;
 - (c) respectful;
 - (d) fair;

- (e) impartial;
 - (f) sensitive to the risks of re-traumatisation; and
 - (g) sensitive to support, access and communication requirements and preferences.
- 1.9. Complaints Handlers should be mindful not to suggest to the Complainant or Person Affected any judgment on the merits of the complaint prior to determination of the complaint.
 - 1.10. Complainants and Persons Harassed should be supported and educated about the avenues for redress and support, in accordance with the wishes of that individual, rather than advised or guided towards particular outcomes. Central to the support process should be a respect for the desired outcomes of the Person Affected, including if they change or waver.
 - 1.11. Complaints Handlers should be appropriately trained and equipped to provide referrals and information to Complainants and Person Affected as appropriate, so there is no 'wrong door' to reporting sexual harassment.

2. Document management

- 2.2 The Person Affected should be consulted, and kept informed, in respect of how their personal information is proposed to be used and stored.
- 2.3 In the case of complaints initiated by Bystanders, but consented to by the Person Affected, care must be taken to:
 - (a) quarantine any personal information in respect of the Person Affected from the Complainant and any other parties; and
 - (b) subject to any statutory reporting requirements, only use information provided by the Person Affected with their express consent in respect of how a particular piece of information is to be used.
- 2.4 Complaints must be recorded in a document management system that ensures, as far as is reasonably possible:
 - (a) sensitive information is kept confidential to (as applicable):
 - the complaints handling (and preferably the sexual harassment complaints handling) team; and/or
 - claims investigators;
 - (b) that all correspondence is on file and up to date; and
 - (c) that all documents are stored securely for at least six years from the date the complaint was raised, or for such longer time as is reasonable in the circumstances.
- 2.5 All persons who will be handling the sensitive information should be clearly informed of the parameters for accessing and using the information, including the

consequences of misuse. This should include any obligations to report certain events or information to other agencies such as Police.

- 2.6 Clear disciplinary procedures should be developed in respect of the misuse of information.

3. Complaints processes

3A. Initial contact

- 3.1 At the time of the initial interaction with the Complainant, Complaints Handlers should:
- (a) Ask if the Complainant would benefit from any assistance to aid the discussions with the Complaints Handler, such as a support person, an interpreter, hearing or visual aids.
 - (b) Clearly convey that sexual harassment is unacceptable, in any context.
 - (c) As far as it is possible, give consideration to whether a Complaints Handler of the same gender is preferable in the circumstances.
 - (d) Advise that the taking of the complaint can be conducted over more than one session, and that the Complainant can pause (or discontinue) the complaint at any time.
 - (e) Establish whether the complaint is being made by the Person Affected or a Bystander.
 - (f) Enquire whether other related proceedings/investigations/complaints are on foot. To the extent that this is confirmed:
 - advise the Complainant of whether both can proceed concurrently; and
 - to the extent that they cannot proceed concurrently, advise how this will impact the Complainant's query with the subject Organisation, including timeframes, noting that:
 - regard must be had to protecting the privacy of any persons involved in other complaints and ensuring that the subject complaint or other complaints are not prejudiced.
 - (g) Enquire as to whether the complaint is covered by a Non-Disclosure Agreement (**NDA**) and inform the Complainant that legal advice may be of assistance in that context and, to this end, the relevant law society or professional association will be able to refer the Complainant to appropriate legal advice.
 - (h) Enquire whether the Complainant is seeking a particular outcome.
 - (i) Advise the Complainant of the availability of both anonymous reporting or a complaint and the parameters of each including that complaints cannot remain anonymous.
 - (j) Explain that anonymous reporting can later be formalised into an investigable complaint, if desired.

- (k) Ask Complainants how they wish their private information to be treated.
- (l) Explain what information will be required to proceed - this will differ depending on whether the complainant desires to make an anonymous report or a complaint.
- (m) Outline the frameworks for redress (as outlined in **Sections 3B, 3C and 3D** below), without providing legal advice.
- (n) If applicable, note the timeframes and limitation periods for pursuing these avenues for redress, and that legal advice can be sought on this issue;
- (o) Inform the Complainant of the next steps of the applicable avenues for redress, including an indication to timeframes.
- (p) Refer Complainants to any applicable forms or guidance materials, as is appropriate.
- (q) Offer any other information and referral services, as appropriate, including where legal advice can be sought.⁶³ It is recommended that Complaints Handlers have available, from the outset of receiving any complaints, all available referral points, including those to counselling and other support services such as Lifeline or 1800 RESPECT.

3B. Anonymous reporting

3.2 The Law Council recommends that anonymous reporting be permitted for information gathering purposes, noting that:

- (a) provision of, and support during, the anonymous reporting process has been shown to empower Complainants/Persons Harassed to later proceed with a complaint;⁶⁴ and
- (b) even if complaints are ultimately not pursued, information provided in anonymous reports may provide valuable information about trends and areas of concern that may be addressed through other avenues.⁶⁵

3.3 Anonymous reporting should also be accepted from Bystanders.

3.4 It is noted that there is no power under the state and territory Legal Profession Acts and Legal Profession Uniform Law (**Uniform Law**) for individuals to be investigated and/or disciplined on the basis of an anonymous report. This is on the basis that a respondent to an anonymous report will be deprived of sufficient particulars so as to respond to the case against them.⁶⁶

⁶³ Please see the Law Council's [Time for Change](#) portal regarding Law Societies and Professional Associations who can refer persons to appropriate legal advice.

⁶⁴ See Office of the Legal Services Commissioner (NSW), [Inappropriate Personal Conduct](#) (Web Page, 1 November 2023).

⁶⁵ See Victorian Legal Services Board and Commissioner, [Making a complaint to VLSB+C about sexual harassment](#) (Web Page, 2 January 2025).

⁶⁶ As noted by the Law Society of New South Wales, '[i]f the complaint is later taken to an external tribunal or court, it will be important to demonstrate that the internal investigation was thorough and afforded natural justice. If this is demonstrated, the external tribunal or court is more likely to uphold the internal investigator's findings of fact': see Law Society of New South Wales, [Workplace Guide and Model Discrimination and Harassment Policies](#) (May 2021) 24.

3C. Investigations initiated by Regulatory Organisations

- 3.5 It is noted that there is latitude within the Uniform Law for Designated Local Regulatory Authorities to initiate audits to ensure compliance with the Uniform Law (including Professional Conduct Rules) pursuant to [Section 256](#).
- 3.6 The Law Council considers that both anonymous reports and formal complaints of sexual harassment occurring within a legal practice meet the 'reasonable grounds' threshold in Section 256 and permits regulators to commence 'own motion' investigations.

3D. Complaints

- 3.7 Complaints should be accepted from any person:
- (a) who experienced and/or was the subject or target of the conduct;
 - (b) Bystanders who directly witnessed the conduct, even if not the target of the conduct; and
 - (c) Bystanders who have direct knowledge of the conduct, such as Human Resources personnel or managers or other persons who have been told about the conduct by the Complainant or Person Affected.
- 3.8 The form of a complaint may depend upon the particular circumstances of the case. A Complainant should be afforded the opportunity to provide details of the complaint in a range of ways to enable the Complaints Handler to record:
- (a) the name and contact details of the Complainant (if a third party or Bystander);
 - (b) the name and contact details of the Person Affected;
 - (c) the name and contact details for the Respondent;
 - (d) the names and contact details for any other person/s who may have relevant information; and
 - (e) details of the conduct complained of, including when and where the conduct took place.
- 3.9 Regardless of the source, complaints should be progressed in consultation with, and with the consent of, the Person Affected.
- 3.10 When complaints are received by a third party or Bystander:
- (a) The Complaints Handler should inform the Complainant that the Person Affected will be contacted, and their consent sought, before the complaint can be progressed.
 - (b) Subject to ensuring a trauma-informed approach, the Person Affected should then be the next point of contact, and:
 - be advised that a complaint has been made on their behalf;
 - be offered support (such as legal advice or counselling services) via appropriate referrals;

- be provided with the same information as outlined in paragraph **3.1** of this Appendix;
 - be offered a reasonable amount of time to process and consider whether or not they wish to pursue the formal complaint;
 - at all times the Complaints Handler should comply with **Section 1** of this Appendix in their interactions with the Person Affected.
- (c) If the Person Affected does not want a complaint to be pursued, the complaint should be treated as if it was an anonymous report where appropriate to do so. The third-party/Bystander Complainant should be informed on this outcome, but not of the details of the discussions with the Person Affected.
- (d) If the Person Affected does want the complaint pursued:
- offer for the complaint to be initiated in their own name;
 - if the person is content for the third-party to pursue the claim on their behalf, clarify the extent to which the person may need to remain involved to pursue a disciplinary response to the matter; and
 - inform the Complainant of this outcome, but not of the details of the discussions with the Person Affected.

3.11 In the event that the complaint is pursued, please see **Section 4** below.

4. Investigating complaints

4A. Preliminary assessment

- 4.1 Both the Complainant and the Person Affected should be advised of the preliminary assessment stage before its commencement, including the matters outlined in this **section 4A**.
- 4.2 Despite the best intentions of Complaints Handlers, Complainants⁶⁷ may experience distress and fear associated with the Respondent being notified of the complaint. It is therefore imperative for any complaint to have a preliminary assessment, to avoid Complainants experiencing additional trauma if a complaint cannot be pursued.
- 4.3 It is important to note that matters may not be able to be pursued for reasons not connected to the veracity of the complaint, such as jurisdictional issues.
- 4.4 This preliminary assessment should determine whether there are adequate facts to investigate, and not amount to an assessment as to the veracity of the facts or the creditability of the Complainant and/or the Person Affected. This should be emphasised to the Complainant and/or Person Affected.
- 4.5 Complaints Handlers should also assess whether there are any interim or precautionary measures that have (or should have been) identified within the organisation that is the subject of the complaint and whether those measures have

⁶⁷ It is noted that Bystanders may also experience fear and distress in this situation, particularly if they are concerned about a Respondent reacting to the news of their involvement. This may be particularly relevant, for example, where the Respondent is senior to the Bystander in the organisation.

been implemented. To the extent that they consider measures have not been identified and/or implemented, Complaints Handlers may consider, with the consent of the Person Affected (and third-party Complainants where appropriate) contacting the relevant workplace/organisation in respect of work, health and safety obligations.

- 4.6 In the event the complaint does not meet the thresholds in paragraph 4.5 above, the Complaints Handler assessing the complaint should:
- (a) advise the Complainant and the Person Affected of the outcome and reasons, as appropriate, as soon as reasonably practicable;
 - (b) advise the Complainant and the Person Affected that other avenues are available for review, such as through the Organisation's particular conflict resolution policies and/or other external regulators, and that they can seek external advice about the avenues; and
 - (c) in the event that the claim is not sufficiently particularised to pursue - explain to the Complainant what additional information would allow the claim to proceed, without providing advice specific to the facts of the case, or otherwise be construed as providing legal advice.
- 4.7 In the event that the threshold in paragraph 4.5 are met, the Complaints Handler assessing the complaint should:
- (a) advise the Complainant and the Person Affected that the complaint is ready to proceed to formal investigation;
 - (b) clearly outline what the formal investigation entails, including what information is provided to the Respondent, even if these details were relayed at an earlier stage of the process; and
 - (c) confirm the willingness of the Complainant and the Person Affected to continue the claim to formal investigation.

4B. Informal resolution

- 4.8 Complainants and Persons Harassed may find the notion of a formal investigation intimidating and distressing and/or off-putting. Subject to the applicable regulatory frameworks, some complaint handling bodies may be able to attempt to resolve complaints informally.⁶⁸
- 4.9 Such informal resolution options should be conducted with ongoing consultation with the Person Affected - noting that the person may, depending on the circumstances, only be seeking minimal intervention.
- 4.10 Such informal resolution options may include:
- (a) If the Person Affected feels comfortable - a discussion with the Respondent, with or on behalf of the Person Affected, as appropriate. Should the Person Affected wish to discuss the matter directly with the Respondent, the aid of the Complaints Handler and/or a support person should be offered.

⁶⁸ In circumstances where the applicable complaint handling body does not have regulatory arrangements supporting informal resolution, and where complainants do not wish to proceed to informal investigation, regulators have indicated that these complaints can be grounds for compliance audits.

- (b) If the person feels comfortable - correspondence to be provided by the Organisation to the workplace or other organisation where the conduct is alleged to be occurring, on terms agreed with the Person Affected, such as:
 - notifying the other organisation of an anonymous complaint being made and informing the other organisation of their obligations in respect of addressing sexual harassment;⁶⁹ and/or
 - providing any further details as consented to by the Person Affected, and inducing specific initial recommendations (for example regarding training and bolstering policies, or a change of reporting lines);
- (c) conciliation or mediation through an independent/external facilitator.

4C. Formal investigation

- 4.11 Once the complaint has proceeded to the formal investigation, the Respondent must be notified, in writing, as soon as reasonably practicable.
- 4.12 However, before the Respondent is notified, investigators should inform the Complainant that they are preparing the notification documents and that they will be advised before any formal correspondence is sent to the respondent.
- 4.13 The Complainant and Person Affected should then be notified:
 - (a) shortly before the Respondent has been notified; and
 - (b) once the Respondent has been so notified.
- 4.14 Investigators may consider notifying, as appropriate, any other organisations that may be connected to the alleged conduct so that any workplace health and safety, or other reasonably anticipated risks may be appropriately managed while investigations are ongoing. Whether or not this is appropriate will depend on the circumstances of the case and the extent to which they intersect with other work, health and safety and any other statutory obligations.
- 4.15 The notice to the Respondent must include sufficient details so that the Respondent can properly respond to the complaint made against them.
- 4.16 The Respondent must have a sufficient period of time to respond to the complaint made against them. The Respondent should be invited to respond to the allegations and advised that they can seek external advice or assistance to do so.
- 4.17 Formal investigations:
 - (a) should consider any conflicts of interest between the investigator(s) and the parties and, if found, arrange for an alternative investigator(s) to progress the investigation;
 - (b) should have an investigator(s) that is appropriately qualified and/or experienced so as to reliably weigh the relevant facts and legal thresholds;

⁶⁹ This option should only be exercised with caution and careful consideration of whether Complainant, Person Affected or Respondent can be inadvertently identified from context.

- (c) should have the investigator(s) appropriately trained to decide matters involving sexual harassment, as outlined in **section 1** of this Appendix; and
- (d) should, as far as possible, utilise investigators to reflect diverse cultural backgrounds, genders and orientations.

4.18 Formal investigations should:

- (a) consider the information and evidence provided by the parties to the complaint, including any:
 - statements;
 - documentary evidence; and
 - corroborating evidence.
- (b) apply the principles of procedural fairness and natural justice;
- (c) assess and make findings of the credibility of the parties and any witnesses—in doing so, investigators should be cognisant that complaints of sexual harassment often lack corroborating evidence and this alone should not prevent a determination;
- (d) consider and apply the applicable thresholds, as addressed in the Model Framework; and
- (e) apply a civil standard of proof, being on the balance of probabilities.⁷⁰

4.19 If it is determined that the sexual harassment occurred on the balance of probabilities, appropriate remedies should be considered subject to the applicable rules, regulations and legislation.

4.20 Subject to the facts of the individual case, remedies might include (as relevant):

- (a) a finding of unsatisfactory professional conduct or professional misconduct for legal practitioners;
- (b) fines;
- (c) restrictions or cancellation of a practising certificate or membership;
- (d) removal from the Roll of practitioners;
- (e) a finding that the Respondent breached workplace or discrimination legislation; and/or
- (f) a referral to an external body as outlined in **section 4C** below.

4.21 Once a determination has been made in respect of the complaint, the outcome should be communicated to all parties as soon as practicable.

4.22 In the event that the investigator(s) determine that it would be appropriate for the matter to be referred to an external body, please refer to **section 4C** below.

⁷⁰ *Briginshaw v Briginshaw* [1938] HCA 34.

4D. Referral to external body

- 4.23 Transparency is key to deterring sexual harassment. There will be occasions when Complaints Handlers investigating the complaint will consider it appropriate for the complaint to be determined by an external body, regulator, agency and/or tribunal including and not limited to Police and the applicable state or territory Workplace Health and Safety regulator.
- 4.24 It is imperative for the elimination of sexual harassment, that Organisations are open and supportive of external referrals:
- (a) if it is appropriate in the circumstances; and
 - (b) as far as possible, is done with the consent of, and in consultation with, the Person Affected.
- 4.25 In the event that the Complaints Handler investigating the complaint determines that it would be appropriate for the matter to be referred to another regulator, external body, disciplinary tribunal or authority for determination, the Complaints Handler should:
- (a) advise the parties of this determination as soon as reasonably practicable, as appropriate; and
 - (b) provide the parties with an outline of the next steps, including an indication as to timeframes.

5. Review

- 4.26 Following the determination of a complaint, regardless of outcome, Organisations should consider:
- (a) whether the complaint reflects a systemic issue that requires further consideration and redress; and
 - (b) whether any element of the complaints handling, assessment or investigation process could be better managed in future complaints.

APPENDIX B

BEST PRACTICE COMPLAINTS PROCEDURES FOR ORGANISATIONS ADDRESSING INTERNAL COMPLAINTS

RECOMMENDATIONS AND GUIDANCE

The terms used in this document are consistent with the definitions in the *Model Sexual Harassment Framework for the Legal Profession (Framework)*.

1. Complaints Handlers, assessors and investigators

1.12. The persons who act as the points of contact for:

- (a) those making complaints (**Complainants**); and
- (b) the persons targeted by the sexual harassment (**Person Affected**);

are vital to the effectiveness of any complaints process.

1.13. Further to paragraph 1.1, above, this document provides for complaints by Bystanders, so the Complainant and the Person Affected may not necessarily be the same person. The Complainant and the Person Affected are accordingly addressed separately in this document.

1.14. Persons, whether employed or contracted, who are responsible for receiving, assessing and/or investigating complaints (**Complaints Handlers**) should be appropriately trained in responding to persons who report sexual harassment. A Complaints Handler's training should include:

- (a) the matters addressed in the Model Framework;
- (b) trauma-informed techniques for interviewing and investigation;
- (c) an understanding about the impact of shame and fear of retribution;
- (d) an understanding about the practical application of procedural fairness in investigations;
- (e) obligations around privacy and reporting to other agencies such as Police;
- (f) how to respond to complaints in a timely manner consistent with this document;
- (g) how to recognise and manage any real or perceived power imbalance;
- (h) how to consider whether an independent process (e.g. referral to a third party or engagement of an external investigator) is more appropriate; and
- (i) how to respond to the specific needs of the complainant - such as any specific cultural or linguistic needs.

1.15. A Complaints Handler should refresh their training within a reasonable time of:

- (a) following a relevant change in legislation or regulation;

- (b) at the request of a staff member or another complaints handler or investigator;
 - (c) following any circumstances in which complaints handling procedures, as outlined in this Appendix, have not been adequately implemented; and/or
 - (d) otherwise at least once every 2 calendar years.
- 1.16. Complaints Handlers should also be provided with appropriate guidance and support, to maintain a high quality of claims management for Complainants and Persons Harassed, and the well-being and resilience of the Complaints Handlers. This should include:
- (a) the professional guidance of a senior colleague or manager;
 - (b) the availability of counselling services such as the Employee Assistance Program;
 - (c) clear procedures for dealing with complaints and the use of information that are reinforced and consistent with what is required in-practice;
 - (d) clear mechanisms for the escalating of complex complaints as appropriate;
 - (e) clear reporting and grievance mechanisms in the case of alleged mismanagement or conduct; and
 - (f) ongoing training as outlined in paragraph **1.3** of this Appendix.
- 1.17. Organisations receiving complaints arising within, or in connection with, their organisation (for ease of reference, **Organisations**), should ensure that managers and Human Resources staff are appropriately trained in the taking of complaints, in the manner outlined in paragraph **1.3**.
- 1.18. Organisations should also facilitate, where appropriate, for the initial Complaints Handler to remain the consistent 'contact person' for each Complainant and Person Affected, to avoid unnecessary repetition of detail and re-traumatisation.
- 1.19. It is imperative that Complaints Handlers ensure that communications with Complainants and Persons Harassed be:
- (a) calm;
 - (b) clear;
 - (c) respectful;
 - (d) fair;
 - (e) impartial;
 - (f) sensitive to the risks of re-traumatisation; and
 - (g) sensitive to support, access and communication requirements and preferences.
- 1.20. Complaints Handlers should be mindful not to suggest to the Complainant or Person Affected prior to any determination of the complaint:

- (a) a judgment on the merits of the complaint; or
 - (b) a likelihood of any particular outcome.
- 1.21. Complainants and Person Affected should be supported and educated about the avenues for redress and support, in accordance with the wishes of that individual, rather than advised or guided towards particular outcomes. Central to the support process should be a respect for the desired outcomes of the Person Affected, including if they change or waver.
- 1.22. Complaints Handlers should be appropriately trained and equipped to provide referrals and information to Complainants and Persons Harassed as appropriate, so there is no 'wrong door' to reporting sexual harassment.

2. Document management

- 2.1 The Person Affected should be consulted with, and kept informed, in respect of how their personal information is proposed to be used and stored.
- 2.2 In the case of complaints initiated by Bystanders, but consented to by the Person Affected, care must be taken to:
- (a) quarantine any personal information in respect of the Person Affected from the Complainant and any other parties; and
 - (b) only use information provided by the Person Affected with their express consent in respect of how a particular piece of information is to be used.
- 2.3 Complaints must be recorded in a document management system that ensures, as far as is reasonably possible:
- (a) sensitive information is kept confidential to Human Resources and/or the persons directly responsible for handling/investigating the complaint;
 - (b) that all correspondence is secure, kept on file and up to date;
 - (c) that all documents are stored securely for at least six years from the date the complaint was raised, or for such longer time as is reasonable in the circumstances.
- 2.4 All persons who will be handling the sensitive information should be clearly informed of the parameters for accessing and using the information, including the consequences of misuse. This should include any obligations to report certain events or information to other agencies such as Police.
- 2.5 Clear disciplinary procedures should be developed in respect of the misuse of information.

3. Complaints processes

3A. Initial contact

- 3.1 At the time of the initial interaction with the Complainant, Complaints Handlers should:

- (a) ask if the Complainant would benefit from any assistance to aid the discussions with the Complaints Handler, such as a support person, an interpreter, hearing or visual aids;
- (b) clearly convey that sexual harassment is unacceptable, in any context;
- (c) as far as it is possible, offer the availability of a Complaints Handler of the same gender, if desired;
- (d) advise that the taking of the complaint can be conducted over more than one session, and that the Complainant can pause (or discontinue) the complaint at any time;
- (e) establish whether the complaint is being made by the Person Affected or a Bystander;
- (f) enquire whether the complainant is seeking a particular outcome;
- (g) ask Complainants how they wish their private information to be treated;
- (h) explain what information will be required to proceed - this will differ depending on whether the Complainant desires to make an anonymous report or a complaint;
- (i) inform the Complainant of the next steps of the applicable avenues for redress, including an indication as to timeframes;
- (j) refer Complainants to any applicable forms or guidance materials, as is appropriate; and
- (k) offer any other information and referral services, as appropriate, including where legal advice can be sought.⁷¹ It is recommended that complaints handlers have available all available referral points, including those to counselling and other support services such as Lifeline or 1800 RESPECT.

3.2 Organisations should consider whether any interim or precautionary measures should be put in place while the complaint is being assessed or investigated, in a manner that does not disadvantage the Complainant. This might include, for example:

- (a) a change in reporting lines;
- (b) a change in workplace location;
- (c) the utilisation of remote working arrangements; and/or
- (d) implementation of policies or directions to address the relevant risk factors, for example in respect of conduct at social events or working after hours.

3.3 Any change in working arrangements as outlined in paragraph **3.2** above should be done in consultation with the Complainant and be mindful to avoid suggestions of adverse action or victimisation. To this end, Organisations considering interim or

⁷¹ Please see the Law Council's [Time for Change](#) portal regarding Law Societies and Professional Associations who can refer persons to appropriate legal advice.

precautionary measures might consider legal advice with regard to the implementation of such measures.

3B. Anonymous reporting

3.4 The Law Council recommends that anonymous reporting be permitted for information gathering purposes, noting that:

- (a) provision of, and support during, the anonymous reporting process has been shown to empower Complainants/Persons Harassed to later proceed with a complaint;⁷² and
- (b) even if complaints are ultimately not pursued, information provided in anonymous reports may provide valuable information about trends and areas of concern that may be addressed through other avenues.⁷³

3.5 Anonymous reporting should also be accepted from Bystanders.

3C. Investigations initiated by the Organisation

3.6 To avoid the onus of the complaint or disciplinary intervention being placed on the Person Affected or Complainant, the Law Council encourages Organisations to initiate investigations into reported sexual harassment as appropriate, on the basis that:

- (a) the informed consent of the Person Affected is sought prior to the investigation being commenced;⁷⁴ and
- (b) the Person Affected is consulted throughout the process, as appropriate, noting that some Complainants will prefer minimal involvement.

3D. Complaints

3.7 Complaints should be accepted from:

- (a) Any person who experienced and/or was the subject or target of the conduct;
- (b) Bystanders who directly witnessed the conduct, even if not the target of the conduct; and

⁷² See Office of the Legal Services Commissioner (NSW), [Inappropriate Personal Conduct](#) (Web Page, 1 November 2023).

⁷³ See Victorian Legal Services Board and Commissioner, [Making a complaint to VLSB+C about sexual harassment](#) (Web Page, 2 January 2025).

⁷⁴ It is noted that there may be occasions where the conduct reported or imputed is of such a nature that it triggers Work, Health and Safety or other obligations, regardless of the wishes of the Person Affected. This is not inconsistent with a person-centred and trauma-informed approach. The Australian Human Rights Commission notes that: 'Being person-centred and trauma-informed does not always mean doing what the person requests. It means genuinely considering their wishes and the impact that decisions may have on them.' Where a complaint must be pursued, the Person Affected should be supported, consulted and kept informed throughout the complaints process, and protected from victimisation. For further information and guidance, see Australian Human Rights Commission, [Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces](#) (Factsheet, August 2023) in [Factsheet Series: Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023).

MFAs may consider in these circumstances seeking legal advice.

- (c) Bystanders who have direct knowledge of the conduct, such as Human Resources personnel or managers or other persons who have been told about the conduct by the Complainant or Person Affected.
- 3.8 The form of a complaint may depend upon the particular circumstances of the case. A Complainant should be afforded the opportunity to provide details of the complaint in a range of ways to enable the Complaints Handler to record:
- (a) the name and contact details of the Complainant (if a third party or Bystander);
 - (b) the name and contact details of the Person Affected;
 - (c) the name and contact details for the Respondent;
 - (d) the names and contact details for any other person/s who may have relevant information; and
 - (e) details of the conduct complained of, including when and where the conduct took place.
- 3.9 Regardless of the source, complaints should be progressed in consultation with the Person Affected as far as possible.
- 3.10 When complaints are received by a third party or Bystander:
- (a) the Complaints Handler should inform the Complainant that the Person Affected will be contacted, and their consent sought, before the complaint can be progressed.
 - (b) the Person Affected should then be the next point of contact, and:
 - be advised that a complaint has been made on their behalf;
 - be offered support (such as legal advice or counselling services) via appropriate referrals;
 - be provided with the same information as outlined in paragraph 3.1 of this Appendix;
 - be offered a reasonable amount of time to process and consider whether or not they wish to pursue the formal complaint; and
 - at all times the Complaints Handler should comply with **Section 1** of this Appendix in their interactions with the Person Affected.
 - (c) If the Person Affected does not want a complaint to be pursued, the complaint should be treated as if it was an anonymous report where appropriate to do so.⁷⁵ The third-party/Bystander Complainant should be

⁷⁵ It is noted that there may be occasions where the conduct reported or imputed is of such a nature that it triggers Work, Health and Safety or other obligations, regardless of the wishes of the Person Affected. This is not inconsistent with a person-centred and trauma-informed approach. The Australian Human Rights Commission notes that: 'Being person-centred and trauma-informed does not always mean doing what the person requests. It means genuinely considering their wishes and the impact that decisions may have on them.' Where a complaint must be pursued, the Person Affected should be supported, consulted and kept informed throughout the complaints process, and protected from victimisation. For further information and

informed on this outcome, but not of the details of the discussions with the Person Affected.

- (d) If the Person Affected does want the complaint pursued:
- offer for the complaint to be initiated in their own name;
 - if the person is content for the third-party to pursue the claim on their behalf, clarify the extent to which the person may need to remain involved to pursue a disciplinary response to the matter; and
 - inform the Complainant of this outcome, but not of the details of the discussions with the Person Affected.

3.11 In the event that the complaint is pursued, please see **Section 4** below.

4. Investigating complaints

4A. Preliminary assessment

- 4.1 Both the Complainant and the Person Affected should be advised of the preliminary assessment stage before its commencement, including the matters outlined in this **section 4A**.
- 4.2 Despite the best intentions of Organisations, Complainants may experience distress and fear associated with the Respondent being notified of the complaint.⁷⁶ It is therefore imperative for any complaint to have a preliminary assessment, to avoid Complainants experiencing additional trauma if a complaint cannot be pursued.
- 4.3 It is important to note that matters may not be able to be pursued for reasons not connected to the veracity of the complaint, such as jurisdictional issues.
- 4.4 This preliminary assessment should determine whether there are adequate facts to investigate, and not amount to an assessment as to the veracity of the facts or the creditability of the Complainant and/or the Person Affected. This should be emphasised to the Complainant and/or Person Affected.
- 4.5 Preliminary assessments should be conducted to identify:
- (a) any conflicts of interest between the assessor and the parties and, if found, arrange for an alternative assessor to progress the assessment;
 - (b) whether allegations have been adequately specified or particularised;
 - (c) whether any further information is required so as to properly assess the complaint;
 - (d) whether the conduct falls within the definition and thresholds outlined in the Framework;

guidance, see Australian Human Rights Commission, [Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces](#) (Factsheet, August 2023) in [Factsheet Series: Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023).

MFAs may consider in these circumstances seeking legal advice.

⁷⁶ It is noted that Bystanders may also experience fear and distress in this situation, particularly if they are concerned about a Respondent reacting to the news of their involvement. This may be particularly relevant, for example, where the Respondent is senior to the Bystander in the organisation.

- (e) whether there are any interim or precautionary measures, as outlined in paragraph **3.2** of this Appendix, that have, or should have, been identified and whether those measures have been implemented; and
 - (f) in the case of third-party/Bystander complaints, confirm whether consent has been obtained from the Person Affected.
- 4.6 In the event the complaint does not meet the thresholds in paragraph **4.5** above, the Complaints Handler assessing the complaint should:
- (a) advise the Complainant and the Person Affected of the outcome and reasons, as appropriate, as soon as reasonably practicable;
 - (b) advise the Complainant and the Person Affected that other avenues are available for review, such as through the Organisation's particular conflict resolution policies and/or external regulators, and that they can seek external advice about the avenues; and
 - (c) in the event that the claim is not sufficiently particularised to pursue - explain to the Complainant what additional information would allow the claim to proceed, without providing advice specific to the facts of the case, or otherwise be construed as providing legal advice.
- 4.7 In the event that the threshold in paragraph **4.5** are met, the Complaints Handler assessing the complaint should:
- (a) advise the Complainant and the Person Affected that the complaint is ready to proceed to informal resolution and/or formal investigation;
 - (b) clearly outline what the informal resolution and formal investigation entail, including what information is provided to the Respondent, even if these details were relayed at an earlier stage of the process; and
 - (c) confirm the willingness of the Complainant and the Person Affected to continue the claim to informal resolution and/or formal investigation.

4B. Informal resolution

- 4.8 Complainants and Persons Harassed may find the notion of a formal investigation intimidating and distressing and/or off-putting. In order to facilitate the reporting of sexual harassment, it is imperative that alternative and informal options for resolution be offered to the Complainant and/or Person Affected.
- 4.9 Such informal resolution options should be conducted in consultation with the Person Affected - noting that the person may, depending on the circumstances, only be seeking minimal intervention.
- 4.10 Such informal resolution options may include:
- (a) If the Person Affected feels comfortable - a discussion with the Respondent, with or on behalf of the Person Affected, as appropriate. Should the Person Affected wish to discuss the matter directly with the Respondent, the aid of the Complaints Handler and/or a support person should be offered.
 - (b) If the person feels comfortable - the Complaints Handler and/or Human Resources to have a conversation about the conduct directly with the Respondent, on terms agreed with the Person Affected.

- (c) Conciliation or mediation through an independent/external facilitator.

4C. Formal investigation

- 4.11 Once the complaint has proceeded to the formal investigation, the Respondent must be notified, in writing, as soon as reasonably practicable.
- 4.12 However, before the Respondent is notified, investigators should inform the complainant that they are preparing the notification documents and that they will be advised before any formal correspondence is sent to the respondent.
- 4.13 The Complainant and Person Affected should then be notified:
- (a) shortly before the Respondent has been notified; and
 - (b) once the Respondent has been so notified.
- 4.14 The notice to the Respondent must include sufficient details so that the Respondent can properly respond to the complaint made against them.⁷⁷
- 4.15 The Respondent must have a sufficient period of time to respond to the complaint made against them. The Respondent should be invited to respond to the allegations and advised that they can seek external advice or assistance to do so.
- 4.16 Formal investigations:
- (a) subject to the consent of the Person Affected should, if appropriate, be conducted by a person independent to/external to the Organisation;⁷⁸
 - (b) should consider any conflicts of interest between the investigator(s) and the parties and, if found, arrange for an alternative investigator(s) to progress the investigation;
 - (c) should have an investigator(s) that is appropriately qualified and/or experienced so as to reliably weigh the relevant facts and thresholds;
 - (d) should have the investigator(s) appropriately trained to decide matters involving sexual harassment, as outlined in **Section 1** of this Appendix; and
 - (e) should, as far as possible, utilise investigators to reflect diverse cultural backgrounds, genders and orientations.
- 4.17 Formal investigations should:
- (a) consider the information and evidence provided by the parties to the complaint, including any:
 - statements;
 - documentary evidence; and

⁷⁷ Law Society of New South Wales, [Workplace Guide and Model Discrimination and Harassment Policies](#) (May 2021).

⁷⁸ Whether or not it is appropriate to engage an independent investigator will involve considerations such as: any independent person is available internally, whether to investigation internally would give the apprehension of bias or unfairness, and the resources of the organisation.

- corroborating evidence.
- (b) apply the principles of procedural fairness and natural justice;
 - (c) assess and make findings of the credibility of the parties and any witnesses – in doing so, investigators should be cognisant that complaints of sexual harassment often lack corroborating evidence and this alone should not prevent a determination;
 - (d) consider and apply the applicable thresholds, as addressed in the Framework; and
 - (e) apply a civil standard of proof, being on the balance of probabilities.⁷⁹
- 4.18 If it is determined that sexual harassment occurred on the balance of probabilities, the Organisation should consider appropriate remedies subject to the applicable policies, workplace health and safety laws or other applicable regulations.
- 4.19 Subject to the facts of the individual case, remedies might include:
- (a) an apology;
 - (b) a requirement to undertake sexual harassment prevention training;
 - (c) counselling;
 - (d) an agreement on protocols regarding arrangements and interactions between the parties going forward;
 - (e) structural changes, including changes in reporting lines;
 - (f) demotion or termination of employment or engagement;
 - (g) clear expectations, codes of conduct and/or protocols established with contractors, clients, members and other applicable third-parties;
 - (h) for associations - cancellation, or limitations to, membership or licence;
 - (i) reporting of conduct to the relevant regulator (e.g. law society, bar association, legal services commissioner); and/or
 - (j) referral for civil or criminal legal action.
- 4.20 Once a determination has been made in respect of the complaint, the outcome should be communicated to all parties as soon as practicable.
- 4.21 In the event that the investigator(s) determine that it would be appropriate for the matter to be referred to an external body, please refer to **section 4C** below.

4C. Referral to external disciplinary body

- 4.22 Transparency is key to deterring sexual harassment. There will be occasions when complaints investigators will consider it appropriate for the complaint to be determined by an external body, regulator, agency and/or tribunal.

⁷⁹ *Briginshaw v Briginshaw* [1938] HCA 34.

- 4.23 For the purposes of this document, an external body, regulator, agency and/or tribunal might include:
- (a) the relevant regulator such as the applicable law society, bar association or legal services commissioner;
 - (b) Police; and/or
 - (c) the applicable state or territory Workplace Health and Safety regulator.
- 4.24 It is imperative for the elimination of sexual harassment, that Organisations are open and supportive of external referrals:
- (a) if it is appropriate in the circumstances; and
 - (b) as far as possible, is done with the consent of, and in consultation with, the Person Affected.
- 4.25 In the event that the Complaints Handler investigating the complaint determines that it would be appropriate for the matter to be referred to a regulator, disciplinary tribunal or authority for determination, the complaint investigator(s) should:
- (a) advise the parties of this determination as soon as reasonably practicable, as appropriate;
 - (b) provide the parties with an outline of the next steps, including an indication as to timeframes.

5. Review

- 5.1 Following the determination of a complaint, regardless of outcome, Organisations should consider:
- (a) whether the complaint reflects a systemic issue that requires further consideration and redress; and
 - (b) whether any element of the complaints handling, assessment or investigation process could be better managed in future complaints.

APPENDIX C

SEXUAL HARASSMENT FRAMEWORK FOR THE LEGAL PROFESSION

CHECKLIST OF KEY ELEMENTS

This checklist is designed to assist organisations with reviewing and auditing their existing sexual harassment policies.⁸⁰

	Key Element	Explanation
1.	Clear Statements and Objectives: Does your policy clearly explain its commitments and objectives?	<p>The Policy should expressly state the organisation's commitment to the creation and maintenance of a workplace free from sexual harassment and related acts of victimisation.</p> <p>The Policy should include clear statements that:</p> <ul style="list-style-type: none">• sexual harassment is unlawful and unacceptable, as are related acts of victimisation; and• persons conducting a business or undertaking have a legal obligation (i.e. a positive duty) to:<ul style="list-style-type: none">○ take reasonable and proportionate measures to eliminate sexual harassment, as far as possible, in connection with work and between people who have a specific working relationship; and○ provide a workplace free from risks to health and safety, so far as is reasonably practicable; and• workers have a legal obligation to look out for their own safety and the safety of others in the workplace. <p>The Policy should expressly commit the organisation, its leaders and workers to implementing the above-stated obligations. It should explain how this will be achieved by stating the required standards of behaviour, actions or steps.</p>

⁸⁰ This checklist reflects the core policy content for compliance with the positive duty as set out by the regulator, the Australian Human Rights Commission. See Australian Human Rights Commission, Australian Human Rights Commission, [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023) 51.

	Key Element	Explanation
2.	Definition of Sexual Harassment: Does your policy define what sexual harassment is under Australian law?	<p>The Policy should define sexual harassment with reference to the definition in section 28A of the <i>Sex Discrimination Act 1984</i> (Cth).</p> <p>The Policy may highlight the particular elements of the definition, and explain important nuances such as:</p> <ul style="list-style-type: none"> • what elements of the definition are subjective (i.e. whether the conduct was unwelcome); • what elements of the definition are objective (i.e. whether the conduct was sexual in nature, and whether a reasonable person would have anticipated the possibility of the Person Affected being offended, humiliated or intimidated); • that the intention of the Respondent is not relevant to the definition of sexual harassment; • that sexual harassment can arise from a single incident as well as repeated incidents or a course of conduct. <p>In defining sexual harassment, the Policy may also usefully refer to the applicable anti-discrimination laws and solicitor/barrister professional conduct rules of the relevant state/territory.</p>
3.	Practical Examples and Guidance: Does your policy supplement the definition by elaborating on the forms of conduct that may constitute sexual harassment, and the circumstances in which such conduct is unlawful?	<p>The Policy should expand on the definition of sexual harassment by articulating the various different forms of conduct through which sexual harassment may occur, including by:</p> <ul style="list-style-type: none"> • providing practical examples of behaviours that may constitute sexual harassment, for example: <ul style="list-style-type: none"> ○ physical touching or gestures; ○ leering or staring; ○ invading personal space or maintaining unnecessarily close physical proximity; ○ verbal or written comments, questions, requests, insults or jokes; and • explaining the circumstances in which sexual harassment is prohibited—that is, in connection with work and between people who have a specific working relationship—and providing practical examples of these circumstances.

	Key Element	Explanation
4.	Background: Does your policy address the underlying nature and context of workplace sexual harassment?	<p>The Policy should recognise the underlying drivers of sexual harassment, such as gender inequality, as well as other ‘risk factors’ that commonly feature in sexual harassment scenarios. For example:</p> <ul style="list-style-type: none"> • gender differential (e.g., most sexual harassment is perpetrated by men against women); • material power differential (particularly the ability of the Respondent to impact the career prospects or job security of the Person Affected); • age/experience differential (particularly as age/experience often runs together with power and influence); • social and informal settings (particularly where alcohol may be involved); • intersectional disadvantage (e.g. the potential for those who face multiple forms of social or political disadvantage to be more likely to be subject to sexual harassment). <p>The Policy may also usefully highlight:</p> <ul style="list-style-type: none"> • the impact of sexual harassment, on individuals and workplaces; • the extent of sexual harassment in Australian workplaces, including the legal profession; • common barriers to addressing sexual harassment in Australian workplaces, including the legal profession; and • the emphasis on proactive measures to prevent and respond to sexual harassment. <p>The Policy—including its terms and appendices, and actions that are to be taken under these terms and appendices—may also usefully be guided by the following principles:</p> <ul style="list-style-type: none"> • Consultation; • Gender equality; • Intersectionality; and • Person-centred and trauma-informed.

	Key Element	Explanation
5.	Scope: Does your policy clearly describe who it covers and in what circumstances?	<p>The Policy should specify who is bound by the Policy, who is protected by it, where and when.</p> <p>In setting the scope of the Policy, it may be helpful to consider the following questions:</p> <ul style="list-style-type: none"> • Is the Policy intended to be incorporated into any contract of employment, such that it binds both contracting parties, being the employer and employee? • If the Policy is not contractually binding, is it intended to operate as a lawful and reasonable direction to an employee? • What specific classes of people have obligations or protections under the Policy? For example: <ul style="list-style-type: none"> ○ for legal practices—all staff, volunteers, students and independent contractors engaged by the firm, barristers engaged by the firm, clients of the firm, other visitors to the firm, other solicitors, barristers and court/tribunal staff, visitors, third parties or any person to whom services are received or provided, and other people present at work-related functions (social or otherwise); ○ for barristers—all barristers, members and licensees of the chambers, all other staff, volunteers, students and independent contractors engaged by them, all solicitors and clients working with them, other solicitors, barristers and court/tribunal staff, visitors, third parties or any person to whom services are received or provided, and other people present at work-related functions (social or otherwise). • Does the Policy’s scope extend beyond the physical workplace or work-related activities? Does it clearly explain what is meant by conduct that occurs ‘between persons with a specific working relationship’ or ‘in connection with work’, including expectations in ‘interpersonal’, ‘social’, ‘off-duty’, ‘remote’ and ‘online’ circumstances?

	Key Element	Explanation
6.	<p>Obligations: Does your policy clearly express the obligations with respect to sexual harassment for people covered by the policy? Does your policy address compliance with the positive duty?</p>	<p>The Policy should set out the relevant legal, professional and workplace obligations on individuals and on persons conducting a business or undertaking. Including the obligations:</p> <ul style="list-style-type: none"> • not to engage in sexual harassment; • not to take adverse action against a person who makes a complaint or report of sexual harassment (i.e., not to engage in victimisation); • to help create and maintain a professional environment free from sexual harassment; • to follow the complaint/reporting/grievance procedure with respect to any complaint of sexual harassment made by or against the person. <p>Consideration should be given to providing more extensive obligations as a matter of best practice. It may be appropriate for the policy to identify both obligations (i.e., arising under law, professional rules and workplace codes of conduct) as well as expectations.</p> <p>Obligations and expectations may be further broken down so as to impose more relevant or onerous obligations on leaders and senior managers.</p> <p>In addressing the positive duty, the Policy should include actions aimed at preventing and responding to sexual harassment across each of the following areas:</p>
	<ul style="list-style-type: none"> • <i>Leadership: Is there clear, unambiguous and visible support from leaders and senior managers for eliminating sexual harassment?</i> 	<p>The Policy should highlight the role of leaders in overseeing the implementation of reasonable and proportionate measures to eliminate sexual harassment, in modelling appropriate behaviour, and in creating and maintaining a positive, respectful and safe workplace culture.</p>
	<ul style="list-style-type: none"> • <i>Culture: Is the workplace safe, respectful and inclusive? Are actions fostering such a culture encouraged and rewarded?</i> 	<p>The Policy should set out clear expectations and standards of appropriate behaviour in connection with work and between people who have a specific working relationship.</p>

Key Element	Explanation
<ul style="list-style-type: none"> <i>Knowledge: Are all people covered by your policy aware of it, its terms and any associated procedures? Has there been regular training of workers to ensure they understand their workplace responsibilities and protections?</i> 	<p>The Policy should confirm that all those bound by it will be provided with a copy of it (or instructed on how to access a copy of it). The Policy should be readily accessible (for example, by being displayed on the organisation's website).</p> <p>The Policy should include a commitment to provide education and training on understanding, preventing and responding to sexual harassment, including as complainants, bystanders and complaints-handlers.</p> <p>Research suggests that policies are more effective when supported by training for those who are bound by them. Training should:</p> <ul style="list-style-type: none"> • where possible (such as in the instance of legal practices), be mandatory and attended at least once, and ideally with regular refreshers; • extend to everyone bound by the Policy, including the most senior levels; • cover not just the strict legal obligations (including the positive duty obligation) but provide the context to sexual harassment (including the role of gender/power dynamics and common scenarios) and the role of bystanders; • cover the relevant complaint/reporting/grievance procedure for complaints or reports of sexual harassment engaged in by a person bound by the Policy.
<ul style="list-style-type: none"> <i>Risk Management: Does your policy implement a risk-based approach to prevention and response? Is there a process or procedure to regularly identify, assess and control the risk of sexual harassment occurring?</i> 	<p>The Policy should include a commitment to assess the risks of sexual harassment and implement control measures to manage such risks. It should refer to a risk management framework in relation to sexual harassment.</p> <p>In this context, the Policy should recognise the underlying drivers of sexual harassment, such as gender inequality.</p>

Key Element	Explanation
<ul style="list-style-type: none"> <i>Support: Does your policy include reference to the different avenues of support available to people who experience or witness sexual harassment?</i> 	<p>The Policy should include the internal and external supports available for people who experience or witness sexual harassment. This may include:</p> <ul style="list-style-type: none"> internal personnel, such as nominated contact officers, grievance handlers or human resources staff; external counselling services (e.g. Employee Assistance Program, BarCare, 1800RESPECT); external organisations (e.g. Women's Legal Service, Centre Against Sexual Assault).
<ul style="list-style-type: none"> <i>Reporting and Response: Does your policy clearly outline both the avenues for redress and the consequences for non-compliance? Is there a set procedure to respond to internal complaints of sexual harassment in a safe, fair, timely and effective way? Does your policy identify the key contact points and personnel for reporting and response?</i> 	<p>The Policy should clearly refer to the relevant complaint/reporting/grievance procedure for complaints or reports of sexual harassment. This should include how and where to report sexual harassment and the available reporting and resolution options.</p> <p>The Policy should have a clear statement that the safety and wellbeing of the person disclosing or reporting sexual harassment is a priority. It should express that acts of victimisation against a person are unlawful and unacceptable.</p> <p>(While highlighting a person-centred and trauma-informed approach, the Policy should explain that persons conducting a business or undertaking will sometimes have legal obligations to act on a report of sexual harassment, even where the Person Affected does not desire such action to be taken).⁸¹</p> <p>In relation to external avenues for making a complaint or report of sexual harassment, the Policy may usefully refer to:</p> <ul style="list-style-type: none"> the relevant legal regulator (e.g. law society, bar association, legal services commissioner); the relevant regulator (e.g. Australian Human Rights Commission or state/territory equivalent, Fair Work Commission, Work Health and Safety regulators);

⁸¹ This may be the case under work health and safety laws and regulations, or under government sector employment laws and regulations. See, e.g., *Government Sector Employment Act 2013* (NSW) s 69; *Government Sector Employment (General) Rules 2014* (NSW) r 38(2). The Australian Human Rights Commission notes that: 'Being person-centred and trauma-informed does not always means doing what the person requests. It means genuinely considering their wishes and the impact that decisions may have on them.' See Australian Human Rights Commission, [Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces](#) (Factsheet, August 2023) in [Factsheet Series: Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) (August 2023) 4.

Key Element	Explanation
	<ul style="list-style-type: none"> • police. <p>The Policy should also set out the potential consequences of non-compliance for those bound by the Policy. For example:</p> <ul style="list-style-type: none"> • disciplinary action up to and including dismissal for staff; • termination of engagement for volunteers, students and independent contractors (depending on the terms of engagement); • termination of licence for licensees (depending on the terms of licence); • termination of membership for shareholders/members (depending on the terms of the shareholder's agreement); • reporting of conduct to the relevant legal regulator (e.g. law society, bar association, legal services commissioner); and/or • referral to civil or criminal legal action.
	<ul style="list-style-type: none"> • <i>Monitoring, Evaluation and Transparency: Does your policy provide for periodic review? Does it identify the key contact points and personnel with responsibility for your policy?</i> <p>The Policy should clearly state who is responsible for the Policy and where workers can provide feedback about it, as well as when the Policy will be reviewed. It should anticipate the need for regular review of its terms to ensure that it remains consistent with legal and professional obligations and in step with current social norms and best practice.</p> <p>The Policy may also usefully include a commitment to monitoring and evaluating policies and procedures, such as by seeking feedback, to ensure these remain effective and appropriate.</p>
7.	<p>Commitment: Does your policy require an acknowledgement of understanding and a commitment to abide by it?</p> <p>Where possible (such as in the instance of legal practices), the Policy should provide that all those bound by it will be required to acknowledge that they have been provided with access to the policy, they have read and understood it, and they agree to comply with it.</p>