



## VICTORIAN BAR

Owen Dixon Chambers East  
Level 5, 205 William Street  
Melbourne Victoria 3000

16 May 2025

### **The Rt Hon Baroness Harriet Harman KC**

Chair of the Independent Review of Bullying and Harassment at the Bar  
Bar of England and Wales

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Dear Lady Harriet Harman KC,

### **RE: Independent Review into Bullying, Harassment and Sexual Harassment**

The Victorian Bar (**the Bar**) appreciates the opportunity to provide comment in response to your consultation regarding Independent Review into Bullying, Harassment and Sexual Harassment at the Bar of England and Wales.

The Bar acknowledges the contributions of Ms Jenny Firkin KC in the preparation of this response.

### **Response to consultation questions**

#### **1. To what extent, if any, is bullying and harassment a problem at the Bar in your jurisdiction?**

In October 2023, the Victorian Bar commissioned the State of the Bar survey. This survey was sent to the entire membership of the Bar and sought responses in respect of a broad range of topics, including experiences of bullying and harassment. This was the second such survey undertaken, following a previous similar survey undertaken in 2018.

The State of the Bar Report is publicly available and can be accessed [here](#).

Some of the findings of that survey (undertaken by over 630 Victorian barristers, representing approximately one-third of the membership) are summarised below.

#### **Bullying**

23% of barristers surveyed reported experiencing workplace bullying in the preceding 12 months, with 16% of men and 34% of women surveyed reporting this experience. 54% of barristers surveyed reporting experiencing workplace bullying in the preceding 5 years.

Of those who reported experiencing workplace bullying:

- a majority of these barristers were aged between 30-50, and were of less than 15 years call;

- workplace bullying was more likely to be from within the Bar (64%), rather than external to the Bar (36%); and
- a majority of the barristers who had reported experiencing bullying from their colleagues had experienced bullying from more senior male barristers, aged over 50 years of age.

### Sexual Harassment

3% of barristers surveyed reported experiencing sexual harassment in the preceding 12 months, with 1% of men and 6% of women reporting these experiences.

8% of barristers surveyed reported experiencing sexual harassment in the preceding 12 months, with 1% of men and 13% of women reporting these experiences.

**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?**

The *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Barrister Conduct Rules) outline ethical rules of conduct to be observed by all barristers in the Australian states of Victoria, New South Wales, and Western Australia.

Rule 123 of the Barrister Conduct Rules is extracted below:

**123 Anti-discrimination and harassment**

*(1) A barrister must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes:*

- (a) discrimination,*
- (b) sexual harassment, or*
- (c) bullying.*

*(2) 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.*

The terms “discrimination”, “sexual harassment” and “bullying” are defined within the Barrister Conduct Rules as outlined below:

- **discrimination**, means discrimination as defined under the applicable state, territory or federal anti-discrimination or human rights legislation and includes all forms of unlawful discrimination.
- **sexual harassment**, means sexual harassment as defined under the applicable state, territory or federal anti-discrimination or human rights legislation.
- **bullying**, means unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate or cause serious offence to a person.

A contravention of rule 123 is capable of constituting unsatisfactory professional conduct or professional misconduct of the Legal Profession Uniform Law (Victoria) (ss 296-298).

The Bar also administers its own policies against workplace bullying, discrimination and sexual harassment, available on the Bar’s website [here](#). The Bar’s policies expand on the prohibitions outlined within the Barrister Conduct Rules, and more clearly delineate (for the purposes of the Bar’s policies) the Bar Council’s understanding of the terms “discrimination”, “sexual harassment” and “bullying”.

The Bar’s Ethics Committee also administers the [Grievance Protocol](#), allowing individuals to lodge a grievance in respect of the conduct of barristers in connection with that barrister’s practice.

**3. Do barristers in your jurisdiction 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 training materials with us?**

The Bar conducts sexual harassment, discrimination and bullying training for all readers during the Readers’ Course. All new barristers must pass the Readers’ Course before signing the Bar Roll.

The readers’ training is presented by a panel of senior and junior counsel from a variety of practice areas. The readers are provided hypothetical situations and questions, which they discuss in groups prior to the session. Each group presents their hypothetical and conclusions, and the panel facilitates a discussion with the broader audience. The key messages of the session are:

1. Don’t do it.
2. If it happens to you, there are things you can do and people to help you.

3. It is up to everyone at the Bar to prevent sexual harassment, discrimination and bullying. There are things that you can do to help your colleagues.

The Bar conducts mandatory training on sexual harassment, discrimination and bullying for barristers who seek to take silk, the process of appointment of Senior / King's Counsel (SC / KC). The training is for barristers with 10-plus years' call. It is a pre-requisite prescribed by the Chief Justice of the Victorian Supreme Court, and must be taken within 2 years of any silk application.

The silks' training follows a similar format to the readers' session, with a focus on leadership.

We consider that the training is effective because it is practical and discussion based. It was introduced approximately five years ago and has continued to develop based on feedback. The training receives positive feedback. There has been a decrease in sexual harassment, discrimination and bullying since its introduction, evident when comparing the 2023 State of the Bar survey result with those in 2018.

Results from the 2023 survey are set out below:

#### Experienced over the past 12 months

Category	Male 2018	Female 2018	Male 2023	Female 2023	Male Decrease	Female Decrease
<b>Discrimination</b>	<b>16%</b>	<b>36%</b>	<b>5%</b>	<b>8%</b>	<b>-11%</b>	<b>-28%</b>
<b>Sexual Harassment</b>	<b>9%</b>	<b>16%</b>	<b>1%</b>	<b>6%</b>	<b>-8%</b>	<b>-10%</b>
<b>Bullying</b>	<b>20%</b>	<b>37%</b>	<b>16%</b>	<b>34%</b>	<b>-4%</b>	<b>-3%</b>

Please find attached a copy of the most recent hypotheticals for the Readers' course and silks training.

#### 4. Are Chambers regulated entities in your jurisdiction?

Many chambers in Victoria are owned by the Bar's subsidiary Barristers' Chambers Limited (BCL). Those chambers act consistently with the [Chamber Rules of Occupancy](#).

Chambers are otherwise not centrally regulated by the Victorian Bar or BCL.

**5. What obligations, if any, do Chambers have to prevent and/or respond to incidents of bullying and harassment?**

For BCL-operated chambers, Clause 8.1(d) requires chambers occupiers to have regard to the rules outlined in our response to Question 2. That clause is extracted below:

*Occupiers must comply with the Victorian Bar Conduct Policies and the Legal Profession Uniform Conduct (Barrister) Rules 2015, including Rule 123 which deals with conduct that constitutes discrimination, victimisation, sexual harassment or bullying as it relates to the occupancy of chambers.*

**6. What informal and formal reporting mechanisms are available to barristers who have experienced or witnessed bullying or harassment either by (i) other barristers; (ii) judges; (iii) clients; or (iv) clerks or other employees? How effective are these mechanisms?**

Informal mechanisms for reporting complaints are outlined in the Victorian Bar's policies and include:

- Seeking support from a mentor or senior mentor (each reader has a mentor of 10-plus years' call and a senior mentor who has taken silk, and those relationships continue throughout their time at the Bar)
- Seeking support from a Peer Support Barrister (Peer Support Barristers are barristers who have volunteered to be contacted by, and who have been trained to provide support and advice to, those who have experienced, or observe, workplace bullying, discrimination and/or sexual harassment)
- Seeking support from the President/Vice President of Bar Council
- Seeking support from Executive Director of Bar Office
- Raising a grievance with Ethics Committee under Grievance Protocol

Formal mechanisms for reporting complaints include:

- Making a complaint to the Victorian Legal Services Commissioner of a breach of the Barrister Conduct Rules
- Reporting conduct to the police

Complaints in relation to judges are addressed in [12].

**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?**

The Bar is aware barriers that prevent the reporting of incidents include fear of publicity or reputational damage, fear of retaliation and distrust in the reporting systems.

The Bar seeks to overcome these barriers through its policies, training and informal reporting mechanisms, outlined above.

The number of incidents reported formally remains small compared to the State of the Bar responses.

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

Regulatory action is handled by the Victorian Legal Services Commissioner, rather than the Bar. The Bar does not have insight into the thresholds for regulatory action.

**9. Are barristers under a duty to report certain misconduct to the regulator? If so:**

- a. When is this duty triggered?**
- b. Is this an effective mechanism?**

Barristers must self-report any matters which may impact upon whether they are a fit and proper person to practise as a barrister, including if they have acted in contravention of the Barrister Conduct Rules. Barristers report to the Victorian Legal Services Board prior to signing the Bar Roll, and annually when they renew their practising certificates and also out-of-cycle (i.e. outside of the practising certificate renewal period).

Barristers are not under a duty to report conduct of others to the Victorian Legal Services Commissioner.

**10. In your view, is the regulator effective in handling cases concerning bullying and harassment?**

As complaints concerning bullying or harassment are handled internally by the Victorian Legal Services Commissioner, the Bar is unable to comment in respect of the effectiveness of that process.

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

The Victorian Legal Services Commissioner has a specialised sexual harassment team. Details are provided here: <https://lsbc.vic.gov.au/lawyers/practising-law/sexual-harassment/making-complaint-vlsbc-about-sexual-harassment>.

The Bar funds five free sessions with two independent counselling services for members and their families. Help is available 24 hours a day, seven days a week.

**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 barristers to report judicial misconduct?**
- c. To what extent are these mechanisms used by barristers?**
- 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?**

The 2023 State of the Bar Report surveyed participants in respect of inappropriate judicial conduct. 73% of participants (71% of male respondents, and 78% of female respondent) surveyed responded reported having experienced and/or witnessed instances of inappropriate judicial conduct of the course of their career, with:

- 26% of respondents reporting that they were victims of inappropriate judicial conduct;
- 21% reporting that they had witnessed inappropriate judicial conduct; and
- A further 26% of respondents reporting that they were BOTH victims of inappropriate judicial conduct AND has witnessed inappropriate judicial conduct.

Formal complaints against a Victorian judicial officer can be made to the Judicial Commission through the link [here](#). The [Federal Court of Australia](#), and the [Federal Circuit and Family Court of Australia](#), administer standalone judicial complaints procedures.

Barristers are able to consult the Victorian Bar's two Judicial Conduct Advisers. More information is available [on the Bar's website](#).



VICTORIAN BAR

The Bar has recently established a Judicial Conduct Committee to provide a process for review of judicial conduct (by reviewing relevant audio or visual material of a Court case) and an avenue for the Bar to exercise its power to make a formal complaint about judicial conduct under s 6 of the *Judicial Commission of Victoria Act 2016* (Vic).

As complaints are handled internally by the Judicial Commission of Victoria or individual courts, the Bar does not have insight into the effectiveness of the process and sanctions.

Should you require any further information, please contact Kai Li Zhu, the Bar's Senior In-house Legal Counsel, at [REDACTED]

Yours sincerely,

**Justin Hannebery KC**  
President  
Victorian Bar Inc.



The Rt Hon Baroness Harriet Harman KC

Chair of The Independent Review of Bullying  
and Harassment at the Bar

Christopher Blanden  
Amanda Utt  
The Victorian Bar

11<sup>th</sup> April 2025

Dear Christopher and Amanda,

I am writing to you as Chair of the Independent Review into Bullying, Harassment and Sexual Harassment at the Bar of England and Wales.

In December 2023, the [Bar Council published research](#) which showed a persistent problem with bullying, harassment and sexual harassment at the Bar of England and Wales. The report found that:

- 44% of respondents had experienced or observed bullying, harassment or discrimination while working either in person or online over the last two years.
- Respondents who had witnessed or observed these behaviours were more likely to be female, junior, and/or from ethnic minority backgrounds. Those complained about were more likely to be in a senior position, such as judges and senior barristers.

In response to these findings, the Bar Council commissioned an Independent Review to:

- identify the reasons for bullying and harassment at the Bar;
- consider the impact of bullying and harassment upon individuals and the wider profession;
- review the efficacy of extant mechanisms for reporting and investigating bullying and harassment; and
- identify potential solutions.

As part of this Review, we are undertaking a comparative analysis with other comparable professions and jurisdictions. We would be very grateful if you would be willing to share with us your experience of tackling bullying, harassment, and sexual harassment at the Bar in your jurisdiction. In particular:

1. To what extent, if any, is bullying and harassment a problem at the Bar in your jurisdiction?
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?
3. Do barristers in your jurisdiction 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 training materials with us?

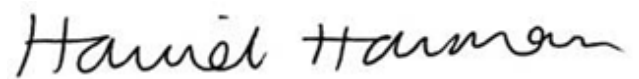
The Rt Hon Baroness Harriet Harman KC

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4. Are Chambers regulated entities in your jurisdiction?
5. What obligations, if any, do Chambers have to prevent and/or respond to incidents of bullying and harassment?
6. What informal and formal reporting mechanisms are available to barristers who have experienced or witnessed bullying or harassment either by (i) other barristers; (ii) judges; (iii) clients; or (iv) clerks or other employees? How effective are these mechanisms?
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?
8. What is the threshold for triggering regulatory action in cases of bullying or harassment?
9. Are barristers under a duty to report certain misconduct to the regulator? If so:
  - a. When is this duty triggered?
  - b. Is this an effective mechanism?
10. In your view, is the regulator effective in handling cases concerning bullying and harassment?
11. In particularly sensitive cases concerning sexual misconduct, are there any bespoke mechanisms in place to support complainants?
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 barristers to report judicial misconduct?
  - c. To what extent are these mechanisms used by barristers?
  - 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?

We would be very grateful for a response by Friday 2<sup>nd</sup> May. Please don't hesitate to contact us at [BHReview@barcouncil.org.uk](mailto:BHReview@barcouncil.org.uk) should you have any questions.

Yours sincerely,



Baroness Harriet Harman KC

## **HYPOTHETICALS - PRESCRIBED SEXUAL HARASSMENT AND BULLYING AWARENESS TRAINING**

### **INSTRUCTIONS**

Below are six hypothetical scenarios.

Attendees are asked to read all hypotheticals before the session.

The objectives of this exercise are to promote discussion about:

- what constitutes sexual harassment and/or bullying;
- what can you do when you see or are told about sexual harassment and/or bullying.

Attendees will be placed into small groups to discuss the hypothetical examples with the assistance of a panel member to lead the discussion. Two hypotheticals will be assigned to each group. All attendees are encouraged to engage in the discussion. There is no right or wrong answer for each hypothetical.

Small group discussion will take place for **30 minutes** prior to returning to the larger group session for discussion of all hypotheticals.

The hypotheticals include the following issues for discussion:

- gender/power imbalance;
- bystander responsibilities;
- red flags;
- consensual relationships;
- inappropriate behaviours;
- subtle vs overt harassment/undermining;
- interactions with court staff, including members of the judiciary;
- interactions with instructing solicitors; and
- interactions with clients.

### **General discussion topics**

In addition to the hypotheticals, there are four general discussion topics. If the discussion about the chosen hypothetical in your group is exhausted, please discuss one or more of the general discussion topics. General discussion questions may be addressed in the large group discussion session subject to time.

<b>SCENARIO ONE: obligations as employer</b>
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- You are a barrister occupying one of the rooms in Isaacs Chambers.
- A legal secretary (currently a law student at the University of Melbourne) is employed by a subset of the barristers in your Chambers. You are one of the group of four employing barristers. Her desk is located directly outside your chambers.
- For three weeks now, you have noticed that a male barrister who is often on the floor attending conferences with senior counsel with whom he is working on a long trial regularly speaks with the secretary, they appear to be friendly, the barrister often compliments and teases the secretary.
- On Monday, you overhear the barrister say to the secretary:  
*"Hi; that dress looks cute. Maybe we can go out for drinks later and I can give you some career tips. You might find it beneficial to know someone who is already established and with a lot of contacts especially if you want to be a judge's associate after Uni, or even later come to the Bar."*
- The secretary declines politely.
- On Wednesday, the barrister visits again. He proceeds to the secretary's desk. The barrister sniffs the air and says, *"You smell good. Nice perfume! Drinks on me tonight?"* The secretary declines saying she has plans. *"Come on, don't you like me?"*

The secretary declines again.

**Q: What if anything do you do? What could you do?**

- You raise this with one of the other barristers on the floor, but she thinks it is probably just innocent flirting and says it might be best to either "wait and see" whether the secretary raises it with one of the employing group.
- Over the next few weeks, the behaviour continues and the barrister gets more persistent with personal comments and questions of a suggestive and sexual nature towards the secretary.
- One day, the secretary calls in sick. She tells you that she is not coping well at work. After a pause, she says that she has received a call from the barrister the day before on her work line in chambers, asking her out to dinner. When the secretary turned the offer down, the barrister said:  
*"Come off it! You have been flirting with me for weeks. You knew what was going on! What a tease. I hope you know what you are missing out on; I have contacts with all the Supreme Court judges and I could have put in a good word for you in relation to being an associate down the track. But it sounds like you don't want a leg up – or a leg over!"*

**Q: What do you do now? The secretary tells you that she is in fear of making a complaint as it may be damaging for her career and in particular is alarmed that the barrister might spoil her chances if she applies to be an associate after finishing at Uni. What would you say? What support can you provide to the secretary?**

**SCENARIO TWO: unwelcome conduct / advising juniors**

- You recently appeared as senior counsel with two junior counsel in a long trial. The trial involved months of preparation and ran for 6 weeks. It was gruelling but rewarding.
- The team of instructing solicitors devoted months to preparation for the trial and provided excellent support to you in court. Everyone agrees that the trial went very well.
- To celebrate, the partner of the law firm invites the entire team (you, the two junior counsel and 6 solicitors) to a long lunch the Friday after the trial.
- The lunch finishes around 4 pm and the team adjourns to a nearby rooftop bar for drinks. The partner excuses herself at 5:30 pm.
- As the partner leaves, she tells the whole group to have a great night on the firm's tab.
- By 7 pm, there are only five of you left: you, one junior counsel (Mr X), two senior associates and the most junior solicitor of the firm, Ms V. You notice that your junior counsel spent some of the next hour listening and talking to Ms V. You overhear Ms V sharing the tale of her recent relationship break-up.
- At 8:30 pm, you and the two senior associates leave, leaving junior counsel and Ms V. You are aware that neither of them has eaten dinner. You also notice that Ms V appears very affected by alcohol. Ms V and junior counsel seem happily engaged with each other's company.

**Q: At the point you leave, what if anything should you say or do vis-à-vis junior counsel or Ms V?**

On Wednesday, Mr X, junior counsel, seeks your advice. He tells you in confidence that on Friday night (about an hour after you left the function) Ms V invited him to her place, they had sex and he stayed the night. He left her place the next morning. Since then, he has called her three times on Monday and twice on Tuesday, but she did not answer or return his call. That morning, he left a voice message saying *"Hi, just calling to check-in. Please give me a ring when you get the chance. Hope everything is ok"* Ms V is yet to respond to that voice message.

**Q: What advice do you give to junior counsel?**

On Thursday, you receive a call from the partner of the law firm in relation to a new brief. You have a chat and thank her for the lunch. She mentions in passing that the team had a great time at the lunch, although she hadn't seen Ms V who has phoned in sick all week.

**Q: What steps would you take, if any, after your call with the partner?**

On Friday, the other junior counsel from the trial calls you and says, *"I thought I should let you know that Ms V rang me in tears and refused to give any details, but she divulged that*

*she is upset about something that happened with Mr X on Friday night. But she has not been willing to tell me what happened."*

**Q: How would you react after hearing this? Would you raise this with Mr X and give him the "heads up" that Ms V is upset?**

**SCENARIO THREE: being an active bystander**

- You are a barrister of 10 years' call. You have been briefed in a matter which involves working with a well-regarded Senior Counsel who has been at the Bar for over 30 years and is much older than you.
  - You hope to forge a strong professional relationship with senior counsel .
  - You attend a conference held in the chambers of senior counsel. The conference is with a female partner (Catherine) from the firm and a female associate (Jessica), both of whom will be working on the matter. The conference went well with senior counsel taking the lead and assigning tasks to everyone.
  - As the conference is winding up, Jessica bends over to pack up her laptop and zip up a large bag of folders she brought with her for the conference.
  - You notice that senior counsel is obviously staring at her behind. He notices you looking at him and raises his eyebrows in a suggestive fashion.
  - Catherine and Jessica prepare to leave and the senior counsel says: *"Well, there's lots of complex issues. I look forward to working with you on it, especially you Jessica. I often do my best work at night; hope you don't mind coming up and giving me a helping hand from time to time."* He laughs, Catherine and Jessica appear bemused.
- Q: Do you say something before Catherine and Jessica leave the room ? Or after they depart, do you say anything to senior counsel about eyeing off Jessica or his comment about working late in chambers? Does the situation raise any red flags? What are they? If yes, what would you do?**
- The following day, you strike up a conversation with other barristers occupying chambers on the same floor as senior counsel. The barristers say that senior counsel "has form" and is known for hitting on younger solicitors. One of them says that they are aware of a rumour that a few years back, two young female solicitors raised complaints with a partner at their firm about his behaviour and that the partner told them *"there was really nothing that could be done"*. No one can offer you any hard facts on this issue.
  - Subsequently Jessica calls you to discuss the case. At the end of the call, she tells you that senior counsel has asked her to go to his chambers at 7:30pm that night to finalise an affidavit that you know has already been settled by you and which needs no further substantive work done on it. Jessica says she has plans for that night, she is reluctant to go but does not want to offend senior counsel.
- Q: What do you say or do?**



**SCENARIO FOUR: in-court bullying of junior and instructor, with judicial bullying**

- It is the first day of a judge-alone trial in which you are briefed to appear as senior counsel.
- Your opponent is another member of senior counsel, who appears with a junior, and is instructed by a solicitor.
- Your opponent rushes into the courtroom shortly before proceedings are due to start, appearing stressed.
- The judge comes onto the bench. After taking appearances, he immediately begins criticising your opponent about the opening submissions that have been filed on behalf of his client. Among other things, the judge says, in a raised voice:

“These are the worst submissions I have seen in my career. You should be embarrassed by them. They are of no assistance to me at all. I might as well put them in the bin. How did you ever become senior counsel?”

- This goes on for several minutes. Your opponent looks shellshocked. You think the judge’s criticism of your opponent’s submissions is unfair.
- After the judge finishes, your opponent opens his case, but appears very affected by what the judge has said, and regularly stumbles over his words, loses his train of thought, or stops speaking altogether.
- Your opponent’s junior and instructor also look very distressed.

**Question:      What, if anything, can you do, either then or later?**

- A little later, the judge takes a mid-morning break.
- During the break, you observe your opponent turn to his junior and instructor and say, in an aggressive voice:

“Well thank you very much for humiliating me. Clearly I cannot rely on either of you for anything. You can both forget about working with me again. And I will certainly be letting others know about the quality of your work.”

- Your opponent’s junior and instructor appear extremely distressed. You see tears welling in both of their eyes.

**Question:      What, if anything, can you do, either then or later?**

**SCENARIO FIVE: leading a junior in an appeal**

You ran a trial successfully which has now been appealed. Your instructors are impressed with the way you ran the trial at first instance and have asked you to be lead counsel, even though the appellant is represented by silk. It is a complicated appeal, with numerous grounds. They have offered to brief junior counsel to assist. This is your first time taking the lead role in an appeal and you are keen to do a good job and impress your instructors.

Your instructors brief a junior they have worked with in other cases. You meet with the junior for coffee and have a chat about the research you would like done and your thoughts for the submissions. Even though you will not receive the appellant's submissions until four weeks prior to the appeal, you want to start working up your arguments in response to the grounds of appeal. The junior is friendly and enthusiastic and agrees to start working up the arguments.

A Friday afternoon a couple of weeks later, you have not received anything from the junior. You call and ask for the work done so far. The junior explains that they are in a long running trial and have not started yet. You are frustrated, and say you want draft submissions on Monday morning. You tell the junior that if they want to work with you, they need to prioritise your work. Over the weekend, you think of various points you want addressed and send the junior a number of emails, to make sure they are included in the submissions.

**What do you think about the junior's conduct?**

**What do you think about the way you managed it?**

The day before the appeal, your client and instructing solicitor want to meet in your chambers at 1pm. You are very busy trying to prepare. You tell your junior to organise coffee and sandwiches and say that you will pay them back. Your robes are at the dry cleaner, so you ask your junior to collect them on the way to your chambers.

At the meeting, your instructing solicitor raises a concern about one of the arguments in your submissions. You say that your junior came up with that argument and you agree it is flawed. You assure your instructor that you will fix it up orally. You make handwritten annotations to your ask your junior to them to type them up.

**What do you think?**

<b>SCENARIO SIX: out of court bullying</b>
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- You are briefed as senior counsel to appear for the second defendant at mediation. The first defendant has also briefed senior counsel. A senior junior of 10 years appears for the plaintiff.
- During the open session, senior counsel for the first defendant is very forceful in their critique of the plaintiff's case and says that it is "hopeless" and "misconceived".
- A couple of hours into the mediation you, senior counsel for the first defendant and counsel for the plaintiff get together in room at the mediation centre to discuss the matter between counsel. Senior counsel for the first defendant tells counsel for the plaintiff that she should tell her client to take the offer the defendants have jointly made. Senior counsel for the first defendant says, "I have been doing this for a lot longer than you and if we go to trial the gloves are off." As he says this he waves his finger at counsel for the plaintiff and takes a step towards her. Counsel for the plaintiff appears a bit shaken.

**Question: what, if anything, do you do at this point?**

- The discussion continues with counsel for the plaintiff making it clear that her client will not settle for the current offer from the defendants. Senior counsel for the first defendant goes red in the face and shouts, "you are a fucking idiot and you clearly have no idea what you are doing."
- Counsel for the plaintiff responds that she will not be spoken to like that and leaves the room.
- Senior counsel for the first defendant turns to you, rolls his eyes and says "she is bloody hopeless. This is a waste of time."

**Question: what, if anything, do you do now or later?**

## TOPICS FOR DISCUSSIONS

1. What is appropriate physical conduct when meeting other barristers, solicitors and members of the wider legal profession?
  - Is it appropriate to hug people or kiss them on the cheek? Never/ sometimes/always?
  - What about when attending professional social occasions such as dinners or lunches?
  - What consideration should you give to inviting people to social events? Are there different considerations if the events are held in public as compared to your home? Are there different considerations if the invitation is to a group or singular?

**Scenario 1:** You and a junior barrister have worked closely on a matter for some time. You would like to take them out for lunch to acknowledge their hard work. What are some of the considerations?

2. When is it acceptable to comment on a colleague's appearance? When would it be unacceptable?

**Scenario 2:** You notice your reader has a flattering new haircut. You instinctively go to compliment her on it. What are the considerations?

3. What medium of communicating with staff are acceptable? Are there times when emails or texts are inappropriate? What about out-of-hours calls, texts or emails?

**Scenario 3:** You are communicating in court with your junior and instructing solicitor via Teams chat. You are tempted to comment on the attire of one of the other barristers. What are the considerations?

4. Is there a clear boundary of inappropriate conduct? How can it be blurred? How do you know if you have violated someone else's boundaries? Is it ever appropriate to have a romantic or sexual relationship with a reader, a junior barrister or to take a Chambers staff member out on a date?
5. What is the line between forceful questioning by a judge and bullying? When you are in court and you consider that a judge is bullying another barrister what can you do? What are the considerations involved in determining what if anything to do? How about when you observe another senior counsel bullying more junior members of the profession? When should you step in?
6. How can senior counsel manage expectations of junior counsel? How can senior counsel respond when junior counsel does not meet expectations? Are there some tasks that junior counsel should not be expected to carry out?

*The above first three scenarios were supplied by the Judicial College of Victoria, on 1 August 2022.*

# **Sexual harassment, discrimination and bullying session: Hypotheticals of the Readers' Course**

**Date:** 4 March 2025  
**Duration of session:** 2 hours

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## **Instructions:**

Below are 5 hypotheticals.

Readers are asked to read all hypotheticals before the session.

The purpose of this exercise is for readers to consider proactively:

- avoiding conduct that may amount to sexual harassment, discrimination or bullying;
- what they can do in the event they encounter sexual harassment, discrimination or bullying at the Bar;
- how they can assist others as bystanders.

There is no one right answer for each hypothetical.

Readers should form 5 roughly even groups, and assign one hypothetical to each group. Each group ought to discuss its hypothetical for 15 mins prior to the session.

Two people from each group will be asked to contribute to a discussion of that hypothetical. Other group members are encouraged to participate in the group discussion.

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## A. The end of year function

- Stephen and Thanya both attend the readers' course together. Stephen is a more senior barrister who practices in the same area as Thanya. After they have finished the course, Stephen refers briefs to Thanya sometimes, when he cannot take them on. From time to time, he invites Thanya out to lunch to talk about how she is going. Thanya is very grateful for the work, and also to have a friend as she starts out at the bar.
  - Thanya and Stephen both attend the same end of year bar function. Thanya has fun, catching up with people from the readers' course. Stephen tells Thanya that there is something he wants to talk about with her, and asks Thanya to go for a drink when the function ends. Thanya agrees and wonders what he wants to talk about.
  - As they are walking to the bar, Stephen talks about how close their relationship is and tells Thanya that he has feelings for her. She is taken by surprise, and tells him that she does not feel the same way. They walk to the bar and have one drink. As they are both leaving, Thanya tells Stephen that she does not want to talk about what he said again.
  - The next day Stephen emails Thanya and asks if she can have lunch and a chat. Thanya feels extremely uncomfortable about meeting up with Stephen. She writes back to say she is busy.
  - A couple of weeks later, Thanya bumps into Stephen in the foyer of chambers. He tells her he is still waiting for that lunch.
  - If you were Thanya, what would you do?
  - What if you were Stephen?
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- A few months pass. Thanya does not receive any referred work from Stephen.
  - She receives a brief from a new instructor to issue proceedings in the Supreme Court. Thanya is excited about the brief, and hopes to develop an ongoing relationship with the instructing law firm. She drafts the statement of claim, and puts her name on the pleading.
  - After proceedings are issued, Stephen emails Thanya. He says he has been briefed to defend the claim and suggests they meet for lunch to discuss it. Thanya replies to him that she needs to establish more space between her work and personal life, and is not able to meet him for lunch. She writes that she is happy to talk about the case over the telephone if there is something he needs to discuss.
  - Stephen does not call.
  - Over the following weeks Thanya's instructor receives a series of lengthy letters from the defendant's solicitors, which contain numerous complaints about the pleading of the statement of claim.
  - If you were Thanya, what would you do now?
  - What if you were Stephen?

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## B. The last minute brief

- You are briefed late to oppose a strike out action to an adverse action claim under the *Fair Work Act 2009* (Cth) in the Federal Circuit Court. You are not familiar with the jurisdiction, so stay up late reading the recent decisions. The following day you greet your opponent at the bar table. Your opponent is counsel of more than 30 years call. He tells you that your client's claim is "doomed to fail". You start to explain the basis for the claim, and refer to some of the decisions you read the night before. Your opponent starts talking over the top of you, and more loudly. He says the claim is effectively alleging fraud against his clients and there are "ethical obligations" around pleading that. The claim does not contain any allegation of fraud. Your opponent indicates that he know the Judge well, and says he "will not like this one bit".
- What do you think?
- The Judge walks onto the bench and the application proceeds. Your opponent does not raise any allegation about a pleading in fraud. The strike out application is dismissed. The Judge refers the parties to a mediation. Looking over his glasses at each of you in turn, the Judge "strongly encourages" both parties to consider a sensible resolution to the matter.
- Several days later, your instructing solicitor sends a "without prejudice" offer of settlement, which you have settled. It refers to a number of recent awards of damages to justify the amount claimed, which is significant. It does not include any amount for costs because of the "no costs" provision in s 570 the *Fair Work Act 2009* (Cth). Within hours you receive an email from your opponent. He writes that the amount of the offer is "ridiculous" and that either you or your instructing solicitor is a "buffoon", and that he has never seen anything like it "in 20 years at the bar". He suggests that you have a "good hard look" at s 570 the *Fair Work Act 2009* (Cth) because it does not prevent costs orders against legal representatives. He signs his email with his name and bar roll number.
- What do you do?

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## C. The three week trial

- Under the rubric of being "a creature of habit", the silk in your matter, in a mildly self-deprecating manner, makes it clear that they "prefer" to meet in chambers at 5.30pm each day for the fortnight prior to and during any trial. This allows the silk to hear a recap on the "to do" list from the day, and allocate any new tasks.
- The senior junior says he cannot make the meetings on Fridays, because he celebrates Shabbat with a family dinner each Friday. Buoyed by the senior junior's comments, you say that you can meet in chambers on Mondays, Wednesdays and Thursdays, but on Tuesdays on Fridays you have to collect your child from child care at 6pm, and you need to leave chambers at 5pm. You suggest that you could join the meeting by telephone from your car from 5.30pm to 6pm.

- The silk winces visibly and says that they will have to consider having the firm clear with the client the idea of bringing in another junior to supplement the team to ensure “someone is actually on deck at critical times”.
- Another junior is retained, and all four counsel appear at the trial, which runs three weeks. On the final day of trial, a Friday, the opposing silk has not finished their closing submissions at 4.00pm. The Judge notes the time. The Judge asks whether the submissions could be completed that day, and notes his calendar is full and the length of time of any adjournment would be significant. The opposing silk offers to finish by 5.30pm. The Judge asks your leader whether this causes any issues. Your leader checks their phone and answers “not at all, your Honour”.
- What do you do?
- Would it change your response if the other two juniors are working in chambers and you are the only member of counsel in court with the silk?
- After you receive judgment, you are asked by the senior junior whether you are coming to the celebration lunch organised by the by silk with the solicitors, and other junior. You have not received an invitation.
- What do you do?
- A few weeks later, you get a text from the silk which reads “Don’t bother asking – never available and will be home with the kids. Yet another failure of feminism”. A couple of minutes later, the message is deleted.
- What do you do?

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#### **D. Conference in chambers attended by junior and senior counsel and instructing solicitors**

- You are a barrister who signed the roll 18 months ago.
- You have been briefed in a matter which will involve you working with a very well regarded senior counsel. You hope to forge a professional connection with the senior counsel which may enable you to both impress the firm instructing you, and possibly lead to you obtaining more work as junior to the senior counsel.
- You are asked to attend a conference held in the chambers of the senior counsel. The conference is attended by you, a male partner from the firm (Fred) and a female senior associate (Sally), both of whom will be working on the matter. The conference goes well, and it is clear this will be an interesting matter and a great team to work with.
- As the attendees are preparing to depart, the female senior associate bends over a number of times first to pick up her lap top, and then in order to zip up a large bag of folders she brought to the conference. On both occasions, the senior counsel very obviously looks at her backside. On the second of these occasions, he looks at the male partner from the firm and raises his eyebrow in a suggestive fashion. You see both of these things, which are going on behind Sally’s back.
- As the attendees are preparing to depart and are almost at the door to leave the silk’s chambers, he says, “well, it’s a great matter and I look forward to



working with you all, especially you Sally. I am sure Fred will attest, I have rotten work habits, including often needing to work late at night in chambers with the whole team around me.... especially you. Yep, I see a lot of late nights in chambers ahead". He laughs. She looks confused.

- What do you say ? What do you do ?
- The following day, you ask around about the senior counsel and some barristers to whom you speak offer up the unsolicited remark that he is known for hitting on female solicitors and no-one knows for sure, but they heard a rumour that a few years ago someone made a complaint about him. No one is able to offer you any hard facts on this issue.
- A few weeks later, Sally tells you that the senior counsel has asked her to meet him alone in chambers at 8pm that night in order to finalise a particularly important affidavit (which you have had significant input into drafting). She tells you Fred has told her about the silk looking at her backside in chambers and recommended she not meet alone with him. Sally sounds nervous and asks what she should do and even wonders aloud whether you might attend as well.
- What do you say ? What do you do ?

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## **E. Discussions with your opponent and exchanges with the Bench**

- Your friend is a junior barrister who is also a person of colour and from an ethnic minority background. Your friend is regularly briefed in Family Law matters, including trials in which they appear unled, often opposed to counsel who are significantly more senior.
- One day your friend tells you that they attended court to appear in a two-day matter, briefed for a wife (who has the same ethnic background as your friend) against a husband in a bitter property dispute, and opposed to a white male barrister, 10 years more senior. Much of day one was devoted to urgent settlement discussions while the matter was stood down. The parties were unable to resolve the matter; the wife was ultimately advised by your friend not to agree to the husband's last offer. As a result, the hearing commenced at 2pm and would now run over and require a third day of hearing the following week.
- Your friend tells you that at 1.30pm, in the final minutes of the negotiations being conducted in a conference room at the court, once it had become clear the matter would not be the subject of a deal, the opposing barrister was clearly annoyed that the trial would now start late, and would not conclude in the allotted time. The opponent had communicated they had another trial starting on the following Monday and did want to have to return that brief if this matter ran over. In that context the opponent said to your friend: "This entire morning has been a waste of my time. I should have known not to bother negotiating with you".
- Up to this point, what do you think?
- What if the conversation continued, and the barrister added the following: "In fact, people like you can't be trusted."

- What do you think now?
- At the commencement at the trial, the trial judge mistakenly believed that your friend was the interpreter saying to your friend, “You will have wait until you are sworn in as the interpreter”. Your friend politely informs the Court that they are Counsel for the wife in the proceeding. The trial judge bluntly says “whatever, let’s get on with it”.
- What do you do?
- During the trial, the opponent continues to “sledge” your friend just out of earshot of the bench saying things like “I can’t understand you”, “I can’t understand your accent” and, on one occasion, “Speak English”.
- What do you do?