



**LAW
INSTITUTE
VICTORIA**

Sexual Harassment in the Legal Profession: What can we do about it?

We are Advocates for Change

"I have been struck by the commitment of participants, their unity of purpose and eagerness to find new ways to address sexual harassment. I think there are reasons for cautious optimism, with signs of progress in the key areas on which real change depends: awareness, engagement and leadership."

Justice Chris Maxwell, President of the Court of Appeal

"Sexual harassment is not just a women's issue. Men need to take a leadership role together with women to bring real change to the profession, and individuals must take responsibility to drive effective action within their organisations. The LIV is proud to be an Advocate for Change."

Adam Awty, CEO, Law Institute of Victoria

"Our 'advocates for change' initiative promotes important dialogue across various levels of the profession. By discussing the causes, experiences and successful responses and practices by firm management, we are both raising awareness and generating information and ideas which might otherwise not be considered."

Genevieve Collins, Chief Executive Partner, Lander & Rogers

"Harassment and bullying are a blight on society and diminish all of us. The fact it is prevalent in the legal industry which stands for justice and fairness is an issue that needs urgent attention. That's why I was very pleased to co-convene this important initiative and to see the enthusiasm and energy brought to bear by colleagues across the industry to identify ways to combat this blight."

John Somerville, CEO, Slater and Gordon

We are Advocates for Change

Advocates for Change is a group of Victorian legal professionals from public and private organisations, community legal centres and the Law Institute of Victoria (LIV).

The Advocates for Change group is focused on eliminating sexual harassment in the legal profession.

Under the leadership of the LIV, we have met (remotely) in small groups from June to November 2021. The co-convenors are Justice Chris Maxwell, President of the Victorian Court of Appeal, Genevieve Collins, Chief Executive Partner of Lander & Rogers, John Somerville, CEO of Slater and Gordon, and Adam Awty, CEO of the LIV.

The purpose of the group is to raise awareness, share experiences, encourage mutual learning and good practice, and commit to being advocates for promoting change. We have found benefit in listening and learning from each other, and sharing ideas.

Set out below are ideas and comments from the participants, who are listed as signatories at the end of the document.

We know that sexual harassment is pervasive in the legal sector

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| <ul style="list-style-type: none">• Successive surveys confirm the prevalence of sexual harassment in the legal sector. | <i>"Everyday sexism, including lack of respect and exclusion, is a big issue – it leads to overt sexual harassment"</i> |
| <ul style="list-style-type: none">• Some people still lack an understanding of what can amount to sexist and harassing behaviour. | <i>"Every female lawyer I know has an experience [of sexual harassment]"</i> |
| <ul style="list-style-type: none">• Sexual harassment is often accompanied by other forms of discrimination based on identity. | <i>"Equality is not limited to gender and neither is harassment"</i> |

We realise that current approaches are not resulting in sufficient change

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| <ul style="list-style-type: none">• Discrimination and harassment continue, despite the widespread adoption of policies intended to address and eradicate such behaviour. | <i>"Even if it is not your personal experience, people should assume sexual harassment is happening"</i> |
| <ul style="list-style-type: none">• Some good work is occurring but much more is needed to effect the changes required. | <i>"I have seen many instances of firms saying one thing, but different things happening in practice when tough choices need to be made"</i> |
| <ul style="list-style-type: none">• Key drivers for change are: organisational culture and commitment, leadership, communication, accountability and visible action. | <i>"It is easy to have policies. It is harder to ensure that consequences flow"</i> |

We understand that cultural change is critical but takes time to achieve

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| <ul style="list-style-type: none">• We need to focus on culture change and prevention. | <i>"Building a culture requires work and action to maintain trust and momentum"</i> |
| <ul style="list-style-type: none">• The culture of law firms can be disempowering for those with less seniority or support, particularly younger or recently recruited lawyers and non-legal staff. | <i>"Sexual harassment should be reframed as a workplace safety issue"</i> |
| <ul style="list-style-type: none">• Bystanders may not recognise or know how to respond to harassing/discriminatory behaviour. | <i>"Disempowerment can leave you feeling speechless"</i> |
| <ul style="list-style-type: none">• Feeling valued and supported will engender trust in the reporting process. | <i>"We need to get messages to resonate with people who are not receptive"</i> |
| | <i>"The decision to report is influenced by whether people feel valued and supported"</i> |

A greater focus on addressing root causes would prevent harm occurring

- Disrespect is a key driver of harassment.
- Harassment is more likely to occur where there is power imbalance and a culture of dominance, bullying, or privilege. The risk is exacerbated by the traditionally hierarchical nature of law firms.
- Change requires action to address gender equality and to challenge gender roles and stereotypes.

"Firms focus on the incidence of sexual harassment rather than its drivers, such as problematic attitudes about gender and sexuality"

"Too often it's been a senior person who has behaved badly... the power imbalance is obvious"

"Firms must act to address pay equity and the representation of women in leadership"

There must be support for those affected, and for bystanders

- The affected person should receive appropriate support, both when making a report and after reporting.
- Bystanders and managers need the skills and awareness to create a safe reporting culture and to intervene effectively.
- An inadequate response to a complaint can make the affected person's experience worse.

"When poor behaviour comes from a partner I would not report to HR and would feel there is nowhere to go"

"Counselling and support needs more attention"

"The burden is often on the person impacted to be proactive to report, which can be traumatising"

"We need to ensure that people have a voice and are supported in all aspects"

Address barriers to reporting and improve responses to sexist and harassing behaviour

- Barriers to reporting include fear of victimisation, trivialising/excusing behaviour and career concerns.
- There needs to be clarity, flexibility and transparency about reporting options and a culture which encourages reporting and confidence in the response.
- Demonstrable consequences and accountability can change behaviour and encourage reporting.

"Law firms can feel like low trust environments – you need certainty that you will not be victimised"

"I would want a clear roadmap setting out my options"

"There should be different mechanisms for making reports and flexibility for seeking redress"

"There need to be consequences"

Leadership is critical

- Leaders must demonstrate commitment and consistency, model respectful behaviour and call out and address inappropriate conduct.
- Gender equality in leadership is important.
- Leaders should be supported/trained to respond to disrespectful behaviour.

"Recently a partner called out unacceptable behaviour. It made a big difference... people remember, it sets the tone"

"Our executive speaking of their own experiences really resonated with staff"

"Many managers do not know how to deal with reports or negotiate confidentiality and OHS obligations"

Addressing sexual harassment requires a sector-wide response

- A sector wide response is needed to achieve systemic change.
- A lack of accountability/control over third party behaviour (i.e. barristers, clients) is a key risk.
- We should have consistent expectations across the sector.

"It is very important to speak collectively and to stand together with others outside the organisation"

"Another risk is third parties, such as clients and barristers. We want to make it clear that bad behaviour will not be tolerated"

"We need a sector wide response to explain what the path of complaint is across the sector"

What can we do about it?

Here are some of the actions being taken (or contemplated) by participants or their organisations to address sexual harassment. These examples can help us think about actions we can take as individuals, organisations and as a sector. Effective action usually requires a multifaceted approach. What is suitable for any individual or organisation will vary, depending on the extent of previous engagement and on available resources.

What can we do about addressing root causes?	
Embed gender equality into the culture of your organisation	<ul style="list-style-type: none"> • Ensure gender equality is a part of a firm's 'operating rhythm'. This includes applying a gender lens to policies and practices, and to pay equity. • Promote and encourage parental leave and flexibility for caring responsibilities, including encouraging uptake by men. • Concerted focus on equitable briefing – one organisation moved from briefing 8% women counsel to 40%.
Communicate that sexual harassment is unacceptable	<ul style="list-style-type: none"> • Reframe sexual harassment as a workplace safety issue (and a respect issue). • Ensure there is a better understanding of what constitutes harassment and discrimination. • Adopt and communicate a 'zero tolerance' approach to sexual harassment. • Training in respectful relationships. • 'Pre-commitment' within an organisation, and to third parties (barristers/clients), about sanctions for inappropriate behaviour - reduces incentive to 'manage the problem quietly'.
What can we do about better support?	
Training and support to better respond to complaints	<ul style="list-style-type: none"> • Give individuals support and empower them to respond in an informed way. • Training and support for bystanders to call out harassment and everyday sexism. • Training should be 'cross-sectional' (i.e. involving participants from different levels of an organisation). • Firm-wide assessments of culture and training, with input from non-partner staff.
Facilitate mentoring and other support	<ul style="list-style-type: none"> • Implementing formal mentoring and buddy groups (comprising a mix of seniority and practice groups) to create a safe environment in which to raise issues. • Facilitate informal group discussions/listening circles – a safe environment can encourage people to raise matters that might not be formally reported. • Introducing 'allies' programs for men to support and advocate for women.
What can we do about improving responses?	
Clear pathways and multiple channels for reporting	<ul style="list-style-type: none"> • Starting at induction, and regularly thereafter, provide a roadmap clearly explaining the reporting pathways. • Ensure multiple reporting channels (internal and external). • Anonymous complaint mechanisms can protect the affected person and encourage reporting (entirely anonymous, or name withheld from perpetrator). This can inform risk identification and management. • One organisation found mandatory reporting can increase bystander reporting.
Appropriate 'contact infrastructure'	<p>Options could include:</p> <ul style="list-style-type: none"> • appoint a first point of contact within each practice group, trained (including trauma informed training) to receive complaints confidentially and explain reporting options. The role could be as an independent, objective participant in the process, or as an advocate to support the person reporting. • appoint a person independent of the organisation to receive complaints. • provide training in handling complaints for people 'in the middle' of a law firm's hierarchy – they could be 'conduits' to firm's leaders.

What can leaders do?	
Demonstrate commitment to change	<ul style="list-style-type: none"> • Greater visibility of senior managers, including in induction, to send a strong message that sexual harassment is not tolerated. • Leaders should respond quickly and consistently to poor behaviour. There is a range of possible appropriate responses depending on the context (in addition to supporting the person reporting), including disciplinary action, targeted education and training, and counselling.
Communicate expectations and create safe environments	<ul style="list-style-type: none"> • Where inappropriate conduct occurs, it is important that leaders are prepared to have the difficult conversations, whether with a senior person internally or with a third party such as a client or a barrister. • Consider best practice from other sectors. For example, St Vincent's Hospital Ethos program, a peer led early intervention program to deliver feedback to staff about how their behaviour is perceived. • Consider day to day opportunities to create a more supportive culture, such as being more considerate when providing feedback/direction on work to junior staff (i.e. more supportive, less crushing).
What can we do as a sector?	
Demonstrate leadership across the sector	<ul style="list-style-type: none"> • LIV to play a central role for the profession in addressing harassment issues systemically. This could include mechanisms for sharing resources and initiatives across the profession, and developing best practice guides. • Extend policies to include behaviour by barristers, judicial officers and court staff. • Sign up to the Charter for the Advancement of Women in the Legal Profession.
Share best practice and new ideas	<ul style="list-style-type: none"> • Facilitate opportunities to share ideas and initiatives in responding to sexual harassment. • Consider development of industry standards. • The profession could pilot strategies/interventions to create a more inclusive and respectful culture. • Consider 'best practice' reporting guidelines across the profession. • Utilise and communicate guidelines, information and resources, such as those available from the LIV, including the Sexual Harassment Framework.
Independent reporting processes	<ul style="list-style-type: none"> • In the case of a contested complaint, where the firm and the complainant desire adjudication, it may help to have access to an independent adjudicator. • Publicise the services provided by the Victorian Legal Services Commissioner: confidential reception of complaints; investigation; and adjudication. • LIV may establish an independent external reporting process, with participating firms receiving feedback about issues/problem areas.

Ask yourself:

What action have I taken?
 What can I do from here?
 How can I make a difference?

Our commitment

We support the process of collaborative engagement through the Advocates for Change meetings. We have benefited greatly from hearing how others are approaching these important issues.

We each commit to ongoing collaborative engagement and to working as advocates for change in our own organisations. We sign the document in our individual professional capacity.

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