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Gendered Violence Research Network

Rapid Evidence Review: Professional Standards and Sexual Harassment

**Prepared for the
Professional Standards Authority**

November 2021

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The Gendered Violence Research Network is based in the Faculty of Arts, Design and Architecture at UNSW Sydney.

The legal entity for the contract is the University of New South Wales (ABN: 5719873179). The UNSW is a GST-registered organisation. Provider CRICOS Code 00098G.

This document has been prepared for the sole purpose of our services provided to the Professional Standards Authority.

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1 Executive Summary

1.1 Background

In May 2021 the Professional Standards Authority (PSA) commissioned the Gendered Violence Research Network, UNSW Sydney to undertake a rapid evidence review on sexual harassment as a potential cause of consumer harms and regulatory interventions, to publish as an article in the online Research Library and disseminate to legal services, professional associations and regulators.

In the wake of recent reporting and inquiries on sexual harassment in the legal profession, the PSA have engaged with law societies, bar associations and legal services regulators on sexual harassment as a consumer risk. Sexual harassment is an area of known risk for professional standards, and more so in hierarchical and competitive industries such as legal services.

This rapid evidence review is intended to help inform the development of professional standards and organisational management strategies. It seeks to identify and examine existing research about the extent of sexual harassment in the legal profession and whether consideration has been given to any flow on effects to consumers.

1.2 Methods

Four broad research questions were developed in consultation with the PSA to guide this review. The research questions were:

1. Does sexual harassment of legal professionals cause consumer harms?
2. What are the consumer harms arising from sexual harassment of legal professionals?
3. What professional standards and risk management strategies have been developed to address sexual harassment in the professions?
4. What application do these have to improving professional standards in legal settings?

Relevant publications were identified through database searches and citation chaining. Publications provided to the research team by the PSA were also included in the review. A total of 32 publications were analysed in relation to the relevant research questions.

1.3 Key Learnings

Sexual harassment and consumer harms

- The review identified considerable evidence on the effects of sexual harassment on the individual legal professional and the costs to business.
- There is evidence that sexual harassment within legal contexts can have negative impacts on legal professionals':
 - mental and emotional health
 - career prospects, including their motivation to remain in their jobs and the legal industry
 - productivity
 - passion about their work and morale
 - involvement in workplace events
 - relationships with other individuals within the workplace; and
 - risk of experiencing further bullying.
- These impacts on legal professionals may have negative repercussions for consumers of legal services.
- This inference is consistent with evidence focused on the health profession that unprofessional and disruptive behaviours may not only have negative consequences for health professionals, but for patient outcomes as well.
- The review was unable to identify studies focusing specifically on consumer harms within the legal profession, which reflects that this is an emerging research area. Similar to research conducted in the health profession, more work needs to be done to identify the impact of sexual harassment of legal professionals on the consumers of their services.

Strategies to address sexual harassment in the legal profession

- No evaluative evidence of strategies to address sexual harassment within the legal profession was identified.
- Several studies found that sexual harassment policies and training were not consistently implemented in the legal profession.
- Studies identified several barriers to reporting sexual harassment within the legal profession, including fears of retribution, a belief that sexual harassment was not a serious issue, an acceptance of sexual harassment within the profession, lack of knowledge about reporting procedures and fear that the allegations would not be believed.
- **Changing the culture of the profession:** this may include measures to end the 'culture of silence' surrounding sexual harassment in the profession by implementing victim-centred reporting processes and organisations communicating a commitment to gender equality. The publications included in the review identified the following types of strategies to address sexual harassment in the legal profession:
 - **Development of consistent workplace and professional standards:** this may include a commitment from the organisation to prevent sexual harassment, promotion of gender equality, standards that clearly specify sexual harassment as unacceptable behaviour, and a victim-centred approach.
 - **Policies:** organisations should implement clear and accessible policies about sexual harassment, and these policies should be regularly communicated to employees.
 - **Training:** legal professionals should receive regular and ongoing training about the nature and impacts of sexual harassment and how to report incidents of sexual harassment.
 - **Reporting mechanisms:** organisations must have flexible reporting models that allow sexual harassment complaints to be made anonymously.
 - **Other responses:** this included, but was not limited to, ensuring law students receive information about sexual harassment during their studies, raising awareness about the issue, sharing best practice insights across the profession, and the collection of monitoring data to review and improve current practices.

2 Background to this report

In May 2021 the Professional Standards Authority (PSA) engaged the Gendered Violence Research Network, UNSW Sydney to undertake a rapid evidence review to publish as an article in the online Research Library and disseminate to legal services, professional associations and regulators on sexual harassment as a potential cause of consumer harms and regulatory interventions.

In the wake of recent reporting and inquiries on sexual harassment in the legal profession, the PSA have engaged with law societies, bar associations and legal services regulators on sexual harassment as a consumer risk. Sexual harassment is an area of known risk for professional standards, and more so in hierarchical and competitive industries such as legal services.

This rapid evidence review identifies and examines existing research about the extent of sexual harassment in the legal profession and whether consideration has been given to any flow on effects to consumers. It is hoped this will assist with the development of professional standards and organisational management strategies.

Any strategies emerging from this review may be considered by law societies and bar associations to combat sexual harassment systemically and culturally through professional standards improvement.

3 Introduction

Workplace sexual harassment is a prevalent issue in Australian society, with studies highlighting the high rates of sexual harassment in Australian workplaces. The most recent national survey addressing sexual harassment is the Australian Human Rights Commission (AHRC) *National Survey on Sexual Harassment in Australian Workplaces*.¹ Key findings confirm that one in three people (33%) had experienced workplace sexual harassment in the five years preceding the survey.¹ Women were more likely to have experienced workplace sexual harassment, with statistics showing that 39% of women had experienced harassment during that time period, compared with 26% of men.¹

This report provides an overview of the evidence relating to organisational responses to sexual harassment generally, and then specifically in legal contexts, addressing the four key questions that structure the evidence review.

3.1 The Australian legal and policy context of workplace sexual harassment

In Australia, workplace sexual harassment is regulated under various legislative and policy documents relating to areas such as anti-discrimination, workplace relations, and work health and safety.²

In 2020, the AHRC completed the *Respect@Work: National Inquiry into Sexual Harassment into Australian Workplaces*.² The inquiry made several recommendations for how workplace sexual harassment can be better addressed.² In September 2021, the federal government passed a bill that enacted 6 of the 12 legislative recommendations in the report. Whilst most of these recommendations have yet to be implemented, some have been adopted through proposed legislation aimed at reforming Australia's sexual harassment law. The government did not legislate the central recommendation around a "positive duty" on employers to prevent sexual harassment in workplaces however advocacy continues in this area.

The following sections outline legal definitions and relevant legislation regulating sexual harassment in Australia. We have provided additional comment on the possible effects the proposed legislative reforms will have on the regulation of workplace sexual harassment. Whilst these laws are targeted at workplace sexual harassment generally, they have implications for sexual harassment in the legal profession.

3.2 Legal definitions of sexual harassment

At the federal level, the *Sex Discrimination Act 1984* (Cth)³ defines sexual harassment and the contexts in which it is unlawful. Section 28A(1)⁴ of the Act states that a person is taken to have sexually harassed another 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 the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.*⁴

Under the Act, sexual harassment in the context of employment or in the workplace is unlawful.⁵ Individuals who are self-employed or who are volunteers or interns in a workplace were not explicitly protected from workplace sexual harassment under the Act.² However, the recently passed *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* (Cth),⁶ will address this issue by expanding sexual harassment protections under the Act to include all paid and unpaid workers.⁷ This includes volunteers, interns and individuals who are self-employed.⁷

Pursuant to the *Australian Human Rights Commission Act 1986* (Cth),⁸ individuals who have experienced workplace sexual harassment can lodge a complaint with the AHRC,⁹ which has the power to investigate the complaint and address it through conciliation. An individual may take their complaint to the Federal Court of Australia or the Federal Circuit Court of Australia if their complaint to the AHRC is discontinued or unresolved.¹⁰

At the state and territory level, anti-discrimination legislation that prohibits workplace sexual harassment also exists.¹¹⁻¹⁸

3.3 Workplace relations

Currently, the *Fair Work Act 2009* (Cth)¹⁹ does not explicitly prohibit workplace sexual harassment.² However, in September 2021, reforms were passed to address this gap in the legislation. Under the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021* (Cth),⁶ which will soon come into force, the *Fair Work Act 2009* (Cth)¹⁹ will be amended to explicitly recognise the perpetration of sexual harassment in connection with one's employment as a valid reason for dismissal.²⁰ It will also allow for an individual who is being sexually harassed at work to apply to the Fair Work Commission for an order preventing the individual from being sexually harassed at work by the perpetrator(s).²¹ These reforms, which were a result of the *Respect@Work: National Inquiry into Sexual Harassment into Australian Workplace*,² strengthen protections for victim-survivors of sexual harassment.

3.4 Work health and safety

In Australia, most jurisdictions have based their work health and safety legislation off the Safe Work Australia's model work health and safety laws, subject to minor variations to the model law by some jurisdictions.^{2, 22} Western Australia is the most recent jurisdiction to move to harmonise health and safety legislation on the model laws, with the new *Work Health and Safety Act 2020* (WA)²³ and its accompanying regulations expected to come into force in

2022.^{24, 25} Victoria has its own legislative and regulatory scheme for addressing occupational health and safety.^{26, 27} The Victorian scheme addresses workplace sexual harassment by imposing on employers a broad duty to 'so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health'.²⁶

Similarly, whilst sexual harassment is not explicitly mentioned in the model Work Health and Safety Act, the model Act impliedly addresses workplace sexual harassment by imposing on 'a person conducting a business or undertaking' (PCBU) a broad duty to ensure, as far as is reasonably practicable, the health and safety of workers.^{2, 28} Section 4 of the model Act specifies that workers' health relates to both their physical and psychological health.²⁸

More recently, Safe Work Australia has published a guide on preventing workplace sexual harassment.²⁹ The guide, which complements the model laws and is intended to support PCBUs in meeting their work health and safety obligations, adopts the definition of sexual harassment used in the *Sex Discrimination Act 1984* (Cth)³ and provides guidance on how PCBUs can identify and manage the risks of workplace sexual harassment.²⁹

3.5 The costs of workplace sexual harassment

Workplace sexual harassment can have adverse consequences for employees who have experienced harassment. Sexual harassment can impact negatively on the health and wellbeing of employees, employment and result in considerable financial consequences.² A national survey on sexual harassment in Australian workplaces conducted by the AHRC found that the most common consequences of workplace sexual harassment were:

- mental health or stress (36%);
- low self-esteem and confidence (33%); and
- negative impacts on employment, career or work (25%).¹

Given the gender asymmetry of those affected, women were also more likely than men to experience the negative consequences of workplace sexual harassment.¹

Workplace sexual harassment can also cause significant costs for employers through lost productivity, adverse impacts on workplace culture and increased resources associated with responding to complaints, court proceedings and workers compensation.² There may be increased employee turnover as a result of sexual harassment leading to recruitment and retraining expenses. Organisations may also be at risk of vicarious liability and reputational damage, particularly if an employee has perpetrated sexual harassment on work premises or using workplace resources.

In 2019, Deloitte published a report estimating the economic costs of workplace sexual harassment in Australia.³⁰ It estimated that in 2018, workplace sexual harassment resulted in \$2.6 billion in lost productivity, with an average of \$1,053 per victim.³⁰ Lost productivity included costs relating to absenteeism, presenteeism, staff turnover and manager time, and approximately 70% of these costs were borne by employers.³⁰ It was also estimated that workplace sexual harassment results in \$0.9 billion in other costs, with an average of \$375 per

victim.³⁰ Other costs included costs to the health system, AHRC or jurisdictional agency investigations, individual legal fees, government justice system costs, and deadweight losses.³⁰

Research has also examined the links between employee wellbeing and productivity, highlighting the importance of an effective organisational response to prevent sexual harassment. In a meta-analysis of 339 studies on employee wellbeing and firm performance, there was a strong positive correlation between employees' satisfaction with their company, employee productivity and customer loyalty, and a negative correlation with employee turnover.³¹ Similarly, one study of employees within IT organisations found that greater psychological wellbeing was associated with increased job performance.³² Studies have also drawn attention to the relationship between stress amongst employees and adverse workplace outcomes. For example, a study of 425 employees in public and private sectors found that greater stress amongst employees was associated with decreased productivity.³³ A Finnish study of 99 women working in hospitals also produced similar results.³⁴ More specifically, it found that participants who experienced high levels of work stress, had significantly lower speeds of memory retrieval than those experiencing less workplace stressors.³⁴

The evidence does not explicitly demonstrate a link between sexual harassment and legal consumer harm. Given the impact sexual harassment can have on employees and workplaces, it is conceivable that there may be impacts on the quality of services consumers receive. This link consequence requires further research.

4 Methods

4.1 Research Questions

Four broad research questions were developed in consultation with the PSA to guide this review. The research questions were:

1. Does sexual harassment of legal professionals cause consumer harms?
2. What are the consumer harms arising from sexual harassment of legal professionals?
3. What professional standards and risk management strategies have been developed to address sexual harassment in the professions?
4. What application do these have to improving professional standards in legal settings?

4.2 Database searches

In July 2021, searches of academic and grey literature databases were conducted to identify publications that addressed the research questions above.

The following databases were searched:

- Academic databases: Informit, Proquest (ERIC, National Criminal Justice Reference Service (NCJRS) Abstracts, PAIS Index, Policy File Index, Proquest Central), EBSCO (Business Source Premier, CINAHL, Criminal Justice Abstracts, Human Resources Abstracts, Violence & Abuse Abstracts, Women's Studies International), SCOPUS, Wiley Online Library, Austlii, Hein Online, LexisAdvance.
- Grey literature databases: Australian Institute of Health and Welfare (AIHW), Lawyers Weekly, The Conversation.

4.2.1 Search terms

Search terms relating to concept areas relevant to the research questions were developed to identify publications from the databases. The four concept areas were as follows:

- Concept Area 1: Sexual harassment
- Concept Area 2: Legal profession
- Concept Area 3: Employee harms
- Concept Area 4: Consumer harms

A full list of the search terms developed in relation to each concept area is available in Appendix A, Table 1.

Search terms were combined using Boolean terms. As some of the searches returned excessive volumes of results that were not relevant to the research questions, some aspects of the search strategy were amended for some of the databases to ensure that the number of

results returned were more manageable, and that these results had greater relevance to the research questions.

4.3 Additional publications

The database searches were also supplemented by other means of identifying publications relevant to the research questions. This included identifying relevant publications:

- from resources provided to the research team by PSA; and
- through citation chaining from other relevant publications.

4.4 Inclusion and exclusion criteria

To be included in the evidence review, publications had to satisfy certain criteria outlined below.

4.4.1 Publications identified from database searches

In the case of publications identified from the database searches, they had to meet the following criteria to be included in the review:

- Provide evidence in the form of empirical research, systematic, scoping or rapid evidence reviews, or meta-analyses. However, this criterion did not apply to publications from *The Conversation* and *Lawyers Weekly*.
- Published within the last 10 years.
- Published in English.
- Publication is from research undertaken in Australia, Canada, New Zealand, the United Kingdom (UK), or the United States (US).

The following exclusion criteria also applied to publications identified from the database searches:

- Publications that did not specifically focus on sexual harassment in the legal profession.

4.4.2 Publications identified from resources provided to the research team

Publications that were identified from resources provided to the research team by the PSA did not have to satisfy the inclusion criteria outlined in 4.4.1 above. These publications were included in the review if they were relevant to one or more of the research questions. This included publications that examined sexual harassment in the workplace generally, or in professions other than the legal profession (e.g., the health profession). Publications that were conceptual were also included.

4.4.3 Publications identified through citation chaining

The inclusion and exclusion criteria outlined in 4.4.1 was applied to publications identified through citation chaining.

4.5 Screening

As shown in Appendix B, Figure 1, the search of academic and grey literature databases produced an initial total of 1,821 publications. Additionally, 9 publications were identified from resources provided to the research team by the PSA, and a further 36 publications were identified through citation chaining. The research team then undertook the following screening process to determine which of these publications should be included in the review:

- The titles and abstracts of these publications were reviewed for potential relevance to the research questions.
- Of these, 66 publications were determined to be potentially relevant to at least one of the research questions.
- Each of these 66 publications were then subjected to a second stage of screening where the full-text of each publication was examined to determine whether they were in fact relevant to the research questions and the inclusion and exclusion criteria for the review.
- Following this second stage of screening and the removal of duplicate publications, 32 publications were assessed to have addressed at least one of the research questions.
- **These 32 publications were analysed in relation to the relevant research questions and included in the review.**

5 Introductory overview of evidence

This section provides an introductory overview of evidence relating to sexual harassment in legal contexts including the prevalence, dynamics and legal regulation. Section 6 presents our analysis addressing the findings related to each of the four research questions. It is important to provide the following caveats to each section. First, the evidence is constrained by low reporting rates of sexual harassment, second, the literature may not always distinguish between profession and legal context. The latter may include experiences and perpetration of non-legal professionals employed in legal contexts. We have chosen to use the terminology used by the studies to ensure accurate reporting of the evidence. Third, the evidence may not distinguish between an allegation and substantiation of sexual harassment through an investigatory process.

5.1 The prevalence of sexual harassment in the legal contexts

Studies have found high rates of workplace sexual harassment reported by employees in Australian legal context. In a national study on attrition of practitioners from the Australian legal sector, 24% of female respondents and 8% of male respondents who were legal practitioners at the time of the study reported that they had experienced sexual harassment at work.³⁵ There was also evidence that gender may intersect with other factors to increase women's risk of experiencing sexual harassment. For example, the study found that female barristers were more likely to report that they had experienced workplace sexual harassment than female practitioners who worked in private practice or in-house legal positions (55% vs 22% and 20%).³⁵ The study also identified that women who were employed by large and medium firms were more likely to report experiencing sexual harassment than women who were working at small firms (24% and 26%, vs 18%).³⁵ These findings highlight how sexual harassment in the legal profession may be more prevalent in certain workplace contexts.

More recently, a study by the Victorian Legal Services Board + Commissioner (VLSB+C) of Victorian legal practitioners and law practices found that approximately one in three (36%) legal professionals reported that they had experienced sexual harassment whilst in the profession.³⁶ Once again, women were more likely to have experienced sexual harassment than men, with 61% of women reporting that they had experienced sexual harassment in their career, compared with 12% of men.³⁶ The study identified a disparity between legal professionals' perceptions of the prevalence of sexual harassment and that of management representatives of law practices – whilst 23% of legal practitioners reported that sexual harassment was either common or very common, only 1% of management representatives said that sexual harassment was common.³⁶ It is assumed that such disparity may be explained as management may not always be aware of the extent and prevalence of sexual harassment in the workplace.

Similarly, a 2020 survey of individuals who were currently working or had previously worked in the South Australian legal profession found that 42.1% of respondents had experienced sexual harassment whilst working in the profession.³⁷ This included 33.3% of respondents who had

experienced sexual harassment in the profession on more than one occasion.³⁷ Consistent with other research on workplace sexual harassment, more than half (56.6%) of female respondents reported that they had experienced sexual harassment in the profession, compared with 13.6% of male respondents.³⁷

These statistics not only highlight the prevalence of sexual harassment in the Australian legal profession, but also draw attention to its unequal impacts on women. Women are disproportionately affected by workplace sexual harassment, making sexual harassment not just a workplace health and safety issue, but also a gender equity issue.

Other factors that have been found to increase legal professionals' risk of experiencing sexual harassment include younger age,³⁸ and having spent less time in the legal sector.³⁶

5.2 The dynamics of workplace sexual harassment in legal contexts

The literature identified the adverse consequences associated with such harassment, and in particular, the harms that it can cause to victim-survivors' physical and mental health, wellbeing, employment and career prospects, and financial stability.^{1,2}

The evidence indicated that sexual harassment in the legal profession is predominately perpetrated by individuals who are:

- male;³⁶
- older (>40 years old);³⁶ and/or
- in more senior positions in the workplace.³⁶⁻³⁸

Consistent with more general evidence, sexual harassment is usually not a single incident. The review found perpetrators engaged in multiple incidents of sexual harassment. In the survey by the VLSB+C, 40% of respondents who had experienced sexual harassment in the legal profession reported that the most recent incident of sexual harassment they experienced was part of pattern or series of sexual harassment incidents involving the perpetrator.³⁶

The most common types of sexual harassment perpetrated in legal contexts include, but are not limited to:

- sexist comments;³⁸
- sexually suggestive comments or sounds;³⁶⁻³⁸
- looking or staring at an individual in an inappropriate manner;³⁶⁻³⁸
- inappropriate physical contact;^{36,38} and
- asking intrusive questions about an individual's appearance or personal life.^{36,37}

In some cases, workplace sexual harassment may involve more serious criminal conduct, such as sexual assault. In the survey by the VLSB+C of Victorian legal practitioners, 2% of respondents reported that they had experienced workplace sexual harassment in the form of actual or attempted rape or sexual assault.³⁶ Similarly, international research by the International Bar Association (IBA) found that amongst respondents who had experienced sexual harassment, 3.1% had experienced physical assault or rape.³⁸

5.3 Regulating sexual harassment in the legal profession

The legal profession is also subject to a range of sector-specific policies, rules and regulations that have implications for how sexual harassment is dealt with in the profession.

5.3.1 Professional conduct

Each Australian state and territory has legislation and rules that specifically govern the professional conduct of legal practitioners in their jurisdiction.³⁹⁻⁶¹

These regulatory frameworks either expressly prohibit sexual harassment by solicitors and/or barristers in the course of their practice,⁶²⁻⁷³ and/or address sexual harassment in the profession indirectly through rules that prohibit solicitors and barristers from engaging in conduct that is discreditable to the legal practitioner, or likely to diminish public confidence in the legal profession or otherwise bring the profession into disrepute.^{e.g. 74, 75}

Breach of these rules may constitute unsatisfactory professional conduct or professional misconduct, depending on factors such as the type and seriousness of the conduct involved. A number of cases have confirmed that workplace sexual harassment by a legal practitioner can amount to unsatisfactory professional conduct and result in disciplinary action.^{76, 77}

5.3.2 The National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession

In December 2020, the Law Council of Australia released the *National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession* (NAP).⁷⁸ The NAP is the Law Council of Australia's national plan for addressing sexual harassment in the Australian legal profession.⁷⁸ It identifies several barriers to eliminating sexual harassment in the profession, such as low reporting, lack of action by employers to address sexual harassment complaints, and weaknesses in existing complaints processes, whilst proposing to undertake several action items to eliminate sexual harassment in the legal profession.⁷⁸

These action items include supporting the implementation of specific recommendations made by the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*,² amending the Australian Solicitors' Conduct Rules to address gaps in the regulation of sexual harassment in the profession, and providing tools and resources (e.g., national model policy and guidelines) for addressing workplace sexual harassment.⁷⁸

The development of this Action Plan is a clear recognition by the Law Council the imperative to reduce sexual harassment in the Australian legal profession.

6 Addressing the review questions

Review Questions

1. Does sexual harassment of legal professionals cause consumer harms?
2. What are the consumer harms arising from sexual harassment of legal professionals?

The review identified considerable evidence on the ways sexual harassment can adversely affect individuals and the workplace, all of which suggest that there must be some effect on consumers of legal services. There was no direct evidence that sexual harassment may cause consumer harms in the legal profession, which reflects that this is an emerging research area. Similar to research conducted in the health profession, more work needs to be done to identify the impact of sexual harassment of legal professionals on the consumers of their services.

6.1 Impact of sexual harassment on legal professionals

6.1.1 Interpersonal effects on health and wellbeing

The most prominent reported impact of sexual harassment on legal professionals, was its effects on legal professionals' mental and emotional health. In a 2018 survey of 3,516 lawyers in New Zealand, more than a third (39%) of respondents who reported that they had been sexually harassed, said that it affected their emotional or mental wellbeing.⁷⁹ This included 28% who reported that they experienced anxiety, and 10% who reported that they experienced depression.⁷⁹

Similarly, in the IBA study on bullying and sexual harassment in the legal profession, qualitative evidence from one respondent demonstrated how her experience of sexual harassment in the workplace had contributed to depression and made her feel angry and helpless.³⁸

It is important to recognise that sexual harassment may not only affect victims-survivors in the short-term but can also have prolonged impacts.³⁶ This was evidenced by the VLSB+C 2019 study of sexual harassment in the Victorian legal sector.³⁶ The study identified a number of short-term impacts of sexual harassment, including:

- negative effects on mental health
- stress, anxiety and depression
- negative effects on self-esteem/confidence
- experiencing discomfort/awkwardness in the workplace; and
- feelings of embarrassment.³⁶

When respondents who had experienced sexual harassment were asked about the long-term impacts of the harassment, several of the short-term impacts identified above, were also reported by participants as long-term impacts. This included: continuing stress, anxiety and depression (14%), negative effects on self-esteem and confidence (17%), and experiencing discomfort/awkwardness in the workplace (25%).³⁶

These studies highlight the potential for sexual harassment to negatively impact on legal professionals' mental and emotional health, both in the short-term and the long-term. Such impacts have the potential to affect legal professionals' productivity and concentration, which in turn, may have negative impacts on their work product and the quality of services that consumers receive.

6.1.2 Reported effects on career

The evidence found that one primary reason that legal professionals leave their jobs or the industry following an experience of sexual harassment relates to the harassment's impact on their mental and emotional wellbeing. It may also be that the alleged perpetrator remains in the workplace and the fear of ongoing harassment means remaining in the workplace is no longer viable.

More recently, the 2019 survey by the International Bar Association (IBA) found that over a third (35.4%) of respondents who had experienced sexual harassment had left or were considering leaving their workplace as a result of the harassment, with 7.5% stating that they had left or were considering leaving the profession altogether.³⁸ Some respondents (7.2%) also stated that they had switched practice areas or departments within their workplace or were considering doing so due to the harassment.³⁸

One participant in the VLSB+C study, stated that their experience of sexual harassment had influenced their decision to leave the industry as it had negatively impacted on their confidence in their skills and abilities.³⁶ More specifically, their experience of sexual harassment by their supervisor led to them losing confidence in their abilities as they came to believe that their supervisor had only supported them professionally so that they could pursue them sexually/romantically.³⁶

The negative effects that sexual harassment can have on legal professionals' jobs and careers can also contribute to and compound mental and emotional health issues. Another participant in the VLSB+C study discussed how their resignation from their role following sexual harassment had led to them experiencing unemployment for a period and that this had negatively impacted on their self-esteem.³⁶

To the extent that sexual harassment, and a failure to address it, presents issues in terms of retaining skilled professionals in legal services, it also has the potential to negatively impact on the quality of services received by consumers.

6.1.3 Impacts of reporting and poor organisational response

In the 2018 survey of the legal profession environment in New Zealand, 32% of respondents who had been sexual harassed reported that it affected their job/career prospects.⁷⁹ This included respondents who reported that the harassment caused them to resign from their job (19%), and respondents who said that they were 'labelled a troublemaker'.⁷⁹

A failure by employers to take sexual harassed seriously and respond to complaints adequately may also lead to legal professionals leaving their jobs. In the survey by the IBA, qualitative evidence from one respondent demonstrated how the law firm she was employed by had not only failed to sanction the perpetrator who had sexually harassed her but had also promoted him and "closed ranks" around him.³⁸ This, coupled with the lack of support she received from the law firm, led to her leaving her job.³⁸

Similarly, in the VLSB+C study, 13% of respondents who had experienced sexual harassment cited resigning or moving roles as a short-term impact of the harassment.³⁶ Resignation was also identified as a long-term impact of sexual harassment (22%).³⁶ Other long-term impacts of sexual harassment that were identified by respondents who had experienced such harassment included having their careers negatively impacted on and experiencing reputational damage (15%).³⁶

A 2018 article on sexual harassment in the legal profession reinforced many of the findings in these studies by highlighting how such harassment may cause employee turnover, absenteeism, as well as damage lawyers' reputations.⁸⁰

6.1.4 Other reported impacts

The review also identified a range of other reported impacts that legal professionals may experience due to sexual harassment. This included:

- becoming more guarded;⁷⁹
- losing respect for others;^{36, 79}
- becoming less trusting of others;^{36, 38}
- avoiding certain people/situations or becoming less willing to participate in events;^{38, 79}
- becoming less productive;⁷⁹
- decreased morale⁸⁰
- becoming less passionate about work⁷⁹;
- having their relationship with colleagues be negatively affected;³⁶ and
- experiencing other bullying behaviour.⁷⁹

These adverse consequences to legal professionals' productivity and their relationships with others within the workplace may impact on the quality of services that consumers receive.

Sexual harassment can have unacknowledged consequences for legal institutions. One article comprehensively outlines the ways in which sexual harassment can incur financial costs for law firms as they respond to complaints and may also cause reputational damage to firms.⁸⁰ This reinforces the need for legal institutions to prevent and address sexual harassment within the workplace.

6.2 Lessons from the health profession

Several publications in this review also identified how unprofessional and disruptive behaviours within the health profession may have adverse consequences for staff wellbeing and patient outcomes. Whilst these publications were not specifically focused on sexual harassment, and examined the health profession, rather than the legal profession, they highlight the potential for problem behaviours within the workplace to negatively impact on staff members and affect the quality of services that consumers receive.

For example, an article on unprofessional behaviour (e.g. bullying, discrimination, sexual harassment) in the health profession discussed the various impacts that such behaviour can have on staff members.⁸¹ This included:

- reduced psychological wellbeing and increased stress,^{82, 83 and 84 in 81}
- less communication and teamwork,^{82, 83 and 84 in 81}
- less concentration,^{82, 83 and 84 in 81}
- reduced staff satisfaction,^{85 in 81}
- increased staff absenteeism,^{86 in 81}
- reduced staff retention, which can result in costly staff turnover.^{87 in 81}

The article also highlighted that unprofessional behaviours can impact on patients, leading to patient dissatisfaction,^{88 in 81} greater medico-legal risk,^{88 and 89 in 81} and threats to the safety and wellbeing of patients.^{84, 90 and 85 in 81}

One of the studies cited in that article, that was also identified in this review, was a US survey of 4,530 health professionals on the impacts of disruptive behaviour by physicians and nurses in hospital settings.⁸⁴ Respondents in that study identified a range of outcomes that such behaviour can have on staff members and teams. This included:

- stress
- frustration
- loss of concentration
- reduced teamwork
- reduced communication
- reduced information transfer
- impaired relationships between nurses and physicians
- staff dissatisfaction.⁸⁴

Respondents of the study also identified that disruptive behaviour may affect a variety of clinical outcomes, with 67% of respondents stating that they felt there was a link between disruptive behaviour and adverse events, and 71% stating that they felt there was a link between disruptive behaviour and medical errors.⁸⁴ Respondents also reported that disruptive behaviour may affect:

- patient safety;
- quality of care;
- response and treatment times; and

- patient mortality.⁸⁴

Almost one-fifth of respondents reported that they knew of an adverse event that occurred due to disruptive behaviour, with 75% of these respondents stating that they believed the event could have been prevented.⁸⁴

The threat that unprofessional behaviour within the health profession may pose to patients' health and wellbeing should not be underestimated. In a US study on the relationship between unprofessional behaviour by surgeons and surgical complications in their patients, patients whose surgeons had a greater number of co-worker reports for unprofessional behaviour (i.e. poor or unsafe care, lack of clear and respectful communication, lack of integrity, and/or lack of responsibility) in the 3 years prior to their surgery, were significantly more likely to experience a surgical complication.⁹¹ The authors of the study note how such behaviour may negatively impact on the performance of surgical teams, leading to greater risk of complications in patients.⁹¹

Whilst these studies were not focused on sexual harassment or on the legal profession, they provide evidence on how behaviour that compromises safety and respect within the workplace may lead to adverse outcomes for consumers.

6.3 Sexual harassment and consumer harms

The review identified evidence of poor conduct and sexual harassment as a failure in professional standards. Both may have the potential to cause harm to consumers and clients. No publications in this review provided direct evidence of consumer harms arising from sexual harassment of legal professionals.

Unprofessional behaviour has been found to affect wellbeing and stress levels, reducing the concentration, communication and collaboration required to competently deliver professional services. Behaviour that may be considered unprofessional more generally is associated with client dissatisfaction and complaints, error in provision of services and increased litigation risk.⁹²

Several publications highlighted the potential for sexual harassment to negatively impact on the mental and emotional health of legal professionals, their productivity, and their career prospects.^{36, 38, 79} To the extent that these impacts may negatively affect the efficiency of legal professionals and the quality of their work, conceivably these issues may have flow-on repercussions for consumers. Sexual harassment, and a failure by employers to properly address it, may also result in legal professionals leaving their roles or exiting the legal industry altogether,³⁸ resulting in a loss of valuable expertise and skills.

6.4 Lessons from other workplace contexts

A number of resources have been designed to address sexual harassment in the workplace. Although not specific or tailored to legal contexts or professional regulation, they may provide some guidance for small and medium size legal firms. These include:

- The Australian Human Rights Commission’s resource on addressing sexual harassment in the workplace – *Ending Workplace Sexual Harassment: A resource for small, medium and large employers*.⁹³ This resource aims to help employers understand and meet their obligations under the *Sex Discrimination Act 1984 (Cth)*.⁹³
- The Fair Work Ombudsman’s helpline which provides free advice for employers, including a designated telephone line available during business hours.⁹⁴
- The Diversity Council Australia’s report – *Myth busting sexual harassment at work*.⁹⁵ This myth busting guide provides detailed frameworks for action on each of the myths listed so that employees and workplaces can stand up to safety and respect at work.⁹⁵ The guide can be downloaded by Diversity Council Australia members.
- The Champions of Change Coalition’s resource – *Disrupting the System, Preventing and responding to sexual harassment in the workplace*.⁹⁶ This resource offers a guide to future approaches, leadership actions and practical resources to address sexual harassment in the workplace.⁹⁶

6.5 Strategies for addressing sexual harassment and improving professional standards in legal settings

Review questions

3. What professional standards and risk management strategies have been developed to address sexual harassment in the professions?
4. What application do these have to improving professional standards in legal settings?

The evidence review identified strategies to address sexual harassment in legal settings however there was no evidence of these strategies being evaluated.

In each Australian jurisdiction, the legal profession has several specific policies, rules and regulations which relate to professional conduct for solicitors and barristers. Table 1 shows the Solicitors and Barrister Rules which specifically address sexual harassment. These rules expressly state that solicitors and barristers should not engage in sexual harassment during the course of their practice, with the exception of the *Legal Profession Conduct Rules 2010 (WA)* which uses the term ‘unlawful harassment’.⁷¹

The *Legal Profession (Barristers) Rules 2021 (ACT)* is the only set of Rules which specifically provides a detailed definition of sexual harassment, that being unwelcome sexual advances, unwelcome requests for sexual favours, or unwelcome conduct of a sexual nature in circumstances in which a reasonable person would have anticipated that the person would be humiliated, offended or intimidated.⁷² The remaining Rules define sexual harassment as unlawful under the relevant state, territory or federal legislation.

Table 1. Solicitors and Barristers Rules in Australia which specifically address sexual harassment.

Jurisdiction	Regulation	Description
ACT	<i>Legal Profession (Solicitors) Conduct Rules 2015 (ACT)</i>	Rule 42.1.2 states that a solicitor must not engage in conduct which constitutes sexual harassment in the course of their practice.
	<i>Legal Profession (Barristers) Rules 2021 (ACT)</i>	Rule 122.2(a) states that a barrister shall not, in any professional context, engage in sexual harassment. According to Rule 122.2(b), this includes unwelcome sexual advances, unwelcome requests for sexual favours, or unwelcome conduct of a sexual nature in circumstances in which a reasonable person would have anticipated that the person would be humiliated, offended or intimidated.
NSW	<i>Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (NSW), r 42.1.2</i>	Rule 42.1.2 states that a solicitor must not engage in conduct which constitutes sexual harassment in the course of their practice.
	<i>Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW)</i>	Rule 123(b) states that a barrister must not engage in conduct which constitutes sexual harassment in the course of their practice.
South Australia	<i>Australian Solicitors' Conduct Rules 2011 (SA)</i>	Rule 42.1.2 states that a solicitor must not engage in conduct which constitutes sexual harassment during the course of their practice.
Queensland	<i>Australian Solicitors Conduct Rules 2012 (Qld)</i>	Rule 42.1.2 states that a solicitor must not engage in conduct which constitutes sexual harassment during the course of their practice.
Tasmania	<i>Legal Profession (Solicitors' Conduct) Rules 2020 (Tas)</i>	Rule 47(b) states that a solicitor must not engage in behaviour which constitutes sexual harassment during the course of their practice.

	<i>Legal Profession Uniform Conduct (Barristers) Rules 2015 (Tas)</i>	Rule 123(b) states that a barrister must not engage in conduct which constitutes sexual harassment during the course of practice.
Victoria	<i>Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic)</i>	Rule 42.1.2 states that a solicitor must not engage in conduct which constitutes sexual harassment during the course of their practice.
	<i>Legal Profession Uniform Conduct (Barristers) Rules 2015 (Vic)</i>	Rule 123(b) states that a barrister must not engage in conduct which constitutes sexual harassment during the course of practice.
Western Australia	<i>Legal Profession Conduct Rules 2010 (WA)</i>	Rules 17(5)(b) states that a practitioner must not engage in conduct which constitutes unlawful harassment.
	<i>Western Australian Barristers' Rules (WA)</i>	Rule 117(b) states that a barrister must not engage in conduct which constitutes sexual harassment during the course of practice.

This review identified empirical and non-empirical publications and media articles which identified professional standards and risk management strategies for addressing sexual harassment. This included strategies both implemented and recommended for the legal profession, and these are shown in Appendix D Tables 1 and 2 respectively. A small number of publications discussed strategies implemented and recommended in other professions but have nevertheless been included in this review as they provide insight into the types of strategies that may be useful for the legal profession.

6.5.1 Strategies for the legal profession

The following section outlines the types of strategies implemented by and recommended for the legal profession to address sexual harassment identified from the publications in this review. As shown in Appendix D Table 1, the most common types of strategies implemented in the profession identified in the review publications included:

- reporting and complaints processes (39.3%; n=11);
- sexual harassment policies (14.3%; n=4); and
- training (14.3%; n=4).

As shown in Appendix D Table 2, the most common types of strategies recommended to address sexual harassment in the legal profession included:

- reporting and complaints processes (42.9%; n=12);
- training (35.7%; n=10);
- sexual harassment policies (35.7%; n=10); and
- improving the culture of the profession (17.9%; n=5).

Development of workplace standards

Three studies recommended the development of workplace standards and good practice principles as a mechanism to address the issue of sexual harassment within the legal profession. In the review of the legal profession's responses to harassment in South Australia, it was recommended that the profession adopt the *Workplace Equality and Respect Standards* developed by Our Watch which includes the following actions from organisations:

- a commitment to the prevention of harassment
- conditions that promote gender equality
- culture that challenges the norms, practices and structures that drive gender equality
- support for those who experience harassment; and
- core business practices that align with an organisation's commitment to the prevention of harassment.^{97 in 37}

The same study also recommended that legal professions adopt good practice principles in relation to the use of non-disclosure agreements. The use of non-disclosure agreements in response to sexual harassment may contribute to a culture of silence, allow perpetrators to evade accountability and exacerbate feelings of isolation among victim-survivors. The study recommended that the profession adopt a victim-centred approach which ensures that the victim-survivor has control over whether they enter into such agreements. The NZ Law Society also discussed the need for clearer conduct standards within the legal profession which expressly identify sexual harassment, bullying and discrimination as unacceptable conduct.⁹⁸

Sexual harassment policies

Two studies examined the implementation of sexual harassment policies in the legal profession.^{36,38} In the IBA's global study on sexual harassment within the legal profession, it was found that 53% of workplaces surveyed had policies about bullying and sexual harassment, but only one in five workplaces regularly informed employees about their rights and obligations under these policies.³⁸ The prevalence of policies also varied widely by workplace type, with government workplaces having the highest prevalence, and barristers chambers having the lowest prevalence.

In the Victorian study on sexual harassment in the legal profession, less than half of principals of legal organisations who responded to the survey reported that their organisation had a policy which addressed sexual harassment (44%).³⁶ Respondents from small workplaces were less likely to report the existence of a policy (65%) compared to respondents from larger workplaces (90%). Approximately half of the legal practitioners who completed the survey reported that their organisation had a sexual harassment policy (54%). Of the organisations which had sexual harassment policies, 88% regularly communicated the policy to new employees as part of the induction process.

Studies often recommended that legal professions should implement a specific policy to address sexual harassment within the workplace. In the survey of legal professionals which aimed to examine the drivers of attrition and retention in the profession, it was recommended

that organisations should develop clear and accessible policies on addressing sexual harassment.³⁵

The study on sexual harassment in the legal profession in South Australia recommended that policies to address sexual harassment include the following:

- A declaration that sexual harassment will not be tolerated.
- Information relating to internal and external complaint-handling procedures.
- Highlight the importance of confidentiality.
- Information relating to internal and external support services, including links to relevant websites.
- Specifying the need to store secure records about complaints of sexual harassment.³⁷

In the same global study mentioned above, the authors recommended that the profession should take the following into consideration when developing policies:

- The policy should be broadly framed and not be limited by strict legal definitions of sexual harassment.
- Policies should be alert to the various work environments of legal professionals in which sexual harassment may occur, including client offices, other legal workplaces, chambers and courts.
- Employees should be regularly reminded of the policies' content and procedures.³⁸

Studies also recommended that legal professions regularly review and update their policies to ensure they eliminate, as far as practicable, the risks of harm arising from sexual harassment.^{37,38}

Training

Training for legal professionals was identified as an important strategy to address sexual harassment, with two studies providing examples of how this has been implemented in the legal profession.^{36,38}

In the IBA global study, 22% of participants reported that their workplace conducted training on bullying and sexual harassment.³⁸ However, participants who had received training were equally as likely to have experienced sexual harassment in their workplace compared to those who did not receive training.

The Victorian study on sexual harassment in the legal profession found that specific sexual harassment training was uncommon in workplaces, with only 13% of principals of legal organisations reporting that sexual harassment training was provided to their employees.³⁶ Only 44% of legal practitioners who responded to the survey reported receiving sexual harassment training. Of those organisations that did provide training, content included examples and definitions of sexual harassment and information about reporting and complaints processes within and external to the organisation.

Several studies recommended that the legal profession should implement specialised training to prevent and respond to sexual harassment. For example, the study examining sexual

harassment in the legal profession in South Australia recommended that legal profession workplaces deliver yearly Continuing Professional Development (CPD) courses on bullying, discrimination and harassment.³⁷ They recommended that the training include information on the nature, drivers and impacts of sexual harassment, and how to report incidents of harassment and support victim-survivors. Another study which found high rates of sexual harassment occurring within the legal profession in the ACT also recommended the introduction of mandatory CPD courses on sexual harassment.⁹⁹

The IBA's global study on sexual harassment in the legal profession recommended the introduction of sexual harassment training that is:

- supported at the highest level of the organisation;
- held regularly and conducted in an interactive manner;
- is reflective of relevant workplace examples, scenarios and procedures;
- targeted towards all negative workplace behaviour, not just behaviours that are prohibited by law; and
- regularly evaluated for efficiency.³⁸

Reporting mechanisms

Studies discussed the implementation of reporting and complaints mechanisms to respond to sexual harassment within the legal profession. The AHRC *National Inquiry into Sexual Harassment in Australian Workplaces* provided a case study of a program developed by the Office of the NSW Legal Services Commissioner (OLSC) that includes a new process for reporting sexual harassment to the OLSC either via telephone or their website.² The report can be made anonymously, and staff have been trained to handle the reports sensitively and supportively.

Several studies explored participants experiences of reporting mechanisms within their workplace, with reporting rates appearing to be low across the studies. In the IBA global survey, experiences of sexual harassment were only reported in 21% of cases.³⁸ Of those participants who did report the harassment, one-quarter assessed their workplace's response as 'sufficient' or better. Similarly, in the study exploring the prevalence and nature of sexual harassment in the Victorian legal profession, 81% of participants who had experienced sexual harassment did not make a complaint to their workplace.³⁶ Of those participants who did make a complaint, 41% reported that their complaint was ignored and 38% reported being treated less favourably in the organisation after making the complaint.

There was some evidence that the existence of a sexual harassment policy may have a positive impact on reporting behaviours. In the IBA study, 72% of participants whose workplaces had a sexual harassment policy reported knowing who was responsible for managing complaints.³⁸ Similarly, 79% were confident that complaints would be managed in a thorough, confidential and impartial manner.

Studies also identified barriers that prevented participants from reporting sexual harassment, including:

- fears of retribution or negative impacts on their career prospects;^{36, 37, 79, 100}
- thinking that sexual harassment was not a serious issue;^{36, 37, 79}
- not knowing how to make a complaint;^{79, 100}
- thinking that action would not be taken;^{37, 79}
- acceptance of sexual harassment within the profession;^{37, 79} and
- feeling that the allegations would not be believed.⁷⁹

Studies also highlighted the impact that unequal power imbalances can have on reporting behaviours, as participants sometimes did not want to report sexual harassment if the perpetrator was in a senior position in the organisation.^{37, 79}

Studies also made recommendations for how sexual harassment reporting and complaints mechanisms within the legal profession could be improved. This included:

- Implementing more flexible reporting models that have multiple points of contact which assure individuals that reports of sexual harassment will be managed sensitively.³⁸
- Allowing individuals to make anonymous reports of sexual harassment where appropriate.⁹⁹
- Implementing a mandatory reporting scheme operated by the NSW Law Society and NSW Bar Association which requires legal practices to provide de-identified information about complaints of sexual harassment against legal practitioners for the purposes of data and reporting.⁹⁹
- Legal practices should ensure they conduct regular reviews of their complaint's mechanisms.⁹⁹
- Digitising reporting processes through the use of technology, such as mobile applications to allow employees to submit anonymous reports, ensuring that complaints are tracked and followed up, streamlining how HR departments deal with complaints and making redress procedures more efficient.¹⁰¹

Improving workplace culture

It is also necessary to implement strategies to improve workplace cultures which may allow sexual harassment to occur. For example, the NSW OLSC has identified sexual harassment as a workplace health and safety issue and has aimed to end the 'culture of silence' surrounding sexual harassment in the profession by encouraging workplaces to implement victim-centred reporting processes.² A US study on problematic behaviours within law firms recommended that leaders should create a positive workplace culture that treats all employees with civility and respect.¹⁰² This should also include a zero tolerance for negative behaviours to ensure that employees can work without fear. The study also noted that failure to address problematic workplace culture can have negative costs to the organisation, including low employee morale, creating a climate of fear, high employee turnover, negative impacts on the organisation's reputation and risk of litigation.

Other strategies

Several other strategies to address sexual harassment within the legal profession were recommended by the studies identified in this review. These included:

- ensuring law students receive adequate education about sexual harassment during their studies;³⁷
- raising awareness about sexual harassment;³⁸
- sharing best practice insights across the profession;³⁸
- reforming the procedures around confidentiality and suppression to increase transparency and accountability;⁹⁸
- ensure senior leaders are held accountable for the behaviour of their employees;¹⁰²
- collecting monitoring data and reviewing current practices;³⁸ and
- bridging the gap between the legal definitions of sexual harassment and people's perceptions of what behaviours constitute sexual harassment.¹⁰³

There are a number of sexual harassment response frameworks and strategies discussed in media opinion pieces. Relevant examples in 2021 include:

- Breckenridge and Unisearch outline actions that law firms can take to drive cultural change and reduce sexual harassment in the workplace.¹⁰⁴
- Keyes, Hickey and Phelan provide steps employers can take to understand and meet their obligations in relation to addressing workplace sexual harassment.¹⁰⁵

The former is intended for consideration in legal contexts,¹⁰⁴ whilst the latter targets workplaces generally.¹⁰⁵ Both provide evidenced based guidance to workplaces to consider^{104, 105}

6.5.2 Strategies in other professions

The review identified strategies to prevent and respond to sexual harassment in other professions that may provide useful insights for developing professional standards in the legal profession.

In a study of sexual misconduct perpetrated by health professionals, the most common outcomes of these cases included no further action being taken (62.6%), suspension or cancellation of the person's registration (19.6%), a caution, reprimand or fine (14.5%) or being referred to another body to deal with the complaint (3.1%).¹⁰⁶

Another publication did not discuss responses for any specific profession but instead made recommendations for how organisations can address sexual harassment more generally.¹⁰⁷ The authors recommended that workplace response to sexual harassment could be improved by implementing the following:

- Bystander intervention training which teaches employees what to do if they notice signs of sexual harassment.

- Training for managers to recognise the early signs of harassment and how to intervene appropriately.
- Train-the-trainer programs which allows employees to become leaders committed to changing the culture.
- Harassment taskforces which can take a lead on the issue and develop solutions tailored to the company's specific needs.¹⁰⁷

It should be noted that the review did not identify any evaluative evidence of strategies to address sexual harassment within the legal profession. Rather, studies either included surveys or case studies to identify responses implemented in the profession, or conceptual discussions of responses to sexual harassment. Our ability to determine the effectiveness of the strategies identified in the review is therefore limited.

7. Conclusion

Workplace sexual harassment is a prevalent issue that can have adverse consequences for individuals who have experienced harassment. Sexual harassment has been shown to have negative impacts on legal professionals' mental health, career prospects and productivity, and legal professionals may face barriers in reporting harassment either within or external to their organisation. Workplace sexual harassment may also cause reputational damage to firms, increased employee turnover, and absenteeism, all of which may incur additional financial costs for organisations.

Given this evidence, it is reasonable to suggest that sexual harassment may have negative impacts on legal professional's work product and the quality of services consumers receive. Effective strategies to prevent and respond to sexual harassment within the legal profession work to ensure consumers receive high quality services may include the development of consistent workplace and professional standards, sexual harassment policies, training, reporting mechanisms and strategies to change the culture of the profession.

Further research is required to better understand the specific consumer harms that may arise as a result of sexual harassment of legal professionals.

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Appendix

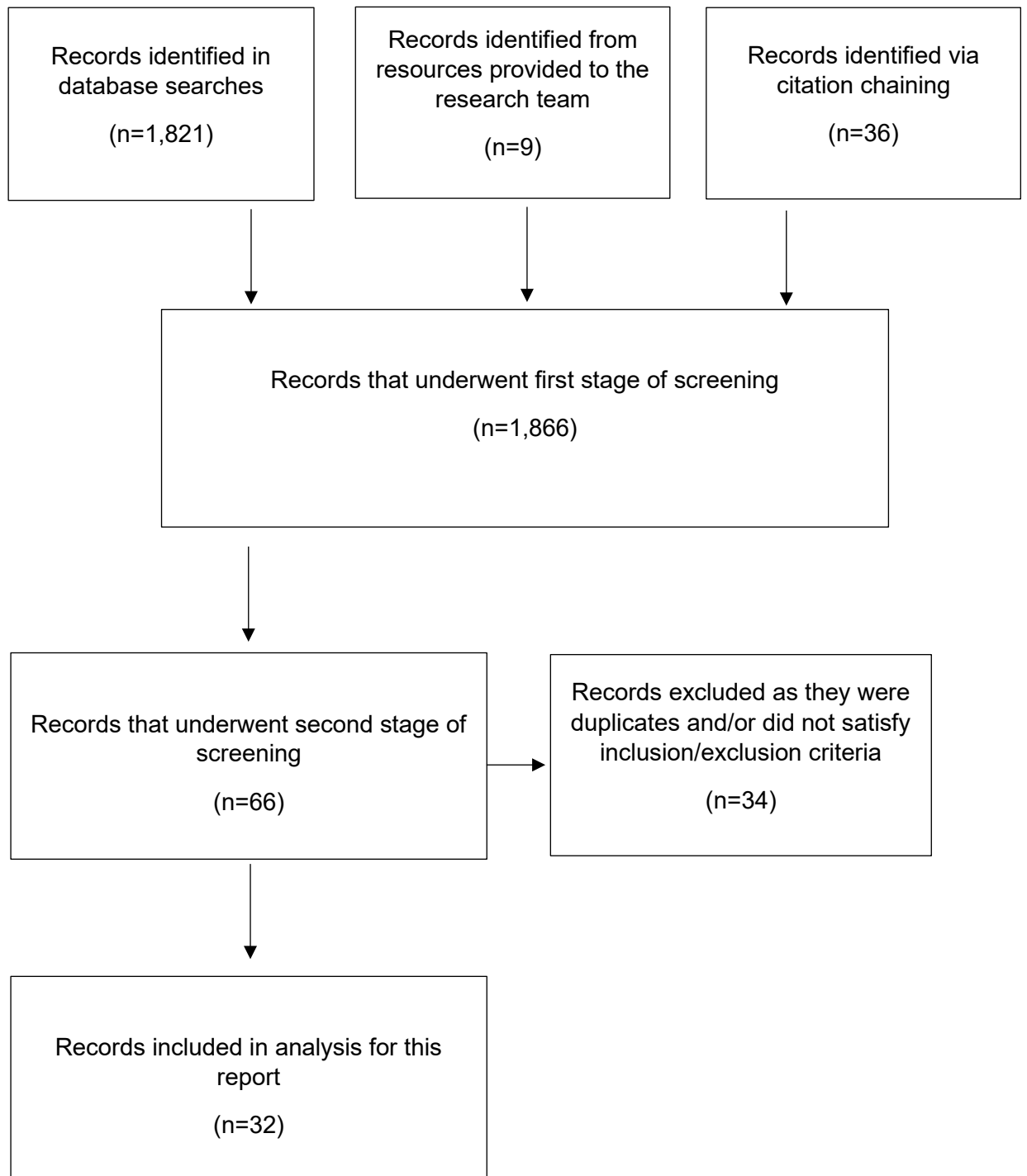
Appendix A: Search terms used in database searches

Table 1. List of search terms used in database searches

Concept 1 (sexual harassment)	Concept 2 (legal profession)	Concept 3 (employee harms)	Concept 4 (consumer harms)
sexual harassment	legal profession*	productiv*	malpractice
sexual n/5 harassment	lawyer*	performance	client n/5 harm*
sexual n/5 harass*	solicitor*	job satisfaction	consumer n/5 harm*
sexual misconduct	barrister*	work* satisfaction	client satisfaction
sexual n/5 misconduct	judge*	employment satisfaction	client dissatisfaction
unwanted sexual attention	judiciary	job dissatisfaction	
unwanted sexual contact	magistrate*	work* dissatisfaction	
workplace bullying	judicial officer*	employment dissatisfaction	
	legal service*	absent*	
	law firm*	present*	
	law practice*	time off	
	legal practice*	leave	
	court*	turnover	
		wellbeing	
		resign*	
		stress	
		burnout	
		career outcome*	
		employment outcome*	
		career consequence*	
		employment consequence*	
		retention	
		tard*	

Appendix B: Search results

Figure 1. Search results



Appendix C: Summary of publications identified in review

Table 1. Summary of publications relating to sexual harassment in the legal profession

Citation	Key Findings
AHRC ² <i>Empirical</i>	This inquiry into sexual harassment in Australian workplaces discussed strategies implemented by the legal profession to address sexual harassment. This included a program implemented in 2019 by the OLSC to improve the culture in the NSW legal profession in relation to sexual harassment. The program encourages law practices to adopt effective, victim-centred processes to prevent and respond to reports of sexual harassment. Also includes a new process for people to make reports to the OLSC about sexual harassment by a person in a law practice.
Appleby ¹⁰⁸ <i>Non-empirical</i>	This media article discussed the pressing need for cultural change within the legal profession to address issues, such as sexual harassment. It discussed the need for an independent complaints mechanism for the federal judiciary which extends to former judges, and highlighted that a complaints body should have the capacity to investigate and impose penalties for misconduct.
Bornstein ¹⁰⁹ <i>Non-empirical</i>	This media article discussed the need for proper investigations into allegations of sexual misconduct. It also highlighted steps taken by courts to make workplaces safer, including implementing additional judicial education and, new policies and processes.
Colmar Bruton ⁷⁹ <i>Empirical</i>	This survey of lawyers in New Zealand, identified the effects of sexual harassment on lawyers including: effects on emotional/mental wellbeing, effects on job/career prospects, experiencing further bullying behaviour, and changes in personal behaviour/outlook. Only 12% of lawyers who experienced sexual harassment formally reported or made a complaint about it. The survey identified a range of reasons for why respondents did not seek support or make a complaint.
Doraisamy ¹¹⁰ <i>Non-empirical</i>	This media article discussed the need for structural remedies in workplaces to address sexual harassment, such as requiring employers to introduce mandatory training to facilitate cultural systemic change, and having sexual harassment policies in workplaces.
Equal Opportunity Commission ³⁷ <i>Empirical</i>	In this study of South Australian Legal Profession, a range of barriers to reporting sexual harassment were identified, including: concerns about repercussions if they report, not knowing conduct was sexual harassment or not thinking the sexual harassment was serious enough, and not thinking any action would be taken. The study also made a number of recommendations for addressing sexual harassment in the profession.
Franklin and Pender ¹⁰¹ <i>Non-empirical</i>	This discussion paper examined how new technology may be used to facilitate reporting of sexual harassment in the workplace (e.g. applications that allow anonymous and/or encrypted reporting, Artificial Intelligence (AI) technology that can follow up with employees following reporting) and overcome some of the challenges associated with traditional reporting.
Galloway ¹¹¹	This media article discussed the need for cultural change in the legal profession to address sexual harassment. It highlighted that the

<i>Non-empirical</i>	government needs to be committed to increasing the diversity in the judiciary.
Grattan ¹¹² <i>Non-empirical</i>	This media article discussed the recommendations of the independent investigation commissioned by the High Court after it received allegations of sexual harassment perpetrated by former judge Dyson Heydon. The recommendations included but were not limited to: developing a HR policy to cover personal staff of justices, reviewing the induction of associations to ensure it covers relevant material, and identifying an appropriate person to liaise with associates and provide support to them if necessary.
Morton ⁸⁰ <i>Non-empirical</i>	In this article on sexual harassment in the legal profession, a number of impacts of sexual harassment were identified, including: negative impacts on employee turnover, negative impacts on employee morale, increased employee absenteeism, costs arising from responding to complaints, and damage to a lawyer's or legal firm's reputation.
Neilson ¹¹³ <i>Non-empirical</i>	This media article discussed the implementation of a platform for legal professionals to anonymously report bullying and sexual harassment. The platform provides users with resources and options pursue their complaints, such as counselling, links to women's collective groups, and contact details for reporting.
Neilson ¹¹⁴ <i>Non-empirical</i>	This media article discussed the need for the legal profession to adopt robust mechanisms to prevent sexual harassment and bullying. It highlighted that policies must recognise the power imbalances that often facilitate such behaviour.
Neilson ¹¹⁵ <i>Non-empirical</i>	This media article discussed a new portal launched by the NSW Law Society to provide information and training to solicitors on sexual harassment and give them resources to get assistance and avenues to lodge complaints. The portal includes information for both solicitors who have experienced sexual harassment and for those that have witnessed it in the workplace.
Neilson ¹¹⁶ <i>Non-empirical</i>	This media article emphasised that legal workplaces should take proactive steps to address sexual harassment. It highlighted the need for a single regulator that is tasked with identifying compliance issues where employers fail to take steps to prevent future sexual harassment incidents. The article also noted the importance of having a sexual harassment policy that outlines procedures for responding to complaints, and policies and practices that develop a culture aimed at proactively preventing sexual harassment.
Neilson ¹¹⁷ <i>Non-empirical</i>	This media article discussed the NSW Supreme Court's new protocols for investigating and managing sexual harassment complaints. Under these protocols, a small group of senior members of the court will be created to provide confidential advice and support to complainants. The recording of complaints will be done transparently and confidentially, and investigations will be done by independent external advisers or referred to the Judicial Commission.
New Zealand Law Society Working Group ⁹⁸	This report made a number of recommendations for enabling better reporting, prevention, detection and support in relation to sexual harassment and other inappropriate workplace behaviour in the legal profession. This included but was not limited to: having clearer conduct

<i>Non-empirical</i>	standards, having closer regulation of workplace obligations, reforming procedures relating to confidentiality and suppression, and changing the complaints process of the Lawyers Complaints Service.
Pender ³⁸ <i>Empirical</i>	In this global survey of the legal profession, several impacts of sexual harassment on legal professionals were identified including: leaving or considering leaving their workplace or profession, experiencing depression, feeling helpless, becoming less trusting of colleagues and becoming less willing to engage in work events. Experiences of sexual harassment were only reported in 21% of cases, and 53% of respondents' workplaces policies addressing bullying and sexual harassment, whilst 22% had training addressing these issues. The report made a number of recommendations for addressing bullying and sexual harassment.
Rikleem ¹⁰² <i>Empirical</i>	In this US survey on workplace and conduct behaviours of law firms, a number of barriers to reporting offending behaviours were identified, including: poor experiences of those who had reported in the past, fears of negative repercussions of reporting, and lack of clear reporting avenues. The report made recommendations for developing safe and respectful environments in firms. This included but was not limited to: engaging leadership to create a positive firm culture, implementing measures to hold firm leader accountable for the behaviours of employees they supervise or manage, and conducting internal self-assessments to identify areas of challenge.
Ryan and Neilson ¹¹⁸ <i>Non-empirical</i>	This media article discussed the need for workplaces to identify personality traits among potential employees that may contribute to sexual harassment, and outlined steps that workplaces can take to determine if potential employees are a good fit for the organisation (e.g. performing risk assessments on potential employees, having better education and training of recruitment staff, and using more investigative recruitment techniques).
Sterling and Chanow ¹¹⁹ <i>Empirical</i>	This US study on why women lawyers are leaving their jobs and the profession identified sexual harassment as an ongoing issue in law firms and recommended the implementation of sexual harassment training for partners in firms.
The Law Society of NSW Young Lawyers ¹⁰⁰ <i>Empirical</i>	This submission reported on the results of a survey of NSW Young Lawyers which found that 70.11% of respondents who had been sexual harassment in the workplace or witnessed sexual harassment in the workplace never made a complaint. Reasons as to why respondents did not make a complaint were identified. The submission also made recommendations for addressing sexual harassment, including but not limited to: requiring employers to take all reasonable steps to prevent sexual harassment in the workplace, and increasing the time limit for making sexual harassment complaints to the AHRC to at least 12 months.
Victorian Legal Services Board and Commissioner ³⁶ <i>Empirical</i>	In this study, a range of short-term and long-term impacts of sexual harassment on legal professionals were identified including discomfort /awkwardness at work, negative effects on mental health and stress, and negative effects on self-esteem/confidence. The majority (81%) of incidents of personally experienced sexual harassment were unreported, and the study identified outcomes of and barriers to reporting.

Wallace et al. ³⁵ <i>Empirical</i>	This report outlined the results of a study on the drivers for attrition of women from the Australian legal profession. The report made a number of recommendations. Some of these recommendations had relevance to the topic of addressing sexual harassment. These included: developing clear and accessible policies and guidelines on addressing gender discrimination, sexual harassment and bullying, developing clear and accessible complaint processes for these issues, and conducting training on these issues.
Webb ¹²⁰ <i>Non-empirical</i>	This media article discussed how more needed to be done to address sexual harassment in the legal profession. Recommendations for doing this included: regulating judges through an enforceable judicial code of ethics and an independent forum to deal with judicial complaints at the federal level, introducing regulation that place a positive obligation on legal practitioners to report harassment that they are aware of to the regulatory authority, and outlaw the use of non-disclosure agreements to enforce victims' silence in settlements.
Women Lawyers Association ACT ⁹⁹ <i>Empirical</i>	This submission reported on the results of a survey on sexual harassment in the ACT legal profession. The survey found that only 22% of respondents had made a complaint about their experience of sexual harassment and identified reasons as to why respondents did not make a complaint. The submission also made recommendations for addressing sexual harassment. This included having legal regulatory bodies: provide guidance on best practice policies and workplace training, reporting the number of sexual harassment complaints received annually, requiring continuing professional development (CDP) training on sexual harassment and conducting a review of complaint mechanisms in the legal profession to increase the effectiveness of the complaints process.
Women Lawyers Association of NSW ¹⁰³ <i>Empirical</i>	This submission reported on the results of a survey of members of the Women Lawyers Association of NSW. The survey found that 82% of respondents had not made a sexual harassment complaint to their employer and identified reasons as to why respondents did not make a complaint. The submission made recommendations for addressing sexual harassment including: bridging the gap between the legal definition of sexual harassment and people's perceptions of behaviours that constitute sexual harassment, having the AHRC publish a guidelines on the steps that a person must take to eliminate sexual harassment (including bystander provisions), and introducing a mandatory reporting scheme.
Women Lawyers of Western Australia ¹²¹ <i>Empirical</i>	This submission reported on the result of a survey by the Women Lawyers of Western Australia on sexual harassment. The submission also made recommendations for addressing sexual harassment including: providing a statutory mechanisms for employers to respond to sexual harassment complaints in the workplace, giving workers an avenues to apply to the Fair Work Commission or the Industrial Relations Commission for orders to stop workplace sexual harassment, and amending occupational health and safety legislation to expressly provide for sexual harassment.

Table 2. Summary of publications relating to sexual harassment in other professions

Citation	Key Findings
Bismark ¹⁰⁶ <i>Empirical</i>	In this study on sexual misconduct by health professionals in Australia, the results found that in the majority of closed cases, no further action (62.6%) was taken. A small percentage (3.1%) of cases resulted in a referral to another body, whilst 14.5% resulted in a caution, reprimand fine or undertaking, and 19.6% resulted in registration condition, suspension or cancellation of registration.
Cooper et al. ⁹¹ <i>Empirical</i>	In this US study, patients whose surgeons had a higher number of co-worker reports for unprofessional behaviour in the 36 months prior to the procedure were significantly more likely to experience a surgical complication.
Dobbin and Kalev ¹⁰⁷ <i>Non-empirical</i>	This article on sexual harassment training programs suggested that traditional training or grievance procedures do not necessarily assist in addressing the issue of workplace sexual harassment. The article
Rosenstein and O'Daniel ⁸⁴ <i>Empirical</i>	In this US survey found of hospital employees, 67% of respondents agreed that disruptive behaviour by physicians was linked with adverse events. Seventy-one percent of respondents agreed that such behaviour was linked with medical errors, 51% agreed that it was linked with patient safety. 71% agreed that it was linked with quality of care and 27% agreed that it was linked with patient mortality. Eighteen percent of respondents said they were aware of an adverse event that had occurred due to disruptive behaviour. Amongst these, 75% said they felt the adverse event could have been prevented.
Westbrook et al. ⁸¹ <i>Empirical</i>	This article on unprofessional behaviour in the health profession identified a number of impacts of such behaviour on, including negative impacts on staff's wellbeing, communication and teamwork, concentration, satisfaction, absenteeism, and retention. It also identified negative impacts on patients, including increased medico-legal risk, increased costs, and increased patient dissatisfaction.

Appendix D: Legal profession strategies implemented and recommended in the publications

Table 1. Strategies implemented in the legal profession to address sexual harassment (N=28).

Type of strategy	Number of articles (%)
Reporting and complaints processes	11 (39.3)
Sexual harassment policies	4 (14.3)
Training	4 (14.3)
Investigation processes	1 (3.6)
Improve the culture of the profession	1 (3.6)
Clearer confidentiality processes	1 (3.6)
Provide support to associates	1 (3.6)
Ensure clearer guidelines for associates	1 (3.6)

Table 2. Strategies recommended for the legal profession to address sexual harassment (N=28).

Type of strategy	Number of articles (%)
Reporting and complaints processes	12 (42.9)
Training	10 (35.7)
Sexual harassment policies	10 (35.7)
Improve the culture of the profession	5 (17.9)
Development of workplace standards	3 (10.7)
Collect data to review current processes	3 (10.7)
Investigation processes	2 (7.1)
Ensure law students receive education about sexual harassment during their studies	1 (3.6)
Raise awareness about the issue	1 (3.6)
Share best practice insights	1 (3.6)
Clearer confidentiality procedures	1 (3.6)
Improve recruitment processes to better identify potential perpetrators	1 (3.6)
Conduct regular check-ins with employees	1 (3.6)
Bridge gap between legal definitions of sexual harassment and employee's perceptions of what behaviours constitute sexual harassment	1 (3.6)
Ensure accountability of senior leaders	1 (3.6)