

INNOVATIVE WAYS TO ELIMINATE UNACCEPTABLE BEHAVIOUR IN THE LEGAL PROFESSION



NEW SOUTH WALES
BAR ASSOCIATION

NSW BAR ASSOCIATION –
PERSPECTIVES AND EXPERIENCES

Professional Standards Councils' Forum - 20 October
2022

Acknowledgment of Country

We are meeting together today from many different places. I acknowledge each of the First Nations Peoples who are the traditional custodians of the land on which we are meeting and pay my deep respects to all Elders past, present and future.

Snapshot of New South Wales Bar Association

- Professional association for practising barristers and associate members (e.g. clerks and judges)
- 2,428 practising barristers (75.12% male and 24.75% female)
- Multiple functions:
 - Designated local regulatory authority for barristers practicing certificates and jointly with OLSC for complaints under the Legal Profession Uniform Law
 - Policy and law reform
 - Ethical Guidance Scheme
 - Legal Assistance Referral Scheme
 - Bar Library
 - Supporting members' wellbeing

Bullying and Sexual Harassment in the Profession

6,980
respondents

from
135
countries

Conducted in
6 languages:
English, French, Italian,
Portuguese, Russian, Spanish

Respondents were:



67% female **32% male** **0.2% non-binary/self-defined**

From across the spectrum of the legal profession: law firms, in-house, barristers' chambers, judiciary, government.



Bullying is rife in legal workplaces, affecting:

**1 in 2 female respondents and
1 in 3 male respondents.**



Sexual harassment is also common, with:

**1 in 3 female respondents and
1 in 14 male respondents**

having been sexually harassed in a work context.

Source – International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (2019)

Updates to *Legal Profession Uniform Conduct (Barristers) Rules 2015*

Amended Rule 123 – Anti-discrimination and harassment:

1. A barrister must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes:
 - (a) discrimination,
 - (b) sexual harassment, or
 - (c) ~~workplace~~-bullying.
2. For the purposes of subrule (1), conduct in connection with a barrister's profession includes, but is not limited to:
 - (a) conduct at social functions connected with the bar or the legal profession; and
 - (b) interactions with a person with whom the barrister has, or has had, a professional relationship.

Amended Rule 125 – Definitions:

~~**workplace bullying**~~ means unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate or cause serious offence to a person ~~working in a workplace~~.

sexual harassment means sexual harassment as defined under applicable state, territory or federal anti-discrimination or human rights legislation.

Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 – Key amendments

- (1) Expanded the provisions of the SDA which make sexual harassment unlawful to **all people conducting a business or undertaking** (i.e. barristers) and introduced the term **worker**, thereby extending the application of the Act to self-employed workers, including barristers
- **Expanded the scope of SDA** to include State public servants, all members of State and Federal parliament, judges and their staff
- New provisions that expressly provide that it is unlawful to harass by seriously demeaning a person on the ground of their sex (**sex-based harassment**)

Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 – Key amendments

(2)

- Provides that it is **unlawful to victimise another person** because the person has made a complaint or taken action with respect to sexual harassment
- **Extended the ‘accessorial liability’ provisions (“a person who causes instructs induces aids or permits another person” to do an unlawful act) to sexual and sex-based harassment**
- **Expanded the “stop bullying” provisions in the *Fair Work Act 2009* to allow the Fair Work Commission to make orders to stop sexual harassment in the workplace**

Challenges for regulators in combatting harassment and bullying in the profession – Underreporting (1)

Targets do not report. In:



57% of bullying cases and 75% of sexual harassment cases,
the incident is never reported.

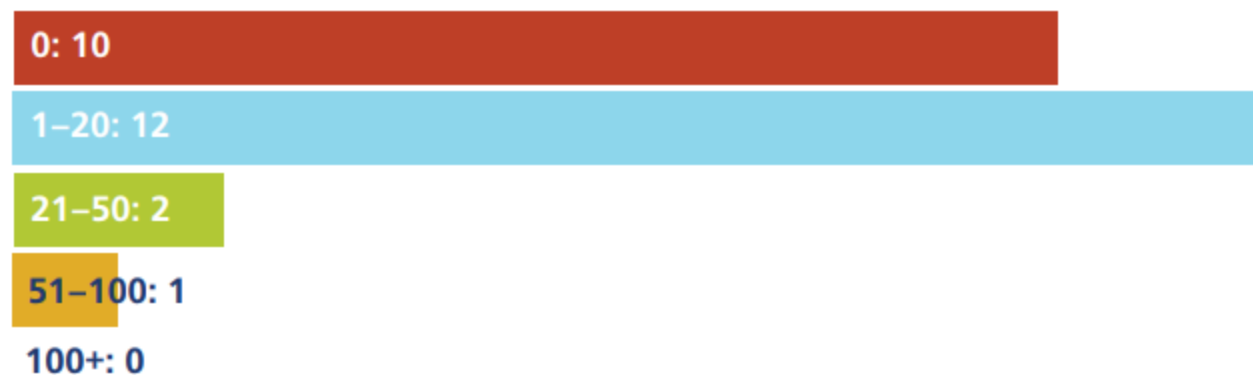


Targets don't report due to:
the status of the perpetrator,
fear of repercussions and the incident
being endemic to the workplace.

Source – International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (2019)

Challenges for regulators in combatting harassment and bullying in the profession –

Number of reports | Number of regulators



Reports of sexual harassment to regulator

Number of reports | Number of regulators



Reports of bullying to regulator

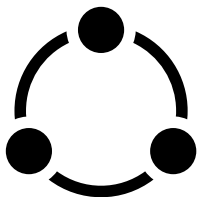
Source – International Bar Association, *Beyond Us Too? Regulatory Responses to Bullying and Sexual Harassment in the Legal Profession* (2022)

Multifaceted Regulatory Approach to Addressing Harassment, Bullying and Discrimination is Needed

1: Proactive CPD, education and standard-setting

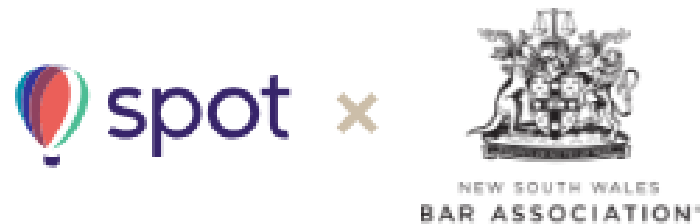
2: Providing avenues for informal disclosures and support for affected persons

3: Investigating and taking decisive action when formal complaints are made



Encouraging informal disclosures and providing support for affected persons

- Spot
- Elker
- Sexual Harassment Officer
- Bar Care
- Grievance handling training for confidantes



- **Online record making tool** designed to make recording (and if desired, reporting confidentially) incidents of harassment, discrimination, bullying and victimisation as easy as possible
- **Option to be contacted by the Sexual Harassment Officer** about the incident recorded
- Sexual Harassment Officer periodically considers anonymised data and **reports to the NSW Bar Association on identified trends and themes**



- **Online reporting platform** managed by the Office of the Legal Services Commissioner
- **Co-funded** by the OSLC, NSW Bar Association and the Law Society of NSW
- Available online 24 hours a day, 7 days per week
- Option to remain anonymous and communicate with **dedicated OLSA team**

Sexual Harassment Officer

- **Dedicated, confidential support function** to anyone who has experienced or witnessed discrimination, bullying or harassment at the NSW Bar
- **Not a grievance handler** – no involvement in investigating or adjudicating complaints
- **Independent** of the Bar Association
- Can be contacted directly or via Spot

BarCare

Confidential
Assistance
BarCare

- **Independent and confidential counselling service** for barristers, Association staff and their immediate families
- Up to 6 consultations provided free of charge
- **Referrals to support services** across NSW
- Sexual Harassment Officer is also the Director of BarCare

Training for Grievance Handlers and Confidantes

- NSW Bar Association has worked with Pysch Safe Pty Ltd to arrange training for:
 - Grievance officers, Heads of Chambers and clerks: in relation to Rule 123
 - Confidantes: trauma and coping, recognition to response, responding in practice and referring requirements

Limb 1: Proactive CPD, education & standard setting

- No place for harassment, bullying and discrimination at the NSW Bar film
- CPDs & guidance materials
- **Recently updated Best Practice Guidelines**
 1. Model Harassment, Discrimination and Bullying Best Practice Guideline, and its two supporting documents:
 - a. Model Grievance and Complaints Framework
 - b. Guidance Materials
 2. Model Parental and Other Extended Personal Leave Guidelines
 3. Bar Association Conduct Guidelines

Respectful Relations Officers / NSW Bar Association Chief Operating Officer

Chambers and floors asked to nominate **at least two Respectful Relations Officers** to receive reports from Complainants about potential breaches of the Model Harassment, Discrimination and Bullying Best Practice Guideline.

NSW Bar Association Conduct Guidelines - issues, concerns and complaints can be reported to the Association's Chief Operating Officer.

Early Results and Reflections (1)

- Informal disclosures remain low to date - consistent with early results in other jurisdictions
- Many individuals who informally disclose indicate that they do not intend to take further action (e.g. lodge a formal complaint)

Early Results and Reflections (2)

2022 practising certificate renewal survey data:

- More than **91%** of respondents reported that they had not experienced discrimination in the past year
- More than **94%** reported not experiencing harassment, including sexual harassment in the past year
- Over **22.5%** of respondents reported experiencing bullying in the past year

**Thank you for your
attention.**

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