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Gendered Violence Research Network

Evidence Snapshot: Professional Standards and Sexual Harassment

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Introduction

This snapshot provides evidence of the prevalence of sexual harassment in the legal profession and identifies the various impacts it can have on legal professionals, workplaces and consumers, and strategies that have been implemented to address it.

Workplace sexual harassment is a significant issue in the Australian legal context, with one recent Victorian study finding women in the legal profession experienced higher rates of sexual harassment (61%) than was the case for women in all Australian workplaces (39%).¹ Further, one in four (25%) legal professionals reported personal experience of sexual harassment within the last twelve months and 57% within the last five years.²

A 2020 survey of individuals who were currently working or had previously worked in the South Australian legal profession found that 42.1% had experienced sexual harassment whilst working in the profession.³ This included 33.3% who had experienced sexual harassment in the profession on more than one occasion.⁴ 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,⁵ highlighting the disproportionate impact of workplace sexual harassment on women. There is also evidence of workplace sexual harassment in the legal context in other Australian jurisdictions.⁶

The costs of workplace sexual harassment

Workplace sexual harassment can have adverse consequences for employees who have experienced harassment. It can have negative impacts on employees' mental health, self-esteem and confidence, and employment and careers.⁷

There are significant costs for employers through lost productivity, increased employee turnover, adverse impacts on workplace culture and increased resources associated with responding to complaints, court proceedings and workers compensation.⁸ In 2019, Deloitte estimated the economic costs of workplace sexual harassment in Australia,⁹ finding that in 2018, workplace sexual harassment resulted in \$2.6 billion in lost productivity, with an average of \$1,053 per victim.¹⁰ Lost productivity included costs relating to absenteeism, presenteeism, staff turnover and manager time, and approximately 70% of these costs were borne by employers.¹¹ 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.

¹ Victorian Legal Services Board and Commissioner, *Sexual harassment in the Victorian legal sector* (Report of findings, 2019) vii; AHRC, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces* (Report, 2018) 8.

² Victorian Legal Services Board and Commissioner (n 1) vii.

³ Equal Opportunity Commission, *Review of harassment in the South Australian Legal Profession* (Report to the Attorney-General, April 2021) 56.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ E.g., Alison Wallace et al, *National Attrition and Re-engagement Study (NARS) Report* (Final report, 2014); Women Lawyers Association of NSW, *Submission to the national inquiry into sexual harassment in the Australian workplace* (Submission, 2019) 9-10; Women Lawyers Association of the ACT, *National inquiry into sexual harassment in Australian workplaces: Submission of the Women Lawyers Association of the ACT* (Submission, February 2019) 6.

⁷ AHRC (n 1) 54; AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 21.

⁸ AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 21.

⁹ Deloitte Access Economics, *The economic costs of sexual harassment in the workplace* (Final report, March 2019).

¹⁰ *Ibid.* 5.

¹¹ *Ibid.* 6.

Impacts of sexual harassment on legal professionals and consumers

Key Findings

- 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.

Interpersonal effects on health and wellbeing

The most common impact of sexual harassment in the literature is its effects on legal professionals' mental and emotional health. In a survey of 3,516 lawyers in New Zealand, 39% of respondents who reported that they had been sexually harassed said that it affected their emotional or mental wellbeing.¹² Research demonstrates that sexual harassment in the legal profession can have a range of adverse consequences for employee wellbeing, including stress, anxiety and depression,¹³ negative effects on self-esteem/confidence,¹⁴ feelings of embarrassment¹⁵ and discomfort/awkwardness in the workplace.¹⁶

It is important to recognise that these impacts may not only affect victim-survivors in the short-term but can also have prolonged impacts.¹⁷ Such impacts on legal professionals' mental and

¹² Colmar Brunton, 'Workplace environment survey', New Zealand Law Society (Presentation for the New Zealand Law Society, 28 May 2018) 24 <<https://www.lawsociety.org.nz/assets/news-files/0009-122679-Report-28-May-2018.pdf>>.

¹³ Ibid; Victorian Legal Services Board and Commissioner (n 1) 36.

¹⁴ Victorian Legal Services Board and Commissioner (n 1) 36-37.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

emotional health may affect their productivity and concentration, which may have negative impacts on their work and the quality of services consumers receive.

Reported effects on career

Research also shows 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 wellbeing.¹⁸ It may be that the alleged perpetrator remains in the workplace and the fear of ongoing harassment means remaining in the workplace is no longer viable. A 2019 study by the International Bar Association (IBA) found that 35.4% of respondents who had experienced sexual harassment had left or were considering leaving their workplace due to the harassment, with 7.5% stating that they had left or were considering leaving the profession altogether.¹⁹ Some respondents (7.2%) also stated that they had switched practice areas or departments or were considering doing so due to the harassment.²⁰

Sexual harassment, and a failure by organisations to address it, present issues in retaining skilled professionals in legal services, and has the potential to negatively impact on the quality of services received by consumers.

Other impacts

Research has also identified a range of other impacts of sexual harassment on individuals in the legal industry. These include becoming more guarded,²¹ losing respect for or trust in others,²² avoiding certain people, situations or events,²³ less productivity,²⁴ having their relationship with colleagues be negatively affected,²⁵ and reduced passion for work.²⁶ These adverse consequences to legal professionals' productivity and relationships with others in the workplace may impact on the quality of services that consumers receive.

Consistent with research highlighting the economic costs of sexual harassment, sexual harassment can also incur costs for law firms responding to complaints.²⁷ Workplace sexual harassment may cause reputational damage to firms,²⁸ employee turnover,²⁹ and absenteeism,³⁰ which may incur additional financial costs for organisations.

Lessons from the health profession

Literature from the health profession has provided some helpful insights into how unprofessional and disruptive behaviours within the workplace can have adverse consequences for staff wellbeing

¹⁸ See, Victorian Legal Services Board and Commissioner (n 1) 37; Kieran Pender, *Us too? Bullying and sexual harassment in the legal profession* (Report, 2019) 66-67; Colmar Brunton (n 12) 24.

¹⁹ Pender (n 18) 67.

²⁰ *Ibid.*

²¹ Colmar Brunton (n 12) 24

²² *Ibid.*; Pender (n 18) 37.

²³ Colmar Brunton (n 12) 24; Pender (n 18) 67.

²⁴ Colmar Brunton (n 12) 24

²⁵ Victorian Legal Services Board and Commissioner (n 1) 37.

²⁶ Colmar Brunton (n 12) 24.

²⁷ Adrienne Morton, 'Sexual harassment in the legal profession' (2018) 144 *Precedent* 34, 35.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

and consumer outcomes. Whilst this research is not specifically focused on sexual harassment or the legal profession, it highlights the potential for problem behaviours within the workplace to negatively impact on employees and affect the quality of services that consumers receive. Such behaviour that compromises safety and respect within the workplace may lead to adverse outcomes for consumers.

Unprofessional and disruptive behaviour within the health profession can have adverse impacts on staff members and teams. This includes reduced psychological wellbeing and increased stress,³¹ reduced concentration, communication and teamwork,³² reduced staff satisfaction,³³ increased staff absenteeism,³⁴ and increased staff turnover.³⁵ At the same time, disruptive and/or unprofessional behaviours may lead to adverse events and medical errors³⁶ and affect patient care and outcomes, such as patient safety and quality of care,³⁷ response and treatment times,³⁸ patient mortality,³⁹ and surgical complications.⁴⁰

Barriers to reporting sexual harassment

Research has also provided insight into the barriers that may prevent legal professionals from reporting sexual harassment, which should be taken into consideration when developing strategies to prevent and respond to harassment. Barriers to legal professionals reporting sexual harassment include fears of retribution or negative impacts on career prospects,⁴¹ thinking that sexual harassment is not a serious issue,⁴² not knowing how to make a complaint,⁴³ thinking that action would not be taken,⁴⁴ acceptance of sexual harassment within the profession,⁴⁵ the perpetrator was in senior position in the organisation,⁴⁶ and feeling that the allegations would not be believed.⁴⁷

³¹ Adrian Loerbroks et al, 'Workplace bullying and depressive symptoms: A prospective study among junior physicians in Germany' (2015) 78(2) *Journal of Psychosomatic Research* 178, Iselin Reknes et al, 'Exposure to bullying behaviours as a predictor of mental health problems among Norwegian nurses: Results from the prospective SUSH-survey' (2014) 51(3) *International Journal of Nursing Studies* 479, and Alan Rosenstein and Michelle O'Daniel, 'A survey of the impact of disruptive behaviors and communication defects on patient safety' (2008) 34(8) *Joint Commission Journal on Quality and Patient Safety* 464, cited in Johanna Westbrook et al, 'Endemic unprofessional behaviour in health care: The mandate for a change in approach' (2018) 209(9) *Medical Journal of Australia* 380.

³² Ibid.

³³ Alan Rosenstein and Michelle O'Daniel, 'A survey of the impact of disruptive behaviors and communication defects on patient safety' (2008) 34(8) *Joint Commission Journal on Quality and Patient Safety* 464, 467; Alan Rosenstein, 'Nurse-physician relationships: Impact on nurse satisfaction and retention' (2002) 102(6) *The American Journal of Nursing* 26, cited in Johanna Westbrook et al, 'Endemic unprofessional behaviour in health care: The mandate for a change in approach' (2018) 209(9) *Medical Journal of Australia* 380.

³⁴ Adrian Ortega et al, 'One-year prospective study on the effects of workplace bullying on long-term sickness absence' (2011) 19(6) *Journal of Nursing Management* 752, cited in Johanna Westbrook et al, 'Endemic unprofessional behaviour in health care: The mandate for a change in approach' (2018) 209(9) *Medical Journal of Australia* 380.

³⁵ Morten B Nielsen, Anne-Marthe R Indregard and Simon Øverland, 'Workplace bullying and sickness absence: A systematic review and meta-analysis of the research literature' (2016) 42(5) *Scandinavian Journal of Work, Environment and Health* 359, cited in Johanna Westbrook et al, 'Endemic unprofessional behaviour in health care: The mandate for a change in approach' (2018) 209(9) *Medical Journal of Australia* 380.

³⁶ Rosenstein and O'Daniel (n 33) 466.

³⁷ Ibid.

³⁸ Ibid 467.

³⁹ Ibid 466-467.

⁴⁰ William O Cooper et al, 'Association of coworker reports about unprofessional behavior by surgeons with surgical complications in their patients', (2019) 154(9) *JAMA Surgery* 828.

⁴¹ Victorian Legal Services Board and Commissioner (n 1) 50; Equal Opportunity Commission (n 3) 84; Colmar Brunton (n 12) 29; Law Society of NSW Young Lawyers, *Submission to the Australian Human Rights Commission's National Inquiry into Sexual Harassment in Australian Workplace* (Submission, 28 February 2019) 9.

⁴² Victorian Legal Services Board and Commissioner (n 1) 50; Equal Opportunity Commission (n 3) 84; Colmar Brunton (n 12) 29.

⁴³ Colmar Brunton (n 12) 29; Law Society of NSW Young Lawyers (n 41) 9.

⁴⁴ Equal Opportunity Commission (n 3) 84; Colmar Brunton (n 12) 29.

⁴⁵ Equal Opportunity Commission (n 3) 84; Colmar Brunton (n 12) 29.

⁴⁶ Equal Opportunity Commission (n 3) 85.

⁴⁷ Colmar Brunton (n 12) 29.

Strategies to address sexual harassment in the legal profession

Key Findings

- 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 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 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.

In each Australian jurisdiction, the legal profession has specific rules and regulations which relate to professional conduct for solicitors and barristers. There are rules which expressly state that barristers and solicitors should not engage in sexual harassment during the course of their practice,⁴⁸ while others prohibit solicitors and barristers from engaging in conduct that is discreditable to the practitioners or likely to diminish public confidence in the profession.⁴⁹ Several

⁴⁸ *Legal Profession Uniform Conduct (Barristers) Rules 2015* (NSW) r 123(b); *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW) r 42.1.2; *Australian Solicitors' Conduct Rules 2012* (Qld) r 42.1.2; *Australian Solicitors' Conduct Rules 2011* (SA) r 42.1.2; *Legal Profession Uniform Conduct (Barristers) Rules 2020* (Tas) r 123(b); *Legal Profession (Solicitors' Conduct) Rules 2020* (Tas) r 47(b); *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Vic) r 123(b); *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Vic) r 42.1.2; *Western Australian Barristers' Rules* (WA) r 117(b); *Legal Profession Conduct Rules 2010* (WA) r 17(5)(b); *Legal Profession (Barristers) Rules 2021* (ACT) r 122.2(a); *Legal Profession (Solicitors) Conduct Rules 2015* (ACT) r 42.1.2.

⁴⁹ E.g., *Barristers' Conduct Rules 2011* (Qld) r 12; *Barristers' Conduct Rules 2013* (SA), r 12.

other strategies have been implemented by or recommended for the legal profession to prevent and respond to sexual harassment, which are summarised below.

Development of consistent workplace and professional standards

Legal organisations should implement workplace standards and good practice principles to address sexual harassment. A review of the legal profession's response to harassment in South Australia recommended that the profession adopt the *Workplace Equality and Respect Standards* developed by Our Watch.⁵⁰ These standards require organisations to demonstrate a commitment to the prevention of harassment and create conditions that promote gender equality.⁵¹ Organisations should provide support for those who experience harassment and ensure that business practices align with the commitment to the prevention of harassment.⁵²

Policies

Organisations should implement clear and accessible sexual harassment policies that are regularly communicated to employees. However, the IBA's global study found that only 53% of workplaces surveyed had policies about bullying and sexual harassment.⁵³ The study recommended that policies should be broadly framed and not limited by strict legal definitions of sexual harassment, and be alert to the various work environments in which sexual harassment may occur, including client offices, chambers and courts.⁵⁴ The South Australian study recommended that policies should include a declaration that sexual harassment will not be tolerated, information relating to internal and external complaint-handling procedures and support services, and the need to store secure and confidential records about complaints of sexual harassment.⁵⁵

Training

Training is an important strategy to address workplace sexual harassment, as it provides an opportunity for organisations to communicate their stance on the issue, educate employees, and address barriers to reporting.⁵⁶ However, one study reported that only 13% of principals of legal organisations and 44% of legal practitioners surveyed had received sexual harassment training.⁵⁷ The IBA's study recommended implementing sexual harassment training that is supported at the highest level of the organisation and targeted towards all negative workplace behaviour.⁵⁸ Training should be interactive, held regularly and include relevant workplace examples and procedures.⁵⁹

Reporting mechanisms

Studies have identified low levels of reporting of sexual harassment within the legal profession. The IBA's global study found that incidents of sexual harassment were only reported in 21% of

⁵⁰ Our Watch, *Workplace equality and respect standards* (Standards, 2018), cited in Equal Opportunity Commission (n 3) 99.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Pender (n 18) 8.

⁵⁴ Ibid 100.

⁵⁵ Equal Opportunity Commission (n 3) 108-109.

⁵⁶ Victorian Legal Services Board and Commissioner (n 1) 80.

⁵⁷ Ibid x.

⁵⁸ Pender (n 18) 101-102.

⁵⁹ Ibid.

cases.⁶⁰ Similarly in Victoria, 81% of survey participants who had experienced sexual harassment did not make a complaint to their workplace.⁶¹ Of those 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.⁶²

To address these issues, organisations should have flexible reporting models with multiple points of contact that allow sexual harassment complaints to be made anonymously.⁶³ Organisations should also conduct regular reviews of their complaint mechanisms and ensure complaints are tracked and followed up.⁶⁴

Changing the culture of the profession

It is also necessary for the legal profession to implement strategies to improve workplace cultures which may allow sexual harassment to occur. For example, the NSW Office of the Legal Services Commissioner has identified sexual harassment as a workplace health and safety issue and has aimed to end the 'culture of silence' surrounding sexual harassment by encouraging workplaces to implement victim-centred reporting processes.⁶⁵ Leaders should create a positive workplace culture that treats all employees with civility and respect, to ensure all employees can do their jobs in a safe and respectful environment.⁶⁶

Other responses

Other strategies that may assist in addressing workplace sexual harassment include sharing best practice insights across the profession,⁶⁷ reforming confidentiality and suppression procedures to increase transparency,⁶⁸ ensuring senior leaders are held accountable for the behaviour of their employees,⁶⁹ collecting and analysing monitoring data and reviewing current practices,⁷⁰ and bridging the gap between legal definitions of sexual harassment and people's perceptions of what behaviours constitute sexual harassment.⁷¹

Conclusion

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.

⁶⁰ Pender (n 18) 62.

⁶¹ Victorian Legal Services Board and Commissioner (n 1) 38.

⁶² *Ibid* 45.

⁶³ Pender (n 18) 106; Women Lawyers Association of the ACT (n 6) 4-5.

⁶⁴ Women Lawyers Association of the ACT (n 6) 4; Emma Franklin and Kieran Pender, *Innovation-led cultural change: Can technology effectively address workplace harassment?* (Discussion paper, November 2020) 5-7.

⁶⁵ AHRC (n 8) 649.

⁶⁶ Lauren Stiller Rikleen, *Survey of workplace conduct and behaviors in law firms* (Report, 2018) 33.

⁶⁷ Pender (n 18) 102-103.

⁶⁸ New Zealand Law Society Working Group, *Report of the New Zealand Law Society Working Group to enable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the legal profession* (Report, 2018) 12.

⁶⁹ Rikleen (n 66) 33.

⁷⁰ Pender (n 18) 105.

⁷¹ Women Lawyers Association of NSW (n 6) 6.

Given this evidence, it is reasonable to suggest that sexual harassment may have negative impacts on legal professional's work produce and the quality of services consumers receive. Effective strategies to prevent and respond to sexual harassment within the legal profession and ensure that 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.