Addressing Sexual Harassment in the Australian Legal Profession

Discussion Paper

July 2019
# Table of Contents

Introduction............................................................................................................................................. 3  
Background............................................................................................................................................... 4  
Previous Publications and Recommendations...................................................................................... 6  
Questions.................................................................................................................................................. 8  
Appendices ............................................................................................................................................... 12  
  Appendix 1: Previous Recommendations – Listed in Full, and Organised by Publication................................. 12  
  Appendix 2: Previous Recommendations – Consolidated, and Compared to Existing Measures.......................... 29
Introduction

1. Addressing the issue of sexual harassment forms part of the Law Council’s long-running commitment to inclusion and diversity in the legal profession.

2. The Law Council, guided by its Equal Opportunity Committee and Constituent Bodies, takes an active leadership role across various policies and projects regarding inclusion and diversity, many of which link to the issue of sexual harassment. These include the NationalAttrition and Reengagement Study (NARS); the Diversity and Equality Charter; the Equitable Briefing Policy; the Unconscious Bias Training delivered through Symmetra; and the webpage on sexual harassment in the legal profession.

3. In the recent submission to the Australian Human Rights Commission’s (AHRC) National Inquiry into Sexual Harassment in Australian Workplaces (NISHAW) the Law Council provided a comprehensive and up-to-date legal and policy review on the issue of sexual harassment in Australia.

4. The submission was presented in two main parts.

5. The first part focused on opportunities to reform the current legal framework, in order to better address sexual harassment in Australia. The Law Council looks forward to addressing the recommendations for legislative and policy reform when the Sex Discrimination Commissioner, Kate Jenkins, releases the final report on the NISHAW in the latter half of 2019.

6. This aspect of the Law Council’s submission is not the topic of this Discussion Paper.

7. The second part of the Law Council’s submission focused on sexual harassment in the Australian legal profession. The nature and extent of sexual harassment by lawyers or directed to lawyers in their workplaces has long been discussed by critical and feminist legal scholars, by lawyers working in the area of anti-discrimination, and by those who have sought to increase the diversity of the legal profession. It is now a topic of wider coverage, both domestically and internationally.

8. Numerous bodies, committees and individuals within the legal profession have collected data and offered recommendations. Most recently, the International Bar Association (IBA) released the final report on its global survey, entitled Us Too? Bullying and Sexual Harassment in the Legal Profession, which will also be the topic of events in Australia in August. The Law Council has reviewed this work, and acknowledges the importance of moving beyond identifying the problem to implement practical measures to eliminate sexual harassment.

9. Put simply, lawyers are not above the law when it comes to complying with federal, state and territory laws that make sexual harassment unlawful in workplaces and in the provision of legal services.

10. Accordingly, the Law Council seeks feedback from Constituent Bodies on the questions raised in this Discussion Paper, to assist in determining the practical measures that should be taken to address the issue of sexual harassment in the Australian legal profession. Responses to these questions, and any other matters of relevance, are requested by COB Friday 16 August 2019.
Background

11. There is a large body of quantitative, qualitative and anecdotal evidence that shows alarmingly high rates and low reporting of sexual harassment incidents by legal practitioners.

12. Numerous sources of statistics relating to the prevalence of sexual harassment within the Australian legal profession have been published, including:

- In 2007, the Law Society of Tasmania’s Employment and Equal Opportunity Committee’s survey on sexual harassment and inappropriate workplace behaviour in the local legal profession, completed by 132 men and 89 women, where 47 respondents (that is, 21%) stated they had been subjected to inappropriate workplace behaviour;¹
- In 2012, Changing the Rules: The Experiences of Female Lawyers in Victoria where 24% of the female lawyers who responded to the survey reported having experienced sexual harassment;²
- In 2014, the National Attrition and Re-engagement Study (NARS) Report where 24% of the female lawyers and 8% of the male lawyers who responded to the survey reported having experienced sexual harassment;³
- In 2017, the International Bar Association’s Women in Commercial Legal Practice where 27% of the female lawyers and 7% of the male lawyers who responded to the survey reported having experienced sexual harassment;⁴
- In 2018, the Victorian Bar’s Quality of Working Life Survey where 16% of the female barristers and 2% of the male barristers who responded to the survey reported having experienced sexual harassment;⁵
- In 2018, the Women Lawyers Association New South Wales survey of 242 respondents, 96% of which were women, where 71% of respondents reported having experienced sexual harassment;⁶
- In 2018, the NSW Young Lawyers Human Rights Committee’s survey on the incidence of sexual harassment in the legal profession, distributed to the NSW Young Lawyers membership, where 51% of the respondents reported having experienced sexual harassment;⁷
- In 2018, the Women Lawyers Association of the ACT survey on sexual harassment in the local legal profession where 57% of the respondents reported having experienced sexual harassment;⁸

¹ See Law Society of Tasmania’s Employment and Equal Opportunity Committee, Submission No 358 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).
⁴ International Bar Association, IBA LPRU: Women in Commercial Legal Practice (December 2017) 34.
⁵ Victorian Bar, Victorian Bar: Quality of Working Life Survey (University of Portsmouth, 2018) 16.
In 2019, the IBA’s final report on its global survey, entitled *Us Too? Bullying and Sexual Harassment in the Legal Profession*

- where 47% of the female lawyers and 13% of the male lawyers who responded to the survey from Australia reported having experienced sexual harassment; and
- The *forthcoming* data from the Law Society of South Australia’s 2018 survey on bullying, harassment and discrimination in the local legal profession.

13. Statistics from these same sources suggest that more than two thirds of those who experience sexual harassment whilst working in the legal profession never make a formal complaint. This is often due to fear of negative repercussions, fear of damage to professional or personal reputation, and lack of faith in the policies or processes of the workplace. Alternatively, workers may be unaware of any such policies or processes, or the policies or processes for making a complaint may not exist.

14. There are numerous drivers of sexual harassment. Workplaces that are male-dominated, hierarchical, adversarial and commercial report higher levels of sexual harassment, consistent with the view that sexual harassment is connected to power relations and imbalances.

15. The significant role that gender plays should not be ignored. It would be insincere as well as ineffective to approach the issue of sexual harassment as if it were gender neutral. Sexual harassment does not occur in a blanket fashion. According to the AHRC, ‘the majority of workplace sexual harassment in the past five years was perpetrated by men’: ‘93% of female victims’ and ‘58% of male victims’ were sexually harassed by male perpetrators. Moreover, studies consistently show that women are significantly more likely than men to experience sexual harassment. In the legal profession in particular, women experience sexual harassment at approximately three to four times the rate of men.

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11. See Law Council of Australia, Submission No 249 to Australian Human Rights Commission, *National Inquiry into Sexual Harassment in Australian Workplaces* (26 February 2019) 68. See also Women Lawyers Association New South Wales, Submission No 340 to Australian Human Rights Commission, *National Inquiry into Sexual Harassment in Australian Workplaces* (February 2019) 9, where only 18% of respondents to a survey conducted by the organisation in 2018 had ever made a complaint to their employer.
13. See Women Lawyers Association of the Australian Capital Territory, *Survey of Sexual Harassment in the Legal Profession* (2018). This is preliminary data ahead of publication, which was generously shared with the Law Council in February 2019.
15. The word ‘gender’ is used within the context of critical and feminist theory, which considers the concept to be socially constructed. The Law Council acknowledges the limitations of the traditional binary approach to gender, and recognises that not all women are biologically female and not all men are biologically male.
18. See Law Council of Australia, *National Attrition and Reengagement Study (NARS) Report* (2014). This study found that 24% of women and 8% of men had experienced sexual harassment in their current legal workplace.
16. It is interesting to compare rates of sexual harassment with rates of bullying in the legal profession. While the rates of bullying are also alarmingly high, the difference between the rates of women who experience it and the rates of men who experience it appears to be much less stark than for sexual harassment.19 Undoubtedly the interrelationship between bullying and sexual harassment is a complex one and the two behaviours can, and do at times, intersect. Nonetheless, recognising the particularly gendered nature of sexual harassment is an important part of understanding it and devising practical strategies to overcome it.

17. This does not mean ignoring the needs of men. Men can experience sexual harassment. Moreover, male victims of sexual harassment may face distinct barriers to accessing assistance. They may be not taken seriously or supported, or may have difficulty in speaking up due to the dominant social constructions of what it means to be a man. Interrogating the construction and maintenance of gender identities, roles and power relationships can therefore help both male and female victims of sexual harassment.

18. It is also important to view sexual harassment through an intersectional lens. For people whose gender intersects with other attributes, such as race, sexuality, age, or disability, harassment can be complex and create or exacerbate specific forms of disadvantage. Individuals may experience intersectional forms of harassment which are not recognised in mainstream discourses, policies or processes and therefore not adequately protected against. The Law Council supports intersectionality in policy development as a means of producing holistic, inclusive and accessible solutions that respond to diverse groups.

Previous Publications and Recommendations

19. Many organisations within the legal profession, including the Law Council, law societies and bar associations, have made recommendations on how to address sexual harassment.20

This is approximately 1 in 4 women and 1 in 12 men. See also International Bar Association, Us Too? Bullying and Sexual Harassment in the Legal Profession (2019). In this study, 47% of women and 13% of men working in the law in Australia reported having been sexually harassed. This equates to almost 1 in 2 women and 1 in 8 men.

19 See, eg, International Bar Association, Us Too? Bullying and Sexual Harassment in the Legal Profession (2019). In this report, bullying of men and women occurred at similar rates: 1 in 3 men and 1 in 2 women. Sexual harassment, on the other hand, affected 1 in 14 men and 1 in 3 women – a much starker difference.

20 See, eg, Victorian Equal Opportunity and Human Rights Commission, Changing the Rules: The Experiences of Female Lawyers in Victoria (2012); Law Council of Australia, National Attrition and Re-engagement Study (NARS) Report (2014); Dame Margaret Bazley, Independent Review of Russell McVeagh (2018); Law Council of Australia, Submission No 249 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (26 February 2019) (with contributions from Constituent Bodies); New South Wales Bar Association, Submission to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (18 February 2019); Law Society of Tasmania’s Employment and Equal Opportunity Committee, Submission No 358 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Australian Women Lawyers, Submission No 288 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (27 February 2019); Women Lawyers Association of New South Wales, Submission No 340 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019); Women Lawyers Association of the Australian Capital Territory, Submission No 323 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019); Northern Territory Women Lawyers Association, Submission No 251 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (25 February 2019); Women Barristers Association, Submission No 335 to Australian
20. In June 2019, the Law Council undertook a review of these publications in order to determine the range and overlap of existing recommendations on the issue of sexual harassment, and whether there is consensus across the legal profession. A list of the recommendations was compiled (Appendix 1) and consolidated (Appendix 2).

21. For ease of reference, those recommendations that are (i) specific to the legal profession, (ii) directed only at professional bodies (i.e. including the Law Council, law societies and bar associations) and (iii) consolidated, are at pages 32 to 36 of this Discussion Paper.

22. The Law Council is interested in examining how these recommendations can be used to develop specific, achievable and practical measures to eliminate and prevent sexual harassment.

23. There are several issues upon which reasonable minds may differ.

24. One issue relates to the degree of oversight that professional bodies should have over legal workplaces and legal practitioners.

25. A related issue is how to distinguish between the responsibilities of regulatory bodies versus professional bodies. Where it is decided that a certain measure should fall to

Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Victoria Legal Aid, Submission No 283 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019) ('Change the Culture, Change the System: Urgent Action Needed to End Sexual Harassment at Work'); Law Society of New South Wales Young Lawyers, Submission No 306 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); New South Wales Legal Services Commissioner, Submission No 254 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); New South Wales Society of Labor Lawyers, Submission No 320 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019); Employment Law Centre of Western Australia, Submission No 361 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Top End Women’s Legal Services, Submission No 384 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Women’s Legal Centre of the Australian Capital Territory, Submission No 360 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Caxton Legal Centre, Submission No 382 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); LGBTI Legal Service Inc, Submission No 441 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Maurice Blackburn Lawyers, Submission No 307 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Williamson Barwick Lawyers, Submission No 202 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (6 February 2019); Harmers Workplace Lawyers, Submission No 366 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Australian Bar Association, Submission No 413 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019); Legal Aid New South Wales, Submission No 442 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019); Springvale Monash Legal Service, Submission No 278 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (27 February 2019); Monica Campo, Lynda Memery and Nina Ulasowski, ‘Sexism and Gender Inequality in the Victorian Legal and Justice Sector’ (Discussion Paper Phase One, Women’s Legal Service Victoria, 2019); Victorian Legal Services Board + Commissioner, Statement on Sexual Harassment in the Victorian Legal Profession (6 February 2019); Maria Nawaz, Sharmilla Bargon and Pip Davis, “#Me Too: Legal Responses to Sexual Harassment at Work” (Joint Report, Kingsford Legal Centre, Redfern Legal Centre, Women’s Legal Service of New South Wales and National Association of Community Legal Centres, 2019); International Bar Association, Us Too? Bullying and Sexual Harassment in the Legal Profession (2019); and Australian Women Lawyers, Seven Strategies for Addressing Sexual Harassment in the Legal Profession (July 2019). This is a policy document sent to the Law Council in July 2019.
professional bodies, the question arises as to whether implementation should be undertaken at the national level or not.

26. Finally, different publications make different recommendations about whether certain measures should be mandatory or guiding.

Questions

27. The Law Council welcomes a response or comments on the following questions.

28. Please note that, for the purposes of this Discussion Paper, the Law Council is distinguishing between bodies with predominantly professional functions and bodies with predominantly regulatory functions. Professional bodies mean those bodies purporting to represent the views of the legal profession, including national peak bodies, such as the Law Council, and state and territory peak bodies, such as the law societies and bar associations. Regulatory bodies mean those bodies that regulate the profession and have the power to discipline legal practitioners for breaches of professional conduct rules. The Law Council recognises that in some jurisdictions, such as the Australian Capital Territory, the two are one and the same.

Discussion Question 1

(a) What role should the Law Council play as the national peak body in addressing sexual harassment within the Australian legal profession?

(b) What would you consider to be outside the mandate of the Law Council?

Discussion Question 2

(a) Do you agree that more oversight from regulatory bodies and/or professional bodies is needed; or

(b) Should all responsibility for change and compliance be left to individual workplaces?

Discussion Question 3

What is the role for professional bodies as distinct from regulatory bodies?

Discussion Question 4

Which of the following practical measures would you most like to see the Law Council undertake?

(a) General standards of conduct for the legal profession:
   i. Mandatory
   ii. Guiding
   iii. Including around social events and alcohol.

These regulatory bodies include: in New South Wales, the Office of the Legal Services Commissioner; in Victoria, the Victorian Legal Services Board and Commissioner; in Western Australia, the Legal Practice Board of Western Australia’s Legal Profession Complaints Committee; in South Australia, the Legal Profession Conduct Commissioner; in Tasmania, the Legal Profession Board Tasmania; in Queensland, the Legal Services Commission; in the Northern Territory, the Law Society Northern Territory, which can refer serious matters to the Legal Practitioners’ Disciplinary Tribunal; and, in the Australian Capital Territory, the ACT Law Society.
(b) Best practice guidelines for the legal profession in relation to sexual harassment policies, complaints processes, procedures, and/or training.

(c) Model sexual harassment policies, which workplaces, law societies and bar associations can adapt.

(d) Model sexual harassment training, which law societies and bar associations can adopt and provide as continuing professional development training:
   i. General
   ii. Bystander
   iii. Management response.

(e) Education for the legal profession on sexual harassment to ensure lawyers understand their legal obligation and are aware of what to do to prevent or respond to sexual harassment.

(f) Model clauses, which lawyers and workplaces can adapt and use, and/or accompanying factsheets or educational materials to inform decision-making in relation to when and if it is appropriate to use non-disclosure clauses in settlement agreements.

(g) Public statement of intent not to use unfair or unethical non-disclosure agreements, which lawyers and workplaces can adopt.

(h) Voluntary code for law firms, practices and chambers (or directors, partners and barristers) to adopt, and provide reports on number of sexual harassment complaints, number of women in senior positions, etc.

(i) Mandatory reporting scheme, which requires law firms, practices and chambers (or directors, partners and barristers) to provide de-identified data of sexual harassment complaints.

(j) Other, please specify.

(k) None of these are appropriate for the Law Council.

**Discussion Question 5**

(a) Are there any previous recommendations that you do not agree with (see Appendices)?

(b) Are there any previous recommendations suggested as mandatory/compulsory that you think should be guiding/voluntary, or vice versa (see Appendices)?

**Discussion Question 6**

(a) What constitutes best practice in relation to sexual harassment policies, complaints processes, procedures, and training?
(b) Are there certain non-negotiable minimum standards?

(c) Do you have examples of best practice?

(d) Do you have examples of practices that have not been successful?

**Discussion Question 7**

(a) If best practice guidelines are important to you, should these be uniform across the country, or should each law society and bar association decide its own best practice guidelines?

(b) What are the advantages and disadvantages of a nationally consistent approach?

(c) What role should the Law Council play in the development of any future best practice guidelines?

**Discussion Question 8**

(a) Has your law society or bar association attempted to implement a practical measure and not been successful?

(b) What was the barrier to implementation?

(c) What do you consider could be the greatest barriers to implementation?

(d) How could such barriers be addressed?

**Discussion Question 9**

Have you considered the experiences of sole practitioners, such as solicitors in sole practice or barristers?

**Discussion Question 10**

Have you considered the experiences of legal practitioners with under five years of experience in the legal profession?

**Discussion Question 11**

Have you considered the experiences of LGBTIQ+ legal practitioners, culturally and linguistically diverse legal practitioners, First Nations legal practitioners, legal practitioners with a disability, or legal practitioners who might otherwise experience intersectional forms of harassment?

**Discussion Question 12**

Are ‘male allies’, ‘male champions of change’ and ‘good behaviour pledges’ useful concepts?
<table>
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<tr>
<th>Discussion Question 13</th>
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<tr>
<td>(a) Should any policies or practices address the role of witnesses and bystanders to sexual harassment?</td>
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<td>(b) If so, what should be the role or responsibilities of witnesses and bystanders to sexual harassment?</td>
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<th>Discussion Question 14</th>
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<tr>
<td>What other existing or forthcoming practical measures has your law society or bar association undertaken to address sexual harassment (see Appendices)?</td>
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### Appendices

Appendix 1: Previous Recommendations – Listed in Full, and Organised by Publication

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#### RECOMMENDATIONS SPECIFIC TO THE AUSTRALIAN LEGAL PROFESSION


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<th>For workplaces:</th>
<th>For the profession:</th>
<th>For regulators:</th>
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<tr>
<td>• Develop a positive duty action plan to promote gender equality, aligning issues of equal opportunity, flexible work practices and prevention of sexual harassment with the organisation’s existing values, and outlining the organisation’s compliance with the [Victorian] positive duty to eliminate discrimination, sexual harassment and victimization.</td>
<td>• In consultation with law firms, consider the development of a voluntary code for the legal sector – this may include periodic reporting on percentage of women in partnership positions, number of employees working flexibly, number of sexual harassment complaints, and outcome of sexual harassment complaints. This could also include that firms opt in for complaints to be handled by a panel review comprising external organisations.</td>
<td>• Nil.</td>
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<td>• Develop an internal diversity working group to monitor the progress of the equal opportunity action plan to promote gender equality.</td>
<td>• Develop a communications plan to promote issues of gender equality and awareness of sexual harassment in the legal profession e.g. articles in law journals, seminars, media releases, social media.</td>
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<td>• Ensure that the organisation has policies on sexual harassment.</td>
<td>• Develop and promote education programs including sexual harassment training – as part of the continuing professional development program.</td>
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<td>• Ensure that the organisation has clear, accessible complaint processes in place and that these processes are adhered to when complaints are made.</td>
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<tr>
<td>• Organise for all staff including partners and managers to participate in training on sexual harassment, including bystander education.</td>
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<td>• Consider how the organisation can share both good news and bad news stories at work conferences and functions e.g. lunchtime seminars, a leadership series.</td>
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22 Please note that these appendices include information published to date 8 July 2019. The Australian Human Rights Commission is publishing the submissions to its *National Inquiry into Sexual Harassment in Australian Workplaces* in ‘batches’. Accordingly, more recommendations from the legal profession could later become available.
By workplaces, law firms, practices and chambers (as appropriate):
- Develop clear and accessible written policies and guidelines on addressing sexual harassment.
- Develop clear and accessible complaint processes for sexual harassment.
- Conduct training on sexual harassment (including bystander training).

By professional bodies (Law Council, law societies and bar associations):
- Establish taskforces in each jurisdiction to address the issue of sexual harassment.
- As a basis, use recommendations for the profession contained in the ‘Changing the Rules: The Experiences of Female Lawyers in Victoria’.
- Develop a mechanism whereby lawyers who are experiencing sexual harassment can confidentially discuss their situation, and seek advice on strategies and options, and have any complaint handled by a panel review comprising external organisations.

By regulatory bodies (legal services boards, etc):
- Nil.


Workplaces, law firms, practices and chambers (as appropriate) should:
- Develop and implement an internal sexual harassment policy.
- Conduct annual compulsory sexual harassment training for all staff members.
- Develop and implement an internal complaints process wherein:
  o Any complaint is treated with confidentiality, and not disclosed to any staff member, including the alleged perpetrator, unless the complainant consents; and
  o The complainant has liberty to choose whether their allegation is brought to the attention of the alleged perpetrator; and
  o Where the complainant does choose for the complaint to be raised with the alleged perpetrator, this is done privately.

Professional bodies (Law Council, law societies and bar associations) should:
- Publicise the professional conduct rules relevant to sexual harassment. This is perhaps particularly important in jurisdictions such as Tasmania, where the Law Society of Tasmania (LST) has only recently adopted the National Model Conduct Rules and these rules are yet to come into force.
- Draw a panel of senior members of the profession willing to directly receive confidential complaints and queries and to provide advice in relation to sexual harassment. The Law Society of Tasmania, for example, already provides a similar service for ethics-related queries.
- Offer a confidential mediation or conciliation process, which can be quickly convened at the request of a complainant.

Regulatory bodies (legal services boards and commissioners, etc) should:
- Handle complaints seriously, confidentially and quickly. Complainants must give consent before a complaint is relayed to the perpetrator.
- Decide whether, when the National Model Conduct Rules come into effect in Tasmania, complaints will be handled by the Law Society of Tasmania (LST) or by the Legal Profession Board of Tasmania (LPBT). While the LST has adopted the rules for the Tasmanian legal profession, it is not clear to the EEOC whether the LST intends to handle complaints internally or refer to the LPBT. The LPBT, in the EEOC’s view, likely lacks the resources and training to manage sexual harassment complaints at present.
and as soon as possible.

- Offer an internal confidential mediation or conciliation process between the complainant and the alleged perpetrator (if the complainant consents).
- Either train senior staff to carry out this process or delegate the matter to the Law Society.
- Offer counselling and support with an accredited provider to all parties involved.
- Where the complaint includes conduct that is clearly a breach of professional conduct rules, anti-discrimination laws, or is a criminal offence, senior leaders should be required to refer the complaint to the appropriate authorities, and to either suspend the alleged perpetrator or ensure no contact between the complainant and alleged perpetrator.

- Handle complaints seriously, confidentially and quickly. Complainants must give consent before a complaint is relayed to the perpetrator.
- Provide training and education on sexual harassment. Consider making it mandatory for all members of the profession to obtain one Continuing Professional Development “point” in anti-discrimination training each year.
- Acknowledge and accept that sexual harassment in the legal workplace is a problem, and senior members must lead by example in condemning inappropriate behaviour and pushing for change.


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<tr>
<th>Workplaces, law firms, practices and chambers (as appropriate) should:</th>
<th>Professional bodies (Law Council, law societies and bar associations) should:</th>
<th>Regulatory bodies (legal services boards and commissioners, etc) should:</th>
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| - Be required to have a sexual harassment policy in place and provide education and training to all employees. | - Be encouraged to provide guidance on policies and training.  
- Be required to implement a sexual harassment complaints mechanism, which allows for anonymous complaints. | - Provide guidance on best practice policies and training.  
- Mandate continuing professional development training on sexual harassment.  
- Be required to implement a sexual harassment complaints mechanism, which allows for anonymous complaints.  
- Report annually on the number of sexual harassment complaints received.  
- Undertake a review of the current complaint mechanisms relevant to the legal profession, and allow for anonymous complaints when appropriate. |
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<td><strong>Professional bodies (Law Council, law societies and bar associations) should:</strong></td>
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<td>• Operate a mandatory reporting scheme, requiring principals and barristers to provide de-identified notification of complaints of sexual harassment.</td>
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<td><strong>Regulatory bodies (legal services boards and commissioners, etc) should:</strong></td>
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<td>• Nil.</td>
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<td><strong>Professional bodies (Law Council, law societies and bar associations) should:</strong></td>
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<td>• Provide continuing professional development training and education about sexual harassment. Continuing professional development training about sexual harassment should be compulsory. The biannual Readers’ Course should include a component about sexual harassment.</td>
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<td>• Programs should also focus on the important role played by bystanders in identifying and calling out sexual harassment.</td>
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<td><em>Raise awareness:</em></td>
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<td>• Internally distribute this report.</td>
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<td>• Supervisors should take responsibility for discussing sexual harassment issues with their teams on a regular basis.</td>
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<td><em>Implement and revise policies:</em></td>
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<td>• Implement, regularly remind staff of, and regularly review and update, workplace-specific policies and procedures on sexual harassment.</td>
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<td><em>Introduce regular, customised training:</em></td>
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<td>• Implement regular, tailored, dynamic training, that extends beyond strict legal</td>
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<td><em>Raise awareness:</em></td>
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<tr>
<td>• Ensure that this report and similar sexual harassment research is widely distributed.</td>
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<td>• Consider holding events, possibly for continuing legal education credit, for the discussion of sexual harassment issues among members.</td>
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<td><em>Implement and revise policies:</em></td>
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<td>• Articulate macro-level standards to reinforce workplace-specific policies.</td>
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<td>• Develop or update standards of conduct for the profession (whether mandatory or guiding).</td>
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<td>• Articulate macro-level standards to reinforce workplace-specific policies.</td>
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<td>• Develop or update standards of conduct for the profession (whether mandatory or guiding).</td>
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<tr>
<td><em>Consider the appropriateness and efficacy of introducing mandatory requirements for workplace policies on sexual harassment (whether via legislative obligations or profession-specific regulatory commitments).</em></td>
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</table>
 definitions of sexual harassment and shielding the organisation against liability, to broader standards of civility and workplace culture.
- Regularly evaluate training for efficacy.
- Consider specific training for managers on how to prevent and respond to incidents.
- Consider bystander intervention training.

Increase dialogue and best practice sharing:
- Nil.

Take ownership:
- Vocalise that sexual harassment is unacceptable.
- Senior leaders should be role models for expected standards of behaviour, and support committees, working groups and initiatives aimed at achieving change.
- Encourage responsible drinking at social events.

Gather data and improve transparency:
- Undertake internal workplace self-assessments and climate surveys.
- Release annual data regarding incidents of sexual harassment.

Explore flexible reporting models:
- Review and revise existing reporting procedures. Seek feedback from staff as to the failings with existing models. Offer multiple reporting options.
- Investigate the potential utility of technological solutions for reporting.
- Strengthen formal and informal mentoring schemes.

Engage with younger members of the profession:
- Empower the voices of younger professionals who may otherwise be prevented from active advocacy on issues.

Appreciate the wider context:
- Acknowledge the link between sexual harassment and mental health for victims and survivors.

- Consider producing jurisdiction specific training materials.
- Consider offering training courses for continuing legal education credit.

Increase dialogue and best practice sharing:
- Consider creating networks to discuss sexual harassment issues. These could be informal or formal (working groups or committees).
- Engage more actively with domestic and international counterparts.

Take ownership:
- Vocalise that sexual harassment is unacceptable.
- Senior leaders should be role models for expected standards of behaviour, and support committees, working groups and initiatives aimed at achieving change.

Gather data and improve transparency:
- Conduct surveys or data-gathering on a regular basis.

Explore flexible reporting models:
- Review and revise existing reporting procedures. Seek feedback from members as to the failings with existing models. Offer multiple reporting options.

Engage with younger members of the profession:
- Senior members of the profession should engage with the perspectives of their junior colleagues to develop a greater appreciation of changing attitudes to workplace culture.

Appreciate the wider context:
- Improve mental health and quality of life.
- Increase diversity.

Maintain momentum:
- Create standing committees and working groups, and other institutional actors: continue awareness-raising efforts; turn one-
bystanders, and commit to addressing factors that contribute to adverse mental health outcomes.

**Maintain momentum:**
- Consider establishing permanent committees with mandates for maintain efforts to address sexual harassment.

### Australian Women Lawyers, Seven Strategies for Addressing Sexual Harassment in the Legal Profession (2019).

<table>
<thead>
<tr>
<th>Workplaces, law firms, practices and chambers (as appropriate) should:</th>
<th>Professional bodies (Law Council, law societies and bar associations) should:</th>
<th>Regulatory bodies (legal services boards and commissioners, etc) should:</th>
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<tr>
<td><strong>Key Idea 2:</strong></td>
<td><strong>Key Idea 1:</strong></td>
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<tr>
<td>• Support a range of reporting options enabling monitoring or progress and keeping the issue at the forefront of mind for the profession and for workplaces. Reporting should cover: the number of complaints; the general nature of complaints; and the outcome of complaints; and should be de-identified, with collation completed by an independent body.</td>
<td>• Mandate sexual harassment training for practitioners across Australia, including for barristers and judicial officers, and as part of Practical Legal Training. Training should be mandatory or free, or both; in place for 5 to 10 years with a review to follow; include bystander training; and, be broader than simply restating the law, understanding the gender biases at play.</td>
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<td><strong>Key Idea 6:</strong></td>
<td><strong>Key Idea 2:</strong></td>
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<td>• Have staff annually undertake that they understand their obligations, in performance reviews or at other times – e.g. ‘I am aware of my obligations under the [insert list of applicable sexual harassment, discrimination and bullying] policies and have sought to comply with them throughout the year’. The need for this could be reviewed after 5 or 10 years.</td>
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<td><strong>Key Idea 7:</strong></td>
<td><strong>Key Idea 3:</strong></td>
<td><strong>Key Idea 4:</strong></td>
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<td>• Support local Women Lawyers and Barristers Associations, join them, pay for staff to be part of them, and engage them in consultations.</td>
<td>• Work together with the AWL to provide guidance on minimum standards regarding the content of workplace policies, or, where these are being worked on already, consult with the AWL.</td>
<td>• Create and encourage implementation of grievance policies that allow confidential complaints. E.g. the recent process initiated by the Office of the Legal Services Commissioner in enabling anonymous complaints to be raised.</td>
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<td><strong>Key Idea 4:</strong></td>
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<tr>
<td>• Create and encourage implementation of grievance policies that off initiatives into ongoing, productive dialogues.</td>
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allow confidential complaints. This would ideally be done by a national peak body. E.g. the Victorian Bar’s ‘Policy Against Sexual Harassment’ which has Human Rights Commission trained conciliators.

**Key Idea 6:**
- Include the following tick a box statement on practicing certificate renewal forms, ensuring that individual lawyers annually undertake that they understand their obligations – ‘I am aware of my obligations under the [insert list of applicable sexual harassment, discrimination and bullying] policies and have sought to comply with them throughout the year’. This is specific to those professional bodies that ensure the renewal of practicing certificates. The need for this could be reviewed after 5 or 10 years.
- Extend time limits for complaints under the conduct rules to at least 6 years with discretion to allow for historical cases.

**RECOMMENDATIONS FOR WIDER LEGAL, POLITICAL AND SOCIAL REFORM**


**For government:**

**Anti-Discrimination Laws:**
- Consolidate federal anti-discrimination laws on sex, race, age and disability, and ensure that intersectional discrimination and harassment is explicitly addressed.
- Consolidate sexual harassment provisions across jurisdictions in a manner which enshrines best practice. This includes removing compensation caps.

**Sex Discrimination Act 1984 (Cth):**
- Simplify the definition of sexual harassment in the SDA.
- Expand the coverage of the prohibitions against sexual harassment in the SDA. Make sexual harassment unlawful in all areas of public life. Alternatively, ensure all persons (e.g. self-employed persons, unpaid workers, interns, volunteers, labour hire workers, etc, including barristers and solicitors in sole practice) in all workplaces are protected from sexual harassment.
- In the SDA, impose a positive duty on duty-holders (e.g. employers, event organisers, venues, institutions) to eliminate sexual harassment.
- In the SDA, impose a positive duty on duty-holders (e.g. employers, event organisers, venues, institutions) to respond to complaints or information of sexual harassment. Bystanders should likely

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23 This is not the topic of this Discussion Paper. The Law Council awaits publication of the Australian Human Rights Commission’s Final Report on the *National Inquiry into Sexual Harassment in Australian Workplaces* before advancing any recommendations relating to federal law reform or advocating for change beyond the legal profession.

Please also note that these appendices include information published to date 8 July 2019. The Australian Human Rights Commission is publishing the submissions to its *National Inquiry into Sexual Harassment in Australian Workplaces* in ‘batches’. Accordingly, more recommendations from the legal profession could later become available.
be involved in responding to sexual harassment through training, rather than through legal obligations, however.

- In the SDA, impose a positive duty on duty-holders (e.g. employers, event organisers, venues, institutions) to report sexual harassment.
- Attach appropriate penalties to breaches of these duties.

**Regulation of Non-Disclosure Agreements (NDAs):**

- Make NDAs unenforceable where they fail to meet certain minimum standards. Make explicit the rights that the survivor retains, such as the right to report the complaint to authorities for investigation. Make non-disclosure equal (i.e. conditional on the perpetrator not publicly misrepresenting or denying the interaction either). Deposit the complaint in an information escrow, to be released for investigation if another complaint about the same perpetrator is also deposited.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**

- Empower the AHRC to investigate and commence court proceedings about sexual harassment of its own initiative.
- Remove the 6-month time limit on making a sexual harassment complaint to the AHRC, which is currently a discretionary ground for termination. Any time limit should not be less than 6 years.
- Increase funding to the AHRC.

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**

- For the FWA to apply in relation to sexual harassment, the definition of ‘adverse action’ needs to be amended to include sexual harassment. A ‘stop sexual harassment order’, equivalent to the current ‘stop bullying order’, could then be included.

**Work Health and Safety Act 2011 (Cth), and other OHS Legislation:**

- No legislation in Australia includes an express provision defining, preventing or responding to sexual harassment as a workplace health and safety issue. The Law Council is not aware of any pertinent reason to shift the prohibitions against sexual harassment from the anti-discrimination to the occupational health and safety framework.

**Whistleblower Laws:**

- Make whistleblower laws uniform in structure and operation across all contexts and sectors and administered by a single regulatory body. Explicitly include sexual harassment complaints as protected disclosures.

**International Law:**

- Regularly incorporate advances in international law on the issue of sexual harassment into Australian law.

**For broader society:**

- Cultural and structural change is important in addressing the issue of sexual harassment. There should be a government-funded public awareness and education campaign, as well as shared responsibility for the issue from the media, the justice sector, the legal profession, the medical profession, social service providers, work health and safety regulators, unions, professional bodies and representatives, corporate bodies and representatives, minority groups, organisations, workplaces, schools and universities. Education and training on sexual harassment, including bystander education and training, should be applied across all sectors and at all levels.

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**New South Wales Bar Association, Submission to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (18 February 2019).**

For government:

**Sex Discrimination Act 1984 (Cth):**

- Barristers and other self-employed persons are not adequately protected. Amend the SDA, so that protections are directed to the circumstances where the conduct takes place (i.e. work) and not the status of the persons involved, and so that the definition of ‘services’ is expanded.
- Amend s 105 of the SDA (i.e. liability for aiding and permitting) to include Division 3 conduct (i.e. sexual harassment).
- In the SDA, impose a positive duty to eliminate sexual harassment.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**

- Amend s 46PH(1)(b) of the AHRCA to extend the period of time for lodging a sexual harassment complaint from 6 months to 18 months.

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**Law Society of New South Wales Young Lawyers, Submission No 308 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).**

For government:

**Sex Discrimination Act 1984 (Cth):**

- Require employers to take all reasonable steps to prevent sexual harassment in their workplace.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
- Empower the AHRC to investigate sexual harassment on its own motion.
- Restore the time limit for making a sexual harassment complaint to the AHRC to at least 12 months.
- A complainant of sexual harassment should generally not pay the respondent's costs.
- The Commonwealth Government should restore funding to the AHRC.

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
- Amend the definition of ‘adverse action’ in the FWA to explicitly include sexual harassment.

**Broader Change:**
- Australian governments should support access to justice for victims of sexual harassment by increasing funding to the legal assistance sector.
- Australian governments should foster conditions of work in which victims of sexual harassment are empowered to assert their rights by developing strategies to address insecure work.

**Law Society of Tasmania's Employment and Equal Opportunity Committee, Submission No 358 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).**

**For government:**

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
- Amend the FWA to enable the FWC to be able to deal with complaints of sexual harassment that occurs in employment.

**Australian Women Lawyers, Submission No 288 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (27 February 2019).**

**For government:**

**Sex Discrimination Act 1984 (Cth):**
- Barristers are not adequately covered by the existing legal framework and seek a broadening of current legislative power to capture the places and people associated with their work from whom they may be harassed.
- The current system of complaint-based compliance is insufficient.
- Introduce greater collation nationally of (and funding for) data on sexual harassment in the workplace and mandatory reporting.
- Impose more significant consequences for employers who are aware of improper behaviour and fail to take adequate and appropriate actions and give greater support to victims.

**Regulation of Non-Disclosure Agreements (NDAs):**
- Prohibit confidentiality clauses in settlement agreements, unless the complainant requests them.
- Ensure releases in settlement agreements do not prohibit the pursuit of professional conduct reporting or criminal law proceedings.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
- Expand the AHRC’s jurisdiction in sex discrimination matters to investigate and commence court proceedings on its own initiative.
- Extend the time limit to raise AHRC complaints on all forms of sex discrimination to a minimum of 6 years.
- Increase funding to the AHRC for its current and potential functions.

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
- Enact a standalone provision within the FWA relating specifically to sexual harassment within the workplace.

**For complaints bodies and commissions:**
- The AHRC should develop preventative programs such as bystander training, unconscious bias training, and addressing the gender pay gap.

**For broader society:**
- There must be preventative cultural change measures, in particular education, training and awareness programs fostering a culture of respect, especially increased training for bystanders.

**Women Lawyers Association of New South Wales, Submission No 340 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019).**

**For government:**

**Anti-Discrimination Laws:**
- Support the amendments proposed to the victimisation provisions in the Human Rights and Anti-Discrimination Bill 2012 (Cth) with the proviso that the provisions should explicitly extend to persons who act as bystanders and persons who provide assistance, support and advocacy to the person making a complaint.

**Sex Discrimination Act 1984 (Cth):**
- Simplify the definition of sexual harassment, including by: focusing on how the actual recipient of the conduct feels in all the circumstances; expanding the definition of ‘conduct of a sexual nature’; and adding a note to the definition section containing examples based on the behaviours identified in the AHRC’s National Surveys.
- Impose a positive obligation on employers to maintain a workplace free of sexual harassment.
- Introduce a civil penalty framework. The penalty system needs to demonstrate an appropriate assessment of the seriousness of the offending and effectively deter unlawful conduct.

**Workplace Gender Equality Act 2012 (Cth) and related documents:**
- Expand criteria 6.3 of the Workplace Gender Equality Agency Employer of Choice for Gender Equality Citation to require de-identified reporting of the incidence of sexual harassment complaints and the outcomes of investigations undertaken in response to such complaints.

**Regulation of Non-Disclosure Agreements (NDAs):**
- Prohibit employers from negotiating settlement deeds that benefit or protect perpetrators, where the complaint has been investigated and proven on the balance of probabilities.
- Where the complaint is established on the balance of probabilities, it should be illegal for employers or perpetrators to negotiate terms which prevent complainants from contacting the police (for criminal offences) or the relevant regulator or disciplinary body.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
- Give the AHRC powers similar to those of the Fair Work Ombudsman as to education, investigation and commencement of enforcement proceedings.
- Increase the time limit for making a complaint to the AHRC to 6 years from the last alleged offence.
- There should be an option for the applicant to make a complaint to a court directly, and to seek an interim injunction prior to a court application pending the determination of the proceedings.

**For complaints bodies and commissions:**
- The AHRC should publish a guideline that includes steps a person must take to eliminate sexual harassment; that is, setting out best practice as to the positive obligations, dealing with complaints, conducting investigations, etc. The guideline should also include bystander provisions.

**Women Lawyers Association of the Australian Capital Territory, Submission No 323 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019).**

**For government:**
**Sex Discrimination Act 1984 (Cth):**
- Make it mandatory for all employers to have a sexual harassment policy in place and to provide education and training to all employees on sexual harassment.
- Consider statutory minimum standards regarding the content of policies and training and encourage professional and regulatory bodies to provide guidance on these.
- Make it mandatory for industry professional representative bodies (for example, law societies, legal services boards and bar associations) to have sexual harassment complaint handling mechanisms which allow for anonymous complaints.

**Regulation of Non-Disclosure Agreements (NDAs):**
- Prohibit the use of nondisclosure or confidentiality clauses in settlement agreements for matters that involve sexual harassment or discrimination, unless requested by the complainant.

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
- Amend the FWA to introduce a similar regime to the current anti-bullying provisions. This would allow victims of sexual harassment to seek orders from the FWC compelling employers to take steps to stop sexual harassment, with civil penalties imposed if employers fail to take necessary action.

**For broader society:**
- Develop and deliver a widespread public education campaign on sexual harassment, including its drivers and what constitutes unacceptable behaviour (similar to current domestic violence and drink driving campaigns).

**Victorian Women Lawyers, Submission No 337 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019).**

**For government:**
**Sex Discrimination Act 1984 (Cth):**
- Impose a positive obligation on employers to put in place measures to eliminate sexual harassment in the workplace.
- Require companies to report sexual harassment statistics to an external body such as the AHRC or WGEA.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
- Give the AHRC (and VEOHRC) powers to investigate whether employers are meeting the (proposed) obligation to eliminate sexual harassment in the workplace.
- Abolish or extend the time limit for complaints to the AHRC (and VEOHRC) (to either 3 years, like personal injury claims, or 6 years, like tortious claims).
- Upon application by the complainant, allow the decision of the AHRC (or VEOHRC) to terminate or discontinue a complaint to be subject to internal review.

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
- Enact a standalone provision within the FWA, which relates specifically to sexual harassment in the workplace. This standalone provision could be modelled on the workplace bullying provision added in 2013. This is because there is a need for a swifter, more responsive mechanism to address workplace sexual harassment.

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**Northern Territory Women Lawyers Association, Submission No 251 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (25 February 2019).**

**For government:**

**Anti-Discrimination Laws:**
- Raise or remove current compensation caps for sexual harassment in the Anti-Discrimination Act 1996 (NT).

**Sex Discrimination Act 1984 (Cth):**
- Amend the SDA (and state and territory anti-discrimination laws) to include an enforceable positive duty to eliminate discrimination and harassment.

**Workplace Gender Equality Act 2012 (Cth) and related documents:**
- Introduce compulsory reporting of sexual harassment claims and outcomes for all employers reporting to the WGEA. This is because the core problem with the current system is that the full burden of addressing sexual harassment is left to the individual, the victim of the unwanted behaviour. There is no enforced requirement for systemic responsibility to be taken by employers or workplace regulators.

**Regulation of Non-Disclosure Agreements (NDAs):**
- Prohibit the inclusion of confidentiality clauses (commonly known as "gag clauses") in settlement agreements unless the complainant requests them.
- Alternatively, prohibit confidentiality clauses unless the organisation has agreed to take steps to prevent the harassment or discrimination occurring again (such as policy change or training).

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
- Provide the AHRC and State and Territory anti-discrimination bodies with the power to enforce the (proposed) national code, to initiate and conduct investigations of their own, to enter into enforceable undertakings, to issue compliance notices, and to issue proceedings to remedy a contravention of the law.
- Extend or remove time limits for sexual harassment complaints to the AHRC and State and Territory anti-discrimination bodies.
- Provide that parties bear their own costs for proceedings under anti-discrimination laws, unless certain criteria are met (this would be in line with the FWA).

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
- Amend the general protections provisions in the FWA to explicitly include sexual harassment as a form of sex discrimination.
- Explore the inclusion of an additional section similar to the current anti-bullying provisions to address sexual harassment complaints.
- Amend the FWA to require Modern Awards and Enterprise Agreements to contain terms mandating positive steps to prevent sexual harassment, in the same way that they currently do for dispute settlement procedures, consultation and individual flexibility agreements.
- Raise or remove current compensation caps for sexual harassment in the FWA.
- Extend or remove time limits for sexual harassment complaints to the FWC.

**Work Health and Safety Act 2011 (Cth), and other OHS Legislation:**
- Amend Federal, State and Territory work health and safety laws to explicitly state that sexual harassment and discrimination are safety issues that are covered by these laws, and that existing powers will be used to address sexual harassment.
- Develop a national code of practice to educate and assist employers, so that regulators and employers can proactively enforce work, health and safety laws to prevent sexual harassment occurring.
- Develop (or contract in) the capacity to respond seriously and adequately to complaints.
- Require work health and safety regulators to collect and publish sex disaggregated data on complaints.

**Defamation Laws:**
- Review defamation laws to reduce the current legislative disincentive to make sexual harassment civil complaints.

**Broader Change:**

- Develop education materials, guidance materials and campaigns as preventative measures to address the issue of gendered violence risks in the workplace.
- Introduce a Commonwealth Government-wide gender equity policy.
- Increase funding for specialist support services for sexual harassment, such as Women's Legal Services and Working Women's Centres. Many jurisdictions have no Working Women's Centres, as well as underfunded Women's Legal Services. This should be rectified by an expansion of the programs to ensure national access to these essential, specialist services.
- Ensure that the Fourth Action Plan under the National Action Plan to Reduce Violence Against Women and their Children includes a focus on addressing sexual harassment and other forms of workplace gendered violence.

**For complaints bodies and commissions:**

- Conduct an expanded inquiry into sexual harassment beyond workplaces; examine sexual harassment in all areas of life and over the life cycle, including sexual harassment occurring in schools, religious groups, sporting groups, clubs and associations, and in the public arena.

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**Women Barristers Association, Submission No 335 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).**

**For government:**

- **Sex Discrimination Act 1984 (Cth):**
  - Consider amending the SDA (and the Equal Opportunity Act 1984 (Vic)) to extend protections to all persons who are self-employed - including barristers. That is, provide a statutory remedy in respect of sexual harassment of barristers by other barristers, and of barristers by solicitors outside of the context of a formal retainer, rather than leaving it necessary to shoehorn incidents of sexual harassment into the existing categories of relationships.

  - **Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
    - Abolish or extend the time limit to make a complaint to the AHRC (and VEOHRC).

  - **Fair Work Act 2009 (Cth), and decisions related to the FWC:**
    - Enact a standalone provision within the FWA, relating specifically to sexual harassment in the workplace.

**Australian Bar Association, Submission No 413 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).**

**For government:**

- **Anti-Discrimination Laws:**
  - Harmonise Commonwealth, State and Territory legislation in relation to what constitutes sexual harassment, when sexual harassment is unlawful and when a complaint may be made about it.

- **Sex Discrimination Act 1984 (Cth):**
  - Amend Part II, Division 3 of the SDA to apply to persons self-employed or members of a profession.
  - Expand the definition of ‘services’ in s 4 of the SDA to protect barristers and people working with barristers – for example: "services” includes, without limiting the generality of the word – …. (d) services of any profession, occupation, trade or business, including those of an employment agent”.

**Victoria Legal Aid, Submission No 283 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019) (“Change the Culture, Change the System: Urgent Action Needed to End Sexual Harassment at Work”).**

**For government:**

- **Sex Discrimination Act 1984 (Cth):**
  - The SDA (and all anti-discrimination laws) should be amended to expand protection from sexual harassment to all areas of public life.
  - Impose an enforceable positive duty on employers to prevent sexual harassment supplemented by guidelines for compliance.
  - Improve protection and redress for people who complain of sexual harassment and suffer detriment because the employer or other duty holder fails to respond reasonably or handles an investigation badly.

- **Regulation of Non-Disclosure Agreements (NDAs):**
  - Standard form settlement agreements should include terms requiring duty holders to implement systemic measures to prevent and address sexual harassment.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
• Grant increased powers and resources to human rights commissions to effectively address sexual harassment, including greater investigation powers, the power to enter into enforceable undertakings, and the power to issue compliance notices.
• Extend the time limit for bringing a complaint to six years.
• Anti-discrimination laws should be amended to shift the burden of proof to the employer once the employee has established a prima facie case.
• Anti-discrimination laws should be amended to include a costs rule which provides that costs orders against an unsuccessful defendant are allowed, but costs orders against unsuccessful applicants are limited to instances where the application is frivolous, vexatious or without foundation.
• Human rights commissions should be resourced to reduce the current wait times for conciliations.

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
• The FWA should be amended to protect workers from sexual harassment with a standalone civil remedy provision to enable the FWC and Fair Work Ombudsman to tackle sexual harassment.

**Work Health and Safety Act 2011 (Cth), and other OHS Legislation:**
• Enforce the positive duty under work health and safety laws. The model laws should be amended to create an effective framework, and amendments adopted by all jurisdictions that have adopted the laws. Vic and WA should likewise amend their laws.
• Work health and safety agencies should be resourced and trained to effectively address sexual harassment.

**Broader Change:**
• Funding should be granted to pilot an accessible and confidential online reporting tool that assists people to report behaviour and seek support and identifies trends to assist with prevention efforts.
• Specialist support services should be funded to assist people who have experienced sexual harassment.
• Governments should invest in primary prevention efforts to address the underlying gendered drivers of sexual harassment. These should be part of a holistic strategy to prevent violence against women and promote gender equality.

**For complaints bodies and commissions:**
• Human rights commissions should be required to regularly record and report deidentified complaint data and information.

**Legal Aid New South Wales, Submission No 442 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019).**

**For government:**

**Anti-Discrimination Laws:**
• Harmonise Federal and State anti-discrimination laws to provide the greatest level of protection from discrimination.

**Sex Discrimination Act 1984 (Cth):**
• Amend the SDA (and Anti-Discrimination Act 1977 (NSW)) to impose a positive duty on employers to ensure that, so far as is reasonably practicable, a worker is not sexually harassed.
• Amend the SDA to provide the Sex Discrimination Commissioner with a function to conduct ‘own motion’ investigations.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
• Amend the AHRC Act to restore the time limit in which to lodge complaints to 12 months after the alleged unlawful conduct.
• Amend the AHRC to insert a ‘costs protection’ consistent with that in section 570 of the FWA.
• The AHRC (and State anti-discrimination commissions) should regularly release uniform, de-identified data which provides an outline of the nature of complaints and any financial and non-financial outcomes.
• The AHRC (and State anti-discrimination commissions) should set performance targets of finalising almost all sexual harassment complaints within 3 months.

**Broader Change:**
• Provide additional funding to the legal assistance sector to conduct specific community legal education about sexual harassment.
• Re-establish Working Women’s Centres in New South Wales.

**For complaints bodies and commissions:**
• The AHRC (and State anti-discrimination commissions) should regularly release uniform, de-identified data which provides an outline of the nature of complaints and any financial and non-financial outcomes.
• The AHRC (and State anti-discrimination commissions) should set performance targets of finalising almost all sexual harassment complaints within 3 months.
### For government:

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
- Sexual harassment should be included as an adverse action in the general protections provisions of the FWA.

**Broader Change:**
- There must be increased and adequate funding to specialist Women's Legal Services, including TEWLS, as well as the expansion of the Working Women's Centres in order to support women seeking advice and support in respect of sexual harassment in the workplace.

### Kingsford Legal Centre, Redfern Legal Centre, Women's Legal Service New South Wales, and the National Association of Community Legal Centres, Submission No 450 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (29 March 2019).

**For government:**

**Anti-Discrimination Laws:**
- Consolidate existing anti-discrimination legislation and enact a comprehensive Equality Act, reflecting the highest level of protection.

**Sex Discrimination Act 1984 (Cth):**
- Amend the SDA and the FWA (and all anti-discrimination laws) to make sexual harassment unlawful for all volunteers and unpaid workers.
- Amend the SDA (and all anti-discrimination laws) to make it unlawful for one person to sexually harass another person in all circumstances.
- Amend the SDA (and all anti-discrimination laws) to introduce a shifting onus of proof for sexual harassment claims. Make clear that the standard of proof is the civil standard of the balance of probabilities, and that the Briginshaw standard should not be applied.
- Amend the SDA (and all anti-discrimination laws) to impose a positive obligation on employers to take all reasonable steps to prevent sexual harassment in their workplaces, with a civil penalty provision for breaches of this duty.
- Amend the SDA (and all anti-discrimination laws), as well as the FWA, to allow the courts to order civil penalties for sexual harassment, which reflect the seriousness of the conduct.
- Amend the SDA (and all anti-discrimination laws) to specifically protect against intersectional discrimination.

**Regulation of Non-Disclosure Agreements (NDAs):**
- Introduce a law to regulate the use of confidentiality agreements in sexual harassment matters, which would prohibit confidentiality clauses unless the applicant requests one, require such requested clauses to be drafted plainly and clearly, prohibit confidentiality clauses from suppressing factual information, and allow both parties to request that the settlement amount remain confidential.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
- Extend the time limit to lodge a complaint of sexual harassment to the AHRC to 12 months, and reverse the onus of establishing why an application should not be accepted out of time. Allow a series of events to be considered even if some are out of time, if these events are linked to the last event that is within time.
- Amend Part IIB Division 2 of the AHRCA so that applicants and respondents in sexual harassment matters must bear their own costs unless an exception applies. Exceptions include either that the proceedings were vexatious or without reasonable cause, or the party caused the other party to incur costs by an unreasonable act or omission.
- Empower the AHRC to conduct own-motion investigations of what appears to be unlawful sexual harassment, and the power to commence court proceedings without receiving an individual complaint.
- Amend the AHRCA and SDA (and all anti-discrimination law) to provide for group and representative complaints.

**Fair Work Act 2009 (Cth), and decisions related to the FWC:**
- Amend the FWA to expressly prohibit sexual harassment. Make it unlawful for one person to sexually harass another person in the course of their employment in all circumstances. Adverse action should be defined to include sexual harassment as a form of discrimination against a person by reason of the person's sex.
- Amend the FWA to increase the time limit to lodge a general protections claim involving dismissal to the FWC from 21 days to 12 months.
- Amend sub-regulation 1.07(3) of the *Fair Work Regulations 2009* (Cth) to include sexual harassment as an example of serious misconduct.

**Work Health and Safety Act 2011 (Cth), and other OHS Legislation:**
- Amend the WHSA to explicitly include sexual harassment as a health risk to workers, requiring Safework to investigate, address and manage sexual harassment.

**Broader Change:**
- Increase funding to the AHRC (and State and Territory anti-discrimination bodies) to enable it to efficiently and effectively fulfil its complaint-handling and educative functions.
- Increase funding to Community Legal Centres to enable them to provide increased advice and representation in sexual harassment matters and to develop sexual harassment community legal education.
- Increase funding for community-based employment services to assist vulnerable migrant workers navigate the system and enforce their rights.
- Remove visa condition 8105 from student visas. Alternatively, issue a new decision-making protocol so international students can be issued with a warning instead of having their visas cancelled if they breach their work conditions.

**For complaints bodies and commissions:**
- Provide conciliators with extensive training on sexual harassment legislation, alternative dispute resolution theory and techniques, and the nature and dynamics of sexual violence a trauma informed practice.
- Make early referrals to free legal assistance in sexual harassment matters.
- Have appropriate and publicly available policies in place to empower parties and improve consistency in conciliations.

**For broader society:**
- Workplaces should make regular sexual harassment training compulsory, and tailor it to the workplace.
- Workplaces should define the type of conduct that constitutes sexual harassment, set out the complaint process, the investigation process, and the disciplinary action that will be taken, and regularly publish their sexual harassment policy via various workplace channels.
- Workplaces should allow for multifaceted reporting systems, and handle reports of sexual harassment sensitively, confidentially, transparently, fairly and quickly.
- Workplaces should take proportional corrective action in response to sexual harassment.

**Women’s Legal Centre of the Australian Capital Territory, Submission No 360 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).**

**For government:**

**Sex Discrimination Act 1984 (Cth):**
- Introduce in the SDA positive duties on Australian workplaces to prevent sexual harassment. This should include financial penalties for workplaces who fail to comply with such positive duties.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
- Allow for human rights commissions to conduct own-motion enquiries with enforceable remedies.

**Work Health and Safety Act 2011 (Cth), and other OHS Legislation:**
- Regulate sexual harassment issues in employment in a similar way to other work, health and safety issues.

**Broader Change:**
- Provide greater funding for the legal assistance sector, particularly specialist women’s legal services.

**Caxton Legal Centre, Submission No 382 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).**

**For government:**

**Sex Discrimination Act 1984 (Cth):**
- Extend the SDA to prohibit sexual harassment in all areas of life, like the Anti-Discrimination Act 1991 (Qld).
- Amend the element of ‘unwelcome’ in the SDA, or its interpretation, to acknowledge that, even in emails or text messages, it is rare for a complainant to explicitly say ‘that is unwelcomed behaviour’. Currently, when there is a written record of behaviour, a lot is read into the literal meaning of the messages, and this needs to change.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**
- Extend the time limit in the AHRC’s complaints process. Currently, the AHRC’s six-month time limit is less than the Anti-Discrimination Commission Queensland (ADCQ), which allows 12 months.

**For broader society:**
• In terms of workplace sexual harassment education, emphasis needs to be placed on the fact that behaviour that occurs outside the physical parameters of work may also constitute workplace sexual harassment.

LGBTI Legal Service Inc, Submission No 441 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (15 March 2019).

For government:
Sex Discrimination Act 1984 (Cth):
• Clarify sexual harassment and discrimination law to include the unique circumstances faced by the LGBTI community. Consult with relevant LGBTI organisations with regards to any proposals to amend the laws relating to sexual harassment arising out of the Inquiry.

For complaints bodies and commissions:
• Continue to encourage organisations to deliver LGBTI cultural competency training to staff and to foster a confidential and understanding complaint reporting environment.

St Kilda Legal Service, Submission No 409 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).

For government:
Broader Change:
• Implement and advocate for workplace training that aims to change gendered attitudes and entrenched behaviours that lead to sexual harassment. Training should include LGBTIQ topics.
• Fund targeted training for not-for-profit organisations to assist them to effectively implement sexual harassment policies and prevention strategies.
• Fund targeted, peer-led research into the experiences of sexual harassment of LGBTIQ people.
• Fund peer-led services to support members of the LGBTIQ community who have been subject to sexual harassment, including counselling, legal advice, victim support and advocacy.

For complaints bodies and commissions:
• Support the development of an online anonymous reporting tool for the purposes of collecting information on sexual harassment, including trends and common workplaces, with the option of providing support to victims of sexual harassment.
• The AHRC should consult with Intersex human Rights Australia in order to implement strategies for Australian workplaces that address the diverse experiences and needs of people with an intersex trait or variation.
• The AHRC template sexual harassment policy (and other template policies, such as from the Australian Institute of Community Directors) should be amended to explicitly acknowledge the wide spectrum of conduct that constitutes sexual harassment, including harassment towards LGBTIQ people.

For broader society:
• LGBTIQ organisations should implement professional development programs focusing on developing an awareness of sexual harassment in the workplace.

New South Wales Society of Labor Lawyers, Submission No 320 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (February 2019).

For government:
Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:
• The time limit for filing complaints of sexual harassment should be removed from the AHRC Act. In the alternative, the time frame for complaints should be extended to at least six years (with a discretion to extend it beyond six years).

Employment Law Centre of Western Australia, Submission No 361 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).

For government:
Sex Discrimination Act 1984 (Cth):
• Amend the definition of sexual harassment in the SDA to remove some of the barriers that can make it difficult for a complainant to establish sexual harassment, while providing a defence to a respondent in limited circumstances.
• Extend the sexual harassment protections in the SDA to cover volunteers and other kinds of unpaid workers, and persons performing work in non-traditional working arrangements such as ‘gig workers’.
• Amend the SDA and AHRCA to provide for a reverse onus of proof for a victimisation offence, similar to the general protections provisions in the FWA.
• Amend the SDA to place a positive duty on employers and other responsible parties to eliminate sexual harassment and victimisation, in line with s 15(2) of the Equal Opportunity Act 2010 (Vic).
• Introduce civil penalties for breach of the sexual harassment provisions in the SDA, and the power to allow for such penalties to be paid to the victim of sexual harassment.
• Substantially increase the penalties for a victimisation offence to be aligned with those available for serious contraventions of the FWA.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**

• Empower the AHRC to investigate and commence proceedings on behalf of complainants, or without requiring a particular identified complainant.
• Empower the AHRC to seek compensation and penalties for breaches of the SDA.
• Consider how to make settlement agreements at or through AHRC conciliation easier to enforce.
• Amend the AHRCA so that the timeframe for lodging a sexual harassment complaint (and other discrimination-based complaints) is extended to 6 years.
• Modify the legal framework so that parties before the FCC or FCA bear their own costs, and that the parties are not at risk of adverse cost orders except for in exceptional circumstances (such as frivolous or vexatious complaints).

**Broader Change:**

• Adequately resource the AHRC to perform these additional proactive and reactive functions.
• Provide immediate additional funding and resources to the community legal sector.

**For complaints bodies and commissions:**

• Establish an anonymous sexual harassment complaints function to assist with identifying non-compliance and to inform workplace investigations.

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**Maurice Blackburn Lawyers, Submission No 307 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).**

**For government:**

**Workplace Gender Equality Act 2012 (Cth) and related documents:**

• The governing bodies of all organisations should be required to report the number of incidents of sexual harassment, as part of their reporting requirements to the WGEA. One of the significant failings of the current legislative scheme is the onus it places on victims to seek redress, rather than placing a positive obligation on employers to prevent the harm occurring in the first instance.

**Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:**

• The current legislated timeframe for making a complaint through the AHRC should be amended to 6 years in line with other employment law jurisdictions.
• The AHRC should be properly funded and fully staffed in order to fulfil and more swiftly and robustly perform its objectives.

**Work Health and Safety Act 2011 (Cth), and other OHS Legislation:**

• There should be enforceable sanctions against employers who fail in their duty to provide a safe workplace for their employees.

**For broader society:**

• Other authorities, such as state and territory Work, Health and Safety regulators, along with trade unions and consumer advocates, could and should have a greater role to play in addressing and stamping out workplace sexual harassment.

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**Williamson Barwick Lawyers, Submission No 202 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (6 February 2019).**

**For government:**

**Sex Discrimination Act 1984 (Cth) and/or Fair Work Act 2009 (Cth):**

• A regime of mandatory investigation of complaints of sexual harassment, as exists in Malaysian law, is both appropriate and timely for Australia. There is already a precedent in the Anti-Bullying provisions in the FWA which enables the FWC to examine allegations of bullying and impose Stop Bullying Orders on perpetrators.

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**Harmers Workplace Lawyers, Submission No 366 to Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces (28 February 2019).**

**For government:**

**Sex Discrimination Act 1984 (Cth):**

• Amend the SDA and the Evidence Act 1995 (Cth) to provide for complainants of sexual harassment to make audio or film recordings of the behaviour of perpetrators toward them and for such recordings to be admissible as evidence in court in appropriate circumstances.
• Remove the exclusion of employees of States and State Instrumentalities from s 28B of the SDA.
• Extend the definition of workplace participant in s 28B to include members of the board of directors and other officers of the employer corporation and related bodies corporate.
• Require the registration of all settlements of sexual harassment across the country with a private computer register maintained by the AHRC and designed to detect repeat offenders.

Australian Human Rights Commission Act 1986 (Cth), and decisions related to the AHRC:
• Repeal s 46PH(1)(b) and s 46PO(3A) of the AHRCA.
• Amend s 46PO(4) of the AHRCA to expressly provide for the court to make an order requiring reckless, blatant and repeat respondents to pay exemplary damages (perhaps only if positive misconduct of particularly egregious character contravening section 28A of the SDA).
• Amend s 46P of the AHRCA to clarify that the estate of a deceased person has standing to bring a complaint on behalf of the deceased.

For complaints bodies and commissions:
• Retain a record of the Deeds of Release or other Settlement Agreements reached following conciliation conferences concerning complaints of sexual harassment in order to be in a position to identify repeat offenders.
• Maintain a private computer register of all settlements of sexual harassment across the country, designed to detect repeat offenders.
• Delegates of the president should refrain from writing to complainants raising objections to complaints unless there is a sound legislative and/or factual basis for such objections.


For broader society:
• Employers should develop specific sexual harassment policies and procedures, ensuring that these are known by staff members. Bystanders should be assured that they can speak out without suffering repercussions.
• Employers should provide effective, specific, regular, and up-to-date training on sexual harassment, including specialised training for supervisors and risk managers.
• Policies and procedures should support both internal and external investigations and, where the conduct is serious, police investigations. There should also be consistent and fair responses to allegations, including proper counselling for victims and fitting punishments for perpetrators.
• There should be increased roles for regulatory bodies to hold workplaces to certain standards, including the need for investigatory officers and compliance officers. Regulatory bodies should be able to make binding determinations and enforceable orders.
• Fines should be placed on an employer who does not protect an employee from workplace sexual harassment, and the employer could be required to undertake action with inspections for compliance.

Appendix 2: Previous Recommendations – Consolidated, and Compared to Existing Measures

<table>
<thead>
<tr>
<th>RECOMMENDATIONS SPECIFIC TO THE AUSTRALIAN LEGAL PROFESSION</th>
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<tbody>
<tr>
<td>Recommendation</td>
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<tr>
<td>Workplaces, law firms, practices and chambers should have policies on sexual harassment, which are clear, accessible, tailored, regularly communicated, regularly reviewed, and regularly updated.</td>
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</table>

24 Please note that these appendices include information published to date 8 July 2019. The Australian Human Rights Commission is publishing the submissions to its National Inquiry into Sexual Harassment in Australian Workplaces in ‘batches’. Accordingly, more recommendations from the legal profession could later become available.

25 The content under the heading ‘Existing Measures’ includes only those measures of Constituent Bodies of which the Law Council has been made aware, either from the public release of information or from the submission of information by Constituent Bodies to the Law Council. Accordingly, this content is not necessarily complete or up to date. Discussion Question 14 is a request for further information in this area from Constituent Bodies.

| Workplaces, law firms, practices and chambers should have sexual harassment complaint processes, which are confidential, clear, accessible, tailored to the organisation, and communicated to staff; which offer multiple avenues and options for making complaints; and which allow for anonymous complaints. Complaint processes should be regularly reviewed and revised, and feedback should be sought from staff as to the failings with existing models. Technological options for making complaints should be considered. |
| Workplaces, law firms, practices and chambers should have procedures for responding to sexual harassment complaints, which are clear and adhered to. For example, procedures should include a confidential mediation or conciliation process (if the complainant consents), administered either by senior staff who are trained to carry out the process or by a professional body. Where the complaint includes conduct that is clearly a breach of professional conduct rules, anti-discrimination laws, or is a criminal offence, senior leaders of the workplace should refer the complaint to appropriate authorities, and either suspend the alleged perpetrator or ensure there is no contact between the alleged perpetrator and the complainant. Similarly, counselling or support from an accredited provider should also be offered to all parties involved in complaint processes. |
| Workplaces, law firms, practices and chambers should have training on sexual harassment, which is regular, tailored, interactive and dynamic; which extends beyond strict legal definitions of sexual harassment to broader standards of civility; which is genuinely aimed at improving the culture of the organisation and not merely shielding the organisation from liability; and which is regularly reviewed, evaluated for efficacy and updated. Training should be for all staff, including CEOs, partners, etc. |
| Workplaces, law firms, practices and chambers should also have bystander training on sexual harassment. |
| Workplaces, law firms, practices and chambers should also have specific training |

- QLD Law Society has a Sexual Harassment Policy, applying to all staff and agents.\(^{27}\)
- VIC Bar has a Policy Against Sexual Harassment.\(^{28}\)
- Law Firms Australia member firms generally have grievance procedures to address and resolve complaints of inappropriate behaviour by partners or by employees.\(^{29}\)
- Law Council is currently in the process of training and appointing internal Harassment Contact Officers for staff.
- Law Firms Australia member firms generally provide online and group training to new and existing staff on a variety of issues, including on sexual harassment.\(^{30}\)
- Law Council staff, including officers, directors, and supervisors, undertook training on sexual harassment delivered by the ACT Human Rights Commission in February 2019.
- Law Firms Australia member firms generally provide specific training to staff, including bystander intervention workshops.\(^{31}\)

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30 Ibid.
31 Ibid.
for managers on sexual harassment. Managers should take responsibility for discussing sexual harassment issues with their teams on a regular basis.

| Workplaces, law firms, practices and chambers should **internally distribute news and research** on sexual harassment. |
| Workplaces, law firms, practices and chambers should encourage **responsible drinking** at social events. |
| Workplaces, law firms, practices and chambers should have staff **annually undertake that they understand their obligations**, in performance reviews or at other times – e.g. ‘I am aware of my obligations under the [insert list of applicable sexual harassment, discrimination and bullying] policies and have sought to comply with them throughout the year’. The need for this could be reviewed after 5 or 10 years. |
| Workplaces, law firms, practices and chambers should **release annual data** regarding sexual harassment complaints. |
| Workplaces, law firms, practices and chambers should consider establishing **permanent committees** with mandates to maintain efforts to address sexual harassment. |
| Workplaces, law firms, practices and chambers should **vocalise that sexual harassment is unacceptable**. Senior leaders should be role models for expected standards of behaviour, and support committees, working groups and initiatives aimed at achieving change. |
| Workplaces, law firms, practices and chambers should **empower the voices of younger professionals** who may otherwise be prevented from active advocacy on issues, and strengthen formal and informal mentoring schemes. |
| Workplaces, law firms, practices and chambers should **support local Women Lawyers and Barristers Associations**, join them, pay for staff to be part of them, and engage them in consultations. |
| Workplaces, law firms, practices and chambers should **develop a positive duty action plan to promote gender equality**, aligning issues of equal opportunity, flexible work practices and prevention of sexual harassment with the organisation’s existing values, and outlining the organisation’s compliance with the positive duty to eliminate discrimination, sexual harassment and |

| • Law Firms Australia member firms generally have employees complete internal surveys, third party provided workshops, and exit interviews. |
| **• Law Firms Australia member firms generally have mentoring schemes.** |

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32 Ibid.
33 Ibid.
victimization. An internal diversity working group should be created to monitor the progress of the equal opportunity action plan to promote gender equality.

<table>
<thead>
<tr>
<th>Workplaces, law firms, practices and chambers should acknowledge the link between sexual harassment and mental health for victims and bystanders, and commit to addressing factors that contribute to adverse mental health outcomes.</th>
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<tbody>
<tr>
<td>• Law Firms Australia member firms generally have counselling and support services and hotlines, and information. 34</td>
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<tr>
<th>Professional bodies (Law Council, law societies and bar associations) should develop mandatory or guiding standards of conduct for the profession. Macro-level standards should be articulated to reinforce workplace-specific standards.</th>
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<tbody>
<tr>
<td>• This is perhaps particularly important in jurisdictions such as Tasmania, where the Law Society has only recently adopted the National Model Conduct Rules, and these rules are yet to come into force.</td>
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<tr>
<th>Professional bodies (Law Council, law societies and bar associations) should publicise the professional conduct rules relevant to sexual harassment.</th>
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<tr>
<td>• ACT Bar Association is currently developing a model policy and grievance procedure to be adopted by chambers. 35</td>
</tr>
<tr>
<td>• NSW Bar Association has a Model Harassment, Discrimination, Vilification and Victimisation Best Practice Guideline. 36</td>
</tr>
<tr>
<td>• The AWL has stated that it is willing to work with peak bodies on this recommendation.</td>
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<tr>
<th>Professional bodies (Law Council, law societies and bar associations) should include the following tick a box statement on practicing certificate renewal forms, ensuring that individual lawyers annually undertake that they understand their obligations – ‘I am aware of my obligations under the [insert list of applicable sexual harassment, discrimination and bullying] policies and have sought to comply with them throughout the year’. This is specific to those professional bodies that ensure the renewal of practicing certificates. The need for this could be reviewed after 5 or 10 years.</th>
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<tr>
<th>Professional bodies (Law Council, law societies and bar associations) should develop guiding, best practice policies on sexual harassment.</th>
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<tr>
<td>• NSW Bar Association has elective continuing professional development topics that directly address sexual harassment (e.g. ‘Responding to Sexual Harassment at the Bar Series Part 1 – what to do when sexual harassment occurs?’).</td>
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<tr>
<td>• ACT Bar Association is currently developing a proposal to introduce compulsory continuing</td>
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34 Ibid.
Programs should also focus on the important role played by bystanders. Professional development topics on discrimination, harassment and bullying.

<table>
<thead>
<tr>
<th>Professional bodies (law societies and bar associations) should mandate sexual harassment training for all members of the profession across Australia, including solicitors, barristers and judicial officers, and as part of Practical Legal Training. Training should be compulsory or free, or both; in place for 5 to 10 years with a review to follow; include bystander training; and, be broader than the law, and include the gender biases at play.</th>
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<tbody>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should develop and manage a voluntary code, which workplaces, law firms, practices and chambers can adopt; which includes periodic reporting on numbers of women in senior positions, numbers of employees working flexibly, and numbers and outcomes of sexual harassment complaints; and which enables law firms, practices and chambers to opt-in for sexual harassment complaints to be handled by an external review panel.</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should operate a mandatory reporting scheme, which requires workplaces, law firms, practices and chambers (or directors, boards, partners and barristers) to provide de-identified notification of sexual harassment complaints. Alternatively, reporting could be periodic and cover the number of complaints, the general nature of complaints, and the outcome of complaints.</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should operate a sexual harassment complaints reporting mechanism, which allows for anonymous complaints. The complaints reporting mechanism should be regularly reviewed and revised, and feedback should be sought from the profession as to any failings. Multiple options, including technological options, for making complaints should be considered.</td>
</tr>
<tr>
<td>VIC Bar adopted an internal grievance process in 2018 where members can lodge a complaint ‘seeking investigation and response’, which will be investigated, where appropriate conciliated by a trained, senior member of the bar, and, in some cases, referred to the regulator.</td>
</tr>
<tr>
<td>Law societies and bar associations have mentoring schemes, counselling services and hotlines for members to discuss any issue, including sexual harassment (but these are not targeted to sexual harassment, nor do they promise a professional trained in helping those who have experienced sexual harassment).</td>
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<tr>
<th>Professional bodies (Law Council, law societies and bar associations) should draw a panel of senior members of the profession willing to directly receive complaints and queries and provide advice in relation to sexual harassment.</th>
<th>• Law Society of TAS provides a similar service for ethics-related queries.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should offer a confidential mediation or conciliation process, which can be quickly convened at the request of a complainant.</td>
<td>• VIC Bar adopted an internal grievance process in 2018 where members can lodge a complaint 'seeking investigation and response', which will be investigated, where appropriate conciliated by a trained, senior member of the bar, and, in some cases, referred to the regulator.39</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should establish taskforces in each jurisdiction to address the issue of sexual harassment.</td>
<td>• Law Society of SA has recently formed a Working Group to develop strategies to address sexual harassment in the local legal profession.40 • VIC Bar created a Diversity and Inclusion Working Group to draft new conduct policies to address sexual harassment.41</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should establish networks, committees or working groups to address the issue of sexual harassment, continue awareness raising efforts and turn one-off initiatives into ongoing, productive dialogues.</td>
<td>• Law Council's Equal Opportunity Committee; Law Society of NSW’s Diversity and Inclusion Committee; NSW Bar Association’s Diversity and Equality Committee; Victorian Bar’s Equality and Diversity Committee; Law Institute Victoria Council’s Diversity Committee; WA Bar Association’s standing Diversity Committee; SA Bar’s Women at the Bar sub-committee; Law Society of SA’s Equality, Diversity and Inclusion Committee; Law Society of Tasmania’s Employment and Equal Opportunities Committee; QLD Law Society’s Equity and Diversity Law Committee; QLD Bar’s Equal Opportunity and Diversity Committee.</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should engage more actively with international and domestic counterparts on the issue of sexual harassment, and establish linkages with women lawyers’ associations.</td>
<td>• Law Council, law societies and bar associations already work together, but could communicate and consolidate more, and resist competition, including on the issue of sexual harassment. • Members of Law Council, law society and bar association committees might also be members of women lawyers’ associations committees.</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should acknowledge the problem and vocalise that sexual harassment is unacceptable. Senior leaders should be role models for expected standards of behaviour, and support committees, working groups and initiatives aimed at achieving change.</td>
<td>• Law Council, law societies and bar associations have released ad hoc statements and initiatives. • Members of the profession are e.g. white ribbon and male champions of change ambassadors.</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should engage with the perspectives of junior members to develop a greater appreciation of changing attitudes to workplace culture.</td>
<td>• Young Lawyers Committees.</td>
</tr>
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<tr>
<th>Professional bodies (Law Council, law societies and bar associations) should conduct surveys or data-gathering on sexual harassment on a regular basis.</th>
<th>• Law Council, law societies and bar associations have conducted surveys.42</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should hold events for the discussion of sexual harassment issues among members.</td>
<td>• Law Council, law societies and bar associations have held ad hoc events.</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should develop a communications plan to promote issues of gender equality and awareness of sexual harassment in the legal profession e.g. articles in law journals, seminars, media releases, social media.</td>
<td>• Law Council, law societies and bar associations have published ad hoc media releases, submissions, policies, articles in law journals, etc.43</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should conduct unconscious bias training.</td>
<td>• Law Council provides Unconscious Bias Training tailored to the legal profession, delivered through Symmetra. • WA Bar Association mandates Unconscious Bias Training as a compulsory part of the Bar Readers' Course, and allows non-Readers to undertake the training voluntarily. • VIC Bar provides Unconscious Bias Training as a voluntary part of the Ethics and Professional Responsibility category of continuing professional development training.</td>
</tr>
<tr>
<td>Professional bodies (Law Council, law societies and bar associations) should aim to increase diversity.</td>
<td>• Wider NARS Report Recommendations.44 • Diversity and Equality Charter.45 • Unconscious Bias Training.46 • Equitable Briefing Policy.47 • Collection of Ethnic and Cultural Diversity Data. • Clerkships, scholarships, and programs for First Nations students, lawyers and members. • LGBTIQ+ workplace initiatives and information.48 • Flexible workplace initiatives and information.49</td>
</tr>
</tbody>
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Professional bodies (Law Council, law societies and bar associations) should aim to improve mental health and quality of life.

<table>
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<tr>
<th>Regulatory bodies (legal services boards and commissioners, etc) should develop <strong>mandatory or guiding standards of conduct</strong> for the profession. Macro-level standards should be articulated to reinforce workplace-specific standards.</th>
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<tbody>
<tr>
<td>• Mental health and wellbeing research, surveys, portals, counselling services and hotlines, and information.</td>
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<tr>
<td>• Australian Solicitors Conduct Rules, including Rule 42.1.2 (adopted in ACT, NSW, VIC, SA, QLD and equivalent in WA, as well as forthcoming in TAS).</td>
</tr>
<tr>
<td>• Legal Profession Uniform Conduct (Barristers) Rules, including Rule 123 (adopted in NSW, VIC and equivalent in ACT, WA).</td>
</tr>
<tr>
<td>• Victorian Legal Services Board + Commissioner is currently developing guidance for legal practitioners on the proper drafting and use of non-disclosure agreements.</td>
</tr>
<tr>
<td>• New South Wales Legal Services Commissioner is currently reviewing how to fast-track cultural change in profession.</td>
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<tr>
<th>Regulatory bodies (legal services boards and commissioners, etc) should consider the appropriateness and efficacy of introducing <strong>mandatory requirements for workplace policies</strong> on sexual harassment.</th>
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<td>• New South Wales Legal Services Commissioner is currently reviewing how to fast-track cultural change in workplaces.</td>
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<tr>
<th>Regulatory bodies (legal services boards and commissioners, etc) should operate a <strong>sexual harassment complaints reporting mechanism</strong>, which allows for anonymous complaints. The complaints reporting mechanism should be regularly reviewed and revised, and feedback should be sought from the profession as to any failings. Complaints should be handled seriously, confidentially and quickly. Multiple options, including technological options, for making complaints should be considered.</th>
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<tr>
<td>• Each regulatory body allows any person to make a complaint against a lawyer.</td>
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<tr>
<td>• Victorian Legal Services Board + Commissioner has certain staff contacts and an email address dedicated to receiving harassment complaints.</td>
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<tr>
<td>• Victorian Legal Services Board + Commissioner is currently working to ensure it is embodying best practice complaints management.</td>
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<td>• New South Wales Legal Services Commissioner is currently reviewing best complaints options.</td>
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The Legal Profession Board of Tasmania (LPBT), together with the Law Society of Tasmania (LST), should decide whether, when the National Model Conduct Rules come into effect in Tasmania, complaints will be handled by the LST or by the LPBT. While the LST has adopted the rules for the Tasmanian legal profession, it is not clear to the LST’s EEOC whether the LST intends to handle complaints internally or refer to the LPBT. The LPBT, in the EEOC’s view, likely lacks the resources and training to manage sexual harassment complaints at present.

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52 Ibid.


55 Ibid.

Regulatory bodies (legal services boards and commissioners, etc) should **report annual data** on the sexual harassment complaints they receive.

- Victorian Legal Services Board + Commissioner publishes an annual report, which has in the past documented complaints relating to ‘sexual impropriety’.\(^{57}\)

Regulatory bodies (legal services boards and commissioners, etc) should **reiterate the need for workplaces to report** sexual harassment incidents, given the prohibitions on misconduct.

- Victorian Legal Services Board + Commissioner’s recent media release.\(^{58}\)
- New South Wales Legal Services Commissioner’s recent submission to the AHRC’s NISHAW.\(^{59}\)

Regulatory bodies (legal services boards and commissioners, etc) should **include the following tick a box statement on practicing certificate renewal forms**, ensuring that individual lawyers annually undertake that they understand their obligations – ‘I am aware of my obligations under the [insert list of applicable sexual harassment, discrimination and bullying] policies and have sought to comply with them throughout the year’. This is specific to those regulatory bodies that ensure the renewal of practicing certificates. The need for this could be reviewed after 5 or 10 years.

Regulatory bodies (legal services boards and commissioners, etc) should **undertake a review of the current sexual harassment complaint processes** relevant to the legal profession.

Regulatory bodies (legal services boards and commissioners, etc) should **mandate continuing professional development training on sexual harassment**.

Regulatory bodies (legal services boards and commissioners, etc) should consider the appropriateness and efficacy of introducing **mandatory requirements for workplace training** on sexual harassment.

Regulatory bodies (legal services boards and commissioners, etc) should consider introducing sexual harassment **training as part of the law school curriculum and entry to the profession**.

Regulatory bodies (legal services boards and commissioners, etc) should **mandate sexual harassment training for all members of the profession across Australia**, including solicitors, barristers and judicial officers, and as part of Practical Legal Training. Training should be compulsory or free, or both; in place for 5 to 10 years with a review to follow; include bystander training; and, be broader than the law, and include the gender biases at play.

Regulatory bodies (legal services boards and commissioners, etc) should **conduct surveys or data-gathering** on sexual harassment on a

- New South Wales Legal Services Commissioner has recently set up a contact line for informal sexual harassment complaints.\(^{60}\)

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60 Jerome Doraismay, ‘Legal Services Commissioner vows to be ‘real instigator’ for changing sex harassment culture’, *Lawyers Weekly* (online), 20 June 2019.
regular basis, and release annual data on relevant trends.

Regulatory bodies (legal services boards and commissioners, etc) should engage more actively with international and domestic counterparts on the issue of sexual harassment (e.g. International Conference of Legal Regulators).

**RECOMMENDATIONS FOR WIDER LEGAL, POLITICAL AND SOCIAL REFORM**

<table>
<thead>
<tr>
<th>Recommendation62</th>
<th>Existing Measures63</th>
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<tbody>
<tr>
<td>Government should consolidate anti-discrimination laws on sex, race, age, and disability, and ensure that intersectional discrimination and harassment is explicitly considered and addressed. Some organisations recommend the amendments proposed to the victimisation provisions in the Human Rights and Anti-Discrimination Bill 2012 (Cth) with the proviso that the provisions explicitly extend to bystanders and supporters.</td>
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<td>Government should consolidate sexual harassment provisions across all jurisdictions and legal practice areas, in a manner which enshrines best practice. This includes removing compensation caps.</td>
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<tr>
<td>Government should clarify anti-discrimination laws and sexual harassment provisions across all jurisdictions to include the unique experiences faced by the LGBTQI+ community. Government should consult with relevant LGBTQI+ organisations with regards to any amendments.</td>
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<tr>
<td>Government should amend s 28A of the SDA to simplify the meaning of sexual harassment (and remove the gender biases).</td>
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<tr>
<td>Government should amend the SDA to make sexual harassment unlawful in all areas of public life. Alternatively, government should amend the SDA to extend coverage and protection to all persons who are at work – including self-employed persons (such as barristers and solicitors in sole practice), interns, volunteers, unpaid workers, and labour hire workers.</td>
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<tr>
<td>Government should amend the SDA to impose a positive duty on specified duty-holders (such as employers, event organisers, venues, etc) to take reasonable steps to prevent sexual harassment.</td>
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<td>For example:</td>
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<td>• Anti-Discrimination Act 1991 (Old) s 118.</td>
<td>• Equal Opportunity Act 2010 (Vic) s 94 and s 4 (definition of 'services'); and</td>
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<td>Alternatively, consider the wider coverage in the following:</td>
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<td>• Anti-Discrimination Act 1977 (NSW) s 22B(6);</td>
<td>• Equal Opportunity Act 1984 (SA) s 87(1).</td>
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<td>• Anti-Discrimination Act 1998 (Tas) s 3 (definition of 'employment' para (a));</td>
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<td>• Equal Opportunity Act 1984 (SA) s 87(1).</td>
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61 This is not the topic of this Discussion Paper. The Law Council awaits publication of the Australian Human Rights Commission’s Final Report on the National Inquiry into Sexual Harassment in Australian Workplaces before advancing any recommendations relating to federal law reform or advocating for change beyond the legal profession.

62 Please note that these appendices include information published to date 8 July 2019. The Australian Human Rights Commission is publishing the submissions to its National Inquiry into Sexual Harassment in Australian Workplaces in ‘batches’. Accordingly, more recommendations from the legal profession could later become available.

63 The content under the heading ‘Existing Measures’ includes only those measures of which the Law Council has been made aware, either from the public release of information or from the submission of information by Constituent Bodies to the Law Council. Accordingly, this content is not necessarily complete or up to date.
Government should amend the SDA to impose a positive duty on specified duty-holders (such as employers, event organisers, venues, institutions) to respond to complaints or information of sexual harassment. Other organisations suggest that government should make it mandatory for *industry professional bodies* to have sexual harassment complaint handling mechanisms. Complaint handling mechanisms should allow for anonymous complaints.

Government should amend the SDA to impose a positive duty on specified duty-holders (such as employers, event organisers, venues, institutions) to report sexual harassment. Workplaces, organisations and companies could be required to report sexual harassment statistics to an external body such as the AHRC or WGEA. Government could amend the *Workplace Gender Equality Act 2012* (Cth) and related documents to introduce compulsory reporting of sexual harassment claims and outcomes for all employers reporting to the WGEA. Similarly, criteria 6.3 of the WGEA’s Employer of Choice for Gender Equality Citation could be expanded to introduce the compulsory reporting of sexual harassment claims and outcomes. Reports should be de-identified. Alternatively, government should at least introduce and/or fund greater collation nationally of data on sexual harassment.

Government should consider statutory minimum standards regarding the content of the proposed positive duties, and the content of policies, training and complaints handling mechanisms, and encourage professional and regulatory bodies to provide guidance on these. Other organisations suggest government develop a national code of practice. Still others suggest government develop guidelines for compliance.

Government should amend s 105 of the SDA (i.e. liability for aiding and permitting) to include div 3 conduct (i.e. sexual harassment).

Government should amend the SDA to introduce a civil penalty framework, including for breaches of the proposed positive duties. The penalty system should demonstrate an appropriate assessment of the seriousness of sexual harassment and effectively deter it. Alternatively, government should at least impose more significant consequences for duty-holders who are aware of improper
behaviour and fail to take adequate actions, or duty-holders who fail to respond reasonably or handles an investigation badly, causing detriment to the complainant.

Government should regulate non-disclosure agreements or non-disclosure clauses in settlement agreements (also known as confidentiality clauses, gag clauses, etc). NDAs could be made unenforceable where they fail to meet certain minimum standards, such as that the survivor must not be prevented from reporting the complaint to the relevant authorities (e.g. professional regulators or police); that the rights the survivor maintains must be made explicit; that non-disclosure must be equal (i.e. conditional on the perpetrator not misrepresenting or denying the interaction either); that the complaint must be deposited in an information escrow (to be released for investigation if another complaint about the same perpetrator is deposited); etc. Other organisations suggest that NDAs could be prohibited unless requested by the complainant, or, alternatively, unless the workplace, company or organisation has agreed to take steps to prevent the conduct occurring again (such as policy change or training).

Government should expand the jurisdiction of the AHRC in sexual harassment matters to conduct investigations and commence court proceedings of its own initiative – and also to investigate whether workplaces are meeting the proposed positive duties (or any other proposed standards); to enter into enforceable undertakings; and to issue compliance notices. That is, powers like the Fair Work Ombudsman.

Government should amend s 46PH(1)(b) of the AHRCA to either abolish the 6-month time limit as a discretionary ground for termination, or extend it to at least 6 years. (Other organisations suggest at least 1 year (as it was previously), others 18 months, and others 3 years (as with personal injury claims), but the vast majority suggest 6 years (as with tortious claims), some with the discretion to extend beyond 6 years). Equivalent amendments removing or extending time limits should be made for state and territory bodies.

Government should amend the law to allow for a sexual harassment complainant to make an application to a court directly, and to seek an interim injunction prior to a court application.

Government should amend the law to shift the burden of proof to the respondent (e.g. the employer) once the complainant (e.g. the employee) has established a prima facie case.

Government should amend the AHRCA to provide that a sexual harassment complainant should generally not pay the costs of the respondent. Some organisations suggest a costs rule where costs orders are allowed.

For example:
against an unsuccessful defendant, but not against an unsuccessful complainant unless their application is frivolous, vexatious or without foundation. Other organisations suggest that parties bear their own costs for sexual harassment proceedings unless certain criteria are met. This would be in line with the FWA.

Government should amend the law to provide that a decision of the AHRC (or state and territory equivalent) to terminate or discontinue a complaint would, upon application by the complainant, be subject to internal review.

Government should increase funding to the AHRC.

Government should amend the FWA to include a ‘stop sexual harassment order’ like the current ‘stop bullying order’. To do so, government would first need to amend the definition of ‘adverse action’ in the general protections provisions of the FWA to explicitly include sexual harassment. This would allow complainants to seek orders from the FWC compelling employers to take steps to stop sexual harassment, with civil penalties imposed if employers fail to take action.

Government should amend the FWA to require Modern Awards and Enterprise Agreements to contain terms mandating positive steps to prevent sexual harassment.

Currently, no work health and safety legislation includes an express provision addressing sexual harassment. Some organisations suggest using and enforcing the current positive duty in work health and safety law to address sexual harassment. Others suggest amending the model laws to ‘create a more effective framework’. Still others suggest amending the model laws to explicitly state that sexual harassment and discrimination are safety issues covered by these laws. There should be enforceable sanctions against employers who fail in their duty to provide a safe workplace for their employees.

Government should increase the funding, resourcing and training of work health and safety agencies to effectively address sexual harassment and respond seriously and adequately to complaints.

Government should make whistleblower laws uniform in structure and operation across all contexts and sectors and administered by a single regulatory body, and explicitly include sexual harassment complaints as protected disclosures.

Government should review defamation laws to reduce disincentives to make sexual harassment complaints.

Government should require commissions, such as the AHRC, and work health and safety
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<th>regulators, to report data on the sexual harassment complaints received.</th>
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<td>Government should regularly incorporate advances in international law on the issue of sexual harassment into domestic law. E.g. fully implement CEDAW. E.g. adopt the forthcoming Convention Concerning the Elimination of Violence and Harassment in the World of Work.</td>
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<tr>
<td>Government should grant funding to pilot an accessible and confidential online reporting tool that assists people to report behaviour and seek support, and identify trends to assist with prevention efforts.</td>
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<td>Government should increase funding to the legal assistance sector, including to Women’s Legal Services, such as TEWLS, and for the expansion of Working Women’s Centres, in order to support access to justice for victims of sexual harassment, as well as to broader specialist support services.</td>
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<td>Government should develop strategies to address insecure work, in order to foster conditions in which victims of sexual harassment are empowered to assert their rights and make informal or formal complaints.</td>
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<td>Government should invest in primary prevention and cultural change efforts to address the underlying gendered drivers of sexual harassment, as part of a strategy to address gender inequality. Internally, government should introduce a government-wide gender-equity policy.</td>
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<td>Government should ensure that the Fourth Action Plan under the National Action Plan to Reduce Violence Against Women and their Children includes a focus on addressing sexual harassment and other forms of workplace gendered violence.</td>
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<td>Commissions, such as the AHRC, should publish a best practice guideline, in order to inform the proposed positive duties to eliminate, respond to and report sexual harassment.</td>
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<td>Commissions, such as the AHRC should continue to encourage workplaces to deliver LGBTQI+ cultural competency training to staff and to foster a confidential and understanding complaint reporting and handling environment.</td>
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<td>Commissions, such as the AHRC, should develop primary prevention and cultural change measures, such as bystander training, unconscious bias training, and addressing the gender pay gap.</td>
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<td>Commissions, such as the AHRC, should conduct an expanded inquiry into sexual harassment beyond workplaces, examine sexual harassment in all areas of life and over the life cycle, including in schools, religious</td>
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groups, sporting groups, clubs and associations, and in the public arena.

There must be preventative cultural change measures, in particular awareness, education and training programs fostering a culture of respect, especially bystander training programs, applied across all sectors and at all levels. There must be shared responsibility from the government, media, justice sector, legal profession, medical profession, social service providers, work health and safety regulators, unions, professional bodies and representatives, corporate bodies and representatives, company boards, organisations, minority groups, workplaces, schools and universities. A government-funded public awareness and education campaign could be launched, similar to current domestic violence campaigns.