

27 May 2021

Michael Tidball
Chief Executive Officer
Law Council of Australia
GPO Box 1989
CANBERRA ACT 2601

Email: tarryn.gaffney@lawcouncil.asn.au

Dear Mr Tidball

RULE 42 OF THE AUSTRALIAN SOLICITORS CONDUCT RULES

I refer to the Law Council of Australia consultation paper dated 6 April 2021.

The Law Society of Western Australia supports the proposal to amend the Conduct Rule such that it captures conduct "in connection with" legal practice, and not just "in the course of" legal practice.

The Law Society considers that there should be a stand-alone definition of "sexual harassment" which is tethered to the definition found in the *Sex Discrimination Act 1984* (Cth).

This will avoid regulatory gaps found in the applicable state and territory legislation, whilst also promoting national consistency.

The Law Society also notes that the Western Australia state legislation is currently under review by the Western Australian Law Reform Commission.¹

As for the specific consultation questions, The Law Society answers them as follows:

1. No, as the Law Society considers that there should be a separate definition of "sexual harassment";
2. Yes, apart from the consideration in point 1 above;
3. Yes;
4. Yes, the word "unlawful" before the word "harassment" in 42.1.3 is unnecessary given "harassment" is defined as "harassment that is unlawful under the applicable state, territory or federal anti-discrimination or human rights legislation";
5. The inclusion of the words "including sexual harassment" in the definition of harassment is not required given 42.1.2 specifically lists sexual harassment as

¹ Project 111 – Review of the *Equal Opportunity Act 1984* (WA)
<https://www.lrc.justice.wa.gov.au/P/project-111.aspx>

prohibited conduct, and as stated above “sexual harassment” should have its own definition; and

6. The Society suggests that useful material for the commentary can be found in the recent report by the Victorian Legal Services Board,² and reports by the Victorian³ and South Australian⁴ Equal Opportunity Commissioners.

The Law Society also suggests that further consideration be given to appropriate definitions for the other undefined terms in rule 42, such as a definition for ‘workplace bullying’.

Separately, the Society notes the heading of Rule 42 is "ANTI-DISCRIMINATION AND HARASSMENT" – given the Rule also addresses workplace bullying (at 42.1.4), perhaps the heading of the rule should be amended to reflect this.

If you have any queries please contact Mary Woodford, General Manager Advocacy and Professional Development on (08) 9324 8646 or mwoodford@lawsocietywa.asn.au

Yours sincerely

A handwritten signature in blue ink that reads "Jocelyne Boujos". The signature is fluid and cursive, with the first letter 'J' being particularly large and stylized.

Jocelyne Boujos
President

² *Report on the Sexual Harassment Study*

<https://lsbc.vic.gov.au/resources/report-sexual-harassment-study>

³ *Review into Sexual Harassment in the Victorian Courts* <https://www.humanrights.vic.gov.au/for-individuals/courts-review/>

⁴ *Review of Harassment in the Legal Profession* <https://eoc.sa.gov.au/initiatives/independent-review-harassment-legal-profession>