

Sexual Harassment Unofficial Discussion – 6 February 2019

Key points

1. Why does it happen and how do we prevent it?

Why does it happen

- Hierarchical nature of the profession and empowerment of those in powerful positions (“untouchables”)
- Power imbalance between senior leaders and juniors – misreading flattery as “an invitation to treat”
- Senior leaders in the profession implicitly setting the standard for the rest of the profession and new entrants (i.e. at bar readers course) in a negative way by making sexualised and sexist remarks and centring narratives around the male barrister (and supporting wife) as the norm
- Concerns about reporting (reputational damage, unreliability of work for juniors, stigma) leading to a culture of (real or at least perceived) impunity
- Repeat perpetrators often cunning and subtle in their harassment, making it difficult for victims to make or prove allegations

What can we do about it?

- Communicate the values of the bar and expectations of all members
- Ensure that bar readers course includes sessions that:
 - Communicate the values and expectations at the bar;
 - Educate regarding the issue of sexual harassment and appropriate/inappropriate behaviour, as well as support and reporting mechanisms;
 - Do not contain sexualised and sexist comments or narratives
 - Refer to both male and female barristers as equals
- Advertising campaigns to target behaviours and bring awareness to what is not acceptable, and also to shed light on those leaders in the profession who are standing up against sexual harassment
- Ensuring that senior leaders who are standing up against sexual harassment are educating their peers (not just new entrants to the profession)
- Celebrating those who exhibit outstanding leadership in this area
- Considering this issue in applications for silk – it *will* affect your application for silk (in each direction - making the adherence to the standards of the bar and excellence in standing up for sexual harassment and gender equality part of the criteria).

2. Once it has happened how does the complainant and institution respond?

Current approach

- Victorian Legal Services Board (LSB) – any contact with the LSB in relation to a particular person will be noted on that practitioner’s record. In the event that further complaints are received the LSB may consider an investigation (and also has the option of advising the complainant that other complaints had been received – which may encourage that person to consider lodging a formal complaint).
- Victorian Bar – various options:

- Reporting mechanism where complainant lodges a report (but does not name the perpetrator) – mechanism to respond to the concern of those who don't want to name the person, but want it known to the institution. Option of making contact with the complainants in the event that a recurring pattern of behaviour is identified.
- Conciliators – options for raising the complaint with the alleged perpetrator and facilitating a process aimed towards re-building the working relationship between the two individuals (by consent only).

New ideas

- Think about options for recording untested allegations in an effort to challenge the current “culture of impunity”
 - Consider options whereby a complainant may record a complaint without taking it further, but elect to be told in the event there is another complaint against the same person (which may cause that first complainant to consider making a formal complaint) – options for this include web-based “black box” platforms adopted in university colleges ([Callisto](#) and the [Silent Choir Project](#))
- Need to focus on making more of a profile for those who are standing up against sexual harassment and whose “doors are open” for conversation about the issue. Particularly important for conciliators – focus on making them “a known quantity” (and therefore considered approachable by complainants) by having their personal views and approaches towards these matters publically known
- Adopting a zero tolerance approach and educating barristers of what is at stake – ultimately ability to practice – escalation to the ethics committee and ultimately VCAT if pursued by the LSB.