

Lawyers encouraged to blow #MeToo whistle on harassers



Law firms and professional bodies are overhauling policies relating to harassment to encourage lawyers to report misconduct and fuel a change in culture away from the real or perceived protection of top performers.

The shift comes as regulators across the nation reveal few incidents of sexual harassment are reported; a situation some experts anticipate will change as the [global MeToo movement](#) flushes out alleged offenders.

"Despite the rarity of complaints from lawyers, we believe from anecdotal information that sexual harassment by one lawyer against another is grossly underreported," said Victorian Legal Services Commissioner Fiona McLeay.

"Unfortunately, there remains the prevailing view that it would be 'career suicide' for a lawyer to make an allegation of sexual harassment or abuse against another lawyer within their workplace."

The Victorian Legal Services Commissioner receives about two to three complaints on average each year alleging sexual harassment or abuse by lawyers; and they are generally from clients or other parties, not lawyers. Two matters in recent years — one each in 2014 and 2016 — resulted in the regulator taking action.

"We know that some law practices deal with these issues internally without involving the regulator," said Ms McLeay.

'Times have changed'

In 2014, the Law Council of Australia released an extensive study on national attrition and re-engagement, which found one in four women experienced sexual harassment in their workplace.

Yet other state regulators and professional bodies similarly confirmed they receive few complaints.



Victorian Legal Services Commissioner Fiona McLeay: encouraging lawyers to report, against fear of 'career suicide'
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The ACT Law Society has received only one complaint in the past decade with sufficient detail to allow a formal investigation. That was in 2016.

"We care very much, and if it appears that 'nobody is doing anything', it's because we are not getting enough information to investigate conduct that, if it were proved, would be serious," said ACT Law Society president Sarah Avery.

"To affected people who are thinking of reporting sexual harassment, I would say: Times have changed. You do not need to fear that you will be unemployable if you report sexual harassment. The tide of public opinion is with you."

Last year there were only two calls to the ACT's general enquiry hotline on the topic.



Harmers Workplace Lawyers chairman Michael Harmer says top earning partners are a "protected species" *Ben Rushton*

"There is an informal grapevine to a degree in any community, and I believe that because of this, some affected people might believe that everybody knows about what the alleged perpetrators are up to, and nobody cares," said Ms Avery.

"This is not true."

South Australia's Legal Profession Conduct Commissioner Greg May has dealt with two matters involving allegations of harassment or sexual misconduct since the inception of his role in July 2014. In the preceding decade, there were another two matters including one where a lawyer was suspended from practice for three months, undertook psychological sessions and was fined \$3000 in criminal proceedings after committing a sexual offence with a female work experience student in his office.

'Fear of retribution'

Legal Practice Board of Western Australia executive director Libby Fulham said lawyers contacting the complaints division usually did not identify themselves; including due to "fear of retribution, loss of employment, loss of employment opportunities and further harassment".

"The best we can do is to inform the contact of the obligations held by the principal of the practice and the availability of resources," she said.

In NSW, the Legal Services Commissioner has received 72 personal misconduct complaints in the

past eight months, but commissioner John McKenzie said they covered a broad set of behaviours beyond harassment and discrimination, including outside the practice of law.

Law Society of NSW president Doug Humphreys said the "few complaints" received about misconduct could be for a number of reasons, including "that matters may be dealt with internally within firms or the complaint may be submitted to other authorities". He encouraged lawyers to report "all complaints", saying they would be "dealt with the utmost seriousness".

In Tasmania, since its inception in 2009 the Legal Profession Board has had no complaints where the principle allegation involved sexual harassment or abuse; but CEO Frank Ederle noted the relatively small size of the profession (about 550-600 lawyers) and said the board was unaware of underreporting.

Queensland Law Society president Ken Taylor said while the association did not have data on complaints, it was "aware that workplace harassment is a serious issue".

Cultural shift

It is understood that both the Law Institute of Victoria and the Victorian Bar Association, which has a grievance protocol to deal with complaints within the bar, are looking at the issue.

On Thursday night the Victorian Bar Association is expected to agree to the renewal of policies that have been in place for decades, after a review of the processes for dealing with sexual harassment, bullying and discrimination.

Behind the change is a drive to promote the bar as a bully and harassment-free environment.

In NSW, Bar Association president Arthur Moses recently reminded members of the disciplinary action that misconduct could bring.

"Sexual harassment is not condoned in any manner by the NSW Bar," he told *The Australian Financial Review*.

"It can result in disciplinary action, criminal prosecution or penalties under anti-discrimination legislation."

The low incidence of reports, in a profession rife with anecdotal incidents, has triggered questions over whether confidentiality, or non-disclosure, agreements are suppressing complaints.

Law Society of South Australia president Tim Mellor said a contractual agreement could not override statutory entitlements and obligations; meaning confidentiality clauses could not prevent an investigation of a complaint by the commissioner.

"This is particularly pertinent in the legal profession, which is held to a higher standard of conduct than the general business community and is subject to disciplinary authorities that have duties to

investigate alleged misconduct," he said.

Regulation varies state by state, but there is increasing consistency. The Australian Solicitors Conduct Rules are adopted in South Australia, Queensland, Victoria, New South Wales and the Australian Capital Territory; Rule 42 prohibits discrimination, sexual harassment or workplace bullying in the course of practice. Reporting requirements vary: while South Australia requires the Law Society to report "reasonable grounds" to suspect misconduct, NSW does not.

The Law Council is undergoing a review of the rules. President Morry Bailes said the Law Council was "absolutely committed to ensuring that all members of the legal profession are treated fairly and respectfully".

"Over a number of years, the Law Council has worked proactively and closely with law firms, state and territory law societies and bars, to improve the workplace culture."

End of the protected rainmaker?

Harmers Workplace Lawyers leader Michael Harmer likes to call them the "protected species": the lawyers who bring in serious revenue for a firm and are almost untouchable. Historically, at least.

Promoted, protected, shuffled from firm to firm, predatory behaviour persisting.

"We would have on our books a number of leading practitioners in this country, whose names you would recognise, who are still out there and touted as a big name in the industry, with none the wiser," said Mr Harmer.

"Some of them have engaged in quite disgusting conduct, and they have still been promoted – that goes all the way to managing partner level. No wonder it's hard to improve gender diversity.

"It just makes the area a total joke."

The legal profession, he claims, is "right up there at the top" along with accounting, property and finance, in terms of sectors producing the most harassment cases.

Signs are emerging the global MeToo movement is finally reaching the profession.

This week, global press reported the head of the first law firm to crack the \$US3 billion revenue mark, Latham & Watkins managing partner Bill Voge, quit after admitting "communications of a sexual nature". Other partners across Europe and the US have been ousted or worse in recent months, including at Baker McKenzie.

Last week, the movement reached Australia as *The Australian Financial Review* revealed Herbert Smith Freehills [suspended a partner while investigating sexual harassment and misconduct allegations](#); later named – although not publicly confirmed by the firm – as projects leader Peter Paradise.

Firms take notice

Some of the nation's largest firms revealed they have recently renewed policies or are in the process of an overhaul. Initiatives beyond paper-based policies such as unconscious bias training, to push a cultural shift, are also in vogue.

Corrs Chambers Westgarth outgoing CEO John Denton said the firm was undertaking a full review of policies, including complaint avenues, how it conducts investigations and encourages people to "call out and report incidents".

"We are in a new and appropriate era of heightened awareness and consciousness around the issue of harassment, in particular sexual harassment," he said.

"Corrs as a firm welcomes and embraces the raised standards expected by our people."

Mr Denton said the firm had "zero tolerance of harassment of any kind", but recognised policies were not enough.

"The important ongoing work of instilling the values of respect, inclusion, diversity and support in our firm must continually be reinforced, supported and lived by the people at the firm, particularly by our board, by me, my executive, partners, senior lawyers and business executives," he said.

"Our people are also telling us that policies and procedures are all well and good but that's not enough, that we need to do even more, and we will."

MinterEllison cited a "zero tolerance policy"; a spokeswoman saying it dealt with claims in a formal manner ensuring those making them are "supported and heard".

"Immediate and complete investigations are undertaken, and prompt action is taken where necessary," she said.

"Depending on the nature of the behaviour, disciplinary action is taken which may include termination."

Ashurst highlighted its whistleblower policy and "effective mechanisms" to deal with claims and give "full support to those affected".

"We are conscious of the importance of providing a safe, diverse and inclusive environment for all of our people."

The firm recently refreshed its code of conduct, regularly reinforced and requiring "behaviour of the highest standard".

Clayton Utz outlined the serious and sensitive investigations that accompany claims. Depending on circumstances and severity, disciplinary action ranges from a warning to dismissal.

Earlier this year the firm rolled out partner-led workplace behaviour training, compulsory for all partners and staff.

"We've worked really hard in recent years to create a supportive, inclusive and respectful workplace culture," a spokeswoman said.

King & Wood Malleons said certain conduct including sexual harassment was "unacceptable".

In addition to policies and processes, a spokeswoman said the firm had taken other steps to "instil a culture where all our people are treated fairly and with respect", including unconscious bias training and conscious decision making workshops.

It is understood Herbert Smith Freehills deals with allegations on a case-by-case basis and investigates claims directly and immediately.

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