

Sexual Harassment in the Legal Profession



Information for lawyers about sexual harassment in the legal profession.

What is Sexual Harassment?

There is range of behaviour and conduct that can constitute sexual harassment, including physical, verbal or written conduct. The underlying requirement however, is that the behaviour is unwelcome (subjective test).

Section 17 of the *Anti Discrimination Act 1998* (Tas) defines sexual harassment as:

- unsolicited physical contact of a sexual nature
- unwelcome sexual advances
- unwelcome requests for sexual favours
- unwelcome remarks or gestures of a sexual nature; or
- other unwelcome conduct of a sexual nature

in circumstances in which a reasonable person, having regard to all the circumstances, would anticipate the person would be offended, humiliated or intimidated (objective test). Sexual harassment is similarly prohibited under the *Sex Discrimination Act 1984* (Cth) (s 28).

The types of behaviour which can constitute sexual harassment are broad and can include for example: unwanted physical contact, remarks, jokes or innuendos of a sexual nature, questions about someone's sex or private life, lewd comments, offensive material displayed in the workplace, gender-based insults, inviting hugs and sexually explicit physical contact.

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The Federal anti-discrimination laws in combination with the State and Territory laws, provides the right to work in an environment free from sexual harassment.¹ Studies have revealed however, that unacceptable levels of sexual harassment are occurring throughout the legal profession across the world.²

Sexual harassment in the legal profession can occur at work as well as outside the workplace or work hours, if it occurs in connection with:

- work
- an employee or employer; or
- arises as a function of work.

Legal practitioners and law practices, have a responsibility to take reasonable steps to prevent sexual harassment and a culture of harassment in the workplace. Employers can be held vicariously liable for sexual harassment committed by their employees or agents, if they failed to take 'all reasonable steps' to prevent it.³

¹ Australian Human Rights Commission National Inquiry into Sexual Harassment in Australian Workplaces (Report, January 2020) 73

² See for example, The International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (Report, May 2019).

³ *Sex Discrimination Act 1984* (Cth) s 106

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Sexual Harassment as Professional Misconduct

Sexual harassment is against the law and is capable of amounting to unsatisfactory professional conduct or professional misconduct under the *Legal Profession Act 2007* (Tas).

Specific anti-discrimination rules apply additionally to anti-discrimination legislation in the legal profession. Legal practitioners have a professional status and a responsibility to protect individual rights, and therefore should lead by example in non-discriminatory conduct.⁴ This is reflected in professional rules applicable to all legal practitioners including those with a barrister only practising certificate that proscribes conduct which constitutes discrimination or sexual harassment.⁵

The following rules prohibiting sexual harassment apply specifically to legal practitioners:

- Rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* (Tas)
- Rule 48 of the incoming⁶ *Legal Profession (Solicitors' Conduct) Rules 2019* (Tas)

The Board's Strategy to Address Sexual Harassment in the Profession

The Board's strategy comprises both proactive and reactive measures.

Proactive:

- Raising awareness – The Board is committed to raising awareness of this issue in the legal profession and seeks to do so through its educative role in the Tasmania profession. Generating discussion across the legal profession is a step forward towards meaningful action to redress the issue and to identify opportunities for change in culture and practice
- Encouraging reporting of unacceptable behaviour
- Undertaking specialist training – The Board and staff members are committed to undertaking specialist training regarding sexual harassment to enable the appropriate and effective handling of sensitive complaints

Reactive:

The Board's response will also be reactive, whereby appropriate measures can be identified in response to reports and complaints. These measures may include:

- Investigating individual lawyers in response to a complaint
- Taking disciplinary action where appropriate
- Developing further resources and information in response to identified areas of concern

⁴ Gino E Dal Pont, *Lawyer's Professional Responsibility* (Thomson Reuters Australia, 7th ed, 2017) 713.

⁵ Ibid

⁶ To be implemented in late 2020

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What can you do if you have been Sexually Harassed?

There are a number of options available to you if you have been sexually harassed:

- Seek advice and support. Speak to a trusted friend or colleague
- Deal with the behaviour yourself if you are comfortable doing so (by addressing your concerns directly with the person concerned)
- Informally report the incident to the appropriate person within the organisation (someone from human resources, a partner or manager)
- Formally make a written complaint with your employer
- If your complaint is against a lawyer, make a complaint to the Legal Profession Board of Tasmania

Other Support services and Reporting Agencies

- Tasmania Police – 000
- Equal Opportunity Tasmania - 1300 305 062
- Human Rights Commission – 1300 656 419
- 1800RESPECT on 1800 737 732

Making and Complaint & Further Information

If you wish to make a complaint relating to sexual harassment by a lawyer, or have a confidential discussion regarding a matter of sexual harassment, you can contact the Legal Profession Board in the following ways:

- Call the Legal Profession Board on 03 6226 3000
- Email enquiry@lpbt.com.au
- Visit the Board at Level 3, 147 Macquarie Street, Hobart Tasmania, 7000
- Send mail addressed to the Legal Profession Board of Tasmania, GPO Box 2335, Hobart TAS 7000

Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

We are located at Level 3,
147 Macquarie Street
Hobart Tasmania.

Website:
www.lpbt.com.au

Postal address:
GPO Box 2335,
Hobart 7001

Telephone:
(03) 6226 3000

Email:
enquiry@lpbt.com.au

Fax:
(03) 6223 6055

The normal hours of opening
at our office are between
9:00am and 5:00pm on
weekdays.

