



WOMEN BARRISTERS ASSOCIATION

IN THE MATTER OF THE VICTORIAN LEGAL SERVICES BOARD
INQUIRY INTO CONTINUING PROFESSIONAL DEVELOPMENT IN VICTORIA

SUBMISSION

ON BEHALF OF THE

WOMEN BARRISTERS ASSOCIATION (VICTORIAN BAR)

1. This submission is made on behalf of the Women Barristers Association (**WBA**) of the Victorian Bar, to the Victorian Legal Services Board's 'Inquiry into Continuing Professional Development in Victoria'.
2. Amongst other things, the WBA aims to:
 - a. Promote awareness, discussion and resolution of issues which particularly affect women;
 - b. Identify, highlight and eradicate discrimination against women in law and in the legal system; and
 - c. Advance equality for women across the legal profession generally.
3. The WBA submits that the Inquiry should make the following recommendations for reform of Continuing Professional Development (**CPD**) for legal practitioners:
 - a. **Recommendation 1** – that there be mandatory CPD points required each year in the areas of sexual harassment, discrimination, and unconscious bias; and
 - b. **Recommendation 2** – that there be exploration of how CPD sessions can be flexibly delivered, in particular through remote access, in order to ensure those with parental or caring responsibilities can conveniently take part in CPD.
4. Recommendation 2 is, we hope, self-explanatory.
5. Recommendation 1 is sought in a context where:

- a. There is a wealth of existing research which establishes that sexual harassment continues in the legal profession at alarming rates;¹ and
 - b. There are also a wealth of suggestions about what might be done to address existing issues of sexual harassment and discrimination, and to advance equality in the law.
6. The need for mandatory CPD yearly points in the areas of sexual harassment, discrimination, and unconscious bias has been pressed by a number of key bodies in the legal profession in recent years:
 - a. In July 2019 Australian Women Lawyers released a Policy Paper with seven strategies to address sexual harassment, including compulsory CPD training;
 - b. In September 2019 the Victorian Bar Council supported the introduction of a mandatory CPD element on sexual harassment, in a submission to the Law Council of Australia, in response to the Discussion Paper into Sexual Harassment in the Legal Profession; and
 - c. Indeed, one of the express questions in the Issues Paper for this Inquiry is whether sexual harassment should be included as a mandatory CPD topic.
7. Recommendation 1 becomes more pertinent with the recent news of the High Court’s investigation into the former Justice Dyson Heydon, and the finding of sexual harassment against six former Associates.
8. The release of this news, and the reverberations it has caused in the legal profession, including for female barristers, are significant. Many members have been reflecting on their own varied experiences, over many years, often without further comment or action at the time – but in respect of which the shame, anger, and feeling of powerlessness and belittlement, has endured. The WBA is particularly concerned about the effect that experiences like this appear to have in turning promising female practitioners away from a pathway in the law.
9. In this context, we urge the Inquiry to adopt Recommendation 1.

¹ In 2014 the Law Council of Australia’s *National Attrition and Re-engagement Study* reported that 25% of female lawyer and 55% of female barrister respondents had experienced sexual harassment. In October 2018 the Victorian Bar’s *Quality of Working Life Survey* reported that 16% of female barristers had experienced sexual harassment in the past year. In May 2019 the International Bar Association reported that 47% of Australian female lawyer respondents had experienced sexual harassment, in *Us Too? Bullying and Sexual Harassment in the Legal Profession*. In April 2020 the Victorian Legal Services Board reported that over one third of Victorian lawyer respondents had been sexually harassed.

10. It is vital that all members of the legal profession have the knowledge, skills, and understanding to recognise, campaign against, and prevent inappropriate behaviour.
11. The potential for theoretical and practical content for a mandatory CPD requirement envisaged by Recommendation 1 is vast and could include:
 - a. Education for legal professionals as to:
 - what constitutes sexual harassment;
 - what constitutes sexual discrimination;
 - what constitutes unconscious bias;
 - the rates at which females experience sexual harassment in the legal profession;
 - the reporting and conciliation avenues available to legal practitioners who have experienced or witnessed sexual harassment; and
 - the differences between men and women's experiences in terms of career progression in the law (for example educating legal practitioners to the significant disparity in appearances by men and women in civil hearings).
 - b. Practical training for legal practitioners in this area by provision of:
 - clear examples of what constitutes unwelcome or inappropriate behaviours;
 - strategies to help identify less obvious situations in which behaviour is unwelcome or inappropriate;
 - information to help identify particular circumstances in which male legal practitioners need to remain vigilant around their behaviour (eg where a male barrister is briefed or instructed by a newly admitted lawyer);
 - practical strategies on how to respond when a legal practitioner experiences, suspects or witnesses sexual harassment (eg 'bystander' training);
 - suggestions for practical, positive and respectful ways in which male legal practitioners can encourage and support female legal practitioners in career progression and generally; and

- strategies and suggestions for legal practitioners on respectful ways to interact with and support their female juniors, instructing solicitors, personal assistants, secretaries, researchers and work experience students.
12. Importantly, the predominantly female and junior recipients of unwelcome behaviour from more senior men should not bear the burden of being the ones to have to address this issue early in their careers, or more prevalently, the burden of coping with these experiences alone. The focus needs to be towards the broader profession, and senior members of the profession, in terms of the CPD training.
 13. In addition to addressing sexual harassment directly, CPD requirements which relate to the broader issues of discrimination and unconscious bias, diversity and inclusion, are also important and will be of assistance in creating systemic cultural change which makes the incidence of sexual harassment less likely.
 14. The WBA thanks the Inquiry for the opportunity to make this submission.
 15. The WBA would be happy to work further with the Victorian Legal Services Board in discussing and developing appropriate CPD content in respect of these issues, or discussing this submission further, should that be of assistance. Please contact Emma Pepler, Counsel, at emmapepler@vicbar.com.au or on 0401 436 597 with any questions or enquiries.
 16. Finally, this submission has been reviewed and endorsed by the Australian Women Lawyers.



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