

Recommendations:

2021 Review of Harassment in the Legal Profession (SA)

RECOMMENDATION 1

That all legal profession workplaces consider implementing the Workplace Equality and Respect Standards developed by Our Watch (or equivalent).

RECOMMENDATION 2

That all Persons Conducting a Business or Undertaking of a legal nature in South Australia review and, where necessary, update, their policies, procedures and processes (including staff induction materials) to ensure that they eliminate or ameliorate, as far as is practicable, risks of harm arising from sexual and discriminatory harassment, by:

- Developing, implementing and monitoring work health and safety systems with respect to psychological hazards.
- Encouraging diversity and inclusion, including in recruitment processes.
- Declaring that sexual and discriminatory harassment will not be tolerated.
- Clarifying acceptable and unacceptable conduct.
- Detailing internal and external complaint-handling procedures.
- Underlining the need to maintain confidentiality about complaints.
- Outlining internal and external support and services in the event of harassment, including links to relevant websites.
- Specifying the need to keep and secure store records regarding complaints of harassment, for six years after they are made.

RECOMMENDATION 3

That, consistent with Recommendation 15 of the Parliamentary Review, the Attorney-General consider amending the *Equal Opportunity Act 1984* (SA) to impose a positive duty upon employers to eliminate discrimination, sexual harassment and victimisation.

RECOMMENDATION 4

That all legal profession workplaces which currently deliver in-house Continuing Professional Development courses, deliver one Continuing Professional Development course per year for the next five years with respect to bullying, discrimination and harassment, including sexual harassment, in addition to the fourth required unit mandated by the Legal Practitioners Education and Admission Council Rules 2018.

RECOMMENDATION 5

That the State Courts Administration Council, in consultation with the relevant bodies responsible for developing training, programs and resources for judicial officers, develop a training program on the nature, drivers and impacts of harassment, including sexual harassment for delivery to South Australian judicial officers on an annual basis.

RECOMMENDATION 6

That the South Australian universities and providers of Practical Legal Training review their ethics content, with a view to providing a profession-specific perspective of harassment and ensuring that students have a comprehensive understanding of the issue as a means of fulfilling the Legal Practitioners Education and Admission Council's Professional Obligations competency.

RECOMMENDATION 7

That the Attorney-General amend the *Legal Practitioners Act 1981* (SA) to:

- amend section 5 to include the South Australian Bar Association Barristers' Conduct Rules under the definition of 'legal profession rules'.
- grant the Legal Profession Conduct Commissioner and the Legal Practitioners Disciplinary Tribunal the power to make an order that a respondent practitioner do, or refrain from doing, a specified or unlawful act.

RECOMMENDATION 8

That the Legal Profession Conduct Commissioner be adequately funded to:

- increase the informal reporting initiative to two investigative solicitors, and that those officers be provided with adequate training to provide a trauma-informed management of complaints of harassment.
- establish an online portal for receiving and managing informal reports and formal complaints.

That the Attorney-General consult with the Legal Profession Conduct Commissioner regarding amendments to the *Legal Practitioners Act 1981* (SA) to empower the Commissioner to conduct compliance audits and issue management system directions, as available to regulators under the *Uniform Law Application Act 2014* (Vic), and that the Legal Profession Conduct Commissioner receive adequate funding to allow the proper exercise of those functions.

RECOMMENDATION 9

That the members to be appointed to the Legal Practitioners Disciplinary Tribunal include one or more members:

- with expertise in dealing with sexual harassment and / or other trauma, and that this member be appointed to any panel constituted to consider a charge arising from alleged harassment, including sexual harassment.
- from a culturally and linguistically diverse or Aboriginal and / or Torres Strait Islander background, or, failing that, be experienced in working with individuals in these groups.

RECOMMENDATION 10

That the Attorney-General amend section 13 of the *Evidence Act 1929* (SA) to ensure that it applies to witnesses appearing in an inquiry before the Legal Practitioners Disciplinary Tribunal.

RECOMMENDATION 11

That the Attorney-General creates and funds an additional ongoing position within the Equal Opportunity Commission for a Designated Enquiries Officer to take enquiries and conciliate matters relating to sexual harassment.

RECOMMENDATION 12

That the Attorney-General amend section 93(2) of the *Equal Opportunity Act 1984* (SA) be amended to increase the time limits in which a complaint may be made to three years, or such longer period as the Commissioner may allow, having regard to the nature of the failure to make a complaint within the timeframe and the public interest in receiving and progressing the complaint.

RECOMMENDATION 13

That the Attorney-General facilitate the creation of an instrument pursuant to which Safe Work SA, the Legal Profession Conduct Commissioner and the Commissioner for Equal Opportunity can share information relating to reports, complaints or other information about harassment by a member of the legal profession.

RECOMMENDATION 14

That all legal profession workplaces consider, adopt and apply, as part of their workplace policies, good-practice principles with respect to the appropriate, victim-centred use of non-disclosure agreements.

RECOMMENDATION 15

That the Attorney-General make this Report publicly available and provide it to the following organisations for further dissemination:

- Attorney-General's Department
- The Law Society of South Australia
- Legal Profession Conduct Commissioner
- Legal Services Commission
- South Australian Bar Association
- Courts Administration Authority
- Women Lawyers' Association of South Australia
- Respectful Behaviours Working Group
- Office of the Commissioner for Public Sector Employment
- South Australian Universities and Practical Legal Training providers.

RECOMMENDATION 16

That the Attorney-General commit to commissioning a further review into the effectiveness of the laws, policies, structures and complaint mechanisms relating to harassment, including sexual harassment, in the South Australian legal profession within three years of the publication of this Report.