

Review of Harassment in the South Australian Legal Profession: A Summary

By Jodeen Carney, South Australian Commissioner for Equal Opportunity



On 20 April 2021, the South Australian Office of the Commissioner for Equal Opportunity (OCEO) released its Review of Harassment in the South Australian Legal Profession ('the Review'). Led by then-Acting Commissioner, Steph Halliday, the Review heard from over 600 participants, most of whom included barristers, solicitors employed in private practice and within government, as well as in-house counsel. It was clear from those submissions that sexual and discriminatory harassment is prevalent in the legal profession.

Sexual Harassment

42.1% of respondents to the Review's survey indicated that they had experienced sexual harassment in the profession, including one-third who had experienced it more than once. A further 13 of the Review's 16 interview participants and four participants who made written submissions described being victims of sexual harassment, ranging in severity from sexually suggestive and unwelcome comments to sexual assault.

Women are much more likely to experience sexual harassment, with 56.6% of the survey's 346 female respondents indicating they had experienced sexual harassment in the profession, compared with 13.6% of the 140 male respondents.

Discriminatory Harassment

42.1% of respondents to the Review's survey indicated that they had experienced discriminatory harassment in the profession, including 34.6% on more than one occasion. A further 43% of survey respondents reported having experienced offensive comments or jokes made about a personal attribute protected by the *Equal Opportunity Act 1984 (SA)* ('the Act').¹

Survey results also revealed that unfavourable treatment on the basis of a protected attribute, particularly caring responsibilities, is not uncommon. Also raised in many of the responses and submissions to the review were work practices which reflected a gender bias.

Bullying

As the Commissioner for Equal Opportunity does not have jurisdiction to consider complaints of bullying under the Act, general incidences of bullying did not fall within the



scope of the Review. However, it was clear from submissions to the Review that incivility is prevalent in the profession and is in itself a contributing factor to the prevalence of sexual and discriminatory harassment.

Drivers of Harassment in the Legal Profession

The Review found that the following factors were some of the key drivers of harassment in the profession:

- a patriarchal and hierarchical culture characterised by intense competition;
- a lack of cultural diversity, particularly in relation to people identifying as Aboriginal and/or Torres Strait Islander;
- deeply entrenched gender bias that underpins discriminatory behaviour; and
- a 'culture of silence' whereby instances of harassment are minimised, normalised and kept quiet.

Many participants also raised concerns about the number of women in positions of authority failing to raise their voices against these drivers of harassment, and therefore allowing them to continue. It is also clear that harassment in the profession is not only perpetrated by men, with a number of participants indicating that some of the perpetrators of sexual harassment and discrimination, particularly on the basis of an employee's caring responsibilities, were women.

Concerns were also raised about the highly adversarial nature of the profession, particularly in relation to barristers, who are likely to be those who are most often engaged in the 'adversarial aspects of legal practice'.

The Acting Commissioner noted observations made by Justice Sam Doyle, who has previously remarked that the barrister's working environment 'allow[s], if not encourage[s], certain personality traits to flourish in a way that might not be permitted to occur in the more controlled and accountable environments of a law firm or within government'.²

Barriers to Reporting Harassment

The Review found that reporting rates of harassment in the profession are very low. A number of reasons for this were identified, including a lack of understanding and trust in complaint processes, fear of repercussions on career and work life, and a culture where victims thought it best not to 'rock the boat'. Most survey respondents were, however, generally aware of the bodies to which complaints could be made. Hence, it is clear that awareness of complaint mechanisms is not the issue, but rather a fear of speaking up.

The Acting Commissioner cautioned that increasing the number of formal complaints brought by victims will not in itself reduce the prevalence of harassment in the legal profession. Instead, change must be achieved at a deeper, cultural level, and that the profession should foster a culture of mutual respect and civility. There is a need for greater diversity and implementation of inclusive practices, and those in positions of authority must model professional and supportive conduct and call out inappropriate or discriminatory behaviour.

Recommendations

The Review made 16 recommendations primarily aimed at improving culture in the profession, including through education before admission and as part of internal continuing professional development programs.

While the findings of the Review have been confronting, the response of the profession has been encouraging and determined. A review in three years will measure whether progress has been made. **BN**

ENDNOTES

- 1 Protected attributes include sex, race, age, disability, and caring responsibilities, among others.
- 2 Justice Samuel Doyle, 'The path to gender equality requires removing cultural and structural barriers in the profession' (March 2021) *Law Society of South Australia Bulletin* 6.