

# Sexual harassment in the legal profession

## Information for lawyers about sexual harassment in the workplace

### POSITION OF THE REGULATOR

Sexual harassment of any kind is unacceptable. For lawyers, it is also conduct that is capable of constituting professional misconduct.

As the primary regulator of Victoria's legal profession, the Victorian Legal Services Board and Commissioner (VLSBC) does not tolerate sexual harassment. We will investigate any complaints we receive about this conduct, initiate our own complaints where appropriate, and in either case use the powers we have to address it.

This factsheet provides information about the obligation of lawyers and law practices to eliminate sexual harassment in the workplace.

#### What is sexual harassment?

The *Equal Opportunity Act 2010* (Vic) defines sexual harassment as:

- an unwelcome sexual advance
- an unwanted request for sexual favours, and
- any other unwelcome conduct of a sexual nature

in circumstances which could make a reasonable person feel offended, humiliated or intimidated.

Sexual harassment can be physical, verbal or written. It is against the law in many areas of public life, including the workplace.

The question of whether behaviour is unwelcome is subjective. It will depend on the perception and experience of the person alleging sexual harassment, not the intention behind it.

Whether conduct is of a sexual nature depends on the circumstances and the relevant context. The Australian Human Rights Commission has noted that conduct which in isolation may not appear to be sexual in nature may become so, because of the surrounding circumstances.

Finally, whether behaviour is offensive, humiliating or intimidating is an objective test. That is, the relevant question is whether a reasonable person would have anticipated that the person who was harassed would be offended, humiliated or intimidated.

#### Sexual harassment in the workplace

Sexual harassment can occur:

- at work
- at work-related events (or where people are carrying out work-related functions)
- between people sharing the same workplace

The workplace is not confined to the actual physical location of the workplace used by the employees.

A broad range of behaviours can constitute sexual harassment including: sexually suggestive comments or jokes; offensive materials (e.g. calendars, posters or screensavers) displayed in the workplace; requests for dates or sex; questions about someone's sex or private life; sexually explicit texts or emails; contact on social media; unwanted physical contact; and assault.

The Victorian Equal Opportunity & Human Rights Commission (VEOHRC) has useful information on their website regarding what does and does not constitute sexual harassment:

[VEOHRC > Sexual Harassment FAQ](#)

### **Sexual harassment by lawyers can constitute professional misconduct**

Rule 42 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* provides that, in the course of practice, solicitors must not engage in conduct that constitutes sexual harassment. Rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* replicates this rule for barristers.

Section 298 of the *Legal Profession Uniform Law 2014* makes it clear that conduct contravening the Uniform Rules for solicitors and barristers is, without limitation, conduct that is capable of constituting either unsatisfactory professional conduct or professional misconduct.

### **What can you do if you have been sexually harassed?**

If you have been sexually harassed, there are a number of options open to you.

You can raise the issue directly with your harasser, if you feel comfortable doing so, or you may choose to talk to a trusted colleague or human resources manager in the workplace. Alternatively, **VEOHRC** can help with advice, as well as free impartial conciliation services. You can contact VEOHRC on **1300 292 153**.

If you have been sexually harassed by a lawyer, contact the **VLSBC** on **(03) 9679 8001** and ask to speak to a Sexual Harassment Complaints Team member, or email [harassmentcomplaints@lsbc.vic.gov.au](mailto:harassmentcomplaints@lsbc.vic.gov.au). You can also contact the VLSBC if you believe a Victorian legal practice has failed to take reasonable steps to ensure their lawyers engage in professional conduct.

If you believe your workplace has systemic failings in creating and maintaining a safe and healthy workplace (including in relation to sexual harassment), you can seek further information or potentially refer the matter to **Worksafe Victoria** by calling **1800 136 089**.

### **Other reporting agencies and support services**

If you are in danger or want to report a crime, you should contact **Victoria Police** on **000**.

To make an anonymous, online report about either sexual harassment or assault you can do so via SARA (Sexual Assault Report Anonymously), by clicking [here](#).

If you require urgent medical or psychological assistance, you should contact your **local doctor** or the **emergency department** of your local hospital.

The following support services are also available to you:

#### Sexual assault crisis services

The **Sexual Assault Crisis Line** (Victoria) on 1800 806 292 (between 5pm weeknights through to 9am the next day, and throughout weekends and public holidays).

**1800RESPECT** on 1800 737 732 (24 hours, 7 days a week). Alternatively, for 1800RESPECT's 24-hour online chat service click [here](#).

#### General helplines

Lifeline on 13 11 14 (24 hours, 7 days a week). Alternatively, for Lifeline's daily 7pm – midnight (AEST) online chat service, click [here](#).

Beyond Blue on 1300 22 4636 (24 hours, 7 days a week). Alternatively, for Beyond Blue's daily 3pm to midnight (AEST) online chat service, click [here](#).

#### Victorian legal professional associations' member services

Law Institute of Victoria Employee Assistance Program, on 1300 687 327.

Victorian Bar health crisis help service, on 9650 5540 (24 hours, 7 days a week).

### **Your employer's obligation to provide a workplace free from sexual harassment**

The *Equal Opportunity Act 2010* specifically requires organisations to take proactive steps to eliminate sexual harassment in the workplace.

Employers have a duty not to sexually harass their employees or other persons for whom they are responsible, for example contractors, job applicants, volunteers and unpaid workers.

An employer can also be held responsible for the actions of an employee, or any other person for whom the employer is responsible (such as a contractor) who has committed the sexual harassment, if the employer has not taken reasonable precautions to eliminate sexual harassment in the workplace.

An employer's responsibility extends beyond the normal workplace and outside normal working hours, for example, sexual harassment occurring at a social function paid for by the employer.

VEOHRC has useful information on their website regarding employers' obligations. See [VEOHRC > Employer responsibilities](#)