



VICTORIAN  
WOMEN  
LAWYERS

## SUBMISSION TO REVIEW OF SEXUAL HARASSMENT IN VICTORIAN COURTS

Submitted by:	Victorian Women Lawyers Association Inc ( <b>VWL</b> )
Submitted:	By email and via submission portal
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## About us

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 600 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community.

Since 1996, VWL has advocated for the equal representation of women at all levels of the legal profession and promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating discrimination against women in the law and in the legal system, to achieve justice and equality for all women.

Details of our publications and submissions are available at [www.vwl.asn.au](http://www.vwl.asn.au) under the 'Publications' tab.

## Overview of submission

VWL welcomes the opportunity to make a submission to the Review of Sexual Harassment in Victorian Courts<sup>1</sup> (**SH Review**). VWL supports all action taken to address issues of sexual harassment in Victorian workplaces, particularly workplaces which are involved in the administration of justice and so clearly in the public eye.

### ***Prevalence of sexual harassment in the Victorian legal industry***

Sexual harassment is a significant and insidious issue in the Victorian legal industry. Recent media attention has given considerable visibility to the unacceptably high prevalence of sexual harassment in the profession. Disturbingly, there was widespread knowledge of these issues within the industry prior to the explosion of media reporting earlier this year,<sup>2</sup> with sexual harassment considered rife in the profession and prevalent at all levels, including the very top.<sup>3</sup>

According to the 2019 survey of Victorian legal professionals conducted by the Victorian Legal Services Board + Commissioner (**VLSB+C**), 61% of women and 12% of men in the Victorian legal profession have experienced sexual harassment while working in a legal workplace.<sup>4</sup> The survey revealed that 9 in 10 perpetrators of sexual harassment were male.

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<sup>1</sup> In this submission, '**Victorian Courts**' refers to all Victorian Courts (including the County and the Victorian Civil and Administration Tribunal (VCAT)).

<sup>2</sup> Catharine Lumby, 'The sexual harassment started at law school in Sydney. It was a taste of what was to come', *The Guardian (Aust)*, 26 June 2020.

<sup>3</sup> Naaman Zhou, 'Nobody stood up for me': young lawyers say harassment rife in Australian legal profession', *The Guardian (Aust)*, 26 June 2020; Calla Wahlquist, 'We're all gentlemen here': Australia's legal profession can pretend no more', *The Guardian (Aust)*, 4 July 2020; Casey McLoughlin, 'Dyson Heydon finding may spark a #MeToo moment for the legal profession', *The Conversation*, 22 June 2020; Kate McClymont and Jacqueline Maley, 'High Court inquiry finds former justice Dyson Heydon sexually harassed associates', *Sydney Morning Herald*, 22 June 2020.

<sup>4</sup> Victorian Legal Services Board + Commissioner, *Sexual Harassment in the Victorian Legal Sector: 2019 study of legal professionals and legal entities* (2019), vii <<https://lsbc.vic.gov.au/sites/default/files/2020-03/Sexual%20Harassment%20in%20the%20Victorian%20Legal%20Sector%20Report.pdf>>.

While women are disproportionately more likely to be the victims of sexual harassment perpetrated by men,<sup>5</sup> sexual harassment is not a women's issue, nor is it something which women alone must bear the responsibility of solving. Sexual harassment is a societal problem rooted in gender discrimination and violence against women. Preventing sexual harassment requires real and meaningful action by individuals and institutions to address underlying structural issues that condone, promote or hide the behaviour. Action is needed to create environments where individuals feel safe to speak up with the knowledge and trust that they will be believed, the wrongdoing will be acknowledged, and appropriate steps will be taken to address the harms caused.

VWL addresses the four areas of inquiry in the SH Review's terms of reference in this submission, being (1) preventing sexual harassment; (2) improving reporting and support for those who experience sexual harassment; (3) raising awareness and (4) ensuring accountability. In addressing these issues, VWL outlines several areas for consideration by the SH Review, including publicly available resources which VWL encourages the SH Review to refer to in conducting its review.

Every person has a right to be safe at work and in all public and private places. As the institution responsible for representing and administering justice in Victoria, the Victorian Courts have a responsibility to put in place measures to eliminate sexual harassment and to set an example of best practice for the wider legal profession.

### **Nature of the Victorian Courts**

Before turning to the four specific areas of inquiry, it is important to identify key features of the Victorian Courts which present unique challenges to dealing with the issue of sexual harassment and which serve to create an environment where sexual harassment can proliferate, including:

- the relative power imbalance between individuals working for and accessing the Victorian Courts – from justices, judges, magistrates and tribunal members to barristers and solicitors of all ages and experience levels, to court staff and the general public;
- the transitory nature of the Victorian Courts, being spaces where people enter and exit frequently and stay for varying lengths of time;
- the diverse contexts of the Victorian Courts, both in terms of the purposes for which people access the Victorian Courts and the physical locations within the Victorian Court complexes;
- the adversarial nature of court rooms and proceedings, in which poor professional behaviour by practitioners can go unchecked and where disparaging practices can be accepted or ignored;

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<sup>5</sup> In 2018, a National Survey conducted for the Australian Human Rights Commission found that 85% of women and 56% of men have experienced sexual harassment in their lifetime. The survey also found that four out of five harassers in the workplace are men. Australian Human Rights Commission, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces* (2018), 7  
<[https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_WORKPLACE\\_SH\\_2018.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_WORKPLACE_SH_2018.pdf)>.

- the formality of court rooms and court complexes, which serve to create a context of secrecy;
- the subject-matter of court proceedings, which can involve highly emotional or sensitive matters.

As noted above, the higher representation of women as victims of sexual harassment, and the significantly higher likelihood that a perpetrator will be male, demonstrates that sexual harassment is part of the broader issue of inequality between men and women in the workplace. This is a particularly significant contextual factor when considering the incidence of sexual harassment in Victorian Courts, and the relative power imbalance between male and female legal practitioners. The continued male-dominated nature of the legal industry is reflected in the fact that while female lawyers (solicitors and barristers) in Victoria outnumbered male lawyers (solicitors and barristers) by 5.33% as at 1 November 2019,<sup>6</sup> female lawyers remain significantly underrepresented in leadership roles. According to a survey of 140 law firms across Australia, female solicitors hold just 16% of equity partnership roles and only one third of non-equity partner roles.<sup>7</sup> More significantly in the context of the Victorian Courts, men currently make up 70% of barristers in Victoria.<sup>8</sup>

VWL submits that the SH Review must have regard to the unique circumstances of the Victorian Courts outlined above when conducting its review and formulating strategies that will most effectively respond to and prevent sexual harassment.

## 1. Preventing sexual harassment

### ***Effective programs and strategies to prevent sexual harassment and target its root causes***

VWL encourages the SH Review to draw upon the considerable bank of publicly-available material and resources that already exist to identify comprehensive evidence-based programs and strategies that prevent the occurrence of sexual harassment, target the root causes of sexual harassment, the responsibility of individuals for their actions, and the responsibility of parties to call out inappropriate behaviour.

In this respect, VWL refers the SH Review to:

- VWL's submission to the National Inquiry into Sexual Harassment in Australian Workplaces;<sup>9</sup>

<sup>6</sup> Victorian Legal Services Board + Commission, *Annual Report 2019* (September 2019), 43 <[https://lsbc.vic.gov.au/sites/default/files/2020-02/Report-Victorian\\_Legal\\_Services\\_Board\\_and\\_Commissioner\\_annual\\_report\\_2019.pdf](https://lsbc.vic.gov.au/sites/default/files/2020-02/Report-Victorian_Legal_Services_Board_and_Commissioner_annual_report_2019.pdf)>.

<sup>7</sup> Pitcher Partners, *Legal firm survey* (February 2019) <[https://www.pitcher.com.au/sites/default/files/downloads/survey\\_legal\\_190225\\_national.pdf](https://www.pitcher.com.au/sites/default/files/downloads/survey_legal_190225_national.pdf)>.

<sup>8</sup> Above n 6, 43.

<sup>9</sup> Available at <<https://vwl.asn.au/wp-content/uploads/2019/02/Victorian-Women-Lawyers-submission-to-the-AHRCs-inquiry-into-sexual-h....pdf>>.

- Australian Women Lawyers' seven strategies for preventing and responding to sexual harassment in its letter to the legal industry;<sup>10</sup> and
- VWL's submission to VLSB+C's review of mandatory CPD requirements in Victoria, which called for targeted mandatory training by all Victorian legal practitioners to prevent sexual harassment.<sup>11</sup>

VWL also refers the SH Review to the Australian Human Rights Commission's (**AHRC**) Respect@Work report released on 25 March 2020,<sup>12</sup> which includes the AHRC's findings and recommendations following the National Inquiry into Sexual Harassment in Australian Workplaces.

VWL notes that in order to establish effective strategies to deal with sexual harassment and its root causes, the Victorian Courts will need to develop and apply a holistic, integrated system-level workplace sexual harassment prevention and response framework. One example of such a framework is that outlined in the Respect@Work report,<sup>13</sup> which details six key elements of any effective framework – being leadership, risk assessment and transparency, culture, knowledge and support, reporting, and measuring.<sup>14</sup>

VWL also recommends appropriately adapting a response framework to apply when instances of sexual harassment occur in Victorian Courts, such as the CPPA Promoting Professionalism Pyramid as referred to in the Respect@Work report.<sup>15</sup> The CPPA pyramid is a tool for guiding employer responses to unprofessional conduct, through a structure of escalated communication as patterns of unacceptable behaviour develop. Adoption of such an approach in the legal profession enables appropriate action to be taken at all levels of the industry and can overcome power imbalances and structural barriers when complementing contemporary and victim-focused reporting approaches.

Complementing these strategies, VWL recommends the industry-wide adoption of the Victorian Equal Opportunity and Human Rights Commission's (**VEOHRC**) Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010 (August 2020) by employers in the legal profession.<sup>16</sup> This guideline provides a framework to prevent and respond to sexual harassment which involves six minimum standards that employers must meet to comply with their positive duty to eliminate sexual harassment, being:

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<sup>10</sup> Australian Women Lawyers, *Seven Strategies for Addressing Sexual Harassment in the Legal Profession* (9 July 2019) <<https://australianwomenlawyers.com.au/wp-content/uploads/2019/07/Seven-Strategies-for-addressing-Sexual-Harassment-in-the-Legal-Profession-AWL-9-July-2019.pdf>>.

<sup>11</sup> VWL, *Submission to Victorian Legal Services Board + Commission's review of Victoria's continuing professional development (CPD)* <<https://vwl.asn.au/wp-content/uploads/2020/09/20200717-VWL-submission-VLSBC-CPD-Review.pdf>>.

<sup>12</sup> Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (5 March 2020) <[https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_wsh\\_report\\_2020.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wsh_report_2020.pdf)>.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Victorian Human Rights and Equal Opportunities Commission, *Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010* (August 2020) <<https://www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/>>.

knowledge, prevention plan, organisational capability, risk management, reporting and response, and monitoring and evaluation. The guideline is designed to have applicability in diverse workplace settings, across a range of sectors and industries, and for small, medium and large organisations. Importantly, the guideline was informed by extensive consultation with stakeholders (such as employers and industry bodies, worker advocacy groups and other regulators) and the stories of individuals with lived experience of sexual harassment.

In an effort to develop strategies for building organisational capability, VEOHRC also undertook the program, 'Raise It! Conversations about sexual harassment and discrimination'.<sup>17</sup> The program focused on building workers' and managers' confidence and competence to start conversations about sexual harassment and discrimination at work and to take action in responding to incidents. Piloted in seven diverse organisations, the independent evaluation showed increased awareness, knowledge and confidence, and positively influenced staff conversations about sexual harassment and discrimination. VWL encourage the SH Review to consider implementing this (or a similar) initiative in the context of the Victorian Courts.

VWL also stresses the need for adopting prevention strategies that are evidence-based, inclusive and sensitive to the needs of the broad membership of the legal profession, particularly those from culturally and linguistically diverse communities, First Nations peoples, LGBTQIA+ people, and those living in rural areas or with a disability.

Finally, VWL submits that no framework for creating change can be effective without the success of the program or strategy being monitored and measured against key performance indicators. Programs and strategies to prevent sexual harassment must have in-built qualitative and quantitative feedback mechanisms, and the outcomes of the programs and strategies must be reported to stakeholders, including the general public, so that both the Victorian Courts as a workplace and the individuals in leadership positions can be held to account.

### ***Role of Court Services Victoria to prevent sexual harassment***

Court Services Victoria (**CSV**), established by the *Court Services Victoria Act 2014 (Vic)* (**CSV Act**), provides the administrative services and facilities necessary for the Victorian Courts to operate independently of the Victorian Government.

VWL submits that the SH Review should consider recommending in its final report that the Victorian Government amend the *Court Services Victoria Act 2014 (Vic)* to introduce a positive duty on anyone engaging in any activity in the course of the functioning of CSV to take reasonable and proportionate measures to prevent and minimise risks of harm from discrimination, sexual harassment and victimisation to those involved in delivering the functions and administration of CSV and its users. This duty should extend to interactions at Victorian

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<sup>17</sup> Victorian Human Rights and Equal Opportunities Commission, *Raise It! Evaluation insights and enhancements from the pilot program – Jun 19* (June 2019) <<https://www.humanrights.vic.gov.au/resources/raise-it-evaluation-insights/>>.

Courts, events and social functions, as well as communications via electronic means such as email or text message.

In determining whether a measure is reasonable and proportionate, the CSV Act should prescribe the factors that must be considered such as:

- (a) the nature of the risk and degree of vulnerability;
- (b) the nature and circumstances of the activity and court function;
- (c) resources and operational priorities;
- (d) the practicability and the cost of the measures; and
- (e) all other relevant facts and circumstances.

Separately, VWL submits that the SH Review should consider recommending in its final report that the VLSB+C, as regulator of the legal profession in Victoria, be given the function of assessing compliance with this positive duty and for its enforcement in Victorian Courts. This may include expanding the powers of the Board under the *Legal Profession Uniform Law Application Act 2014* (Vic).

## **2. Improving reporting and support for those who experience sexual harassment**

The reporting of sexual harassment within the Victorian legal profession has been identified as a major impediment to addressing and preventing its occurrence. According to the VLSB+C's 2019 survey, 81% of victims of harassment did not report their most recent experience of sexual harassment.<sup>18</sup> Of those who did report an incident, only 5% made a formal report, with 10% making an informal report and 4% of victims being reported through a third party.<sup>19</sup> Physical sexual harassment was more likely to be reported, whilst suggestive jokes or comments and inappropriate staring was less likely to be reported.<sup>20</sup> Significantly, of those that did report an incident of sexual harassment, many experienced negative repercussions as a result, including being labelled, ostracised or being denied further opportunities in the workplace.

According to the VLSB+C's findings, the primary reasons given for not reporting an incident of sexual harassment were not wanting to confront the harasser, thinking that it was easier to keep quiet, or feeling that nothing would change as a result of reporting.<sup>21</sup> In addition, many respondents felt that they would receive negative treatment from either colleagues or the harasser as a result of reporting.<sup>22</sup>

In light of the above, VWL submits that the root causes preventing victims reporting incidents of sexual harassment are:

1. low levels of trust in the reporting process; and
2. negative repercussions experienced by a victim when they make a report.

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<sup>18</sup> Above n 4, 38.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, 40.

<sup>21</sup> Ibid, 50.

<sup>22</sup> Ibid, 55.

The SH Review should examine existing reporting procedures in place at the Victorian Courts to assess their effectiveness, and to consider new or improved channels for reporting incidents of harassment which can overcome the underlying root causes which otherwise prevent victims from coming forward.<sup>23</sup>

In this respect, VWL endorses the establishment of an independent judicial complaints and oversight body, as put forward by the Honourable Chief Justice Kiefel. VWL also encourages the SH Review to consider introducing or improving reporting mechanisms from within the Victorian Courts (with the appropriate level of independence).

VWL also refers the SH Review should to the International Bar Association's (**IBA**) introduction of flexible reporting, which includes different methods of reporting and multiple points of contact.<sup>24</sup> The IBA asserts that implementing flexible reporting processes demonstrates to victims that workplaces take these issues seriously and will assist in breaking down some of the most significant barriers to underreporting.<sup>25</sup> The IBA's flexible reporting procedure serves to promote a workplace culture that makes victims feel safe in reporting incidents of sexual harassment and protects them from negative repercussions from colleagues.<sup>26</sup>

Finally, VWL submits that reporting mechanisms can only be successful if victims and bystanders are aware of their existence. Mechanisms for raising awareness about these processes and procedures are set out further below.

### ***Importance of bystander action in raising awareness and preventing sexual harassment***

As outlined in its previous submission to the National Inquiry into Sexual Harassment in Australian Workplaces, VWL reiterates the important role that bystanders can play in exacerbating sexual harassment behaviour in the workplace, and how critical it is for bystanders to take action to prevent and address workplace sexual harassment. In this respect, VWL notes the findings in the AHRC survey that sexual harassment was witnessed by another person in 40% of cases but that the majority of bystanders did not take any action.

In considering how to improve bystander action, VWL refers the SH Review to the Victorian Health and Behavioural Insights Team's (**Insights Team**) resource developed in 2019 'Take Action: Empowering bystanders to act on sexist and sexually harassing behaviours' (**Take Action**).<sup>27</sup> Take Action is intended to help organisations introduce bystander initiatives as part of their work to reduce sexist and sexually harassing behaviours. Take Action explains what 'active bystandering' is and outlines four key steps for implementing effective bystander initiatives. The

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<sup>23</sup> International Bar Association, *Us too? Bullying and Sexual Harassment in the Legal Profession* (May 2019), 10 , <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>>.

<sup>24</sup> Ibid, 106.

<sup>25</sup> Ibid, 106.

<sup>26</sup> Ibid, 106.

<sup>27</sup> The VicHealth and Behavioural Insights Team, *Take Action: Empowering bystanders to act on sexist and sexually harassing behaviours*, Victorian Health Promotion Foundation (2019), [https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/PVAW/Bystander/Bystander\\_Summary-Report.pdf?la=en&hash=D6AE39B8222BD02AF417AA83BBF19ED022437F92](https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/PVAW/Bystander/Bystander_Summary-Report.pdf?la=en&hash=D6AE39B8222BD02AF417AA83BBF19ED022437F92)>.



Insights Team recognised that it can be difficult for the targets of sexist and sexually harassing behaviours to confront perpetrators. However, when a third party (a bystander) intervenes, it can support the victim emotionally, discourage the perpetrator from behaving in this manner again and contribute to a culture that condemns sexist and sexually harassing behaviours. By empowering bystanders to act on sexist and sexually harassing behaviours, this approach builds confidence in bystanders to take action that can have direct and indirect impacts within an organisation.

VWL also notes that a common impediment to bystanders coming forward is the concern that doing so could affect their reputation or career. The SH Review therefore needs to consider how to safely enable bystander reporting, effect broad cultural change and remove the negative stigma and actual negative consequences attached to reporting the inappropriate behaviour of one's colleagues. Bystander training must also be sensitive to the need to protect the privacy and agency of victims and reporting processes must be holistic and consistent in their approach to ensure both victims and bystanders are protected and supported.

### **3. Raising awareness**

#### ***The need for a communication campaign***

While adopting clear sexual harassment policies and tools for identifying and eliminating inappropriate behaviours are necessary, preventing sexual harassment can only be achieved if individuals who work at or access Victorian Courts:

1. are aware of what constitutes sexual harassment, including being capable of recognising when instances of sexual harassment have occurred (including as a victim, bystander or perpetrator);
2. understand what circumstances contribute to environments where sexual harassment can take place (for example, environments where substantial power imbalances between individuals exist, where gender or other forms of discrimination are permitted to proliferate or environments which cultivate a culture of secrecy);
3. are aware of exactly how they can report instances of sexual harassment and the steps that will be taken by the Victorian Courts to address harms caused by sexual harassment (including support to the victim and action that will be taken against the perpetrator);
4. clearly understand the Victorian Court's approach to dealing with instances of sexual harassment and the Victorian Court's success in reducing and managing instances of sexual harassment; and
5. understand the importance of eliminating sexual harassment in the workplace, and the role of each individual in preventing and reporting sexual harassment.

VWL submits that in order to achieve the above, the Victorian Courts will need to embark on a communication campaign with both short and long term initiatives aimed at each of the key areas outlined above. Such a communication campaign should include, at a minimum:

- regular mandatory training for all employees (and regular users) of Victorian Courts;

- readily available resources and materials on Victorian Courts' websites including guides for how to identify and report sexual harassment;
- appropriate signage (for example posters) around the Victorian Court so that individuals are made immediately aware of how to identify and report sexual harassment that occurs at the Victorian Courts.

In considering how to implement an effective communication campaign, VWL refers the SH Review to the 'Care Review' which took place in November 2018.<sup>28</sup> The purpose of the Care Review was to explore what works when responding to and preventing sexual harassment in the workplace. By considering social ecology, the Care Review considered factors that drive and sustain harmful behaviours such as pre-existing accepted social norms. By shifting and reframing the pre-existing drivers that sustain harmful behaviour, the Care Review identified that we can collectively begin to reduce sexual harassment in the workplace. In its review, Care references a mass media experiment in Uganda aimed at constructing new public norms regarding bystander intervention in intimate partner violence situations. The study found there was an increased willingness to report when pre-existing accepted social norms around reporting had shifted to reduce judgment of those reporting. Raising awareness and shifting social norms through promotion of shared individual responsibility for responding to and preventing sexual harassment in the workplace encourages parties to speak up when they hear or see inappropriate sexual behaviour.

#### 4. Ensuring accountability

The law on sexual harassment in Victoria is governed by the *Equal Opportunity Act 2010* (Vic) (**Equal Opportunity Act**). Under this Act, a person must not sexually harass another person at a place that is a workplace for both of them;<sup>29</sup> and must not sexually harass another person in the course of providing services to that person.<sup>30</sup>

Any person who is sexually harassed in a Victorian Court may bring a complaint to the VEOHRC, which provides free dispute resolution services to assist parties in resolving sexual harassment complaints. The alleged perpetrator is invited to attend conciliation and the VEOHRC will attempt to resolve the dispute in a mutually agreeable way.<sup>31</sup> However, the VEOHRC's jurisdiction to deal with sexual harassment claims is limited – it cannot make orders or award compensation to victims, even where the VEOHRC considers that sexual harassment has been perpetrated.<sup>32</sup> As a consequence, VWL submits that the VEOHRC process is a relatively ineffective accountability mechanism. Furthermore, VWL notes that this process relies both on victims reporting the harassment to the VEOHRC and on alleged perpetrators being willing to engage in discussions.

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<sup>28</sup> Helen Campbell and Suzi Chinnery, Care, *What Works? Preventing & Responding to Sexual Harassment in the Workplace A Rapid Review of Evidence* (November 2018) , [https://www.care.org.au/wp-content/uploads/2018/10/STOP\\_What-works-to-address-workplace-sexual-harassment\\_Rapid-Review-of-evidence.pdf](https://www.care.org.au/wp-content/uploads/2018/10/STOP_What-works-to-address-workplace-sexual-harassment_Rapid-Review-of-evidence.pdf).

<sup>29</sup> s 94(1) *Equal Opportunity Act 2010* (Vic).

<sup>30</sup> s 99(1) *Equal Opportunity Act 2010* (Vic).

<sup>31</sup> Michelle Makela, *Sexual Harassment (Vic)* <<https://www.gotocourt.com.au/civil-law/vic/sexual-harassment>>.

<sup>32</sup> Victorian Human Rights and Equal Opportunity Commission, *Sexual harassment* <<https://www.humanrights.vic.gov.au/for-individuals/sexual-harrassment/>>.

As outlined in Section 2 of this Submission, victims of sexual harassment rarely report perpetrators due to low levels of trust in the reporting process and fear of negative repercussions. VWL submits that similar issues arise in relation to complaints made to the AHRC.<sup>33</sup>

If a matter is unable to be resolved through conciliation with the VEOHRC, the complaint can be made to VCAT, which does have the power to make binding monetary and non-monetary orders.<sup>34</sup> This may include an order that a party pay compensation for loss of earnings or an order that human resources training or policies to combat sexual harassment are implemented in the workplace.<sup>35</sup> Again, this process puts the onus on the victim (rather than the perpetrator or the employer) to take steps to have the wrongdoing acknowledged and to prove damage or loss.

Victoria is one of a handful of Australian States to have a Judicial Commission – an independent body established to investigate complaints about judicial officers and VCAT members, including in relation to sexual harassment.<sup>36</sup> Once a complaint has been heard, the investigating panel must do one of the following:<sup>37</sup>

- dismiss the complaint;
- refer complaints to the relevant head of jurisdiction with recommendations about the future conduct of the concerned officer; or
- draft a report recommending that the officer be removed from office if there is proven misbehavior or incapacity.

VWL notes, however, that the Judicial Commission's jurisdiction does not extend to hearing complaints against retired judges or against non-judicial officers operating within the Victorian Courts.<sup>38</sup> Complaints may further be rejected if they occurred at too remote a time, which is problematic given that delays in reporting sexual harassment are common.<sup>39</sup> VWL urges the SH review to consider the appropriateness of such constraints in ensuring that perpetrators of sexual harassment are held accountable.

Finally, while guidelines on judicial conduct exist, there is no enforceable judicial code of ethics, and no formalised sanctions for misconduct other than dismissal.<sup>40</sup> VWL suggests that the SH review should consider including sexual harassment as a specific disciplinary breach with clear, formal consequences.

Effective accountability mechanisms are key to reducing instances of sexual harassment in the Victorian Courts, and to ensuring that victims have faith in reporting processes. As outlined above,

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<sup>33</sup> The *Equal Opportunity Act 2010* (Vic) operates alongside federal legislation including the *Sex Discrimination Act 1984* (Cth), which prohibits sexual harassment in Division 3. Complaints under this Act can be made to the Australian Human Rights Commission.

<sup>34</sup> VCAT, *Enforce a VCAT Order* <<https://www.vcat.vic.gov.au/the-vcata-process/decisions/enforce-a-vcata-order>>.

<sup>35</sup> Above n 31.

<sup>36</sup> Judicial Commission of Victoria, *Home* <<https://www.judicialcommission.vic.gov.au/>>.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> Above n 12.

<sup>40</sup> Julian Webb, 'In the wake of the Dyson Heydon allegations, here's how the legal profession can reform sexual harassment', *The Conversation*, 15 June 2020.

current accountability mechanisms rely largely on victims to report the harassment they have experienced, and on perpetrators to cooperate with investigations. VWL urges the SH review to evaluate and strengthen internal mechanisms to ensure that perpetrators of sexual harassment in the Victorian Courts are held to account independently of the Federal or State complaints handling processes.

## **Conclusion**

The Victorian Courts hold an esteemed position within society. They are places where justice must not only be done and but must also be seen to be done. Both the Victorian Courts as an institution, as well as the individuals working within the Victorian Courts, are trusted by the public to abide by, uphold and protect the laws that govern us. For that reason, the Victorian Courts must be an exemplar of lawful behaviour and a benchmark of best practice in terms of eliminating and preventing sexual harassment in the workplace. Failure to address instances of sexual harassment that occur within or at the Victorian Courts impacts the community's confidence in our justice system and risks hypocrisy in the eyes of the public. As leaders of the legal profession the Victorian Courts must act swiftly to eliminate sexual harassment and stop the destructive impacts of the behaviour on victim's lives and careers.

VWL implores the Victorian Courts to take urgent action to disrupt the culture contributing to the proliferation of sexual harassment in the legal profession, including gender discrimination and other workplace practices which endanger female practitioners. While VWL welcomes the SH Review as a first step in this process,<sup>41</sup> the profession can no longer afford slow and piecemeal activity that does not affect real change. Women in the legal profession have come forward and bravely shared their stories of sexual harassment. Our leaders must now respond with strength and determination, drawing on contemporary learnings from other sectors.<sup>42</sup>

Eradicating sexual harassment and gender discrimination requires long term commitment and engagement with likeminded organisations and individuals to improve outcomes. VWL looks forward to continuing to work with the Victorian Courts in this important process and welcomes every opportunity to contribute to discussion and collaboration this area.

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**Victoria Muravchenkov**

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<sup>41</sup> Anne Davies and Naaman Zhou, 'Dyson Heydon: Australian courts review how they handle sexual harassment in wake of case', *The Guardian (Aust)*, 24 June 2020.

<sup>42</sup> Kathryn B. H. Clancy, Lilia M. Cortina and Anna R. Kirkland (2020) Use science to stop sexual harassment in higher education, 22614–22618 PNAS vol. 117 no. 37.