

Bystander policies and their importance in combating sexual harassment and bullying

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New Chambers



Topics to be covered

- Why are we still talking about sexual harassment?
- What is sexual harassment and barristers' legal obligations?
- NSW Bar Association's video
- Bystander policies and action
- Resources and further information

Why are we still talking about sexual harassment?

The legal profession has had a significant problem with sexual harassment. Legal workplaces feature many risk factors for sexual harassment including power imbalances, systems of patronage, interconnectedness, long hours and the reality that men continue to hold most senior positions.

Fortunately, all branches of the profession have become acutely aware of the problem and the need to endeavour to eliminate it.

Bathurst CJ - Opening of Law Term – 3 February 2021

According to a 2015 NSW Bar Association survey...

42%
of female
barristers
reported
experiencing
sexual
harassment



3%
of male
barristers
reported
experiencing
sexual
harassment

0 barristers made a
formal complaint

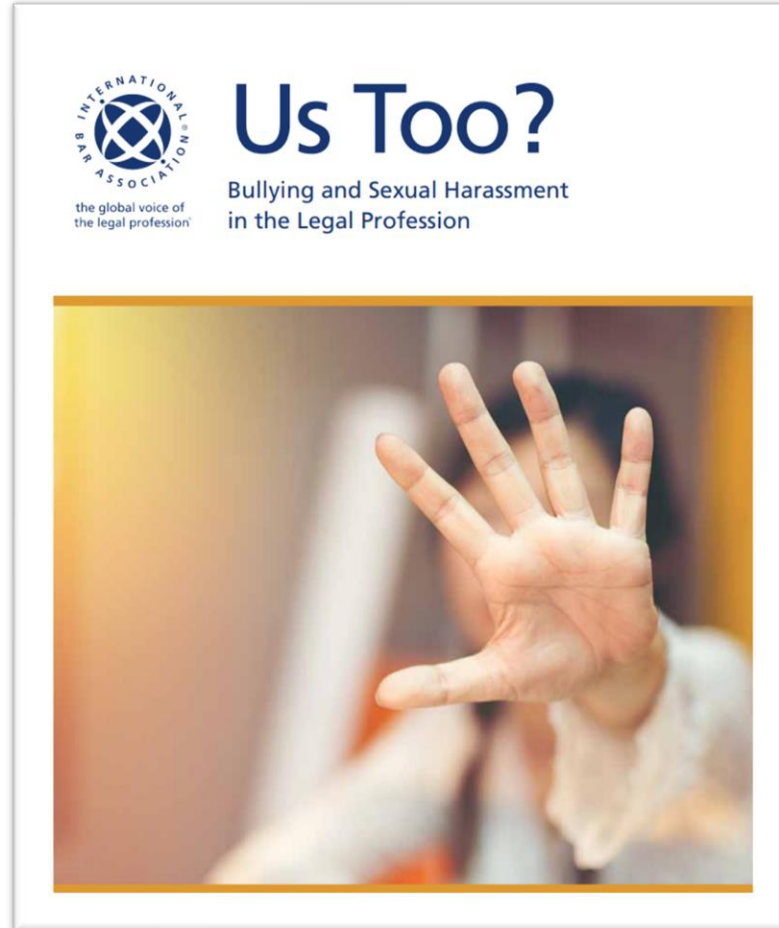
According to the IBA's 2019 Report:



One in two female Australian lawyers had experienced sexual harassment (47%)



One in eight male Australian lawyers had experienced sexual harassment (13%)



Why are we still talking about sexual harassment?

Kenneth Hayne AC QC:

“every aspect of this has to stop – the harassment, abusing the imbalance of power, trying to excuse conduct, let alone blaming the victim ... [it] all has to stop.”

“We must all recognise and acknowledge what has happened and is continuing to happen. That is the essential first step. But then we have to change what is happening... we have to change the culture.”

“We need to make plain to our members that every member of the Bar is responsible for stopping the conduct.”

Sexual harassment and barristers' legal obligations?

Sexual harassment – unwelcome conduct of a sexual nature of a kind that a reasonable person would anticipate the victim would be offended, intimidated or humiliated in all the circumstances (s28A of the *Sex Discrimination Act 1984 (Cth)* (**SDA**))

Sex based harassment – unwelcome conduct of a seriously demeaning nature in relation to a person and is done because the person is a woman. The conduct is of kind that a reasonable person would anticipate the victim would be offended, intimidated or humiliated in all the circumstances (s 28AA SDA)

What is sexual harassment and barristers' legal obligations?

The SDA makes it unlawful for a person to engage in sexual harassment towards:

- a worker in a business or undertaking;
- an employee;
- a person who is providing or receiving services.

It is also unlawful to aid or permit sexual harassment and to victimise a person who has made a complaint or allegation.

Barristers Rule - Rule123



NSW legislation

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Legal Profession Uniform Conduct (Barristers) Rules 2015

- 123** A barrister must not in the course of practice, engage in conduct which constitutes:
- (a) discrimination,
 - (b) sexual harassment, or
 - (c) workplace bullying.



NEW SOUTH WALES
BAR ASSOCIATION

No place for
sexual harassment
at the Bar

Bystanders

- The “bystander” is akin to the reasonable person who would anticipate that it is likely that the woman to whom unwelcome conduct is directed would be offended, intimidated or humiliated in the circumstances
- “Bystander” as an observer who witnesses and is present when sexual harassment occurs (active bystander)
- “Bystander” may be the person to whom an initial report is made; the incidental confidante.
- “Bystander” may be an accessory because they ‘permit’ sexual harassment (s 105 SDA)

Becoming a bystander

- You may become a bystander because you witness harassment or become aware of the conduct after the event.
- When you are approached by a person who experiences sexual harassment or bullying
 - Be aware of how you react. It is critical that the woman confiding in you is believed
 - What are your obligations to report?
 - Know your limits – not a counsellor, not the person's legal adviser, not there to rescue a person
 - Be aware of trauma informed approaches
 - Know where to refer the person for assistance

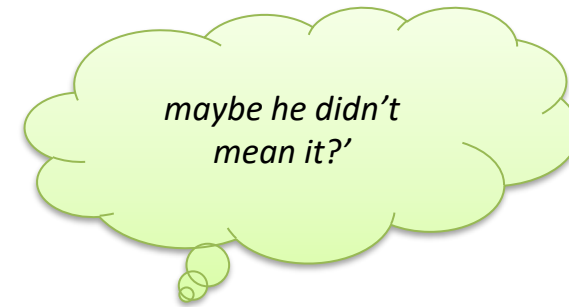
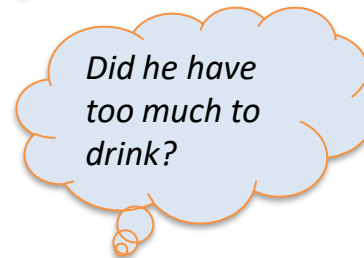
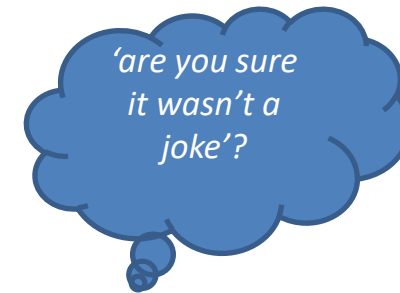
Being an effective bystander

What are the attitudes and beliefs that are generally false but widely or persistently held that justify or excuse sexual harassment?

- Unconscious bias held by men and women
- Women are responsible for men's behaviour
- Women are the custodians of professional boundaries (even if in less powerful position)
- Good things happen to good people, bad things happen to bad people
- Sexual harassment occurs to attractive women or women who dress provocatively
- Unless women report, there is no problem
- Women who report are disgruntled and are 'getting back' at men

Assumptions women are not believed

These assumptions manifest in our thoughts or how we respond:



What assumptions are you making about the person who uses sexual harassment?

He didn't mean it?

He had too much to drink?

That's what's his like – always joking. No one could take him seriously

He's pretty stressed, there's a lot going on for him?

I'm not responsible for what he did and I can't fix this

If I take this on – how am I going to work with this man?

What to do if you experience sexual harassment

- Don't feel you have to just 'put up with it'.
- There are a range of options from support, information and reporting
- SPOT – online anonymous reporting option
- Sexual Harassment Officer, Jennifer Houen
jhouen@barcare.org / 0427 317 958
- Legal Services Commissioner

Resources and further information

- NSW Bar Association [resources](#)
- SPOT - talktopot.com/nswbar
- [ABA | ABA Podcast #4 \(austbar.asn.au\)](http://austbar.asn.au) (ABA Podcasts x 4)
- Law Council of Australia – [Time for Change](#)
- Victorian Legal Services Board – [Bystander resources](#)