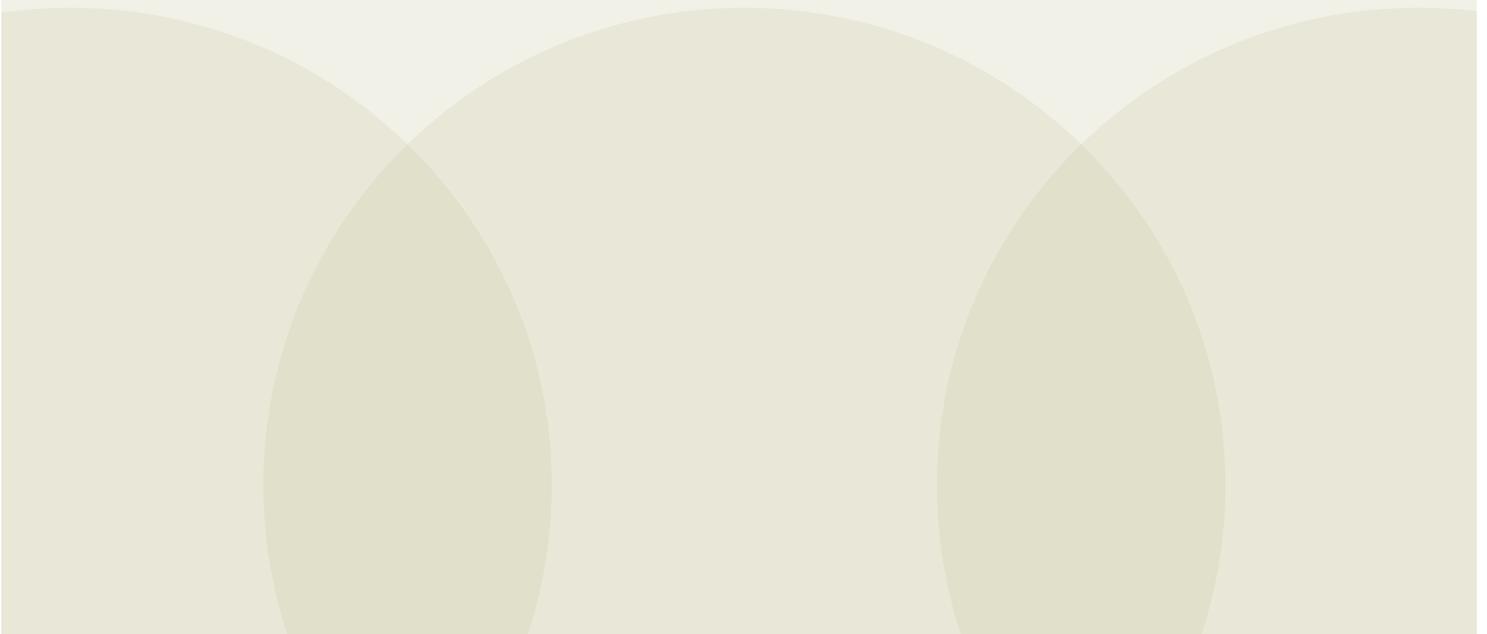


**Review of
Sexual Harassment
in Victorian Courts**

Preventing and Addressing
Sexual Harassment in
Victorian Courts and VCAT

**Report and
Recommendations**

MARCH 2021



Preventing and Addressing Sexual Harassment
in Victorian Courts and VCAT
Report and Recommendations

Published March 2021

Acknowledgements

This report was prepared on the country of the Bunurong people of the Kulin Nation and I pay respect to Elders and ancestors and their lands and waters.

Thank you to every contributor and interviewee who shared their stories for the Review. Without them this Report would not be able to portray the lived experience of those who have experienced sexual harassment. The Review Team is particularly grateful to the women who trusted the Review with their painful and sensitive experiences.

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The Review also wishes to acknowledge Court Services Victoria staff working in courts and administration for their generous support and time providing data, statistics, documentation and information to the Review Team.

Thank you to the Heads of Jurisdiction for their support and availability throughout the Review.

All errors are my own.

Sexual harassment remains a pervasive challenge, and this Review has drawn heavily on the work of the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), the Victorian Legal Services Board and Commissioner, the Federal Sex Discrimination Commissioner and her team.

The Review thanks Court Services Victoria and the Department of Justice and Community Safety for enabling the conduct of the Review of Sexual Harassment in Victorian Courts and VCAT.

The Review would not be possible without the talent, perseverance and dedication of its staff: Alex Shehadie, Melanie Schleiger, Karlie Dickenson, Tom Warne-Smith and Linda Petrone as well as our partnership with VEOHRC, with special thanks to Amy Rogers and Kathryn Moloney.

Lastly, I thank the former Attorney-General of Victoria and the Chief Justice of Victoria for initiating the Review and their strong commitment to ensuring workplaces are safe, respectful and free of sexual harassment.

Dr Helen Szoke AO
Reviewer

Review of Sexual Harassment in Victorian Courts

March 2021

The Hon Jaclyn Symes MP
Attorney-General

The Hon Anne Ferguson
Chief Justice of the Supreme Court of Victoria
and Chair of the Courts Council

Dear Attorney-General and Chief Justice,

In accordance with the Terms of Reference dated August 2020, I have the honour of presenting to you the report and recommendations of the Review of Sexual Harassment in Victorian Courts and VCAT.

It has been a privilege to lead this Review. I thank all who have participated, advised and shared their personal stories to prevent future sexual harassment in Victoria's courts and VCAT and improve reporting and supports for those who experience it.

Yours sincerely



Dr Helen Szoke AO
Reviewer

‘Respect – yindyamarra

I think I’ve come to realise that with some things, you cannot receive them unless you give them too. Unless you’ve even got the opportunity to give and to receive.

Only equals can share respect, otherwise it’s a game of masters and slaves – someone always has the upper hand when they are demanding respect.

But yindyamarra is another thing too, it’s a way of life – a life of kindness, gentleness and respect at once. That seems like a good thing to share, our yindyamarra.’

Tara June Winch, Wiradjuri author,
The Yield (2019) Penguin Random House
Australia

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Foreword

The Review of Sexual Harassment in Victorian Courts ('the Review') was commissioned at a time when the legal profession was shocked by the revelations of sexual harassment perpetrated by a now retired judge of the High Court of Australia and at a global turning point on workplace sexual harassment.

In 2017, #MeToo ignited a global conversation about the prevalence, nature and impact of sexual harassment. The Australian Government supported a world-first National Inquiry into Sexual Harassment in Australian Workplaces by the Australian Human Rights Commission (AHRC) to find modern solutions to an age-old problem. The Commission's *Respect@Work* report was delivered in March 2020, just as COVID-19 took hold of the country.

The Victorian Legal Services Board and Commissioner had also been working on the issue within the Victorian legal profession. Its 2019 surveys of the legal profession found that sexual harassment is widespread in Victoria's legal profession.¹

It was in this context that then Attorney-General, the Hon Jill Hennessy, and the Chief Justice of Victoria, the Hon Anne Ferguson, initiated this Review into sexual harassment in Victorian courts and the Victorian Civil and Administrative Tribunal (VCAT). The Attorney-General and the Chief Justice are to be commended for commissioning the Review and the Victorian judicial sector acknowledged for its willingness to engage with the Review. The Review was commissioned with the understanding that sexual harassment does occur, and that the courts and VCAT should work to create a workplace where this is not tolerated.

At the outset, the partnership formed between the Review and the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) was vital to ensure that the voices of people who experienced sexual harassment could be safely heard.

Sexual harassment continues to be pervasive and under-reported in many workplaces, despite decades-old statutory protections. Extensive research has gone into building an understanding of the causes and effects of sexual harassment, yet in many workplaces it is still poorly understood, and its corrosive and traumatic impacts are largely overlooked, dismissed or underestimated.

Society will question its trust in a justice system when those responsible for that system do not all abide by expected standards of conduct.

Victoria's courts and VCAT are workplaces subject to many pressures, challenges and opportunities. They are visited by professionals and by members of the public. As with all workplaces, they are subject to legal and ethical expectations of how people will be treated and how people should behave. However, what distinguishes the courts and VCAT from other workplaces is that they are responsible for the exercise of judicial power. Society rightly expects them to be held to the highest standards of behaviour. When the justice system fails to meet expected standards of conduct, it is not just the individual victim-survivors who suffer. The community's confidence in the system will suffer. Society will question its trust in a justice system when those responsible for that system do not all abide by expected standards of conduct.

During the Review, many women and some men told their stories of the 'open secret' of sexual harassment. Many of these stories related to the wider legal profession; some to experiences of working in the courts or VCAT. Women also spoke of everyday sexism and a culture that often sees women and junior staff as 'less than'. Sexually suggestive comments

or jokes, intrusive questions about their private life, and unwelcome comments on their physical appearance were accepted as part of the job. Participants in the VEOHRC process and attendees in the Roundtables spoke of the individual harm caused – both personally and professionally – of deficient systemic responses to disclosures of sexual harassment. The Review was told that sexual harassment and the silence surrounding these behaviours is perpetuated by the power inequalities in the court setting and a legal profession requiring patronage and a network to progress.

The health and wellbeing of those who work in the courts has been a strong focus over the past few years, led by the Courts Council and Court Services Victoria and this will provide a strong foundation for further work focused on preventing sexual harassment. Notwithstanding this, the Review was made aware of serious instances of sexual harassment with significant impacts on its victim-survivors. This Review is not in a position to identify how widespread sexual harassment is in the courts and VCAT, but the cases reported indicate the need for a dedicated focus.

Three common themes emerged from the Review's consultations:

1. sexual harassment is an 'open secret' in the legal profession
2. there are significant barriers preventing victim-survivors and witnesses from reporting sexual harassment that occurs in the courts and VCAT
3. sexual harassment is frequently reported as being perpetrated and experienced by barristers.

The Review's recommendations focus on the operation of the courts and VCAT and the systems in place for judicial officers, VCAT members and Court Services Victoria staff. The need for reform in the broader legal profession, however, remains pressing.

The scale and depth of the task ahead to implement the recommendations of this Review should not be underestimated. I recognise that its recommendations will require additional resources to be effectively implemented. I am confident that the Victorian Government – which has demonstrated a strong commitment to gender equality and to preventing and responding to violence in all its forms – will ensure consideration is given to resource requirements in its budget allocation.

I hope the insights gained through this Review will be considered by courts and tribunals across all Australian jurisdictions, and that there will be common responses across the legal profession.

While our focus has been on Victorian Courts and VCAT, we encourage the Victorian Attorney-General to also consider the *Respect@Work* recommendations directed to the Victorian Government to support safe and respectful workplaces across Victoria. Sexual harassment is prevalent and pervasive across many workplaces. It affects productivity, costs the Australian economy and harms workers.

Everyone the Review spoke to is committed to their roles and to making a contribution to improve the justice system. This Review seeks to ensure that they are supported as they play their part in building and fostering safe and respectful workplaces.

Dr Helen Szoke AO

Reviewer

Terminology used in the report

This is a glossary of the language and acronyms the Review uses in this report in connection with workplace sexual harassment, the courts and affected individuals.

Glossary of terms

Associate	Associates provide legal research, in-court duties and other support for judges of the Supreme Court and County Court. The positions are generally attached to a particular judge. Associate positions are often highly sought-after and provide invaluable insights, experience and professional opportunities.
Attendee	An individual who participated in a Review Roundtable.
Bullying and harassment	Bullying is the systematic abuse of power through repeatedly and deliberately harming others with the express purpose of intimidating or gaining control. There is often a power imbalance between the bully and their victim(s). Bullying and harassment can, in some cases, be a gendered experience for both women and men and be related to sex discrimination.
Bystander	Someone who witnesses an incident or incidents of sexual harassment in a workplace or hears about an incident/s after it has occurred.
Chief Executive Officer (CEO)	<p>The CEO of Court Services Victoria (CSV) is appointed by the Courts Council for a term of up to five years and is responsible for the management of the support service and functions of CSV in accordance with the strategy, plans, procedures and policies of the Courts Council and the appointment and management of the members of the staff of CSV, other than the appointment of the Court Chief Executive Officers.²</p> <p>The CEO has the functions of public service body Head for the purposes of Part 3 of the <i>Public Administration Act 2004</i> ('PAA') in relation to all members of the staff of Court Services Victoria other than judicial employees (defined below).³ The CEO must comply with any directions of the Courts Council.⁴</p> <p>The Courts Council also appoints Court CEOs for each of the jurisdictions for a period not exceeding five years.⁵ The CEO of CSV is tasked with the 'appointment and management' of court staff, and 'direction' of the individual court CEOs, who are also subject to directions by the Chief Judges of their courts.</p> <p>Each Court is responsible for establishing how the judicial business of the court is managed in accordance with law. Each Jurisdiction, through the Head of Jurisdiction, directs the administrative support provided by CSV Jurisdiction-based staff under the management of the Court CEO.</p>

Circuit Court	In some regional areas, there are no permanent judicial officers for a particular court. Instead, judges and magistrates travel from other areas of the state to sit in these courts. This is referred to as being 'on circuit'.
Complainant	A person who makes a complaint against someone else either to a supervisor or organisational leader for unacceptable behaviour, including sexual harassment.
Contractors	References to contractors includes hire staff, service providers and consultants. Contractors are not Victorian public sector employees. Contractors are not covered by the CSV Act and are not directly subject to the <i>Public Administration Act 2004</i> . However, the Code of Conduct provides that in relevant circumstances, which include the position of court security officers, 'public sector employers are to require contractors or consultants engaged in or by their public body (including contractors or consultants engaged through an employment agency) to comply with this Code of Conduct and relevant policies and procedures.' ⁶
Courts Council	Courts Council is the governing body of CSV which comprises the chief judicial officers of each court, the President of VCAT, and up to two members with relevant expertise in finance, administration or management. ⁷ The Courts Council is presided over by the Chief Justice, who retains the power of veto over any decisions of the Council that are deemed to be 'incompatible with ... the institutional integrity of a jurisdiction' or 'the capacity of the Supreme Court to function as the Supreme Court of the State'. ⁸ The Courts Council has broadly defined powers to 'direct the strategy, governance and risk management' of CSV, and to appoint the CEOs of CSV and the individual courts and VCAT. ⁹
Courts Executive	The Courts Executive is CSV's key leadership group, supporting the work of the CSV CEO and the Courts Council in the delivery of strategy and collaboration across jurisdictions. Its membership includes the CSV CEO; Court, VCAT and Judicial College CEOs; and CSV senior executives.
Court Services Victoria (CSV)	Court Services Victoria (CSV) is an independent statutory body established under section 5 of the <i>Court Services Victoria Act 2014</i> to support judicial independence in the administration of justice in Victoria, and to put court administration into the hands of an entity directed by the judiciary (rather than the executive). ¹⁰ CSV's functions are to: <ul style="list-style-type: none"> • provide the administrative services and facilities to support the performance of the judicial, quasi-judicial and administrative functions of the courts, the Victims of Crime Assistance Tribunal and the Victorian Civil and Administrative Tribunal (VCAT) • enable the Judicial College of Victoria to perform its functions, and • enable the Judicial Commission to perform its functions.¹¹

CSV staff	All CSV staff, other than judicial employees are employed under Part 3 of the <i>Public Administration Act 2004</i> (PAA). Judicial employees are employed under Division 3 of Part 6 of the PAA. ¹² Judicial employees include associates to a Judge of the Supreme or County Court, tipstaves of a Judge of the Supreme Court or County Court and secretaries of, or associates to, an Associate Judge of the Supreme or County Courts. ¹³ While CSV staff are employed under the PAA, the CSV Act makes clear that in order to protect the independence of CSV and the judiciary from the executive, CSV staff are not subject to control, supervision or direction by the Premier, a minister or any other person or body representing the executive branch of government. ¹⁴
Everyday sexism	Everyday sexism is common and frequent sexist behaviour caused by prevailing gender stereotypes. Examples include looking first to women to do office chores and characterising women differently for the same behaviour as men. Everyday sexism is frequently invisible, and often accepted and normalised.
Gender harassment	Gender harassment covers a range of verbal and non-verbal behaviours that convey insulting, hostile and degrading attitudes related to gender.
Hierarchical organisational structure	A hierarchical organisational structure refers to the 'chain of command' in an organisation. A hierarchy is a structure where different levels or bodies are ranked or ordered, depending on their power, authority influence and/or importance.
Intersectionality and intersectional discrimination	Different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation. Intersectional discrimination refers to the additional and compounding discrimination experienced by some groups. For example, women of colour, women with a disability and women who identify as LGBTIQ+ experience discrimination and harassment not only because of their gender but also, and in different ways, because of their race, disability and sexual orientation.
Judicial officer	Includes judges of the Supreme Court or County Court, reserve and associate judges of the Supreme Court or County Court, magistrates, reserve magistrates, coroners, reserve coroners and judicial registrars.
LGBTIQ+	'LGBTIQ+' is an evolving acronym that stands for lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual and other terms (such as non-binary and pansexual) that people use to describe their experiences of their gender, sexuality and physiological sex characteristics.
Participant	An individual who made a submission to or participated in an interview with VEOHRC, with appropriate supports and protections for confidentiality.
Risk factor	A variable linked to an increased risk of sexual harassment taking place.
Risk assessment	A process undertaken to identify the hazards, risk controls and level of risk associated with a task or activity, including sexual harassment.

Risk control	The implementation of an action that eliminates, prevents, reduces, or mitigates the harm from the potential exposure to a hazard. Under the <i>Occupational Health and Safety Act 2004</i> , a duty holder must eliminate health and safety risks so far as is reasonably practicable, and if that is not possible, minimise the risks so far as is reasonably practicable. Eliminating a hazard will also eliminate any risks associated with that hazard.
Sexual harassment	Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature, which makes someone feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.
Tipstaff or tipstaves	Tipstaves provide support to judges of the Supreme Court and County Court. They work with Associates and often have a focus on in-court operations and jury management. Like Associates, they are generally attached to a particular judge.
Trauma-informed approach	A trauma-informed approach recognises the prevalence of trauma and its impact on the emotional, psychological and social wellbeing of people and communities.
VCAT member	A member of VCAT who is not a judicial officer.
Victim-survivor	<p>A victim-survivor refers to someone who has experienced sexual violence, including sexual harassment. When describing experiences of workplace sexual harassment, some people prefer to use the term 'victim' while others prefer the term 'survivor' or 'victim-survivor'. In this report, the Review employs the term 'victim-survivor' consistent with VEOHRC language.</p> <p>The report also at times uses terms such as 'complainant', 'applicant' and 'alleged victim' in the context of formal reporting, complaints and other legal or administrative processes or proceedings.</p>
The Victorian Civil and Administrative Tribunal (VCAT)	The Victorian Civil and Administrative Tribunal is a tribunal established and governed by the <i>Victorian Civil and Administrative Tribunal Act 1998</i> .
Workplace/organisational culture	Organisational culture is a system of shared assumptions, beliefs and values that governs behaviour in an organisation.

The Review recognises that violence, including sexual harassment, is experienced by trans, gender diverse, non-binary and intersex people and those whose life and/or identity does not follow binary definitions of sex and gender. The Review's definition of 'women' in this report encompasses all those who identify and live as a woman. Drawing on the work of Our Watch regarding the key drivers of violence against women at the population level, this report does employ binary terms like 'men/women' and 'male/female'.

A list of common acronyms and abbreviations used in the report

AHRC	Australian Human Rights Commission
CSV	Court Services Victoria
HR	Human Resources
VCAT	Victorian Courts Administrative Tribunal
VEOHRC	Victorian Equal Opportunity and Human Rights Commission
VLSB+C	Victorian Legal Services Board and Commissioner
WBA	Women Barristers' Association

Summary of Recommendations

This summary includes an overview of the recommendations of the Review – each essential for the courts and VCAT to foster respectful cultures and ensure these workplaces are safe for all who work there. The Recommendations are underpinned by the Terms of Reference for the Review. Specific details of these recommendations are provided in Part 3.

Recommendations contributing to the prevention of sexual harassment

- ▶ **Outcome: Strong and effective leadership driving successful, long-term reform**

▶ Recommendation 1

Consistently and visibly champion a healthy, positive workplace culture in all jurisdictions and adopt strategies to prevent sexual harassment.

Progress will be assessed by:

- a. Court and VCAT leadership, including Heads of Jurisdiction, and Courts Executive publicly acknowledging the harms experienced by victim-survivors as a result of sexual harassment in Victorian courts and VCAT and the inadequacy of institutional responses to sexual harassment to date; and
- b. regular reports to the Courts Council, addressing the implementation of recommendations contained in this report.

Responsibility

Heads of Jurisdiction

Courts Executive

Judicial officers and VCAT Members

- ▶ **Outcome: A positive workplace culture**

▶ Recommendation 2

Develop, promote and implement a sexual harassment policy that covers all staff and contractors and:

- a. sets out clear standards for behaviour;
- b. sets out the standard of behaviour that can be expected in dealings with judicial officers and VCAT members;
- c. meets the six minimum standards for employers listed in the Victorian Equal Opportunity and Human Rights Commission's [Guideline: Preventing and responding to Workplace sexual harassment](#) (2020);
- d. recognises CSV's positive obligations under the [Equal Opportunity Act 2010](#) and the [Occupational Health and Safety Act 2004](#);
- e. adopts a victim-survivor-centred response to instances of sexual harassment;
- f. clearly sets out all internal and external reporting options, including processes and potential outcomes;
- g. explains how the confidentiality of complainants will be protected and the protections in place to deal with retaliation for making a complaint;
- h. explains the role of bystanders and the support that can be provided to bystanders;
- i. makes clear that confidentiality obligations between judicial staff and judicial officers do not prevent staff from making a complaint about misconduct;
- j. covers the consumption of alcohol by all staff, contractors, judicial officers and VCAT members; and
- k. addresses the issue of consensual personal relationships and potential power imbalances, conflicts of interest and bias using the Victorian Public Services Commissioner's Managing consensual personal relationships – Practice Guide and Model Conflict of Interest Policy.

Responsibility

Court Services Victoria

Courts Executive

► **Outcome: A positive workplace culture**
– vulnerable workers and risk

► **Recommendation 3**

Undertake a risk assessment of CSV, the courts and VCAT, to identify and assess all sexual harassment work hazards, using a work health and safety risk framework.

This risk assessment should be part of the workplace gender equality audit required by the [Gender Equality Act 2020](#) and should be informed by:

- a. the WorkSafe Victoria Guide [Work-related gendered violence including sexual harassment](#);
- b. the VEOHRC [Guideline: Preventing and responding to workplace sexual harassment](#);
- c. consultations with staff using the Australian Human Rights Commission (AHRC)'s [Have your Say – Conversation Toolkit](#); and
- d. existing work health and safety mechanisms, staff survey results, complaints data, Health and Safety Representative reports, Employment Assistance Program (EAP) trend reports, information received during staff exit interviews, reports from stakeholders and regulators, and any data received from online reporting tools.

Responsibility

Court Services Victoria
Courts Executive

► **Recommendation 4**

Commission an independent expert to review and make recommendations to the Courts Council on the recruitment processes and working arrangements for Court Services staff who work in a primary relationship with judicial officers, including associates, tipstaves and clerks.

The independent review should include:

- a. the processes by which staff are assigned to judicial officers;
- b. appropriate training for judicial officers and CSV managers on their respective responsibilities for the supervision of staff;
- c. the quality and scope of induction processes as it relates to sexual harassment;
- d. reporting lines, and the options for different systems of reporting that could mitigate sexual harassment risk factors;
- e. models of peer support that build collegiate support and networks, such as mentoring or buddy systems;
- f. feedback mechanisms for both judicial officers and judicial staff; and
- g. processes for identifying, addressing and responding to sexual harassment perpetrated against judicial staff.

Responsibility

Court Services Victoria
Courts Executive

- ▶ **Outcome: A positive workplace culture**
 - appointment practices

▶ Recommendation 5

Amend the appointment process for judicial officers to explicitly require that potential appointees are of good character and have consistently demonstrated professional respect and courtesy for their colleagues, clients and others involved in the legal process.

In assessing whether a potential candidate has satisfied this requirement the Attorney-General should consult widely with relevant regulatory and professional organisations.

Responsibility

Attorney-General
Heads of Jurisdiction

▶ Recommendation 6

Amend the appointment criteria for Senior Counsel to better assess applicant character and previous conduct.

The amendments should:

- provide that Senior Counsel must be recognised as being of good character and must always demonstrate professional respect and courtesy for their colleagues, clients and others involved in the legal process;
- include a clear statement that the Chief Justice will consult with the Victorian Legal Services Board and Commissioner and professional associations representing women lawyers and lawyers from minority groups about prospective appointments; and
- provide that applicants must have completed a prescribed sexual harassment awareness training course within the previous two years.

Responsibility

Chief Justice

- ▶ **Outcome: Diversity and gender equality**

▶ Recommendation 7

Amend the *Judicial College of Victoria Act 2001* to cover the appointment of at least three and up to four directors who are not judicial officers. At least two of these directors must have broad experience in community issues affecting courts.

Responsibility

Attorney-General

▶ Recommendation 8

Expand the Judicial College of Victoria's *Disability Access Bench Book* into an *Equality Bench Book*, providing information about other protected attributes. The Equality Bench Book should:

- be modelled on the England and Wales Equal Treatment Bench Book, the NSW Equality Before the Law Bench Book, and the WA Equal Justice Bench Book; and
- include practical suggestions and guidance.

Responsibility

Judicial College of Victoria in consultation with the Victorian Equal Opportunity and Human Rights Commission

Recommendations contributing to improving reporting and support to those who experience sexual harassment

► **Outcome:** Victim-survivor-centred support, reporting and response

► **Recommendation 9**

Adopt victim-survivor-centred responses to gender-related misconduct that prioritise the safety and wellbeing of the victim-survivor and provide multiple channels and support for reporting gender-related misconduct, including sexual harassment.

To be effective, the channels and support provided must include:

- a. informal peer support officers at all levels of the organisation including judicial officers and VCAT members who are given additional specific training in responding to sexual harassment and who have the necessary skills to informally talk with and assist complainants to address the matter and/or make a formal complaint if they wish to do so;
- b. a formal internal complaint mechanism that includes:
 - i. the option for anonymous complaints;
 - ii. an explanation of the options for making external complaints;
 - iii. the independent investigation of the complaint;
 - iv. the victim-survivor and complainant receiving notice of the outcome of the complaint process and a follow-up 12 months after the complaint is resolved to ensure that they have not suffered any reprisal or other adverse consequences as a result of the complaint; and
- c. support and protection when an external complaint is made to the relevant body.

Responsibility

Courts Council

Court Services Victoria

► **Recommendation 10**

The review of the Judicial Commission of Victoria should consider, and if appropriate make recommendations to the Attorney-General for legislative amendments to the *Judicial Commission of Victoria Act 2016* to strengthen sexual harassment complaint and investigation processes by:

- a. giving the Judicial Commission of Victoria the power to compel information or documents from any relevant person or body for the purposes of considering a complaint or referral;
- b. giving the Judicial Commission of Victoria powers to issue confidentiality notices in appropriate circumstances to prevent disclosure of the fact of a complaint, referral or investigation or the details of a complainant or the person subject to a complaint;
- c. clarifying that any conduct that is a breach of the guidelines or could warrant removal from office can be the subject of a complaint or referral to the Judicial Commission of Victoria; and
- d. conferring the Judicial Commission of Victoria with an own motion investigation power to establish an investigating panel to investigate sexual harassment, discrimination or other related misconduct without the need for a formal complaint or referral, where there is a reasonable basis to suspect that a judicial officer or member of VCAT has committed conduct that if proven would warrant dismissal from office.

Responsibility

Judicial Commission of Victoria

Recommendations contributing to raising awareness across the courts and VCAT

- ▶ **Outcome:** Organisational capability and knowledge

▶ Recommendation 11

Develop a coordinated awareness-raising campaign for the Courts, VCAT and the wider legal profession on appropriate behaviour within the courts and VCAT that:

- a. makes it clear that sexual harassment is being treated seriously and raises awareness about the work that is being done to prevent and address sexual harassment; and
- b. explains the multiple mechanisms for raising a concern or making a complaint and encourages victim-survivors and witnesses to report sexual harassment to the relevant oversight body.

Responsibility

Courts Council

Court Services Victoria

with input from the regulatory and member organisations of the legal profession

- ▶ **Outcome:** Organisational capability and knowledge – the importance of training and education

▶ Recommendation 12

Provide targeted sexual harassment, gender inequality and discrimination training to all CSV staff and contractors that is delivered by independent experts.

The training should cover the following topics:

- a. the importance of creating a safe, respectful, diverse and inclusive workplace culture;
- b. the nature and impact of sexual harassment, gender inequality, discrimination, everyday sexism and incivility;
- c. how to recognise and respond appropriately to sexual harassment, gender inequality, discrimination, incivility and retaliation against people who report these behaviours;
- d. how effective bystander action can be encouraged;
- e. the potential risks and impacts of power disparity;
- f. empathetic communication and dealing with difficult behaviours; and
- g. implementing flexible work arrangements that are supported and seen as part of a positive culture and effective ways of working within the courts.

For those responsible for managing or supervising others, the training should also cover:

- h. inclusive leadership; and
- i. CSV's commitment to eradicating sexual harassment, gender inequality, discrimination and incivility and its expectation for the role they will play in that task, as well as providing them with the skills to effectively prevent, detect and respond to any inappropriate behaviour.

Responsibility

Court Services Victoria

► Recommendation 13

Implement an education program for existing and newly appointed judicial officers and VCAT members on gender equality and the nature, drivers and impacts of sexual harassment, gender inequality and discrimination.

The relevant Head of Jurisdiction should ensure all current and any new judicial officers and VCAT members complete the Judicial College education program, which should cover:

- a. the duty of judicial officers and VCAT members to:
 - i. treat CSV staff, lawyers and others with civility, respect and dignity and avoid misconduct such as bullying, sexual harassment and discrimination;
 - ii. ensure that courts are safe workplaces for everyone who works there and respond to any instances of sexual harassment they witness or become aware of;
- b. the range of experiences and impacts of sexual harassment on victim-survivors including a storytelling strategy similar to what was used by the Victorian Bar in 2017–18;
- c. the resources and services available for those who wish to make complaints or seek support;
- d. how gender, power imbalances in the workplace and other forms of inequality (for example, related to race or disability) impact how people respond to unwanted sexual advances;
- e. the role and expectations of bystanders in relation to incidents of sexual harassment;
- f. opportunities for feedback, review and/or coaching, to address in-court behaviour and out-of-court behaviours
- g. any other matters raised in the CSV policy referred to in Recommendation 2 and judicial conduct guidelines referred to in Recommendation 17; and
- h. for Heads of Jurisdiction, their role in recognising and responding to sexual harassment and other misconduct by judicial officers and VCAT members.

Responsibility

Judicial College of Victoria
Heads of Jurisdiction

► Recommendation 14

Appoint an additional person/s with specific expertise in the prevention of sexual harassment and organisational change to join the Human Resources Committee of the Courts Council.

The Human Resources Committee should be responsible for:

- a. providing an annual update and report on its work and priorities, included in the annual report of each Court and also of Court Services Victoria;
- b. identifying further action required to create positive organisational cultures that prioritise staff wellbeing, gender equality and diversity; and
- c. reporting that informs an independent audit of progress against sexual harassment prevention as outlined in Recommendation 20.

Responsibility

Courts Council

Recommendations contributing to ensuring accountability

- ▶ **Outcome:** Ensuring integrity and accountability

▶ Recommendation 15

The *Equal Opportunity Act 2010* and *Occupational Health and Safety Act 2004* should be amended to ensure that all persons working in Victorian Courts and VCAT, including judicial officers and VCAT members, are protected against sexual harassment and prohibited from sexually harassing others.

Responsibility

Attorney-General

- ▶ **Outcome:** Ensuring integrity and accountability – investigating systemic issues

▶ Recommendation 16

The Victorian Government explore further changes to the *Equal Opportunity Act 2010* to address systemic issues of sexual harassment as well as discrimination and victimisation. This should include changes to the powers and functions under the Act to enforce the current positive duty.

Responsibility

Attorney-General

- ▶ **Outcome:** Ensuring integrity and accountability – guidance to judicial officers and VCAT members

▶ Recommendation 17

Publish a supplementary guideline for judicial officers and members of VCAT dealing with sexual harassment and the standard of behaviour expected of them. To the extent that it is possible and appropriate to do so, the guideline should be consistent with and cover the same subject matter as the policy for CSV staff set out in Recommendation 2.

Responsibility

Judicial Commission of Victoria

► **Outcome:** Effective monitoring and evaluation

► **Recommendation 18**

Conduct an annual anonymous survey of all court and VCAT user groups to track progress on incidents of sexual harassment, reporting of incidents, and action by bystanders in the courts and VCAT. These surveys should be created in consultation with the Victorian Legal Services Board and Commissioner to ensure they collect comparable data and should reach all CSV staff, judicial officers and VCAT members as well as other court and VCAT users including barristers, solicitors and police prosecutors.

Responsibility

Court Services Victoria

► **Recommendation 19**

Embed performance metrics for people managers and supervisors with accountability to effectively prevent, detect and respond to any sexual harassment, and take a victim-survivor-centred approach in their responses.

Responsibility

Court Services Victoria

► **Recommendation 20**

Within two years, commission an independent audit of the implementation of the Review recommendations and the effectiveness of the interventions implemented and make the audit report public.

Responsibility

Courts Council

Court Services Victoria

PART ONE

Setting the scene

1.1 Scope of the Review

The terms of reference for the Review of Sexual Harassment in Victorian Courts (the Review) tasked it with considering measures to:

- prevent sexual harassment;
- improve reporting by and support for those who experience sexual harassment;
- raise awareness; and
- ensure accountability for perpetrators of sexual harassment in Victorian courts and VCAT.¹⁵

The Review itself was not a mechanism for investigating and addressing individual complaints. However, it was informed by the lived experience of those who have been subject to sexual harassment within Victorian courts and VCAT.

The Review partnered with the [Victorian Equal Opportunity and Human Rights Commission](#) (VEOHRC), an independent statutory body with responsibilities under the [Equal Opportunity Act 2010 \(Vic\)](#), the [Racial and Religious Tolerance Act 2001 \(Vic\)](#) and the [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#).

With considerable experience in supporting victim-survivors of sexual harassment and victimisation, VEOHRC's role was to provide individuals with a confidential pathway to share their experiences with the Review and access help and support. It should be noted that:

- no identifying information about victim-survivors, witnesses or alleged perpetrators was shared with the Review
- aggregated data was provided to the Review on the location (jurisdictions and work-related locations) of incidents that were reported to VEOHRC
- no specific information was provided about whether a formal complaint has been or would be pursued following the report to VEOHRC; participants were asked if they reported their experience
- VEOHRC were available to hear and receive reports of sexual harassment for a six-week period only, and in that time 36 people shared their experience via written submission or through a one-on-

one interview. Most, but not all, written submissions were anonymous.

Some of the stories are shared in this report – with the participant's permission and in a de-identified form. All of the stories have helped to shape the findings and recommendations.

The Review covered sexual harassment in the courts and VCAT as workplaces. This includes all work-related activities and functions (including social functions and events) even when these occur outside of court or VCAT buildings. As part of its scope, the Review included consideration of the conduct of judicial officers and VCAT members, court and VCAT staff as well as other parties (legal representatives, witnesses, interpreters, corrections, police, external service providers and contractors) involved in incidents occurring in these workplaces.

A range of consultative and evidence-gathering approaches were employed to inform the Review. These included:

- A safe and confidential process for those who had experienced sexual harassment or witnessed sexual harassment in the Courts or VCAT to share their experiences. With the approval of the Justice and Human Research Ethics Committee of the Department of Justice and Community Safety, and in partnership with the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), 36 people were supported to share their experiences through online submissions or a detailed interview with a VEOHRC staff member with appropriate expertise and who could provide support. This information has been provided to the Review in a confidential and de-identified format.
- Twenty-six roundtable discussions involving approximately 175 attendees were held with solicitors and barristers, judicial officers, VCAT members, Court Services Victoria staff, regional lawyers, Victoria Police, academic experts, regulators, and Koori staff and services. The major themes and feedback from these discussions have informed this final report.
- More than 50 one-on-one interviews were held with judicial officers, VCAT members, academics and experts in sexual harassment, and with key personnel at the Victorian Bar, Law Institute of Victoria and regulatory bodies.

- Fifteen written submissions received from organisations.

This review was undertaken during a period when COVID-19 restrictions prohibited face-to-face meetings. All consultations were undertaken by phone, Zoom or Teams.

A [Review Advisory Committee](#) (RAC) was established to provide additional expertise in sexual harassment and legal practice. The RAC was Chaired by Dr Helen Szoke AO, and its Members were: Kate Jenkins, Sex Discrimination Commissioner; Kristen Hilton, VEOHRC; Marcia Neave AO, Former Judge of the Supreme Court of Victoria (Court of Appeals Division) and Commissioner of the Royal Commission into Family Violence; Samantha Burchell, CEO Judicial College of Victoria; Professor Paula McDonald, Associate Dean, Research QUT Business School; Rabea Khan, Barrister, Victorian Bar; and Kieran Pender, Senior Lawyer at the Human Rights Law Centre and Author of *Us Too? Bullying and Sexual Harassment in the Legal Profession* for the International Bar Association.

In addition to the consultative processes, the Review:

- undertook a summary review of interventions to prevent and respond to sexual harassment in courts (Appendix 1: Summary Review of interventions to prevent and respond to sexual harassment in courts)
- reviewed prevalence data from the most recent reviews (Appendix 2: Prevalence data – a snapshot of surveys and projects on sexual harassment)
- outlined the understanding of Judicial Independence and Judicial Immunity as it related to sexual harassment and the conduct of judicial officers (Appendix 3: Judicial independence, accountability and the role of the Heads of Jurisdictions)
- sought additional advice on gaps and legislative amendments required to strengthen accountability in the courts and tribunals (Appendix 4: Review to Address Sexual Harassment in Courts and Law Memorandum)
- outlined an overview of the legislative impacts on courts and tribunals (Appendix 5: The current legal framework for preventing sexual harassment in Victoria)

- was informed by the VEOHRC process and includes a summary of individual experiences (Appendix 6: VEOHRC Data summary of participant's experiences).

In reviewing sexual harassment within the courts, attention must be given to harassment that is occurring outside the courts and the culture of other workplaces that then contribute to the culture within the courts. Based on the evidence given to the Review and the prevalence of complaints of sexual harassment against barristers reported to the Victorian Legal Services Board and Commissioner (VLSB+C),¹⁶ the issue of sexual harassment by barristers was identified as a particular problem.

Barristers' role in the courts and VCAT, and the culture of the Bar which inevitably transfers to the bench as the vast majority of judges are appointed from the Bar, mean that changing the culture at the Bar will be very important to fully addressing sexual harassment within the Courts and VCAT. Given that the Victorian Bar is a private entity, the Review makes no specific recommendations directed to the Bar Association. However, the Review supports the initiatives outlined in section 2.7 of this Report such as reviewing its sexual harassment policies and employing a specially trained dedicated assessment and conduct officer, whose role includes supporting those who have experienced sexual harassment.

The Review also makes no recommendations about law practices or other parties that utilise the courts. However, given the broad extent of the problem of sexual harassment among members of the legal profession¹⁷ it is important to recognise that these employers also have an obligation to their staff to prevent harassment both at their premises and when staff attend a court or VCAT.

1.2 Court Services Victoria

Court Services Victoria (CSV) holds administrative responsibility for the over 350 courts and VCAT rooms accessed daily by its staff, judicial officers, VCAT members, barristers, solicitors, volunteers and the public. CSV provides, or arranges for the provision of, the administrative services and facilities necessary to support the performance of the judicial, quasi-judicial and administrative functions of the Victorian Courts and VCAT and enables the Judicial College of Victoria and the Judicial Commission of Victoria to perform their functions. CSV is responsible for providing a working environment that is free from sexual harassment, and the organisation is liable for sexual harassment perpetrated by its employees, contract workers or others in certain circumstances.

CSV's governance structure is judicially led, principally by the Courts Council. The Courts Council is comprised of the heads of each jurisdiction and up to two independent members. It is chaired by the Chief Justice and there are seven Standing Committees that inform and support the work of the Courts Council.¹⁸ As CSV's governing body, the Courts Council is responsible for the strategy, governance and risk management of CSV. This includes monitoring organisational health and compliance with CSV's workforce obligations for approximately 3,000 people who work for CSV, as staff, contracted labour or service providers.

Employee classifications within CSV range from VPS grade 1 to 7 followed by executive levels. Women make up around 71% of the CSV workforce. They hold 68% of executive roles and 56% of Executive VPS 7 and VPS 6 roles, compared to 72% of VPS 5 roles and lower. There are more women than men in younger age cohorts – 49% of the women who work at CSV are aged 34 and under compared with 33% of men in the same age bracket.¹⁹ Research has shown young women, particularly those in junior roles, are an at-risk group for sexual harassment.²⁰

1.3 Legislation prohibiting sexual harassment in the courts and VCAT

Sexual harassment is prohibited by different laws that apply in different contexts. The primary legislation prohibiting sexual harassment is the Victorian *Equal Opportunity Act 2010* and the [Commonwealth Sex Discrimination Act 1984](#). These laws prohibit sexual harassment in certain contexts, primarily in employment, education and the provision of goods and services, rather than providing that sexual harassment is unlawful whenever it occurs.²¹ Other employment and occupational health and safety laws also create a positive duty to prevent sexual harassment and systems for responding when it does occur.

In addition to the common law duty of care owed by employers, the *Occupational Health and Safety Act 2004* provides that:

*An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.*²²

It is not just the employing organisation but also any person who has management or control of a workplace who must ensure, so far as is reasonably practicable, that the workplace and the means of entering and leaving it are safe and without risks to health.²³

All CSV staff (including contractors such as court security officers) and other public sector staff, including crown prosecutors, Office of Public Prosecutions solicitors and Victoria Legal Aid solicitors, are subject to the *Equal Opportunity Act 2010*. However, the Act does not expressly refer to judicial officers; the extent of its application to their conduct is uncertain.

A full discussion of legislation is in *Appendix 5: The current legal framework for preventing sexual harassment in Victoria*.

1.4 Judicial independence and judicial immunity

The matter of judicial independence and judicial immunity was often raised throughout the Review.

Judicial independence is a foundation of our justice system and the separation of powers. Former High Court Chief Justice Murray Gleeson stated:

Judicial independence means, amongst other things, that judges are independent of each other. Judges enjoy what is, by most workplace standards, extraordinary personal independence and freedom from interference by their leadership. This is in aid of one thing: reinforcing the public's confidence that they will exercise their judicial power without fear or favour, and without the prospect of being subjected to pressure, direct or indirect, from any authority but the law itself.²⁴

Judicial immunity operates to protect a judicial officer from being the subject of legal proceedings for the exercise of their judicial functions. To attract the immunity, the judicial officer must be acting in a judicial capacity or performing administrative duties associated with that capacity. Conduct of a private nature – including the commission of an offence or unlawful conduct such as sexual harassment – would ordinarily not attract judicial immunity. In general terms, judicial officers are subject to the operation of the criminal law and other Acts proscribing unlawful behaviour. Judicial immunity does not render lawful an unlawful act nor can it transform a private act into a judicial act.

This Review does not understate the importance of judicial independence and judicial immunity, which are central to maintaining public confidence in the integrity of the judicial system in Australia. The Review believes that judicial independence should not be a reason against, or a limitation upon, clear regulation of the conduct of judicial officers to prohibit sexual harassment. The independence of judicial officers should not act as a barrier to effectively addressing sexual harassment within the courts and VCAT. A detailed discussion of the issues associated with judicial independence is set out in Appendix 3.

Heads of Jurisdiction, under their relevant legislation, have broad responsibility for ensuring the 'effective, orderly and expeditious discharge of the business of the Court'.²⁵

The head of each jurisdiction is also responsible for directing learning and development and may direct all, or some, judicial officers to participate in a specified professional development, continuing education and training activity.²⁶ However the extent to which Heads of Jurisdiction can exercise control over or should be responsible for the management of the behaviour of other judges is uncertain and contentious.

1.5 What is sexual harassment?

Sexual discrimination was first prohibited in Victoria in 1977²⁷ and was expressly prohibited in 1984 by the *Sex Discrimination Act 1984* (Cth). Since then, there have been countless inquiries, reports and surveys as well as volumes of academic research looking at the causes and solutions in almost every professional context.²⁸ Despite this, across most workplaces a lack of understanding of the nature and impact of sexual harassment remains.

The *Equal Opportunity Act 2010* defines sexual harassment as follows:

A person sexually harasses another person if he or she –

- a. makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or*
- b. engages in any other unwelcome conduct of a sexual nature in relation to the other person –*

*in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.*²⁹

The Victorian Equal Opportunity and Human Rights Commission further defines sexual harassment as:

*Unwelcome sexual behaviour that could make a person feel offended, humiliated or intimidated. It can be a symptom of gender inequality and most often – but not always – affects women. Sexual harassment can be a single incident or repeated behaviour, a suggestive comment or an offensive joke. It may happen in the office, a work party or at school. It doesn't matter what the intention is, sexual harassment is against the law.*³⁰

Behaviours that constitute sexual harassment include:

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

Sexual harassment can be physical, verbal or written. Examples include:

- comments about a person's private life or the way they look*
- sexually suggestive behaviour, such as leering or staring*
- brushing up against someone, touching, fondling, or hugging*
- sexually suggestive comments or jokes*
- displaying offensive images or objects*
- repeated requests to go out*
- requests for sex*
- sexually explicit emails, text messages or posts on social media*
- sexual assault, and*
- suggestive behaviour.*³¹

Sexual harassment in Victoria's legal sector

In 2019, the Victorian Legal Services Board and Commissioner (VLSB+C) surveyed over 21,000 legal professionals holding current practising certificates about their experiences of **sexual harassment** in Victoria's legal workplaces. More than 2,000 people completed this survey. The figures below summarise the outcomes from report of the survey.³²

Prevalence of workplace sexual harassment



Prevalence of workplace sexual harassment by gender

61% of women and **12%** of men in the legal profession have experienced **sexual harassment** while working in a legal workplace in Victoria.



Prevalence of sexual harassment in legal workplaces by experience



Of the legal professionals who experienced **sexual harassment**, for **three in five (59%)** it occurred during their first five years in the legal sector.

Women with less than 6 years' experience in the legal profession are more likely to have been **sexually harassed** (61%) than those with 6 or more years' experience (36%).

Perpetrators of workplace sexual harassment

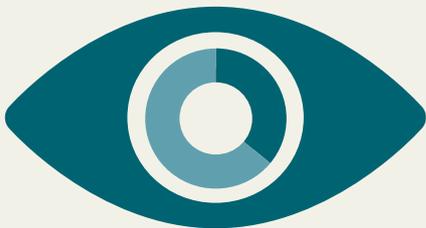
Perpetrators of **sexual harassment** in legal workplaces were typically more senior than those they harass (72%), compared to results for all Australian workplaces* (27%).



Nine in ten (90%) perpetrators of **sexual harassment** were male and one in ten (10%) were female.

Witnesses to sexual harassment in the legal sector

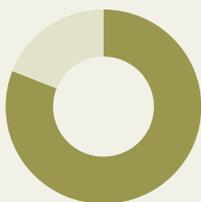
One in three (36%) legal professionals have witnessed **sexual harassment** in the workplace.



One in ten (10%) reported the **sexual harassment** they witnessed.



Reporting of sexual harassment in the legal sector



81% of people said they **did not** report their most recent incident of **sexual harassment**.



Of the **one in five (19%)** people who did report the incident, 28% were labelled as a **troublemaker**, 23% felt **ostracised, victimised** or **ignored** by colleagues and 26% said they **resigned** from their role.

* Source: Australian Human Rights Commission, *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces 2018*.

The individual account set out below was shared with VEOHRC and provides an example of sexual harassing behaviours perpetrated by judicial officers. The names have been changed to protect the identity of the people involved.

MIN'S STORY

In my first week of starting with the court, I observed a judicial officer going up to a staff member and going, 'Let me take you out for lunch'. She looked very uncomfortable and he said back to her, 'Oh, you always say no to me.' She didn't say anything but looked quite uncomfortable.

Then, just a few days after that, the same judicial officer that I'd seen asking my colleague out for lunch came up to my desk and started licking his lips and said to me, 'Oh, have they told you how much of a flirt I am?'

I'd never really experienced anything like that before, but I spoke with a senior judicial officer about it, who basically said, 'Look, I understand this has happened. Do you want me to take it further?' And because I was very new to the job at the court at the time, even actually going to the senior judicial officer and reporting it was quite stressful. I thought, 'No, I don't want to take it further'. I think I would find that traumatic and I don't want it to be – because I knew nothing was going to happen to this judicial officer and I would still have to work with him. I didn't want it to be awkward. So, I just left it at that.

Unfortunately, I continued to experience similar incidents at the court, often from judicial officers – sexual innuendo or being called 'gorgeous'. I've also heard other stories about that same judicial officer. It makes me angry that some of them just have no concept of what's appropriate, and no respect for women at all. It has also made me question myself and wish that I presented myself in a different way so I wouldn't be a target. It made me think maybe I'm too nice. Why do they come to me? What is it about me that makes them say that?

I haven't reported anything else. I was just a bit worried how it was going to look if I kept coming to them about these incidents. Because I'd already reported that one incident, I was worried that they were going to think 'She's a bit sensitive.' I thought that they might think it's a reflection of me.

Looking back at my first week and observing the incident with my colleague, I didn't think much of it at the time. But now, after what I've experienced, I've realised 'Oh wow, that must have happened to her all the time.' And I've heard from colleagues that it did.

1.6 The drivers of sexual harassment

Gender inequality and related drivers of sexual harassment

Gender inequality is a central driver of sexual harassment. As the Australian Human Rights Commission's [Respect@Work report](#) observes:

Gender inequality relates to the unequal distribution of power, resources and opportunity between men and women in society, due to prevailing societal norms and structures.³³

While gender inequality is at the core of sexual harassment, other drivers include:

- conservative norms of gender and sexuality
- the culture of a workplace, including the role of leadership in setting workplace behaviours and norms
- overlapping and interdependent systems of discrimination or disadvantage including gender, race, disability or sexuality
- a lack of understanding about what constitutes sexual harassment
- sexualisation of women and the subordination of women in traditionally female roles
- a sense of entitlement and lack of accountability by those who hold powerful positions in the workplace, and
- the abuse of alcohol in a work context.³⁴

The Women's Legal Services submission to this Review stated:

Sexual harassment is an expression of gender inequality and flourishes in environments where the conditions for gender inequality remain strong, under-recognized and unquestioned. These are workplace cultures where male-dominated hierarchies pervade, and women are under-represented at the more senior levels and have less decision-making power.³⁵

While sexual harassment impacts all genders, considerable empirical research shows that it disproportionately impacts women.

Organisational cultures where negative behaviours are tolerated amplify the risk of sexual harassment. The risk can be further exacerbated when individuals work in isolation, are not given training, and have low status in the organisation.

Sexual harassment is a key characteristic of work environments with normative male dominance.³⁶ The prevalence of sexual harassment is higher in male-dominated workplaces than in gender-balanced or female-dominated workplaces.³⁷ This is compounded in organisations with a rigid hierarchy and which permit, condone or ignore demeaning attitudes towards women including sexism and discrimination.

Abuse of power

The impact of hierarchy and power on women has been the subject of much research across a range of professions, including the military, law enforcement and in the corporate sector. As one of the most entrenched characteristics of the courts, hierarchy and power imbalance are key risks.

As numerous studies have shown, sexual harassment prevails in hierarchical workplaces with strongly embedded masculine norms and a dominance of male leadership. These environments make it difficult for women to thrive to the same extent as men, and can also create a culture of silence, where those who experience these behaviours are implicitly or explicitly discouraged from speaking out.

The Australian Human Rights Commission's [Respect@Work report](#) highlighted how sexual harassment reinforces the traditionally subordinate position of women in the workforce hierarchy. University of South Australia law lecturer Dr Joe McIntyre, commenting on the legal profession and the courts, stated:

Prevention of sexual harassment relies on addressing this power imbalance and ensuring that judicial officers and those who operate in the courts do not behave in ways which are unchallenged, unknown or with limited or no consequence.

Courts as powerful institutions and the legal industry more broadly will need to recognise the corrosive and subtle ways unequal power relations contribute to a culture of gender violence, misconduct and failure to ensure that all who have a duty to build a positive culture in the court accept their responsibility.

The foundational sin in the legal profession is that it remains a domain dependent upon personal relationships and hierarchical power. This leaves it exposed to embed gender inequality & abuse BUT also general exploitation. It is significant that the further up the hierarchy of legal practice one climbs, the more dependent upon personal relationships for referrals, briefs, appointments one becomes. And this is where the gender imbalance becomes particularly odious. Women are systemically underrepresented in the senior profession ... This is no coincidence. Men in positions of power are operating with a sense of practical immunity, because if the women speak out, they know their career is dust.³⁸

Power disparities and the abuse of power are an underlying feature of sexual harassment. Studies have found that power enables people to do as they please, often at the expense of not taking other people's perspectives into consideration. In the minds of men with a high proclivity to harass, power and sex are closely linked.³⁹

The NSW Women's Lawyers Association found in their 2018 survey on sexual harassment in the legal profession:

Sexual harassment is a workplace scourge we continue to struggle with. Those who are the most vulnerable in our profession are most affected.⁴⁰

Abuses of power can manifest as disrespect, sexism and sexual harassment. The Review heard through VEOHRC interviews and the Review's Roundtables of abuses of power by some judicial officers. For example, according to one lawyer, 'The way we are spoken to by some judicial officers would not be tolerated in any other workplace.' Other attendees commented that disrespect is gendered, with women disproportionately experiencing more uncivil or harassing behaviour from judicial officers and other senior legal representatives working in the courts. There was general agreement that power imbalance and the abuse of that power was at the heart of discrimination and sexual harassment.

The abuse of power can also be seen in the inadequate responses to poor behaviour in the courts by lawyers and judicial officers. Many attendees at the Roundtables commented that they would not confront an individual or make a report if they experienced or witnessed poor behaviour. As one academic who spoke to the Review stated, 'We are never going to address sexual harassment by just focusing on sexual harassment. We need to address power, entitlement and disrespect.'⁴¹

Efforts to promote equality and eradicate sexual harassment and sex discrimination are superficial if they fail to deal with underlying cultural and structural barriers.⁴²

Permissive cultures

The degree to which an organisation's culture is regarded as permissive of sexual harassment has the strongest relationship to how much harassment occurs in that organisation.⁴³ Sexual harassment is part of a range of behaviours that contribute to a broader disrespect towards women. If other negative behaviours such as gendered bullying, disrespect and everyday sexism are overlooked, tolerated or condoned in workplaces, it creates a permissive culture for sexual harassment. The Review heard that such negative behaviours all occur in the courts.

Permissive cultures exist in workplaces where there is no risk management of sexual harassment, where employees do not feel confident to report sexual harassment, where they think that a complaint will not be taken seriously, and where they believe that perpetrators will not be held to account.

Doing nothing to address everyday sexism, disrespect and bullying validates what is said and done, gives support to the transgressor and leaves the person being targeted to deal with it alone. It becomes an accepted part of workplace culture and discourages employees from raising concerns or making complaints. In their research, O'Hare and O'Donohue found that:

*The risk factors most strongly associated with sexual harassment were an unprofessional environment in the workplace, sexist atmosphere, and lack of knowledge about the organization's formal grievance procedures.*⁴⁴

Alcohol

The nature of the court workplace has unique features and sits within a complex, demanding and sensitive environment. The work can involve long hours, pressure to do what's expected without question, and for some, an obligation to travel, often up to a number of weeks at a time on circuit.

In addition to this, the *Respect@Work* report found professional expectations for those in the legal profession often includes socialising and networking as part of work, including at events where there is high alcohol consumption.⁴⁵

Drawing on Our Watch's findings, alcohol can interact with the gendered drivers of violence against women to increase the probability and severity of such violence.

The VLSB+C, in its survey on Sexual Harassment in the Victorian Legal Sector, found:

*Respondents who experienced sexual harassment cited work-related events, such as after-work drinks or a Christmas party, as the location where sexual harassment occurred (36%). Other common environments related to the workplace itself, such as at a workstation (24%), in a common area at the workplace (such as a stairwell or lift) (12%) or in a one-on-one meeting (11%). For 5% of respondents, the harassment occurred 'online', either via mobile phone, personal email, or via social networking.*⁴⁶

Work-related functions were identified by many of the interviewees who spoke to VEOHRC as environments where sexual harassment occurred.⁴⁷

Alcohol is not a causative factor on its own but, as *Respect@Work* found, 'reviews of cultural and systemic issues in specific organisations have identified alcohol as a factor contributing to sexual harassment, sexual assault or other inappropriate behaviour.'⁴⁸

When consumed at harmful levels it can interact with the gendered drivers of violence against women to increase the prospect and seriousness of that violence.⁴⁹

The findings from *Respect@Work* indicate that among the range of measures designed to prevent sexual harassment, including systemic and cultural factors, organisations should consider how access to alcohol, especially at work social events, may increase the risk of workplace sexual harassment.⁵⁰

Consensual personal workplace relationships

Intimate relationships are an inevitable part of the workplace. The issue of workplace intimate relationships in the corporate sector and in politics has recently been in the spotlight. While consensual intimate relationships are not inherently problematic, they do raise two important issues:

- the power dynamic and power imbalance between the parties to the relationship; and
- managing potential conflicts of interest and potential bias – particularly in the public sector.

Additionally, it is recognised that consensual relationships sometimes lead to sexual harassment. The Australian Human Rights Commission observes that:

Sexual behaviour between employees arising from a mutual sexual or romantic relationship is not sexual harassment. However, managing this situation can become particularly difficult for employers where the relationship later breaks down and a complaint of sexual harassment is made ... Sexual harassment may occur if, following the relationship breakdown, one party behaves in an inappropriate and unwanted sexual manner towards their former partner.⁵¹

There is an ongoing debate around the need for parties to disclose workplace relationships to their employers to manage potential conflicts of interest and bias.⁵² In the Victorian public sector, the [Conflict of Interest Model Policy](#) requires employees who are in an intimate relationship where there is also a direct hierarchical relationship to disclose the relationship to their manager, a designated disclosure officer (e.g. Human Resources officer) or a designated management representative. Employees who are in an intimate relationship but who do not have a hierarchical relationship are required to disclose a consensual personal relationship where an actual, potential or perceived conflict of interest cannot be appropriately avoided.⁵³

1.7 The impacts of sexual harassment

The impacts of sexual harassment can be severe and have long-term psychological, physical and economic effects. As one researcher writes ‘sexual harassment is a continual systemic trauma for women in the workplace.’⁵⁴

Fear, anxiety, depression, sleeplessness, difficulty concentrating, headaches, fatigue, shame and/or guilt, feeling powerless, helpless or out of control, loss of confidence and self-esteem, withdrawal and isolation, and suicidal thoughts or suicide attempts are some of the impacts reported by victim-survivors. Other effects include a decline in work performance, being objectified and humiliated by scrutiny and gossip, stress on relationships with significant others and stress on peer relationships.⁵⁵

Sexual harassment also makes women more likely to quit their jobs, even when doing so is economically disadvantageous. Sexually harassed women experience financial stress, largely by changing jobs which can significantly alter their career progression.⁵⁶ Research shows that ‘experiences of sexual harassment have a “scarring” effect on women, leading to lower overall earnings for years afterwards.’⁵⁷ Sexual harassment can also have significant organisational impacts, including lost productivity, poor morale, and the time spent documenting and pursuing or defending claims. Increased absenteeism is also a widely reported impact.⁵⁸

These behaviours create personal and organisational risk and can damage lives, divide teams, and undermine the operational effectiveness of organisations.

PART TWO

What we heard

2.1 Workplace culture in the courts and VCAT

‘All workplaces, including courts, should be safe and respectful. Sexual harassment is shameful. It disrespects and undermines the dignity of the individual. It must not be tolerated in any circumstance.’

Chief Justice of Victoria the Hon Anne Ferguson⁵⁹

Despite their unique features, courts are workplaces. As the Chief Justice of the Federal Court, the Hon James Allsop AO stated:

Courts are, of course, workplaces for judges and staff. The responsibility of heads of jurisdiction and those who assist them to maintain working environments for judges and their staff that are conducive to mental and physical health and wellbeing should be understood and express. The likely best way to foster this in judges and staff is to ensure a sense of trust, and individual autonomy in managing and conducting their working lives. Courts are also workplaces for practitioners. It has always been the case that how a judge behaves in court can affect practitioners in important ways – professionally and personally.⁶⁰

Leaders across the courts and CSV, including the Chief Justice of the Supreme Court and other Heads of Jurisdiction, told the Review that they were committed to creating positive and safe workplace cultures and were keen to ensure their workplaces were free from sexual harassment. A number of attendees⁶¹ in the Roundtables, particularly judicial officers, told the Review that a positive and healthy culture was an integral part of the operation of their courts and that there was a strong ‘zero tolerance’ approach for any disrespectful and unacceptable behaviour, including sexual harassment.

‘I’m really lucky with my Judge. He is inclusive of my opinions and he actively tells me to give him feedback. He is very alive to these issues (sexual harassment and sex discrimination) and to hierarchy issues ... I always feel included and respected.’

A number of attendees in the Roundtables spoke of judicial officers who role-model respectful, inclusive, authentic leadership contributing to a health workplace culture. Many also spoke of the rewarding nature of their work and acknowledged the significant steps that have been taken in recent years to address health and wellbeing.

‘We do this job because we love it. We love the intellectual stimulation, the friends and colleagues we make, and, in particular, knowing we are contributing to the delivery of justice.’

‘What I love about my job is the legacy I will leave behind regarding tipping the balance [towards greater justice for Aboriginal people]... I feel like I’m making a positive difference to the community.’

However, others challenged the assertion that there was a zero-tolerance approach.

‘There is definitely an ingrained culture around just not doing anything about it, and just, ‘It’s too hard to do anything about it.’ Sweep it under the carpet. Judicial officers are powerful people.’

Other attendees spoke of the hierarchy and the power inequity that they experienced, and how this impacted on the culture.

‘The court hierarchy and power imbalance are one of the main challenges to prevent sexual harassment.’

‘Power, hierarchy and a male-dominated culture, where women are often perceived as “the other” provide the seeds for sexual harassment to grow.’

‘The weeks after I reported the incident, I was waiting for my managers to come and have a conversation with me or check in on me or something and it just never happened.’

Attendees to the Review Roundtables identified a culture within the courts that can normalise or ignore sexual harassment, creating a barrier against preventing sexual harassment, raising awareness of the issue and reporting incidents. Examples of the problems that were raised include:

- fragmented and inconsistent applications of policies and processes;
- siloed systems;
- the lack of clear accountability responding to misconduct; and
- work conditions that made it difficult for staff to raise concerns or make complaints about sexual harassment.

‘There is a culture of keeping judicial officers happy and doing what they want when they want it, deferring to them at all times by calling them “your honour” even when not in court. You can see how this habitual deference and pleasing behaviour from very junior staff to senior judiciary can lead to sexual harassment’

‘Senior male barristers and judges and magistrates haven’t had experience with a modern workplace culture.’

‘There is a culture of exceptionalism. There is a degree of keeping themselves apart from other sectors and environments that they are bound to. There is a view that “no one understands the difficult job we do”’

These examples illustrate aspects of the present culture that have allowed sexual harassment to occur, and that negative behaviours are often unchecked or appropriately addressed. They point to a workplace culture that requires resetting and strengthening.

2.2 Hierarchy and power

The Review was told the court hierarchy and resulting power imbalance exists in all realms of the professional working life of court staff.

Attendees in Roundtables and participants⁶² in the VEOHRC process commented on the deference which associates, tipstaves and other court staff treat judicial officers – an issue that seemed for many, ‘not negotiable.’

‘I can’t think of any other power imbalance that is that uneven. Any other industry you work in, they ... have some sort of governing body – for example, in the law firms, if it got bad enough, HR could get involved and something could happen. There is literally nothing you can do in the courts.’

Some also spoke of the intersection between the hierarchy of power and gender, and how the male-dominated culture and norms of both the courts and the Bar impacted on attitudes and behaviour towards women. In this context, there was agreement among many female and some male attendees and participants that there needs to be more diversity represented in leadership roles in the courts and at the Bar.

‘Hierarchy and ceremony are a real problem and are conducive to a culture of bullying.’

‘I think there is a lot of responsibility that other judiciary have to call out things when they see it because ... the power imbalance is so extraordinary, that it can only really be addressed by their colleagues.’

2.3 Experiences of sexual harassment in the courts and VCAT

Despite the universal recognition of the importance of a safe, respectful and inclusive culture in the courts and VCAT, the evidence before the Review affirmed that sexual harassment still occurs across the legal profession, including in the courts.

The 2019 Victorian Legal Services Board and Commissioner survey found that 25% of lawyers had personally experienced sexual harassment in the legal sector in the previous 12 months and 57% in the previous five years.⁶³ The survey showed that sexual harassment is not just perpetrated by other lawyers but also by judicial officers:

A small number of respondents to our survey (around 17 individuals) indicated that they had been sexually harassed by judicial officers. Some respondents detailed very concerning abuses of power in free text comments about either witnessing or experiencing sexual harassment by judicial officers ... They include comments by judicial officers in open court on the looks, clothing, make-up or expressions of female lawyers, requests for dates, sexually explicit comments, unwanted touching, and unnecessary disrobing in chambers.⁶⁴

As well as those in the legal profession, VEOHRC heard from policy officers, clerks and tipstaves who reported their experiences of sexual harassment by judicial officers and with court staff, including CSV colleagues and supervisors.

Each of the participants in the VEOHRC process were asked a pre-interview question: ‘While working within the Victorian Court system, or attending a Victorian Court or Tribunal, have you experienced sexual harassment?’ This was to ensure that the participants were talking about experiences associated with

Victorian courts and VCAT. Of the 36 total VEOHRC participants, 28 reported that they had experienced sexual harassment in the courts, with 23 further reporting that there had been multiple incidents; 21 reported witnessing sexual harassment with 18 reporting witnessing multiple incidents. The experiences of the 36 participants included instances where the perpetrators were judicial officers, VCAT members, colleagues, managers, barristers and others (see Appendix 6).

‘Harassing behaviour is usually aimed at new people, people who have come straight from uni, people who haven’t been in the system for a while who don’t understand their rights. As they are new, they realise and are continually told how lucky they are to have this position, that they should be grateful for this position. And because of the hierarchy, as in everything – your career could swing on how well you get along with, how well you do, how compliant you are to the particular judge you are with.’

‘It was just this significant power imbalance. I was so focused on thinking that he had my career in his hands, really ... That’s why I haven’t said anything.’

‘[The judicial officer] invited me out to dinner one night and then ... took me to his house with just the two of us. I didn’t feel like I could say no to the original invitation and I certainly didn’t feel like I could say no to being alone in his house with him. I was very lucky that I was texting my best friend as this was all going on because I was genuinely concerned for my safety.’

‘I felt I had to go along with it or I wouldn’t be able to work effectively with him. I would rather have avoided him but I felt I had to try to make jokes with him and be bright and cheerful or he would be difficult to work with.’

‘I began feeling uneasy around the judge I was working with ... To begin with, it wasn’t anything too alarming, just regularly asking me to have dinner with him or drinks. I was young and I didn’t know whether he was just being nice. I didn’t feel like I could say no. Then the behaviour escalated with several incidents of unwanted touching that were also very clear advances.’

‘Another staff member cornered me at a party, in a photocopy room, a much older man. He was talking about visiting prostitutes and his sex life and I found it quite intimidating and full on.’

Sexual harassment by judicial officers was highlighted by the Women Barristers’ Association (WBA) in their submission to the Review:

The WBA is aware that sexual harassment by judicial officers affects court staff such as judges’ associates and researchers, as well as other members of the profession such as barristers, solicitors, and others involved in the administration of justice. Many WBA members were judges’ associates prior to commencing their careers at the Bar. In addition to the targeting of judges’ associates, WBA is aware of multiple instances where women barristers, particularly newer, young women barristers have been targeted or approached by judicial officers as objects of romantic or sexual interest. WBA acknowledges that there are, of course, many healthy, consensual, ‘normal’ relationships that occur between judges and barristers. Problematically however, there are patterns of behaviour that WBA has been made aware of that suggest that there are judges who specifically target younger, newer barristers as objects of romantic and sexual interest, when that approach is not welcomed or reciprocated.⁶⁵

Experiences of women involved with the Bar were also raised extensively in the Roundtables. Section 2.7 explores the issues around the Bar further, but these examples give some insight into the cultural challenge to be addressed.

‘I’ve often worked with QCs as a junior, and a lot of social functions around the Bar involve invariably alcohol. There was a particular QC – who is now a judge – who I had worked with quite closely on various cases. At this social occasion that was for barristers, he behaved inappropriately towards me ... and it was not welcome.’

‘Most men [working in the courts] believe that sexual harassment is jocular. This is normalised.’

Another significant area raised with the Review were police prosecutors. While many Roundtable attendees spoke of professional relationships with police prosecutors, others referred to disrespectful language and inappropriate ‘banter’. They told the Review that often they had to make the decision of how much of this they would take for the sake of their client.

One Roundtable attendee told the Review that harassment often occurred during summary case conferencing, in a small office with a police officer where keeping a good rapport with that officer is important to negotiating a good outcome for the client. They noted that this type of power imbalance makes it easy for sexist, racist and homophobic remarks to be made without rebuke.

‘I find that a lot of people don’t really understand what sexual harassment is. And some people think it’s funny, or they have the mentality “oh that’s men, that’s what they do”. Sometimes I do pull my hair out, because I’ve been told that any conduct that is unwanted is sexual harassment, but some people seem to be a bit more relaxed about it.’

Despite the offensive nature of the behaviours described by interviewees to VEOHRC participants and attendees in Roundtables, the Review was told that sexual harassment and its impacts are not well understood by those working in the courts. Some also commented that harassment is normalised. VEOHRC participants and Roundtable attendees strongly believed that all those who work in the courts require targeted and interactive training to ensure there is no ambiguity or any ‘misunderstandings’ about sexual harassment and its effects.

‘It is a culture of power and hierarchy, and women are so often excluded from those dynamics.’

2.4 The impacts of sexual harassment in the courts and VCAT

In Roundtables and interviews, attendees and participants spoke of the impacts of sexual harassment on their personal and professional lives. Fear, anxiety and feeling pressured to stay silent were common themes.

Participants to the VEOHRC process identified the following impacts of the experience of sexual harassment:

- deterioration in mental health, sometimes requiring counselling, treatment and, in a serious case, hospitalisation;
- stress, anxiety, fear and humiliation;
- having to take time off work or leave the workplace;
- a loss of self-confidence and self-blame;
- negative impacts on their career progression or career options; and
- loss of trust in and loyalty to the employer.

Bystanders also reported to VEOHRC the impact of sexual harassment, including being disappointed in themselves that they did not feel safe to intervene and frustrated that the behaviour continued.

‘When it first happened, the first few times, I just froze, because I wasn’t expecting it, and I didn’t know what to say or what to do when – I’m such a people-pleaser. I didn’t want to say anything that was then going to upset him, and then jeopardise my job. Because he’s made it very clear that he’s very powerful’.

Many participants in the VEOHRC process and Roundtable attendees relayed their deep concern about the negative impact on their career should they report their experience of sexual harassment, particularly when the harasser was a judicial officer. This was especially the case for the associates, junior staff and junior practitioners.

‘It’s had pretty ghastly effects on my mental health and my family life.’

For some, sexual harassment was normalised in their work environment, particularly those behaviours considered to be at the lower end of the spectrum. Inappropriate behaviours were often minimised and redress was neither likely nor expected. Some attendees at Roundtables and VEOHRC participants expressed a mistaken concern that they may have done something to cause the sexual harassment. They spoke of changing the way they dressed or how they wore their hair and make-up as a protective measure to reduce the ongoing risk of being sexually harassed. Of particular concern was a belief that nothing would be done if they reported the sexual harassment and, in fact, retribution could result. Some considered their only option would be to leave their job.

Everyone has the right to a healthy and safe workplace. The experiences shared with VEOHRC and the Review show how sexual harassment creates psychologically unsafe, even toxic workplaces and can have detrimental impacts on the wellbeing of individuals experiencing that harassment.

‘The barrier that comes up again and again in my career is this persistent low confidence and self-esteem that I can personally trace back to this experience because a big part of me thinks I only got that job because he liked the way I looked’.

‘I’m sure it did change my behaviour. I ... started dressing very differently. I had gone into that role being very like, “pretty dress, high heels, long hair”. After that, it’s just kind of like, “I’ll just wear pants every day and it’s lucky if I wear make-up”. So, I think I did start to develop some sort of ways that I would hope people would stop paying attention to me like that.’

The individual stories were deeply compelling and distressing and highlight the need for action to be taken to prevent and properly address sexual harassment as a matter of urgency.

'I did go through the whole self-blaming thing... I was saying, "I think it's my fault. I think maybe I've said or done or something, or maybe because I didn't shut it down and I wasn't like, 'Ew, don't do that,' that that's invited him in?" And I was getting upset, because I'm an educated woman, I've supported people who have been victims. How can this be happening to me?'

Nora's story, shared with VEOHRC, illustrates the personal impacts of sexual harassment in the courts.

NORA'S STORY

I applied for a position as an associate to a judge and was effectively given the job on the spot. When I began, the associate that I was replacing ... said, 'They (the judge) like it when you wear make-up and when you wear dresses and skirts.' I didn't really think anything of it at the time because I was trying to learn the new job.

Then within several months of starting, I began experiencing sexual harassment from this judge. The behaviour would include things like inappropriate gifts and notes, hugging and regular invitations for dinners or lunches. It escalated over the course of my employment and at times I was genuinely concerned for my safety. I didn't speak to anyone at the court about it, but many people witnessed this behaviour including other judges. Another associate saw what was happening and wouldn't leave the judge and me alone in a room together.

I started having panic attacks and sometimes would be so unwell that I couldn't go into work. I knew I had to get out of there, but I had nowhere to go. I eventually got a new job and began counting down the days that I had left to work at the court. My anxiety was just through the roof.

I didn't feel like there was anything I could do

at all and I certainly didn't feel that I could say no to him. I also had no idea how I would even go about reporting it. I remember meeting an HR person the day I signed my contract, but I never had anything to do with them again. I felt I really had no choice but to keep going into this environment that was very uncomfortable.

This was also not the first time that I had been sexually harassed in the workplace. Having also come from my previous job in a law firm where sexual harassment was rampant, it was just sort of like, 'Oh this again.' So, I think part of the problem was I thought that it was okay and that was just the price you paid.

A lot of the associates I believe had the same mindset of, well, we want this on our resumes, so we're just going to do our time and then we're going to leave. The judges are not going to change. Nobody is going to change them. So why rock the boat? But I also knew that enough people in positions of power knew about what was happening and nobody did anything. So, that made me think that it was acceptable and there was nothing that I could do. I suppose this experience has contributed tremendously to my imposter syndrome, in part because I was worried that I only got the job as an associate because this judge liked the way I looked.

Chris's story, shared with VEOHRC, illustrates the impacts of sexual harassment on a witness.

CHRIS'S STORY

While working at the court, I have directly witnessed and heard about multiple incidents of sexual harassment, often by judicial officers. I've also seen plenty of casual sexism. In my view, young women here aren't necessarily treated with the same respect as men.

I've seen firsthand how this behaviour has detrimentally impacted my female colleagues and it has made me feel disappointed in myself for not saying anything. I know it's no excuse whatsoever, but it comes down to a power play. While judges aren't my boss, I'm subservient to them just like all court staff. And I think that's probably the biggest key issue with reporting sexual harassment in courts, even as a male. It's that question of, 'Who do I go to? Do I go to the head of jurisdiction?' But then they're not our boss either. 'Do I go to the administration?', 'How do we know that it is going to remain confidential?' It raises all those questions, but at the end of the day, it's about protecting one's job.

It makes me feel frustrated that young women have to keep putting up with sexual harassment and that they feel that they can't speak up, whether that's because of the power play or the impact on their career. I think they just feel that they can't do it, because something is going to be put back on them and they'll be a known complainer. There are a lot of reasons people don't come forward. The main reason I haven't come forward is I don't trust the process.

2.5 The experiences of specific groups who work in the courts and VCAT

The experiences of women compared to men

Women have made enormous contributions to the law over many decades. The Review was told of the strong commitment and excellence that women brought to their roles despite the systemic and structural obstacles they routinely face.

For female judicial officers, there was pride in being role models for other women aspiring to a career on the bench.

The Review spoke with legal practitioners who had been in the profession for decades – driven by the desire to 'make a difference', and a significant contribution to their area of practice and the profession, and to be a part of a system that allows individuals to seek and receive justice.

Not being "tough enough" is particularly directed at women. Women have to hold themselves to a higher level than their male colleagues. If we fail it perpetuates the negative stereotypes about women.'

'Being a male, I'm not really disrespected by others. But what worries me is I feel that a lot of young women here aren't treated with the same respect.'

Many male judicial officers and barristers were supportive of ensuring more women were appointed to the bench and to senior counsel, arguing that this approach would positively impact on the excellence, decision-making and innovation in the profession.

However, despite these positive trends, attendees at Roundtables and VEOHRC participants described very different experiences in the courts for men and women.

For some women, these experiences are barriers to being able to thrive in their professional capacity to the same extent as men. Also, according to one police prosecutor, some magistrates treated female prosecutors differently and more harshly than male colleagues.

‘As a woman, I have to work three times as hard to be heard. You have to repeatedly prove your competence.’

‘A lot of thought goes into what a woman wears to court and how she presents herself. Do I smile or take that harder approach?’

The data from VEOHRC’s interviews supported the research and evidence that women overwhelmingly experience sexual harassment at a greater rate than men. The vast majority of victim-survivors who spoke with VEOHRC staff were women. Interviewees most commonly reported that they believed their gender and age were factors in why they experienced the sexual harassment.

Sexual harassment occurs on a spectrum of sexual violence, with sexual assault and rape at the most serious end of that spectrum. At the other end is everyday sexism – a behaviour that, as its name suggests, involves instances of sexism experienced on a day-to-day basis. It is demeaning, often degrading, and corrosive.

‘Briefs tend to go to male barristers more than women barristers. Men and women are treated very differently.’

‘Male barristers and prosecutors can exhibit shocking behaviour towards women on the bench.’

Everyday sexism occurs in the formal and informal interactions in the workplace that play into gender stereotypes. Examples of everyday sexism include devaluing women’s voices, insults masquerading as jokes, role stereotyping, preoccupation with physical appearance, and assumptions that careers and caring don’t mix.

Everyday sexism devalues the role of a woman in her workplace and can diminish her authority and stature as a professional in the eyes of clients and others.

Female lawyers, some judicial officers and court staff told the Review through the Roundtable discussions of their experiences of everyday sexism and spoke of instances of gendered bullying behaviour from older male barristers and judicial officers.

‘Sometimes I know male judges see themselves in male associates, so will treat their female associates more like a secretary but their male associates more like a peer because they see them in that paternal role. But they also might sexually intimidate a woman for the fact that she’s a woman.’

‘A lot of disrespectful talk goes on before court starts. This is part of the culture. It’s “boys club” conversation. We’ve all nodded and smiled generally for the sake of not rocking the boat for our client. We need to have a cultural shift to stop that insulting talk.’

‘The magistrates set the tone. The way you are spoken to by some would not be tolerated in any other workplace ... Some magistrates are well known [for it]. We brace ourselves when certain magistrates are visiting [a regional area]. Sometimes that disrespect is gendered. I think that magistrates do a wonderful job in difficult circumstances but the bad eggs don’t shift.’

I think [there was] a perception that a couple of the judges didn’t really take you seriously ... particularly if you were female.’

‘In practice, female junior solicitors and barristers will tolerate all kinds of things because they don’t have any power.’

Intersectionality

Intersectionality is often neglected when discussing sexual harassment. Intersectionality is defined by the Victorian Government as ‘the ways in which different aspects of a person’s identity can expose them to overlapping forms of discrimination and marginalisation.’⁶⁶

For women with disabilities, experiences of ableism layer upon their experiences of sexism and sexual harassment. Racism and homophobia or transphobia further compound these experiences if they are women of colour and/or transgender.⁶⁷

The *Respect@Work* report found that:

*The risk of sexual harassment was much higher for people who already experience higher rates of disadvantage and discrimination, with 52 per cent of workers who identify as lesbian, gay, bisexual, transgender or intersex; 53 per cent of Aboriginal or Torres Strait Islander workers; and 44 per cent of workers with disability indicating they were sexually harassed at work in the last five years.*⁶⁸

Based on their Independent Review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police, the Victorian Equal Opportunity and Human Rights Commission submission to the National Inquiry also reported far higher rates of LGBTIQ+ employees experiencing sexual harassment than their non-LGBTIQ+ colleagues.⁶⁹

During the Review Roundtables, we were told there are many attributes that may be impacted by intersectional discrimination, including Aboriginality, sexual orientation, ethnicity, colour, age and socioeconomic status.

Attendees at the Roundtables told the Review of the diverse ways that sexual harassment was experienced and often amplified, according to their race, disability, sexuality and age characteristics. This included the particular vulnerabilities facing Aboriginal and Torres Strait Islander women and women of colour in relation to sexual harassment and their disempowerment when it comes to reporting in a range of settings within the legal profession. Women spoke of having to endure the ‘double

whammy of being a woman of colour.’ They spoke of having to have a ‘stiff upper lip and a thick skin [while] enduring derogatory comments and comments on women’s appearances.’

‘Women of colour face bullying, racism and sexual harassment at the same time and there are greater consequences if we speak out.’

‘[If you report] your job is at stake, particularly for Aboriginal people. You are labelled outspoken and out of line: “get back in your box”.’

‘Women of colour are very aware of our minority status in the law. We want to fit in, so we have to have a thick skin, a stiff upper lip when it comes to derogatory comments.’

‘Because of the hierarchy, [judicial officers’] word is considered more credible than ours. As women of colour, we just become more vigilant and more cautious.’

The experiences of harassment of lesbian, bisexual, transgender and queer women included homophobia and/or transphobia as well as sexism. Lesbian lawyers who spoke to the Review told of homophobia and men fetishising lesbians’ personal lives, and not wanting to have to go into their personal lives and discuss their sexuality to report such behaviours. Lawyers also reported that they had witnessed disrespectful commentary by judicial officers directed to their transgender clients.

The submission from the St Kilda Legal Service highlights the failures of current discourse around sexual harassment to address the experience of people who identify as LGBTIQ+:

Sexual harassment experienced by the LGBTIQ+ communities is compounded by an assumed heteronormative understanding of workplace dynamics. This means that workplaces may fail to notice or address the specific forms of harassment experienced by LGBTIQ+

workers and volunteers and focuses primarily on sexual harassment by and against cisgender heterosexual individuals. Sexual harassment of people within the LGBTIQ+ communities can include intrusive questions or comments about potential surgeries, genitalia, the gender of a person's partner and sex life. Sexual harassment against trans, gender diverse and non-binary people is usually rooted in other people's belief that trans, gender diverse and non-binary people are not acting how a man or woman 'should' act, therefore making it sexual harassment.⁷⁰

Associates and junior CSV staff

The Review heard of the vulnerability of staff such as associates and junior female staff in both the Roundtable discussions and through the VEOHRC process. Specifically, attendees at Roundtables and VEOHRC participants spoke of the temporary nature of employment conditions and how this is an obstacle to reporting sexual harassment. Many also felt they were largely at the whim of their individual judge.

'I have worked in the court/tribunal for a number of years as a staff member responsible for other staff. I have observed a consistent pattern of behaviour on the part of a handful of judges which is consistent bullying. There are very junior staff in Court Services who have to deal with judges. Staff have reported that they had conversations where they have walked away crying and absolutely torn apart. These judges are arrogant and wield power so consistently that they create a culture of fear. I also have personal experience where judges have written to me and called me names, using a tone that was personal and attacking and unprofessional, have received emails from judges which feel like a hard slap in the face. It feels like there is nowhere safe to go without repercussions for the person who raises issues about the bad behaviour of judges.'

'I would probably suggest young, new staff feel very unsafe about attending functions at work. But more importantly, if something does happen, who are they going to speak to about it? Do they then say, "Well, I'm not going to attend the function?" And these functions are actually really great for them to network and meet other people, because when you're working with a judge, it's very isolating.'

'If there's an issue with a judge, staff are moved on.'

Associate positions are highly sought after. They are seen as a stepping stone to the Bar or a prestigious law firm.

'Many of the young staff are straight from uni. They don't feel comfortable speaking up. The court is putting people straight out of university knowingly with badly behaved judges.'

In its submission to the Review, the Australian Human Rights Commission observed that:

The nature of legal work often involves long hours, preparedness to do whatever is required, and travel with colleagues (including judges) ... This can be accompanied by a view that the best performers are those who put up with difficulties without complaint. Competition for graduate positions is high, and key roles like associateships are fixed term, meaning associates need to position themselves for future positions relying heavily on references from judges.⁷¹

The Review heard from associates about their experiences in the courts. Many spoke of extremely rewarding experiences which they believed would be beneficial to their future career in the law. But some who shared their stories with VEOHRC acknowledged challenges in the working conditions of associates that can make them vulnerable to behaviours such as sexual harassment by judges and other court staff.

‘I didn’t know whether anything could be done, to be honest ... because he [the judicial officer] doesn’t sign any of the same codes of conduct that we sign. He doesn’t have to.’

‘The cycle repeats. How many young people have been put at risk when the court knows that there’s an issue with the behaviour, nothing has been done about that behaviour, and they put somebody else in again? To me, that’s abhorrent.’

In its submission to the Review, the Women Barrister’s Association stated:

Many women who take up a position as a judge’s associate or court clerk do so with a view of one day becoming barristers or solicitors. Often, but not always, judge’s associates are young and/or recent graduates. Women should be able to enjoy the career benefit of being a judge’s associate or court clerk without becoming victims of sexual harassment. The WBA wants to ensure that no more women abandon their career goals as a result of being sexually harassed during their time at the Court.⁷²

‘Staff don’t want to come forward because they want to keep their jobs. They also don’t want to come forward because if they’re seen to rock the boat or make a complaint, they believe it will affect their legal career, affect their ability to go into a good chambers if they decide to go to the Bar, and there’ll be stigma attached to them.’

Roundtable attendees commented that many junior court staff are particularly young, and the majority are women. They noted that within the hierarchical nature of the courts, these staff ‘are very much at the bottom and are disempowered.’ A common theme of these discussions was that staff did not believe that lodging a complaint would address their concerns. Associates to judicial officers talked about their need for support people with whom they could safely discuss issues about how to manage their roles and for opportunities with other associates to share experiences.

Fatima’s story, shared with VEOHRC, highlights the vulnerability of junior court staff.

FATIMA’S STORY

Junior staff members would regularly visit judicial officers’ chambers to speak to them or collect or drop off files. As one junior staff member was up there and waiting at the door of one of the judicial officer’s chambers, two male judicial officers were talking amongst themselves about someone they knew, potentially a colleague, someone working in the legal field, who was sleeping with a younger woman. They were basically laughing and joking about it and saying, ‘Where can I get one of those?’ And the young female staff member was standing right in the doorway in view of them both. They finished their conversation and then acknowledged her.

Travelling on court circuits in regional Victoria was also cited as a particular challenge for associates.

Associates identified a range of benefits of circuit work including developing a stronger professional relationship with their judge and tipstaff, getting to know solicitors and barristers, and broadening the range of matters they were involved in.

However, they also noted risks including pressure to socialise with the judge and sharing close quarters in isolated regional areas. Associates who accompanied judicial officers on circuit commented to the Review that they often felt unable to decline an invitation or a drink given the power imbalance.

2.6 Reporting systems and supports for those who experience sexual harassment

Numerous studies and reports recognise that in most organisations, reporting of sexual harassment is low and, in some settings, extremely rare.⁷³ According to the VLSB+C 2019 survey, 81% of victim-survivors did not report their most recent experience of sexual harassment. Of those who did report an incident, only 5% made a formal report, 10% made an informal report and 4% reported the incident to a third party.⁷⁴

‘I can’t say I’d be confident to report because of the impact on the next 50 years of my career.’

‘I know that staff are very reluctant to come forward. They’re scared because most associates are on one-year contracts, which then can be renewed, but they’re only renewed by “the okay” from a judge – even though we’re not employed by judges, we’re employed by CSV.’

Consistent with these findings,⁷⁵ the majority of VEOHRC participants and Roundtable attendees stated that they would not report an incident of sexual harassment. Those incidents more likely to be reported were physical sexual harassment, while suggestive jokes or comments and inappropriate staring was less likely to be reported.

‘Associates feel very reluctant – in fact they don’t complain about any behaviour. Be it of a sexual nature, or a bullying nature, none, because they are scared of the repercussions.’

Consistent with the VLSB+C findings, the primary reasons VEOHRC participants and Roundtable attendees gave for not reporting an incident of sexual harassment were:

- not wanting to confront or cause trouble for the harasser;
- thinking it was easier to keep quiet;
- feeling that no one will do anything and nothing would change as a result of reporting;
- fear they will be blamed and/or they won’t be believed;
- concern that they would receive negative treatment from either colleagues or the harasser as a result of reporting ;
- a confusing, cumbersome reporting process that marginalises complainants;
- not having appropriately trained personnel to receive reports/complaints (not just the process – but the capacity of staff); and
- human resources being absent or uninvolved, or a lack of trust in HR sometimes due to negative prior experiences.⁷⁶

‘If you put up with the behaviour, it kills your soul. If you complain, it kills your career.’

‘My manager encouraged me to go to HR and get it on record, but I didn’t want to do that because I was worried that HR would have an obligation to take it further, and I was just worried about making work uncomfortable. I think I was worried that he would come back and say, “Well, she was asking for it, and ... [it was] consensual”.’

One judge attendee in a Roundtable stated, ‘there is a stunning lack of an explicit process’ about the reporting system.

While one attendee in a Roundtable told the Review of a positive reporting experience, noting that they were happy with what happened and felt believed, most attendees spoke of unsatisfactory responses and even negative repercussions. Some of the stories to VEOHRC echoed this. Among the examples provided included experiencing inaction by supervisors/managers; being labelled a ‘trouble-

maker', moved on, ostracised, denied further opportunities in the workplace, discouraged or not supported to escalate the matter to a formal complaint; and not hearing back about their complaint or being required to work with the alleged harasser.

'I felt it was like I'd done something wrong, that I was being removed due to the fact that I'd reported and that I was in the wrong, and that he just stayed there in situ.'

The common thread of many of the stories was that it is not always safe to report sexual harassment.

Those in regional areas felt it would be impossible to remain anonymous if raising a complaint.

'I just thought that they came down on me and not the perpetrator, and I felt isolated and alone from that, and that I was being punished for making the complaint.'

'Because of my prior experiences with HR, I knew that they wouldn't be able to deal with it at all or deal with it sensitively or try to help me find a solution that would make me feel better.'

'There might be a reluctance to report to HR because you think "well, it won't go anywhere" and not only that, all of a sudden I've got the judge offside because he knows I've reported him.'

Some attendees at Roundtables told the Review they were reluctant to go to the Judicial Commission of Victoria to complain about judicial officers. The Judicial Commission of Victoria's formality, its requirement to disclose the identity of the complainant, and its perceived limited powers to deal effectively and decisively with sexual harassment are disincentives for making a complaint. The Judicial Commission's lack of timeliness in dealing with complaints was also raised as an issue.

'I think the reporting options need to be clearer. I think a lot of staff wouldn't know about the Judicial Commission and its role and function. I don't think the role of the Commission is as widely known as perhaps it should be. I think anecdotally ... an issue some staff members have is that the Commission is headed up by Heads of Jurisdiction.'

Chloe's story, shared with VEOHRC, illustrates the ramifications that can occur when a court staff member speaks out against a judicial officer.

CHLOE'S STORY

One of my co-workers called out a judicial officer when they saw the judicial officer sexually harassing someone at a work event. They were severely penalised for speaking up and I don't think anyone at the Court really listened to their account of it. The judge basically said they wouldn't be working with them anymore. This person then struggled to get permanent work with another judge. This is why I think staff are generally reluctant to come forward and report sexual harassment, particularly associates. They're scared of the repercussions. The potential impact on their career and the stigma.

I've seen similar things happen before at the court. When staff make complaints about a judge, the staff member is usually moved on and the judge stays in their role. Nothing is seen to happen, there are no repercussions. Then another young person will be brought in to replace them and the cycle repeats. How many young people have been put at risk when the court knows that there's an issue with a judge's behaviour, nothing has been done about that behaviour, and they just put somebody else in again?

Anna's story, shared with VEOHRC, provides another example of a victim-survivor attempting to report an incident.

ANNA'S STORY

I actually spoke to quite a few people about the sexual harassment before I decided to report it. I spoke to a colleague about it. They just thought it was funny and made fun of me – and this person is a judicial officer. When I spoke to one of my instructors about it, they told me that the person who was harassing me just had a crush on me and that it was funny and cute, flattering even.

I don't understand why no one did anything about this and why no one identified it as sexual harassment.

Luckily, someone ended up telling me the specific person I should report this to. If I didn't know the right person to report it to, I don't know how I would have found that out. I wouldn't have known who to contact at the court without someone pointing me in the right direction.

I don't think there is a lot of reporting in relation to sexual harassment – either because people don't take what's happened seriously, or they don't identify it as sexual harassment. Unless someone actually comes up and grabs you, people may not realise that it was sexual harassment that they should potentially report.

Existing initiatives by the courts to build a positive culture

The Review acknowledges and supports the strong messaging about the unacceptability of sexual harassment in the statement signed by all the Heads of Jurisdiction in June 2020 (reproduced below). It provides a strong foundation on which the courts can come together in a united way to ensure their workplaces are healthy, respectful and safe. It also creates an expectation by court staff and court users that sexual harassment will not be tolerated, will be taken seriously and appropriate and swift action will be taken should it occur.



Monday 29 June 2020

We are each committed to making sure that our courts and tribunal are safe, healthy and respectful workplaces. We understand the importance of doing so.

We understand that a safe workplace has people who value honesty, use their power responsibly, and strive to earn and sustain trust.

A healthy workplace fosters wellbeing through sound governance and accountable, open and transparent practices.

A respectful workplace is fair and inclusive, with leaders who model ethical behaviour.

Diversity and inclusion cannot thrive where disrespectful and unethical conduct occurs.

Judicial officers hold a leadership position in society.

Our behaviour should reflect the trust and confidence the community places in us.

The judiciary must lead by example by rejecting improper and unethical behaviour. It must not be tolerated in any circumstance. We will not tolerate it.

Failing to do so will jeopardise the operation of the justice system and erode trust.

Robust workplace policies and procedures are important. But they must be accompanied by building a culture in which improper conduct does not occur and where anyone who sees it or learns of it will take steps to address it.

We have worked in the past with the Judicial College of Victoria to develop and deliver its advanced court leadership and workplace

programs for judicial officers to ensure we have that culture and that the Victorian judiciary maintains the highest standards of integrity both individually and collectively. Our work with the College in this area is continuing.

We have policies and procedures in place to protect our staff and address improper conduct. We are reviewing them and we will do more to ensure that all who work in our courts and tribunal are aware of and clearly understand them.

We are united in our commitment to providing a positive and inclusive environment for all who work with us.

Together, we will continue to build a culture of respect in our courts and tribunal.

Signed

The Honourable Justice Anne Ferguson,
Chief Justice of the Supreme Court

The Honourable Justice Peter Kidd,
Chief Judge of the County Court

The Honourable Justice Michelle Quigley,
President of the Victorian Civil and
Administrative Tribunal (VCAT)

Her Honour Judge Lisa Hannan,
Chief Magistrate

Her Honour Judge Amanda Chambers,
President of the Children's Court

His Honour Judge John Cain,
State Coroner

The Review understands that a number of the courts, VCAT and CSV have policies, plans and documents in place that focus on conduct and wellbeing, including in relation to both staff, judicial officers and VCAT members.⁷⁷ Some include information about how to report an incident of unacceptable behaviour, including sexual harassment. CSV's Respect in the Workplace Policy outlines the behaviour that is expected of employees, volunteers and contractors/consultants, and the steps that can be taken if it is considered that this policy has been breached. It includes the behaviours that constitute sexual harassment, along with other unacceptable conduct and identifies the process of making a complaint. CSV's

Misconduct Policy provides an outline of the process for investigating and determining whether an employee has engaged in misconduct, including serious misconduct. Sexual harassment is one type of conduct which may be investigated.

The Review acknowledges the existence of CSV's and some of the courts' and VCAT's relevant policies. It notes, however, there is no standalone sexual harassment policy nor a comprehensive sexual harassment section in any of their relevant policies. The Review makes a recommendation on the development and implementation of visible and accessible sexual harassment policy in Recommendation 2.

'There is not a separate sexual harassment policy. It's tucked away in "Respectful Workplace". It does not instil any confidence to report. There's no reporting when there is no trust.'

2.7 The Victorian Bar

The culture of the Bar influences the culture of the courts. Most judges come from the Bar and barristers are the main participants in almost all court proceedings.

Attendees at the Review's Roundtables referred frequently to the male-dominated culture, describing it as 'a boys' club' and 'a very blokey environment, which puts you on your guard.'

The Review heard from barristers from culturally and linguistically diverse backgrounds and from Aboriginal and Torres Strait Islanders about a lack of diversity at the Victorian Bar.

In its submission to the Review, the Victorian Bar noted:

Shifting the 'cultural dial' within an organisation such as the Bar is a key challenge to preventing and addressing sexual harassment, both inside and outside of court. Part of the cultural change that is required to stop sexual harassment involves ensuring that policies and support measures across legal organisations and workplaces, including the Courts, are robust.⁷⁸

While some attendees at the Roundtables reported positive experiences, others spoke of 'disrespectful' and 'inappropriate' attitudes and behaviours by some barristers.

'Male barristers and prosecutors can exhibit shocking behaviour towards women on the bench.'

'The bar is really hierarchical. There are steps you need to go through to move up. There is a celebration of senior people. When you come into that environment [as a young woman], it's hard to be taken seriously.'

Extreme competitive aggression and 'soft' intimidation were described as tactics of the profession – just part of the norm. The Review heard that such behaviour often occurred before the formal proceedings or in the

corridors outside court rooms, unobserved by judicial officers. As one Roundtable attendee said, 'it's how you win.'

'The Bar Readers' Course is very male-centric and male-dominated.'

Attendees at the Roundtables spoke of behaviours by male barristers as ranging from deeply respectful and totally professional, to disrespectful and inappropriate.

Commenting on the courts and the Bar as workplaces, the Chief Justice of the Federal Court stated:

Politeness and civility are not just aspects of the proper conduct of judicial power, they are important aspects of making the Bar a more equitable place. If judges are polite and civil, the alpha male instincts of some barristers will be curbed.⁷⁹

Research shows that a positive and respectful culture is critical to an organisation's success. The *Harvard Business Review* report found:

A large and growing body of research on positive organizational psychology demonstrates that not only is a cut-throat environment harmful to productivity over time, but that a positive environment will lead to dramatic benefits for employers, employees, and the bottom line ... While a cut-throat environment and a culture of fear can ensure engagement (and sometimes even excitement) for some time, research suggests that the inevitable stress it creates will likely lead to disengagement over the long term. Engagement in work – which is associated with feeling valued, secure, supported, and respected – is generally negatively associated with a high-stress, cut-throat culture.⁸⁰

The Victorian Bar Association is the professional association representing more than 2,200 barristers in Victoria. The Victorian Bar provides chambers, technology network services, full-service desk support and managed floor service to most of Victoria's barristers.

Notwithstanding that barristers are self-employed, the fact that they work together in dedicated buildings and floors and are all members of the Victorian Bar Association provides a collective way to address cultural issues that underpin the current problems.

In its submission to the Review, the Victorian Bar noted that it had recently reviewed its sexual harassment policies and in 2020:

...earlier this year, employed a dedicated assessment and conduct officer, whose role included supporting those who have experienced sexual harassment, as well as to facilitate both informal and formal conduct investigations. The conduct officer has specific sexual harassment and investigation training, and conducts investigations referred to the Bar in its capacity as delegate of the Victorian Legal Services Commissioner.⁸¹

The CEO of the Bar is available as an independent point of contact who may be consulted by members about bullying and harassment issues, including sexual harassment issues. The CEO also maintains a list of current Bar conciliators, who have been trained by the Australian Human Rights Commission, and whom it is proposed will act as safety contact points for members, staff and clerks to speak to about their options should they experience or witness sexual harassment or other forms of inappropriate conduct.⁸²

‘The Bar is a boys’ club. It’s cracking but not yet breaking.’

Nevertheless, the Review Roundtables heard that many barristers are not confident that the current process will protect them if they make a complaint about sexual harassment. Barristers – particularly junior barristers – depend on informal networking and recommendations for work. Their fear of retaliation by the perpetrator means that the potential cost of coming forward and making a complaint is simply too great.

The Review supports Recommendation 88 of the [Royal Commission into the Management of Police Informants](#) which recommends the Victorian Legal Services Commissioner revoke the complaint investigation delegation to the Victorian Bar and assume responsibility for investigating all complaints about barristers’ conduct and also notes the Victorian Bar’s agreement and support for this.⁸³ The Review also notes the comment in the Victorian Bar’s submission that ‘the Bar considers that it has a role in supporting a “zero tolerance” culture against sexual harassment in the profession.’⁸⁴

The Victorian Bar needs to be more proactive and take a strong leadership role in preventing and responding to sexual harassment including through effective prevention plans, appropriate and sensitive reporting options, additional professional development opportunities and the encouragement of a diversity of practitioners to join the Victorian Bar.

The Review supports the work of the Victorian Bar Equality and Diversity Committee in identifying areas for improving its sexual harassment prevention and response efforts. This work has been endorsed by the Bar Council. For its members to be confident in this work, it will be important to make these improvements tangible and visible.

‘Things are changing but there are still some negative attitudes and behaviours that are embedded.’

‘A lot of young female lawyers are not treated with respect. There is a hierarchical approach and demeaning language. This is part of the culture.’

PART THREE

Taking action

3.1 The way forward – what success looks like

Traditional organisational responses to sexual harassment have mixed results. Sexual harassment at work remains widespread and pervasive even though sexual harassment policies, training and complaint processes have existed for years in organisations, including courts and tribunals. Addressing it must be a constant process; there is no one-off fix.

Australian employers now have a new road map for better practice as a result of the Australian Human Rights Commission’s 18-month National Inquiry into Sexual Harassment in Australian Workplaces 2020 and the resulting *Respect@Work* report.⁸⁵

Effective prevention strategies require more than writing a policy and providing some training. As the *Respect@Work* report identifies, while robust policies and training are necessary, they are not sufficient to address sexual harassment. The prevention of sexual harassment requires a deep knowledge of the way an organisation works and its underlying values and culture and risk factors. It requires planning and resources to identify and implement a range of interventions that are complementary and mutually reinforcing.

The Review recognises that each of the courts are distinct in the way they work and the challenges they face. Strategies to prevent sexual harassment must be tailored to the culture, idiosyncrasies and specific risk factors of each court and VCAT and the people who work in those workplaces. Notwithstanding, there are seven common outcomes that need to be consistently achieved across all of the courts and VCAT for sexual harassment to be adequately responded to:

- ▶ **Outcome 1:** Strong and effective leadership driving successful, long-term reform
- ▶ **Outcome 2:** A positive workplace culture
- ▶ **Outcome 3:** Diversity and gender equality
- ▶ **Outcome 4:** Victim-survivor-centred support, reporting and response
- ▶ **Outcome 5:** Organisational capability and knowledge
- ▶ **Outcome 6:** Ensuring integrity and accountability
- ▶ **Outcome 7:** Monitoring and evaluation

► **Outcome 1:** Strong and effective leadership driving successful, long-term reform

Strong leadership is critical to ensuring workplaces are safe, respectful, diverse and inclusive and is essential to the success of any cultural change process, including preventing and responding to sexual harassment.

Leaders give explicit and implicit cues to individuals in the workplace about the conduct and values expected of them. Sexual harassment persists when leadership fails to treat the prevention of such behaviours as an organisational imperative. According to Hart et al:

Our research points to a single step that leaders can take to help reduce sexual harassment: communicate to employees that preventing it is a high-priority issue for their companies ... If leaders do nothing, they are not just acting neutrally. They may be fostering a culture where sexual harassment will become more prevalent. But if a leader instead identifies sexual harassment prevention as an issue that the company prioritizes, our research shows that this stance will push other people in the organization to take it seriously as well.⁸⁶

Leaders therefore have a responsibility to raise awareness of the unacceptability of sexual harassment in their workplaces, its individual and organisational impacts, and the consequences for perpetrators. Leaders, particularly judicial officers and VCAT members, also have a responsibility to ensure that their everyday interactions with all staff are always respectful. Without this, specific actions to address sexual harassment will appear hollow and are much less likely to be effective.

► **Outcome 2:** A positive workplace culture

Leadership and organisational culture are closely related. Good leadership that promotes positive institutional values will create a culture that deters sexual harassment and properly addresses it so that victim-survivors feel confident reporting it and perpetrators are held to account when it does occur.

Employees who work in safe, respectful, diverse and inclusive organisations are more likely to innovate, be productive workers and provide excellent customer and client service than those in disrespectful or unsafe organisations.⁸⁷ Further, diverse, respectful and inclusive organisations attract and retain the best talent – both men and women.⁸⁸

► **Outcome 3:** Diversity and gender equality

Diversity and inclusion at all levels, particularly in leadership positions, is vital for preventing sexual harassment. Creating a workplace with gender, ethnicity, sexuality, age and ability diversity also assists in delivering systems, structures and decisions that reflect the broader needs and perspectives of the workforce and wider community.

Sexual harassment is disproportionately experienced by those who identify as LGBTIQ+.⁸⁹ The courts and VCAT must find practical ways to recognise and support lesbian, gay, bisexual, transgender, intersex, queer and gender-diverse people and ensure these staff can thrive in workplaces that are free from sexual harassment and based on respect, safety and inclusion.

Equality and diversity should extend to all groups within the courts and VCAT including the judicial officers and VCAT members. There have been incremental improvements in the number of women appointed to these roles, and Victoria has been more successful than other Australian jurisdictions in this regard. Broader diversity requires more attention, particularly in the broader legal profession.

► **Outcome 4:** Victim-survivor-centred support, reporting and response

An empathetic and victim-survivor-centred response to sexual harassment encourages the reporting of incidents, ensures that victim-survivors are properly supported, and is fair and respectful to everyone. A victim-survivor-centred approach ensures that victim-survivors' rights and needs are at the centre of any action. It is a response that recognises that sexual harassment harms individuals, divides teams and undermines the effectiveness of any organisation. An effective prevention and education response grounded in respectful relationships accords with a victim-survivor-centred response.

► **Outcome 5:** Organisational capability and knowledge

An organisation's capacity to properly address sexual harassment depends upon organisation wide:

- understanding of the nature and impact of sexual harassment and of gender inequality more generally; and
- knowledge and skills to effectively identify, respond to and report sexual harassment and other inappropriate behaviour.

To achieve this, there must be the necessary skills amongst the management of the organisation, in this case the Courts Council and comprehensive training across the organisation that recognises the different roles and responsibilities of everyone in the organisation.

► **Outcome 6:** Ensuring integrity and accountability

In workplaces, it is vital that everyone is subject to the same standards and is equally accountable for their actions. In the case of the courts and VCAT, this includes judicial officers and VCAT members. Judicial officers and VCAT members must be independent in their decision-making but must also be held to high standards of behaviour and be accountable for their actions. Judicial officers and VCAT members hold significant leadership responsibilities. When a judicial officer or VCAT member acts inappropriately, it undermines the credibility and legitimacy of the justice system as a whole. This perception is reinforced if judicial officers and VCAT members are not seen to be held accountable for their actions. To properly address sexual harassment in the courts and VCAT, all judicial officers and VCAT members must be subject to the same or higher standards as everyone else. The community must have confidence that there are effective mechanisms to identify and sanction misconduct where it occurs.

► **Outcome 7:** Effective monitoring and evaluation

The organisational change needed to continually address sexual harassment requires a strategy that includes leadership, dedicated staff time, specialist expertise and support at the highest levels. It also requires ongoing monitoring and evaluation to identify areas where progress is being made and where further effort is required. The monitoring and evaluation should include feedback from individuals across all levels and be representative of the diversity of the workplace. This should be part of an independent assessment of progress to ensure accountability.

3.2 Recommendations for reform

It is clear from firsthand accounts, institutional submissions and academic research that despite recent initiatives, the current culture, systems and processes do not do enough to protect people who work in the courts and VCAT from sexual harassment.

This chapter recommends reforms and interventions needed to create meaningful and long-lasting change in Victorian courts and VCAT.

The recommendations are designed to assist the courts and VCAT to set and implement positive cultural standards and norms. The Review has taken into account:

- the information from the consultation process and particularly the personal stories from victim-survivors and witnesses;
- the Australian Human Rights Commission's *Respect@Work* report and other current expertise from academics, regulators and practitioners;
- VEOHRC's *Guideline: Preventing and responding to workplace sexual harassment – Complying with the Equal Opportunity Act 2010*;
- strategies adopted by other institutions that share similar characteristics and risk factors; and
- lessons learned from various workplaces' efforts to address the common drivers of sexual harassment, including gender inequality, intersectional discrimination, abuse of power and permissive cultures.

As with any review of this kind, there are resource implications. To ensure a successful response to the Review's recommendations, additional resources must be identified to support prompt implementation.

Under Victoria's *Gender Equality Act 2020*, Court Services Victoria will be required to undertake a workplace gender equality audit, develop a Gender Equality Action Plan and complete periodic reporting on progress against gender equality indicators. Where it is clear that particular actions fit within the *Gender Equality Act 2020* requirements, this has been included in the recommendations. The Review recognises that as gender equality initiatives are implemented and evolve, additional matters recommended by the Review may also be incorporated within that body of work.

The following table outlines how the Review's recommendations link to the required outcomes and align with the Terms of Reference of the Review. A detailed explanation of the 20 recommendations follows.

Term of Reference	Outcome	Recommendation	Responsibility
Preventing sexual harassment	1. Strong and effective leadership driving successful, long-term reform	1. Champion a healthy, positive workplace culture	Heads of Jurisdiction /Courts Executive / Judicial officers VCAT members
	2. A positive workplace culture	2. Sexual harassment policy	CSV/Courts Executive
		3. Risk assessment sexual harassment	CSV/Courts Executive
		4. Recruitment of staff working with judicial officers	CSV/Courts Executive
		5. Appointment of judicial officers	Attorney-General Heads of Jurisdiction
		6. Appointment of Senior Counsel	Chief Justice
	3. Diversity and gender equality	7. Judicial College membership	Attorney-General
		8. Equality bench book	Judicial College and VEOHRC
Improve reporting and support to victims	4. Victim-survivor centred support, reporting and response	9. Victim-survivor centred response	Courts Council and CSV
		10. Changes to <i>Judicial Commission Act</i>	Judicial Commission of Victoria

Term of Reference	Outcome	Recommendation	Responsibility
Raising awareness of sexual harassment	5. Organisational capability and knowledge	11. Awareness raising campaign	Courts Council and CSV and input from legal profession
		12. Targeted training	CSV
		13. Education program for existing and newly appointed judicial officers and VCAT members	Judicial College and Heads of Jurisdiction
		14. Specific expertise to Human Resources Committee	Courts Council
Ensuring accountability	6. Ensuring integrity and accountability	15. Amend EO Act and OHS Act	Attorney-General
		16. Review EO Act to enhance systemic powers	Attorney-General
		17. Guide for judicial officers and VCAT members	Judicial Commission of Victoria
	7. Effective monitoring and evaluation	18. Annual survey	CSV
		19. Build metrics into performance management	CSV
		20. Independent audit	Courts Council CSV

3.2.1 Recommendations contributing to the prevention of sexual harassment

► **Outcome 1:** Strong and effective leadership driving successful, long-term reform

Sexual harassment is more likely to occur in organisations where there is gender inequality, a lack of broader diversity, abuse of power, general incivility and a permissive culture.⁹⁰ The Review has heard that notwithstanding the advancement of an increasing number of women working in the courts, challenges remain. Preventing sexual harassment is not just about dealing with the behaviour of individuals, but ‘about changing the culture and environment of workplaces in which it occurs.’⁹¹

As identified in this Review, Courts Council and Court Services Victoria have taken an active role in addressing health, safety and wellbeing for those that use the courts and VCAT. The evidence given to the Review shows that there is a need for proactive, clear and united leadership to specifically address sexual harassment.

It is important that all leaders, including all judicial officers and VCAT members, recognise that they have both an individual and a shared responsibility for driving change. To achieve that change, more than aspirational statements in response to this Review will be required. As outlined in Part 2 of the Review, people working in the courts and VCAT have experienced sexual harassment. This means that an effective response to this Review from the Chief Justice and the Heads of Jurisdiction and the Courts Executive will have to be unequivocal, repeated and demonstrated at every opportunity.

It also means that it is particularly important that the Heads of Jurisdiction are united with the Chief Justice in publicly acknowledging what has occurred and the harms that have been suffered by victim-survivors. This must be supported by the leadership of CSV through the Courts Executive. This is a vital first step that demonstrates real leadership and starts to build confidence that meaningful change is happening. This will require the development of an engagement and communication plan with advice from an appropriate expert, that

demonstrates shared responsibility for building a positive and healthy culture that addresses sexual harassment.

► **Recommendation 1**

Consistently and visibly champion a healthy, positive workplace culture in all jurisdictions and adopt strategies to prevent sexual harassment.

Progress will be assessed by:

- a. Court and VCAT leadership, including Heads of Jurisdiction, and Courts Executive publicly acknowledging the harms experienced by victim-survivors as a result of sexual harassment in Victorian courts and VCAT and the inadequacy of institutional response to sexual harassment to date; and
- b. regular reports to the Courts Council, addressing the implementation of recommendations contained in this report.

Responsibility

Heads of Jurisdiction

Courts Executive

Judicial officers and VCAT members

► **Outcome 2:** A positive workplace culture

Accountability for a healthy and positive workplace culture is the joint responsibility of CSV and the courts, as expressed through the Charter of the Courts Council.

CSV’s Respect in the Workplace Policy for employees, volunteers, contractors and consultants prohibits sexual harassment. The policy references the Victorian Public Sector Codes of Conduct⁹² and:

- includes a definition of sexual harassment and some practical examples of the types of conduct that may constitute sexual harassment; and
- lists the options for resolving matters if the policy is breached.

The current policy is insufficient and inadequate in tackling the sexual harassment that occurs in CSV, courts and VCAT. It doesn’t deal explicitly

with the conduct of judicial officers and VCAT members nor does it detail how complaints will be investigated, by when, the steps that might be taken as a result of the investigation or what CSV will do to protect complainants. The policy is also not publicly available and, while it notes the possibility of anonymous complaints, there is no anonymous online platform for people who are not CSV staff to make a sexual harassment complaint to CSV.

The Review understands that CSV security and cleaning service providers must carry out their duties in accordance with the requirements of CSV policies as well as the Victorian Government's Supplier Code of Conduct. The service providers are also responsible for the training of their contractors and handling of complaints. While there are CSV management structures in place to oversee contractor performance, the Review could not confirm the compliance, quality and frequency of contractor training, how service providers fulfil the responsibility of investigating complaints about sexual harassment from or against contractors and whether data regarding harassment complaints, breaches of the code of conduct or any other workplace laws are captured and reported to CSV Human Resources.

The Review has found that there is a widespread lack of awareness and understanding of both what constitutes sexual harassment and what should be done to address it within the courts and VCAT. Within CSV, there is a strong emphasis on having a separate administration in each jurisdiction to reflect different court or tribunal priorities. The Review has heard that this leads to different approaches and responses for those who report or wish to report sexual harassment or misconduct, often reflecting the skills or the will of the jurisdictional CEO and/or the relevant Head of Jurisdiction.

The Review notes and supports the current aim of creating 'one CSV' as it relates to standards of conduct. For CSV to be successful in preventing sexual harassment, there must be a consistent approach across all of the courts and VCAT and a conscious effort to ensure that every division has a consistent and commonly understood approach to addressing sexual harassment.

The foundation for addressing this is a comprehensive policy to guide behaviour

within the organisation, courts and VCAT and provide a practical and useful point of reference for responding to the variety of conduct that may occur.

While CSV is not responsible for the conduct of judicial officers and VCAT members as employees, they share a workplace with CSV staff and their conduct directly affects CSV staff. This demands that judicial officers and VCAT members are explicitly referred to in the policy along with clear, readily available mechanisms for dealing with their improper conduct. Guidance on judicial conduct is covered in Recommendation 17.

The link between alcohol, inappropriate behaviour and sexual harassment was raised many times during the Review. CSV has a Workplace Related Events and Social Functions Policy to guide hospitality provision and appropriate behaviour when attending work-related events and social functions. The policy applies to all CSV employees, contractors, consultants, volunteers and trainees and recognises that inappropriate behaviour at workplace events and functions can lead to CSV being held vicariously liable.⁹³ Clarifying how this relates to judicial officers and VCAT members is required.

In relation to consensual personal relationships, the Victorian Public Sector Commission has developed the Managing Consensual Personal Relationships – Practice Guide and a Conflict of Interest Model Policy for managing personal relationships in the workplace.⁹⁴ The Model Policy sets out high-level processes for the management of consensual personal relationships in the workplace and provides examples of where conflict of interest arises. This includes consensual personal relationships involving people in a direct hierarchy (i.e. in the same reporting line, where one person has supervisory or decision-making authority over the other). Where such a relationship exists, the Model Policy requires employees to declare the relationship. The risks of potential conflict of interests are likely to be heightened for individuals in senior leadership positions.⁹⁵ The purpose of the Practice Guide and Model Policy is not to limit consensual personal relationships but to be clear about where conflicts may occur. This should be clarified for all who work in the courts and VCAT Tribunal including judicial officers and VCAT members.

► Recommendation 2

Develop, promote and implement a sexual harassment policy that covers all staff and contractors and:

- a. sets out clear standards for behaviour;
- b. sets out the standard of behaviour that can be expected in dealings with judicial officers and VCAT members;
- c. meets the six minimum standards for employers listed in the Victorian Equal Opportunity and Human Rights Commission's [Guideline: Preventing and responding to Workplace sexual harassment](#) (2020);
- d. recognises CSV's positive obligations under the [Equal Opportunity Act 2010](#) and the [Occupational Health and Safety Act 2004](#);
- e. adopts a victim-survivor-centred response to instances of sexual harassment;
- f. clearly sets out all internal and external reporting options, including processes and potential outcomes;
- g. explains how the confidentiality of complainants will be protected and the protections in place to deal with retaliation for making a complaint;
- h. explains the role of bystanders and the support that can be provided to bystanders;
- i. makes clear that confidentiality obligations between judicial staff and judicial officers do not prevent staff from making a complaint about misconduct;
- j. covers the consumption of alcohol by all staff, contractors, judicial officers and VCAT members; and
- k. addresses the issue of consensual personal relationships and potential power imbalances, conflicts of interest and bias using the Victorian Public Services Commissioner's *Managing consensual personal relationships – Practice guide and Model Conflict of Interest Policy*.

Responsibility

Court Services Victoria
Courts Executive

► Outcome 2: A positive workplace culture: vulnerable workers and risk

The specific structure of each of the courts and VCAT should not result in a workplace where improper and unlawful behaviours are excused, accepted or leave people feeling unsafe.

An underlying contributor to sexual harassment in the courts and VCAT is the power disparity between the people who work there. A significant number of young and junior staff shared experiences with VEOHRC of sexual harassment and other improper conduct experienced in their work in the courts. Personal accounts were also shared through the Roundtable discussions.

The clear message to the Review was that more stringent guidelines and greater protections need to be in place to ensure that the more vulnerable staff are able to carry out their duties in a safe and respectful working environment.

To address both the make-up of the CSV workforce and the unique workplace that is the courts and VCAT, a comprehensive risk assessment using an occupational health and safety framework should be undertaken. This will identify the risks of sexual harassment in the court and VCAT so that those risks can be prioritised for action.

Court Services Victoria will be required to undertake a workplace gender audit as part of their obligations under the *Gender Equality Act 2020*. Recommendations 3 and 4 are initiatives that will inform the workplace gender audit and can then be addressed in the Gender Equality Action Plan.

► Recommendation 3

Undertake a risk assessment of CSV, the courts and VCAT, to identify and assess all sexual harassment work hazards, using a work health and safety risk framework.

This risk assessment should be part of the workplace gender equality audit required by the [Gender Equality Act 2020](#) and should be informed by:

- a. the WorkSafe Victoria Guide [Work-related gendered violence including sexual harassment](#);
- b. the VEOHRC [Guideline: Preventing and responding to workplace sexual harassment](#);
- c. consultations with staff using the Australian Human Rights Commission (AHRC)'s [Have your Say – Conversation Toolkit](#); and
- d. existing work health and safety mechanisms, staff survey results, complaints data, Health and Safety Representative reports, Employment Assistance Program (EAP) trend reports, information received during staff exit interviews, reports from stakeholders and regulators, and any data received from online reporting tools.

Responsibility

Court Services Victoria
Courts Executive

► Recommendation 4

Commission an independent expert to review and make recommendations to the Courts Council on the recruitment processes and working arrangements for Court Services staff who work in a primary relationship with judicial officers, including associates, tipstaves and clerks.

The independent review should include:

- a. the processes by which staff are assigned to judicial officers;
- b. appropriate training for judicial officers and CSV managers on their respective responsibilities for the supervision of staff;
- c. the quality and scope of induction processes as it relates to sexual harassment;
- d. reporting lines, and the options for different systems of reporting that could mitigate sexual harassment risk factors;
- e. models of peer support that build collegiate support and networks, such as mentoring or buddy systems;
- f. feedback mechanisms for both judicial officers and judicial staff; and
- g. processes for identifying, addressing and responding to sexual harassment perpetrated against judicial staff.

Responsibility

Court Services Victoria
Courts Executive

► Outcome 2: A positive workplace culture – appointment practices

Recruitment processes are influential in defining workplace culture. To establish a culture that is not permissive of sexual harassment, the past conduct and character of potential judicial or VCAT appointees is required. Proper previous behaviour with colleagues, clients and others involved in the legal process should be a clear criterion in appointment processes. To properly assess candidates against this criterion, the Attorney-General will need to consult widely with professional bodies such as the Women Barristers' Association and the VLSB+C. All new judicial and tribunal member appointees should also undertake training (see Recommendation 13) to ensure they are aware of the responsibilities and expectations on them to contribute to the organisational commitment to create a safer culture.

► Recommendation 5

Amend the appointment process for judicial officers to explicitly require that potential appointees are of good character and have consistently demonstrated professional respect and courtesy for their colleagues, clients and others involved in the legal process.

In assessing whether a potential candidate has satisfied this requirement the Attorney-General should consult widely with relevant regulatory and professional organisations.

Responsibility

Attorney-General
Heads of Jurisdiction

Barristers' roles in court proceedings impact the cultural norms of the courts and are a significant factor in some of the existing cultural problems within the courts. Recent improvements to the number of women appointed to senior counsel are to be commended.⁹⁶ A further step in the senior counsel appointment process should be added to require awareness of sexual harassment and demonstrated appropriate conduct. This will require the Chief Justice to consult with the broader legal profession on

both the additional criteria proposed but also the nature of training that should be provided and how the confidentiality of applicants should be protected.

► Recommendation 6

Amend the appointment criteria for Senior Counsel to better assess applicant character and previous conduct.

The amendments should:

- provide that Senior Counsel must be recognised as being of good character and must always demonstrate professional respect and courtesy for their colleagues, clients and others involved in the legal process;
- include a clear statement that the Chief Justice will consult with the Victorian Legal Services Board and Commissioner and professional associations representing women lawyers and lawyers from minority groups about prospective appointments; and
- provide that applicants must have completed a prescribed sexual harassment awareness training course within the previous two years.

Responsibility

Chief Justice

► Outcome 3: Diversity and gender equality

Diversity at all levels of an organisation is vital to effectively preventing sexual harassment. In recent years, the courts have become more gender diverse, with higher proportions of women appointed to judicial officer positions and as senior counsel. However, there is still much work to be done to ensure the courts have greater representation of gender, ethnicity, sexuality and age.

The Review recognises that the recommendations in this report do not specifically address sexual harassment or more generally violence against lesbian, bisexual and queer women and trans, gender-diverse, non-binary and intersex people, and that there are

additional and unique drivers of harassment for these groups. As Our Watch notes, the prevention of harassment against these groups can be aided by strategies to address harassment more generally 'to the extent that such violence shares some similar drivers to violence against women generally (particularly rigid, binary and hierarchical constructions of gender, sex and sexuality)'.⁹⁷ To that extent, what is proposed by the Review is a first step and further initiatives to address the specific issues faced by LGBTIQ+ people will be required.

Based on the evidence before the Review, the primary issues for increasing judicial diversity rest in the wider legal profession since it is the pool from which judicial officers are appointed. Recommendations regarding this broader challenge fall outside the scope of this Review. To effectively address diversity and gender equality at the judicial level, the legal profession must continue to reform. The Review notes that the Department of Justice and Community Safety's upcoming review into the legal profession is an opportunity to consider this need for greater diversity.

To improve diversity in the courts and VCAT, judicial officers and VCAT members must continue to improve their understanding of the issues facing marginalised groups within the community and why it is that they often do not participate in governmental institutions in proportionate rates. The Judicial College of Victoria was established to support the continuing development of judicial officers and VCAT members on the breadth of issues relevant to their roles. As well as specific legal education, the Judicial College can play a significant role in continuing to support judicial officers and VCAT members on how to improve diversity and gender equality within the courts and VCAT.

To do this, the Review considers that additional experience from outside the judiciary should be added to the Judicial College. Just as most private sector organisations look externally when seeking to solve a longstanding problem within the organisation, so too should the Judicial College look to the greater range of skills and experience that exist within the community to be able to deliver the broader range of educational resources required by a modern judiciary.

► Recommendation 7

Amend the *Judicial College of Victoria Act 2001* to cover the appointment of at least three and up to four directors who are not judicial officers. At least two of these directors must have broad experience in community issues affecting courts.

Responsibility

Attorney-General

► Recommendation 8

Expand the Judicial College of Victoria's *Disability Access Bench Book* into an *Equality Bench Book*, providing information about other protected attributes. The Equality Bench Book should:

- a. be modelled on the England and Wales Equal Treatment Bench Book, the NSW Equality Before the Law Bench Book, and the WA Equal Justice Bench Book; and
- b. include practical suggestions and guidance.

Responsibility

Judicial College of Victoria in consultation with the Victorian Equal Opportunity and Human Rights Commission

3.2.2 Recommendations contributing to improving reporting and support to those who experience sexual harassment

► **Outcome 4:** Victim-survivor-centred support, reporting and response

A constant theme heard in the Review's consultation, particularly through the Roundtable discussions and the stories shared with VEOHRC, was that there was lack of clarity and confidence in the current reporting and complaints systems to deal with sexual harassment. The Review found there is a significant trust deficit in the reporting process by CSV staff. In their current form, the options and processes for reporting sexual harassment are unclear; a coordinated response is lacking, it is not culturally sensitive and for some, it is re-traumatising. The inability to report in an anonymous or confidential way acts as a significant deterrent to complainants. The Review was told that support for complainants was sporadic and not built into the reporting system. Rather than encourage individuals to come forward to report an incident of sexual harassment, it discourages and deters them.

Organisational submissions to the Review as well as information provided by participants to the VEOHRC process, support the need for multiple reporting options being available to complainants.⁹⁸ In its global report on sexual harassment and bullying in the legal profession, the International Bar Association (IBA) found that implementing flexible reporting processes demonstrates to victim-survivors that workplaces treat these issues seriously. It also shows a commitment to breaking down some of the most significant barriers to under-reporting.⁹⁹ Given the data shared with the Review indicates extremely low levels of reporting of sexual harassment at CSV, the courts and VCAT¹⁰⁰, addressing these barriers requires urgent attention.

► **Outcome 4:** Victim-survivor-centred support, reporting and response – restorative justice

Other inquiries and reviews of sexual harassment have proposed restorative justice options and redress schemes. While the Review is not recommending that a restorative justice scheme be implemented at this stage, the voices of people who have experienced sexual harassment must be heard and acknowledged by court VCAT and CSV leaders. This will be an ongoing process as improvements are made and more people feel comfortable coming forward. The views of victim-survivors are integral to informing good practice. Storytelling can help raise awareness and support cultural change. Sharing their experience and being believed also has therapeutic benefits for some. The work led by women barristers to trial storytelling with senior members of the Bar – which also covers inequality and lack of opportunities as well as inappropriate behaviour – is an example of the possible impact of sharing experiences. (See page 69).

► **Outcome 4:** Victim-survivor-centred support, reporting and response – improving reporting

The conditions which determine whether an organisation is a safe reporting environment are not universally met across CSV and the courts.¹⁰² These conditions are:

- the organisation has no tolerance for unacceptable behaviour;
- complaints are treated seriously;
- complainants will not be further victimised; and
- if complaints are substantiated, action will be taken.

These conditions are consistent with the aspiration of Court Services Victoria's strategic plan, *Delivering Excellence in Court and Tribunal Administration 2020–2025*. This aspiration to develop a strong people and culture program will be strengthened by taking a specific focus on sexual harassment.

As the University of Melbourne Law School highlighted in its submission to the Review:

Leadership is ... critical in setting a tone that values reporting and ensures that complainants are treated fairly and without victimisation. Independent investigation ... can increase confidence in the process and outcomes of a complaints system.

Adopting a victim-survivor-centred approach can make it easier and more likely for victim-survivors to report, and therefore improve the effectiveness of efforts to address workplace sexual harassment.¹⁰³ The Australian Human Rights Commission (AHRC) states '[a] victim-centred response will prioritise the worker's health needs ahead of the organisation's formal reporting and disciplinary processes.'¹⁰⁴ The

AHRC's view is that this is not only organisational best practice, but a legal obligation:

Given the significant impacts and harm caused by sexual harassment, and the further harm that workers can experience from reporting it, the Commission's view is that, consistent with their obligations under WHS laws, an employer's first priority on receiving a report should be to ensure the safety and welfare of the worker who has made the report, by providing them with suitable support.¹⁰⁵

Further guidance about how to respond to reports of sexual harassment in a victim-survivor-centred way is provided in the UN Women report, *What Will It Take? Promoting Cultural Change to End Sexual Harassment*.¹⁰⁶

THE POWER OF STORYTELLING

Fifteen women barristers attended the Advocates for Change meetings convened by a senior judicial officer and including some senior counsel at the Victorian Bar in 2017–18. The women participants came from a mix of practice areas and seniority (although most were juniors). They spoke frankly of their experiences as women at the Bar, some commenting that this was the first time they had been able to speak up in a safe environment. The confidentiality of what was discussed during these sessions is respected. What was equally plain was the candour of the female participants made senior male attendees sit up and listen.

Raw and unfiltered stories told firsthand had a powerful impact. There were also positive stories, including tales of great mentors and how they had helped.

One senior counsel who participated said: 'I work with women solicitors and barristers very often and have daughters. I thought that I was aware of gender issues. Only very rarely have I found resistance [from others] to the briefing of a woman junior. I was very surprised and disappointed at the prevalence of inequality experienced by women at the Bar ... If we

remain unaware of the gender inequality issue, we will not address it. And it must be addressed because inequality is fundamentally unjust and has no place in our justice system. I think the most important benefit of the Advocates for Change process was to raise awareness.'

Discussion in the groups focused on what an individual (male) barrister could do to make a difference. The free exchange of ideas and experiences was most instructive. For example, when one senior barrister said that he always kept a list of female junior counsel by the phone to facilitate recommendations to instructing solicitors, others said they would adopt the same practice. At each meeting, individual barristers would report back on what they had done since the previous meeting. Thus, one barrister had made a point of recommending a female junior whenever he himself was unavailable; another had stepped in when he perceived that a female barrister was being spoken to inappropriately; a third said that he had made a welcoming phone call to a female barrister newly admitted to his list. The process of reporting back reinforced both the collaborative nature of the exercise and the sense of accountability to each other.¹⁰¹

The following recommendations are designed to strengthen the reporting process to ensure that it is psychologically safe, that individuals feel confident coming forward, that the process is sensitive, compassionate, fair, flexible and timely, and that accountability mechanisms for perpetrators are clear.

► Recommendation 9

Adopt victim-survivor-centred responses to gender-related misconduct that prioritise the safety and wellbeing of the victim-survivor and provide multiple channels and support for reporting gender-related misconduct, including sexual harassment.

To be effective, the channels and support provided must include:

- a. informal peer support officers at all levels of the organisation including judicial officers and VCAT members who are given additional specific training in responding to sexual harassment and who have the necessary skills to informally talk with and assist complainants to address the matter and/or make a formal complaint if they wish to do so;
- b. a formal internal complaint mechanism that includes:
 - i. the option for anonymous complaints;
 - ii. an explanation of the options for making external complaints;
 - iii. the independent investigation of the complaint;
 - iv. the victim-survivor and complainant receiving notice of the outcome of the complaint process and a follow-up 12 months after the complaint is resolved to ensure that they have not suffered any reprisal or other adverse consequences as a result of the complaint; and
- c. support and protection when an external complaint is made to the relevant body.

Responsibility

Courts Council

Court Services Victoria

There are a range of additional processes that can build on the emerging role of the Judicial Commission of Victoria to better address sexual harassment. The Commission is responsible for receiving and investigating complaints about the conduct or capacity of judicial officers and VCAT members.¹⁰⁷ The Review has found an inconsistent understanding of the role of the Judicial Commission and a lack of confidence in utilising this avenue to raise concerns about sexual harassment. The current Judicial Commission Review is an opportunity to ensure the process of making a complaint, and the investigative functions of the Judicial Commission are effective in addressing sexual harassment.

The Judicial Commission is also responsible under the existing legislation, for issuing guidelines on the standards of ethical and professional conduct and general standards of appropriate conduct expected of judicial officers and VCAT members.¹⁰⁸

The Review has identified changes needed in the Judicial Commission processes so that victim-survivors and the community can have confidence that sexual harassment will be appropriately investigated and judicial officers and VCAT members will be sanctioned for any misconduct.

► Recommendation 10

The review of the Judicial Commission of Victoria should consider, and if appropriate make recommendations to the Attorney-General for legislative amendments to the *Judicial Commission of Victoria Act 2016* to strengthen sexual harassment complaint and investigation processes by:

- a. giving the Judicial Commission of Victoria the power to compel information or documents from any relevant person or body for the purposes of considering a complaint or referral;
- b. giving the Judicial Commission of Victoria powers to issue confidentiality notices in appropriate circumstances to prevent disclosure of the fact of a complaint, referral or investigation or the details of a complainant or the person subject to a complaint;
- c. clarifying that any conduct that is a breach of the guidelines or could warrant removal from office can be the subject of a complaint or referral to the Judicial Commission of Victoria; and
- d. conferring the Judicial Commission of Victoria with an own motion investigation power to establish an investigating panel to investigate sexual harassment, discrimination or other related misconduct without the need for a formal complaint or referral, where there is a reasonable basis to suspect that a judicial officer or member of VCAT has committed conduct that if proven would warrant dismissal from office.

Responsibility

Judicial Commission of Victoria

3.2.3 Recommendations contributing to raising awareness across the courts and VCAT

► Outcome 5: Organisational capability and knowledge

The cultural norms that influence behaviour in the courts and VCAT are built and developed in other places throughout the legal profession, particularly at the Bar. The legal profession in Victoria is highly interconnected, with both good and bad practices inevitably brought into the courts and VCAT. It is essential that the courts and VCAT are proactive in preventing bad practices and set clear standards of behaviour for all court and VCAT users. The courts and VCAT will thus be setting the tone for conduct amongst the broader legal profession.

Education and awareness about sexual harassment in the legal profession have been included in other reviews, and the Review supports action on the following recommendations:

The VLSB+C should investigate the options for ensuring that CPD undertaken by newly admitted solicitors during their supervised period of practice and barristers within their first three years of practice helps them to develop values and behaviours that will sustain their career, including in the areas of ethics, diversity and inclusion, sexual harassment, family violence, and health and wellbeing. One option would be to make completion of such requirements a precondition for the grant of an unrestricted practising certificate.¹⁰⁹

The Victorian Legal Services Board and Commissioner be given the power to set policies and requirements for continuing professional development for solicitors as they can already for barristers. Leading up to that change, the VLSB+C should investigate making sexual harassment training a condition on practising certificates of solicitors in their first year of practice.¹¹⁰

Broader recommendations for improved approaches in all workplaces, including courts and tribunals, are outlined in the Australian Human Rights Commission's *Respect@Work* report. These include:

- new and better approaches to workplace education and training, to demonstrate an employer's commitment to addressing sexual harassment and developing a collective understanding of expected workplace behaviours and processes to initiate change; and
- delivering training that aims to:
 - build skills and capacity on how to prevent and respond to workplace sexual harassment;
 - be trauma-informed; and
 - include content on the nature, drivers and impacts of sexual harassment.¹¹¹

Submissions to this Review also identified the need to focus on young people who are choosing a career in the law or in the courts. Law schools, law firms and professional organisations must take the opportunity to help shape the profession to ensure that sexual harassment and related sexism, disrespect and bullying behaviour are not tolerated. This can be done by sharing the experiences of practising lawyers, particularly as they relate to power imbalances in and the patriarchal nature of the legal profession and to use storytelling as a mechanism to bring to life those experiences. It also involves positive role modelling from leaders in the profession. Similarly, young lawyers must understand what constitutes unacceptable behaviour and be aware of the remedies available to them should they become victim-survivors of workplace sexual harassment.

Consistent with the *Respect@Work* report, the Review heard that campaigns and training that are creative, positive and focus on what people *should* do were more effective than training which focuses only on what people *should not* do.

► Recommendation 11

Develop a coordinated awareness-raising campaign for the Courts, VCAT and the wider legal profession on appropriate behaviour within the courts and VCAT that:

- a. makes it clear that sexual harassment is being treated seriously and raises awareness about the work that is being done to prevent and address sexual harassment; and
- b. explains the multiple mechanisms for raising a concern or making a complaint and encourages victim-survivors and witnesses to report sexual harassment to the relevant oversight body.

Responsibility

Courts Council

Court Services Victoria

with input from the regulatory and member organisations of the legal profession

► Outcome 5: Organisational capability and knowledge – the importance of training and education

Creating a culture of continual learning is important, and additional expertise should be brought into the governance of CSV to specifically address sexual harassment and strengthen the current approach to health, safety and wellbeing.

Training should be provided at induction and at regular intervals afterwards and evaluated regularly to ensure its effectiveness.

All judicial officers and VCAT members as well as CSV staff need to be given focused and engaging training on all the issues surrounding sexual harassment.

The *Respect@Work* report directed a specific recommendation to Judicial Colleges to develop training, programs and resources for judges, magistrates and tribunal members on the nature, drivers and impacts of sexual harassment, and the importance of them being trauma informed and in line with the training principles in *Change the Story*.¹¹² It also recommended that Australian governments support and encourage judicial officers and tribunal members who may come into contact with victim-survivors of sexual harassment to undertake this training.¹¹³ The Review supports this recommendation. Training developed by the Judicial College of Victoria that makes the expected standards of conduct clear and explains how to recognise and call out sexual harassment and disrespectful behaviour from peers and other staff should be given to all judicial officers and VCAT members.

There are a range of strategies that can also build on the important work of the Judicial College of Victoria and the emerging role of the Judicial Commission of Victoria. As noted, the Heads of Jurisdiction and the courts already have strategies to protect the wellbeing of staff and court users and develop court rules to remove ambiguity about conduct within the court of all court users.

A further consideration in building organisational capability is the traditional career pathway for judicial officers and many VCAT members, which involves limited people management, administrative and organisational leadership experience. The majority of judicial officers have been drawn from the Bar where they have operated as sole practitioners responsible for seeking their own work and managing their own income and expenses. This means a significant number don't have experience building positive and healthy organisational cultures. As a result, those appointed to the bench may be given responsibilities without having the necessary understanding, experience or professional development opportunities that a focus on healthy organisational culture demands.

The role of bystanders emerged during the review as a significant issue. Bystanders are people who witness sexual harassment firsthand or who become aware of the incident after it occurs. Bystander action is the action

staff can take in response to witnessing or becoming aware that an incident has occurred.

The Review heard differing views on the role of bystanders. Some believed that bystanders play an important part in calling out behaviours and preventing further incidents occurring. A number of attendees at Roundtables believed that empowering and supporting bystanders to take action against sexual harassment is a valid approach for preventing it, while noting the importance of seeking consent from the person experiencing the harassment before bystanders speak to their employer, human resources personnel or other colleagues. This is supported by the AHRC in the report *Respect@Work* which stated:

*Given that sexual harassment and other forms of violence are driven by the same underlying societal norms and practices, a range of principles and approaches to primary prevention from this research are relevant to sexual harassment, including [among other factors] ... encouraging bystanders to take action.*¹¹⁴

An area of concern raised by Roundtable attendees was that in some circumstances sexual harassment can be normalised in the workplace which undermines the opportunities for bystanders to intervene in incidents. Bystander action becomes more likely when it is encouraged as part of a broader program to create safe and respectful workplace cultures. To ensure effective interventions are undertaken by bystanders and appropriate support is provided, proper training that includes victim-survivor-centred approaches is required.

Effective implementation of the following recommendations will ensure the courts and CSV are equipped with strong organisational knowledge of gender equality and how to prevent, respond to and report sexual harassment.

► Recommendation 12

Provide targeted sexual harassment, gender inequality and discrimination training to all CSV staff and contractors that is delivered by independent experts.

The training should cover the following topics:

- a. the importance of creating a safe, respectful, diverse and inclusive workplace culture;
- b. the nature and impact of sexual harassment, gender inequality, discrimination, everyday sexism and incivility;
- c. how to recognise and respond appropriately to sexual harassment, gender inequality, discrimination, incivility and retaliation against people who report these behaviours;
- d. how effective bystander action can be encouraged;
- e. the potential risks and impacts of power disparity;
- f. empathetic communication and dealing with difficult behaviours; and
- g. implementing flexible work arrangements that are supported and seen as part of a positive culture and effective ways of working within the courts.

For those responsible for managing or supervising others, the training should also cover:

- h. inclusive leadership; and
- i. CSV's commitment to eradicating sexual harassment, gender inequality, discrimination and incivility and its expectation for the role they will play in that task, as well as providing them with the skills to effectively prevent, detect and respond to any inappropriate behaviour.

Responsibility

Court Services Victoria

► Recommendation 13

Implement an education program for existing and newly appointed judicial officers and VCAT members on gender equality and the nature, drivers and impacts of sexual harassment, gender inequality and discrimination.

The relevant Head of Jurisdiction should ensure VCAT members complete the Judicial College education program, which should cover:

- a. the duty of judicial officers and VCAT members to:
 - i. treat CSV staff, lawyers and others with civility, respect and dignity and avoid misconduct such as bullying, sexual harassment and discrimination;
 - ii. ensure that courts are safe workplaces for everyone who works there and respond to any instances of sexual harassment they witness or become aware of;
- b. the range of experiences and impacts of sexual harassment on victim-survivors including a storytelling strategy similar to what was used by the Victorian Bar in 2017–18 (see page 68);
- c. the resources and services available for those who wish to make complaints or seek support;
- d. how gender, power imbalances in the workplace and other forms of inequality (for example, related to race or disability) impact how people respond to unwanted sexual advances;
- e. the role and expectations of bystanders in relation to incidents of sexual harassment;
- f. opportunities for feedback, review and/or coaching, to address in-court behaviour and out-of-court behaviours;
- g. any other matters raised in the CSV policy referred to in Recommendation 2 and judicial conduct guidelines referred to in Recommendation 17; and
- h. for Heads of Jurisdiction, their role in recognising and responding to sexual harassment and other misconduct by judicial officers and VCAT members.

Responsibility

Judicial College of Victoria

Heads of Jurisdiction

► Recommendation 14

Appoint an additional person/s with specific expertise in the prevention of sexual harassment and organisational change to join the Human Resources Committee of the Courts Council.

The Human Resources Committee should be responsible for:

- a. providing an annual update and report on its work and priorities, included in the annual report of each Court and also of Court Services Victoria;
- b. identifying further action required to create positive organisational cultures that prioritise staff wellbeing, gender equality and diversity; and
- c. reporting that informs an independent audit of progress against sexual harassment prevention as outlined in Recommendation 20.

Responsibility

Courts Council

3.2.4 Recommendations contributing to ensuring accountability

► Outcome 6: Ensuring integrity and accountability

The Review explored the current coverage by laws and guidelines of judicial officers and VCAT members as it relates to complaints of sexual harassment. Judicial officers and VCAT members have particular responsibilities which require that their independence in relation to their role is not compromised. This is explored in Section 1.4 of the Report and also is outlined clearly in Appendix 3: Judicial independence, accountability and the role of the Heads of Jurisdictions.

However, their conduct in the workplace is subject to regulation and setting of expectations as has been outlined in this report. To this end, the Review sought to clarify the application of specific laws to judicial officers and VCAT members.¹¹⁵ Judicial officers and VCAT members are not employees and although they exercise control of CSV staff, they

are not employers. They do, however, share a common workplace and exercise control over staff despite there being no explicit reference to them in the *Equal Opportunity Act 2010* or the *Occupational Health and Safety Act 2004*.

CSV and its governing body, the Courts Council, are responsible for providing a working environment that is free from sexual harassment and may be held liable for sexual harassment perpetrated by its employees, contract workers or others in certain circumstances. However, judicial officers and VCAT members are not accountable to CSV.

It is generally accepted that Heads of Jurisdiction do not have the power to suspend, censure or otherwise penalise a judicial officer for misconduct – although there is limited power to control the allocation of cases and to provide directions concerning education and training.¹¹⁶ Dealing with misconduct when it relates to sexual harassment is not well understood and – with the exception of the process for making a formal complaint to the Judicial Commission – the ways that inappropriate conduct by judicial officers and VCAT members can be addressed are not expressly outlined in the current *Equal Opportunity Act 2010* or the *Occupational Health and Safety Act 2004*.

To clarify that judicial officers and VCAT members are subject to the same rules and are accountable for their conduct in the same way as other court users, and to give victim-survivors greater confidence to come forward and make complaints and the community confidence in the integrity of the judiciary, amendments to both the *Equal Opportunity Act 2010* and the *Occupational Health and Safety Act 2004* to expressly cover judicial officers are proposed.

► Recommendation 15

The *Equal Opportunity Act 2010* and *Occupational Health and Safety Act 2004* should be amended to ensure that all persons working in Victorian Courts and VCAT, including judicial officers and VCAT members, are protected against sexual harassment and prohibited from sexually harassing others.

Responsibility

Attorney-General

► Outcome 6: Ensuring integrity and accountability – investigating systemic issues

The results of the *Respect@Work* report, VLSB+C survey of the legal profession, and the evidence obtained by this Review make clear that sexual harassment is a matter of serious concern that impacts victim-survivors and in the case of this Review, the integrity of the court system.

Information provided to the Review from a range of staff and legal practitioners who work in the courts and VCAT reported that sexual harassment is an open secret within the broader legal profession, including the courts, and there are a range of reasons victim-survivors do not come forward to report it.

It is well documented that victim-survivors are reluctant to make sexual harassment complaints.¹¹⁷ Evidence provided to the Review, most specifically through participant accounts, shows this is particularly strong where harassment is perpetrated by judicial officers. This is understandable given the power imbalance and also the relative newness and low profile of the Judicial Commission of Victoria's process for complaints.

The Review heard both positive and negative accounts of working with judicial officers and VCAT members. However, 50% of the 36 participants who shared their experience with the Review indicated that they had experienced or witnessed sexual harassment by a judicial officer or VCAT member. Of these, 38% occurred approximately within the last five years. This alone makes taking strong action against sexual harassment, including the implementation of the recommendations contained in this report, a matter of urgency.¹¹⁸

The *Equal Opportunity Act 2010* includes a positive duty requiring duty holders to proactively eliminate discrimination, sexual harassment and victimisation.¹¹⁹ At the time of the Act's amendment in 2010 and arising from the Recommendations of the Gardner Equal Opportunity Review,¹²⁰ it was envisaged that VEOHRC would move beyond relying on victim-survivors to take action to enforce the law, towards one that addresses entrenched, systemic issues such as sexual harassment, including by enforcing the positive duty. The

original amendments to the *Equal Opportunity Act 2010* provided for additional functions and powers that would assist with the enforcement of the positive duty and enable the Commission to enforce the Act and address systemic discrimination, including sexual harassment. The amendments included investigation and inquiry powers, supported by effective compulsion powers and enforcement tools. The case for these complementary powers was well made in the Gardner Review¹²¹ and is consistent with the VEOHRC submission to *Respect@Work*.¹²²

These powers were intended to enable VEOHRC to proactively address the causes of sexual harassment in workplaces and require employers to take systemic steps to prevent it from occurring in the future. However, the *Equal Opportunity Act* was further amended in 2011 and VEOHRC's investigation and enforcement powers were significantly reduced.¹²³

It is the view of this Review that relying on individual complaints is not enough to effectively prevent and address sexual harassment. As seen in the accounts from participants to VEOHRC, responses to individual complaints rarely address the cause of the problem nor make it less likely that the harassment will occur again. This approach puts the onus for action on victim-survivors and takes responsibility away from employers to address the causes and drivers of sexual harassment.

It is some ten years since the Gardner Review. In that time, the statutory landscape has changed and other regulatory statutes and complaint handling bodies have been developed and enhanced. It is beyond the scope of this Review to specifically recommend what statutory changes might be made to address the systemic responses to sexual harassment under the *Equal Opportunity Act*. However, this opportunity should not be lost. It is an opportune time for the current powers of the *Equal Opportunity Act* to be reviewed to address how the existing positive duty within the Act can be properly applied as a means of identifying and working to eradicate widespread sexual harassment when it occurs within workplaces. This requires careful consideration to understand the changed legislative context over the past ten years, the current powers and functions under the *Equal Opportunity*

Act, the findings and recommendations of the *Respect@Work* report and thus propose a contemporary statute that is able to address sexual harassment in all workplaces including in the courts and VCAT.

► Recommendation 16

The Victorian Government explore further changes to the *Equal Opportunity Act 2010* to address systemic issues of sexual harassment as well as discrimination and victimisation. This should include changes to the powers and functions under the Act to enforce the current positive duty.

Responsibility

Attorney-General

► Outcome 6: Ensuring integrity and accountability – guidance to judicial officers and VCAT members

As noted earlier in this report, the Heads of Jurisdiction and the courts have strategies focusing on the psychological wellbeing of staff and court users. The Review builds on these efforts, seeking to strengthen transparency and accountability and ensure a safer workplace for all in the courts.

The Judicial Commission currently adopts the Australasian Institute for Judicial Administration's Guide to Judicial Conduct.¹²⁴ It covers most aspects of judicial office and sets out the general expectation that judges must not engage in conduct that diminishes public confidence in and respect for, the judicial office.¹²⁵ The Guide states that judges should treat staff 'courteously and considerately' and they 'should be mindful that court staff may feel unable to differ from the judge.'¹²⁶ It has recently been amended to specifically address sexual harassment:

Judges must conform to the standard of conduct required by law and expected by the community. They must treat others with civility and respect in their public life, social life and working relationships. It goes without saying that Judges must not engage in discrimination or harassment (including sexual harassment) or bullying. In relation to these matters, Judges must be particularly conscious of the effect of the imbalance of power as between themselves and others, especially their Chambers staff, Court staff and junior lawyers.¹²⁷

However, the Guide is not binding and does not purport to be a code or to lay down fixed rules for judicial conduct.

Consistent with recommendation 2, for CSV to create a new, comprehensive and accessible policy on sexual harassment, the Judicial Commission of Victoria should make an equivalent guideline for judicial officers and VCAT members to set consistent standards and expectations on all who share the courts and VCAT as a workplace.

► Recommendation 17

Publish a supplementary guideline for judicial officers and members of VCAT dealing with sexual harassment and the standard of behaviour expected of them. To the extent that it is possible and appropriate to do so, the guideline should be consistent with and cover the same subject matter as the policy for CSV staff set out in Recommendation 2.

Responsibility

Judicial Commission of Victoria

► Outcome 7: Effective monitoring and evaluation

There is inconsistency in the collection, analysis, monitoring and reporting of data on workplace sexual harassment by CSV and the courts. This obscures any clear picture of the prevalence of sexual harassment. It also means the identification of any trends and patterns regarding, for instance, the nature and severity of sexual harassment and where it may frequently take place cannot properly occur. It prevents the implementation of any cohesive, targeted and strategic interventions.

CSV, like all organisations committed to providing a safe and healthy workplace, must ensure its sexual harassment reporting systems are robust and transparent while protecting confidentiality. Accurate data collection and analysis allows organisations to measure how they are progressing in preventing sexual harassment and what interventions may need strengthening.

Best practice indicates that organisations should regularly report on complaints data (e.g. incidents, themes, time of process from complaint to resolution, and outcomes including settlements), as well as cultural indicators (e.g. culture surveys) and other prevalence data. Numbers should also be interrogated to account for any under-reporting. Low or no reporting does not equate to no incidents.¹²⁸

In the context of courts and CSV, robust systems for the collection, analysis, monitoring and reporting of consistent, de-identified data on workplace sexual harassment and formal information-sharing and data-exchange mechanisms between the courts and CSV will inform measures to effectively prevent and respond to sexual harassment. It also assists in keeping those responsible for delivering change, including senior executives, managers and coordinators, accountable.

► Recommendation 18

Conduct an annual anonymous survey of all court and VCAT user groups to track progress on incidents of sexual harassment, reporting of incidents and action by bystanders in the courts and VCAT. These surveys should be created in consultation with the Victorian Legal Services Board and Commissioner to ensure they collect comparable data and should reach all CSV staff, judicial officers and VCAT members as well as other court and VCAT users including barristers, solicitors and police prosecutors.

Responsibility

Court Services Victoria

► Recommendation 19

Embed performance metrics for people managers and supervisors with accountability to effectively prevent, detect and respond to any sexual harassment, and take a victim-survivor-centred approach in their responses.

Responsibility

Court Services Victoria

► Recommendation 20

Within two years, commission an independent audit of the implementation of the Review recommendations and the effectiveness of the interventions implemented and make the audit report public.

Responsibility

Courts Council

Court Services Victoria

Appendices

The following Appendices can be accessed online at www.shreview.courts.vic.gov.au

Appendix 1

Summary Review of interventions to prevent and respond to sexual harassment in courts

Appendix 2

Prevalence data – A snapshot of surveys and projects on sexual harassment

Appendix 3

Judicial independence, accountability and the role of the Heads of Jurisdictions

Appendix 4

Review to Address Sexual Harassment in Courts and Law Memorandum

Appendix 5

The current legal framework for preventing sexual harassment in Victoria

Appendix 6

VEOHRC Data summary of participant's experiences

Endnotes

Foreword and Glossary

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- 5 CSV Act section 30.
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PART ONE – Setting the Scene

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