

BEST PRACTICE GUIDELINE: GUIDANCE MATERIALS FOR HARASSMENT, DISCRIMINATION AND BULLYING

1. Together with the Model Best Practice Guideline on Harassment, Discrimination and Bullying (the **HDB BPG**), these Guidance Materials were approved by Bar Council on **24 March 2022** for adoption by individual chambers/floors of the private Bar. This Chambers has substantially adopted both documents.
2. The purpose of the HDB BPG is to:
 - (a) assist with the elimination and/or prevention of all forms of harassment, discrimination, vilification, victimisation and/or bullying on this Chambers Premises, including through education;
 - (b) promote the dignity and respect of every person in relation to all protected attributes;
 - (c) record that this Chambers has adopted this Guideline, including for the purposes of minimising the risk of liability associated with any contravention of the relevant laws and to assist in complying with its positive duty under the *Sex Discrimination Act 1984 (Cth)* to take reasonable and proportionate steps to eliminate, as far as possible, unlawful discrimination on the grounds of a person's sex, unlawful sexual harassment or harassment on the grounds of sex, unlawful conduct under the hostile workplace provisions and acts of victimisation;
 - (d) provide a framework, and options, for dealing with alleged contraventions of this Guideline;
 - (e) operate in conjunction with and in furtherance of any other policies adopted by the New South Wales Bar Association;
 - (f) clearly articulate the Chambers' attitude against harassment, discrimination (including but not limited to hostile work environments, within the meaning of the *Sex Discrimination Act*), vilification, victimisation and/or bullying; and
 - (g) promote adherence to all relevant laws including the *Legal Profession Uniform Law (NSW)* (**Uniform Law**) and the Legal Profession Uniform Conduct (Barristers') Rules (the **Barristers' Conduct Rules**).
3. The New South Wales Bar Association encourages each set of chambers/floors to seek independent legal advice with respect to the application of the HDB BPG to its chambers, members and staff. Nothing in the HDB BPG or these Guidance Materials should be taken as legal advice with respect to the obligations imposed on chambers, members and staff under Commonwealth or New South Wales law.

3.1. This Chambers has made amendments to the HDB BPG, Guidance Materials to the HDB BPG and the Grievance and Complaint Framework to tailor these policies to the specific processes and procedures of this Chambers. Any insertions made by this Chambers are reflected in underline and any deletions are struck through. The amended Model Best Practice Guidelines were adopted by this Chambers on 13 December 2023

EVERYONE HAS A ROLE TO PLAY

1. Everyone has a role to play in preventing and responding to harassment, discrimination, vilification, victimisation and/or bullying and ensuring persons are not subjected to hostile workplace environments. This is entirely consistent with our existing workplace health and safety obligations to protect each other from harm to our health and safety, including psychological harm (in so far as is reasonably practicable).
2. Without exception, everyone is expected to behave in ways that are safe, respectful and inclusive. People who speak up about or report concerning behaviours they see or know of make a valuable contribution to the health and safety of our workplace by supporting someone who may be subjected to the behaviour and preventing escalation or repeat behaviour.

APPLICATION

3. The HDB BPG has been developed to, among other things, assist with the elimination and/or prevention of all forms of harassment, discrimination, vilification, victimisation and/or bullying ~~in~~ on this Chambers Premises. These Guidance Materials provide further guidance to ~~Members~~, licensees, readers, door tenants and ‘floaters’ who are from time to time associated with ~~of~~ this Chambers (**Chambers Residents of the Chambers**) and visitors to the Chambers Premises about particular aspects of the HDB BPG.
4. In the HDB BPG and these Guidance Materials, the following definitions apply:
 - (a) **Affected Person:** a person who is the target or focus of conduct alleged to raise a concern under the HDB BPG (namely, sexual harassment, harassment, discrimination, vilification, victimisation or bullying), who may or may not also be a Complainant.¹
 - (ai). **Board:** the Board of the Chambers;
 - (b) **Bystander:** a person who:
 - a. has directly witnessed an incident that raises a concern under the HDB BPG; and/or

¹ This Framework uses the term ‘the Person’ in place of the term ‘the Targeted Person’ in the Law Council of Australia *National Model Framework Addressing Sexual Harassment for the Australian Legal Profession*, December 2021

- b. has direct knowledge of an incident that raises a concern under this Guideline, such as Human Resources personnel, a manager or a clerk or person ~~in e~~Chambers Premises to whom the conduct has been reported.
- (ci) **Chambers:** References to Chambers are references to Tersplit Pty Ltd.
- (cii) **Chambers Premises:** the physical area leased by Tersplit Pty Ltd at 60 Marting Place, Sydney.
- (ciii) **Chambers Residents:** a person described by clause 3.
- (c) **Complainant:** a person who makes a complaint under the HDB BPG. The person may be an Affected Person or a Bystander.
- (d) **Cultural competency:** a set of congruent behaviours, attitudes, and policies that come together in a system, agency, or among professionals that enables that system, agency, or those professionals to work effectively in cross-cultural situations. Further, cultural competency is the willingness and ability of a system to value the importance of culture in the delivery of services to all segments of the population.
- (di) **External Consultant:** the consultant engaged by the Chambers from time to time to provide support, information and advice to any Affected Person in the manner prescribed in the Grievance and Complaint Framework and whose details are to be included in a factsheet provided each year to all Chambers Residents, employees, volunteers, students and independent contractors engaged by the Chambers and, on request, to any visitor of the Chambers Premises. **The current External Consultant is Dr Louise Morrow – 0408 448 326 – louise@lmpsychoology.com.au**
- (e) **Respectful Relations Officers:** at least two nominated ~~persons in~~ Chambers Residents, ideally of different genders, who have received training in complaint handling and receive reports from Complainants about potential breaches of the HDB BPG, being .Mr Moore SC and Ms Wong SC, or any other senior counsel nominated by the Board from time to time.
- (f) **Respondent:** a person alleged to have engaged in conduct that is in breach of the HDB BPG.

WHAT IS SEXUAL HARASSMENT?

Sexual harassment defined

5. The HDB BPG adopts the definition of ‘sexual harassment’ contained in the *Sex Discrimination Act 1984* (Cth).
6. The definition of ‘sexual harassment’ requires consideration of the following elements:
 - (a) the *subjective* test of whether the sexual advance, request for sexual favours, and/or conduct of a sexual nature was unwelcome to the person to whom the advance, request or conduct was directed; and
 - (b) the *objective* test of whether:
 - a. the conduct was of a sexual nature; and
 - b. a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person would be offended, humiliated or intimidated.²
7. The *circumstances* to be taken into account include, but are not limited to:
 - (a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
 - (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
 - (c) any disability of the person harassed; and
 - (d) any other relevant circumstance.
8. The recent amendments to the *Sex Discrimination Act 1984* (Cth) also provide that it is unlawful to harass a person on the grounds of their sex (**sex-based harassment**). Sex-based harassment is defined as unwelcome conduct of a seriously demeaning nature by reason of the person’s sex in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. The amendments also:
 - (a) extended the accessory/ancillary liability provisions in the Act so that a person who causes, instructs, induces, aids or permits another person to engage in sexual harassment

² See the Law Council of Australia, “National Model Sexual Harassment Policy for the Legal Profession” (Model Sexual Harassment Policy) at paragraph 3.1

or sex-based harassment can also be found liable for the conduct; and

- (b) expanded the coverage of the protection against sexual harassment to all workplaces and workers, so that barristers are now included within the scope of the Act.
9. Sexual harassment can occur when the conduct is unintended or not directed at the person. It is irrelevant whether the conduct is regarded by a Respondent as innocent, intended to be a joke, or the result of poor judgment.
 10. A lack of objection to the behaviour in question at the time it occurs does not necessarily infer that the behaviour was welcome or that it was acceptable for the behaviour to continue at another time.
 11. There is no requirement that the behaviour be repeated. A one-off incident can constitute sexual harassment, as can a pattern of behaviour.
 12. What may not offend one person, may still offend another and meet the definition for sexual harassment.
 13. Consumption of alcohol or any other substances is not an excuse or an extenuating circumstance.
 14. There are some behaviours that are criminal offences.
 15. Sexual harassment, in all its forms including non-physical and non-verbal conduct, is an abuse of power. It represents behaviours that are beneath the standards we expect from every one of us and across our Chambers and our profession. It is unethical and against the law.
 16. Sexual harassment takes a psychological, emotional and physical toll and has detrimental consequences on the careers and personal lives of those affected, as well as their families and those close to them.

UNDERSTANDING SEXUAL HARRASSMENT

Drivers of sexual harassment

17. Although called ‘sexual harassment’ and referring to behaviour that manifests as conduct of a sexual nature, this behaviour is not about consensual sex and sexual attraction, but rather about unwelcome behaviour that a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. In many cases, it is about exerting power and position over others who are perceived to be, or are in fact, more vulnerable. This can even be the case between peers or co-workers.
18. Sexual harassment is particularly prevalent where hierarchical structures and gender inequality exists – where organisational demographics, values and structures prioritise men and workplace

cultures reinforce rigid gendered norms and sexist attitudes.³

19. Other factors such as age, gender identity, sexual orientation, Indigeneity, other cultural and linguistic diversity, and disability have also shown to increase the likelihood a person may experience sexual harassment.

Understanding the context of sexual harassment

20. When it comes to understanding a person's experience of sexual harassment, context is essential. Context is the lens through which a person experiences the behaviour of others. Context can amplify impact or give behaviour a different nature.
21. It explains why a certain behaviour experienced in one context may be 'ok', and in another context, 'not ok'. Contextual factors that come into play may include:
 - Any power disparity between the parties
 - The history of the relationship
 - Previous patterns of behaviour between the parties (ie a one off incident or pattern)
 - Tone, verbal and non-verbal cues
 - Position or level of seniority
 - Employment status, job security and the nature of work
 - Where and when the incident takes place
 - Personal characteristics of age, gender identity, sexual orientation, First Nations identification, other cultural and linguistic diversity, and disability which can make people more subject to sexual harassment.⁴

Recognising sexual harassment

22. Sexual harassment takes many forms. It can occur during person-to-person interaction, in writing (hard copy, email, text etc.) or it may occur by conduct. There is no comprehensive list but the following are examples of conduct that could be found to be sexual harassment:⁵
 - Unwelcome comments about appearance, dress, hairstyles;
 - Jokes of a sexual nature or about a person's sexual orientation or gender identity;
 - Degrading comments of a sexual nature;

³ See further the Model Sexual Harassment Policy at paragraph 3.6 which sets out certain factors that may facilitate a culture of sexual harassment.

⁴ See further the Model Sexual Harassment Policy at paragraph 3.7.

- Lavishing attention on a particular person, including requests for private meetings on Chambers Premises not about work, or unwelcome gifts;
- Sexual objectification of people;
- Persistently staring or leering;
- Sexually explicit pictures or posters in the workplace;
- Sexually explicit comments including in emails, SMS, phone messages or social media;
- Whistling, catcalling, honking and using sexualised nicknames;
- Intrusive questions or comments about another person's body, private life, gender identity, sexual orientation, sexual relationships and sexual practices;
- Unnecessary familiarity, such as brushing up against a person;
- Touching or adjusting a person's clothing including flicking bra straps, putting hands in another person's pocket, lifting up skirts or shirts;
- Forced physical intimacy, e.g. touching, grabbing, massaging, hugging, cornering or kissing;
- Making comments fetishizing a person as a result of her or his race;
- Asking someone a question about their sexual history in the context of their religion or race;
- Making comments about a person's sexuality or sexual orientation (for example: asking a lesbian "who is the 'man' in their relationship?")
- Being undressed or exposing one's genitals;
- Coercing or inviting people to look at pornography;
- Requesting intimate images/video of someone;
- Requests or pressure for sex or other sexual acts in exchange for favourable treatment;
- Sharing intimate images/video of someone without consent;
- Stalking, following, watching; and/or
- Actual or attempted sexual assault or rape

Where sexual harassment may occur

23. The locations and circumstances in which sexual harassment may occur could include:

- ~~In~~ On Chambers Premises, during work hours, including common areas such as lifts, entrances, vehicles, reception areas, corridors, kitchens and toilets;
- At work-related locations including courts, tribunals, conference rooms, solicitors' offices, client's premises or incident sites;
- Beyond the usual workplace and outside normal working hours but where there is a link to employment such as social events, business trips, after parties, seminars/conferences, the Bar Practice Course and CPD events; or
- Online via technology and social media.

Relationships

24. Work relationships are extensive which gives rise to the potential for workplace sexual harassment to occur. Sexual harassment may arise in situations where a personal relationship ends and the intimate behaviour of one of the parties is no longer welcome.

DISCRIMINATION

Recognising discrimination

25. Discrimination can be direct or indirect. A person, or a group of people, may be discriminated against directly if they are treated less favourably than others because of their personal characteristics. Indirect discrimination can occur when a rule or policy has the effect of disadvantaging a person or group of people because of a personal characteristic.
26. Examples⁵ of *age* discrimination could include:
- not employing certain people because they won't 'fit in' with other employees because of their age
 - not employing younger workers because of assumptions that they will quickly move on to another job
 - advertising a position for someone aged 'under 30' to join a 'dynamic, young team'
 - making choices around redundancy, or forcing someone to retire, because of his or her age, or
 - harassing or bullying a person because of his or her age.
27. Examples of *racial* discrimination in employment could include:
- not employing someone from a particular racial group because 'those people are unreliable'

⁵ The examples of age, racial and sex discrimination in these Guidance Materials are adapted from fact sheets published by the Australian Human Rights Commission and accessed in March 2022

- not employing or promoting someone because of assumptions they wouldn't 'fit in' with their colleagues based on race, or
- unfair treatment in the course of work on the basis of race such as subjecting employees to negative comments about their race.

28. Examples of *sex* discrimination could include:

- not hiring a woman because the employer thinks she won't fit into a 'traditionally' male workplace
- not paying a woman the same salary as a man for doing the same work, or not providing the same opportunities for training, mentoring or promotion
- allocating work tasks based on a person's sex.

29. Examples of *disability* discrimination could include:

- not making reasonable adjustments when an employer knows, or could reasonably be expected to know, that a job applicant or employee has a disability (such as by lowering a workbench for an employee who uses a wheelchair or providing an enlarged computer screen for an employee with a vision impairment)
- imposing unreasonable requirements or conditions such as requiring people with disability to access places which are physically inaccessible, or requiring pregnant women to stand for extended periods of time
- not considering a job applicant who uses a mobility aid or assistance animal
- not reasonably considering or providing alternative or light duties to an injured employee

Hostile Work Environments

29.1. Under the *Sex Discrimination Act 1984* it is unlawful for a person to subject another person to a workplace environment that is hostile on the grounds of sex. A "hostile work environment" occurs in circumstances where a reasonable person, having regard to all of the circumstances, would have anticipated the possibility of the conduct resulting in the workplace environment being offensive, intimidating or humiliating to a person of the sex of the second person by reason of the sex of the person, or a characteristic that appertains generally to persons of the sex of the person, or a characteristic that is generally imputed to persons of the sex of the person.

29.2. The offending conduct must have occurred in the workplace of a person.

29.3. Subjecting another person to a hostile workplace environment is unlawful discrimination.

BULLYING

30. Bullying is defined in rule 125 of the Barristers conduct Rules as “unreasonable behaviour that could reasonably be expected to intimidate, degrade, isolate, alienate or cause serious offence to a person.” Rule 123 states that conduct in connection with a barrister’s profession includes, but is not limited to:
- a. conduct at social functions connected with the bar or the legal profession; and
 - b. interactions with a person with whom the barrister has, or has had a professional relationship.
- 30.1 Under section 789FD of the *Fair Work Act 2009* (Cth) a worker (or a group of workers) is bullied at work if the worker (or the group of workers) is subjected to repeated and unreasonable behaviour while at work and that behaviour creates a risk to health and safety.
- 30.2 Behaviour which is not repeated may still amount to other unlawful conduct protected by other legislation. For example, it may still amount to discrimination under the HDB BPG and state or federal legislation if it occurs because of a person’s particular characteristics (as defined in the HDB BPG) which are protected by anti-discrimination legislation.
31. Examples of behaviour, whether intentional or unintentional, that may be bullying if they are repeated, unreasonable and create a risk to health and safety include but are not limited to:
- abusive, insulting or offensive language or comments;
 - aggressive and intimidating conduct;
 - belittling or humiliating comments;
 - victimisation;
 - practical jokes or initiation;
 - unjustified criticism or complaints;
 - deliberately excluding someone from work-related activities;
 - withholding information that is vital for effective work performance;
 - setting unreasonable timelines or constantly changing deadlines;
 - setting tasks that are unreasonably below or beyond a person’s skill level;
 - denying access to information, supervision, consultation or resources to the detriment of the worker;
 - spreading misinformation or malicious rumours; and/or
 - changing work arrangements such as rosters and leave to deliberately inconvenience a particular worker or workers.

32. If the conduct is reasonable management action that is carried out in a reasonable way, then it will not amount to bullying. As such, the context, content and manner in which the interaction occurs is important.
33. Bullying is a risk to health and safety, and failure to take steps to manage the risk of bullying can result in a breach of the *Work Health and Safety Act 2011* (NSW).

GRIEVANCE AND COMPLAINTS FRAMEWORK

Resolution Pathways

34. Various pathways may be utilised to address harassment, discrimination, vilification, victimisation and/or bullying conduct. The Chambers may facilitate a range of resolution pathways to resolve concerns raised under the HDB BPG depending on the Affected Person's election and the seriousness of the alleged conduct.
35. Complaints ought to be dealt with in a manner which is culturally competent having regard to the cultures of each person involved in any handling of a grievance under the HDB BPG.
36. The Grievance and Complaints Framework contains a suggested range of pathways for use by the Chambers. These are explained in the table below. Alternatively, the Chambers may wish to consider the guidance notes to the Law Council of Australia's [*National Model Framework: Addressing Sexual Harassment for the Australian Legal Profession*](#).

<p>Early intervention</p>	<p>The objective of early intervention is to let a person know their behaviour is offensive, have the behaviour stop and prevent escalation or repeat behaviour.</p> <ul style="list-style-type: none"> • The steps that a Bystander or an Affected Person may take will vary depending on whether they act at the time the offensive behaviour occurs or shortly afterwards. • If acting at the time the offensive behaviour is occurring, we encourage Bystanders and Affected Persons to: <ul style="list-style-type: none"> ➤ intervene in a way that is comfortable for them and if they feel safe to do so, to redirect the conversation or stop the behaviour; ➤ if safe to do so, separate the Respondent from the situation (e.g. remove the Respondent before the circumstances escalate); ➤ speak up publicly or in the moment to address the comment or behaviour; and ➤ encourage the Respondent to reflect on their behaviour including apologising to the person or people impacted. • If acting sometime after the offensive behaviour occurred, a Bystander should first check with the Affected Person to determine if they wish any particular steps to be taken. In addition, the Affected Person could raise the issue with a Bystander, seeking help to speak to the Respondent or to intervene if it happens again.
<p>Tips for early intervention by Bystanders</p>	<ol style="list-style-type: none"> 1. Look out for behaviour that appears to be, or may have the effect of, making another person uncomfortable. 2. Speak up to stop the behaviour from happening. 3. Take aside the person engaging in the behaviour as early as possible and explain why their behaviour was wrong, how they can fix it, and what they need to avoid doing in future. 4. Check in with the Person to make sure they are okay.
<p>Interim action</p>	<p>Once a report of behaviour that potentially breaches the HDB BPG has been received by the Chambers' Respectful Relations Officers (either directly or via the External Consultant), the <u>Respectful Relations Officers</u> may take interim action in the interests of health and safety of the Chambers' members, employees, and contractors without making conclusions about whether the conduct occurred or whether it breaches the HDB BPG.</p> <p>Interim action could include arranging for persons not to interact with one another in <u>on</u> Chambers</p>

	<p><u>Premises</u> or arranging for training or awareness raising activities for all members and employees of Chambers <u>Residents</u>.</p>
<p>Tips for establishing interim action</p>	<ol style="list-style-type: none"> 1. Identify a person in Chambers <u>Resident</u> who is prepared to be a first point of contact regarding complaints of inappropriate behaviour ie. the Respectful Relations Officers <u>and the External Consultant</u>. 2. Train the Respectful Relations Officers <u>and ensure the External Consultant is adequately trained</u> in effective strategies to safeguard Affected Persons and other Residents of the Chambers <u>Residents</u> from the potential risk of sexual harassment while resolution pathways are being considered and explored.
<p>Informal pathways</p>	<p>The objective of an informal pathway is to provide the Respondent with the opportunity to stop the behaviour, ensuring they also get a clear message their behaviour is offensive and may constitute harassment, <u>discrimination</u>, sexual harassment or bullying. It can provide a safe way for individuals to raise issues about behaviour without being identified. Informal pathways should be used only in consultation with the Affected Person.</p> <p>Informal pathways alert the Chambers about the issue and understand what it needs to do to prevent escalation or repeat behaviour. Responding to issues through informal pathways may include:</p> <ul style="list-style-type: none"> ▪ the Respectful Relations Officers <u>or the External Consultant</u> consulting with the Affected Person to understand how they wish the matter to be resolved; ▪ the Respectful Relations Officers speaking to the Respondent about their behaviour; ▪ facilitating or mediating an open and respectful conversation between the parties; ▪ an anonymous report; ▪ putting system changes in place to prevent further issues; and ▪ the Chambers initiating further reviews to understand any underlying cultural issues and taking preventative action such as education.
<p>Tips for establishing</p>	<ol style="list-style-type: none"> 1. Regularly undertake proactive measures to prevent breaches of the HDB BPG, including risk assessments, anonymous surveys and education.

<p>informal pathways</p>	<ol style="list-style-type: none"> 2. Review established informal pathways on an annual basis to identify and implement measures of improvement. Consider having grievance handling as a standing item on the agenda for floor meetings. 3. Provide support and training to designated members of the Chambers who are available to facilitate mediation between the parties or identify external consultants that can provide this service at short notice, where the Affected Person agrees to mediation.
<p>Formal pathways</p>	<p>The objective of a formal pathway is to initiate a fair and confidential investigation to fully understand the circumstances of a reported issue by impartial, capable internal or external investigators. It seeks to protect the Affected Person from further harm by delivering appropriate disciplinary and educative outcomes to the Respondent and ensuring the Affected Person is safe and support is in place.</p> <p>A formal resolution pathway may involve:</p> <ul style="list-style-type: none"> ▪ Appointment of an internal or external investigator: The investigator will be independent and impartial and avoid all actual or perceived conflicts of interest. ▪ Interview with the Affected Person: The investigator will ordinarily wish to speak to the Complainant and Affected Person to ascertain further details of the incident(s). ▪ Notifying the Respondent: The investigator will notify the Respondent of the substance of the allegations in writing and provide them with a reasonable opportunity to respond. ▪ Obtaining further evidence: The investigator may gather other evidence by speaking to other witnesses or reviewing relevant documents. ▪ Decision: The investigator will weigh up all the evidence and make a decision as to whether, on the balance of probabilities, the conduct occurred and whether it breaches the HDB BPG. ▪ Outcomes: A finding will be made, and appropriate outcomes determined. Where complaints are substantiated: <ul style="list-style-type: none"> • Disciplinary outcomes for the Respondent could include: mandatory training, verbal or written warnings, suspension of floor privileges, being asked to leave Chambers, termination of employment, <u>and/or a resolution of shareholders that the Respondent has brought the Chambers into disrepute or is substantially interfering with the good management or harmony of the Chambers (as applicable)</u>

	<ul style="list-style-type: none"> • Remedial action could include: a verbal or written apology, extra security measures or mentoring, support to pay Floor fees if their ability to work has been impacted <u>(as applicable)</u>. ▪ External referrals: Consideration will be given to whether to make any appropriate reports to the Office of the Legal Services Commissioner, New South Wales Bar Association (sexual harassment officer), Worksafe <u>SafeWork NSW</u> and/or the NSW Police. ▪ Review: Following the determination of a complaint, the Chambers' Respectful Relations Officers <u>and/or the Board</u> will consider whether the complaint reflects a systemic issue that requires further consideration and redress; and whether any element of the complaints handling, assessment or investigation process could be better managed in future complaints.
<p>Tips for establishing formal pathways</p>	<ol style="list-style-type: none"> 1. Document a clear process to be followed in making confidential enquiries regarding a complaint, or otherwise outsourcing an investigation of those enquiries to an external investigator. 2. Confirm the accuracy of any relevant allegations with the Complainant or Affected Person (if the Complainant is not the Affected Person) before putting them to the Respondent. 3. Ensure that a range of consequences for substantiated inappropriate behaviour are documented and well known by members of Chambers <u>Residents</u>.
<p>What a Respondent can expect</p>	<p>A Respondent who is the subject of a complaint may expect:</p> <ol style="list-style-type: none"> a) To be treated with respect and courtesy and to have their privacy respected; b) To be given information about how the complaint will be addressed, approximately how long it will take, what the process will involve and what will happen to any records; c) To be offered supports to participate properly and fairly in the complaints process; d) To be kept updated throughout the complaint process; e) For the process to be fair; and f) To be told about the outcome of an investigation, if conducted, or any other action taken in response to the complaint.

External pathways

The objective of an external pathway is to provide the Affected Person with the choice to have the issues resolved by an independent, expert body that may be able to assist the Chambers and the parties to reach an outcome or resolution.

The Australian Human Rights Commission deals with complaints made under Federal anti-discrimination laws, including the *Sex Discrimination Act 1984* (Cth), and the Anti-Discrimination Board deals with complaints made under the *Anti-Discrimination Act 1977* (NSW). The Fair Work Commission deals with complaints made under the *Fair Work Act 2009* (Cth).

It is important to note that there are time limitations for lodging a complaint, for example, within 24 months of the incident if you wish the Australian Human Rights Commission to assist for complaints relating to the *Sex Discrimination Act 1984* (Cth) and six months for other complaints to the Australian Human Rights Commission. Affected Persons should ensure they familiarise themselves with any applicable legislative timeframes.

Responding to issues through external pathways may include:

- Participating in mediated discussions;
- Parties agreeing to outcomes or resolutions, including compensation;
- Escalating the issues to a formal Court or Tribunal if the matter cannot be resolved by conciliation; and
- Findings and determinations are usually made public.

A Complainant may at any time make a complaint to the Office of the Legal Services Commissioner or to the NSW Bar Association against a barrister for contravening a provision of the Barristers Rules including Rule 123 which prohibits barristers from engaging in conduct that constitutes discrimination, sexual harassment or bullying. Conduct that contravenes Rule 123 can amount to professional misconduct and/or unsatisfactory professional conduct within the meaning of Division 1, Part 5.4 of the Uniform Law.

Complaints to the NSW Bar Association are to be made to the Sexual Harassment Officer on 0427 317 958 or at sexualharassmentofficer@nswbar.asn.au, and online via the anonymous reporting platform, Spot: www.talktopot.com/nswbar.

Details about how to make a complaint to the OLSC are available [on the OLSC's website](#). The OLSC has prepared a [Fact Sheet](#) explaining how to notify the OLSC about inappropriate personal conduct by someone in a law practice. It also explains the investigation process should a formal complaint or notification be made.

	<p>Any formal complaint made against a legal practitioner which is made to the NSW Bar Council must be referred in the first instance to the OLSC. The OLSC will then decide if the complaint should be referred back to Bar Council to handle, or if it should be managed by the OLSC. When a formal complaint is referred to the OLSC (by Bar Council) or to Bar Council (by the OLSC), the name of the Complainant will be disclosed.</p> <p>Under the Uniform Law the Bar Council must conduct a preliminary assessment of the complaint. Following a preliminary assessment, the Bar Council may close all or part of the complaint, or may decide to investigate the complaint. Depending upon the outcome of that investigation, the barrister may face disciplinary action.</p> <p>Relevant information can be requested. The Respondent may be given a copy of the complaint for his or her comment.</p>
<p>Where the alleged behaviour may be a criminal offence</p>	<p>The most serious sexual harassment, harassment and bullying may also be considered an offence under criminal law. In that instance, a member of the Chambers <u>Residents</u> may be required to refer the issue to the NSW Police, as explained below.</p> <p>Under s 316 of the <i>Crimes Act 1900</i> (NSW), where a member of the Chambers <u>Resident</u> knows or believes that someone has committed a serious indictable offence (including sexual touching and assault occasioning actual bodily harm), and that person knows or believes that he or she has information that might be of material assistance in securing the apprehension of the alleged offender or the prosecution of that the alleged offender for the offence, it is an offence to fail without reasonable excuse, to bring that information to the attention of the police or other appropriate authority. Failure to report to the police without reasonable excuse in such circumstances risks imprisonment for up to 5 years.</p> <p>However, a person has a reasonable excuse if the information relates to a sexual offence and the alleged victim was an adult at the time the person obtains the information and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to the police or other authority: s 316(1A) of the <i>Crimes Act 1900</i> (NSW).</p> <p>Depending on the wishes of the Affected Person, the Chambers will either contact the NSW Police directly or accompany the Affected Person to the NSW Police so that they can make the report themselves.</p>

This Policy was last reviewed by Banco Chambers on 13 December 2023.