

Review of Sexual Harassment in the Victorian Courts and VCAT

Released 19 April 2021

By Dr Helen Szoke AO

Author of the Report, jointly commissioned by the Attorney General of Victoria and the Chief Justice of the Victorian Supreme Court



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 one end. That seems like a good thing to share, our yindyamarra.

TARA JUNE WINCH, WIRADJURI AUTHOR

THE YIELD, HAMISH HAMILTON, 2019

The above quote has been incorporated into the start of the Review report (with the permission of the publisher). In many ways it sums up the challenge for us all, to understand our respective responsibilities to prevent and address sexual harassment, bullying and discrimination in the legal profession. This captured the tone of the final report into the Review of Sexual Harassment in the Victorian Courts and VCAT.

The Review of Sexual Harassment in the Victorian Courts and VCAT was initiated by the then Victorian attorney general, the Hon Jill Hennessey and the Victorian Chief Justice Anne Ferguson, on 14 July 2020. The Review was established as a proactive measure, accepting that regrettably the prevalence of sexual harassment, bullying and discrimination in the broader legal profession was high, and notwithstanding decades of legal protections and prohibitions being in place, that this was still an issue. The Terms of Reference of the Review specifically prioritised prevention as a key term of reference while also looking at the

protections for people who had experienced sexual harassment, improvements in systems and processes and clarity around accountability. Importantly, the review incorporated consideration of judicial officers, and looked at conduct of all who participate in the court system in Victoria.

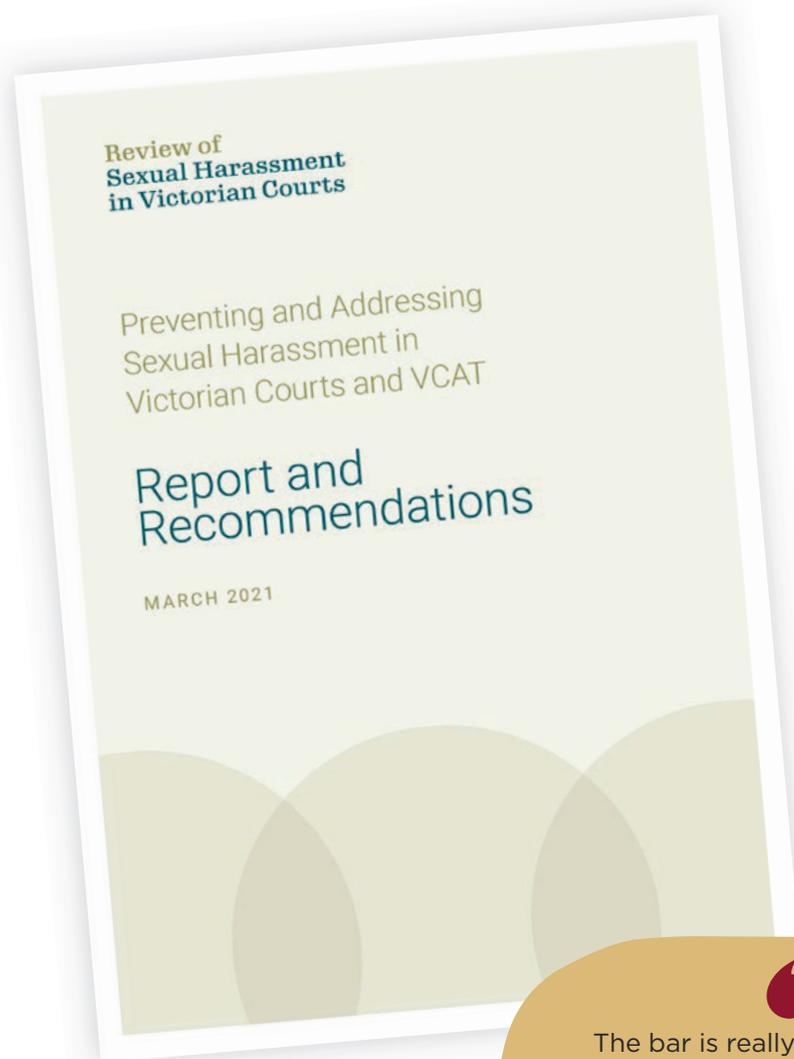
Following an extensive series of consultative processes, a partnership with the Victorian Equal Opportunity and Human Rights Commission, and a series of background papers and advice, (all of which are publicly available at: <https://www.shreview.courts.vic.gov.au/>) the Review identified three major themes:

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 made 20 recommendations, which aimed to provide: guidance about what constituted sexual harassment, avenues for reporting and addressing sexual harassment, policies and procedures which addressed the cultural health of the courts, specific statutory recommendations to make more explicit the coverage of judicial officers and also recommendations to address recruitment processes for Silks and judicial officers. Six outcomes were identified to be achieved as a result of the Review:

1. Strong and effective leadership driving successful, long-term reform;
2. A positive workplace culture;
3. Diversity and gender equality;
4. Victim-survivor centred support, reporting and response;
5. Organisational capability and knowledge;
6. Effective monitoring and evaluation.

The terms of reference focussed on the



courts and VCAT, legal practitioners appearing in the courts and VCAT, the courts staff and judicial officers. Notwithstanding the terms of reference focussing specifically on the courts and VCAT, the consultative process exposed that the experience of sexual harassment by barristers or perpetrated by barristers was a common and constant theme. The Review identified that 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. Harassing behaviour by barristers, including that directed at other barristers, occurred before formal court proceedings or in corridors outside courtrooms. Extreme competitiveness and aggressiveness was accepted by some as the norm among barristers and part of the nature of court practices. Many barristers reported that they are not confident that the current complaints process will protect them if they make complaints about sexual harassment.

“
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.”

”
Some of the comments shared during the Review consultative process included:

”
I have seen sexual harassment multiple times at the bar... It is perpetrated by men. It is an issue dominated by men.

”
The bar is a boys' club. It's cracking but not yet breaking.

It was noted that the Bar remains the major recruitment pool for judicial appointments and accordingly it was recommended that an additional step in the Senior Counsel recruitment process should require awareness of sexual harassment, completion of appropriate sexual harassment training and demonstration

of appropriate conduct by applicants for Senior Counsel (recommendation 6).

This Review is one of many that addresses sexual harassment. Each part of the legal profession must focus on building a positive and healthy culture to ensure that all can contribute and participate in the legal profession, safely and equitably. **BN**