

# No place for sexual harassment

Michael McHugh SC

Reflecting on my first year as President, 2021 has again seen us presented with many challenges together with many successes.

Since the last edition of *Bar News*, the Bar Association has held the elections for the 2022 Bar Council. I thank those Councillors who have returned and welcome the new members who are joining us. My thanks are also due to those 2021 Bar Councillors who have not returned to the Council for the coming year.

In my last column for 2021 I would like to highlight some of the Association's achievements during another challenging year affected by the COVID-19 pandemic.

The Association has launched three key linked initiatives to combat unacceptable behaviour at the Bar.

1. *No place for sexual harassment at the Bar* is the title of the new film commissioned by the Association.
2. The Association has appointed an independent Sexual Harassment Officer to provide dedicated, confidential support and advice to anyone who has experienced or witnessed sexual harassment, workplace bullying or discrimination at the NSW Bar; and
3. *Spot*, which is an online tool to allow confidential and anonymous reporting of sexual harassment, workplace bullying or discrimination.

The Association has developed these initiatives to assist in ending such unacceptable behaviour and addressing cultural issues at the Bar which have gone unchecked for too long.

The New South Wales Bar Association condemns any form of discrimination, workplace bullying and sexual harassment and is committed to the elimination of unacceptable behaviour in our workplaces and to a safe and inclusive legal profession.

If you have experienced or witnessed sexual harassment, workplace bullying or discrimination in any form, please do not



let it pass – utilise one of these facilities or contact a member of the Bar Council executive. By working together we can create a more inclusive and supportive environment at the NSW Bar.

## No place for sexual harassment at the Bar film

The film includes statements from the Chief Justice of New South Wales the Honourable TF Bathurst AC and me about the need for significant change to the culture of our profession and the stigma around reporting sexual harassment.

The film has become a part of our ongoing CPD program, the readers course and is targeted at achieving real cultural change at the Bar. In response to interest, it is also being utilised by the judiciary and made available to the smaller bars.

## Sexual Harassment Officer

The Bar Association has appointed a new, independent Sexual Harassment Officer, Ms Jenny Houen, to provide confidential advice and support to anyone who has experienced or witnessed discrimination, workplace bullying and sexual harassment at the New South Wales Bar.

Members can contact the Sexual Harassment Officer directly for support and referral to services.

The Sexual Harassment Officer is also

available to listen to reports, to provide pastoral care and support to those who have experienced or witnessed sexual harassment, and to provide advice about the various options which are available for making informal and formal complaints about sexual harassment and other behaviour.

The Sexual Harassment Officer will not have any involvement in investigating or adjudicating complaints and all communications with the Sexual Harassment Officer are entirely confidential.

You can contact Jenny anonymously via *Spot* (further details below) or directly on 0427 317 958 or via email on [sexualharassmentofficer@nswbar.asn.au](mailto:sexualharassmentofficer@nswbar.asn.au).

## Spot

*Spot* is an online tool which allows those who have witnessed or experienced discrimination, workplace bullying and sexual harassment at the Bar to make a confidential record of what happened, and, if they wish, to report the behaviour to the Sexual Harassment Officer on an anonymous basis.

To report an incident, members can initiate a conversation with *Spot* through the online platform, which is available at *About Spot – Spot* ([talktospot.com](http://talktospot.com)).

*Spot* is a completely secure online application, which means that a record can be made without any involvement with another person.

The platform is designed to provide prompts to enable a record to be created of exactly what was experienced or witnessed, who saw it, where it happened and when. It allows questions to be skipped and documents or records to be uploaded.

Once a record of an incident has been created, *Spot* provides a time stamped contemporaneous record of the incident which can be downloaded and retained by members.

The record can also be submitted on an anonymous basis to the Association's independent Sexual Harassment Officer to

start a conversation or to simply inform her that an incident has occurred.

The Sexual Harassment Officer will periodically consider the aggregated anonymised data which is collected by *Spot* and will report to the Association on identified trends and themes. **All members** are encouraged to test the *Spot* platform to familiarise themselves with the process.

### Silks and appointments

I would like to congratulate the 20 new Senior Counsel who were appointed in 2021, as well as acknowledge the many excellent, though ultimately unsuccessful applications, in what is always a rigorous process. It is gratifying to see that the high standards of practice at the NSW Bar have not been adversely affected by the pandemic. The task of the silk selection committee (this year myself, Bashir SC, Gleeson SC, Goddard SC, Furness SC and Hooke SC), would not be possible without the participation of the judiciary and the profession – thank you all.

In recent weeks there have been a number of significant appointments of members of the NSW Bar to judicial office. I would like to take this opportunity to congratulate Scott Goodman SC on his appointment as a Justice of the Federal Court of Australia, Mr Hament Dhanji SC on his appointment as a Justice of the Supreme Court of NSW, Mr Peter Campton SC and Ms Suzanne Christie SC on their appointment to the Federal Circuit and Family Court of Australia (Division 1) and Ms Julie Kearney and Ms Vivienne Carty on their appointment to Division 2 of the Court.

### Policy and Public Affairs

Over the last few months the Association has continued to make recommendations to Government and Parliamentary Committees regarding law reform. The Association's various policy Committees, assisted by staff from the Department of Policy and Public Affairs, have prepared and finalised 17 law reform submissions since the last edition of *Bar News*.

Among these was the Inquests & Inquiries Committee submission to the NSW Legislative Council's Portfolio Committee No. 1 – Premier and Finance – in relation to its inquiry into the Public Interest Disclosure Bill 2021. That submission emphasised that, as a matter of general legislative drafting practice, it is beneficial for all Bills affecting the rights of citizens, such as the *Public Interest Disclosure Bill 2021*, to incorporate guiding principles, which illuminate the broad context of the legislation and provide

guidance to those who must interpret and apply it. Committee member Hugh Dillon subsequently represented the Bar Association at the hearings of Portfolio Committee No 1 regarding the Bill.

Another significant submission made in this period involved a comprehensive submission to the State Insurance Regulatory Authority regarding the McDougall Review, COVID-19 and future opportunities for personal injury schemes prepared by the Common Law Committee. The submission addressed issues including:

- Threshold tests for entitlement to medical expenses and weekly expenses;
- Proposed changes to section 60 of the Workers Compensation Act 1987 (NSW) (relating to compensation for the cost of medical or hospital treatment and rehabilitation); and
- The impact of COVID-19 on personal injuries.

Other important recent submissions included a Costs & Fees Committee proposal put to the Legal Services Council regarding thresholds and out-of-time applications for costs assessment, various submissions regarding criminal law reform issues from the Criminal Law Committee including the operation of post-conviction orders for high risk / violent / sexual offenders and a submission to the Victorian Department of Justice and Community Safety regarding the potential construction of a mandatory reporting requirement for lawyers.

The Association's policy work is a crucial part of our role to further the administration of justice in this State

### COVID-19

The New South Wales Bar Association acknowledges and specifically thanks the Chief Justice of the Supreme Court and Chief Justice of the Federal Court, as well as the other heads of jurisdictions, for their understanding and acknowledgement of the difficulties experienced by legal practitioners as a result of the COVID-19 pandemic and related lockdown restrictions. The challenges posed by remote practice have placed particular pressures upon those practitioners who had young children at home and who had home schooling obligations.

As I write this column the increasing vaccination rates and the indications from the State Government that restrictions will continue to be eased throughout the State over time, are a welcome relief from the uncertainty of the recent past and give hope

of a path forward for all of us, especially in relation to in person appearances in the Courts. At the time of writing a number of jurisdictions have released protocols regarding arrangements for in person hearings in accordance with public health orders.

I would like to acknowledge and praise the profession for their endurance and versatility in adapting to and persevering with the online environment in circumstances that for some have been quite onerous, with many competing demands during this lengthy lockdown. Moreover, the willingness of the Courts to accommodate where possible the needs of practitioners and to take a flexible approach to these issues in arranging court timetables are greatly appreciated.

As always the Association is here to assist members experiencing personal or professional difficulties and I again remind you all that barristers who are in need of confidential assistance and support are encouraged to contact *BarCare* and the Barristers Benevolent Fund is also available for those who may be experiencing financial hardship.

The New South Wales Bar Association's primary concern throughout the pandemic has been the health and welfare of its members.

As we move towards a more permanent return to in person hearings members are again reminded that many locations may have rules and guidelines around vaccination. The Association encourages members who have not already done so to get vaccinated to ensure a smooth return to the courtroom and hearings in person as soon as possible.

Requiring COVID-19 vaccination for floor members, staff and visitors is a matter for each chambers, who should take their own advice and explore options for dealing with this issue. We understand that many chambers are considering options in relation to unvaccinated attendees such as remote attendance at conferences. These kinds of measures can assist in making our workplaces as safe as possible, particularly in light of the approaching relaxation of restrictions on movement that the Government has foreshadowed.

As we near the end of what has been another testing year, I encourage members to take some time to refresh and recharge away from the pressures of practice over the Christmas holiday period and to enjoy some time with friends and family wherever possible in light of the easing of restrictions.