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# Beyond Us Too?

Regulatory Responses to Bullying and Sexual  
Harassment in the Legal Profession



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The International Bar Association (IBA), established in 1947, is the world's leading international organisation of legal practitioners, bar associations, law societies, law firms and in-house legal teams. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world.

It has a membership of more than 80,000 lawyers, 190 bar associations and law societies, and 200 group member law firms, spanning over 170 countries.

The IBA is headquartered in London, with offices in São Paulo, Seoul, The Hague and Washington, DC. The IBA Legal Policy & Research Unit (LPRU) undertakes research and develops initiatives that are relevant to the rule of law, the legal profession and the broader global community.

This research was undertaken in collaboration with the Market Insights team at Thomson Reuters (formerly Acritas).

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This report considers sensitive issues, which may cause distress among some readers. If required, readers are encouraged to seek appropriate support. In many countries, free telephone and online counselling services are available.

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# Foreword

In 2019 the International Bar Association released the findings of its global research study on bullying and sexual harassment in the legal profession – findings that unfortunately confirmed widely held perceptions about the high prevalence of bullying and sexual harassment in the law. Now, in this report, the IBA explores the actions of legal regulatory and disciplinary bodies across the world to uncover and prevent this behaviour in their respective jurisdictions.

As this report rightly observes, the legal profession's harassment problem is endemic, cultural and societal. This means that regulatory and disciplinary bodies alone cannot eliminate the problem; the profession's leaders, individual lawyers, law-makers and professional associations will all play an equally important role in achieving this objective.

Regulatory and disciplinary bodies are nonetheless making a meaningful difference in combatting inappropriate behaviour among lawyers. Regulators internationally have sent strong signals to regulated individuals about the seriousness with which they view this issue and its link to professional ethics, rules and regulations. They have sought to independently verify the prevalence of poor conduct and support individuals to report their experiences. They have taken disciplinary action where necessary.

Some may query the authority or motivation for legal regulators to prioritise these actions given the other harms which regulation is designed to address. In response, I refer to the primary reason for regulating lawyers, which is to maintain public confidence in the legal profession and promote the public's trust in both the administration of justice and rule of law.

Workplace sexual harassment and bullying have been against the law for some time now, in many countries. Yet lawyers who would not otherwise break laws (eg, by stealing their clients' funds) nonetheless continue to harass or bully their colleagues. This type of attitude to the rule of law – in which a distinction is drawn between the laws a lawyer will and won't obey – is unlikely to inspire public confidence in the profession or the rule of law. It therefore rightly concerns legal regulators.

Similarly, regulators are alive to the threat to the quality, sustainability and diversity of the profession posed by lawyers who harass their colleagues. Many lawyers on the receiving end of this treatment suffer diminished confidence and self-belief, or develop anxiety – which, in turn, may understandably affect the quality of legal services they deliver. Some people even decide to leave the law, resulting in lawyers of great potential never assuming leadership positions in the profession to which they may otherwise have aspired.

Of course, there are challenges for regulatory and disciplinary bodies in taking action to address harassment in the profession. In particular, reasonable minds differ on the limits of appropriate professional discipline oversight. However, regulators are well-equipped to meet these challenges, which are not going to go away.

This report is a timely and important resource. It offers useful insights and lessons for regulators who may be considering whether – and if so, how best – to intervene to address problems of harassment and bullying within their own professions. It also makes it clear that, although achieving lasting and positive change in this area is challenging, with long-term commitment, creativity and innovation, it is certainly achievable.

**Fiona McLeay**

*Victorian Legal Services Commissioner, Australia*

# Letter from the President of the IBA

In a foreword to this report's forerunner, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (2019) ('*Us Too?*'), my predecessor wrote: 'Since there has been a legal profession, there have been requirements that its practitioners be of good character'. He highlighted behavioural obligations on lawyers that dated back to, variously, Ancient Greece, Ancient Rome and 17th-century Britain. He did so to emphasise that these obligations are by no means novel. Ever since there have been lawyers, society has expected us to uphold the highest standards of conduct.

However, as the *Us Too?* report demonstrated, collectively, we have failed to uphold those standards. Bullying and sexual harassment are rife in the law. Our data, collected from a survey of almost 7,000 respondents from 135 countries, made that abundantly clear. In that report and our subsequent global campaign, the International Bar Association implored the profession to get our house in order.

Achieving and maintaining a safe, supportive and healthy professional environment, free from inappropriate behaviour, is an ongoing undertaking. Many structural factors contribute to the high prevalence of bullying and sexual harassment in our profession. We will not fix them overnight. Yet, if we work together, we can achieve positive, genuine change. I see this challenge as a jigsaw puzzle, with many pieces. Only by addressing each piece – whether it be mental health and well being, flexible reporting channels, reducing the prevalence of alcohol, zero-tolerance policies and so on – will we be able to address the collective failings identified in the *Us Too?* report.

This report looks at one distinct piece of that puzzle: regulation. Robust regulation of lawyer misconduct is no panacea for our harassment problem. But it is an important step. As this report explains, regulatory and disciplinary bodies have responded to the greater focus on these issues since the #MeToo movement and *Us Too?* with considerable effort and initiative. From England to Finland, Japan to Singapore, Australia to Canada, regulators have placed considerable energies into addressing inappropriate behaviour within the law. Although this is an emerging phenomenon, I do not expect it to be a transient one. I believe that this regulatory focus on our individual behaviour, when it does not meet the standards expected of us, is here to stay.

I hope this report will provide useful food for thought as regulatory and disciplinary bodies around the world strive to play their part in achieving a legal profession free from inappropriate behaviour.

The report's publication, alongside the release of a *Global Directory of Anti-Discrimination Rules within the Legal Profession*, prepared by our Bar Issues Commission Regulation Committee, underscore the International Bar Association's enduring commitment to addressing bullying, sexual harassment and discrimination within the legal profession.



**Sternford Moyo**

*President, International Bar Association*

## Executive summary

For centuries, the conduct of members of the legal profession has been regulated. Lawyers hold an esteemed role within society; rights and responsibilities attach to this privilege. While it has always been accepted that certain *personal* conduct falls within the scope of *professional* regulation, in recent decades there has been increased regulatory focus on this realm.

The #MeToo movement, and numerous high-profile incidents of sexual harassment in the legal profession in different jurisdictions, have given impetus to this focus. Many regulatory and disciplinary bodies across the globe now consider bullying, sexual harassment and other inappropriate interpersonal workplace behaviour to fall squarely within their regulatory remit.

Yet this trend is not universal. Incidents often occur outside the physical workplace, which adds complexity to the disciplinary process. In some jurisdictions, tribunals have cautioned regulators against extending too far into the personal lives of members of the legal profession. In others, outdated regulation and limited reporting of incidents has impeded the ability of regulators to act.

This report explores these trends, challenges and opportunities, drawing on a landmark global survey of legal regulatory and disciplinary bodies. Between July and September 2020, the International Bar Association (IBA) Legal Policy & Research Unit (LPRU) and Acritas (now the Market Insights team at Thomson Reuters), a research company, anonymously surveyed approximately 70 organisations with regulatory/disciplinary powers over the legal profession in their respective jurisdiction.

Respondent organisations were spread relatively evenly between Asia, Australasia, Europe and North America, with limited responses from Africa and Latin America. Seventy per cent of respondent organisations said that their rules prohibited sexual harassment – in most cases, the prohibition was explicit, while others relied on case law or other interpretive developments. On the other hand, just one quarter of respondent organisations had an explicit prohibition on bullying.

Half of respondent organisations had taken disciplinary action in relation to sexual harassment. However, incidents are rarely reported: more than 80 per cent of respondent organisations had received fewer than 20 reports of sexual harassment within the past 12 months. The majority had reporting channels, while 37 per cent offered relevant training. One quarter of respondent organisations had staff dedicated to working on such issues, and a similar proportion had taken active steps to gather specific data about the prevalence of inappropriate behaviour within their jurisdictions. Most regulators considered that addressing bullying and sexual harassment was an important regulatory priority.

Ultimately, it is hoped that this report will provide constructive guidance, drawn largely from peers, as regulatory and disciplinary bodies around the world continue to grapple with the challenge of preventing and addressing inappropriate behaviour within the law.

As one regulator responded to the survey that underpins this report: ‘Being a fit and proper person is at the heart of what it means to be a member of an esteemed and trusted profession’. All stakeholders within this profession must play their role in upholding this core value, and regulatory bodies have a privileged position from which to drive positive change.

# Introduction

*The calls for change are clear and must be answered. This requires the legal profession to hold up a mirror to itself and to make a commitment to implementing change.*<sup>1</sup>

As is evident from its title, this report is intended to follow on from the IBA's 2019 report, *Us Too? Bullying and Sexual Harassment in the Legal Profession*.<sup>2</sup> That research, based on a survey of approximately 7,000 members of the legal profession across 135 countries, provided irrefutable empirical evidence for the unacceptable prevalence of bullying and sexual harassment in the legal workplace. One in two female respondents and one in three male respondents had been bullied at work; and one in three female respondents and one in 14 male respondents had been sexually harassed at work or in work-related contexts.

The *Us Too?* report was unambiguously clear that 'the legal profession has a problem'.<sup>3</sup> Outlining ten recommendations, the report called on the global profession to do better: 'Every member of the legal profession has personal responsibility for eliminating bullying and sexual harassment from our workplaces. Together, we can achieve positive change.'<sup>4</sup>

When work on the *Us Too?* report began at the beginning of 2018, there were early indications that legal regulators across the globe considered sexual harassment and other inappropriate interpersonal workplace behaviour within their regulatory purview. Responding to the #MeToo movement and various incidents in their particular jurisdictions, regulators issued statements, revised their rules and, in some cases, commenced disciplinary proceedings. In the subsequent three-and-a-half years, what began as a trickle of regulatory and disciplinary action has become a flood.

After the publication of *Us Too?*, the IBA undertook a global engagement campaign to drive positive change. Visiting 30 cities across six continents and meeting with thousands of stakeholders, it became increasingly clear that regulatory and disciplinary bodies across the world were prioritising efforts to address inappropriate behaviour.

In some respects, this development is long overdue. There have been expectations and regulatory obligations of good character imposed on lawyers for over two millennia.<sup>5</sup> It is hard to see how a lawyer who sexually harasses a colleague is not acting contrary to his or her regulatory obligations, whether that conduct was committed today or many decades ago. Most jurisdictions globally have historically required

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1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa, *Report of the New Zealand Law Society Working Group: To enable better reporting, prevention, detection, and support in respect of sexual harassment, bullying, discrimination and other inappropriate workplace behaviour within the legal profession* (December 2018) 10 [www.lawsociety.org.nz/assets/News-and-publications-documents/Other-Reports/Report-of-the-NZLS-Working-Group-December-2018.pdf](http://www.lawsociety.org.nz/assets/News-and-publications-documents/Other-Reports/Report-of-the-NZLS-Working-Group-December-2018.pdf), accessed 2 February 2022.

2 Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (IBA, May 2019) [www.ibanet.org/bullying-and-sexual-harassment](http://www.ibanet.org/bullying-and-sexual-harassment), accessed 2 February 2022.

3 *Ibid* 11.

4 *Ibid* 112.

5 It should be noted that these requirements were not an unalloyed good; there have been times where the good fame and character test was used to exclude women and people of colour from the profession. See Gino Dal Pont, *Lawyers' Professional Responsibility* (7th edn, Lawbook Co 2020) 44–6. With thanks to Professor Vivien Holmes at the Australian National University (ANU) College of Law for this observation.



those seeking admission to practice to be of good fame and character (or similar), and to maintain that standard throughout their practice.

Most also provide that conduct bringing the profession into disrepute is grounds for sanction. Even on these broad regulatory obligations, it is apparent that sexual harassment – particularly of a more serious nature – is within a regulator’s scope. Additionally, beginning in the 1990s, jurisdictions have moved to impose explicit prohibitions on inappropriate behaviour in their regulatory rules. For example, the Law Council of Australia’s *Solicitors’ Conduct Rules*, which serve as model law for a number of Australian jurisdictions, have provided since 2011 (the *Rules* were recently expanded; the original text is shown here):

‘42. Anti-Discrimination and Harassment

A solicitor must not in the course of practice, engage in conduct which constitutes:

discrimination;

sexual harassment; or

workplace bullying.’

Despite these longstanding explicit and/or implicit prohibitions on inappropriate workplace behaviour among legal professionals, before the #MeToo movement, many, perhaps most, regulators had paid the issue insufficient attention. The reasons for this were numerous: incidents were rarely reported to regulators, making it difficult to commence disciplinary action; when incidents were reported, targets often did not wish to proceed with a formal process, or there may have been an absence of evidence; rules in many jurisdictions were unclear about the precise scope of explicit prohibitions, and wider, catch-all clauses were not considered sufficient.

Broadly speaking, regulators of the legal profession (with some exceptions, no doubt) have focused their energies in recent decades on misconduct perpetrated against clients or the legal system itself – whether financial fraud or mismanagement, unprofessional litigation tactics, malpractice and so on. By focusing on how lawyers interact with clients, third parties or the system, regulators had neglected to sufficiently engage with how lawyers were interacting with each other. This may sound like a criticism, but it is made only with the benefit of hindsight. Given the ethical standards lawyers are expected to uphold, and the environments in which many work – whether in law firms or other structured workplace environments, with internal codes of conduct, procedures and human resources staff – it was perhaps not unreasonable for regulators to consider that these were issues best managed at a workplace level or through the civil or criminal legal system.

No longer. As regulatory and disciplinary bodies increasingly focus on interpersonal workplace behaviour by those within their jurisdiction, certain trends, challenges and opportunities arise. The purpose of this report is to understand these, and to highlight the important role regulators can play as the legal profession globally confronts the prevalence of sexual harassment and bullying within our workplaces.

Consistent with the empirical approach of the original *Us Too?* report, *Beyond Us Too?* is based on a survey of almost 70 organisations across the globe with regulatory and/or disciplinary responsibilities. The survey was undertaken on an anonymous basis, to encourage full and frank disclosure however, certain identifying characteristics were requested (eg, geographic region and nature of regulator) to better understand the results.

This report begins by providing helpful context to the emerging regulatory focus on inappropriate personal behaviour (from both within the profession and in cognate regulatory settings). It then outlines the research methodology, before analysing the survey data. The report concludes by offering suggestions and guidance as regulators continue to regulate and take preventative and disciplinary action in relation to bullying and sexual harassment.

The survey that underpins this report included both qualitative and quantitative responses. At various points throughout the report, responses will be extracted.

“It is an area all regulators have to accept as being part of their core work. Regulators need to have the ability to call out and sanction bullying and harassment to maintain a healthy profession for those who work within it, as well as showing the public that we care about what it means to be a lawyer. However, any response needs to be compassionate and proportionate, with respect and care show to all involved – from the target to the accused. And to take care of all people involved from the accused to the target.

Australasia and the Pacific, bar association or law society

## Context

The earliest notable regulatory and quasi-regulatory responses to inappropriate behaviour within the law emerged in the United States. Although it is a non-regulatory body, the American Bar Association's (ABA) influence on state bar associations and regulators of the profession allowed it to begin carving a space for such measures. In 1987, the ABA established the Commission on Women in the Profession (the 'Commission'), with the intent of promoting the status of women in the profession and combatting the various challenges they faced.<sup>6</sup>

Chaired by Hillary Rodham Clinton, the Commission reported to the ABA House of Delegates in 1988 that sexual harassment was a 'serious obstacle' to women's advancement in the profession.<sup>7</sup> In 1990, the ABA's *Model Code of Judicial Conduct* was amended to prohibit a judge conducting 'bias or prejudice', including on the basis of sex. The code further specified the responsibility of judges to 'refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment' and 'require[ed] the same standard of conduct of others subject to the judge's direction and control'.<sup>8</sup>

This was followed by the adoption of a resolution acknowledging sexual harassment as a serious problem which 'constitute[d] a discriminatory and unprofessional practice that [could] not be tolerated in any work environment' by the House of Delegates in 1992.<sup>9</sup> In 2001, the Commission published *The Unfinished Agenda: Women and the Legal Profession*.<sup>10</sup> This report found that between half and two-thirds of women in the profession had experienced or observed sexual harassment, while three-quarters of female lawyers believed sexual harassment was a problem in their workplace.<sup>11</sup>

Other jurisdictions also began to take steps to confront inappropriate behaviour within the profession. In Canada, regulators began to introduce prohibitions on sexual harassment into their rules of professional conduct. In 1994, the Law Society of British Columbia updated its *Professional Conduct Handbook* to prohibit a lawyer from engaging 'in any form of harassment, including sexual harassment'.<sup>12</sup> Similarly, the Law Society of Ontario adopted its *Rules of Professional Conduct* in 2000, providing that 'a lawyer shall not sexually harass a colleague, staff member, a client, or any other person'.<sup>13</sup> In 2009, the Federation of Law Societies of Canada adopted a *Model Code of Professional Conduct* (the 'Model Code'), which prohibited discrimination and harassment, both of a sexual nature and otherwise.<sup>14</sup>

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6 American Bar Association, 'About Us' [www.americanbar.org/groups/diversity/women/about\\_us/](http://www.americanbar.org/groups/diversity/women/about_us/) accessed 2 February 2022.

7 American Bar Association Commission on Women in the Profession, *Report to the House of Delegates* (1988) 8.

8 American Bar Association, *Model Code of Judicial Conduct* 1990, Canon 3.B(5) Commentary.

9 American Bar Association, *Resolution* (Adopted by the House of Delegates, February 1992).

10 Deborah L Rhode, *The Unfinished Agenda: Women and the Legal Profession* (American Bar Association Commission on Women in the Profession, 2001) <https://womenlaw.law.stanford.edu/pdf/aba.unfinished.agenda.pdf> accessed 2 February 2022.

11 *Ibid* 7–8.

12 Law Society of British Columbia, *Professional Conduct Handbook* (1994) [5].

13 Law Society of Ontario, *Rules of Professional Conduct* (2000) Rule 5.03(2).

14 Federation of Law Societies of Canada, *Model Code of Professional Conduct*, s 6.3.

All Canadian jurisdictions have a provision in their professional codes prohibiting harassment and discrimination, with most explicitly prohibiting sexual harassment.<sup>15</sup> A review of the *Model Code* is presently ongoing, with a view to expand the definitions of bullying, harassment and sexual harassment.<sup>16</sup> This move echoes an update by the ABA in 2016 to its *Model Rules of Professional Conduct*. Where adopted, it became professional misconduct under Model Rule 8.4(g) for a lawyer to ‘engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination...’<sup>17</sup> By 2020, at least 25 American states had taken steps to address inappropriate conduct in their rules.

In Australia, the *Legal Profession Regulations 1994* (NSW) were amended in 1999 to prohibit a legal practitioner from engaging in any conduct ‘that constitute[d] unlawful discrimination (including unlawful sexual harassment)’ against any person.<sup>18</sup> In 2011, the Law Council of Australia revised its model rules of professional conduct with the new *Australian Solicitors’ Conduct Rules*, which explicitly prohibited a solicitor from engaging in bullying, discrimination or sexual harassment.<sup>19</sup> These rules have since been adopted in the majority of Australian states and territories.<sup>20</sup> The introduction of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* expanded this prohibition to barristers in Victoria and NSW.<sup>21</sup> A breach of the *Uniform Rules* would amount to conduct capable of being considered unsatisfactory professional behaviour or professional misconduct.<sup>22</sup>

## #MeToo

In 2017, multiple allegations of sexual harassment against Hollywood mogul Harvey Weinstein emerged and became the catalyst for the subsequent #MeToo movement, resulting in a global awakening to the pervasive and endemic nature of sexual harassment. The legal profession was not immune. In the first half of 2018, the Discrimination and Harassment Counsel for the Law Society of Ontario reported a 50 per cent rise in the number of complaints compared with the previous year.<sup>23</sup> Similarly, the Solicitors Regulation Authority (SRA) in England and Wales received a record number of complaints relating to sexual misconduct in 2018–2019.<sup>24</sup>

In New Zealand, the legal profession was rocked by widely publicised allegations of a ‘pattern of sexually inappropriate behaviour’ by senior male staff towards female law clerks at a prestigious law firm.<sup>25</sup> New

15 Federation of Law Societies of Canada, *Interactive Model Code of Professional Conduct*, <https://flsc.ca/interactivecode> accessed 2 February 2022.

16 Federation of Law Societies of Canada, *Model Code of Professional Conduct: Consultation Report* (29 January 2020).

17 American Bar Association Center for Professional Responsibility, *Model Rules of Professional Conduct*, Rule 8.4(g).

18 *Legal Profession Regulations 1994* (NSW) reg 69B (repealed).

19 Law Council of Australia, *Australian Solicitors’ Conduct Rules*, s 42.1.

20 Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015 (Vic & NSW); *Australian Solicitors’ Conduct Rules* (SA); *Australian Solicitors’ Conduct Rules* (QLD); *Legal Profession (Solicitors) Conduct Rules 2015* (ACT).

21 *Profession Uniform Conduct (Barristers) Rules 2015* (NSW), s 123.

22 *Legal Profession Uniform Law* (NSW), s 298.

23 Anita Balakrishnan, ‘Harassment and discrimination complaints skyrocket’ *Law Times* (online, 29 October 2018) [www.lawtimesnews.com/practice-areas/human-rights/harassment-and-discrimination-complaints-skyrocket/263282](http://www.lawtimesnews.com/practice-areas/human-rights/harassment-and-discrimination-complaints-skyrocket/263282) accessed 2 February 2022.

24 Alexandra Topping, ‘Sexual misconduct cases at record high in legal profession’ *The Guardian* (online, 20 January 2020) [www.theguardian.com/law/2020/jan/20/sexual-misconduct-cases-at-record-high-in-legal-profession](http://www.theguardian.com/law/2020/jan/20/sexual-misconduct-cases-at-record-high-in-legal-profession) accessed 2 February 2022.

25 Sasha Borissenko and Melanie Reid, ‘The summer interns and the law firm’ *Newsroom* (online, 4 February 2018) [www.newsroom.co.nz/2018/02/14/88663/the-summer-interns-and-the-law-firm](http://www.newsroom.co.nz/2018/02/14/88663/the-summer-interns-and-the-law-firm) accessed 2 February 2022.

Zealand law students and young lawyers took to the streets, marching through Wellington to demand a zero-tolerance approach to sexual harassment in the profession.<sup>26</sup> Following the allegations, legal researcher Zoë Lawton set up a blog to facilitate the anonymous submission of individual's stories regarding bullying and sexual harassment.<sup>27</sup> Within a month, 214 people had posted.

In response, The New Zealand Law Society | Te Kāhui Ture o Aotearoa (NZLS), which holds both representative and regulatory responsibilities, convened a working group to consider the prevalence of bullying and sexual harassment in the legal profession.<sup>28</sup> The group conducted an inquiry into New Zealand's current regulatory framework, focusing on reporting, prevention, detection and support regarding inappropriate behaviour in the profession.<sup>29</sup> The working group's key recommendations included creating clearer conduct standards, closer regulation of workplace obligations, the creation of a specialised complaints process, changes to the procedures of the Disciplinary Tribunal and the imposition of mandatory training.<sup>30</sup> Many of these proposed changes are currently in the process of being implemented.<sup>31</sup> While the response by the New Zealand legal profession is a powerful example, it was certainly not unique. Indeed, the effects of the #MeToo movement were felt by the profession on a global scale.

In October 2018, the IBA's own *International Principles on Conduct for the Legal Profession* were updated. Among the revisions was an update to general principle 2, 'Honesty, Integrity and Fairness', which added: 'A lawyer shall ensure that equality of opportunity and respect for diversity govern all aspects of conduct in the lawyer's exercise of the profession'. The related commentary offered:

*'Regarding diversity and equality, a lawyer shall not discriminate unlawfully, or victimise or harass anyone, in the course of professional dealings. A lawyer shall provide services to clients in a way that respects diversity. A lawyer shall approach recruitment and employment in a way that encourages equality of opportunity and respect for diversity. Complaints of discrimination against the lawyer or the firm shall be dealt with promptly, fairly, openly, and effectively.'*

During working group discussions that led to this inclusion, there was considerable debate about whether it was appropriate for professional codes and regulation to extend beyond issues solely relevant to the profession, to those that might be described as wider societal issues often covered by general law, both civil and criminal. This has been a recurring issue, including in several disciplinary cases, and will be considered further below.

## Information gathering

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26 Frances Cook, 'Law students march for end to sexual harassment' *New Zealand Herald* (online, 15 March 2018) [www.nzherald.co.nz/nz/law-students-march-for-end-to-sexual-harassment/XCAO54DLAGHXI2FRRBDFCYXNLE/?c\\_id=1&objectid=12012775](http://www.nzherald.co.nz/nz/law-students-march-for-end-to-sexual-harassment/XCAO54DLAGHXI2FRRBDFCYXNLE/?c_id=1&objectid=12012775) accessed 4 February 2022.

27 Zoë Lawton, #MeToo Blog (Blog) [www.zoelawton.com/metoo-blog.html](http://www.zoelawton.com/metoo-blog.html) accessed 4 February 2022.

28 *See n 1 above.*

29 *Ibid* 10.

30 *Ibid* 11–13.

31 The NZLS is currently undergoing a consultation on proposed changes to the Lawyers' Conduct Rules: see NZLS, 'Law Society Requests Feedback on Lawyers' Conduct Rules' (press release, 4 June 2020) [www.lawsociety.org.nz/news/legal-news/law-society-launches-consultation-on-lawyers-conduct-rules/](http://www.lawsociety.org.nz/news/legal-news/law-society-launches-consultation-on-lawyers-conduct-rules/) accessed 2 February 2022.

In response to the #MeToo movement, a number of regulators sought to better understand the prevalence of bullying and sexual harassment in their jurisdictions. In November 2017, Swedish newspaper *Svenska Dagbladet* (SvD) issued an appeal to the Swedish legal profession under the hashtag #medvilkenrätt (roughly translated as ‘#withwhatright’). Thousands of women responded, sharing their experiences of sexual harassment in the profession,<sup>32</sup> and by December, 5,965 women had signed a petition calling for an end to such conduct.<sup>33</sup>

The Swedish Bar Association was swift in its response and conducted a survey of women and assistant lawyers regarding the matter. Of the more than 1,600 respondents, 33 per cent reported experiencing sexual harassment.<sup>34</sup>

Around the same time, the Finnish Bar Association surveyed law firm staff, asking whether they had been sexually harassed or had witnessed sexual harassment.<sup>35</sup> One in five respondents said they had personally experienced sexual harassment, while 40 per cent said they had witnessed it in their workplace.<sup>36</sup> In response to the survey results, the Finnish Bar Association launched the #eimilläännoikeudella (#bynoright) campaign, which included an action plan and working group to combat sexual harassment in the profession.<sup>37</sup>

In New Zealand, the NZLS undertook a Workplace Environment Survey, which was completed by 3,516 practitioners, making up 26 per cent of the country’s legal profession. The results indicated that sexual harassment and bullying were pervasive: 31 per cent of women and five per cent of men had experienced sexual harassment, while 52 per cent of all lawyers had been bullied.<sup>38</sup>

In Australia, the Victorian Legal Services Board and Commissioner (VLSB+C), a regulatory body, similarly undertook a survey of sexual harassment in the Victorian legal profession in 2019. The study sought to investigate the experiences of practitioners, as well as current management practices pertaining chiefly to the training, policies and procedures used for prevention. The survey found that 36 per cent of legal professionals had experienced sexual harassment in the workplace. In particular, women in the legal profession experienced far higher rates of sexual harassment than women in other, non-legal Australian workplaces: 61 per cent of female legal professionals had been sexually harassed in the past five years, compared with 39 per cent of women generally.<sup>39</sup>

Of particular note was a perception gap in the perceived prevalence of sexual harassment between legal practitioners and those associated with management practices: 23 per cent of legal practitioners said sexual harassment was common or very common, while 41 per cent said it occurred sometimes, and

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32 SvD Culture, ‘Lawyers Testify: “The Judge Wanted Oral Sex in Return”’ *Svenska Dagbladet* (online, 15 November 2017) available [www.svd.se/jag-kommer-att-forstora-din-karriar-innan-den-borjat](http://www.svd.se/jag-kommer-att-forstora-din-karriar-innan-den-borjat) accessed 2 February 2022.

33 *Ibid.*

34 Swedish Bar Association, ‘New Study on Sexual Harassment’ (press release, 5 December 2017) [www.advokatsamfundet.se/Nyhetsarkiv/2017/december/ny-undersokning-om-sexuella-trakasserier/](http://www.advokatsamfundet.se/Nyhetsarkiv/2017/december/ny-undersokning-om-sexuella-trakasserier/) accessed 2 February 2022.

35 Finnish Bar Association, ‘One-fifth of those surveyed by the Bar Association experienced sexual harassment themselves’ (press release, 20 December 2017) <https://asianajaliitto.fi/2017/12/viidennes-asianajaliiton-kyselyyn-vastanneista-kohdannut-itse-seksuaalista-hairintaa/> accessed 2 February 2022.

36 *Ibid.*

37 Finnish Bar Association, *#Eimilläännoikeudella: Eliminating Workplace Harassment* (Guide, 15 June 2018) 4.

38 New Zealand Law Society, *Workplace Environment Survey* (28 May 2018) 6.

39 Victorian Legal Services Board + Commissioner (VLSB+C), *Sexual Harassment in the Victorian Legal Profession: 2019 study of legal professionals and legal entities: Report of Findings* (May 2020) vii.



just nine per cent said it was very rare.<sup>40</sup> By contrast, 73 per cent of respondents to the Management Practices Survey believed that sexual harassment in their organisation was very rare.<sup>41</sup> Perhaps as a result of these perceptions, only 28 per cent of respondents said they had documented policies to address sexual harassment, and only 13 per cent conducted sexual harassment-specific training.<sup>42</sup>

The perception gap between members of the profession and managers was similarly reflected in research by the ABA. The 2019 *Walking Out the Door* report found that 50 per cent of women – compared with six per cent of men – had received unwanted sexual conduct at work.<sup>43</sup> Significantly, and in stark contrast to the aforementioned figures, 91 per cent of firm leaders and male partners believe their firms to be active advocates of gender diversity, compared with 62 per cent of experienced women lawyers, of whom only 27 per cent ‘strongly’ agreed.<sup>44</sup> Similarly, while 90 per cent of managing partners surveyed reported utilising sexual harassment training, only 42 per cent of women lawyers said sexual harassment training was ‘very or somewhat effective’.<sup>45</sup>

## Mandatory reporting

Low levels of reporting are a key issue hampering regulators from addressing inappropriate workplace behaviour. *Us Too?* found that 75.4 per cent of sexual harassment cases and 57 per cent of bullying cases are never reported. Reporting is particularly valuable to regulators; without the information gathered through reporting channels, such entities struggle to identify and respond to inappropriate workplace behaviour. A lack of reporting also obscures the extent of the problem. Several regulators have introduced mandatory reporting obligations to encourage greater reporting (in the present context and more broadly). While mandatory reporting can increase levels of reporting, there is concern that it discourages informal avenues of reporting and may have an adverse ‘chilling’ effect on people speaking up about bullying and harassment.

In January 2019, the SRA in England and Wales updated its reporting requirements in response to a 2018 consultation process. The new reporting obligations create a mandatory responsibility to report to the SRA ‘any facts or matters that you reasonably believe are capable of amounting to a serious breach of regulatory arrangements’.<sup>46</sup> It is a breach of the regulatory arrangements to victimise any person for making or proposing to make a report or provide information to the SRA.<sup>47</sup> The Bar Standards Board (BSB) of England and Wales also requires mandatory reporting under the *Bar Standards Board Handbook*. Subject to client confidentiality, a barrister must report to the BSB if he or she has reasonable grounds to believe that

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40 *Ibid.*

41 *Ibid.*

42 *Ibid* ix–x.

43 Roberta D Liebenberg and Stephanie A Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice* (American Bar Association, 2019) 8.

44 *Ibid* 14.

45 *Ibid* 16.

46 SRA, *Code of Conduct for Solicitors, RELs and RFLs* [7.7]; SRA, *Code of Conduct for Firms* [3.9].

47 SRA, *Code of Conduct for Solicitors, RELs and RFLs* [7.9]; SRA, *Code of Conduct for Firms* [3.12].

there has been serious misconduct by a regulated person.<sup>48</sup> Serious misconduct includes, but is not limited to, assault or harassment.<sup>49</sup>

New Zealand also has a mandatory reporting obligation. Under the current *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008*, a lawyer who has reasonable grounds to suspect that another lawyer has been guilty of misconduct must make a confidential report to the Law Society.<sup>50</sup> However, the New Zealand Working Group highlighted concerns that mandatory reporting may have a silencing effect, emphasising that current reporting mechanisms are not working. Significantly, the current regime does not provide an exception for informal mechanisms of reporting, or for lawyers who prefer to seek guidance or support from a trusted colleague.<sup>51</sup> Furthermore, the Working Group was concerned that there was no protection for individuals who may be particularly vulnerable.<sup>52</sup>

For example, a literal interpretation of the current rule places the mandatory reporting burden on the individual who is being bullied, harassed or discriminated against.<sup>53</sup> While reporting is undeniably important and provides invaluable information to regulators, reporting requirements should be balanced against the need to protect and support individuals impacted by inappropriate behaviour, either directly or indirectly, and who may be particularly vulnerable. NZLS recently introduced a reformed mandatory reporting obligation.<sup>54</sup>

The BSB has acknowledged that mandatory reporting requirements ‘may be unhelpful in relation to dealing with allegations of sexual or other harassment’.<sup>55</sup> In order to encourage informal reporting of bullying and sexual harassment, the BSB established the Pilot Harassment Support Scheme (the ‘Pilot’). Under the Pilot, organisers of a support scheme, as well as individual barristers, can apply for a waiver of the mandatory reporting requirement.<sup>56</sup> The aim is to exempt these designated services and individuals from the reporting requirement, allowing barristers who have experienced bullying and sexual harassment to seek help and support, without fearing that their ‘informal’ report will be subject to mandatory reporting requirements.<sup>57</sup> Those involved in the scheme are required to undergo training and have access to support and wellbeing services.<sup>58</sup>

In contrast to mandatory reporting regimes, the Office of the Legal Services Commissioner NSW (OLSC), an Australian regulator, is encouraging informal reporting, with the aim of building a better picture of what is happening in the profession.<sup>59</sup> The scheme provides three different forms that can be used to notify

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48 Bar Standards Board, *Bar Standards Board Handbook* rC66.

49 *Ibid* gC96.

50 *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* (NZ) Rule 2.8.

51 See n 1 above, 42.

52 *Ibid* 42.

53 *Ibid*.

54 NZLS, ‘New rules governing lawyers’ behaviour from 1 July’ (1 April 2021) [www.lawsociety.org.nz/news/law-society-statements/new-rules-governing-lawyers-behaviour-from-1-july](http://www.lawsociety.org.nz/news/law-society-statements/new-rules-governing-lawyers-behaviour-from-1-july) accessed 2 February 2022.

55 BSB, *Pilot Harassment Support Scheme Waiver Guidance* (Guidance, October 2019) [2].

56 *Ibid* [5].

57 *Ibid* [2].

58 *Ibid* [7].

59 OLSC, ‘Inappropriate Personal Conduct – Sexual Harassment and Workplace Bullying’ [www.olsc.nsw.gov.au/Pages/inappropriate-personal-conduct/inappropriate-personal-conduct.aspx](http://www.olsc.nsw.gov.au/Pages/inappropriate-personal-conduct/inappropriate-personal-conduct.aspx) accessed 2 February 2022. The Victorian regulator has also established a dedicated, multi-channel reporting framework, including online and anonymous options.



the OLSC of inappropriate conduct: subject, anonymous and witness.<sup>60</sup> The complainant will retain total control over what the OLSC does with the information gathered.<sup>61</sup> How the OLSC acts will depend on the information provided in the complaint and the extent to which the individual wishes for an investigation or disciplinary action to occur.<sup>62</sup> The OLSC's objective is to assure that even when the complainant wishes to remain anonymous or does not wish to commence an investigation or disciplinary process, the organisation itself will still receive data that will contribute to a greater knowledge of the extent of inappropriate conduct in the profession. Such measures will assist with 'monitoring and gathering data regarding inappropriate personal conduct by lawyers (and others)', with the potential to form the basis for further systemic action.<sup>63</sup> (Victoria's regulator, the VLSB+C, has introduced a similar reporting platform.)

## Role of tribunals

In many jurisdictions, the regulator and the disciplinary tribunal are separate entities. Divergent attitudes towards addressing inappropriate workplace behaviour between regulators and tribunals has been a barrier to effectively addressing inappropriate behaviour. In England and Wales, both the SRA and BSB refer complaints to independent disciplinary tribunals. However, the resulting decisions of the Bar Tribunals and Adjudication Service (BTAS) and the Solicitor's Disciplinary Tribunal (SDT) have sometimes been at odds with the efforts of the SRA and BSB to combat harassment in the profession.

For example, in 2019, barrister Kevin Barry came before the BTAS for engaging in unwanted sexual conduct towards a young female member of his chambers (known as 'C'), and former pupil, who had come to him for advice.<sup>64</sup> The conduct included touching C's face, telling her she was beautiful and attempting to kiss C without her consent, placing his hand down the top of C's skirt and squeezing her bottom and running his hand up and down C's thigh.<sup>65</sup> Barry was reprimanded and fined £3,000.<sup>66</sup> At the time of the decision, he was still registered as a pupil supervisor.<sup>67</sup>

In another high-profile decision, Ryan Beckwith, a partner of a major international law firm, appeared before the SDT for engaging in sexual activity with a junior employee.<sup>68</sup> The conduct included inviting himself into the employee's home and engaging in sexual conduct with her, where she was so intoxicated she could not fully remember what happened.<sup>69</sup> While the SDT found that Beckwith knew his conduct was inappropriate, the SDT considered that this was mitigated by the fact that it was a 'single episode of brief duration' and the incident was 'caused by a lapse in [Beckwith's] judgment that was highly unlikely to be repeated'.<sup>70</sup>

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60 *Ibid.*

61 *Ibid.*

62 OLSC, *Inappropriate Personal Conduct in a Law Practice* (information sheet, June 2019) 1.

63 *Ibid.*

64 *Bar Tribunals and Adjudication Service v Kevin Barry* (Disciplinary hearing, Case Reference 2018/0094/D3, BTAS, 20 March 2019) [8].

65 *Ibid* [3].

66 *Ibid* [23].

67 *Ibid* [26].

68 *Solicitors Regulation Authority v Ryan Beckwith* (Disciplinary hearing, Case No 11887-2018, SDT, 30 January 2020) ('Beckwith').

69 *Ibid* [25.16]–[25.18].

70 *Ibid* [33]–[34].

Despite the fact that Beckwith was a partner and in a position of significant seniority to person A, the SDT held that ‘[it was not] the case that he had used his position of seniority and authority to engineer the sexual encounter’.<sup>71</sup> Significantly, it ‘did not find that the Respondent posed a future risk to the public... nor did it consider that the Respondent posed a future risk to the reputation of the profession’.<sup>72</sup> Beckwith received a fine of £35,000 (plus costs).

Beckwith subsequently successfully appealed, with the High Court of England and Wales criticising the SRA for its conduct of the case: ‘Regulators will do well to recognise that it is all too easy to be dogmatic without knowing it; popular outcry is not proof that a particular set of events gives rise to any matter falling within a regulator’s remit’.<sup>73</sup> The High Court found that Beckwith’s conduct did not fall within the scope of the conduct principles.

*‘Neither [Principle] has unfettered application across all aspects of a solicitor’s private life... [The Principles] may reach into private life only when conduct that is part of a person’s private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor’s profession.’<sup>74</sup>*

The High Court’s decision points to the tension between the appropriate scope of professional regulation. It suggests a divergence of those who believe the conduct of legal professionals, where there is any nexus with the profession at all (the complainant in Beckwith was a junior solicitor at the firm), is within regulatory scope, and those (including the High Court in *Beckwith*) who consider a more pronounced nexus is necessary, in the absence of which the matter is best left to general law. While much will depend on the particular wording of regulatory provisions, this tension – which was echoed in the discussions that led to the formulation of the latest IBA conduct guidelines – suggests a wider ideological divergence.

Similar issues arose in a recent Australian case, *Council of the New South Wales Bar Association v EFA (a pseudonym)*, decided in December 2021.<sup>75</sup> Disciplinary proceedings had been commenced against a barrister who was alleged to have engaged in inappropriate sexual conduct towards a junior clerk while intoxicated at a social function. At first instance, the tribunal found that the respondent’s conduct did not amount to professional misconduct, but did amount to unsatisfactory professional conduct (a lower threshold). The tribunal did not fine the respondent, but reprimanded him and ordered him to pay costs. The regulator appealed, challenging the finding that the conduct did not constitute professional misconduct, and seeking a penalty including a fine and mandatory sexual behaviour counselling. The NSW Court of Appeal rejected the appeal and refused to increase the penalty, on the basis of what it described as ‘extra-curial punishment’, including:

- ‘notwithstanding the non-publication orders, a level of public notoriety and humiliation;
- a four-year period of anxiety, while the Council’s investigations proceeded;

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71 *Ibid* [35].

72 *Ibid* [34].

73 [2020] EWHC 3231 (Admin) [54].

74 *Ibid* [53]–[54].

75 [2021] NSWCA 339 (21 December 2021).

- *a further period of anxiety since the filing of the Council's appeal;*
- *severe impact on the respondent's mental health...*
- *the termination of the respondent's marriage and disruption to his family;*
- *a very significant quantifiable cost resulting from the variation in the terms of the respondent's policy of professional indemnity insurance for 2022, with an unquantifiable potential penalty in forthcoming years (already, the annual cost has dwarfed the maximum fine this Court could impose); and*
- *an unquantifiable but real and significant impact on the respondent's practice'.<sup>76</sup>*

It is not appropriate for this report to comment on individual cases. But the trend in sanctions and regulatory scope exemplify a dissonance between stated regulatory efforts, and the findings and penalties delivered by disciplinary tribunals. This becomes even more pronounced when compared to the typical sanctions passed down for other forms of misconduct – particularly financial misconduct – where disbarment is not uncommon. A dissonance in the treatment of sexual and financial wrongdoing has also been observed in other contexts.<sup>77</sup>

Continued low-level sanctions (or no sanctions at all) may discourage targets of harassment from reporting to their regulator, and act as a disincentive to regulators proceeding with such disciplinary matters.

On 1 January 2022, the BTAS issued its latest Sanctions Guidance.<sup>78</sup> Notably, the lower end of the range of penalties for 'misconduct of a sexual nature' and 'discrimination and non-sexual harassment' was increased to a 12-month suspension from practice.<sup>79</sup> The guidance noted that it is 'important that misconduct of these types is marked by serious sanctions to maintain public confidence, act as a deterrent and encourage the reporting of such misconduct'.<sup>80</sup> It added:

*'Mitigation based on the respondent's personal circumstances, health, good character/references needs to be treated with caution in the context of sexual misconduct, discrimination and harassment. The nature of such misconduct means that serious sanctions are required to protect others and promote standards regardless, in most instances, of the respondent's own circumstances. Many practitioners will face personal challenges, such as ill-health, bereavement and divorce, but do not resort to committing misconduct.'<sup>81</sup>*

## Entity-level response

Some regulators are beginning to explore using their powers to tackle inappropriate conduct at the broader workplace level. For example, in response to data from its harassment survey, the VLSB+C has launched a 'reactive response' to combatting sexual harassment. Such a procedure will necessitate that the regulator take action in response to complaints, reports or other intelligence to combat a culture of

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<sup>76</sup> *Ibid* [195].

<sup>77</sup> See generally: Sara Carnegie, *Sextortion: A Crime of Corruption and Sexual Exploitation* (IBA, 2019).

<sup>78</sup> BTAS, *Sanctions Guidance Version 6* (6 January 2022) [www.tbta.org.uk/wp-content/uploads/2021/12/BTAS-Sanctions-Guidance-Jan-2022-Version-6-Final.pdf](http://www.tbta.org.uk/wp-content/uploads/2021/12/BTAS-Sanctions-Guidance-Jan-2022-Version-6-Final.pdf) accessed 2 February 2022.

<sup>79</sup> *Ibid* i.

<sup>80</sup> *Ibid* 19.

<sup>81</sup> *Ibid*.

unacceptable behaviour. The proposed measures include increased investigation and disciplinary action against individual lawyers.

Significantly, an entity-level response is also being included. This mechanism would have the VLSB+C monitor reports to identify ‘hotspots’ of inappropriate behaviour and use the regulator’s auditing powers to undertake targeted compliance audits of a firm’s management and supervision structures.<sup>82</sup> VLSB+C’s Chief Executive Officer (CEO), Fiona McLeay, has echoed these measures by proclaiming that ‘as the regulator, we will be doing everything in our power to investigate and respond to complaints about sexual harassment’.<sup>83</sup>

The OLSC has a similar intention to utilise disciplinary powers beyond individual lawyers who engage in inappropriate conduct and is looking towards targeting entities.<sup>84</sup> The OLSC believes that law practices and barrister chambers ‘have an obligation to prevent a culture of workplace harassment, bullying or sexual harassment’ and that those who fail to do so should be held to account.<sup>85</sup> This may include conducting compliance audits, and/or the issuing of management system directions to ensure policies and processes are in place to target inappropriate behaviour and encourage reporting.<sup>86</sup>

## Protecting witnesses at tribunal

Some regulators have made efforts to improve the ways tribunals deal with sexual harassment matters. For example, in January 2020 the Law Society of Ontario introduced new *Tribunal Rules of Practice and Procedure* (the ‘Rules’), which are designed to assist vulnerable witnesses, including sexual harassment or assault complainants, in bringing forward a matter. The new Rules allow, ‘where it would be fair and in the interests of justice’ for a witness support person, to allow the witness to testify without the person against whom the complaint is being made being present, to prevent the person against whom the complaint has been made from cross-examining the complainant and to make any other orders to accommodate or protect the witness.<sup>87</sup> The Rules also allow for the witness to testify in person, by telephone or videoconference, or in writing.<sup>88</sup>

The BTAS has also introduced a ‘vulnerable witness policy’ to enable targets of sexual or violent harassment to ‘give evidence without causing alarm or distress’.<sup>89</sup> The policy includes, but is not limited to: pre-hearing Tribunal visits; a single BTAS point of contact; use of video links; the employment of interpreters or intermediaries; utilisation of screens or other measures in order to protect the identity of the witness; communication aids; hearing evidence (either whole or in part) in private; and allowing carers or support

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82 As permitted under s 256 of the *Legal Profession Uniform Law*.

83 VLSB+C, ‘Sexual harassment in Victorian legal workplaces is common and disproportionately affects women’ (press release, 1 April 2020) <https://lsbc.vic.gov.au/news-updates/news/sexual-harassment-victorian-legal-workplaces-common-and-disproportionally-affects> accessed 2 February 2022.

84 OLSC, *Inappropriate Personal Conduct in a Law Practice* (n 64) 3.

85 *Ibid.*

86 *Ibid.*

87 Law Society of Ontario, *Tribunal Rules of Practice and Procedure* Rule 6.6.

88 Law Society of Ontario, *Tribunal Rules of Practice and Procedure* 7.3

89 BTAS, *Vulnerable Witnesses Policy* s 4.1.

workers to assist when evidence is being given.<sup>90</sup> Significantly, the policy prevents any individual who is charged with a sexual or violent allegation from cross-examining a witness who is the alleged target.<sup>91</sup>

## Policies and procedures

The Law Society of Ontario requires each legal workplace with at least ten licensees to complete an equality, diversity and inclusion self-assessment, which is to be included in the Lawyer and Paralegal Annual Reports every two years.<sup>92</sup> The self-assessment asks whether legal practices have ‘actively demonstrated a commitment to fostering an environment that is free from discrimination and harassment’ by way of establishing policies, training and complaints processes centred on discrimination, harassment and sexual harassment.<sup>93</sup>

The aim of the self-assessment is to engage legal workplaces in ‘dialogue and reflection on the current state of diversity and inclusion within their workplace and encourage them to work proactively to advance diversity and inclusion’.<sup>94</sup> It will also allow the Law Society of Ontario to gather information on policies and procedures to address equality and diversity, and to measure the ongoing progress of the profession.<sup>95</sup> To this end, the Law Society of Ontario has developed best practice guides and model policies, including a model policy to address Workplace Harassment and Sexual Harassment.<sup>96</sup>

Similarly, the BSB’s Handbook requires chambers or BSB-regulated entities to, at a minimum, have a written anti-harassment policy which states that ‘harassment will not be tolerated or condoned,’ and that those who are targets of harassment have the right to complain.<sup>97</sup> The Handbook establishes a process for communicating the policy and sets out a procedure for dealing with complaints of harassment.<sup>98</sup>

In February 2018, the ABA passed Resolution 302, urging all employers ‘to adopt and enforce policies and procedures that prohibit, prevent, and promptly redress harassment and retaliation based on sex, gender, gender identity, sexual orientation, and the intersectionality of sex with race and/or ethnicity’.<sup>99</sup> The following month, the ABA Commission on Women in the Profession released *Zero Tolerance: Best Practices for Combating Sex-Based Harassment in the Legal Profession*, which provides a toolkit to assist legal employers in recognising inappropriate workplace behaviour and aid with designing the best practices to combat it.<sup>100</sup>

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90 *Ibid* 4.2.

91 *Ibid* 4.3.

92 Law Society of Ontario, ‘Self-Assessment Questions’ at <https://lso.ca/about-lso/initiatives/edi/measuring-progress/self-assessment-questions> accessed 2 February 2022.

93 *Ibid*.

94 Law Society of Ontario, ‘Measuring Progress – Inclusion Index’ at <https://lso.ca/about-lso/initiatives/edi/measuring-progress> accessed 2 February 2022.

95 Law Society of Ontario, ‘Equality, Diversity and Inclusion’ at <https://lso.ca/about-lso/initiatives/edi> accessed 2 February 2022.

96 Law Society of Ontario, *Preventing Harassment, Discrimination and Violence in the Legal Workplace: Guide to Developing Policies for Firms or Organisations* (Best Practice Guide, December 2015).

97 BSB, *Bar Standards Board Handbook* rC110(j).

98 *Ibid*.

99 ABA, Resolution 302 (adopted 5 February 2018) [1].

100 ABA, ‘Zero Tolerance’ [www.americanbar.org/groups/diversity/women/initiatives\\_awards/the-zero-tolerance-program-toolkit/](http://www.americanbar.org/groups/diversity/women/initiatives_awards/the-zero-tolerance-program-toolkit/) accessed 2 February 2022.

Likewise, in 2020, the President of the Law Society of Singapore (which has both regulatory and representative responsibilities) announced that the Law Society would seek a pledge from the biggest member law firms to ‘make a statement and stand for zero tolerance of bullying and harassment’.<sup>101</sup>

The Finnish Bar Association published a guide for preventing and intervening in sexual harassment in 2018.<sup>102</sup> The guide contains instructions for employers on how to prevent, investigate, stop and monitor sexual harassment in legal workplaces, along with instructions for those who experience and witness sexual harassment.<sup>103</sup> The guide is intended to assist workplaces to develop their own policies and guidelines on responding to and preventing sexual harassment.<sup>104</sup>

Similarly, in June 2020, the Law Society of Singapore published *Workplace Harassment in the Legal Profession: A Resource Guide for Members*,<sup>105</sup> which stresses the Law Society’s ‘zero tolerance approach to any and all forms of harassment in the legal profession’.<sup>106</sup> It provides definitions of harassment, alongside case study examples and then goes on to outline best practice responses to address workplace harassment.<sup>107</sup> While the guide provides resources for targets of harassment, it is principally aimed at senior management and executive leadership, to ensure legal workplaces are proactive in addressing and eliminating workplace harassment.<sup>108</sup>

The Tokyo Bar Association has developed a number of initiatives to target discrimination and sexual harassment in the profession. The *Rules for Discriminating Treatment Due to Sex and Prevention of Sexual Harassment* outline the definitions of inappropriate behaviour, as well as establishing complaint mechanisms. Article 1 of the *rules* emphasises that the Tokyo Bar Association considers that discriminatory treatment and sexual harassment infringe upon basic human rights, and call upon members to prevent such treatment.<sup>109</sup> Furthermore, Article 4 creates an obligation on members to prevent sexual harassment and respond appropriately when complaints are made.<sup>110</sup>

Under the complaint mechanism, complaints can be made directly to the Tokyo Bar Association or a nominated counsellor who has been designated to deal confidentially with complaints relating to discrimination or sexual harassment.<sup>111</sup> Once a complaint has been made, the complainant will receive an initial consultation interview with a counsellor.<sup>112</sup> The Tokyo Bar Association also has a dedicated Sex Discrimination and Sexual Harassment Counselling Section to deal with inappropriate behaviour in the profession.<sup>113</sup>

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101 Gregory Vijayendran, ‘Opening of the Legal Year 2020’ (Speech, Law Society of Singapore, 5 January 2020) [26].

102 Finnish Bar Association, *#Eimilläännoikeudella: Eliminating Workplace Harassment* (15 June 2018).

103 *Ibid.*

104 *Ibid* 4.

105 Law Society of Singapore, *Workplace Harassment in the Legal Profession: A Resource Guide for Members* (June 2020).

106 *Ibid* 4.

107 *Ibid.*

108 *Ibid* 5.

109 Tokyo Bar Association, *Rules for Discriminating Treatment Due to Sex and Prevention of Sexual Harassment*, Art 1.

110 *Ibid* Art 4.

111 Tokyo Bar Association, ‘Initiatives to prevent gender discrimination and sexual harassment’ [www.toben.or.jp/know/toben/sexuhara.html](http://www.toben.or.jp/know/toben/sexuhara.html) accessed 2 February 2022.

112 *Ibid.*

113 *Ibid.*



## Counselling

A number of regulators have established, or contributed to, counselling services, to provide confidential advice and assistance to targets of bullying and sexual harassment. For example, legal mental health charity LawCare provides counselling services to legal professionals in the United Kingdom.<sup>114</sup>

The Law Society of Singapore similarly offers a confidential counselling service, administered in conjunction with the Counselling and Care Centre.<sup>115</sup> They also offer a Pastoral Care Support Scheme for young practitioners.<sup>116</sup> The scheme is designed to assist them with questions or problems relating to ethics, guidance and stress management.<sup>117</sup> The NZLS, in conjunction with NZ Charity Vitae, is trialling a free counselling service, available to anyone working in legal workplaces.<sup>118</sup> The counselling service is available either via a hotline, online referral form, or app.<sup>119</sup>

## Summary

Globally, the regulatory response to bullying and sexual harassment is still emerging. However, it is clear from that a number of regulators are now taking wholesale action to address bullying and sexual harassment in the profession. In particular, reforms to professional conduct rules, reporting and complaint mechanisms, and policies and procedures are becoming more commonplace. Yet, the regulatory response has not been universal. In order to garner a more complete understanding of the global approach to this issue, as well as any challenges and aspirations, we undertook a survey of legal regulators.

**“We have taken the renewed focus on sexual harassment prompted by the #MeToo movement very seriously.**

Europe, standalone regulator

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114 ‘Distress calls peak at mental health helpline’ *Law Society of Ireland Gazette* (online, 22 January 2019) [www.lawsociety.ie/gazette/top-stories/2019/01-january/distress-calls-peak-at-lawyers-mental-health-helpline](http://www.lawsociety.ie/gazette/top-stories/2019/01-january/distress-calls-peak-at-lawyers-mental-health-helpline) accessed 2 February 2022.

115 The Law Society of Singapore, ‘LawCare’ [www.lawsociety.org.sg/the-law-society/support-schemes/lawcare](http://www.lawsociety.org.sg/the-law-society/support-schemes/lawcare) accessed 2 February 2022.

116 The Law Society of Singapore, ‘Relational Mentorship’ [www.lawsociety.org.sg/the-law-society/support-schemes/relational-mentorship-rm/](http://www.lawsociety.org.sg/the-law-society/support-schemes/relational-mentorship-rm/) accessed 2 February 2022.

117 *Ibid.*

118 NZLS, ‘Legal Community Counselling Service’ [www.lawsociety.org.nz/professional-practice/practising-well/legal-community-counselling-service/](http://www.lawsociety.org.nz/professional-practice/practising-well/legal-community-counselling-service/) accessed 2 February 2022.

119 *Ibid.*

# Comparative perspective

Before proceeding to the survey data, it is helpful to contextualise the regulatory response within law to other sectors. Law is not, of course, the only profession to experience high levels of inappropriate personal behaviour, nor the only sector where regulators have sought to take action.

## Financial services and accounting

The Financial Conduct Authority (FCA), which regulates financial firms providing services to consumers and maintains the integrity of the financial markets in the UK, published *Transforming Culture in Financial Services* in March 2018.<sup>120</sup> The collection of essays provide insight into: what a ‘good culture’ looks like; the role of regulation and regulators in managing firms’ culture; suggestions for firms to influence their culture beyond traditional incentives; and ideas as to how firms should go about developing a desired culture in a practical way.

The FCA subsequently participated in the Women and Equalities Committee of the UK House of Commons inquiry into workplace harassment, and wrote to the Committee in September 2018 confirming: ‘we view sexual harassment as misconduct which falls within the scope of our regulatory framework’.<sup>121</sup>

Two years later, the FCA published a second discussion paper,<sup>122</sup> in which it focused on ‘purpose’, one of the four drivers of culture that it identified, examining the benefits of having a ‘purposeful culture’. In its Business Plan 2019/2020, the FCA stated that it expects firms to demonstrate awareness of the FCA’s expectations on culture, to reflect this in their practices and to make specific improvements where the FCA identifies shortcomings. The process of embedding such a culture within firms is, the FCA has said, a cross-sector supervisory and enforcement priority.

It is the FCA’s stated desire that firms transform culture away from one motivated solely by the fear of enforcement or by financial incentives to one that considers the public interest. It reiterated its emphasis in a ‘Dear CEO’ letter in January 2020, highlighting its expectations following ‘recent, publicised incidents of non-financial misconduct’.<sup>123</sup> This purposive, culture-led approach is an interesting one, reflecting an understanding that genuine change requires initiatives which address the underlying conditions that allow harassment and bullying to thrive, rather than focusing narrowly on addressing the conduct itself.

American financial services regulators have also taken a number of steps to address harassment. For example, as of January 2020, a person seeking to renew his or her professional licence issued by the Illinois division of Financial and Professional Regulation (IDFPR) must complete a one-hour continuing education

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120 FCA, *Transforming Culture in Financial Services* (discussion paper, March 2018) [www.fca.org.uk/publication/discussion/dp18-02.pdf](http://www.fca.org.uk/publication/discussion/dp18-02.pdf) accessed 2 February 2022.

121 FCA letter to the Right Honourable Maria Miller MP, Chair of the Women and Equalities Committee (28 September 2018) [www.parliament.uk/globalassets/documents/commons-committees/women-and-equalities/Correspondence/180928-FCA.pdf](http://www.parliament.uk/globalassets/documents/commons-committees/women-and-equalities/Correspondence/180928-FCA.pdf) accessed 2 February 2022.

122 FCA, *Transforming culture in financial services: Driving purposeful cultures* (discussion paper, March 2020) [www.fca.org.uk/publication/discussion/dp20-1.pdf](http://www.fca.org.uk/publication/discussion/dp20-1.pdf) accessed 2 February 2022.

123 FCA letter regarding expectations on incidents of misconduct (6 January 2020) [www.fca.org.uk/publication/correspondence/dear-ceo-letter-non-financial-misconduct-wholesale-general-insurance-firms.pdf](http://www.fca.org.uk/publication/correspondence/dear-ceo-letter-non-financial-misconduct-wholesale-general-insurance-firms.pdf) accessed 2 February 2022.



course in sexual harassment prevention.<sup>124</sup> Illinois is currently the only state which has adopted such an explicit requirement for licensees, but several American states already require sexual harassment training for state and/or private employees.

In South Africa, the South African Institute of Chartered Accountants (SAICA) has a Code of Ethics and Legal Compliance (the 'Code'), which sets out ethical principles and provides guidance on how to apply them in practice,<sup>125</sup> including a principle of 'Diversity, Inclusion and Non-Discrimination' that prohibits harassment. The Code contains provisions on reporting unethical behaviour or raising concerns that the requirements of the Code or ethical policies are not being met.

## Insurers

The Prudential Regulation Authority (PRA) in the UK has ordered Chief Executive Officers (CEOs) of general insurance firms to prevent sexual harassment and bullying in the workplace, in the wake of allegations of impropriety at Lloyd's.<sup>126</sup> The insurance market is required to provide the PRA with a detailed breakdown of its whistleblowing channels and procedures, along with its training programmes for senior management and staff annually for the next three years.

The PRA has warned that offending managers could be banned from working in the insurance industry, and cautioned that perpetrators may fail the fitness and propriety requirement within the Senior Managers and Certification Regime (SMCR). The SMCR is expanding the ethical responsibility of staff at all levels, and requires companies and employees to be able to demonstrate where responsibility lies and the scope of prevention, reporting and sanction mechanisms.<sup>127</sup>

## Doctors

The General Medical Council (GMC) in the UK is a member of the informal Anti-Bullying Alliance ('Alliance'),<sup>128</sup> created to enable the sharing of ideas and the enactment of interventions across the entirety of the National Health Service (NHS). The group has published a reference document for health leaders giving guidance on how to tackle bullying and undermining. This document contains a wide variety of initiatives and practical approaches that Alliance members are undertaking to change workplace culture and professional behaviours.

Additionally, during 2019, the GMC piloted a training programme called Professional Behaviours and Patient Safety, which is designed to help improve doctor's skills and confidence to address unprofessional

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124 National Association of State Boards of Accountancy, 'IL Requires Harassment CPE' <https://nasba.org/blog/2020/01/23/il-requires-harassment-cpe/> accessed 2 February 2022.

125 SAICA, Code of Ethics and Legal Compliance, [www.saica.com/filemanager/userfiles/quienes/code\\_en.pdf](http://www.saica.com/filemanager/userfiles/quienes/code_en.pdf) accessed 2 February 2022.

126 Shruti Chopra, 'UK regulator tells insurers to tackle harassment following Lloyd's report', *Financial News* (online, 5 November 2019) [www.fn.london.com/articles/uk-regulator-calls-on-insurers-to-tackle-harassment-in-wake-of-lloyds-report-20191105](http://www.fn.london.com/articles/uk-regulator-calls-on-insurers-to-tackle-harassment-in-wake-of-lloyds-report-20191105) accessed 2 February 2022.

127 *Ibid.*

128 GMC, 'GMC supports anti-bullying guide for health leaders' (4 April 2019) at [www.gmc-uk.org/news/news-archive/gmc-supports-anti-bullying-guide-for-health-leaders](http://www.gmc-uk.org/news/news-archive/gmc-supports-anti-bullying-guide-for-health-leaders) accessed 2 February 2022.

behaviours.<sup>129</sup> The half-day workshops combine interactive and small group work with facilitated discussions.

Doctors who attend are able to discuss their perceptions of unprofessional behaviours and how they impact patient safety. They are also able to practise the verbal and behavioural skills they need to challenge these behaviours. The current phase of piloting will test how this training can be offered in collaboration with employers to help them drive cultural change. Like the FCA's work, this initiative aims to address the pervasive 'culture' of workplace bullying by equipping doctors with the tools to identify and deal with these problematic behaviours.

The American Medical Association (AMA) in the US and the Medical Council of Canada (MCC) both have Codes of Conduct to ensure there is professional and ethical behaviour associated with their respective activities and platforms.<sup>130</sup> In medicine and several other sectors, a profession-wide code of conduct appears to be a baseline approach to addressing workplace behavioural standards.

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129 GMC, 'Professional behaviours and patient safety programme' [www.gmc-uk.org/about/how-we-work/corporate-strategy-plans-and-impact/supporting-a-profession-under-pressure/improving-support-for-doctors-to-raise-and-act-on-concerns/professional-behaviours-and-patient-safety-programme](http://www.gmc-uk.org/about/how-we-work/corporate-strategy-plans-and-impact/supporting-a-profession-under-pressure/improving-support-for-doctors-to-raise-and-act-on-concerns/professional-behaviours-and-patient-safety-programme) accessed 2 February 2022.

130 AMA, *Anti-Harassment Policy H-140.837* (2020) available at <https://policysearch.ama-assn.org/policyfinder/detail/Anti-Harassment%20Policy%20H-140.837?uri=%2FAMADoc%2FHOD.xml-H-140.837.xml> accessed 2 February 2022.

## Methodology and demographics

Between July and September 2020, the IBA and Acritas undertook a survey involving bodies that regulate the legal profession in different jurisdictions. It was available in both English and Spanish. Responses were anonymous and substantive questions were optional. The survey, which is extracted in Appendix 1, began by asking basic demographic questions. It then asked a series of questions about how regulators perceived and were responding to issues of bullying and sexual harassment within the profession they regulated. While the majority of questions were quantitative, at various points, respondents were given an option to provide qualitative comments.

Fifty-five regulators responded to the survey. Regional distribution is displayed in Figure 1. Additionally, in lieu of completing the survey, the Federation of Law Societies of Canada provided a collective submission summarising the position across its 14 law societies 'to the best of the Federation's knowledge'. The survey therefore provides a reasonably comprehensive summary of the global picture, although the data is more limited for Latin America (two responses) and absent for the Middle East (zero responses). All questions were optional, and some respondent organisations chose not to respond to certain questions (hence the sum total varies somewhat by question).



*Figure 1: survey respondents by jurisdiction*

Approaches to regulating the legal profession vary considerably around the globe. In some jurisdictions, the regulator is a standalone public or statutory body, independent of government and organisations representing the profession. In other jurisdictions, the representative bar association or law society has regulatory responsibilities. There are also some jurisdictions where regulation of the profession is under the authority of the judiciary and discipline is undertaken via an agency of the court, or through government. Responses to the survey were received from a broad cross-section of the different institutional types of regulators (see Figure 2).

Regulator type	Number of responses
Standalone regulator	24
Bar association or law society	31
Government body	5
Judicial body	9

*Figure 2: responses by institutional type*

# Sexual harassment

## Regulatory framework

The majority of respondent organisations oversaw a regulatory regime where sexual harassment was explicitly prohibited (see Figure 3). This was less common in Europe, though, where only one-quarter of respondent organisations had such a prohibition.

Where respondent organisations did not have rules prohibiting sexual harassment, they were asked whether case law or other directives had brought it within regulatory scope – 40 per cent answered affirmatively. Accordingly, whether by express rules or subsequent interpretation, about 70 per cent of respondent organisations had regulatory authority to address sexual harassment.

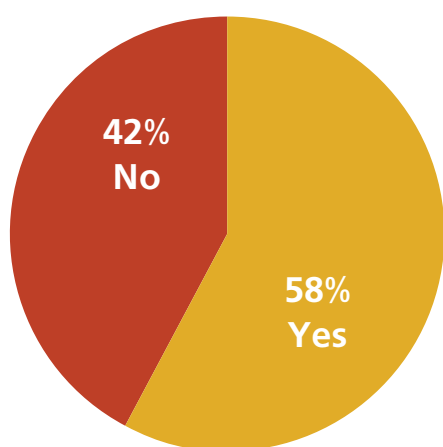


Figure 3: do your rules prohibit sexual harassment?

Respondent organisations with an explicit prohibition on sexual harassment were asked if their rules or regulations provide a definition of sexual harassment. The majority did (see Figure 4).

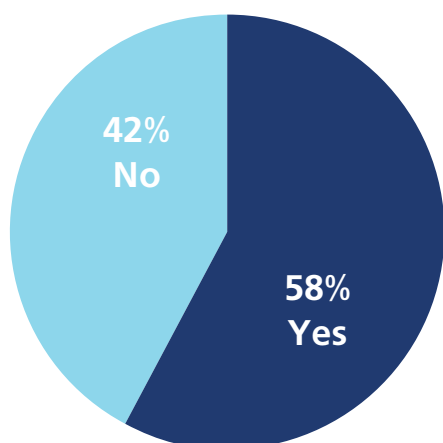


Figure 4: do your rules define what constitutes sexual harassment?

## Disciplinary action

An overwhelming majority of respondent organisations said they had the authority to bring disciplinary proceedings against a member of the profession for committing sexual harassment (92 per cent). There was some regional variation: only a bare majority of respondent organisations from Asia had such jurisdiction, while all respondent organisations from Australasia and the Pacific, and Europe, could bring such proceedings.

Arguably more significant than whether regulators have this power is if they are putting it to use. Fifty-eight per cent of respondent organisations with authority to bring disciplinary proceedings for sexual harassment had done so (see Figure 5). North American regulators were particularly active, with 86 per cent having brought such claims.

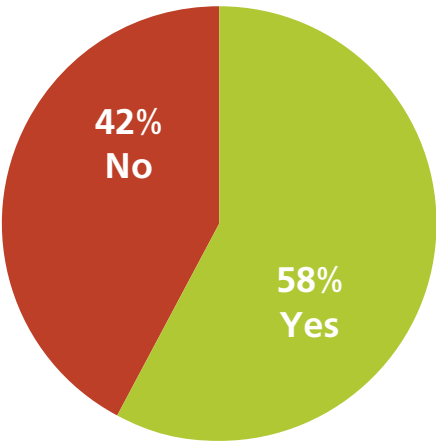


Figure 5: have you brought disciplinary proceedings against a member of the profession for committing sexual harassment?

## Regulatory priority

Forty-one respondent regulators answered the question on to what extent they viewed addressing sexual harassment as a regulatory priority, on a scale from one to ten (with ten being the highest priority). More than half of respondents ranked sexual harassment as seven or above, with seven being the median answer.

By region, Australasia and the Pacific had the highest median priority ranking (eight), while North America had the lowest (five) – see Figure 6. By institutional type, standalone regulators had the highest median priority ranking (eight) – see Figure 7.

### Region | Median priority ranking



Figure 6: sexual harassment as a regulatory priority – by region

## Regulator type | Median priority ranking

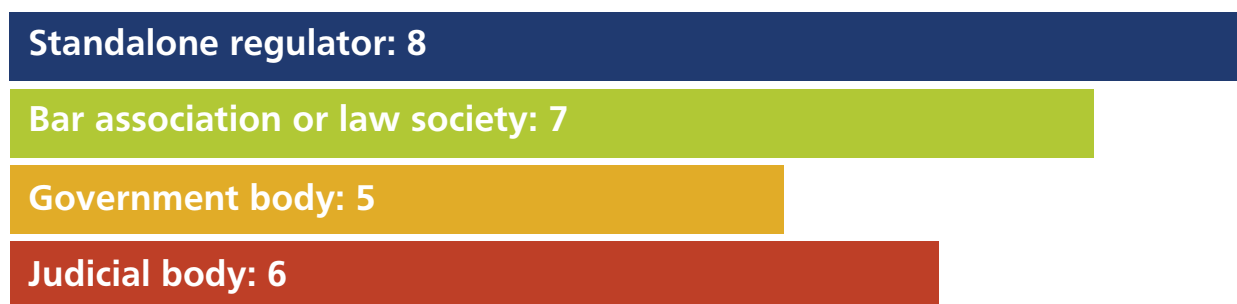


Figure 7: sexual harassment as a regulatory priority – by type

“Answering the questions makes it look like we are invested, but have nothing to show for it. I am hoping that will change with law reform and bringing the issue to the forefront to address it at a cultural level. It is one thing to have powers to address bad behaviour (when it is supported by evidence) but it is another to have in place demonstrable systems that confront the cultural problems head on, to prevent them and empower the ‘at risk’ to manage a situation and know there is a safe place to come forward.

Australasia and the Pacific, standalone regulator

# Bullying

## Regulatory framework

In contrast to sexual harassment, far fewer respondent organisations had rules explicitly prohibiting bullying: just one-quarter of regulators (see Figure 8). Express prohibitions on bullying were relatively more common in Australasia and the Pacific (70 per cent), and particularly uncommon in North America (seven per cent). However, case law or other directives had brought bullying within regulatory scope for one-in-three regulators without an express prohibition. Of those jurisdictions with an express prohibition, almost 70 per cent contained a definition of bullying.

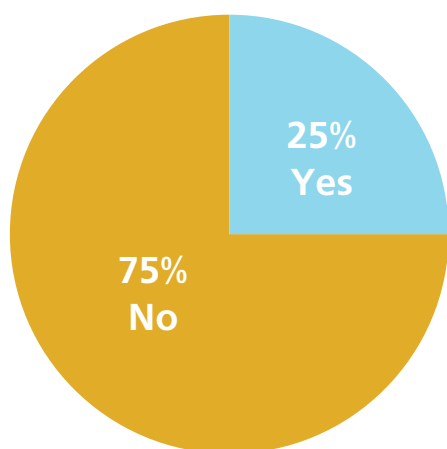


Figure 8: do your rules prohibit bullying?

## Disciplinary action

Despite the lack of express prohibitions on bullying, three-quarters of respondent organisations said they had the ability to bring disciplinary proceedings for such conduct. Notably, all respondent organisations in Europe had such authority. The reason for this disjunct between conduct rules and regulatory jurisdiction was explained by the Federation of Law Societies of Canada in its submission:

*‘At present, there are no explicit provisions in law society codes relating to bullying. However, we are advised by some law societies that proceedings are brought against their members under various other provisions of their codes/ rules for conduct that is essentially bullying (eg, provisions relating to civility, integrity, harassment).’*

Disciplinary action for bullying is less prevalent than for sexual harassment: of those respondent organisations with relevant authority, less than half had actually brought disciplinary proceedings for bullying (see Figure 9). Notably, 82 per cent of North American regulators (excluding the Canadian submission) said they had brought a disciplinary case for bullying.



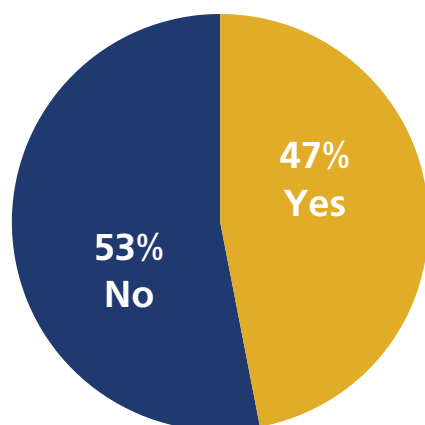


Figure 9: have you brought disciplinary proceedings against a member of the profession for committing bullying?

## Regulatory priority

Forty-two respondent regulators answered the question as to what extent they viewed addressing bullying as a regulatory priority, on a scale from one to ten (with ten being the highest priority). More than half of respondents ranked bullying as six or below, with six being the median answer. By region, Australasia and the Pacific had the highest median priority ranking (eight), while Africa had the lowest (four) – see Figure 10. By institutional type, standalone regulators had the highest median priority ranking (eight) – see Figure 11.

In comparison to priority rankings for sexual harassment, these responses indicate that bullying is considered to be somewhat less of a priority for regulators. Otherwise, there was broad consistency between regulator prioritisation of the two categories of inappropriate behaviour, with almost identical median priority ratings across region and regulator type.

Region	Median priority ranking
Africa	4
Asia	7
Australasia and the Pacific	8
Europe	7
North America	5

Figure 10: bullying as a regulatory priority – by region

Regulator type	Median priority ranking
Standalone regulator	8
Bar association or law society	7
Government body	6
Judicial body	5

Figure 11: bullying as a regulatory priority – by type

“Some of the barriers to addressing bullying and/or sexual harassment in the profession are deeply rooted in its cultural and/or structural elements. Approximately 80 per cent of the profession is self-employed and chambers may lack [human resources] and other structures to support their members in relation to bullying and sexual harassment.

The profession is small and reputation based. Barristers typically rely on clerks and solicitors, who are not regulated... for their instructions. Senior or influential members of the Bar, and judges, can also influence barristers' reputations. Pupil barristers and very junior barristers are particularly vulnerable, as they rely on senior members of the profession to train them, lead them in cases and, in the case of pupil barristers, recommend them for tenancy. Most barristers do not formally report their experiences due to the fear of a negative impact on their reputation and career progression. Instead, they prefer to talk to their friends, family or peers, which leads to the lower levels of formal reporting.

Also, the range in frequency and seriousness of the incidents, implies a complex picture of bullying and harassment at the Bar which can be hard to identify, define and record. These factors, and others, make it very difficult for many members of the profession to even talk about, never mind report, bullying and sexual harassment. Many practitioners are concerned that doing so would have an adverse impact on their reputation and practice. These concerns are likely to be greater for the most junior members of the profession.

Europe, standalone regulator

# Regulatory context

## Reporting

For regulators to be able to address sexual harassment or bullying, targets of such conduct must feel confident reporting the incidents to the regulator. Accordingly, an important section of the survey sought to understand how respondent organisations managed reporting of incidents.

First, they were asked whether they had reporting channels in place to facilitate reporting of bullying and/or sexual harassment by the profession. Two-thirds of respondent organisations indicated that they did (see Figure 12). Not unsurprisingly given their function, standalone regulators were the regulator-type most likely to have reporting channels (90 per cent). Of these, the majority (62 per cent) said their reporting process was general in nature (ie, used for any form of misconduct). Seventeen per cent had specific reporting channels for incidents of bullying and/or sexual harassment, and 20 per cent accepted reports via both specific and general channels.

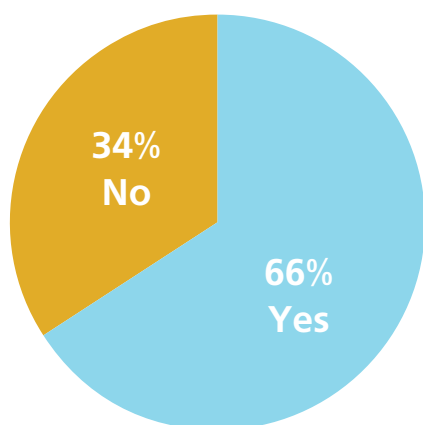


Figure 12: do you have reporting channels in place to facilitate reports of bullying and/or sexual harassment by those you regulate?

Respondent organisations were asked to provide further details about their reporting processes. Some of their qualitative responses are extracted below:

**“All law societies in Canada have reporting channels in place for complaints against the legal professionals they regulate, which includes reports about bullying and sexual harassment. Some law societies have a special process in place for complaints of sexual harassment and related conduct. For example, the Law Society of British Columbia has created a trauma-informed approach and guidance for handling complaints of sexual misconduct. Other law societies have a dedicated and trained staff member(s) to handle these complaints’.**

Submission by the Federation of Law Societies of Canada

**“We have deployed the Spot app to allow members to report instances of bullying or harassment. Members can also report incidents to office-bearers.**

Europe, bar association or law society

**“We have a standard operating procedure for the receipt of information (including reports and complaints) about sexual harassment. The procedure sets out ways in which information may be received, how it will be handled (eg. when it will informally dealt with, or alternatively assessed, investigated and pursued in the disciplinary tribunal) and where referrals to other organisations may be appropriate (eg, the occupational health and safety regulator, a human rights body or the police). We do not have a similar specific reporting channel in place for reporting workplace bullying.**

Australasia and the Pacific, standalone regulator

**“Currently any complaints regarding sexual harassment and bullying are facilitated through the normal complaint process (ie, used for any form of misconduct). Our organisation is currently working on training and procedures on how to facilitate better complaint handling etc. of complaints regarding sexual harassment and bullying.**

Australasia and the Pacific, standalone regulator

One issue that has generated particular controversy in a number of jurisdictions is the concept of mandatory reporting, whether placed upon individuals or entities. Just six respondent organisations indicated that they had mandatory reporting obligations (making up 21 per cent of those with reporting channels). Interestingly, these six were widely spread from a geographical perspective: two in North America and one each in Latin America, Europe, Australasia and the Pacific, and Asia. It was also notable that, by regulator type, mandatory reporting was most common among regulators connected to the judiciary.

**“[a relevant provision] places all barristers under a duty to self-report if they have committed serious misconduct. [Another provision] places all barristers under a duty to report serious misconduct by other members of the profession. Guidance to these rules... lists assault or harassment as examples of serious misconduct.**

Europe, standalone regulator

The use of ‘informal reporting’ to regulators has been encouraged in a number of jurisdictions to overcome the barriers to formal reporting. While such informal reports might not lead to disciplinary action, they can help inform regulators of the nature and extent of the challenge faced in this context. Sixty-five per cent of respondent organisations with reporting channels indicated that they accepted both formal and informal reports, while 31 per cent could only accept formal reports. An inability to accept informal reporting of incidents was particularly prevalent in North America, where 71 per cent of respondent organisations could only accept formal reports (this data point does not cover Canada).

*“There is a dual process. A report can be made that can be anonymous, with the report kept for statistical purposes. Bar Council is informed of the report. A complaint can be made that will trigger an investigation process. This is not anonymous.*

Australasia and the Pacific, bar association or law society

*“An informal reporting avenue by phone (and hopefully, soon to be by online platform) of instances and as much or as little detail as the reporter is comfortable giving.*

Australasia and the Pacific, standalone regulator

*“Several law societies have a special advisor or ombudsman to whom inquiries can be made before a complaint is filed. These individuals provide confidential guidance, support and/or information about the complaint process to potential complainants so they may make informed decisions about how to address their concerns. For example, the Law Society of Alberta has an equity ombudsman [and] the Law Society of Ontario has Discrimination and Harassment Counsel who operates independent of the law society. Similar positions exist in other law societies. These are not reporting channels per se, they are intended to be a resource for offering support and helping individuals identify and evaluate their options to resolve their concerns. Where an individual decides to escalate their inquiry to a complaint, they are directed to the law society's formal reporting process.*

Submission by the Federation of Law Societies of Canada

## Responses

Despite the increased attention on these issues, and the growing regulatory interest, the number of reports made to regulators about incidents of bullying or sexual harassment remains low. Respondent organisations were asked how many reports of bullying and sexual harassment they had received in the prior 12 months. Interestingly, less than half of respondent organisations responded to the question (which might suggest a lack of standalone internal data).

Of those who did respond, only three regulators had received more than 20 reports of sexual harassment in the past year, and only one had received more than 20 reports of bullying (see Figures 13 and 14). Forty-eight per cent had received between 1–20 reports of sexual harassment, and 56 per cent had received between 1–20 reports of bullying. Given the extensive empirical research around the prevalence of inappropriate behaviour in law, these numbers highlight a chronic underreporting problem. There were no statically significant variations in reporting responses by region or regulator type.

## Number of reports | Number of regulators

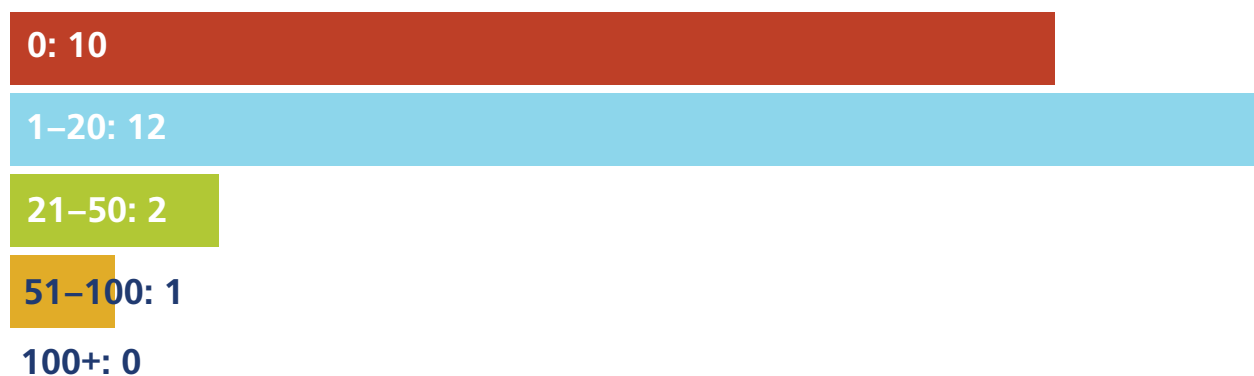


Figure 13: reports of sexual harassment to regulator

## Number of reports | Number of regulators



Figure 14: reports of bullying to regulator

## Training

One commonly deployed preventative initiative is training. Respondent organisations were asked if they offered training relevant to addressing bullying and/or sexual harassment. Thirty-seven per cent indicated that they offered such training. Intriguingly, standalone independent regulators were much less likely to offer training (only ten per cent did), whereas 52 per cent of law society and bar associations with regulatory responsibilities did. This may be explained by the training role traditionally undertaken by law societies and bar associations in their representative capacity, whereas standalone regulators often necessarily stand apart from the profession, to an extent.

There has been growing discussion in several jurisdictions about the potential for making such training mandatory, as part of existing continuing professional development obligations. In April 2021, South Australia became the first jurisdiction in Australia to require practitioners to do one hour of training on sexual harassment each year.<sup>131</sup> Despite this recent example, mandatory training requirements are not (yet) widespread – of the respondent organisations to offer training, only 15 per cent – three jurisdictions in total – had a mandatory training requirement on these issues.

<sup>131</sup> Michael Pelly, 'SA introduces mandatory training for lawyers on harassment', *Financial Review* (online, 29 April 2021), [www.afr.com/companies/professional-services/sa-introduces-mandatory-training-for-lawyers-on-harassment-20210426-p57mje](http://www.afr.com/companies/professional-services/sa-introduces-mandatory-training-for-lawyers-on-harassment-20210426-p57mje) accessed 3 February 2022.

## Entity-level regulation

In many jurisdictions, professional regulation has traditionally been premised on a predominantly individual basis – lawyers are regulated in their personal capacity. However, as regulatory approaches have evolved, there has been increasing recognition of the need to also consider entities within the profession – law firms and so on. This evolution may be particularly salient in the context of inappropriate workplace behaviour, as regulators seek to address the issue at a macro level rather than solely through disciplinary proceedings in individual cases.

For example, if incidents of sexual harassment were persistently occurring at a law firm, this might indicate broader workplace issues, more appropriately addressed through an entity-level approach. Just under half of respondent organisations indicated that they possessed such powers (see Figure 15). Entity-level regulation was particularly uncommon among North American regulators, albeit in the Canadian context, the Federation advised: ‘Six law societies in Canada have moved toward entity regulation and are at different stages of implementation’. Of those regulators with entity-level powers, 43 per cent said they had exercised the powers in the harassment or bullying context.

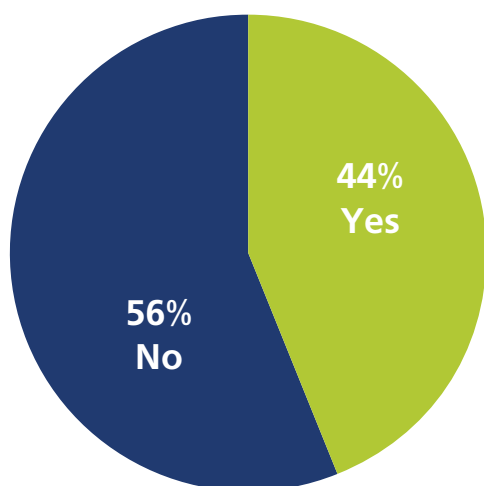


Figure 15: do you have entity-level regulatory powers that could be used to address bullying and/or sexual harassment in workplaces? This may include investigating or sanctioning management or the entity itself (whether a law firm, chambers etc).

**“**We have powers to take enforcement action against regulated entities... we can take enforcement action against Heads of Chambers and other individual members of chambers including, for example, all members of a chambers’ management committee.

Europe, standalone regulator

# Regulatory initiatives

## Policy and strategy

Just under half of respondents indicated that they had established a specific policy or strategy for addressing inappropriate behaviour, including bullying and sexual harassment, within the profession they regulated (see Figure 16). A specific policy or strategy was particularly uncommon in North America, where just 13 per cent of respondent organisations indicated they had one. Of those respondents that did have a specific policy or strategy, more than half indicated that they had dedicated staff members responsible for the policy or strategy (see Figure 17).

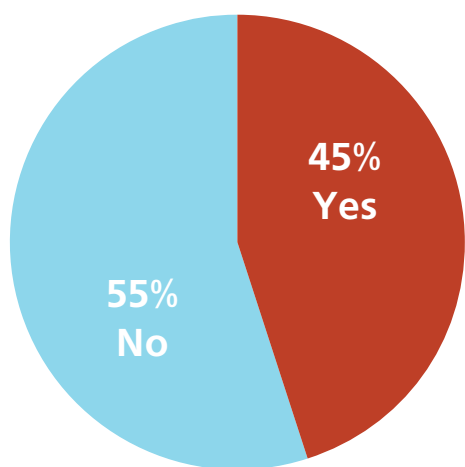


Figure 16: do you have a specific policy or strategy for addressing bullying and/or sexual harassment in the profession?

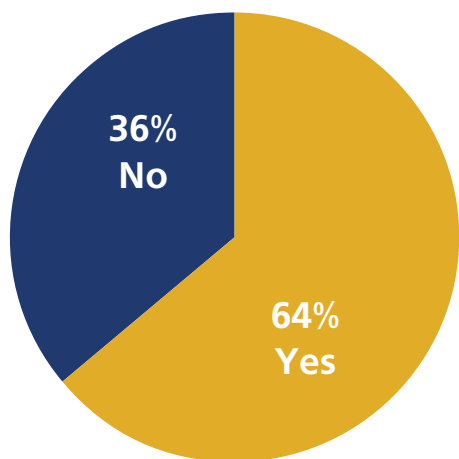


Figure 17: do you have dedicated staff members responsible for this policy or strategy?

**“**We have always felt hamstrung in relation to the lack of reports, but now the focus is shifting we hope to play an active part in encouraging reporting, education, and changing cultural norms.

Australasia and the Pacific, standalone regulator



**“Improvements are being made to the training and expertise of our staff, particularly in relation to vulnerable witnesses and reports of harassment, and we have named individual members of staff as the contact points for witnesses and individuals involved in investigations concerning bullying and/or harassment.**

Europe, standalone regulator

## Data gathering

Respondent organisations were asked if they had taken steps to gather data about the prevalence of bullying and/or sexual harassment, beyond that received via reports of individual incidents. While regulators pursuing such initiatives remain in the minority (see Figure 18), it appears to be a growing trend.

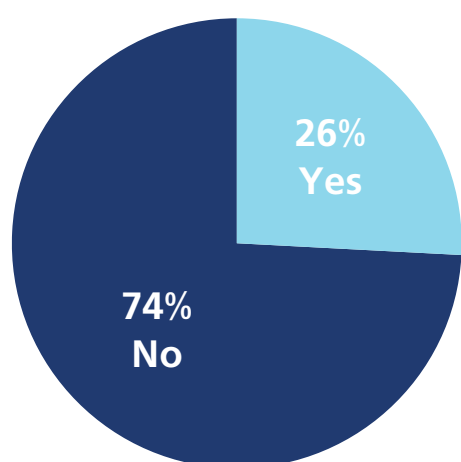


Figure 18: do you gather data?

Respondent organisations who had undertaken data-gathering efforts were asked to provide more information. A selection of responses is extracted below.

**“We undertook a large-scale research study in 2019, which was designed to assess how pervasive (or otherwise) sexual harassment is in our legal profession. Two surveys were conducted as part of the study: the first was designed to collect data about the personal experiences of over 20,000 lawyers; the second collected information about the policies and procedures that legal workplaces have in place, and the training they provide, to prevent and manage sexual harassment in the workplace.**

Australasia and the Pacific, standalone regulator

**“We are planning to conduct a survey among attorneys, which includes bullying and sexual harassment within the profession.**

Europe, bar association or law society

*“Another way some law societies gather information about an individual’s experience is through exit surveys. These tend to be voluntary and they ask members who are leaving the profession whether they experienced any form of harassment or discrimination, and if so, whether those experiences impacted their decision to leave.*

Submission by the Federation of Law Societies of Canada

## Attitudes

Respondent organisations were asked if they thought attitudes to inappropriate behaviour in the profession were changing. A significant majority, 68 per cent, said yes. Some also provided qualitative responses, which are extracted below.

*“There is greater awareness after the #Metoo movement.*

*Africa, bar association or law society*

*“More jurisdictions are considering adopting ABA Model Rule 8.4g, mostly as a result of the current emphasis on eliminating racial bias in the system.*

*North America, Bar Association or Law Society*

*“There now seems to be a greater acceptance among many, if not all, legal regulators that sexual harassment – which in many jurisdictions constitutes a breach of civil and/or criminal laws – is conduct which is entirely at odds with the standards to which lawyers are held (even in the absence of a specific professional conduct rule prohibiting this behaviour).*

*Australasia and the Pacific, standalone regulator*

*“Yes. The prevailing attitude used to be that bullying and harassment were not in the domain of regulation. This is no longer the case: the prevailing attitude, particularly in relation to sexual harassment, is that these behaviours are very much in the regulatory domain and that regulatory action should be taken to address them.*

*Europe, standalone regulator*

## Outcomes, opportunities and challenges

The survey concluded with questions about positive outcomes and challenges faced by regulators. First, respondent organisations were asked if they had identified any positive regulatory outcomes from the emerging regulatory focus on bullying and sexual harassment. forty-two per cent said yes, and provided qualitative responses. A selection of these is extracted below:

**“We have required lawyers to complete educational programs designed to increase sensitivity to these issues as alternatives to discipline.**

North America, judicial body

**“Our relationship with some of the stakeholders that were most critical of our perceived historic inaction has definitely improved, as has our engagement with the groups who are the main targets of bullying and harassment – young lawyers, women lawyers and those from minority backgrounds.**

Australasia and the Pacific, bar association or law society

**“We had an excellent response to our research study, which has provided quality baseline data from which to assess the effectiveness of any regulatory action we take to address this problem. We have also received more reports of sexual harassment from the profession.**

Australasia and Pacific, standalone regulator

**“Recent caselaw on sexual harassment by attorneys in our jurisdiction has included excellent analysis and harsher sanctions than we might have expected in the past.**

North America, judicial body

**“Other relevant legal stakeholders have expressed interest in joining a “working group” to discuss and address sexual harassment in the local legal profession.**

Australasia and the Pacific, standalone regulator

**“The threshold of tolerance vis-à-vis harassment has reduced significantly.**

Europe, bar association or law society

**“Part of our work to address bullying and sexual harassment includes taking appropriate enforcement action. The numbers of cases where we brought misconduct proceedings for sexual harassment is small but we have secured findings in the majority of cases and a number of cases have led to a sanction of suspension from practise. The attendant publicity for such cases has a positive outcome in signalling to the public and the profession that such conduct is taken very seriously and also may encourage others to come forward.**

*However, it remains the case that victims of sexual harassment are reluctant to come forward and, if they do, may not be willing to face the challenges and stress involved in supporting the regulatory to take disciplinary action. Saying this, we have received new reports of harassment following publicity about disciplinary findings for harassment, with reporters directly referencing #MeToo and the changes to attitudes about behaviour within society generally.*

Europe, standalone regulator

Finally, respondent organisations were asked about the primary challenges they faced in seeking to address bullying and sexual harassment in the profession. A selection of responses is extracted below:

**“Persuading members to report incidents. Our survey indicated bullying and harassment was taking place but not being reported.**

Europe, bar association or law society

**“Developing a culture that overcomes fear of retribution for speaking out.**

Australasia and the Pacific, bar association or law society

**“We do not have rules that expressly prohibit this conduct, so must tether the conduct to existing rules in order to bring charges. For instance, we might need to allege that a lawyer violated our rule prohibiting criminal conduct by reason of conduct involving harassment or bullying, thus requiring us to prove that the conduct also violated a relevant criminal statute.’**

North America, judicial body

**“Our rules prohibit discrimination on the basis of sex (and for other reasons in employment). Aside from that, sexual harassment and bullying are not regulated by us. We can only regulate based on the authority that the Court grants us by adopting a rule, and the Court has not done so.**

North America, judicial body

**“The Patriarchy. Anytime there is discussion about punishing an attorney for engaging in bullying, sexual harassment, having sex with clients, or discriminating against another because of race, religion, sexual orientation, gender, age, ethnicity, or other protected class, white males, especially older white males, fearing the loss of power and privilege threaten litigation and challenges to enforcement under the 1st Amendment, and they will continue to prevail in those efforts as long as the Patriarchy is allowed to remain in charge.”**

North America, judicial body

**“Building trust with people who experience this behaviour so they will report it, and then having the necessary resources and legislative tools to address it. We are presently working with inadequate legislation. Investigating and addressing the behaviour also requires significant resources and skill, as at times you are required to investigate the entire partnership of a major firm. That takes resources and expertise – it also takes time [which is a problem] when the people involved have expectations it will be addressed quickly.”**

Australasia and the Pacific, bar association or law society

**“Inability to discipline just poor, boorish or unprofessional behavior that is less than harassing.”**

North America, judicial body

**“While the Law Society has issued a resources guide to members, addressing bullying and/or sexual harassment is largely seen to be a law firm issue rather than a regulatory issue that Council of the Law Society deals with. The primary challenge presented is that culturally law firms still need to develop and implement appropriate policies and procedures to deal with bullying and/or sexual harassment in the workplace and for staff to be trained in these policies and procedures. The large law firms are well placed to do this but the medium and smaller law firms are not resourced to put these in place.”**

Asia, bar association or law society

# Guidance

From the above context and survey data, it is possible to identify a number of issues that have confronted regulatory and disciplinary bodies in responding to bullying and sexual harassment in the profession. In this section, we suggest a number of primary areas of consideration and focus – drawing on the insights shared by respondent organisations and other sources of information. These are, of course, only suggestions and guidance, yet it is hoped they provide helpful food for thought to enable regulatory and disciplinary bodies to continue to strive for positive change.

## 1. Clarity around the nature and scope of regulations

Because regulatory focus on bullying and sexual harassment is, in relative terms, a recent development, many regulatory and disciplinary frameworks remain underdeveloped or unclear about their particular application in this context. For sexual harassment, about 70 per cent of respondent organisations had regulatory authority – expressly or via interpretation; for bullying, it was only about half.

Accordingly, there is a considerable regulatory gap – in jurisdictions where there is no clear authority over issues of sexual harassment, or, in those where authority has only come through interpretation via case law and so on, uncertainty in the absence of express rules that prohibit inappropriate interpersonal behaviour in the profession. We would encourage regulatory and disciplinary bodies to consider whether law and rule reform might be necessary to adapt frameworks for the modern context in this respect.

Even in jurisdictions with clear prohibitions, regulatory and disciplinary bodies would be well-advised to consider the appropriate scope of that prohibition. The ongoing law reform discussion in Australia is instructive. Rule 42 of the uniform law in Australia formerly prohibited discrimination, sexual harassment and workplace bullying ‘in the course of practice’. Accordingly, there was an open question around whether the prohibition extends to conduct occurring in social settings, such as ‘casual after-work drinks or a legal industry networking function’.<sup>132</sup> Just before this report was published, the rule was reformed to clarify its scope.

Similar issues have arisen in a number of disciplinary cases in a range of jurisdictions internationally.<sup>133</sup> There are no easy answers to the appropriate scope, reflecting, no doubt, the divergent views about the proper boundaries of professional regulation on ground otherwise covered by criminal and civil law. If a solicitor sexually harasses another solicitor, a colleague, at after work drinks, should that fall within regulatory scope? What if a solicitor sexually harasses a member of the public at a social event with no nexus to the profession? Should that fall within scope, given the potential impact on the reputation of the profession? Or should it be left to civil and criminal law?

Further consideration of these issues in the years ahead will be essential to ensuring clarity around the extent of regulatory and disciplinary jurisdiction.

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<sup>132</sup> Law Council of Australia, ‘Australian Solicitors’ Conduct Rules – Further Revisions to Rule 42’ (Public Consultation, 6 April 2021) 6.

<sup>133</sup> See the discussion in *Beckwith* [2020] EWHC 3231 (Admin).

## 2. Innovative and supportive reporting channels

A recurring theme from respondent organisations was the limited number of formal complaints they received and hence, as organisations are often reactive to complaints, the limits in taking action. This is no doubt why, despite the data suggesting widespread inappropriate behaviour in law, disciplinary action remains relatively rare. To address this gap between prevalence and reported incidents, regulatory and disciplinary bodies should focus on innovative and supportive reporting channels to ensure targets of inappropriate behaviour feel empowered to speak up. This might include technology-enabled solutions,<sup>134</sup> the ability to make informal or anonymous reports at first instance, the possibility of making a complaint that is not investigated until someone else complains against the same individual<sup>135</sup> and so on.

Reporting channels should include appropriate access to support – for example, regulatory staff answering phone calls should receive necessary training to provide trauma-informed support. Regulatory and disciplinary bodies should also be proactive in raising awareness about the availability of new reporting channels and take steps to remove barriers to reporting, such as unnecessary formality requirements.

Consideration should also be given to the possibility of extending limitation periods, in light of the structural and cultural barriers to reporting. One advocacy group has called for the time period for complaints to be extended to six years;<sup>136</sup> an academic has suggested regulatory discretion to review older historical cases ‘where the evidence so merits’.<sup>137</sup> Of course acceptance of such reports may well give rise to evidentiary issues and procedural fairness concerns, which would need to be appropriately balanced.

One approach that has been increasingly considered is mandatory reporting, where obligations are imposed on individual bystanders, or firms, to report incidents that they witness or become aware of to the regulator. Just six respondent organisations had such obligations, suggesting it remains rare. While mandatory reporting may help increase reporting rates, and give regulatory and disciplinary bodies greater oversight and awareness, concerns have been expressed about potential unintended consequences – including the risk that mandatory reporting obligations will undermine efforts to foster informal reporting within workplaces, to address historically low reporting levels. Regulatory and disciplinary bodies considering mandatory reporting obligations should proceed with caution, consult widely, and benefit from the insight available from jurisdictions that have implementing mandatory reporting.

## 3. Getting disciplinary processes and sanctions right

As disciplinary bodies bring more proceedings in cases involving inappropriate personal conduct, care and attention will need to be given to the proper manner of those proceedings. Issues for consideration will include minimising compounding trauma during the process (which may well require complainants and

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<sup>134</sup> See Emma Franklin and Kieran Pender, ‘Innovation-led cultural change: can technology effectively address workplace harassment?’ (IBA, November 2020) [www.ibanet.org/MediaHandler?id=4c00afd9-53e7-4ad6-8db0-c663c2f23f45](http://www.ibanet.org/MediaHandler?id=4c00afd9-53e7-4ad6-8db0-c663c2f23f45) accessed 3 February 2022.

<sup>135</sup> See Ian Ayres and Cait Unkovic, ‘Information Escrows’ (2012) 111 *Michigan Law Review* 145.

<sup>136</sup> Australian Women Lawyers, ‘Seven Strategies for Addressing Sexual Harassment in the Legal Profession’ (9 July 2019) <https://australianwomenlawyers.com.au/wp-content/uploads/2019/07/Seven-Strategies-for-addressing-Sexual-Harassment-in-the-Legal-Profession-AWL-9-July-2019.pdf> accessed 3 February 2022.

<sup>137</sup> Julian Webb, ‘Legal profession: Professional culture to blame’, 94(10) *Law Institute Journal* (October 2020) 28.



witnesses to give evidence, and be subject to cross-examination), protecting the identity of complainants and witnesses and so on.<sup>138</sup>

Specialist training for judges and tribunal members hearing such matters may well be appropriate, to assist them in managing cases so as not to re-traumatise complainants. Internal processes of regulatory and disciplinary bodies should be attuned to these same issues – minimising the number of times complainants are required to retell their story, providing a single contact point (where feasible) throughout and so on.

Sanctions will also be a recurring issue of controversy. As was evident in the discussion earlier in this report, in the case law to emerge thus far, the appropriateness of sanctions has been contested. The development of sanctions guidance, as was recently done for the barristers' disciplinary tribunal in England, is a promising start. But disciplinary bodies and tribunals are faced with a dilemma: lenient sanctions may be seen as downplaying the severity of bullying and sexual harassment, and undermining the regulatory focus on these issues. This may well discourage the reporting of incidents.

However, overly punitive punishments may have a counter-intuitive effect. In the *Us Too?* report, a number of respondents said that they had not reported incidents, on the less severe end of the spectrum of conduct, for fear of disproportionate punishment for the perpetrator. Paradoxically, then, harsh punishment might discourage reporting, too. Tribunals, in reaching their determinations, and disciplinary bodies in making submissions on appropriate sanctions, should be mindful of these countervailing concerns and seek proportionate penalties, which might include remedial sanctions as well as the typical financial penalties, suspension or disbarment.

## 4. Collaboration will be critical

Regulatory and disciplinary bodies cannot fix the profession's harassment problem alone. In recent years, many different stakeholders – courts, bar associations, law societies, law firms, barristers' chambers and representative groups – including women lawyers groups and young lawyers groups – have been proactive in formulating and implementing strategies to address bullying and sexual harassment.

While acknowledging the requisite independence in certain circumstances, where possible regulatory and disciplinary bodies should work in partnership with the profession at large and particular stakeholders. They should amplify respective work and collaborate to undertake joint initiatives. This extends internationally, too. It is hoped that this report provides helpful guidance by allowing regulatory and disciplinary bodies to consider the perspectives of peers across jurisdictions.

Some of the data outlined here was first presented at the International Conference of Legal Regulators; that forum, and others like it, provide great opportunity for ongoing sharing of knowledge and best practice. It is hoped that regulators will continue to work together to address harassment, which – as the *Us Too?* report underscored – is a global rather than localised challenge.

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138 The appropriateness of protecting the identity of the respondent was discussed in the *EFA* case: [2021] NSWCA 339 (21 December 2021).

## 5. A creative, holistic and long-term approach

Finally, disciplinary and regulatory bodies will need to grapple, now and in the future, with the fact that these issues represent a long-term societal challenge. That poses a significant challenge for those with oversight of the profession, which have typically focused on individual misconduct. Many of the responses from respondent organisations underscored the difficulty of achieving wider change through this paradigm.

The profession's harassment problem goes beyond individuals – it is endemic, cultural and societal. The question of what role regulatory and disciplinary bodies should play is therefore not straightforward. Should regulatory bodies be engaging in more systemic measures aimed at wider change? Is it enough that they continue to pursue individuals for breaches of professional conduct rules, perhaps with greater frequency than in the past, in revised frameworks that explicitly target these forms of misconduct? That dilemma sits alongside the issue of appropriate regulatory scope discussed earlier.

It is not just the law that has a harassment problem, but society as a whole. Reasonable minds can and do differ on the bounds of appropriate professional-discipline oversight within that context. Should regulatory and disciplinary bodies limit themselves to what happens between members of the profession in workplaces? Or is a wider remit appropriate? If a lawyer sexually harasses a non-lawyer in a social setting, should that be left to civil and criminal law? Or is it appropriately a matter of concern for regulatory and disciplinary bodies?

These are not easy questions, but they must be confronted. In the years ahead, regulatory and disciplinary bodies will need to think creatively and holistically about their role in driving positive change within the process. Innovation in data collection, reporting strategies, enforcement action, collaboration and policy work will be essential. That thinking must necessarily be long-term. These issues are not going away. The current momentum to address bullying and sexual harassment in law, sparked by the #MeToo movement, should not be allowed to dissipate.

Addressing inappropriate interpersonal behaviour should no longer be a new trend for regulatory and disciplinary bodies, but a core focus – resourced appropriately and integrated into organisational structures in a way that ensures longevity.

# Conclusion

There is no place for bullying or sexual harassment in the legal profession. That much is undisputed. However, we know, anecdotally and empirically, that bullying and sexual harassment remain widespread within legal workplaces. Accordingly, the urgent question becomes: how do we address this scourge of inappropriate behaviour in our profession? There is no one answer, no silver bullet. Instead, there are many strategies that must be adopted and implemented at all levels. Every member of the legal profession has a responsibility, an obligation, to contribute to this positive change.

This report looked at one dimension of the multi-faceted strategy required for achieving change: regulatory and disciplinary approaches to bullying and sexual harassment. As the report explored, in recent years, there has been far greater focus by regulatory and disciplinary bodies within the profession on interpersonal conduct. That focus has brought with it challenges and opportunities. By surveying regulatory and disciplinary bodies around the world and sharing that data, this research is intended to inform and assist ongoing regulatory efforts to address bullying and sexual harassment. It is hoped that it provides useful food for thought, sharing insight and advice among peers.

Regulatory and disciplinary bodies can make a meaningful difference. By prioritising these issues, driving reform to rules and regulations, seeking accurate data, facilitating better reporting of incidents and, where appropriate, bringing disciplinary proceedings, regulators are signalling that bullying and sexual harassment in law will not be tolerated. They are sending a warning to perpetrators, a deterrent signal to the profession and a message of support to targets. These efforts will not fix law's bullying and sexual harassment problem. But in the years ahead, regulatory and disciplinary initiatives will be a crucial part of a wider campaign for change.

The report's Introduction began with a quote from a working group of the NZLS, chaired by Dame Silvia Cartwright. In many respects, the New Zealand profession has been ahead of the curve on grappling with the prevalence of bullying and sexual harassment, after the profession was rocked by allegations soon after the #MeToo movement began. Some of the incidents that gave rise to this harassment reckoning led to regulatory intervention – in June 2021, the New Zealand Lawyers and Conveyancers Disciplinary Tribunal issued its decision on liability in one such case.<sup>139</sup> It is apt to conclude with a passage from the decision, which underscores the toll of harassment and the need for urgent action:

*'We wish to comment briefly on the effects on the complainants, and the other two (then) junior women lawyers who gave evidence. Of the group, two have left New Zealand – one specifically as a result of these events; at least one has left the profession; another changed her area of practice so as to avoid contact with [the respondent]; another felt her career had been adversely affected. It is a mark of shame for the profession that its most junior members have shouldered the burden of bringing these events to notice, but it reflects only positively on them...'*

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<sup>139</sup> Just prior to the finalisation of this report, the decision on penalty was handed down. See *National Standards Committee No 1 v Gardner-Hopkins* [2022] NZLCDT 2 (LCDT 022/20).

*The Tribunal would not want this decision to be read as one which prevents enjoyable or even warm interactions between practitioners. Or to be read as enforcing a humourless, rigid code of behaviour on the legal profession, which is already a stress-laden one. A careful reading of the evidence recorded in this case, and understanding of the relevance of power imbalances, will reveal the stark differences between healthy collegiality and what happened here.*<sup>140</sup>

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140 *National Standards Committee No 1 v Gardner-Hopkins* [2021] NZLCDT 21 (LCDT 022/20) [185]–[187].

# Acknowledgements

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This report was made possible by the thoughtful and engaged responses from regulators around the world that replied to our survey – thanks to each and every one of them. I hope the report has utility that repays the time investment. I am particularly grateful to the Federation of Law Societies of Canada for helpfully collating responses from across their jurisdictions and providing comments on a draft.

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# Appendix: Survey

As the survey used conditional branching and optional questions, it is difficult to replicate in paper form. Nevertheless, for the interests of transparency, the survey is extracted below.

In 2019, the International Bar Association (IBA) Legal Policy & Research Unit (LPRU) published *Us Too? Bullying and Sexual Harassment in the Legal Profession*. This research, based on a global survey of approximately 7,000 respondents across 135 countries, indicated that inappropriate behaviour was widespread within legal workplaces. One in two female respondents and one in three male respondents said they had been bullied (mobbed/morally harassed) at work; and one in three female respondents and one in 14 male respondents had been sexually harassed.

As the next phase of this work, the LPRU – in collaboration with the IBA Bar Issues Commission Regulation Committee – wish to better understand the regulation of these issues. Regulators in different jurisdictions have taken divergent approaches to inappropriate behaviour in recent years. With these issues looming as an emerging regulatory trend, the IBA hopes that it might be helpful for regulators to understand how their peers are responding. The results of this survey will be compiled and published in a discussion guide, to be launched in late October 2020 at the virtual International Conference of Legal Regulators. While this project and survey do not consider the related but distinct issue of discrimination within the profession, the IBA continues to work to address barriers to equality in law, including through our Diversity & Inclusion Council.

Responses to this survey are anonymous. We would appreciate your frank insight. Acritas Research Limited, an independent agency administering the survey, will process responses and pass aggregated results to the IBA LPRU. Acritas may capture Internet Protocol (IP) addresses to ensure survey integrity. It will not capture any other personal information. Please see the IBA's privacy policy and Acritas' privacy policy. Any questions can be directed to [kieran.pender@int-bar.org](mailto:kieran.pender@int-bar.org).

THESE QUESTIONS ARE MANDATORY

## Your Regulator

Q1. Region:

☐ Europe ☐ Latin America ☐ North America ☐ Middle East ☐ Africa ☐ Asia ☐ Australasia and the Pacific

Q2. Type

- ☐ Standalone regulator (a public or statutory independent body, separate from government and the bar/law society)
- ☐ Bar association or law society (with regulatory responsibilities)
- ☐ Government body (a regulator based within a government department or otherwise connected to government)
- ☐ Judicial body / other



THESE QUESTIONS AND ONWARDS ARE OPTIONAL

All questions in this survey are optional – please provide as much information as you are comfortable with.

## Sexual Harassment

Q3. Do your professional conduct rules (or equivalent) explicitly prohibit sexual harassment?

☐ Yes ☐ No

Q3A. [If No to 3] Has case law or other directives brought sexual harassment into your regulatory scope?

☐ Yes ☐ No

Q3B. [If Yes to 3] Do the rules define what constitutes sexual harassment?

☐ Yes ☐ No

Q4. Can you bring disciplinary proceedings against a member of the profession for committing sexual harassment?

☐ Yes ☐ No

Q4A. [If Yes] Have you done so?

☐ Yes ☐ No

Q5. How do you rank sexual harassment as a regulatory priority (on the basis of your priorities and strategies as a regulator, 1 being not a priority at all; 10 being the most significant priority)?

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10

## Bullying (Mobbing/Moral Harassment)

Q6. Do your professional conduct rules (or equivalent) explicitly prohibit bullying?

☐ Yes ☐ No

Q6A. [If No] Has case law or other directives brought bullying into your regulatory scope?

☐ Yes ☐ No

Q6B. [If Yes to 6] Do the rules define what constitutes sexual harassment?

☐ Yes ☐ No

Q7. Can you bring disciplinary proceedings against a member of the profession for committing bullying?

☐ Yes ☐ No

Q7A. [If Yes] Have you done so?

☐ Yes ☐ No

Q8. How do you rank bullying as a regulatory priority (on the basis of your priorities and strategies as a regulator, 1 being not a priority at all; 10 being the most significant priority)?

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10

## Regulatory Context

Q9. Do you have reporting channels in place to facilitate reports of bullying and/or sexual harassment by those you regulate?

☐ Yes (please provide details) ☐ No

Q9A-E. [If Yes]

Is reporting of bullying and/or sexual harassment mandatory?

☐ Yes ☐ No

Are your reporting channels for bullying and/or sexual harassment:

☐ Formal only ☐ Informal only ☐ Both

Are your reporting channels:

☐ Specific to bullying and sexual harassment ☐ Used for any form of misconduct ☐ Both

In the past 12 months, how many reports of bullying have you received?

☐ 0 ☐ 1-10 ☐ 11-20 ☐ 21-50 ☐ 50-100 ☐ 100+

In the past 12 months, how many reports of sexual harassment have you received?

☐ 0 ☐ 1-10 ☐ 11-20 ☐ 21-50 ☐ 50-100 ☐ 100+

Q10. Do you offer training to members of the profession regarding bullying and/or sexual harassment?

☐ Yes ☐ No

Q10A. [If Yes] Is it mandatory?

☐ Yes ☐ No

Q11. Do you have entity-level regulatory powers that could be used to address bullying and/or sexual harassment in workplaces? This may include investigating or sanctioning management or the entity itself (whether a law firm, chambers etc).

☐ Yes ☐ No

Q11A. [If Yes] Have you used these powers?

☐ Yes ☐ No

## Regulatory Initiatives

Q12. Do you have a specific policy or strategy for addressing bullying and/or sexual harassment in the profession?

☐ Yes ☐ No

Q13. Other than through reports of individual incidents, have you gathered any data on the prevalence of bullying and/or sexual harassment within the profession?

☐ Yes (please provide details) ☐ No

Q14. Do you think attitudes and approaches to addressing bullying and/or sexual harassment through regulatory action have recently changed or are currently changing?

☐ Yes (please provide details) ☐ No

Q15. What are primary challenges you face in seeking to address bullying and/or sexual harassment in the profession?

Q16. Do you have any other comments to share?

Thank you for completing this survey. Your responses are anonymous. Any questions can be directed to [kieran.pender@int-bar.org](mailto:kieran.pender@int-bar.org).



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